

**IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996, C. 367  
AND  
IN THE MATTER CONSTABLE [REDACTED]**

**NOTICE OF DISCIPLINE AUTHORITY'S DECISION**

TO: Mr. [REDACTED]	Complainant
AND TO: Constable [REDACTED]	Member
AND TO: Sergeant [REDACTED]	Investigator
AND TO: Mr. Clayton Pecknold	Police Complaint Commissioner

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**The circumstances that gave rise to the complaint:**

On the 5<sup>th</sup> of April, 2020, the complainant, [REDACTED], was driving on Nelson Street in the city of Vancouver when Constable [REDACTED] pulled him over because of the plastic covers on his licence plates. The officer approached [REDACTED] vehicle, advised him of the reason for the stop and asked for his driver's licence. [REDACTED] felt that no offence had been committed and demanded that [REDACTED] contact his supervisor. He sat patiently waiting in his vehicle but still refused to provide his drivers licence or any form of identification. [REDACTED] requested the attendance of his supervisor and also called for back up. He advised [REDACTED] that he would be arrested for obstruction if he continued to refuse to provide his licence. Within a few minutes other officers appeared on the scene. [REDACTED] exited his vehicle and was arrested for obstruction. After his arrest his vehicle was searched.

**The complaint**

On July 2<sup>nd</sup>, 2020, [REDACTED] filed a complaint. This complaint was assessed as required by section 82 of the *Police Act* and two allegations of misconduct were found to be admissible. The Vancouver Police Department was directed to conduct an investigation. The file was assigned and on March 2<sup>nd</sup>, 2021, the investigator, Sgt. [REDACTED], submitted his final investigative report. He found that both of the misconduct allegations

appeared to be unfounded. After assessing this report, Inspector ██████ the Discipline Authority, adopted these findings. The Police Complaint Commissioner upon reviewing the report and the decision considered that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect. In particular, the Commissioner was of the view that the search of ██████ vehicle had not been fully analyzed and might support a finding that ██████ had abused his authority contrary to section 77(3)(a) of the *Police Act*.

On April 14<sup>th</sup>, 2021, pursuant to section 117(4) of the *Police Act*, the Commissioner appointed me, a retired Provincial Court Judge, to review the matter and arrive at my own conclusions based on the evidence.

### **The search of ██████ vehicle**

There is no dispute on the facts relating to this issue. ██████ and ██████ describe the search and the items found and removed in a consistent way. ██████ had been arrested, removed from his vehicle and was handcuffed before ██████ started to search the truck. The search took approximately 30 minutes.

██████ works in security and provides first-aid and technical rescue on construction sites. He was in uniform and on duty that day and was driving one of his co-workers from one of their locations to another when he was pulled over. In his complaint, describing

██████ search of the vehicle ██████ said:

He opened everything in the vehicle including a rescue kit, a naloxone kit (sterilized due to the COVID-19 pandemic) Level 3 trauma first aid kit...they opened ...and ransacked everything while placing belongings on the street...

██████ gives this description of the content they searched through:

He had a whole lot of equipment. He had camping gear, he had all this tactical stuff, he had knives, he had first aid equipment, the pickup bed was full of equipment, and the rear seat was full of equipment. It took me awhile to go through the whole thing so that there wasn't nothing of concern inside. (sic) There was a lot of stuff that needed to be unpacked. Once everything was said and done, I offered my assistance, and said "hey, would you like a hand with me packing these". I can give you a hand and I know it is a whole lot of stuff and you are roadside. He refused my assistance.

### **Grounds for the search**

During his interview with ██████ ██████ asked him why he had searched the vehicle.

█████ responded:

Yeah, I made a lawful arrest and he had weapons present in the vehicle. It was of concern to me that he was totally uncooperative with police, he is claiming to be a security guard, and has all these weapons present. I needed to make sure, to check for more weapons. I did locate several more weapons, such as knives, multi-tools and bear sprays and I did not seize any of the weapons...

It was evident from later comments that this officer and several of his colleagues made that there was a common belief that a “search incidental to arrest” was authorized as a matter of course anytime there had been a lawful arrest. It is this assumption that needs to be examined in light of the binding case law.

