

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

**AND**

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

**NOTICE OF DECISION**

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

And to: [REDACTED] (External Investigator)  
c/o Abbotsford Police Department  
Professional Standards Section

And to: Inspector [REDACTED] (External Discipline Authority)  
c/o Abbotsford Police Department  
Professional Standards Section

And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department

And to: His Worship Mayor Kennedy Stewart  
Chair, c/o Vancouver Police Department

**INTRODUCTION**

1. This is a review pursuant to s. 117 of the *Police Act*, R.S.B.C. 1996, c. 367, as am. (the "Act"). On April 27, 2020, I was appointed by the Police Complaint Commissioner to conduct this review pursuant to ss. 117(1) and (4) of the Act. The Act requires I as a retired judge must arrive at a decision within 10 business days after the receipt of the materials from the office of the Public Complaint Commissioner. However pursuant to Ministerial Order no. MO86 I require until the close of business on May 22, 2020 to arrive at my decision.

2. [REDACTED] of the Vancouver Police Department is accused of neglect of duty pursuant to s. 77(3)(m)(ii) of the Act. The allegations arise out of [REDACTED]'s deployment of a police dog which bit a bystander during the course of a police investigation. The bystander was injured.

### **EVIDENCE**

3. There is no serious conflict in the evidence. In the late afternoon of October 30, 2018, officers of the Vancouver Police Department strike force team were conducting surveillance in a parking lot at [REDACTED] in the City of Vancouver. At this point [REDACTED] veers south and turns into south west [REDACTED]. It is a busy thoroughfare. The parking lot where the surveillance was conducted accesses onto south west [REDACTED]. The covert surveillance was being conducted on a [REDACTED] motor vehicle bearing Saskatchewan plates. The car was in the parking lot. The surveillance target was [REDACTED] who was a passenger in the vehicle. He was a suspect in numerous armed robberies throughout the lower mainland. The police believed him to be a high risk offender. Earlier in the day he had been arrested, detained and released by the police on Powell Street in the City of Vancouver. Thus his identity was known to the Police.

4. At approximately 5:10pm, [REDACTED] and his police service dog [REDACTED] (PSD) were requested to assist in the investigation. [REDACTED] is described as a small German Shepherd. The vehicle in which [REDACTED] was a front seat passenger was parked in the middle of the parking lot facing in a north easterly direction. [REDACTED] in his vehicle entered the parking lot from the east and pinned the suspect vehicle on the rear passenger side. He activated the police emergency lights. [REDACTED] then got out of the vehicle and began to run northbound in the parking towards Marine Drive. [REDACTED] removed the police dog from the vehicle and extended his arm so as to give the dog direction to go towards the fleeing suspect. The dog was not on a leash. At that point 2 male persons appeared in the parking lot. They were later identified as Mr. [REDACTED] and Mr. [REDACTED]. They were unconnected to the investigation. Upon the dog being released, Mr. [REDACTED] remained motionless while Mr. [REDACTED] kept walking. The dog made immediate contact with Mr. [REDACTED]'s right leg. In attempting to pull away

from the dog, Mr. [REDACTED] was yelling and fell to the ground. [REDACTED] then physically took control of the dog. Mr. [REDACTED] was taken to the hospital where the wound required 25 stitches.

## **OPCC**

5. On October 31, 2018, the Vancouver Police Department notified the Office of the Public Complaint Commissioner (OPCC) pursuant to s. 89 of the *Act*. On December 21, 2018, the Police Complaint Commissioner ordered that [REDACTED]'s conduct be investigated in order to determine whether his conduct constituted misconduct in the deployment of the police dog pursuant to s. 77(3)(m)(ii) of the *Act*. Accordingly, pursuant to s. 135(1) of the *Act* the Commissioner designated a senior officer of the Abbotsford Police Department to conduct an investigation of the matter.

## **INVESTIGATION**

6. [REDACTED] of the Abbotsford Police Department was assigned to conduct the investigation. On May 24, 2019 he interviewed [REDACTED]. [REDACTED] has been a member of the Vancouver Police Department since [REDACTED]. He has been on the Canine Unit since [REDACTED]. In his statement, [REDACTED] said that he learned that [REDACTED] was suspected of being involved in numerous armed robberies while using a firearm. He was also suspected of threatening to kill a person during one armed robbery and struck a person with firearm during a course of yet another armed robbery. He understood [REDACTED] to have pepper spray, a knife or a handgun. He told [REDACTED] that he believed that [REDACTED] was an escape risk and was prone to violence. It was his opinion that unless [REDACTED] was apprehended there was a further danger to the public.

