

IN THE MATTER OF  
THE POLICE ACT R.S.B.C. 1996 c. 367 AS AMENDED  
AND  
IN THE MATTER OF THE PUBLIC HEARING INTO THE COMPLAINT AGAINST  
CONSTABLE ERIC LUDEMAN AND CONSTABLE NEIL LOGAN  
OF THE VANCOUVER POLICE DEPARTMENT

Before: Adjudicator C. Baird Ellan

REASONS FOR ADJOURNMENT  
OF CONTINUATION OF PUBLIC HEARING

Public Hearing Counsel  
Commission Counsel  
Counsel for Cst. Ludeman  
Counsel for Cst. Logan  
Counsel for Chief Constable Palmer

Brad Hickford  
Mark Underhill  
Claire Hatcher  
Kevin Woodall  
Marino Sveinson

Date of Decision:

May 11, 2020

Reasons Filed:

May 14, 2020

**Introduction**

[1] A public hearing commenced before me on March 10, 2020 into a complaint filed by Vladimir Tchaikoun regarding the conduct of Vancouver Police Constables Ludeman and Logan in an incident on March 13, 2016. The matter proceeded for four days from March 10 to 13, 2020, with continuation dates set in the weeks of May 25 and June 22, 2020. Despite the age of the complaint and the public interest in proceeding expeditiously, these were the earliest dates on which all counsel could find dates in common.

[2] For the reasons that follow, the continuation dates set for the week of May 25, 2020 were adjourned on May 11, 2020.

## Provincial COVID-19 Measures

[3] During the week of March 10, 2020, Canada was starting to take measures to prevent the spread of COVID-19. By March 11, travellers were being asked to self-isolate on return to Canada and some BC public events were cancelled<sup>1</sup>. On March 13, 2020, the BC Courts issued a joint statement about measures to safeguard the health of court participants, and designated alert levels which culminated in level 4, where only essential services would be performed. At that time, the courts deemed the situation to be at level 2 and courthouses remained open<sup>2</sup>.

[4] On March 16, 2020, the Police Complaint Commissioner issued Information Bulletin #19, outlining the OPCC's response to the pandemic. In addition to providing guidance in relation to the conduct of OPCC matters during COVID-19 measures, the Commissioner enumerated a list of public interest factors to be considered in making decisions: "procedural fairness, timeliness of investigations and proceedings; the need for thorough and complete investigations; the preservation of evidence; accountability and transparency to the public, and; to ensure the complaints process upholds the rights of respondents, complainants and affected persons." In addition, the Commissioner stressed the importance of proceeding expeditiously and stated:

To ensure transparency and accountability of the complaints process, decision-makers are advised that all considerations should be clearly articulated and documented as to those public interest factors described above. This includes requests to this office such as discontinuations or extensions of investigations as well as those matters decided independently by investigators or discipline authorities under Part 11.

[3] On March 17, 2020, the BC Public Health Officer declared a public health emergency, and on March 18, the BC government declared a provincial state of emergency<sup>3</sup>. On March 18, 2020, the provincial government declared a state of emergency. The BC Courts followed suit on March 18 with the Supreme Court declaring a Level 4 alert level and suspending all but emergency matters as of March 19<sup>th</sup> and the Provincial Court suspending regular operations as of March 25<sup>th</sup>.

[5] With those measures, Courtroom 109 at Robson Square, where this matter was scheduled to proceed, became unavailable for use by the OPCC. On March 26, 2020, the Minister for

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<sup>1</sup> <https://www.cbc.ca/news/canada/british-columbia/coronavirus-update-bc-what-you-need-to-know-1.5494135>

<sup>2</sup> [https://www.bccourts.ca/Court\\_of\\_Appeal/documents/COVID-19\\_Index\\_of\\_Notices.pdf](https://www.bccourts.ca/Court_of_Appeal/documents/COVID-19_Index_of_Notices.pdf)

<sup>3</sup> <https://news.gov.bc.ca/releases/2020PSSG0017-000511>

Public Safety and Solicitor General issued Ministerial Order 86 (MO 86) abating mandatory limitation periods during the state of emergency. On March 30, 2020, the Commissioner amended Information Bulletin No. 19 in relation to mandatory timelines, to align with Ministerial Order 86. The portions of the Bulletin referred to above remained unaltered.

[4] In light of the courthouse closures, a case management teleconference was convened on this matter on May 4, 2020, but adjourned to May 11 to await the provincial health officer's anticipated May 6 outline of the provincial reopening plan, in case that might affect the availability of the courtroom on the scheduled May dates. As of May 11, it was clear that courtroom 109 would not become available for this matter to resume, because it is too small to accommodate the distancing measures that will continue to be required by public health guidelines as the province reopens.

[5] While the OPCC is making inquiries as to the availability of alternate venues in which physical distancing and hygiene measures could be appropriately implemented. In addition, for a public hearing such as this the venue will require a closed circuit video monitoring system to accommodate public access. No such venue had been identified as of the May 11 teleconference, nor was it anticipated that any would be found and appropriately equipped by the week of May 25. It was the consensus of counsel and the other participants on the teleconference that the matter would not be able to proceed as scheduled on the week of May 25, 2020.

[6] Having regard to the public interest factors identified by the Commissioner in Information Bulletin #19, an adjournment of this block of time clearly does not assist in achieving a timely resolution of the matter, nor does it operate fairly to the complainants and other persons affected. The incident date is now over four years ago. A witness who testified during the week of March 10 awaits cross-examination. The break in the evidence and two-month delay in its resumption from March to May that was already scheduled was itself undesirable. This adjournment just exacerbates that. It is clear that, as soon as a venue is identified in which the necessary measures can be implemented, there will be considerable urgency to bring this matter to completion within a reasonable time; particularly given that it has already commenced and a witness's testimony has been interrupted.

[7] The next block of time reserved for the hearing is the week of June 22 to 26, 2020. There is cause for optimism that an appropriate venue will be identified and properly equipped by the

OPCC, by then, if not before that. Counsel were also asked to consider the weeks of June 15 (the week prior to the block currently reserved), or the week of July 20, 2020, as alternate blocks with which to replace the May week that has now been lost. Counsel had some discussion at the teleconference about the relative priorities of several OPCC matters that were vying for time during one or the other of those weeks.

[8] If it comes to a conflict those priorities will need to be further canvassed on the record, in light of the relevant public interest factors, and bearing in mind that this is a very dated matter that has already commenced and on which counsel have already taken instructions and prepared.

[9] May 25, 2020 has been retained as an appearance date by teleconference for the purpose of confirming the continuation dates and receiving updates on the identification of venues.

Reasons filed at Vancouver, British Columbia this 14<sup>th</sup> day of May, 2020.



Carol Baird Ellan, Retired Judge  
Adjudicator