



Office of the
Police Complaint Commissioner

British Columbia, Canada

OPCC File: 2021-19722
November 09, 2022

NOTICE OF REVIEW ON RECORD

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 Complaint against
Constable Lance Fraser of the Vancouver Police Department**

To: Mr. Roshan Soroush-Nasab (Complainant)

And to: Constable Lance Fraser #2639 (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 May 21, 2021, the Office of the Police Complaint Commissioner (OPCC) received a copy of Mr. Roshan Soroush-Nasab's registered complaint describing his concerns with a member of the Vancouver Police Department on May 16, 2021. Mr. Soroush-Nasab (Complainant) alleged he was assaulted by Constable Lance Fraser (Member). The Complaint relates to an incident where the Member forcefully took the Complainant to the ground during a traffic stop. The incident was captured on video.

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Police Complaint Commissioner

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2. The OPCC reviewed the circumstances as outlined in the complaint and determined that the conduct alleged in relation to the use of force would, if substantiated, constitute misconduct. Accordingly, the complaint was forwarded to the Professional Standards Section of the Vancouver Police Department for investigation. Sergeant Jay Edwards of Professional Standards investigated this matter and submitted the Final Investigation Report (FIR) to the Discipline Authority on January 15, 2022.
3. On January 21, 2022, Inspector Mike Ritchie, the initial Discipline Authority, rejected the FIR and requested additional investigative steps including adding the allegation of *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the *Police Act* in relation to the Member's failure to advise the Complainant of the reasons for his arrest prior to taking him into custody. On February 2, 2022, Sergeant Edwards re-submitted his FIR to Inspector Ritchie.
4. On February 16, 2022, following his review of the FIR, Inspector Mike Ritchie, notified the Member that a Discipline Proceeding would be held in relation to the one substantiated allegation, namely *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act*. In his decision the Discipline Authority also unsubstantiated the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*. A Prehearing Conference was offered to the Member on the substantiated allegation, which he declined.

Discipline Proceeding

5. On September 08, 2022, following the Discipline Proceeding, and after considering the available evidence and submissions, a new Discipline Authority Superintendent Don Chapman made the following determinations in relation to the allegation:
 - i. That on May 16, 2021, Constable Lance Fraser, did not commit: *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, which is, oppressive conduct towards a member of the public, including, without limitation, in the performance or purported performance, of duties, intentionally or recklessly using unnecessary force on any person.
6. In his decision the Discipline Authority determined that the Member was in the execution of his duties when he used force on the Complainant. With respect to the Member having reasonable grounds to believe that the use of force he applied to the Complainant was necessary in order to carry out his duties the Discipline Authority stated,

It is clear that Constable Fraser had the lawful authority to stop and detain Mr. Soroush-Nasab pursuant to the *Motor Vehicle Act* and force may be applied in order to achieve lawful arrest or detention.

I also agree with the reasoning and conclusion provided by the Investigator at para. 56-57 of the FIR, whereby, Constable Fraser had, "...obvious and legitimate safety concerns for himself and the public...Constable Fraser [also] had reason to suspect that

Mr. Soroush-Nasab's motorbike may be stolen." The Investigator concluded that Constable Fraser did have, in the aforementioned circumstances, the authority to use force on Mr. Soroush-Nasab.

The Discipline Authority then determined that the Member was not required to exhaust verbal commands or to explain to the Complainant that he was going to be handcuffed. The Discipline Authority acknowledged some inconsistencies in the Member's evidence in relation to the pre-assaultive cues. Specifically, the Discipline Authority found that: the Complainant did not appear to take a "bladed stance", the Complainant only pulled away from the Member after the Member had reached out and grabbed at him, and the Complainant had not pushed the Member's hand away as the Member had suggested. Nevertheless, the Discipline Authority cited the observations of the Member to support the determinations that the force was quick and effective and caused no injuries. The Discipline Authority also determined that the force was reasonable in achieving its stated goal of restoring control to an "out of control situation." Finally, the Discipline Authority determined that the extent of the force was an "arm-bar/leg-sweep technique" and that this was a proportionate response to an "active-resistant" subject.

