



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 2015-11276  
October 5, 2016

To: (Complainant)

And to: (Member)  
c/o Vancouver Police Department  
Professional Standards Section

And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

And to: The Honourable Judge Carole Lazar (ret'd) (Retired Judge)  
Retired Judge of the Provincial Court of British Columbia

Vancouver Police Professional Standards investigator, conducted an investigation into this matter and on he submitted the Final Investigation Report to the Discipline Authority.

In the report, identified the following allegations of misconduct:

1. That on , and , committed *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* by intentionally or recklessly making an arrest without good and sufficient cause. Specifically, arresting on because, "he said I match the description of a B&E suspect."
2. That on , and , committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on any person. Specifically, the VPD member,

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Police Complaint Commissioner

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“slammed my face onto the hood of the car” and “crushed my right hand fingers together then twisted my wrist up words [sic] causing pain.”

3. That on \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* by conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, \_\_\_\_\_ being taken to, “The corner of Main st [sic] & Mountain HWY, North Vancouver. Then dumped off, 1 ½ hours later.”

4. That on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* by intentionally or recklessly making an arrest without good and sufficient cause. Specifically arresting \_\_\_\_\_ on \_\_\_\_\_ for Breach of the Peace.

On September 8, 2016, \_\_\_\_\_ issued his decision pursuant to section 112 in this matter. Specifically, \_\_\_\_\_ determined that the allegations of *Discreditable Conduct* for transporting \_\_\_\_\_ to North Vancouver and leaving him there; and *Abuse of Authority* for arresting \_\_\_\_\_ for Breach of the Peace against \_\_\_\_\_, and \_\_\_\_\_ did not appear to be substantiated. The OPCC is satisfied that \_\_\_\_\_ appropriately determined that these two allegations do not appear to be substantiated on the basis of the reasoning provided regarding \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. However, we have determined that there is a reasonable basis to believe that the decision of the Discipline Authority in relation to these two allegations is incorrect in regard to \_\_\_\_\_

Regarding the allegation of *Abuse of Authority* for arresting \_\_\_\_\_ for Breach of the Peace, I am of the view that \_\_\_\_\_ decision attributes behaviour to \_\_\_\_\_ that were not contained in the evidence, including that \_\_\_\_\_ was “loud and boisterous”. Moreover, the decision did not consider inconsistencies in \_\_\_\_\_ evidence regarding his grounds for arrest or the speculative nature of some of those grounds. Nor did \_\_\_\_\_ assess whether, or the extent to which, the inconsistencies or speculation impacted the weight that should be afforded to \_\_\_\_\_ evidence.

Regarding the allegation of *Discreditable Conduct* for transporting \_\_\_\_\_ to North Vancouver, I am of the view that \_\_\_\_\_ did not apply the appropriate analysis for discreditable conduct. \_\_\_\_\_ considered policy rationales from a policing perspective, but did not consider the reasonable expectation of the community regarding transporting apprehended persons out of the jurisdiction and/or a significant distance from home. Moreover, \_\_\_\_\_ finding that \_\_\_\_\_ was well-intentioned is based, in part, on speculation with respect to the relative ease with which \_\_\_\_\_ could obtain transportation in North Vancouver versus Vancouver. That finding also did not consider the distance between \_\_\_\_\_ residence and the location at which \_\_\_\_\_ dropped

In addition, though he noted that \_\_\_\_\_ conduct was in breach of VPD Policy, I am of the view that \_\_\_\_\_ erred in not considering whether conduct would constitute *Neglect of Duty* for failing to abide by the VPD Policy regarding Breach of the Peace arrests.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegations and the alleged conduct in its entirety, I consider that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect.

Therefore, pursuant to section 117(4) of the *Police Act* and based on a recommendation from the Associate Chief Justice of the Supreme Court of British Columbia, I am appointing Carole Lazar, retired Provincial Court Judge, to review this matter and arrive at her own decision based on the evidence.

Pursuant to section 117(9), 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 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: