



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 2017-13441

February 13, 2019

- To: [REDACTED] (# [REDACTED]) (Members)
[REDACTED] (# [REDACTED])
c/o Vancouver Police Department
Professional Standards Section
- And to: [REDACTED] (External Investigative Agency)
c/o Delta Police Department
Professional Standards Section
- And to: [REDACTED] (External Discipline Authority)
c/o New Westminster Police Department
Professional Standards Section
- And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section
- And to: The Honourable Judge David Pendleton, (ret'd) (Retired Judge)
Retired Judge of the Provincial Court of
British Columbia
Professional Standards Section

On [REDACTED] the Office of the Police Complaint Commissioner (OPCC) received information from [REDACTED] in the form of a registered complaint in relation to an incident which occurred on [REDACTED], involving the Vancouver Police Department (VPD).

On [REDACTED], based on information provided by [REDACTED], Commissioner Lowe ordered an investigation into the conduct of one member of the Vancouver Police Department.

Clayton Pecknold
Police Complaint Commissioner

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Vancouver Police Department Police Professional Standards investigator, [REDACTED], conducted an investigation into this matter.

Due to the need to ensure impartiality with the handling of this investigation by VPD investigators and concerns regarding the accountability of the process, on [REDACTED], the Police Complaint Commissioner determined it was in the public interest that the alleged misconduct be investigated by an external police force. The Police Complaint Commissioner appointed the Delta Police Department to continue the *Police Act* investigation and designated [REDACTED] of the New Westminster Police Department to exercise the power and perform the duties of a Discipline Authority in relation to this matter.

On [REDACTED], [REDACTED] of the Delta Police Department Professional Standards Section completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On [REDACTED], [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, [REDACTED] identified two allegations of misconduct against [REDACTED] and [REDACTED]. He determined that the allegation of *Deceit*, pursuant to section 77(3)(f)(i)(A) of the *Police Act*, against [REDACTED] and [REDACTED] did not appear to be substantiated.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegation 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 not correct.

In arriving at his decision, [REDACTED] noted a number of factors which could have impacted the officer's recollection of the incident such as the passage of time, and the fact that the officers spoke to one another about the incident and read reports that were completed by other officers about this incident. According to [REDACTED], a complicating factor in determining whether the members provided false or misleading information with the intent to deceive or mislead the investigation is that inaccurate GPS data was relayed to the members prior to providing additional statements to investigators.

While the Discipline Authority correctly noted that inaccurate GPS data was relayed to the members, this misinformation was not provided to these members until they were interviewed by the VPD Professional Standards investigator, [REDACTED]. This misinformation would not have impacted their recollections when they drafted their Duty Reports. Furthermore, the nature of this incident cannot be characterized as benign or inconsequential. It is one where an individual reportedly called 9-1-1 to turn himself in for committing two Break and Enters. Police attended and spoke with this individual. Police determined there were not sufficient grounds to detain this individual further. A few hours later, it was learned that this individual committed a third Break and Enter which involved a violent sexual assault on the occupant on the home in Vancouver.

Following the initiation of an investigation into this matter, both [REDACTED] and [REDACTED] independently authored Duty Reports on [REDACTED]. They both noted in their respective Duty Reports that they were directed to attend to the area of [REDACTED] and [REDACTED] to check for a Break and Enter to a [REDACTED] store. They both reported attending the area for this purpose but did not observe anything that would lead them to believe a Break and Enter had occurred. The investigation confirmed, through GPS data, that neither officer attended this area. The Discipline Authority has made a preliminary finding that both [REDACTED] and [REDACTED] neglected their duty by failing to attend the area(s) identified as possible locations where a Break and Enter may have been committed, as requested.

In preparing their Duty Reports, it was determined that [REDACTED] and [REDACTED] had an opportunity to review the General Occurrence Report regarding this incident, and later stated they spoke to each other prior to submitting the reports. Both officers would have been very aware of the call relating to this incident. Both officers also had the benefit of seeking advice from Vancouver Police Union agents prior to submitting their Duty Report to the Professional Standards Investigator.

[REDACTED] and [REDACTED] both stated they have independent recollections of attending in the area of [REDACTED] and [REDACTED] to investigate a possible Break and Enter. They did not state that they did not recall; their statement of attendance and actions were firm and definite in their Duty Report. They provided descriptions of the efforts that they made to identify the location of the Break and Enter. Furthermore, they were unable to provide any information to investigators to suggest that another call to this location perhaps impacted their recollection.

Even with the passage of time from the date of this incident and the request for a Duty Report by the Professional Standards Investigator, the circumstances of this incident and the seriousness of the criminal act committed by the person involved would not likely be something that the officers would forget. Both officers would have known that the actions of all members involved in the original incident would be under scrutiny. There were no text pages in the General Occurrence Report authored by either [REDACTED] or [REDACTED], nor any notes which detailed their response or involvement in the call. If the members truly believed they attended this area as directed, it is difficult to understand the lack of reporting in the General Occurrence Report as they would have known that documenting their involvement and response would be required, given the totality of the circumstances.

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 David Pendleton, retired Provincial Court Judge, to review this matter and arrive at his 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 allegations of misconduct set out in this notice reflect the allegations listed and/or described by the Discipline Authority in their decision pursuant to section 112 of the *Police Act*. It is the responsibility of the retired judge to list and/or describe each allegation of misconduct considered in their decision of the matter pursuant to section 117(8)(c) of the Act. As such, the retired judge is not constrained by the list and/or description of the allegation as articulated by the Discipline Authority.

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 pre-hearing 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 20 business days.



Clayton Pecknold
Acting Police Complaint Commissioner

cc:

