



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 2023-23532

February 4, 2025

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

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

And to: Chief Constable Del Manak
c/o Victoria Police Department
Professional Standards Section

The Office of the Police Complaint Commissioner (OPCC) completed its review of the decision issued by the Honourable Judge Mark Takahashi (Discipline Authority) pursuant to section 133 of the *Police Act* (Act) in this matter. The following allegations were found to be substantiated by the Discipline Authority with proposed discipline or corrective measures:

1. *Abuse of Authority*, pursuant to section 77(3)(a)(i) of the *Police Act*; specifically, Constable [REDACTED] arresting the complainant without good and sufficient cause.

Discipline Proposed:

- a. Counselling and treatment as directed and suspension without pay for 4 days.

2. *Abuse of Authority*, pursuant to section 77 (3)(a)(ii)(B) of the *Police Act*, specifically, Constable [REDACTED] searching the complainant without good and sufficient cause.

Discipline Proposed:

- a. Suspension without pay for one day.

Prabhu Rajan
Police Complaint Commissioner

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Constable [REDACTED] was provided a copy of the Discipline Authority's findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures. Constable [REDACTED] was informed that if they were aggrieved by either the finding or determination, 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 Act, such a request must be filed within 20 business days of receipt of the review of discipline proceedings.

On January 8, 2025, our office received a request from Constable [REDACTED] (the "Request"), asking that the Police Complaint Commissioner exercise his authority to arrange a Review on the Record pursuant to the *Police Act* in relation to the decision on disciplinary and corrective measures.

Constable [REDACTED] does not take issue with the findings of misconduct in the circumstances of the case. However, the Request adds that, "...there is no basis for any finding that the Member did more than conduct a fishing expedition on the basis of a "hunch" where reasonable grounds did not exist".

Constable [REDACTED] goes on to assert within the Request that the Discipline Authority "ordered the Member to serve a 5-day suspension, without pay – a punishment that is wildly disproportionate to the finding of misconduct." The Discipline Authority's reasoning is said to be "without precedent in terms of its severity vis-à-vis this type of misconduct."

I have reviewed the discipline proceedings and Constable [REDACTED] Request. Considering all the factors described in section 138(2) of the *Police Act*, I determined on January 21, 2025 that a Public Hearing or Review on the Record is not necessary in the public interest. Pursuant to section 138(5) of the *Police Act*, my reasons for that decision were as follows.

In the Request, Constable [REDACTED] suggests the disciplinary measures are excessive since the unlawful arrest and search wrapped up at the roadside without "much more than moderate inconvenience" to the complainant. However, the Discipline Authority concluded after considering all the evidence that the arrest in this case was "serious misconduct," and the incidental search was "moderately serious misconduct."

I believe it was open to the Discipline Authority to reach those conclusions. In my view, an unlawful arrest – even for a short period of time – is a serious matter and certainly not a mere inconvenience. Further, describing the conduct as a fishing expedition based on a hunch absent reasonable grounds does not, in my view, mitigate the impropriety of the conduct but rather serves to highlight it. Unjustified state interference with freedom of movement should not be trivialized. Taking this into account, I do not believe there is an arguable case that the measures imposed by the Discipline Authority are "inappropriate," or that the Discipline Authority's interpretation of the *Police Act* was incorrect, within the meaning of sections 138(2)(d)(ii) or (iii) of the *Police Act*.

Constable [REDACTED] Request identifies eight past decisions that are said to have imposed lesser measures for similar misconduct.

I acknowledge that the range of disciplinary or corrective measures taken in similar circumstances is a relevant consideration when a decision maker decides on disciplinary or corrective measures under the *Police Act*. However, under section 126(2) of the *Police Act*, the range in past cases is just one factor to consider among many. In this case, identifying these past cases at this stage does not persuade me that a Review on the Record or Public Hearing is necessary in the public interest, for several reasons.

First, I note that the Discipline Authority commented in the *Reasons for Disciplinary and Corrective Measures*, dated December 7, 2024, that “No cases were provided” in relation to the range of disciplinary or corrective measures taken in similar circumstances. Constable [REDACTED] had the opportunity to provide the Discipline Authority with cases involving similar circumstances through the Discipline Proceeding process, but did not do so.

Second, and in any event, I do not see the difference between these cases and the Discipline Authority’s decision as being of any significance and certainly not “wildly disproportionate”, as Constable [REDACTED] suggests.

As a starting point, it is important to remember that the discipline imposed here was pursuant to two separate allegations of misconduct. The separate suspensions without pay are (i) four days for arresting the complainant without good and sufficient cause, and (ii) one day for searching the complainant without good and sufficient cause. It was fully appropriate for the Discipline Authority to categorize the allegations in this way.

In his Request, Constable [REDACTED] says most of the similar past cases involved no more than a one-day suspension, with one resulting in a two-day suspension. Here, the Discipline Authority imposed suspensions of one day (equivalent to the past cases) and four days (higher than the past cases by two to three days). Given that section 126(1)(c) of the *Police Act* allows a broad spectrum of suspensions from one to thirty days, I do not consider a variation of two to three days to be inappropriate in the circumstances of this case.

As a final observation, I note Constable [REDACTED] concern with the Discipline Authority’s statement that, “A reprimand or advice as to his conduct would trivialize the misconduct and be an insult to him.” I agree with Constable [REDACTED] that the Act calls for an approach that seeks to correct and educate the member, unless it is unworkable or would bring the administration of police discipline into disrepute. However, I do not believe the Discipline Authority’s decision is contrary to that approach. By directing counseling to help understand and prevent recurrence of the unlawful arrest, the Discipline Authority demonstrated his understanding of the importance of corrective and educational measures.

For the above reasons, I have determined that it is not necessary in the public interest 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 allegations, the disciplinary or corrective measures imposed are approved. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with *Police Act*, the disciplinary or corrective measure imposed in relation to

Constable [REDACTED] have been completed, and that their service record of discipline has been updated.

Sincerely,



Prabhu Rajan
Police Complaint Commissioner