

OPCC File No.2023-23240

IN THE MATTER OF THE POLICE ACT, [RSBC 1996] c. 367

AND

IN THE MATTER OF A DISCIPLINARY PROCEEDING PURSUANT TO SECTIONS
117(9) AND 118

AND

IN THE MATTER OF AN ALLEGATION OF MISCONDUCT AGAINST

CONSTABLE ██████████ OF THE
VANCOUVER POLICE DEPARTMENT

Before the Hon. Elizabeth Arnold-Bailey, Discipline Authority

NOTICE OF DISCIPLINE AUTHORITY'S UPON REVIEW

TO: Ms. ██████████ Complainant
c/o Personal Representative

AND TO: Constable ██████████ Member
c/o Vancouver Police Department
Professional Standards Section

AND TO: Sergeant ██████████ Investigator
c/o Vancouver Police Department
Professional Standards Section

AND TO: Inspector ██████████ Discipline Authority
c/o Vancouver Police Department
Professional Standards Section

AND TO: Chief Constable Steve Rai Chief Constable
Vancouver Police Department

AND TO: Mr. Frank Chong Chair
Vancouver Police Board

AND TO: Mr. Prabhu Rajan Complaint Commissioner
BC Police Complaint Commissioner

AND TO: Mr. Kevin B. Westell Counsel for Cst. [REDACTED]

DISCIPLINE AUTHORITY'S DECISION

Introduction

1. I am now the Discipline Authority [DA] of this complaint of police misconduct against Cst. [REDACTED] [the Member] in which it is alleged that he engaged in the misconduct of Abuse of Authority towards a member of the public in the performance of his duties, by intentionally or recklessly using unnecessary force contrary to s. 77(3)(a)(ii)(A) of the *Act*.
2. The alleged misconduct committed by the Member, now of the Vancouver Police Department [VPD], arose on January 18, 2023, when he had dealings with Ms. [REDACTED] [the Complainant] in the VPD Jail, after she had been arrested. At that time the Member was a special municipal constable [SMC] working in the jail. He was involved in providing security and escorting her to a cell, along with two other SMCs.
3. Jail video footage depicts the Member leading the Complainant to the cell area by holding the Complainant's head by her hair while she was being restrained and pushed forward by the two other SMCs. The Complainant's behaviour in the jail up to this point was largely uncooperative, in so far as she resisted

directions from the officers by going limp or by using her legs to resist going in the direction the Member and the other SMCs were seeking to move her.

4. The alleged misconduct by the Member came to the attention of a disciplinary authority in the course a larger discipline proceeding relating to the conduct of four other VPD members during the arrest of the Complainant, after which she was transported to the VPD jail where she was detained for several hours.

Background

5. The Complainant's written complaint to the Office of the Complaint Commissioner was received on January 23, 2023. The focus of her complaint related to her alleged mistreatment by the four VPD officers who arrested her for assault with a weapon and uttering threats. While she complained about various acts of physical abuse during her arrest and while at the VPD Jail, she did not specifically complain or refer to the actions of the Member when he assisted the two other SCMs to put her in a cell.
6. The misconduct specifically alleged against the Member occurred when he was one of three SMCs escorting the Complainant down a hallway in the jail and was leading the way holding the Complainant's head by her hair. It came to light while the allegations against the four VPD officers were being investigated as it was depicted in jail surveillance camera footage.
7. In a s.112 review the disciplinary authority found the allegations of misconduct by the four VPD members of Abuse of Authority to be unsubstantiated.
8. The disciplinary authority also found the Member's alleged misconduct of Abuse of Authority by the use of unnecessary force in relation to his actions while escorting the Complainant to be unsubstantiated.
9. It was that decision that the PCC ordered to be reviewed by a retired judge under s. 117 of the *Act*. As the person who did the review and found that there

was evidence that appeared to be sufficient to substantiate the allegation, I am now the DA.

10. The allegation of misconduct against the Member to be determined in this Discipline Proceeding [DP] is Abuse of Authority by the use of unnecessary force on the Complainant, as contained in s. 77(3)(a)(ii) (A) of the *Act*.
11. In my s. 117 reasons I offered a pre-hearing conference to the Member and set out the range of disciplinary or corrective measures I was considering to be a) a written letter of reprimand; b) a requirement that the Member participate in a specific program regarding the appropriate use of force. This matter was not resolved at the pre-hearing conference stage.
12. By operation of s. 118(1) of the *Act*, I convened the Discipline Proceeding. The hearing was held in Vancouver on September 9, 2025, and I received final submissions written by Mr. Westell, counsel for the Member, dated November 2, 2025. I have carefully considered those submissions in light of the evidence before me.

