

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996 C. 367
AND
IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST
CONSTABLE [REDACTED]
AND
CONSTABLE [REDACTED]

NOTICE OF ADJUDICATOR'S DECISION

- To: Mr [REDACTED] (Complainant)
- And to: Constable [REDACTED] (Member)
Constable [REDACTED] (Former Member)
c/o Saanich Police Department
Professional Standards Section
- And to: Chief Constable Dean Duthie
c/o Saanich Police Department
Professional Standards Section
- And to: Sergeant [REDACTED] (Investigator)
c/o Saanich Police Department
Professional Standards Section
- And to: His Worship Mayor Dean Murdock
Chair, c/o Saanich Police Board
- And to: Mr. Prabhu Rajan
Police Complaint Commissioner

Introduction

This is a review under section 117 of the *Police Act*, R.S.B.C. 1996, c. 367 concerning allegations of misconduct against Cst. [REDACTED] and against Cst. [REDACTED] of the Saanich Police Department. The Police Complaint Commissioner has appointed me, as a retired judge, to conduct the review.

The allegations of misconduct arise out of the arrest of Mr [REDACTED] (the Complainant) on January 1, 2024, for being intoxicated in a public place, and his subsequent detention for several hours in Saanich Police Department cells until he was sufficiently sober to be released, without charge.

By way of background, on the evening of January 1, 2024, a civilian called police to report that a man, later identified as the Complainant, had entered a Circle K convenience store in Saanich and exposed his penis to customers and staff..

A short time later, another civilian called to report a similarly described male holding an alcoholic beverage and screaming randomly at people. Another civilian provided dispatch with information that the same man said he had a gun. Cst. [REDACTED] (hereinafter, "Cst. [REDACTED]"), Cst. [REDACTED] (hereinafter, "Cst. [REDACTED]"), and Cst. [REDACTED] (hereinafter, "Cst. [REDACTED]") attended to the area and located the man, who was later confirmed to be the Complainant.

Cst [REDACTED] informed the Complainant he was under arrest for being in a State of Intoxication in a Public Place. Upon placing his hands on the Complainant to place him in handcuffs, a physical struggle ensued. The Complainant was placed into handcuffs, and at around 10:27 p.m. Cst [REDACTED] read him his section 10(b) *Charter* rights. He was transported to the Saanich Police Department and lodged in a cell. He was subsequently released at about 5:50 a.m. the next morning, January 2, 2024.

On January 4, 2024, the Complainant attended hospital, where he was diagnosed with a left elbow coronoid fracture.

The Written Complaint

On January 14, 2024, the Complainant filed a written complaint with the Office of the Police Complaint Commissioner (OPCC).

The Complainant set out the following narrative in his written complaint:

I was arrested by the Victoria PD: however, I spent the night in the Saanich Police Department.

I was arrested without due cause.

I was harshly treated resulting in bleeding, broken skin, bruising, ripped existing stitches, punctured lip and a fractured elbow along with the inability to work.

I was denied my 'right' to contact my lawyer after being read 3 different versions of my 'rights'.

I was refused to be breathalyzed or blood tested upon the accusation of being intoxicated.

I was strip searched and was ridiculed for my choice of undergarments and humiliated by the officers.

I was kept in a cell without a blanket or pillow and the air conditioning was turned on due to my requests for help, and demands to speak with a lawyer.

My light t-shirt and pants nearly skidded into the toilet when they threw them in the corner of the dirty cell.

I repeatedly asked for medical attention and a blanket but was ignored and left in excruciating pain despite the other prisoner that I observed being offered both upon his intake.

My pain was so severe, I was unable to sleep.

The inventory provided was incorrect and my refusal to sign resulted in a threat to lock me up again and I was denied badge numbers or file numbers. No offer to help dress, or recover my possessions upon demand despite the pain the officers must have seen and which should be viewable on the CCTV recordings, and then was pressured to leave or risk being locked up again.

