

IN THE MATTER OF THE POLICE ACT, R.S.B.C. CHAPTER 367  
 AND  
 IN THE MATTER OF A REVIEW PURSUANT TO SECTION 117  
 AND  
 IN THE MATTER OF ALLEGATIONS OF MISCONDUCT AGAINST  
 CONSTABLE [REDACTED]  
 CONSTABLE [REDACTED]  
 FORMER CONSTABLE [REDACTED]  
 FORMER SERGEANT [REDACTED]  
 VANCOUVER POLICE DEPARTMENT

**NOTICE OF ADJUDICATOR'S DECISION UPON REVIEW**

TO: Ms. [REDACTED] Complainants  
 Ms. [REDACTED]  
 c/o Mr. [REDACTED]  
 [REDACTED] Law Corporation

AND TO: Constable [REDACTED] Members  
 Constable [REDACTED]  
 Former Constable [REDACTED]  
 Former [REDACTED]  
 c/o Vancouver Police Department  
 Professional Standards Section

AND TO: Inspector [REDACTED] Discipline Authority  
 c/o Vancouver Police Department  
 Professional Standards Section

AND TO: Sergeant [REDACTED] Investigator  
c/o Vancouver Police Department  
Professional Standards Section

AND TO: Mr. Clayton Pecknold Commissioner  
c/o Office of the Police Complaint Commissioner

AND TO: His Worship Mayor Ken Sim Chair  
c/o Vancouver Police Board

## ADJUDICATOR'S DECISION

### Introduction

1. On April 4, 2022, Detective Constable [REDACTED] [Det. [REDACTED] of the Vancouver Police Department [VPD] Gang Crime Unit observed a black Mercedes without a front license plate, speeding and weaving in and out of traffic on Oak Street, in Vancouver. According to the evidence of Det. [REDACTED] he initially attempted to stop the vehicle for *Motor Vehicle Act* offences, including speeding and no front license plate.
2. When Det. [REDACTED] activated his emergency equipment the black Mercedes drove away at a very high rate of speed. Within a few minutes Det. [REDACTED] located the black Mercedes approximately two kilometers away, parked off a lane in the driveway of a residence. Det. [REDACTED] blocked the Mercedes in with his police vehicle. He found its driver's door to be open and the driver's seat unoccupied, and an uncooperative woman in the front passenger seat (Ms. [REDACTED] She indicated there was another person in the vehicle, but he was not able to see into the vehicle to confirm this or obtain any kind of a physical description because of the heavy tint to the windows of the vehicle.
3. Minutes later the females in the vehicle as passengers came to be identified as Ms. [REDACTED] in the front passenger seat, and her 13-year-old daughter, Ms. [REDACTED] in the rear passenger seat.

4. Det. [REDACTED] instructed Ms. [REDACTED] to exit the vehicle several times. Neither she nor her daughter complied. Det. [REDACTED] called for assistance and other members of the VPD attended. During this time there were multiple further demands from the police, including from Det. [REDACTED] that the occupants of the vehicle exit it. Cst. [REDACTED] who staked out the Mercedes with a Less Lethal Bean Bag Shotgun made clear, loud, and verbally forceful demands that the occupants exit while pointing the Less Lethal Bean Bag Shotgun in the direction of Ms. [REDACTED] to no effect.
5. Ms. [REDACTED] video-recorded herself repeatedly asking the VPD members what she was being arrested for and she advised them she had a child with her in the vehicle. Both Ms. [REDACTED] and her daughter became upset but did not get out of the vehicle, despite being told to do so on numerous occasions.
6. Det. [REDACTED] advised the police members who attended the the occupants were arrestable for the criminal offences of Obstruction [of a police officer], and the driver, who was no longer at the scene, was arrestable for Dangerous Operation of a Motor Vehicle. After continuing to refuse to comply with numerous directions by police that they both get out of the vehicle, former Sergeant [REDACTED] discharged Oleoresin Capsicum (OC) spray into the vehicle. Ms. [REDACTED] and Ms. [REDACTED] exited the vehicle and were taken into custody. Ms. [REDACTED] (later determined to be 13 years old) punched Cst. [REDACTED] and struggled not to be handcuffed. She was subdued by Cst. [REDACTED] who was assisted by Cst. [REDACTED] in handcuffing Ms. [REDACTED] Ms. [REDACTED] resisted somewhat and as she moved toward her daughter, she was restrained and handcuffed by Cst. [REDACTED]
7. Both Ms. [REDACTED] and Ms. [REDACTED] were arrested for Resisting Arrest and Assaulting a Police Officer.
8. Cst. [REDACTED] evidence was that Ms. [REDACTED] punched her in the face, and Cst. [REDACTED] applied force in response by striking her in the face, and by restraining her.
9. Her mother, Ms. [REDACTED] was physically restrained by former Cst. [REDACTED] when she moved towards her daughter as the latter was being arrested by Cst. [REDACTED]
10. EHS attended at the request of the police and Ms. [REDACTED] received treatment for exposure to OC spray. Ms. [REDACTED] had been placed in a police wagon. She had suffered a black eye and bruising to her head and an arm and scraped knees.

11. Ms. [REDACTED] was not provided with medical treatment at the scene, as it was anticipated that she would receive any treatment she needed when she was booked into jail. However, Ms. [REDACTED] and Ms. [REDACTED] were released by police at the scene after EHS paramedics had departed. They were both directed to appear in court at 222 Main Street on a future date. I note that FIR indicates that no criminal charges against Ms. [REDACTED] or Ms. [REDACTED] relating to this incident were ultimately proceeded with by the Crown.
12. When Det. [REDACTED] searched the black Mercedes, he located two cell phones, some Canadian currency in various denominations, and half a kilogram of cannabis in the trunk. The vehicle was towed upon direction of Det. [REDACTED]
13. The police determined the identity of the driver to be Mr. [REDACTED] who was prohibited from driving at the time. On the evidence contained in the FIR, the police did not apprehend Mr. [REDACTED] at the scene or in the surrounding area despite their efforts to search the area, including a search with a police dog. Ms. [REDACTED] indicated to police that her father is Mr. [REDACTED] and her mother is Ms. [REDACTED]
14. The Complainants, Ms. [REDACTED] and Ms. [REDACTED] allege that the members of the VPD arrested them without the lawful authority, used excessive force and derogatory language when dealing with them, and failed to provide medical assistance to Ms. [REDACTED]

### **Procedural Background**

15. The Complainants' complaint regarding the incident on April 4, 2022, was received by the Office of the Police Complaint Commissioner [OPCC] on April 10, 2022. The OPCC determined that it was an admissible complaint and it was directed the VPD to investigate. Sgt. [REDACTED] was assigned to investigate the complaint [the Investigator].
16. On November 22, 2022, the Investigator, submitted the Final Investigation Report [FIR] to Inspector [REDACTED] the Discipline Authority.
17. On December 6, 2022, Inspector [REDACTED] issued his decision in this matter, pursuant to s. 112 of the *Police Act*, R.S.B.C. Ch. 367 [*Police Act*]. Inspector [REDACTED]

identified six allegations of misconduct against Constables [REDACTED] [REDACTED] [REDACTED] former Cst. [REDACTED] and former Sgt. [REDACTED]. These allegations were:

- 1 – *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* for intentionally or recklessly making an arrest without good and sufficient cause;
- 2 – *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* for intentionally or recklessly searching Ms. [REDACTED] and Ms. [REDACTED] without good and sufficient cause;
- 3 – *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for intentionally or recklessly using unnecessary force on Ms. [REDACTED] and Ms. [REDACTED];
- 4 – *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* for failing to provide medical care to Ms. [REDACTED];
- 5 – *Discourtesy* pursuant to section 77(3)(g) of the *Police Act* for failing to act with courtesy towards Ms. [REDACTED] and Ms. [REDACTED] and
- 6 – *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* specifically in relation to former Sergeant [REDACTED] for failing to submit the required documentation following the use of OC spray.

18. The Discipline Authority determined that five of the allegations, Allegations 1 through 5 against all the Respondent Members, did not appear to be substantiated. However, the Discipline Authority determined that Allegation 6, in relation to former Sergeant [REDACTED] [REDACTED] was substantiated. Therefore, this allegation does not form part of the basis of this review as it is subject to a separate discipline proceeding.
19. In this review, Mr. Clayton Pecknold, the Police Complaint Commissioner [the Commissioner] considers that there is a reasonable basis to believe the Discipline Authority's decision is incorrect in relation to four of the unsubstantiated allegations, specifically Allegations 1 through 4 as against Constables [REDACTED] [REDACTED] former Constable [REDACTED] and former Sergeant [REDACTED].
20. The Commissioner is not seeking a review of the Discipline Authority's decision that found Allegation 5, Discourtesy, to be unsubstantiated against these same four Members. Finally, the Commissioner is not seeking a review of the Disciplinary Authority's decision that none of the allegations of misconduct against Cst. [REDACTED]

██████████ was substantiated. Therefore, Cst. ██████████ conduct is not part of this review although his evidence is relevant as a witness.

21. These reasons represent a review of this complaint by me as a retired judge appointed by the Police Complaint Commissioner pursuant to s. 117 of the *Police Act*.

### **The Disciplinary Authority's Decision**

22. In the Notice of Appointment of Retired Judge, dated January 2, 2023, the Commissioner summarized the decision of the Disciplinary Authority rendered on December 6, 2022.

23. The Discipline Authority determined there was lawful authority to arrest the driver of the black Mercedes for *Criminal Code* offences. The Discipline Authority further concluded that “any interference by any persons which inhibited police from seizing or otherwise gaining access to the Mercedes would constitute an offence of Obstruction”. The Discipline Authority further determined the force used by the Respondent Members was reasonable, necessary, and not reckless. In addition, the Discipline Authority found that searches of Ms. ██████████ and Ms. ██████████ were necessary to establish identity, to search for evidence related to the offences, and for officer safety.

### **The Commissioner's Position**

24. The Commissioner set out the basis upon which he has initiated a s. 117(4) review of this matter. The Commissioner is of the view that the Discipline Authority's decision is “incorrect in relation to counts one through four of the unsubstantiated allegations” in relation to Det. ██████████ Cst. ██████████ former Cst. ██████████ and former Sgt. ██████████ ██████████

25. In the Notice of Appointment of Retired Judge, the Commissioner raises a number of concerns with regard to the Discipline Authority's analysis. In particular:

- The analysis failed to consider whether the arrests of Ms. ██████████ and Ms. ██████████ involved oppressive conduct on the part of the police, as “oppressive conduct includes whether or not the arrest was recklessly made without good or sufficient cause”.

- Det. [REDACTED] did not establish that the black Mercedes he located parked off the lane behind [REDACTED] [REDACTED] [REDACTED] was the same black Mercedes that sped away from him on Oak Street, before he instructed Ms. [REDACTED] and Ms. [REDACTED] to exit the vehicle and took steps to have them arrested.
- That even if the vehicle located by Det. [REDACTED] was the correct vehicle, Ms. [REDACTED] and Ms. [REDACTED] were passengers and the driver had fled.
- The analysis did not adequately consider the essential elements of the offence of Obstruction of a police officer, including whether the Obstruction warning was given prior to the arrests, Ms. [REDACTED] reason for refusing to exit the vehicle, and whether her reasons for not exiting amounted to a willful obstruction of Det. [REDACTED]
- The analysis was incorrect in finding that the deployment of OC spray by former Sgt. [REDACTED] was reasonable and necessary, particularly in light of the presence of a child in the vehicle.
- The evidence reasonably supports a finding that Ms. [REDACTED] and Ms. [REDACTED] were displaying, at most, passive resistance by refusing to exit the vehicle, and there was no evidence that Ms. [REDACTED] or Ms. [REDACTED] had or had access to a weapon. Thus, the threshold for the use of OC spray, an intermediate weapon, was not met.
- The analysis failed to sufficiently consider that at least one police member was close enough to hear Ms. [REDACTED] say that her daughter was in the vehicle from a distance of 25 feet away.
- The analysis is incorrect in finding that the force used by Cst. [REDACTED] and Cst. [REDACTED] to take Ms. [REDACTED] and Ms. [REDACTED] into police custody and handcuff them was reasonable and necessary, particularly as the grounds to arrest them did not exist. Rather, the evidence can reasonably support a finding that the force used was excessive and disproportionate to the behaviors faced by the police members.
- The analysis is incorrect in the determination that Cst. [REDACTED] was not neglectful when she did not provide Ms. [REDACTED] access to medical treatment. The evidence reasonably supports a finding that when Cst. [REDACTED] became aware that Ms. [REDACTED] age 13 years, had been pepper sprayed, and was no longer going to be transported to jail where she could medical attention, Cst. [REDACTED] did not take reasonable and appropriate steps to ensure that she received medical assistance; and

- Given that the arrests were unlawful, the subsequent searches of Ms. [REDACTED] and Ms. [REDACTED] as well as the vehicle, were unreasonable.

### **Statutory and Legal Requirements Applicable to a s. 117 Review**

26. The *Police Act* governs police complaints in relation to provincial and municipal police forces in BC. Its goal is to integrate the interests of police officers, individual civilians, and in certain instances broader community interests, into a fair and just police complaint procedure.
27. The present review pursuant to s. 117(1) gives the Commissioner the authority to appoint a retired judge to review the decision of a disciplinary authority when the Commissioner considers that there is a reasonable basis that the disciplinary authority's decision is incorrect in terms of a finding that the member or former members conduct did not constitute misconduct. Section 117(1) also sets out the task for the reviewing retired judge, which is to:
- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
  - (b) make her or his own decision on the matter;
  - (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.
28. Section 117(9), referred to immediately above, is engaged if upon review the retired judge considers the police conduct at issue "appears to constitute misconduct". If this occurs:
- [...] the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless s. 120(16) [a prehearing conference] applies.
29. On the other hand, if the retired judge upon review decides that the conduct of the member or former member does not constitute misconduct (s.117(10)), the retired judge must include that decision, with reasons, in the notification required under s. 117(7) to the listed individuals.



30. Section 117(8) mainly deals with what the notification referred to in s. 117(7) must contain. First, it specifies the required ingredients of notice for any s. 117 review carried out by a retired judge must contain:

- (a) a description of the complaint, if any, and any conduct of concern,
- (b) a statement of a complainant's right to make submissions under section 113,
- (c) a list or description of each allegation of misconduct considered by the retired judge...

31. Further, if the retired judge does not make a finding different from the discipline authority's finding of no misconduct, then pursuant to s. 117(11) the decision of the retired judge "(a) is not open to question or review by a court on any ground, and (b) is final and conclusive." Section 117(8)(e) requires the retired judge to include such a finding in the notification.

