

**REVIEW ON THE RECORD
DECISION: DISCIPLINARY OR CORRECTIVE MEASURES**

PURSUANT TO SECTION 141 *POLICE ACT*, R.S.B.C. 1996, c. 267

In the matter of a Hearing on the Record
into the Ordered Investigation
against Constable Lance Fraser
of the Vancouver Police Department

To: Constable Lance Fraser (“Member”)

And to: Chief Constable Adam Palmer, Vancouver Police Department

And to: Mr. Clayton Pecknold, Police Complaint Commissioner

And to: Ms. A.M. Latimer, K.C., Counsel of the Office of the Police
Complaint Commissioner

And to: Mr. K. Woodall, Counsel for Constable Lance Fraser #2639

And to: Superintendent Don Chapman, Discipline Authority

And to: Sergeant Jay Edwards (“Investigator”)

And to: Mr. Roshan Soroush-Nasab (“Complainant”)

Review hearing date: April 10, 2023, Vancouver, B.C.
Decision date: August 22, 2023.

Reasons for Decision on Disciplinary or Corrective Measures

I. Overview

1. On May 16, 2021 the Member was on patrol as part of the Integrated Road Safety Unit conducting traffic enforcement. He was alone and riding a motorcycle.
2. The Member observed 5 motorcyclists excessively speeding contrary to section 148 of the *Motor Vehicle Act*. One rider fled when the Member tried to stop them.
3. The Member pulled the remaining riders over. The Member confiscated the keys of the first rider and as he spoke to the Complainant, the third rider fled. The Member left the Complainant, hand-cuffed the fourth rider then returned to the Complainant. As the Member approached he had a brief exchange with the Complainant, grabbed him by the neck and upper body and pulled him backwards to the ground (“Take-down”). The Member controlled the Complainant on the ground until backup arrived.
4. By a Notice of Decision dated May 20, 2023 I found that the Member had no reasonable grounds to apply force to the Complainant and substantiated the allegation that the Member committed misconduct of *Abuse of Authority* pursuant to section 177(3)(a)(ii)(A) of the *Police Act*, to wit, oppressive conduct towards the Complainant, a member of the public, including, without limitation, in the performance or purported performance of duties, of duties, intentionally or recklessly using unnecessary force on the Complainant.

THE POLICE ACT

5. The *Police Act [R.S.B.C. 1996], Chapter 367* provides:

126 (3) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary and corrective measures in relation to the misconduct of a member...including...:

- (a) the seriousness of the misconduct,
- (b) the member's record of employment and discipline,
- (c) Impact of proposed discipline/corrective measure on member, his family and career,
- (d) the likelihood of future misconduct,
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the action of the member's supervisor, contributed to the misconduct,
- (g) the range of disciplinary or corrective measures taken in similar circumstances, and
- (h) other aggravating or mitigating factors.

(a) Seriousness of the misconduct

6. This sub-section refers to the seriousness of the officer's misconduct with respect to the Complainant.
7. The Member's initial error was to use the flight of the first motorcyclist to base his assessment of the remaining motorcyclists. This caused him to mis-assess the motorcyclists including the Complainant as flight risks that justified confiscation of their keys.
8. His next error was to re-assess the Complainant because another motorcyclist fled and to wrongly conclude that the new situation justified raising the use of force to handcuffing.
9. The Member executed the Take-down to handcuff the Complainant. After the Take-down the Member kept the Complainant on the ground until back-up arrived.
10. Any unnecessary application of force is serious however, the Member said he did not intend to hurt the Complainant which is borne out by his use of a soft rather than a hard physical control technique and the Complainant suffered no serious or long-term injuries.
11. In the circumstances, this was a moderately violent use of force.

(b) Member's record of employment and discipline

(d) The likelihood of future misconduct

(e) Whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence

12. These considerations are closely related so will be treated together.
13. The Member had no discipline history before this incident.
14. In the Review on the Record the Member advanced 6 reasons for why he assessed the Complainant as an immediate flight risk. I dismissed 2 reasons as not being flight cues or indications that the Complainant was about to flee, 3 as misinterpretations of what occurred and one as unproven.
15. The incident was captured on the Member's helmet cam ("Video"). The Video contradicted parts of the Member's earlier report and subsequent interview and did not support several of the inferences that he advanced in the discipline proceeding. It is worrisome that, having viewed the video, the Member continued to blame the Complainant for the actions of the other motorcyclists and advance unfounded justifications for his conduct.
16. The Member now states that he accepts responsibility for the misconduct and offers an apology for the difficulties he may have caused the Complainant. The apology falls short of an unqualified admission that what he did was wrong.
17. The Member states that since the incident he has consulted with the supervising use of force instructor for Vancouver Police Department. No conclusions can be drawn from this statement without knowing more of what was discussed or resolved.
18. The Member states that he "will respect the punishment and fulfill it because [he] believe[s] in being accountable."
19. Although I have concerns about the timing and wording of the Member's acceptance of responsibility, his clean service record

convinces me that this misconduct is an anomaly and unlikely to recur.

