

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
R.S.B.C. 1996, c. 210 (AS AMENDED)

AND IN THE MATTER OF A COMPLAINT BEFORE
THE BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL

BETWEEN:

MAXWELL JOHNSON SR. AND TORIANNE [REDACTED]

COMPLAINANTS

AND:

VANCOUVER POLICE BOARD

RESPONDENT

APPENDIX TO RESPONSE TO COMPLAINT

Overview

1. We are legal counsel to Vancouver Police Board (“VPB” or the “Respondent”) and have authority to file a response to the human rights complaint filed by Maxwell Johnson Sr. and Torianne [REDACTED] (the “Complainants”) on November 23, 2020 (the “Complaint”).
2. The Respondent denies discriminating against the Complainants as alleged or at all.

Facts

3. Except where expressly admitted, the Respondent denies each and every allegation of fact made by the Complainants and puts the Complainants to the strict proof thereof.

Events of December 20, 2019

911 Call

4. On or about December 20, 2019, at approximately 11:39 am, Ms. S, Branch Manager, at the Bank of Montreal (“BMO”), located at 595 Burrard Street, Vancouver, British Columbia (the “Burrard Branch”) made a 911 call to E-COMM BC, to report a fraud in progress at the Burrard Branch.

5. Ms. S advised the 911 Call Taker that there were customers that had presented fake ID at the Burrard Branch and were trying to access a customer bank account that had \$23,000 in it. Ms. S advised the 911 Call Taker that BMO had a customer that "...presented a fake ID that we have confirmed."
6. Ms. S further advised the 911 Call Taker that she had contacted a number on a "Canadian Government website in regards to verifying Indian status" cards, and spoke to someone who instructed her to "keep the ID" that had been presented, and contact the police.
7. Ms. S advised the 911 Call Taker that she was stalling the customers who had presented the "fake ID" and that they were seated in the lobby of the Burrard Branch.
8. The 911 Call Taker asked Ms. S to describe the customers, and Ms. S said that there was a female teenager, and a male, claiming to be her grandfather, in his fifties. She described the female teenager as being approximately five feet, two inches or five feet, three inches tall with a heavy build, and the male as being approximately six feet tall with a heavy build. She described both the female teenager and the male as being of South Asian race. She also described the clothing that each of them was wearing.

VPD Arrival at the Burrard Branch

9. On or about December 20, 2019, at approximately 12:35 pm, Constables Wong and Tong ("Officers") of the Vancouver Police Department ("VPD") attended the Burrard Branch. Constable Tong was the driver of the police cruiser, and Constable Wong was the lead investigator on December 20, 2019.
10. Constable Wong met with Ms. S to learn more about the incident. Ms. S advised Constable Wong that at approximately 11:30am, Mr. Johnson and Ms. [REDACTED] were at BMO to open a joint chequing account for Ms. [REDACTED].
11. Ms. S advised Constable Wong that BMO concluded an attempted fraud had occurred because:
 - (a) There had been a recent large money deposit into Mr. Johnson's account,
 - (b) Mr. Johnson changed his phone number connected to the bank account the day before (on December 19, 2019),
 - (c) Mr. Johnson's status card did not match the one on BMO's database, and
 - (d) Ms. [REDACTED] presented a card that BMO deemed fraudulent because it was under a different name than the one listed on the public inquiries database.
12. Upon receiving the above information from BMO's Branch Manager, Constable Wong had no basis to disbelieve the information provided by Ms. S. Large financial institutions have experience identifying financial irregularities, including customer fraud. Furthermore, Ms. S had advised that she had contacted a public inquiries line

about the authenticity of the status cards, received confirmation that they were fraudulent, and passed that information to Constable Wong, as fact.

13. Based on the information from Ms. S, Constable Wong concluded he had reasonable grounds to believe that fraud had occurred, and further concluded he was obliged to arrest the suspects.
14. When summarizing for Constable Wong the grounds for her concluding that an attempted fraud had occurred, Ms. S made no mention of the suspects' race, ethnicity, ancestry, colour, age, or family status.
15. The only information that the Officers had about the Complainants' ancestry, race, age, colour, and family status upon entering the Burrard Branch were from their descriptions that BMO had provided to the 911 Call Taker, and this only stated that the suspects appeared to be "South Asian".
16. Following Constable Wong's conversation with Ms. S, Ms. S pointed out the Complainants, who were seated in the main lobby of the Burrard Branch, as being the suspects.

