

**IN THE MATTER OF *THE POLICE ACT*, R.S.B.C. 1996, c.367 as amended,  
AND  
IN THE MATTER OF A REVIEW OF  
THE ALLEGATIONS OF MISCONDUCT AGAINST  
SPECIAL MUNICIPAL CONSTABLE [REDACTED]  
OF THE VANCOUVER POLICE DEPARTMENT**

TO: Chief Constable Steve Rai  
c/o Vancouver Police Department  
Professional Standards Section

AND TO: Mayor Ken Sim  
Vancouver Police Board

AND TO: Special Municipal Constable [REDACTED]  
c/o Vancouver Police Department

AND TO: Investigator Sergeant [REDACTED], Investigator  
c/o Vancouver Police Department  
Professional Standards Section

AND TO: [REDACTED] Analyst  
Office of the Public Complaint Commissioner

AND TO: [REDACTED] Inspector  
c/o Vancouver Police Department  
Discipline Authority

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**NOTICE OF SECTION 117 DECISION**

**INTRODUCTION**

1. On April 16, 2024 officers from the Metro Vancouver Transit Police (MVTB) attended a call for service of an intoxicated man at a bus stop in south Vancouver. The man, later identified as [REDACTED], was reported to be very drunk, belligerent, and assaultive towards members of the public including a relief bus driver waiting at the bus stop. Mr. [REDACTED] spat on the bus driver's face, amongst other things. MVTB located Mr. [REDACTED] shortly after and he was arrested for assault and for being intoxicated in a public

place, and transported to the Vancouver Jail (located adjacent to the Vancouver Provincial Court at 222 Main Street, downtown).

2. Upon arrival at the Vancouver Jail, Mr. [REDACTED] refused to cooperate with officers and follow instructions. Once inside the jail, but prior to arriving at the intake area, Vancouver Special Municipal Constable [REDACTED], a jail guard, initiated a “leg reap” or “sweep” and took Mr. [REDACTED] down to the ground, in response to what SMC [REDACTED] says were signs that Mr. [REDACTED] was about to spit on officers. Mr. [REDACTED] unfortunately landed face down, rather forcefully, and injured his nose. In reports with respect to his use of force, SMC [REDACTED] described Mr. [REDACTED] amongst other things, as “diving” forward during the take down, and that he, SMC [REDACTED] initiated the take down with the appropriate “duty of care”. The interaction between SMC [REDACTED] and Mr. [REDACTED] was recorded on video inside the jail.

3. This matter is before me for consideration pursuant to s. 117 of the *Police Act*, RSBC 1996, c. 367, as amended. The questions I must address is whether the actions of SMC [REDACTED] “appear to constitute misconduct”. More specifically, there are three allegations of misconduct at issue as a result of the Police Complaint Commissioner’s Notice of Appointment:

1. abuse of authority, pursuant to s. 77(3)(a)(ii)(A), by intentionally or recklessly using unnecessary force on Mr. [REDACTED] (the leg reap);
2. deceit, pursuant to s. 77(3)(f)(i)(A), for making false or misleading statements about the incident; and
3. neglect of duty, pursuant to section 77(3)(m)(ii), for failing to prepare accurate, detailed and comprehensive notes about the incident.

## **FACTS**

### *Bus stop assault and arrest*

4. I have reviewed and considered the report and records supplied to me in this matter: the 85-page Final Investigation Report prepared by Vancouver Police Department Sgt. [REDACTED]; surveillance video footage; witness and police statements; police and jail reports; and the related materials arising in this disciplinary investigation. I will review the evidence in more detail here.

5. It is not in dispute that on April 16, 2024, at approximately 12:24, MVTP received a report of a 911 call from a relief bus driver who had been assaulted by [REDACTED] at a bus stop on SE Marine Drive. Mr. [REDACTED] made rude comments to an elderly couple walking by the bus stop. He then made rude and angry comments to the bus driver, walked up to him, and spat in his face. Mr. [REDACTED] also put his fists up and made a comment to the effect of “let’s go!” The bus driver hopped onto the next bus that arrived, for safety, and called 911 once the door was closed. Mr. [REDACTED] proceeded to urinate on the side of the bus stop and then walk away before police could arrive.

