

Form 4

DISCIPLINARY DISPOSITION RECORD

[Section 128 (1) (b) Police Act]

Discipline authority file number: 18-1806

Police complaint commissioner file number: 2018-15276

Name of member/former member involved:

██████████, Constable, ██████████

Police department, designated policing unit

or designated law enforcement unit: **Vancouver Police Department**

Date of discipline proceeding: **2020, June 23, September 14, 15, December 2, 3.**

In relation to each allegation of misconduct found to be proven, the following disciplinary or corrective measures are proposed:

Misconduct: **Abuse of Authority by unnecessary force against ██████████, section 77(3)(a)(ii)(A) of the *Police Act***

Aggravating/mitigating factors:

See attached reasons

Disciplinary/corrective measures:

Two day suspension without pay

Undertake specified training or retraining: See attached reasons

TAKE NOTICE:

If you are aggrieved by the disposition of your case, you may file with the police complaint commissioner a written request for a public hearing or review on the record. The police complaint commissioner must receive the request within 20 business days after you receive the discipline authority's report of the discipline proceeding under section 133 (1) (a) of the *Police Act*. Unless a public hearing or review on the record is arranged by the police complaint commissioner, the findings and reasons set out in Form 3 and the determination as to appropriate disciplinary or

corrective measures set out in this Form 4 in respect of the matter are final and conclusive and not open to question or review by a court on any ground.

Signature of discipline authority:   Date: 2021/5/5 [yyyy/mm/dd]

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE POLICE COMPLAINT COMMISSIONER AS FOLLOWS:

OPCC contact name: [REDACTED]

Office of the Police Complaint Commissioner
5th Floor, 947 Fort Street
PO Box 9895, Stn Prov Govt
Victoria, BC V8W 9T8
Ph. (250) 356-7458

I acknowledge service of this form:

Signature of member/former member: Date: [yyyy/mm/dd]

For office use only:

PROVIDED TO:

Police Complaint Commissioner: [] Date:..... [yyyy/mm/dd]

ENTERED INTO COMPUTER: [] Date:..... [yyyy/mm/dd]

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Aggravating/mitigating factors:

See attached reasons

Disciplinary/corrective measures:

One day suspension without pay

Undertake specified training or retraining: See attached reasons

Misconduct: **Abuse of Authority by arrest of ██████████, section 77(3)(a)(i) of the Police Act**

Aggravating/mitigating factors:

See attached reasons

Disciplinary/corrective measures:

One day suspension without pay, concurrent

Undertake specified training or retraining: See attached reasons

Misconduct: **Abuse of Authority by excessive force against [REDACTED], section 77(3)(a)(ii)(A) of the Police Act**

Aggravating/mitigating factors:

See attached reasons

Disciplinary/corrective measures:

Two day suspension without pay, concurrent

Undertake specified training or retraining: See attached reasons

Misconduct: **Neglect of Duty, section 77(3)(m)(ii) of the Police Act**

Aggravating/mitigating factors:

See attached reasons

Disciplinary/corrective measures:

One day suspension without pay, concurrent

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Disciplinary/corrective measures:

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Aggravating/mitigating factors:

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Disciplinary/corrective measures:

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Undertake specified training or retraining: See attached reasons

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Aggravating/mitigating factors:

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Disciplinary/corrective measures:

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Signature of discipline authority: Date: **2021/5/5** [yyyy/mm/dd]

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PROVIDED TO:

Police Complaint Commissioner: [] Date:.....[yyyy/mm/dd]

ENTERED INTO COMPUTER: [] Date:.....[yyyy/mm/dd]

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

AND

IN THE MATTER OF ALLEGATIONS OF MISCONDUCT

AGAINST

CONSTABLE [REDACTED]

CONSTABLE [REDACTED]

CONSTABLE [REDACTED]

CONSTABLE [REDACTED]

OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S REASONS

ON DISCIPLINARY OR CORRECTIVE ACTION

To: Constable [REDACTED]
Constable [REDACTED]
Constable [REDACTED]
Constable Ian [REDACTED] (Members)
c/o Vancouver Police Department
Professional Standards Section

AND TO: Mr. Clayton Pecknold (Commissioner)

AND TO: Mr. [REDACTED] (Discipline Representative)

