

**In the Matter of the *Police Act*, R.S.A. 2000, c. P-17 and  
In the Matter of the *Police Service Regulation*, Alta. Reg. 356/1990  
And in the Matter of Disciplinary Proceedings Against  
Regimental Number 2584 Constable Binoy PRABHU  
Of the Edmonton Police Service**

**Decision**

## **Procedural Background**

Constable Binoy PRABHU was cited with three counts of misconduct on January 21<sup>st</sup>, 2020. A hearing into the allegations was commenced via teleconference call on January 28<sup>th</sup>, 2020. Mr. Derek CRANNA was the Presenting Officer and Mr. Patrick NUGENT represented the cited officer.

Mr. CRANNA submitted three exhibits as follows:

- Exhibit 1      A memorandum from the Chief appointing myself as the Presiding Officer,
- Exhibit 2      A memorandum from the Chief appointing Mr. CRANNA as the Presenting Officer,
- Exhibit 3      A Notice and Record of Disciplinary Proceedings dated January 21<sup>st</sup>, 2020.

The hearing was recommenced on June 25<sup>th</sup>, 2020 via internet videoconference application Zoom. In addition to the regular attendees, the Complainant and a media representative were also present.

## **The Allegations**

### Count #1

Engaging in the misconduct of Unlawful or Unnecessary Exercise of Authority contrary to section 5(1)(i) of the *Police Service Regulation*, as further defined by section 5(2)(i)(ii) of the *Police Service Regulation*.

### Details of Allegation

On or about November 3, 2017, B.B. attended at the West Division station of the EPS. Upon leaving West Division you and another member approached Mr. B.B. to place him under arrest. In the course of doing so you grabbed his jacket collar, threw him up against a vehicle, and shook and/or choked him. It is alleged that these uses of force, together or individually, were inappropriate in the circumstances and constituted Unlawful or Unnecessary Exercise of Authority contrary to section 5(1)(i) of the *Police Service Regulation*, as further defined by section 5(2)(i)(ii) of the *Police Service Regulation*.

### Count #2

Engaging in the misconduct of Unlawful or Unnecessary Exercise of Authority contrary to section 5(1)(i) of the *Police Service Regulation*, as further defined by section 5(2)(i)(ii) of the *Police Service Regulation*.

### Details of Allegation

On or about November 3, 2017, following your arrest of B.B. and while escorting him in custody, you grabbed his upper right arm/shirt and pulled him into the phone room with enough force to cause him to go to the ground on his back. It is alleged that this use of force was inappropriate in the circumstances and constituted Unlawful or Unnecessary Exercise of Authority contrary to section 5(1)(i) of the *Police Service Regulation*, as further defined by section 5(2)(i)(ii) of the *Police Service Regulation*.

### Count #3

Engaging in the misconduct of Discreditable Conduct contrary to section 5(1)(e) of the *Police Service Regulation*, as further defined by section 5(2)(e)(viii) of the *Police Service Regulation*.

### Details of Allegation

On or about November 3, 2017, following your arrest of B.B. and while Mr. B.B. was in the phone room, Mr. B.B. stated to you that he would try to kill himself and that he had previously attempted suicide. In response you used words to the effect that he should go ahead. It is alleged that your response and/or encouragement to Mr. B.B. was prejudicial to discipline or likely to bring discredit on the reputation of the police service, and constituted Discreditable Conduct contrary to section 5(1)(e) of the *Police Service Regulation*, as further defined by section 5(2)(e)(viii) of the *Police Service Regulation*.

### Plea

The Presenting Officer advised that the constable had agreed to accept two counts and had cooperated on an Agreed Statement of Facts as well as a Joint Submission on Penalty. Mr. NUGENT confirmed this. Mr. NUGENT entered guilty pleas to counts 2 and 3. Mr. CRANNA withdrew count 1.

### Evidence

Evidence of the misconduct was entered by way of an Agreed Statement of Facts. Though not signed by the respective parties, they were nonetheless, verbally supported by the Presenting Officer and Constable PRABHU's counsel who specifically noted acceptance.

#### Exhibit 4      Agreed Statement of Facts

For ease of reference the submission, less attachments, is reproduced herein.

1. *Constable Binoy Prabhu (Reg. #2584) has been a member of the Edmonton Police Service (the "EPS") since February, 2005.*
2. *On November 3, 2017, Cst. Prabhu was working on the front counter of West Division.*
3. *At approximately 1623 hrs, Mr. B.B. attended at the front counter of West Division to report concerns that an individual at a convenience store was selling illegal drugs to minors. Mr. B.B. was advised by a civilian volunteer that his complaint could not be dealt with at the front counter and he would have to put in a call for service. Mr. B.B. was*

*frustrated with that response. As the discussion continued, Cst. Prabhu intervened and spoke to Mr. B.B., confirming that a call for service would be required.*

- 4. Mr. B.B. was upset after those discussions and exited West Division. In the course of doing so his foot struck one of the sliding doors, dislodging it and making a loud noise.*
- 5. After hearing that noise Cst. Prabhu and another officer, Cst. C.C., followed Mr. B.B. into the parking lot.*
- 6. After a verbal exchange regarding the door, Mr. B.B. was arrested for Mischief at approximately 1625 hrs. Cst. Prabhu handcuffed Mr. B.B. and escorted him into West Division.*
- 7. Mr. B.B. was taken to a holding cell by Cst. Prabhu and Cst. C.C., where he was searched and the arrest processed. During the search, a pressurized spray can of Sabre 'Dog and Coyote Attack Deterrent' was recovered by Cst. C.C. from Mr. B.B.'s pants pocket. Cst. Prabhu informed Mr. B.B. he was under arrest for possession of a weapon.*
- 8. At approximately 1633 hrs, as indicated by time stamp on West Division's CCTV surveillance, Cst. Prabhu escorted Mr. B.B. to the phone room. Mr. B.B. was not handcuffed or physically escorted; he was walking ahead of Cst. Prabhu. At the entrance to the phone room, Cst. Prabhu grabbed onto the back of Mr. B.B.'s upper right arm or shirt, pulling him with enough force that Mr. B.B. went to the ground, falling backwards into the door jamb and through the open doorway to the phone room. Attached at **TAB 1** (via USB) is a copy of the CCTV footage extract from West Division's WestCam\_07<sup>1</sup> on November 3, 2017.*
- 9. At approximately 1635 hrs, while in the phone room, Mr. B.B. called 911 for an ambulance stating he was having a panic attack and the police were not helping him. He also reported police were beating him.*
- 10. At around 1638 hrs, Cst. Prabhu escorted Mr. B.B. back to the holding cell.*
- 11. Mr. B.B. became increasingly emotional. Cst. Prabhu and Mr. B.B. conversed several times. During one interaction, Mr. B.B. stated that he had previously attempted suicide and threatened to kill himself. Cst. Prabhu replied that Mr. B.B. should go ahead, or words to similar effect.*
- 12. At approximately 1639 hrs, Acting Sergeant D.D. was contacted by police communications and was informed Mr. B.B. had called 911 from the West Division phone room stating he needed an ambulance as he was having a panic attack.*
- 13. At approximately 1655 hrs, A/Sgt. D.D. attended to Mr. B.B. in cells. Mr. B.B. was observed holding his shirt in his hand and had visible red marks on the front of his neck. A/Sgt. D.D. did not observe any injuries to Mr. B.B. Mr. B.B. stated he had medication in*

*his bag and it was provided to him. Mr. B.B. became calmer and it was determined an ambulance was not needed at that time.*

14. *As it was determined there was no damage to the door, Mr. B.B. was released to his mother by A/Sgt. D.D. without charges.*
  15. *Mr. B.B. saw a physician, Dr. E.E., on November 6, 2017. Dr. E.E observed tenderness to the back of his head, right hip, and left knee. He noted that there was “no particular bruising visible.” Attached at **TAB 2** is copy of Dr. E.E.’s notes from November 6, 2017.*
  16. *At all times relevant to the matters described, the Use of Force Policy, Policy Number OP7PO (the “Policy”), was in place for the purpose of ensuring members use force professionally and reasonably. The Policy states that “any force used must be objectively reasonable in the circumstances...” The Objective Reasonable Test sets out a number of officer, subject and environmental factors for an officer to consider.*  
*Use of Force Policy, Policy Number OP7PO [TAB 3]*
  17. *The Reasonable Officer Response Procedure, Procedure Number OP7-1PR (the “Procedure”) was also in place during the material time for the purpose of setting out the responsibilities of members when using force in the exercise of their policing duties.*  
*Reasonable Officer Response Procedure, Procedure Number OP7-1PR [TAB 4]*
  18. *The Procedure further defines the terms “empty hand soft” and “force” as follows:*
    - i. **Empty Hand Soft** – *Techniques which result in contact with the subject but are not dynamic or aggressive (e.g. pressure points, joint locks, grabbing/retraining the subject).*
    - ii. **Force** – *Any physical control or power exerted on any person.*
  19. *The Procedure requires officers using force in the exercise of their duties to 1) be lawfully placed in the execution of their duties; 2) act on reasonable grounds, considering environmental, subject, and officer factors, verbal warnings, and the use of strategies of lawful presence, tactical communication skills, and tactical considerations; and 3) only use as much force as necessary.*
  20. *By grabbing Mr. B.B. and causing him to lose his footing on to his back, Cst. Prabhu engaged in an Empty Hand Soft technique.*
  21. *In the circumstances, Cst. Prabhu acknowledges that he used inappropriate force against Mr. B.B. that was in excess of what was necessary in the circumstances.*
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22. *Cst. Prabhu acknowledges and admits that the foregoing conduct constitutes unlawful or unnecessary exercise of authority, contrary to section 5(1)(i) of the Police Service Regulation, as further defined by section 5(2)(i)(ii) of the Police Service Regulation.*
23. *Cst. Prabhu acknowledges and admits his use of the aforementioned language when responding to Mr. B.B.'s threat to harm himself was inappropriate and constitutes discreditable conduct, contrary to 5(2)(e) of the Police Service Regulation, as further defined by 5(2)(e)(viii) of the Police Service Regulation.*
24. *From December 2017 to May 2018 Cst. Prabhu was off work on a medical leave. During this time and beyond Cst. Prabhu attended regular counselling sessions with a psychologist. Attached as **TAB 5** is a copy of a letter from Cst. Prabhu's psychologist, dated March 19, 2019.*
25. *Cst. Prabhu recently received a performance evaluation. Attached at **TAB 6** is a copy of Cst. Prabhu's recent Employee Development and Performance Plan.*

