



Office of the  
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2018-15600

**NOTICE OF REVIEW ON THE RECORD**

Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Registered Complaint against  
Constable Jag Ghuman of the Vancouver Police Department**

To: [withheld] (Complainants)

And to: Constable Jag Ghuman (#3005) (Member)  
c/o Vancouver Police Department  
Professional Standards Section

And to: Deputy Chief Constable Dean Duthie (Discipline Authority)  
c/o Saanich Police Department  
Professional Standards Section

**WHEREAS:**

**Investigation**

1. On December 12, 2018, the Office of the Police Complaint Commissioner (OPCC) received registered complaints from three persons ("complainants") describing their concerns with members from the Vancouver Police Department (VPD).
2. The complainants reported that on April 30, 2018, at approximately 3:45 am, they left the McDonalds on Davie Street, near Cardero Street, and observed two VPD officers issuing a ticket to a cyclist for not wearing a helmet. One or more of the complainants commented, "Come on guys, it's only a helmet," and, "[That's] a shitty way to end the night." The complainants then continued on their way.
3. The complainants reported that a few seconds later, the officers pulled up beside them with their lights on. The officers left their vehicle, advised the complainants that they were under arrest for jaywalking, and demanded that the complainants provide their identification. An

Clayton Pecknold  
Police Complaint Commissioner

5<sup>th</sup> Floor, 947 Fort Street  
PO Box 9895 Stn Prov Govt  
Victoria, British Columbia V8W 9T8  
Tel: (250) 356-7458 Fax: (250) 356-6503

Toll Free 1 877-999-8707 # Website: [www.opcc.bc.ca](http://www.opcc.bc.ca)

altercation then ensued, during which the officers allegedly punched, kicked, and kneed one of the complainants and deployed OC spray against two of the complainants.

4. The complainants further reported that, upon the arrival of backup officers, they were each handcuffed, slammed on the ground, and “beaten.” Additionally, two of the complainants reported that the officers made threatening comments while they were detained.
5. The allegations contained in the complaints received were reviewed and this office determined that the conduct alleged would, if substantiated, constitute misconduct. Accordingly, the complaints were forwarded to the Professional Standards Section of the VPD for investigation.
6. This office subsequently determined that, due to the nature and seriousness of the incident, it was necessary in the public interest that the alleged misconduct be investigated by an external police force, pursuant to section 92(1)(a) of the *Police Act*. Accordingly, the Delta Police Department was appointed as the external investigative agency.
7. This office also determined that, pursuant to section 135(1) of the *Police Act*, it was necessary in the public interest to designate Deputy Chief Constable Dean Duthie of the Saanich Police Department to exercise the powers and duties of the Discipline Authority for the purposes of all provisions under Division 3.
8. Delta Police Professional Standards investigator, Inspector Heath Newton, conducted an investigation into this matter and on January 10, 2020, he submitted the Final Investigation Report to the Discipline Authority.
9. On January 24, 2020, following his review of the FIR, the Discipline Authority found that five allegations of misconduct appeared to be substantiated. The Discipline Authority notified Constable Ghuman that a Discipline Proceeding would be held in relation to the substantiated allegations.

### **Discipline Proceeding and Proposed Discipline**

10. At the Discipline Proceeding, the Discipline Authority examined five allegations pertaining to: the arrest of [withheld] (*Abuse of Authority*); the use of force used on [withheld] (*Abuse of Authority*); failing to provide fulsome information on a submitted Report to Crown Counsel (*Discreditable Conduct*); failing to provide [withheld] with his Charter Rights following his arrest (*Neglect of Duty*); and providing contradictory oral and written evidence during the investigation (*Deceit*).
11. On March 3, 2021, following the Discipline Proceeding and after considering the available evidence including cell phone video of the incident and submissions, the Discipline Authority substantiated the following two allegations:
  - (i) *Discreditable Conduct* pursuant to section 77(3)(h)(iii) of the *Police Act*, which is without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for

or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada.

Finding: Substantiated

Proposed Disciplinary Measure: Written reprimand

- (ii) *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*, which is in the capacity of a member, making or procuring the making of any oral or written statement that, to the member's knowledge, is false or misleading.

