

DISCLAIMER: In accordance with the *Community Safety and Policing Act* and the *Freedom of Information and Protection of Privacy Act*, the summary below has been de-identified to remove the personal information of individuals, including public complainants and persons who were the subject of the investigation.

DE-IDENTIFIED SUMMARY UNDER SECTION 167(2) OF THE CSPA

Original Police Service:

Date of Complaint: 05/06/2024

Type of Investigation:

Referred to Same Service: ☒

Referred to Other Service: ☐

Retained by LECA: ☐

Service Investigations Referred to:

De-identified Summary of Complaint

The complainant alleged the Respondent Officer (RO) conducted a negligent Intimate Partner Violence (IPV) investigation that resulted in Civilian Witness (CW) 1 being arrested for multiple Criminal Code of Canada (CC) offences. The complainant further alleged that RO denied CW1 their rights under the Youth Criminal Justice Act (YCJA).

Unsubstantiated Code of Conduct Allegations

Neglect of Duty - Sec. 2(1)(c) PSA Reg. 268/10

Decision and Reasons

The complainant alleged the RO was biased in their investigation and concluded CW1 was guilty without conducting a full investigation. The investigation was reviewed and found to be fulsome and thorough with no evidence of bias.

The complainant alleged the RO relied on digital evidence that was improperly obtained from CW1's social media account by CW2. The digital evidence was obtained by CW2 prior to police involvement. The RO received the information from CW2 and an assisting officer obtained a search warrant for CW1's devices. Current case law including R v Cole 2012 SCC 53, R v Reeves 2018 SCC 56, and R v Harper 2021 ONCJ 11 supports this practice of passively receiving the fruits of a civilian search and obtaining subsequent judicial authorization.

The complainant alleged the RO improperly relied upon statements from CW2 and CW3 where CW2 and CW3 colluded in their allegations against CW1. The video statements were reviewed and there is no evidence of collusion.

The complainant alleged the RO improperly interviewed CW2 and CW3 and used leading questions to elicit the allegations against CW1. The video statements were reviewed. It was found that an assisting officer conducted the interviews and the questioning was open ended and in line with best practices.

The complainant stated the conduct alleged by CW2 and CW3 did not meet the threshold for criminal charges. The statements of CW2 and CW3 were reviewed and compared to the facts in issue set out in the CC sections that CW1 was charged under. The statements of CW2 and CW3 met the facts in issue for each of offence.

The complainant alleged the RO had insufficient evidence to proceed with charges, because some of the charges were withdrawn. The evidence was reviewed and found to be sufficient to support the charges. The Crown Attorney (CW4) was spoken to and indicated they had no concerns. The disposition of charges was reviewed and it was found that several of CW1's charges were withdrawn when CW1 pled guilty to other offences.

The complainant alleged the RO failed to consider CW2 and CW3's backgrounds when deciding to lay charges. CW2 and CW3's backgrounds were reviewed and did not diminish the RO's grounds to arrest CW1.

The complainant alleged the RO was negligent in that they did not speak to CW1 prior to deciding to arrest. R v Storrey 1990 SCC supports that police may continue to investigate following an arrest. The RO did not wish to alert CW1 to the investigation prior to the arrest because they planned to seize CW1's electronic devices and did not want to provide CW1 the opportunity to destroy evidence. Following the arrest, the RO provided CW1 the opportunity to provide a statement, and CW1 declined.

The complainant alleged the RO failed to seek out records of communications between the complainant and CW2 that the complainant believed would be exculpatory for CW1. The RO was not aware of these records and could not have sought them out. CW4 (the Crown Attorney) was also not aware of the records.

The complainant alleged the RO chose to arrest CW1 in a public place in order to publicize their arrest and therefore violated CW1's rights under the Youth Criminal Justice Act (YCJA). The arrest was conducted in public so that the RO had the opportunity to seize CW1's electronic devices before CW1 could destroy evidence. The YCJA does not prohibit arrests in public.

The complainant alleged the RO denied CW1 their right under the YCJA to having a parent present. The RO offered CW1 the opportunity to have a parent present and CW1 declined. The RO notified the complainant of the arrest in a timely manner both verbally and in writing.