

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

and

**IN THE MATTER OF A DISCIPLINE HEARING INTO THE COMPLAINT  
OF MISCONDUCT AGAINST**

**CST. [REDACTED] AND CST. [REDACTED]**

**OF THE VICTORIA POLICE DEPARTMENT**

**FINDINGS AND REASONS OF DISCIPLINE AUTHORITY**

(Pursuant to s. 125(1)(b) of the *Police Act*, RSBC 1996 C. 367)

- NOTICE TO: Mr. [REDACTED], Complainant
- AND TO: Constable [REDACTED], Member
- AND TO: Constable [REDACTED], Member
- AND TO: Sergeant [REDACTED] Investigating Officer  
c/o Victoria Police Department, Professional Services  
Division
- AND TO: Inspector [REDACTED], Discipline Authority  
c/o Victoria Police Department
- AND TO: Prabhu Rajan, Police Complaint Commissioner

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**EXECUTIVE SUMMARY**

Officers arrested and searched the occupants of a vehicle for possession of drugs for the purpose of trafficking without reasonable grounds. Complaints were made that they arrested (s. 77(3)(a)(i)) and searched (s. 77(3)(a)(ii)) the suspects without good and sufficient cause. The inexperienced officer relied on his more experienced partner to determine whether there were

reasonable grounds to arrest and search the driver. He was found to have good and sufficient cause to arrest and search even though he had insufficient grounds to arrest and search the passenger. The Complaints against him were dismissed.

The other member was found to have insufficient grounds and no good and sufficient cause to arrest and search the passenger. Those Complaints were substantiated.

Complaints were also lodged against the officers for not submitting a General Occurrence report as required by Policy AF170 and failing to make notes of the incident. The Complaints were dismissed because the Policy did not indicate when the report needed to be submitted and no evidence was led of a policy that required the officers to make notes.

## I. DEFINITIONS

In this decision I will refer to:

- a. Constable [REDACTED] as Member A;
- b. Constable [REDACTED] as Member B;
- c. Members A and B collectively as the Members;
- d. Mr. [REDACTED] as the Driver;
- e. Mr. [REDACTED] as the Passenger;
- f. The Driver and Passenger collectively as the Suspects; and
- g. The interaction between the Members and the Suspects on March 16, 2023 as the Incident;
- h. Sergeant [REDACTED] of the Victoria Police Department Professional Standards Section as the Investigating Officer;
- i. Police Complaint Commissioner Prabhu Rajan as the Complaint Commissioner;
- j. [REDACTED], Victoria, B.C. as the Shelter;
- k. The *Police Act*, R.S.B.C. [1996], Ch. 337 as the Act;

- I. *The Controlled Drugs and Substances Act, (S.C. 1996, Ch. 19)* as the CDSA;
- m. Substance(s) included in Schedule I, II, III, or IV of the CDSA as a drug(s);

## II. THE HISTORY OF THE COMPLAINT

1. On March 16, 2023 the Members stopped a [REDACTED] (" [REDACTED] operated by the Driver after observing the commission of several driving offences. The Passenger was in the front passenger seat.
2. They arrested the Suspects for possession of drugs for the purpose of trafficking contrary to section 5(2) of the CDSA and searched them for evidence and weapons. Member A searched the [REDACTED] and seized money, several cellphones and a machete. Eventually the Members released the Suspects without charges.
3. Later that day the Passenger filed a written complaint arising out of the Incident against the Members at the Office of the Police Complaint Commissioner.
4. On March 30, 2023 the Police Complaint Commissioner admitted the complaint.
5. On April 17, 2023 the Investigating Officer was assigned to conduct the *Police Act* investigation.
6. On October 31, 2023 the Investigating Officer filed a Final Investigation Report ("FIR") that dismissed:
  - a. COMPLAINT 1: That the Members committed Abuse of Authority contrary to s. 77(3)(a)(i) of the Act by arresting the Suspects without good and sufficient cause;
  - b. COMPLAINT 2: That the Members committed Abuse of Authority pursuant to s. 77(3)(a)(ii) of the Act by searching the Suspects without good and sufficient cause; and
  - c. COMPLAINT 3: That the Members committed Neglect of Duty contrary to s. 77(3)(m) of the Act by failing to promptly make notes or

submit a General Occurrence report of the Incident without good or sufficient cause.