A copy of the closed circuit television video of the contact was provided. No other evidence was offered.

### **Decision on the Facts**

As the constable accepted two of the counts, I found the counts were proven and we moved to the penalty phase.

### **Submissions on Sanction**

The Presenting Officer advised that agreement had been reached on a joint submission with respect to the penalty and submitted it as an exhibit. Again, the document was unsigned but its veracity was acknowledged.

#### **Exhibit 5      Joint Submission on Penalty**

Mr. CRANNA presented the joint submission by reviewing the salient factors of *Amery* in the context of this misconduct and Constable PRABHU's circumstances. Chief amongst the *Amery* factors is to assess whether the conduct is amenable to being learned from. He noted that a rank reduction is a serious penalty, second only to dismissal. Of the factors to consider when making an assessment is the previous conduct of the officer. While Constable PRABHU has three incidents of discipline, none predated this incident. This means that they are not considered in the context of progressive discipline. The current misconduct is of a nature that Constable PRABHU, with his service and experience, would have no trouble understanding its impropriety. Similarly, he would understand the expectations of the police service, the policy within the Reasonable Officer Response and other policies. This was not a premeditated incident. The incident was one of poor judgement in the moment and demonstrated a lack of empathy contrary to the principles of the police service.

On the mitigating side, the constable was cooperative with investigators. A joint submission was made on both the facts and the proposed sanction. The constable demonstrated remorse for his

actions. He was under significant personal pressure at the time of the incident and, in fact, was on medical leave shortly afterwards. The constable sought and completed psychological counseling sessions.

Mr. NUGENT acknowledged the completeness of Mr. CRANNA's submission and, for context, noted that while there are other citations for discipline, this current matter is the only misconduct that is police related. The others were off-duty incidents.

### **Penalty**

I recognize the reference within the joint submission on penalty, *R v Anthony-Cook*, a Supreme Court of Canada decision. I note that this decision creates a high threshold for rejection of joint submissions unless such submission is so "unhinged" from the circumstances of the matter at hand or would otherwise cause a reasonably informed individual to believe the proper function of the justice system had broken down. I have no such concern in this case. I am satisfied that the proposed joint submission on sanction meets the factors of *Amery* and is appropriate under the circumstances. I impose a penalty as follows:

- a) Constable PRABHU shall receive a reduction within rank from a Senior Constable II (11 years) (Job Code 0974, Salary Grade 1, Step 9) to a 5<sup>th</sup> year Constable (Job Code 0974, Salary Grade 1, Step 5) for a period of four months.
- b) On completion of the sanction period, Constable PRABHU will be reinstated to his previous rank and salary grade.

This penalty shall be commenced forthwith in accordance with the timelines needed by Human Resources to make the necessary pay adjustments. This represents a financial impact to the officer of approx. \$3,100.

Verbal decision delivered this 25th day of June, 2020.

Written decision dated this 28th day of June, 2020.

Fred R. KAMINS, Chief Superintendent, RCMP (Retired)

Presiding Officer

Mr. Derek CRANNA  
Mr. Pat NUGENT

Presenting Officer  
For the Cited Officer