



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH: 2019-01
OPCC File: 2016-12210

NOTICE OF PUBLIC HEARING

Pursuant to section 138(1) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Public Hearing into the Complaint against
Constable Eric Ludeman and Constable Neil Logan
of the Vancouver Police Department**

- To: Mr. Vladimir Tchaikoun (Complainant)
- And to: Constable Eric Ludeman #2982
Constable Neil Logan #2787 (Members)
c/o Vancouver Police Department
Professional Standards Section
- And to: The Honourable Judge Brian Neal, Q.C. (Discipline Authority)
Retired British Columbia Provincial Court Judge
- And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

WHEREAS:

Investigation

1. On April 5, 2016, the Office of the Police Complaint Commissioner (OPCC) received a registered third-party complaint describing concerns with members from Vancouver Police Department (VPD). The third-party referenced a Global News story regarding the force used by police officers against Mr. Vladimir Tchaikoun.
2. The allegations contained in the complaint were reviewed. The allegation concerning use of force was determined to be admissible and, accordingly, the complaint was forwarded to the Professional Standards Section of the Vancouver Police Department for investigation.

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Police Complaint Commissioner

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3. On March 6, 2017, the OPCC received a registered complaint from Mr. Vladimir Tchaikoun who was “directly affected” by the conduct of Vancouver police officers.
4. As a result of Mr. Tchaikoun’s complaint, the third-party complaint was discontinued pursuant to section 84(3) of the *Police Act*.
5. Mr. Tchaikoun advised in his registered complaint that on March 13, 2016, he was at his residence when there was a knock at the door. When he opened the door, officers addressed him in a very aggressive tone with one officer asking about his wife. While holding the door open, officers forced their way through the door. According to Mr. Tchaikoun, officers then commenced to “assault” him. It was alleged that officers punched, kicked, and struck him numerous times using a baton, elbows, legs, and a head-butt. Mr. Tchaikoun also reported that when his wife and son came downstairs, officers pushed his daughter to the ground and “assaulted” his son with at least three punches to the face. Mr. Tchaikoun reported that he had not raised his voice, used impolite language, made any threatening gestures, and had not attempted to close the door, or touch any officer.
6. On May 4, 2018, the Police Complaint Commissioner determined that it was necessary in the public interest the alleged misconduct be investigated by an external police force, pursuant to section 92(1) of the *Police Act*. The Victoria Police Department was ordered to conduct the external *Police Act* investigation and Chief Constable Del Manak appointed an investigating officer to conduct the investigation.
7. The Police Complaint Commissioner also considered it necessary in the public interest that a person other than the Chief Constable of the Vancouver Police Department or their delegate be the Discipline Authority in relation to this matter. The OPCC received information that Mr. Tchaikoun had engaged in civil litigation against the Vancouver Police Department in relation to this matter. In order to avoid any conflict of interest and to address any perception of bias, the Police Complaint Commissioner appointed, pursuant to section 135(1) of the *Police Act*, Chief Constable Del Manak of the Victoria Police Department to exercise the powers and perform the duties of a Discipline Authority in relation to this matter.
8. Chief Constable Del Manak delegated the Discipline Authority powers and duties to Inspector Colin Brown of the Victoria Police Department.
9. Victoria Police Department Professional Standards investigator, Sergeant Steve Kowan, conducted an investigation into this matter and on December 4, 2018, he submitted the Final Investigation Report (FIR) to the Discipline Authority.
10. On December 17, 2018, the Discipline Authority rejected the Final Investigation Report and directed further investigation.

11. On March 5, 2019, a subsequent Final Investigation Report was submitted by Sergeant Steve Kowan to the Discipline Authority.
12. On March 19, 2019, the Discipline Authority issued his decision pursuant to section 112 of the *Police Act* in this matter. Specifically, the Discipline Authority determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* did not appear to be substantiated.