6. MVTP Constables [REDACTED] and [REDACTED] were dispatched and took statements. They located Mr. [REDACTED] at approximately 15:26 after a subsequent call that an intoxicated male fitting his description was escorted off of a bus by Transit Security, and then passed out in the nearby bushes. The constables woke Mr. [REDACTED] up and placed him under arrest for intoxication in a public place and assault. He was transported by police vehicle to the Vancouver Jail.

### *Assessment and initial interaction with jail staff*

7. Once at the Vancouver Jail, Mr. [REDACTED] was assessed in the backseat of the MVTP vehicle by the Vancouver Police Department (VPD) officer in charge, Sgt. [REDACTED], and a nurse, as is the customary practice with intoxicated detainees. Sgt. [REDACTED] determined that Mr. [REDACTED] was intoxicated to the point that he could not be released. Sgt. [REDACTED] advised SMCs [REDACTED] and [REDACTED] (both jail guards) that Mr. [REDACTED] needed to be detained in custody at the jail. Sgt. [REDACTED] was not able to recall

the particulars of the conversation he had with Mr. [REDACTED] in the police vehicle, nor details about Mr. [REDACTED] behaviour at that time, and while being escorted inside. The on-duty jail nurse did not recall whether she went outside at all, but agreed she would have, as she was on-duty that day.

8. SMC [REDACTED] reported that Mr. [REDACTED] refused to answer the questions of Sgt. [REDACTED] when he was in the back of the police vehicle (a sports-utility vehicle). Mr. [REDACTED] was rude and refused to cooperate, forcing the jail guards to go into the back seat and pull him out. Once outside the vehicle, Mr. [REDACTED] refused to walk and had to be carried. After a few steps, the officers convinced Mr. [REDACTED] to stand on his own, but he continued to display resistant actions such as refusing to walk at times, and pushing and pulling forwards and backwards when he did walk. SMC [REDACTED] stated that SMC [REDACTED] told her that once they got inside, the plan would be to take him to the ground to perform a safety search, due to the fact that he was actively resisting the efforts of officers to get him inside and processed.

9. SMC [REDACTED] also recalled that MVTP officers told jail staff upon arrival that Mr. [REDACTED] had assaulted a bus driver and spat on him, and that he “would be aggressive”. MVTP Cst. [REDACTED] did not recall the particulars of what was passed on, but stated that they would have briefed jail staff on arrival as to Mr. [REDACTED] behaviour. MVTP Cst. [REDACTED] recalled that Mr. [REDACTED] went limp and acted as “dead weight” once reality “kicked in” that he was being escorted inside the jail. He did not recall seeing any other behaviour as jail staff escorted him inside.

10. Another jail guard, SMC [REDACTED], assisted in carrying Mr. [REDACTED] to the door of the jail. He described Mr. [REDACTED] as acting “dead weight”. When asked if Mr. [REDACTED] was “cooperative” he stated no, but could not recall specific behaviour at that time. He opened the door to inside, and SMCs [REDACTED] and [REDACTED] had physical control of Mr. [REDACTED] as they entered.

11. SMC [REDACTED] reported that he gave Mr. [REDACTED] repeated instructions to exit the police vehicle. He refused. Instead, Mr. [REDACTED] looked away and “scoted further into the vehicle”. SMC [REDACTED] was forced to then pull Mr. [REDACTED] out of the police vehicle. He and SMC [REDACTED] each took one side of Mr. [REDACTED]

to escort him inside. He described Mr. [REDACTED] as resisting both “actively and passively”, refusing to walk, and pushing and pulling. He recalled that MVTP officers had told jail staff that Mr. [REDACTED] had spit on the bus driver, and SMC [REDACTED] said he told Mr. [REDACTED] not to spit.

12. Video surveillance from the Vancouver Jail confirms that both Sgt. [REDACTED] and the on-duty jail nurse came out to assess Mr. [REDACTED] in the police vehicle. For about 35 seconds, Mr. [REDACTED] appears to stay in the vehicle, refusing to exit. The video shows SMC [REDACTED] leaned into the vehicle to pull Mr. [REDACTED] out. It shows that Mr. [REDACTED] refused to stand up and went down to the ground. SMCs [REDACTED] and [REDACTED] picked him up and carry him for a time. Mr. [REDACTED] then started to walk on his own, on his knees. He eventually got up and walked, with jail guards on either side. He appeared at times to be moving ahead of the jail guards, apparently swaying or pulling forward. At one point, this caused the neck of his shirt to stretch, where SMC [REDACTED] was holding it.

