

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

and

IN THE MATTER OF A DISCIPLINE HEARING UNDER SECTION 124

and

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST  
CST. ██████████ OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S DECISION ON DISCIPLINE OR CORRECTIVE  
MEASURES

(Supplement to Form 4)

TO: Constable ██████████, # ██████████

AND TO: ██████████ Counsel for ██████████

AND TO: Clayton Pecknold Police Complaint Commissioner

### **Introduction**

1. On September 9, 2020, I delivered my Findings and Reasons under section 125(1)(b) of the *Police Act*. I found that Constable ██████████ had committed the misconduct offence of abuse of authority in using unnecessary force in attempting to remove a member of the public from the lobby of Vancouver Police Department headquarters. I must now propose appropriate disciplinary or corrective measures.

### **The Misconduct**

2. In the early morning hours of October 7, 2017 ██████████ (the "Complainant") and her mother were in the lobby of Vancouver Police Department headquarters at 2120 Cambie St., Vancouver. Personal property including keys and identification had been stolen from them earlier in the evening. Upon returning to their apartment they believed the apartment had been entered. Concerned and frightened they

attended at Vancouver Police Department headquarters for assistance. The headquarters was closed but after a significant wait a Cantonese speaking Constable tried to assist them. It was a cool October evening and he allowed them to enter the secure area of the building. For a variety of reasons he was not able to assist and they were not willing to leave. They remained there for a number of hours. The Constable spoke to Constable [REDACTED] who was entering the building to commence his shift and asked him to hint to the two that they should leave. Without any further inquiry as to why the Complainant was there, Constable [REDACTED] attempted to physically remove the Complainant. The contact was brief, she resisted removal and Constable [REDACTED] ceased his efforts and left.

3. At paragraphs 67 and 71 of the decision I had this to say:

67. "I have no hesitation in concluding that Constable [REDACTED] had no lawful authority to take the actions he did against the Complainant. Through his actions in not making any inquiry as to why the women were in the secure area before attempting to physically remove the Complainant, he was reckless in terms of caring whether he had any lawful authority. I agree that recklessness in this context means that Constable [REDACTED] did not turn his mind to consider whether he had grounds for his actions in circumstances where he should have done so."

71. "In summary, I find that Constable [REDACTED] did use some degree of force in attempting to remove the Complainant from the premises in purported performance of his duties: that the Complainant was a member of the public; that he did not have reasonable and probable grounds to proceed in the manner which he did under the Trespass Act (or alternatively the Criminal Code); that in taking actions that he did he was reckless in applying force to the Complainant; and that any amount of force in the situation was unnecessary"

4. The evidence referred to above satisfied me that Constable [REDACTED] had abused his authority in recklessly using unnecessary force. The discipline proceeding was adjourned to October 8, 2020 for written submissions from counsel as to the appropriate discipline or corrective measures.

### **Position of Counsel**

5. Counsel for Constable [REDACTED] did provide a written submission and included a previous discipline decision in which Constable [REDACTED] had a substantiated misconduct allegation in 2019 of Improper Use or Care of Firearms pursuant to section 77(3)(k) of the *Police Act*. That was the only record of discipline provided to me. I was not provided with performance appraisals, commendations or letters of congratulation nor any other details concerning Constable [REDACTED] career with the Vancouver Police Department. Counsel's position is that the appropriate disciplinary or corrective measure is advice as to future conduct.

**Section 126**

6. Section 126 of the *Police Act* governs discipline and corrective measures that the discipline authority must propose for an allegation of misconduct found to be proven. It states:
- (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113[complainant's right to make submissions], the discipline authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:
    - (a) dismiss the member;
    - (b) reduce the member's rank;
    - (c) suspend the member without pay for not more than 30 scheduled working days;
    - (d) transfer or reassign the member within the municipal police department;
    - (e) require the member to work under close supervision;
    - (f) require the member to undertake specified training or retraining;
    - (g) require the member to undertake specified counselling or treatment;
    - (h) require the member to participate in a specified program or activity;
    - (i) reprimand the member in writing;
    - (j) reprimand the member verbally;
    - (k) give the member advice as to her or his conduct.
  - (2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,
    - (a) the seriousness of the misconduct,
    - (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,

- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
  - (d) the likelihood of future misconduct by the member,
  - (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
  - (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
  - (g) the range of disciplinary or corrective measures taken in similar circumstances, and
  - (h) other aggravating or mitigating factors.
- (3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

### **Section 126(3) Considerations**

#### **Aggravating and Mitigating Circumstances**

##### **a. The seriousness of the misconduct**

7. The misconduct of abuse of authority in using unnecessary force is serious, however, the use of force in the situation was relatively minor, was not intended to injure, and stopped as soon as resistance was apparent.

##### **b. The member's record of employment as a member, including, without limitation his or her service record of discipline, if any, and any other current record concerning past misconduct**

8. [REDACTED] I have no further information with respect to Constable [REDACTED] record of employment other than that he was hired February 24<sup>th</sup>, 2004 by the Vancouver Police Department. He has served with teams 1, 2, 3 and 4. I have no information as to the duties and responsibilities with respect to those assignments.

##### **c. The impact of proposed disciplinary or corrective measures on the member and on her or his family and career**

9. I have no information as to whether or not any proposed disciplinary or corrective measure will affect Constable [REDACTED] or his family if indeed, he has one.

**d. The likelihood of future misconduct by the member**

10. Constable ██████ attempted to remove the Complainant without any inquiry as to why she was in the secure area of the Vancouver Police Department building and, more importantly, no inquiry as to where she would go upon being removed from the building at 4 AM. Without an understanding of the rights and responsibilities he has as a police officer and a thorough understanding of the legal authority under which he acts there is a substantial likelihood that he will find himself in a similar situation in the future.

**e. Whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence**

11. There is no information before me as to whether or not Constable ██████ accepts responsibility and is willing to take steps to prevent its recurrence.

**f. The degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct**

12. The evidence at the hearing disclosed that Constable ██████ did not recall any training received at the Justice Institute with respect to his powers to remove an individual under the *Trespass Act*. He recalls no internal Vancouver Police Department briefings with respect to changes in the law. I have no evidence before me to suggest that Constable ██████ has taken any internal or external courses with respect to powers to arrest and detain or the exercise of police discretion since he left the Justice Institute and joined the Vancouver Police Department.

**g. The range of disciplinary or corrective measures taken in similar circumstances**

13. I have reviewed a number of cases with respect to the use of unnecessary force. Given the unusual nature of the fact pattern in this case I do not find them of particular use.

**h. Other aggravating or mitigating factors**

14. An aggravating factor is Constable ██████ willingness to act without ascertaining the facts or weighing the consequences of his actions. As a police officer Constable ██████ fulfils an extraordinarily responsible role in society and in order to assist him society provides him significant discretion and depends on his judgement to fulfill that role. It is expected of him, in fulfilling his role, to exercise fairness and compassion. It is also expected that he will know the law and act within its boundaries. That did not occur in this case.
15. A mitigating factor is that Constable ██████ was attempting to assist a fellow officer in resolving a situation that the fellow officer was apparently unable to deal with. He used a minimal amount of force and when met with resistance

immediately stopped. The call to assist occurred when he was coming on duty and when he had not officially started his shift. There is no evidence to suggest that he bore any ill will towards the Complainant. Indeed, he attempted to use the limited Cantonese language skills that he had acquired (in an effort to make himself a more effective police officer) to converse with the Complainant. Unfortunately, he did not use his skill in Cantonese to inquire as to why she was there.

### **Conclusion**

16. Section 126(3) requires me to give precedence to an approach that seeks to correct and educate unless it is unworkable or would bring the administration of police discipline into disrepute.
17. After considering the evidence, the material filed and the options available I propose that the most appropriate approach, bearing in mind section 126(3), is to require Constable [REDACTED] to undertake training and retraining with specific emphasis on a police officer's powers of arrest and detention and the appropriate exercise of discretion.



Signature of discipline authority  
Judge John (Jim) James Threlfall (rt.)

Date: October 19, 2020