I was released into the street on foot: thirsty - after being denied water. hungry and in agony without reason for the arrest

The OPCC

On May 3, 2024, the OPCC found the complaint to be admissible, and on May 13, 2024, an investigation was initiated pursuant to Division 3 of the *Police Act*. Sergeant [REDACTED] (hereinafter "the Investigator") was assigned to investigate an allegation of Abuse of Authority for unnecessary force in relation to the arrest of the Complainant and two allegations of Neglect of Duty, one for failing to provide access to medical care for the Complainant while in custody in police cells and one for failing to provide access to counsel. He identified Cst. [REDACTED] Cst. [REDACTED] and Cst. [REDACTED] as the arresting officers. He identified Cst. [REDACTED] with respect to the allegation of failing to provide

access to medical care and Cst. [REDACTED] with respect to the allegation of failing to provide access to counsel.

On November 13, 2024, the Investigator submitted his Final Investigation Report to the Discipline Authority, who issued a decision on December 11, 2024, which concluded that none of the allegations of misconduct appeared to be substantiated. More specifically:

The allegation of Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the Police Act against Cst. [REDACTED] and Cst. [REDACTED] did not appear to be substantiated.

The allegation of Neglect of Duty pursuant to section 77(3)(m)(ii) of the Police Act against Cst. [REDACTED] did not appear to be substantiated.

The allegation of Neglect of Duty pursuant to section 77(3)(m)(ii) of the Police Act against Cst. [REDACTED] did not appear to be substantiated.

The OPCC reviewed the decision of the Discipline Authority and confirmed that the allegation of Abuse of Authority was not substantiated against any of the officers. Pursuant to section 112(5) of the *Police Act*, that decision is now final and conclusive.

However, the OPCC did not agree with the Discipline Authority's decision regarding Neglect of Duty. The OPCC expressed the following concerns:

Based upon my review of all the available evidence, I have a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to the allegations of Neglect of Duty against Constable [REDACTED] and Constable [REDACTED].

In my view, it is clear that Constable [REDACTED] knew of his duty to report injuries and facilitate access to medical care and would have exercised them had he believed the Complainant about his injury. Given Constable [REDACTED] first aid training, he ought to have known that serious injuries such as fractures do not always result in obvious signs of injury. Also, a level of intoxication can further mask pain responses and injuries. In this case, the Complainant was reported to be highly intoxicated at the time of arrest and transport to cells. Video evidence and statements suggest that the Complainant was treating his arm carefully and complaining of pain and injury throughout his time in cells. Constable [REDACTED] had a duty to facilitate access to medical care regardless of whether he thought the injury was minor and despite potential cell management and/or policy and procedure deficiencies.

In addition, I do not believe that there was good or sufficient cause for Constable [REDACTED] to neglect his duty to facilitate access to counsel. While the Complainant was initially deemed unsafe to be provided access to

counsel, there was no reassessment undertaken or further attempt to facilitate access, and no sufficient reason identified not to. The lack of specific SPD training related to following up with respect to access to counsel does not justify the neglect of the Complainant's Charter rights, especially given the complete absence of follow-up. The implementational obligation under section 10(b) of the Charter is suspended only under special circumstances such as public safety or police safety. Even then, police must take reasonable steps to minimize the delay. Even if there were concerns about implementing the Complainant's rights just after arrival at cells due to police safety, it does not appear there would have been good or sufficient cause for Constable ██████ to leave cells and neither return to facilitate access to counsel nor pass the duty to another member once safe to do so.

Accordingly, pursuant to section 117 of the *Police Act*, the Police Complaint Commissioner appointed me, as a retired judge, to conduct a review of the Final Investigation Report and the evidence and records referenced therein, and to make a decision on the matter.

The Nature And Scope of a Section 117 Review

The appointment of a retired judge and the nature and scope of a review are governed by section 117 of the *Police Act*.

Section 117(1) provides that the retired judge is to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

Section 117(7) stipulates that the review is to be completed and the parties notified within ten business days, and subsections 117(8)-(11) specify the nature and effect of the review decision.

Specifically, section 117(8)-(11) provides:

117 (8) Notification under subsection (7) must include

(a) a description of the complaint, if any, and any conduct of concern,

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],

(c) a list or description of each allegation of misconduct considered by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120(16) [*prehearing conference*] applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive.

