

Office of the Police Complaint Commissioner

British Columbia, Canada

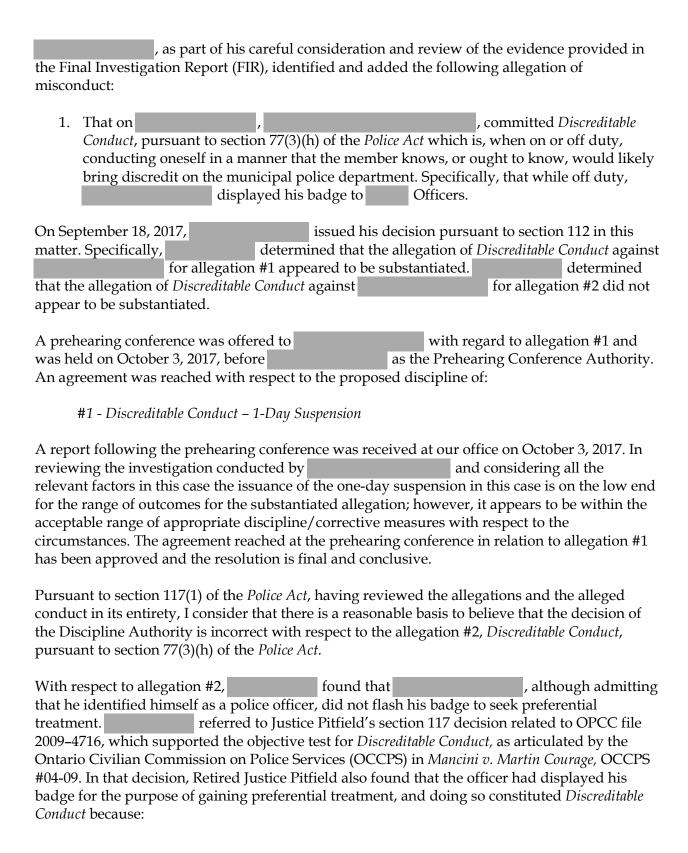
NOTICE OF APPOINTMENT OF RETIRED JUDGE

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

OPCC File 2017-13143 October 17, 2017

То:	c/o Vancouver Po Professional Stand	±	l	(Member)			
And to:	Chief Constable A c/o Vancouver Po Professional Stand	lice Department					
And to:		adge Carol Baird Ella ne Provincial, Court	, ,	(Retired Judge) nbia			
Final Inves	onducted an investig stigation Report to th	ne Discipline Author	er and on Septer rity.	nber 1, 2017, he submitted the			
In the report,		identified the following allegation of misconduct:					
<i>Cor</i>	1. That on, committed <i>Discreditable Conduct</i> , pursuant to section 77(3)(h) of the <i>Police Act</i> 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.						
the Final Ir	_	is careful considerat (FIR), added the foll		of the evidence provided in tion #1:			
pol		2	spicious behavi	d in a manner that prompted four and was intoxicated in bance".			

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"... 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	decision, I am of	easonable basis							
to conclude that he was incorrect in his determination that evidence in the FIR did not appear to										
support substantiatio	n for <i>Discreditable</i>	for Discreditable Conduct against			. I am of the view					
that	nalysis placed to	alysis placed too much weight on								
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										
did not afford proper weight to objective evidence in the FIR regarding the timing of										
disclosure that he was a police officer, the manner in which										
presented his badge t	o the offic	ers, or what	S	said whe	n 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

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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.

Stan T. Lowe

Police Complaint Commissioner

cc: Sylvia Sangha, Registrar

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