#### The use of force

13. SMC [REDACTED] stated that Mr. [REDACTED] continued to be aggressive and rude throughout the escort. Her perception was that Mr. [REDACTED] was trying to break free of their grasp by pushing and pulling as they walked. Once inside, he went silent. She recalled thinking that he was going to spit, because he went silent, and she knew he had previously spit on someone that day. She recalled that Mr. [REDACTED] began to turn his head, and that SMC [REDACTED] told her at that point to let go. She assumed he was going to take Mr. [REDACTED] to the ground, given that they had previously discussed that. She understood that the plan was to conduct a search of Mr. [REDACTED] on the ground, as it would be safer for everyone, given Mr. [REDACTED] behaviour.

14. SMC [REDACTED] reported that Mr. [REDACTED] “launched” his weight forward as SMC [REDACTED] tried to escort him to the ground. He fell on his side, and then rolled forward with his full weight, and hit his nose on the ground, causing it to bleed. She recalled in the aftermath, that she heard SMC [REDACTED] say, “oh, he was going to spit”.

The officer's description of the incident

15. For his part SMC [REDACTED] account of what occurred is captured in several different documents, including his notebook, police report, Subject Behaviour / Officer Response (SBOR) use of force report, jail notes, and his interview with the investigator tasked with reviewing his conduct, Sgt. [REDACTED]. I will summarize each briefly.

16. In his notebook, SMC [REDACTED] wrote that he heard Mr. [REDACTED] making a “slurping” noise with his throat and mouth, which he interpreted as an imminent sign of spitting. In response to the “threat”, SMC [REDACTED] “executed an outer reap physical take-down technique (with duty of care)”. He wrote that during the takedown, he “felt [Mr. [REDACTED] acting dead weight and diving forward independently”. He “pulled [Mr. [REDACTED] up as best [he] could for [Mr. [REDACTED] safety” but that he landed face down, resulting in injury.

17. SMC [REDACTED] written police report is essentially verbatim to his notebook. He added to his police statement that the leg reap technique “is a use of force technique approved by VPD”. He also expanded on his note that he tried to pull Mr. [REDACTED] up as he went down, writing in his police report that “to ensure [REDACTED] safety and well-being, [REDACTED] pulled [REDACTED] up as best he could using both arms for DOC [“duty of care”]. [REDACTED] swayed to the right and landed horizontally, face down.”

18. SMC [REDACTED] completed an SBOR report, as he was required to do. That type of report uses a template format and contains questions with responses, which can be ticked off. It also contains space to write descriptions in response to certain questions. In the SBOR report, SMC [REDACTED] checked off boxes indicating that Mr. [REDACTED] behaviour was classified during the interaction as “passive resistant”, “active resistant”, and “assaultive”. Under the category of “pre-assault cues” he ticked off the boxes for several observed actions, including the box for the subject matter attempting to spit. He ticked “yes” that a struggle went to the ground, and that it was subject (rather than officer) initiated. He noted that he conducted a “hard takedown”, and that it was his takedown that caused injury to Mr. [REDACTED]. In his narrative, he noted that

Mr. [REDACTED] was “non-compliant, agitated, assaultive, and difficult”. He noted the “slurping” noise, which he perceived to be “assaultive”. He noted that he made intentional efforts to use as much “duty of care” as possible while dealing with Mr. [REDACTED]

19. In the Vancouver Police Jail Detainee record, SMC [REDACTED] handwrote that he “attempted to physically escort [Mr. [REDACTED] to the ground w/ duty of care (DOC)” but that Mr. [REDACTED] “acted dead weight and dove face first on his own”.

20. At the time of his interview with investigator Sgt. [REDACTED], SMC [REDACTED] had reviewed the video, his notes, and his reports. SMC [REDACTED] repeated that once inside the jail building, he heard a “gurgling or slurring” noise, consistent with Mr. [REDACTED] accumulating saliva in his mouth to spit. SMC [REDACTED] stated that he had been spat on over ten times as a jail guard, and was familiar with it. He described it as disgusting, and later in his interview, as dangerous, as it can lead to the spread of diseases. He considered it to be an act of assault.