7. On November 15, 2023 the Discipline Authority confirmed the dismissals of the Investigator.
8. The Police Complaint Commissioner disagreed with the Discipline Authority and on December 12, 2023 appointed me to review the findings and conclusions of the Discipline Authority.
9. I conducted a review pursuant to s. 117(7) of the Act and ruled that there appeared to be allegations capable of substantiating:

COMPLAINT 1: That the Members committed Abuse of Authority contrary to s. 77(3)(a)(i) by arresting the Suspects for possession of drugs for the purpose of trafficking contrary to s. 5(2) of the CDSA without good and sufficient cause;

COMPLAINT 2: That the Members committed Abuse of Authority contrary to s. 77(3)(a)(ii) by searching the Suspects without good and sufficient cause; and

COMPLAINT 5: That the Members committed Neglect of Duty contrary to s. 77(m)(ii) by not promptly and diligently making notes and filing a General Occurrence report on the Incident without good or sufficient cause.

10. I dismissed:

COMPLAINT 3: That Member A committed misconduct by searching the [REDACTED] and

COMPLAINT 4: That Member A committed misconduct by failing to inform the Driver of his rights under section 10 of the *Canadian Charter of Rights and Freedoms*, Being part of the Constitution Act, 1982.

**III. DID THE MEMBERS COMMIT ABUSE OF AUTHORITY CONTRARY TO SECTION 77(3)(I) OF THE ACT BY ARRESTING THE SUSPECTS WITHOUT GOOD AND SUFFICIENT CAUSE?**

11. Section 495(a) of the *Criminal Code of Canada*, R.S.C. 1985, Ch. C-46 provides that a peace officer may arrest a person who he believes, on reasonable grounds, has committed an indictable offence.
12. Section 5(2) of the CDSA makes it an indictable offence to possess drugs for the purpose of trafficking.
13. The Supreme Court of Canada, in *R. v. Storrey*, [1990] 1 S.C.R. 241 ruled that a police officer must subjectively have reasonable and probable grounds on which to base an arrest and those grounds must, in addition, be justifiable from an objective point of view.

**IV. DID THE MEMBER A HAVE REASONABLE AND PROBABLE GROUNDS TO ARREST THE DRIVER?**

14. Member A relied on the following evidence to form the grounds to arrest the Driver:
  - a. The ██████ entered a busy highway from the Shelter;
  - b. Poor driving;
  - c. The Driver did not immediately stop when signalled;
  - d. The Driver looked nervous;
  - e. The Driver tried to hide money in the console; and
  - f. Numerous PRIME database files related to the Driver.
15. Member A found cellphones and a machete in the ██████ but they were found after the arrests so could not be used to justify the search.
  - a. **The ██████ entered a busy highway from the Shelter**
16. The Shelter was notorious for drug activity.

17. Member A had seen the [REDACTED] a “couple of times” before at other shelters. The other shelters were not identified, no dates were given for the previously sightings, and Member A did not identify the Driver as operating the car on those occasions.
18. Apart from the Driver being in a vehicle that left from the Shelter, there was nothing more that connected him to that place.
19. Finding a person near a place notorious for drug activity was not evidence of the presence of drugs.

**b. Poor driving**

20. Member B had to brake to avoid a collision when the [REDACTED] suddenly backed out onto the highway. The vehicle then changed lanes without signalling.
21. Neither Suspect appeared be under the influence of drugs or alcohol.
22. Bad driving was not evidence of the presence of drugs.

**c. The [REDACTED] did not immediately stop when signalled**

23. After Member A activated the lights and siren, the [REDACTED] went a further 250 metres before parking in a strip mall.
24. The Members opined that most people immediately stopped when signalled by the police. In their experience offenders often delayed stopping to evade arrest or to buy time to hide drugs or other evidence.
25. In this case the [REDACTED] continued at a speed under the speed limit and made no attempts to elude the Members.
26. The Members could see into the [REDACTED] from behind but reported no movements consistent with hiding or disposing of evidence. Their view, however, was obstructed by the seats.

27. The Members never inquired of the Driver why he did not stop. It may have been that the Driver chose not to stop on a busy highway where he would be exposed to the inquiring looks from the many people in cars.
28. Failure to immediately stop when signalled was not evidence of the presence of drugs.

**d. The Driver looked nervous**

29. The Driver appeared nervous, rigid and tended to avoid looking at Member A.
30. Nervousness is a common reaction to being stopped by the police.
31. Nervousness in these circumstances was not evidence of the presence of drugs.

