

Office of the Police Complaint Commissioner

British Columbia, Canada

NOTICE OF APPOINTMENT OF RETIRED JUDGE

Pursuant to section 117(4) of the Police Act

To: (Complainant) And to: (Members) 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 Mr. Wally Oppal, Q.C., (ret'd) (Retired Judge) Retired Judge of the Appeal 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. identified the following allegations of misconduct: In the report, 1. That on and , committed Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the Police Act which is oppressive conduct towards a member of the public, including, without limitation, in the performance, or purported performance, of duties, intentionally or recklessly using unnecessary force on any person. Specifically, using the police vehicle as a means to stop walked away from the officers and subsequently striking to jump onto the hood of the police vehicle. causing 2. That on and , committed

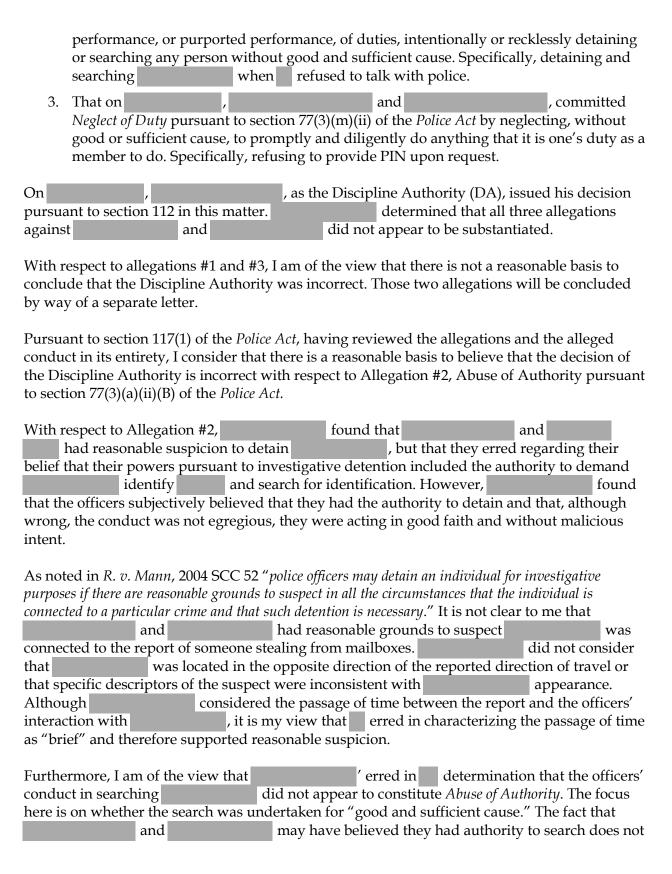
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OPCC File: 2016-11766

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conduct towards a member of the public, including, without limitation, in the

Abuse of Authority pursuant to section 77(3)(a)(ii)(B) of the Police Act which is oppressive



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by itself mean did no good and sufficient cau	t subsequently rec se."	cklessly detain ar	nd search	"without
The stated grounds for searching		for ident	ification were	refusal to identify
and officer safe	ty.	concluded tha	t	and
were acting in good faith; however, 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). 'decision does not appear to have considered that the scope				
of police powers pursuant to investigative detention, as articulated by the Supreme Court of				
Canada in R. v. Mann, had been law for 12 years at the time of this incident.				
Finally,	' assessment that	t the members' co	onduct was not e	gregious or malicious
did not take into account the entire constellation of circumstances in which the detention,				
handcuffing and search	of	occurred.	did n	not consider that in the
context of	attempts to as	ssert right to	silence,	and
handcı	ıffed , threate	ned to arrest	for obstruction	and searched
person. Nor did	conside	er	evidence that	was told that the
only way the handcuffs would be removed was if identified .				
		_		

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 Mr. Wally Oppal, Q.C., retired British Columbia Appeal Court Judge, to review Allegation #2 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 members 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 May 3, 2017.

Stan T. Lowe

Police Complaint Commissioner

cc: Sylvia Sangha, Registrar

St. 7.2

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