AND TO: Mr. [REDACTED] (Counsel for Csts. [REDACTED] & [REDACTED])

AND TO: Ms. [REDACTED] (Counsel for Csts. [REDACTED] & [REDACTED])

AND TO: Sergeant [REDACTED] (Investigator)
Vancouver Police Department

AND TO: Sergeant [REDACTED] Professional Standards Section
Vancouver Police Department

[1] These are my reasons under Section 128 of the *Police Act* for proposing the disciplinary or corrective measures in relation to findings of misconduct against the named members of the Vancouver Police Department. These reasons are to accompany a Form 4 Disciplinary Disposition Record for each member.

1. Allegations

[2] The six misconduct allegations arose out of the officers' entry of a suite in the downtown east side of Vancouver on May 6, 2018, and their use of force against two of the occupants. In a decision dated March 17, 2021, I found the following six allegations to be proven with respect to the named members:

- [3] In relation to Constables ██████ and ██████
1. Abuse of Authority, pursuant to section 77(3)(a) of the Police Act; which is oppressive conduct towards a member of the public, by unlawful entry of a residence.
- [4] In relation to Constable ██████:
2. Abuse of Authority, pursuant to section 77(3)(a)(i) of the Police Act, which is oppressive conduct towards a member of the public, including, without limitation, intentionally or recklessly making an arrest without good and sufficient cause; to wit, of ██████.
- [5] In relation to Constables ██████ ██████ and ██████:
3. Abuse of Authority, pursuant to section 77(3)(a)(ii)(A) of the Police Act, which is oppressive conduct towards a member of the public, including, without limitation, in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on any person; to wit, ██████
- [5] In relation to Constables ██████ and ██████:
4. Neglect of Duty, pursuant to section 77(3)(m)(ii), of the Police Act, which is neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do, in relation to the arrest of ██████.
- [6] In relation to Constable ██████:
5. Abuse of Authority, pursuant to section 77(3)(a)(i) of the Police Act, which is oppressive conduct towards a member of the public, including, without limitation, intentionally or recklessly making an arrest without good and sufficient cause; to wit, of ██████ and;

6. Abuse of Authority, pursuant to section 77(3)(a)(ii)(A) of the Police Act, which is oppressive conduct towards a member of the public, including, without limitation, in the performance, or purported performance, of duties, by intentionally or recklessly using unnecessary force on any person; to wit, [REDACTED].

[7] I am required by Section 128 to propose disciplinary or corrective measures in relation to each proven allegation for each member, from the available measures enumerated under Section 126(1), within 10 days of hearing the members' submissions under Section 125(1)(d). The members' submissions were filed in writing on April 22, 2021.

2. Legislation

[8] The sections of the *Police Act* that are relevant to this phase of the disciplinary proceeding are as follows:

Conclusion of discipline proceeding

125 (1) Within 10 business days after hearing evidence and submissions under section 124 [*discipline proceeding*] concerning the conduct of a member or former member, the discipline authority must

- (a) make a finding in relation to each allegation of misconduct against the member or former member as to whether the misconduct has been proven,
- (b) record those findings and the reasons for them in the prescribed form,
- (c) serve a copy of that form on the member or former member and provide another copy of it to the police complaint commissioner, and
- (d) invite submissions from the member or former member, or her or his agent or legal counsel, as to appropriate disciplinary or corrective measures for each allegation found to be proven under paragraph (a).

(2) Submissions referred to in subsection (1) (d) must be made to the discipline authority within 10 business days after receiving a copy of the form referred to in subsection (1) (c).

Imposition of disciplinary or corrective measures in relation to members

126 (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.

Disciplinary disposition record

128 (1)Unless the police complaint commissioner grants an extension under subsection (2) of this section, within 10 business days after hearing submissions under section 125 (1) (d) [*conclusion of discipline proceeding*], the discipline authority must

- (a)propose disciplinary or corrective measures to be taken for each allegation of misconduct found to be proven,
- (b)record the date and the proposed disciplinary or corrective measures in a disposition record in the prescribed form,
- (c)include in the disposition record any aggravating or mitigating factors in the case,

(d)serve a copy of the disposition record on the member or former member concerned, together with notification of the effect of sections 133 (6) [*review of discipline proceeding*] and 136 (1) [*time limit for requesting public hearing or review on the record*], and

(e)provide another copy of the disposition record to the police complaint commissioner, together with the entire unedited record of the proceedings.