Request for Public Hearing or Review on the Record

7. The Complainant and the Member were provided a copy of the Discipline Authority's findings at the Discipline Proceeding. The Complainant and Member were informed that if they were aggrieved by either the findings or determinations, they could file a written request with the Police Complaint Commissioner (PCC) to arrange a Public Hearing or Review on the Record.
8. On September 29, 2022, our office received a written request from the Complainant. The request outlined the Complainant's disagreement with the Discipline Authority. The Complainant wrote in his request that if the Member had asked him to put his hands behind his back he would have cooperated. The Complainant referenced that his body posture and actions were at all times non-threatening and despite this he was determined to have been actively resisting. The Complainant went on to note his concerns with the lack of communication from the Member during the incident. The Complainant stated that given the Member's experience level, he should have the ability to understand communication skills and read body language. The Complainant stated his belief that the Member was "angry" that other riders had fled and this anger was "taken out" on him. Finally, the Complainant stated that the Member should have been able to recognize he was in no immediate danger and handled the situation in a more peaceful and mature manner given his authority.

Decision

9. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or 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

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corrective measures under section 128(1); or, otherwise considers that a Public Hearing or Review on the Record is necessary in the public interest.

10. I have reviewed the record of the disciplinary decision, the associated determinations pursuant to section 138 of the Act, and I have concluded that there is a reasonable basis to believe that the Discipline Authority's determination pursuant to section 125(1) of the Act is incorrect. The Discipline Authority determined that force was required in this matter and that the Member was in the lawful execution of his duties however there is an absence of any determination that the Member arrested the Complainant or else decided to handcuff him for another legitimate reason. The evidentiary record, including video evidence raises concerns with the Discipline Authority's finding. There are inconsistencies in the Member's statements and written reports including as it relates to the perceived threat posed by the Complainant. There are additional concerns with the rapid deployment of force with an absence of effective verbal communication. The evidence reasonably supports a finding that the Member elevated his force response to this situation without sufficient grounds to do so and in a manner disproportionate to circumstances and behaviours the member was observing. Specifically, the evidence reasonably supports a finding that the rapid and forceful takedown of the Complainant, described as an "arm-bar/leg-sweep", absent any attempts at de-escalation, was not required or necessary and was also disproportionate to the circumstances.
11. I have further determined that a Public Hearing is not necessary in this particular matter. I am satisfied all material witnesses were interviewed and a comprehensive record, including detailed video evidence from the member and other witnesses to the incident exists. I note that the Member called no witnesses at the Discipline Proceeding. 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.
12. Accordingly, pursuant to section 141 of the *Police Act*, I am arranging a Review on the Record. Pursuant to section 141(2) of the *Police Act*, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the *Police Act*, unless pursuant to section 141(4) of the *Police 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.
13. Pursuant to section 141(5) of the *Police Act*, Constable Fraser, or his agent or legal counsel, may make submissions concerning the matters under review.
14. Pursuant to section 141(6) of the *Police Act*, the Commissioner or his commission counsel may make submissions concerning the matters under review.

15. Pursuant to section 141(7)(a) and (b) of the *Police Act*, the Adjudicator may permit the complainant, or their agent or legal counsel, and the Discipline Authority to make submissions concerning the matters under review.
16. It is therefore alleged that Constable Lance Fraser committed the following disciplinary default, pursuant to section 77 of the *Police 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 Fraser's use of an "arm bar and leg sweep takedown" of the Complainant.

THEREFORE:

17. A Review on the Record is arranged pursuant to section 141 of the *Police Act*.
18. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Mark Takahashi, retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

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 9th day of November, 2022.



Clayton Pecknold
Police Complaint Commissioner