Section 117 of the *Police Act*

13. On April 16, 2019, pursuant to section 117(1) of the *Police Act* and having reviewed the allegation and the alleged conduct in its entirety, I considered that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect; specifically, the determination that Constable Ludeman and Constable Logan had the lawful authority to enter Mr. Tchaikoun's residence. Further, the Discipline Authority relied upon court decisions with factual patterns that were not directly applicable to this case. Finally, considering that the use of force flowed from the entry into the residence, the use of force may not have been justified in the circumstances.
14. 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 appointed the Honourable retired Provincial Court Judge Brian Neal, Q.C., to review this matter and arrive at his own decision based on the evidence.
15. On May 10, 2019, retired Judge Neal, Q.C. issued the Notice of Adjudicator's Decision. In that decision, retired Judge Neal, Q.C. concluded that the evidence appeared sufficient to substantiate that Constable Logan and Constable Ludeman committed *Abuse of Authority* when they entered Mr. Tchaikoun's residence on March 13, 2016.
16. Further, retired Judge Neal, Q.C. concluded that the evidence appeared sufficient to substantiate that Constable Ludeman committed *Abuse of Authority* for intentionally or recklessly using unnecessary force in the course of his entry into Mr. Tchaikoun's residence on March 13, 2016.
17. Finally, retired Judge Neal, Q.C. concluded that the evidence was not sufficient to substantiate that Constable Logan committed *Abuse of Authority* for intentionally or recklessly using unnecessary force in the course of his entry into Mr. Tchaikoun's residence on March 13, 2016.
18. Retired Judge Neal, Q.C. offered a prehearing conference to both Constable Ludeman and Constable Logan with respect to the substantiated allegations.
19. The offer of a prehearing conference was not accepted by either Constable Ludeman or Constable Logan. The matter proceeded to a discipline proceeding.

Discipline Proceeding

20. No witnesses were called at the Discipline Proceeding, and as a result, Mr. Tchaikoun and other members of his family who were witnesses to the events did not have the opportunity to give testimony relating to the complaint. Further, only Constable Ludeman and the investigating officer, Sergeant Steve Kowan, testified at the Discipline Proceeding. Constable Logan declined to testify at the Discipline Proceeding and account for his actions. In his decision, retired Judge Neal, Q.C noted,

"It is clear from a review of the FIR that on several matters material to the investigation, the evidence of [Constable Logan] at trial and during the subsequent inquiries differed from that of other witnesses." (Reasons for Decision, Discipline Proceeding page 11 par 57)

And,

"Counsel for [Constable Logan] was cautioned that [Constable Logan's] failure to testify could allow an adverse inference to be drawn in these proceedings. He was also advised that as Adjudicator, I had several questions to put to the Member concerning his earlier evidence." (Reasons for Decision, Discipline Proceeding page 11 par 58)

21. On September 23, 2019, following the Discipline Proceeding, and after considering the available evidence and submissions, the retired Judge Neal, Q.C., acting as the Discipline Authority, determined that none of the allegations against Constable Logan or Constable Ludeman were substantiated, concluding in part,

"Although [Constable Ludeman's] actions in entering the home of the Complainant and using force on that person were not found to be lawful, they were nonetheless not actions taken in bad faith or recklessly." (Reasons for Decision, Discipline Proceeding page 36 par 158)

22. Pursuant to provisions contained in the *Police Act*, unless the member whose conduct is the subject of the proceeding initiates a request to call witnesses to testify in the proceeding, there is no other mechanism to allow for the participation of material witnesses. This limits the evidence available to the Discipline Authority, as was noted by retired Judge Neal, Q.C. in his findings,

"It is not a simple matter to consider the credibility and reliability of the Complainant's evidence and that of his family members. The inability to hear from the Complainant other than by way of written submissions of necessity limits my ability to fully assess matters from inside the Complainant's home. This perspective is critically important because on many issues it differs with the perspective presented by the Members." (Reasons for Decision, Discipline Proceeding, page 12 par 66)