VPD Detention

17. Constable Wong approached the Complainants in the main lobby of the Burrard Branch, introduced himself and Constable Tong, and asked them to follow him outside.
18. Based on the information received from the 911 Call out, and the manner in which Ms. [REDACTED] presented (approximately five foot two or three, heavy build) the Officers were satisfied that the conclusion reached by Ms. S that Ms. [REDACTED] was a teenager, approximately 16 or 17 years old, was pretty accurate.
19. It is typical for Officers to bring people outside of a business, to detain or arrest them, to protect the privacy of those being arrested, reduce the number of persons involved in the incident, and minimize the chance for disruption from suspects or others.
20. The Officers and the Complainants walked calmly together, out of the front door of the Burrard Branch, and walked left a short ways down Burrard Street.
21. As Constable Wong had reasonable grounds to believe that fraud had occurred, the Officers arrested the Complainants.
22. Because Constable Wong had reasonable grounds to conclude an attempted fraud had occurred, Constable Wong could not assume the identity of the suspects was as they presented. He had to conduct a further investigation to determine identity of the suspects, if possible.
23. Constable Wong concluded that the suspects had to be hand-cuffed for a number of reasons:

- (a) Constable Wong was going to have to engage in other investigative activity, including phone calls and any follow up with BMO, to satisfy himself about the identity of the suspects and independent verification of the information that formed the basis of the arrest. In doing so, he would not be able to maintain physical proximity and ensure custody of either suspect with Constable Tong, leaving Constable Tong to secure custody of two suspects at the same time. It is proper discretion in such a situation to hand-cuff suspects.
 - (b) Constable Wong's experience was that teenagers are sometimes a flight risk at the scene of arrest.
 - (c) Flight risk jeopardized any future criminal investigation steps, because at the moment the Officers hand-cuffed the suspects, their identity was unknown.
24. The Officers did not know the Complainants' ancestry, race, age, and family status at the time of the arrest.
 25. The Officers advised Mr. Johnson and Ms. [REDACTED] that they were under arrest for fraud, and read them their rights.
 26. Mr. Johnson showed no signs of stress, and appeared very calm.
 27. The Officers conducted a brief search of Mr. Johnson but did not conduct a search of Ms. [REDACTED]. As per the VPD's best practice and procedures in dealing with female detainees, Constable Wong called for a female VPD member to attend the Burrard Branch to conduct a search of Ms. [REDACTED]. A female member of the VPD did arrive within a few minutes, and conducted a brief search of Ms. [REDACTED].
 28. Mr. Johnson explained that he was confused why he and Ms. [REDACTED] were arrested. He explained that they were from Bella Bella and they were in town to open a bank account, and that the money was deposited in the account from a recent settlement.
 29. Based on Mr. Johnson's accounts, Constable Wong determined that he needed to conduct further investigation before proceeding with a charge.
 30. Mr. Johnson advised Constable Wong that another family member was with them and was still inside the Burrard Branch. Constable Wong went back into the Burrard Branch to find and speak with the family member. The family member corroborated the Complainants' version of events.
 31. Constable Wong entered his police vehicle to conduct searches on the VPD and related databases to see if he could find any information on the Complainants that would assist him in confirming their identities. He was able to find information on Ms. [REDACTED], which stated that she was 12 years old. Constable Wong then questioned Ms. [REDACTED] about the information he found, and was satisfied that her identity was confirmed.
 32. Given Ms. [REDACTED]'s age and her cooperation, Constable Wong removed Ms. [REDACTED]'s handcuffs.

