

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996, c.367

and

IN THE MATTER OF A REVIEW OF AN ALLEGATION
OF MISCONDUCT AGAINST CST [REDACTED]
OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF DECISION

(Section 117 *Police Act*)

NOTICE TO: [REDACTED] Complainant;

Constable [REDACTED] Member;

Staff Sergeant [REDACTED] c/o South Coast British Columbia
Transportation Authority Police Service Professional Standards Section,
Investigating Officer;

Chief Constable Adam Palmer, c/o Vancouver Police Department; and
Clayton Pecknold, Police Complaint Commissioner.

Introduction & Alleged Misconduct

1. On April 3, 2020, the Police Complaint Commissioner (the “Commissioner”) ordered a review pursuant to sections 117(1) and (4) of the *Police Act* of the discipline authority’s determination that an allegation of misconduct directed at Constable [REDACTED] could not be substantiated.
2. The misconduct alleged is as follows:

Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the Police Act, oppressive conduct towards a member of the public, including, without limitation, in the performance, or purported performance of duties, October 7, 2017 intentionally or recklessly using unnecessary force on [REDACTED] [REDACTED] in attempting to remove her from the lobby of Vancouver Police Headquarters located at 2120 Cambie Street Vancouver.

Summary of Complaint and Alleged Misconduct

3. The Complainant, [REDACTED] ("Ms. [REDACTED] or "the Complainant"), and her mother (collectively, "the [REDACTED]" had attended a social gathering in Vancouver's Chinatown on October 6, 2017. While at the gathering Ms. [REDACTED] backpack containing house keys, bankbook, personal address information, bus pass and other items went missing. The [REDACTED] reported the theft but upon returning home believed that a thief may have entered the residence. Frightened, they took a cab to Vancouver Police Headquarters at 2021 Cambie Street, Vancouver, B.C. They arrived at approximately 10 PM to find the building closed. They pressed the buzzer to summon help and waited until a constable arrived. Ms. [REDACTED] and her mother have limited English language skills and a Cantonese speaking constable (Constable [REDACTED] was summoned. They were invited into the lobby of Vancouver Police Headquarters. For a number of hours Constable [REDACTED] attempted to assist them. It was apparent that they were frightened and mistrustful of police. They wished to remain in the building until it was safe to return home.
4. Constable [REDACTED] offered a number of options to assist the [REDACTED] but these options involved them leaving Vancouver Police Headquarters. The [REDACTED] refused. It was shift change time between 3 and 4 AM and a number of officers were entering the building. Frustrated, Constable [REDACTED] retreated to his police car parked in front of police headquarters to make notes on another case, before heading off shift. He left the [REDACTED] in the lobby. At some point he told one or more constables entering the building that he had been dealing with the [REDACTED] that they refused to leave the lobby, and asked them to tell the [REDACTED] to leave.
5. One of the police constables he spoke to was Constable [REDACTED]. Upon entering the lobby Constable [REDACTED] noticed another female constable talking to the [REDACTED]. He approached the [REDACTED] and greeted them in Cantonese. He told him they had to leave. When Ms. [REDACTED] refused he took her by the arm in an attempt to escort her from the building. She fell to the ground and he dragged her kicking and screaming towards the door. Ultimately Constable [REDACTED] re-entered the building. Constable [REDACTED] let go of Ms. [REDACTED] and headed off to change for work.
6. Other members of the Vancouver Police Department intervened and in the result two constables were designated to sit with the [REDACTED] until the building opened to the public. The [REDACTED] left approximately 9 AM.

