



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

CONCLUSION OF PROCEEDINGS

Pursuant to s.133(6) of the *Police Act*, RSBC 1996 c.367

OPCC File: 2021-19727
March 15, 2024

To: Mr. [REDACTED] (Complainant)

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

And to: The Honourable Judge Carol Baird Ellan (ret'd) (Discipline Authority)
Retired Judge of the Provincial Court of British Columbia

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

The Office of the Police Complaint Commissioner (OPCC) completed its review of the decision issued by the Discipline Authority pursuant to section 133 of the *Police Act* in this matter. The Discipline Authority found the following allegation to be substantiated:

1. *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A) of the *Police Act*; specifically, the member intentionally or recklessly using unnecessary force when he deployed a police service dog to arrest a person.

Discipline Proposed

- A. Advice as to Conduct: 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;

Prabhu Rajan
Police Complaint Commissioner

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- 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.

The complainant and the member were provided a copy of the Discipline Authority's findings in relation to the allegation of misconduct and determination on appropriate disciplinary or corrective measures at discipline proceeding. The complainant and the member were informed that if they were aggrieved by either the findings or determinations, they could file a written request with the Police Complaint Commissioner to arrange a Public Hearing or Review on the Record. Pursuant to section 136(1) of the *Police Act*, such a request must be filed within 20 business days of receipt of the review of discipline proceedings.

On February 6, 2024, my Office received a request from the member via counsel requesting that the Police Complaint Commissioner exercise his authority to arrange a Public Hearing or Review on the Record pursuant to the *Police Act*.

Based on a review of the available evidence, I am satisfied that the Discipline Authority appropriately determined the allegation of *Abuse of Authority* to be substantiated on the basis of the reasoning provided.

Specifically, the evidentiary record appears to support the conclusion that: the member's decision to confront the suspects with the dog, in the absence of confirmation that the surveillance officers would participate in the arrest, was neither objectively nor subjectively reasonable; the member failed to provide an adequate warning to the youths and was reckless as to whether the youths understood what was being asked of them; the member's belief that the suspects were actually fleeing was not reasonable; and that the member's decision to effect an immediate apprehension with the dog was not reasonably necessary.

As such, based on a review of the Discipline Authority's finding under section 125, I do not consider there is a reasonable basis to believe the finding is incorrect. The Discipline Authority provided a comprehensive review and analysis of the evidentiary record in reaching her decision and such decision appears reasonable in the circumstances.

Furthermore, in consideration of all the relevant factors in this case, I do not consider that there is a reasonable basis to believe that the Discipline Authority incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128 of the *Police Act*. Specifically, while the imposition of advice as to the member's conduct appears to fall toward the lower end of the range of acceptable disciplinary or corrective measures, the Discipline Authority conducted a thorough, balanced, and complete analysis of section 126 and appropriately imposed a disciplinary measure that is corrective in nature.

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Additionally, we note that the advice provided by the Discipline Authority appears consistent with the requirements set out in the BC Provincial Policing Standards.

With respect to public interest, I have considered all the relevant factors including the nature and seriousness of the misconduct and the harm suffered by the youth. I have also considered that this matter has proceeded through an investigation, a review by a retired judge, and a discipline proceeding before a retired judge where further investigation was conducted.

Additionally, I do not consider that the Discipline Authority's consideration and treatment of the expert evidence resulted in any procedural fairness issues, such that further adjudicative review is required.

Therefore, there are insufficient grounds to arrange a public hearing or review on the record in the circumstances. The decision to conclude this matter is final and this office will take no further action.

In relation to the substantiated allegation, the disciplinary or corrective measure imposed is approved. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.

Prabhu Rajan
Police Complaint Commissioner