Some guidance on the interpretation of section 117 may be found in *Scott v. British Columbia (the Police Complaint Commissioner)*, 2016 BCSC 1970. There, Justice Affleck remarked at paragraph [39]:

[39] Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken. If that was the appropriate interpretation it would inevitably raise a serious issue of an apprehension of bias when the retired judge made preliminary findings adverse to the petitioner and was then required to conduct a disciplinary hearing. I conclude that the retired Judge adopted an interpretation which has now led to that unfortunate outcome.

Those remarks were in relation to the interpretation of section 117(9), which is worded somewhat differently from section 117(10).

In short, my task on this section 117 review is to consider the Final Investigation Report and the evidence and records referenced therein, and make my own decision of whether the member's conduct appears to constitute misconduct under section 117(9) or whether the conduct of the member does not constitute misconduct under section 117(10).

My review is not an appeal from any previous determination. At this stage I do not hear witnesses nor do I consider any additional evidence or submissions beyond what is referenced in the Final Investigation Report.

Alleged Misconduct

"Misconduct" is defined in section 77(1) of the *Police Act* as including a disciplinary breach of public trust under section 77(3). For present purposes, sections 77(3)(m) and 77(4) are relevant:

77 (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:

...

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

(i) properly account for money or property received in one's capacity as a member;

(ii) promptly and diligently do anything that it is one's duty as a member to do;

(iii) promptly and diligently obey a lawful order of a supervisor.

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

Two potential allegations of misconduct have been identified:

First, Neglect of Duty by Cst. [REDACTED] for not facilitating access to counsel for the Complainant, pursuant to section 77(3)(m)(ii) of the *Police Act*.

Second, Neglect of Duty by Cst. [REDACTED] for not providing the Complainant with access to medical attention for his alleged injury, pursuant to section 77(3)(m)(ii) of the *Police Act*.

The Final Investigation Report

The Final Investigation Report is 118 pages long, and the evidence and records attached to it comprise several hundred more pages. I have read and considered all the material, and as well I have viewed the photographs and video recordings referenced in the Final Investigation Report..

For the purpose of this decision, I do not find it necessary to recite all that material here. I shall only refer to those portions that relate to the two allegations of Neglect of Duty, namely, Neglect of Duty by Cst. [REDACTED] for not facilitating access to counsel for the Complainant pursuant to section 10(b) of the *Charter*, and second, Neglect of Duty by Cst. [REDACTED] for not providing the Complainant with access to medical attention for his alleged injury.

Analysis – Allegation of Neglect of Duty by Cst. [REDACTED] for not facilitating access to counsel for the Complainant

To substantiate an allegation of Neglect of Duty pursuant to section 77(3)(m)(ii) of the *Police Act*, it must be established that the officer had a duty to do something, which he neglected to promptly and diligently do, without good or sufficient cause.

Cst. [REDACTED] was involved in the apprehension of the Complainant, and he is the officer who read him his *Charter* section 10(b) rights after Cst. [REDACTED] arrested him for being intoxicated in a public place.

Having assumed the responsibility of complying with section 10(b) of the *Charter*, Cst. [REDACTED] had a duty to ensure that both the informational and the implementational

components of section 10(b) were carried out, either by doing this himself, or by handing off that task to another officer.

Section 10 of the *Canadian Charter of Rights and Freedoms* provides:

10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefore;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined by way of habeus corpus and to be released if the detention is not lawful.

According to the evidence contained in the Final Investigation Report and the evidence and records referenced therein, Cst. ██████ told the Complainant he was under arrest for being intoxicated in a public place, and he recited section 10(b) of the *Charter* to him at that time. This was described as a “protracted thing” because the Complainant was trying to talk on top of Cst. ██████

Unfortunately, it does not appear that Cst. ██████ ever confirmed with the Complainant that he understood the explanation of his rights, nor did he confirm whether the Complainant wished to exercise those rights by contacting counsel. According to the Complainant, he asked to speak with his lawyer, but no arrangements were ever made to carry that out.

