



Affidavit #1 of Lisa Helps
dated March 28, 2017

Court File No. 17 1290
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE VICTORIA AND ESQUIMALT POLICE BOARD

PETITIONER

AND:

THE POLICE COMPLAINT COMMISSIONER

RESPONDENT

AFFIDAVIT

1. I am the Mayor of the City of Victoria, British Columbia ("Victoria"), and as such am one of the Co-Chairs of the Victoria and Esquimalt Police Board. I have personal knowledge of the facts and matters set out herein, except where my knowledge is stated to be based upon my information and belief, and where so stated, I verily believe such facts and matters to be true.
2. The other Co-Chair of the Victoria and Esquimalt Police Board is the Mayor of the Township of Esquimalt, Barbara Desjardins ("Mayor Desjardins"). Mayor Desjardins has held that office since the fall of 2008.
3. I have been the Mayor of Victoria since my election in 2014. Both Mayor Desjardins and I were elected to four year terms in the 2014 municipal elections.

4. The Esquimalt Police Department and the Victoria Police Department were amalgamated in 2003. The amalgamated department is called the Victoria Police Department ("VicPD").
5. The VicPD is governed by the Victoria and Esquimalt Police Board ("Board") in accordance with the *Police Act*, RSBC 1996, c. 367 (as amended) (the "Act").
6. After the elections of 2014, Mayor Desjardins and I decided to split lead duties evenly between us. For the first two years of our respective terms, we decided that Mayor Desjardins would be the Lead Co-Chair and that I would be the Deputy Co-Chair. Those roles reverse for the second two years of our respective terms. This arrangement was approved by the both the Board and the Policing and Security Branch of the Ministry of Justice of British Columbia.
7. The Petitioner has requested from the Respondent the following documents in order to fulfil its statutory obligations as prescribed by section 110 of the Act:
 - a. Final Investigation Reports with respect to investigations ordered by the Respondent on December 18, 2015 and April 29, 2016 (the "FIRs");
 - b. Section 112 Decisions of the Discipline Authorities in relation to the FIRs (the "Section 112 DA Decisions").
8. Attached as Exhibit "A" to this affidavit is a true copy of the Media Statement, issued by the Respondent on December 18, 2015 and is published on the Respondent's website.

9. Attached as Exhibit "B" to this affidavit is a true copy of the Respondent's Order for External Investigation and Notice of Designation of New Discipline Authority dated December 18, 2015 with respect to one of the investigations referred to in the Media Statement which is Exhibit A. This document is published on the Respondent's website.

10. Attached as Exhibit "C" to this affidavit is a true copy of the Media Statement, issued by the Respondent on April 29, 2016 and is published on the Respondent's website.

11. Attached as Exhibit "D" to this affidavit is a true copy of the Respondent's Order for External Investigation and Notice of Designation of New Discipline Authority dated April 29, 2016 with respect to the investigation referred to in the Media Statement which is Exhibit C. This document is published on the Respondent's website.

12. As Co-Chairs of the Board, Mayor Desjardins and I were provided notice on or about April 29, 2016 that one of the Discipline Authority's had issued a Notice of Suspension to Chief Constable Elsner pursuant to section 110(1) of the Act, effective April 29, 2016. I am aware from my role as Co-Chair of the Board that the April 29, 2016 suspension has continued in effect to this day.

13. Attached as Exhibit "E" to this affidavit is a true copy of the Media Statement issued by the Respondent on March 9, 2017 and is published on the Respondent's website.

14. Attached as Exhibits "F", "G" and "H", respectively, to this affidavit are true copies of correspondence between Joseph M. Doyle, counsel for the Petitioner, and Brock Martland, counsel for the Respondent, dated:

- March 10, 2017 (Doyle to Martland) - Exhibit F
- March 14, 2017 (Martland to Doyle) - Exhibit G
- March 21, 2017 (Doyle to Martland). - Exhibit H

15. Attached as Exhibit "I" to this affidavit is a true copy of a Media Statement, issued by the Respondent, on March 23, 2017 and is published on the Respondent's website.

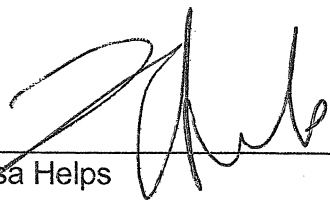
16. The Petitioner has received, via the VicPD, invoices for expenses of the Vancouver Police Department in relation to work its investigators have conducted on the above noted investigations ordered by the Respondent.

17. As of the time of the swearing of this Affidavit, the Respondent has not provided the Petitioner with either the FIRs or the Section 112 DA Decisions.

18. I make this Affidavit with respect to the matter herein.

SWORN BEFORE ME at the City of)
Victoria, in the Province of British)
Columbia, this 28 day of March, 2017)


A Commissioner for taking Affidavits in)
and for the Province of British Columbia)


Lisa Helps

JEFFREY GREEN Q.C.
Barrister & Solicitor
1161 FORT STREET
VICTORIA BC V8V 3K9
TEL: 361-9600



OFFICE OF THE POLICE COMPLAINT COMMISSIONER This is Exhibit " A " referred to in the affidavit of Lisa Helps

British Columbia, Canada made before me this 28 day of March 20 17

December 18, 2015

John A. OPCC 2015-11048 A Commissioner for taking Affidavits

MEDIA STATEMENT

Commissioner Orders Two Investigations

Victoria - The Office of the Police Complaint Commissioner (OPCC) announced today that Commissioner Stan T. Lowe has determined that it is in the public interest to inform the public that he has ordered two investigations into the alleged conduct of Chief Constable Frank Elsner of the Victoria Police Department. This disclosure is intended to maintain public confidence in the civilian oversight of law enforcement through enhanced transparency and accountability.

First Investigation Order

The OPCC has completed its review of an internal investigation and disciplinary process involving Chief Constable Elsner. Pursuant to the Police Act (the "Act"), Mayors Barbara Desjardins and Lisa Helps assumed the roles of Internal Discipline Authorities by virtue of being Co-Chairs of the Victoria Police Board.

In relation to internal discipline matters, the Commissioner is entrusted through legislation with an after-the-fact "gatekeeping" role. The Commissioner's role is to review an internal investigation and disciplinary process, in order to determine whether there is a basis upon which to exercise his independent power to order an investigation into any conduct which, if proven, would constitute misconduct as defined pursuant to the Act.

The Commissioner has ordered an external investigation into five allegations of disciplinary breaches of public trust. Attached as an addendum to this Statement is the Order for Investigation. It provides more information about the matter.

The Commissioner has appointed as Discipline Authority, Carol Baird Ellan, a retired Chief Judge of the Provincial Court of British Columbia.

Second Investigation Order

On December 11, 2015, the OPCC received information from a representative of the Victoria Police Union in relation to allegations made by four employees of the Victoria Police Department of workplace harassment by Chief Constable Elsner. The allegations relate to alleged conduct that has been occurring on a ongoing basis since early 2014. The conduct described includes behaviour that is prohibited by the Victoria Police Department's Workplace Harassment and Improper Activity Policy.