Request for Public Hearing

23. Mr. Tchaikoun, Constable Ludeman and Constable Logan were provided a copy of retired Judge Neal, Q.C.'s findings in relation to each allegation of misconduct. Mr. Tchaikoun was informed that if he was aggrieved by the findings he could file a written request with the Police Complaint Commissioner to arrange a Public Hearing or Review on the Record.
24. On October 17, 2019, the OPCC received a request from Mr. Tchaikoun that the Police Complaint Commissioner should exercise his authority to arrange a Public Hearing pursuant to the *Police Act*. Mr. Tchaikoun advised that he and his family have evidence that contradicts evidence of police and that he has not been given the opportunity to present that evidence in court. Mr. Tchaikoun is of the view that the inability to present his evidence gives the Discipline Authority a limited point of view of what occurred in his residence. He further stated that the police officers' conduct has undermined public confidence in the police as they intentionally used excessive force during this incident. Mr. Tchaikoun submits that a Public Hearing would assist in determining the truth, as the victims and witnesses will have the opportunity to testify. Mr. Tchaikoun reports that the injuries and impact stemming from the police conduct has been significant and long-lasting.

Decision

25. Pursuant to section 138(1) of the *Police Act*, the Commissioner must arrange a Public Hearing or Review on the Record if the Commissioner considers that there is a reasonable basis to believe: that the Disciplinary Authority's findings under section 125(1) are incorrect; the Discipline Authority has incorrectly applied section 126 in proposing disciplinary or corrective measures under section 128(1); or, if the Commissioner considers that a Public Hearing is necessary in the public interest.
26. Having reviewed the investigation, the Discipline Proceeding and associated determinations, pursuant to section 138 of the *Police Act*, I have determined that a Public Hearing is required and necessary in the public interest. In determining that a Public Hearing is necessary in the public interest, I have considered several relevant factors, including, but not limited to the following:
 - a) The complaint is serious in nature as the allegations involve a significant use of force;
 - b) The complaint involves a warrantless entry into a private residence and a "fundamental breach of homeowner rights" which was determined to have not been "authorized by law" by retired Judge Neal, Q.C.;
 - c) The investigation established that Mr. Tchaikoun received significant injuries during the interaction including a diagnosis from a medical doctor of a probable concussion, damaged teeth, severe bruising of the entire body including face, head, arms, legs, chest, back, abdomen, and also multiple lacerations on his head, face, lips, nose;

- d) It is necessary to examine and cross-examine witnesses and receive evidence that was not part of the record at the Discipline Proceeding in order to ensure a complete accounting of the events and to allow for the credibility of all parties to be fully assessed;
 - e) There is a reasonable prospect that a Public Hearing will assist in determining the truth; and
 - f) A Public Hearing is required to preserve public confidence in the Vancouver Police Department.
27. It is therefore alleged that Constable Ludeman and Constable Logan committed the following disciplinary defaults, pursuant to section 77 of the *Police Act*:
- (i) That on March 13, 2016, Constable Ludeman and Constable Logan committed *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* by engaging in oppressive conduct towards a member of the public; specifically, that the members unlawfully entered the complainant's residence.
 - (ii) That on March 13, 2016, Constable Ludeman and Constable Logan committed *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* by intentionally or recklessly using unnecessary force in the course of their entry into the home of the complainant.
28. Pursuant to section 143(5) of the *Police Act*, Public Hearing counsel, Constable Ludeman and Constable Logan or their legal counsel and commission counsel may:
- a) call any witness who has relevant evidence to give, whether or not the witness was interviewed during the original investigation or called at the discipline proceeding;
 - b) examine or cross-examine witnesses;
 - c) introduce into evidence any record or report concerning the matter; and
 - d) make oral or written submissions, or both, after all of the evidence is called.
29. Pursuant to section 143(7) of the *Police Act*, Mr. Tchaikoun, his agent or legal counsel, may make oral or written submissions, or both, after all of the evidence is called.

THEREFORE:

30. A Public Hearing is arranged pursuant to section 137(1) and 143(1) of the *Police Act*.
31. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable Carol Baird Ellan, retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*. Dates for the Public Hearing have not yet been determined. The Public Hearing will commence at the earliest practicable date.

TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 7th day of November, 2019.



Clayton Pecknold
Police Complaint Commissioner