In his interview with the Investigator, the Complainant described it this way:

They told me I was under arrest, you know, I don't want to be there and then they tell me that, hm, you've got, you're allowed, uh, mm, telephone a lawyer. I gave my lawyer's name and this was still kind on intake. Um. And it was, uh. I don't know. You know they didn't necessarily scoff at it, whatever. They just kind of ignored that whole aspect and, um. We're gonna hold you here because you're drunk or something like this and uh, brought me down in the cell.

It appears that Cst. ██████ and the other officers were concerned that the Complainant was too intoxicated and uncooperative to facilitate access to counsel at the time of his being booked in, and they wanted him to have some time in the cells to sober up. However, neither Cst. ██████ nor any of the other officers revisited this issue later in the evening.

In *R. v. Suberu* 2009 SCC 33, the Supreme Court of Canada held that the duty imposed upon the police in section 10(b) of the *Charter* arises “immediately” upon detention, subject to concerns about officer or public safety:

[42] To allow for a delay between the outset of a detention and the engagement of the police duties under s. 10(b) creates an ill-defined and

unworkable test of the application of the s. 10(b) right. The right to counsel requires a stable and predictable definition. What constitutes a permissible delay is abstract and difficult to quantify, whereas the concept of immediacy leaves little room for misunderstanding. An ill-defined threshold for the application of the right to counsel must be avoided, particularly as it relates to a right that imposes specific obligations on the police. In our view, the words “without delay” mean “immediately” for the purposes of s. 10(b). Subject to concerns for officer or public safety, and such limitations as prescribed by law and justified under s. 1 of the *Charter*, the police have a duty to inform a detainee of his or her right to retain and instruct counsel, and a duty to facilitate that right immediately upon detention.

And in *R. v. Taylor*, 2014 SCC 50, the Supreme Court of Canada emphasized that the implementational component of the duty includes facilitating access to counsel:

[24] The duty to inform a detained person of his or her right to counsel arises “immediately” upon arrest or detention (*Suberu*, at paras. 41-42), and the duty to facilitate access to a lawyer, in turn, arises immediately upon the detainee’s request to speak to counsel. The arresting officer is therefore under a constitutional obligation to facilitate the requested access to a lawyer at the first reasonably available opportunity. The burden is on the Crown to show that a given delay was reasonable in the circumstances (*R. v. Luong* (2000), 2000 ABCA 301 (CanLII), 271 A.R. 368, at para. 12 (C.A.)). Whether a delay in facilitating access to counsel is reasonable is a factual inquiry.

[25] This means that to give effect to the right to counsel, the police must inform detainees of their s. 10(b) rights and facilitate access to those rights where requested, both without delay. This includes “allowing [the detainee] upon his request to use the telephone for that purpose if one is available” (*Manninen*, at p. 1242). And all this because the detainee is in the control of the police and cannot exercise his right to counsel unless the police give him a reasonable opportunity to do so (see *Brownridge v. The Queen*, 1972 CanLII 17 (SCC), [1972] S.C.R. 926, at pp. 952-53).

If Cst. ██████ was not going to complete both the informational and implementational components of section 10(b) immediately upon arrest out of concern for officer or public safety or because the Complainant was too intoxicated to understand, then he had a duty to monitor the situation and ensure that the Complainant’s right to counsel was facilitated as soon as he was sufficiently sober. If Cst. ██████ could not do this himself, due to shift changes or other circumstances, then he had a duty to assign this task to be completed by another officer.

As it turned out, the Complainant spent the night in cells and was released in the morning, without ever being offered the opportunity of consulting with counsel.

I find, therefore, that the evidence referenced in the Final Investigation Report appears sufficient to substantiate the allegation that there was a Neglect of Duty by Cst. [REDACTED] for not facilitating access to counsel for the Complainant, and that this appears to require the taking of disciplinary or corrective measures.

Analysis – Allegation of Neglect of Duty by Cst. [REDACTED] for not providing the Complainant with access to medical attention for his alleged injury.

