



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 2019-16794

June 12, 2020

- To: [REDACTED] (Complainant)
- And to: Constable [REDACTED] (Members)
Constable [REDACTED]
Constable [REDACTED]
Constable [REDACTED]
c/o Vancouver Police Department
Professional Standards Section
- And to: Inspector [REDACTED]
c/o Vancouver Police Department
Professional Standards Section
- And to: The Honourable Judge Carole Lazar, (ret'd) (Retired Judge)
Retired Judge of the British Columbia Provincial Court
- And to: His Worship Mayor Kennedy Stewart
Chair, c/o Vancouver Police Department Police Board

On September 3, 2019, our office received a complaint from [REDACTED] describing his concerns with members of the Vancouver Police Department (VPD). The OPCC determined [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed Vancouver Police Department to investigate.

On April 30, 2020, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On May 14, 2020, Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified two allegations of misconduct against each of the respondent members, Constable [REDACTED], Constable [REDACTED], Constable [REDACTED],

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and Constable [REDACTED]. He determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(B) of the *Police Act* against Constable [REDACTED] Constable [REDACTED] Constable [REDACTED] and Constable [REDACTED] did not appear to be substantiated. He also determined that the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(i) of the *Police Act* against Constable [REDACTED] Constable [REDACTED] Constable [REDACTED] and Constable [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.

Background

In his registered complaint, [REDACTED] stated that on August 30, 2019, at approximately 6:10 p.m. he was seated in a friend's vehicle outside his residence building at [REDACTED]. He unloaded several boxes and bags of his personal possessions in preparation for transporting them inside his building. The contents of the boxes and bags included, among other items, four axes, a machete, a Crossman air pistol, and an assortment of knives including a Tops Cockpit Commander knife. The handles of an axe and machete were both visible.

[REDACTED] reported that he walked approximately ten feet towards the front door of his residence building before being stopped by four VPD officers. He stated that he complied with the demands of the officers but verbally protested what he perceived as an illegitimate search. He complained that his items were turned out all over the sidewalk and that the officers played with his air pistol in an unprofessional manner.

[REDACTED] alleged that the officers seized his air pistol, machete, and several knives including a Tops Cockpit Commander knife. He reported that a female officer photographed this particular knife before it was seized. It was described as having a custom lanyard on the handle. [REDACTED] stated that this particular knife was never received by the VPD Property Office and was never returned to him when the remainder of the seized items were returned.

DA Decision

Inspector [REDACTED] found that [REDACTED] was seen carrying an axe and was detained, and then arrested, for possession of a dangerous weapon and possession of stolen property. He found the search was incident to arrest and that the police were there to deal with street vending, and violence, and to seize weapons if grounds existed. Inspector [REDACTED] noted [REDACTED] was openly carrying a weapon, [REDACTED] was not handcuffed and had no force applied to him so the action was not oppressive. He further found the knife was inadvertently lost or mixed with other property and destroyed, which seemed to be due to a mistake. Inspector [REDACTED] found the property was processed properly, noting that the members all took appropriate steps to catalog and secure [REDACTED] property.

OPCC Decision, Section 117 of the *Police Act*

I am of the view that the circumstances merited investigation by the officers, but disagree with the Discipline Authority's determination that they had reasonable and probable grounds for arrest. [REDACTED] indicated he noticed several VPD officers sweeping the vending area near his residence and determined it was a good time to move his items inside his building as most of the local street population had cleared out of the area. He further stated he was simply carrying his property to his residence and the video indicates he was doing so in a peaceable and open manner. The officers did not provide any evidence to suggest otherwise, or that supported reasonable and probable grounds to believe that the items [REDACTED] was carrying were in these circumstances in violation of the Criminal Code. They were not subsequently dealt with in a manner consistent with the officers belief that they were possessed in contravention to the Criminal Code. The officers returned the axe at the scene and submitted the machete to the property office for safekeeping. No charges were pursued.

Similarly, only Constable [REDACTED] mentioned that he believed [REDACTED] was in possession of stolen property, but he offered no foundation for that belief. The General Occurrence Report indicates that the officers were engaged in a "street vending callout," during which *"items that appeared to not belong to owner (clothes with store tags, items with no receipts, items voluntarily relinquished) and any plain view weapons were seized during police patrol of the vending and street vending areas."* Video evidence supports the conclusion that this was the officer's intent when they stopped [REDACTED], not that they subjectively believed they had reasonable and probable grounds that the property was stolen. Email communication between Constable [REDACTED] and [REDACTED] further demonstrates that the officers seized [REDACTED] property with the intent of requiring him to prove ownership, rather than establishing their lawful authority to seize the items.

I am of the view that [REDACTED] was targeted as part of a general police enforcement sweep in a depressed socio-economic area. The officers did not establish grounds for their specific actions involving [REDACTED], rather launched into an immediate search and seizure of [REDACTED] property, without advising him of his *Charter* rights. One of the seized items was not properly accounted for by the officers. While there may be legitimate reasons of public safety to engage in enforcement and to speak to [REDACTED] the manner in which it occurred raises the concern that the actions of the officers with respect to him were arbitrary and without lawful authority.

With respect to the missing knife, the evidence demonstrates that it was not turned over to the attending community safety officers and, therefore, went missing while in the respondent members custody and control. There is no evidence that it was mistakenly mixed with other property.

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 Carole Lazar, retired Provincial Court Judge, to review this matter and arrive at her 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

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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.

Take Notice: That on April 8, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. MO98, the Limitation Periods (COVID-19) Order, pursuant to section 10(1) of the *Emergency Programs Act*. That Order is in effect from the date of the Order until the end of the state of emergency the Provincial Government of British Columbia declared on March 18, 2020, in response to the COVID-19 pandemic. Should the appointed Retired Judge require further time to issue her decision, we refer her to section 3 of the Limitation Periods (COVID-19) Order.



Clayton Pecknold
Police Complaint Commissioner

cc: [REDACTED], Registrar