(2)The police complaint commissioner may grant an extension under subsection (1) if the police complaint commissioner considers that there are good reasons for doing so and it is not contrary to the public interest.

(3)After receiving the records referred to in subsection (1) (e), the police complaint commissioner may order that the discipline authority provide to the police complaint commissioner further reasons justifying the particular disciplinary or corrective measures proposed.

(4)A discipline authority must comply with an order under subsection (3).

3. Extension of Time for Members' Submissions

[9] Section 125(2) requires that the members' submissions under Section 125(1)(d) be filed within 10 business days of the members' receipt of the materials relating to the decision on the discipline proceeding. Counsel for the members received an electronic copy of those materials late on March 17, 2021 or early on March 18, 2021, which would have made April 1, 2021 the latest deadline for their submissions. Each counsel sought and was granted two extensions of that deadline, to April 16 and then to April 22, 2021. I advised that I would provide reasons for granting the extensions in due course.

[10] The wording of Section 125(2) is mandatory, and in that respect may be contrasted with Sections 128(1) and (2), which permit the Commissioner to extend the 10-day deadline for provision of this disposition decision if he "considers that there are good reasons for doing so and that it would not be contrary to the public interest."

[11] Early in these proceedings, on October 7, 2019, I provided a ruling in which I extended the time for the members to apply to call witnesses at the discipline proceeding under section 119(1) of the *Act*. The wording of that section may also be contrasted with Section 125(2): a member is permitted to ("may") make the application "within" a 10-day time frame after receipt of the Section 117(8) decision.

[12] In that earlier application, Mr. ██████ referred me to two cases, an oral ruling by Justice Kelleher in *Bowyer v. Lowe*, BCSC, May 18, 2011¹, and a decision of Chief Constable Jones of the New Westminster Police Department as a disciplinary authority in the matter of *Todd*, dated October 31, 2012. The *Bowyer* ruling relates to the deadline in Section 117(3) for the Commissioner's appointment of a retired judge, and the *Todd* ruling relates to the deadline under Section 119(1). The wording of Section 117(3) is similar to that of Section 125(2), but Justice Kelleher found it to be directory rather than mandatory. Both adjudicators referred to the objectives of the revisions to the *Act* made in response to the 2007 Report of the late Josiah Wood, Q.C.,² which may be summarized as the thorough, proper and timely investigation and conclusion of complaints in the public interest.

[13] In this case, the wording of the deadline is similar to that considered by Justice Kelleher, although the timeline here operates against the member as opposed to the Commissioner. Nonetheless, the overriding consideration must clearly be the objectives of the *Act*.

[14] Since the initial ruling in this matter, I have granted three adjournments of the discipline proceeding, and provided reasons in relation to each of them. The third anniversary of the incident date coincides with the due date of this disposition decision, so it is apparent there has been considerable delay in bringing the matter to a conclusion.

[15] In granting those prior adjournments, I weighed the seriousness and complexity of the proceeding and issues of fairness to the members against the public interest in obtaining a timely conclusion. The matter involves six allegations against four officers, three non-police witnesses and two lawyers, so finding dates in ordinary times would prove somewhat challenging. Added to that, of course, was the extraordinary challenge of the coronavirus pandemic, which was responsible for much of the time lost between March and December 2020.

¹ The ruling is not published. The final decision is published as British Columbia (Police Complaint Commissioner) v. Bowyer, 2012 BCSC 1018.

² <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/independent/police-complaint-process-report.pdf>

[16] The basis for the extension requests at this stage of the proceedings related to the workload of both counsel, the need to obtain records and consult with their clients and co-counsel, and a family challenge for one of the lawyers that necessitated a week out of the province. The two extensions amounted to an additional 13 business days.

[17] Although I recognize that the wording of the deadline contained in Section 125(2) might in an ordinary case lend itself to less discretion, this matter is not to my mind an ordinary case, given its complexity and the backdrop of the pandemic year. While it clearly needs to conclude at the earliest opportunity, in granting the extensions I perceived that little would be sacrificed in terms of the public interest by an additional delay of less than three weeks, when considered against the pre-existing timeline.

