

## CONCLUSION OF PROCEEDINGS

Pursuant to s. 133(6) of the *Police Act*, RSBC 1996 c.367

OPCC File 2017-13441

January 23, 2020

- To: Constable [REDACTED] (Members)  
Constable [REDACTED]  
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
- And to: Chief Constable Neil Dubord (External Investigative Agency)  
c/o Delta Police Department  
Professional Standards Section
- And to: Chief Officer Dave Jones (External Discipline Authority)  
c/o Delta Police Department  
Professional Standards Section
- And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

On May 17, 2017, 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 June 28, 2017, Commissioner Lowe ordered an investigation into allegations against two members of the Vancouver Police Department, Constable [REDACTED] and Constable [REDACTED] regard to the allegations brought forward by [REDACTED] regarding an incident involving [REDACTED]. The allegations against those two members have been investigated and concluded. The initial investigation was undertaken by Sergeant [REDACTED] of the Professional Standards Section of the Vancouver Police Department.

However, during the course of the investigation, additional information came to the attention of the Office of the Police Complaint Commissioner concerning the actions of Constable [REDACTED] and Constable [REDACTED]. Stemming from a review of Constable [REDACTED] duty

statement the assigned Professional Standards Investigator, Sergeant [REDACTED] requested duty statements from Constables [REDACTED] and [REDACTED]

The OPCC reviewed the duty statements provided by Constable [REDACTED] and Constable [REDACTED] and noted that both Constables reported that they were requested to attend the area of [REDACTED] [REDACTED] to check whether a Break and Enter into a [REDACTED] store as described by [REDACTED] had been committed. Both Constables also reported that they recalled attending the area to check, but did not locate a [REDACTED] store that appeared to be broken into.

In pursuing this investigation, Sergeant [REDACTED] collected Global Positioning Satellite (GPS) data associated with the police vehicle operated by Constables [REDACTED] and [REDACTED] on [REDACTED], and conducted interviews with the officers. Sergeant [REDACTED] did not provide the officers with copies of the GPS data to refresh their memories. Rather, he described the content of the GPS data to them, stating that the data indicated they had gone to the area of [REDACTED] as directed.

The OPCC reviewed both interviews and noted that Constable [REDACTED] reported that either Constable [REDACTED] (in the role of an Acting Sergeant), or Constable [REDACTED] had contacted him and requested that he and Constable [REDACTED] check the area of [REDACTED] for a Break and Enter into a [REDACTED] store. Constable [REDACTED] further reported that they drove to the area where he recalls seeing a couple of [REDACTED] stores, but did not observe anything that led him to believe that a Break and Enter had occurred.

Constable [REDACTED] reported that they were requested to attend the area of [REDACTED] [REDACTED] to check for any businesses that had been broken into. Constable [REDACTED] recalled going over and driving the area to check, and reporting their findings back to either Constable [REDACTED] (in the role of an Acting Sergeant), or Constable [REDACTED]

The OPCC reviewed the Global Positioning Satellite (GPS) data associated with the police vehicle operated by Constables [REDACTED] and [REDACTED] on March 26, 2015, and noted that the GPS data does not reflect the police vehicle being operated in the areas of [REDACTED] [REDACTED]

On July 10, 2018, The Police Complaint Commissioner issued an Amended Order for Investigation to include Constable [REDACTED] and Constable [REDACTED]. Additionally, due to concerns about the handling of this investigation, the Commissioner was of the opinion that it was necessary in the public interest that the alleged misconduct be investigated by an external police force, pursuant to section 93(1)(a) and section 93(1)(b)(ii) of the *Police Act*. The Delta Police Department was appointed to conduct the *Police Act* investigation. Further, the Commissioner designated Chief Constable Dave Jones, then of the New Westminster Police Department, as the External Discipline Authority for the allegations against all of the members.

Delta Police Professional Standards investigator, Staff Sergeant [REDACTED], conducted an investigation into this matter and on January 8, 2019, he submitted the Final Investigation Report to the Discipline Authority.

On January 22, 2019, Chief Constable Dave Jones issued his decision pursuant to section 112 in this matter. Specifically, Chief Constable Jones identified two allegations of misconduct against Constable [REDACTED] and Constable [REDACTED]

1. *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the *Police Act* by failing to promptly and diligently do anything it is one's duty as a member to do.
2. *Deceit*, pursuant to section 77(3)(f)(i)(A) of the *Police Act*, by providing a false or misleading oral or written statement.

Chief Jones determined that the allegation of *Deceit*, pursuant to section 77(3)(f)(i)(A) of the *Police Act*, against Constable [REDACTED] and Constable [REDACTED] did not appear to be substantiated.

On February 13, 2019, having reviewed the allegation and the alleged conduct in its entirety, Commissioner Pecknold considered that there was a reasonable basis to believe that the decision of the Discipline Authority regarding the allegation of *Deceit* was not correct. Therefore, pursuant to section 117(1) of the *Police Act*, Commissioner Pecknold appointed the Honourable David Pendleton, retired Provincial Court Judge, to review this matter and arrive at his own decision based on the evidence.

The allegation of *Neglect of Duty* remained with Chief Jones as the Discipline Authority and this *Police Act* process became bifurcated.

On March 19, 2019, Retired Judge Pendleton determined that the evidence referred to in the Final Investigation Report appeared sufficient to substantiate the misconduct allegation of *Deceit*.