**e. The Driver tried to hide money in the centre console**

32. Member B told Member A that he had seen the Driver surreptitiously push the lid of the centre console down whenever it popped open to reveal a “whole bunch of crumpled \$20 bills.”
33. Member B opined that \$20 bills were the most common denomination used in street drug transactions. He further noted money used in drug transactions were usually crumpled unlike those that had been freshly drawn from an ATM.
34. \$20 bills are commonly used in many cash transactions and crumpled bills are not uncommon.
35. Both Members noted that most people kept cash in their wallets or pockets not in the console of a convertible where they could easily be blown away.
36. Member B thought that the Driver was trying to hide the money.
37. Neither Member asked the Driver why he had the money in the console.

38. Member A testified that since these events, he received training that a centre console was a convenient place to store cash in a dial-a-dope transaction which usually consisted of a quick exchange of drugs for cash through a car window. The dealer often used the console as a convenient place to hide money and to keep the money made in dealing separate from his personal cash.
39. This may have been helpful information but it was not considered by the Members at the time so is not relevant to whether they had sufficient grounds for arrest.
40. There was no evidence of whether a “whole bunch” of \$20 bills was an inordinate amount for a person to have.
41. In this case the possession of the money was not evidence of presence of drugs.

**f. Numerous PRIME database files relating to the Driver**

42. Member A ran the [REDACTED] licence plate number through the police databases and found that the Driver was the registered owner. He also found a number of files on the PRIME database (“PRIME”) including several for trafficking, possession and property crimes in which the Driver had been a person of interest, suspect or person charged. The database did not show that the Driver had been convicted of any offense.
43. The information on PRIME is unsworn and from sources of unknown credibility and reliability.
44. The fact that the police had investigated the Driver numerous times is not an indicator that that he was a criminal or that he had a propensity towards criminal activity.
45. The PRIME files related to the Driver were not evidence of the presence of drugs.

## **Ruling**

46. Reasonable grounds to arrest pursuant to section 5(2) of the CDSA for possession of drugs for the purpose of trafficking required evidence of the presence of drugs. There was no such evidence in this case.
47. There were no reasonable grounds for Member A to arrest the Driver.

### **V. DID MEMBER A HAVE GOOD AND SUFFICIENT CAUSE TO ARREST THE DRIVER?**

48. The caselaw differentiates between “without reasonable grounds” and “without good and reasonable cause.”
49. Complaint of Catherine Crockwell, Nfld. Adj. 26 May 1998 p. 24 provides that:

Conduct necessary to establish an offence under Section 3(1)(a), however is qualified by the words “without good or sufficient cause”. An officer is not guilty of this offence simply on the basis that his arrest or detention is established to be unlawful. Additionally it must be established that the officer acted without good or sufficient cause.

Case law establishes that the words “good and sufficient cause” is descriptive of behaviour which is done in good faith, behaviour which is not arbitrary, irrational, unreasonable or irrelevant to the duties which rests upon police officers. The phrase, in my view, is broad enough to include an officer acting in good faith but acting under mistake of fact as well as mistake of law. Mistake of law is not a defence to an offence but I have already concluded that Mr. Crockwell’s arrest was unlawful in the first instance. In considering good faith conduct, it makes no difference if the reasons for an officer’s mistaken belief, is prompted by a mistake of fact or a mistake of law. I therefore do not conclude an officer is guilty of acting “without good or sufficient cause” simply because an arrest or detention is determined unlawful.

50. "Good and sufficient cause" is the objective standard of what a reasonable police officer with similar training, knowledge, skills and experience would have done in the same circumstances.
51. Member A had been on active duty about 7 months with little experience in drug investigations.
52. Member A stated that traffic stops were dynamic, inherently dangerous situations and that their decisions to arrest must be reviewed in the urgency of those circumstances.
53. At the time that the Members considered whether there were sufficient grounds to arrest the [REDACTED] was parked, the Members had approached the vehicle, looked inside it, conversed with the Suspects, taken documents from the Driver, returned to the police vehicle and processed the vehicle and Driver's information through the databases. The perceived threat that the Suspects would flee or try to do harm to the officers had dissipated. This was no longer a substantially dynamic situation.
54. At hearing Member A correctly defined reasonable grounds to believe as "reasonably likely" and was familiar with the terms "subjective belief" and "objective facts".
55. An arrest in a drug case is so rudimentary to the duties of an officer that Member A would have received training in the requirements needed for reasonable grounds to arrest for possession of Drugs.
56. There was no evidence that Member A lacked training.
57. Member A was partnered with Member B, an officer of 17 years experience, most of it in drug investigations.
58. In his statement Member B said;  
  
...they're delaying being pulled over and now we have this, you know the money, which in my experience, like okay, it's two easy strikes. You guys are totally, definitely involved in drug trafficking.