Finding: Substantiated

Proposed Disciplinary Measure: Suspension without pay for fifteen working days

### **Request for Public Hearing or Review on the Record**

12. The complainants and Constable Ghuman were provided a copy of Deputy Chief Constable Duthie's findings in relation to the allegations of misconduct and determinations on appropriate disciplinary or corrective measures at the Discipline Proceeding. The complainants and Constable Ghuman were informed that if they were aggrieved by either the findings or determinations they could file a written request for a Public Hearing or Review on the Record.
13. On March 10, 2021, the Police Complaint Commissioner received a request from Constable Ghuman through his agent, for a Review on the Record. The request notes that one senior and experienced police officer (the investigator) concluded that Constable Ghuman did not commit deceit, while another senior officer (the Discipline Authority) concluded that Constable Ghuman did commit deceit; the request opines that the fact the decision of one police officer trumps the decision of another has the appearance of being arbitrary. Moreover, the request notes that Constable Ghuman was a very junior officer at the time of the incident and that a finding of deceit at this early a stage in Constable Ghuman's career has the potential to affect his entire career. The request proposes that the highest level of justice is called for in the most serious cases, and that a review is needed to ensure that the process as a whole has been fair, and appears to be fair.

### **Decision**

14. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Discipline Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Records is necessary in the public interest.
15. I have determined that a Review on the Record is necessary in the public interest. In determining that a Review on the Record is necessary in the public interest, I have considered all relevant factors, including but not limited to the following:

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- (i) A review before a retired judge acting as an adjudicator will reasonably assist in determining the disputed evidence.
  - (ii) The nature and seriousness of the complaint or alleged misconduct: *Deceit* is one of the most serious findings of misconduct under the *Police Act*. Additionally, this was a significant use of force incident involving the deployment of an intermediate weapon (i.e. OC spray).
  - (iii) The conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints, or the disciplinary process.
  - (iv) Additionally, I have considered Constable Ghuman's request for a Review on the Record given the gravity of a finding of *Deceit* and am therefore of the view that an arguable case can be made that the discipline authority's application of Part 11 is incorrect.
16. Accordingly, pursuant to section 141 of the *Police Act*, I am arranging a Review on the Record.
17. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decisions as defined by section 141(3) of the Act, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or the service record of the member.
18. Pursuant to section 141(5) of the *Police Act*, Constable Ghuman, or his agent or legal counsel, may make submissions concerning the matters under review.
19. Pursuant to section 141(6) of the *Police Act*, the Police Complaint Commissioner or his commission counsel may make submissions concerning the matters under review.
20. Pursuant to section 141(7)(a) and (b) of the *Police Act*, the Adjudicator may permit the complainants, or agent or legal counsel, and the Discipline Authority to make oral or written submissions concerning the matters under review.
21. It is therefore alleged that Constable Ghuman committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
- (i) *Abuse of Authority*, pursuant to section 77(3)(a)(i) of the *Police Act*, which is intentionally or recklessly making an arrest without good and sufficient cause. Specifically, the arrest of [withheld].
  - (ii) *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, which is in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on any person. Specifically, the use of force on [withheld].

- (iii) *Discreditable Conduct*, pursuant to section 77(3)(h)(iii) of the *Police Act*, which is without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada. Specifically, not providing fulsome information on a submitted Report to Crown Counsel, in particular in regard to the force used on an arrested subject.
- (iv) *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the *Police Act*, which is failing to promptly and diligently do anything that it is one's duty as a member to do. Specifically, failing to provide [withheld] with his Charter Rights following his arrest.
- (v) *Deceit*, pursuant to section 77(3)(f)(i)(A) of the *Police Act*, which is in the capacity of a member, making or procuring the making of any oral or written statement that, to the member's knowledge, is false or misleading. Specifically, Constable Ghuman providing contradictory oral and written evidence during the investigation.

**THEREFORE:**

- 22. A Review on the Record is arranged pursuant to section 141 of the *Police Act*.
- 23. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable James Threlfall, retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

**TAKE NOTICE** that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

501 - 947 Fort Street, PO Box 9895 Stn Prov Govt, Victoria, BC V8W 9T8  
Telephone: 250-356-7458 • Toll Free: 1-877-999-8707 • Facsimile: 250-356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 23<sup>rd</sup> day of April, 2021.



Clayton Pecknold  
Police Complaint Commissioner