[18] On the other hand, if I had refused the extensions, it would no doubt have engendered unfairness in one way or another to counsel or to the members, through impairment of their ability to make full and considered submissions in relation to the important issue of disposition, exacerbation of family challenges, and/or possible detrimental effects on counsel's ability to fully represent other clients. Certainly I was not equipped to proceed in relation to disciplinary or corrective measures without the assistance of submissions from members' counsel directed toward the many factors I am required to consider under Section 126, many of which are focussed on the circumstances of the members.

[19] Considered within the extraordinary circumstances under which this unordinary matter has proceeded I concluded that the public interest weighed in favour of granting the extensions.

4. Section 126 Factors

[20] The overriding principle in relation to disciplinary or corrective measures under the *Police Act* is Section 126(3), which states, "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."

[21] Counsel have helpfully directed their submissions to the aggravating and mitigating factors contained in Section 126(2) and I will review those in sequence, with specific observations in relation to each member.

(a) The Seriousness of the Misconduct

[22] The precipitating mistake in the sequential acts of misconduct here was the decision to attempt to force entry into the suite, a decision for which I have held both Constable [REDACTED] and Constable [REDACTED] responsible. I found that they mis-assessed the situation as exigent in circumstances in which they ought to have been able to assess it properly at the outset, or re-assess it as matters progressed. In calling other officers to the scene, they enlisted them to a misconceived purpose, using resources unnecessarily, and creating an atmosphere of heightened alert which no doubt contributed to what I have found to be collective overreaction on the part of all four officers. I accept that the deployment of pepper spray from in or near the suite also raised the level of alarm, but the ability to assess and reassess in stressful situations without causing unnecessary harm to members of the community is integral to policing, particularly in downtown Vancouver.

[23] This ill-advised decision to enter the suite invited a violation of the sanctity of Ms. [REDACTED] s and Mr. [REDACTED]'s home. Granted, the use of the battering ram was unsuccessful, but I have found that it was a precipitating factor in the door being opened to the officers without grounds to enter. Constable [REDACTED]'s decision to take Ms. [REDACTED] bodily down to the floor and handcuff her without cause as she emerged from the suite clearly caused her physical anguish and humiliation. Thereafter Mr. [REDACTED] was seriously injured by the excessive force used by Constables [REDACTED], [REDACTED] and [REDACTED]

[24] In both arrests, I have found that the officers who made the decision, Constables [REDACTED] and [REDACTED] failed to recognize that the circumstances justified only detention, not arrest. While counsel submit that little turns on this, it occurs to me that if they had been mindful of the level of grounds that arose from the circumstances, as with the grounds for entry, it is far less likely they would have felt justified in using or escalating force when the subjects failed to immediately submit. As I observed in the discipline decision, had the officers articulated their grounds before

effecting the arrests it may have provided just the moment’s pause necessary for them to reflect on the appropriate level of response, and for the subjects to decide to submit without force.

[25] Further, despite a clear focus on officer safety, two officers neglected without cause to complete an adequate search incidental to Mr. [REDACTED]’s arrest, overlooking a knife in his waistband, thereby jeopardizing the safety of medical personnel whom they knew would be required to address the injuries they had caused.

[26] In this most unfortunate series of events, each successive abuse or neglect of duty compounded those that preceded it. At each point there was an available rational alternative that would have resulted in far less harm.

[27] Overall, however, I agree with the submissions of both counsel that recklessness “has a special meaning under the Police Act, in essence, failure to give due consideration to all the facts that are relevant to the exercise of a police officer’s powers.” For each of these officers, while their actions were reckless in the sense of misjudgement or misapplication of the law to the events, they were not taken with intent to harm.

(b) The Member’s Record of Employment

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[33] I believe these circumstances were anomalous for all four of the officers. Their service records suggest that they otherwise embody the sentiment behind Section 126(3), which, in its emphasis on correction and education, encourages the retention and correction of good police who may have had a collective bad day. I will say more in due course about the questions that raises in relation to corrective action.

