



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: 2016-11766

April 26, 2017

To: [REDACTED] (Complainant)

And to: [REDACTED] (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, [REDACTED], conducted an investigation into this matter and on [REDACTED], he submitted the Final Investigation Report to the Discipline Authority.

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

1. That on [REDACTED], [REDACTED] and [REDACTED], 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 [REDACTED] as [REDACTED] walked away from the officers and subsequently striking [REDACTED] and causing [REDACTED] to jump onto the hood of the police vehicle.
2. That on [REDACTED], [REDACTED] and [REDACTED], committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* which is oppressive conduct towards a member of the public, including, without limitation, in the

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performance, or purported performance, of duties, intentionally or recklessly detaining or searching any person without good and sufficient cause. Specifically, detaining and searching [REDACTED] when [REDACTED] refused to talk with police.

3. That on [REDACTED], [REDACTED] and [REDACTED], committed *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* by neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one's duty as a member to do. Specifically, refusing to provide PIN upon request.

On [REDACTED], [REDACTED], as the Discipline Authority (DA), issued his decision pursuant to section 112 in this matter. [REDACTED] determined that all three allegations against [REDACTED] and [REDACTED] did not appear to be substantiated.

With respect to allegations #1 and #3, I am of the view that there is not a reasonable basis to conclude that the Discipline Authority was incorrect. Those two allegations will be concluded by way of a separate letter.

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 with respect to Allegation #2, Abuse of Authority pursuant to section 77(3)(a)(ii)(B) of the *Police Act*.

With respect to Allegation #2, [REDACTED] found that [REDACTED] and [REDACTED] had reasonable suspicion to detain [REDACTED], but that they erred regarding their belief that their powers pursuant to investigative detention included the authority to demand [REDACTED] identify [REDACTED] and search for identification. However, [REDACTED] found that the officers subjectively believed that they had the authority to detain and that, although wrong, the conduct was not egregious, they were acting in good faith and without malicious intent.

As noted in *R. v. Mann*, 2004 SCC 52 "police officers may detain an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such detention is necessary." It is not clear to me that [REDACTED] and [REDACTED] had reasonable grounds to suspect [REDACTED] was connected to the report of someone stealing from mailboxes. [REDACTED] did not consider that [REDACTED] was located in the opposite direction of the reported direction of travel or that specific descriptors of the suspect were inconsistent with [REDACTED] appearance. Although [REDACTED] considered the passage of time between the report and the officers' interaction with [REDACTED], it is my view that [REDACTED] erred in characterizing the passage of time as "brief" and therefore supported reasonable suspicion.

Furthermore, I am of the view that [REDACTED]' erred in [REDACTED] determination that the officers' conduct in searching [REDACTED] did not appear to constitute *Abuse of Authority*. The focus here is on whether the search was undertaken for "good and sufficient cause." The fact that [REDACTED] and [REDACTED] may have believed they had authority to search does not

by itself mean [REDACTED] did not subsequently recklessly detain and search [REDACTED] “without good and sufficient cause.”

The stated grounds for searching [REDACTED] for identification were [REDACTED] refusal to identify [REDACTED] and officer safety. [REDACTED] concluded that [REDACTED] and [REDACTED] 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)). [REDACTED]' 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, [REDACTED]' assessment that the members' conduct was not egregious or malicious did not take into account the entire constellation of circumstances in which the detention, handcuffing and search of [REDACTED] occurred. [REDACTED] did not consider that in the context of [REDACTED] attempts to assert [REDACTED] right to silence, [REDACTED] and [REDACTED] handcuffed [REDACTED], threatened to arrest [REDACTED] for obstruction and searched [REDACTED] person. Nor did [REDACTED] consider [REDACTED] evidence that [REDACTED] was told that the only way the handcuffs would be removed was if [REDACTED] identified [REDACTED].

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.

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.

A handwritten signature in black ink, appearing to read "Stan T. Lowe", enclosed in a thin black rectangular border.

Stan T. Lowe  
Police Complaint Commissioner

cc: Sylvia Sangha, Registrar