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

AND

IN THE MATTER OF A REVIEW OF

ALLEGATIONS OF MISCONDUCT AGAINST CONSTABLE

OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF DECISION

TO:

c/o Vancouver Police Department Professional Standards Section

AND TO:

Constable

c/o Vancouver Police Department Professional Standards Section

AND TO:

Chief Constable Adam Palmer c/o Vancouver Police Department Professional Standards Section

AND TO:

Inspector

c/o Vancouver Police Department Professional Standards Section

AND TO:

Sergeant

c/o Vancouver Police Department Professional Standards Section

AND TO:

Clayton Pecknold

Commissioner of the Office of Public Complaint Commission

INTRODUCTION

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EVIDENCE

5. I will review the evidence. It is estimated that the demonstration was attended by two to three hundred people. It is not in dispute that the intent of the demonstrators was to remove the because of the apparent legacy of the protestors alleged that was a settler who married or had children with a young indigenous woman from the Squamish Nation.
6. On October 16, 2020, Sgt. conducted an audio-recorded telephone interview of She told the officer that she had taken part in a peaceful demonstration that started outside the
. Her statement, in part, reads as follows:
"Upon arrival, we were met with numerous police officers who are surrounding the protecting it from any damage. And they were quite hostile as we came around, peaceful, we had a drum circle, we were demanding that the City of Vancouver takes down the police officers got a little bit more aggressive, started shouting, started to provoke the crowd, started to engage with the protestors and that is when I noticed to my left directly, there was a female with a sign, who came face to face with an officer and he tried to grab her and pull her into the circle of cops around the she had as she pulled back he lashed out and grabbed her by the neck and that is when multiple people came between them and then we had the tall officer yell at everyone to "relax". And everyone stopped, and the officer that grabbed the protester had been whisked off to the back to deal with something else This officer is clearly incapable of handling stress in the field and has proved himself to be a liability to the police force, as well as a threat to the public. He needs to be re-evaluated"
It is not in dispute that the female was identified by Sgt and herein after she will be referred to as "AF" to be consistent with the materials provided to me.

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"They were hostile by being unresponsive to us asking them to move away from the . It was just personal property. They were hostile by being aggressive with their body language. By being so numerous for just a piece of property that everybody would like to see removed." On January 26, 2021, Sgt. interviewed AF with a support worker 8. present. She was a part of the demonstration having proceeded there from the Her oral statement reads in part as follows: "I was kind of in the front area facing north, and I saw that there was a woman that was behind the on the other side ... She was affiliated with the demonstration, she was wearing a vest that denoted her as a Marshall. So I saw two Vancouver PD officers who were just kind of harassing this woman, and she was alone, right. So I described that there was a big group of people on one side, but she was ... isolated on the other side of the and the people would have had limited sight lines to her. She was like ... 5 feet tall. So I see this woman kind of getting hassled and I just point and I say 'Hey, what's going on over there?' and this VPD officer grabbed me by the coat at my neck, and I was pretty surprised and pushed his hand away, and he attempted to grab me again, and at that point with people around me, pulled me back away from him and I was kind of like absorbed into the crowd ... So that I think is the underlying incident that led to the complaint. ... I didn't initiate contact or anything like that with the officer. ... I really don't know but he did grab me by the neck and he was attempting to kind of pull me out of the crowd as well. So that, I think, is the underlying incident that led to the complaint." It is AF's belief that the whole incident lasted between 1 to 2 minutes. The officer 9. identified as Cst. was On July 12, 2021, Sgt. interviewed Constable It is not all 10. together clear why there was such a lapse in time from the incident that took place on

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asked her how the police were "hostile". She replied:

7.

July 1, 2020. In any event, in his statement Constable stated that he was advised that the crowd was going to attend in order to tear down the that, that act would constitute mischief under the *Criminal Code*. He said the officers formed a line or a perimeter around the damaged or torn down. He said:

"The group appeared relatively hostile, anti-police and antistate just with their demeanor and the statements that they were showing that day. The tone of that group from what I could compare to other protests or demonstrations that I have been at was significantly more negative and anti-police an others that I have attended in the past." He went on to say, "a specifically small group of people - three to four individuals in front of me - began to shout 'Get your fucking hands off her', they were shouting at a direction behind me, and I believe that they were shouting at what I could only interrupt as an officer placing their hands on someone, one of the protestors, possibly to effect an arrest. This group tried to rush past me which would have resulted in breaking our PSU line. The line we formed to keep ourselves not only safe but to prevent any offences from occurring to that . The push in guestion would have considered assault, as they didn't have the right to push in any capacity. I pushed that smaller group of the larger crowd back and advised them to get back. It was my interruption that they were trying to push past me to possible prevent an officer from conducting what he was lawfully allowed to do, which would have been an arrest. It was a huge safety concern for me if that line was broken and the crowd was able to get past us that could have resulted in officers or other people of the public getting injured."

