



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH: 2014-02
OPCC File No. 2012-7819

NOTICE OF PUBLIC HEARING

(Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267)

**In the matter of the Public Hearing into the complaint against
Constable #2198 Jessie Tiwana of the Vancouver Police Department**

TO: Constable #2198 Jessie Tiwana (Member)
c/o Vancouver Police Department PSS

AND TO: Chief Constable Jim Chu (Discipline Authority)
c/o Vancouver Police Department PSS

WHEREAS:

1. On August 17, 2012, the Office of the Police Complaint Commissioner (OPCC) received a Request for an Order to Investigate from Inspector Mike Serr of the Vancouver Police Department's Professional Standards Section, detailing an incident involving Constable #2198 Jessie Tiwana.
 2. On August 15, 2012, at approximately 8:00 pm, members of the Vancouver Police Department (VPD) responded to a call of a robbery in progress. It is alleged that the suspect, later identified as Mr. Ryan Felton, fled the store and attempted to hijack a vehicle a short distance away. Further calls from the public were received by police advising that the male was stripping off his clothes and attempting to enter a residence in the 1500 block of West 15th Avenue. Police attended this location and arrested Mr. Felton.
 3. On August 16, 2012, the VPD received information from CBC in relation to the arrest of Mr. Felton, indicating that one of the officers in attendance had been captured on video kicking Mr. Felton in the chest while he was handcuffed behind his back. CBC provided a seven-second video clip of the incident in an email to the VPD. It was determined that the member captured on video kicking Mr. Felton was Constable #2198 Jessie Tiwana.
 4. On August 17, 2012, the Police Complaint Commissioner acceded to the request of Inspector Serr and ordered an investigation into the conduct of Constable Tiwana pursuant to section 93(1) of the *Police Act*.
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Stan T. Lowe
Police Complaint Commissioner

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5. On August 27, 2013, the Final Investigation Report into the allegation against Constable Tiwana was submitted to the Discipline Authority. The VPD investigator's assessment of the evidence and analysis of the facts led her to believe that the force used by Constable Tiwana was not justified and not necessary. She was of the opinion that the available evidence appeared to support the allegation of abuse of authority.
6. Following his review required pursuant to the *Police Act*, on September 9, 2013, the designated Discipline Authority, Acting Inspector Dan Dubé issued his Notice of Discipline Authority's Decision. In his decision, Acting Inspector Dubé determined that the evidence appeared to substantiate the allegation of Abuse of Authority pursuant to section 77(3)(ii)(A) of the *Police Act*. The matter was directed to a Discipline Proceeding.
7. On December 9, 2013, pursuant to section 124 of the *Police Act*, a Discipline Proceeding was convened with Superintendent R. Dean Robinson presiding as the Discipline Authority. The only witness who provided testimony was Constable Tiwana. The Discipline Authority did not have the benefit of testimony from other material witnesses including Mr. Felton. Pursuant to the *Police Act*, unless the member whose conduct is the subject of the proceeding initiates a request to call witnesses to testify in the proceeding, there is no other mechanism to allow for the participation of material witnesses. In my view, the accountability of the process and the ability to search for the truth in this proceeding have been hampered.
8. On March 18, 2014, Superintendent Robinson released his findings pursuant to section 125(1) of the *Police Act*. He determined on the basis of evidence presented at the Discipline Proceeding, that the allegation of Abuse of Authority against Constable Tiwana had not been proven. In his decision, Superintendent Robinson applied a different test in determining misconduct from that applied by the investigator and previous Discipline Authority in their determinations.
9. In my respectful view, Superintendent Robinson's interpretation of Part 11 of the *Police Act* and the test that he applied in this matter was incorrect. Additionally, I am of the view that Superintendent Robinson's determination that Constable Tiwana's conduct did not constitute an abuse of authority is incorrect.
10. Pursuant to section 138(1) of the *Police Act*, the Police Complaint Commissioner must arrange a public hearing if the Police Complaint Commissioner considers that there is a reasonable basis to believe that the Disciplinary Authority's findings under section 125(1) of the *Police Act* are incorrect or if the Police Complaint Commissioner considers that a public hearing is necessary in the public interest.
11. Having reviewed the investigation, Discipline Proceeding and the associated determinations, pursuant to section 138 of the *Police Act*, I have determined that a public hearing is required as I consider there is a reasonable basis to believe that the Discipline Authority's findings are incorrect. Furthermore, I have determined that a public hearing is necessary in the public interest. In determining that a public hearing is necessary in the public interest, I have considered several relevant factors, including but not limited to the following:

- a) The complaint is serious in nature as the allegations involve a significant breach of the public trust;
 - b) An arguable case can be made that the Discipline Authority's interpretation or application of Part 11 of the *Police Act* was incorrect;
 - c) It is necessary to examine and cross-examine witnesses and receive evidence that was not part of the record at the Discipline Proceeding, in order to ensure that procedural fairness and accountability is maintained;
 - d) There is a reasonable prospect that a public hearing will assist in determining the truth; and
 - e) A public hearing is required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
12. It is therefore alleged that Constable Jessie Tiwana committed the following disciplinary default, pursuant to section 77 of the *Police Act*:
- a) Abuse of Authority: Contrary to section 77(3)(a)(ii)(A) of the *Police Act*, Constable Tiwana committed the disciplinary default of Abuse of Authority when he intentionally or recklessly used unnecessary force on Mr. Felton on August 15, 2012.

THEREFORE:

1. A public hearing is arranged pursuant to section 138(1) and 143(1) of the *Police Act*.
2. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Carol Baird Ellan, retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 14th day of May 2014.



Stan T. Lowe
Police Complaint Commissioner

Office of the
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