

**IN THE MATTER OF A REVIEW ON THE RECORD  
INTO THE ORDERED INVESTIGATION  
AGAINST CONSTABLE LANCE FRASER  
OF THE VANCOUVER POLICE DEPARTMENT**

**NOTICE OF DECISION**

- TO: Constable Lance Fraser #2639**
- AND TO: Chief Constable Adam Palmer  
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: Sergeant Jay Edwards, Investigator  
c/o Vancouver Police Department  
Professional Standards Section**
- AND TO: Mr. Clayton Pecknold, Police Complaint Commissioner**
- AND TO: Ms. A.M. Latimer, K.C., Counsel for the Office of the Police  
Complaints Commissioner**
- AND TO: Mr. K. Woodall, Counsel for Constable Lance Fraser**
- AND TO: Mr. Roshan Soroush-Nasab, Complainant.**

**Executive Summary:** In a charge that the officer used unnecessary force contrary to section 77(3)(a)(ii)(A) of the *Police Act* in a traffic stop, the fabrication and embellishment of evidence by the officer was found to be inconsistent with his belief that use of force was necessary.

## **INTRODUCTION**

1. In this decision I will refer to:
  - a. the Office of the Police Complaint Commissioner as “the OPCC”;
  - b. the Police Complaint Commissioner as “the PCC”;
  - c. the Discipline Authority as “the DA”;
  - d. the Vancouver Police Department as “the VPD”;
  - e. the VPD Professional Standards Section as “the VPD PSS”;
  - f. Constable Lance Fraser as “the Member”;
  - g. Mr. Soroush-Nasab as “the Complainant”; and
  - h. Motorcyclists as “riders”.

## **COMPLAINT AND INVESTIGATIVE HISTORY**

2. On May 16, 2021 the Member stopped the Complainant along with 3 others for riding a motorcycle on a highway at an excessive speed contrary to section 148 of the B.C. *Motor Vehicle Act* (“MVA”).`
3. In the course of the investigation the Member took the Complainant to the pavement (“Take-Down”) and controlled him there until backup arrived.
4. On May 21, 2021 the Complainant registered a complaint with the OPCC against the Member.
5. The OPCC reviewed the complaint and determined that the allegations, if substantiated, would constitute abuse of authority or oppressive conduct towards a member of the public in the performance or purported performance of duties, by intentionally or recklessly using unnecessary force on the Complainant contrary to section 77(3)(a)(ii)(A) of the *Police Act* (“Complaint”).

6. The OPCC determined that the Complaint was admissible and directed that an investigation be conducted by the Vancouver Police Department (“VPD”).
7. On June 17, 2021 Sergeant Jason Meyer of the VPD Professional Standards Section (PSS) was assigned to investigate the Complaint.
8. On July 15, 2021 a Notice of Complaint and Initiation of Investigation was provided by the VPD PSS to Constable Fraser.
9. On October 15, 2021 this investigation was reassigned to Sergeant Andrea Anderson of the VPD PSS. On November 30 2021 this investigation was further reassigned to Sergeant Jay Edwards of the VPD PSS.
10. On January 11, 2022 the Chief Constable of the VPD delegated his authority as DA to preside over the discipline proceedings to Superintendent Chapman.
11. On January 15, 2022 Sergeant Edwards submitted a Final Investigative Report but 6 days later Acting Inspector Ritchie directed him to consider adding an allegation of Neglect of Duty and to reinterview Constable Fraser.
12. On February 2, 2022 Sergeant Edwards submitted an amended Final Investigative Report dated February 2, 2022 (“FIR”) in which he recommended that the allegation of abuse of authority be substantiated and the allegation of neglect of duty be dismissed.
13. On February 16, 2022 Acting Inspector Ritchie submitted a Notice of Discipline Authority’s Decision pursuant to s. 112 of the *Police Act* in which he found the count of Abuse of Authority contrary to s. 77(3)(a)(ii)(A) of the *Act* to be substantiated and the count of Neglect of Duty pursuant to s. 77(3)(m)(ii) of the *Act* be dismissed.