Turning to the second area of concern: is the evidence capable of supporting a finding that Cst. [REDACTED] neglected his duty by failing to provide the Complainant with access to medical attention for his alleged injury?

All of the officers involved in the arrest of the Complainant said that they did not observe any visible injuries and that the Complainant did not report any injuries at the scene.

The Complainant was transported to the Saanich Police Department and placed in a cell to sober up. The arresting officers departed, and the Complainant was then under the supervision of the front desk officer, Cst. [REDACTED], whose responsibility was to manage the police cells and any prisoners in custody.

The Complainant said that he started to notice an injury to his elbow when he was at the police station and the adrenaline from the arrest started to wear off. He said that he repeatedly complained about this during the time he was in the cells.

Cst. [REDACTED] said he had no recollection of the Complainant requesting an ambulance or a doctor or other medical attention, although the Complainant seemed to think, incorrectly, that Cst. [REDACTED] was one of the arresting officers and that he had “f’d up my elbow”.

There is a video recording of the entire time that the Complainant was in the cells. Unfortunately there is no audio recording. In the video one can clearly see the Complainant repeatedly yelling and pointing to his left elbow, which he was holding in an awkward manner.

The Investigator questioned Cst. [REDACTED] about this at length, and I reproduce here his summary as set out in the Final Investigation Report:

Cst. [REDACTED] advised that some of his duties while working as the front desk officer is to manage and oversee the Saanich Police cells and any prisoners who are in custody.

Cst. [REDACTED] stated that after he graduated from the police academy that he was familiar with the role of the front desk officer.

Prior to policing, Cst. [REDACTED] stated that he worked for BC Corrections for four years and was “very familiar and experienced in, uh, supervising and caring for people in custody.”

He watched Mr. [REDACTED] get uncuffed in the cell and saw Mr. [REDACTED] strip his own clothes off and throw them around the cell.

After Mr. [REDACTED] was secured within the cell, Cst. [REDACTED] recalled how Mr. [REDACTED] was yelling "nonsensical stuff for the first at least couple hours he was in there, um, and I just remember being shocked at, uh, the crazy things that were coming out of his mouth..."

Cst. [REDACTED] stated how he checked on Mr. [REDACTED] a few times that night.

In terms of assessing Mr. [REDACTED] level of sobriety, Cst. [REDACTED] found that Mr. [REDACTED] was affected by drugs, "he came off as like a person experiencing drug-related delusions. Just from like what was coming out of his mouth, it was, it was basically utter nonsense for the first couple hours he was in there. It was nothing that I could, you know, s-. Like I couldn't have a conversation with him. It was just all, um, anger and some threats and just, you know, paranoia and delusions...."

Cst. [REDACTED] stated that although Mr. [REDACTED] was physically cooperative in the sense of walking into the cell, he was very verbally abusive, not making sense, and at one point Mr. [REDACTED] threw himself onto the bed after the officers told him to lie down so the handcuffs could be removed, Cst. [REDACTED] stated that Mr. [REDACTED] did not mention any injuries on initial admittance into cells and he did not display any signs of being injured at all. Mr. [REDACTED] was moving around the cell, flailing his arms, screaming, yelling, pacing back and forth, but he did not have any visible injuries or make mention of them on first interaction with Mr. [REDACTED]

When Sgt. [REDACTED] interviewed Mr. [REDACTED] he stated that while he was being released, he asked to see a doctor. When Cst. [REDACTED] was asked if he recalled this, Cst. [REDACTED] stated, "Uh, yes I've thought a lot about this and I, I'd, I have no recollection of him ever requesting ambulance or doctor or medical attention at all. Um. He, you know, couple of times I visit him. Visited him throughout the night he was yelling at me again because he thought I was the, one of the ones who arrested him, so he's, he's yelling at me saying you know you guys f'd up my elbow. Um, but I don't have any recollection of him ever seeking or like asking me to seek medical attention from him. Um. As I said before I've been in corrections for a few years and I know that there's a, you know, a standard of care that we have for these people that are in custody, so, you know, my. If I ever had a, a notion that somebody in my, in my care needed medical attention, it wouldn't be a hard decision to just have EHS Ambulance come check them out. It's not a hard radio ca-, radio call to make so. Um. That would never. If I, if I ever thought somebody needed medical attention in my cells, I would certainly make that call. It's easy enough to do and I, I know that