11. He went on to state that:

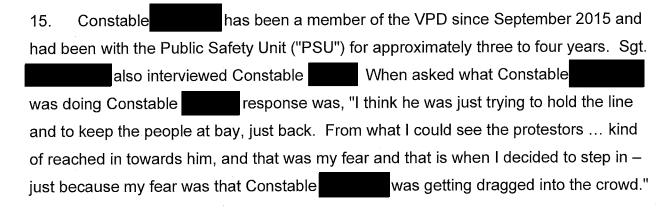
"The small group in front of me that I pushed back, it was one or two individuals that I pushed. One of them was a female. That female then looked at me and deliberately pushed me as an individual – no longer a part of the group pushing forward – what I considered an assault against me, a *Criminal Code* offence. ... That female that pushed me, given that she had just assaulted me – an officer ... working lawfully that day – I grabbed her instinctually *[sic]* from being assaulted. He went on to state that "the grabbing of that

female I felt was lawful as I was in the capacity of a working constable in uniform that day. I felt that the force I used was a minimal amount of force necessary as a result of being assaulted by that female, and that it was reasonable."

12. He said that he used "a minimal amount of force" on the protestor and he would have "likely would have grabbed clothing and likely held on to her between five to ten seconds. During that time, the people around her were pulling her away."

13.	He told Sgt.	that upon request of the protestors he provided his
badge	number.	

14. He went on to say that "there were a number of individuals that had signs, 'Death to Pigs'. There was an individual carrying around a fake severed pig's head that had a police hat with blood coming from the neck. That kind of set the tone for what the group ... was doing that day."



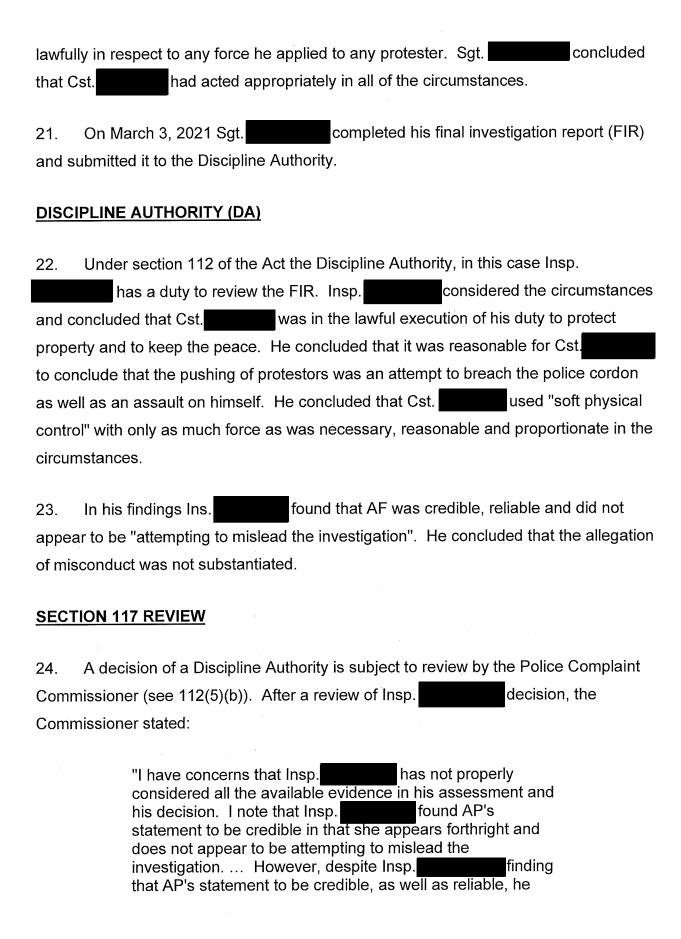
16. Sgt. interviewed Sgt. who was the supervisor on duty. She was in charge of seven (7) constables. She said the crowd was hostile. There was no barrier between the police and the protestors. She went on to say that:

"Initially it was very precarious and I was quite concerned. At one point there was a scuffle, a commotion to the right of me. I didn't know what I was, what here, because here I'm trying to ... facilitate the protestors and try to protect my people from what's going on."

