

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

AND

IN THE MATTER OF A DISCIPLINE PROCEEDING

AND

IN THE MATTER OF ALLEGATIONS OF MISCONDUCT

AGAINST

CONSTABLE [REDACTED]

OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S REASONS
FOR PROPOSED DISCIPLINARY OR CORRECTIVE MEASURES

Section 128(1)

(Supplement to Form 4)

TO: Constable [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section

AND TO: Mr. Kevin Westell (Member's Counsel)

AND TO: Mr. Clayton Pecknold (Commissioner)

1. Overview and Context

[1] These are my reasons for proposed corrective or disciplinary measures provided under Section 128(1) of the *Police Act*, following a finding of misconduct at a discipline proceeding against Constable [REDACTED] of the Vancouver Police Department.

These reasons accompany a Form 4 Disciplinary Disposition Record and will also accompany my subsequent report under Section 133.

[2] The misconduct involved the unnecessary use of force by application of a police service dog in connection with the arrest of a young person. The finding of misconduct, delivered on November 23, 2023 under Section 125(1)(b), included an outline of the circumstances.

[3] I found the member recklessly failed to adhere to police standards prohibiting the use of a police service dog to arrest a person by biting unless certain preconditions are met. The young person, who was [REDACTED] at the time, received several bite wounds to [REDACTED] leg and some bruising to [REDACTED] arm in connection with the arrest. [REDACTED] was admittedly arrestable for [REDACTED] shortly before the incident.

[4] I found that the member made a precipitous decision to confront the youth and a companion with the dog; failed to provide adequate warning before deploying the dog to apprehend the youth by biting; and failed to assess whether the risk of a bite was justified on reasonable grounds in light of certain prerequisite factors set out in the standards.

[5] The available disciplinary and corrective measures are set out in Section 126(1) of the Act and are considered in sequence in Part 2 below under the applicable headings. As an overriding factor, Section 126(3) of the Act states:

If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

[6] In the Section 117 Notification in relation to this matter, I proposed a range of disciplinary or corrective measures consisting of one of the following: advice as to conduct, verbal reprimand, written reprimand. I also proposed training or retraining in

BC Provincial Policing Standards (BCPPS) relating to the application of police service dogs.

[7] Counsel for the member, Mr. Westell, has made written submissions on the member's behalf, advancing "advice as to misconduct" as the only necessary and appropriate measure. For the reasons that follow I agree with counsel.

2. Section 126(2) Factors

(a) The seriousness of the misconduct

[8] The BCPPS state that a bite is the expected result when a police service dog is deployed for an arrest. Section 1.4 states:

Police dogs are ... intermediate weapons; police dogs bite. One of the tasks of police dogs is to apprehend suspects by biting... The potential for a dog bite is inherent in every deployment...

[9] In this case, there were several bites, with some subsequent scarring, or at least, persistent marks at the time of the youth's interview by the departmental investigator. The youth was [REDACTED] but the member was unaware of [REDACTED] age. The youth was admittedly causing mischief with [REDACTED] friend and clearly arrestable.

[10] In terms of the member's conduct, I have found that he was reckless as to whether the force he used was necessary. As an "intermediate weapon," a police service dog is comparable on the use of force framework to conductive energy weapons, bean bag shotguns, OC (pepper) spray, batons, etc.¹

[11] The BCPPS prohibits the use of a dog in circumstances where it may be expected to bite, unless certain preconditions are met. I found that several of those preconditions were not shown to have been present. In particular, I found that the member did not

¹ <https://opentextbc.ca/ethicsinlawenforcement/chapter/use-of-force-philosophy-theory-and-law/#:~:text=The%20National%20Use%20of%20Force,the%20Situation%20confronting%20the%20officer.>

provide a sufficient warning prior to deploying the dog to bite; and that he did not have reasonable grounds to believe: (1) that the youth was “fleeing”; (2) that immediate arrest was necessary; and (3) that the risk of a bite was justified in light of the seriousness of the offences, availability of lesser force options, and the risk of harm to the suspect. The lack of attention to these preconditions and the speed with which the incident appears to have unfolded suggest that the member either did not properly control the dog or rushed to conclusions regarding the fulfillment of the preconditions. The fact that in my view the member breached several aspects of the standards adds to the seriousness of the misconduct.

[12] In terms of mitigating factors, this occurred in the wee hours of the morning, in the dark, on a snowy night, the youths were clearly up to no good, and I have found that for whatever reason, the member was acting without backup, which perhaps enhanced the need for a quick decision in the heat of the moment. While I have found his conduct amounted to recklessness, it falls closer on the spectrum to neglect than to a malicious or cavalier use of force, and in this respect, I agree with counsel’s submission that there is no evidence of callousness, cruelty, ill will, or bad faith.

(b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct

[13] The member has no service record of discipline and has in fact received many commendations and positive performance appraisals during his policing career, which spans most of two decades. Copies of such entries have kindly been provided by his counsel. I am satisfied that he is a diligent, conscientious and proficient member of the department, including in his service relating to the use of a police service dog.

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career

[14] Counsel says the member anticipates no impact from the proposed measures.

(d) the likelihood of future misconduct by the member

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

[15] It is my practice to consider these two factors together. Counsel indicates that the member accepts the outcome of the discipline proceeding and is willing to accept advice as to conduct.

