



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH: 2016-01
OPCC File: 2011-6657/2012-8138

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 Edgar Diaz and Former Constable Hughes of the
South Coast BC Transportation Authority Police Service**

- To: Mr. Charles Riby-Williams (Complainant)
- And to: Constable Edgar Diaz (#151) (Member)
David Butcher, Q.C. - Counsel
- And to: Former Constable Mr. Michael Hughes (Former Member)
Kevin Woodall - Counsel
- And to: Chief Constable Dave Jones (Discipline Authority)
c/o New Westminster Police Department
Professional Standards Section
- And to: The Honourable Ian. H Pitfield (Discipline Authority)
Retired BC Supreme Court Justice
- And to: Chief Officer Doug LePard
c/o South Coast BC Transportation Authority Police Service
Professional Standards Section

WHEREAS:

Investigation

1. On August 18, 2011, the Office of the Police Complaint Commissioner (OPCC) received information from the South Coast BC Transportation Authority Police Service (SCBCTAPS)

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requesting this office order an investigation into an August 10, 2011, altercation that Constable Diaz and former Constable Hughes had with Mr. Riby-Williams.

2. SCBCTAPS Police Professional Standards investigator, Staff Sergeant Kent Harrison, conducted an investigation into allegations of Abuse of Authority against both Constable Diaz and former Constable Hughes. On September 10, 2012, Inspector MacDonald as Discipline Authority, made a finding in relation to the allegations against Constable Diaz and former Constable Hughes.
3. On November 23, 2012, in order to address concerns with Inspector MacDonald's decision, the Police Complaint Commissioner ordered an external investigation to be conducted by the New Westminster Police Department (NWPD). Sergeant Andrew Perry of NWPD was assigned as the external investigating officer. In addition, the Police Complaint Commissioner appointed Chief Constable Jones of the NWPD to perform the duties of Discipline Authority with respect to all matters related to the actions of Constable Diaz and former Constable Hughes.

Section 112 Decision by Chief Constable Jones

4. On July 22, 2013, after completing his investigation, Sergeant Andrew Perry submitted the Final Investigation Report (FIR) to Chief Constable Jones. On July 26, 2013, Chief Constable Jones determined that the evidence appeared to substantiate the following four allegations against former Constable Hughes:
 - That on or about August 10, 2011, at or near the City of Vancouver, British Columbia it is alleged that former Constable Hughes committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* by intentionally or recklessly making an arrest [upon Mr. Riby-Williams for Obstructing a Peace Officer] without good and sufficient cause.
 - That on or about August 10, 2011, at or near the City of Vancouver, British Columbia it is alleged that former Constable Hughes committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on any person.
 - That on or about August 10, 2011, at or near the City of Vancouver, British Columbia it is alleged that former Constable Hughes committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* when he intentionally or recklessly recommended that Constable Diaz issue Mr. Riby-Williams a violation ticket for Drunkenness in a Public Place contrary to section 41 of the *Liquor Control and Licensing Act* without good and sufficient cause.

- That on or about August 10, 2011, at or near the City of Vancouver, British Columbia it is alleged that former Constable Hughes committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* when he intentionally or recklessly arrested and recommended charges against Mr. Riby-Williams for Causing a Disturbance contrary to section 175(1)(a)(ii) of the *Criminal Code*.
5. Chief Constable Jones also determined that the following two allegations against Constable Diaz appeared to be substantiated:
- That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz committed the disciplinary default of *Abuse of Authority*, contrary to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on any person.
 - That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz committed the disciplinary default of *Abuse of Authority*, contrary to section 77(3)(a)(i) of the *Police Act* when he intentionally or recklessly issued Mr. Riby-Williams a violation ticket for Drunkenness in a Public Place, contrary to section 41 of the *Liquor Control and Licensing Act* without good and sufficient cause.
6. Chief Constable Jones also determined that five allegations against Constable Diaz and four allegations against former Constable Hughes did not appear to be substantiated.

