



Office of the  
Police Complaint Commissioner

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British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE**

Pursuant to section 117(4) of the *Police Act*

OPCC File 2017-13143

October 17, 2017

To: [REDACTED] (Member)  
c/o Vancouver Police Department  
Professional Standards Section

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

And to: The Honourable Judge Carol Baird Ellan, (ret'd) (Retired Judge)  
Retired Judge of the Provincial, Court of British Columbia

Vancouver Police Department Police Professional Standards investigator, [REDACTED] conducted an investigation into this matter and on September 1, 2017, he submitted the Final Investigation Report to the Discipline Authority.

In the report, [REDACTED] identified the following allegation of misconduct:

1. That on [REDACTED], [REDACTED], committed *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would likely bring discredit on the municipal police department.

[REDACTED], as part of his careful consideration and review of the evidence provided in the Final Investigation Report (FIR), added the following to allegation #1:

“Specifically, that while off duty, [REDACTED] acted in a manner that prompted police attendance to investigate reported suspicious behaviour and was intoxicated in public to the point that he was arrested for causing a disturbance”.

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**Stan T. Lowe**  
Police Complaint Commissioner

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[REDACTED], as part of his careful consideration and review of the evidence provided in the Final Investigation Report (FIR), identified and added the following allegation of misconduct:

1. That on [REDACTED], [REDACTED], committed *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would likely bring discredit on the municipal police department. Specifically, that while off duty, [REDACTED] displayed his badge to [REDACTED] Officers.

On September 18, 2017, [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, [REDACTED] determined that the allegation of *Discreditable Conduct* against [REDACTED] for allegation #1 appeared to be substantiated. [REDACTED] determined that the allegation of *Discreditable Conduct* against [REDACTED] for allegation #2 did not appear to be substantiated.

A prehearing conference was offered to [REDACTED] with regard to allegation #1 and was held on October 3, 2017, before [REDACTED] as the Prehearing Conference Authority. An agreement was reached with respect to the proposed discipline of:

*#1 - Discreditable Conduct - 1-Day Suspension*

A report following the prehearing conference was received at our office on October 3, 2017. In reviewing the investigation conducted by [REDACTED] and considering all the relevant factors in this case the issuance of the one-day suspension in this case is on the low end for the range of outcomes for the substantiated allegation; however, it appears to be within the acceptable range of appropriate discipline/corrective measures with respect to the circumstances. The agreement reached at the prehearing conference in relation to allegation #1 has been approved and the resolution is final and conclusive.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegations and the alleged conduct in its entirety, I consider that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to the allegation #2, *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act*.

With respect to allegation #2, [REDACTED] found that [REDACTED], although admitting that he identified himself as a police officer, did not flash his badge to seek preferential treatment. [REDACTED] referred to Justice Pitfield's section 117 decision related to OPCC file 2009-4716, which supported the objective test for *Discreditable Conduct*, as articulated by the Ontario Civilian Commission on Police Services (OCCPS) in *Mancini v. Martin Courage*, OCCPS #04-09. In that decision, Retired Justice Pitfield also found that the officer had displayed his badge for the purpose of gaining preferential treatment, and doing so constituted *Discreditable Conduct* because:

“... the reasonable expectation of the community is that an off duty police officer will be accorded the same treatment and be subject to the same sanctions as any other citizen. The community will not accept a double standard of law enforcement.”

In OPCC file 2015-10904, Justice Pitfield authored a decision pursuant to section 117 of the *Police Act*, wherein he elaborated on his previous decision above. Justice Pitfield found that simply identifying oneself as a police officer does not itself constitute *Discreditable Conduct*. There must be subjective or objective evidence from which one can conclude that purpose was to gain favourable treatment. Justice Pitfield wrote:

“...regardless of what was said, the timing and method of disclosure, which constitute objective evidence, may permit one to infer that the officer’s purpose in acting as he did was to seek leniency or favouritism from another officer. Such might be the case, for example, should an officer without saying anything, openly display his identification immediately, whether with or separate from his driver’s license and vehicle registration.”

Retired Judge Carol Lazar in her section 117 decision in OPCC file 2015-11276, and Retired Judge Carol Baird Ellan in Review on the Record RR 16-03, have adopted Mr. Pitfield’s approach, assessing whether there is subjective or objective evidence to conclude that the member was seeking favourable treatment.

Based on my review of [REDACTED] decision, I am of the view that there is a reasonable basis to conclude that he was incorrect in his determination that evidence in the FIR did not appear to support substantiation for *Discreditable Conduct* against [REDACTED]. I am of the view that [REDACTED] analysis placed too much weight on [REDACTED] assertion that he was not seeking favouritism, despite the fact that he did not recall displaying his badge and had limited recollection of identifying himself as a police officer. I am of the view that [REDACTED] did not afford proper weight to objective evidence in the FIR regarding the timing of [REDACTED] disclosure that he was a police officer, the manner in which [REDACTED] presented his badge to the [REDACTED] officers, or what [REDACTED] said when he presented his badge.

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 The Honourable Judge Carol Baird Ellan, retired Provincial Court Judge, to review this matter and arrive at her own decision based on the evidence.

Pursuant to section 117(9), if the appointed retired judge considers that the conduct of the member appears to constitute misconduct, the retired judge assumes the powers and performs the duties of the Discipline Authority in respect of the matter and must convene a discipline proceeding, unless a prehearing conference is arranged.

The Office of the Police Complaint Commissioner will provide any existing service records of discipline to the Discipline Authority to assist him or her in proposing an appropriate range of disciplinary or corrective measures should a prehearing conference be offered or a disciplinary

proceeding convened. If the retired judge determines that 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 a retired judge arrive at a decision **within 10 business days after receipt of the materials** for review from our office. This is a relatively short timeline, so our office will not forward any materials to the retired judge until they are prepared to receive the materials. I anticipate this will be within the next 10 business days.

A handwritten signature in black ink, appearing to read 'Stan T. Lowe', enclosed in a thin black rectangular border.

Stan T. Lowe  
Police Complaint Commissioner

cc: Sylvia Sangha, Registrar