Stan T. Lowe Police Complaint Commissioner

5th Floor, 947 Fort Street PO Box 9895 Stn Prov Govt Victoria, British Columbia V8W 9T8 Tel: (250) 356-7458 Fax: (250) 356-6503

The Commissioner states,

"There is an overriding public interest in proceeding with this investigation as a public trust matter. In my view, the current climate of relations that exists within the Victoria Police Department cannot be adequately addressed through internal processes. The climate within the department appears to be in a state of tension and dissonance. The public must have confidence in the effective and efficient operation of a police department; harmony and discipline within the workplace have a direct impact on its operations."

The Commissioner has ordered an external investigation into three allegations of disciplinary breaches of public trust, which if substantiated, constitute *Discreditable Conduct*.

The Commissioner has appointed as Discipline Authority, Ian H. Pitfield, retired Judge of the the Supreme Court of British Columbia.

Given that this complaint is separate and unrelated to the other investigation involving Chief Constable Elsner, the Commissioner had determined that it is not in the public interest to release further information at this time.

Integrated External Investigation

The Commissioner has determined that it is in the public interest for these matters to be investigated by an external police force. He has designated the Royal Canadian Mounted Police to investigate these matters.

The Commanding Officer of the RCMP in British Columbia, Deputy Commissioner Craig Callens has assigned Chief Superintendent Sean Bourrie as Chief Investigator. Working under his supervision will be a senior team of external investigators with the Vancouver Police Department under the command of Superintendent Laurence Rankin.

In order to protect the integrity of the investigation and the process, the Commissioner respectfully requests that the public not rush to judgment or engage in speculation, and to await the completion of the *Police Act* process.

In order to preserve public confidence in the investigation of police misconduct and the administration of police discipline, the Commissioner will release a summary report to the public at the conclusion of the process.

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To learn more about the Office of the Police Complaint Commissioner, please visit the OPCC webpage at www.opcc.bc.ca.

Media Contact: Rollie Woods, Deputy Police Complaint Commissioner
1-250-356-7458

Office of the
Police Complaint Commissioner

British Columbia, Canada



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

This is Exhibit " B " referred to in the
affidavit of Lisa Helps.....

made before me this... 28..... day

of ... March ... 20 17...

.....
A Commissioner for taking Affidavits

ORDER FOR EXTERNAL INVESTIGATION

Pursuant to s.93(1)(a) & (b)(ii) of the *Police Act*, RSBC 1996, c. 367

NOTICE OF DESIGNATION OF NEW DISCIPLINE AUTHORITY

Pursuant to s.135 of the *Police Act*, RSBC 1996, c.367

OPCC File No: 2015-11048
December 18, 2015

- To: Chief Constable Frank Elsner (Member)
Victoria Police Department
- And to: Chief Superintendent Sean Bourrie (External Investigating Agency)
Royal Canadian Mounted Police
- And to: Ms. Carol Baird Ellan (External Discipline Authority)
Retired Provincial Court Judge
- And to: Her Worship Mayor Barbara Desjardins
Her Worship Mayor Lisa Helps
Co-Chairs, Victoria and Esquimalt Police Board

INTRODUCTION

This document outlines my review of the internal investigation and disciplinary process involving the Chief Constable of the Victoria Police Department, Frank Elsner. Based on my review, I am ordering an investigation into this matter. Pursuant to section 95 of the *Police Act*, I have determined that it is in the public interest to disclose this *Order for Investigation* to the public. I base my decision on the importance of the public office of the Chief Constable, the seriousness of the allegations, and the amount of information currently in the public domain initiated by comments made by individuals directly involved in this matter. At this early stage of the process, I have tried to strike a balance in terms of the degree of disclosure, and in consideration of a number of factors, including:

- protecting the integrity of the impending investigations;
- the privacy interests of those directly affected by this matter and their families; and

Stan T. Lowe
Police Complaint Commissioner

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- the public interest, and in particular, maintaining public confidence in the investigation of alleged misconduct, and the administration of police discipline through the accountability and transparency afforded under the *Police Act* of British Columbia.

BACKGROUND

In late August 2015, our office was contacted by phone by the legal counsel for Mayors Barbara Desjardins and Lisa Helps (the "Co-Chairs") in their capacities as joint Chairpersons of the Victoria Police Board. Counsel was both seeking advice and providing a submission on behalf of the Co-Chairs, with respect to how this matter should proceed pursuant to the *Police Act* (the "Act"). Counsel advised that the Co-Chairs were in possession of communications between Chief Constable Elsner and a member of another local police department. The member involved was the spouse of a member (the "Member") of the Victoria Police Department serving under the command of Chief Constable Elsner. The Co-Chairs took the position that this was an internal disciplinary matter as defined under the Act.

(For context, internal disciplinary matters should be distinguished from public trust matters – the *Police Act* provides for these two methods of addressing failings on the part of a police officer. In this case, the Co-Chairs' position was that the matter should be addressed, not through the more formal public-trust process, but instead through the internal-disciplinary process.)

An in-person meeting was scheduled with counsel for the Co-Chairs, so that I might receive further information and review the Twitter messages between the parties. Due to illness, counsel for the Co-Chairs was not able to attend personally, so our meeting took place by teleconference, in which some additional information was provided. At this point, the available information was limited; there was no information available at that time as to the ownership, operations and privacy related to the social media account. There was no information available with respect to whether the communications took place while on duty or off duty, and whether any municipal police equipment was used to facilitate the communications. These considerations were relevant to determining whether this matter involved a disciplinary breach of public trust and whether it should be dealt with under the public trust process under the Act.

In our discussions, counsel for the Co-Chairs advised me of an anticipated course of action if this matter was to proceed through the internal disciplinary process; that is, counsel set forth an anticipated approach to the situation. In addition, counsel strongly raised the concerns of the Co-Chairs about the privacy interests at stake and the families involved. At the time, I made clear to counsel for the Co-Chairs my concerns about the information and the alleged conflict of interest and/or breach of trust arising out of the employment relationship between Chief Constable Elsner and the Member serving under his command.

I acceded to the request of counsel for the Co-Chairs to allow this matter, initially, to proceed in the internal discipline process. My decision was based on the course of action proposed by counsel for the Co-Chairs, the privacy interests involved, and the requirement that two preconditions be met by the Co-Chairs. These conditions could have an impact on the

information available in determining whether the matter should be dealt with through the internal process or by way of disciplinary breach of public trust. They were as follows:

Precondition 1 There had to be a full and continuing disclosure of the allegations and progress of the investigation to the other Victoria Police Board members.

Precondition 2 There had to be disclosure of the allegations to the Member serving under the command of Chief Constable Elsner, and the Co-Chairs should obtain the Member's informed views as to whether he wished to initiate a complaint or request a public trust investigation under the *Police Act*.

The following day our office was advised by counsel for the Co-Chairs that the remaining Police Board members had been briefed, and that the affected Member did not wish an investigation. On the understanding that my two conditions had been satisfied, I supported the decision to proceed with this matter as an internal discipline matter. It was my expectation that if the investigation revealed evidence of conduct that could constitute a disciplinary breach of public trust, the Co-Chairs would raise the matter with our office.

