



Office of the
Police Complaint Commissioner

British Columbia, Canada

Notice of Appointment of
Adjudicator

(Pursuant to s.117(4) of the *Police Act*)

Date: August 26, 2013

OPCC File No. 2012-8138/2011-6657

DA File No. [REDACTED]

TO: [REDACTED] (Complainant)

AND TO: [REDACTED]
South Coast British Columbia
Transit Authority Police Service (Member)

AND TO: [REDACTED] (Former Member)

AND TO: [REDACTED]
South Coast British Columbia
Transit Authority Police Service (Previous Discipline Authority)

AND TO: [REDACTED]
New Westminster Police Department (Discipline Authority)

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

On [REDACTED] the South Coast British Columbia Transit Authority Police Service, requested that this office order an investigation into the actions of [REDACTED] in relation to his [REDACTED] altercation with [REDACTED]. The SCBCTAPS Professional Standards Unit noted that a reportable injury had occurred and characterized the allegations against [REDACTED] as Abuse of Authority arising from the use of unnecessary force on a person. After reviewing the circumstances of [REDACTED] altercation with [REDACTED] this office determined that the actions of [REDACTED] would, if substantiated, constitute Abuse of Authority pursuant to the *Police Act*. On [REDACTED] this office ordered an investigation into this matter and directed that the Professional Standards Section of the SCBCTAPS investigate the allegations of misconduct against [REDACTED].

Stan T. Lowe,
Police Complaint Commissioner

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It is alleged that on [REDACTED], [REDACTED] and [REDACTED] approached [REDACTED] while conducting fare checks at the Rupert SkyTrain station. [REDACTED] was not able to provide proof of payment while being in a fare paid zone. In the course of issuing [REDACTED] a violation ticket the members sought proof of his identity from him. [REDACTED] verbally identified himself to the members and an attempt was made to verify his identity through SCBCTAPS dispatch and the existing police information system. [REDACTED] believed that [REDACTED] did not provide accurate information and advised [REDACTED] that he was being arrested for Obstruction of a Peace Officer. [REDACTED] resisted the arrest and attempted to leave the area, both members used force to subdue him.

During the incident both members deployed their batons and struck [REDACTED]. [REDACTED] delivered several strikes towards [REDACTED] head and upper back. [REDACTED] attempted to deploy his Taser but the device malfunctioned. [REDACTED] was eventually subdued outside the station on the street. [REDACTED] received lacerations and abrasions to his head, hands, legs and back as a result of the altercation. He was transported to the Burnaby General Hospital where he received four stitches for his head injury before being transported to Vancouver Police Department cells after being arrested for Obstruction of a Peace Officer, Assaulting a Peace Officer and Causing a Disturbance.

SCBCTAPS Police Professional Standards investigator, Staff Sergeant [REDACTED] conducted an investigation into the allegations of Abuse of Authority against both [REDACTED] and [REDACTED]. Pursuant to section 114 of the *Police Act* both members requested further investigation into the incident. [REDACTED] acceded to the requests and directed Staff Sergeant [REDACTED] to conduct a supplementary investigation into this matter pursuant to section 115 of the *Police Act*.

After considering the material contained in the supplemental investigation, [REDACTED] concluded that the following allegations appeared to be substantiated by the evidence against [REDACTED]:

1. Abuse of Authority pursuant to section 77(3)(a)(i) of the *Police Act* for intentionally or recklessly making an arrest of [REDACTED] without good and sufficient cause.
2. Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for using unnecessary force on [REDACTED]
3. Discreditable Conduct pursuant to 77(3)(h)(iii) of the *Police Act* for recommending charge of Assaulting a Police Officer against [REDACTED] without sufficient grounds and thereby failing to report to Crown Counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada.

4. Discreditable Conduct pursuant to 77(3)(h)(iii) of the *Police Act* for recommending Intoxicated in Public against ██████████ without sufficient grounds and thereby failing to report to Crown Counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada.

██████████ determined the following allegations appeared to be substantiated against ██████████

1. Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act* for using unnecessary force on ██████████
2. Discreditable Conduct pursuant to 77(3)(h)(iii) of the *Police Act* for recommending charge of Assaulting a Police Officer against ██████████ without sufficient grounds and thereby failing to report to Crown Counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada.
3. Discreditable Conduct pursuant to 77(3)(h)(iii) of the *Police Act* for recommending Intoxicated in Public against ██████████ without sufficient grounds and thereby failing to report to Crown Counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada.

██████████ determined that the allegation of Abuse of Authority against ██████████ ██████████ in terms of whether there existed good and sufficient cause for him to arrest ██████████ ██████████ did not appear to be substantiated by the evidence.

