

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

**DISCIPLINE AUTHORITY'S REASONS FOR DISCIPLINARY AND
CORRECTIVE MEASURES**

(Pursuant to s. 128(1) of the *Police Act*, RSBC 1996 C. 367)

NOTICE TO: Mr. [REDACTED], Complainant
AND TO: Chief Constable D. Manak, Victoria Police Department
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

EXECUTIVE SUMMARY

On March 16, 2023 the Member committed Abuse of Authority by:

1. Arresting the Complainant without good and sufficient grounds contrary to section 77(3)(a)(i) of the Police Act; and
2. Searching the Complainant without good and sufficient grounds contrary to section 77(3)(a)(ii)(B) of the Police Act.

Disciplinary or Corrective Measures:

1. Counselling and treatment as directed and suspension without pay for 4 days; and
2. Suspension without pay for one day.

DEFINITIONS

1. In this decision I will refer to:
 - a. Constable [REDACTED] as the Member, and
 - b. Mr. [REDACTED] as the Complainant.

FACTS

2. On March 16, 2023 at Victoria, British Columbia the Member and his partner stopped a vehicle for driving violations. The Complainant was a passenger in the front passenger seat. The Member purported to arrest and search the Complainant for possession of drugs or controlled substances for the purpose of trafficking contrary to section 5(2) of the *Controlled Drug and Substances Act*, S.C. 1996, Ch. 19.
3. On October 28, 2024, after a Discipline Proceeding, I found that the Member committed:
 1. Abuse of Authority contrary to section 77(3)(a)(i) by arresting the Complainant without good and sufficient cause; and
 2. Abuse of Authority contrary to section 77(3)(a)(ii)(B) by searching the Complainant without good and sufficient cause.

ANALYSIS

4. This is the hearing to impose disciplinary or corrective measures to the Member.

5. Section 126 of the *Police Act*, R.S.B.C. [1996], Ch. 337 requires me to consider:

(2) Aggravating and mitigating circumstances in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of the member, including, without limitation,

(a) the seriousness of the misconduct,

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

(c) the impact of proposed disciplinary or corrective measures on the member and on the member's family and career,

(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,

(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,

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

(h) other aggravating or mitigating factors.

(3) 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.

(a) the seriousness of the misconduct

The Arrest

6. The Member, knowing he was without proper grounds, arrested the Complainant. The Member had no good and sufficient cause to make the arrest.

7. The arrest and search deprived the Complainant of his liberty for the time it took to be read the Charter of Rights and Police Warnings and for Member A to search the vehicle. A matter of 5-8 minutes.

8. Counsel for the Member submits that the Complainant's loss of liberty was only a few minutes and he suffered no injury, loss or damage to property.

The Search

9. The Member did a pat down search of the Complainant that included the back of his hand having momentary contact with the Complainant's crotch.

10. The search was conducted in public near the police vehicle.

(b) the Member's service record and past misconduct

(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

11. Subparagraphs (b), (d) and (e) are closely linked so I will deal with them together.

12. The Member has no record of disciplinary misconduct. His performance evaluations are exemplary. In 2021 he was described as exceeding all core competences including coaching, communication, community focus, leadership, problem solving, decision-making and resource management.

13. The 2019 evaluation described him as a hard worker and excellent overall with a high level of knowledge, skills and ability.

14. The 2015 and 2012 evaluations similarly described the Member.
15. Counsel submits that the Member accepts responsibility for the misconduct and is willing to take steps to prevent a reoccurrence.

(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

16. Member's counsel submits that this provision does not apply.
17. There was no evidence of what action, if any, the Member's supervisor took.

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

18. No cases were provided.

(h) other aggravating or mitigating factors

19. Counsel submits that this provision does not apply.
20. The Member was partnered with an officer with little experience.

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

22. The Member is married [REDACTED] and they have [REDACTED].
23. Counsel submits that a suspension and wage loss would impact his family and could affect his career trajectory.

DECISION

24. The Member acted in bad faith in arresting the Complainant. Regardless of the length of the detention, this was serious misconduct.

25. The Member was in a position of a mentor to a substantially less experienced officer. His actions were an inappropriate example of how to conduct a criminal investigation.

26. Police officers are the usual point of contact between the police department and the public. Officer misconduct brings the police department and the administration of justice into disrepute.

27. Regardless of the length of the detention, this was serious misconduct.

28. The search was made incidental to the arrest. Once the arrest was made, the search followed as a matter of course and did not require the officer to consider additional justifications. The search was not substantially intrusive but may have been embarrassing to the Complainant. I find the search to be moderately serious misconduct.

26. The Member offers no explanation why the misconduct occurred or what he needs to do to prevent a recurrence.

27. The Member says he will take steps to prevent a recurrence but without knowing why it occurred it is impossible to determine what, if any, rehabilitation would be appropriate.

28. In these circumstances the likelihood that the Member will commit future misconduct cannot be determined.

29. The mitigating circumstance is that the Member had been in service for 15 years with exemplary annual reviews and no record of misconduct.

30. Dismissal or reduction in rank, given the lack of any previous misconduct, would be inappropriate.

31. The Member is a highly experienced and mature member of the force. A reprimand or advice as to his conduct would trivialize the misconduct and be an insult to him.

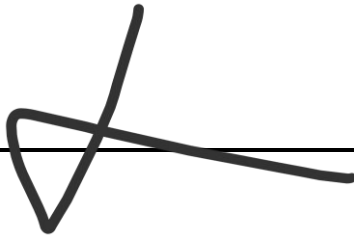
32. Yet to not provide a significant consequence would bring the reputation of the police complaints process and the administration of justice into disrepute.

33. For Abuse of Authority by arresting the Complainant without good and sufficient cause I order:

(a) the Member to take counselling as directed by the Chief Constable of the Victoria Police Department to determine why this misconduct occurred and treatment to prevent its recurrence; and

(b) suspend the Member 4 days without pay.

34. For Abuse of Authority by searching the Complainant without good and sufficient cause I suspend the Member one day without pay.

A handwritten signature in dark ink, consisting of a stylized 'M' and 'T' combined, written over a horizontal line.

M. Takahashi, Discipline Authority

Dated: December 7, 2024