INTERNAL DISCIPLINE PROCESS AND JURISDICTION OF THE OPCC

Pursuant to the Act, the Commissioner is generally responsible for overseeing and monitoring complaints, investigations and the administration of discipline and proceedings.

The Act requires that Chairpersons of municipal Police Boards establish procedures for governing internal discipline matters and taking discipline or corrective measures that are not inconsistent with the Act. In my view, the internal disciplinary process should be guided by the spirit of the public-trust process under the Act, with a focus on procedural fairness, accountability and transparency, as is found in that process.

For internal discipline matters, the oversight jurisdiction of our office is confined to an *ex post facto* review of the investigation and the disciplinary process. It is an after-the-fact role, and in this respect, it may be distinguished from the way public-trust matters are handled. In the public-trust process, our office has the jurisdiction to provide active oversight of the investigation and to request any and all information as it becomes available. In contrast, in the internal discipline process, the request for the investigation report, and all additional information or records, can only be made by our office at the *conclusion* of the internal discipline process, unless voluntarily provided or disclosed by the Co-Chairs at an earlier time.

In practical terms, the *ex post facto* review by my office is one that requires me to determine whether the matter should be addressed through the more formal public-trust process. The question is whether there is information in relation to which I should exercise my discretion to independently order an investigation into any aspect of the matter. The Act provides that if, *at any time*, our office receives information concerning the conduct of a municipal police officer — *which if proven would constitute a disciplinary breach of public trust* — I may order an investigation into the conduct of the officer. The matter then falls within the jurisdiction of our office, both in terms of oversight of the investigation and any ensuing disciplinary process.

I attach, as an appendix to this Order, some of the relevant provisions from the Act that I have alluded to.

OPCC COMMUNICATIONS WITH THE INTERNAL DISCIPLINE AUTHORITIES

Shortly after confirmation that both pre-conditions had been met, our office was contacted by counsel for the Co-Chairs, canvassing whether a senior lawyer with experience in the area of policing could act as an independent investigator in the matter, as opposed to a Chief Constable of another police agency. I was advised that Chief Constable Elsner was in agreement with this proposal and I believed in the circumstances that it was preferable to proceed this way.

There was no further contact from the Co-Chairs until approximately October 28, 2015, when our office received information that members of the Board had not received adequate disclosure with respect to the allegations and investigation related to Chief Constable Elsner. Our office contacted counsel for the Co-Chairs, who advised that it was the Co-Chairs' position that the Board members were not entitled to disclosure. We reminded counsel for the Co-Chairs that this was a pre-condition for our agreeing that this matter could be dealt with as an internal discipline matter. Our office advised the Co-Chairs through counsel that I was contemplating taking action in the matter. A short time later, we received confirmation that the Board members had received adequate disclosure.

The next contact between our office and the Co-Chairs was on December 4, 2015, when a member of the media contacted our office in relation to rumours that Chief Constable Elsner was the subject of an investigation. We did not comment at all, but it appeared the media may have received incomplete or inaccurate information about the matter from Mayor Desjardins. I directed my staff to contact Mayor Desjardins to confirm her comments to the media. Based on a briefing from my staff, I had a conversation with counsel for the Co-Chairs, in which I provided Mayor Desjardins the opportunity to contact the media and correct the misinformation she had provided earlier. That same day we learned that the Co-Chairs' investigation was in fact completed, with a decision having been rendered in the previous 24 hours. We requested and received a document entitled "preliminary" investigation report and a decision letter from the Co-Chairs.

Internal Discipline Authorities are not required to communicate with our office on an ongoing basis on the status of an internal discipline investigation. As noted earlier, our office is confined to an *ex post facto* review of an internal disciplinary matter unless an Internal Discipline Authority chooses to include our office in the process. Since the commencement of the internal investigation into this matter, there was no contact initiated by the Co-Chairs with our office; the first contact was initiated by our office in relation to the Co-Chairs' comments to the media on December 4, 2015.

REVIEW OF THE INVESTIGATION

An internal discipline investigation, like any formal investigation, involves a systematic and thorough search for the evidence to assist in determining the truth. The processes and procedures engaged in an internal disciplinary investigation are the responsibility of an Internal Discipline Authority; in this matter this responsibility falls directly to the Co-Chairs of the

Police Board. The Internal Discipline Authority is responsible for determining the terms of reference of the investigation, and the nature and manner in which an investigation is conducted — the standards adopted to gather and preserve evidence. Simple and less serious matters (e.g. lateness or dresscode violations) do not normally require comprehensive and professional-grade investigative practices. However, in matters involving serious allegations, or issues where there is a likelihood of conflicting or controversial evidence, or both, it is my view these types of investigations require the use of best practices to ensure the accurate preservation of all evidence.

In my view, based on the information and course of action provided by counsel for the Co-Chairs at the outset, this matter involved serious allegations. It involved an obvious potential for conflicting and controversial evidence amongst the witnesses and parties. It was my expectation that, at a minimum, all interviews would be audio recorded. Instead, I learned afterward, all the witness interviews were documented by handwritten notes made by the interviewer, and constituted summaries of the evidence. Furthermore, there was no opportunity provided to the witnesses to review the summaries of their interviews and raise any issues, nor a requirement for them to sign a document attesting to the accuracy of their evidence.

My review also revealed that a number of obvious investigative avenues were not explored, some of which could have provided important corroborating and/or contradictory evidence. One material witness refused to cooperate with the investigation or participate in an interview. In my view, there were procedural options available that could have been explored to obtain the cooperation of this witness. The effect of the non-participation of an important witness was to leave an evidentiary gap on one side of the ledger, with the result that the accounts of other witnesses may have achieved a greater influence than had this evidence been available in the investigative process.

Based on my review of the investigation report and the accompanying materials, I am of the view that there is conduct described which, if substantiated, would constitute disciplinary breaches of public trust. (These are set out in detail below.) Furthermore, pursuant to the Act, an investigating officer has a statutory duty to report any such conduct to the Co-Chairs of the Police Board. Our office has not received any further reports of alleged misconduct from the Co-Chairs since the commencement of the internal investigation.

While I appreciate that there may be arguments about the admissibility and use of information arising through the internal disciplinary process in this case, the question I must address at this stage is one that does not permit me to engage in an assessment of the weight of the evidence, nor a threshold screening of admissibility or use. At this early stage, the question is instead whether, on the information available to me, an investigation is warranted.

Likewise, while I appreciate that I was previously inclined to the view that the matter might be properly addressed through the internal disciplinary process, as this outline makes plain, the conditions sought for that approach were not met. Moreover, the facts of the case have changed significantly, and the information available now is different both in quantity and in character. Because section 93(1) of the *Police Act* speaks to information that comes to my attention “at any

time", I see it as not only appropriate, but necessary that I act based on my present understanding and view of the matter.

