



Office of the
Police Complaint Commissioner

British Columbia, Canada

NOTICE OF APPOINTMENT OF RETIRED JUDGE
Pursuant to section 117(4) of the *Police Act*

OPCC File 2014-9919
March 22, 2016

To: [REDACTED] (Complainant)

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

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

And to: The Honourable Judge Ian H. Pitfield, (ret'd) (Retired Judge)
Retired Judge of the Supreme Court of
British Columbia

Abbotsford Police Department Police Professional Standards investigator, Staff Sergeant [REDACTED], conducted an investigation into this matter and on [REDACTED], he submitted the Final Investigation Report to the Discipline Authority.

In the report, Staff Sergeant [REDACTED] identified the following allegations of misconduct:

1. That on [REDACTED], [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* when officers entered and searched [REDACTED] home unlawfully.
2. That on [REDACTED], [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* when officers pushed [REDACTED] to the couch.
3. That on [REDACTED], [REDACTED] committed *Damage to Property of Others* pursuant to section 77(3)(e)(i) of the *Police Act* when officers damaged [REDACTED] guitar, TV, and glasses.

Stan T. Lowe
Police Complaint Commissioner

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4. That on [REDACTED], [REDACTED] committed *Abuse of Authority* pursuant to section 77(3)(a)(i) of the *Police Act* when officers arrested [REDACTED] without good and sufficient cause.

On February 23, 2016, [REDACTED] issued his decision in this matter pursuant to section 112 of the *Police Act*. Specifically, [REDACTED] determined that the allegations against [REDACTED] did not appear to be substantiated.

Based on a review of the available evidence, I am satisfied that [REDACTED] appropriately determined the allegation of *Damage to Property of Others* does not appear to be substantiated on the basis of the reasoning provided. Therefore, there is not a basis upon which to appoint a retired judge to review Allegation 3, *Damage to Property of Others* pursuant to section 77(3)(e)(i) of the *Police Act*. The decision to conclude this allegation is final and this office will take no further action with respect to Allegation 3.

Pursuant to section 117(1) of the *Police Act*, having reviewed the Discipline Authority's decision under section 112(4) of the *Police Act* 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 in relation to the Allegations 1, 2 and 4 - *Abuse of Authority*.

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

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

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 the Honourable Judge Ian H. Pitfield, retired Supreme Court Judge, to review Allegations 1, 2 and 4 and arrive at his 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.

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



Stan T. Lowe
Police Complaint Commissioner

cc: [REDACTED], Registrar
Staff Sergeant [REDACTED]