Section 117 Review by Retired Judge Ian H. Pitfield

7. On August 26, 2013, after reviewing Chief Constable Jones' decision, the Police Complaint Commissioner determined that there was a reasonable basis to believe that Chief Constable Jones' findings were incorrect with respect to the allegations that he determined did not appear to be substantiated. As a result, pursuant to section 117(4) of the *Police Act*, the Police Complaint Commissioner appointed Honourable retired Supreme Court Justice Ian H. Pitfield, as a retired judge, to review the unsubstantiated allegations and arrive at his own decision.
8. On October 9, 2013, retired Judge Pitfield completed his review recommending that the evidence appeared to substantiate the following allegations:
- That on or about August 10, 2011, **Constable Diaz**, 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 Mr. Riby-Williams for Causing a Disturbance contrary to section 175(1)(a)(ii) of the *Criminal Code* without good and sufficient cause.

- That on or about August 10, 2011, **Constable Diaz and former Constable Hughes**, 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 Mr. Riby-Williams for Assaulting a Police Officer contrary to section 270(1)(b) of the *Criminal Code* without good and sufficient cause.
 - That on or about August 10, 2011, **Constable Diaz and former Constable Hughes**, 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 Mr. Riby-Williams 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.
 - That on or about August 10, 2011, **Constable Diaz and former Constable Hughes**, 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 Mr. Riby-Williams for Causing a Disturbance contrary to section 175(1)(a)(ii) of the *Criminal Code* that to their knowledge was false or misleading.
 - That on or about August 10, 2011, **Constable Diaz and former Constable Hughes**, 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 Mr. Riby-Williams for Assaulting a Police Officer contrary to section 270(1)(b) of the *Criminal Code* that to their knowledge was false or misleading.
9. At that point, the allegations in relation to this matter became bifurcated, thereby proceeding separately and independently of each other. Chief Constable Jones retained the allegations that he determined appeared to be substantiated and retired Justice Pitfield became Discipline Authority with respect to the allegations that he determined appeared to be substantiated.

Chief Constable Jones Discipline Proceeding – former Constable Hughes

10. On January 9, 2014, Chief Constable Jones convened a discipline proceeding for the allegations against former Constable Hughes pursuant to section 124 of the *Police Act*. Former Constable Hughes did not attend so the hearing proceeded in his absence pursuant to section 130 of the *Police Act*.
11. On January 15, 2014, pursuant to section 133 of the *Police Act*, Chief Constable Jones issued the Disciplinary Disposition Record with respect to former Constable Hughes. Chief

Constable Jones determined the following with respect to substantiation and disciplinary/corrective measures:

- *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* by intentionally or recklessly making an arrest [upon Mr. Riby-Williams for Obstructing a Peace Officer] without good and sufficient cause: **Substantiated.**

Disciplinary/Corrective measure: 2 x 11 hour days' suspension from duty, without pay consecutive.

- *Abuse of Authority* contrary to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on any person: **Substantiated.**

Disciplinary/Corrective measure: 5 x 11 hour days' suspension from duty, without pay consecutive.

- *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* when he intentionally or recklessly recommended that Constable Diaz issue Mr. Riby-Williams a violation ticket for Drunkenness in a Public Place contrary to section 41 of the *Liquor Control and Licensing Act* without good and sufficient cause: **Substantiated.**

Disciplinary/Corrective measure: 1 x 11 hour days' suspension from duty, without pay consecutive.

- *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* when he intentionally or recklessly arrested and recommended charges against Mr. Riby-Williams for Causing a Disturbance contrary to section 175(1)(a)(ii) of the *Criminal Code*: **Substantiated.**

Disciplinary/Corrective measure: 1 x 11 hour days' suspension from duty, without pay consecutive.

12. These allegations involving former Constable Hughes have been concluded by this office.

Suspension of *Police Act* Proceedings

13. On January 23, 2014, the Police Complaint Commissioner suspended this matter pursuant to section 179(4) of the *Police Act* after the NWPD advised they would be recommending criminal charges against Constable Diaz and former Constable Hughes.

14. On June 29, 2016, the Office of the Police Complaint Commissioner lifted the suspension of this matter after the NWPD advised that Crown Counsel had entered a stay of proceedings against former Constable Hughes and that Constable Diaz pleaded guilty to Assault

Causing Bodily Harm on May 31, 2016. Constable Diaz was sentenced to 12 months' probation on June 24, 2016.

Chief Constable Jones Discipline Proceeding – Constable Diaz

15. On September 19, 2016, following the discipline proceeding held by Chief Constable Jones, and after considering the available evidence and submissions, Chief Constable Jones made the following determinations in relation to the allegations against Constable Diaz:

- That on or about August 10, 2011, at or near the City of Vancouver, British Columbia Constable Diaz, **committed** the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on any person.

Disciplinary/Corrective Measure – Suspension from duty, without pay for five working days, based on a 10.5 hour shift, and training on use of force techniques and policy applications.

- That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, Constable Diaz **did NOT commit** the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* by intentionally or issuing Mr. Riby-Williams a violation ticket for Drunkenness in a Public Place contrary to section 41 of the *Liquor Control and Licensing Act* without good and sufficient cause.

Notice of Public Hearing Chief Constable Jones' Decision

16. On November 29, 2016, I issued a Notice of Public Hearing pursuant to sections 138(1) and 143(1) of the *Police Act* on the basis that there was a reasonable basis to believe that the Discipline Authority's findings under section 125(1) were incorrect. With respect to the substantiated allegation, I considered that Chief Constable Jones had incorrectly applied section 126 of the *Police Act* and that the disciplinary measures imposed were inadequate and not commensurate with the seriousness of the conduct. With respect to the unsubstantiated allegation, I considered that he erred in his interpretation and application of Part 11 of the *Police Act*.

17. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Ronald McKinnon, retired Supreme Court Justice, was appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*. My decision to issue a Notice of Public Hearing is presently the subject of judicial review proceedings brought by Constable Diaz. The Public Hearing is being held in abeyance pending the results of those proceedings.

Discipline Proceeding before Discipline Authority Pitfield

18. On October 3, 2016, Discipline Authority Pitfield heard an application by Constable Diaz and former Constable Hughes to summarily dismiss the proceedings against them and to join the two proceedings.

19. On October 17, 2016, Discipline Authority Pitfield issued his reasons for decision in respect of the preliminary application. He agreed that the two proceedings should be joined. He also found that the three allegations of *Deceit* against Constable Diaz and former Constable Hughes should be dismissed because in his view, making an arrest and issuing a ticket cannot be construed as *Deceit* for *Police Act* purposes. Discipline Authority Pitfield added that “a different result may have ensued had these allegations of misconduct been framed as *Discreditable Conduct*.”
20. From February 28 to March 2, 2017, Discipline Authority Pitfield convened a joint discipline proceeding for Constable Diaz and former Constable Hughes, but limited that proceeding to the following allegations:
- *It is alleged that on or about August 10, 2011, Constable Diaz and former Constable Hughes 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 Mr. Riby-Williams for assaulting a police officer contrary to section 270(1)(b) of the Criminal Code without good and sufficient cause.*
 - *It is alleged that on or about August 10, 2011, Const. Diaz 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 he intentionally or recklessly arrested and recommended charges against Mr. Riby-Williams for causing a disturbance contrary to section 175(1)(a)(ii) of the Criminal Code without good and sufficient cause.”*
21. On March 16, 2017, Discipline Authority Pitfield found that both allegations of *Abuse of Authority* were not substantiated. In that decision, Discipline Authority Pitfield noted that both allegations referred to “arresting *and* recommending” charges and agreed with submissions by counsel that neither officer arrested Mr. Riby-Williams for assaulting a peace officer until after this arrest for another substantive offence and so these allegations were not substantiated because both elements (arresting and recommending) had not been substantiated. Discipline Authority Pitfield also found that the allegations could not be substantiated because Mr. Riby-Williams assaulted Constable Diaz and/or Constable Hughes by resisting arrest.
22. With respect to the allegation that Constable Diaz arrested and charged Mr. Riby-Williams for causing disturbance, Discipline Authority Pitfield found that the circumstances did not support that charge. He also rejected Constable Diaz’s assertion that he was not aware of the elements of the offense at the time. However, Discipline Authority Pitfield found the allegation to be unsubstantiated on the basis that there was no arrest for causing a disturbance. Discipline Authority Pitfield wrote:

[53] *...If the allegation of arrest is not combined with the making of a recommendation, then the evidence persuades me that the post-incident recommendation was subject to review and approval by a senior officer within SCBCTAPS before a report recommending charges went forward to Crown. With some reluctance, if making a recommendation should be separated from arrest, I would conclude that Const. Diaz's recommendation to his superiors should not be regarded as misconduct for which discipline is warranted. The*

blame for allowing the recommendation to go forward must be attached to the superior officer who approved the report that ultimately went forward to Crown. Simply stated, the recommendation should never have been approved.

23. Former Constable Hughes and Constable Diaz were provided with Discipline Authority Pitfield's findings in relation to each allegation of misconduct at the discipline proceeding. The Disciplinary Disposition Record pursuant to section 133 of the *Police Act* was provided to Mr. Riby-Williams on April 6, 2017, wherein Mr. Riby-Williams was informed that if he was aggrieved by either the findings or determinations he could file a written request with the Police Complaint Commissioner to arrange a Public Hearing or Review on the Record.
24. To date, the OPCC has not received a request for a Public Hearing or Review on the Record from Mr. Riby-Williams.

Decision

25. Section 133(6) of the *Police Act* provides that, in the absence of a request for a Public Hearing or Review on the Record by a complainant, member or former member (made in accordance with section 136(1), a Disciplinary Authority's section 125 determination is not open to question or review by a court unless a Public Hearing or Review on the Record is arranged by the Police Complaint Commissioner. Section 138 governs determinations as to whether to arrange a Public Hearing or Review on the Record. On expiration of the time limit for making a section 136(1) request, the Police Complaint Commissioner must arrange a Public Hearing or Review on the Record in one of three circumstances. One of those circumstances (section 138(1)(d)) is where the Police Complaint Commissioner considers that a Public Hearing or Review on the Record is necessary in the public interest.
26. Based on my review of the proceedings before Discipline Authority Pitfield in the context of all of the information before me, I consider that a Public Hearing is necessary to ensure confidence in the fairness and integrity of *Police Act* disciplinary processes.
27. It is important to note that the *Police Act* gives the Police Complainant Commissioner a very limited oversight role in respect of discipline proceedings undertaken by a Discipline Authority. In this case, my role was triggered by a request for an Order to Investigate made by SCBCTAPS Staff Sergeant Kent Harrison, which I granted. From that point forward, my involvement was limited to designating an employee under section 123(8) of the *Police Act* to observe the discipline proceeding, and receiving various interim reports, FIRs and discipline-related decisions. The *Police Act* does not authorize the Police Complaint Commissioner to direct the course of a discipline proceeding other than limited discretion to grant extensions where requested and necessary under sections 118 and 128 and determine the location of a discipline proceeding under section 123(6) of the *Police Act*. The Police Complaint Commissioner does not have any input into the articulation of misconduct allegations by the investigating officer in any FIR. It is only when discipline proceedings have concluded that the Police Complaint Commissioner may direct that, based on all of the totality of the information culminating in the section 125 discipline

decision and for public interest reasons, a Public Hearing into the conduct of concern be conducted.