Based on the information contained in the investigation report, it appears that very early, if not at the outset of the investigation, there was information that the device at issue (used by Chief Constable Elsner to transmit and receive the information) belonged to the Victoria Police Department, and in addition that some communications occurred while the Chief was on duty. The Twitter account that was involved in the exchange of information was directly related to Chief Constable Elsner's role as Chief Constable. This information was relevant to the question of whether the alleged conduct of Chief Constable Elsner constituted a disciplinary breach of trust and ought to have been provided to our office for consideration.

Furthermore, the report contained new information related to further conduct of Chief Constable Elsner which supports an allegation that he placed himself in a conflict of interest and/or breached a relationship of trust with a member under his command while on duty. This information involves an appearance of unfair treatment that may have compromised the Member's position in and employment with the Police Department. The Chief Constable's conduct, if substantiated, would constitute the disciplinary breach of trust of *Discreditable Conduct*.

In addition, there is information contained in the report that, while under direction by the internal disciplinary investigator not to speak to witnesses related to the investigation, Chief Constable Elsner had conversations with two witnesses, in relation to the ongoing investigation. This conduct, if substantiated, would constitute the disciplinary breach of trust of *Discreditable Conduct*.

There is information contained in the report that supports an allegation that Chief Constable Elsner met with the Member under his command and provided him with inaccurate and misleading information, in circumstances the Chief knew would influence the Member in the decision the Member had to make with respect to whether he wished to initiate a complaint or request a public trust investigation under the Act - circumstances which, in turn, may have impacted upon (and may have been intended to impact upon) the disciplinary response to the matter. The false information provided by the Chief was consistent with an attempt to mislead the Member as to the nature of the Chief's conduct involving the Member's spouse. This conduct, if substantiated, would constitute the disciplinary breach of trust of *Discreditable Conduct*.

Finally, the report contained the Chief's own account of the events and communications, as well as his response to the account given by the affected Member - the two accounts are difficult to reconcile. They appear to be internally contradictory. This information supports an allegation that the Chief failed to accurately and completely answer the questions of the internal discipline investigator. This conduct, if substantiated, would constitute the disciplinary breach of trust of *Discreditable Conduct*.

On a related but different point, in the report the Member is described as advising the Co-Chairs of his meeting with Chief Constable Elsner and the information the Chief provided to the Member. It appears that the Co-Chairs did nothing to correct the Member's misguided appreciation of the circumstances, despite the Co-Chairs knowing the information provided to the Member was false and misleading. In advising our office that the informational pre-condition had been met, no mention had been made that the Member had received false and misleading information from Chief Constable Elsner. Given the circumstances as contained in the report, it is clear that the Member's decision was influenced by misleading information; therefore, the pre-condition had not been fulfilled. The independent investigator in her report confirmed that the Member has not received adequate information about this matter. The independent investigator commented in her report that, "*It is particularly troubling that [the Member (name removed for privacy)] still does not know about the Twitter exchanges between his spouse and the Chief. As a result, there continues to be a risk of further workplace consequences should those Tweets be exposed.*"

REVIEW OF THE INTERNAL DISCIPLINE PROCESS

As to the contact between our office and the Co-Chairs, beyond our initial discussions with counsel for the Co-Chairs, our office received no communications regarding the progress made on the matter. This was true both in terms of the proposed course of action, and also as to the status of the internal investigation. It was not until our office was contacted by journalists regarding comments made by Mayor Desjardins that I initiated contact (through counsel for the Co-Chairs) regarding my concerns about the accuracy of the comments in media reports. The Mayor subsequently addressed my concerns, confirming that an internal investigation did in fact take place. It was a short time later that Chief Constable Elsner made his comments to the media.

Based on the information provided to our office, it is my view that aspects of this internal discipline process were inconsistent with the spirit and principles of the *Police Act*, as well as the principles of procedural fairness and natural justice. I am of the view that the internal process and procedures in this matter did not meet the level of procedural fairness, accountability and transparency contemplated by the *Police Act*. Furthermore, based on the information that I have received, I am of the view that some individuals who have a direct interest in this matter were not accorded sufficient informational rights, were not provided a sufficient right to be heard, and did not receive a decision which clearly identified the basis upon which the Co-Chairs decided the matter.

PUBLIC TRUST INVESTIGATION AND PROCESS

Speaking in general terms, the processes under the *Police Act* related to the investigation and determination of an alleged disciplinary breach of public trust are clearly set out in the *Police Act*. The legislation and the process contemplate active oversight by our office in relation to the investigation and the outcomes in the police disciplinary process. The oversight role of our office and the processes in place are intended to maintain public confidence in the investigation of misconduct and the administration of the police disciplinary process. More broadly, this office is charged with an overarching public duty of ensuring the integrity of the police disciplinary process and fostering public confidence in this process.

The *Police Act* includes a number of provisions that promote thorough and professional investigations, and adjudicative processes that are focused on accountability, with varying degrees of transparency to public. These processes cover a range, and include: discipline proceedings; reviews by retired judges; public hearings; reviews on the record; and, finally, a Commissioner may recommend to government a public inquiry based on the criteria established under the Act.

Based on the information I have received, including but not limited to the Preliminary Investigation Report, I am of the opinion that the following conduct alleged against Chief Constable Frank Elsner, if substantiated, would constitute misconduct:

1. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did engage in conduct with the spouse of a member under his command which constituted a conflict of interest and/or a breach of trust, in circumstances in which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.
2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did provide misleading information to a member under his command, in circumstances in which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.
3. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did provide misleading information to an investigator in circumstances in which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.
4. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did contact witnesses during the course of an internal investigation, which he was the subject of, contrary to the direction of the independent investigator and in circumstances which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.
5. *Inappropriate Use of Department Equipment and/or Facilities* pursuant to section 77(3)(c)(iv) of the *Police Act*: That Chief Constable Elsner did use police equipment and/or facilities of the Victoria Police Department for purposes unrelated to his duties as a member.

Accordingly, I am of the opinion that it is necessary in the public interest that the alleged misconduct described above be investigated by an external police force. Therefore, pursuant to section 93(1)(b)(ii) of the *Police Act*, I order that the incident involving Chief Constable

Frank Elsner be investigated by the Royal Canadian Mounted Police. The Commanding Officer of the RCMP 'E' Division, Deputy Commissioner Craig Callens, has agreed that Chief Superintendent Sean Bourrie will be the assigned Chief Investigator. Working under his supervision will be a senior team of external investigators with the Vancouver Police Department under the command of Superintendent Laurence Rankin.

I also order that the investigation include any potential misconduct, or attempted misconduct, as defined in section 77 of the *Police Act* that may have occurred in relation to this incident. In addition, if, during the course of this investigation, any policy or procedural issues are identified, the external *Police Act* investigator shall notify the Office of the Police Complaint Commissioner for appropriate processing under section 177(4)(c) of the *Police Act*.