The Issue to be Decided

13. The only issue to be decided is whether there is clear, cogent, and convincing evidence before me to establish on a balance of probabilities that the Member committed a disciplinary breach of public trust by engaging in oppressive conduct towards Ms. [REDACTED] a member of the public, that constituted an “abuse of authority” in the performance of his duties, by intentionally or recklessly using unnecessary force upon her (s. 77(3)(a)(ii)(A)) of the *Act*.

The Agreed Facts

14. In his written submissions Mr. Westell described the facts as “uncontroversial. As summarized by this tribunal”. He quoted the two paragraphs from my s. 117 decision (paras. 52 and 53) set out below:

52. The video shows that the Member joined in escorting the Complainant down the short hallway towards an open cell door. With SMCs [REDACTED] and [REDACTED] on either side of the Complainant with each of her arms in a twist lock, essentially propelling her down the hallway, she appears to be resisting to the extent she was able. The lower part of her body was close to the ground and her legs were folded under her from the knees down.

53. The video shows that in front of this trio was the Member with his left hand clenched in the Complainant's hair at what appears to be the top back of her head. Given the angle of her head as this occurs and its position relative to her body and the Member, it appears that she is being led by her hair by the Member towards the cell, with the SMCs [REDACTED] and [REDACTED] escorting her as described above. The Member's upper body is partially bent over and angled with his right shoulder leading, and his head partially turned toward the open cell door. The Complainant is essentially on her knees with her legs folded beneath her and her bare feet behind her.

15. Mr. Westell also stated that the Member's evidence "was accurately summarized in the s. 117 Decision" and set out the following paragraphs from my s. 117 Decision (paras. 31-35):

31. [...] He stated that he did not have any independent recollection of this incident. At that time the Member had been a guard (SMC) at the Vancouver Jail for approximately five years. In that position, he indicated he had hundreds and possibly thousands of interactions with detainees.

32. Based on viewing the video the Member said he could see the detainee (the Complainant) actively resisting the guards who were interacting with her. She was flailing her arms and pulling away. The Member saw himself holding her head by her hair. He indicated that he did this to prevent her from turning around and spitting. He added that he had been spit on numerous times in the jail and he had observed that happening to other guards. He said, "It is not a pleasant experience."

33. The Member said, "Based on the video it did not look like I was pulling on her hair, it looked like I was simply guiding her to the cell, and to break her balance and to keep her moving forward and to prevent the use of force from escalating any further." He could not recall if he used any communications to get the Complainant to comply, but said it was his common practice to use verbal commands when dealing with detainees. He also said that he could not remember if any other jail guards asked for help in controlling her.

34. Follow-up questions were posed to the Member by Sgt. [REDACTED] in writing. They were: "When you were assisting in the escort of Ms. [REDACTED] why did you choose to take hold of her hair? Was there another portion of her body or clothing that you could have held on to?"

35. The Member's written response was:

I chose to hold her hair to gain control of her head as there were no other options available at the time. Had Ms. [REDACTED] been wearing a hoodie, sweater or shirt, I would have taken hold of those items instead. However, based on the video Ms. [REDACTED] was only wearing a tight spaghetti string tank top and it is not an article of clothing I can easily take hold of.

Other Evidence

16. In my s. 117 Decision I set out my observations of the video evidence (at paras. 48-53), which are:

48. I have watched the video evidence, both of the arrest of the Complainant when the police were called to attend multi-unit residence, and the jail video. The former is relevant only to the issue of the Complainant's overall reliability and credibility, whereas the latter depicts the Member's involvement with SMCs [REDACTED] and [REDACTED] while they escorted her down a short hallway to the cell where she was lodged.
49. My first observation is that SMCs [REDACTED] and [REDACTED] were successfully managing the resistance the Complainant was exhibiting from the outset. The views of the jail area indicated that it was orderly, not congested, and that there were at least several other guards in the immediate vicinity. After the truncated stop at the nurse's office, the Complainant became more physically resistant to doing what the guards wanted or expected her do.
50. The jail video did not have sound, so it is not possible to assess the nature of what, if anything, was being said by anyone. When the Complainant did not cooperate, she went limp. At times she used her legs to resist moving. Her level of physical resistance appears to have been effectively managed by SMCs [REDACTED] and [REDACTED] throughout.
51. Given the Complainant's height and weight – 5' 2" and about 100 lbs. according to her – which is generally confirmed by the video, both those officers were larger and significantly outweighed her. In

particular, SMC [REDACTED] was a significantly taller and stockier person when compared to the very slight and thin Complainant.

