

## Office of the Police Complaint Commissioner

British Columbia, Canada

## NOTICE OF APPOINTMENT OF RETIRED JUDGE

Pursuant to section 117(4) of the Police Act

July 27, 2020 To: (Complainant) Mr. And to: Constable (Members) Constable c/o Victoria Police Department Professional Standards Section And to: Inspector c/o Victoria Police Department Professional Standards Section And to: The Honourable Judge James Threlfall (ret'd) (Retired Judge) Retired Judge of the Provincial Court of British Columbia And to: Her Worship Mayor Lisa Helps Her Worship Mayor Barbara Desjardins Co-Chairs, c/o Victoria Police Board

Mr. alleged that he and three friends were walking home from a costume-themed party on the evening of August 4, 2019, when the group was approached by VicPD members Constables and and Reserve Constable sproup were dressed in costume, and Mr and the two female members of his group were carrying open alcoholic beverages.

Mr. alleged that the officer in the passenger seat asked him if he was "fucking Flava Flav?" a reference to a black rapper. Mr. recalled that the officer continued to use inappropriate, racial comments, and was aggressive in his language and tone. For example, Mr. alleged that the officer kept saying "you people" when commenting on the costume he wore to the party. When Mr. produced his identification, the officer stated "what kind"

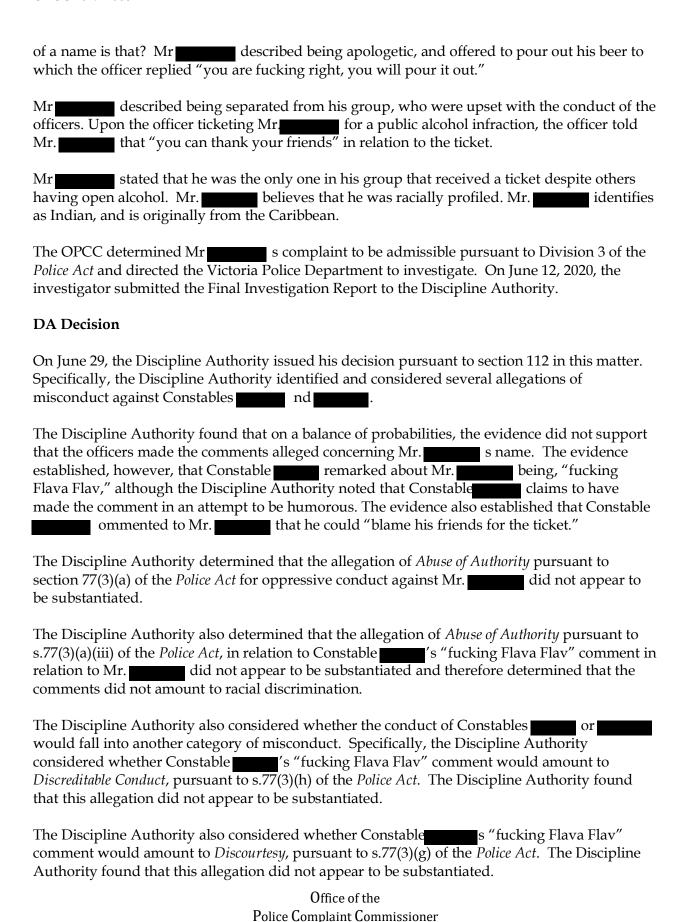
On August 6, 2019, our office received a complaint from Mr.

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describing his

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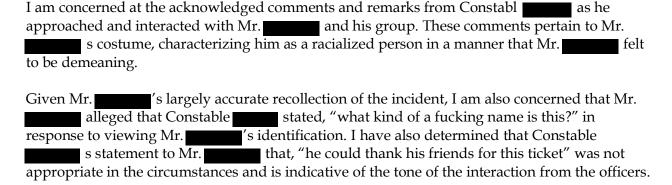
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Lastly, the Discipline Authority considered whether the conduct of Constable and	
in stopping and ticketing Mr. would amount to Abuse of Authority pursu	ant to
s.77(3)(a)(iii) of the <i>Police Act</i> . The Discipline Authority found that this allegation did not a	appear
to be substantiated and therefore determined that the racial profiling, as alleged by Mr.	
was not proven.	
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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.

## OPCC Decision, Section 117 of the Police Act



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 James Threlfall, Retired Provincial 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

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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 his decision, we refer him to section 3 of the Limitation Periods (COVID-19) Order.

Clayton Pecknold

Police Complaint Commissioner

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cc: Registrar

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