In effect, ██████████ introduced in his decision two Discreditable Conduct allegations that were not contained in the original or Amended Order for Investigation and not investigated by Staff Sergeant ██████████ or assessed in his Final Investigation Report or Supplemental Report.

I had no doubt that ██████████ had acted in good faith, motivated by the public interest and was trying to ensure that he addressed in his decision-making all the members' conduct of potential concern. However, I was left with two serious concerns.

The first was the introduction of, and determination on, new allegations of misconduct that were never put to the members in the course of the investigation and were not investigated or assessed by the Investigating Officer in his Final Investigation Report ("FIR"). The *Act* is not clear what a discipline authority is to do if he or she discerns misconduct in addition to that alleged at the time the investigation began or covered in the FIR. A discipline authority's section 98(9) discretion to reject an FIR entirely and direct further investigative steps does not appear to be the right tool for such a circumstance. From my interpretation of the *Act*, even at the stag ██████████ was at, if a discipline authority becomes aware of other conduct

by a member that, if substantiated, would constitute misconduct, the best course is for them to convey that information to me for my determination if a new or amended order for investigation should be issued in respect of the additional alleged conduct.

My second concern was the Discipline Authority's characterization of the new allegations as Discreditable Conduct. The allegation that members recommended charges against ██████████ ██████████ which were not supported by the evidence were very serious in nature, as it alleged that he was subjected to unwarranted criminal jeopardy where his innocence was at stake. In my view, based on my review of the evidence, the appropriate allegation to be considered was Deceit as defined pursuant to section 77(f)(i)(B) of the *Police Act*, as opposed to Discreditable Conduct.

On November 23, 2012, in order to address these issues, I ordered an external investigation pursuant to Section 93(1) and Section 93(1)(b)(ii) of the *Police Act*, to ensure fairness in the complaint and investigation process and, particularly, to ensure that the new allegations were fully investigated and not put back in front of a decision-maker who had already made a determination on them.

I directed that this matter should be investigated by an external police agency and a Notice of External Investigation was sent to ██████████ and ██████████. Accordingly, the New Westminster Police Department (NWPD) was assigned as the external investigative agency and Chief Constable Dave Jones appointed Sergeant ██████████ as the senior investigating officer. In addition, in order to ensure procedural fairness and consistency, pursuant to section 135(1) of the *Police Act*, I appointed ██████████ to perform the duties of Discipline Authority with respect to all matters related to the actions of ██████████ and ██████████.

On May 23, 2013, Sergeant ██████████ submitted a Final Investigation Report with attachments to the OPCC and indicated that he had provided the FIR to the Discipline Authority. During the investigation, Sergeant ██████████ assessed the allegations of Deceit and upon his own initiative identified and added the allegations of Abuse of Authority in relation the member's conduct. After reviewing the FIR, I was in agreement with Sergeant ██████████ assessment that ██████████ ██████████ and ██████████ actions would, if substantiated, constitute misconduct, specifically Abuse of Authority as defined by section 77(3)(a)(i) of the *Police Act*.

In completing a review of Sergeant ██████████ FIR and after consultation with the Discipline Authority, it was my view that further investigative steps were required in this matter and on ██████████, I directed that these be taken pursuant to section 98(9) of the *Police Act*.

On ██████████ after completing the further investigative steps, Sergeant ██████████ submitted his Final Investigation Report to ██████████. The entirety of the

allegations in front of [REDACTED] stemming from both the SCBCTAPS investigation and Sergeant [REDACTED] investigation and [REDACTED] decision in relation to each allegation are as follows:

Initial Allegations investigated by SCBCTAPS

Count 1 – Abuse of Authority

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Abuse of Authority contrary to section 77(3)(a)(i) of the *Police Act* when they intentionally or recklessly arrested [REDACTED] for Obstructing a Peace Officer without good and sufficient cause.

DA determined that evidence appears to substantiate the allegation against both [REDACTED] and [REDACTED].

Count 2 – Abuse of Authority

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Abuse of Authority contrary to section 77(3)(a)(ii)(A) of the *Police Act* when they intentionally or recklessly used unnecessary force against [REDACTED].

DA determined that evidence appears to substantiate the allegation against both [REDACTED] and [REDACTED].

Secondary Allegations Investigated by NWPD

Count 3 – Abuse of Authority

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Abuse of Authority contrary to section 77(3)(a)(i) of the *Police Act* when they intentionally or recklessly issued a violation ticket to [REDACTED] for Drunkenness in a Public Place contrary to section 41 of the *Liquor Control and Licensing Act* without good and sufficient cause.

DA determined that evidence appears to substantiate the allegation against both [REDACTED] and [REDACTED].