28. In considering whether a Public Hearing is in the public interest, I am directed to take into account all of the relevant factors, including those set out in section 138(2) of the *Police Act*. The first is the nature and seriousness of the complaint or alleged misconduct. The second is the nature and seriousness of harm or loss alleged to have been suffered as a result of the alleged misconduct. In this case, I consider the alleged misconduct involves a significant breach of public trust and that the harm suffered by Mr. Riby-Williams to be particularly serious.
29. The allegations against Constable Diaz and Constable Hughes include striking Mr. Riby-Williams numerous times with their police-issue batons. Close-circuit cameras depict some of those strikes making contact with Mr. Riby-Williams' head, a lethal force target when deploying a baton. In his decision pursuant to section 128 of the *Police Act* regarding discipline/corrective measures for the substantiated allegation of *Unnecessary Force* against Constable Diaz, Chief Constable Jones stated as follows with respect to this portion of the incident:

"The details contained within the FIR and subsequent criminal court proceedings describe very vividly and clearly a set of circumstances wherein Constable Diaz acted in an assaultive manner, by striking the victim Mr. Riby Williams, numerous times with his police issued baton, effectively causing injury to Mr Riby Williams. The available video clearly shows an incident that is both inappropriate, and shocking to many individuals who have observed it."

"Constable Diaz described himself as losing control and the video depicts a police officer that does not appear to be in control of his actions during the incident, which is a concern with any police officer who works in an unpredictable environment."

30. Mr. Riby-Williams was a 22 year old university student at the time. As a result of the incident he received lacerations and abrasions to his head, hands, legs and back in the process. He was transported to hospital where he received four sutures for his head injury. He was then transported to Vancouver cells and arrested for Obstruction, Assault of a Police Officer, and Causing a Disturbance by being Drunk. The charges were subsequently either dropped or stayed by Crown counsel.
31. Returning to the section 132(2) factors, I consider the conduct at issue, if not subjected to a Public Hearing, would likely undermine public confidence in "the police, the handling of complaints or the disciplinary process" and that a hearing is required in order to restore that public confidence. In this case, the only evidence heard by Discipline Authority Pitfield was that of former Constable Hughes, Constable Diaz and Sergeant Perry, who conducted the investigation. This is typical of such proceedings because only the member or former member whose conduct at issue has discretion to call (or not to call) witnesses. There is no adjudication in the usual sense because there is no other party to that

proceeding and consequently there is no ability to independently call witnesses, no cross-examination of witnesses called and no submissions made other than those made on behalf of the subject of the discipline. Additionally, in this case, Discipline Authority Pitfield made a preliminary determination, based only on legal submissions, to summarily dismiss some of the allegations even though section 117(9) directed him to conduct a discipline proceeding in accordance with sections 123 and 124 of the *Police Act*.

32. In this case, and in addition to Mr. Riby-Williams, Constable Bentley and Constable Smith, there were a number of independent civilian witnesses to the incident. It is my view that, in all of the circumstances here, a full and *de novo* Public Hearing is warranted to assure police accountability and to assist in determining the truth. There are varying versions of what occurred including civilian witness versions and those of Mr. Riby-Williams that contradict those of Constable Diaz and former Constable Hughes. Pursuit of the truth would benefit from all testimony being tested by cross-examination and associated assessments of credibility by the Adjudicator with legal submissions on the merits by Discipline Authority counsel, Public Hearing counsel, in addition to counsel for Constable Diaz and former Constable Hughes.
33. I am also directed by section 132(2)(d) of the *Police Act* to consider whether an arguable case can be made that, among other things, the Discipline Authority's interpretation or application of Part 11 of the *Police Act* was incorrect. It is my view that such an arguable case can be made. The bifurcation of the disposition proceedings has resulted in inconsistent verdicts whereby Chief Constable Jones substantiated an allegation of *Abuse of Authority* against former Constable Hughes for charging Mr. Riby-Williams with Causing a Disturbance, whereas Discipline Authority Pitfield unsubstantiated the same allegation against Constable Diaz. In saying this, I am mindful of my comments in my November 29, 2016 Order for Public Hearing about *British Columbia (Police Complaint Commissioner) v. Bowyer*, 2012 BCSC 1018. The Court's observations in that case reference the possible outcomes of bifurcated discipline proceedings as being inconsistent, as in this case. The fact that there have been two different outcomes based on essentially the same facts supports my view that an arguable case can be made that Discipline Authority Pitfield's interpretation and application of the *Police Act* was incorrect.
34. Pursuant to section 143(2), a Public Hearing is a new hearing concerning the conduct of a member or former member that was the subject of an investigation or complaint under Part 11, Division 3 of the *Police Act*.
35. Pursuant to section 143(3), a Public Hearing is not limited to the evidence and issues that were before a Discipline Authority in a discipline proceeding.
36. I have noted that the Public Hearing I ordered on November 29, 2016, arising out of the proceedings before Discipline Authority Jones, has not yet convened. Based on sections 143(2) and 143(3) of the *Police Act*, and for reasons akin to those of Discipline Authority Pitfield in granting the application by Constable Diaz and former Constable Hughes to join