21. In response to what he believed was Mr. [REDACTED] preparing to spit on him, or SMC [REDACTED] he decided to take Mr. [REDACTED] to the ground immediately. He said he put out his leg to guide Mr. [REDACTED] down to the floor, and pulled him forward (the leg reap). Unfortunately, at the same time he was doing so, Mr. [REDACTED] was moving forward, causing more forward momentum than SMC [REDACTED] was prepared for. In other words, Mr. [REDACTED] went down harder than expected. In an attempt to lessen the impact, SMC [REDACTED] tried to pull him up with both arms, as he went down towards the ground. Unfortunately, Mr. [REDACTED] still hit the ground hard, face down.

22. When questioned specifically about his description of Mr. [REDACTED] “diving forward” independently, in his notes/reports, SMC [REDACTED] stated that he could have worded it differently. He was referring to Mr. [REDACTED] weight moving forward, at the same time as SMC [REDACTED] initiated the leg reap, causing additional forward momentum. Mr. [REDACTED] was “projected forward” with force.

23. SMC [REDACTED] stated that had Mr. [REDACTED] complied with the directions of police and jail guards, and not made the spitting sound, a normal search procedure would have been used, at the designated search area of the jail.

24. I have reviewed the video including the different angles several times. There is no audio. As Mr. [REDACTED] enters the jail, flanked by SMCs [REDACTED] and [REDACTED] he appears to be walking or pulling ahead. When SMC [REDACTED] initiates his leg reap, Mr. [REDACTED] upper torso and right shoulder are out in front of the rest of his body. He falls quickly to the ground, hitting his face. While falling, SMC [REDACTED] can be observed holding onto Mr. [REDACTED] arms and shirt, with his arms bent at the elbows. Mr. [REDACTED] shirt is stretched out behind him, consistent with being pulled up. Watching the different perspectives of the video cameras, it appears that Mr. [REDACTED] is turning as he goes to the ground; it looks as if he might land on his shoulder rather than face-first, until the last moment.

#### **APPLICABLE LAW**

25. The determination I am tasked with making is set out in s. 117 of the *Police Act*. That provision provides that I am to assess whether “the conduct of the member... appears to constitute misconduct” (*per* s. 117(9)), based on a review of the report, evidence and records supplied to me. In this context I do not to hear live witnesses nor consider additional evidence or submissions from the participants. Instead, I merely conduct a paper-based review.

26. As I read s. 117 and more generally Part 11, Division 3 of the *Police Act*, I am not sitting on appeal from any previous finding that a misconduct allegation was or was not substantiated. My focus is not on the correctness of an earlier finding, but rather I am to reach my own conclusion about whether the materials support a finding of apparent misconduct. I note that s. 117(1)(b) says that the retired judge conducting the review is to “make her or his own decision on the matter”. Recognizing the limitations of a paper-based review, I have made my own assessment of whether the police conduct here “appears to constitute misconduct”.

27. The misconduct allegations in this case arise under three subsections of s. 77 of the *Police Act*, which provide in relevant part:

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:

(a) “abuse of authority”, which is oppressive conduct towards a member of the public, including, without limitation,

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

(A) using unnecessary force on any person ...

...

(f) “deceit”, which is any of the following:

(i) in the capacity of a member, making or procuring the making of

(A) any oral or written statement ...

...

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

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

28. Section 77 of the Act goes on to state, in subs. (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.”

29. I will deal with the three allegations in this case —improper use of force, deceit, and neglect of duty.

*Allegation of excessive force*

30. A police officer’s ultimate authority for using force is found in section 25 of the *Criminal Code*, RSC 1985, c. C-46, as amended. It states that every one who is required or authorized by law to do anything in the administration or enforcement of the law (such as a jail guard) is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

31. Not every instance of unnecessary use of force constitutes misconduct under the *Police Act*. The *Police Act* speaks of this misconduct as occurring when an officer “intentionally or recklessly” uses “unnecessary force” on a person.

32. There is no doubt that SMC [REDACTED] intentionally used force (the leg reap), and that the force used was while in the performance of his duties. The issue then is whether the leg reap was “unnecessary” and if so, that in employing the leg reap, SMC [REDACTED] intended or recklessly used the unnecessary force.