well enough, so. I have no recollection of him ever requesting attention. He certainly brought attention to his elbow a couple of times because he thought I was the one who did it to him and he was angry about that, but, um, based on my assessment, you know, given his, his mobility, his, his actions upon being admitted into cells and throwing stuff around the cell, um, it wasn't something saying that when he said you guys effed up my elbow, it wasn't something that I assessed to be a, a real serious injury. Um. It was something I assessed. Maybe he was trying to exaggerate to, to use to get out early or perhaps to open the cell door and, and have a fight with us or something like that, so, um, yeah. Based on what he was doing, I'd, hm. The actions he was taking and, you know, getting uncuffed and taking off his clothes and throwing them around the cell. You know I've had a broken arm before. I know what it feels like. I know you're in excruciating pain, um, so I was able to look at him and kind of judge like I don't think this is necessarily a creditable, um, claim he's making. Um, but again if he did say I need you to call ambulance, I would've."

In the Release Assessment text page on file 2024-092, it was noted by Cst. [REDACTED] that Mr. [REDACTED] said he was either going to the hospital or to his hotel. When Cst. [REDACTED] was asked if he ever asked Mr. [REDACTED] if he needed to go to the hospital or if he had made any further inquiries or assistance, Cst. [REDACTED] stated, "No, I don't believe so. I. He said I'm either gonna go back to my hotel or go to the hospital and, you know, my assessment was that he didn't have a serious injury. It did not look like to, to me that he had any serious injuries, so I kind of just, uh, thought or maybe even said to him okay you can. If you need to go to the hospital, un, un. I'm pretty sure I'm offered him to call him a cab if he needed to take a cab to the hospital. Um, I usually do that for all releases who don't have like a plan for how they're getting home. Um, that would be it."

When Cst. [REDACTED] was asked if he ever told the on-duty Watch Commander about the fact that Mr. [REDACTED] may go to the hospital, Cst. [REDACTED] stated that it was possible, but he couldn't recall.

During the interview, Sgt. [REDACTED] showed Cst. [REDACTED] a video clip from January 2, 2024, at 1209 to just after 1210 a.m., then asked Cst. [REDACTED] to recall what conversation was happening during this time. Cst. [REDACTED] watched this video and stated, "Yeah, so we lodged this other prisoner beside him. Uh, I definitely remember at that point, you know, the point is memorable for me because the other prisoner was being lodged and, um, Mr. [REDACTED] was still screaming and yelling, and I believe the other prisoner made a comment to me like "is there another cell I can go to." Um, then I went over to look at Mr. [REDACTED] I think, I think at that point he's yelling at me like "you guys effed up my arm." Um. I don't imagine I said too much to

him at that point because like I said it was really tough to get a word in. Um, he's basically just screaming at me thinking I'm the one who arrested him. Um. I arrested him wrongfully and he's going "you guys effed up my arm." Again, at the point I'm relying on my earlier assessment that, you know, not long before this he's wandering around in his cell, throwing things around, he's, um, you know, moving his arm freely. Doesn't seem to be any pain and now he's telling me that, you know, "you guys effed up my arm" and I'm kind of thinking that this is not a, a legitimate complaint. Um. If there is a goal here, he's maybe trying to get let out early."

Cst. [REDACTED] stated that he was standing in front of Mr. [REDACTED] and that Mr. [REDACTED] looked like he had a "normal arm and elbow. There's no, um, [REDACTED] g or swelling. Um, there's no bleeding. Um, all of those things would probably have, you know, triggered me to look a little further into it, but there was, there was no visible injury on him. His elbow looked, you know, both his elbows looked the same. There was no obvious injury."