14. The Member rejected the offer of a without prejudice prehearing conference to admit to misconduct and agree to a disciplinary or corrective measure.
15. On February 16, 2022 the Member was issued a Notice of Discipline Proceeding and required to attend a Discipline Proceeding.
16. The Discipline Proceeding convened on April 29, 2022 when Constable Fraser denied the allegation, documents were exhibited and Constable Fraser testified then the proceeding was adjourned for written submissions.
17. On September 8, 2022 the DA issued its Findings of Discipline Authority in which the DA found that the allegation of Abuse of Authority was unproven.
18. On September 28, 2022 the Complainant filed a request disagreeing with the Discipline Authority.
19. The PCC found that there was a reasonable basis to believe that the Discipline DA's conclusion was incorrect so arranged a review on the record and appointed me to preside as Adjudicator.
20. On November 9, 2022 the OPCC provided the Complainant, the Member, the DA, and the Chief Constable of the VPD PSS with a notice of Review pursuant to s.138 of the *Act*.
21. The Complainant, counsel for the OPCC and Member filed written submissions then counsel made oral submissions on April 10, 2023.

## **BACKGROUND**

22. On May 16, 2021 the Member was on patrol as part of the Integrated Road Safety Unit ("IRSU") to conduct traffic enforcement from the Kensington Overpass. The Member was patrolling alone on a motorcycle.

23. The Member observed a group of 5 riders going 148kph in a 90kph zone. They were operating their motorcycles at an excessive speed contrary to s. 148 of the MVA.
24. The Member pursued and caught up to them in the Cassiar Tunnel. One rider sped off as the officer tried to stop them. The Member pursued that rider but was unable to stop him.
25. The Member went ahead of the remaining group, set up beside the highway north of the Ironworkers Memorial Bridge and pulled the remaining 4 riders over.
26. The first rider was Mr. Omid. The Member confiscated his keys and key fob then went to seize the Complainant's keys. When he was talking to the Complainant the third rider restarted his motorcycle and fled into traffic.
27. The Member left the Complainant and handcuffed the fourth rider, Mr. Kaya. Then he went to handcuff the Complainant.
28. The Member had a brief exchange with the Complainant as he approached, grabbed and executed the Take-Down. The Member stayed on top of the Complainant until backup arrived.

## **CREDIBILITY**

### **a. The Member**

29. The Member wore a helmet cam that videotaped the incident with sound ("Video") starting at roadside before the riders were stopped and continuing after the Complainant was on the ground.
30. In the Video as the Member approached the Complainant, he told him to put his phone down. Those were the only words he said before the Take-Down.

31. On November 15, 2021 after viewing the Video, the Member told Sergeant Anderson that:
- as he approached [the Complainant] he told him ... that he was going to handcuff him and to put his hands behind his back.
- From [the Member's] recollection he doesn't know if he actually told him that but that's what he believes happened.
32. The first comment is damaging because the Member said this immediately after having viewed the Video.
33. The second comment is more telling because even when confronted with irrefutable evidence that he hadn't given the warning he claimed to still believe that he had given it.
34. In a written report made by the Member after the incident under the heading "SPECIFIC SUBJECT BEHAVIOURS including pre-assault cues" the Member ticked "Tensed/Clenched fists and "Yelling/swearing. The Video showed the Complainant exhibited neither cue.
35. I find the Member to be unreliable and to lack credibility. I will not accept his evidence unless it is supported by other independent facts.

#### **b. The Complainant**

36. The Complainant gave a statement to Sergeant Anderson on November 10, 2021. The statement was not given under oath and he did not testify at the Discipline Hearing.
37. The Complainant gave his statement in an unemotional, matter-of-fact manner without vindictiveness. He was responsive to the questions asked and exhibited no uncertainty except his response to being manhandled.

38. The Complainant admitted that Mr. Omid, Mr. Kaya and he had been riding together and that the member tried to stop them in the tunnel but left them to chase a rider who sped off.

39. The Complainant did not deny that he knew that the Member wanted to pull them over.

40. I find the Complainant to be reliable and creditable.

**c. Mr. Kaya**

41. Mr. Kaya gave a statement to Sergeant Anderson on October 7, 2021. The statement was not given under oath and he did not testify at the Discipline Proceeding.

42. Mr. Kaya said that he was riding with Mr. Omid and the Complainant that day. He was responsive to questioning and gave an account of what happened that day consistent with the Video excepting that he thought the Member warned the Complainant that he was going to apply handcuffs. Notably this mistake was contrary to the interests of his friend, the Complainant.

43. I find Mr. Kaya to be credible.

**NATIONAL USE OF FORCE FRAMEWORK (“NUFF”)**

44. The 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.

## **Assessment**

### **1. THE SITUATION**

#### **Environment**

45. The incident occurred during mid-day. The weather was sunny, warm and clear. The Member was on foot beside 2 lanes of slow-moving westbound traffic. The availability of back-up was unclear.

