

## CONCLUSION OF PROCEEDINGS

Pursuant to s.133(6) of the *Police Act*, RSBC 1996 c.367

OPCC File 2020-17317

May 27, 2022

To: Mr. [REDACTED] (Complainant)

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

And to: The Honourable Judge Mr. Brian Neal, Q.C. (ret'd) (Discipline Authority)  
Retired Judge of the Provincial Court of British Columbia

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

The Commissioner has completed his review of the decision issued by the Honourable Judge Mr. Brian Neal, Q.C. (ret'd) acting as the Discipline Authority pursuant to section 133 of the *Police Act* in this matter.

Mr. Neal was appointed pursuant to section 117 of the *Police Act* as the Commissioner considered that there was a reasonable basis to believe that the decision of the initial External Discipline Authority, Chief Constable Del Manak, was incorrect. Chief Manak's decision found that the members "could have done a better job" in the situation and in being informed by Indigenous cultural safety and awareness. He determined that he could not fault the members for a lack of training, although did comment that the Indigenous background of the Complainants should have factored into the members' assessment and determination. The decision further found that the members formed the required grounds to arrest the Complainants and that the handcuffing was "reasonable and justified" and therefore the members did not commit misconduct.

On July 8, 2021, Mr. Neal issued his decision pursuant to 117 of the *Police Act* in which he found that the members appeared to have committed misconduct. Mr. Neal found that it appeared the members acted in an oppressive manner in removing the Complainants from the bank and did not have reasonable and probable grounds nor good and sufficient cause to arrest the Complainants. Mr. Neal further found that it appeared the members recklessly and used

unnecessary force on the Complainants through the application of handcuffs. In addition, Mr. Neal found that Constable ██████ appeared to have acted recklessly in disclosing the Complainant's Status Cards to his counsel.

The Discipline Proceeding commenced on November 29, 2021, with Mr. Neal presiding as the Discipline Authority. The members provided evidence. Subsequent dates for the Discipline Proceeding took place on December 13, 2021, January 12, 2022, and January 24, 2022. On January 28, 2022, Mr. Neal issued his findings on the allegations pursuant to section 125 of the *Police Act*.

The following allegations were found to be substantiated by Mr. Neal for both members:

1. *Abuse of Authority* by oppressive conduct pursuant to sections 77(3)(a) and (a)(i) of the *Police Act* as a result of removing the Complainants from a Bank to a public street without reasonable cause and recklessly arresting the Complainants without good and sufficient cause.
2. *Abuse of Authority* by oppressive conduct pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by recklessly using unnecessary force on the Complainants through the application of handcuffs without good and sufficient cause.

On March 17, 2022, Mr. Neal issued his decision pursuant to section 128 of the *Police Act* in which the following Disciplinary or Corrective Measures were imposed:

Constable ██████

- suspended without pay for three days;
- required to attend and successfully complete the following training or education programs before December 31, 2022:
  - (a) "Cultural Perspectives" training offered by the Indigenous Perspectives Society (commenced March 07, 2022 by the Members);
  - (b) Intensive immersive training (11-12 sessions) through the Vancouver Aboriginal Community Policing Centre coordinated by the Executive Director;
  - (c) Training or retraining in de-escalation skills and risk assessment; and
  - (d) Retraining on the power of arrest; and
- prepare and deliver a written apology to the Complainants within 60 days. The apologies must be in a form and content approved by the Discipline Authority and:
  - (a) Reflect the general findings of the Discipline Decision on the issues of misconduct;
  - (b) Convey the tenor of the apologies provided by the Members in their submissions and testimony during these proceedings; and
  - (c) Convey the Members' offer to meet with the Complainants to listen to their concerns and hear the oral apologies of the Members in relation to the Complaint, at a time and in a manner agreeable to the parties.
- required to work under the close and direct supervision of a senior officer or officers for no less than 6 months.

Constable [REDACTED]

- suspended without pay for two days;
- required to attend and successfully complete the following training or education programs before December 31, 2022:
  - (a) "Cultural Perspectives" training offered by the Indigenous Perspectives Society (commenced March 07, 2022 by the Members);
  - (b) Intensive immersive training (11-12 sessions) through the Vancouver Aboriginal Community Policing Centre coordinated by the Executive Director;
  - (c) Training or retraining in de-escalation skills and risk assessment; and
  - (d) Retraining on the power of arrest; and
- prepare and deliver a written apology to the Complainants within 60 days. The apologies must be in a form and content approved by the Discipline Authority and:
  - (a) Reflect the general findings of the Discipline Decision on the issues of misconduct;
  - (b) Convey the tenor of the apologies provided by the Members in their submissions and testimony during these proceedings; and
  - (c) Convey the Members' offer to meet with the Complainants to listen to their concerns and hear the oral apologies of the Members in relation to the Complaint, at a time and in a manner agreeable to the parties.
- required to work under the close and direct supervision of a senior officer or officers for no less than 6 months.

The Complainant and the members were provided a copy of the Discipline Authority's findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures. They were informed that if they were aggrieved by either the findings or determinations they could file a written request with the Commissioner to arrange a Public Hearing or Review on the Record. No request was received from any party.

Upon review of the totality of the matter and in consideration of all of the factors listed in section 138(1) & (2) of the *Police Act*, the Commissioner has determined that there is not a reasonable basis to believe the decision is incorrect nor is a Public Hearing or Review on the Record necessary in the public interest.

A full and complete Discipline Proceeding occurred during which the Discipline Authority considered submissions by the Complainant and members as well as evidence from the members. Each party was represented by legal counsel. The Discipline Authority correctly characterized the seriousness of this matter observing the degree of harm as "two vulnerable persons of Indigenous heritage [who] were exposed to unnecessary trauma and fear."

The evidence before the Disciplinary Authority included a Final Investigation Report prepared by the Delta Police Department after a comprehensive external investigation. During that investigation the Commissioner directed a number of investigative steps including issuing the direction to the investigator to consider retaining expertise to assist with analyzing the conduct considering the nature of the affected persons as Indigenous and the need for cultural safety

and the impact of trauma given that the officers knew, at the time of arrest and detention, they were Indigenous persons.

As the Commissioner has determined there are insufficient grounds to arrange a Public Hearing or Review on the Record in this matter, the decision to conclude this matter is final and conclusive.

In relation to the substantiated allegations, the disciplinary or corrective measures imposed are approved. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with the *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to, by a member or former member, has been completed, and that their service record of discipline has been updated.



Director - Oversight Operations

Cc: Delta Police Department Professional Standards Section