Complaint and Investigation History

7. On January 19, 2018 Ms. [REDACTED] made a formal complaint about her treatment by Constable [REDACTED]. The complaint was ultimately declared admissible and the subsequent investigation began.
8. On March 8, 2018 the Commissioner designated the South Coast British Columbia Transportation Authority Police Service (the "Transit Police") as the External Investigator and External Discipline Authority. Sgt. [REDACTED] was the designated Investigator and Inspector [REDACTED] was the designated Discipline Authority. A number of Progress Reports were filed prior to October 17, 2018 when the investigation was extended. The investigation was extended again on December 10, 2018. The first Final Investigative Report was submitted to the Discipline Authority on January 14, 2019 and rejected by the Disciplinary Authority on January 15, 2019. The Final Investigative Report was resubmitted to the Discipline Authority on April 5, 2019 and rejected by the Police Complaints Commissioner on April 26, 2019. There was a direction for further investigation on May 15, 2019 and the Final Investigative Report was resubmitted to the Discipline Authority on February 21, 2020. At some point during this time, Staff Sgt. [REDACTED] assumed the role of External Investigator from Sgt. [REDACTED].
9. The Discipline Authority concluded that Constable [REDACTED] was in the lawful execution of his duty and was bound to challenge and ultimately remove Ms. [REDACTED] from the building. The Discipline Authority found that the [REDACTED] were trespassers and that Constable [REDACTED] had a duty imposed upon him to remove them in accordance with Vancouver Police Department building security policy.
10. The Commissioner's concern on review of that decision was that the Disciplinary Authority relied upon authorities that Constable [REDACTED] never cited in his explanation as to why he attempted to remove Ms. [REDACTED] from the lobby. The Commissioner further noted that Ms. [REDACTED] and her mother had been invited into the lobby while Constable [REDACTED] attempted to assist them. Neither spoke English fluently, both were at the Vancouver Police Headquarters to report a crime and wished to remain at the police station out of concern for their safety. The Commissioner found that Constable [REDACTED] assertion that he had authority to use force to remove Ms. [REDACTED] because she was committing the *Criminal Code*, R.S.C. 1985 c. C-46 (the "*Criminal Code*") offence of Mischief was not supported by the actions he took.
11. In my Notice of Appointment the Commissioner specified that pursuant to section 117(8) of the *Police Act* I am not limited in this review to the allegations

considered by the Discipline Authority or the Police Complaint Commissioner's assessment of those allegations.

Section 117 of the *Police Act*

12. The statutory authority governing this review is found in section 117 of the *Police Act*. Specifically, section 117(6) of the *Police Act* imposes a duty on the Commissioner to provide the retired judge with copies of all reports under sections 98, 115 and 132 that may have been filed with the Commissioner prior to the retired judge's appointment in relation to the allegation of misconduct. The responsibilities of the retired judge are set out in sections 117(8) and 117(9) and direct the retired judge to review the material delivered under section 117 and determine whether there is sufficient evidence to substantiate the allegation of misconduct.
13. The law is clear that a review under section 117 is a paper-based examination of the record provided by the Commissioner. It takes place without live witnesses, additional evidence or submissions from any of the parties involved. The review is not an appeal of earlier decisions concerning misconduct nor is it a redetermination in any manner of other court proceedings that may have a connection to the misconduct alleged. The retired judge's focus is not on the correctness of an earlier finding but rather the retired judge is to reach their own conclusion about whether the materials they have been provided for review support a finding of apparent misconduct. If the retired judge concludes that on the record it **appears** that there is sufficient evidence to substantiate an allegation of misconduct the retired judge then becomes the Discipline Authority and a Discipline Hearing results.

The Record

14. In discharge of the obligations under section 117(6) the Commissioner has provided some 725 pages of material for review. These materials consist of the Final Investigation Reports referred to in paragraph 8. Those reports in turn contained witness statements, transcripts of those statements and audio recordings of those statements.
15. Significantly, although all of the events of the evening of October 6, 2017 and the morning of October 7, 2017 were video recorded the video was not part of the record provided. Apparently, it was misplaced or lost after it was reviewed by Vancouver Police Department Professional Standards Members sometime between October 20 and November 2, 2017. There was one frame in the materials that showed Constable [REDACTED] and the [REDACTED]. Other frames were referred to by the Investigating Officers when they were interviewing various witnesses, but those frames were not included in the materials I was

provided. The loss of the video is the subject of a separate complaint and investigation.