52. The video shows that the Member joined in escorting the Complainant down the short hallway towards an open cell door. With SMCs [REDACTED] and [REDACTED] on either side of the Complainant with each of her arms in a twist lock, essentially propelling her down the hallway, she appears to be resisting to the extent she was able. The lower part of her body was close to the ground, and her legs were folded under her from the knees down.

53. The video shows that in front of this trio was the Member with his left hand clenched in the Complainant's hair at what appears to be the top back of her head. Given the angle of her head as this occurs and its position relative to her body and the Member, it appears that she is being led by her hair by the Member towards the cell, with the SMCs [REDACTED] and [REDACTED] escorting her as described above. The Member's upper body is partially bent over and angled with his right shoulder leading, and his head partially turned toward the open cell door. The Complainant is essentially on her knees with her legs folded beneath her and her bare feet behind her.

Evidence of SMC [REDACTED] and SMC [REDACTED]

17. I do not propose to set out all their evidence, but simply to highlight some aspects of it.

18. In his follow up witness interview SMC [REDACTED] indicated that he did not recall from his memory the part in the video where the Member used force on the Complainant. He did remember that when he and SMC [REDACTED] brought the Complainant to the nurse intake, she began to become passive resistant and active resistant so they each obtained an escort grip on her. He took the Complainant by her right hand and began to escort her. His focus was on her because she became dead weight, dragging and kicking her feet out. SMC [REDACTED] said his concern was keeping the Complainant safe and preventing other jail guards from being tripped by her legs. When he escorted the Complainant to the cell, he backed away while SMC [REDACTED] finished putting her into the cell. He did not remember the Member taking a hold of the

Complainant's hair, and he did not remember asking any other jail guards for help in escorting the Complainant.

19. In her follow-up witness interview SMC [REDACTED] remembered escorting the Complainant from the nurse's station to the jail cell and having her in a twist lock. She recalled that the Complainant was being passive resistant and that was why she had her in a twist lock escort position. She did not recall the Member having his hands on the Complainant's hair.

20. SMC [REDACTED] said that when she looked back at the video, she felt confident they had control of the Complainant because she had one limb and SMC [REDACTED] had the other. She said that she was so focused on having control of the arm that she did not know if the Complainant was going to spit. SMC [REDACTED] did not remember if she asked anyone else to help escort the Complainant.

Submissions on behalf of the Member

21. In his written submissions Mr. Westell referred to the following aspects of the Member's testimony at the hearing:

- He did not have an independent memory of the incident.
- He believed that his decision to hold Ms. [REDACTED] by the hair would have included concern for her safety as well as his own.
- He reiterated that his primary concern was to prevent Ms. [REDACTED] from spitting on him, and he explained that it was based on concern regarding the transmission of HIV and Hepatitis C. He explained that he had previously been bitten by an inmate at the jail, which he found traumatic.
- His training history was extensive, and although it was comprised of course titles, clearly included courses that at least touched on police use of force.

- He referred to his training, including an imperative that police officers should “control the head”, and explained that his actions in relation to this incident were taken with that in mind.
- He conceded that the training did not speak to controlling the head by way of grabbing the hair.
- There is no evidence to suggest that the Member’s actions injured the Complainant or to suggest that she experienced harm, or even dismay because of the Member’s actions.
- Neither of the other officers recalled the Member’s actions in relation to the Complainant.
- The video evidence confirms that the Member was not yanking or pulling the Complainant’s hair and is most consistent with what he said he was doing – using her hair to control her head.
- The Member was wary of being bitten by an inmate as he had experienced before, and he was concerned about being spat upon given where he worked and what had occurred to others in the past.
- Even in the absence of specific indications that the Complainant was going to spit or bite anyone, he wanted to take precautions as she was actively resistant and at times belligerent.
- While the Member’s use of force may not have been necessary in the circumstances, this does not equate with a finding on a balance of probabilities that what he did was unnecessary.
- The Member’s response was a reasonable one considering the circumstances and his experience, and one that was untainted by malice or malevolence. It caused the Complainant no harm and was fleeting in duration.