Pursuant to section 135(2) of the *Police Act*, because this matter involves a Chief Constable of a municipal police department in a context where the internal disciplinary process to date has given rise to difficulties as outlined above, I consider it necessary in the public interest to appoint a retired judge as Discipline Authority in this case. (This provision of the Act provides that, any time after an investigation has been initiated into the conduct of a member or former member of a municipal police department, who is or was a Chief Constable or Deputy Chief Constable at the time of the conduct of concern, the Police Complaint Commissioner may if he considers it necessary in the public interest, appoint a retired judge to exercise the powers and perform the duties of a Discipline Authority under the applicable provision, in substitution of the Chair of the Board of the municipal police department.)

Based on a review of the information received by this office, I consider it necessary in the public interest that a person other than the Co-Chairs of the Victoria Police Board be the Discipline Authority for all purposes pursuant to the Act.

Therefore, pursuant to section 135(2) of the *Police Act*, in substitution, I am appointing retired judge Carol Baird Ellan, to exercise the powers and perform the duties of a Discipline Authority in relation to this matter.

An investigation under Division 3 of the *Police Act* must be completed within six months. Unless the circumstances of this investigation warrant a further extension, the investigation limitation period is scheduled to expire on **June 18, 2016**.



Stan T. Lowe
Police Complaint Commissioner

Appendix

APPENDIX: RELEVANT PROVISIONS OF THE *POLICE ACT*

General responsibility and functions of police complaint commissioner

- 177 (1) The police complaint commissioner is generally responsible for overseeing and monitoring complaints, investigations and the administration of discipline and proceedings under this Part, and ensuring that the purposes of this Part are achieved.
- (2) In addition to any other duties imposed under this Part or Part 9, the police complaint commissioner must do the following: ...
- (j) inform, advise and assist the following in respect of this Part:
 - (i) persons who make complaints;
 - (ii) members and former members;
 - (iii) discipline authorities;
 - (iv) boards;
 - (v) adjudicators;

Internal discipline matters

- 175 (1) A chief constable of a municipal police department and the chair of the board of the municipal police department must establish procedures, not inconsistent with this Act, for dealing with internal discipline matters and taking disciplinary or corrective measures in respect of them.
- ...
- (4) The internal discipline authority must provide the police complaint commissioner with a copy of
- (a) any recommendation on disciplinary or corrective measures arising from an internal discipline matter, and
 - (b) the final decision reached by the internal discipline authority, the board or the arbitrator.
- (5) On request of the police complaint commissioner, an internal discipline authority must provide any additional information or records respecting an internal discipline matter that are in the possession or control of the municipal police department concerned.
- (6) The internal discipline authority may determine any issue respecting a member's competence or suitability to perform police duties that arises in an internal discipline matter.

Ongoing duty of investigating officer to report information

- 108 (1) If, during the course of an investigation,
- (a) information comes to the attention of an investigating officer concerning the conduct of a member or former member of a municipal police department,
 - (b) the conduct is not the subject of the investigating officer's investigation, and
 - (c) the conduct would constitute misconduct, if the information were substantiated,

the investigating officer must immediately report the information to a chief constable of that municipal police department, unless subsection (2) applies, and to the police complaint commissioner.

(2) If the conduct referred to in subsection (1) is that of the chief constable or former chief constable of the municipal police department, the investigating officer must immediately report the information to the chair of the board of that municipal police department.

Independent power to order investigation, whether or not complaint made

93 (1) Regardless of whether a complaint is made or registered under section 78, if at any time information comes to the attention of the police complaint commissioner concerning the conduct of a person who, at the time of the conduct, was a member of a municipal police department and that conduct would, if substantiated, constitute misconduct, the police complaint commissioner may

- (a) order an investigation into the conduct of the member or former member, and
- (b) direct that the investigation into the matter be conducted under this Division by any of the following as investigating officer:
 - (i) a constable of the municipal police department who has no connection with the matter and whose rank is equivalent to or higher than the rank of the member or former member whose conduct is the subject of the investigation;
 - (ii) a constable of an external police force who is appointed for the purpose of this section by a chief constable, a chief officer or the commissioner, as the case may be, of the external police force;

Power to designate another discipline authority if in public interest

135 (2) At any time after an investigation is initiated under this Part into the conduct of a member or former member of a municipal police department who is or was a chief constable or deputy chief constable at the time of the conduct of concern, if the police complaint commissioner considers it necessary in the public interest that a person other than the chair of the board be the discipline authority for the purposes of one or more provisions of this Division,

- (a) the police complaint commissioner must request the Associate Chief Justice of the Supreme Court to
 - (i) consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and
 - (ii) recommend one or more retired judges to act as discipline authority for the purposes of those provisions, and

(b) the police complaint commissioner must appoint one of the retired judges recommended to exercise the powers and perform the duties of a discipline authority under the applicable provision, in substitution of the chair of the board of the municipal police department.

(3) The police complaint commissioner may make a designation under subsection (1) or an appointment under subsection (2) ...

(b) on the police complaint commissioner's own motion.



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER
British Columbia, Canada

This is Exhibit " C " referred to in the
affidavit of *Lise Helas*
made before me this *28* day
of *March* 20 *17*
..... *Stan T. Lowe*
OPCC 2015-11048
A Commissioner for Taking Affidavits

April 29, 2016

MEDIA STATEMENT

Commissioner Orders Additional Investigation into Conduct of Chief Constable Frank Elsner

Victoria - The Office of the Police Complaint Commissioner (OPCC) announced today that Commissioner Stan T. Lowe has ordered an investigation into new allegations of misconduct involving Chief Constable Frank Elsner of the Victoria Police Department, based on information received from the ongoing investigations. The Commissioner has determined that this disclosure is necessary in the public interest in order to maintain public confidence in the civilian oversight of law enforcement through enhanced transparency and accountability.

Our office has received information from Chief Investigator Chief Superintendent Sean Bourrie and senior members of the investigative team in accordance with the earlier *Orders for Investigation* and the provisions of the *Police Act*. The Commissioner has determined that the information discloses conduct which, if substantiated, would constitute three separate disciplinary breaches of public trust; one allegation of *Deceit* and two allegations of *Discreditable Conduct*.

Integrated External Investigation

The Commissioner has determined that it is in the public interest that these new allegations should be investigated by an external police force. He has designated the Royal Canadian Mounted Police to investigate these matters.

The Commanding Officer of the RCMP in British Columbia, Deputy Commissioner Craig Callens has assigned Chief Superintendent Sean Bourrie as Chief Investigator. Working under his supervision is a senior team of external investigators with the Vancouver Police Department under the command of Deputy Chief Constable Laurence Rankin. This is the same team of investigators assigned to the earlier investigations.

The Commissioner has appointed as Discipline Authority, Ian H. Pitfield, retired Judge of the Supreme Court of British Columbia.

It is important to note that the outstanding investigation involves allegations of misconduct, and in order to protect the integrity of the investigations and the *Police Act* process, the

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Commissioner respectfully requests that the public not rush to judgment or engage in speculation, and to await the completion of the process.

In order to preserve public confidence in the investigation of police misconduct and the administration of police discipline, the Commissioner will release a summary report to the public at the conclusion of the process.

