

May 4, 2023

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996 C. 367

AND

IN THE MATTER OF A REVIEW OF AN ALLEGATION OF MISCONDUCT AGAINST

CONSTABLE [REDACTED] AND CONSTABLE [REDACTED]

OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION

TO: Constable [REDACTED] Members
Constable [REDACTED]

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

AND TO: Mr. Clayton Pecknold Police Complaint Commissioner

Introduction

1. On January 27, 2022 [REDACTED] telephoned 911 to report she had been assaulted. Constable [REDACTED] and her partner [REDACTED] were dispatched to investigate the matter. Constable [REDACTED] spoke to Ms. [REDACTED] on the telephone regarding the alleged incident and provided her with information regarding victim services. Constable [REDACTED] as the lead investigator, prepared a General Occurrence (GO) report.
2. Constable [REDACTED] continued to investigate the incident. She attempted to speak to the alleged assailant [REDACTED] and she attended at a Vancouver residence where he was believed to reside. She was unable to locate Mr. [REDACTED]. On March 19, 2022, she wrote in the concluding remarks section of the GO report,

"Due to there being no independent witnesses to the alleged assault, no injuries having been sustained and no other means of investigation this file will be concluded."
3. On June 15, 2022, Ms. [REDACTED] filed a formal complaint with the Office of the Police Complaint Commissioner (OPCC) outlining her dissatisfaction with the investigation by the members over the period of time from January 27, 2022 to the end of May 2022.
4. The OPCC reviewed the complaint and additional information provided by Ms. [REDACTED]. The Commissioner concluded,

"The OPCC has reviewed the circumstances as outlined in the complaint received from Ms. [REDACTED] and has determined that the conduct

alleged in relation to the police investigation into an assault would, if substantiated, constitute misconduct. Based on the information contained in the complaint, the conduct could be potentially defined as follows:

1. Neglect of Duty pursuant to section 77(3)(m)(ii) of the Police Act by neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do.

5. On July 29, 2022 the OPCC notified the Vancouver Police Department (VPD) that Ms. [REDACTED] complaint was admissible in accordance with section 82(2) of the Police Act. The VPD was directed to investigate the complaint. Sergeant [REDACTED] was assigned to conduct the investigation.

6. On February 28, 2023, Sergeant [REDACTED] completed his Final Investigation Report (FIR) and submitted it to the Discipline Authority. Sergeant [REDACTED] concluded the evidence did not prove on a balance of probabilities that Constable [REDACTED] and Constable [REDACTED] committed the alleged misconduct.

7. On March 24, 2023, Inspector [REDACTED], as Discipline Authority, issued his decision pursuant to section 112 of the Police Act. Inspector [REDACTED] determined the evidence in the Final Investigation Report did not appear to substantiate the allegation pursuant to section 77(3)(m)(ii) of the Police Act.

8. The Police Complaint Commissioner reviewed the complaint and the alleged misconduct and considered that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect.

9. On April 12, 2023 the Police Complaint Commissioner appointed me to review the investigating officer's report, the evidence and the records pursuant to section 117 of the Police Act.

Section 117

10. The statutory authority governing this review is set out in Section 117 of the Police Act. If, on review of a discipline authority's decision under section 112(4) or 116(4) that conduct of a member or former member does not constitute misconduct, the Police Complaint Commissioner considers that there is a reasonable basis to believe that the decision is incorrect, the Police Complaint Commissioner may appoint a retired judge recommended under subsection (4) of this section to do the following:

- (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.

Section 117(6) The Police Complaint Commissioner must provide the appointed retired judge with copies of all reports under sections 98, 115 and 132 that may have been filed with the Police Complaint Commissioner before the appointment.

Section 117(7) Within 10 business days after receiving the reports under subsection (6), the retired judge appointed must conduct the review

described in subsection (1)(a) and notify the complainant, if any, the member or former member, the Police Complaint Commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

Section 117(8) Notification under subsection (7) must include:

- (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,
- (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 requires 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, and
- (e) if subsection (10) applies, a statement that includes the effect of subsection (11).

Section 117(9) If, on review of the investigating officer's report and the evidence and records referenced in them, the appointed retired judge considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline

proceeding, unless section 120 (16) applies.

Section 117(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

11. A review of the Section 117 case law and the case cited as 2016 BCSC 1970 defines my role as the adjudicator. I must review the material delivered under subsection 117(6) and determine whether or not the conduct of the member appears to constitute misconduct. The law is clear that, because the adjudicator may become the discipline authority in relation to discipline proceedings, my job is not to reach conclusions about the conduct of the member; rather, it is to assess only whether it appears to constitute misconduct.
12. The review is a paper-based process of the record provided by the Commissioner. There are no witnesses or submissions. Section 117(1)(b) directs the adjudicator to make “her or his own decision on the matter.”

