

SCHEDULE A

DISCIPLINE AUTHORITY'S DISPOSITION OF COMPLAINTS AGAINST SIX OFFICERS OF THE VANCOUVER POLICE DEPARTMENT ARISING FROM EVENTS IN STANLEY PARK ON JANUARY 14th, 2003

AND IN THE MATTER OF DISCIPLINARY HEARINGS JANUARY 15th and 16th, 2004 AGAINST CONSTABLES

**CHRISTOPHER CRONMILLER, RAYMOND GARDNER, DUNCAN GEMMELL,
JAMES KENNEY, GABRIEL KOJIMA and BRANDON STEELE**

CHIEF CONSTABLE JAMIE H. GRAHAM
VANCOUVER POLICE DEPARTMENT
2120 Cambie Street
Vancouver, BC V5Z 4N6

Discipline Authority

FARRIS VAUGHAN WILLS & MURPHY
#2600-700 W. Georgia Street
Vancouver, BC V6C 1A5
Attention: George K. MacIntosh, Q.C.

Counsel for Discipline Authority

SMART AND WILLIAMS
#1190-840 Howe Street
Vancouver, BC V6Z 2L2
Attention: Bill Smart, Q.C.

Counsel for Christopher Cronmiller (2117)

PECK AND COMPANY
#610-744 West Hastings Street
Vancouver, BC V6C 1A5
Attention: Richard C.C. Peck

Counsel for Raymond Gardner (1917)

WILSON, BUCK, BUTCHER & SEARS
#400-744 West Hastings Street
Vancouver, BC V6C 1A5
Attention: David G. Butcher

Counsel for Duncan Gemmell (2109)

CROSSIN CORISTINE WOODALL
#660-220 Cambie Street
Vancouver, BC V6B 2M9
Attention: Kevin Woodall

Counsel for James Kenney (1885)

CROSSIN CORISTINE WOODALL
#660-220 Cambie Street
Vancouver, BC V6B 2M9
Attention: David Crossin, Q.C.

Counsel for Gabriel Kojima (2070)

DONALD JETTE
#490-1090 Homer Street
Vancouver, BC V6B 1W9
Attention: Ian Donaldson, Q.C.

Counsel for Brandon Steele (1992)

VANCOUVER POLICE DEPARTMENT
2120 Cambie Street
Vancouver, BC V5Z 4N6
Attention: Sergeant Dan Bezanson

Investigating Officer

VANCOUVER POLICE DEPARTMENT
2120 Cambie Street
Vancouver, BC V5Z 4N6
Attention: Sergeant Warren Lemcke

Investigating Officer

Dated: January 28, 2004

INDEX

	<u>Page No.</u>
1. Introduction and Governing Statutory Provisions	5
2. Allegations:	21
a) Barry Lawrie	
b) Jason Desjardins	
c) Grant Wilson	
d) Barry Lawrie	
e) Jason Desjardins	
f) Grant Wilson	
3. Evidence of Constable. Troy Peters	31
4. Evidence of the Stanley Park Teahouse Employee and the Taxi Cab Driver	43
5. Submissions from Counsel for the Respondent Police Officers	46
6. Review of Evidence:	52
a) Barry Lawrie	
b) Jason Desjardins	
c) Grant Wilson	
7. Importance of Oath	67
8. Breach of Peace	68
9. Findings and Disposition:	74
a) Constable Christopher Cronmiller	
b) Constable Raymond Gardner	
c) Constable Duncan Gemmell	
d) Constable James Kenney	
e) Constable Gabriel Kojima	
f) Constable Brandon Steele	
g) Aggravating and Mitigating Factors	
h) Seriousness of the Breaches	
i) Officers' Records of Employment and Discipline	

	j) Impact of Proposed Measures on the Respondents, Their Careers and Families	
	k) Likelihood of Future Breaches	
	l) Acceptance of Responsibility and Willingness to Take Steps to Prevent a Recurrence	
	m) Impact of Departmental Policies on the Actions of the Respondents	
	n) Measures Imposed in Similar Circumstances	
	o) Other Aggravating or Mitigating Factors	
10.	Exhibit List	100

1. Introduction And Governing Statutory Provisions

As the Chief Constable of the Vancouver Police Department, I am the Discipline Authority designated under the *Police Act* to hear complaints that have been made against six officers of the Vancouver Police Department, and hereinafter collectively referred to as the “Respondents”, namely:

#1885, Constable. James Kenney

#1917, Constable. Raymond Gardner

#1992, Constable. Brandon Steele

#2070, Constable. Gabriel Kojima

#2109, Constable. Duncan Gemmell

#2117, Constable. Christopher Cronmiller

The complaints were made by three men named Grant Wilson, Jason Desjardins and Barry Lawrie, hereinafter collectively referred to as the “Complainants”, in connection with events that occurred in Stanley Park in the early morning hours of January 14, 2003.

A hearing was conducted before me, in accordance with the provisions of Section 59 of the *Police Act* (hereinafter referred to as the “Act”), at the Vancouver Police Department offices on January 15 and 16, 2004.

The alleged disciplinary defaults (Exhibit #2) against the six officers were as follows:

Three (3) counts of Abuse of Authority, contrary to section 10 of the Code of Professional Conduct Regulation (hereinafter referred to as the “Code”), and one (1)

count of Discreditable Conduct, contrary to Section 5 of the Code against all the Respondents. One (1) additional count of Deceit, contrary to Section 7 of the Code against Constable Duncan Gemmell only.

The three counts of Abuse of Authority deal with the alleged assaults on the Complainants. The count of Discreditable Conduct deals with the overall conduct regarding the arrest of these three men, including oppressive and abusive treatment of them. The last allegation against Constable Gemmell alone deals with a “false and misleading” ... “report regarding the events of January 14 and the arrest of the Complainants for breach of the peace.”

The Code states in part as follows:

Section 5 Discreditable Conduct:

“ ...a police officer commits the disciplinary default of discreditable conduct if

- (a) the police officer, while on duty, acts in a disorderly manner or in a manner that is
 - (i) prejudicial to the maintenance of discipline in the municipal police department with which the police officer is employed, or*
 - (ii) likely to discredit the reputation of the municipal police department with which the police officer is employed,**
- (b) the police officer's conduct, while on duty, is oppressive or abusive to any person,*

- (c) *the police officer contravenes a provision of the Act, a regulation, rule or guideline made under the Act, or does not comply with a standing order of the municipal police department with which the police officer is employed,*
- (d) *the police officer withholds or suppresses a complaint or report against any other officer,*
- (e) *the police officer fails to report to an officer whose duty it is to receive the report, or to Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada, or*
- (f) *the police officer suppresses, tampers with or fails to disclose to an investigating officer, or to the discipline authority of a Respondent, information that is material to a proceeding or potential proceeding under Part 9 of the Act.”*

Section 7 Deceit:

“ ... a police officer commits the disciplinary default of deceit if

- (a) *the police officer makes or signs a false, misleading or inaccurate oral or written statement or entry in any official document or record, or*
- (b) *the police officer, with intent to deceive, falsify or mislead,*
 - (i) *destroys, mutilates or conceals all or any part of an official document or record, or*
 - (ii) *alters, erases or adds to any entry in an official document or record.”*

Section 10 Abuse of Authority:

“ ... for the purposes of section 4 (1) (f), a police officer commits the disciplinary default of abuse of authority if the police officer

- (a) without good and sufficient cause arrests, detains or searches a person,*
- (b) uses unnecessary force on a person,*
- (c) while on duty, is discourteous or uncivil or uses profane, abusive or insulting language to a person including, without limitation, language that tends to demean or show disrespect to a person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status, or*
- (d) harasses, intimidates or retaliates against a person who makes a report about the conduct of an officer or submits a complaint under Part 9 of the Act.”*

Before proceeding to address the particular complaints against these officers, it may be useful to reference certain provisions of the Act and further provisions in the Code pursuant to the Act, both of which are of course binding upon me as a Discipline Authority operating under the Act.

First, I want to set out Section 58.1 and Section 59 of the Act. They provide as follows:

Convening Discipline Proceedings:

58.1 (1) *Subject to subsection (2), if it is determined under section 57.1 (1)*

(a) that imposition of disciplinary or corrective measures against a Respondent is warranted and a prehearing conference is not offered or held under section 58 or, if held, does not result in a resolution of all alleged discipline defaults respecting the complaint, the discipline authority must

(a) convene and preside at a discipline proceeding,

(b) provide to the Complainant at least 15 business days' notice of the discipline proceeding, and

(c) serve the Respondent with at least 15 business days' notice, in the prescribed form, of the discipline proceeding.

(2) If at any time a public hearing is arranged by the police complaint commissioner in respect of a matter that is the subject of a discipline proceeding under subsection (1), the discipline authority must cancel the discipline proceeding.

(3) At any time before a discipline proceeding is held under this section, the Complainant may make written or oral submissions to the discipline authority respecting the complaint, the adequacy of the investigation and the range of disciplinary or corrective measures that should be considered.

(4) *The following persons may attend a discipline proceeding under this section:*

(a) *the Police Complaint Commissioner or the Police Complaint Commissioner's delegate;*

(b) *the Respondent's agent or counsel, or both.*

(5) *The following persons must attend a discipline proceeding under this section:*

(a) *the Respondent;*

(b) *the discipline authority;*

(c) *the investigating officer.*

Conduct of Discipline Proceedings:

59 (1) *Each alleged discipline default respecting the complaint, other than those resolved at a prehearing conference held in respect of the matter under section 58, must be read to the Respondent at a discipline proceeding, and the Respondent must be asked to admit or deny the alleged discipline default.*

(2) *No witnesses, other than the investigating officer who prepared the final investigation report, may be called at a discipline proceeding and the only records that may be presented are the final investigation report, any separate reports prepared respecting the investigation and any other*

relevant written records, from which reports and records may be severed any portions that may be excepted from disclosure under the Freedom of Information and Protection of Privacy Act.

- (3) *The Respondent is not compellable at a discipline proceeding under this section, but the Respondent, or his or her agent or counsel, if any, may*
 - (a) *ask questions of the investigating officer who prepared the final investigation report, and*
 - (b) *make submissions concerning the complaint, the adequacy of the investigation and the range of disciplinary or corrective measures that should be considered.*

- (4) *A discipline proceeding must be electronically recorded.*

- (5) *At the conclusion of a discipline proceeding under this section, the discipline authority must*
 - (a) *in relation to each alleged discipline default under subsection (1), make a finding as to whether the discipline default has been proved on the civil standard of proof,*
 - (b) *record those findings in the prescribed form, and*
 - (c) *invite and hear submissions from the Respondent, or his or her agent or counsel, as to appropriate disciplinary or corrective*

measures for each discipline default found to be proven under paragraph (a).

- (6) *Within 10 business days after hearing submissions from the Respondent, or his or her agent or counsel, at the conclusion of a discipline proceeding under subsection (5), the discipline authority must*
 - (a) *propose disciplinary or corrective measures for each discipline default found to be proven under subsection (5) (a),*
 - (b) *record those proposed measures and the date in a disposition record in the prescribed form,*
 - (c) *include in the disposition record any aggravating or mitigating factors in the case, and*
 - (d) *serve a copy of the disposition record on the Respondent.*

Review of Discipline Proceedings:

- 59.1** (1) *Within 10 business days after the date of the disposition record referred to in section 59 (6), the discipline authority must*
- (a) *serve on the Complainant or send to the Complainant by registered mail a report setting out*
 - (i) *the findings of the discipline authority under section 59 (5) (a),*
 - (ii) *any disciplinary or corrective measures proposed by the discipline authority under section 59 (6) (a) and any policy*

changes being considered by the discipline authority in respect of the complaint,

- (iii) the reasons for the proposed measures or policy changes,*
- (iv) any noted aggravating and mitigating factors in the case, subject to severing those portions of the disposition record that may be excepted from disclosure under the Freedom of Information and Protection of Privacy Act, and*
- (v) the recourse available to the Complainant under this section, and*
- (vi) provide the police complaint commissioner with the entire unedited record of the proceedings, an unedited copy of the disposition record and a copy of the report sent to the Complainant under paragraph (a).*

- (2) After receiving the records and report referred to in subsection (1) (b), the Police Complaint Commissioner may*
 - (a) order that the discipline authority provide to the police complaint commissioner further reasons justifying the particular disciplinary or corrective measures imposed, and*
 - (b) provide those further reasons to the Complainant and the Respondent.*

- (3) *A Respondent or Complainant who is aggrieved by the disposition of a public trust complaint proposed by a discipline authority in a disposition record may file with the police complaint commissioner a written request for a public hearing in accordance with section 60 (1) (a) or (d), as the case may be, and section 60 (2) applies.*
- (4) *Unless a public hearing is arranged by the Police Complaint Commissioner,*
- (a) *the Complainant and Respondent referred to in this section are deemed to have accepted the proposed disposition,*
 - (b) *any disciplinary or corrective measures proposed under Section 59 (6) (a) are final and binding, and*
 - (c) *the proposed disposition is final and conclusive and is not open to question or review by a court on any ground.*

Referencing Section 58.1(1)(b), the Complainants were provided, through their counsel, proper notice of the discipline proceeding. Referencing Section 58.1(3), the Complainants were given an opportunity to make written or oral submissions to me respecting the complaints, the adequacy of the investigation or the range of disciplinary or corrective measures that should be considered. No submissions were received from the Complainants or their counsel.