32. On the other hand, if the retired judge decides that they are unable to agree with the discipline authority's finding of no misconduct, and considers the police conduct at issue to constitute apparent misconduct, s. 117(8)(d) contains the test to be applied in reaching such a determination. It requires the retired judge to include in the notification their determination as to the following:

- (d) if subsection (9) applies, the retired judge's determination as to the following:
  - (i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;
  - (ii) whether or not a prehearing conference will be offered to the member or former member under section 120;
  - (iii) the range of disciplinary or corrective measures being considered by the retired judge in the case...[Emphasis added.]

33. Thus, as specified in s. 117(8), the test to be applied by the retired judge to the evidence is whether it "appears sufficient to substantiate the allegation of misconduct and require[s] the taking of disciplinary or corrective measures". The making of such a finding places the retired judge in the role of disciplinary authority. It includes the authority to add or change the nature of the alleged police misconduct.

34. This articulation, when contrasted to the task for the retired judge on review that he or she make their “own decision” on the matter (s. 117(1)(b)), has caused some confusion.
35. In *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970, [Scott], Mr. Justice Affleck addressed this issue (at para. 30), stating:
- In my opinion the legislature did not intend the retired judge, whose ultimate role could include presiding over a disciplinary hearing involving the very person whose conduct he had already determined was improper, nevertheless could use language, before a hearing had taken place, that on any reasonable reading left no doubt in the mind of the petitioner that the retired judge had already made up his mind that the petitioner was guilty of the misconduct alleged.
36. Mr. Justice Affleck commented (at para. 39):
- Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken.
37. Thus, Affleck J. concluded (at para. 41) that the retired judge was disqualified from serving as the disciplinary authority pursuant to the *Police Act*, finding that the apprehension of bias was so apparent that the petitioner could not “reasonably have any confidence he [would] receive a fair hearing.”
38. Therefore, it is important to note that while s. 117(1)(b) directs a retired judge to come to their own decision, it is incorrect for the judge’s reasons to stray into a conclusive analysis of the evidence. This is because in the case of apparent police misconduct the s. 117 review may well be preliminary to a later hearing regarding apparently substantiated allegations of misconduct in which the retired judge becomes the discipline authority, whereas apparently unsubstantiated allegations of misconduct do not proceed past the review.
39. If the allegations of police misconduct do proceed to hearing before the retired judge who steps into the role of the disciplinary authority, the police officer whose conduct is at issue, individuals recognized as complainants, other affected parties, and members of the public must have confidence that the presiding retired judge is free from bias and

has maintained an open mind regarding the evidence to be heard and conclusions to be reached.

40. The role of the retired judge on a s. 117 review is to review the decision or decisions the Commissioner submits for review. The “matter” referred to in s. 117(1)(b) pertains to the unsubstantiated decision of the disciplinary authority and does not permit a wider review of all the evidence contained in the FIR relating to other alleged misconduct not considered by the discipline authority: *British Columbia (Police Complaint Commissioner) v. Bowyer, 2012 BCSC 1018, at paras. 71-72.*

### **Allegations of Police Misconduct Considered in this Review**

41. In this review I am only considering the following allegations in relation to Det. [REDACTED] Cst. [REDACTED] former Cst. [REDACTED] and former Sgt. [REDACTED] which were unsubstantiated by the Discipline Authority and sent for review by the Commissioner:

- 1 – *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* for intentionally or recklessly making an arrest without good and sufficient cause;
- 2 – *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* for intentionally or recklessly searching Ms. [REDACTED] and Ms. [REDACTED] without good and sufficient cause; and
- 3 – *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for intentionally or recklessly using unnecessary force on Ms. [REDACTED] and Ms. [REDACTED]

42. Allegation 4 pertains to Cst. [REDACTED] only and is reviewed on that basis:

- 4 – *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* for failing to provide medical care to Ms. [REDACTED] [Emphasis added.]

### **Materials Considered**

43. In conducting this review, I have reviewed all the materials reviewed by the Discipline Authority and referenced in the FIR and its attachments. These materials include but are not limited to the following:

- The written statement of Complainants' complaint provided to the OPCC by their lawyer, Mr. [REDACTED] and Ms. [REDACTED] and Ms. [REDACTED] statements provided to the Investigator, including their answers to any further questions he posed to them;
- Statements provided to the Investigator by the Respondent Members, Det. [REDACTED] Cst. [REDACTED] Cst. [REDACTED] (initially a Respondent Member), and former Cst. [REDACTED] with any follow-up information they provided;
- Statements provided to the investigator by two witness members: Cst. [REDACTED] and Cst. [REDACTED];
- The Investigator's summary of the Computer Aided Dispatch [CAD] report in relation to this incident "CAD Call – VPD file [REDACTED] ;
- The Investigator's summary of the General Occurrence Report which consisted of a Synopsis and Occurrence Report Narrative authored by Det. [REDACTED] and Police Statements authored by Cst. [REDACTED] Cst. [REDACTED] and Cst. [REDACTED]
- Radio Broadcast Audios made by Det. [REDACTED] and covering District 4 police units on April 4, 2022, between 6:31 pm and 7:38 pm;
- The training records of the Respondent Members;
- Photographs of Ms. [REDACTED] and Ms. [REDACTED]
- Two short videos recorded during the incident by Ms. [REDACTED]
- Medical records in relation to Ms. [REDACTED] and
- Portions of the VPD Regulations and Procedure Manual, namely: VPD RPM Section 1.2 – Use of Force; VPD RPM Section 1.16.8 – SBORR: and VPD Less Lethal Shotgun Operator Policy.

44. In the FIR (at p. 129) it states that Sgt. [REDACTED] retired shortly after this incident. In addition to not completing the documentation required regarding his discharge of OC spray into the black Mercedes, he did not contribute any text to the General Occurrence Report or provide a statement to the Investigator.

### **The Complainants' Complaint and Their Evidence**

*The Written Complaint sent by Mr. [REDACTED]*

45. The complaint by Mr. [REDACTED] on behalf of Ms. [REDACTED] and Ms. [REDACTED] succinctly summarizes their complaint. The key portion of it reads as follows:

Ms. [REDACTED] was in the passenger seat of a motor vehicle and her 13 year old daughter Ms. [REDACTED] was in the back seat. At no point in time was Ms. [REDACTED] driving the vehicle, nor is it alleged that she was driving the vehicle.

Constable [REDACTED] approached the vehicle and opened the driver's side door. He advised Ms. [REDACTED] that she was "under arrest for excessive speeding" and told her to get out of the vehicle. Ms. [REDACTED] advised Cst. [REDACTED] that she was not driving the vehicle and asked why she would need to step out. Constable [REDACTED] repeated his direction and again Ms. [REDACTED] asked why she would need to get out of the vehicle. Ms. [REDACTED] again reiterated that she was not the driver of the vehicle. Cst. [REDACTED] and his partner retreated to the back of the vehicle and presumably called for backup.

Shortly thereafter, about 10 police officers arrived on scene. One of them loaded a shotgun in plain view of the occupants of the vehicle. He positioned himself behind an electrical pole and pointed the shotgun at the vehicle. The officers were shouting commands for Ms. [REDACTED] and her daughter to step out of the vehicle. Ms. [REDACTED] repeatedly asked why she needed to get out and told the police that her daughter is scared and inside the car. An officer approached the vehicle and deployed pepper spray through the open driver's door dousing both Ms. [REDACTED] and her daughter Ms. [REDACTED]

[REDACTED] was then pulled out by her hair and thrown on the ground. She was handcuffed and assaulted. The officers used derogatory language when referring to her. She was advised that she would be sent to a group home that evening. She was then placed in the back of a transport truck. At no time was she treated for her injuries or the deployment of the pepper spray. Ms. [REDACTED] currently has a black eye and bruising on her head. She is seeking medical treatment for her injuries.

Ms. [REDACTED] was removed from the vehicle in a similar fashion. She was handcuffed on the ground face first by multiple officers. She remained face first on the ground in handcuffs until the paramedics arrived. She did receive treatment from the paramedics. The vehicle was searched and seized. Ms.

[REDACTED] was charged with resisting arrest. The 13 year old girl was [REDACTED] [REDACTED] [REDACTED] have been issued a police undertaking with a court date of May 30 at 222 Main Street.

46. Mr. [REDACTED] states the Complainants' position regarding their detention by the police as being related to excessive speeding:

On the circumstances as alleged there was no basis to detain the occupants of the vehicle. Clearly, excessive speeding cannot form the basis of an arrest. At no point in time were the occupants advised of the reason for their detention despite repeated

requests for some clarity on the matter. It seems inconceivable that police officers had a basis to detain Ms. [REDACTED] a 13 year old girl, sitting in the back seat of the vehicle.

Not only were the occupants of the vehicle unlawfully arrested and subjected to an excessive use of force, in my view both were criminally assaulted by the Vancouver Police Department. It is troubling that officers felt such use of force was required to detain a crying and hysterical 13 year old girl who had just been pepper sprayed.

*Ms. [REDACTED] Statement to the Investigator*

47. On the date in question, Ms. [REDACTED] her daughter, Ms. [REDACTED] and her husband, Mr. [REDACTED] had been returning home to [REDACTED] from doing some shopping at Pacific Center Mall, when she noticed that Mr. [REDACTED] had pulled over. Mr. [REDACTED] told Ms. [REDACTED] that he had to speak to someone and would be right back. At the time, Mr. [REDACTED] had been driving a Mercedes-Benz SUV that belonged to his father. During their journey from the mall, up until the point Mr. [REDACTED] had pulled over, Ms. [REDACTED] had been on her phone and was unaware of any police presence.
48. About three minutes after Mr. [REDACTED] left the vehicle, Ms. [REDACTED] noticed a vehicle pull up behind them. Ms. [REDACTED] looked and realized it was a police officer, who later identified himself to Ms. [REDACTED] as Det. [REDACTED]. Det. [REDACTED] got out of his vehicle, approached the Mercedes, and ripped open the door. This startled Ms. [REDACTED] because she had no idea why Det. [REDACTED] would have ripped open the door. She asked Det. [REDACTED] what he was doing, and Det. [REDACTED] told her she was under arrest for excessive speeding. Ms. [REDACTED] asked Det. [REDACTED] what he meant, as she was just sitting in the vehicle as a passenger. Det. [REDACTED] then asked Ms. [REDACTED] to get out of the vehicle. Ms. [REDACTED] said she was confused and asked Det. [REDACTED] what was going on. There wasn't much more conversation at that point and Det. [REDACTED] said "ok" and went back to his vehicle, leaving the driver's side door of the Mercedes open.
49. Ms. [REDACTED] and Ms. [REDACTED] sat in the vehicle for about fifteen minutes, waiting. Ms. [REDACTED] kept looking out of the back window of the Mercedes and observed two police officers standing there. During this time frame, other police officers arrived.
50. Ms. [REDACTED] started to panic about the situation, as she was also looking out of the vehicle's window and had observed police officers loading guns. Two more police

officers arrived, and Ms. [REDACTED] could tell that something weird was going to happen.

Ms. [REDACTED] felt unsafe, so she began recording what was happening with her phone.

51. Ms. [REDACTED] had no idea why the police were responding in the way they were, was unaware of Mr. [REDACTED] driving status, and did not know why he would have wanted to flee from the police, if that was what had occurred.

52. Ms. [REDACTED] and Ms. [REDACTED] continued to wait in the vehicle. Ms. [REDACTED] thought that perhaps Det. [REDACTED] would come back and speak to them. She then observed an officer with a gun go to “the corner” and “take a position”. Ms. [REDACTED] continued to record what was happening. Ms. [REDACTED] began to yell that she had her thirteen-year-old daughter in the vehicle, that her daughter was anxious about what was happening, the police still had not told them what was going on, and that she could not be under arrest as the passenger in the vehicle.

53. Suddenly, Ms. [REDACTED] had a bunch of pepper spray in her face from someone she believed had come around the side of the vehicle. Ms. [REDACTED] was also sprayed while in the back seat of the vehicle. Ms. [REDACTED] began panicking and was able to grab her phone again to start recording. The pepper spray burned her eyes and skin, and she couldn't breathe. While the pepper spray did affect her vision, she was able to see somewhat by looking up and around, and by blinking a lot.

54. The police officers were telling Ms. [REDACTED] and Ms. [REDACTED] to “get out, get out”. Due to the fact Mr. [REDACTED] had parked the Mercedes close to a wall, Ms. [REDACTED] and Ms. [REDACTED] were only able to open their respective car doors so much. They tried to get out, but due to the effects of the pepper spray and the limited amount of space they had, it was difficult.

55. Ms. [REDACTED] could hear Ms. [REDACTED] screaming in the back of the vehicle, saying “I can't see”, and “I can't get out”. Ms. [REDACTED] then observed a female police officer with blonde hair rip Ms. [REDACTED] out of the vehicle. Ms. [REDACTED] yelled “it's a child, it's a child, please stop”, and she tried to get out of the vehicle.

56. Ms. [REDACTED] observed the police officers grab Ms. [REDACTED] and slam her to the ground. She couldn't see what was happening, just that there were “probably like seven officers...just on her”.

57. Ms. [REDACTED] was able to get herself out of the vehicle before an officer grabbed her by the arm, threw her to the ground, and handcuffed her. Ms. [REDACTED] denied resisting arrest in any way and did not believe she walked towards Ms. [REDACTED]. She recalled that upon exiting the vehicle, she looked at Ms. [REDACTED] then was pulled by the officer.
58. Ms. [REDACTED] observed Ms. [REDACTED] look up at her, then the blonde female officer slammed Ms. [REDACTED] head into the ground. She heard the officers were laughing at them and calling them “dumb bitches”. Ms. [REDACTED] was panicking at this point, as she suffers from anxiety and was prone to panic attacks. Ms. [REDACTED] was then taken away to another vehicle.
59. Ms. [REDACTED] lay on the ground for five to ten minutes and was having difficulty breathing, so she got up to her knees. She was told that an ambulance was coming, and about ten minutes later, an ambulance arrived, and paramedics treated Ms. [REDACTED] for the pepper spray. Ms. [REDACTED] kept asking the police officers and paramedics where Ms. [REDACTED] was, and if she was also being treated. One paramedic told Ms. [REDACTED] that he had spoken to one of the police officers and Ms. [REDACTED] was fine. Ms. [REDACTED] later told Ms. [REDACTED] that no one had checked on her and she was never treated for the exposure to pepper spray. Once Ms. [REDACTED] had been treated by the paramedics, she was put back with the police officers.
60. The officers searched Ms. [REDACTED] bag and her phone, trying to unlock it, and were answering her phone calls. The female officer then patted her down, opened up her pants, and looked down her pants. This made Ms. [REDACTED] feel really uncomfortable.
61. The police officers finally brought Ms. [REDACTED] back to Ms. [REDACTED] and she could see Ms. [REDACTED] wasn't ok. None of the pepper spray had been cleaned off, her eye was completely swollen and starting to go black already, and she had two huge goose eggs on the back of her head.
62. The police officers continued to say “a bunch of messed up stuff” to them. They told Ms. [REDACTED] that she was never going to see her parents again, that she was going to a group home, and “they were going to have fun with you in the group home”. The officers also laughed at Ms. [REDACTED] and Ms. [REDACTED] called them “dumb bitches”, and kept saying “This is what happens when you come to our city”. When asked by the Investigator which officers had said these things to them, Ms. [REDACTED] implicated the



blonde female officer as having said the things about Ms. [REDACTED] going to a group home and never seeing her parents again. Ms. [REDACTED] implicated Det. [REDACTED] and “the other guys”. Overall, Ms. [REDACTED] believed all of the officers at the scene had been involved.

63. The officers asked Ms. [REDACTED] a number of questions, including who had been driving the vehicle. Ms. [REDACTED] lied and said it wasn't Mr. [REDACTED]. She told the Investigator that she lied because she was scared about what the police officers had just done to her and Ms. [REDACTED].
64. Det. [REDACTED] brought Ms. [REDACTED] and Ms. [REDACTED] some paperwork and told them that Ms. [REDACTED] she was being charged with assaulting a police officer. Det. [REDACTED] made them sign the paperwork, then they were allowed to leave.
65. Ms. [REDACTED] did recall being read her *Charter* Rights, but at no point did anyone attempt to explain to her why things had happened the way they had.
66. When asked by the Investigator why she had not complied with the directions of the officers to get out of the Mercedes, she reiterated that she had been the passenger in the vehicle, she didn't think she needed to get out of the vehicle, and she thought that a police officer would come talk to her and let her know what was happening.
67. Ms. [REDACTED] also went on to say that once all the other police officers began to arrive, she felt unsafe, so did not want to get out of her vehicle at that point for that reason. She did not want to leave her daughter in the vehicle, and with the one officer pointing a gun at them and the other officers yelling at them, she felt the situation was weird and began yelling that she had her daughter with her, with the hope that an officer “would just come and talk to us”. She did not think the situation was going to escalate the way it did and had not been expecting “that at all”. Other than being pulled over by the police in a “regular” traffic stop, Ms. [REDACTED] said she had no previous experience dealing with police and had never received any directions from a police officer to do something.
68. When asked by the Investigator why she had felt the need to record the interaction with police, Ms. [REDACTED] advised that once the other police officers arrived, she had not felt safe about the situation.

69. She explained that Ms. [REDACTED] had recently done a project on George Floyd in school, and she herself had seen various videos on social media “like that”, so it was her first instinct to record the interaction.
70. When asked by the Investigator about a portion of the video she had taken where she was yelling that Ms. [REDACTED] had “anxiety”, Ms. [REDACTED] explained that Ms. [REDACTED] did not have a previously diagnosed anxiety disorder, but it was Ms. [REDACTED] perception at the time that her daughter was experiencing anxiety as a result of what was taking place.
71. Ms. [REDACTED] advised that she did not seek any medical treatment herself but had taken Ms. [REDACTED] to a doctor to get checked out. Ms. [REDACTED] had a black eye and a lot of bruising, and ended up taking two weeks off from school, as she didn’t want to go with a black eye.

*Ms. [REDACTED] Statement to the Investigator*

72. On the date in question, they had been driving back from the mall when they pulled over into a neighbourhood and her dad (Mr. [REDACTED] said he had to go do something or go talk to someone. At the time, her dad had not seemed stressed in any way and was his normal self. Her dad had been driving, her mom (Ms. [REDACTED] had been in the front passenger seat, and Ms. [REDACTED] had been in the back seat of the vehicle.
73. Ms. [REDACTED] did not recall anything out of the ordinary taking place during their journey from the mall and hadn’t really been paying attention. Ms. [REDACTED] sat there with her mom, and after about three minutes, a cop pulled up behind them, turned on his lights, and got out of his car. He then walked up to their car and opened the door.
74. Her mom asked the cop why he had opened the door, and he told her she was under arrest for speeding or something. Her mom then asked why, because she was the passenger. The cop just said “ok”, then went to the back of the car.
75. After about another three minutes, more cops came, and Ms. [REDACTED] saw one of them grab what she believed to be a shotgun and began loading it. He then stood behind a pole and aimed the shotgun at her mom.

76. Ms. [REDACTED] had been looking at what was going on through the rear windshield. She confirmed that the rear windows of the vehicle were tinted and as a result, you couldn't really see into the vehicle unless you were up close.
77. The cops were all yelling at them to get out of the car, and her mom asked why, because they were the passengers, and she told them that Ms. [REDACTED] was a kid.
78. Then a guy came from around the corner, pepper sprayed her and her mom, and told them to get out of the car. Ms. [REDACTED] did not see who had deployed the pepper spray because he had come from around the corner of the car. The pepper spray burned her eyes and her skin, and she couldn't see at all. Because her dad had parked the car really close to a wall, it was difficult to get out. Ms. [REDACTED] opened the car door and while she was trying to get out, a female police officer with blond hair pulled her out by her hair, using both of her hands.
79. Ms. [REDACTED] couldn't see because of the pepper spray, and when the female police officer pulled her out, Ms. [REDACTED] believed she must have touched the officer because the officer told her she had hit her. While Ms. [REDACTED] speculated that she may have contacted the officer as a result of her arms flailing around, she denied assaulting the officer and had no memory of making any contact with her.
80. Ms. [REDACTED] said that the officer then began punching her in the back of the head and grabbing her. Ms. [REDACTED] described how the officer had let go of her hair with one hand in order to punch her with it, while still holding onto her hair with her other hand. Ms. [REDACTED] recalled that the officer had yelled at her to "get down", and had been yelling in her face the whole time. Then a whole bunch of cops (about five) came over, jumped on top of her, and began kicking and punching her.
81. While this was happening, the female officer had her knee on Ms. [REDACTED] neck until Ms. [REDACTED] told her she couldn't breathe.
82. Ms. [REDACTED] was then placed into handcuffs as she was lying on the floor. The female police officer sat on Ms. [REDACTED] the whole time, with her knee on her elbow, pushing on it really hard.
83. As the police officers were beating her up, kicking her and punching her, yelling at her and calling her a whole bunch of names, she looked up to see if her mom was okay, because she thought they must be doing something worse to an adult than they were to

her, a thirteen-year-old child. As she looked up, the female officer on top of her grabbed her by the head and slammed her face to the floor.

84. Eventually, the officers got her up and put her into a police car so they could ask her questions. As the female officer was placing Ms. [REDACTED] into the police car, she slammed Ms. [REDACTED] head into the car.
85. The officers asked her what her name and date of birth were. A male officer told her that pepper spray wasn't good, and they were waiting for an ambulance to come.
86. She stood there for a while, waiting, and during this time, the female officer kept calling her a disrespectful bitch and a dummy, and telling her she was never going to see her parents again, and she shouldn't "do stuff like that", i.e. hit a police officer. The female officer also referred to where Ms. [REDACTED] was from, and how it was different in Vancouver.
87. Ms. [REDACTED] was then put into a police wagon and she sat there for "awhile". Eventually she was let out and she could see her mom again. When she got out of the police wagon, the ambulance was leaving. Her mom had been cleaned up, but Ms. [REDACTED] hadn't been. Ms. [REDACTED] confirmed that she never received treatment for her exposure to the pepper spray.
88. The police then gave them a bunch of papers and let them go.
89. Ms. [REDACTED] did recall being read her *Charter* rights;
90. Ms. [REDACTED] did not believe any of the officers explained to her why they responded in the manner they did.
91. As a result of her arrest, Ms. [REDACTED] suffered bruising to one side of her face, on the back of her head, on her elbows and knees, on her back, and on her sides. Her mom took photos of her injuries and the next day she went to a doctor to document her injuries. She was not prescribed any medication and no further treatment was required.
92. Ms. [REDACTED] believed what happened to her and her mother wasn't right.

### **Evidence of Respondent Police Members**

Cst. [REDACTED]

93. In his statement to the Investigator, Det. [REDACTED] indicated that on April 4, 2022, at 6:30 pm he was on duty as a one-person unit, wearing full uniform and driving an unmarked

Ford Explorer police SUV northbound on Oak St. in Vancouver. Det. [REDACTED] observed a vehicle driving southbound on Oak St., travelling at a high rate of speed, and weaving in and out of traffic without signaling. He estimated that the vehicle was travelling over 90 km/hr in a 50 km/hr zone.

94. When the suspect vehicle came to stop at a red light at Oak St. and West 57<sup>th</sup> Avenue, Det. [REDACTED] stopped his vehicle diagonally across from the suspect vehicle, and from a distance of about six meters he made eye contact with the male driver, who he later identified as Mr. [REDACTED]. It was Det. [REDACTED] perception that the driver saw him in his police vehicle and recognized that he was a police officer.
95. Once the light turned green, Det. [REDACTED] allowed the suspect vehicle to pass him, then activated the lights and siren on his police vehicle. Det. [REDACTED] did a u-turn in order to initiate a stop of the suspect vehicle, which at that time he could only describe as a newer model black SUV with no front licence plate. Det. [REDACTED] did the u-turn and pulled within two or three car-lengths of the suspect vehicle, it immediately accelerated to speeds well over 100 km/hr, weaving in and out of traffic.
96. Det. [REDACTED] observed the suspect vehicle's "instant acceleration", leading him to believe the driver had pressed the accelerator "to the floor". Based on the way the suspect vehicle was being driven and Det. [REDACTED] prior experience as a police officer with numerous fleeing vehicles, he believed the driver was trying to flee.
97. When asked by the Investigator whether it would have been possible, given the way the suspect vehicle was being driven, for its occupants to have been unaware that something out of the ordinary was happening, Det. [REDACTED] view was the "common person" would have known something was out of the ordinary was occurring.
98. When asked whether it was possible that the occupants of the vehicle were unaware they were being pursued by a police vehicle with activated emergency lights and siren, Det. [REDACTED] opinion was that unless the occupants had music "fully cranked up" or "had headphones in", they would have heard the siren and/or "looked in a mirror" and seen the lights.
99. Due to the fact the suspect vehicle was more powerful than Det. [REDACTED] vehicle, coupled with its high speeds, Det. [REDACTED] said he was unable to close the distance

between them. Furthermore, Det. [REDACTED] believed it was not safe to attempt to try to do so.

100. Det. [REDACTED] observed the suspect vehicle make a right turn off Oak St. and travel westbound on a side street. At that point, it was Det. [REDACTED] view that the driver was looking for a place to “dump” the vehicle, in order to flee on foot. Det. [REDACTED] broadcast his observations over the police radio and requested other units to come to the area to search for the suspect vehicle and its driver. He also requested the assistance of the police helicopter, Air 1, which turned out to be unavailable.

101. Det. [REDACTED] located the suspect vehicle in the west lane of the [REDACTED] [REDACTED] parked in an “almost garage port”, with the driver’s door open. As the driver’s door was open, Det. [REDACTED] believed the driver had fled. He positioned his police vehicle directly behind the Mercedes to prevent it from moving. Det. [REDACTED] observed the licence plate on the black Mercedes to be BCLP [REDACTED] and that it was a 2022 Mercedes GLE. Upon querying the vehicle, he learned the registered owner did not live in the area.

102. Det. [REDACTED] approached the Mercedes cautiously from the driver’s side and observed a female front passenger, later identified as Ms. [REDACTED]. Det. [REDACTED] could not see if there were any passengers in the rear of the vehicle, due to the heavy tint on the windows. Det. [REDACTED] identified himself as a police officer and informed Ms. [REDACTED] the driver was arrestable for “Dangerous Operation of a Motor Vehicle”. He instructed her to exit the vehicle. Det. [REDACTED] said at some point, Ms. [REDACTED] stated there was another person in the back of the Mercedes. Ms. [REDACTED] response to Det. [REDACTED] was “essentially” that he should “go fuck himself” and to “fuck off”. Det. [REDACTED] also recalled that Ms. [REDACTED] called him a “pig” at some point.

103. Det. [REDACTED] who was the only officer present, did not try to get Ms. [REDACTED] out of the vehicle. He recalled telling her that she would be arrested for obstruction if she did not exit the vehicle. He then retreated to the rear of his police vehicle to wait for cover units to arrive.

104. Det. [REDACTED] believed the initial interaction with Ms. [REDACTED] had been less than thirty seconds, at which time he had been about one meter away from the driver’s side

door of the Mercedes. When he retreated to the rear of his police vehicle, he was about seven meters away.

105. As he waited for cover, Det. ██████ gave verbal commands to Ms. ██████ to exit the vehicle with nothing in her hands, otherwise she would be arrested. Det. ██████ said he repeated these commands about a dozen times.
106. When asked by the Investigator to clarify what he meant in his police report by “the occupants had already shown their intent by fleeing”, Det. ██████ explained the occupants were inside a vehicle that had fled police. He did not know whether the occupants knew if the driver had fled on purpose, or if something else was happening.
107. When asked by the Investigator what information he received as a result of querying the Mercedes, Det. ██████ advised that he had learned through Radio Broadcast Audios that Mr. ██████ had previously been pulled over or checked in the same vehicle, that he was a known drug trafficker and had a history of organized crime association. Det. ██████ could not recall the specifics of what information was broadcast about persons associated with Mr. ██████ or any history about the possession of weapons. Det. ██████ advised that persons involved in drug trafficking and associated with organized crime are assumed to have access to weapons.
108. As the cover officers arrived on scene, Det. ██████ advised them Mr. ██████ was arrestable for “Dangerous Operation of a Motor Vehicle” and the occupants of the vehicle were arrestable for “Obstruction” should they continue to refuse to exit the vehicle. [I note Dangerous Operation of a Motor Vehicle is an offence contrary to s. 320.13(1) of the *Criminal Code*, with s.320.19(5) stating the penalty; and Obstruction of a Peace Officer in the execution of his duty is an offence contrary to s. 129 of the *Criminal Code*.]
109. When Det. ██████ was asked by the Investigator to articulate how the occupants were obstructing the police, Det. ██████ advised that the Mercedes needed to be towed (seized) pursuant to the *Criminal Code* as part of Dangerous Operation of a Motor Vehicle investigation. He also advised that the Mercedes had not been “cleared” for weapons and so the threat level posed by the occupants was unknown. Also, the reason for the driver, Mr. ██████ to have fled was also unknown. In general, by the

occupants refusing to exit the Mercedes, they were obstructing his ability to carry out his investigation. He also learned that Mr. [REDACTED] was a prohibited driver.