On July 9 and 10, 2019, a discipline proceeding was held in relation to this matter. On September 25, 2019, this office received Retired Judge Pendleton's findings and reasons pursuant to the *Police Act*.

1. *Deceit* pursuant to section 77(3)(f)(i)(A) of the *Police Act*; specifically, that [REDACTED] and Constable [REDACTED] provided a false or misleading duty statement on [REDACTED] and a false or misleading oral statement during an interview on [REDACTED]

Section 125 Findings - Substantiated

Discipline Proposed – Suspension without pay for 20 days

## Review Process

Constables █████ and █████ were provided a copy of Retired Judge Pendleton's findings in relation to each allegation of misconduct and determinations on appropriate disciplinary or corrective measures at Discipline Proceeding. Constables █████ and █████ were informed that if they were aggrieved by either the findings or determinations, they could file a written request with the Police Complaint Commissioner (the Commissioner) to arrange a Public Hearing or Review on the Record. Pursuant to section 136(1) of the *Police Act*, such a request must be filed within 20 business days of receipt of the review of discipline proceedings. To promote accountability in the complaint process, all findings and determinations at the discipline proceeding are reviewed by the OPCC, regardless of whether a request has been made.

To date, the OPCC has not received a request from Constable █████ or Constable █████

## OPCC Decision

At this juncture in the complaint process, the role of the OPCC is to conduct a review of the Discipline Authority's findings at the conclusion of the discipline proceeding and determine whether to arrange a Public Hearing or Review on the Record. The Police Complaint Commissioner must arrange a Public Hearing if:

- A. there is a reasonable basis to conclude that the Discipline Authority has made an incorrect finding with respect to whether an allegation of misconduct is proven;
- B. there is a reasonable basis to conclude that the Discipline Authority has incorrectly applied section 126 of the *Police Act* in proposing discipline or corrective measures, or;
- C. a Public Hearing or Review on the Record is necessary in the public interest.

If the Police Complaint Commissioner does not arrange a Public Hearing or Review on the Record, the Discipline Authority's findings at the discipline proceeding and the disciplinary or corrective measures proposed are final and conclusive and not open to question or review by a court on any ground.

## Discipline Authority's Findings on the Allegations

### 1. *Deceit, pursuant to section 77(3)(f)(i)(A) of the Police Act*

*Finding – substantiated - not admitted*

There is no reasonable basis to believe that the Discipline Authority's findings under section 125(1) are incorrect.

## **Discipline Authority's Application of Section 126 of the *Police Act* in proposing disciplinary or corrective measures**

In considering all the relevant factors in this case, this office does not consider that there is a reasonable basis to believe that the Discipline Authority incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128 of the *Police Act*. The application of the aggravating and mitigating factors by the Discipline Authority was appropriate.

### **Public Interest Factors**

In determining whether a Public Hearing is required in the public interest, the Police Complaint Commissioner must consider all of the relevant factors, including, but not limited to:

- (a) the nature and seriousness of the complaint or alleged misconduct;
- (b) the nature and seriousness of harm or loss alleged to have been suffered by any person as a result of the conduct of the member or former member, including, without limitation, whether
  - (i) the conduct has caused, or would be likely to cause, physical, emotional or psychological harm or financial loss to a person,
  - (ii) the conduct has violated, or would be likely to violate, a person's dignity, privacy or other rights recognized by law, or
  - (iii) the conduct has undermined, or would be likely to undermine, public confidence in the police, the handling of complaints or the disciplinary process;
- (c) whether there is a reasonable prospect that a Public Hearing or Review on the Record would assist in determining the truth;
- (d) whether an arguable case can be made that,
  - (i) there was a flaw in the investigation,
  - (ii) the disciplinary or corrective measures proposed are inappropriate or inadequate, or
  - (iii) the Discipline Authority's interpretation or application of this Part or any other enactment was incorrect.

The allegations brought forward against Constable ██████ and Constable ██████ are serious, and as noted by Retired Judge Pendleton, their actions in making false statements in their duty reports and during interviews were made with the intent to mislead a police investigation. However, Retired Judge Pendleton also noted that some acts are more serious than others, and that the decisions provided by counsel in their submissions establish that a finding of deceit "does not invariably lead to dismissal." Having reviewed the investigation and the discipline process in this case, there is little likelihood that a Public Hearing or Review on the Record would assist in providing additional information which has not already been considered.

The investigation into these allegations was exceedingly thorough, and all of the evidence provided by the investigator was considered by the Discipline Authority in coming to his decision. This office is of the view that there is no flaw in the investigation; that the disciplinary or corrective measures proposed are appropriate; and that the Discipline Authority's interpretation or application of this Part or any other enactment is correct. Also, we have determined that a Public Hearing or Review on the Record is not necessary in the public interest.

There are insufficient grounds to make a recommendation to the Police Complaint Commissioner to arrange a Public Hearing or Review on the Record in these circumstances. The Police Complaint Commissioner has reviewed this assessment and agrees with the determination in this matter.

In relation to the substantiated allegation, the disciplinary or corrective measures imposed are approved. Our file with respect to this matter will be concluded upon receipt of confirmation that in accordance with *Police Act*, any disciplinary or corrective measure imposed in relation to, or agreed to by, a member or former member, has been completed, and that their service record of discipline has been updated.



Rick Gosling  
Investigative Analyst

cc: Staff Sergeant [REDACTED], Delta Police Department