



Office of the
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2020-18945

NOTICE OF REVIEW ON THE RECORD - AMENDED

Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation
against Constable Arminster Gill of the Vancouver Police Department**

To: Constable Arminster Gill (#2550) (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Superintendent Don Chapman (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

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

WHEREAS:

Investigation

1. On December 29, 2020, the Office of the Police Complaint Commissioner (OPCC) received a Request for an Ordered Investigation from the Vancouver Police Department (VPD) in relation to an incident which occurred in November 2019.
2. According to the VPD, they received a video recording of an incident involving Constable Arminster Gill that appeared to show him striking a male across the face with his hand during the arrest and search of the male. The VPD advised that the New Westminster Police Department (NWPD) had initiated a criminal investigation into Constable Gill's conduct depicted in the video, and requested that the *Police Act* (Act) investigation into this matter be suspended pending the outcome of the criminal investigation.
3. On January 20, 2021, after reviewing the information forwarded by the VPD, I ordered an investigation into the conduct of Constable Gill pursuant to section 93(1) of the Act. In

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Police Complaint Commissioner

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addition, the *Police Act* investigation into this matter was suspended to avoid prejudicing the ongoing criminal investigation or prosecution.

4. On July 12, 2021, the suspension of the *Police Act* proceedings was lifted at the request of Constable Gill's legal counsel. VPD Professional Standards investigator Sergeant Stan Dy conducted the *Police Act* investigation and on January 10, 2022, he submitted the Final Investigation Report to the Discipline Authority.
5. On October 27, 2021, Constable Gill entered a guilty plea to the charge of Assault, pursuant to section 266 of the *Criminal Code* and received a *Conditional Discharge* with a period of a six-month probation with conditions.
6. On January 24, 2022, following his review of the FIR, Inspector Mike Kim, as the Discipline Authority, found that the misconduct of *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A) of the Act, appeared to be substantiated. The allegation of a *Public Trust Offence* was not substantiated and has been concluded by this office.
7. The member accepted an offer of a Prehearing Conference which was convened before Inspector Kim on February 16, 2022.
8. On March 2, 2022, I rejected the Prehearing Conference agreement. Accordingly, the matter proceeded to a Discipline Proceeding before Superintendent Don Chapman as the new Discipline Authority.

Discipline Proceeding and Proposed Discipline

9. On May 3, 2022, following the Discipline Proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determination in relation to the allegation:
 - (i) That on November 13, 2019, Constable Gill committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* when he slapped a male suspect in the face immediately after being pricked with a hypodermic needle during the course of a Breach of Probation investigation.

Proposed Disciplinary Measure – verbal reprimand

10. In arriving at the proposed discipline, the Discipline Authority noted that the actions of Constable Gill were serious in nature but that his actions were "knee-jerk", the assault was "minor" and without injury, and that Constable Gill accepted responsibility for his actions. The Discipline Authority assessed the aggravating factors that Constable Gill was a senior police officer who assaulted an arrested person in the presence of junior and recruit police officers, that Constable Gill made a physically threatening comment towards the arrested person after the assault, and that Constable Gill reported the incident after a period of

approximately one year when he became aware that the incident had been recorded and was being circulated on social media.

Request for Public Hearing or Review on the Record

11. Constable Gill was provided a copy of the Discipline Authority's findings in relation to the allegation of misconduct and determination on appropriate disciplinary/corrective measures at the Discipline Proceeding. Constable Gill was informed that if he was aggrieved by either the findings or determinations, he could file a written request with the Police Complaint Commissioner (the Commissioner) to arrange a Public Hearing or Review on the Record. No request was received.

Decision

12. Pursuant to section 138(1) of the Act, the Commissioner must arrange a Public Hearing or a Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, otherwise considers that a Public Hearing or a Review on the Record is necessary in the public interest.

13. I have reviewed the record of the disciplinary decision, the associated determinations pursuant to section 138 of the Act, and I agree with the Discipline Authority's determination as to whether misconduct has been proven is correct pursuant to section 125(1) of the Act.

14. However, I have concluded that there is a reasonable basis to believe that the Discipline Authority has incorrectly applied section 126 of the Act in proposing disciplinary or corrective measures in this matter.

15. Specifically, I have determined that there is a reasonable basis to believe that the disciplinary or corrective measure proposed does not adequately address the seriousness of Constable Gill's conduct, which includes an unprovoked assault on a person in his custody to which Constable Gill pled guilty on a subsequent assault charge. Furthermore, it appears that the Discipline Authority has not accorded sufficient weight to the aggravating factors in proposing the disciplinary or corrective measure of a verbal reprimand, including that Constable Gill made a physically threatening comment toward the male after the assault, and that Constable Gill only self-reported the incident one-year later after he became aware that this incident had been videotaped and was being circulated on social media.

16. I have further determined that a Public Hearing is not necessary in this particular matter. I note that Constable Gill called no evidence at the Discipline Proceeding and accepted the facts and findings contained in the Discipline Authority's decision pursuant to section 112 of the Act. I am therefore satisfied that it is not necessary to examine witnesses or receive new evidence. Further, a Public Hearing is not required to preserve or restore public confidence

in the investigation of misconduct and the administration of police discipline. A Review on the Record is sufficient.

17. Accordingly, pursuant to section 141 of the Act, I am arranging a Review on the Record. As I have determined that the only reasonable basis to believe that the Discipline Authority was incorrect was in proposing discipline or corrective measures, the Review on the Record will be confined to the issue of disciplinary or corrective measures.
18. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act, unless pursuant to section 141(4) of the Act, the Adjudicator considers that there are special circumstances and it is necessary and appropriate to receive evidence that is not part of the record of disciplinary decision or the service record of the member.
19. Pursuant to section 141(5) of the Act, Constable Gill, or his agent or legal counsel, may make submissions concerning the matters under review.
20. Pursuant to section 141(6) of the Act, the Commissioner or his commission counsel may make submissions concerning the matters under review.
21. Pursuant to section 141(7)(b) of the Act, the Adjudicator may permit the Discipline Authority to make submissions concerning the matters under review.
22. It is therefore alleged that Constable Gill committed the following disciplinary default, pursuant to section 77 of the Act:
 - (i) *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the Police Act, which is in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on any person. Specifically, Constable Gill's use of force in slapping the arrested male.
23. In the Notice of Review on the Record, dated July 12, 2022, the Honourable Judge William Ehrcke, Q.C., retired Supreme Court Judge was appointed to preside as Adjudicator in these proceedings. The Honourable Judge Ehrcke has since advised that he is no longer able to act as Adjudicator in this matter.

THEREFORE:

24. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Judge Elizabeth Arnold-Bailey, retired Supreme Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the Act.

25. The Notice of Review on the Record, dated July 12, 2022, appointing Mr. William Ehrcke, Q.C., to act as Adjudicator in this matter for purposes of section 141 of the *Police Act* is hereby amended.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 1st day of September, 2022.



Clayton Pecknold
Police Complaint Commissioner