- 30 -

To learn more about the Office of the Police Complaint Commissioner, please visit the OPCC webpage at www.opcc.bc.ca.

Media Contact: Rollie Woods, Deputy Police Complaint Commissioner
1-250-356-7458



Office of the
Police Complaint Commissioner

British Columbia, Canada

This is Exhibit " D " referred to in the
affidavit of Lisa Helps
made before me this 28 day
of March 20 17

..... [Signature]
A Commissioner for taking Affidavits

ORDER FOR EXTERNAL INVESTIGATION

Pursuant to ss. 93(1)(a) & (b)(ii) of the *Police Act*, RSBC 1996, c. 367, as am.

NOTICE OF DESIGNATION OF NEW DISCIPLINE AUTHORITY

Pursuant to s. 135 of the *Police Act*, RSBC 1996, c. 367, as am.

OPCC File No: 2015-11048

April 29, 2016

To: Chief Constable Frank Elsner (Member)
Victoria Police Department

And to: Chief Superintendent Sean Bourrie (External Investigating Agency)
Royal Canadian Mounted Police

And to: Mr. Ian H. Pitfield (External Discipline Authority)
Retired B.C. Supreme Court Judge

And to: Her Worship Mayor Barbara Desjardins
Her Worship Mayor Lisa Helps
Co-Chairs, Victoria and Esquimalt Police Board

On December 18, 2015, I issued two separate Orders for Investigation in relation to allegations of disciplinary breaches of public trust by Chief Constable Frank Elsner of the Victoria Police Department.

I determined that it was in the public interest to appoint an external police force to conduct both investigations. Chief Superintendent Sean Bourrie was appointed as Chief Investigator by Deputy Commissioner Craig Callens, the Commanding Officer of the Royal Canadian Mounted Police in British Columbia. Working under his supervision has been a senior team of external investigators, provided by Chief Constable Adam Palmer of the Vancouver Police Department, under the Command of Deputy Chief Constable Laurence Rankin.

In the first December 18, 2015 Order for Investigation, involving five allegations of disciplinary breaches of public trust, I determined it was in the public interest to appoint as Discipline Authority, Carol Baird Ellan, a retired Chief Judge of the Provincial Court of British Columbia.

Stan T. Lowe
Police Complaint Commissioner

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In the second December 18, 2015 Order for Investigation, involving three allegations of disciplinary breaches of public trust, I determined it was in the public interest to appoint as Discipline Authority Ian H. Pitfield, a retired Judge of the Supreme Court of British Columbia.

On April 21 and 22, 2016, our office received information from Chief Superintendent Bourrie and the investigative team containing further allegations of conduct involving Chief Constable Elsner which, if substantiated, would constitute disciplinary breaches of public trust. The new information arises from recent interviews of witnesses, as well as information obtained from the information technology systems at the Victoria Police Department.

The information includes allegations that Chief Constable Elsner attempted to inappropriately influence potential witnesses during the internal investigation in 2015 and during the current ongoing public-trust investigations.

In addition, the information supports an allegation that Chief Constable Elsner obtained access to the Victoria Police information system and may have deleted or attempted to delete information relevant to the internal investigation in 2015.

I have reviewed the information provided by Chief Superintendent Bourrie, and I am of the opinion that the conduct alleged against Chief Constable Elsner, if substantiated, would constitute misconduct under the *Police Act*, specifically:

1. *Deceit* pursuant to section 77(3)(f)(iii) of the *Police Act*: That Chief Constable Elsner did attempt to procure the making of an oral or written statement from a potential witness, knowing the statement to be false or misleading.
2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner made a request to a potential witness to destroy electronic data related to an ongoing external investigation.
3. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did seek access to the Victoria Police GFI Archiver server, conducted various searches, and erased or attempted to erase emails during the course of an ongoing investigation.

Accordingly, I am of the opinion that it is necessary in the public interest that the alleged misconduct described above be investigated by an external police force. Therefore, pursuant to section 93(1)(b)(ii) of the *Police Act*, I order that the incidents involving Chief Constable Frank Elsner be investigated by the Royal Canadian Mounted Police. The Commanding Officer of the RCMP "E" Division, Deputy Commissioner Craig Callens, has agreed that Chief

Office of the
Police Complaint Commissioner

British Columbia, Canada

Superintendent Sean Bourrie will be the assigned Chief Investigator. Working under his supervision will be a senior team of external investigators with the Vancouver Police Department under the command of Deputy Chief Constable Laurence Rankin.

I also order that the investigation include any potential misconduct, or attempted misconduct, as defined in section 77 of the *Police Act*, that may have occurred in relation to this incident. In addition, if, during the course of this investigation, any policy or procedure issues are identified, the external *Police Act* investigator shall notify the Office of the Police Complaint Commissioner for appropriate processing under section 177(4)(c) of the *Police Act*.

Pursuant to section 135(2) of the *Police Act*, because this matter involves a Chief Constable of a municipal police department in a context where the internal disciplinary process to date has given rise to difficulties as outlined above and in my December 18, 2015 Order for Investigation, I consider it necessary in the public interest to appoint a retired judge as Discipline Authority in this case. (This provision of the Act provides that, any time after an investigation has been initiated into the conduct of a member or former member of a municipal police department who is or was a Chief Constable or Deputy Chief Constable at the time of the conduct of concern, the Police Complaint Commissioner may, if he considers it necessary in the public interest, appoint a retired judge to exercise the powers and perform the duties of a Discipline Authority under the applicable provision, in substitution of the Chair of the Board of the municipal police department.)

Based on a review of the information received by this office, I consider it necessary in the public interest that a person other than the Co-Chairs of the Victoria Police Board be the Discipline Authority for all purposes pursuant to the Act.

Therefore, pursuant to section 135(2) of the *Police Act*, in substitution, I am appointing Retired Judge Ian H. Pitfield, to exercise the powers and perform the duties of Discipline Authority in relation to this matter.

An investigation under Part 11, Division 3 of the *Police Act* must be completed within six months. Unless the circumstances of this investigation warrant a further extension, the investigation limitation period is scheduled to expire on **October 29, 2016**.



Stan T. Lowe
Police Complaint Commissioner

Office of the
Police Complaint Commissioner



Fair Independent Principled

This is Exhibit "E" referred to in the
affidavit of Lisa Helms
made before me this 28 day
of March 20 17

March 9, 2017

MEDIA STATEMENT

.....
A Commissioner for taking Affidavits

Victoria - This advisory is intended to help the media understand the process under the BC *Police Act* as it relates to the ongoing matters involving Victoria Police Department Chief Constable Frank Elsner. The *Police Act* sets out a series of steps and time periods for the "next steps," and the aim of this advisory is to describe this process so that the media and the public can understand what is happening and what information is available to the public at various stages.

This Advisory will describe the Police Complaint Commissioner's approach to the disclosure of information related to the ongoing *Police Act* process.

Process

By way of background, in late 2015 and in 2016, the Commissioner ordered external investigations of potential misconduct by Chief Constable Elsner, and directed that two different Retired Judges serve as Discipline Authorities. The *Police Act* process provides that the external investigator is to supply a Final Investigation Report to the Discipline Authority, who must then decide what to do.

