

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

and

**IN THE MATTER OF REVIEW OF AN ALLEGATION OF MISCONDUCT
AGAINST CONSTABLE [REDACTED] OF THE SURREY
POLICE SERVICE**

NOTICE OF DECISION

(Section 117 of the Police Act)

NOTICE TO: Mr. [REDACTED], Complainant

AND TO: Constable [REDACTED]
c/o Surrey Police Service

AND TO: Mr. Prabhu Rajan
Police Complaint Commissioner.

AND TO: Sergeant [REDACTED], Investigating Officer.

EXECUTIVE SUMMARY:

Section 117(1) review of complaint of neglect of duty contrary to section 77(3)(m)(ii) of the Police Act. An experienced member of the Surrey Police Service failed to interview material witnesses and the suspect in an assault investigation. The officer concluded the investigation without charges citing insufficient evidence to identify the assailant. The material witnesses could have supplied evidence establishing the identity of the assailant. The member appears to have breached his general duty to investigate and the Surrey Police Service policy to take statements from the witnesses and the individuals involved in an assault investigation. The member's reasons for

not interviewing the witnesses and Suspect were not supported by the evidence. Ruling: the member appears, without good and sufficient cause, to have committed neglect of duty. A prehearing conference is offered to take retraining, accept a written reprimand, and advice that he decline field training recruits until he completes retraining.

INTRODUCTION

1. In this Decision I will refer to:
 - a. Mr. [REDACTED] as the “Complainant”;
 - b. Constable [REDACTED] as the “Member”;
 - c. Constable [REDACTED] as the “Recruit”;
 - d. Mr. [REDACTED] as the “Suspect”;
 - e. Sergeant [REDACTED] as the “Investigating Officer”;
 - f. the *Police Act* [R.S.B.C. 1996] Chapter 367 will be referred to as the “Act”.

COMPLAINT AND INVESTIGATIVE HISTORY

2. On January 14, 2023 a call was made to the Surrey Police Service (“SPS”) to investigate an alleged assault at the [REDACTED]
[REDACTED]

3. The Complainant told the Member and Recruit that the Suspect had punched him in the head. He complained to the corrections officers and one of them handcuffed and took the Suspect away.

4. A video of the altercation showed the Complainant being punched in the head. The assailant could not be identified because he was obscured by a pillar. The Complainant is shown to immediately speak to a corrections officer. Several corrections officers were then shown approaching the pillar where the assailant remained in hiding. At that point the video stopped.

5. The Member did not interview the corrections officers in the video or, if he was not part of that group, the Member who handcuffed the Suspect. The Member also did not interview the Suspect.

6. There were no independent witnesses to the actual assault.

7. On April 10, 2023 the Member concluded the investigation without charges, citing insufficient evidence to identify the assailant.
8. The Office of the Police Complaint Commission received the Complaint on October 23, 2023.
9. On January 7, 2024 the Investigating Officer submitted the Final Investigation Report (“FIR”) on whether the members committed neglect of duty contrary to section 77(3)(m)(ii) by failing to reasonably investigate the assault. The Discipline Authority dismissed the allegation of misconduct against both members.
- 10-. On March 3, 2025 the Police Complaint Commissioner Prabhu Rajan appointed me pursuant to section 117(1) of the Act to review the FIR and the evidence and records referenced therein and decide whether there was a reasonable basis to believe that the dismissal of neglect of duty as against the Member was incorrect.

ANALYSIS

THE LAW

Section 77(3) the Act states that:

Subject to subsection (4) any of the conduct described in the following paragraphs constitutes a disciplinary breach of 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.

DUTY OF THE MEMBER INVESTIGATING AN ASSAULT

11. R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310 at para. 63 states that:

The police are charged with the duty to investigate alleged crimes and, in performing this duty, they necessarily have to make inquiries

from relevant sources of information, including persons suspected of, or even charged with, committing the alleged crime.

12. Surrey Police Service policy OP 4.34.4 Assaults, states:

(a) Section 4.8 that members attending an incident of assault must:

(vii) Interview and obtain audio or audio-video recorded statements from the individuals involved and witnesses.

13. The Suspect was an “individual involved”. The failure to interview the Suspect appears to be a breach of an officer’s general duty to make inquiries and the Surrey Police Service assault investigation policy to interview the “individuals involved.”

14. The failure to interview the corrections officers who approached the assailant behind the pillar and those who handcuffed the Suspect appears to be a breach of the general duty to make inquiries and the Surrey Police Service policy for investigating assaults.