...But then [Member A] gets the driver's DL, he goes to the car and I just tell him, Hey (sic), like I told [Member A] my observations about the money and ...about the driver being quite nervous and trying to conceal the money (undecipherable). In my experience, that will likely be dealing...I don't know but I told [Member A] like, yeah, we should, uh, just arrest him and find out what's going on. Get to the bottom of this.

59. Member A admitted that he relied on Member B when he formed the grounds to arrest as his partner had a lot more experience with drug trafficking. Member B said he would have spoken up if he did not think there were grounds but that would be unlikely since he was relying on his partner for that information.

60. It would have been reasonable for an inexperienced officer like Member A to have deferred to his older and substantially more experienced and knowledgeable partner.

### **Ruling**

61. I find that Member A by relying on Member B, was induced into mistakenly believing that there was sufficient reasonable grounds to legally arrest the Driver. This was a mistake of law.

62. I find that the Member A had good and sufficient grounds to arrest the Driver and dismiss this allegation as unsubstantiated.

### **VI. DID MEMBER B HAVE REASONABLE GROUNDS TO ARREST THE PASSENGER?**

63. The Passenger was not in control of the [REDACTED] so the none of the driving evidence applied to him.

64. The Driver was the only one dealing with the money in the console.

65. Member B stated that the Passenger was the registered owner of the vehicle and attributed the PRIME history to him. This was clearly incorrect since Member B did not know the Passenger's name before he arrested him. Without a name Member B could not have ascertained that the

Passenger was the registered owner of the [REDACTED] or searched him on the databases.

66. The only evidence Member B had was that the Passenger had been in a car that came out of the driveway of a place notorious for drug activity.

### **Ruling**

67. Member B did not have reasonable grounds to believe that the Passenger possessed drugs for the purpose of trafficking.

### **VII. DID MEMBER B HAVE GOOD AND SUFFICIENT GROUNDS TO ARREST THE PASSENGER?**

68. Section 77 of the Act provides that:

(3) ...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 or sufficient reason.

69. The harshest punishment available to the Canadian justice system is to take away a person’s freedom. To arrest a person is to take away that person’s freedom.

70. To intentionally or recklessly arrest a person without good and sufficient cause, as defined by section 77(3)(a), is oppressive conduct so no further proof that the arrest was oppressive is required once section 77(3)(a)(i) is proven.

71. Member B maintains that, at the time of arrest, he believed that he had proper grounds to arrest the Passenger.

72. Member B had extensive experience and training in drug matters. An officer of the same training and experience as Member B would immediately have known that no grounds existed to arrest of the Passenger

73. I cannot accept that Member B, given his extensive experience and training in drug enforcement, could have mistakenly believed the evidence was good and sufficient to arrest the Passenger.

### **Ruling**

74. I conclude that Member B did not have a subjective belief that sufficient grounds existed to arrest the Passenger for possession of drugs for the purpose of trafficking.

75. I find that he did not act in Good Faith.

76. I find that the allegation that Member B committed Abuse of Authority contrary to section 77(3)(a)(i) of the Act has been substantiated.

### **VIII. DID THE MEMBERS COMMIT ABUSE OF AUTHORITY CONTRARY TO SECTION 77(3)(a)(ii)(B) OF THE ACT BY SEARCHING THE SUSPECTS WITHOUT GOOD AND SUFFICIENT CAUSE?**

77. Section 77(3)(a)(ii)(B) of the Act defines Abuse of Authority to include “intentionally and recklessly” searching a person without good and sufficient cause.

78. The searches of the Occupants were made incidental to or arising from their arrests so their lawfulness will depend on the lawfulness of the arrests.

79. Member A arrested the Driver without reasonable grounds but with good and sufficient grounds so the arrest occasioned no misconduct.

80. Member A would have continued to act under the mistake of law that that he had reasonable grounds to arrest the Driver when he searched him.

81. Member B arrested the Passenger without reasonable grounds and without good and sufficient grounds. He did not believe that he had

reasonable grounds or good and sufficient grounds to search the Passenger.

### **Ruling**

82. I find that Member A had good and sufficient reason to search the Driver and dismiss the Complaint.

83. I find that Member B did not have good and sufficient grounds to search the Passenger and substantiate this Complaint.