Count 4 – Abuse of Authority

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Abuse of Authority contrary to section 77(3)(a)(i) of the *Police Act* when they intentionally or recklessly arrested and recommended charges against [REDACTED] for Causing a Disturbance contrary to section 175(1)(a)(ii) of the *Criminal Code* without good and sufficient cause.

DA determined that evidence appears to substantiate the allegation against [REDACTED] but not [REDACTED].

Count 5 – Abuse of Authority

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Abuse of Authority contrary to section 77(3)(a)(i) of the *Police Act* when they intentionally or recklessly arrested and recommended charges against [REDACTED] for Assaulting a Police Officer contrary to section 270(1)(b) of the *Criminal Code* without good and sufficient cause.

DA determined that evidence did not appear to substantiate the allegation against [REDACTED] and [REDACTED]

Count 6 – Deceit

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Deceit contrary to section 77(3)(f)(i)(A) or (B) of the *Police Act* when they issued a violation ticket to [REDACTED] for Drunkenness in a Public Place contrary to section 41 of the *Liquor Control and Licensing Act* that to their knowledge was false or misleading.

DA determined that evidence did not appear to substantiate the allegation against [REDACTED] and [REDACTED]

Count 7 – Deceit

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Deceit contrary to section 77(3)(f)(i)(A) or (B) of the *Police Act* when they arrested and recommended charges against [REDACTED] for Causing a Disturbance contrary to section 175(1)(a)(ii) of the *Criminal Code* that to their knowledge was false or misleading.

DA determined that evidence did not appear to substantiate the allegation against [REDACTED] and [REDACTED]

Count 8 – Deceit

It is alleged that on or about [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at or near the City of Vancouver, British Columbia committed the disciplinary default of Deceit contrary to section 77(3)(f)(i)(A) or (B) of the *Police Act* when they arrested and recommended charges against [REDACTED] for Assaulting a Police Officer contrary to section 270(1)(b) of the *Criminal Code* that to their knowledge was false or misleading.

DA determined that evidence did not appear to substantiate the allegation against [REDACTED] and [REDACTED]

On [REDACTED], [REDACTED] issued his decision pursuant to section 112 in this matter, determining that the evidence appeared to substantiate the allegations against [REDACTED] [REDACTED] on Counts 1 - 4 and [REDACTED] on Counts 1 - 3. [REDACTED] determined that the remaining allegations against both members did not appear to be substantiated by the evidence.

In his review of Counts 1 and 2, [REDACTED] findings were consistent with [REDACTED] [REDACTED]'s prior assessment that the evidence appeared to substantiate [REDACTED] [REDACTED] in relation to both Counts 1 and 2 and [REDACTED] in relation to Count 2. This office does not take issue with [REDACTED] finding that the evidence does not appear to substantiate the allegation against [REDACTED] in relation to Count 1.

Pursuant to Section 117(1) of the *Police Act*, having reviewed the decision of [REDACTED] [REDACTED] I consider that there is a reasonable basis to believe that his finding that the conduct of [REDACTED] does not constitute misconduct in relation to Counts 4 - 8 is incorrect.

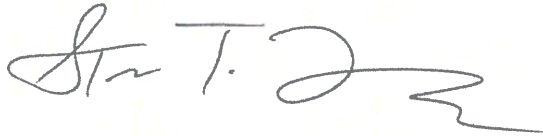
Furthermore, pursuant to section 117(1) of the Act, having reviewed the decision of [REDACTED] [REDACTED] I consider that there is a reasonable basis to believe that his finding that the conduct of [REDACTED] does not constitute misconduct in relation to Counts 5 - 8 is incorrect.

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 Honourable retired Supreme Court Judge Ian H. Pitfield as Adjudicator to review this matter and arrive at his own decision based on the evidence.

The allegations in relation to this matter are now bifurcated as [REDACTED] will retain the allegations which appeared to be substantiated by the evidence and Honourable retired Supreme Court Judge Ian H. Pitfield as Adjudicator will make his own decision in relation to Count 4 against [REDACTED] and Counts 5 - 8 against both members.

Pursuant to Section 117(9) if the Adjudicator determines that the conduct in question appears to constitute misconduct, they assume the powers and perform the duties of Discipline Authority with respect to any allegations that they substantiate. 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 them 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, they must provide reasons and the decision is final and conclusive.

Finally, the *Police Act* requires that an Adjudicator arrive at a decision **within 10 business days after receipt of the materials** for review from our office. In consultation with this office retired Judge Pitfield has indicated that he will be prepared to receive the materials in relation to this matter in late September after his vacation and will confirm an exact date in the near future.

A handwritten signature in black ink, appearing to read "Stan T. Lowe". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stan T. Lowe
Police Complaint Commissioner

cc: [REDACTED] Registrar
cc: Sergeant [REDACTED], NWPD PSS Investigator