



Office of the  
Police Complaint Commissioner

British Columbia, Canada

**Notice of Appointment of Adjudicator**

(Pursuant to section 117 of the *Police Act*)

Date: December 4, 2012  
OPCC File No. 2011-6366-01  
DA File No. [REDACTED]

TO: [REDACTED]  
Nelson Police Department (Members)

AND TO: Chief Constable Wayne Holland  
Nelson Police Department (Chief Constable)

AND TO: Sergeant [REDACTED]  
Delta Police Department (External Investigator)

AND TO: Mr. William J. Diebolt  
Retired Judge of the Provincial Court of British Columbia (Adjudicator)

An investigation was conducted into the above-noted Nelson Police matter by Sergeant [REDACTED] of the Delta Police Department's Professional Standards Section. On October 23, 2012, the Final Investigation Report was submitted to [REDACTED] the Discipline Authority for the Nelson Police Department, for decision. Sergeant [REDACTED] recommended that the one allegation of Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, be substantiated against [REDACTED] and [REDACTED].

On November 5, 2012, [REDACTED] issued his Notice of Discipline Authority's Decision pursuant to section 112 of the *Police Act*. [REDACTED] determined that the evidence did not substantiate the following allegation against either or both named members:

Abuse of Authority:

*It is alleged that on [REDACTED] [REDACTED] and [REDACTED] used unnecessary force on [REDACTED] while booking him into the Nelson Police cell block and committed the misconduct of Abuse of Authority as per section 77(3)(a)(ii)(A) of the Police Act.*

Stan T. Lowe,  
Police Complaint Commissioner

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- 2 -

I have reviewed both the Final Investigation Report and the Discipline Authority Decision of [REDACTED]. In his decision [REDACTED] stated "*I was unable to seize upon the requisite logical proof or evidence that would allow me to conclude, with absolute certainty that either officer intentionally or recklessly used unnecessary force on [REDACTED] in the course of interacting with him.*" In *F. H. v. McDougal*, the Supreme Court of Canada determined that the appropriate legal standard to be applied in this forum is a balance of probabilities.

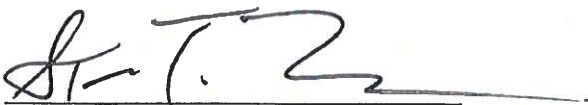
I consider there is a reasonable basis to believe the Discipline Authority applied the incorrect legal standard in his review of the evidence, and was also incorrect in his determination that the conduct of the member did not constitute misconduct.

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 Provincial Court Judge Mr. William J. Diebolt as adjudicator, to review this matter and based on the evidence, arrive at a decision with respect to [REDACTED] and [REDACTED]'s treatment of [REDACTED].

Pursuant to section 117(9), if the adjudicator determines that the conduct in question appears to constitute misconduct, he assumes the powers and perform the duties of the Discipline Authority in respect of this matter. In addition, if a service record of discipline exists the Office of the Police Complaint Commissioner will provide that record to the new Discipline Authority to assist him 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 as adjudicator determines the conduct in question does not constitute misconduct, he must provide reasons and the decision is final and conclusive.

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 the adjudicator until he is prepared to receive the materials.



Stan T. Lowe  
Police Complaint Commissioner  
Office of the Police Complaint Commissioner

cc. [REDACTED] – OPCC Registrar  
[REDACTED] – OPCC Senior Analyst