(c) The Impact of Proposed Measures on the Member, Their Family and Their Career

(d) The Likelihood of Future Misconduct by the Member

(e) Whether the Member Accepts Responsibility and Will Take Steps to Prevent Recurrence

[34] These three factors are intertwined and I find it expedient to consider them together. Each of the officers has been deeply affected by the proceedings and the findings in the decision on misconduct, and I am satisfied that the experience of those proceedings is itself likely to be corrective. Clearly, to the extent that the disposition for any of them is career-limiting or has financial impacts, it will affect the member and their family.

[35] In relation to Constable ██████, Mr. ██████ submits that given the impulsivity of the kick to Mr. ██████'s head and Constable ██████'s recognition in his evidence that it was excessive, he is unlikely to repeat the misconduct. In my view, Constable ██████'s attitude towards his role as a police officer is exemplified by his candid admission at the hearing that on reflection he believed he had used excessive force against Mr. ██████ from which I take an open willingness to learn and improve as an officer.

[36] On Constable ██████'s behalf, Ms. ██████ points out that, "This matter, including the investigation phase, the hearing phase, and in particular some of the findings made by the Discipline Authority vis-à-vis Cst. ██████' motivations and credibility have had deep impacts on Cst. ██████ and, ██████ ...An unpaid suspension and the resultant loss of regular pay will of course deepen the losses Cst. ██████ has already suffered due to events of the past three years, all of which were out of her control. ...These proceedings have had a profoundly deterrent effect on this officer. In terms of accepting responsibility, Cst. ██████ has read the Discipline Authority's decision in detail several times, particularly in regard to the distinction between powers of investigative detention versus arrest. Cst. ██████ has re-examined her understanding of the AG Policy on domestic violence and the authority of Godoy." It is clear that Constable ██████ is treating the disciplinary experience as a learning opportunity and is therefore unlikely to repeat the misconduct.

[37] For Constable [REDACTED], Mr. [REDACTED] states, in relation to the entry of the suite, he recognizes that “he had thought about the evidence more carefully, he would have realized that it was even thinner than he appreciated at the time. He has learned that when he is considering an entry into someone’s home, an additional, more objective, assessment of the evidence, is crucial.” Mr. [REDACTED] also states that Constable [REDACTED] has taken particular note of the observation in the misconduct decision that, had he “articulated to Mr. [REDACTED] that he was under arrest (or detention), Mr. [REDACTED] might have understood why the police were taking him into custody, and his obligation not to resist. In retrospect, Cst. [REDACTED] understands that Mr. [REDACTED] might not actually have understood that he was also a suspect for the use of pepper spray. Had Cst. [REDACTED] better communicated that, Mr. [REDACTED] might have responded differently, and the interaction with Mr. [REDACTED] might have ended much differently.” In relation to the use of force, Mr. [REDACTED] submits that Constable [REDACTED] accepts the finding that had he “stopped and assessed, he would have realized that Mr. [REDACTED]’s reaction was primarily defensive, rather than aggressive.”

[38] It appears that Constable [REDACTED] will take steps to use the findings in the discipline decision as a learning experience and is unlikely to repeat any of the misconduct that occurred in this case. I expect that Constable [REDACTED] has also taken to heart the need to complete procedures incidental to arrest, whatever may be the condition of the subjects; in particular, when other responders will need to interact with them.

[39] Turning to Constable [REDACTED], Ms. [REDACTED] submits that he “acknowledges the seriousness of any finding of abuse of authority in relation to a police officer’s dealings with the public. He has reflected on his actions in applying force to Mr. [REDACTED]. He recognizes that the cumulative application of force by all three ...members police caused real harm to Mr. [REDACTED] even though such was not intended.” I am able to conclude that Constable [REDACTED] has accepted responsibility and is unlikely to involve himself in unnecessary use of force without reflection, and is also likely to ensure that he conducts a full search of any subject that is entrusted to his custody.

[40] Each officer has accepted responsibility for the misconduct I have found, each has already taken steps to review their practice in light of those findings and in an effort to enhance

their ability to make the proper assessment should similar circumstances present themselves. I am encouraged and impressed by those attitudes on the part of all of the officers. From counsel's helpful submissions on these points, including the officers' prior exemplary service records, I am able to conclude that the likelihood of future misconduct of any kind by these officers is extremely low.

(f) The Degree to which Departmental Policies, Standing Orders or Internal Procedures, or the Actions of the Member's Supervisor, Contributed to the Misconduct

[41] The exemplary records of these four officers and their responses toward the findings of misconduct raise the question, for me and I expect for each of them: How could this series of compounded bad decisions have occurred on this single day in their otherwise unblemished careers? I expect that is a question they will continue to ponder.

[42] It strikes me that the common theme in this series of precipitous decisions was overreaction. The officers were dealing with what commenced essentially as a confrontation, but descended into an alarming and then violent situation. Counsel have pointed to the stressful nature of the events. There seems to have been an overarching theme of bad judgement in these tense circumstances. I am wondering whether that may have arisen from some departmental lack of training or experience in applying theoretical legal principles to actual scenarios, and in making quick assessments under extreme stress. Certainly, in any event, the apparent vagueness about the policy regarding exigent entry, or at least the collective misapprehension about its application here, is something of a mitigating factor, in my view. The same might be said about each incident of recklessness. Each type of allegation here was committed by more than one officer, which tends to negate malice or bad faith, and suggest some kind of systemic deficiency.

(g) The Range of Disciplinary or Corrective Measures Taken in Similar Circumstances

[43] The OPCC analyst in this matter, Mr. ██████ provided a helpful recent survey of disposition decisions under the relevant sections dating back as far as 2009. The cases set a range of measures from advice as to conduct to suspension without pay for a period of days. It is noteworthy that at present there is no public database of OPCC discipline dispositions so it is

difficult for members to have access to comparable cases, and the summaries do not include information as to the background of the officers or other member-specific factors.

[44] Having said that, I will highlight a few of the more relevant case summaries. Each case of course turns on its own facts, and each is clearly dependent upon an assessment of the Section 126(2) factors. Many of the cases involve more than one type of misconduct so I have not categorized them by subject-matter.

[45] In OPCC File No. 2015-11042, for intentionally or recklessly detaining or searching a subject without good and sufficient cause, the penalty was to undertake a legal refresher in arrest and detention authority. Failing to advise the subject why he was being detained and his right to counsel resulted in specified training or re-training in arrest and detention authority.

[46] In OPCC File No. 2018-14290, two police officers detained an individual for breach of the peace without good or sufficient cause and used unnecessary force by taking physical control and applying knee strikes to gain compliance. One officer received a written reprimand and the other received advice as to future conduct.

[47] In the Page Public Hearing, OPCC File No. PH 12-03,³ the officer received a three-day suspension for assaulting a subject in the course of arrest. The complainant received no injuries but the officer was charged and pled guilty to assault, and the force was admittedly motivated by a loss of temper.

[48] For repeatedly striking a complainant in the face with a closed fist the officer in OPCC File No. 2011-6700 received a two-day suspension.

[49] In OPCC File No. 2012-7650, for punching the complainant in the head, the member received a one-day suspension and training/retraining from the Force Options Training Unit on the law regarding use of force, appropriate situation assessment and de-escalation techniques, and best practices when use of force is required.

³ https://opcc.bc.ca/wp-content/uploads/2017/04/12-03_Pitfield_Decision_Part_2.pdf

[50] After catching up to a motorcyclist who was driving dangerously, the officer in OPCC File No. 2016-11867 pushed the subject to the ground and delivered knee strikes to the left side of his torso. He was given a written reprimand; training/retraining in the use of force with an emphasis on situation assessment, reassessment and de-escalation techniques; and counselling in the area of anger management with an emphasis on regulating emotions.

[51] An officer who struck a complainant and took him to the ground while the complainant was in cells received a one-day suspension without pay and training/retraining in use of force policy with a trained use of force instructor and tactical communications as it relates to use of force, in OPCC File No. 2017-12992.

[52] In OPCC File No. 2018-14290, for continued detention of the complainant without lawful authority after being advised that they were no longer a suspect in an assault investigation, an officer received a verbal reprimand, and for failing to provide the complainant with their rights under Section 10(b) of the *Charter*, advice as to future conduct.

[53] Finally, Mr. ██████ referred to the case of Hobbs, OPCC No. PH 17-01, which dealt with allegations of unlawful entry and detention of a homeowner and a search of his home. Adjudicator Neal imposed a two-day suspension, and additional measures under Sections 126(1)(e) [work under close supervision for one year], (f) [retraining in the law relating to entry and search] and (g) [provide a letter of apology]. While Hobbs has some similarities I note that the officer had two other misconduct cases on his service record and there were adverse credibility findings in two of the three cases.