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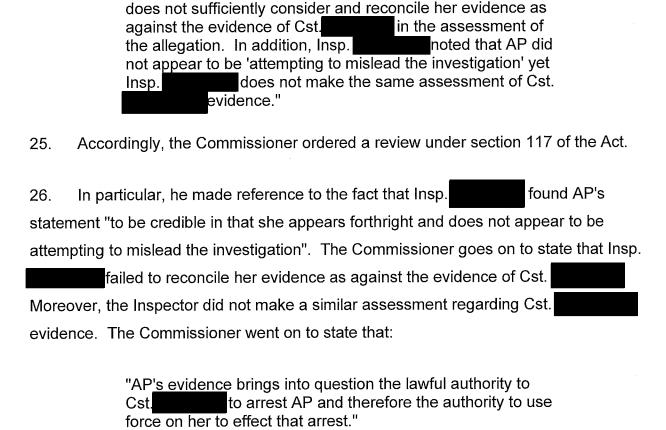
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were present. She said the police purpose at the was to:
"protect the and to facilitate a peaceful protest"
She estimated the crowd to be between 200-300 people.
Final Investigation Report (FIR)
appropriately in the whole of the circumstances. Sgt. examined s. 25(1) of the <i>Criminal Code</i> which authorizes a police officer, when acting on reasonable grounds, to use as much force as is necessary in the circumstances. The section justifies the use of force where an officer acting in the lawful execution of his duties acts on reasonable grounds and uses only as much force as is necessary for the purpose of carrying out his duties. As well, he examined the Vancouver Police Department Regulations and Procedures regarding the use of force. He also reviewed the National Use of Force Model ("NUFM") that is applicable to all police forces.
19. In considering the whole of the circumstances he concluded that on a balance of probabilities Cst. conduct did not meet the standard required for a finding of misconduct.
20. He completed his investigation and submitted his Final Investigation Report ("FIR") to the Discipline Authority ("DA"). In his analysis he concluded that the evidence was not clear, convincing and cogent to satisfy the balance of probabilities test with respect to the allegation of abuse of authority against Constable. He recommended the allegations be deemed unsubstantiated. He concluded that it was likely AF had come into contact with Cst. who assumed he had been assaulted by AF and therefore he used force that was necessary to carry out his duties. Sgt. acknowledged that there was a clear divergence on the accounts provided by AF and Cst. AF's perspective was that Cst. said that he acted
were sudden and escalated without provocation. Cst. said that he acted



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APPLICABLE LAW

27. The law is not in dispute. Pursuant to the provisions of section 117 it is my duty to determine whether the conduct of the member "... appears to constitute misconduct" (per s. 117(9)). I must make that determination based on the evidence that is before me in the form of the Final Investigation Report, statements solicited by Sgt. as well as all documentary evidence. It is unfortunate that there is no video recording of the incident. In a review under section 117, I do not hear oral evidence or live witnesses or consider any additional evidence or submissions by any of the participants involved. This is not an appeal from any previous finding that a missed conduct allegation was not substantiated. This is commonly called a paper-based review. My focus under section 117, if not on the correctness of the earlier finding but rather I am to reach my own conclusion about whether, based on the evidence before me, there is evidence to support a finding of apparent misconduct. Section 117(1)(b) is clear that a retired Judge conducting a review is "to make her or his own decision on the matter".

ANALYSIS AND CONCLUSION

28. The issue in this review is whether the conduct of Cst. appears to constitute misconduct within section 77(3)(a)(ii)(A). That section reads as follows:

"'Abuse of authority', which is oppressive conduct towards a member of the public, including without limitation ...

- (ii) in the performance, or purported performance, of duties, intentionally or recklessly, ...
 - (A) using unnecessary force on any person, or ..."
- 29. I have reviewed the whole of the evidence as disclosed by the materials provided to me in the Final Investigation Report under the provisions of the Act. Sgt. has prepared a comprehensive report wherein he has provided lengthy and comprehensive statements from all the relevant witnesses. It is clear from the material that with 200-300 demonstrators approaching the the circumstances were chaotic. While the demonstrators were making demands to have this removed, the police were attempting to prevent damage. Not surprisingly, the evidence is not at all reconcilable. On the material before me it appears that the parties did their best to give an accurate account of the events. I have carefully considered the written evidence that is before me. As I stated earlier, it is both unfortunate and surprising that there is no video evidence to consider. In the circumstances I am not satisfied that the appears to constitute misconduct under the Act. conduct of Cst.

The Honourable Wally Oppal, Q.C.

This 31st day of May, 2021.