Reports and Material Considered

13. Pursuant to sec. 117 (6) the Commissioner provided the following materials for my review:
 - (a) FIR of Sergeant [REDACTED] and attachments described as: progress reports, OPCC notices, complainant’s statement, police officers’ statements, supporting documents, VPD Regulations and Procedures Manual and case law.

(b) Additionally, I have considered the Notice of Appointment of Retired Judge dated April 12, 2023, and the relevant case law and statutory authority.

Section 117(8)(a) Description of the Complaint and Conduct of Concern

14. The conduct of concern relating to Constables [REDACTED] and [REDACTED] arose out of the investigation of an alleged assault of [REDACTED] on January 27, 2022. Constable [REDACTED] spoke to Ms. [REDACTED] on the telephone and attempted to locate and interview the alleged assailant [REDACTED]. Constable [REDACTED] ended her investigation of the matter on March 19, 2022. The conduct of concern here is whether Constables [REDACTED] and [REDACTED] neglected their duty by failing to promptly and diligently investigate the alleged assault of Ms. [REDACTED].

Section 117(8)(c) - Allegation of Misconduct Considered

15. Having reviewed the evidence referenced in the FIR, I identify the following allegation of misconduct against Constables [REDACTED] and [REDACTED] that could appear to be substantiated:
1. Neglect of Duty pursuant to section 77(3)(m)(ii) of the Police Act by neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do.
16. I am mindful of the limitation to the definitions of misconduct in Section 77 found in Section 77(4):

77(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.

Section 117(8)(d)(i) Whether the Evidence Appears Sufficient to Substantiate the Allegation

17. Sergeant [REDACTED] as part of his investigation, reviewed the Notice of Admissibility and Registered Complaint. He interviewed the members and Ms. [REDACTED]. He reviewed the 911 call, the radio broadcasts, the Computer Aided Dispatch (CAD) report and emails and telephone calls of Ms. [REDACTED] and the members. This material is referred to in his FIR and forms part of the record forwarded to me by the Commissioner.
18. Having reviewed the Record I agree with Sergeant [REDACTED] that, for the most part, the evidence regarding the assault investigation is not in dispute. In the FIR at paragraphs 114 and 115 he writes:

Sgt. [REDACTED] submits that Cst. [REDACTED] and Cst. [REDACTED] had a duty to investigate Ms. [REDACTED] assault call. That Cst. [REDACTED] and Cst. [REDACTED] had a duty to respond to Ms. [REDACTED] and provide her updates. Sgt. [REDACTED] submits that Cst. [REDACTED] and Cst. [REDACTED] had completed these duties for the following reasons:

Cst. [REDACTED] and Cst. [REDACTED] attended Ms. [REDACTED] call on January 27, 2022. This is confirmed by Ms. [REDACTED] Cst. [REDACTED] and Cst. [REDACTED]

That Cst. [REDACTED] completed a GO on the day of the incident;

That Cst. [REDACTED] provided Ms. [REDACTED] victim services, which Ms. [REDACTED] confirmed in her audio statement. As well victim services completed a miscellaneous page on the GO on January 28, 2022;

That Cst. [REDACTED] called Ms. [REDACTED] on January 29, 2022 and advised Ms. [REDACTED] that she will attempt to contact Mr. [REDACTED]

That in Ms. [REDACTED] audio statement she states Cst. [REDACTED] was calling me all the time and that it was inconvenient to talk as she was busy;

That Ms. [REDACTED] left an email on February 14, 2022 to Cst. [REDACTED]

That Cst. [REDACTED] called Ms. [REDACTED] during the week of February 20-23, 2022;

That Cst. [REDACTED] received a phone message from Ms. [REDACTED] and notified Cst. [REDACTED] of the call on February 24, 2022. Cst. [REDACTED] advised Cst. [REDACTED] that she has been in contact with Ms. [REDACTED] and that she is the primary investigator for the file. Cst. [REDACTED] believed he had completed his duty to speak with the primary investigator;

That Cst. [REDACTED] puts herself back on the report call at the next available time she can continue the investigation on March 19, 2022;

Cst. [REDACTED] completed the file and notifies Ms. [REDACTED] of the

outcome;

That Ms. [REDACTED] calls and emails after the call from Cst. [REDACTED] to both members on March 20, 2022;

That Cst. [REDACTED] had already provided the update to Ms. [REDACTED] and again calls Ms. [REDACTED] back when she receives another request by Det/Cst [REDACTED] to contact Ms. [REDACTED] on May 25, 2022;

That email from Det/Cst [REDACTED] to Cst. [REDACTED] provides that Ms. [REDACTED] appeared satisfied at that time.