### **VIII. DID THE MEMBERS COMMIT NEGLIGENCE OF DUTY CONTRARY TO SECTION 77(3)(m) OF THE ACT BY FAILING TO PROMPTLY SUBMIT A GENERAL OCCURRENCE REPORT WITHOUT GOOD OR SUFFICIENT CAUSE?**

84. Victoria Police Department Policy AF170 provides that:

3.1 General Occurrence (GO) report must be submitted where:

3.1.1 Reason to believe an offence has been committed;

3.1.2 An arrest

85. Section 77(3) of the Act provides that:

[A]ny of the conduct described in the following paragraphs constitutes a disciplinary breach of a public trust, when committed by a member:

(m) “neglect of duty”, which is neglecting, without good and sufficient cause, to do any of the following:

(ii) promptly and diligently do anything that it is one’s duty to do.

86. Member A had reason to believe that the Driver committed an offence and arrested him. This triggered the requirement that a General Occurrence report must be submitted.

87. Member A did not think he had to submit a report because:

(a) The Suspects were released without charge so it did not justify submitting a report; and

(b) Member B or the officer in charge should have submitted the report.

88. Member B's arrest of the Passenger similarly triggered an obligation under Policy AF170 yet he submitted no General Occurrence report for over a month.
89. The Policy does not stipulate when the report must be submitted. In this case a General Occurrence report was filed April 17, 2023 so there had been compliance with the Policy.

### **Ruling**

90. I dismiss the allegation against both Members on that ground that there has been compliance with Policy AF170 3.1.
91. The Policy also does not stipulate which officer must submit the report when more than one officer is involved. Member A said that, not being the officer in charge, he was not responsible to submit the report. Member B did not comment on that point.
92. The Policy appears to contemplate that only one General Occurrence report need be submitted. But the Policy is unclear as to which Member in this case was responsible to submit the report.
93. However, as I have dismissed these Complaints on other grounds, I do not have to consider this aspect and make no decision on this issue.

### **IX. DID THE MEMBERS COMMIT NEGLIGENCE OF DUTY CONTRARY TO SECTION 77(3)(m) OF THE ACT BY FAILING TO PROMPTLY MAKE NOTES OF THE INCIDENT WITHOUT GOOD OR SUFFICIENT CAUSE?**

94. Neither Member made notes of the Incident. Notes are absolutely necessary as a tool for investigators. If Member A had made notes then he would have known the exact number of cellphones he found, where he found them and where he found machete. If Member B had notes he would not have attributed the PRIME history to the Passenger.
95. Even though the Members conceded that they should have made notes, no Policy was entered into evidence that required the Members make notes.

## **Ruling**

96. There was no evidence of a policy requiring the Members to make notes. I dismiss those Complaints.

## **X. CONCLUSION**

97. In this proceeding I substantiated:

- a. A COMPLAINT that Member B did commit Abuse of Authority contrary to section 77(3)(a)(i) by arresting the Passenger without good and sufficient cause; and
- b. A COMPLAINT that Member B did commit Abuse of Authority contrary to section 77(3)(a)(ii)(B) by searching the Passenger without good and sufficient cause;

98. I dismissed:

- c. A COMPLAINT that Member A did commit Abuse of Authority contrary to section 77(3)(a)(i) of the Act by arresting the Driver without good and sufficient cause;
- d. A COMPLAINT that Member A did commit Abuse of Authority contrary to section 77(3)(a)(ii)(B) of the Act by searching the Driver without good and sufficient cause;
- e. COMPLAINTS that the Members did commit neglect of duty contrary to section 77(3)(m) of the Act by failing to promptly submit a General Occurrence report of the incident without good or sufficient cause; and
- f. COMPLAINTS that the Members did commit neglect of duty contrary to section 77(3)(m) of the act by failing to promptly make notes of the incident without good or sufficient cause.

## **XI. NEXT STEPS**

99. Pursuant to section 125(1)(d) of the Act, I invite Member B to make submissions regarding appropriate disciplinary or corrective measures for the substantiated COMPLAINTS set out in paragraph 97.

100. Pursuant to section 125(2), those must be submitted in writing within 10 business days of the member receiving a copy of the Form 3 in this matter.

A handwritten signature in black ink, appearing to be 'M. Takahashi', written in a cursive style.

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M. Takahashi, PCJ (ret.)

Dated: October 28, 2024