



Office of the  
Police Complaint Commissioner

British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE**

Pursuant to section 117(4) of the *Police Act*

OPCC File: 2014-9919

July 7, 2017

To: [REDACTED] (Complainant)

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

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

And to: The Honourable Judge Mr. Wally Oppal, Q.C., (ret'd) (Retired Judge)  
Retired Judge of the Appeal Court of British Columbia

On August 25, 2014, our office received a complaint from [REDACTED] describing her concerns with members of the Abbotsford Police Department. The OPCC determined [REDACTED]' complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the Abbotsford Police Department to conduct an investigation.

Abbotsford Police Professional Standards investigator, [REDACTED], conducted an investigation into four allegations of misconduct and on [REDACTED], he submitted the Final Investigation Report to the Discipline Authority.

On [REDACTED], [REDACTED], as the delegated Discipline Authority, issued his decision pursuant to section 112 in this matter. [REDACTED] identified four allegations of misconduct in his review: *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act*; *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the Act; *Damage to Property of Others* pursuant to section 77(3)(e)(i) of the Act; and *Abuse of Authority* pursuant to section 77(3)(a)(i) of the Act. [REDACTED] determined that all four allegations against [REDACTED] did not appear to be substantiated.

Stan T. Lowe  
Police Complaint Commissioner

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In my original *Notice of Appointment of Retired Judge*, dated March 22, 2016, I noted that I was satisfied that [REDACTED] appropriately determined the allegation of *Damage to Property of Others* did not appear to be substantiated on the basis of the reasoning provided. Therefore, there was not a basis upon which to appoint a retired judge to review this allegation (*Damage to Property of Others*). The decision to conclude this allegation was final and this office advised it would not take any further action with respect to this allegation.

Based on a review of the Discipline Authority's decision, I considered that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect in relation to the three allegations of *Abuse of Authority* and noted the following with respect to these allegations:

*I am of the view that the Discipline Authority's decision did not properly consider the application of the Doctrine of Abuse of Process as described in Toronto (City) v. C.U.P.E., Local 79, 2003 SCC 63, which prevents the re-litigation of issues decided upon by the court.*

*Furthermore, I am of the view that the Discipline Authority's application of the Doctrine of Good Faith in this matter was incorrect, as he did not assess the reasonableness of [REDACTED] beliefs as they relate to his scope of his authority. In particular, good faith cannot be claimed on the basis of an officer's unreasonable error or ignorance as to the scope their authority (R. v. Buhay, [2003] 1 S.C.R. 631, (SCC)).*

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 the Honourable Judge Ian H. Pitfield, retired Supreme Court Judge, to review the three allegations of *Abuse of Authority* and arrive at his own decision based on the evidence. On April 13, 2016, Mr. Pitfield issued his determination on the matter and concluded that the three allegations of *Abuse of Authority* "may be substantiated." Based on this finding and in accordance with section 117(9) of the *Police Act*, Mr. Pitfield then became the Discipline Authority for these allegations. Mr. Pitfield offered [REDACTED] a prehearing conference. [REDACTED] declined this offer and the matter was set to proceed by way of a discipline proceeding.

On May 30, 2016, [REDACTED] filed a Petition with the Supreme Court of British Columbia seeking:

1. An order in the nature of *certiorari*, quashing the orders and decisions of the respondent, the Police Complaint Commissioner of British Columbia ("PCC"), dated March 22, 2016 and April 19, 2016.
2. Interim and permanent orders in the nature of prohibition, prohibiting the respondent, the Honourable Ian H. Pitfield ("respondent Pitfield") from proceeding with a Discipline Hearing into the conduct of the petitioner.

On July 15, 2016, an Amended Petition to the Court was filed to include:

3. In the alternative, an order that the respondent Pitfield is disqualified from serving as Discipline Authority, on the basis that his reasons for decision on the s.117 review amount to an over-extension of his statutory authority and establish a reasonable apprehension of bias.