Misconduct and the *Police Act*

16. Section 77 of the *Police Act* sets out the definition of *misconduct* relevant to the allegations concerning the Member. Specifically, subsection 77 of the *Police Act* provides, in part, as follows:

77(1) In this part, *misconduct* means

- (a) conduct that constitutes a public trust offence described in subsection (2), or
- (b) conduct that constitutes
 - (i) an offence under section 86[offences to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint] or 106[offences to hinder, delay, obstruct or interfere with investigating officer], or
 - (ii) a disciplinary breach of public trust described in subsection (3) of this section....

(3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

- (a) abuse of authority, which is oppressive conduct towards a member of the public, including, without limitation,
 - (i) ...
 - (ii) in the performance, or purported performance, of duties, intentionally or recklessly
 - (A) using unnecessary force on any person....

17. An important overall limitation to the definitions of misconduct in section 77 of the *Police Act* is found in subsection 77(4) as follows:

77(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

18. Adjudicator Pitfield in a decision under Section 117 *Police Act* [2014-9919] had this to say about the offence of *abuse of authority*:

[29] Abuse of authority is a disciplinary breach of trust. While “breach of public trust” is not defined in the *Police Act*, it should be construed to reflect the public expectation that police will act in a manner that is not offensive to the public, to the policing profession generally, or to the police force in which an officer is a member.

[30] Rather than being exhaustively defined, *abuse of authority* embraces any conduct that may be regarded as oppressive to a member of the public. That result flows from insertion of the words *including, without limitation*, before the description of certain kinds of conduct with greater particularity. It is an error to conclude that only intentional or reckless conduct can constitute an abuse of authority.

19. It is an allegation of misconduct (abuse of authority) arising under subsection 77(3)(a) of the *Police Act* concerning the member's interaction with the complainant that is relevant to this review. This review is, therefore, the examination of all of the evidence submitted related to the allegation of misconduct as defined under section 77(3)(a) as qualified by subsection 77(4).

The Evidence

Circumstances leading to alleged misconduct

20. The Complainant, Ms. [REDACTED] (DOB [REDACTED]) and her mother (DOB [REDACTED]) were in a meeting in the basement of [REDACTED], Vancouver, B.C. on October 6, 2017. An orange Adidas bag belonging to the Complainant and a cell phone belonging to a friend were stolen. The Adidas bag contained personal items of Ms. [REDACTED] including house keys, bankbook, letters, a bus pass, invoices and other miscellaneous items including records of her personal address. Police were called but were not immediately available. At approximately 21:08 hours the Complainant and her mother were able to flag down a police car and report the theft. They then headed home. Upon their return to their home, they observed that the front door appeared insecure (left open). Frightened, and afraid to go inside their apartment, they took a taxi to 2120 Cambie Street, Vancouver Police Headquarters.
21. From the material provided it appears that the [REDACTED] took a taxi to Vancouver Police Headquarters at approximately 10 PM. The building was closed. They used the intercom and waited for a Cantonese speaking member to arrive. Ultimately Constable [REDACTED] was contacted and arrived at Vancouver Police Headquarters at approximately 12:12 AM on October 7, 2017. He parked his police cruiser at the rear of the building and then proceeded to the front doors, locating the Complainant seated on the front entrance steps of the building. The weather was cold and windy outside so Constable [REDACTED] brought the [REDACTED] into the Vancouver Police Headquarters lobby. The Complainant and her mother had been waiting outside Vancouver Police Headquarters for approximately two hours.

22. Constable [REDACTED] obtained further details from the [REDACTED] including the fact that they had reported the theft. He told the Complainant that he would call for a taxi so that they could return home, and that he would follow the taxi back to their home, in order to deal with the incident. Constable [REDACTED] decided to attend to his police car to see if he could pull up the theft report and get some further background. He left the [REDACTED] in the lobby, attended to his police car and checked out the report then repositioned his police cruiser to the front of Vancouver Police Headquarters so that he could follow the taxi to the [REDACTED] residence.
23. Upon re-entering Vancouver Police Headquarters Constable [REDACTED] noted that two other police officers were talking to the [REDACTED]. They had asked the [REDACTED] who they were and if they were waiting for somebody. Constable [REDACTED] told the members that he was dealing with the [REDACTED] and the other two members left the lobby.
24. Constable [REDACTED] spent considerable time patiently telling the [REDACTED] what the police would be going to investigate their complaint. He explained that police would have to attend to their home and ensure that nobody was there. If there had been a break and enter police would have to call the identification section to look for potential forensic evidence. Throughout, the Complainant's mother continued to criticize police and stated on a number of occasions that they were useless. It was readily apparent that the [REDACTED] were very distrustful of police.
25. Constable [REDACTED] tried on at least two occasions to arrange for a taxi for the [REDACTED]. For a variety of reasons his efforts were unsuccessful. It was clear, however, that the [REDACTED] did not want to take a taxi home. At one point the Complainant's mother told Constable [REDACTED] that she did not believe that he would follow the taxi back to their home; that she believed that he would just leave once the taxi started driving. Constable [REDACTED] became extremely frustrated. He provided other options, including a stay in a hotel or with a friend for the night, assisting them with a 24 hour locksmith to change their locks or putting them in a taxi and following them home to ensure that their home was safe and they were protected. The [REDACTED] indicated that they wished to stay at Vancouver Police Headquarters and the Complainant's mother insisted that they had a right to stay at Vancouver Police Headquarters.
26. At approximately 3 AM on October 7, 2017 the Complainant told Constable [REDACTED] that since he had offered to drive them home in his police cruiser that he could drive them home now. Constable [REDACTED] received authorization to drive the [REDACTED] home in his police cruiser but only if there was an available unit that could assist him. Unfortunately, no units were available. Constable [REDACTED] advised the [REDACTED] that under the circumstances he could not drive them home. He then told them

that his shift would be ending soon. He reminded them that they were not supposed to be inside Vancouver Police Headquarters during non-business hours but given the circumstances he would not be forcing them out. He told them that other members encountering them in the lobby might ask why they were there and might ask them to leave. Constable [REDACTED] left the building after telling the [REDACTED] that he was sorry that he couldn't help them but since his shift was ending he needed to return to his police cruiser to finish writing another report from a previous call. The Complainant's mother continued to insist that they would remain in the lobby until Vancouver Police Headquarters opened as they had a right to be there and the police should be helping them.

27. Constable [REDACTED] sat in his police cruiser, which was parked directly in front of the lobby at Vancouver Police Headquarters. He notified the dispatcher that he couldn't help the [REDACTED] and that he would be clear from the call. He observed many members arriving for the start of their shift, entering the building walking past the [REDACTED] without acknowledging their presence. He said he felt disappointed that his colleagues weren't challenging the [REDACTED]. He therefore felt compelled to flag down some random members who were at the beginning or end of their shift and returning to Vancouver Police Headquarters. Constable [REDACTED] says he told some of these random members that he had been dealing with the [REDACTED] but they were refusing his assistance and were refusing to leave the lobby. He says that he wanted some of these members to engage the [REDACTED] to make them aware that they were seated in a secure building and should leave.

28. One of the members he flagged down turned out to be Constable [REDACTED]. Moments after speaking to Constable [REDACTED] he observed a disturbance inside the lobby area involving Constable [REDACTED] and the Complainant. Constable [REDACTED] immediately exited his police cruiser and proceeded to the lobby to intervene. As he entered the lobby the Complainant's mother pointed at him angrily and blamed him for having Constable [REDACTED] forcibly attempt to remove them from the building. The Complainant's mother was loud and agitated. She pointed at the video camera and stated that she was going to call 911. Ultimately other members intervened and arrangements were made to have Vancouver Police Department officers sit with the [REDACTED] until the police station opened.

The alleged misconduct

29. What occurred in the lobby of Vancouver Police Headquarters is not totally clear. The record discloses that the incident happened between 3 and 4 AM just before shift change on October 7, 2017. Numerous members of the Vancouver Police Department passed through the lobby either going on or off shift. If they noticed the [REDACTED] sitting in the lobby they did not challenge them. There is no evidence to suggest that the [REDACTED] did anything to attract attention, to interfere annoy or

harass any of the members. Obviously, the video would have been the best evidence of what transpired: a picture being worth a thousand words.

30. The Complainant, Ms. [REDACTED] says that a Caucasian male and female police officer came into the lobby and started "yelling at them" telling the [REDACTED] to leave. Ms. [REDACTED] says the male officer said "you better leave now" and then he approached her, took her hat off and grabbed her by the hair, lifted her hair and pulled her towards the front door. She was crying and screaming and ultimately the officer let her go and left. Because she was screaming loudly other officers came over to see what was going on.
31. Constable [REDACTED] turns out to have been the female police officer involved. She was interviewed August 15, 2018 by Sgt. [REDACTED]. She provided a compelled statement in compliance with the requirements of the *Police Act*. It appears that she was the only officer to actually take notes. Sgt. [REDACTED] asked her to address her mind to an incident that occurred at about 4 AM on December 7 (no year provided). It is apparent from the balance of her statement that the date was incorrect and that she was referring to October 7, 2017.
32. Constable [REDACTED] statement said that she was coming on shift when she saw two Asian females seated in the front lobby quietly. Since at 4 AM the lobby was a secure area she approached them and asked why they were there. She was told that an officer had let them in. She asked who the officer was but didn't get a response. There was further conversation in which the [REDACTED] gave what, in her view, was conflicting information as to who they were waiting for. She then asked them to leave. In her mind it was a secure environment, they had no lawful reason to be there and it didn't look like they were in distress. Apparently neither of the [REDACTED] indicated that they had been in the process of making a police complaint. It was at this point that Constable [REDACTED] showed up. Constable [REDACTED] said she gave him a "help me" look and he came over and spoke to the [REDACTED]. At some point she showed the [REDACTED] her badge. The [REDACTED] were shaking their heads and said they weren't leaving. It was at this juncture that Constable [REDACTED] took the arm of the younger Asian female and started to pull her into the direction of the doorway. Constable [REDACTED] said the younger Asian female used her body weight to actively resist and Constable [REDACTED] pulled her further to the door. The Complainant's resistance increased. Constable [REDACTED] let the Complainant go and she returned to the seated area. Constable [REDACTED] said in her statement that she never saw Constable [REDACTED] grab the younger Asian females' hair. At this point Constable [REDACTED] showed up and intervened.
33. Constable [REDACTED] provided two compelled statements under the *Police Act*.

34. In the first statement, given October 9, 2018 (or more than a year after the alleged incident) Constable [REDACTED] was asked about an incident that happened October 3, 2017 at approximately 4 AM. Constable [REDACTED] said he was in civilian clothes going to Vancouver Police Headquarters at 2120 Cambie Street to start his shift. He encountered Constable [REDACTED] who addressed him by his first name. Constable [REDACTED] told him that there were some ladies in the lobby and that they wouldn't leave. Constable [REDACTED] added that they had been there for hours and asked Constable [REDACTED] to give them a hint that they had to leave. Upon entering the lobby Constable [REDACTED] observed Constable [REDACTED] speaking with two Asian women who were sitting side-by-side in the small lobby seating area. One of the women was much older than the other. He sensed that Constable [REDACTED] wasn't having much success with the two women so approached them. Since he knew some Cantonese he address them in Cantonese. He asked their names but got no answer. He said he asked them in Cantonese to please go home but got no response. When he asked again the younger of the two defiantly yelled no. It was apparent to him that the two women were not going to leave. He decided that he needed to escort them out of the building and approached the younger of the two and asked her to please stand. She did not comply and he says he took action by gently taking a hold of her left arm and attempting to lift her from her seat with minimal force. He said the younger woman stood and then batted him in the head with her hands then dropped to the floor where she repeatedly kicked his legs and screamed. He said he stood still and wondered whether the Asian woman had a mental health problem. At this point Constable [REDACTED] came into the lobby and stated that he would handle the situation. Constable [REDACTED] left to change into his uniform for his patrol duties that day.
35. The second compelled interview of Constable [REDACTED] occurred on November 23, 2018. On this occasion Sgt. [REDACTED] the Investigator, asked Constable [REDACTED] to address his mind to an incident that happened on December 7, 2017 at approximately 4 AM in the lobby of Vancouver Police Headquarters. Constable [REDACTED] did not clarify dates but I am satisfied that the events that he was addressing occurred October 7, 2017 at approximately 4 AM. The story he gave was pretty much the same as the one he related during his first interview. During the second interview Sgt. [REDACTED] asked him what authority he had to remove the Asian woman. He said it was urgent to remove her because he was ensuring the integrity and security of the building and that they were interfering with and obstructing the lawful use of the property. He said he made a decision that a criminal offence was happening since the two women were interfering and obstructing the use of the police station from the police officers coming in and taking up their time. He said he wasn't aware of the history of police involvement with the women but the bottom line was that they were not welcome, they were not taking direction and they were interfering with the use of the building and obstructing the use of the building. He didn't know how they got into the building

