



Office of the
Police Complaint Commissioner

British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE AS NEW
DISCIPLINE AUTHORITY**

Pursuant to s. 117(4) and (9) of the *Police Act*, RSBC 1996, c.367

OPCC File: 2014-9919
November 3, 2016

To: [REDACTED] (Complainant)

And to: [REDACTED] (Member)
c/o Abbotsford Police Department
Professional Standards Section

And to: The Honourable Wally Oppal (Discipline Authority)
Retired Judge, BC Court of Appeal

And to: Chief Constable Bob Rich
c/o Abbotsford Police Department
Professional Standards Section

On August 25, 2014, the Office of the Police Complaint Commissioner (OPCC) received a registered complaint from [REDACTED] describing her concerns with members from the Abbotsford Police Department (APD). [REDACTED] stated that on [REDACTED], she was at home when she noticed people at her front door. These people did not identify themselves, so [REDACTED] asked if she could help them. [REDACTED] approached the people and saw they looked like police, so she asked what was going on. One officer told [REDACTED] they were there to arrest a male for assault and [REDACTED] told the officer the male was not there and the male was the one who was assaulted.

[REDACTED] then went to close the door when the officers pushed forward and she told the officers they could not enter as they did not have a warrant. The officers continued to move forward and [REDACTED] was told to hand over her grandchild or they would take her by force. [REDACTED] reported the officers rushed in and pushed her to the couch and told her she was under arrest. [REDACTED] resisted the officers and one officer kicked her guitar, her TV was smashed and her glasses were crushed. [REDACTED] reported her house was then searched.

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Police Complaint Commissioner

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The allegations contained in [REDACTED]' complaint were reviewed and the allegations concerning:

- *Abuse of Authority* pursuant to section 7(3)(a) of the *Police Act* in relation to [REDACTED]' allegation the officers entered and searched her home unlawfully;
- *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* in relation to [REDACTED]' allegation she was physically pushed to the couch;
- *Damage to Property of Others* pursuant to section 77(3)(e)(i) of the *Police Act* in relation to [REDACTED]' allegation her guitar, TV, and glasses were damaged by the officers; and
- *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* in relation to [REDACTED]' allegation she was arrested without good and sufficient cause.

were determined to be admissible, and accordingly, the complaint was forwarded to the Professional Standards Section of the APD for investigation.

On [REDACTED], [REDACTED], as the Discipline Authority, issued his decision pursuant to section 112. In his decision, [REDACTED] determined that all allegations against [REDACTED] were not substantiated.

On March 22, 2016, I appointed a retired judge to review this matter pursuant to section 117(1) of the *Police Act*, as I considered there was reasonable basis to believe that the decision of the Discipline Authority was incorrect. Therefore, pursuant to section 117(4) of the *Police Act*, and based on a recommendation from the Associate Chief Justice of the Supreme Court of British Columbia, I appointed retired judge Ian Pitfield to review the matters of *Abuse of Authority* and arrive at his own decision based on the evidence.

On April 13, 2016, upon review of the report, and the evidence, and records referenced in it, retired judge Ian Pitfield determined that the conduct of [REDACTED] appeared to constitute misconduct. Subsequently, pursuant to section 117(9) of the *Police Act*, Mr. Pitfield became the Discipline Authority in respect of the matter. Mr. Pitfield offered a prehearing conference to [REDACTED], and the range of proposed disciplinary or corrective measures included suspension without pay for no more than 30 scheduled working days. [REDACTED] declined the offer of a prehearing conference. As a consequence, Mr. Pitfield became the Discipline Authority, by operation of section 117(9) of the *Police Act*.

On May 30, 2016, [REDACTED] filed an application seeking judicial review of both my decision to appoint a retired judge under section 117(1) of the *Police Act*, and the decision of Mr. Pitfield made on April 13, 2016, that the conduct of [REDACTED] appeared to constitute misconduct. On October 27, 2016, British Columbia Supreme Court Justice Affleck released his decision in respect of that judicial review application: *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970. The Court concluded (at paragraph 40) that Mr. Pitfield "must be disqualified from serving as the Discipline Authority pursuant to the Act," due to reasonably apprehended bias. The Court was satisfied, that the reasons set out in Mr. Pitfield's April 13, 2016 decision "on any reasonable reading left no doubt in the mind of the

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petitioner that the retired judge had already made up his mind that the petitioner was guilty of the misconduct alleged.”

In light of Mr. Pitfield’s disqualification, I am appointing Mr. Wally Oppal, Q.C., retired Court of Appeal Judge to act as the Discipline Authority for purposes of section 117(9) of the *Police Act*. I note the Court’s decision offers guidance as to the application of principles set out in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 and the interpretation of section 77(3) of the *Police Act*. I am confident that Mr. Wally Oppal, Q.C., will be mindful of that guidance in the course of the disciplinary proceedings.



Stan T. Lowe
Police Complaint Commissioner

cc: , Abbotsford Police Department