

IN THE MATTER OF A COMPLAINT MADE PURSUANT TO SECTION 78 OF THE *POLICE ACT*,
RELATING TO THE ALLEGED CONDUCT OF

CONSTABLE "X" AND OF CONSTABLE "Y", BOTH OF THE DELTA POLICE
DEPARTMENT

AND

IN THE MATTER OF A REVIEW PURSUANT TO SECTION 117(1) OF THE *POLICE ACT*, CONDUCTED
BY

RETIRED JUDGE JAKOB S. de VILLIERS Q.C.

AND NOTIFICATION PURSUANT TO SECTION 117(7) OF THE SAID ACT

Introduction:

My attention having been drawn to certain omissions from the review recently filed herein by me, rendering it incomplete, I withdraw it and submit this review in its place. This is a notification pursuant to Section 117 of the *Police Act* of the next applicable steps to be taken in accordance with the said Section 117.

Description of the complaint:

Pursuant to a complaint lodged by Mr "V" the final investigative report noted four different aspects of alleged misconduct by Constables "Y" and "X" :

- 1) abuse of authority;
- 2) damage to property;
- 3) neglect of duty;
- 4) deceit.

It is alleged that on or about September 17, 2011:

- 1) both constables committed the misconduct of abuse of authority by detaining and searching Mr "V" without good cause and by using unnecessary force, contrary to Section 77(3)(a)(ii) of the *Police Act*;
- 2) both constables committed the misconduct of damage to property of others by damaging Mr "V" 's property, contrary to Section 77(3)(e)(i) of the *Police Act*;
- 3) both constables committed the misconduct of neglect of duty, contrary to Section 77(3)(m)(ii) of the *Police Act*, by inadequately reporting the abovementioned incidents;
- 4) both constables committed the misconduct of deceit, contrary to Section 77(3)(f) of the *Police Act*.

These complaints were thoroughly investigated by Acting Sergeant Lynae Gallamore of the Delta Police Department, by whom the said constables were at all material times employed. Acting Sergeant Gallamore submitted her report on October 22, 2012.

The conclusion of her careful analysis was that the evidence appeared to support the allegations of neglect of duty only, against both constables, but did not support any of the other allegations against them or either of them. The Delta Police Department discipline authority reached substantially the same conclusion.

The Police Complaint Commissioner, having reviewed the allegations individually, concluded that there is a reasonable basis to believe that the discipline authority's decision in respect of allegations 1, 2 and 4 was incorrect, and appointed myself, pursuant to a recommendation from the Associate Chief Justice of the Supreme Court of British Columbia, as Adjudicator to review this matter pursuant to Section 117(1)(a) of the *Police Act* and arrive at my own decision in the matter. I accepted my appointment, made pursuant to Section 117(4) of the *Police Act*, and the task imposed on me.

I have reviewed all the reports submitted to me, pursuant to Section 117(6) of the *Police Act*, including the final investigative report and related records, filed with the Police Complaint Commissioner. I have considered the allegations, numbered 1, 2 and 4, which, for the purposes of Section 117(8)(a) of the *Police Act*, I describe as a complaint that the said constables allegedly misconducted themselves in the manner described in Paragraphs 12, 13, 14 and 15 of the final investigative report, submitted by A/Sgt. Gallamore, and have determined that the alleged conduct of the said two members appears to constitute misconduct in respect of all three such allegations, that is to say the evidence in the final investigative report and related records appears to substantiate the allegations and requires the taking of disciplinary or corrective measures. Consequently I become the disciplinary authority in respect of the matter and will convene a discipline proceeding pursuant to Section 117(9) of the *Police Act*.

If, at the conclusion of the discipline proceeding, I find that one or both of the said constables was or were guilty of any of the misconduct, as alleged, I will consider imposing a penalty or penalties within the range of penalties provided in Section 126 of the *Police Act*, other than a reduction in rank or dismissal of either or both of the constables.

There will be no prehearing conference pursuant to Section 120(16) of the *Police Act*.

Jakob S. de Villiers Q.C.
Retired Judge of the Provincial Court
Adjudicator