- As such, it is submitted that the evidence in this case does not rise to the level of clear, convincing and cogent evidence of misconduct.

The Elements of Abuse of Authority – Use of Unnecessary Force

22. Misconduct is defined by s. 77 of the *Act* and covers a broad range of conduct.

Section 77(1)(b)(ii) establishes the category of “a disciplinary breach of public trust” as described in ss. (3) as follows:

(3) 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:

(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 and sufficient cause,

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person,

[...] [Emphasis added.]

23. Section 77(4) states that it is not a disciplinary breach of public trust for a member to engage in conduct necessary for the proper performance of authorized police work.

24. Therefore, the elements of this misconduct are:

1. A member engaging in oppressive conduct towards a member of the public;
2. In the performance of the member’s duties;
3. Intentionally or recklessly;
4. Using unnecessary force;
5. On another person.

Analysis and Findings

25. The correct burden of proof is on a balance of probabilities: *FH McDougall*, 2008 SCC 53.
26. I am mindful that police officers are not required to use only the absolute least amount of force to achieve their objective, and that the amount of force used by an officer is not to be assessed to a “nicety”. In *R v Nasogaluak*, 2010 SCC 6, the Supreme Court considered the amount of force used by police in effecting an arrest in the context of s. 25(1) of the *Criminal Code*, and stated the following:
- [35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.):
- In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]
27. These general statements of the applicable law must be considered when assessing the amount and nature of the force used by police. However, the circumstances of individual cases require a careful analysis of the amount of force necessary to be used, especially when detainees are in custody at a jail.
28. In this case I find the evidence falls short of establishing that the Member engaged the misconduct of Abuse of Authority by oppressive conduct towards the Complainant in the performance of his duties (as a SMC working as a jail guard) by the use of unnecessary force when he helped escort her to the cell by holding the hair at the back of her head. The evidence, weighed carefully, does not establish this misconduct on a balance of probabilities for the following reasons:

- 1) The Complainant, as slight and thin as she appears in the video, was very actively resisting being moved to the cell by the two SMCs when the Member became involved.
- 2) While the Member's action by grabbing the back of her head by taking a hold of her hair appears to be excessive when in fact SMC [REDACTED] and SMC [REDACTED] seemed to have the situation in hand, the evidence of the Member was that jail staff including himself have been bitten or spat upon in such circumstances, which causes physical harm to them.
- 3) In his testimony at the hearing the Member did not seem to harbour any ill will towards the Complainant. Rather, the demands of working in the jail, and the hundreds or thousands of people he dealt with during the five years he worked there, had made him wary of what could happen in circumstances like those involving the Complainant.
- 4) Given the number of people the Member and the two other SCMs dealt with during their work, it is not surprising that no one had a clear recollection of the incident. No soundtrack on the surveillance video meant there is no record of what, if anything, was said to the Member to enlist his help, or the degree of ruckus the Complainant was causing verbally as she was being escorted to the cell.
- 5) The Member's evidence that because of what she was wearing there was nowhere else he could grab on her upper body is borne out by the video.
- 6) His explanation for why he did what he did was based on protecting the other SCMs including himself from being spat upon or bitten, and to prevent the Complainant from hitting her head on the floor.
- 7) He said he relied on his training that the head is a very effective way to control detainees, as he was taught in training that the body moves where the head moves.

- 8) He candidly admitted that he was not taught to grab the head at the base of the hair, but he considered that he had acted within the bounds of his training.
- 9) There is no evidence to contradict his explanation of why he did what he did and how he did it.

29. Mr. Westell's submissions were excellent and of great assistance to his client. I was especially struck by his comment:

It is fair comment that Cst. ██████ use of force *may* not have been necessary in the circumstances. But that is not the same as a finding, on a balance of probabilities that [it was] unnecessary.

Conclusion

30. For these reasons I find that the allegation against the Member of misconduct by Abuse of Authority as defined in s. 77(3)(a)(ii)(A) of the *Act* is **unsubstantiated**.

Dated at the City of Kelowna, British Columbia, the 12th day of January, 2026

Elizabeth Arnold-Bailey

The Honourable Elizabeth Arnold-Bailey (BCSC Ret'd)
Discipline Authority