

IN THE MATTER OF THE PUBLIC HEARING RELATING TO THE CONDUCT OF  
[REDACTED] OF THE SAANICH POLICE DEPARTMENT

ADJUDICATOR'S DECISION:

INTRODUCTION:

In this proceeding, brought under Section 143 of the *Police Act*, [REDACTED] a member of the Saanich Police Department, appeals against findings of misconduct, made by his superiors on or about May 20, 2011, and against the consequential punishment meted out to him. Mr. Bradley L. Hickford has appeared as public hearing counsel and Mr. Richard L. Neary as counsel for the constable. Both counsel have discharged their duties ably and with integrity.

I have heard a wide array of witnesses on both sides of the issues.

ALLEGED MISCONDUCT:

It is alleged that [REDACTED] committed the following disciplinary defaults, pursuant to Section 77 of the *Police Act*:

**Abuse of authority:**

*On May 20, 2011 [REDACTED] committed the misconduct of Abuse of Authority pursuant to Section 77(3)(a)(i) of the Police Act, by intentionally arresting a male without good and sufficient cause, specifically by persuading the male individual to leave his residence and stand in a public place, which unbeknownst to the male, placed him in a position of jeopardy and where grounds for his arrest did not otherwise exist.*

**Deceit:**

*On May 20, 2011 [REDACTED] committed the misconduct of Deceit pursuant to Section 77(3)(f) of the Police Act, in his capacity as a member by knowingly making false or misleading statements to his immediate supervisors, surrounding the circumstances of his arrest of a male, in relation to Saanich Police file 11-10381.*

The part of the definition of deceit, contained in that section, that is relevant to this proceeding, is *making any oral or written statement that to the member's knowledge, is false or misleading.*

The evidence of the facts underlying the issues in this matter is simple and straightforward:

[REDACTED] and [REDACTED] were both on patrol in their vehicles in the evening of May 20, 2011 when they received a telephone call from a woman, whose identity I, purporting to act under the powers conferred upon me by Section 150 of the

*Police Act*, and at the request of both counsel, ordered protected from publication. I will accordingly refer to them in these reasons, simply as the "Mother," "Father" and "Son." The Mother complained that there had been violence on the part of her husband against the Son, to the extent that she sought police intervention to prevent a continuance or repetition of it.

██████████ was at that time the "primary investigator" and ██████████ was there to assist him. They went to the house from where they had received the telephone call, driving separate cars.

The Mother met ██████████ who arrived first, at the door. She told ██████████ that her husband and son had had a fight, because the teenage son had refused to cut the lawn, and the Father, who had had too much to drink, had assaulted the Son. She wanted the police to intervene and put a stop to the confrontation.

The Father was called to the door, and ██████████ observed his condition, which appeared to him to have been one of intoxication. He erroneously was of the opinion that he did not in the circumstances have the legal power to arrest the Father for assault, thus putting an end to the confrontation. He was, however, of the opinion that if the Father were to be found in a public place while under the influence of liquor he could be lawfully arrested pursuant to the *Liquor Control and Licensing Act*, held in custody until he sobered up and then released with or without a charge. Such an arrest is usually referred to by the police as a "SIPP" (state of intoxication in a public place). Its practical effect is to forestall a drunken person from causing any injury or damage or breach of the peace, as a result of his or her condition, while so intoxicated, without necessarily staining that person's record with a criminal conviction or putting him or her to the expense, inconvenience or disgrace of a prosecution and its potential consequences, although a prosecution remains an option.

Section 41 of the *Liquor Control and Licensing Act* reads:

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- (1) *A person who is intoxicated must not be or remain in a public place.*
- (2) *A peace officer may arrest, without a warrant a person found intoxicated in a public place.*

Clearly, the purpose of such an arrest is twofold:

- (1) To remove the intoxicated person immediately from the public place so as to prevent him from committing an offence, stemming from his intoxication, such as assault or damage to property, and
- (2) To prosecute the offender and, for that purpose, to prevent his escape, without first having to obtain a warrant for his arrest.

██████████ saw a SIPP arrest of the Father as the best and, indeed, the only way to prevent further violence. He erroneously did not consider an arrest for assault as an option available to him.

██████████ in an important respect misunderstood the law. In my opinion, on the basis of the information given to him by the Mother, he did have the right, pursuant to Section 495(2)(d)(iii) of the *Criminal Code*, to enter the Father's house, and arrest him for assault, to prevent the continuance or repetition of the assault, and to put him into a cell and cause him to appear in court the next day for a plea and/or a bail hearing. After considering the evidence, the Crown prosecutor could, then, in his or her discretion, have withdrawn the assault charge, and caused the Father's immediate release from custody, but such a course would inevitably have resulted in the Father's detention in custody until at least later that morning, after the prosecutor had read the material. Or the prosecutor could have proceeded to a prosecution and brought the Father before the court on a charge of assault.

