



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 2018-14498

March 19, 2019

To:



(Members)

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 Mr. Wally Oppal, Q.C., (ret'd) (Retired Judge)  
Retired Judge of the Appeal Court of British Columbia

On March 20, 2018, based on information provided by the Vancouver Police Department and a request to initiate an investigation into the matter, Police Complaint Commissioner Stan Lowe ordered an investigation into the conduct of [REDACTED] and other unidentified members of the Vancouver Police Department. Vancouver Police Department Professional Standards investigator [REDACTED] conducted an investigation into this matter.

On September 20, 2018, based on information received from [REDACTED] pursuant to section 108 of the *Police Act*, eight respondent members, [REDACTED] were added to the investigation and an additional allegation of misconduct was identified against all nine respondent members.

Clayton Pecknold  
Police Complaint Commissioner

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On February 1, 2019, [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On February 19, 2019, [REDACTED] issued his decision pursuant to section 112 in this matter. [REDACTED] considered four allegations of misconduct in accordance with section 112(2)(c):

1. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*: Did [REDACTED] [REDACTED] conduct themselves in a manner that they should know, or ought to have known, would be likely to bring discredit to the Vancouver Police Department?
2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*: Did [REDACTED] [REDACTED] drive off with open beer cans in their vehicles?
3. *Discreditable Conduct* pursuant to section 77(3)(c)(iii) of the *Police Act*: Did [REDACTED] identify himself and the group as police officers to use or attempt to use his position as a Vancouver Police Department member for personal gain or other purposes unrelated to the proper performance of duties as a member?
4. *Corrupt Practice* pursuant to section 77(3)(c)(iii) of the *Police Act*: Did [REDACTED] attend the offices of [REDACTED] to use or attempt to use his position as a Vancouver Police Department member for personal gain or other purposes unrelated to the proper performance of duties as a member?

[REDACTED] determined that the evidence referenced in the Final Investigation Report appeared to substantiate allegations 3 and 4 against [REDACTED]. In accordance with the BC Supreme Court decision in *British Columbia (Police Complaint Commissioner) v. Bowyer, 2012 BCSC 1018*, those allegations will remain within the jurisdiction of [REDACTED] as Discipline Authority.

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 Allegation 1.

In my view, [REDACTED] did not apply the appropriate test for assessing *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*. In a *Police Act* decision from August 11, 2010, (OPCC file 2009-4719, *In the Matter of Constable \*\*\*\* of the Vancouver Police Department*) the Honourable Ian H Pitfield, a retired judge of the Supreme Court of BC, endorsed the test for *Discreditable Conduct* that was articulated in *Mancini v. Constable Martin Courage, OCCPS #04-09*, by the Ontario Civilian Commission on Police Services. Retired Judge Pitfield wrote:

[17]...*The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.*

[18] *While I am not bound by the view of the Ontario Commission, I do agree that the test was fairly stated in Mancini and appropriate in the context of the Police Act.*

The above test has been consistently applied by Discipline Authorities and adjudicators during *Police Act* matters to assess allegations of *Discreditable Conduct*. However, in this case, [REDACTED] appears to have elevated the test for *Discreditable Conduct* when assessing [REDACTED]'s drinking of an alcoholic beverage in public, which would constitute a breach of the *Liquor Control and Licensing Act (LCLA)*. [REDACTED] found that breach to be a minor infraction and that members of the community would not be shocked or offended by [REDACTED] consuming one beer, after work, with his peers. [REDACTED] concluded that [REDACTED]'s actions would, therefore, not discredit the Vancouver Police Department.

Police officers are duty bound by both the *Police Act* and the common law to enforce the law, including the *LCLA*, and offenses related to drinking in public. In the above cited decision from OPCC File 2009-4716, Retired Judge Pitfield wrote:

[20] *The community expectation that police officers who, when on duty, are engaged in the diligent detection and sanction of citizens who inappropriately drink and drive will themselves refrain, when off duty, from breaching the very laws they enforce, is reasonable. The omission to respect that expectation is discreditable conduct within the meaning of s. 77(3)(h) of the Police Act. As a result, I find that. (The Member) appears to have engaged in discreditable conduct which constituted misconduct when he operated a motor vehicle in circumstances which resulted in the imposition of a 24-hour roadside suspension.*

In my view, [REDACTED]'s conclusion that the infraction in question was minor and, therefore, not misconduct, was in error. While a contravention of the *LCLA* provisions regarding drinking in public is not as serious as impaired driving, the evidence indicates that the conduct in question in this matter was a routine occurrence. I disagree that the infraction was so minor that it would not fall below the reasonable expectation of the community to refrain from breaching the very laws that the officers involved were responsible for enforcing. I am also concerned that this rationale may be viewed by the public as lowering the standard of ethical behavior expected of police officers based on the view that minor infractions of the law are acceptable thus creating both a perceived double-standard and the risk of increased incidents of misconduct.

Further, I am of the view that [REDACTED] erred by only assessing the conduct of the officer who admitted to consuming alcohol rather than considering the totality of the groups' conduct to determine if the participation by all members present in a gathering during which violations of the *LCLA* were occurring would constitute *Discreditable Conduct*, or any other form of misconduct pursuant to section 77(3). In this regard, I note that the evidence indicates that this group of officers has a joint bank account to support their social activities. These joint funds were used to purchase twelve cans of beer, snacks and ice, by the junior member of the squad. A few of the members admitted that beer was present at the time, and one of them believed empty beer cans may have been on the ground. The security person who observed the group provided evidence that she observed two to four cans on the ground with labels that appeared to match that of Sleeman beer, and two people pouring out what she believed to be Sleeman beer. I note again the *Police Act* and common duties to enforce the law, the evidence that

indicates that this type of gathering was a routine occurrence for this squad and that on previous occasions the group had been approached by security guards who left the officers alone after the officers identified themselves.

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 Wally Oppal Q.C., retired British Columbia Court of Appeal 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 10 business days.



Clayton Pecknold  
Police Complaint Commissioner

cc: [REDACTED], Registrar  
Vancouver Police Board