



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH:2010-03

NOTICE OF PUBLIC HEARING
(Pursuant to Section 143(1) *Police Act*, R.S.B.C. 1996, c.267)

In the matter of
Public Hearing into the complaint against
Constable Dan Dickhout
of the South Coast British Columbia Transit Authority Police Service

TO: Constable Dan Dickhout (Member)
South Coast British Columbia Transit Authority Police Service

AND TO: Acting Chief Officer George Beattie (Discipline Authority)
South Coast BC Transit Authority Police Service

AND TO: David Eby, Executive Director (Third Party Complainant)
British Columbia Civil Liberties Association

WHEREAS:

1. On September 13, 2007, Constable Dickhout, while conducting fare checks on the Skytrain encountered Mr. Christopher Andrew Lypchuk. Mr. Lypchuk was allegedly riding the Skytrain without paying the required fare and had in his possession two cans of beer and appeared intoxicated. While Constable Dickhout was attempting to write a violation ticket at the Scott Road Skytrain Station Mr. Lypchuk fled into a nearby stairwell where he was pursued and confronted by Constable Dickhout and a second officer. During this second encounter Constable Dickhout deployed his Conducted Energy Weapon (CEW) which caused Mr. Lypchuk to fall and strike his head causing injuries.

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

2. On April 18, 2008, the British Columbia Civil Liberties Association (BCCLA) filed a Form 1 complaint in relation to this incident and a *Police Act* investigation was initiated.
3. On April 25, 2008, upon the request of Chief Officer Bob Kind of the Greater Vancouver Transit Authority Police Service, the Police Complaint Commissioner issued an Order for External Investigation to investigate all Taser usages, including that filed by the BCCLA. The *Police Act* investigation was assigned to the Vancouver Police Department's Professional Standards Section to conduct an external investigation.
4. On April 30, 2009, the Final Investigation Report into the allegation against Constable Dickhout was submitted to the external Discipline Authority, Chief Constable Brad Parker of the Port Moody Police Department. The investigator in this matter recommended that the allegation against Constable Dickhout be unsubstantiated.
5. On May 29, 2009, Chief Constable Brad Parker disagreed with the recommendations of the investigator and substantiated one alleged disciplinary default against Constable Dickhout:
 - a) **Abuse of Authority**, contrary to section 4(1)(f) of the *Code of Professional Conduct Regulation*.
6. The Discipline Authority recommended that the following discipline be imposed for the substantiated disciplinary default:
 - a) Suspension without pay for 2 scheduled working days; and
 - b) Direction to undertake special training or retraining on the appropriate deployment of the CEW; and
 - c) Written reprimand.
7. In December 2009, Counsel for Constable Dickhout provided a privately retained use of force opinion report to the Discipline Authority. The use of force opinion report concluded that Constable Dickhout's use of the CEW was appropriate in the circumstances.
8. Subsequently, the Discipline Authority sought an additional use of force opinion report which concluded that the use of the CEW by Constable Dickhout was inappropriate in the circumstances.
9. On May 26, 2010, during Constable Dickhout's discipline proceeding, counsel for Constable Dickhout submitted a motion that the Discipline Authority recuse himself from the proceedings based on circumstances surrounding his retention of the

additional use of force opinion report. On June 17, 2010, the Discipline Authority issued a decision that dismissed counsel's motion for recusal.

10. The decision of the Discipline Authority was petitioned for judicial review in the Supreme Court of British Columbia and on October 29, 2010, the court issued a decision directing the recusal of the Discipline Authority and requiring that the Office of the Police Complaint Commissioner appoint a new Discipline Authority.
11. The Police Complaint Commissioner, having reviewed the investigation and discipline proceedings into this matter to date, pursuant to section 143(1)(b) of the *Police Act* has determined that a public hearing in this matter is required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. In arriving at this determination I have considered several relevant factors including but not limited to the following:
 - a) The complaint is serious in nature as the alleged misconduct involves a significant breach of trust.
 - b) The nature and seriousness of the alleged harm to have been suffered by the person involved in this matter.
 - c) There is a reasonable prospect that a public hearing will assist in determining the truth.
 - d) There is an arguable case that the investigation of this matter was flawed.
 - e) A public hearing is not limited to the evidence and issues that were before a discipline authority in a discipline proceeding, therefore would allow for the introduction of both use of force opinion reports submitted outside of the formal investigation into this matter.
12. It is therefore alleged that the Constable Dickhout committed the following disciplinary default pursuant to section 77 of the *Police Act*:
 - a) **Abuse of Authority:** contrary to section 77 of the *Police Act*, subject member committed the disciplinary default of abuse of authority, in the performance of duties, intentionally or recklessly used unnecessary force.

NOW THEREFORE:

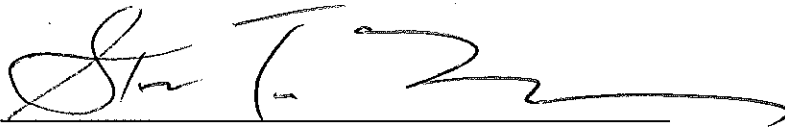
1. A public hearing is arranged pursuant to section 143 of the *Police Act*.
2. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, The Honourable Ian Pitfield, retired Justice of the

Supreme Court of British Columbia is appointed to preside as Adjudicator in these proceedings, pursuant to s. 142 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:

#501, 947 Fort Street, PO Box 9895, Stn Prov Govt, Victoria, BC V8W 9T8
Telephone: (250) 356-7458 / Facsimile: (250) 356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 19 day of November, 2010.

A handwritten signature in black ink, appearing to read 'Stan T. Lowe', with a long horizontal flourish extending to the right.

Stan T. Lowe
Police Complaint Commissioner
for the Province of British Columbia