110. With respect to the two videos taken by Ms. [REDACTED] from inside the Mercedes, reviewed by Det. [REDACTED] prior to the interview, Det. [REDACTED] identified himself as the male voice giving verbal commands in the videos, and Cst. [REDACTED] as the member depicted standing behind a pole, holding a Less Lethal Beanbag Shotgun.

111. Det. [REDACTED] said that Sgt. [REDACTED] was the NCO who arrived on scene. Det. [REDACTED] advised Sgt. [REDACTED] that he had already given the occupants of the Mercedes dozens of commands to exit the vehicle, had identified himself as a police officer, and advised them they were under arrest. However, they were refusing to exit. Sgt. [REDACTED] advised Det. [REDACTED] that should the occupants continue to refuse, he would deploy his OC spray.

112. Det. [REDACTED] asked Sgt. [REDACTED] to wait so he could give a few more commands, which he proceeded to do. However, when the occupants continued to refuse to exit the Mercedes, Sgt. [REDACTED] deployed his OC spray into the vehicle.

113. When asked by the Investigator about the first video taken by Ms. [REDACTED] which began not long before the OC spray was deployed, whether Det. [REDACTED] had a dialogue going with Ms. [REDACTED] Det. [REDACTED] advised he had not heard anything Ms. [REDACTED] had been saying at that time from inside the Mercedes, and only became aware of what she had been saying upon viewing the video. Det. [REDACTED] also advised that at no point had he been aware that there had been a youth in the back of the Mercedes, due to the heavy tint on the windows.

114. When asked by the Investigator about what other factors may have played a role in him not being able to hear Ms. [REDACTED] Det. [REDACTED] believed that the distance he and the other officers were from the vehicle, combined with the fact she had been yelling from inside a vehicle with only the driver's door open as he had been simultaneously shouting commands at her, as well as the fact the vehicle had been parked in a carport (later he corrected this to be beside a detached garage), were all factors that may have affected his and other officers' ability to hear Ms. [REDACTED]

115. Once the OC spray was deployed, Ms. [REDACTED] and her daughter, Ms. [REDACTED] exited the Mercedes on the passenger-side. Due to where he was positioned, Det.



█████ was unable to see them being taken into custody, other than being aware that a scuffle was taking place on the ground. He said he did not observe Ms. █████ assault anyone.

116. Once Ms. █████ and Ms. █████ were in custody, they were escorted back to a police vehicle. Det. █████ called for EHS and/or Fire to attend, then cleared the vehicle. As he had then been focused on dealing with the Mercedes, Det. █████ did not play a role in caring for Ms. █████ and Ms. █████ He believed, however, that both had been treated by EHS for the exposure to OC spray, and at no point had Ms. █████ expressed to him her concern that Ms. █████ had not been treated.

117. In the aftermath of what took place, Det. █████ did not have a conversation with Sgt. █████ about adding his evidence page and/or an SBORR to the Report to Crown Counsel to document the deployment of OC spray, as Sgt. █████ was a sergeant of thirty-plus years of service and Det. █████ believed he knew what was required.

118. With respect to the search for Mr. █████ that was occurring at the same time, Det. █████ advised that a K-9 unit had been out tracking, and other police units had set up containment of the area. Det. █████ said at some point he entered his police vehicle and queried Mr. █████ on his mobile desktop. Upon viewing Mr. █████ mugshot, Det. █████ confirmed that Mr. █████ was the person he had observed driving the Mercedes.

119. Det. █████ searched the Mercedes incident to arrest and located the driver's licence of Mr. █████ in a man-purse he found on the driver's seat. He also found two cellular phones, various denominations of Canadian currency, and approximately a half-kilo of cannabis concealed beneath the "floorboard" in the trunk area. Having conducted dozens of drug investigations during his career, Det. █████ believed the phones, currency, and drugs to be consistent with drug trafficking.

120. Det. █████ said he had very little contact with Ms. █████ and Ms. █████ after they exited the vehicle, other than to serve them with Undertakings to Appear (UTAs). With respect to the charges specified in the UTA's, it was Det. █████ understanding that Ms. █████ had resisted arrest and Ms. █████ had punched Cst. █████ in the face. He said he could not speak to how they were treated by the other officers.

121. With respect to the allegations by Ms. [REDACTED] and Ms. [REDACTED] that the officers on scene had called them “dumb bitches” and had told Ms. [REDACTED] she would be going to a group home where they would “have fun” with her, and she would never see her parents again, Det. [REDACTED] stated that he had not overheard any such utterances and he had not made those comments to them.
122. With respect to a search of Ms. [REDACTED] phone and her allegation that members had answered her phone calls, Det. [REDACTED] was unaware this had taken place and had not given any instructions to this effect.
123. After his interview, Det. [REDACTED] emailed the Investigator and clarified several points. The first was that Det. [REDACTED] had located the Mercedes parked in the rear of [REDACTED], next to the small, detached garage style building, where it had been parked, nosed in and facing north, on the west side of the detached garage-style structure.
124. Det. [REDACTED] also indicated that after the Mercedes left the light at West 57th Avenue, it travelled south on Oak Street and continued many blocks, but he did not know exactly how many, given the high speeds of the vehicle. It then made a right turn off Oak Street onto a side street and travelled westbound. He indicated that the situation was very “dynamic” at that time. He referred to several of his radio broadcasts with respect to the last known location and direction of travel of the Mercedes and said they may have been incorrect/inaccurate as he had been estimating from a distance, and the Mercedes may have been further south than he had broadcast.
125. Det. [REDACTED] turned westbound off Oak Street into the side streets to try and locate the Mercedes, assuming it was going to be dumped. After looking both south and north down each street and laneway, Det. [REDACTED] observed a black SUV matching the suspect vehicle description, travelling north in what he believed was the west lane of Oak Street, but may have been the west lane of [REDACTED]. Det. [REDACTED] then “cleaned” the area and located the black Mercedes. Det. [REDACTED] further advised he had broadcast about the “fail to stop” once it was clear the Mercedes was not going to stop, which was almost immediately, and that the Mercedes then covered a large distance in a short time frame, given how fast it was travelling.

126. The Investigator included in the FIR that at the time of the incident Det. [REDACTED] was assigned to the VPD Gang Crime Unit, a specialized unit tasked with targeting gang activity within the City of Vancouver, that investigates drug and human trafficking, weapons and firearms possession, and violence against rival gang members. In his statement, and the Report to Crown Counsel and General Occurrence Report regarding this incident, Det. [REDACTED] described how over the course of his policing career dozens of crime vehicles had fled from him, including drug trafficking vehicles, stolen vehicles, prohibited drivers, impaired drivers, and emotionally disturbed persons.

127. In the FIR the investigator included a Google map, which shows the location of the traffic light at Oak Street and West 57<sup>th</sup> Avenue where Det. [REDACTED] first saw the black Mercedes with no front licence plate, and the location where Det. [REDACTED] found the suspect vehicle, parked off the south lane of a residence on [REDACTED] [REDACTED] [REDACTED] approximately three blocks off Oak Street, between [REDACTED] and [REDACTED]

128. The Investigator indicated that Oak Street is a six-lane major thoroughfare in the City of Vancouver, with a posted speed limit in 50 km/hr.

129. The Investigator also indicated the Mercedes was a 2022 GLE53 AMG model, which has a 429 horsepower engine and can accelerate from 0 to 96.6 km/hr in 4.7 seconds. At the time Mr. [REDACTED] was prohibited from driving pursuant to s. 93(1)(a)(ii) of the *Motor Vehicle Act*. He was also subject to a life-time firearms' prohibition arising from drug-related convictions. The vehicle was registered to [REDACTED] [REDACTED] with a birth date in 1953, believed to be [REDACTED] father.

Cst. [REDACTED]

130. Cst. [REDACTED] provided a statement to the Investigator.

131. On April 4, 2022, Cst. [REDACTED] was on duty, in uniform, driving a marked police car, and working by himself. He responded to Det. [REDACTED] broadcast regarding a black Mercedes SUV that had taken off on him. He was in the area at the time and assisted in looking for the vehicle. He responded to Det. [REDACTED] broadcast that he had located the vehicle and arrived at the scene at about 6:36 pm. His observations of the scene are very similar to those of Det. [REDACTED] who he joined at the rear of the former's police vehicle that was parked behind the Mercedes. Cst. [REDACTED] said the driver's door was

open and the windows were heavily tinted so he could not see any occupants inside. Det. ██████ provided him with a brief description of what had occurred, including that the driver of the vehicle, who had fled the scene, was arrestable for flight from police and dangerous operation of a motor vehicle. Det. ██████ said the number of occupants in the vehicle was unknown and that he had already made several “call outs” for the occupants to exit the vehicle. Det. ██████ said that the occupants had been hostile with him and told him to “fuck off”. Cst. ██████ stated this added to their concern about who might be in the vehicle and what they were doing. He indicated Det. ██████ was concerned they may have been in possession of weapons or were destroying evidence in the vehicle such as drugs.

132. Cst. ██████ believed that the occupants of the vehicle were arrestable for Obstruction by refusing to comply with the lawful commands of police to exit the vehicle.

133. He stated that Cst. ██████ Cst. ██████ and Sgt. ██████ arrived on the scene and after several more commands to the occupants to exit the vehicle, Sgt. ██████ deployed OC spray into the vehicle. The occupants began to cough and exited the vehicle.

134. Cst. ██████ saw that space was limited as the Mercedes was parked next to a detached garage, he assisted the older female (Ms. ██████) out of the vehicle and escorted her away from it by holding onto her by the wrist and the arm. As he attempted to escort her to the front of the detached garage Ms. ██████ tried to pull away from him. At this time Cst. ██████ was taking the second female occupant into custody (Ms. ██████) and Cst. ██████ assumed that Ms. ██████ was pulling away to interfere with that arrest. He instructed Ms. ██████ to get onto her knees and place her hands behind her back. He said she partially complied, but continued to struggle and was attempting to turn around to see what was going on behind her. In describing the force he used on Ms. ██████ to take her into custody, he indicated that he had pulled her and pushed her downwards. She was not fully thrown to the ground as he never lost hold of her arm as he applied force. He only used enough force as was necessary to push her to the ground and it was not a large amount of force.

135. As Ms. ██████ continued to struggle against Cst. ██████ another officer who he believed to be Cst. ██████ assisted him to place Ms. ██████ in handcuffs.

136. Cst. [REDACTED] recalled that Ms. [REDACTED] had only been pulled to her knees when being taken into custody and was not placed face-down on the ground at any point.
137. Once Ms. [REDACTED] was in custody, Cst. [REDACTED] advised her that she was under arrest for Obstruction, and told her once the situation was under control he would explain everything to her. He recognized that she had been very distressed and agitated by the situation and OC spray, and he made attempts to reassure her that she would be treated by EHS using baby shampoo and water.
138. He believed that he had treated Ms. [REDACTED] in a professional manner and denied saying or hearing other officers call her or Ms. [REDACTED] “dumb bitches” or telling Ms. [REDACTED] that she would be going to a group home and wouldn’t see her parents again.
139. Once both Ms. [REDACTED] and Ms. [REDACTED] were in custody, he turned Ms. [REDACTED] over to Cst. [REDACTED] a female officer, to search Ms. [REDACTED] incident to arrest. After doing so Cst. [REDACTED] said that he did not have much more involvement with Ms. [REDACTED] other than answering a few questions from her. He did not recall seeing Cst. [REDACTED] remove Ms. [REDACTED] phone from her person and did not see anyone searching or answering her phone.
140. When Cst. [REDACTED] was asked whether he was aware that there was a youth in the vehicle prior to the deployment of the OC spray, he did not recall. However, once Ms. [REDACTED] and Ms. [REDACTED] were out of the Mercedes, Ms. [REDACTED] had been yelling that the police had sprayed her daughter.
141. When Cst. [REDACTED] was asked to describe the grounds for charging Ms. [REDACTED] with resisting arrest, he referred to her refusal to exit the Mercedes at the direction of the police, the fact she attempted to pull away from him as he was escorting her away from the vehicle, and also that she continued to struggle against him and Cst. [REDACTED] as they tried to place her in handcuffs.

Cst. [REDACTED]

142. Cst. [REDACTED] provided a statement to the Investigator regarding this incident.
143. On April 4, 2022, Cst. [REDACTED] was on duty in plain clothes, wearing a police takedown jacket and working with Cst. [REDACTED]. She heard a radio broadcast from Det.

█████ regarding a vehicle that had taken off on him and that he had located the vehicle with the driver missing. He requested cover as there were multiple people in the vehicle who were uncooperative and refusing to exit.

144. Upon arriving on scene, Cst. ██████ observed the suspect vehicle parked in a private driveway, facing north, with Det. ██████ vehicle parked behind it. There were other officers already on scene and Cst. ██████ could hear people yelling from inside the vehicle.
145. It was Cst. ██████ understanding that there were some females at the scene and she anticipated she would be needed to search them. She heard officers giving commands and screaming going back and forth from the suspect vehicle. Cst. ██████ remembered the occupants screaming that the police had no reason to be doing what they were doing.
146. Cst. ██████ stated she was unaware at that point there was a youth in the vehicle, and she did not become aware of that fact until after the youth, later identified as Ms. ██████ was in custody.
147. Det. ██████ explained to Cst. ██████ that the vehicle was going to be seized as offence-related property, and that the occupants would be arrested for refusing to exit the vehicle, which seemed “pretty reasonable” to her.
148. When Cst. ██████ was asked by the Investigator what the occupants of the vehicle were arrestable for, she said, based on what Det. ██████ told her, that she believed they were arrestable for Obstruction, as they were not complying with Det. ██████ commands and the vehicle had failed to stop for police.
149. Cst. ██████ believed the occupants would be getting out of the driver’s side of the vehicle, as the driver’s side door was already open, and the vehicle was parked next to a shed on the passenger side, leaving very little room. Suddenly, however, the occupants began to get out on the passenger side, screaming and “freaking out”. Cst. ██████ was unaware at that point that pepper spray had been deployed into the vehicle.
150. In response to this sudden development, Cst. ██████ moved up and took the place of Cst. ██████ at the rear wheel of the suspect vehicle as a female who she later learned was Ms. ██████ exited the rear passenger door, with her head in her hands. As

Cst. [REDACTED] reach out to grab Ms. [REDACTED]. Ms. [REDACTED] punched Cst. [REDACTED] with her right hand on the left side of her face with a closed fist. Cst. [REDACTED] had not anticipated this at all, and she reacted immediately by punching Ms. [REDACTED] back as hard as she could. Cst. [REDACTED] could not recall exactly where she punched Ms. [REDACTED] but believed she punched her in the face.