During the interview, Sgt. [REDACTED] showed Cst. [REDACTED] a video clip from January 2, 2024, at 144 a.m., then asked Cst. [REDACTED] to recall what happened, with Cst. [REDACTED] stating, "Uh, it's m [REDACTED] he same. Um, he's yelling at me cause he thinks I'm the one who arrested him. He wants to be let out. Um, yeah that's basically what I can recall... Like I obviously saw him point to it then, so he's probably saying the same thing like, um, you know, "you guys fucked up my elbow." Um, but certainly no, no mention of like I need to s-, I need to see a doctor or anything like that."

During the interview, Sgt. [REDACTED] showed Cst. [REDACTED] a video clip from January 2, 2024, at 5 a.m. and 32 seconds, then asked Cst. [REDACTED] to recall what happened, with Cst. [REDACTED] stating how this was more about him talking and seeing if Mr. [REDACTED] was calm to be released and where he did not think Mr. [REDACTED] mentioned his elbow.

During the interview, Sgt. [REDACTED] showed Cst. [REDACTED] a video clip from January 2, 2024, at 501 a.m. and 14 seconds, then asked Cst. [REDACTED] to recall what happened, with Cst. [REDACTED] stating, "Uh, specifically in that moment, I can't really recall if he's mentioning anything. If he is, he's, it's more of the same like, um, you know, when you guys arrested me, you twisted this arm. Um. That sort of thing."

During the interview, Sgt. [REDACTED] showed Cst. [REDACTED] a video clip from January 2, 2024, at 534 a.m. and 44 seconds, then asked Cst. [REDACTED] to recall what happened, with Cst. [REDACTED] stating how he could not recall what specific conversation he had, but he would assume that the jailer was telling Mr. [REDACTED] that there was some paperwork and usual spiel he has heard jailers say to prisoners.

During the interview, Sgt. ██████ showed Cst. ██████ a still image from the CCTV, dated January 2, 2024, at 535 a.m. and 4 seconds, then asked Cst. ██████ to recall what happened, with Cst. ██████ stating, "That might be when he was saying, you know, I might have to go to the hospital, which is what I refer to in my release document."

When Cst. ██████ was asked if injuries should be documented within a notebook, Cst. ██████ stated that if he saw a "noticeable injury" that he "believed" was an injury, he would probably put it in a text page and in his notes. Cst. ██████ then added that in his "assessment" was that Mr. ██████ did not have a broken arm and was not "wailing in pain or anything like that."

Cst. ██████ stated that if someone had a "legitimate injury" then he would report it to the Staff Sergeant.

When Cst. ██████ was asked when it was that he first learned of Mr. ██████ claiming to have an injury, Cst. ██████ stated, "Claimed to have an injury, um, it was probably around the, you know, the first, not the, not the first admittance into cells, but I realized that he was claiming to have an injury when I was speaking to him at the door, and he gestured towards his arm and was like "you guys fucked up my arm." You know "you guys twisted my arm." Um, that was the first time I realized that he was claiming to have something wrong with his arm, but at no point in the night did I think, realize, or become aware that he actually had an injury. My interpretation throughout the whole night was that he did not have a serious injury to his arm..." When Cst. ██████ was asked if Mr. ██████ had any challenges getting dressed or gathering his effects during the release, Cst. ██████ stated, "I think at that point he was talking about maybe I need to go to the hospital and, and he was saying you know like "how do you expect me to get dressed" and I think at that point I, that was me saying you know do you want me to call you a cab. You know you take yourself to the hospital if you like. Um. I th-, he, he got dressed and I don't think, you know, he was probably holding his arm in the way that he was, but he didn't like, you know, when putting on his sleeves or anything he didn't cry out in pain or anything like that. Um. Yeah, so he, he would have had difficulty just cause of the way he was holding his arm, but there was never like an expression of pain or anything like that."

When Sgt. ██████ asked Cst. ██████ if someone needs to ask to go to the hospital or if he could infer that someone needs medical assistance, Cst. ██████ stated that many times he has observed people who needed medical help that never asked for it, but he has called on their behalf.

At the end of the interview Cst. [REDACTED] added that based on his experience as a police officer and former correctional officer, of his responsibilities and "duty of care." If he had thought that Mr. [REDACTED] needed medical assistance, Cst. [REDACTED] stated that it wouldn't have been an issue to "just call paramedics to the cell block if I thought it was necessary."