In the statutory provisions quoted above, the legislation has stated that the Police Complaints Commissioner or his delegate may attend the discipline proceeding, and in this case, the Police Complaints Commissioner's delegate did so on the first day, January 15, but not on January 16, 2004. The delegate advised me on the morning of the 16th that he would not be attending on the second day.

The legislation in Section 58.1(5), as quoted above, further provides that those who must attend the discipline proceeding include me as the Discipline Authority, the six Respondents and the investigating officers. The six Respondents attended with their counsel. Two investigating officers, Sergeant Dan Bezanson and Sergeant Warren Lemcke, were in attendance throughout. I wish to thank both investigating officers for their diligent efforts, which resulted in the preparation of the Final Investigation Report, which became Exhibit # 3 in the discipline hearing. As can be seen from the statutory provisions quoted above, the legislation does not authorize Complainants to attend discipline proceedings. As is also apparent from Section 59 of the Act, that the only witnesses who can be heard in a discipline proceeding are the investigating officers. Sergeant Bezanson and Sergeant Lemcke were sworn as witnesses but none of the Respondents had any questions for them.

As can also be seen from Section 59, in addition to the provision that no witnesses other than the investigating officers are to be called to give evidence in a discipline proceeding, the Respondent officers themselves are not compellable to give evidence. The Respondents can ask questions of the investigating officers, which they chose not to do,

and they can make submissions concerning the complaints and the appropriate disposition of the complaints. The Respondents were represented by experienced and capable counsel who made thorough submissions in accordance with the rights accorded to the Respondents under these statutory provisions.

One other legal point arising from Section 59, quoted above is that I am to use a civil standard of proof rather than a criminal standard of proof in determining whether or not complaints have been proved. In the case before me, all Respondents admitted every count charged against them, and so the task of determining whether the counts were proved did not arise. However, the standard of proof remained relevant in determining exactly what occurred in Stanley Park to give rise to each of the counts.

The criminal standard of proof is generally summarized as being “proof beyond a reasonable doubt”. This is normally regarded as the most onerous standard of proof. The civil standard of proof is normally described as “proof on the balance of probabilities” and is a lower standard than proof beyond a reasonable doubt.

Counsel for the Respondents submitted that when, as in this case, charges directly affect the Respondents’ occupation and the complaints allege criminal conduct, the civil standard of proof must be applied with particular caution. Legal writers are at pains to say there is simply a criminal standard of proof and a civil standard of proof, and yet they add that the civil standard in some sense is raised closer to the criminal standard when one’s professional livelihood is at stake and the complaint alleges conduct which is

criminal in nature. I will be mindful that the legislation provides for a civil standard of proof and of the cautions in employing that standard as pointed out by Respondents' counsel.

I referenced above the Code. That is very important to keep in mind when it comes to the proper disposition of the disciplinary defaults which the Respondents have admitted occurred in Stanley Park.

Section 2 of the Code sets out the purposes of the Code. Section 2(d) provides that one purpose is to maintain public confidence in the police by ensuring that police are accountable to the public in a way that is fair to police officers and to members of the public, and does not unduly interfere with the ability of police officers to carry out their duties.

Section 19 of the Code is of particular importance. Section 19(1) – (4) read as follows:

Disciplinary or Corrective Measures:

19 (1) *After finding that a disciplinary default has occurred, the discipline authority may impose one or more of the following disciplinary or corrective measures in relation to the police officer concerned:*

- (a) dismissal;*
- (b) reduction in rank;*
- (c) transfer or reassignment;*

- (d) *suspension without pay for not more than 5 scheduled working days;*
- (e) *direction to work under close supervision;*
- (f) *direction to undertake special training or retraining;*
- (g) *direction to undertake professional counseling;*
- (h) *written reprimand;*
- (i) *verbal reprimand.*

(2) *If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.*

(3) *If the discipline authority considers that one or more disciplinary or corrective measures are necessary, the discipline authority must choose the least onerous disciplinary or corrective measures in relation to the police officer concerned unless one or both of the following would be undermined:*

- (a) *organizational effectiveness of the municipal police department with which the police officer is employed;*
- (b) *public confidence in the administration of police discipline.*

- (4) *Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures for a breach of this Code by a police officer of a municipal police department, including, without limitation,*
- (a) *the seriousness of the breach,*
 - (b) *the police officer's record of employment as a police officer, including, without limitation, his or her service record of discipline, if any, and any other current record concerning past discipline defaults,*
 - (c) *the impact of proposed disciplinary and corrective measures on the police officer and on the police officer's career and family,*
 - (d) *the likelihood of future breaches of this Code by the police officer,*
 - (e) *whether the police officer accepts responsibility for the breach and is willing to take steps to prevent a recurrence of the breach,*
 - (f) *the degree to which the municipal police department's policies, standing orders or internal procedures or the actions of the police officer's supervisor contributed to the breach,*
 - (g) *the range of disciplinary or corrective measures imposed in similar circumstances, if known, and*
 - (h) *other aggravating or mitigating factors.*

It can be seen from Section 19(1) that dismissal is the most severe discipline available and that a verbal reprimand is the least severe discipline available.

Section 19(2) points out that correcting and educating a police officer take precedence over blaming and punishing an officer, unless the former approach would be unworkable or would bring the administration of police discipline into disrepute.

Section 19(3) of the Code directs me to select the less onerous disciplinary measure rather than the more onerous one, unless doing so would undermine the police department or the public confidence in the administration of police discipline.

With these statutory and regulatory provisions in mind, I'll now address the particular allegations against the Respondents.

2. Allegations

The following is a summary of the Respondents' statements about the events which occurred on the Granville Mall leading to the initial arrest of the three Complainants and their subsequent removal from the area.

At approximately 0430 hours on the 14th of January, 2003 Constables Gemmell and Gardner were writing a report at a hotel in the 1100 block Granville Street. They heard yelling and looked out the window where they saw Grant Wilson sitting in the back of a taxi cab. Wilson was shouting at two men, Mr. Desjardins and Mr. Lawrie, and a female. Mr. Wilson exited the cab without paying and joined the others on the sidewalk and then all four entered Khan's Market. Mr. Wilson was seen to pass something to Mr. Desjardins in a hand to hand transaction. One of them was seen to hold something up to inspect it. Constables Gemmell and Gardner believed they had just witnessed a drug transaction and that an altercation was imminent. As Constables Gemmell and Gardner went down to Granville Street the four individuals exited Khan's Market. Mr. Wilson was screaming that he had been ripped off. Mr. Wilson and Mr. Lawrie were yelling that they hated each other and appeared to be heading for a fight.

After all four individuals were apprehended, a decision was made to remove them from the area under the authority of Section 31 of the Criminal Code of Canada, Breach of the Peace. The police wagon was called and all four were placed in the wagon for transportation from the Granville Mall. The female was released from custody on

Robson Street and the wagon transported the three males into Stanley Park where the allegations of assault took place.

In Exhibit #1 (Form 1) the three Complainants gave their first version of the events in the form of a short narrative. A summary of their statements made to internal investigators are provided later in this document. The following have been taken verbatim from the Complainants written narratives:

a) Barry Lawrie:

“January 14th, 2003 at around 4 a.m. ... Stanley Park ... Grant Wilson and my friend Shannon and a young guy we call juniour were told to by two or three police men at gun point get down on the ground outside the Khan’s market on Granville street. Later we were put in a paddy wagon Shannon was let out and the paddy wagon and several car loads of police following the wagon went to 3rd beach where we were all beaten by estimate 8 or 9 other police officers. I don’t know there names but some of them I recognize from the beat.”

b) Jason Desjardins:

“I stopped by Khan’s market to talk to Barrie Lawrie. I was in the store and I heard the police officers outside shouting to get down. A policeman came in and grabbed me and pulled me outside onto the ground. They took everything out of my pockets marihuana speed and a syringe and 15 dollars. I saw the police

hitting Barry Lawrie and Grant Wilson. I saw them searching Shannon Pritchard's purse they found a loaded syringe and a tie in it. The police dealing with me called me a piece of shit and said that I had hooked her to drugs. At least one of the police hit me three times in the head. One of the police told us to get up and then they took pictures of us so they could show their colleagues who the drug dealers are. They put us in a paddy wagon I thought we were going to jail. I recall the paddy wagon stopping to let Shannon Pritchard out and then we had a wide drive around. Eventually I heard the door of the paddy wagon open and then flashlights were shone in my face. I was hauled out on the ground. There were at least six police. One of them I call him road runner said "no one knows you exist, no one knows you're here anything can happen you piece of shit." At times I could see some one I recognized as Constable Wong and another we call the roadrunner., I was hit from all sides someone stomped on my hand., the one called roadrunner said "anything could happen. I could kill you and no one would know." He kept twisting my ear and he made me repeat "I am going to leave the Granville mall and I am going to leave Vancouver." Eventually they let me go. I ran into Barry Lawrie later and I went back to Granville street."

c) Grant Wilson:

"January 14, 2003 at around 4 a.m. ... Granville street and later at 3rd beach in Stanley Park ... I was rushed by a couple of policemen outside of Khan's market on Granville Street about 4 in the morning. I was told go get down and was searched for drugs. They did the same to Barrie Wayne Lawrie, his friend

Shannon and a young guy we call juniour. I was told at gun point to look away. I was searched and took my shoes off but they found nothing. They kept asking where the drugs were. I told them "I don't got any" ... A paddy wagon came and we were put into it. I was in the back and I heard them let out Shannon and then we were driven to Stanley park and some police followed in cars. At 3rd beach I was kept in the back while Barrie was beaten and so was juniour. I could hear it, not see it. I was taken out and I was beaten by 5 or 6 police. I can recognize quite a few of them although I had flashlights in my face much of the times. I was allowed to run away and told not to come back on the Mall as it was for nice people not people like me. They made me repeat it. I spoke to a parks employee and I called a cab and I took a cab to Saint Pauls hospital I had bloody face and numerous injuries from the beating."

It is important to understand that these accounts are the first brief statements from the three Complainants after investigators contacted them.

Counsel for the Respondents have argued that I should give little weight to the statements and comments of the three Complainants in this proceeding. I accept that all three Complainants were involved in a questionable lifestyle on Granville Street.

Respondents' counsel submitted:

“... the three are life-long criminals who clearly have an axe to grind with authority generally and the police in particular.” (p. 6, Exhibit #5)

I have noted that the Complainants have extensive criminal backgrounds and that none are strangers to the police or the criminal justice system. I have had to take a cautious approach because I found that the statements of the Complainants are filled with rhetoric, slang and some confusion. Many of the particulars they provided I found to be exaggerated, minimized or corrupted by others. However, there is information to be gleaned from their recollection of the events on Granville Street and Stanley Park.

The following is a summary of the statements provided by the Complainants to the Internal Investigators.

d) Barry Lawrie:

Mr. Lawrie was interviewed on January 25th, 2003 and I think it is fair to say that his statement contains some inconsistencies. By his own admission, he is no stranger to Breach of the Peace arrests. During the arrests on Granville Street, Mr. Lawrie claimed that he was kicked in the shoulder (p. 95, Tab A, Exhibit # 3) by the English cop, and kicked in the back of his head resulting in his chin getting scratched up when it hit the ground. He also said he was kicked in the back between the shoulder blades, all on Granville Street during the Breach of the Peace arrest.

When he was released from the wagon in Stanley Park, Mr. Lawrie spoke of a “light ... blinding me” and being pulled out of the van and being “passed” from officer to officer,

“turn and twisting me like ... kids game when you turn the person around, around, around. And, I’d be circling this person and the next person. It was like a hazing or something, because the lights were constantly in your face no matter which direction you were turning or swirling in, you couldn’t see anything.”

(p. 96, Tab A, Exhibit #3)

Mr. Lawrie said he was banged and sent to ground and that someone stepped on his face. He was kicked in the legs, kicked in the arms, and was left limping away. He said that Grant (Wilson) had his head ripped open. He also said that his injuries consisted of a split lip, cracks on his nose, “fucking” nose was “mushed” and he had black eyes for a week. (p. 100, Tab A). He said he had bruises and scratches all over his legs. Mr. Lawrie stated that he was punched in the side of the face (p. 105, Tab A), in the leg and tripped backwards ... put to the ground and punched. After the assaults, he could barely walk, limping, with one shoe on. Mr. Lawrie claimed to have “limped away and turned and watched the other guy get his beating ... “ (p. 97)

Mr. Lawrie advised that he had attended a specific medical clinic for treatment of his injuries as a result of this incident. Members of the police internal investigation unit attended the clinic and found that the clinic's records indicated that Mr. Lawrie had only attended for medical treatment at the clinic on January 2, 2003 for a nose injury (two weeks prior to the incident).