but how they entered the building wasn't germane to what he was dealing with. They were unwanted and it was a closed police facility. Any information he had would have come from PC [REDACTED] the Constable he encountered outside the building. When asked again whether he thought the situation he was dealing with was urgent he stated that he believed the urgency had occurred hours before he got there. He had no idea why the situation had lapsed for hours and that he wasn't a party to that. Ultimately, Constable [REDACTED] said that his authority to remove the Complainant comes from the offence of mischief in the *Criminal Code* where a person who interferes and obstructs with the lawful use of property commits a criminal offence.

36. Staff Sgt. [REDACTED] and Inspector [REDACTED] both viewed the CCTV video footage of the incident sometime between October 20 and November 2, 2017. Staff Sgt. [REDACTED] gave a compelled statement. He didn't document the time or summarize the video at the time when he viewed it. He recognized Constable [REDACTED] and saw him conversing with the two Asian women. He said Constable [REDACTED] engaged with the female who was sitting closest to the door. Constable [REDACTED] took her by the arm in a manner that gave him the impression that she was going to be escorted out of the building. The female dropped to the ground and looked like she was resisting. Constable [REDACTED] continued to pull her by her left arm and she slid across the floor towards the north door. He then saw Constable [REDACTED] enter the lobby and interject. Staff Sgt. [REDACTED] said there was nothing that he observed that was a strike or a knock other than the application of Constable [REDACTED] two hands to the woman's arm. When the female ended up on the ground it became a dragging motion with Cst. [REDACTED] pulling her across the floor. She obviously didn't want to leave. He felt that Constable [REDACTED] pulled the female 10 to 13 feet. He said it was not clear whether her hair had been pulled.
37. Inspector [REDACTED] gave a voluntary statement. He recalled observing the CCTV video with Staff Sgt. [REDACTED]. He saw a male in plain clothes speaking to the younger of the two females who appeared quite animated. There was no audio but it appeared the female was yelling. It was apparent to him that the females were being asked to leave. He said the constable looked like he was touching the female in an escort grip when she dropped to the ground. At this juncture other members showed up. He thought the female's fall to the ground was embellished. He did say that there was motion towards the door and once they got to the door he stopped watching but he could not recall any dragging. The events were fuzzy, and his recollection wasn't very good.

Analysis & Determination

38. My review in this case is based upon a record that is less than perfect. Despite the fact that many of the statements contained incorrect dates I am satisfied that the events at issue here all occurred during the early morning hours of October 7, 2017. The investigation took 2 ½ years to complete and by the time statements were taken from a variety of witnesses their memories had faded. Only a couple of witnesses actually had notes to refer to. CCTV video was misplaced or lost. I am satisfied however that Constable [REDACTED] attempted to remove the Complainant, Ms. [REDACTED] from the lobby of Vancouver Police Headquarters at 2120 Cambie Street at approximately 4 AM October 7, 2017. In doing so he placed his hands on the Complainant who dropped to the floor. He subsequently dragged her between 10 and 13 feet towards the door. When Constable [REDACTED] intervened Constable [REDACTED] stopped his attempt to remove the Complainant from the lobby and left.

