



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH: 2017-01
OPCC File: 2015-11300

NOTICE OF PUBLIC HEARING

Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Public Hearing into the Complaint against
Constable #2742 Brian Hobbs of the Vancouver Police Department**

To: Mr. Andrew Fraser (Complainant)

And to: Constable Brian Hobbs (#2742) (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Chief Constable Adam Palmer (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On November 23, 2015, the Office of the Police Complaint Commissioner (OPCC) received a registered complaint from Mr. Andrew Fraser describing his concerns with members from Vancouver Police Department in relation to an incident that occurred on November 18, 2015.
2. Mr. Fraser alleged that on November 18, 2015, he heard a ring from his residence's back door. When he went to investigate, he found a male in his laundry room. The male flashed a badge and when Mr. Fraser asked the intruder why he was in his house, the male started to interrogate him without really explaining why he was there. He was told he was under arrest and then placed in handcuffs. Officers searched the downstairs living-room area while he was handcuffed in the laundry room, then left the residence. Mr. Fraser believes the police entered his home unlawfully.

Stan T. Lowe
Police Complaint Commissioner

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3. The allegations contained in Mr. Fraser's complaint were reviewed and the allegations concerning the entry into Mr. Fraser's laundry room, the search of the living-room area and the detention of Mr. Fraser in handcuffs, were determined to be admissible and, accordingly, the complaint was forwarded to the Professional Standards Section of the Vancouver Police Department for investigation.
4. Vancouver Police Professional Standards investigator, Sergeant Derek Gilmore, conducted an investigation into this matter and on June 10, 2016, he submitted the Final Investigation Report to the Discipline Authority.
5. The investigator's assessment of the evidence and analysis of the facts led him to submit that based upon a balance of probabilities, the available evidence does support both allegations of misconduct, *Abuse of Authority*, specifically unlawfully entering Mr. Fraser's laundry room and searching the living-room area and for intentionally or recklessly detaining Mr. Fraser in handcuffs. The investigator therefore recommended that the allegations be deemed substantiated.
6. On June 22, 2016, following his review of the FIR, the Discipline Authority notified Constable Hobbs that a discipline proceeding would be held in relation to the two substantiated allegations, namely *Abuse of Authority* pursuant to section 77(3)(a) for entering Mr. Fraser's laundry room and searching the living-room area and section 77(3)(ii)(B) of the *Police Act* for detaining Mr. Fraser in handcuffs.

Discipline Proceeding

7. On August 5, 2016, pursuant to section 124 of the *Police Act*, a discipline proceeding was convened with Superintendent Mike Porteous presiding as the Discipline Authority.
8. March 29, 2017, following the discipline proceeding, and after considering the available evidence and submissions, the Discipline Authority made the following determinations in relation to the allegations:
 - (i) That on November 18, 2015, Constable Brian Hobbs, did not commit *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act*, oppressive conduct towards a member of the public. Specifically, that he did not unlawfully enter the laundry room of Mr. Fraser's residence and conduct an unlawful search of the downstairs living room.
 - (ii) That on November 18, 2015, Constable Brain Hobbs, did not commit *Abuse of Authority* pursuant to section 77(3)(ii)(B) of the *Police Act*, when in the performance, or purported performance, of duties, did not intentionally or recklessly detain Mr. Fraser in handcuffs.
9. Mr. Fraser and Constable Hobbs were provided a copy of Superintendent Porteous' findings in relation to each allegation of misconduct at the discipline proceeding. Mr. Fraser and Constable Hobbs were informed that if they were aggrieved by the findings, they could file

a written request with the Police Complaint Commissioner (PCC) to arrange a Public Hearing or Review on the Record.

10. On April 23, 2017, our Office received a request from Mr. Fraser that the Police Complaint Commissioner exercise his authority to arrange a Public Hearing pursuant to the *Police Act*.
11. In my respectful view, Superintendent Porteous' interpretation of Part 11 of the *Police Act*, in particular, his assessment of the constituent elements for the allegation of *Abuse of Authority*, was incorrect. Superintendent Porteous stated that for the matter to be an *Abuse of Authority* it required the conduct to be, "intentionally oppressive" or have a "serious blameworthy element..." It is my view that Superintendent Porteous has elevated the test for *Abuse of Authority* beyond the elements set out in the *Police Act*.
12. It is also my respectful view that Superintendent Porteous' findings pursuant to section 125(1) of the *Police Act* were incorrect. Superintendent Porteous' findings placed too great an emphasis upon the member's subjective view and did not maintain the relevant context that speaks to whether or not the actions of the member were objectively reasonable in the circumstances.
13. Furthermore, after reviewing the proceedings, I have concerns with the disciplinary proceeding process. The only witness who provided testimony was Constable Hobbs. The Discipline Authority did not have the benefit from other material witnesses, including Mr. Fraser. Pursuant to the *Police Act*, unless the member whose conduct is the subject of the proceeding initiates a request to call witnesses to testify in the proceeding, there is no other mechanism to allow for the participation of material witnesses. In my view, the accountability of the process and the ability to search for the truth in this proceeding have been hampered.
14. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, if the Commissioner considers that a Public Hearing is necessary in the public interest.

Decision

15. Having reviewed the investigation, the discipline proceeding and associated determinations, pursuant to section 138 of the *Police Act*, I have determined that a Public Hearing is required as I consider there is a reasonable basis to believe that the Discipline Authority's findings under section 125(1) are incorrect. Furthermore, I have determined that a Public Hearing is necessary in the public interest. In determining that a Public Hearing is necessary in the public interest, I have considered several relevant factors, including, but not limited to the following:
 - a) The complaint is serious in nature as the allegations involve a significant breach of the public trust;

- b) An arguable case can be made that the Discipline Authority's interpretation or application of Part 11 of the *Police Act* was incorrect;
 - c) It is necessary to examine and cross-examine witnesses and receive evidence that was not part of the record at the discipline proceeding, in order to ensure that procedural fairness and accountability is maintained;
 - d) There is a reasonable prospect that a Public Hearing will assist in determining the truth; and
 - e) A Public Hearing is required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
16. It is therefore alleged that Constable Brian Hobbs committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
- (i) That on November 18, 2015, Constable Brian Hobbs, committed *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* which is oppressive conduct towards a member of the public. Specifically, did unlawfully enter the laundry room of Mr. Fraser's residence and conduct an unlawful search of the downstairs living room.
 - (ii) That on November 18, 2015, Constable Brian Hobbs, committed *Abuse of Authority* pursuant to section 77(3)(ii)(B) of the *Police Act* when in the performance, or purported performance, of duties, intentionally or recklessly detained Mr. Fraser in handcuffs.
17. Pursuant to section 143(5) of the *Police Act*, Public Hearing counsel, Constable Brian Hobbs, or her or his legal counsel and commission counsel may:
- a) call any witness who has relevant evidence to give, whether or not the witness was interviewed during the original investigation or called at the discipline proceeding;
 - b) examine or cross-examine witnesses;
 - c) introduce into evidence any record or report concerning the matter; and
 - d) make oral or written submissions, or both, after all of the evidence is called.
18. Pursuant to section 143(7) of the *Police Act*, Mr. Fraser, or his agent or legal counsel, may make oral or written submissions, or both, after all of the evidence is called.

THEREFORE:

19. A Public Hearing is arranged pursuant to section 137(1) and 143(1) of the *Police Act*.

20. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Brian Neal, retired Provincial Court Judge, is appointed to preside as adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*. Dates for the Public Hearing have not yet been determined. The Public Hearing will commence at the earliest practicable date.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 5th day of June, 2017.



Stan T. Lowe
Police Complaint Commissioner