WITHOUT GOOD AND SUFFICIENT CAUSE

15. Even though corrections officers in the video did not witness the assault, they appeared to arrive before the individuals involved had left the scene.

16. The Member said that he didn’t interview the corrections officers because they had not witnessed the assault. That is, that they would not have been able to provide evidence relevant to the investigation.

17. Those officers likely could identify the person behind the pillar which when combined with the video would identify the assailant.

18. The Member did not say why he didn’t interview the corrections officer or officers who handcuffed the Suspect. The implication is that the Member did not think they could provide relevant evidence as they had not witnessed the assault. They, however, could have spoken to the demeanor and level of agitation of the Suspect and whether he had injuries to his hands consistent with punching someone.

19. The Member said that he did not interview the Suspect because:
- (i) there were no reasonable grounds to believe that the Suspect was the assailant;
 - (ii) the Suspect was in custody at the [REDACTED] so would likely be unable to provide a statement that could be used in court; and
 - (iii) persons in custody rarely gave statements.
20. The Complainant told the Member that the Suspect was the assailant. This statement, by itself, was reasonable grounds to believe that the Suspect was the assailant.
21. I do not share the Member's doubt in obtaining an admissible statement in the circumstance. Many suspects who are questioned by the police are under arrest or detention, that is, in custody. Yet with the proper Charter warnings and instructions those statements are often found admissible.
22. If it is true that few people in prison give statements, some do, and nothing would be lost by asking.
23. The Surrey Police Service policy requires that the Member, at least, try to take a statement from the suspect.
24. The Member made a conscious and deliberate decision to not to take statements from the corrections officers and the Suspect.
25. The failure to interview the corrections officers was not an inconsequential decision. They likely had evidence that would have identified the Subject as the assailant. This would have led to the charge of assault or assault causing bodily harm being brought against the Suspect.
26. The Member's decisions to not interview these persons do not appear to have been due to a mistake of fact because no circumstances misled him to believe that they had no relevant evidence to give.
27. The Member's decisions do not appear to have been due to a mistake of law as there do not appear to have been any circumstances that caused him to misapprehend the law.

28. The Member's reasons for breaching his duties do not appear to be supported by the circumstances nor do they appear to provide good or sufficient cause to justify not performing his duties.

CONCLUSION

29. In the circumstances I find that there appears to be a reasonable basis to believe that the decision of the Discipline Authority was incorrect.

30. In accordance with the powers given me pursuant to section 117(1)(b) I find that the circumstances, as set out in the FIR and the evidence and documents referenced therein, appear to substantiate a finding that the Member committed neglect of duty contrary to section 77(3)(m)(ii) of the Act.

NEXT STEPS

31. This is a notification to the Member of the next steps in this proceeding.

32. Pursuant to section 20 of the Act I offer the Member a prehearing conference respecting the apparent misconduct.

33. The disciplinary and corrective measures which I consider appropriate in this case include:

(a) undertake retraining:

(i) in the application of the Charter of Rights and Freedoms in taking statements from accused persons; and

(ii) general investigation techniques in criminal cases

under the supervision and to the satisfaction of his superior officer;

(b) reprimand the Member in writing; and

(c) to instruct the Member to decline field training recruits until the training or retraining is complete.

34. I direct the Member to advise the Registrar within 5 days of receipt of this notice whether to accept this offer of a prehearing conference.

35. If the Member accepts a prehearing conference then pursuant to section 113 of the Act:

(a) the Complainant has a right to make oral or written submissions, or both, to the prehearing conference authority regarding the disciplinary or corrective measures that would be appropriate. This must be done within 10 business days of receipt of this notice.

(b) the Member has the right to make submissions to the prehearing conference authority. This must be done within 10 business days of receipt of this notice.

36. If this matter proceeds to discipline proceeding then:

(a) the Complainant has a right to make submissions; and

(b) the Member may request permission to question witnesses pursuant to section 119 of the Act. Such request must be made within 10 business days of receipt of this notice.

37. A discipline proceeding concerning the apparent substantiated misconduct must be convened within 40 business days of notice of this Decision.

38. A pre-discipline proceeding conference call will be convened by telephone with the Member or counsel on his behalf at a date to be determined by the Registrar. At that time dates will be canvassed that are convenient to commence the discipline proceeding.

A handwritten signature in black ink, appearing to be 'M. Takahashi', with a stylized flourish at the end.

M. Takahashi, PCJ (ret.)
Adjudicator

Dated: March 24, 2025