On October 27, 2016, British Columbia Supreme Court Justice Affleck released his decision in relation to the judicial review application: *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970. Mr. Justice Affleck determined, based on the language used by the retired judge in his decision, that "on any reasonable reading left no doubt in the mind of [ ] that the retired judge had already made up his mind that [ ] was guilty of the misconduct alleged." Mr. Justice Affleck concluded that the retired judge "must be disqualified from serving as the Discipline Authority pursuant to the Act," as the apprehension of bias was so apparent that [ ] could not reasonably have any confidence that he would receive a fair hearing.

In light of Mr. Pitfield's disqualification as the Discipline Authority, on November 3, 2016, I appointed Mr. Wally Oppal, Q.C., retired British Columbia Appeal Court Judge, to act as the Discipline Authority for purposes of section 117(9) of the *Police Act*.

Following this appointment, [ ] sought clarification with respect to the decision of Mr. Justice Affleck and requested the court quash my original decision to appoint Mr. Pitfield pursuant to section 117(4) of the *Police Act*. On April 12, 2017, the parties appeared before The Honourable Mr. Justice Affleck in the Supreme Court of British Columbia to obtain clarification on his October 27, 2016, decision. On June 9, 2017, Mr. Justice Affleck released his decision on the matter: *Scott v. British Columbia (The Police Complaint Commissioner)*, 2017 BCSC 961. Mr. Justice Affleck did not find that the PCC was unreasonable in his appointment of Mr. Pitfield as the retired judge to review the matter and declined "to make the order requested by [ ] quashing the decision of the PCC to appoint Mr. Pitfield."

Having reviewed the decisions from Mr. Justice Affleck and based on the determinations made by the Court in relation to this matter, I have determined that in fairness to all parties involved, the section 117 process is to start afresh. Based on a review of the evidence, I still consider that there is a reasonable basis to believe that the decision of the [ ] is incorrect in relation to the three allegations of *Abuse of Authority* for the reasons set out earlier in this Notice.

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 am appointing Mr. Wally Oppal, Q.C., retired British Columbia Appeal Court Judge, to review this matter and arrive at his own decision based on the evidence.

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The *Notice of Appointment of Retired Judge as New Discipline Authority*, dated November 3, 2016, appointing Mr. Wally Oppal, Q.C., to act as the Discipline Authority in this matter for purposes of section 117(9) of the *Police Act* is hereby rescinded and replaced with this Notice effective immediately.

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 his review.

Pursuant to section 117(9) of the *Police Act*, if the appointed retired judge considers that the conduct of the member appears to constitute misconduct, the retired judge assumes the powers and performs the duties of the discipline authority in respect of the matter and must convene a discipline proceeding, unless a prehearing conference is arranged. The allegations of misconduct set out in this notice reflect the allegations listed and/or described by the Discipline Authority in their decision pursuant to section 112 of the *Police Act*. It is the responsibility of the retired judge to list and/or describe each allegation of misconduct considered in their decision of the matter pursuant to section 117(8)(c) of the Act. As such, the retired judge is not constrained by the list and/or description of the allegation as articulated by the Discipline Authority.

The Office of the Police Complaint Commissioner will provide any existing service records of discipline to the Discipline Authority to assist him or her in proposing an appropriate range of disciplinary or corrective measures should a pre-hearing conference be offered or a disciplinary proceeding convened. If the retired judge determines that the conduct in question does not constitute misconduct, they must provide reasons and the decision is final and conclusive.

Finally, the *Police Act* requires that a retired judge arrive at a decision **within 10 business days after receipt of the materials** for review from our office. This is a relatively short timeline, so our office will not forward any materials to the retired judge until they are prepared to receive the materials. I anticipate this will be within the next 10 business days.



Stan T. Lowe  
Police Complaint Commissioner

cc: [REDACTED], Abbotsford Police Department Professional Standards Section  
[REDACTED] Abbotsford Police Board

Attached:

*Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970, October 27, 2016.  
*Scott v. British Columbia (The Police Complaint Commissioner)*, 2017 BCSC 961, June 9, 2017.

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