## IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367 AND

IN THE MATTER OF

## **NOTICE OF DECISION ON**

## **REVIEW OF FINAL INVESTIGATION REPORT**

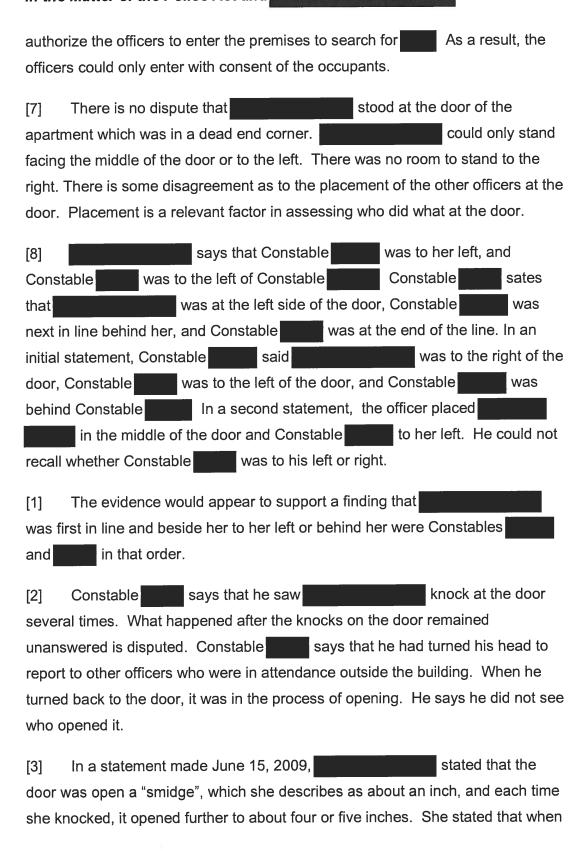
| TO:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | New Westminster Police Service                          |  |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|--|--|
| AND TO:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Sergeant Todd Matsumoto, New Westminster Police Service |  |  |
| AND TO:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Complainant                                             |  |  |
| AND TO:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | ND TO: Mr. Stan Lowe, Police Complaint Commissioner     |  |  |
| Introduction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                         |  |  |
| [1] Five complaints were made in relation to the conduct of when she participated in the arrest of in New                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                         |  |  |
| Westminster shortly before 11:00 pm on March 23, 2009. Following an internal investigation by the New Westminster Police Service Professional Standards Office, Deputy Chief Constable Jones, acting as disciplinary authority, concluded that three of the five complaints, namely discreditable conduct associated with entry into a private residence, abuse of authority by intentionally or recklessly making an arrest without good and sufficient cause, and abuse of authority by intentionally or recklessly using unnecessary force in the process of arresting one had been substantiated. |                                                         |  |  |
| [2] The discipline authority concluded that two complaints, namely, alleged deceit in relation to two oral statements made by                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                         |  |  |

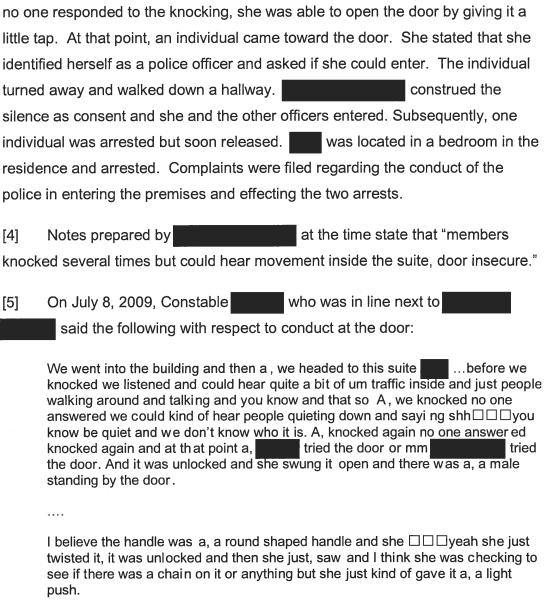
neglect of duty by omitting to complete a use of force report, had not been substantiated.

- [3] The Police Complaint Commissioner concluded that the determination in respect of the complaint of deceit was incorrect. Pursuant to s. 117 of the *Police Act*, R.S.B.C. 1996, c. 367, the Commissioner appointed Provincial Court Judge Brian Neal to review the final investigation report and to determine whether the complaint of deceit could be substantiated. Judge Neal considered that it could, and the matter was scheduled to proceed to a disciplinary hearing on May 3, 2011.
- [4] On January 31, 2011, filed a petition in the Supreme Court of British Columbia seeking an order prohibiting Judge Neal from proceeding with the hearing on the basis that he had fettered his discretion by making certain findings of fact adverse to the officer. On March 24, 2011, Judge Neal withdrew from the proceeding.
- [5] On March 25, 2011, the Commissioner appointed me, a retired judge of the Supreme Court of British Columbia, to review the final investigation report in relation to the complaint of deceit. The Commissioner expressed no disagreement with respect to the disposition of the complaint alleging a failure to file a use of force report. The final investigation report and all records, transcripts, and video statements referred to therein, were delivered to me on April 5, 2011. As a result, my decision was due not later than 10 business days thereafter, namely on or before April 19, 2011.