7. [REDACTED] believed that in the circumstances direct apprehension was necessary in order to prevent [REDACTED] from committing further crimes. Direct apprehension is done with no physical control of the dog. A handler would command the dog to apprehend the suspect as opposed to controlling him. The apprehend

command instructs the dog to bite and hold on to the person until commanded to release. He described direct apprehension as a situation where a police dog is released and given the command to apprehend a fleeing suspect without any physical control such as a physical line. [REDACTED] did not see Mr. [REDACTED] beside his parked car because it was parked in a different row, in an opposite direction of the suspects' parked vehicle. [REDACTED] recognised that his vehicle and the suspects' vehicle created an obstruction for the dog. He said he called the dog by name in order to get his attention so that the dog would run alongside of him and he would be able to alert the dog with a follow up command. He went on to say that PSD [REDACTED] is trained to respond in this fashion and has done so in many occasions in the past. He agreed that he lost momentary sight of PSD [REDACTED]. Unfortunately PSD [REDACTED] responded to the take "command" by apprehending the first person in his direct line of sight which was Mr. [REDACTED].

8. In his statement, [REDACTED] said that he understands that the BC Police Standards require a dog handler to maintain control of a police service dog. He said he had a verbal command and control of PSD [REDACTED] when he removed him from the rear of the police vehicle. He also said that PSD [REDACTED] responded to his verbal command. [REDACTED] was certain in his statement that he had control over PSD [REDACTED]. He said that he immediately ran towards Mr. [REDACTED] and attempted to limit his injury by grasping [REDACTED]'s jowls and holding Mr. [REDACTED]'s leg. [REDACTED] immediately apologised to Mr. [REDACTED].

9. Constable [REDACTED] of the Vancouver Police Department is a Canine Unit Trainer. He prepared a report for the investigation. He was apprised of the circumstances. He saw the video. He was asked to give his opinion about the incident. In his report he stated that a dog handler should make reasonable attempts to ensure that the PSD is targeted on the correct suspect before releasing the PSD from his/her physical control. In his report he went to state "unfortunately, due to the extremely volatile and dynamic situation unfolding, [REDACTED] mistakenly gave the wrong command to PSD [REDACTED]. He commanded PSD [REDACTED] to apprehend rather than control command to ensure target acquisition." He went to state that [REDACTED] did not

have offline control. He said he spoke to [REDACTED] about the deployment and "he recognizes that he did not use the obeyed control command, when he should have. However later he resiled somewhat from his previous statement wherein he qualified his earlier opinion after he spoke to [REDACTED]. He agreed with [REDACTED]'s suggestion that by running alongside the dog he would have had control over the dog.

10. [REDACTED] a Canine handler with [REDACTED] years of police dog experience with the Vancouver Police Department was interviewed by [REDACTED]. [REDACTED] had read Constable [REDACTED]'s report. He also stated that a running apprehension is "a bit riskier" because of the police dog is offline and the handler has to be cognizant of the surroundings in order to ensure that dog is visually on target before release. [REDACTED] went on to say that environmental risks and criminal aspects must be weighed before deciding to deploy or not. He stated that although the parking location in question and open business hours present risks canine handlers are accustomed to deploying in the situations.

11. In his report [REDACTED] considered s. 25(1) of the Criminal Code which in general terms states that a police officer who acts on reasonable grounds, is entitled to use as much force as is necessary. He also considered the VPD regulations and procedures regarding police service dogs as well as the BC Policing Standards for police service dogs. [REDACTED] noted that [REDACTED] had to immediately assess a dynamic situation and that he reasonably believed that a direct apprehension was the safest manner in which to apprehend a fleeing suspect. In his Final Investigation Report (FIR), [REDACTED] concluded that there was not sufficient, clear or convincing evidence to support a finding on a balance of probabilities for neglect of duty. He based his findings on the wording of s.77(3)(m)(ii) of the Act. As well he stated that [REDACTED] demonstrated his concern for public safety when he advised his strike force that the first suggested take down location should pose an unacceptable public safety risk. In considering the whole of the evidence, [REDACTED] concluded that having regard to the environment [REDACTED]'s deployment of PSD

[REDACTED] was an appropriate response to apprehend a fleeing suspect who had just committed 2 indictable offences.

### **DISCIPLINE AUTHORITY**

12. On October 10, 2019, [REDACTED] submitted his Final Investigation Report (FIR) to the Discipline Authority and the OPCC. Under s. 112(1) of the Act it is the duty of the Discipline Authority to review the FIR. After reviewing the FIR, Inspector [REDACTED] as the Discipline Authority considered that there were 2 allegations of neglect of duty. The first related to whether [REDACTED] complied with the BC Provincial Standards in the deployment of the service dog in light of the whole of the circumstances. The second allegation related to whether or not he complied with the Vancouver Police Policy in submitting a subject Behaviour Officer Response Report. He went on to state that "it is possible that another officer with similar training, knowledge, skills and experience would have deployed their PSD in the same manner." He concluded [REDACTED]'s error in judgment was inadvertent. In essence, Inspector [REDACTED] concluded that [REDACTED] had reasonable grounds to believe that the risk was justified. In summary, Inspector [REDACTED] concluded that based on the evidence that neither of the allegations appeared to be substantiated.

### **PCC**

13. The Discipline Authority's decision is subject to review by the Public Complaint Commissioner. See s. 112(5)(b). In this case the Commissioner concluded that the decision is incorrect and therefore subject to review under s. 117. It is on that basis that the Commissioner has appointed me under s.117 of the Act to conduct a review of the decision.