the discipline proceedings, I am of the view that all allegations arising from this matter should be joined in a single Public Hearing. I am also of the view that these allegations should be heard by Adjudicator McKinnon together with those matters currently the subject of my November 29, 2016, Notice of Public Hearing in respect of Constable Diaz.

37. It is therefore alleged that Constable Diaz and former Constable Hughes committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
- (i) That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz and former Constable Hughes committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a) of the *Police Act*, which is oppressive conduct towards a member of the public, by recommending charges against Mr. Riby-Williams for Assaulting a Police Officer without good and sufficient cause.
 - (ii) That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz and former Constable Hughes committed the disciplinary default of *Deceit* contrary to section 77(3)(f)(i)(a) or (B) by knowingly making false or misleading written statements and/or false or misleading entries into official documents, based on false or misleading statements to support charges against Mr. Charles Riby-Williams in SCBCTAPS General Occurrence file 2011-11318.
38. It is therefore alleged that Constable Diaz committed the following disciplinary default, pursuant to section 77 of the *Police Act*:
- (iii) That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a) of the *Police Act*, which is oppressive conduct towards against a member of the public, by recommending charges against Mr. Riby-Williams for Causing a Disturbance without good and sufficient cause.
 - (iv) That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force on any person.
 - (v) That on or about August 10, 2011, at or near the City of Vancouver, British Columbia, it is alleged that Constable Diaz committed the disciplinary default of *Abuse of Authority* contrary to section 77(3)(a)(i) of the *Police Act* when he intentionally issued Mr. Riby-Williams a violation ticket for Drunkenness in a Public Place, contrary to section 41 of the *Liquor Control and Licensing Act* without good or sufficient cause.
39. Pursuant to section 143(9)(a), the Adjudicator is not limited to the above listed allegations, but must decide whether any misconduct has been proven.

40. Pursuant to section 143(5) of the *Police Act*, Public Hearing counsel, commission counsel, Constable Diaz and former Constable Hughes, or their legal counsels 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.
41. Pursuant to section 143(7) of the *Police Act*, Mr. Riby-Williams, or her or his agent or legal counsel, may make oral or written submissions, or both, after all of the evidence is called.

THEREFORE:

42. A Public Hearing is arranged pursuant to section 138(1) and 143(1) of the *Police Act*.
43. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Ronald McKinnon, retired Supreme 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.
44. This Notice replaces the Notice of Public Hearing issued on November 29, 2016.

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

501 - 947 Fort Street, PO Box 9895 Stn Prov Govt, Victoria, BC V8W 9T8
Telephone: 250-356-7458 • Toll Free: 1-877-999-8707 • Facsimile: 250-356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 15th day of June, 2017.



Stan T. Lowe
Police Complaint Commissioner

Office of the
Police Complaint Commissioner