## **Facts**

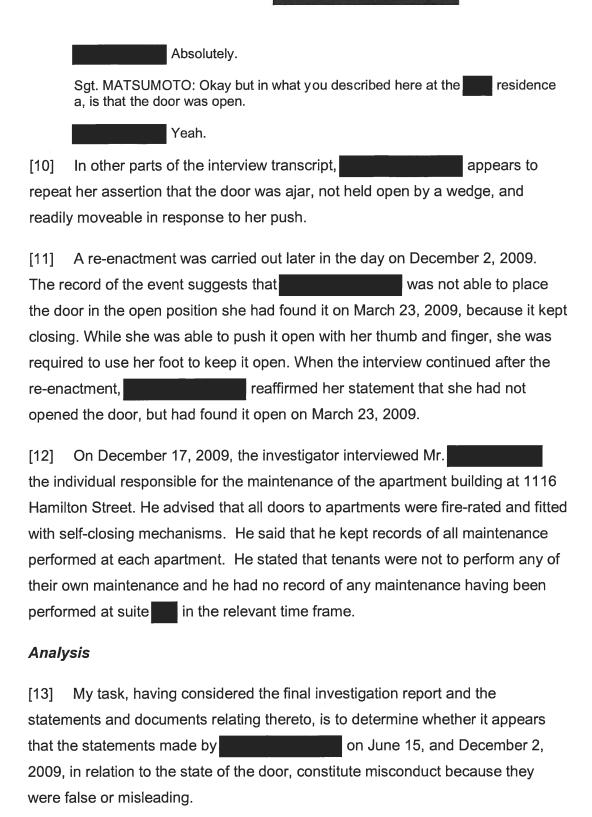
[6] The statements to which the complaint of deceit relates arose out of events that occurred on March 23, 2009. In the evening on that date, assisted by Constables and of the New Westminster Police Service, went to the door of Street in New Westminster to locate and arrest one The arrest warrant did not





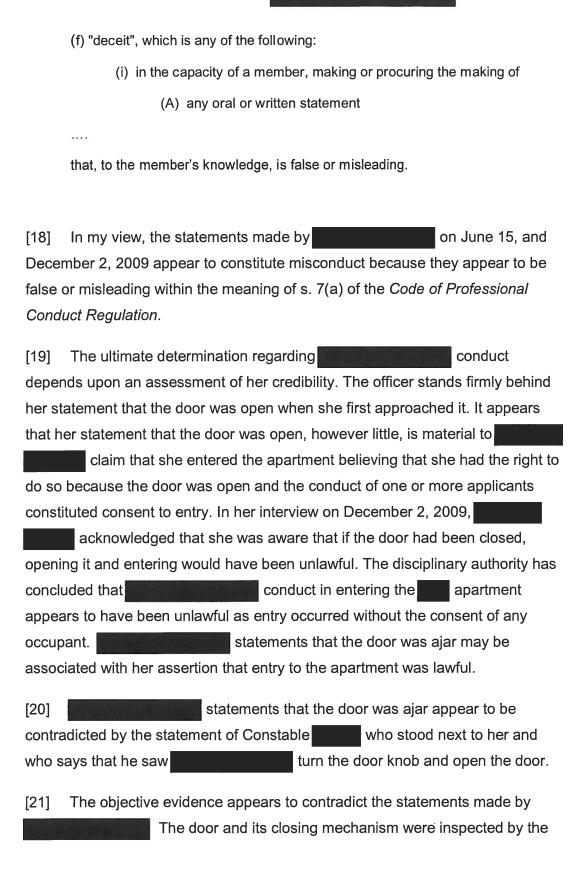
- [6] On July 21, 2009, the investigator, accompanied by another officer, visited the apartment to examine the door. He says that he observed the following:
  - a) The front door is heavier than interior doors with a self □ closing hinge located on the top portion of the door....
  - b) The door's handle is a cylindrical knob and appeared to be functioning properly. The door is locked by a deadbolt thum b latch and also appears to be functioning properly....