Cst. [REDACTED] added that he has Level 2 First Aid from the past, which is a more comprehensive course on first aid, covering things like broken limbs and fastening splints.

To substantiate the allegation of Neglect of Duty by Cst. [REDACTED] it must be established that he had a duty to facilitate necessary medical care, which he neglected to promptly and diligently do, without good or sufficient cause.

Cst. [REDACTED] was the Front Desk Officer during the time that the Complainant was lodged in cells, and in that capacity, he had a duty to facilitate necessary medical care for any prisoners in custody, including the Complainant. The evidence appears to show that he neglected to carry out that duty. The evidence does not appear to establish any good or sufficient cause.

From the evidence, it appears that Cst. [REDACTED] did not believe the Complainant had any injuries sufficiently serious to merit further investigation or medical intervention.

The video of the cells appears to show the Complainant repeatedly pointing to his elbow and shouting. Cst. [REDACTED] explained that the Complainant was saying something to the effect of "You f'd up my arm", which he dismissed since he was not involved in the arrest and he did not cause any injury to his arm. Nevertheless, the accusation "You f'd up my arm" carries with it the obvious implication that there was an injury to the arm. This should have prompted Cst. [REDACTED] to follow up with some medical intervention to determine the extent of the injury and what, if any, medical care was necessary. Cst. [REDACTED] explanation that in his opinion, he did not think it was serious, is not a good or sufficient cause for ignoring the complaint.

I find, therefore, that the evidence referenced in the Final Investigation Report appears sufficient to substantiate the allegation that there was a Neglect of Duty by Cst. [REDACTED] for not facilitating access to medical care for the Complainant, and that this requires the taking of disciplinary or corrective measures.

Conclusion And Next Steps

With respect to the allegation pursuant to section 77(3)(m)(ii) of the *Police Act* of Neglect of Duty by Cst. [REDACTED] for not facilitating access to counsel for the Complainant, I find that the evidence referenced in the Final Investigation Report appears sufficient to substantiate the allegation and that this appears to require the taking of disciplinary or corrective measures.

With respect to the allegation pursuant to section 77(3)(m)(ii) of the *Police Act* of Neglect of Duty by Cst. [REDACTED] for not facilitating access to medical care for the Complainant, I find that the evidence referenced in the Final Investigation Report appears sufficient to substantiate the allegation and that this appears to require the taking of disciplinary or corrective measures.

On the basis of the limited information now before me, I have determined that in each case, the range of disciplinary or corrective measures to be considered under section 126(1) of the *Police Act* includes one or more of the following:

- i. To require the member to take training,
- ii. To reprimand the member verbally or in writing for this conduct,
- iii. To provide the member with advice as to his conduct.

Having considered the factors set out in section 120(3) of the *Police Act*, I have decided to offer Cst. [REDACTED] and Cst. [REDACTED] a pre-hearing conference regarding the allegations of Neglect of Duty.

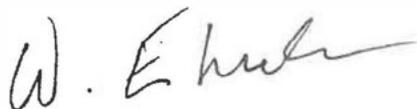
I am directing that they advise the Registrar within 5 business days when a decision has been made on whether to accept the offer of a pre-hearing conference.

Section 118(1) of the *Police Act* provides that a discipline hearing concerning the apparently substantiated misconduct allegations must be convened within 40 business days of notice of this decision.

Pursuant to section 113 of the *Police Act*, the Complainant has the right to make submissions at a discipline hearing under section 117(8)(b) or at a pre-hearing conference under section 120(6).

Cst. [REDACTED] and Cst. [REDACTED] may, pursuant to section 119(1) of the *Police Act*, file with the discipline authority a request to call and examine or cross-examine one or more witnesses listed in the Final Investigation Report. Such a request must be made within 10 business days of this notification.

Dated at Vancouver, British Columbia this 5th day of February, 2025.



Hon. William Ehrcke,
Retired Judge of the Supreme Court of British Columbia, Adjudicator