Under the *Police Act*, the Office of the Police Complaint Commissioner ("OPCC") has a "gatekeeping" role. At this juncture, the investigative team has submitted its Final Investigation Reports to the Retired Judges who are serving as the Discipline Authorities. During the investigation stage, the OPCC provided oversight over the police investigation into these matters, to ensure that all the relevant investigative avenues were explored and the manner in which the investigation was conducted was professional.

These matters are currently in the early stages of the adjudicative process. At present, the Final Investigation Reports are being reviewed by the Discipline Authorities (the two Retired Judges). They are tasked with the preliminary determination of whether the evidence gathered in the Reports meets the threshold to direct any of the allegations (from the Order for External Investigation) to proceed to a disciplinary proceeding for determination.

In general terms, as noted above, when a Discipline Authority is reviewing a Final Investigation Report, the Discipline Authority must decide whether the evidence meets the threshold for the allegation to proceed to a disciplinary proceeding. If the Discipline Authority concludes this threshold is not met, then, as part of his gatekeeping role, the Commissioner reviews those allegations. If the Commissioner considers there is a reasonable basis to believe the decision is

incorrect, then the Commissioner has the discretion to refer the matter to another Retired Judge to independently review the Final Investigation Report and determine if the evidence meets the threshold to send to a discipline proceeding. (If that Retired Judge determines it meets the threshold, he or she will preside over a discipline proceeding.) The Commissioner has 20 business days to complete his review. And where the Commissioner agrees with a determination that an allegation does not meet threshold to send to a discipline proceeding, the allegation is concluded.

Dealing with the situation where the Discipline Authority *has* directed that allegations will go to a discipline proceeding, those proceedings must be convened no later than 40 business days from the date the Final Investigation Report was submitted to the Discipline Authority. It is important to note that disciplinary proceedings are not open to the public. (It should also be noted that the *Police Act* allows for the officer facing the misconduct allegations to request further investigation, within 10 business days after receiving the Final Investigation Report, and if that occurs the Discipline Authority will decide whether to accept or reject that request.) The OPCC does not play any active role at a discipline proceeding, although the OPCC may attend and monitor the proceedings. At the conclusion of a discipline proceeding, the Commissioner will review the accountability of the process and the outcome proposed. It is at this juncture that the Commissioner may, or in some cases is required to, initiate a Public Hearing or a Review on the Record. Both adjudicative avenues of review are presided over by a Retired Judge and both reviews are open to the public. It is at this point in the *Police Act* process that the Commissioner becomes an active participant in the proceedings.

A Public Hearing is an entirely new adjudication of the matter, in which evidence may be introduced, including testimony from subpoenaed witnesses.

Disclosure of Information

In the *Police Act* process, the Commissioner is bound by a general duty of confidentiality in respect of the existence of an investigation and information derived from it. However, the legislation specifically gives the Commissioner the discretion to disclose information when it is in the public interest to do so.

In determining whether it is in the public interest to release information to the public pursuant to the *Police Act*, the Commissioner may consider factors which include, but are not limited to:

- maintaining public confidence in the investigation of police misconduct allegations and the administration of police discipline;
- the quantity, nature and accuracy of the information that exists in the public domain, as well as the source of that information;
- the privacy interests of those directly affected by this investigation; and
- guidance provided by the Court in relation to this matter.

At the conclusion of the *Police Act* adjudicative process the Commissioner anticipates he will release a Summary Concluding Report.



**JOHNSON
DOYLE
SUGARMAN
& FERGUSON**

Chris S. Johnson*, Joe Doyle, Shelley Sugarman*
Paul M. Ferguson, Andrew Nelson, Tony Lagemaat
Randy Robinson (Articled Student)
An association of independent lawyers

March 10, 2017

VIA EMAIL

Brock Martland
Martland & Saulnier
Barristers and Solicitors
506 – 815 Hornby Street
Vancouver, BC V6Z 2E6

This is Exhibit " F " referred to in the
affidavit of *Lisa Helms*
made before me this.... *28* day
of *March* 20 *17*
..... *F. M. Doyle*
A Commissioner for taking Affidavits

Dear Mr. Martland:

RE: Chief Constable Frank Elsner

I write further to earlier correspondence, and in light of the pending decisions of the two Discipline Authorities ("DAs") upon submission of the Final Investigation Reports ("FIRs").

In your letter of May 5, 2016, you advised that your client, the Police Complaint Commissioner, would not release to the Board progress reports or other information arising from the ongoing investigations, as had been requested by the Board to fulfill its statutory duties pursuant to section 110.

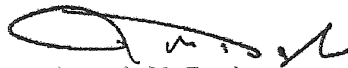
The Act grants the Board exclusive jurisdiction to consider and decide the issue of discontinuance of pay and allowances. No other entity is able to make that decision on behalf of the taxpayers of Victoria and Esquimalt.

As your client's media statement of yesterday sets out, the decisions of the DAs may not be the end of the matter.

Now that the FIRs are complete, and in order to permit the Board to fulfill its statutory duties under section 110, the Board requests that the FIR's be provided to it immediately. This seems to fall within the ambit of your client's responsibilities under section 177 and, more broadly, within a contextual interpretation of the Act to permit the overall proper functioning of the process established by the Act (including the public interest concerns of section 110).

Given the non-public nature of the proceedings at this point, as also described in your client's media release, the Board is willing to accept the FIRs on such conditions as are appropriate to that preserving the nature of that process.

Yours very truly,


Joseph M. Doyle

2nd Floor – 195 Alexander Street, Vancouver, B.C. V6A 1B8 • Phone 604.688.8338 • Fax 604.688.8356

**denotes a legal service provided by a law corporation*



Brock Martland* Joseph Saulnier* Amber Timothy

March 14, 2017

VIA EMAIL

Joseph Doyle
Johnson, Doyle, Sugarman
2nd Floor, 195 Alexander Street
Vancouver, B.C. V6A 1B8

This is Exhibit "G" referred to in the affidavit of *Liss Helges* made before me this *28* day of *March*, 20 *17*
[Signature]
A Commissioner for taking Affidavits

Dear Mr. Doyle:

Re: Victoria Police Department Chief Constable Elsner

I write in response to your correspondence of 10 March 2017, setting out requests made by your client, the Police Board, of my client, the Office of the Police Complaint Commissioner ("OPCC").

I can advise that the two Discipline Authorities ("DAs") rendered their s. 112 decisions on Friday, 10 March 2017.

Given my understanding of the *Police Act* process that applies at this juncture, I am not at liberty to disclose the contents of the DA decisions, nor the Final Investigation Reports ("FIRs"). As you appreciate, s. 112(1)(b) of the Act provides that the DA will supply certain materials to the member and the complainant, if any. The Act does not provide that the Board is to receive the FIRs or the DAs' decisions at this time.

In addition, there is a general concern with the possibility of significant information moving to additional people, which could undermine the integrity of future processes under the Act.