151. Cst. [REDACTED] then “jerseyed” Ms. [REDACTED] by grabbing the back of her sweater and pulling her to the ground.

152. When later asked by the Investigator about Ms. [REDACTED] allegation that Cst. [REDACTED] pulled her out of the vehicle by her hair, Cst. [REDACTED] conceded that it was possible that when she grabbed Ms. [REDACTED] by the back of her sweater, she could have also grabbed some of her hair.

153. Cst. [REDACTED] recalled that after Ms. [REDACTED] punched her, Ms. [REDACTED] immediately began apologizing, saying “I’m so sorry. I’m so sorry”. Once on the ground, Ms. [REDACTED] “turtled”, pulling her arms underneath her body. Cst. [REDACTED] gave Ms. [REDACTED] commands to release her arms, so she could be placed into handcuffs, but Ms. [REDACTED] did not comply.

154. To gain her compliance, Cst. [REDACTED] delivered one knee strike to the left side of Ms. [REDACTED] body. The strike was effective, and Ms. [REDACTED] released her hands. She was then placed into handcuffs by another officer, but Cst. [REDACTED] could not recall who it was.

155. Cst. [REDACTED] believed the struggle to take Ms. [REDACTED] into custody took about ten seconds.

156. Ms. [REDACTED] once again apologized, saying “I’m so sorry. I didn’t know who you were.” Cst. [REDACTED] did not believe this statement by Ms. [REDACTED] as it was clearly apparent that she was under arrest and the police were present.

157. When asked by the Investigator about the allegation brought forth by Ms. [REDACTED] that Cst. [REDACTED] had struck her in the back of the head twice, Cst. [REDACTED] stated she had no memory of that taking place, but if she had done so, it might have occurred while dragging Ms. [REDACTED] to the ground.

158. Cst. [REDACTED] went on to say the struggle to take Ms. [REDACTED] into custody had been “a bit of a melee” and she believed there had been other officers assisting her.

Cst. [REDACTED] however, did not believe any of the assisting officers used force on Ms. [REDACTED]

159. When asked by the Investigator about the allegation brought forth by Ms. [REDACTED] that Cst. [REDACTED] had forced her face into the ground when Ms. [REDACTED] had looked up to see what was happening with her mother, Cst. [REDACTED] denied that this took place. She believed the only point Ms. [REDACTED] head could have been forced into the ground was when Cst. [REDACTED] pulled her to the ground by the back of her sweater.
160. Cst. [REDACTED] also denied Ms. [REDACTED] allegations that she had knelt on her neck and only got off of her neck once Ms. [REDACTED] had told her she couldn't breathe, and stated "I have never done that". Cst. [REDACTED] also denied Ms. [REDACTED] allegations that she had pulled on her arms while she was on the ground.
161. Cst. [REDACTED] could not recall exactly how long Ms. [REDACTED] remained on the ground before she was stood up but believed it had been no longer than a couple of minutes. Cst. [REDACTED] went on to say that no further force was used on Ms. [REDACTED] once she was placed into handcuffs.
162. When asked by the Investigator about the allegation made by Ms. [REDACTED] that Cst. [REDACTED] and other officers had called her and Ms. [REDACTED] "dumb bitches", and Cst. [REDACTED] had told her she would be going to a group home and would never see her parents again, Cst. [REDACTED] denied saying any of those things to her. Cst. [REDACTED] said she had no idea where Ms. [REDACTED] would be going from the scene other than to jail.
163. However, Cst. [REDACTED] advised the investigator that after being assaulted by Ms. [REDACTED] and taking her into custody, she had a discussion with Ms. [REDACTED] about her poor parenting role models, and that she told her Ms. [REDACTED] would make better life choices if she had better parents. In response to Cst. [REDACTED] comments, Ms. [REDACTED] once again apologized.
164. Cst. [REDACTED] continued to say that her comment about poor parenting role models referred to the fact Ms. [REDACTED] mother had refused to exit the vehicle when directed to do so by police, which had led to the confrontation that followed, and Ms.



██████████ father had fled the scene, leaving her and her mother behind. Cst. ██████████ said she was upset with Ms. ██████████ for assaulting her and admitted to lecturing her.

165. After Ms. ██████████ had also been taken into custody and moved to a nearby police vehicle, another officer escorted Ms. ██████████ to the police wagon. Cst. ██████████ however, could not recall who that officer was.

166. Cst. ██████████ later read Ms. ██████████ and Ms. ██████████ their *Charter* rights and searched them both incident to arrest. With respect to Ms. ██████████ phone, Cst. ██████████ Cst. ██████████ stated that she did not search the phone or answer any calls and did not observe anyone else doing so. Cst. ██████████ recalled that Ms. ██████████ had been wearing it in some kind of lanyard case around her neck, and Cst. ██████████ had removed it and placed it into a clear plastic bag in preparation for transport to jail.

167. At some point, EHS arrived and decontaminated Ms. ██████████ for exposure to pepper spray. At that time, it was Cst. ██████████ belief that Ms. ██████████ who was still being held in a police wagon, was going to be transported to the Vancouver Jail for assaulting her. Cst. ██████████ had a conversation with one of the EHS attendants about treating Ms. ██████████ After the EHS attendant asking Cst. ██████████ a few questions about Ms. ██████████ condition, the attendant advised that it would be okay for Ms. ██████████ to be transported to jail and treated there by the nurse. Cst. ██████████ said other than when Ms. ██████████ had first exited the vehicle with her head in her hands, the pepper spray did not appear to affect her very much.

168. Cst. ██████████ further stated that if she had known Ms. ██████████ was not going to be transported to jail and released at the scene, she would have had EHS decontaminate her at the scene.

169. Once it was decided that both Ms. ██████████ and Ms. ██████████ would be released at the scene on undertakings to appear in court, Cst. ██████████ served them the necessary paperwork and explained the various requirements, including the dates and the fact Ms. ██████████ would have a “no contact” condition with Cst. ██████████ There was no other discussion about the matter and Ms. ██████████ and Ms. ██████████ left the scene.

170. In a subsequent email Cst. ██████████ advised the Investigator that she searched Ms. ██████████ and Ms. ██████████ to determine if they had any further identification and to ensure that they did not have the keys to the vehicle.

171. From Cst. [REDACTED] recollection, one of them only had a CareCard, so it took a bit of extra time to confirm her identity. Finding the vehicle's keys would have assisted as evidence of the initial offence of Failing to Stop for Police.
172. In relation to the allegation made by Ms. [REDACTED] that Cst. [REDACTED] "opened up her pants, and looked down her pants", Cst. [REDACTED] advised this was "completely false." Cst. [REDACTED] vaguely remembered that at least one, maybe both, of the two females had been wearing leggings/yoga pants. She recalled patting down around the top of the waistband of the leggings and asking if she had placed anything in her pants, which was her common practice when conducting a search.
173. At the time, Cst. [REDACTED] was under the impression that at least one of the parties were going to be transported to jail, and she needed to ensure that they had nothing on their person that could be used as a weapon, a means of escape, or, given the current opioid crisis, a means to overdose for when placed in the wagon.

Cst. [REDACTED]

174. At the time of this incident Cst. [REDACTED] was working with Cst. [REDACTED]. He too was in plain clothes and wearing a police takedown jacket. His observations of hearing the radio broadcast by Det. [REDACTED] seeking cover to deal with the Mercedes and the scene upon arrival are essentially the same as those of Cst. [REDACTED].
175. On their way to the scene, Cst. [REDACTED] heard on the police radio that in a past check by police, a knife had been located in the door well of the Mercedes.
176. Upon arriving on scene, Cst. [REDACTED] observed Det. [REDACTED] police vehicle parked behind the Mercedes with its emergency lights activated. Cst. [REDACTED] then had a brief conversation with Det. [REDACTED] the exact details of which he could not recall, but believed it had been regarding tactics and who was still in the vehicle.
177. When asked by the Investigator whether he believed Det. [REDACTED] had transferred grounds (to arrest) to him with respect to the occupants of the Mercedes, Cst. [REDACTED] replied that in dealing with the entirety of the situation, he definitely remembered believing that the occupants were resisting and obstructing Det. [REDACTED] duty to deal with the vehicle, and the police not knowing for sure if the driver was still in the vehicle or not.

178. Based on this information, coupled with the fact the occupants of the Mercedes were not complying with commands to exit, upon arriving on scene, Cst. [REDACTED] armed himself with his Less Lethal Beanbag Shotgun and took up a position behind cover that afforded him a view into the driver's side door of the Mercedes and the female front passenger later identified as Ms. [REDACTED]. While Cst. [REDACTED] could see a second passenger moving around in the back, due to the heavy tint on the windows of the Mercedes, he could not make out any details relating to a physical description.
179. Cst. [REDACTED] overheard Det. [REDACTED] continuing to give commands to Ms. [REDACTED] and the other occupant to exit the Mercedes, but they would not comply. At that time, Cst. [REDACTED] observed Ms. [REDACTED] holding a phone and yelling that she didn't have to get out of the vehicle. Cst. [REDACTED] made eye contact with Ms. [REDACTED] and told her to get out of the vehicle. When this failed to elicit a response, Cst. [REDACTED] repeated his command, but this time stated, "Get out of the fucking car". Cst. [REDACTED] went on to explain that in his experience dealing with people who challenged the police, you had to "speak their language", and he wanted to get across to Ms. [REDACTED] the seriousness of the situation. In addition, given the stressful nature of the situation and the fear-factor of not knowing who was in the Mercedes, his adrenaline was going, and he did "escalate" his language.
180. Cst. [REDACTED] later stated that he did recall hearing Ms. [REDACTED] yell that she had her daughter in the vehicle, but he had no knowledge that her daughter was a youth.
181. While he was trying to negotiate getting Ms. [REDACTED] and the other occupant out of the Mercedes, another police officer [Sgt. [REDACTED]] deployed OC spray into the Mercedes. This elicited a strong response from the occupants, and seconds later, he observed a female later identified as Ms. [REDACTED] walk slowly from the vehicle towards Cst. [REDACTED]. As Cst. [REDACTED] took control of Ms. [REDACTED] arm, Ms. [REDACTED] punched Cst. [REDACTED] on the left side of her face with a closed fist. Cst. [REDACTED] then put Ms. [REDACTED] down to the ground, at which point they went out of Cst. [REDACTED] view, behind a police vehicle.

182. As Cst. [REDACTED] was dealing with Ms. [REDACTED] Cst. [REDACTED] observed Ms. [REDACTED] exit the Mercedes and run in almost a full sprint towards Cst. [REDACTED] location. It was Cst. [REDACTED] belief that Ms. [REDACTED] was going to assault Cst. [REDACTED] if she reached her. However, other officers intercepted Ms. [REDACTED] before she could reach Cst. [REDACTED]
183. Cst. [REDACTED] then moved towards Cst. [REDACTED] location and observed her in a handcuffing position on top of Ms. [REDACTED] shoulder, trying to get her into handcuffs. Cst. [REDACTED] then placed his knee on Ms. [REDACTED] lower back in order to prevent her from flipping over and assisted Cst. [REDACTED] in placing Ms. [REDACTED] into handcuffs. Once Ms. [REDACTED] was in handcuffs, she was brought to her feet. He estimated that once Ms. [REDACTED] was placed into handcuffs, she had remained on the ground no longer than one minute before being assisted to her feet.
184. When the Investigator described to Cst. [REDACTED] Ms. [REDACTED] allegation that Cst. [REDACTED] had sat on Ms. [REDACTED] chest for some period of time, not allowing her to get up, to the point Ms. [REDACTED] told Cst. [REDACTED] she couldn't breathe, Cst. [REDACTED] advised that this allegation was completely false.
185. Cst. [REDACTED] then explained as he approached the area where Cst. [REDACTED] was attempting to take Ms. [REDACTED] into custody, he could hear Cst. [REDACTED] giving commands to Ms. [REDACTED] to stop fighting, and when he came around the corner, he observed that Cst. [REDACTED] had Ms. [REDACTED] in a handcuffing position: controlling one arm and with her knees on Ms. [REDACTED] shoulder. Ms. [REDACTED] however, was "doing a log roll", so that was why he then placed his knee on her lower back. Cst. [REDACTED] estimated the time that passed between him placing his knee on Ms. [REDACTED] back to her being placed into handcuffs was approximately five seconds. Once Ms. [REDACTED] was handcuffed, he did not observe anyone use any additional force on her. In addition, other than controlling Ms. [REDACTED] to the ground, Cst. [REDACTED] did not observe Cst. [REDACTED] use any other force on Ms. [REDACTED] He confirmed that only he and Cst. [REDACTED] had been involved in taking Ms. [REDACTED] into custody.
186. Cst. [REDACTED] believed there had also been two officers involved in taking Ms.

██████████ into custody.

187. When asked by the investigator whether there had been an arrest plan discussed with Det. ██████████ or any supervisor on scene, Cst. ██████████ advised that due to where he took up his position, he was about twenty-five feet away from Det. ██████████. As a result, he was not privy to any planning that may or may not have occurred prior to the OC spray being deployed.

188. Cst. ██████████ described how he reassured Ms. ██████████ that the effects of the OC spray would dissipate over time, and EHS/Fire would attend the scene to decontaminate her. It was Cst. ██████████ recollection that this seemed to calm Ms. ██████████ down, and she then began to apologize to Cst. ██████████ and to Cst. ██████████ in particular for assaulting her.

189. Specifically with respect to Ms. ██████████ apology, Cst. ██████████ stated that he and Cst. ██████████ had told Ms. ██████████ that it had been pretty stupid of her to punch a police officer and there was no reason for that. This elicited Ms. ██████████ to say she was “so sorry”, and agree it was stupid.

190. When the Investigator described to Cst. ██████████ the allegation by Ms. ██████████ that officers at the scene had called them “dumb bitches” and made the comments regarding her going to a group home, Cst. ██████████ advised that he did not utter those things, and he had not heard anyone else do so. He continued to say the only thing he could think of that was even remotely close to that allegation was a subsequent conversation he had with Ms. ██████████ about putting her child into a dangerous situation, how stupid it was, and if she continued to put her child in such situations, the police would be forced to report her to the Ministry.