Having, however, formed the opinion that he could not or ought not to arrest the Father for assault, but that it would nevertheless not be safe to leave him at home with his son, in a condition that had prompted the Mother to invoke the assistance of the police, ██████████ proceeded to create the circumstances that would, in his opinion, enable him to make a lawful "SIPP" arrest of the Father, and thus avoid any further violence. He did so by inviting the Father to come out of the door and on to the public sidewalk in front of the residence. Having succeeded in that, he promptly arrested the Father for being "found" drunk in a public place and took him off to the cells. But he did not in fact "find" the Father drunk in a public place. He had already "found" him in his residence, and then persuaded him to go into the public place. Whatever ██████████ motive for the arrest was, it was unlawful and dishonest, and he ought to have known that.

The Father was drunk. ██████████ testified that when the father was arrested he was unstable on his feet and she could smell the alcohol when he was yelling, but she did not believe that he was a danger to himself or others. In that respect, obviously, she had a different opinion from ██████████ who, in my opinion, quite properly formed the opinion that to leave the Father in his intoxicated condition, at home with his son, would entail the risk of further assaults by the Father. As I will mention again later, upon the return of the Father by the police to his home, according to ██████████ who had been sent back to the home, the Mother and Son left for a friend's home for the night. They clearly feared the Father. This is, in my opinion, further evidence, supporting ██████████ opinion that the Father was intoxicated and a danger to his family and that his arrest was called for.

In her notebook ██████████ wrote, about the Father:



*Domestic - no assault, SOC rude, belligerent obnoxious, slurred words, unsteady on feet, stated he had not been drinking/, pupils completely fixed, alcohol emanating from breath, uncooperative.*

I find that the Father was intoxicated at the time when [REDACTED] first encountered him and that [REDACTED] had grounds for arresting him for assault. He did not, however, have grounds for arresting the Father for having been "found" in a public place in a state of intoxication. He had already been "found" in his home, a private place. The arrest, purporting to have been effected pursuant to the *Liquor and Licensing Act*, was thus unlawful, and [REDACTED] ought to have known that.

Shortly after the Father's arrest the incident came to the attention of one of [REDACTED] superior officers. That gentleman felt outraged by what he perceived to have been improper conduct on the part of [REDACTED] and he immediately caused the Father to be released and returned to his home, without considering whether the Father might, in spite of his unlawful arrest, have been detained on a charge of assault, contrary to the *Criminal Code*.

Disciplinary proceedings ensued. The outcome was a finding by the Chief Constable that the allegations outlined above had been proven, and he imposed the following disciplinary and corrective measures:

*Abuse of Authority : suspension from duty without pay for 7 days.*  
*Deceit: Reduction in rank to Third Class Constable.*

It is not clear from the record before me what the Chief Constable deemed to have been the "deceit". Was it the deceit practised upon the Father by luring him out of his house, or did he allegedly deceive his superiors in his account of the occurrences? Apparently he is accused of the latter. For the written reasons submitted by [REDACTED] counsel I agree that a case of deceit in the sense of an intentional falsification of material evidence or a deliberate attempt to mislead his superiors has not been made out. As acknowledged by S. Sgt. Piercy, [REDACTED] at the second meeting in the Watch Commander's office, appeared to be in a tremendous amount of emotional distress and struggling to articulate himself. Likewise, Sgt. Stephens acknowledged that [REDACTED] had a great degree of difficulty, articulating himself. He was flustered. Where he did inadvertently misstate the facts relating to his invitation to the Father to step outside he did afterwards correct himself. His superiors were not misled. It is clear that he, understandably, was very upset by the hostile allegations made against him, and it is possible that in some respects he did not initially correctly relate the facts to his superior investigating officers, but he did promptly correct himself and I do not draw the inference from that circumstance that he had intentionally misled his superiors in their investigation of the incident. Accordingly I dismiss the allegation of deceit, which led to his being punished by a reduction in rank.

What is clear from the evidence, is that [REDACTED] motive in effecting the arrest was not for any improper personal purpose, such as personal gain or advancement or

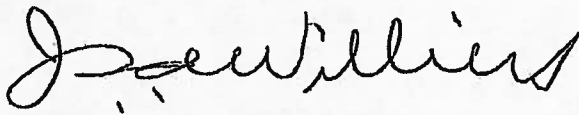
revenge, and that, however improper the manner of the arrest was, its ultimate purpose was to prevent further violence and protect the Mother and Son.

The Father had nothing to complain about. His violent conduct and threats deserved consequences. He was lucky he had not been prosecuted for assault.

This proceeding has been brought before me pursuant to the provisions of Section 137(1) of the *Police Act*, which enable a member of a police department to request a public hearing if the discipline authority proposes as a disciplinary measure the dismissal of that member or a reduction in rank. Here only a reduction in rank has been proposed.

#### CONCLUSION:

Pursuant to Section 143(9) of the *Police Act* I find that the only misconduct that has been proved on the balance of probabilities was the false arrest of the Father, purportedly pursuant to the provisions of the *Liquor Control and Licensing Act*, but stemming directly from [REDACTED] improper conduct in inducing the Father to act in a manner that would normally have constituted an offence under that Act and by falsely pretending that the Father had been "found" in a public place. I determine that the only disciplinary or corrective measure reasonably taken in relation to [REDACTED] flows from that particular conduct, was his suspension from duty without pay for a period of seven days, which I regard as proper and adequate punishment. I affirm it, but set aside the other disciplinary measures imposed.



JAKOB S. de VILLIERS Q.C.

Adjudicator