Sgt. [REDACTED] submits that Cst. [REDACTED] and Cst. [REDACTED] had not failed their duty to investigate Ms. [REDACTED] complaint and the Cst. [REDACTED] had kept Ms. [REDACTED] notified of the ongoing investigation until conclusion. Cst. [REDACTED] concludes the report call and notified Ms. [REDACTED] as such. Sgt. [REDACTED] submits that Cst. [REDACTED] completed a thorough report.

19. There appears to be some dispute between the members and Ms. [REDACTED] regarding dates, times and frequency of their communications. The members also questioned the nature of the relationship between Ms. [REDACTED] and Mr. [REDACTED] and whether Ms. [REDACTED] was more concerned with recovering compensation for a damaged jacket. The primary disagreement between the members and Ms. [REDACTED] has to do with the thoroughness of the investigation and what effort was made to interview Mr. [REDACTED]
20. In her formal complaint to the OPCC Ms. [REDACTED] wrote:

I called 911 once I got out of the trail and was at a safe distance away from the trail and his home. Officer [REDACTED] contacted me that evening and I explained to her what happened. She said that she would be contacting him for his statement. On Saturday night, Jan 29th, she informed me she could not get a hold of him because he was not answering his phone and she asked for his address so that she could go in-person to look for him. I gave her his address and informed her that he might be working graveyard shifts that week. She said she might go another day if he was not going to be home that night. She assured me that she would call me back soon with updates after speaking with him. However, I never heard back from her.

I took the initiative and called her on Feb 7th, Feb 14th, and March 20th, and left her voicemails to call me back. I also emailed her on Feb 14th, Feb 24th, and March 20th asking for updates. I obtained her work partner's (Officer [REDACTED]) name, badge number, and email from the non-emergency police line, and called him (via 311) and also emailed him. I expected that he would either update me or get Officer [REDACTED] to do so. But still, neither one of them responded.

For the 4 months that Officer [REDACTED] left me hanging without a response, I lived in constant fear and trepidation each day at the prospect of crossing paths with the assaulter on my daily route. I suffered from recurring flashbacks of the assaults, shaking, heart palpitations, insomnia, disturbed sleep, and disrupted concentration in carrying out my daily tasks. I had to take painkillers every day for the headaches and physiological tension that resulted from the anxiety that flooded me on a daily basis whenever I left my house, especially since the assaulter lives close to me.

It was only after I submitted the Question/Concern Form that Officer [REDACTED] finally contacted me on May 25th. It was her off-day; however, she had no hesitation calling me now that the Question/Concern Form had been submitted. It was obvious that before May 25th, she was knowingly and willfully “ghosting” me for the last 4 months. “Ghosting” was not a behavior I expected from any respectable law enforcement officer. She gave the excuse that she was too busy to call me back with updates, which is an unacceptable excuse given that she had 4 months to make a quick phone call or write a brief email, in addition to the multiple reminders and opportunities to respond to my calls and emails requesting her for updates.

In the phone call on May 25th, she told me that she was not able to get a hold of the assaulter back in January, and sheepishly recalled that she might have left him “at least 1 voicemail”. She had gone to his parents’ place and she found them to be “super nice”. They told her that “they had not been in contact with him for a long time and thought he was doing well”. She said that based on the information she had on him, she “did not think” I was in danger. Because he did not call her back, and there was no witness to the assault, she made no further efforts in the investigation and no more attempts at contacting him, and left it as that.

Needless to say, I was shocked and crestfallen to learn of her partiality favoring the side of the assaulter and her apathy towards the ordeal I suffered. If not for my coat taking the brunt of the assaults and becoming damaged, I would have been physically scathed. Yet, she trivialized the physical and mental trauma I went through, discredited my report, and let him off scot-free without even speaking to him,

without even warning him that his actions were unlawful and had been reported to the police. By doing so, she has not made it safer for me nor given me any peace of mind, and she is, in fact, approving, encouraging, and perpetuating his behavior and his violence towards me.

I had expected her to be impartial and to diligently follow through with a proper investigation, to speak to and issue a warning to the assaulter in order to deter and prevent future recurrences of assault and violence from him, and to make the public trail and the neighborhood feel safe and be safe again for me. I trusted her to uphold justice honorably, to protect the innocent and the vulnerable, to have integrity and empathy, and to be prompt and thorough.