#### **Number of subjects**

46. The Member was alone. Initially there were 5 suspects but one fled before the remaining 4 were stopped. A short time after the stop another suspect fled.
47. At the time of the Take-Down the Member was alone with the Complainant, Mr. Omid and Mr. Kaya.

#### **Perceived subjects' abilities**

48. The riders were not intoxicated, under the influence of drugs or alcohol nor exhibit signs of mental distress. They had no weapons.
49. They were young men who up until the Take-Down were calm, polite and generally compliant with the Member's directions.

#### **Knowledge of subject**

50. The Member had no prior contact with the riders or knowledge of their histories or reputations.

#### **Time and distance**

51. The Member submits that the situation required immediate action as the Complainant posed an immediate threat to get on his motorcycle and ride recklessly into traffic.



## **Potential attack signs**

52. The Member submits that the Complainant ignored and refused to comply with directions.

## **2. SUBJECT BEHAVIOURS**

### **Cooperative**

53. The Member submits that the Complainant was not cooperative.

### **Resistant (passive)**

54. The Member submits the Complainant was, at least, passively resistant. The Complainant shook off the Member's hand. The Member may have interpreted this as resistance.

### **Resistant (active)**

55. This does not apply.

### **Assaultive**

56. This does not apply.

### **Grievous bodily harm or death**

57. This does not apply.

## **3. PERCEPTION AND TACTICAL CONSIDERATIONS**

### **PERCEPTION**

58. The Member was fit. He had 13 years experience with the VPD and 2 ½ years with IRSU.

59. The Member had martial arts and motorcycle operations training in addition to the usual training of officers.
60. The Member was male and had no special fears.
61. The Member was not tired, injured or suffer from critical incident stress. His vision was limited by his helmet and face shield.

### **TACTICAL CONSIDERATIONS**

62. The Member was alone and in uniform with a police motorcycle equipped with emergency equipment and a radio to communicate with police services. There were helicopter and back-up services available but their response time was not known.
63. The Member submits that the situation was out of control at the time he approached the Complainant and the Complainant had to be immediately physically restrained to ensure that he did not escape and recklessly endanger the driving public.

### **3. USE OF FORCE OPTIONS**

#### **Officer Presence**

64. The Member was in uniform beside a police motorcycle with its emergency equipment engaged.
65. The Member had training and handcuffs to physically restrain the Complainant.

#### **Communication**

66. The Member did not inform the Complainant of the reason that he had been stopped. The Member submits that the situation was sufficiently urgent that there was no time to do that.
67. The reason for the stop would not necessarily be apparent to the riders since the speeding took place a number of kilometres before.

68. To say “You have been stopped for speeding” would have taken less than 2 seconds and allay any fear that something more than speeding was involved.
69. The Member directed the riders with short, sharp sentences. He seemed aggressive and agitated.
70. The Member did not inform the Complainant that he wanted to handcuff him.

### **Physical Control**

71. The Member took the Complainant to the ground using a soft technique. The Complainant suffered some muscle soreness but no serious injury.

### **Intermediate Weapons**

72. No weapons were used as weapons

### **Lethal Force**

73. No lethal force was used.

## **ANALYSIS**

74. The standard of proof in a discipline proceeding is the balance of probabilities.
75. S. 25 of the *Criminal Code of Canada* provides:
- (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law
  - (b) as a peace officer...

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

76. The OPCC concedes that the Member was acting in the execution of his duties pursuant to s. 25 of the *Criminal Code of Canada*.

### **THE ISSUES**

- I. Was the Member's decision to use force reasonable?
- II. Was the amount of force used by the Member reasonable?
- III. Did the Member believe that the use of force was necessary?
- IV. Did the Member believe that amount of force he used was reasonable?
- V. If yes to III and IV then were the Member's beliefs reasonable?

#### **I. WAS THE MEMBER'S DECISION TO USE FORCE REASONABLE?**

77. The Member submits that after the second rider fled he handcuffed Mr. Kaya and went to handcuff the Complainant because the situation was "out of control" and he thought the Complainant was about to flee and recklessly endanger the motoring public.

