



Office of the  
Police Complaint Commissioner

British Columbia, Canada

PH: 2013-03  
OPCC File No. 2011-6804-01

**NOTICE OF PUBLIC HEARING**

(Pursuant to Section 138(1) *Police Act*, R.S.B.C. 1996, c.267)

**In the matter of the  
Public Hearing into the complaint against  
Constable #2131 Aaron Hill and Constable #2521 Aaron McRae  
of the Delta Police Department**

TO: Mr. Edward Pecaskie (Complainant)

AND TO: Constable #2131 Aaron Hill  
Constable #2521 Aaron McRae  
Delta Police Department (Members)

AND TO: Chief Officer Jim Cessford  
Delta Police Department (Discipline Authority)

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**WHEREAS:**

1. On September 27, 2011, the Office of the Police Complaint Commissioner received a registered complaint from Mr. Edward Pecaskie in which he alleged that Constable Hill of the Delta Police Department used unnecessary force against him when he tackled him off of his bike and repeatedly smashed his face into the cement. Mr. Pecaskie further alleged that his IPOD and bicycle were damaged by Constable Hill and his partner, Constable McRae, and that one of the members kicked him in the ribs. The allegations contained in Mr. Pecaskie's complaint were reviewed and determined to be admissible and, accordingly, the complaint was forwarded to the Professional Standards Section of the Delta Police Department for investigation.
2. On October 22, 2012, the Final Investigation Report into the allegations against Constable Hill and Constable McRae was submitted to the Discipline Authority. The investigator assessed both the allegations of *Police Act* misconduct which were

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Stan T. Lowe,  
Police Complaint Commissioner

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contained in Mr. Pecaskie's complaint, as well as the further allegations of misconduct which were added during the course of the investigation. These allegations included Abuse of Authority, Damage to Property of Others, Neglect of Duty and Deceit. The investigator in relation to this matter recommended that the allegations of Abuse of Authority, Damage to Property of Others and Deceit be "unsubstantiated" and that the allegation of Neglect of Duty be "substantiated"

3. On November 2, 2012, the designated Discipline Authority, Inspector Ian MacWilliams of the Delta Police Department, issued his Notice of Discipline Authority's Decision in which he agreed with the investigator and determined that only the allegation of Neglect of Duty appeared to be substantiated by the evidence.
4. On December 3, 2012, pursuant to section 117(4) of the *Police Act* the Police Complaint Commissioner appointed Provincial Court Judge Jakob S. De Villiers Q.C as Adjudicator to review this matter after determining that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect in relation to the allegations of Abuse of Authority, Damage to the Property of Others and Deceit.
5. On December 19, 2012, pursuant to section 117(7) of the *Police Act*, retired Judge De Villiers issued his review of this matter and determined that the evidence in the Final Investigation Report and related records appeared to substantiate the allegations of Abuse of Authority, Damage to Property of Others and Deceit against Constable Hill and Constable McRae. As a result, pursuant to section 117(9) of the *Police Act*, retired Judge De Villiers became the Discipline Authority for this matter and it was directed to a Discipline Proceeding.
6. On June 11, 2013, after a Discipline Proceeding was held in relation to this matter, retired Judge De Villiers released his findings pursuant to section 133(1) of the *Police Act*. He determined that on a balance of probabilities, and on the basis of admissible evidence at the Discipline Proceeding, that the allegations of Abuse of Authority, Damage to the Property of Others and Deceit against Constable Hill and Constable McRae had not been proven.
7. In his decision, retired Judge De Villiers summarily dismissed the allegations of Deceit at the outset of the Discipline Proceeding based on submissions he had received from members' counsel outside the proceeding and not included in the Record of Proceedings. Furthermore, retired Judge De Villiers failed to address the allegations of Abuse of Authority associated with the detention and search of Mr. Pecaskie in his decision. These errors and omissions have seriously diminished the accountability of the Discipline Proceedings as I am left to review an incomplete Record of Proceedings. Furthermore, in his decision retired Judge De Villiers identified several "obstacles to a fair hearing" which led to his expression of reluctance in arriving at his decision. These "obstacles" included retired Judge De Villiers' view that he was not permitted to cross examine the members who testified, and his concern that the complainant, nor any of



his potential supporting witnesses were permitted to participate at the proceedings as they had not been requested as witnesses by the members.