33. Constable Wong then went back into the Burrard Branch to confirm again with Ms. S on what grounds BMO had concluded that fraud occurred. Ms. S remained adamant that fraud had occurred, based on her experience and the other details she had previously outlined.
34. Constable Wong was then provided, either by Mr. Johnson or possibly by a male family member who had been present inside the Burrard Branch, a phone number for one Margaret Brown, a person identified as the Justice Coordinator for the Heiltsuk Nation.
35. Constable Wong called the phone number for Ms. Brown. Ms. Brown confirmed that she knew both Mr. Johnson and Ms. [REDACTED], and that they were both members of the Heiltsuk Nation. She also confirmed that the recent deposit of \$23,000 was from an Indigenous settlement. She advised Constable Wong that Ms. [REDACTED] was using the status card of her mother, which was permissible given her age. Ms. Brown stated that there was likely a clerical error with the status card, which may be the fault of Indian Affairs, or could have been due to the person who usually deals with the status cards for the Heiltsuk Nation being recently dismissed.

VPD Release

36. Based on the information provided by Ms. Brown, Constable Wong concluded that no fraud had occurred and advised the Complainants that they were no longer under arrest and were free to proceed.
37. In making the decision to arrest, the Respondent's Officers did not discriminate against the Complainants on any prohibited ground, or at all.
38. Constable Wong did not confirm that the Complainants were Indigenous persons, at all, until after Ms. Brown confirmed that they were members of the Heiltsuk Nation. Constable Wong released the Complainants immediately as soon as the Complainants' identities were confirmed, and the erroneous assertions, on the basis of which BMO had called 911, were revealed by his further investigation.
39. In releasing the Complainants despite the persistent assertion of BMO that they had committed a fraud, Constable Wong preferred the information of the Complainants, Mr. Johnson's relative, and Ms. Brown, a member of the Heiltsuk Nation, over the information of BMO and Ms. S.
40. Information from Mr. Johnson, when corroborated by his relative, and the Heiltsuk First Nation, was taken at face-value by Constable Wong, and resulted in his decision to release without charges.
41. Through the detention, Mr. Johnson remained calm and made small-talk with Constables Wong and Tong. He did not present to the Officers as experiencing any anxiety or panic.
42. Once the Complainants were released, Constable Wong sat down with them in the Burrard Branch. He explained again that they had initially been arrested based on

BMO's information regarding fraud, which he concluded through his investigation had been incorrect.

43. Constable Wong followed correct police procedure and appropriately exercised his discretion in detaining the Complainants. However, he apologized that the incident had occurred – as he would to any other person that had been detained or arrested on incorrect grounds.

VPD Policies and Procedures

44. The VPD has created the Regulations & Procedure Manual ("RPM") which contains guidelines and policies which all officers are expected to follow when fulfilling their duties.
45. Section 1.6.47(ii) of the RPM sets out procedures with respect to Charges and Arrests of Young Persons. Officers are also guided by the *Criminal Code*, R.S.C., 1985, c. C-46 and the *Youth Criminal Justice Act*, S.C. 2002, c. 1 with respect to process when dealing with youth.
46. Section 1.2.3 of the RPM addresses Use of Force – Restraint Devices, which applies to use of handcuffs. Any use of force is guided by the National Use of Force Framework.
47. These policies and procedures do not provide any specific guidance on when officers should use handcuffs. The decision on when to use handcuffs is within the discretion of each officer.

Position of the Respondent

48. The Respondent did not engage in discrimination against the Complainants in the provision of a service as alleged or at all.
49. The Officers did not respond differently to the Complainants on the basis of their ancestry, race, colour, age, or family status. The Respondent submits that the Officers' conduct with respect to the Complainants on December 20, 2019 was appropriate and measured in the circumstances and not discriminatory.
50. It was reasonable and appropriate for Constable Wong to rely on information provided by BMO, a credible source, in forming reasonable grounds that an attempted financial fraud had occurred, as the Officer investigated. In fact, Constable Wong had an obligation to objectively assess the assertion of criminality made by BMO.
51. To the extent that BMO's and Ms. S's conduct towards the Complainants' and conclusions about the Complainants' intentions at the Burrard Branch were discriminatory, the Complainants must direct their complaint to BMO.
52. The Officers have the statutory authority and responsibility to exercise discretion to make decisions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice. The Officers properly

exercised their discretion in detaining, arresting, handcuffing, and then releasing the Complainants, once further investigation had revealed exculpatory facts.

53. For all of these reasons, the Complaint against the Respondent ought to be dismissed.