



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH: 2013-06
OPCC: 2012-7650

NOTICE OF PUBLIC HEARING

(Pursuant to sections 138(1) and 138(2) of the *Police Act*, R.S.B.C. 1996, c.267)

**In the matter of the Public Hearing into
the complaint against Constable Jason Howell and
Constable John Gibbons of the Vancouver Police Department**

TO: Constable 2399 John Gibbons
Constable 2516 Jason Howell
Vancouver Police Department (Members)

AND TO: Chief Constable Jim Chu
Vancouver Police Department (Discipline Authority)

AND TO: Superintendent Jeff Sim
Vancouver Police Department (Designated Discipline Authority)

WHEREAS:

1. On June 27, 2012, the Office of the Police Complaint Commissioner received a registered *Police Act* complaint from Mr. James Feng outlining allegations of professional misconduct against Constables John Gibbons and Jason Howell in relation to an incident that occurred on June 22, 2012.
 2. Mr. Feng alleged that Constables Gibbons and Howell approached the window of his car and, just as he was about to open it, smashed the window and began to beat him. He also alleged that they searched his wallet without justification.
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Stan T. Lowe
Police Complaint Commissioner

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3. On November 8, 2012, Mr. Feng advised the OPCC that he wished to withdraw his complaint. On December 10, 2012, the OPCC accepted the withdrawal, but directed that the investigation continue pursuant to section 94(2) of the *Police Act*.
4. On April 11, 2013, following an investigation conducted by the Vancouver Police Department, the Discipline Authority at that time, Inspector Tom McCluskie, issued his Notice of Discipline Authority's decision pursuant to section 112 of the *Police Act*. Inspector McCluskie recommended that the evidence appeared to substantiate the allegations of Abuse of authority contrary to section 77(3)(a)(ii)(A) of the *Police Act* (unnecessary force), Abuse of Authority contrary to section 77(3)(a)(ii)(B) of the *Police Act* (search without good and sufficient cause) and Damage to the Property of Others contrary to section 77(3)(e)(i) of the *Police Act*. The matter was directed to a discipline proceeding.
5. On November 27, 2013, after considering the available evidence and submissions at the Discipline Proceeding, Superintendent Jeff Sim as the Discipline Authority found that the above allegations against Constable Gibbons and Constable Howell had not been proven.
6. Having reviewed the investigation and discipline proceedings into this matter, pursuant to section 138(1)(c), I have determined that a public hearing into this matter is required as I am of the view that there is a reasonable basis to believe that the Discipline Authority's finding in this matter is incorrect.
7. I am also of the view that a public hearing is necessary in the public interest pursuant to section 138(1)(d) of the *Police Act*. I have considered factors including, but not limited to the following:
 - a. the nature and seriousness of the alleged misconduct;
 - b. there is a reasonable prospect that a public hearing will assist in determining the truth;
 - c. a public hearing is necessary to preserve public confidence in the police complaint process; and
 - d. an arguable case can be made that the Discipline Authority's interpretation or application of the *Police Act* was incorrect.
8. My decision to call a public hearing into this matter is reliant on the anticipated cooperation and participation of Mr. Feng in the proceedings. If Mr. Feng's cooperation is not forthcoming, I may review my decision to arrange a public hearing.
9. It is therefore alleged that Constable Gibbons committed the following disciplinary defaults, contrary to section 77 of the *Police Act*:
 - a. **Abuse of Authority:** contrary to section 77(3)(a)(ii)(A) of the *Police Act* – intentionally or recklessly used unnecessary force on Mr. Feng;

- b. **Abuse of Authority:** contrary to section 77(3)(a)(ii)(B) of the *Police Act* – intentionally or recklessly searched Mr. Feng without good and sufficient cause; and
- c. **Damage to the Property of Others:** contrary to section 77(3)(e)(i) of the *Police Act* – when on duty, or off duty but in uniform, intentionally or recklessly damaging the vehicle being driven by Mr. Feng.

10. It is therefore alleged that Constable Howell committed the following disciplinary defaults, contrary to section 77 of the *Police Act*:

- a. **Abuse of Authority:** contrary to section 77(3)(a)(ii)(A) of the *Police Act* – intentionally or recklessly used unnecessary force on Mr. Feng; and
- b. **Abuse of Authority:** contrary to section 77(3)(a)(ii)(B) of the *Police Act* – intentionally or recklessly searched Mr. Feng without good and sufficient cause.

THEREFORE:

A public hearing is arranged pursuant to section 138(1) of the *Police Act*.

Upon the recommendation of the Associate Chief Justice of the British Columbia Supreme Court, a retired BC Provincial Court Judge will be appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) 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:

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 27th day of December, 2013.



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