He admitted to being "physically addicted to heroin"(p. 100, Tab A).

e) Jason Desjardins:

Mr. Desjardins claimed to have been smoking a joint (p. 145, Tab A, Exhibit # 3) and was arrested by the police on Granville Street. He said he was "put on the ground" by the same officer who punched him (p. 150, Tab A). He said he was "smacked" in the back of the head with an open palm and had his head smashed the ground. He said he was kicked in the leg (p. 154, Tab A) and that he was really stomped on. He also said they stomped on Mr. Lawrie's leg and that they were "kicking Grant" (Wilson). He also said that Grant got smacked around a couple of times. On the other hand, it should be noted that Grant Wilson in his statement said he was simply breached out of the area and that his hands were stepped on. There was no mention by him of being otherwise assaulted on Granville Street.

At Stanley Park, Mr. Desjardins said they “had a light on me.” He said he was told to stand up and he was smashed in the gut, then he “heard the night stick come out.” He also claimed that his ear was twisted. He mentions an Oriental officer when he “heard” the night-stick come out and he got “smacked” in the knee. (p. 159, Tab A, Exhibit 3). Desjardins said he was “only stuck once (with the baton), that was it”

“Like I was only punched once, struck once (p. 160) with the night stick and basically like, just like being poked and just being pushed and that was it.”

Mr. Desjardins said that he heard Grant (Wilson) screaming and saw blood on Mr. Wilson’s face (p. 156) afterwards when they left the park about the same time.

f) Grant Wilson:

The Complainant, Mr. Wilson, gave a statement and was interviewed on January 23, 2003. At the scene of the Breach of the Peace arrest on Granville Street, Mr. Wilson said he was told to lie on the ground where he was searched. He said his hands were “stepped on” and he was later “thrown” in a paddy wagon and told he was under arrest. (p. 64, Tab A, Exhibit # 3). He was driven to Stanley Park where he was the third Complainant removed from the wagon. He said that he saw “pieces of the flashlight that was being shined on whoever was taken out first”. Barry Lawrie was the first Complainant taken out of the wagon. Mr.

Wilson claimed to have heard blows being struck to that person. (p.69). He also heard:

“gasps and grunts ... the aftermaths of a blow being inflicted.” (p. 70)

Mr. Wilson claimed that when the second Complainant (Mr. Desjardins) was being released he heard a police officer telling him to stay away from Granville Mall. He heard

“blows, because I heard the, the gasps and you know like, after a blows been inflicted on him” ... “more blows and stuff. Cause like it, apparently by the wincing and the, ooohs and ahhs.”

When Mr. Wilson exited the police wagon he claimed to have been kicked, punched and hit with an extended baton. He was knocked to the ground (p. 71, Tab A, Exhibit #3) and repeatedly kicked and hit with a bat. In total Mr. Wilson felt he was kicked 20 times (p. 81, Tab A, Exhibit #3) and struck with an “extended bat” 5 or 6 times. After the assault, Mr. Wilson was walking out of Stanley Park and met a “grounds keeper or maintenance guy” (Del Angel). Mr. Wilson claimed to have explained it to him and showed “his wounds” including the blood running down his face. Mr. Wilson eventually obtained a Yellow Cab ride to the

hospital. Mr. Wilson admitted to smoking a “couple of rocks” (crack cocaine) earlier in the day (p. 83, Tab A, Exhibit #3)

3. Evidence Of Constable Troy Peters

Although the discipline hearing did not hear from Constable Troy Peters directly, considerable time was taken to review his actions before, during and after the Stanley Park assaults. I also reviewed his statements given during the internal investigation and his interviews with Crown Counsel.

The Honourable Judge Weitzel, in his reasons for sentencing the Respondents in criminal proceedings, spoke admiringly about Constable Peters' conduct:

“In this whole sordid set of circumstances, he is the one bright light who, despite his inexperience, knew the true nature of policing, and recognized when the very police who are expected to investigate and apprehend criminals, became themselves criminals by virtue of their behaviour.”

During the discipline proceedings, there was considerable attention to the statements and observations of Constable Peters as compared to the statements supplied by the Respondent police officers. Crown Counsel, during additional interview sessions in preparation for the criminal case, conducted three taped interviews with Constable Peters prior to the Respondents entering guilty pleas. These taped sessions are included in Exhibit #3, as Tabs C, D and E. There was a brief follow up interview with the internal investigators and that taped session is in Tab A of Exhibit #3. I have been urged by the

Respondents' counsel to consider Constable Peter's observations (of the Respondents conduct in Stanley Park) with care, not suggesting that he lacked:

“credibility in the sense that he deliberately exaggerated, but when his statements are compared with those of the Complainants, it is clear that his evidence is not reliable.”

While the Provincial Judge had only “an agreed statement of facts” to consider during the criminal sentencing process, I have the advantage of Exhibit #3 which contains statements from all three Complainants, in addition to the statements disclosing the conduct of Constable Peters during and after the events in Stanley Park.

Between January 17th and the 20th, Constable Peters disclosed and described this incident to several people, including two instructors at the Justice Institute of B.C. (pp. 23, 27, 29, 30, 32, Tab A, Exhibit #3)

Constable Peters' other written statements include two statements to the Internal Investigation Section (pp. 32-35, Tab A, Exhibit #3 and pp. 35-61, Tab A, Exhibit #3), and at least three sessions with Crown Counsel (tabs C, D, E of Exhibit #3).

Notwithstanding Constable Peters' short time as a peace officer and his inexperience on the road, I found his observations overall to be compelling and reliable. His first written narrative statement was provided on January 24, 2003 and he comments on Constable Kojima belittling Mr. Wilson prior to the Section 31 Breach of the Peace on Granville

Street and subsequently threatening to, “.. kick the shit out of him (Wilson).” Constable Peters saw and heard Constable Kojima belittling Mr. Lawrie in Stanley Park prior to the assaults, calling him “scum”, saw punches delivered to Mr. Lawrie from all the members present except Constable Kenney. Constable Peters watched Lawrie leave the scene, walking “with a limp.” Constable Peters described Constable Kojima shining his flashlight into the eyes of the Complainant Desjardins and the same member open his baton (asp). Constable Peters described Mr. Desjardins as being punched repeatedly, saw Constable Kojima step on his shoulder and “gently” kick this Complainant’s head as he was on the ground, then saw Mr. Desjardins limping as he left the scene.

Constable Peters described how Constable Kenney came over to him and made a comment to the effect that the worst was yet to come – that he might want to “take a walk.” When the last Complainant (Wilson) was removed from the wagon, Constable Kojima was seen by Constable Peters to strike Mr. Wilson on the thigh area with a baton. There were kicks delivered and Mr. Wilson fell to the ground. Constable Steele was yelling at Mr. Wilson (belittling him) and Mr. Wilson was seen to stumble off after the assaults, holding his torso.

Later in the morning, Constable Peters recalled Constable Kojima making the comment, “now that was the shit you signed up for.” Constable Peters recalled at the briefing afterwards at the police station being shocked at the attempted justification for their earlier actions because the three were drug dealers. He recalled that there were instructions given out that this was not to be talked about so as to thwart any internal

investigation that might follow. There was also an attempted justification for the number of police officers accompanying the wagon to Stanley Park. That is not usually the practice on routine “breach of peace” cases.

The follow up internal investigation Q & A interview of Constable Peters took place on January 24, 2003. In much more detail, he recalled Constable Kojima shining his flashlight into the eyes of the first released breached Complainant Lawrie, with Constable Gemmell standing on the tailgate of the wagon. Constable Gardner was heard to belittle Mr. Lawrie, calling him a piece of shit and using crude language in an unsuccessful attempt to convince him not to return to a drug lifestyle on Granville Street. Constable Peters saw Constable Gemmell punch Mr. Lawrie in the back kidney area and then everyone, all except Constable Kenney, followed suit with 3 – 5 punches each. This includes Constables Cronmiller, Steele, Gardner and Kojima. There was some kicking of Mr. Lawrie. Constable Kojima was heard to tell Mr. Lawrie to “get lost” and he was seen to be limping off.

At this stage Constable Gardner asks Constable Peters if he was “alright with this”, if he “needed to go sit in the (police) car” and that no one would take offence to that.

Constable Peters then described the second Complainant to be released, Mr. Desjardins. Constable Kojima was observed to shine his flashlight into Mr. Desjardins’ eyes and Constable Gardner belittled the Complainant, attempting to convince him to alter his drug lifestyle and telling him to stay away from Granville Street. Constable Steele pushed Mr.

Desjardins and there was a flurry of punches. The Complainant fell to the ground and was kicked by everyone, all five constables. Constable Kenney was not part of this. Constable Kojima had his baton in his hand and was seen to step on Desjardins' collarbone. Constable Kojima kicked the Complainant's head like a soccer ball. There were 3 – 5 kicks to the Complainant by Constables Gemmell, Gardner, Cronmiller, Steele and Kojima. Constable Kojima told Mr. Desjardins to get up and get lost.

At about this stage, Constable Peters recalled Constable Kenney saying that “maybe I should take a walk, because, uh, this one is going to be the ugliest of the, the three” (assaults).

After the last Complainant was being removed from the wagon, Constable Kojima shone his flashlight in Mr. Wilson's eyes. Constable Gardner belittled the Complainant, calling him a “piece of shit” and then criticized him for having no regard for police authority and something to the affect that it is time he learned a lesson. Constable Kojima was seen to strike Mr. Wilson in the leg with a baton. Mr. Wilson went down and everyone started kicking him. Mr. Wilson was screaming and was eventually seen to be limping away.

In the police car on route away from Stanley Park, Constable Kenney apologized for putting Constable Peters in that position. Constable Peters told him he was not happy about it.

Constable Kojima, on route by foot from the parking area to the office said to Constable Peters' words to the affect, "now that's the shit we sign up for isn't it?"

Constable Kenney at one stage suggested a de-briefing of this incident which was accepted and took place with all the members in attendance in a meeting room at the police Headquarters on Cambie Street. It was a closed-door meeting. Each participant had a chance to speak with Constable Kenney going first, apologizing to Constables Peters and Cronmiller for having put them in "that position." There were comments about the lengthy criminal records of the three Complainants justifying the number of police officers that accompanied the wagon to Stanley Park. Constable Cronmiller spoke, as did Constable Gemmell, Constable Gardner, Constable Kojima, Constable Steele and Constable Kenney. Constable Kenney suggested that this incident should not be talked about with others, that it should stay in house. There was also some talk that this incident could be detrimental to people's careers and there could be repercussions.

On the September 19, 2003 Crown Counsel Rob Gourlay interviewed Constable Peters. His evidence was reviewed and there were questions about his note-taking after the assaults were witnessed. Constable Peters recalled that his notes were his own and accurately reflected what he saw. He used a map to indicate where the vehicles and the officers were standing. The lighting in the area was discussed and Constable Peters was unable to say for sure which officers searched the bushes with flashlights just after they entered the park.

Constable Peters observed that five of the Respondent officers were standing around the back of the wagon. Constable Steele got the first Complainant (Lawrie) out of the wagon. Constable Kojima had his flashlight shining in the first Complainant's eyes. The Complainant was holding his hand up to block the light. Constable Gardner was doing most of the talking, belittling the Complainant. Constable Gemmell was standing on the rear bumper and when the Complainant was brought around, Constable Gemmell struck Mr. Lawrie in the kidney area, then each officer started taking their shots, short and swift to the kidney area, mostly to the torso area. There were three to five punches from each officer delivered with closed fists. The "semi-circle (of police officers) collapsed, went closer" (p.23, Tab C, Exhibit #3) after Constable Gemmell delivered the first blow.

Constable Peters said that while he saw the semi-circle of officers close in on Mr. Lawrie and saw what is described as Constable Steele "lunged in", it cannot be said "for certain that he in fact you know, struck him."

Constable Peters confirmed that he saw Constable Cronmiller strike Mr. Lawrie three to five times.

During further questioning by Crown Counsel, Constable Peters said the Complainant Lawrie just,

"kind of covered his head and kind of absorbed the blows ... the two other parties went to the ground but I don't believe he went

to the ground.”

After the assault the semi-circle broke up and Constable Gardner told him to “get lost and be on his way.” He was seen to be stumbling his way down toward the water, walking with a limp.

Constable Peters reiterated the sequence of the Complainants’ assaults in that the second Complainant (Desjardins) did go to the ground because Constable Kojima,

“stepped on his shoulder area ... kind of exposing his torso area ... I remember him kind of ... kicking his head around similar to what a young kid would do with a soccer ball in between his feet.” (p. 30, Tab C)

Constable Peters recalled the visit to where he was standing by Constable Gardner and his words that “if he was alright with what had taken place” and if I needed to “go sit in the vehicle, that I could and no one would be offended by it”.

On September 23, 2003, Mr. Gourlay, Vancouver Crown Counsel, again interviewed Constable Peters. Constable Peters reviewed the comments from Constable Gardner about sitting in the police car. (p. 2, Tab D).

Constable Peters said that Mr. Desjardins was brought out of the wagon. Constable Kojima again shined his light in the Complainant's eyes. He had his hand up around his face because of the flashlight beam. Constable Gardner gave his belittling "pre-amble." Constable Kojima took out his baton, "extended it ... in somewhat of a downward swing ... opened it fully." The semi-circle of police officers closed and like the first Complainant, started hitting him. Mr. Desjardins started to "turtle up", put his hands over his face and plead for them to stop.

"He fell to the ground after numerous strikes ... on his back with his feet up around his chest ... his hands, or his arms over his head."

At one point the Complainant was pushed back and Constable Gemmell started to talk, then he (the Complainant) was starting to be struck. All of the officers put out their arms in an attempt to stop him from walking through the circle or the semi-circle. The punches that were struck were short, there was no,

"big wind-up ... just more or less arms going forward and uh, and at that point he was continually yelling and looked to be grimacing in the, in the pain".

With this Complainant, Constable Peters was unable to say for sure if there was any contact on Mr. Desjardins' torso by Constable Gardner or Constable Steele's hands or fists. In both cases their upper bodies were moving, and they appeared to be hitting, but

he did not actually see fists strike Mr. Desjardins. He did see Constable Cronmiller strike the Complainant with his fist. (p. 14, Tab D). Constable Peters confirmed he saw Constable Kojima take the asp off his duty belt and open it up. Constable Peters' does not recall Constable Kojima striking this Complainant with the asp (p. 19, Tab D). Constable Peters saw Constable Kojima use his feet to kick Mr. Desjardins' head,

“around a little bit where his hands were as if he were playing with a soccer ball between his feet.”

Mr. Desjardins was on the ground for about 10-15 seconds. Then he left the area a little slower than the first Complainant (Lawrie) did. Mr. Desjardins was holding his torso and walking with a distinct limp.

Constable Peters described the kicking of the Complainant Desjardins. He said that he saw Constable Gemmell in a “kicking motion towards the party on the ground.” Also with Constable Gardner, he said that he saw a kicking motion but could not say for sure whether he contacted him or not. Constable Kojima was seen stepping on Mr. Desjardins shoulder area and kicking his head. Mr. Desjardins was moving around. Constable Peters saw Constable Cronmiller's boot or foot come into contact with Mr. Desjardins.(p. 20, Tab D).

Constable Kenney at this stage approached Constable Peters and told him

“I’d probably want to walk away for this one as this one will probably be the worst of the three.”

The Complainant Wilson was then removed from the wagon. Constable Gardner lectured Wilson about his conduct and lifestyle. All the police officers standing around Mr. Wilson were,

“getting more intense ... getting agitated ... up on the balls of their feet” (p. 22, Tab D)

Constable Peters saw Constable Kojima strike Mr. Wilson in the thigh area (lower extremities) with his baton, and then Mr. Wilson went to the ground. When Mr. Wilson got struck the first time, Constable Peters “just kind of looked the other way and listened to the screams.” Mr. Wilson had his hands up covering his eyes. After seeing the blow with the baton, Constable Peters just kept walking (p. 27, Tab D). As Constable Peters sat on the hood of his police car, he heard Mr. Wilson screaming, continuously yelling for some time. Constable Peters could hear Constable Steele continue saying,

“who owns Granville Street, who owns Granville Street and just kind of screaming.”

While he heard the screaming, Constable Peters did not see actual blows to the Complainant Wilson. His earlier version of Mr. Wilson being kicked was just an impression because of the screaming.

On January 29, 2003, Constable Peters was again interviewed by Rob Gourlay. There was a review of his notes that were dated January 17, 2003. Constable Peters recalled on route back to the police Headquarters from the parking lot, Constable Kojima made the following “off the cuff” remark:

“he looked over at me and kind of said you know, that, that’s the, that’s the shit you sign up for isn’t or you know and that was more or less the gist of, can’t say that was verbatim but that was the gist of what he said and I just didn’t react to it, I just kind of kept on walking and didn’t really try to dignify it with an answer.”

Constables Kenney and Cronmiller were present at this time and within earshot of this comment. The rest of this interview was a review of Constable Peters’ earlier version of events at the unofficial de-briefing at the main police Headquarters.

4. Evidence Of The Stanley Park Teahouse Employee And The Taxi Cab Driver

Two independent witnesses provided statements that are relevant to determining what took place in Stanley Park. The first is a Stanley Park Teahouse employee, referred to hereafter as “the employee”, (Tab F, Exhibit #3) who was arriving to work at 0515 hours. on January 14, 2003 when he met three men (Messrs. Wilson, Desjardins and Lawrie) coming from the area known as Third Beach. They told him “not to be afraid, we don’t want to hurt you, we need some help.” They said that they had been hurt and needed a ride to the hospital. One of the three, the tallest one, did most of the talking and said that they were,

“taken from downtown by the police ... told me they were beaten
one by one because they ... drug dealers ... “

One of the men (with facial hair) approached the employee and said “look what ya did to me” and the employee observed blood on his face, especially one side. They wanted him to use his truck to give them a ride but as it was full of equipment, he declined. The employee recalled,

“the middle guy complaining a lots of body pain and in the stomach
and the arms and in the legs.”

He recalled (p. 4, Tab F) the tall one with the blood on his face complaining about pain in his upper body area, his shoulder and his stomach. He also recalled the tall guy with the blood on his face,

“was most of the time covered with the arm, the hands and the middle one was always grabbing the top, the upper chest and the legs and sometimes his stomach and walking like a cripple, ... “

He said also that the younger one looked very scared and disoriented. The employee spent about a half-hour with the three men and said that they looked normal in that he observed “no symptoms of drugs or alcohol or anything.” (p. 8, Tab F)

The employee called his security people out of concern about these “three guys”, describing them as bad guys with bad intentions. He suggested they call the police, an idea which was rejected by the three Complainants.

Later on, the employee recognized the “tall guy with the facial hair” (the beard) (p. 6, Tab F) on the news as the same man with the blood on his face that he had met that morning.

The second independent witness (p. 173 of Tab A, Exhibit #3) was a taxi cab driver who responded to a call from the TeaHouse area in Stanley Park. It was his first call of the day and he put the time at around 0430 to 0500 hours. He had an onboard dispatch

computer with a name on it, which he recalled as “Grant ... something like that.” The cab driver stated that when Grant came to his cab he was “bleeding from head and on the right the hand too.” He asked what happened and was told, “city police beat me up.”

The cab driver didn't believe him “because you know these guys are always lying” and asked him if he had sufficient fare. The man did not have money and needed a ride to the hospital. He started to leave, and he drove a short distance but, as the man was bleeding, the cab driver picked him up and gave him a ride to the hospital. The fare was \$7.50 when he dropped him off at the hospital. As they were leaving the Park, they passed by the other two Complainants and the passenger (Mr. Wilson) told the driver,

“don't pick these guys up, these are like drug” ... “maybe he got a fight with these guys, right?”

The cab driver observed the passenger in his cab bleeding not from the face but from the head (p. 177),

"dripping a bit" ... I didn't know if he was hurt and the hand too, or not, because his hand was a lot of blood and that.” (p. 175, Tab A of Exhibit #3)

5. Submissions From Counsel For The Respondent Police Officers

I noted the apology (Exhibit #16) by the Respondents,

“to the three individuals we arrested, to our fellow officers with the Vancouver Police Department, to the Vancouver Police Department itself, and most importantly, to the citizens of the City of Vancouver.”

I reviewed the material supplied to me during the discipline hearing by the Respondents’ counsel and I will address some of the issues they have raised.

Constable Gemmell admitted to five (5) discipline defaults at the discipline proceeding. His counsel, Mr. Butcher, suggested that a lesser penalty than dismissal be imposed and that a total of 25 days of suspension be imposed. This would be the maximum under the Act considering the maximum for each default would be five days’ suspension.

There were detailed submissions about Constable Gemmell’s personal background, his character and his employment history as a police officer in Regina and Vancouver (Exhibit #6). I also noted documents of character reference (Exhibits #7, 8, 10 and 11).

I reviewed the Brief of Authorities (Exhibit #9) in relation to Constable Gemmell. The Respondent’s counsel also drew my attention to Justice Oppal’s report on policing and relevant subsections of Section 19 of the Code. There was mention of the parallel of

various Criminal Code provisions for sentencing. I was encouraged to follow the Provincial Court's ruling in the matter and impose a correctional/remedial sanction which is the least onerous necessary and which would be "one step lower" than the ultimate sanction (dismissal).

It was submitted that I consider that the second Complainant Desjardins leapt towards Constable Gemmell as the former exited the police wagon and that Constable Gemmell repelled him by punching him once in the stomach (p. 9, Exhibit #6).

The Respondent's counsel (p. 20, Exhibit #6) presented issues regarding what effect a demotion/suspension would have on undermining the organizational effectiveness of the Vancouver Police or public confidence in the administration of police discipline. I was encouraged by him to assess "public confidence" from the perspective of the "fully informed, right thinking" members of the community.

Constable Gemmell admitted to the default of Deceit dealing with authoring the false General Occurrence Report. Constable Gemmell's statement outlined that Constable Kenney asked him (Constable Gemmell) to omit both of them (Constables Kenney and Peters' names) from the general occurrence report on the Breach.

Mr. David Crossin was counsel for Constable Gabriel Kojima. He admitted four discipline defaults on January 15, 2003 and I considered "submissions" (Exhibit #12) and a "book of documents" (Exhibit #13). Mr. Crossin gave an analysis of the statements

made by Constable Peters concerning Constable Kojima's movements in relation to the Complainant Lawrie. Constable Kojima admitted that Mr. Lawrie was "passed around from officer to officer" and that he (Constable Kojima) shoved Mr. Lawrie back towards the back of the police wagon. The reviews of Constable Peters' statements and observations to the Internal Investigators and to Crown Counsel were exhaustive in relation also to the Complainants Desjardins and Wilson. Constable Kojima admitted (p. 16, Exhibit #12) he "tapped" Desjardins once in the vicinity of the knee using his baton and that when the Complainant Wilson exited the wagon, he advanced towards one of the other Respondents. Constable Kojima admitted he grabbed Mr. Wilson by the shoulder and pulled him and also that Mr. Wilson fell to the ground at some point, after which he prodded Mr. Wilson with the instep of his boot (p. 16, Exhibit #12). Constable Kojima has no recollection of the conversation alleged by Constable Peters as they walked back to the Headquarters on Cambie Street from the parking area.

The conduct of Constable Kojima at Khan's Market on Granville Street was reviewed.

As urged, I considered the reliability and credibility of the Complainants and Shannon Pritchard. It was suggested that the evidence of Mr. Desjardins could be generally accepted, but that the evidence of Messrs. Lawrie and Wilson is exaggerated. It was stressed that all three Complainants have criminal records of varying degrees, at least two of them may have been under the influence of drugs, and none of them received medical treatment after the assaults. It should be noted, however, that Mr. Wilson did attend to St. Paul's Hospital and was examined by a doctor, but did not require treatment.

It was submitted that Constable Peters' evidence should not be accepted in relation to the assault on Mr. Lawrie (para 92, p. 26, Exhibit #12) or the assault on Mr. Desjardins (para 95, p. 27, Exhibit #12). There are inconsistencies between the statements of Constable Peters and Constable Kojima in relation to the Complainant Wilson. The submission was that Constable Peters was mistaken in what he saw.

I have noted the many letters of reference contained in Exhibit #13.

Mr. Ian Donaldson represented Constable Brandon Steele. I have reviewed Exhibit #14 (and a single letter, Exhibit #15) which contains personal information and many letters of reference. There is also reference to issues of deterrence and protection of the public. I have noted Constable Steele's remorse (p.5, Tab 1, Exhibit #14) and his counsel's submission in terms of a recommended sanction.

Mr. Paul Barclay represented Constable Raymond Gardner. I was urged to conclude that Constable Gardner's involvement in the assaults consisted of being a "party" to one offence (Mr. Lawrie), two shoves to the chest of another Complainant (Wilson) and two shoves to the chest of the third Complainant (Desjardins). The fourth allegation of Discreditable Conduct was alleged to be a failure to report the assaults. Similar to the other Respondents, it was submitted that Mr. Lawrie (para 14, p. 4) and Mr. Wilson (para 19, p. 5) are men whose credibility is highly suspect and that Constable Peters is a

witness who is unreliable (para 6, p. 2, and para 23, p. 6 of Exhibit #20). It was suggested that the incident was not planned and was in fact spontaneous in nature.

The submissions to me included suggested penalties, details on Constable Gardner's background and some compelling information as to his state of mind at the time of the assaults (para 52, p. 14). There were also numerous materials of reference (Exhibit #21) as to his good character. Submissions were also made in relation to section 19(4) of the Code.

Mr. Kevin Woodall represented Constable James Kenney. Exhibits #22 and 23 contained submissions for consideration along with documents of reference, including the results of a polygraph test and letters attesting to Constable Kenney's character.

Constable Kenney admitted the defaults and will accept any discipline short of dismissal. Constable Kenney's personal background was reviewed along with relevant issues relating to his service in the VPD. His admissions to the defaults reflect that he was a party to the defaults with his "failure to intervene when the other officers jostled and roughed up the accused" (para 27, p. 6, Exhibit #22). There was mention of Constable Kenney not being considered an acting sergeant, with weight being given to Judge Weitzel's sentencing comments (para 29, p. 7, Exhibit #22). Constable Kenney admitted to suggesting to Constable Gemmell that both his name and Constable Peters' be removed from the reporting of the breach arrests. There were submissions made regarding appropriate levels of sanction.

