



Office of the
Police Complaint Commissioner

British Columbia, Canada

Notice of Appointment of
Retired Judge

(Pursuant to s.117(1) of the *Police Act*)

OPCC File No.: 2009-4584

DA File No: [REDACTED]

Date: March 25, 2011

TO: [REDACTED]
New Westminster Police Service (Member)

AND TO: Chief Constable Dave Jones
New Westminster Police Service (Discipline Authority)

AND TO: The Honourable Justice Ian Pitfield (ret'd) (Retired Judge)

On September 14, 2010, Sergeant [REDACTED] of the New Westminster Police Service (NWPS) Professional Standards Section submitted his Final Investigation Report to [REDACTED], NWPS, the Discipline Authority in this matter. Sergeant [REDACTED] recommended that the allegations included in Count 1, 2, 3, and 4 against NWPS [REDACTED] be substantiated:

Count 1 – Discreditable Conduct

That on [REDACTED] it is alleged that [REDACTED] acted in a manner to wit: while on duty, conducted herself in a manner that the member knew, or ought to have known, would likely bring discredit on the [REDACTED] that if proved would constitute misconduct pursuant to section 77(3)(h) of the *Police Act*.

Count 2 – Deceit

That on [REDACTED] and [REDACTED] [REDACTED] acted in a manner, to wit: in the capacity of a member, made or procured the making of an oral

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statement, that to the member's knowledge was false or misleading, that if proved would constitute misconduct pursuant to section 77(3)(f)(i)(A) of the *Police Act*.

Count 3 – Abuse of Authority

That on [REDACTED] it is alleged that [REDACTED] acted in a manner to wit: with oppressive conduct towards [REDACTED] including, without limitation, intentionally or recklessly making an arrest without good and sufficient cause, that if proved would constitute misconduct pursuant to section 77(3)(a)(i) of the *Police Act*.

Count 4 – Abuse of Authority

That on [REDACTED] it is alleged that [REDACTED] acted in a manner to wit: with oppressive conduct towards [REDACTED], including, without limitation, in the performance, or purported performance, of duties, intentionally or recklessly used unnecessary force on [REDACTED] that if proved would constitute misconduct pursuant to section 77(3)(a)(ii)(A) of the *Police Act*.

Sergeant [REDACTED] recommended that the allegations included in Count 5 against NWPS [REDACTED] be unsubstantiated:

Count 5 - Neglect of Duty

That on [REDACTED] it is alleged that [REDACTED] acted in a manner to wit: neglected, without good or sufficient cause, to promptly and diligently complete a subject behaviour report as required by policy OH20 "Use of Force", that if proved would constitute misconduct pursuant to section 77(3)(f)(i)(A) of the *Police Act*.

On September 29, 2010, [REDACTED] issued his decision pursuant to s. 112 in this matter. Specifically [REDACTED] substantiated counts #1, #3, #4, and unsubstantiated counts #2 and #5.

Pursuant to Section 117(1) of the *Police Act*, I concluded that there was a reasonable basis to believe the Discipline Authority was incorrect in determining that the conduct of the member in relation to count #2 did not constitute misconduct.

On October 29, 2010, Judge Brian Neal, retired, was appointed pursuant to Section 117(1) of the *Police Act* to review the Final Investigation Report and evidence and records referenced in that report. On November 8, 2010, the noted materials were transmitted to Judge Neal for his review.

On November 22, 2010, Adjudicator Neal issued his decision in this matter. Judge Neal substantiated count #2 and a discipline proceeding was scheduled to begin on May 3, 2011, for all substantiated counts.

On March 24, 2010, Adjudicator Neal advised the Office of the Police Complaint Commissioner that was recusing himself from this matter and requested his name be deleted from the list of retired judges eligible to receive appointments pursuant to the *Police Act*.

Therefore, based on a recommendation pursuant to Section 117(4) of the Police Act, from the Associate Chief Justice of the Supreme Court of British Columbia, I am appointing retired Justice Ian Pitfield, to review this matter and arrive at a decision with respect to Count 2 based on the evidence.

Pursuant to Section 117(9) if retired Justice Pitfield determines that the conduct as set out in Count 2 appears to constitute misconduct, retired Justice Pitfield assumes the powers and performs the duties of discipline authority in respect to all substantiated allegations associated with this matter. Should a prehearing conference be offered to the member, the matter will be returned to the originating department for the assignment of a Prehearing Conference Authority. If a prehearing conference is not offered or a resolution not reached, the matter will return to retired Justice Pitfield as the Discipline Authority for the purposes of a discipline proceeding.

If retired Justice Pitfield determines the conduct in question does not constitute misconduct with respect to Count 2, retired Justice Pitfield must provide reasons and the decision is final and conclusive, in regard to that count only. The remaining counts will be returned to [REDACTED] as Discipline Authority.

Finally, the *Police Act* requires that the 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 time line so our office will not forward any materials to retired Justice Pitfield until he is prepared to receive the materials. I anticipate this will be within the next 10 business days.



Stan T. Lowe
Police Complaint Commissioner

Cc: [REDACTED] OPCC analyst
Cc: Sergeant [REDACTED] NWPS PSU
Cc: New Westminster Police Board
Cc: [REDACTED]