However, she acted preferentially, abandoned the investigation entirely, denied me/withheld from me a timely update, and deliberately and repeatedly ignored my calls and emails over the span of 4 months. Likely she would have even ignored me indefinitely if not for me submitting the Question/Concern Form.

21. On January 6, 2023, Sergeant [REDACTED] interviewed Constable [REDACTED]. Constable [REDACTED] said, in preparing for the interview, she refreshed her memory from the GO report, the CAD report, her personal telephone logs and emails. She had not made notes of the incident in her police notebook. She was asked to describe the assault investigation. She recalled being dispatched to the call, speaking to Ms. [REDACTED] and advising her of the availability of victim services. She told Ms. [REDACTED] she would try to speak to Mr. [REDACTED]. Constable [REDACTED] told Sergeant [REDACTED]

Um, after that I calling him a number of times. One time I recall him answering, once I introduced myself as the police he hung up. I left a couple more voicemails. Two days later on January 29th I went to his PRIME address, which I think, he does not reside at, it was his parent's house, and I spoke with his parents. They said they are not in contact with him, he does not live there anymore, but they advised that from their understanding he was just trying to get his life around and he wasn't involved in (unintelligible). Um, January 29th (unintelligible) I called her and updated her back. She was very interested that I follow up with him again in regards to getting payments for the jacket he ripped. Uh, I again assured her that (unintelligible) facilitate um, she was pretty concerned about the cost of the jacket. Um, again I reiterated that (unintelligible) police (unintelligible) deal with. Um, she was a little bit quiet about the relationship between them, she said she was just a dog walker but then when I followed up with her the second day she said she actually knew his actual address. Um, which she provided to me at the time. But she said he'd be only be available during like the morning time, I guess he works afternoons (unintelligible). At that time I advised her that I could make further attempts to go to his home but as I was, at the time on delta shift (unintelligible) day-shift (unintelligible) follow up with (unintelligible). I did also advise her at that time there was still no further information in regards to putting in, forwarding any charges against him and still there were no witnesses and no further evidence (unintelligible) charges so unless he provided some of his statement the file would be closed at that time. So that was for January 29th.

Later in her interview she stated:

Um, the following Bravos between March 16th and 19th I did go to that address, he was not home. I called her again from a work phone, when I'm Charlie seven seven (unintelligible) phone from work, um, I left her a voicemail, advising the same information I had provided for her on 29th unless there were further updates the file is going to be closed.

And then the next time I had heard from her was from [REDACTED] in PSS, uh, on May the 24th that she had, she hadn't filed an official complaint yet but she was unhappy with the, the lack of update on the file. Uh, so I called her on my days off the following day on the 25th, um, and spoke with her at length (unintelligible) so just under an hour advising her an update from the file. Um, when I spoke to her she spoke as if I hadn't spoken to her on the 29th, as if I hadn't updated her, (unintelligible), um, and again bringing up that her jacket had been ripped. She was, she spoke as if I hadn't told her that I went to his parent's house and spoke to them. Um, as I spoke with her on 29th of January. Um, and by the time she told me she was satisfied with the phone call she honestly upset it took so long for me to get back to her and actually speak to her over the phone. Um, and the other times she was satisfied, uh, I was later updated repeatedly through the [REDACTED] uh, (unintelligible) in PSS that she was not satisfied and each update I received that she would agree to the resolution and then change her mind. And that went on for another month until she made a complainant.

22. On January 6, 2023 Sergeant [REDACTED] interviewed Constable [REDACTED] Constable [REDACTED] made no notes. He said Constable [REDACTED] took the role as lead investigator. He said that Ms. [REDACTED] emailed him on March 20, 2022 asking for an update from Constable [REDACTED] Constable [REDACTED]

told Constable [REDACTED] that Ms. [REDACTED] was looking for an update. Apart from one telephone message and this one email he had no other communication with Ms. [REDACTED]. Constable [REDACTED] mentioned to Sergeant [REDACTED] that Constable [REDACTED] had spoken to Mr. [REDACTED]. Constable [REDACTED] was not sure when this conversation took place but he recalled that Constable [REDACTED] said Mr. [REDACTED] believed Ms. [REDACTED] was trying to steal his dog and that he pushed her. Constable [REDACTED] told Sergeant [REDACTED] that Ms. [REDACTED] was not forthcoming about her relationship with Mr. [REDACTED] and that Ms. [REDACTED] appeared more concerned about the damage to her jacket. Constable [REDACTED] stated he felt Constable [REDACTED] took all the necessary investigative steps and followed up with letting Ms. [REDACTED] know.