Mr. William Smart represented Constable Christopher Cronmiller. The submissions for this Respondent (Exhibit #24) contained personal information of a compelling nature. There were many letters submitted on his behalf. He provided an affidavit whereby he denied assaulting any of the Complainants. He denied touching Mr. Lawrie or Mr. Desjardins. He admitted “pushing” Mr. Wilson, then,

“moved back to avoid being involved if anything else occurred.”

There is no doubt that all the Respondents were ably represented before me.

6. Review of Evidence

The Respondent police officers' main accounts of what happened are included at Tab H of Exhibit #3 in a document titled:

“STATEMENT OF CONSTABLE 1885, KENNEY, 1917 GARDNER,
1992 STEELE, 2070 KOJIMA, 2109 GEMMELL and
2117 CRONMILLER IN RESPONSE TO NOTICE OF
COMPLAINT, DATED FEBRUARY 18, 2003”

and at Tab I, Exhibit #3 in a document titled:

“STATEMENT OF AGREED FACTS”

This was an agreement of facts that was accepted by Judge Weitzel for the purposes of guilty pleas to three criminal charges of assault.

I reviewed the “Reasons for Sentence of the Honourable Judge Weitzel”, copies of which were provided to the Respondents at their criminal sentencing on January 5, 2004.

I was encouraged by the Respondents' counsel to adopt the “Statement of Agreed Facts” from the criminal process as the complete and accurate account of the events. I considered this document, but I also considered all the evidence available to me. I kept in

mind that as the officers' livelihoods are at stake, a high standard of proof is required. This was discussed earlier in this disposition, in Part I.

Not all of the six officers charged were involved in the decision to make arrests of the original four people for Criminal Breach of the Peace. All the evidence supported the officers' decision to detain these people and up to the release of the Complainant Shannon Pritchard, the conduct of the Respondents was found to be lawful. As there was and continues to be considerable public attention and concern regarding Breach of the Peace arrest, the appropriateness of the execution of arrests in this regard will be discussed later in this disposition in Part 8.

There were submissions regarding the poor lighting where the assaults took place in Stanley Park. While the lighting was far from ideal, Constable Peters explains throughout several statements, what he saw. Whether illuminated by flashlight, headlights or running lights from the police wagon, I accepted the fact that the lighting was not ideal but also that Constable Peters' version of the events changed little during the various interview sessions. Considering the number of interviews he went through, the media scrutiny and the internal stress he was under, I found that the few variations in evidence in Constable Peters' statements are understandable and do not undermine his evidence as a whole. I noted the Complainant Desjardins' words that it was "pitch black" but I believe that Constable Peters was able to see the events he addressed in his statements.

a) Barry Lawrie:

The six Respondents' comments in relation to Barry Lawrie's arrest and treatment were examined.

In their brief agreed statement of facts (Exhibit #3, Tab I), Constable Gardner admitted shining his flashlight at Mr. Lawrie and berating him. Constable Gemmell poked Mr. Lawrie with his index finger several times in the right upper chest area. Constable Steele berated the Complainant Lawrie and shoved him once, as did Constable Kojima. Mr. Lawrie was spun around (jostled) and Mr. Lawrie left the area.

In their collective statement (Exhibit #3, Tab H), after Mr. Lawrie was released from the police wagon),

“he was subject to a lecture. Constables. Kojima and Cronmiller arrived at approximately this time. The lecture went beyond what was intended and escalated into minor physical assault as he was told to stay out of the area and to stop his criminal activities. Mr. Lawrie then walked away.”

Mr. Lawrie gave a much different version. He claimed that during his Breach arrest on Granville Street he was kicked in the shoulder (p. 95, Tab A, Exhibit

#3), kicked in the back of his head resulting in his chin getting scratched up when it hit the ground. He also said he was kicked in the back between the shoulder blades.

In Stanley Park, Mr. Lawrie was the first one released and he spoke in part of being “passed” from officer to officer. He said he was banged and sent to ground and that someone stepped on his face. Mr. Lawrie further stated he was kicked in the legs, kicked in the arms, and was left limping as he left the scene of the assault. He said that Grant (Wilson) had his “head ripped open.” He also said that his (Lawrie’s) injuries consisted of a split lip, cracks on his nose, “fucking” nose was “mushed” and he had black eyes for a week. (p. 100, Tab A, Exhibit #3). He said he had bruises and scratches all over his legs. Mr. Lawrie stated that he was punched in the side of the face (p. 105, Tab A, Exhibit #3), in the leg and tripped backwards ...”put to the ground and punched. After the assaults, he could barely walk, limping, with one shoe on. Mr. Lawrie claimed to have “limped away and turned and watched the other guy get his beating ... “ (p. 97, Tab A, Exhibit #3)

There was no evidence that Mr. Lawrie attended for medical treatment when he said he did. Internal Investigators made inquiries at the medical treatment centre Mr. Lawrie stated that he had attended. They had no record of Mr. Lawrie attending in the indicated time frame. He received medical treatment about two weeks earlier for a nose injury. He admitted that he was addicted to heroin.

Continuing with the Complainant Lawrie, in Constable Peters' first narrative version of the events, he heard Constable Kojima belittling this Complainant in Stanley Park prior to the assaults, calling him "scum". Constable Peters saw punches delivered to Mr. Lawrie from all the members present and watched Mr. Lawrie leave the scene, walking "with a limp." In his second more detailed Q & A statement with the Internal Investigators, Constable Peters recalled Constable Kojima shining his flashlight into the eyes of Mr. Lawrie, with Constable Gemmell standing on the tailgate of the wagon. Constable Gardner was heard to belittle Mr. Lawrie, calling him a "piece of shit". He berated Mr. Lawrie in an attempt to convince him not to return to Granville Street or to continue using and selling drugs. Constable Peters saw Constable Gemmell punch Mr. Lawrie in the back kidney area and then everyone, all except Constable Kenney, followed suit. This included Constables Cronmiller, Steele, Gardner and Kojima. There was some kicking of Mr. Lawrie. Constable Kojima was observed to tell Mr. Lawrie to "get lost" and he was seen to be limping off.

In his first interview with Crown Counsel, Constable Peters recalled Constable Steele getting Mr. Lawrie out of the wagon first. There was no conversation as Constable Peters felt that the outcome was predetermined after the huddle on Granville Street when the four had been arrested. Constable Kojima shone his flashlight into Mr. Lawrie's eyes, and he was holding his hand up to block the light. Constable Gardner was belittling the Complainant. Constable Gemmell

was standing on the rear bumper and when the Complainant was brought around, Constable Gemmell struck Mr. Lawrie in the kidney area, then each officer started taking their shots, short and swift to the kidney area, mostly to the torso area. There were 3 to 5 five punches from each officer delivered with closed fists. The “semi-circle of police officers collapsed, went closer” (p.23, Tab C, Exhibit #3) after Constable Gemmell delivered the first blow. Constable Peters said that while he saw the semi-circle of officers close in on Mr. Lawrie and saw what is described as Constable Steele’s action as “lunged in”, it cannot be said,

“for certain that he (Steele) in fact you know, struck him.”

Constable Peters confirmed that he saw Constable Cronmiller strike Mr. Lawrie 3 to 5 times. Constable Peters said Mr. Lawrie covered his head and absorbed the blows ... the two other parties went to the ground but Peters wasn’t sure if Mr. Lawrie went to the ground. Constable Gardner was heard to tell Mr. Lawrie to “get lost and be on his way.” He was seen to be stumbling his way down toward the water, walking with a limp.

b) Jason Desjardins:

Turning to Jason Desjardins’ arrest and treatment:

In their “agreed statement of facts”, (Exhibit #3, Tab I) the Respondents stated that Constable Gemmell released Mr. Desjardins from the wagon where he advanced towards this same officer who then punched Mr. Lawrie in the stomach. Mr. Desjardins went backward and fell onto the wagon bumper. He then stood up and Constable Gardner shoved him in the chest area a couple of times. Constable Kojima contacted Mr. Desjardins with his police-issue baton in the vicinity of his knee. Constable Steele berated Mr. Desjardins and he left the scene.

In their statement to the internal investigators regarding Mr. Desjardins (Tab H, Exhibit #3), the Respondents said,

“A similar process occurred with Messrs. Desjardins and Wilson. In each case the lecture was accompanied by a physical assault. Each of them walked away separately. Constable Kojima at one point deployed his baton. Constables. Kojima, Gardner, Gemmell, Steele and Cronmiller either participated in the assaults or were in the immediate area during the assaults. Constables Kenney and Peters stood about 20 feet away from the assaults and did not participate. Constable Kenney acknowledges and accepts that he should have intervened earlier.”

Jason Desjardins' version of the events is more detailed. He details a series of assaults on Granville Street before going to Stanley Park but there is little or no supporting evidence that this happened. He was the second person released from the police wagon in Stanley Park and said that they "had a light on me." He said that he was smashed in the gut and he "heard the night stick come out"¹ (p. 159, Tab A, Exhibit #3). Mr. Desjardins said he was "only struck once (with the baton), that was it." He compared his treatment to being "poked and just being pushed." He claimed that he heard Grant (Wilson) screaming and saw blood on Mr. Wilson's face (p. 156, Tab A, Exhibit #3) afterwards when they left the park about the same time.

Constable Peters, in his first written narrative, recalled Constable Kojima shining his flashlight into the eyes of Mr. Desjardins and the same member open his baton (asp). Constable Peters said Desjardins was punched repeatedly then saw Constable Kojima step on his shoulder and "gently" kick this Complainant's head as he was on the ground. He then saw Mr. Desjardins limping as he left the scene.

In his second more detailed account with investigators, Constable Peters described Mr. Desjardins being released second from the wagon. Constable Kojima shined his flashlight into Mr. Desjardins' eyes and Constable Gardner

¹ The deployment of the issue baton can be "heard." As a compliance weapon, the asp is a short telescoping piece of metal and it has to be deployed in a very specific manner. It must be swung fast and deliberately in an arch-like fashion to allow the two portions of the weapon to extend and lock into place, causing the metal to slide against itself and click into place. The sound is distinctive and trainees are instructed to use the deployment and the resulting sound as a deterrent. It is part of the continuum of force beginning with voice commands progressing all the way to deadly force with a firearm. It is not unlike the old style Billy club when deployed.

belittled this Complainant. Constable Steele pushed Mr. Desjardins and there was a flurry of punches. The Complainant fell to the ground and was kicked by everyone, all five constables. Constable Kenney was not part of this. Constable Kojima had his baton in his hand and was seen to step on Mr. Desjardins' collarbone. Constable Kojima kicked the Complainant's head like a soccer ball. There were kicks to the Complainant by Constables Gemmell, Gardner, Cronmiller, Steele and Kojima. Constable Kojima then told Mr. Desjardins to get up and get lost.

In his next interview with Crown Counsel Mr. Rob Gourley, Constable Peters saw Desjardins "go to the ground" because Constable Kojima,

"stepped on his shoulder area ... kind of exposing his torso area ... I remember him kind of ... kicking his head around similar to what a young kid would do with a soccer ball in between his feet." (p. 30 of Tab C, Exhibit #3)

Constable Peters recalled Constable Gardner coming over to him, stating or asking "if he was alright with what had taken place" and if he (Constable Peters) needed to "go sit in the vehicle, that I could and no one would be offended by it".

On September 23, 2003, Mr. Gourlay, again interviewed Constable Peters (Tab D, Exhibit #3).

Constable Peters recalled that the Complainant Desjardins was brought out of the wagon. Constable Kojima shined his light in the Complainant's eyes. He had his hand up around his face because of the flashlight beam. Constable Gardner belittled Mr. Desjardins. Constable Kojima took out his baton, extended it "... in somewhat of a downward swing ... opened it fully." The semi-circle of police officers closed and they started hitting Mr. Desjardins. Mr. Desjardins started to "turtle up", put his hands over his face and plead for them to stop. He fell to the ground after numerous strikes. His feet were up around his chest, his hands, or his arms over his head. Mr. Desjardins was pushed back and Constable Gemmell started to talk, then he (the Complainant) started being struck. All of the officers put out their arms in an attempt to stop him from walking through the circle or the semi-circle. The punches were short, there were just arms going forward and he was continually yelling and looked to be grimacing in pain. Constable Peters was unable to say for sure if there was any contact on Mr. Desjardins' torso by Constable Gardner or Constable Steele's hands or fists. In both cases their upper bodies were moving, and they appeared to be hitting but he did not actually see fists strike Mr. Desjardins. He did see Constable Cronmiller strike the Complainant with his fist. Constable Peters saw Constable Kojima take the asp off his duty belt and open it up. Constable Peters' does not recall Constable Kojima striking the Complainant with it. Constable Peters saw Constable Kojima use his feet to kick Mr. Desjardins' head similar to playing with a soccer ball between his feet. Mr. Desjardins was on the ground for about 10-15 seconds.

Then he left the area a little slower than the first Complainant (Lawrie) did. Mr. Desjardins was holding his torso and walking with a distinct limp.

Constable Peters described the kicking of the Complainant Desjardins. He said that he saw Constable Gemmell use a kicking motion towards Mr. Desjardins who was on the ground. Constable Peters also said that although Constable Gardner used a kicking motion towards Mr. Desjardins on the ground, he could not say for sure whether he made contact with him or not. Constable Kojima was seen stepping on Desjardins' shoulder area and kicking his head. Mr. Desjardins was moving around. Constable Peters saw Constable Cronmiller's boot or foot come into contact with Mr. Desjardins.

Constable Kenney at this stage approached Constable Peters and told him he'd probably want to walk away from this one as it will be the worst of the three.

The account of the Respondents, in relation to what occurred when the Complainant Desjardins was taken out of the wagon, is very similar to the statement Mr. Desjardins himself made.

c) Grant Wilson:

Mr. Wilson was the last person released from the wagon in Stanley Park. He said that he saw the (flashlight beam) that was being shone on whoever was taken out

first (Barry Lawrie). Mr. Wilson claimed to have heard blows being struck to that person. He also heard, “gasps and grunts ... the aftermaths of a blow being inflicted.”

Mr. Wilson claimed that when the second Complainant (Desjardins) was being released he heard a police officer telling him to stay away from Granville Mall. He heard blows being struck and the sounds of someone wincing (oohs and ahhs). When Mr. Wilson was let out he claimed to have been kicked, punched, and hit with an extended baton. He was knocked to the ground and repeatedly kicked and hit with a bat. In total Mr. Wilson felt he was kicked 20 times and struck with an “extenda bat” (refers to the police asp baton) 5 or 6 times. Mr. Wilson admitted to smoking a “couple of rocks” (crack cocaine) earlier in the day (p. 83, Tab A, Exhibit #3).

Constable Peters, in his first narrative statement, said that he heard Constable Kojima belittling Mr. Wilson prior to the Section 31 Breach of the Peace arrests on Granville Street. He threatened to, “.. kick the shit out of him (Wilson).” In Stanley Park, Constable Kojima was seen to strike Mr. Wilson on the thigh area with a baton. There were kicks delivered and Mr. Wilson fell to the ground. Constable Steele was yelling at Mr. Wilson (belittling him) and Mr. Wilson was seen to stumble off after the assaults, holding his torso.

In Constable Peters' second and more detailed internal interview Constable Kojima was seen to shine his flashlight in Mr. Wilson's eyes. Constable Gardner belittled the Complainant, calling him a "piece of shit" and then criticized him for having no regard for police authority and something to the affect that it was time he learned a lesson. Constable Kojima was seen to strike Mr. Wilson in the leg with a baton, Mr. Wilson went down and everyone started kicking him. Mr. Wilson was screaming. He was eventually seen to be limping away.

During the interview with Crown Counsel, Constable Peters said that Mr. Wilson was seen being removed from the wagon. Constable Gardner lectured Mr. Wilson about his conduct and lifestyle. All the police officers standing around Mr. Wilson were getting more intense and agitated. Constable Peters saw Constable Kojima strike Mr. Wilson in the thigh area (lower extremities) with his baton, and then Mr. Wilson went to the ground. When Mr. Wilson got struck the first time, Constable Peters "just kind of looked the other way and listened to the screams." Mr. Wilson had his hands up covering his eyes. After seeing the blow with the baton, Constable Peters just kept walking. As Constable Peters sat on the hood of his police car, he heard Mr. Wilson screaming, continuously yelling for some time. Constable Peters could hear Constable Steele scream a couple of times about "who owns Granville Street." While he heard the screaming, Constable Peters did not see actual blows to the Complainant Wilson. His earlier version of Mr. Wilson being kicked was just an impression because of the screaming.

During Constable Peters' last interview with Crown Counsel (Mr. Rob Gourlay), it was related that Mr. Wilson was removed from the wagon and lectured by Constable Gardner about his conduct and lifestyle. All the police officers standing around Wilson were,

“getting more intense ... getting agitated ... up on the balls of their feet” (p. 22, Tab D, Exhibit #3)

Constable Peters saw Constable Kojima strike Mr. Wilson in the thigh area (lower extremities) with his baton, and then Mr. Wilson went to the ground. When Wilson got struck the first time, Constable Peters said he,

“just kind of looked the other way and listened to the screams.”

Mr. Wilson had his hands up covering his eyes. After seeing the blow with the baton, Constable Peters said he just kept walking. As he sat on the hood of his police car, he heard Mr. Wilson screaming, continuously yelling for some time. Constable Peters could hear Constable Steele continue saying,

“who owns Granville Street, who owns Granville Street and just kind of screaming.”

Shortly thereafter, Constable Peters stated he observed Mr. Wilson stumble off into the darkness of the parking lot holding his torso.

7. Importance Of Oath

Upon commencement of employment with the Vancouver Police, the Respondents swore an Oath of Allegiance and Office², a formal Code of Ethics³ and our Terms of Service⁴.

These officers' conduct directly contravenes portions of these important provisions.

² **Oath of Allegiance and Office:** "I, ... will well and truly serve our Sovereign Lady the Queen, her heirs and successors according to law, in the office of Police Constable for the City of Vancouver without favour, affection, malice, or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the office I will, to the best of my judgement, skill, knowledge, and ability, carryout, discharge, and perform all the duties of my office faithfully according to law, so help me God."

³ **Code of Ethics:** As a member of the community and as a police officer I recognize that my fundamental duty is to protect lives and property, preserve peace and good order, prevent crime, detect offenders and enforce the law. I will faithfully discharge my duties in a just, impartial and reasonable manner, preserving the equality, rights, and privileges of all persons as guaranteed by the Canadian Charter of Rights and Freedoms. I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of the Vancouver Police Department. I will preserve the dignity of all persons. I will be faithful in my allegiance to her Majesty the Queen and my country. I will honour the obligations of my office and strive to attain excellence in the performance of my duties.

⁴ **Terms of Service:** I ... do hereby agree to make myself familiar with, and obey, all Rules and Regulations made for the government of the Department. I will devote my whole time to the Police Service and will not become engaged in any business, or trade, or other employment. I will accept the pay of my rank in the Department as full compensation for my services, subject to any deductions that may legally be required, or as the Chief Constable, or the Police Board, may direct in accordance with regulations. I will take proper care of any and all property which may, from time to time, come into my possession or be entrusted to me, and I realize that I may be obliged to make good any deficiency or damage which may result while such property is in my care or possession. I will abstain from any public expression of political opinion which might give offence to any person or which might influence any election. I will not sever my connection with the Department without giving such notice as may be required, realizing that I may be liable to dismissal for misconduct at any time. I will, on leaving the Department, deliver to the Department the articles of clothing and equipment which have been furnished by the Department. I will be responsible for any improper use of, or unnecessary damage to, any Departmental property issued or entrusted to me, and may be subject to a deduction of pay sufficient to make good any damage. I understand that my first period of service with the Department will be on a probationary basis and, if I am found unsuitable during this period of probation, I may be discharged without notice and without prejudice. I agree that all of the foregoing is subject to any collective agreement or regulation which is presently in effect or which may, in future, come into use.

8. Breach Of Peace

There has been discussion and reference to "breaches of the peace" or people being "breached" so it is important to briefly discuss the practice of the police in this area.

The Sections of the Criminal Code of Canada that deal with breaches of the Peace are:

1) Section 30:

"Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace.

R.S., c. C-34, s. 30"

2) Section 31(1) which allows for an arrest for breach of peace:

"Every peace officer who witnesses a breach of the peace and everyone who lawfully assists the peace officer is justified in

arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace"

3) Section 31(2):

"Every peace officer is justified in receiving into custody any person who is given into his charge as having been a party to a breach of the peace by one who has, or who on reasonable grounds the peace officer believes has, witnessed the breach of the peace. R.S., c. C-34, s. 31)

The duty to preserve the peace is an important one for the police. The following Vancouver Police Department policy has been in place for some time and was reviewed by the Police Board in October, 2002:

"The police have a duty to maintain peace and security in the community. It is recognized that members will at times encounter situations where an individual or a group acts in a manner that constitutes a breach of the peace.

An arrest for Breach of the Peace under the Criminal Code should only be used as a last resort when all other options, such as an arrest

for a substantive offense, have been exhausted and the member has observed the breach. A breach of the peace has been defined by the Courts as something more than mere annoyance. The disturbance or threat must be serious enough to cause a reasonable belief that, if the police do not intervene, a more serious problem will result, such as an assault or mischief.

Members also have a common law power of arrest for an "apprehended breach of the peace". This occurs when the member has not witnessed a breach of the peace, but the member believes on reasonable grounds that a breach will take place unless an arrest is effected. The apprehended disturbance or threat must be serious enough to cause a reasonable belief that, if the police do not intervene, a more serious problem will result, such as an assault or mischief."

The procedure to follow in the event of an arrest for Breach of the Peace or a member's common law power of an arrest for an apprehended breach of the peace is:

"No person displaying symptoms of intoxication that meet the criteria for H/SIPP will be dealt with under the terms of this section.

When an arrest is made under authority of the Criminal Code of Canada for a Breach of the Peace, or under the member's common

law authority for an apprehended breach of the peace, the member shall advise an NCO prior to arresting the suspect, or if impracticable, then after the arrest has taken place.

The NCO shall decide if the person arrested is to be incarcerated or removed from the area and released to prevent the occurrence, continuation, or renewal of a Breach of the Peace.

When an NCO authorizes the removal of an arrested party from the area, that party shall be released within this Department's territorial jurisdiction at a point determined by the NCO. Police have a duty of care to ensure that police actions do not endanger the well being of the person being released. Therefore, the NCO shall consider the person's safety and well being with respect to that person's removal from the scene, incarceration, and subsequent release. Specific issues to consider in determining when and where the person is released must include any vulnerability the person may have due to gender, age, mental state, suitability of clothing for the weather, lack of money (e.g., for public transit/taxi), release location, or any other relevant factor.

If the arrested person is sent to the Vancouver Jail, the NCO shall contact the Vancouver Jail Police NCO before the arrested party is booked into the

Jail. The Vancouver Jail Police NCO, in consultation with the authorizing NCO, shall decide how long the person will be held.

Whenever a person is arrested for an apprehended or witnessed Breach of the Peace, the arresting member shall submit a detailed General Occurrence (GO) report - which will automatically be routed to the jail - outlining the following:

- Reasons and authority (Criminal Code or common law) for arrest;
- Name of the authorizing NCO; and
- Disposition of the arrested party (example: lodged in jail or removed to a specifically named location)."

Both common law and the Criminal Code have long provided the police with the authority to stop or prevent a breach of the peace. These provisions do not create an offence of breach of the peace, and criminal charges do not automatically flow from the arrest. They merely provide a right of arrest where a breach of the peace is occurring, or where there are reasonable grounds to believe that a breach of the peace will be renewed. A person arrested for this can be released without any further consequences. Arrests for this purpose are seen as a preventive measure, permitting the police to detain people before any unlawful activity has

occurred or before problems escalate. There are a variety of minor offences that are transitory in nature, that if not handled in this manner would escalate into further acts of violence. The provisions of Section 31 provide that intermediate step between doing nothing and making an arrest and compelling a person to attend court. A brief detention, under the proper circumstances and duly authorized is a valuable tool in preventing minor issues from escalating into more substantial crimes.

A review of the evidence on this case supported the original decision to arrest the four people on Granville Street. The policy of the Vancouver Police Department is reasonable and in support of the law and its intent. It calls for oversight by a supervisor and the procedure is used for the most part in a fair and reasonable manner. It was the non-adherence to the policy and the law, which was at issue in Stanley Park, not the law itself.

9. Findings And Disposition

The obvious difficulty I have before me is how to resolve the various versions of what took place that night. Constable Peters was in the position of having to recall the actions and interactions of six police officers and three complainants during a dynamic and troubling series of events. It was dark, with some lighting from the vehicles and flashlights. He was obviously troubled by what was occurring before him. There is no way one person could see, hear or recall everything that took place that night. I have no doubt, that in the statements provided by Constable Peters he is recalling events as accurately as he possibly can in these circumstances. In weighing the evidence I must consider each statement made about a respondent member's actions and then decide whether clear and convincing evidence exists that the Respondent acted as alleged. However, in assessing the conduct of a Respondent, whether that Respondent struck one blow or two, is not as material as finding that the Respondent took part in the overall misconduct and assault of the three Complainants. I do find that all of the Respondents, except Constable Kenny, used force on at least one of the Complainants and, although their participation can be differentiated, that they acted to some degree in concert to use force on the three Complainants as they were released from the wagon.

One factor to be considered in relation to all Respondents has been their conduct since this allegation was brought to light by the actions of Constable Peters. All six Respondents pled guilty in criminal court. All six admitted all the defaults alleged

against them before me at the Discipline Proceeding. All six have issued a written apology addressed to the Complainants, the Department and to the community they serve.

I will now go over my findings and disposition in relation to each Respondent.

a) Constable Christopher Cronmiller:

Mr. William Smart, Q.C., counsel for Constable Cronmiller, provided me with copies of correspondence to Judge Weitzel from a wide variety of people including other police officers, contacts from the officer's church and other members of the community. Constable Cronmiller is married and has a supportive and caring family. His church is obviously a key part of his life, as are sports and fundraising. At the time of this incident, he was a new police officer, having only completed 28 shifts since graduating from the Justice Institute of B.C. His name was mentioned in connection with Constable Peters as having about the same amount of service. Constable Cronmiller has taken rehabilitative steps through counselling and his additional contribution to his community through volunteer work has been noted.