The Commissioner has not yet made a decision on what, if any, further information he may release under s. 95, but any such step would be in a manner consistent with his media release of 9 March 2017.

Thank you.

Yours truly,

MARTLAND & SAULNIER

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BM/vkl

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& FERGUSON**

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Paul M. Ferguson, Andrew Nelson, Tony Lagemaat
Randy Robinson (Articled Student)
An association of independent lawyers

March 20, 2017

VIA EMAIL

Brock Martland
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Barristers and Solicitors
506 – 815 Hornby Street
Vancouver, BC V6Z 2E6

This is Exhibit " H " referred to in the
affidavit of *Lise Helpe*
made before me this..... *28* day
of *March* 20 *17*
..... *[Signature]*
A Commissioner for taking Affidavits

Dear Mr. Martland:

RE: Chief Constable Frank Elsner

Thank you for your letter of March 14, 2017.

The Victoria and Esquimalt Police Board ("Police Board") requested that the Police Complaint Commissioner provide it with copies of the Final Investigation Reports and the section 112 Notices of the two Discipline Authorities (the "FIRs" and "DA Decisions") so that the Police Board can fulfill its statutory duties pursuant to section 110 of the *Police Act*.

Your aforementioned letter was in response to those requests for the FIRs and DA Decisions, copies of which are held by the Police Complaint Commissioner ("PCC").

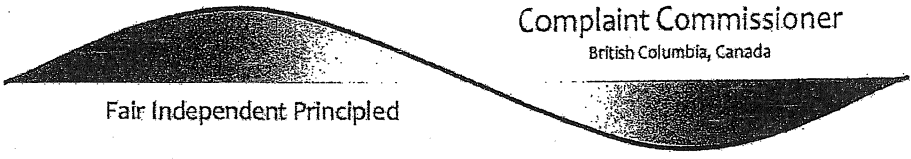
I confirm that the PCC's decision is not to provide copies of the FIRs or the DA Decisions to the Police Board. I further confirm that the PCC's decision in this regard is based upon his interpretation of the provisions of the *Police Act* and the exercise of his powers pursuant to that Act.

Thank you for your attention herein.

Yours very truly,


Joseph M. Doyle

THIS IS EXHIBIT ... ATTACHED TO
29 in the Affidavit of Lisa Helps
sworn before me the 28 day
of March, 2017.



Stan T. Lowe
A Commissioner of the Police within British Columbia,
Complaint Commissioner
British Columbia, Canada

March 23, 2017

OPCC 2015-11048

MEDIA STATEMENT

Retired Judges Direct Allegations to two Discipline Proceedings

Victoria - The Office of the Police Complaint Commissioner (OPCC) announced today that Commissioner Stan T. Lowe has determined that it is in the public interest to release information to the public regarding the determinations made by the Discipline Authorities in regards to ordered investigations into allegations of misconduct by Victoria Police Department Chief Constable Frank Elsner. This disclosure is intended to maintain public confidence in the investigation of alleged misconduct, and the administration of police discipline pursuant to the *Police Act*.

Decisions of the Discipline Authorities

On February 24, 2017, the Final Investigations Reports were submitted to the two retired judges who were appointed to act as the Discipline Authorities in this matter. After 10 business days the Discipline Authorities provided their decision to the Police Complaint Commissioner and Chief Constable Frank Elsner in accordance with timelines in the *Police Act*.

Discipline Authority Retired Judge Carol Baird Ellan

Following her review of the Final Investigation Report the Discipline Authority determined there was sufficient evidence to meet the threshold to direct the following allegations proceed to a discipline proceeding for determination:

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did engage in conduct with the spouse of a member under his command which constituted a conflict of interest and/or a breach of trust, in circumstances in which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did provide misleading information to a member under his command, in circumstances in which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.

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Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did provide misleading information to an investigator in circumstances in which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.

Inappropriate Use of Department Equipment and/or Facilities pursuant to section 77(3)(c)(iv) of the *Police Act*: That Chief Constable Elsner did use police equipment and/or facilities of the Victoria Police Department for purposes unrelated to his duties as a member.

Deceit pursuant to section 77(3)(f)(iii) of the *Police Act*: That Chief Constable Elsner did attempt to procure the making of an oral or written statement from a potential witness, knowing the statement to be false or misleading.

Retired Judge Carol Baird Ellan determined that there was *not* sufficient evidence to direct the following allegations to a discipline proceeding:

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did contact witnesses during the course of an internal investigation, which he was the subject of, contrary to the direction of the independent investigator and in circumstances which he knew, or ought to have known, would likely bring discredit to the Victoria Police Department.

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner made a request to a potential witness to destroy electronic data related to an ongoing external investigation.

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did seek access to the Victoria Police GFI Archiver server, conducted various searches, and erased or attempted to erase emails during the course of an ongoing investigation.

Discipline Authority Retired Judge Ian Pitfield

Following his review of the Final Investigation Report the Discipline Authority determined there was sufficient evidence to meet the threshold to direct the following allegations proceed to a discipline proceeding for determination:

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner engaged in unwanted physical contact with female staff at the Victoria Police Department.

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner made unwelcome remarks of a sexual nature and inappropriate comments that could be reasonably seen to objectify female staff members.

Discreditable Conduct pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner leered and inappropriately stared at female staff members.

Next Steps on Both Matters

The Commissioner is entrusted with a "gatekeeping" role to review the allegations that have been determined to have not met the threshold to direct to a discipline proceeding. If the Commissioner determines there is a reasonable basis to believe the Discipline Authority's decision is incorrect, he may appoint a Retired Judge to review the same evidence and make his or her own decision on the matter.

DEALING FIRST WITH THE ALLEGATIONS FOUND BY THE FIRST DISCIPLINE AUTHORITY TO HAVE NOT MET THE THRESHOLD FOR A DISCIPLINE PROCEEDING, the Commissioner has determined there is not a reasonable basis to believe that the Discipline Authority's decision was incorrect. Therefore, the decision of the Discipline Authority in relation to the three allegations that were not substantiated stands and that decision is final and conclusive.

TURNING TO THE ALLEGATIONS FOUND TO HAVE MET THE THRESHOLD FOR A DISCIPLINE PROCEEDING, subject to any further investigation or measures ordered by either Discipline Authority, the next phase in the *Police Act* process is to arrange a discipline proceeding. A discipline proceeding must be convened within forty business days from the date that the Final Investigation Report was submitted. Dates for the commencement of the discipline proceeding have not yet been scheduled.

In order to protect the integrity of the process, the Commissioner respectfully requests that the public not rush to judgment or engage in speculation, and to await the completion of the *Police Act* process.

In order to preserve public confidence in the investigation of police misconduct and the administration of police discipline, the Commissioner will release a summary report to the public at the conclusion of the process.

-30-

To learn more about the Office of the Police Complaint Commissioner, please visit the OPCC webpage at www.opcc.bc.ca.

Media Contact: Rollie Woods, Deputy Police Complaint Commissioner
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media@opcc.bc.ca