33. It is clear, on my review of the evidence, that Mr. [REDACTED] was far from an ideal detainee. He had a recent and demonstrated history prior to arriving at the Vancouver Jail, and known to SMC [REDACTED] of engaging in belligerent and aggressive behaviour, including toward persons in authority. I emphasize in particular — because of its relevance to the use of force at issue — that SMC [REDACTED] was aware that only recently Mr. [REDACTED] had committed an assault by spitting. This fact matters because it informs the officer's assessment of what risks Mr. [REDACTED] raised as he was taken into the jail. (Without this specific detail, conceivably an officer's assertion that “he was about to spit” could be taken as an unfair speculation.)

34. Upon arrival at the jail facility, Mr. [REDACTED] continued in his resistant and belligerent behaviour. He refused to get out of the police vehicle. When it became obvious that jail guards were going to extract him, SMC [REDACTED] says Mr. [REDACTED] moved himself further away, apparently to make their job more difficult. Once out of the vehicle, he acted as a dead weight, pulling himself to the ground, forcing jail staff to carry him. He eventually walked on his knees, and then his feet. Multiple officers and jail guards confirm that Mr. [REDACTED] was intentionally making himself dead weight. Once he was on his feet, both SMC [REDACTED] and [REDACTED] say that he was actively pulling and pushing away from them.

35. While intoxicated, and unsteady on his feet to some degree, it does not appear from the video that Mr. [REDACTED] movements were primarily as a result of imbalance or gross impairment of his motor skills. There does appear to be intention behind his actions, which is consistent with the descriptions given by SMCs [REDACTED] and [REDACTED]. His actions are consistent with both passive and active resistance.

36. It is uncontroversial that intentionally spitting on a person is considered an assault. If SMC [REDACTED] heard throat and mouth noises consistent with an impending spitting action, he was entitled to respond with proportionate physical force to protect himself and SMC [REDACTED] from the impending assault. SMC [REDACTED] repeatedly and consistently stated that he heard Mr. [REDACTED] make noises consistent with an impending assault. He described it variously as a “slurping” noise, or a “gurgling or slurring” noise. He demonstrated the noise in the interview with Sgt. [REDACTED], and it is clear that it is the sound of accumulating saliva in preparation for spitting, sometimes termed, somewhat inelegantly, “horking”. I note that others present did not recall hearing that noise, including SMC [REDACTED] who was right beside Mr. [REDACTED]. Yet SMC [REDACTED] recalled that she thought Mr. [REDACTED] would spit, as she described SMC [REDACTED] telling her to let go of Mr. [REDACTED] abruptly upon entering the jail.

37. Based on the record before me, in the context of a s. 117 review, I accept that SMC [REDACTED] reasonably believed that Mr. [REDACTED] was about to spit on jail staff. Importantly, as noted above, he knew that Mr. [REDACTED] had already spat on a bus driver earlier that day, when he became upset. He also had first-hand knowledge of Mr. [REDACTED] behaviour in the minutes and seconds before, including belligerent, combative, and active resistant behaviour. He had personal experience with being spat on as a jail guard, and had reasonable grounds to be concerned about that occurring. I would add that as a matter of logic, it is reasonable to assume that something precipitated SMC [REDACTED] taking Mr. [REDACTED] to the ground, immediately after entering the door (in other words, the leg sweep did not come out of the blue for no reason). While SMC [REDACTED] stated that it was their plan to take him to the ground to search, regardless, because of his consistently difficult behaviour, this “take down” occurred just inside the door, rather than in the search area further down. SMC [REDACTED] stated that had Mr. [REDACTED] not made the spitting noise, he would have been taken further in, to the designated search area.

38. Given my conclusion that SMC [REDACTED] reasonably believed that Mr. [REDACTED] was about to spit on jail staff, I accept that it was appropriate to try and subdue Mr. [REDACTED] immediately, to prevent that

action, by taking him to the ground. It is clear that Mr. ██████ went down faster and harder than SMC ██████ anticipated, and with no ability to break his own fall given that he was in handcuffs. SMC ██████ should have anticipated some of that forward momentum, given Mr. ██████ level of intoxication, and his demonstrated acts of pulling away prior to this. However, his actions cannot be judged by a standard of perfection, with hindsight. On the evidence before me, I do not believe he intentionally or recklessly caused Mr. ██████ face to hit the ground as it did. The video suggests that the officer is not throwing Mr. ██████ into the ground and if anything may be pulling him upwards just before he hits the ground (which he says was to prevent or minimize injury). I would add that the video (from all the various angles) does not suggest that SMC ██████ was angry or lost his temper; he appears calm and in control.