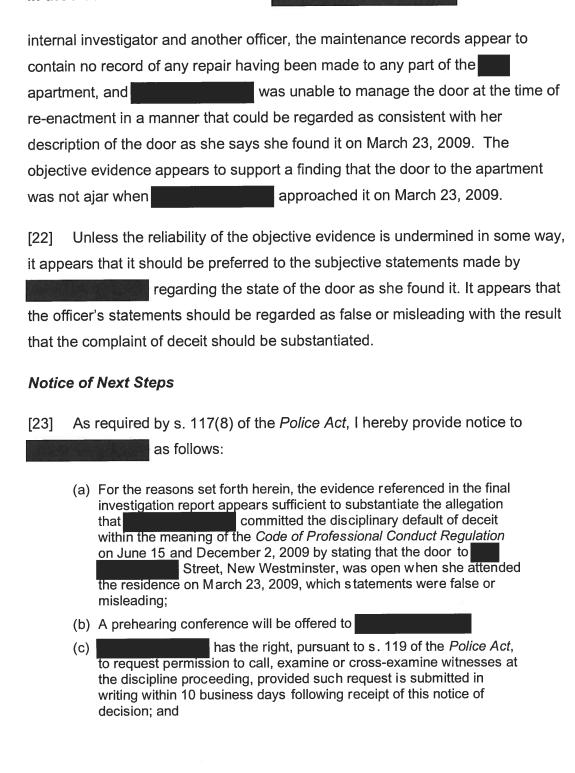
|                    | c) The door could not be propped open without using either the deadbolt or wedging an object between the door and door jamb. Even after lightly closing the door, the door would not stay ajar; the top hinge always forced the door closed.                                                                                                                                                                                                                     |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    | d) A grey⊡coloured door stop inside the apartment behind the door. This item could be wedged between the door and jamb                                                                                                                                                                                                                                                                                                                                           |
|                    | e) The door could not be opened by knocking.                                                                                                                                                                                                                                                                                                                                                                                                                     |
| arrest<br>where    | On September 3, 2009, was advised that the allegation he had assaulted one of the occupants by placing him in handcuffs and ing him for alleged obstruction of justice when he refused to disclose the eabouts of the target, within the suite was the subject of a hal investigation.                                                                                                                                                                           |
| times She re maybe | On December 2, 2009, was interviewed again. She he had been required to attend at the residence twenty, thirty, or forty in the course of her career as a New Westminster Police Service officer. eaffirmed that on March 23, 2009, the door was open about an inch or e even less than an inch. Because it was open an inch, she pushed it open aid New West Police'. The following exchange occurred ten the investigator and in the course of that interview: |
|                    | Sgt. MATSUMOTO: Now you've said door was it was already opened was it?                                                                                                                                                                                                                                                                                                                                                                                           |
|                    | Yeah.  Sgt. MATSUMOTO: A, and you said it was about an inch or something like that or just like a   Yeah and I think as I knocked the first time I may have knocked it just slightly open a little bit more but then I used two fingers and I tapped it open fully open.                                                                                                                                                                                         |
| [9]                | Later in the interview, the following exchange occurred:                                                                                                                                                                                                                                                                                                                                                                                                         |
|                    | But I absolutely did not open that door.                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                    | Sgt. MATSUMOTO:   okay now just going on your example from [another unrelated incident] with it seems to me that that you're saying that if the door was closed you would not have the lawful author ity to open it and go in is that right?                                                                                                                                                                                                                     |



- [14] The investigator framed the question in the context of s. 77(3)(f)(i)(A) of the *Police Act*. In another decision addressing the character of alleged misconduct in the period preceding the amendment of the *Police Act* effective March 31, 2010, I stated my view that conduct occurring before April 1, 2010 that is alleged to constitute misconduct must be assessed by reference to the definition of misconduct as it stood at the date of the alleged misconduct. While it is true that the process to be followed in dealing with allegations of misconduct, whenever alleged to have occurred, is that provided by the *Police Act* as amended effective April1, 2010, the amended *Act* cannot be construed to have retroactively made that which was not misconduct at any time before amendment actionable misconduct subject to disciplinary proceedings under the *Act*.
- [15] In this case, there does not appear to be any material difference in the substance of misconduct involving deceit in making an oral statement whether the statement is alleged to have been made before, or on or after, April 1, 2010.
- [16] Before the *Police Act* was amended, misconduct was assessed by reference to the *Police Code of Professional Conduct Regulation*, B.C. Reg. 205/98, which provided as follows in relation to deceit:
  - 7 For the purposes of [identifying a disciplinary default], a police officer commits the disciplinary default of deceit if
  - (a) the police officer makes or signs a false, misleading or inaccurate oral or written statement or entry in any official document or record
- [17] The regulation was replaced by legislation when the *Act* was amended in 2010. Section 77(3)(f)(i)(A) now provides as follows:
  - (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

...





| (d) | The disciplinary or corrective measure being considered is |                                      |  |
|-----|------------------------------------------------------------|--------------------------------------|--|
| . , | suspending                                                 | without pay for not more than thirty |  |
|     | (30) days.                                                 | ·                                    |  |

Dated at Vancouver, British Columbia this "18th" day of April, 2011.

"lan H. Pitfield"

Hon. lan H. Pitfield, Retired Judge