8. In my respectful view, retired Judge De Villiers was procedurally mistaken in his view that he could not question the members in his role as Discipline Authority. Furthermore, I share his concerns that the complainant and supporting witnesses were denied the opportunity to participate in the proceeding, as there was no request for their attendance by the members. In my view the accountability of the proceedings has been significantly diminished, and the search for the truth substantially compromised.
9. Pursuant to section 136(1) of the *Police Act*, a complainant or member is able to request a public hearing or review on the record by sending a written request to the Police Complaint Commissioner within 20 business days after they receive the report referred to in section 133(1)(a) of the *Police Act*. On June 21, 2013, the Police Complaint Commissioner received a written request for a public hearing from the complainant Mr. Pecaskie.
10. Having reviewed the investigation, Discipline Proceeding and determinations, including the concerns expressed by retired Judge De Villiers, pursuant to s. 138 of the *Police Act*, I have determined that a public hearing is required as I consider there is a reasonable basis to belief that the Discipline Authority's findings are incorrect. Furthermore, I have determined that a public hearing is necessary in the public interest. In determining that a public hearing is necessary in the public interest, I have considered several relevant factors; including but not limited to the following:
  - a) The complaint is serious in nature as the allegations involve a significant breach of the public trust;
  - b) An arguable case can be made that the Discipline Authority's interpretation or application of Part 11 of the *Police Act* was incorrect;
  - c) It is necessary to examine and cross-examine witnesses and receive evidence that was not part of the record at the discipline proceeding, in order to ensure that procedural fairness and accountability is maintained;
  - d) There is a reasonable prospect that a public hearing will assist in determining the truth; and
  - e) A public hearing is required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.

11. It is therefore alleged that Constable Hill and Constable McRae committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:

- a) **Abuse of Authority:** contrary to section 77(3)(a)(ii)(A) of the *Police Act*, Constable Hill and Constable McRae, committed the disciplinary default of Abuse of Authority when they intentionally or recklessly used unnecessary force on Mr. Pecaskie on September 17, 2011.
- b) **Abuse of Authority:** contrary to section 77(3)(a)(ii)(B) of the *Police Act*, Constable Hill and Constable McRae, committed the disciplinary default of Abuse of Authority when they intentionally or recklessly detained or searched Mr. Pecaskie without good and sufficient cause on September 17, 2011.
- c) **Damage to Property of Others** – contrary to section 77(3)(e)(i) of the *Police Act*, Constable Hill and Constable McRae, committed the disciplinary default of Damage to the Property of Others, when they intentionally or recklessly damaged Mr. Pecaskie's property on September 17, 2011.
- d) **Deceit** – contrary to section 77(3)(f) of the *Police Act*, Constable McRae committed the disciplinary default of Deceit, when he provided accounts of the events of September 17, 2011, to Staff Sergeant Lebus on September 19, 2011, in a PRIME report on October 19, 2011, and to Professional Standards Investigators on November 29, 2011 and May 31, 2012, that were materially different and that to his knowledge were false or misleading.

**THEREFORE:**

- 1. A public hearing is arranged pursuant to section 138(1) and 143(1) of the *Police Act*.
- 2. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, The Honourable Alan Filmer, Q.C., retired Provincial Court Judge is 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:

501 - 947 Fort Street, PO Box 9895, Stn Prov Govt, Victoria, BC V8W 9T8  
Telephone: (250) 356-7458, Toll Free: 1-877-999-8707, Facsimile: (250) 356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 2nd day of August, 2013.

A handwritten signature in black ink, appearing to read 'Stan T. Lowe', written over a horizontal line.

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