In his "Reasons for Sentence" during the criminal process, Judge Weitzel commented very favourably about Constable Cronmiller's personal situation and that his involvement in the assaults was less than it was for the other officers. In Provincial Court, he was sentenced to a Conditional Discharge on all three counts

with six (6) months' probation and ordered to conduct 30 hours' work service. He is to have no contact with any of the victims and pay a victim fine surcharge of \$150 (\$50 x 3).

As with all the Respondents, Constable Cronmiller has had to endure considerable adverse publicity and condemnation. All the Respondents have suffered stress and humiliation as a result of their actions. Their apologies to the victims, the community and the Vancouver Police Department have been noted.

By his own admission, on the morning of the assaults, Constable Cronmiller arrived with Constable Kojima at the scene on Granville Street where the four people were originally arrested for Breach of the Peace. Later in Stanley Park, Constable Cronmiller said that after the Complainant Wilson exited from the police wagon (he was the third and last) and came towards him, Constable Cronmiller took a step back to avoid coming into contact with Mr. Wilson; however, Mr. Wilson fell into him. Constable Cronmiller's submission is that he pushed Mr. Wilson away towards the other officers. Constable Cronmiller said that he had no contact with either Mr. Lawrie or Mr. Desjardins. Constable Cronmiller's counsel has supplied material in support of his affidavit to this effect (Tab 2, Exhibit #24).

Constable Peters' statement sets out that Constable Cronmiller had more involvement than simply pushing Wilson. Constable Peters' statement says that

he observed Constable Cronmiller strike the Complainant Lawrie more than once. He also saw Cst Cronmiller kick the Complainant Desjardins. I find Constable Peters version of events credible and believable.

Constable Cronmiller's actions are extremely serious. However, I am compelled to consider that this was an extremely junior member whose actions were influenced by the more senior members present. I have also considered the personal mitigating facts provided by Constable Cronmiller's counsel and all the relevant portions of the Act and the Code. The Code urges an approach to discipline that seeks to correct and educate a police officer when a mistake has been made. Although the actions of this Respondent are very serious and troubling, I am persuaded to provide a second chance for this young officer to serve the community.

Discipline Proposed:

1. I propose that Constable Cronmiller be suspended from duty without pay for a period of 5 days (each of 8 hours in duration) on each allegation. This term of suspension is to be served consecutively making a total of 20 days (160 hours without pay).
2. At the time of this incident Constable Cronmiller was a 5th Class (Probationary) Constable. I propose that he remain in this rank for an

additional year beginning on this date, January 28, 2004 and that any subsequent increment promotions as detailed in Section 11.4 of the Vancouver Police Union Collective Agreement be based on a start date of January 28, 2004.

3. At the end of his suspension, it is proposed that Constable Cronmiller attend and take direction from the Inspector in charge of the Human Resources Section to be reassigned to a position where he can return to full duties which will not be in violation of the order of Judge Weitzel.
4. It is proposed that Constable Cronmiller work under the close supervision and direction of an experienced member for a period of not less than one year and that he be the subject of quarterly progress reporting by that supervising officer to the Inspector in charge of the Human Resources Section.
5. It is proposed that Constable Cronmiller attend and receive, or continue to attend and receive, any training and/or counselling as directed by the Inspector in charge of the Human Resources Section.

b) Constable Raymond Gardner:

I have reviewed the submission by Constable Gardner's counsel, Mr. Paul Barclay. There are many statements and letters of support from a wide variety of

people. I have noted that Constable Gardner came to Canada from the U.K. in 1988 at the age of 17. He enjoys a good relationship with his family who are strongly supportive of him. He has been with the Vancouver Police for approximately 4 years and his counsel provided material regarding education and previous employment. Constable Gardner has been a qualified coach, a volunteer and a student of Japanese culture and language. I have noted the many letters from the community, previous working associates, various organizations, and police peers and supervisors. I have also noted his counselling (Tab 16, Exhibit #21) and the associated comments.

Judge Weitzel during the criminal proceedings was clear in his condemnation of this officer. Constable Gardner was a direct participant in each of the three assaults. He berated one of the Complainants. He shoved a Complainant a couple of times after he had been punched in the stomach. He shoved another Complainant once or twice. Constable Gardner was given a suspended sentence on the three counts of assault with a term of nine (9) months probation to run concurrently. He was given 50 hours work service with no contact with any of the victims. There was a victim fine surcharge of \$150 (\$50 x 3).

As with all the Respondents, there has been considerable adverse publicity and condemnation of Constable Gardner. All the Respondents have suffered stress and humiliation as a result of their actions. Their apologies to the victims, the community and the Vancouver Police Department have been noted.

Constable Gardner by his own admission said he shone his flashlight into the eyes of one Complainant. He berated a Complainant as well. He shoved one Complainant in the chest a couple of times and shoved a Complainant once or twice in the upper chest. One Complainant was knocked or fell to the ground at one point.

Constable Peters' observations and statements reflect a different picture. Constable Gardner was heard to verbally belittle and degrade a Complainant. Constable Gardner told one Complainant, in a demeaning manner, to leave the Park. Constable Gardner asked Constable Peters if he was "alright with this", if he "... needed to go sit in the (police) car" and that no one would take offence to that. During at least one of the assaults Constable Peters saw Constable Gardner make kicking motions towards the Complainant Desjardins, but could not say for sure if contact was made. These actions are in conflict with Constable Gardner's version of events and I give more weight to Constable Peters' version.

Discipline Proposed:

1. I propose that Constable Gardner be suspended from duty without pay for a period of 5 days (each of 8 hours in duration) on each allegation. This term of suspension is to be served consecutively making a total of 20 days (160 hours without pay).

2. At the time of this incident Constable Gardner was a 2nd Class Constable. I propose that he be reduced in rank to 3rd Class Constable for a period of one year beginning on this date, January 28, 2004 and that any subsequent increment promotions as detailed in Section 11.4 of the Vancouver Police Union Collective Agreement be based on the date of January 28, 2004.
3. At the end of his suspension, it is proposed that Constable Gardner attend and take direction from the Inspector in charge of the Human Resources Section to be reassigned to a position where he can return to full duties which will not be in violation of the order of Judge Weitzel.
4. It is proposed that Constable Gardner work under the close supervision and direction of an experienced member for a period of not less than one year, and that he be the subject of quarterly progress reporting by that supervising officer to the Inspector in charge of the Human Resources Section.
5. It is proposed that Constable Gardner attend and receive, or continue to attend and receive, any training and/or counselling as directed by the Inspector in charge of the Human Resources Section.

c) Constable Duncan Gemmell:

I have taken note of Constable Gemmell's personal situation and circumstances from the sentencing report by Judge Weitzel and information submitted by his Counsel, Mr. David Butcher. There were lengthy, detailed and very helpful submissions in this regard. Constable Gemmell was the recipient of many letters of reference contained in two separate booklets. He has six years of policing experience with the Regina Police Service and with Vancouver. He has received many letters from other police officers and business people. I have noted his efforts toward counselling (Tab 1, Exhibit #8) and the associated comments.

Constable Gemmell was the oldest and the most experienced of the Respondents. He had previous policing experience in Regina and he has provided supportive material from people who knew him or had contact with him there.

As with all the Respondents, there has been considerable adverse publicity and condemnation against Constable Gemmell. All of the Respondents have suffered stress and humiliation as a result of their actions. Their apologies to the victims, the community and the Vancouver Police Department have been noted.

Judge Weitzel in his written decision found this officer's conduct especially relevant and troubling and factually distinguishable from the other five. He reviewed the law that was submitted by Counsel and found Constable Gemmell's

conduct more serious. The Judge found that Constable Gemmell started the assaults. He poked the first Complainant Lawrie in the upper chest. Constable Gemmell punched the second Complainant in the stomach. From the Statement of Agreed Facts, this Complainant went backward and fell onto the wagon bumper and the Judge felt the blow caused this fall. Constable Gemmell was there during Mr. Desjardins receiving “contact” with a police issue baton by Constable Kojima. Constable Gemmell was present while the third Complainant Wilson was punched and shoved by other police officers and prodded with the instep of Constable Kojima’s boot. Mr. Wilson’s injuries were caused by the direct action of this officer. The Judge found Constable Gemmell was an integral part, directly and indirectly, in each of the three assaults. He set the tone and escalated the nature of the assault by punching Mr. Desjardins and letting Mr. Wilson out of the wagon into an atmosphere of violence.

Constable Gemmell’s conduct warranted the highest level of denunciation and he was given a Conditional Sentence Order, 60 days’ imprisonment on each of 3 counts, concurrent. He was given house arrest from 2000 - 0700 hours daily, with 6 months’ probation at the end of the CSO. He must complete 40 hours of work service. He must have no contact with any of the victims and pay a victim fine surcharge of \$150 (\$50 x 3).

Constable Gemmell admitted these same facts through his Counsel at the discipline hearing. There was a number of mitigating factors that were submitted

and I considered them.

I have the additional advantage of reviewing other important evidence, especially the detailed statements from Constable Peters and I have found his version of the events generally credible and reliable. Constable Peters said that Constable Gemmell stood on the bumper of the police wagon when Mr. Lawrie was outside the wagon and Constable Peters saw Constable Gemmell step down and deliver the first blow, a punch to Mr. Lawrie in the back, in the kidney area.

Constable Peters said that Mr. Desjardins might have gone to the ground.

Constable Peters said that Constable Gemmell delivered a kicking motion to the Complainant Desjardins when he was on the ground and he was one of the officers delivering kicks and punches at various times. It is my view that Constable Gemmell's conduct consisted of deliberate acts of aggression aimed at persons in his care.

Constable Gemmell pursued a deceitful course of action by being the author of a false and misleading police report. There were suggestions that this was done simply to protect a junior officer but I find a much more sinister rationale at play. There was in my view a specific attempt to hide illegal behaviour. Any desire to protect the identity of Constable Peters was secondary. The report not only left officers' names out of the description of the events, it fabricated facts in an attempt to keep the officers from being linked to criminal behaviour. The report

was incomplete, false, misleading and was generated in my view by an attempt to divert suspicion from all the Respondents.

Constable Gemmell's behaviour is inexcusable. He was not inadvertently caught up in a bad situation, his actions were deliberate and wrong. The conduct of Constable Gemmell is not something that can be corrected in a refresher-training course as it goes right to the core of judgement, truthfulness and integrity.

Discipline Proposed:

The totality of Constable Gemmell's behaviour must be dealt with so as to send a message to all that there can be no justification for this type of conduct. The open and flagrant deceit, which followed the assaults, confirmed to me what was in the mind of this officer. Moreover, he struck the first blow that initiated this incident when, as the longest serving officer present, he should have prevented just such a situation from developing. This officer's conduct offended the community standards expected of a police officer and any sanction short of dismissal would bring the administration of police discipline into disrepute. I therefore propose that, pursuant to Section 19(1) (a) of the Code of Professional Conduct Regulation, Constable Gemmell be dismissed from the Vancouver Police Department effective 2400 hours, today January 28, 2004.

Pursuant to Section 60 (1) (a) of the Act, Constable Gemmell has the right to

request a Public Hearing if he disagrees with my decision. He must make this request, in writing, to the Office of the Police Complaints Commissioner. This request must be made within 30 days of this decision.

d) Constable James Kenney:

Mr. Kevin Woodall represented Constable Kenny and the Discipline Hearing was supplied with detailed background material on the officer. I have noted the support of Constable Kenney's family, his church and various community members. I have been supplied information regarding Constable Kenney's truthfulness in relation to his planning and intentions towards the Complainants. (Tab 1, Exhibit #23).

As with all the Respondents, there has been for Constable Kenney considerable adverse publicity and condemnation. All the Respondents have suffered stress and humiliation as a result of their actions. Their apologies to the victims, the community and the Vancouver Police Department have been noted.

The evidence submitted during the discipline proceedings and the criminal process all supported the fact that Constable Kenney did not berate or physically touch any of the three Complainants. He was a party to each of the three assaults in that he was present and did nothing to stop them. Judge Weitzel described Constable Kenney's "moral blameworthiness" in detail. He differentiated

Constable Kenney's behaviour from the others, suggesting that he was a Sergeant in name only, that he lacked any special qualifications or experience. He had none of the usual authority that a regular sergeant is expected to have and that he had been an acting sergeant for a short time. Constable Kenney received an Absolute Discharge on all three counts. He must pay a victim fine surcharge \$150 (\$50 x 3).

I view Constable Kenney's position as acting sergeant differently that Judge Weitzel did. The acceptance of the responsibility which Constable Kenney embraced an hour earlier, could just as easily have been rejected and given to another. Events and situations create leaders and the NCO going off duty put his trust and faith in Constable Kenney. The six officers in question all thought of Constable Kenney as the Sergeant, albeit "acting". Constable Gemmell commented on this in his general occurrence (GO) report, referring to "A/Sgt. Kenney." There was mention in the Respondent's submissions (p. 9, para 21, Exhibit # 5) that Constable Kenney took a lead role in determining that the second Breach of the Peace arrests take place. There were other references to his acting position. I mention all this for a reason. Leaders are supposed to motivate and inspire others to action. Leadership is not a job title. We lead by our attitudes, by our responses to authority, by the challenges we accept, by the words we speak and by the examples we set for those under our command. Danger could have come at a moment's notice during that short time when Constable Kenney was the acting sergeant, forcing decisions by a young supervisor with little experience. I

find that his choice not to intervene was serious.