191. When asked by the Investigator whether Cst. ██████████ had any knowledge of any officers answering Ms. ██████████ phone at the scene, Cst. ██████████ confirmed that he had answered her phone. Cst. ██████████ explained that Ms. ██████████ phone had been ringing, and they believed it was Mr. ██████████ calling, so he answered with the view to determining his location and affecting an arrest. At first, Cst. ██████████ pretended he was a regular citizen who had found the phone and he tried to have Mr. ██████████ meet somewhere. Ms. ██████████ however, yelled loudly “Don’t talk. It’s the police!”, alerting Mr. ██████████ to the situation. When Mr. ██████████ called back, Cst. ██████████ answered the

phone again and, this time as a police officer, he tried to convince Mr. [REDACTED] to return to the scene and deal with the situation. Mr. [REDACTED] however, was not willing to do so. Cst. [REDACTED] did not search Ms. [REDACTED] phone.

192. Once Ms. [REDACTED] and Ms. [REDACTED] were released from the scene, Cst. [REDACTED] kept them under surveillance until they left the area.

Cst. [REDACTED]

193. Cst. [REDACTED] provided a statement to the Investigator as a witness officer. At the time of this incident Cst. [REDACTED] was on duty and working with Cst. [REDACTED] when he too heard a radio broadcast from Det. [REDACTED] regarding a 'Fail to Stop'. The vehicle in question had been travelling at an extremely high rate of speed. When Det. [REDACTED] located the vehicle in a lane the driver had already fled.

194. As Cst. [REDACTED] and Cst. [REDACTED] made their way to the location Cst. [REDACTED] recalled hearing there were possibly more occupants in the vehicle, and Det. [REDACTED] had asked for cover units to attend.

195. Cst. [REDACTED] did not recall making any broadcasts regarding the Mercedes and/or the suspected driver as they made their way to the scene, but later recalled hearing information that the driver had a criminal history.

196. By the time Cst. [REDACTED] and Cst. [REDACTED] arrived at the scene there were at least three other police vehicles already there and officers were giving commands to the occupants of the Mercedes.

197. Given the dynamic nature of the situation upon arriving at the scene, there was no opportunity to receive any direction or information from the officers already there. Cst. [REDACTED] said he took up a "cover" role at the rear of the Mercedes and slightly towards the driver's side.

198. Cst. [REDACTED] could not see into the Mercedes due to the heavy tint on the windows, but he could hear female voices screaming and "yelling back at us" that they weren't coming out, the police had no right to be there, and words to this effect. This went on for a matter of minutes. Cst. [REDACTED] said he had no reason to believe there was a youth in the Mercedes. It was his perception the voices coming from the Mercedes were those of adult females.

199. Cst. ██████ said at the time of this incident the Lower Mainland gang conflict was “well and active”, and he and Cst. ██████ had conducted vehicle stops with gang members involved in the conflict and had numerous vehicles fail to stop for them. During some of these vehicle stops, Cst. ██████ and Cst. ██████ had located weapons. Therefore, when vehicles did fail to stop for police, it “upped the threshold” on how they dealt with the situation.
200. Given the driver had fled from police at a high rate of speed and then had fled on foot, couple with the fact there had been some information broadcast that the driver had some history relating to “that” (Lower Mainland Gang Conflict) and/or criminal activity, Cst. ██████ believed the “context” of the situation to be “much higher” than a simple traffic offence.
201. Cst. ██████ described how grounds existed to arrest the driver for “Dangerous Operation of a Motor Vehicle” and “Flight from Police” [s. 320.17 of the *Criminal Code*], and that the occupants were obstructing police.
202. When OC spray was deployed, Cst. ██████ saw activity on the passenger side of the Mercedes, and then two females exited. He observed Cst. ██████ approach the female rear passenger (Ms. ██████) in order to arrest her, at which point the female punched Cst. ██████ in the face with her right hand. Upon observing the assault, Cst. ██████ left his position and moved towards Cst. ██████ in order to assist. There were other officers present and Ms. ██████ was taken to the ground and arrested.
203. At that point, the female front passenger (Ms. ██████) became “quite active and erratic and was screaming”. She was pulled to the side, taken to the ground, and arrested. Cst. ██████ recalled crouching down near her legs/lower body area while she was being placed into handcuffs by Cst. ██████
204. During the arrests, Cst. ██████ said he was positioned between the spots where both females were being arrested. He did not participate in the arrests or use any force on either female but stood by ready to assist if the need arose. Once the females were in custody Cst. ██████ assisted in clearing the Mercedes. He then made inquiries of nearby residences and assisted the K9 unit tracking the driver.
205. Cst. ██████ did not recall hearing any of the officers on scene call the arrested females “dumb bitches” or tell the youth she would be going to a group home. He also

did not recall hearing any of the officers on scene use any language towards the arrested females that might have been considered discourteous.

Cst. [REDACTED]

206. Cst. [REDACTED] provided a statement to the Investigator as a witness officer.
207. On the date in question, Cst. [REDACTED] was on duty, wearing plain clothes, and working in the company of Cst. [REDACTED] when he heard a radio broadcast regarding the Mercedes “taking off”. As Cst. [REDACTED] and Cst. [REDACTED] made their way to the area, they heard on the radio that the Mercedes was located - “dumped”, i.e. the driver had fled on foot.
208. Cst. [REDACTED] queried the licence plate of the Mercedes on the police computer and learned there were some “negative” reports associated to the vehicle, which he believed were authored by the Combined Forces Special Enforcement Unit’s “Uniform Gang Enforcement Team”.
209. Cst. [REDACTED] recalled that he broadcast the information he had learned about the Mercedes and its most recent interaction with police, which had occurred about a week earlier.
210. When they arrived on scene, there were several other units already there. Cst. [REDACTED] took up a position where he was “covering” the passenger side the Mercedes. He recalled that the Mercedes was “pretty heavily tinted”, but it was confirmed there were two occupants: one in the front and one in the rear.
211. Cst. [REDACTED] provided updates over the radio as other members challenged the occupants of the Mercedes. He could not recall if he had heard the occupants yelling anything out of the vehicle. OC spray was deployed into the Mercedes, and the occupants exited.
212. Cst. [REDACTED] observed the younger of the two female occupants (Ms. [REDACTED] exit the vehicle and a struggle ensued “almost immediately” with the officer trying to take her into custody, which went to the ground. Cst. [REDACTED] did not observe much of what occurred as his focus was on the passenger side of the Mercedes in case additional persons exited, as well as on his surroundings, given that the driver of the Mercedes



was still outstanding. He was not involved in taking either occupant of the Mercedes into custody.

213. Once the occupants of the Mercedes were in custody, Cst. [REDACTED] began searching the immediate area for any clues as to where the driver may have fled. He tried unsuccessfully to get possible video footage from the resident of a house and assisted the K9 unit in tracking the driver.

214. Cst. [REDACTED] did not recall hearing any of the officers on scene call the arrested females “dumb bitches”, or tell the youth she would be going to a group home. He also did not recall hearing any of the officers on scene use any language towards the arrested females that might have been considered discourteous.

*Two Videos taken by Ms. [REDACTED] and Photographs of Injuries visible on Ms. [REDACTED] and Ms. [REDACTED]*

215. I have reviewed the two videos taken at the scene by Ms. [REDACTED] provided to the Investigator by their counsel, Mr. [REDACTED]

216. The video referred to as Video #1 was 43 seconds in duration and was shot from what appeared to be the front passenger seat, looking out on the open driver’s side door to a lawn outside.

217. Several seconds into the video what appeared to be male plain clothes police officer is visible standing behind a pole pointing what appeared to be a shotgun (Cst. [REDACTED] and the Less Lethal Bean Bag Shotgun) at the vehicle.

218. In the background, a male voice could be heard stating “Exit the vehicle with nothing in your hands. You’re under arrest. Exit now, and if you do not...” A female voice within the vehicle, Ms. [REDACTED] could be heard replying “I’m the passenger. I have a child in the car. I have a child. My daughter’s in the car. Please, my daughter’s in the car. Please. You can’t arrest me. I haven’t done anything. I’m not getting out of the car. My child’s in the car. Please stop. I have my daughter in the car”. A second female voice [belonging to Ms. [REDACTED] was crying in the background.

219. The male voice could be heard continuing to issue verbal commands: “Get out of the car. Do it now”. While the male voice issued commands to get out of the vehicle, Ms. [REDACTED] stated “I haven’t done anything wrong though. But I want to know why I’m

under arrest. You haven't given me a reason. Please, I have my daughter in the car and I'm just the passenger. She's very scared and she suffers from anxiety. Please don't do this. Please. Please, she's very nervous".

220. At that point, a police officer in full uniform, wearing glasses and a long-sleeved shirt with three chevrons on the shoulder, Sgt. [REDACTED] appeared at the open door and deployed pepper spray into the vehicle. Almost immediately, both Ms. [REDACTED] and Ms. [REDACTED] began screaming and the video ended.

221. I have also viewed Video # 2, which is 36 seconds in duration. It depicted the interior of the Mercedes. In the background, two female voices could be heard screaming.

222. One female, likely Ms. [REDACTED] was screaming that she couldn't see. In the background a male voice could be heard giving commands and saying "get out". In response, the female holding the phone, Ms. [REDACTED] replied "okay, okay", then "You just pepper sprayed me and my daughter". Ms. [REDACTED] face could then be seen on the video, and she appeared to be suffering from the effects of pepper spray: eyes closed, tears coming from her eyes and mucus from her nose. Ms. [REDACTED] could then be heard screaming in the background and she said, "I can't get out." Ms. [REDACTED] could then be heard screaming "Ow", which was followed by Ms. [REDACTED] yelling "No, that's my daughter. Please, she's only eleven. Oh my God. Please."

### *The Photographs*

223. Eleven photographs were submitted by the Complainants in relation to injuries they attribute to the actions of the police in this incident.

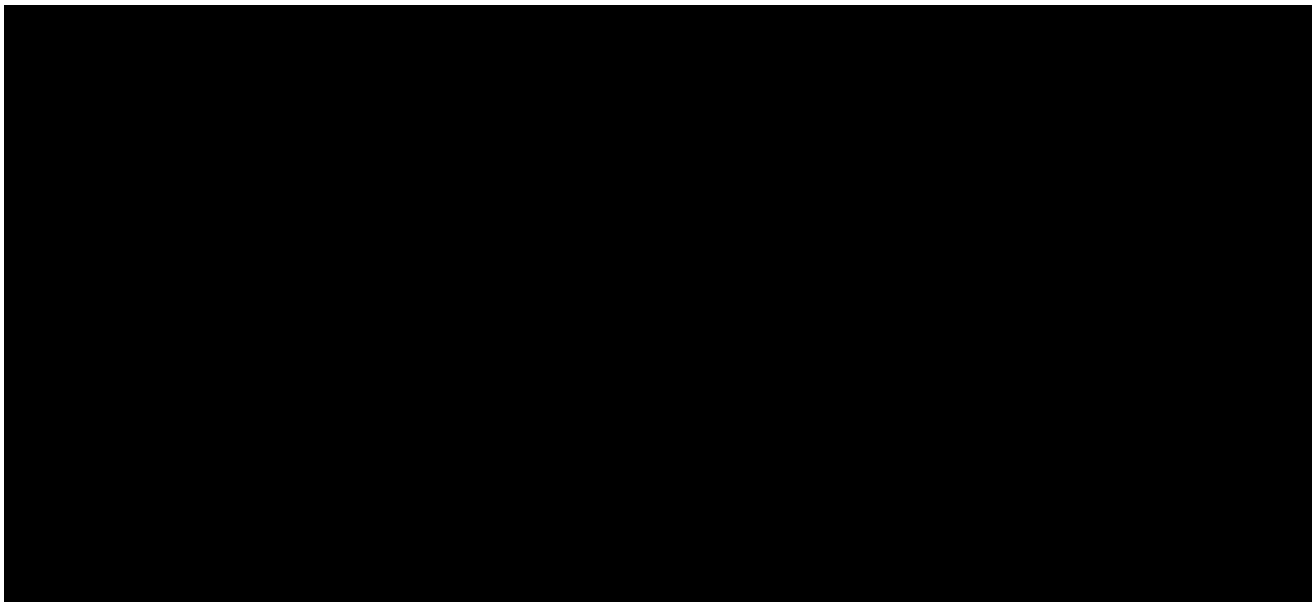
224. A photograph of Ms. [REDACTED] legs shows a relatively small abrasion on her right knee.

225. Two photographs of Ms. [REDACTED] knees show a larger abrasion and what appears to be bruising on her right knee and a cut or abrasion on her left knee with some blood. Other photos of Ms. [REDACTED] show a slight abrasion on her left lower cheek and some bruising and a slight abrasion on her left elbow. Photographs of the top of her head depict a small area of redness on her scalp towards the back of her head, visible through her hair. Two photographs of Ms. [REDACTED] depict red discoloration in the area

directly under her right eye extending to most of the lower eyelid and a small hematoma in the white of her eye.

226. Medical records from an attendance by Ms. [REDACTED] to a medical clinic on April 6, 2022, were provided to the Investigator. The computer notes of Dr. [REDACTED] are reproduced in the FIR. He referred to injuries of Ms. [REDACTED] consistent with those in the photographs. Ms. [REDACTED] appears to have attended with her. For multiple contusions as described in the doctor's record Ms. [REDACTED] was use ice and take Tylenol as needed.

227. Dr. [REDACTED] record included an account of how Ms. [REDACTED] obtained her injuries, indicating that the history was from the mother and the patient. It was entered under the heading [06-Apr-2022.: [REDACTED] along with his clinical findings and they appear below:



228. With regard to the above account, I note that the actions of Ms. [REDACTED] and Ms. [REDACTED] regarding how the interaction with the police unfolded are completely omitted.