### **THE LAW**

14. The law is not in dispute. This is a review on the record under s. 117 of the Act. It is not an appeal from any previous finding. It is not my function to hear any witnesses

or to consider any other evidence. This is commonly called a paper based review. It is my duty to reach my own decision based on the whole of the evidence. In so doing I have read the statements of the witnesses, the Final Investigation Report (FIR) the decision of the Discipline Authority and have had an opportunity to view the video of the incident.

15. The issue in this review is whether the conduct of the officer appears to constitute misconduct within s. 77(3)(m)(ii) of the Act. The relevant words of the Act that apply to neglect of duty reads as follows:

(m) "neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:....

(ii) promptly and diligently do anything that it is one's duty as a member to do;

The use of police dogs is essentially a subset of the use of force. In 2015 the Province implemented new standards for the use of police dogs. The new rules were intended to address a number of incidents that involved police dogs biting unintended persons. The revised BC Provincial Policing Standards read in part as follows:

"the use of a dog, as with all other options must be proportional to the level of risk posed to the officer, the suspect and the community as a whole. The need to locate or apprehend someone must always be balanced with the potential for a police dog bite and its likely resulting injury. Police dogs must always be under the control of their handler"

16. It is useful to refer to the VPD Regulations regarding police service dogs, the regulations in part read as follows:

"police service dogs" are an important policing tool that can be used for a variety of tasks. Police service dogs are also considered intermediate weapons in the context of the use of force and, as such, dog handlers are responsible and accountable for deploying police service dogs in a manner, which facilitates the effective execution of police duties while reasonably safe guarding the public and police member. The use of police service dogs must be proportionate to the

level of risk posed to the officer, the suspect and the public ("emphasis added")  
see appendix 32;1.13.1

## **ANALYSIS**

17. After a careful consideration of the evidence I have come to the conclusion that the conduct of [REDACTED] appears to constitute misconduct within the meaning of the Act.

18. It is useful to review the evidence. It is not in dispute that the parking lot off [REDACTED] was busy with cars and members of the public. There was no dispute about the identity of the suspect [REDACTED] in that he had been apprehended and detained earlier in the day. The officer had reasonable grounds to arrest [REDACTED], however the circumstances were not so urgent so as to justify the use of a police dog without a leash. The officer obviously assumed that a risk was necessary in the circumstances. Both the Provincial Policing Standards and the VPD regulations establish rules for the use police service dogs. The one common characteristic in both the Provincial Policing Standards and the VPD regulations is the need to do a risk assessment which requires the balancing of the need to apprehend a suspect with the potential for the police dog to bite an unattended target.

19. [REDACTED] agreed that the area was not a quiet one and not ideal for a takedown. He obviously knew of the risks involved to public safety. The situation was exacerbated by the fact that officer was unable to maintain continual sight of [REDACTED]. His view of [REDACTED] as well as the dog's view of [REDACTED] was obstructed. The video shows that by the time [REDACTED] was able to get a clear view of [REDACTED], the latter was running quickly in a northerly direction.


20. The officer agreed that in a direct apprehension with no control over the dog the situation poses a risk. The fact that 2 persons unconnected to the investigation appeared at that time was not unforeseeable. In his statement [REDACTED] said he did not see any pedestrians in the immediate area of the route that [REDACTED] was fleeing. Constable [REDACTED]'s statement that a dog handler should make reasonable attempts to



ensure that the dog is targeted on the correct suspect before being released. In his initial statement, Constable [REDACTED] said that [REDACTED] mistakenly gave the wrong command to the dog to apprehend rather than control command to ensure target acquisition. He did not have offline control. The Provincial Standards are clear that the use of a dog must be proportional to the level of risk posed not only to the officer the suspect but to the community as a whole. Similarly the VPD regulations state "dog handlers are responsible and accountable for deploying police service dogs in a manner which facilitates the effective execution of police duties while reasonably safe guarding the public and police member". ("emphasis added"). I accept the contention that the situation was dynamic. However the officer by deploying the PSD without a leash assumed an unnecessary risk that resulted in injury. In the circumstances I have no difficulty in concluding that the conduct of [REDACTED] in the deployment of PSD [REDACTED] appears to constitute misconduct within the meaning of the Act.

21. Since I have found that the conduct of the officer appears to constitute misconduct the Act requires that I become the Discipline Authority with respect to the incident. See s.117(9).

22. I am prepared to engage s.120(2) by offering [REDACTED] a prehearing conference. That sections gives the Discipline Authority the discretion to offer a member a confidential, without prejudice, a prehearing conference authority in order to determine whether the member is prepared to admit misconduct and if so what disciplinary or correct measures the member is prepared to accept.

  
The Honourable Wally Oppal, Q.C.  
Retired Justice of the Court of Appeal for  
British Columbia

Dated at Vancouver, British Columbia, this  
21<sup>st</sup> day of May, 2020.