39. Watching the video highlights how quickly this incident took place. It took mere seconds. It is, in my view, unrealistic and unfair to engage in a frame-by-frame dissection and to fault the officer in this case for excessive force, based on the record before me and in the context of assessing whether the evidence appears to substantiate misconduct. I conclude that the evidence does not appear to substantiate the allegation of excessive force.

*Allegation of deceit*

40. This allegation involves SMC ██████ notes and reports, in which he makes reference to Mr. ██████ “diving” forward independently when he fell, and asserts that he exercised a “duty of care” while dealing with the man.

41. As outlined in OPCC RR 18-03 and above, the essential elements of this type of misconduct are as follows:

- (a) the member made or attempted to make an oral or written statement, or
- (b) the member “procured” or attempted to procure the making of oral or written statement,
- (c) that statement was made or procured in the member’s capacity as a police officer,

(d) that statement was false or misleading, and

(e) the member had knowledge that the statement was false or misleading.

42. A review of the video does not support the assertion that Mr. [REDACTED] “dove forward” independently. Forward momentum was caused, to great extent, by SMC [REDACTED] initiated the leg reap by tripping him, and pushing him over. However, Mr. [REDACTED] is consistently described as being actively resistant during his escort by both jail guards, and the video supports that just prior to the leg reap, he appears to be pulling or leaning forward. The video (from various angles) suggests that Mr. [REDACTED] is pulling forward in much the same manner as a dog would “lead”, pulling on its leash. Furthermore, it appears from the video that SMC [REDACTED] is himself pulled forward and down by Mr. [REDACTED] as he falls. I am prepared to accept SMC [REDACTED] explanation during the interview, that while he could and should have used better phrasing, Mr. [REDACTED] went down harder and faster than he anticipated — given Mr. [REDACTED] own forward motion — leading to his perception that Mr. [REDACTED] contributed independently to the fall. To put this point differently, while the video objectively indicates that Mr. [REDACTED] was not throwing his weight forward, the officer’s subjective perception that he did so was reasonable in the circumstances.

43. With respect to SMC’s use of the phrase “duty of care”, it appears to be a phrase that he uses routinely, since it appears in other places in his report. Vancouver Police Department Force Options Training Sgt. [REDACTED], a use of force expert, stated that “duty of care” is phrase repeatedly used in officer training; the idea is to orient officers to consider the subject’s well-being during a use of force. This is supported by SMC [REDACTED] use of the words, in connection with his description of trying to pull up on Mr. [REDACTED] as he goes down to the ground.

44. To lawyers and judges, “duty of care” has a special legal meaning, one that is often invoked to assess civil liability in negligence law. It is not a phrase that is part of regular parlance. Despite the awkward word choice, applying the standard in s. 117(9) of whether conduct described in the evidentiary record “appears to constitute misconduct”, I conclude that this was not an instance of deceit by SMC [REDACTED]. Considering

how many fellow officers were in the vicinity, and that activity in entrance into the jail facility is captured in high-quality video from numerous angles, it would be surprising if an officer would set out to deceive in their description of an incident that was so visible.

45. I therefore conclude that the allegation of deceit contrary to *Police Act* s. 77(3)(f)(i)(A) is not substantiated.

*Allegation of neglect of duty*

46. This allegation addresses the same conduct as the deceit allegation: SMC [REDACTED] notes and reports, where he makes reference to Mr. [REDACTED] “diving” forward independently when he fell, and the assertion that SMC [REDACTED] exercised a “duty of care” while Mr. [REDACTED] was taken to the ground. As opposed to the deceit allegation — focusing on whether he deliberately lied in his reports and/or notes — the neglect of duty allegation is that he neglected, without good or sufficient cause, to promptly and diligently take accurate, detailed and comprehensive notes about the incident.