[54] It is nonetheless clear from this survey that in cases of significant excessive force, the disposition tends to be a suspension without pay for a period of one to three days. While several of the cases in which suspensions were imposed involved gratuitous force rather than what I have found here to be recklessly excessive force, many of those also do not involve additional types of misconduct.

(h) Other Aggravating or Mitigating Factors

[72] As mitigating factors, I take into account the background and personal circumstances of each of the members that their counsel have set out. There are no additional aggravating factors.

5. Conclusion

[73] It is important to observe that disciplinary or corrective measures under the *Police Act* are not designed to provide redress to an aggrieved member of the community. Damages are outside the realm of available remedies and, if applicable, must be assessed elsewhere. The focus of the *Act* is independent oversight of police discipline, and protection of the public by enhancing the standards of law enforcement. References to “penalty” or “punishment” are not found in the disposition sections; the drafters have opted instead for “disciplinary or corrective measures”.

[74] As I have observed, Section 126(3) is directed toward the encouragement of training and retention of good officers like these, who will no doubt continue to serve the public commendably, as they have otherwise been doing. Section 126(3) also engages the question of public expectations, but as other cases have previously observed, this would be an informed member of the public who was aware of the penalties imposed in similar cases.

(a) Counsel’s Positions

[75] On behalf of Constable ██████ Mr. ██████ submits that the disposition should be a suspension of one to two days. On behalf of Constable ██████ Ms. ██████ submits that “the sanction imposed on Cst. ██████ should be less than that imposed on [the other] officers, particularly as it relates to the use of force. Cst. ██████ used far less force against Ms. ██████ than that used by the other officers as against Mr. ██████ With respect to the entry, Cst. ██████ did not ever actually enter the suite.” Ms. ██████ submits a sufficient disposition would be a “written reprimand and further training – perhaps targeting ss. 7 and 8 of the Charter and their interplay with domestic violence investigations.”

[76] Mr. ██████ suggests the following dispositions in relation to Constable ██████: (a) For the unlawful entry, a period of suspension without pay for two days; (b) For the unlawful arrest, a period of suspension without pay for two days; (c) For the unnecessary use of force, a period of suspension without pay of up to three or four days; (d) For the neglect of duty, advice as to future conduct. (e) All disciplinary and corrective measures to run concurrently. With respect to Constable ██████, Ms. ██████ suggests a suspension of one to two days for the unnecessary force allegation and advice as to conduct on the neglect of duty allegation.

[77] Despite the wide range of misconduct in this case and the varying levels of involvement on the part of the members, there are enough common considerations and factors that it is difficult to distinguish significantly among them in terms of the level of severity of the misconduct and the assessment of the appropriate disposition.

[78] For Constable ██████ there is but one allegation; however, he had a supervisory role in the investigation, and the force he used against Mr. ██████ likely caused the most significant injury to him. Constable ██████ was a party to the forcible entry decision and arrested Ms. ██████ without cause, but the force she used against her was significantly less excessive. Constable ██████ was perhaps a lesser party to the entry decision, but he had prior experience with the ram, the force he used in relation to Mr. ██████ was considerably more excessive than that used by Constable ██████, and he has the additional allegation of neglect of duty in failing to ensure that a proper search was completed. Constable ██████ contributed forcefully to the injuries Mr. ██████ experienced and was a party to the neglect of duty.

[79] The maximum suspension available under the Act is 30 days. Counsel have submitted that, if suspensions are necessary, they should be on the lower end of the scale, and based on the disposition of similar cases, I agree.

[80] I do not see a need for working under close supervision, nor for transfers or reassignment. I also do not believe that for any of the officers a verbal or written reprimand is sufficient. The members have essentially received advice as to their conduct, in the form of the findings and reasons on the discipline proceeding, and I am satisfied that each of them has taken those to heart. In some respects, those reasons likely also serve a purpose similar to a written reprimand.

