



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 2018-14701

August 2, 2019

- To: [REDACTED] (Members)
And to: [REDACTED]
c/o South Coast British Columbia Transportation Authority Police Service
Professional Standards Section
- And to: Acting Deputy Commissioner Eric Stubbs (External Investigative Agency)
c/o Royal Canadian Mounted Police
Professional Standards Section
- And to: [REDACTED] (Discipline Authority)
c/o South Coast British Columbia Transportation Authority Police Service
Professional Standards Section
- And to: The Honourable Judge Ron McKinnon, (ret'd) (Retired Judge)
Retired Judge of the Supreme Court of
British Columbia
- And to: Mr. Mark Reder
Chair, c/o SCBCTAPS Police Board

On May 1, 2018, based on information provided by the South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) pursuant to section 89 of the *Police Act*, in relation to an incident which occurred on [REDACTED], former Police Complaint Commissioner Lowe ordered an investigation into the conduct of [REDACTED] and [REDACTED]. [REDACTED], from the [REDACTED] of the [REDACTED] RCMP Detachment, conducted an investigation into this matter.

On July 2, 2019, [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

Clayton Pecknold
Police Complaint Commissioner

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On July 9, 2019, [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, [REDACTED] identified two allegations of misconduct against [REDACTED] and two allegations of misconduct against [REDACTED]. He determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* against [REDACTED] and [REDACTED] did not appear to be substantiated. Additionally, he determined that the allegation of *Deceit* pursuant to section 77(3)(f)(i)(B) 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 incorrect in concluding that the force used by officers did not constitute *Abuse of Authority*. In addition he did not consider whether, in the alternative, the officers breached their duty of care towards [REDACTED] once he was in their custody.

The evidence indicates that the officers were in the lawful execution of their duties and that [REDACTED] was trying to evade them. However, when [REDACTED] is on the ground and the officers are on top of him, the video depicts [REDACTED] applying force to [REDACTED] head resulting in it striking on the concrete. [REDACTED] then lays motionless for a brief period. There is a reasonable basis on the evidence to conclude that application of force was unnecessary and excessive.

There is also a reasonable basis on the evidence to conclude that the force, when escorting [REDACTED] out of the station, was also unnecessary and excessive, or in the alternative, a breach of the officers' duty of care with respect to a person in their custody. [REDACTED] appears in the video to be having difficulty walking, yet the officers do not attempt to assess his condition. Rather, they continue to lift up on his handcuffs, at one point forcing his arms above his head as they take him down the escalator without reasonable regard for any injuries he may have suffered when he was arrested.

With respect to whether the officers' conduct can be characterized by a blameworthy element, I have considered the fact that this was a minor infraction that led to significant use of force and injury to [REDACTED]. There is evidence that the officers were both reckless in their assessment of the circumstances and the proportionality of the force used, or, minimally, neglectful in their duty of care towards [REDACTED].

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 Judge Ron McKinnon, retired Supreme 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.



Clayton Pecknold
Police Complaint Commissioner

cc: [REDACTED]