78. The Member submits that the Complainant was an immediate flight risk because:

- a. The Complainant was uncooperative as he did not obey the directive to give the Member his motorcycle ignition key;
- b. The Complainant had just seen 2 of his friends flee;
- c. The Complainant tightened his glove;
- d. The Complainant did not comply with the Member's command to put down his phone;
- e. The Complainant resisted handcuffing; and
- f. The Complainant could start his motorcycle without a key so could immediately get on his motorcycle and flee.

79. I will deal with each of these in order.

**a. The Complainant was uncooperative as he did not give the Member his motorcycle ignition key when directed**

80. When the Member requested the motorcycle ignition key the Complainant said that he had no key and explained why he did not have one. There is no evidence that a key was subsequently found.
81. In those circumstances failure to produce a key was not being uncooperative.

**b. The Complainant just seen 2 his friends flee**

82. The Member alleged the persons who fled were friends of the Complainant. He may have assumed this because he had seen them riding together.
83. Mr. Kaya said that unknown riders often joined, left and rejoined groups to socialize and for safety reasons.
84. There was nothing outwardly distinctive about the 5 riders that would indicate they belonged to the same group. They had different styles of clothing and helmets.
85. The Complainant and Mr. Kaya both said that they and Mr. Omid were acquaintances and rode as a group that day and didn't know the riders that had fled.
86. The Member first saw 3 riders together that were joined by 2 others. This is consistent with those assertions.
87. There was no reasonable basis for the Member to conclude those that had fled were friends of the Complainant and of their association would predict the Complainant's behaviour.
88. In any event, the Complainant was not responsible for the actions of the riders that had absconded.

89. To that point the Complainant did not flee after the first rider fled and had remained after the second rider fled.

90. Seeing others flee was not a cue that the Complainant would flee.

### **c. The Complainant tightened his glove**

91. The Member said that in his experience tightening the gloves was an indication that a rider was about to flee.

92. The Complainant was looking at a cellphone as the Member approached. He did something with his right glove but it is unclear whether he was tightening, loosening or just adjusting it.

93. Operating a motorcycle requires the operator's right hand to control the throttle, the left hand to operate the clutch and both hands to steer.

94. If the Complainant intended to flee then he would not have encumbered his hands with a cellphone.

95. The allegation of this flight cue was not made out on the evidence.

### **d. The Complainant did not comply with the Member's command to put down his phone**

96. On approach the Member reached for the Complainant's left arm as he said "put the phone down". The Complainant asked "why?" and pulled his arm away as he added "I have the right to film you?" The Member grabbed the Complainant and executed the Take-Down.

97. The approach, conversation and Take-Down occurred as one continuous action. The Complainant did not have time to comply with the directive.

98. In those circumstances the Complainant did not disobey the Member's command.

**e. The Complainant resisted handcuffing**

99. The Member did not have handcuffs in his hands nor did he say anything about wanting to handcuff the Complainant as he approached.

100. The Complainant said that he did not know that he was going to be handcuffed.

101. The Member submits that the Complainant should have known that he was going to be handcuffed because he had just seen the Member handcuff Mr. Kaya,

102. At the time of the Take-Down the Member and the Complainant were in mid discussion about whether the Complainant had the right to film the Member.

103. This was a traffic stop for speeding, not an arrest for a serious crime. To be handcuffed during a traffic stop was no something that the Complainant would not expect to happen.

104. I accept that the Complainant did not know that the Member wanted to handcuff him.

105. In the circumstances it was unreasonable for the Member to think that the Complainant knew that he wanted to handcuff him.

106. I find that the Complainant did not resist being handcuffed.

**f. The Complainant could start his motorcycle without a key so had immediate access to the use of his motorcycle**

107. The Complainant had dismounted from his motorcycle, turned it off and stood one or two steps away from it.

108. During the incident the Complainant did not move closer to the motorcycle nor do anything to suggest that he intended to remount it and flee.
109. Having access to a motorcycle that was operable was not an indication that the Complainant intended to flee.
110. Upon review of the Member's submissions I find that the Complainant exhibited no indications or cues that he was a flight risk.
111. At the time the Member went to handcuff the Complainant, Mr. Omid stood 20 feet away without his keys and Mr. Kaya was 10 feet away with his hands handcuffed behind his back. Neither was a threat to the Member or a threat to flee. The situation was not "out of control",
112. I find that the Member's decision to use force was unreasonable.