#### *CAD Call Logs*

229. I have reviewed the CAD call logs for this incident as contained in the FIR (pp.21-25). I am only going to refer to select edited entries as provided by the Investigator and

in some instances further edited by me. These entries are useful to show the timeline of how the events that form the basis of this complaint occurred, and they are as follows:

- On April 4th, 2022, at about 6:31 p.m. Det. [REDACTED] broadcast that he was northbound in the west lane of Oak Street, up to West 66<sup>th</sup> Avenue, and “VCB” (visual contact broken).
- At 6:32 p.m. Det. [REDACTED] broadcast “Going 180 km/h on Oak...did not get a plate...brand new all black”.
- At 6:33 p.m. Det. [REDACTED] asked for Air 1 and advised that the suspect vehicle was initially southbound on Oak Street when he “picked them off”.
- Also at 6:33 p.m. Det. [REDACTED] broadcast that he’d located the suspect vehicle dumped in the [REDACTED] the vehicle’s licence plate was [REDACTED] (the Mercedes), and there was possibly still one occupant.
- At 6:34 p.m. Det. [REDACTED] broadcast that the driver was “out and gone”, the passenger was refusing to exit the vehicle and requested a cover unit. Cst. [REDACTED] responded that he was seven blocks away.
- At 6:34 p.m. Sgt. [REDACTED] broadcast that Code 3 [emergency response] was authorized.
- At 6:35 p.m. Det. [REDACTED] broadcast that there were two occupants in the vehicle, one front and one rear, and the driver was gone and arrestable for dangerous operation of a motor vehicle.
- At 6:36 p.m. the dispatcher broadcast that Mr. [REDACTED] had been stopped driving the Mercedes “last week”.
- At 6:37 p.m. Det. [REDACTED] broadcast that there was no description for the driver, that he’d only seen him briefly, and that he was a younger male in his thirties.
- At 6:37 p.m. (K9 unit) Cst. [REDACTED] broadcast that Mr. [REDACTED] was a prohibited driver.
- At 6:38 p.m. Det. [REDACTED] broadcast that he would check Mr. [REDACTED] mugshot “after dealing with these occupants”.
- At 6:39 p.m. Det. [REDACTED] broadcast that the front passenger was a female, but he couldn’t see who was in the rear of the vehicle as the windows were tinted.
- At 6:41 p.m. Det. [REDACTED] broadcast “Another unit here...still refusing to come out”.
- At 6:41 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “Two blocks out”.
- At 6:41 p.m. Det. [REDACTED] broadcast that the Mercedes was “nose into driveway” and “I have the rear”.
- At 6:42 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “With them”.
- At 6:43 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “Giving commands... down range is north”, followed by “If runners need containment to north”.
- At 6:43 p.m. Cst. [REDACTED] broadcast that he had north.
- At 6:43 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “Giving commands, non-compliant”.
- At 6:43 p.m. Det. [REDACTED] broadcast “Refusing”.
- At 6:44 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “OC deployed...EHS to stage”, followed by “Passenger and rear passenger door. open”, followed by “Looks like two females, giving commands still”.
- At 6:44 p.m. Det. [REDACTED] broadcast “Both actively fighting...one

- member punched in face”.
- At 6:44 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “Still resisting”.
- At 6:45 p.m. the dispatcher broadcast that they were on hold with EHS.
- At 6:45 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “One in custody, still challenging the other”, followed by “Two females in custody...clearing wheels”.
- At 6:45 p.m. Sgt. [REDACTED] broadcast for a wagon.
- At 6:45 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast “Wheels are clear”.
- At 6:46 p.m. Det. [REDACTED] broadcast “Air 1?...Copy neg”.
- At 6:46 p.m. the dispatcher broadcast that Air 1 did not answer on emergency services.
- At 6:47 p.m. Sgt. [REDACTED] broadcast to keep the tone on for the “K81”.
- At 6:47 p.m. Cst. [REDACTED] broadcast “Seeing if I can get anything started.”
- At 6:47 p.m. the dispatcher broadcast that EHS had been advised to attend and to move right in”.
- At 6:49 p.m. Sgt. [REDACTED] broadcast “EHS can move in rear lane”.
- At 6:50 p.m. Cst. [REDACTED] broadcast “Dog giving me a little to west...sorting it out”.
- At 6:51 p.m. Cst. [REDACTED] broadcast “Dog pulling southbound”.
- At 6:52 p.m., the dispatcher broadcast that EHS was advised for the west. lane of [REDACTED] and to move in.
- At 6:53 p.m., Det. [REDACTED] broadcast “Confirmed [REDACTED]...will be
- arrestable for dangerous op”.
- At 6:56 p.m. Cst. [REDACTED] broadcast “Coming back to the yard where the wheels are”.
- At 6:56 p.m. Det. [REDACTED] broadcast “Note – located [REDACTED] ID in front driver seat”, followed by “Tow for Mercedes SUV”.
- At 7:02 p.m. Cst. [REDACTED] and Cst. [REDACTED] broadcast that the EHS was on scene.
- At 8:42 p.m. Det. [REDACTED] requested that the dispatcher advise Surrey RCMP, Langley RCMP, Ridge Meadows RCMP, and the other three districts of Vancouver, that Mr. [REDACTED] was arrestable for flight from police, dangerous operation of a motor vehicle, and driving while prohibited.

230. The initial broadcasts by Det. [REDACTED] are somewhat confused as to direction (northbound on Oak St. from West 57<sup>th</sup> would have taken him away from West 64<sup>th</sup> Avenue). However, his statement to the Investigator describes how he was initially travelling northbound on Oak Street when he observed a black Mercedes without a front licence plate, speeding and weaving in and out of traffic; then how both Det. [REDACTED] and the black Mercedes were stopped at the traffic light on Oak Street at West 57<sup>th</sup> Avenue, with the Mercedes pointed southbound and his police vehicle pointed northbound, how he observed its male driver to appear to register that he was a police officer; and how Det. [REDACTED] then made a u-turn to travel south on Oak Street, activating his emergency equipment to try to stop the Mercedes, as it rapidly accelerated south from West 57<sup>th</sup>

Avenue and turned right off Oak Street onto a side street. Given the location where the black Mercedes was found “dumped” by its driver (without a driver and without a front licence plate), the only reasonable conclusion to be drawn is that it was the same vehicle Det. [REDACTED] had observed prior to stopping at the traffic light at West 57<sup>th</sup> and afterwards.

231. These entries and Det. [REDACTED] statement also show that Det. [REDACTED] located the suspect vehicle “dumped” and with its driver “out and gone” within approximately two minutes of seeing it at the traffic light.

232. These entries further show that a total of 11 minutes passed between when Det. [REDACTED] first approached the Mercedes and directed Ms. [REDACTED] to exit the vehicle to when Sgt. [REDACTED] discharged OC spray into the vehicle and Ms. [REDACTED] and Ms. [REDACTED] exited. They also refer to both Ms. [REDACTED] and Ms. [REDACTED] actively fighting and one member [Cst. [REDACTED] being punched in the face at 6:44 pm. [by Ms. [REDACTED]

233. At 6:45 pm the dispatcher was on hold with EHS, and one of the females was in custody and the other was still resisting, quickly followed by reference to them both being in custody. Subsequently, a police wagon was called and EHS was reported on scene at 7:02 pm.

234. In addition, these entries show that prior to securing the exit of the occupants of the Mercedes with OC spray and taking Ms. [REDACTED] and Ms. [REDACTED] into police custody, the police on the scene were advised of the identity of [REDACTED] that he was a prohibited driver, and he had recently been stopped by police in the same vehicle in the company of another male with connections to a crime group known to the police. The available information at 6:39 pm was that during the previous stop all the occupants of the vehicle were quite hostile with the police although they did ultimately get out of the vehicle. At that time a knife was found in the driver’s side door.

235. Therefore, during this incident the evidence discloses that police had very legitimate concerns about who was in the back seat of the vehicle, despite Ms. [REDACTED] protestations and assertions, and also whether there were weapons or evidence of criminal activity in the vehicle. It is also of note that a very active search of the area was in progress to try to locate Mr. [REDACTED], the driver of the Mercedes,

whose spouse and daughter were in the vehicle. Ms. [REDACTED] was very vocal from the outset and the evidence also discloses that Mr. [REDACTED] was calling her after she was in custody.

*Radio Broadcast Audios*

236. It is not necessary to review these in detail and much of the information is captured in other accounts. However, I do note the following:

237. After the Mercedes did not stop for Det. [REDACTED] on Oak Street Det. [REDACTED] broadcast "Did not catch a plate. He was driving a buck eighty along Oak", which he the clarified as "A hundred and eighty".

*The Subject Behavior-Officer Response Report [SBORR]*

238. The Investigator reviewed SBORR authored by Cst. [REDACTED] and Cst. [REDACTED]

239. Cst. [REDACTED] identified the initial reason for dispatch/call-for-service as Dangerous Operation of Motor Vehicle, and he indicated it was a High-Risk Incident Response.

240. Cst. [REDACTED] indicated there were six officers, including himself, who were on the scene. Prior to being deployed Cst. [REDACTED] was aware that Mr. [REDACTED] was reported to have had a weapon or a history of weapon use, and elaborated that the suspect was [known to be] confrontational with police, not to follow directions, and had previously had access to weapons (knives).

241. Cst. [REDACTED] classified Ms. [REDACTED] behavior on this occasion as passive resistant, and further described her behavior as "non-compliant", "yelling/swearing" and "agitated/erratic". He communicated with Ms. [REDACTED] by instructing her multiple times to exit the Mercedes.

242. Cst. [REDACTED] indicated that he used soft physical control on Ms. [REDACTED] which he described as the placing of his knee on her lower back/buttocks.

243. Cst. [REDACTED] indicated that when he pointed his Less Lethal Beanbag Shotgun at Ms. [REDACTED] it had been ineffective.

244. Cst. [REDACTED] indicated that Ms. [REDACTED] was not injured.

245. Cst. [REDACTED] identified the initial reason for dispatch/call-for-service as “Uncooperative occupants of vehicle stop”.
246. With respect to relevant information with respect to the occupants of the Mercedes that had been known to Cst. [REDACTED] prior to a force response deployment, Cst. [REDACTED] stated “female was uncooperative with police commands to exit the vehicle and there was a knife found in the vehicle on previous vehicle stops”. However, Cst. [REDACTED] indicated that the occupants of the Mercedes were not in possession or believed to be in possession of a weapon on this occasion.
247. Specifically with respect to Ms. [REDACTED] Cst. [REDACTED] classified her behavior as “active resistant” and “assaultive”, and further described her behavior as “tensed/Clench fists”, “turtle/refuse show hands”, “non-compliant”, “yelling/swearing”, “pull away/attempt flee”, “attempt/strike person” and “struggle/push”. Cst. [REDACTED] indicated that there had been an officer-initiated struggle that went to the ground.
248. Cst. [REDACTED] described that she communicated with Ms. [REDACTED] by instructing her to show Cst. [REDACTED] her hands when she had been on the ground. She indicated that she used hard physical control on Ms. [REDACTED] in the form of a “stun/strike”, which had been effective. She further indicated that Ms. [REDACTED] was not injured, and that she herself had not suffered any injury.
249. In the narrative portion of the report, Cst. [REDACTED] had included all of the information set out in her Police Statement regarding the force used on Ms. [REDACTED]
250. The Investigator noted there was no SBORR submitted by Sgt. [REDACTED] in relation to the discharging of OC spray into the Mercedes.

### **Findings on the Evidence**

251. I make following findings on the evidence:
- It is highly unlikely that Ms. [REDACTED] and Ms. [REDACTED] were not aware that the vehicle in which they were passengers was going excessively fast southbound prior to stopping at the red light on Oak Street at West 57<sup>th</sup> Avenue.
  - After stopping at the light and accelerating rapidly to speeds well over 100km/hr on a city thoroughfare, it is also highly unlikely that they were not aware the vehicle was in was being actively pursued by police.



- The vehicle, a 2022 Mercedes GLE 53 capable of very fast acceleration, was being driven by a male who turned out to be Mr. [REDACTED], the father of 13-year-old [REDACTED], who was in the back seat. Mr. [REDACTED] was the spouse of Ms. [REDACTED] was in the front passenger seat. It seems unlikely that he would not have commented to them about the police pursuit and his plan to stop the vehicle in an inconspicuous place, particularly as he left them in the vehicle within a very few minutes of being pursued by the police.
- I accept that the driver's door of the Mercedes was open when Det. [REDACTED] approached. Although there is little evidence about whether the vehicle was still running, subsequent searches of Ms. [REDACTED] and Ms. [REDACTED] failed to turn up the keys. From this I infer that Mr. [REDACTED] left his family there, that the vehicle was not running, and the keys were not with the vehicle. That being so, Ms. [REDACTED] and Ms. [REDACTED] likely appreciated that they were in a difficult position once Det. [REDACTED] who was working on his own, appeared.
- I find that Det. [REDACTED] did not ever regard Ms. [REDACTED] as the driver, and he did not instruct Ms. [REDACTED] to exit the car on that basis. He had seen the male (he made eye contact with at the red light on Oak Street) driving and when he approached the Mercedes he did so cautiously.
- Det. [REDACTED] was in uniform. He believed the driver had fled. Det. [REDACTED] identified himself as a police officer and said that the driver was arrestable for Dangerous Operation of a Motor Vehicle, and he instructed her to exit the vehicle. She advised there was another person in the vehicle. She used profanity and did not exit the vehicle. He could not see in the area of the back seat because of the vehicle's dark tinted windows. As he was alone, could not see who was in the rear seat of the vehicle, and was concerned the driver may still have been in the area, he backed off and waited for back off. Ms. [REDACTED] response at this point was somewhat hostile and she gave no indication that she planned to comply with his direction.
- As Det. [REDACTED] waited for cover, he gave further commands to Ms. [REDACTED] to exit the vehicle with nothing in her hands or she would be arrested. He said he repeated these commands about a dozen times. She did not comply. He indicated initially that she could be charged with Obstruction and then that she would be charged with Obstruction

if she failed to get out of the vehicle. Ms. [REDACTED] comments at the time and her statement to the Investigator reflect her mistaken view that she could continue to sit in the vehicle because she had not been driving it.

- As the minutes passed more information became available about Mr. [REDACTED] as a prohibited driver and the subject of a firearms' prohibition, as well as the nature of a recent prior stop of him in the same vehicle where its occupants were uncooperative, an individual was associated with a crime group, and a knife was found in the area of the driver's door. All of this served to heighten the security concerns of the police in relation to the Mercedes and its occupants.
- I find that it is more likely than not that Ms. [REDACTED] decided to ignore the commands due to her misapprehension about the seriousness of the situation, or to occupy Det. [REDACTED] for a number of minutes to permit Mr. [REDACTED] more time to absent himself from the scene, or both.
- Ms. [REDACTED] showed that she was very much aligned with Mr. [REDACTED] interest in avoiding the police when Cst. [REDACTED] answered Ms. [REDACTED] cell phone in her presence, and pretended to have found the phone, trying to arrange to meet with Mr. [REDACTED] effect its return. She yelled as the call was occurring that the person how had answered her phone was a police officer, thus alerting Mr. [REDACTED] that he ought not to talk with the person and that she was in the presence of the police.
- I find that it is highly unlikely that Mr. [REDACTED] would not have offered some sort of explanation to his spouse and his daughter as to his plans before rapidly departing from the Mercedes. It must be remembered that only about three moments had passed from when the Mercedes and its male driver attracted Det. [REDACTED] attention at the red light.
- The reason that Mr. [REDACTED] pulled into that particular parking area adjacent to and close to the wall of a detached garage is unknown, but the police information indicated the address was not associated with the vehicle.
- Det. [REDACTED] was seeking to arrest the male driver of the Mercedes, and only wanted to take control of the vehicle and its occupants to determine what was going on. He was concerned about who else was in the Mercedes, where and who the driver was, and wanted to prevent the destruction of any evidence in the Mercedes. Ms. [REDACTED] continued to be most uncooperative and took no steps to exit the vehicle.