23. On October 14, 2022, Sergeant [REDACTED] interviewed [REDACTED]. She said she met Mr. [REDACTED] in December 2021 and she described the incident on January 27, 2022 where she was pushed to the ground. Ms. [REDACTED] recalled her conversations with Constable [REDACTED] on January 27 and 29. She said after these calls she tried several times to communicate with the members. She recalled she made three telephone calls and sent three emails to Constable [REDACTED] and made one telephone call and sent one email to Constable [REDACTED]. The VPD Information Technology section located five emails sent to Constable [REDACTED]. She said she heard nothing from the members. In May 2023 she contacted the VPD Professional Standard Section (PSS) to request help in having Constable [REDACTED] provide an update. On May 25, 2022 Constable [REDACTED] telephoned Ms. [REDACTED]. Ms. [REDACTED] told Sergeant [REDACTED] that Constable [REDACTED] apologized for not calling. Constable [REDACTED] told Ms. [REDACTED] she had attempted to speak to Mr. [REDACTED] had left a message and had gone to his residence but could not locate him and that she had finished her investigation.

24. In the FIR, the investigator carefully analyzed the issue of whether the

members neglected their duty to promptly and diligently investigate the alleged assault of Ms. [REDACTED]. Sergeant [REDACTED] considered the case law and the relevant VPD Regulations and Procedures Manual. He referred to the decision in OPCC file 2011-6912 that discusses three statutory elements involved in a consideration of an allegation of neglect of duty including whether a duty exists in the circumstances and, if so, the nature of the duty. He reviewed the members' conduct having regard to whether they had a duty to investigate the allegation, whether they neglected this duty and whether they had good or sufficient cause to neglect the duty. Sergeant [REDACTED] concluded that Constable [REDACTED] and Constable [REDACTED] had a duty to investigate the allegation and inform Ms. [REDACTED] of the results of the investigation. He determined the members did not neglect their duty and that Constable [REDACTED] completed a thorough report.

25. I agree with Sergeant [REDACTED] the evidence and the record prove that the members had a duty to investigate the alleged assault. However, it appears that the nature of the duties of Constable [REDACTED] and Constable [REDACTED] were different.
26. Constable [REDACTED] took on the role of lead investigator. She interviewed Ms. [REDACTED] wrote the GO and was responsible for the contents of the GO including to ensure the document complied with the policies and requirements of the VPD Regulations and Procedures Manual (section 1.16 Report Writing). She communicated with Ms. [REDACTED]
27. The nature of Constable [REDACTED] duty appears to be limited to supporting and assisting Constable [REDACTED]. Apart from assisting his partner, Constable [REDACTED] was obliged to respond to Ms. [REDACTED] telephone message and email in a timely fashion. (VPD Regulations and Procedures Manual section 2.9(3)). The evidence establishes he advised

Constable ██████ in a timely fashion of Ms. ██████ request for an update. I am satisfied Constable ██████ did not neglect his duty and I find that his conduct does not constitute misconduct pursuant to section 117(10). Pursuant to section 117(11), this decision regarding Constable ██████ is not open to question or review by a court on any ground and is final and conclusive.

28. After considering the evidence, it appears there are questions as to whether Constable ██████ neglected her duty. Constable ██████ interviewed Ms. ██████ by telephone but apparently did not meet with her in person and take a statement. There appears to be questions regarding whether Constable ██████ provided full written details of the results of her investigation, including the dates, times, and locations of her efforts to contact Mr. ██████ and whether she, as Constable ██████ recalled, spoke to Mr. ██████ It does not appear that Constable ██████ kept any notes of this, or any other, conversation.
29. The issue to be determined at this stage is whether the evidence appears sufficient to substantiate misconduct. Based on the materials and evidence, I find the evidence appears sufficient to substantiate the allegation that Constable ██████ neglected her duty.

Conclusion and Next Steps

30. After reviewing the FIR and the evidence and records I am satisfied that the conduct of Constable ██████ appears to constitute misconduct.
31. I hereby notify the relevant parties of the next steps pursuant to sections 117(7) and (8) of the Police Act.

- a) Considering the factors in section 120 of the Police Act, I am willing to offer the member a prehearing conference.
 - b) I have determined that the range of disciplinary or corrective measures being considered for Constable [REDACTED] includes:
 - i. Require the member to undertake specified training or retraining.
 - ii. Give the member advice as to her conduct
32. The member may, pursuant to section 119(1) file with the discipline authority a request to call and examine or cross-examine one or more witnesses listed in the FIR. Such a request must be made within 10 business days of this notification.

Dated at Victoria British Columbia

May 4, 2023

David Pendleton

David Pendleton

Adjudicator