In *R. v. Caslake*, 1998 CanLII 838 (SCC), [1998] 1 SCR 5 the court discussed the limitations on this kind of search. Per Lamer C.J. and Cory, McLachlin and Major JJ , it said:

... all of the limits on search incidental to arrest are derived from the justification for the common law power itself: searches which derive their legal authority from the fact of arrest must be truly incidental to the arrest in question. The authority for the search does not arise as a result of a reduced expectation of privacy of the arrested individual. Rather, it arises out of a need for the law enforcement authorities to gain control of things or information which outweighs the individual's interest in privacy. This means, simply put, that the search is only justifiable if the purpose of the search is related to the purpose of the arrest.

The court quoted with approval Doherty JA decision in the case of *R. v. Belnavis*, 1996 CanLII 4007 (ON CA) where he found that:

Requiring that the search be truly incidental to the arrest means that if the justification for the search is to find evidence, there must be some reasonable prospect of securing evidence of the offence for which the accused is being arrested. For example, when the arrest is for traffic violations, once the police have ensured their own safety, there is nothing that could properly justify searching any further.

In the present case, █████ was subjected to a search incidental to arrest when he was first removed from his vehicle. Officers checked his pockets and a duty belt that he was wearing. They obtained his wallet which contained his drivers' licence and provided the identification evidence they needed to process charges against █████ They also removed a pocket knife and some other items and placed them on the hood of one of

the police cruisers. This search assured officer safety by removing items that could be used as weapons and obtained identification evidence that was germane to the charge of obstructing justice.

Was the search of [REDACTED] vehicle taken for the same purposes? It would seem not. [REDACTED] had noticed a couple of exacto knives in the console of the truck and wanted to check to see if there were other items that could be construed as weapons. This information would have no relevance to the charge of obstruction. With [REDACTED] handcuffed and in the custody of another officer, meters away from the vehicle, the presence of these weapons in the truck did not compromise officer safety. [REDACTED] had access to information relating to [REDACTED] past contact with the police. There was nothing on the police data base that would suggest that his being in possession of weapons would make him a danger to the public nor did anyone raise this as a concern. Given his occupation, [REDACTED] had a legitimate need for the objects that [REDACTED] was interested in and when the search was completed all the items that had initially been seized or examined were returned to him.

On the basis of the cases cited, it is my view then that this search exceeded the limits the courts have imposed on the common law right to conduct a search incidental to arrest and that there were no valid grounds for the search of this vehicle.

I am therefore satisfied that there appears to be sufficient evidence to substantiate the allegation that [REDACTED] conduct amounted to a breach pursuant to section 77(3) (a) of the *Police Act, being an "abuse of authority"*, which is oppressive conduct towards a member of the public.


As required by s. 117(8) of the *Police Act*, I hereby provide notice to Constable [REDACTED] [REDACTED] as follows:

- a. For the reasons set forth herein, the evidence referenced in the investigation report appears sufficient to substantiate the allegation of *Abuse of Authority by conducting a search that was not authorized by the law* pursuant to s. 77(3)(a) of the *Police Act*. This constitutes misconduct and requires the taking of disciplinary or corrective measures;

- b. A prehearing conference will be offered to Constable [REDACTED]  
[REDACTED]
- c. Constable [REDACTED] has the right pursuant to s. 119 to request permission to call, examine or cross-examine witnesses at the discipline proceeding, provided such request is submitted in writing within 10 business days following receipt of this notice of decision.
- d. The range of disciplinary or corrective measures being considered include:
  - i. Giving Constable [REDACTED] advice as to his conduct;
  - ii. Reprimanding Constable [REDACTED] verbally
  - iii. Reprimanding Constable [REDACTED] in writing.

I hereby notify [REDACTED], the complainant in this instance, of his right pursuant to s. 113(1) of the *Police Act* to make submissions at the discipline proceeding with respect to the complaint, the adequacy of the investigation, or the disciplinary or corrective measures that would be appropriate.

Dated at Surrey, British Columbia this 19<sup>th</sup> day of April, 2021.



Hon. Carole D. Lazar, Discipline Authority