39. Constable [REDACTED] believed that the legal justification for his actions lay in the *Criminal Code* offence of mischief.

40. Section 430 of the *Criminal Code* provides the following:

Mischief

430(1) Every one commits mischief who wilfully

- (a) destroys or damages property;
- (b) renders property dangerous, useless, inoperative or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property

41. The Complainant and her mother were in the lobby at the invitation of Constable [REDACTED] who was investigating their complaint of a break-in at their apartment. They were not fluent in English, were clearly frightened and distrustful of police. They had waited nearly two hours outside Vancouver Police Headquarters before Constable [REDACTED] arrived to let them in. While in the lobby they sat quietly in chairs in a small waiting area. There is no evidence to suggest that they obstructed, interfered or interrupted any person while seated in the lobby. The evidence discloses that it was near shift change and many police officers entered the building and passed through the lobby without challenging the [REDACTED]. At least a couple of officers asked if they could help but moved on after conversing briefly

with the [REDACTED] The area was monitored by video. Constable [REDACTED] had told the [REDACTED] that he would not force them to leave.

42. The only information Constable [REDACTED] had was that Constable [REDACTED] had dealt with the [REDACTED] that morning, that they did not want to leave the lobby and that Constable [REDACTED] had asked him to hint to them that they should leave. He had no history as to why they were there and made no effort to find out why they were there. He did not speak to any other Vancouver city police members to determine whether or not the [REDACTED] had been a problem while waiting in the lobby. In other words, he took no investigative steps to determine whether or not the *Criminal Code* offence of mischief that he believed was the basis for his actions had been committed.
43. Accordingly, I am satisfied that the allegation of misconduct appears to have been made out in that Constable [REDACTED] utilized physical force to attempt to remove the Complainant from the lobby of Vancouver Police Headquarters at 2120 Cambie Street without lawful authority.

Conclusion & Next Steps

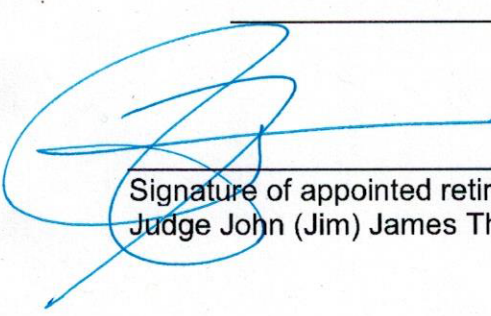
44. Pursuant to my authority under sections 117(8) and (9) of the *Police Act*, I make a finding that the conduct of the Member appears to constitute misconduct. The specific misconduct at issue relates to the use of unnecessary force by the member against the Complainant contrary to section 77(3)(a)(ii)(A) of the *Police Act* in attempting to remove the Complainant from the lobby of Vancouver Police Headquarters without lawful authority.
45. Pursuant to section 117(9) of the *Police Act*, I am now the Discipline Authority in respect of this matter.
46. I hereby notify the relevant parties of the next steps, pursuant to section 117(7) and (8) of the *Police Act*.
47. Under Section 119(1) Constable [REDACTED] may file with the Discipline Authority a request to call witnesses and examine at the disciplinary proceeding one or more witnesses listed in the Final Investigative Report or supplementary report. The request must be made in writing, within 10 days of receipt of this notice, and name the witnesses and the reasons for their requested presence.

48. Having considered the factors set out in section 120 of the *Police Act*, I am willing to offer a prehearing conference to the Member, Constable [REDACTED]. The range of disciplinary and corrective measures set out in the *Police Act* which I would consider appropriate in the instant case include:

- a. giving advice to the Member as to his conduct
- b. verbal or written reprimand, or
- c. requiring the Member to engage in training or retraining,

pursuant to subsections 126(1)(f),(i) (j) and (k) of the *Police Act*.

49. The Complainant has a right to make submissions at a discipline hearing pursuant to section 113 of the *Police Act*.



Signature of appointed retired judge
Judge John (Jim) James Threlfall (rt.)

Date: April 27, 2020