[16] I note that the materials reflect that the member qualifies with his dog annually to provincial standards and will have done so at least twice since this incident. I expect a conscientious officer like this member will have been attuned during those qualification exercises to the issues that arose in this matter and will have focused on areas in his annual qualification that are related to the findings that I made. I conclude that the experience of having had the complaint submitted and going through the disciplinary process, with this outcome, can only have a salutary effect on the member's conduct in any future similar situations.

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

[17] I noted in the reasons on the discipline proceeding that the wording of the VPD manual ("RPM") in relation to some of the police standards outlined in the BCPPS was slightly different; in particular, that the requirement in relation to the wording of the member's warning before a dog is deployed to apprehend by biting does not specify the components of it that are mandatory, as does that section of the BCPPS. (See paragraph 119 of Reasons dated November 23, 2023.) I will discuss this further below.

[18] I note as well that the expert that provided a report at the discipline proceeding, who is a VPD member and trainer, was strongly of the view that there was no misconduct in this matter, as was the investigator. I have previously observed that discipline authorities are rarely made aware of the impact of their recommendations or advice in relation to findings of misconduct, although the OPCC may track that information. I would hope that the findings in a case of this nature, to the extent they are not altered on any subsequent review, would be incorporated into training materials, or otherwise used to inform or adjust the nature of training in relation to similar situations.

[19] It may also be that the VPD will want to consider aligning the wording pertaining to the warning required prior to a bite in Section 1.13.1, paragraphs 8 and 9 of the RPM with that of Section 1.4.2, paragraphs (3) and (4) of the BCPPS; and also perhaps providing more guidance either in the manual or in training as to how such a warning might best be effectively communicated. Finally, I would hope some thought could be given to tailoring the form for a dog report or SBOR (see Reasons, paragraph 29), to include specific reference to the BCPPS Threshold factors, in light of my suggestion below that the member document his consideration of those factors in his reports.

[20] To the extent that the department may have trained to or accepted a different standard than that contained in the BCPPS, although I did not find that to be a lawful excuse, it would constitute a mitigating factor in this matter, supporting measures at the lower end of the scale.

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

[21] I have reviewed the following decision summaries contained in recent OPCC Annual Reports pertaining to misconduct in relation to bites by police service dogs or precipitous use of intermediate weapons:

1. 2022-2023 Annual Report:

- OPCC 2020-18524 – Vancouver Police - suspect not given an opportunity to comply before bitten – written reprimand
- OPCC 2018-15338 – Victoria PD – member failed to control dog when subject in an agitated state approached the police vehicle; member failed to properly document the incident – Transfer/reassignment; written reprimand.

2. 2021-2022 Annual Report:

- OPCC 2019-16763 – Vancouver Police – unnecessary premature use of taser – written reprimand & training

3. 2020-2021 Annual Report:

- 2019-16709 – Vancouver – unnecessary force by deployment of bean bag shotgun – training and one-day suspension
- 2019-16572 – Vancouver – unnecessary force by deployment of beanbag shotgun – advice as to future conduct

[22] In addition to the above entries, I note as a general observation that abuse of authority by excessive force, as misconduct without a service record of discipline, seems to result more often than not in a written reprimand.

(h) other aggravating or mitigating factors

[23] Other than the seriousness of the misconduct under Section 126(1)(a), there is no factor under Section 126(2) addressing the impact of the misconduct or the proposed measures on the affected person or the complainant. I will here note that the youth's father provided a comment by email pertaining to corrective measures, as he is permitted to do under Section 113, as follows:

Good morning, we have reviewed the final report and we're satisfied with the decision; therefore, we would appreciate that the full extent of the consequences be applied.

[24] Notably, at that point, the proposed consequences included training, but as I have previously observed, I understand that the member has undergone training in the nature of requalification each year since the incident, and I am hopeful that the lessons to be learned from the misconduct in this matter have been amply brought home.

3. Analysis and Conclusion

[25] There is not a lot of difference between measures of written or verbal reprimand, and advice as to conduct; and an adjudicator needs to be mindful of the overriding provision that corrective measures are to be favoured if the public interest does not demand otherwise. As I interpret that provision, measures lower on the list set out in Section 126(1) should be considered before those that are higher on the list.

[26] In light of the findings on the discipline proceeding and the above factors, I agree with the submissions of the member's counsel. I therefore propose that the only disciplinary or corrective measure the member will receive is advice as to conduct, in the following terms:

In future situations where you are called to assess the necessity of applying a police service dog to challenge or apprehend a person, you are advised to:

- (a) consider the availability of lesser force such as police presence or verbal commands;
- (b) consider the ability of the person to understand the commands they are being given, and the need for additional or clearer communication regarding your identity, the commands, and the risk of a dog bite;
- (c) consider the need for the person's immediate apprehension by a dog bite, or whether they could be apprehended at a later time; and
- (d) document and explain your decisions in relation to these factors in your associated police reports.

[27] In the past, I have made recommendations regarding policy at this stage, given the availability of this option invited by the wording in Section 133(2)(a)(ii), “and any policy changes being considered by the discipline authority in respect of the complaint.”

[28] As I stated in my reasons under Section 125(1)(b), in my view it would be advisable in future for the VPD to support the creation of a real-time record in situations involving the deployment of police service dogs, whether that be through a recorded police radio channel or through body-worn cameras.

[29] I also make the recommendations in relation to training and policy that are contained in paragraphs 18 and 19 above.

DATED this 21st day of December, 2023.



Carol Baird Ellan, KC, Ret'd PCJ
Discipline Authority