47. To constitute police misconduct, “neglect of duty” must involve more than just a mistake or error of judgement: the conduct must include an element of wilfulness in the police officer’s conduct, or alternatively there must be a degree of neglect that would make the matter cross the line from a mere job performance issue to a matter of misconduct: *Dickinson v. Ontario Provincial Police*, 2018 ONCPC 20.

48. I take no issue with the use of the phrase “duty of care” for the reasons I have set out above. SMC [REDACTED] was exposed to that phrase in training, and in his notes and reports, he articulated what he sought to do during the takedown to prevent or mitigate injury. While its possible he could have expanded his decision-making process on the use of the takedown manoeuvre, and what considerations he gave to safety, I do not find an appearance of misconduct.

49. With respect to SMC [REDACTED] repeated assertions that Mr. [REDACTED] “dove” forward independently, however, I do have some concern. I have already explained that I believe SMC [REDACTED] did not deliberately lie or mislead in his notes and/or report. However, as noted, the video is not consistent with Mr.

██████████ “diving” forward independently, or diving “face first” on his own, and by that, I mean, propelling himself face first, downwards with great force. He was tripped and pulled down by SMC ██████████. The officer appears to acknowledge that in his explanations as well, because alongside his description of “diving”, he notes that Mr. ██████████ acted as “dead weight”. Those are two different things.

50. I accept what SMC ██████████ stated, during his interview, that he could have chosen better words, and that what he meant was that due to Mr. ██████████ own forward-pulling motion or step, at the time, he went down harder than SMC ██████████ expected. In other words, Mr. ██████████ movements contributed to how hard he fell, but he did not dive “face first” on his own. And the officer in this instance neglected to add further information to give a more fair and balanced account of what occurred. The language used by SMC ██████████ was very poorly chosen, and gives the appearance of attributing blame disproportionately to Mr. ██████████ by leaving out the officer’s deliberate manoeuvre taking the man to ground, hard.

51. Police officers have a responsibility to be accurate and fair in their notetaking. This is not a standard of perfection, by any means. However, SMC ██████████ deliberately repeated that phrase in his reports, and his police report. He had time to consider what occurred. I do not see this as deliberate deceit, but rather a failure to properly take the time to articulate what he meant and to be balanced in his description of the incident. Had he done so, it would have been clear that through his words he was leaving the impression that Mr. ██████████ sprung forward, head first, of his own accord, rather than just dropping his weight, or contributing forward motion to the fall.

52. The expectation that police officers will take care in preparing their notes and reports is well settled in law, just as it is in police training. There are many reasons why officers are expected to be fair, accurate, balanced and thorough in their notes. In any situation where an officer faces particular jeopardy (such as injury resulting from the officer’s use of force), there is the superadded prospect that the officer puts a spin on the ball, by preparing notes or reports that present information in a favourable or even self-serving way, or leave out countervailing facts.

53. In this case, while not an egregious instance of misconduct and not a situation involving deliberate deceit, I conclude that the conduct of SMC [REDACTED] appears to constitute misconduct contrary to s. 77(3)(m)(ii).

### **CONCLUSION**

54. Based on the analysis above, I have concluded that based on the evidence and records before me, the first two allegations — abuse of authority by using unnecessary force, and deceit — are not substantiated. However the third allegation, neglect of duty, appears to constitute misconduct.

55. Subsections 117(9) and 117(1)(c) of the *Police Act* direct that I am to exercise the powers and perform the duties of discipline authority in relation to the substantiated neglect of duty allegation.

56. Pursuant to ss. 117(7) and (8), I am delivering this decision to the member, the Police Complaint Commissioner, and the investigating officer (there is no complainant in this case). I consider it appropriate that SMC [REDACTED] be offered a prehearing conference in accordance with ss. 117(8)(d)(ii)-(iii) and 120. The range of disciplinary or corrective measures I would consider in a prehearing conference would include advice as to conduct, reprimand, and requiring specified training or program attendance (s. 126(f)-(k)).

57. Finally, in relation to the two allegations I have determined to be unsubstantiated under s. 117(10), as required by s. 117(8)(e), I am reproducing the language of s. 117(11)):

- 117(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.



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### **DISCIPLINE AUTHORITY**

The Honourable Wallace T. Oppal, K.C., O.B.C.

July 29<sup>th</sup>, 2025