- Other police officers arrived on the scene and further directions were given to the occupants of the Mercedes to exit the vehicle. They did not. I accept that none of the officers appreciated there was a 13 year-old-girl in the vehicle. Given the uncooperative and at times somewhat hostile nature of Ms. [REDACTED] responses to the police, I find they were entitled to approach the vehicle with skepticism and caution.
- Cst. [REDACTED] took up a position near the Mercedes behind a post with what appeared to be a shotgun, but was a Less Lethal Bean Bag Shotgun, which he pointed in the direction of Ms. [REDACTED] sitting in the front passenger seat through the open driver's door. Cst. [REDACTED] delivered several very forceful commands that the occupants exit the Mercedes with no result except increased agitation, crying, screaming and shouting. Cst. [REDACTED] was clearly visible to Ms. [REDACTED] as she took a video of the scene at that time with her phone. This was a very clear sign that the police wanted Ms. [REDACTED] and her daughter to exit the vehicle. She did not, nor did Ms. [REDACTED] who was clearly very upset from the sounds she was making, and likely would have taken direction from her mother to comply.
- The video taken by Ms. [REDACTED] shows Cst. [REDACTED] abruptly dropping the muzzle of the shotgun, and then Sgt. [REDACTED] suddenly appeared at the open driver's door and discharged OC spray into the vehicle.
- At that point Ms. [REDACTED] and Ms. [REDACTED] started to get out of the vehicle and a number of police officers moved in. Taking them into custody did not occur without a struggle.
- Cst. [REDACTED] took Ms. [REDACTED] into custody as he described. Where her evidence of the nature and force used conflicts with his, I find that I accept his. Apart from suffering the effects of the OC spray and being put to the ground at least to her knees which showed relatively minor abrasions she was not injured. She was highly agitated, very concerned about her daughter, upset by the fact that she and her daughter, who she said was 11 years old, had been pepper sprayed and taken into custody. She did not seek medical attention for herself.
- With regard to Ms. [REDACTED] 13 years old, the situation is more concerning terms of her injuries and the upset and trauma caused this incident caused to her. It was very unfortunate that her parents put her in the situation she found herself.

- Where Ms. [REDACTED] account of what occurred as she was being taken into custody conflicts with that of Cst. [REDACTED] and Cst. [REDACTED] I find that the accounts of the officers are more likely to be true. In particular, I find that Ms. [REDACTED] upon trying to get out of the Mercedes through the right rear passenger door, encountered Cst. [REDACTED] and deliberately took a swing at her with a closed fist, contacting a side of Cst. [REDACTED] head. Cst. [REDACTED] who seemed impeccably honest about what happened, responded by hitting Ms. [REDACTED] back as hard as she could. This blow likely caused the bruising in the area of Ms. [REDACTED] right eye. The redness on her scalp was likely caused by Cst. [REDACTED] “jerseying” her to pull her to the ground, where Ms. [REDACTED] continued to struggle and resist the officer’s efforts to handcuff her until Cst. [REDACTED] had the assistance of another officer. I find that if Ms. [REDACTED] had not exited the vehicle in such an agitated, upset, and OC sprayed state, she likely would not have struck Cst. [REDACTED] as described. There would have been no reason for her to apologize to Cst. [REDACTED] for doing so, as I find she did on several occasions, and she would have sustained few or no injuries herself. Instead, due largely to the influence and example of her mother, Ms. [REDACTED] Ms. [REDACTED] was in a very difficult position and had become extremely agitated and upset. It was appropriate that Ms. [REDACTED] receive medical attention, and fortunately her injuries as assessed by Dr. [REDACTED] required only the use of ice and Tylenol as needed.

252. In conclusion, regarding this incident, which was no doubt very upsetting for the Complainants, in particular, Ms. [REDACTED] age 13 years, I find myself unable to accept many aspects of their accounts, in particular in relation to the nature and degree of force used upon them. Human nature being what it sometimes is, sudden incidents of anxiety and trauma involving the use of force by another on one’s person seem particularly severe and are exaggerated.

253. In this case I only have to look at the account Ms. [REDACTED] and Ms. [REDACTED] provided to Dr. [REDACTED] about what had occurred to realize that they were both capable of exaggerating the conduct of the police, and by omission leaving out the many other facts that led the police to approach the situation as they did. It is particularly troubling that Ms. [REDACTED] accused Cst. [REDACTED] of kneeling on her neck, which Cst. [REDACTED] vehemently denied.

### Sections of the *Police Act* relevant to the Alleged Misconduct

254. “Misconduct” is defined by s.77 of the Police Act and covers a broad range of conduct.
255. Section 77(1)(b)(ii) establishes the category of “a disciplinary breach of public trust” that includes several forms of misconduct that constitute an “abuse of authority” as set out in s. 77(3)(a).
256. Section 77(3)(a) states:
- (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:
- (a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,
- (i) intentionally or recklessly making an arrest without good and sufficient cause,
  - (ii) in the performance, or purported performance, of duties, intentionally or recklessly
    - (A) using unnecessary force on any person, or
    - (B) detaining or searching any person without good and sufficient cause,
- [...]
- (m) “neglect of duty”, which is neglecting, without good or sufficient cause, to do any of the following:
- [...]
- (ii) promptly and diligently do anything that it is one’s duty as a member to do;
- [...]
- (4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.
257. I note that the disjunctive phrase “intentionally or recklessly” suggests that mere negligence is not a sufficient basis upon which to find misconduct. It is a significantly higher threshold of intentional wrongdoing or conduct exhibiting a reckless indifference in

the face of a duty to know: *Peracomo v. Telus Communications Co.*, 2014 SCC 29, at paras. 57-58.

**The Alleged Misconduct in this Review in relation to Cst. [REDACTED] Cst. [REDACTED] former Cst. [REDACTED] and former Sgt. [REDACTED]**

258. In this review I am considering (s. 117(8)(c)) the following allegations of misconduct in relation to the four Respondent Members named above:

1 – *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* for intentionally or recklessly arresting Ms. [REDACTED] and Ms. [REDACTED] without good and sufficient cause;

2 – *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* for intentionally or recklessly searching Ms. [REDACTED] and Ms. [REDACTED] without good and sufficient cause; and

3 – *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for intentionally or recklessly using unnecessary force on Ms. [REDACTED] and Ms. [REDACTED]

259. I am considering the fourth allegation only in relation to Cst. [REDACTED] namely:

4 – *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* for failing to provide medical care to Ms. [REDACTED]

**Findings regarding Allegations 1, 2, and 3**

260. Based on the evidence and the law, I find all three these allegations of police misconduct against the four Respondent Members to be unsubstantiated.

261. First, I find that Det. [REDACTED] had reasonable grounds, assessed both subjectively and objectively, arrest the driver of the Mercedes had committed the *Criminal Code* offences of Dangerous Operation of Motor Vehicle pursuant to s. 320.13(1) and Fleeing a Police Officer pursuant to s. 320.17.

262. Second, in light of Det. [REDACTED] proper grounds to stop the Mercedes and investigate the circumstances of the alleged criminal offences Det. [REDACTED] and those

police officers who came to the scene had reasonable grounds to arrest Ms. [REDACTED] and Ms. [REDACTED] for Obstruction.

263. Second, had Ms. [REDACTED] and Ms. [REDACTED] cooperated initially and exited the vehicle when Det. [REDACTED] directed them to do so, it is likely that they would have been sent on their way after a brief investigative detention. The situation would have been explained to them by Det. [REDACTED]. There would have been no tears, no screaming, stress, anxiety, no OC spray, no physical struggles, no arrests, and no detention. They would not have engaged in the obstructive behaviour that gave the police reasonable and probable grounds to arrest them for Obstructing a Peace Officer in the Execution of his Duty, contrary to s. 129 of the Criminal Code. Indeed, the evidence makes it clear that they were directed to exit many times and that they were warned a failure to do so would result in a charge of Obstruction.

264. After securing the Mercedes, Det. [REDACTED] was planning to have it seized in relation to the alleged Dangerous Operation of a Motor Vehicle, as well as Fleeing a Police Officer. Therefore, for reasons of officer safety and to investigate serious criminal offences he asked the occupants to exit the vehicle. After repeated directions to exit the vehicle and warnings that failure to do would result in being charged with Obstruction, Ms. [REDACTED] and Ms. [REDACTED] did not comply.

265. Arrests without warrant are governed by s.495(1) of the Criminal Code. A police officer may lawfully arrest a person, without a warrant, when there are reasonable grounds for believing the person has committed or is about to commit an indictable offence or, where the person is committing a criminal offence.

266. In the leading case of *R. v. Storrey*, [1990] 1 S.C.R. 241, the Supreme Court of Canada considered the authority to arrest and held that the reasonable and probable grounds necessary for a lawful arrest must exist both subjectively and objectively. Further, and importantly, the Court held that the objective component acts as an “additional safeguard against arbitrary arrest”:

It is not sufficient for the police officer to personally believe that he or she has reasonable and probable grounds to make an arrest. Rather, it must be objectively established that those reasonable and probable grounds did in fact exist. That is to say a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest. See *R.*

*v. Brown* (1987), 1987 CanLII 136 (NS CA), 33 C.C.C. (3d) 54 (N.S.C.A.), at p. 66; *Liversidge v. Anderson*, [1942] A.C. 206 (H.L.), at p. 228.

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

267. It follows that the Respondent Members had the legal authority to arrest Ms. [REDACTED] and Ms. [REDACTED] for Obstruction.
268. Search incident to a lawful arrest for officer safety is permitted: *Cloutier v. Langlois*, [1990] 1 S.C.R.158. There is nothing here to indicate that the searches conducted on Ms. [REDACTED] and Ms. [REDACTED] by Cst. [REDACTED] a female officer, were conducted in an unreasonable manner. It is unfortunate that Ms. [REDACTED] was uncomfortable with Cst. [REDACTED] searching the waistband area of her pants, but a careful search for weapons, drugs or other articles of concern for safety is permitted.
269. All the circumstances related to the Mercedes and its driver, combined with the information that the police had regarding the possible risks or criminal activity associated with Mr. [REDACTED] and the occupants of the vehicle who repeatedly refused to exit, and then the behaviour of Ms. [REDACTED] and Ms. [REDACTED] upon exiting, resulted in the police using the force necessary to secure the Mercedes and control its occupants.
270. With regard to the use of force in this situation Det. [REDACTED] and the other police officers who attended sought to take control of the Mercedes without avoidable personal risk. It is most unfortunate that the risk to the personal safety police officers and to members of the public has been considerably heightened by the activities of criminal organizations in the Lower Mainland. This means that when police approach a situation with knowledge of possible, increased risk of confrontation their responses are designed to address that risk.



271. In the present case, Cst. ██████ commented that at the time of this incident Lower Mainland gang conflict was “well and active”, and when a vehicle failed to stop for the police that “upped the threshold” for police on how they dealt with the situation.
272. Regarding the allegation of misconduct pertaining to the use of unnecessary force intentionally or recklessly (3), it is very unfortunate that the situation escalated to the point that OC spray was used. However, it cannot be said that the police did not try numerous times to have the occupants of the Mercedes exit the vehicle using other methods, including the actions of Cst. ██████
273. It is particularly unfortunate when one of the recipients of the effects of OC spray was a 13-year-old girl. However, when I look at the efforts that the police made not to escalate the necessary force and at the same time not put themselves at risk given the unknowns of the situation, I cannot say they ought to have done otherwise. Ms. ██████ said she had her daughter in the vehicle. Some officers heard Ms. ██████ say that and some didn't. However, the police could not be sure that was in fact true, or know the age of the daughter. It was a reasonable to think that a mother would exit with her child to avoid any problems. Given how the situation unfolded, when there was no exit as Cst. ██████ was pointing what looked like a shotgun into the vehicle through the open driver's door, the deployment of OC spray became the inevitable next step.

#### **Finding in relation to Allegation 4 regarding Cst. ██████**

274. The last allegation of misconduct pertains only to Cst. ██████ and her alleged failure to provide medical care to Ms. ██████ This misconduct is defined as “neglect of duty” “without good or sufficient cause” “promptly and diligently” to “do anything that it is one's duty as a member to do”, in this instance to fail to provide medical care to Ms. ██████
275. I have given this matter careful consideration and I am of the view that Cst. ██████ did take steps to ensure that Ms. ██████ received medical care by discussing her situation with an EHS attendant at the scene and satisfying herself that Ms. ██████ would be seen by the jail nurse as she was in custody for transport to jail. Something changed in that regard and a decision was made not to take Ms. ██████ to jail and therefore she was released at the scene after or just as the EHS attendants were

leaving. While I consider it to be generally a very unwise practice for police officers to recount their observations to an EHS attendant for an “off the cuff” medical opinion without the attendant examining the person, in these circumstances Cst. ██████ made inquiries and had Ms. ██████ gone to jail, the information that was provided to Cst. ██████ was that she would receive medical care for a nurse. Cst. ██████ who had spent time post-arrest with Ms. ██████ did not consider the situation to be urgent. Fortunately, for all concerned it was not.

276. Therefore, I cannot say that Cst. ██████ neglected her duty – she was aware of it and addressed it. She was prompt and diligent. She could not provide the medical care and had taken steps to satisfy herself that Ms. ██████ would receive it.

277. As a final comment, it is a troubling aspect of this allegation that the lack of communication as to what was happening regarding Ms. ██████ among the police officers at the scene operated to deprive her of an opportunity to be seen by an EHS attendant. However, the lack of evidence on how that occurred and who else may be responsible is not to be laid at the feet of Cst. ██████ Surely it is obvious when it becomes known that a suspect in custody is 13 years old, special care must be taken to address any medical concerns arising from the use of force by police during their arrest or the incident giving rise to it. This must be done properly and promptly, and fully documented.

### **Conclusion**

278. Upon reviewing all the evidence in this matter, pursuant to s. 117(8)(d) of the Police Act, I am satisfied Allegations 1 through 4 inclusive against the Respondent Members are all **unsubstantiated**.

279. Having found, based on my review of the evidence and material before me, that the misconduct contained in the allegations is unsubstantiated insofar as the evidence appears insufficient, pursuant to s. 117(11)(a) of the Act this decision “is not open to question or review by a court on any ground,” and (b) “is final and conclusive.”

Dated the 9th day of March, 2023.

*The Hon. Elizabeth A. Arnold-Bailey*

The Honourable Elizabeth A. Arnold-Bailey