(c) Impact of proposed discipline/corrective measure on member, his family and career

20. Any conviction resulting in a disciplinary or corrective measure will have serious consequences on the Member's career.

21. The Member is paid \$56.20 per hour and worked a 10-hour day so for each day of suspension without pay the Member would lose \$562. The suspensions proposed by counsel would have the Member forfeit between \$562 to \$1,686.

22. Using this pay rate the Member's gross annual income would be \$146,120.

23. The Member has no dependants.

24. There was no disclosure of the Member's expenses or financial circumstances so whether the Member may suffer hardship by a loss of pay cannot be determined.

(f) The degree to which the municipal police department's policies, standing orders or internal procedures, or the action of the member's supervisor, contributed to the misconduct

25. This consideration is not addressed by either counsel.

(h) Other aggravating or mitigating factors

26. It would be more appropriate to deal with this provision before section 126(3)(g).

27. Other aggravating factors include that:

- a. The Member did not inform the Complainant of the reason for the detention;

- b. The Member did not communicate with the Complainant to gain compliance or to de-escalate the situation;
- c. Without sufficient grounds the Member handcuffed another motorcyclist;
- d. The Member indicated in a Subject Behavior–Officer Response report (“SBOR”) made 5 days after the incident that the Complainant “Tensed/clenched [his] fists” and was “Yelling/Swearing.” This was shown to be untrue by the “Video”.

In the NOTICE OF DECISION I erred in describing this as fabricating evidence as an SBOR would not be admissible as evidence in a trial for fabricating evidence under section 137 of the *Criminal Code*, R.S.C. 1985, c. C-46. However, those indications remain as allegations meant to mislead in a police investigation;

- e. In an interview on November 15, 2021 with the Investigator the Member said that he told the Complainant that he was going to be handcuffed and to put his hands behind his back. Then the Member stated that he didn’t know if he actually said that but that’s what he believed happened.

The Video showed that the Member did not give that warning or direction; and

- f. The Member took the Complainant down and restrained him on the ground beside a busy urban highway until backup arrived. This would have brought embarrassment and loss of dignity to the Complainant.

28. Other mitigating factors include:

- a. Before the incident the Member had built a reputation as a caring, compassionate and committed police officer;
- b. The Member suffered loss of reputation due to a video of the incident posted online and the publicity in the newspapers; and

- c. The protracted discipline process caused the Member stress which contributed to the Member going on sick leave 6 months ago. He could lose over \$30,000 in income this year.

(g)The range of disciplinary or corrective measures taken in similar circumstances

- 29. The significant elements of the Member's misconduct are the unnecessary use of force and the misstatement of facts in a report and interview.

Many of the cases to which counsel referred dealt with one but not both those factors.

- 30. In OPCC 2010-5158 the member was found to have used unnecessary force in making an arrest. Subsequently the member made false and misleading statements in his report and during an interview with a Professional Standards Investigator. The member was suspended 3 days without pay for the unnecessary force and 25 day suspensions without pay for each of 2 findings of deceit.
- 31. The force used in OPCC 2010-5158 was more substantial but the behaviour of the complainants was also more provocative. Unlike in the Member's case, the deceit was separately alleged and accounted for.
- 32. In OPCC FILE No. 2018-15600 the member and his partner arrested a complainant because he made an irritating comment. When the complainant refused to put his arms behind to be handcuffed, the member and his partner punched, kneed, kicked and used OC spray on the complainant. In a General Occurrence Report the member described the complainant as intoxicated, belligerent and shouting profanities. A subsequently produced video of the incident did not confirm the member's description of the complainant.
- 33. The member also omitted to include in the Report that he punched and kneed the complainant.

34. For the reckless use of unnecessary force pursuant to s. 77(3)(a)(ii)(A) the member was required to take training and retraining. For the discreditable conduct for not providing fulsome information pursuant to section 77(3)(h)(iii) the member was ordered to serve an unpaid suspension of 8 days.
35. Those cases were factually the closest of the cases proposed by counsel.

THE POSITIONS OF COUNSEL

36. The OPCC proposes a suspension of 3 to 5 days without pay and training or retraining with a use of force instructor on use of force techniques with an emphasis on situational assessment, re-assessment, and de-escalation to prevent future complaints.
37. Counsel for the Member proposes a suspension of one day and retraining at the direction of an appropriate officer of the Vancouver Police Department.