[81] Nonetheless, in my view, given the extent of the force used in this matter, the serious injuries to Mr. ██████ and the intrusive nature of the officers' actions, and despite the exemplary backgrounds and personal circumstances of each of the officers, periods of suspension are required to address the administration of police discipline, as specified by Section 126(3).

[82] In my view a combination of short suspensions and specified training are appropriate for each of the members. I will say that in relation to Constables ██████ and ██████ I had considered slightly longer suspensions, but was persuaded by their background and personal circumstances

that the lengths proposed below are sufficient. I also distinguish this case from those in which the force was gratuitous as opposed to reckless.

(b) Suspensions Without Pay

[83] Pursuant to Section 128(1)(a), I propose, in addition to the corrective measures set out below this section, the following suspensions without pay, as disciplinary measures.

- (1) Constable ██████ Unnecessary force - two days
- (2) Constable ██████ : Unlawful entry – one day
Arrest without cause, unnecessary force – one day, concurrent
- (3) Constable ██████ Unlawful entry – one day
Arrest without cause – one day, concurrent
Unnecessary force – two days, concurrent
Neglect of duty – one day, concurrent
- (4) Constable ██████ Unnecessary force – one day
Neglect of duty – one day, concurrent

(c) Section 126(1)(f) Training or Retraining

[81] I am not aware of whether the members have access to skills-based practical training in making assessments of the type that I found they failed to make in this case. The officers exhibited a collective inability to exercise sound judgement under stress, in their interactions with Ms. ██████ and Mr. ██████. It strikes me that some kind of role-playing or practical skills training or retraining would assist with the development of those necessary skills.

[82] If that kind of training is currently available, I recommend that all four of the members participate in it, specifically, in the following areas:

- (1) grounds for exigent entry as distinguished from well-being checks;
- (2) grounds for arrest as distinguished from investigative detention and the authority and appropriate level of intervention that flows from each;
- (3) alternatives, such as verbal requests or commands, to the use of escalating force in obtaining compliance in cases of apparent non-compliance;
- (4) assessment and re-assessment of the need to escalate force when faced with non-compliance during arrest; and
- (5) search incidental to investigative detention and arrest in cases of an injured suspect.

[83] I recognize that not all of the officers participated in each of the allegations, but the overlap is sufficient that in my view each should have training or retraining in all five areas.

[84] In the absence of available practical skills training opportunities in all or any of those areas, I propose instead that the members each have training or retraining in exigent entry and wellbeing checks, arrest and investigative detention, use of force and de-escalation techniques, and search incidental to arrest and detention.

(d) Policy Changes [Section 133(1)(a)(ii)]

[85] While I am not technically called upon at this stage of a discipline proceeding to make any recommendations regarding policy changes, I note that at the next stage, under Section 133(1)(a)(ii), I am to provide the members with a report including “any policy changes being considered by the discipline authority in respect of the complaint.” Under Section 133(1)(a) (iii), I am to provide reasons for both. It has been my practice to provide the reasons already filed under Section 128 with the Section 133 report.

[86] It is not entirely clear whether the reference to “complaint” in Section 133(1)(a)(ii) restricts the issue of policy changes to situations where the allegations arose out of a complaint under the *Act*, which these did not. In addition, the reference to a discipline authority “considering” policy changes infers that the decision-maker has the capacity to affect departmental policy. I consider my capacity as a discipline authority in this matter to be limited to making recommendations at best, not policy changes. And I am not entirely convinced that is the import of the section, because there is no provision in the *Act* for input or submissions in relation to policy changes, by the department.

[87] In addition, I am far from an expert in police training. Accordingly I believe my role as an independent discipline authority in this matter should be limited to providing any thoughts I may have on policy changes; in case they are of assistance to the department.

[88] If the kind of training outlined above in Part 5. (b) is not available, I suggest that the department consider designing a training program that assists officers to practice making these types of decisions in stressful circumstances. In particular, I suggest that they offer skills-based training in the five areas enumerated in Part 5. (b) above, with role-playing scenarios, perhaps

derived from disciplinary decisions, that are designed to enable members to make appropriate assessments and re-assessments as to the extent of their authority under stress and in evolving circumstances. I will leave that, respectfully, for due consideration.

Dated at Sechelt, British Columbia this 5th day of May, 2021.



Carol Baird Ellan
Retired Provincial Court Judge
Discipline Authority