

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

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

And to: Staff Sergeant [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

This matter came on before me as a review under s. 117 of the *Police Act*, R.S.B.C. 1996, c. 367, as am. [REDACTED] of the Vancouver Police Department was accused of neglect of duty under s. 77(3)(m)(ii) of the *Act*. The circumstances which rise to these proceedings relate to [REDACTED]'s deployment of a police dog which inadvertently bit a bystander during a police investigation. On May 21, 2020, I concluded that the conduct of [REDACTED] "appears to constitute misconduct within

the meaning of the Act". In light of that finding I have become by operation of law the Discipline Authority with respect to the incident. See s. 117(9).

EVIDENCE

It is useful to give a brief overview of the evidence. I pause here to note that while I made my initial determination under s. 117 of the Act that finding was based upon the Final Investigation Report (FIR) and viewing of the video of the incident. However, as the Discipline Authority I must convene a discipline proceeding under s. 117(9).

HEARING Under s. 124

A discipline hearing was held on August 10 pursuant to s. 117(9). Both [REDACTED] and his counsel, Mr. [REDACTED] attended. [REDACTED] testified while Mr. [REDACTED] filed a written argument. I will deal first with [REDACTED]'s oral evidence. He testified pursuant to s. 124(6) of the Act. He wished to add to it and further expand on what told [REDACTED] in his previous statement.

He admitted that he is responsible for making the decision as to whether or not a dog ought to be released. At no time has he evaded responsibility for the consequences of the dog being unleashed. He agrees that he made an inadvertent error in unleashing the dog having regard to the circumstances. The one major issue he wishes to expand upon relates to the location of the surveillance. He said that he was told by a surveillance member that the lot would be a good place to apprehend the suspect [REDACTED] because there was no one around the suspect's vehicle. However, [REDACTED] testified that if he had been aware that there was a liquor store in the parking lot he would have strongly suggested that the arrest be made elsewhere. In these circumstances the surveillance members' decision had already been made. As well the facts are that [REDACTED] and his associates had in the past chosen businesses that were to be the targets of their robberies in quiet areas. He said that he had to take a different route than one that was originally anticipated because there was a vehicle that was approaching the sight. Thus he could not take a straight line. That caused

complications. He felt that he needed a direct line of sight. He said he could not see Mr. [REDACTED], the person who was bitten by the dog. He said that had he seen Mr. [REDACTED], he would have given PSD [REDACTED] a command to ignore them. He had ignored other pedestrians moments earlier. [REDACTED] testified that he has utmost confidence in PSD [REDACTED]'s ability to ignore ordinary passerbys. He has done so in the past.

Under normal circumstances a dog handler would have the ultimate authority to change the deployment of the dog in the event that the deployment would be unsafe. However in these circumstances the surveillance members decision had already been made. He said that having a dog off leash is not in and of itself risky. In fact it is not contrary to either the Provincial Standards or VPD Standards. He was aware of the Standards. He said that he simply failed to see the 2 men and therefore did not anticipate that the dog would "acquire that its target on one of them rather than the suspect". He agrees that an inadvertent error had serious consequences in that the dog bit an intended target.

In 2018, the year in which this incident occurred VPD police dogs apprehended criminals suspects with bites one out of ten times. Of the 73 were direct apprehensions i.e. off leash apprehensions. The officer agreed that there is some risk in off leash direct apprehensions with police dogs. He went on to say that the inherent risk is not so high that the practice is prohibited or more severely restricted. His testimony is that having PSD [REDACTED] off leash does not in out of itself create and inherent unacceptable risk even in the presence of pedestrians or other unattended targets. He said that he simply failed to see the 2 men and therefore did not anticipate that the dog would "acquire that his target on one of them rather the suspect". He agrees that an inadvertent error had serious consequences in that the dog bit an unintended target.

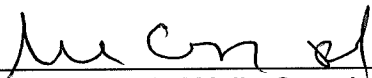
FINDINGS

The issue in this case is whether an inadvertent error in the circumstances of this case constitutes misconduct of neglect of duty under s. 77(3)(m)(ii). The section requires police officers to act properly and diligently. It is settled law that the act or the law does

not require perfection in the execution of duties. As well, this is not an absolute liability offence under the Act.

CONCLUSION

[REDACTED] has been a member of the VPD since [REDACTED], he testified that his service record is unblemished. He appears to be genuinely remorseful and in fact apologised to Mr. [REDACTED] at the first reasonable opportunity. The Law regarding police misconduct is not in dispute. In fact errors of law or errors of judgment do not in and out of themselves constitute serious misconduct. See *Scott v. Police Complaint Commissioner* 2016 BCSC 1970. Accordingly having regard for the whole of the evidence including the testimony of [REDACTED] I am not satisfied that his conduct falls within the parameters of s. 77(3)(m)(ii) of the Act so as to constitute neglect of duty.



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

Dated at Vancouver, British Columbia, this
31st day of August, 2020.