Constable Kenney made a comment to Constable Peters, after the second Complainant left the area of the police wagon and before the third incident, that the “worst is yet to come” or words to that affect. I found that referred to the upcoming assault on Mr. Wilson. These comments to Constable Peters and those later in the police car were noted. Even after these comments, Constable Kenney was open to take some positive action, but he did not.

Constable Kenney’s action or inaction was more serious because he was the acting Sergeant. What saves Constable Kenney from more severe disciplinary action is the fact that he did not actively participate in the assaults.

Discipline Proposed:

1. I propose that Constable Kenney be suspended from duty without pay for a period of 5 days (each of 8 hours in duration) on each allegation. This term of suspension is to be served consecutively making a total of 20 days (160 hours without pay).
2. At the time of this incident Constable Kenney was a 1st Class Constable. I propose that he be reduced in rank to 2nd Class Constable for a period of one year beginning on this date, January 28, 2004 and that any subsequent

increment promotions as detailed in Section 11.4 of the Vancouver Police Union Collective Agreement be based on the date of January 28, 2004.

3. At the end of his suspension, it is proposed that Constable Kenney attend and take direction from the Inspector in charge of the Human Resources Section to be reassigned to a position where he can return to full duties which will not be in violation of the order of Judge Weitzel.
4. It is proposed that Constable Kenney work under the close supervision and direction of an experienced member for a period of not less than one year and that he will be the subject of quarterly progress reporting by that supervising officer to the Inspector in charge of the Human Resources Section.
5. It is proposed that Constable Kenney attend and receive, or continue to attend and receive, any training and/or counselling as directed by the Inspector in charge of the Human Resources Section.

e) **Constable Gabriel Kojima:**

Constable Gabriel Kojima's counsel, Mr. David Crossin, Q.C., provided a book of submissions and a book of documents (Exhibits #12 and #13). They outline a variety of factors to be considered along with supportive material in the form of letters from police officers and civilians attesting to his character and work habits. There were letters supplied on his behalf that I have noted and considered. Mr. Crossin's verbal submissions on Constable Kojima's behalf supported the material in Exhibit #12. Constable Kojima received about 30 supportive letters from police officers, his church, business people and friends.

As with all the Respondents, there has been considerable adverse publicity and condemnation for Constable Kojima. They have all suffered stress and humiliation as a result of their actions. Their apologies to the victims, the community and the Vancouver Police Department have been noted.

In his "reasons for sentence" during the criminal sentencing, Judge Weitzel commented critically about Constable Kojima's actions in Stanley Park, including that he was the only one that had physical contact with all three Complainants. He was the only one who used a weapon against one of the Complainants and, according to the evidence that was presented during the criminal hearing, was the only officer to use his foot to make contact with any of the Complainants. Judge Weitzel found that the actions of Constable Kojima were at the higher level of

wrongful conduct compared with that of most of the other police officers. In the criminal proceeding, this officer received a Conditional Sentence Order, 30 days' imprisonment on each of 3 counts, concurrent. He was given house arrest from 2000 - 0700 hours daily, plus 6 months probation at the end of the CSO. He must complete 30 hours work service and have no contact any of the victims. He must also pay a victim fine surcharge of \$150 (\$50 x 3).

Constable Kojima admitted that he shoved the Complainant Lawrie once, that he "contacted" the Complainant Desjardins with his "asp" baton in the vicinity of the knee once and he grabbed and pulled the Complainant Wilson. Mr. Wilson fell at one point or was knocked to the ground after which Constable Kojima admitted to prodding Mr. Wilson with his boot.

Constable Peters saw Constable Kojima shine his flashlight into the eyes of all three Complainants after they got out of the police wagon. I believe this was done to blind them from witnessing the persons who were about to commit the assaults. There can be, and there was, no other reasonable explanation.

Constable Peters included Constable Kojima when describing the officers who were punching the Complainant Lawrie in the torso area. Constable Peters thought that "maybe" Mr. Lawrie was on the ground but he wasn't sure.

When Mr. Desjardins was on the ground, Constable Peters saw Constable Kojima

with his baton in his hand. Constable Peters included Constable Kojima when describing the officers who were kicking the Complainant Desjardins. Constable Peters said he observed Constable Kojima step on Mr. Desjardins' collarbone or shoulder and then kick Mr. Desjardins' head and/or body.

At one point, Constable Kojima was seen taking his asp baton from his duty belt, then he was heard to open the asp baton fully in a downward swinging motion.

Constable Peters saw Constable Kojima strike the Complainant Wilson in the thigh area with his asp baton after which Mr. Wilson went to the ground.

Constable Peters included Constable Kojima when describing the officers who were kicking the Complainant Wilson.

Constable Kojima was the one who told some of the Complainants to leave the Park after the assaults.

After the assaults, walking back to the office from the parking lot, Constable Kojima said words to Constable Peters to the effect that "this was the shit you sign up for."

Constable Kojima illegally and improperly used the police issue baton. He drew it out and opened it unnecessarily. The production of this weapon escalated the tension of the moment. His berating behaviour towards the Complainants was

degrading. He kicked a Complainant in the head. There were injuries to various Complainants as a result of the actions of Constable Kojima. He made a boastful, bragging comment to Constable Peters some time after the assaults that what Constable Peters had just witnessed was what “he signed up for.” This was not said during the heat of the moment and demonstrated an attitude that places this perhaps otherwise innocuous comment in a very different context in terms of seriousness.

Discipline Proposed:

This officer’s conduct offended the community standards expected of a police officer and any sanction short of dismissal would bring the administration of police discipline into disrepute. Constable Kojima’s use of the ASP baton during the commission of these assaults, combined with his boastful statements made shortly thereafter, make dismissal the only appropriate course of action. I therefore propose that, pursuant to Section 19(1) (a) of the Code that Constable Kojima be dismissed from the Vancouver Police Department effective 2400 hours today, January 28, 2004.

Pursuant to Section 60 (1) (a) of the Act, Constable Kojima has the right to request a Public Hearing if he disagrees with my decision. He must make this request, in writing, to the Office of the Police Complaints Commissioner. This request must be made within 30 days of this decision.

f) Constable Brandon Steele:

Constable Steele was represented by Mr. Ian Donaldson, Q.C. His counsel provided material (Exhibit #14) which I have carefully considered along with Judge Weitzel's comments from January 5, 2004. I have also noted that Constable Steele has excelled in many areas despite facing roadblocks along the way. His background in New Zealand, his education in Canada and his employment history were all reviewed.

As with all the Respondents, there has been considerable adverse publicity and condemnation for Constable Steele. All the Respondents have suffered stress and humiliation as a result of their actions. Their apologies to the victims, the community and the Vancouver Police Department have been noted.

Constable Steele was the driver of the police wagon. Judge Weitzel observed that Constable Steele removed the first Complainant Lawrie from the wagon.

Constable Steele was involved in the verbal berating of this Complainant but had no contact with the second Complainant Desjardins. Constable Steele verbally berated the last Complainant Wilson, then punched him once in the upper body after Mr. Wilson had been pushed by one of the other officers. Constable Steele continued to berate Mr. Wilson after he had been knocked to the ground or fallen. In court, he was given a suspended sentence on three counts of assault with 6 months' probation, 25 hours' work service and was ordered to have no contact

with any of the victims. There was a victim fine surcharge of \$150 (\$50 x 3).

Constable Peters made different and further observations of Constable Steele's actions. He was described as screaming at the Complainant Wilson during the belittling session. Constable Peters could not say for sure if Constable Steele had any contact with the Complainant Desjardins except that Constable Steele's upper body was moving in a way that he was seen to "lunge in", but Constable Peters could not say whether Constable Steele struck the Complainant Desjardins.

Discipline Proposed:

1. I propose that Constable Steele be suspended from duty without pay for a period of 5 days (each of 8 hours in duration) on each allegation. This term of suspension is to be served consecutively making a total of 20 days (160 hours without pay).
2. At the time of this incident Constable Steele was a 2nd Class Constable. I propose that he be reduced in rank to 3rd Class Constable for a period of one year beginning on this date, January 28, 2004 and that any subsequent increment promotions as detailed in Section 11.4 of the Vancouver Police Union Collective Agreement be based on the date of January 28, 2004.
3. At the end of his suspension, it is proposed that Constable Steele attend and take direction from the Inspector in charge of the Human Resources Section to

be reassigned to a position where he can return to full duties which will not be in violation of the order of Judge Weitzel.

4. It is proposed that Constable Steele work under the close supervision and direction of an experienced member for a period of not less than one year and that he be the subject of quarterly progress reporting by that supervising officer to the Inspector in charge of the Human Resources Section.
5. It is proposed that Constable Steele attend and receive, or continue to attend and receive, any training and/or counselling as directed by the Inspector in charge of the Human Resources Section.

g) Aggravating and Mitigating Factors:

I note in Section 59(6)(c) of the Police Act that I am to include in my disposition any aggravating or mitigating factors in the case. Similarly, Section 59.1(1)(a)(iv) states that the material provided to the Complainant or Complainants is to include any noted aggravating and mitigating factors in the case.

In turn, Section 19(4) of the Code stipulates that aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures, and that such circumstances include eight factors which are set out in paragraphs (a) to (h) of Section 19(4) of the Regulation.

I have intended above in this disposition to include the relevant aggravating and mitigating circumstances with respect to each of the complaints brought against each of the officers. However, having reference to the factors in Section 19(4) of the Code, I will add the following for the sake of completeness:

h) Seriousness of the Breaches:

The seriousness of all of the breaches is evident from what I have written above.

i) Officers' Records of Employment and Discipline:

None of the six Respondents has a discipline record. Their records of employment have been at least satisfactory and, in a number of instances, have been shown on the evidence presented to me to have been worthy of favourable comment.

j) Impact of Proposed Measures on the Respondents, Their Careers and Families:

The disposition above makes obvious the impact on the Respondents and their careers and families of the proposed measures. I am mindful of the fact, and I regret the fact, that dismissal from the Vancouver Police Department of two of the Respondents will have a devastating impact on them, their careers and, inevitably,

their families. For the other four officers, the impact of the proposed measures is likely to be considerably less, and yet the measures I propose with respect to these four Respondents are intended to be significant and will have detrimental impact.

k) Likelihood of Future Breaches:

I am optimistic that the four officers who have not been dismissed will be unlikely to commit future breaches of the Code. They recognized the seriousness of what they did as seen from their initial written apology, their pleading guilty to the criminal charges and their admitting responsibility for the defaults against them in this proceeding.

l) Acceptance of Responsibility and Willingness to Take Steps to Prevent a Recurrence:

My observations immediately above also have application here.

m) Impact of Departmental Policies on the Actions of the Respondents:

The law permits the removal of people such as the Complainants to locations such as Stanley Park. The policy of the Vancouver Police Department is consistent with that law. The wrongdoing here was not in removing the Complainants to Stanley Park. Had the Respondents behaved as they should have, and simply warned the Complainants and released them unharmed, the Complainants would

have no complaint and, by the process, avoided being arrested yet again. The wrongful conduct here was in what the Respondents did to the Complainants when they should have simply let them go after a warning.

n) Measures Imposed in Similar Circumstances:

Some counsel, particularly Mr. Butcher for Constable Gemmell, placed before me records of other police discipline proceedings. I considered those submissions, but I did not conclude that any of them addressed a fact pattern sufficiently like the fact pattern before me in order for me to treat these other records of proceedings as particularly useful.

o) Other Aggravating or Mitigating Factors :

Any other aggravating or mitigating factor I have dealt with above in the body of this disposition.

10. Exhibit List

File Number: VPD File # 03-14
OPCC File # 1847, 1848, 1934, 1935

Discipline Hearing of January 15 and 16, 2004

<u>EXHIBIT #</u>	<u>EXHIBIT</u>
1	Form 1 'Record of Complaint' from each complainant
2	Form 2 'Notice of Discipline Proceedings' to each respondent
3	Final Investigation Report
4	Form DA-2 'Notice of Complaint' to each respondent
5	Joint Book of Materials submitted by respondent's counsel
6	Book of Submissions re: Cst. Gemmell
7	Booklet of Letters of Reference for Cst. Gemmell
8	Supplemental Booklet of Letters of Reference for Cst. Gemmell
9	Brief of Authorities re: Cst. Gemmell
10	Letter of Reference re: Cst. Gemmell
11	Letter of Reference re: Cst. Gemmell
12	Book of Submissions re: Cst. Kojima
13	Book of Documents re: Cst. Kojima
14	Book of Materials re: Cst. Steele
15	Letter of reference re: Cst. Steele
16	Written Apology from all respondents dated February 27, 2003
17	SCC Case indexed as Machtinger v. HOJ Industries Ltd.
18	OPCC Decisions
19	OPCC Decisions
20	Book of Submissions re: Cst. Gardner
21	Book of Materials re: Cst. Gardner
22	Written Submissions re: Cst. Kenney
23	Book of Documents re: Cst. Kenney
24	Booklet of Letters and Other Documents Submitted re: Cst. Cronmiller