



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.

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.

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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.

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