**II. WAS THE AMOUNT OF FORCE USED BY THE MEMBER REASONABLE?**

113. Since the decision to use force was unreasonable, any force used was unreasonable.

**III. DID THE MEMBER BELIEVE THAT THE USE OF FORCE WAS NECESSARY?**

114. The Member began with a plan to stop the group of 5 riders. He had never stopped that many at once before.
115. It may have been that until the first rider fled that the Member did not fully realize the frustrations of trying to stop multiple offenders while working alone. If one fled from a group the officer could either pursue him or stay with the group. He couldn't do both.
116. From a moving motorcycle, the wind, road and traffic noise would make communication with more than one rider at a time virtually



impossible. Then as soon as the Member told one to pull over, he would have to choose between going with the rider or staying with the group.

117. The Member reassessed the situation and revised his plan so that he went ahead, set up in a safe place where the riders could be stopped and pulled them over.

118. The Member's mood at the stop was agitated and aggressive. As the riders pulled off the highway the Member jabbed an extended baton at each in turn and barked "Turn it off!"

119. The Complainant and Mr. Kaya at different times told the Member to relax. The Complainant thought that the Member was angry that the other riders fled and this anger was taken out on him.

120. Mr. Kaya said "It seemed to me that the officer got way too worked up and he was irritated about the fact that the other motorcyclists took off on him and so it was way too much in my opinion."

121. The NUFF required the Member to choose an appropriate use of force based on an assessment that considered the officer's situation, the subject's behaviour, the officer's perceptions and tactical considerations.

122. The Member knew nothing about the riders before he stopped them yet his initial strategy was to confiscate keys thereby disabling the riders' means of escape. The Member did not describe doing an assessment yet his actions suggest that, without evidence, he deemed them all to be flight risks.

123. Then for no reason, excepting than another rider had fled, the Member increased the use of force as he then handcuffed Mr. Kaya and allegedly went to handcuff the Complainant.

124. The Member fixed and changed the levels of force he used without conducting assessments to determine which level was appropriate.

125. This led the Member into error as he:

- a. Treated the riders as a group, not as individuals;
- b. Improperly generalized the actions of the riders that fled to the those that remained; and
- c. Incorrectly prejudged the remaining riders including the Complainant as flight risks; then
- d. Raised the level of force for no valid reason.

126. Had the Member done a proper assessment then he would have noted that the Complainant:

- a. Had stopped, dismounted, turned off his motorcycle and waited in response to the Member's directions;
- b. Had seen two riders abscond but he remained;
- c. Had not edged closer to his motorcycle;
- d. Had a cellphone in his hands; and
- e. Said that he wanted to film the Member which he couldn't do unless he remained

and concluded that the Complainant was not a flight risk.

127. The Member also would have noted that Mr. Omid was 20 feet away without his keys, Mr. Kaya was 10 feet away with his hands handcuffed behind his back so neither was a flight risk and presented no immediate danger to him.

128. Finally, the Member would have concluded that the situation was under control, there was no urgent need to apply force to the Complainant and he could proceed to identifying the riders starting with the Complainant.

129. Afterwards, the Member embellished and fabricated evidence to justify his actions. This was inconsistent with his belief that the use of force was necessary.

130. I find that the Member did not believe that his use force was necessary.

131. I answer this question in the negative

**IV. DID THE MEMBER BELIEVE THE FORCE HE USED WAS NOT EXCESSIVE?**

132. The Member did not believe that the use of force was necessary so any force he used was inappropriate.

133. I answer this question in the negative.

134. As I have answered questions III and IV in the negative question V does not require an answer.

**THE STANDARD OF REVIEW**

135. The standard of review of a discipline decision is set out in section 141(9) of the *Police Act*.

In a review proceeding under this section, the standard of review to be applied by an adjudicator to a disciplinary decision is correctness.

136. This requires me to re-analyse the evidence and substitute my view of the correct decision for that of the Discipline Authority.

137. The DA and I differed in many areas including:

- a. The credibility of the Member;
- b. Whether the Complainant exhibited indications that he was a flight risk;
- c. Whether the situation that immediately preceded the Take-Down was “out of control”; and
- d. Whether force was necessary to control the Complainant.

138. With respect, I also disagree with the DA as to whether the Claim has been proven on a balance of probability.

### **CONCLUSION AND NEXT STEPS**

139. With respect to 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, intentionally or recklessly using unnecessary force on the Complainant, I find the allegation to be substantiated.

140. The matter will be scheduled for submissions in relation to penalty.



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M. Takahashi, PCJ ret  
Adjudicator.

Dated May 23, 2023.