CONCLUSION

38. The National Use of Force Framework (“NUFF”) is the approved process by which an officer assesses, plans and responds to situations that threaten public and officer safety. The assessment begins with the situation facing the officer by addressing the subject’s behaviour and the officer’s perceptions and tactical considerations. Based on the assessment the officer chooses an appropriate use of force option but continues to reassess as the situation develops whether his actions are appropriate or to change strategies.
39. In this case the Member determined that the Complainant was a flight risk without conducting a proper assessment. Prior to the Take-down the Complainant was calm, polite and generally compliant to the Member’s requests. A proper assessment would have found that the Member was not a flight risk, hence, the Member had no reasonable grounds to handcuff the Complainant.

40. The NUFF lists communication and de-escalation techniques ahead of physical control. The Member did not use communication to control or resolve the situation.
41. The Member could have requested that the Complainant move further away from his motorcycle to reduce his risk of flight or taken the Complainant's driver's licence and registration which would have identified the Complainant thereby eliminating the most important reason the Member needed him to stay and the Complainant's reason to leave.
42. The Member should have assessed the Complainant on the Complainant's behaviour, not on the behaviour of the riders who had been riding with him.
43. For the determination of disciplinary or corrective measures the Member disclosed that over the course of his service with the Vancouver Police Department he had been subjected to inappropriate interpersonal behaviour that alienated and isolated him from his fellow officers.
44. This provides context to why the Member may have defaulted to a "them against me" approach when he confronted the motorcyclists.
45. The confrontation of multiple offenders by one officer would have engaged serious concerns about officer safety, particularly when the backup response time was unknown.
46. As well, the Member likely was likely in a less than optimum emotional state due to his alienation and isolation by his fellow officers. This may have lessened his capacity to deal with a high stress situation.
47. The Member's use of force was not gratuitous. Rather, it arose from a misapprehension of the proper criteria to be used in assessing the Complainant.

Section 126 of the *Police Act* provides:

(3) Where the adjudicator requires that disciplinary/corrective measures are necessary, the adjudicator must prioritize an approach that seeks to correct and educate the member, unless it is unworkable or would bring the administration of justice into disrepute.

48. A mistake in assessment that resulted in the use of unnecessary force could indicate a lack of training or understanding by the officer. This type of misconduct could be addressed with a regime of training to rectify the officer's future comportment.
49. The placing of false negative details in a report and a less than forthright interview with the Investigator takes this case to a level where "a purely corrective and educative approach would be unworkable and bring the administration of police discipline into disrepute". [OPCC FILE No. 2019-15600, para. 44]
50. The maintenance of the reputation of the administration of police discipline requires a measure of discipline and correction in addition to training and retraining.
51. Deceit is a charge that, if substantiated, has led to sentences of 8 to 25 days without pay.
52. The Member was not formally charged with deceit. To charge him with deceit at this time would not be in the public interest. This proceeding has already been too drawn out.
53. The deceit, however, cannot be ignored. The proper accounting of it in this proceeding will be by treating it as an aggravating factor in the unnecessary use of force.
54. The appropriate discipline and corrective measures for Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, for recklessly using unnecessary force on the Complainant in the performance of duties:
 - i. The Member must undertake training or retraining with a use of force instructor with an emphasis on use of force

techniques with an emphasis on situational assessment, reassessment, and de-escalation; and

ii. The Member will be suspended for 3 days without pay.

55. As noted above neither counsel made submissions about the application of sub-clause 126(2)(f) of the *Police Act*, however, I note that in this case:

a. It would have been helpful in this case had a senior officer reviewed the Video with the Member, pointed out the weaknesses of his arguments and suggested that this was not a good case in which to risk the Member's credibility.

Perhaps the better path would have been to admit that it had been a bad day, that he had made a poor decision, apologize to the Complainant and move on.

It may be that this occurred and the Member chose to continue, in which case it was unfortunate that the Member did not accept that suggestion;

b. The Member indicated that the added stress which he had to endure in what felt like an interminable discipline process was oppressive. It is unfortunate that he had to do it alone.

Counsel is helpful in providing legal assistance at key moments but counsel's duties would not include providing for the emotional needs of the client.

Perhaps this could have been alleviated had the Member been able to choose an active or retired officer to assist and support him through this process; and

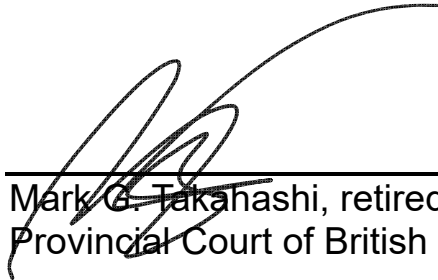
c. The duties of a motorcycle police officer working alone is a high stress position.

It may be helpful for officers in high stress positions to be regularly monitored as to the state of their mental health so they

are not put in positions where their mental health may interfere with their ability to make good decisions.

56. These observations are respectfully made with deference to the greater experience and expertise of the Vancouver Police Department.

Dated August 22, 2023.

A handwritten signature in black ink, appearing to read 'Mark G. Takahashi', is written over a horizontal line. The signature is stylized and cursive.

Mark G. Takahashi, retired judge of the
Provincial Court of British Columbia