



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: 2019-16684

July 27, 2020

To: Mr. [REDACTED] (Complainant)

And to: Constable [REDACTED] (Members)  
Constable [REDACTED]  
c/o Victoria Police Department  
Professional Standards Section

And to: Inspector [REDACTED]  
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

On August 6, 2019, our office received a complaint from Mr. [REDACTED] describing his concerns with members of the Victoria Police Department (VicPD) on August 4, 2019.

Mr. [REDACTED] 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 [REDACTED] and [REDACTED] and Reserve Constabl [REDACTED], travelling in an unmarked VicPD vehicle. Mr. [REDACTED] s group were dressed in costume, and Mr [REDACTED] and the two female members of his group were carrying open alcoholic beverages.

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

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of a name is that? Mr. [REDACTED] described being apologetic, and offered to pour out his beer to which the officer replied “you are fucking right, you will pour it out.”

Mr. [REDACTED] described being separated from his group, who were upset with the conduct of the officers. Upon the officer ticketing Mr. [REDACTED] for a public alcohol infraction, the officer told Mr. [REDACTED] that “you can thank your friends” in relation to the ticket.

Mr. [REDACTED] stated that he was the only one in his group that received a ticket despite others having open alcohol. Mr. [REDACTED] believes that he was racially profiled. Mr. [REDACTED] identifies as Indian, and is originally from the Caribbean.

The OPCC determined Mr. [REDACTED]’s complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the Victoria Police Department to investigate. On June 12, 2020, the investigator submitted the Final Investigation Report to the Discipline Authority.

### DA Decision

On June 29, the Discipline Authority issued his decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified and considered several allegations of misconduct against Constables [REDACTED] and [REDACTED].

The Discipline Authority found that on a balance of probabilities, the evidence did not support that the officers made the comments alleged concerning Mr. [REDACTED]’s name. The evidence established, however, that Constable [REDACTED] remarked about Mr. [REDACTED] being, “fucking Flava Flav,” although the Discipline Authority noted that Constable [REDACTED] claims to have made the comment in an attempt to be humorous. The evidence also established that Constable [REDACTED] commented to Mr. [REDACTED] that he could “blame his friends for the ticket.”

The Discipline Authority determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* for oppressive conduct against Mr. [REDACTED] did not appear to be substantiated.

The Discipline Authority also determined that the allegation of *Abuse of Authority* pursuant to s.77(3)(a)(iii) of the *Police Act*, in relation to Constable [REDACTED]’s “fucking Flava Flav” comment in relation to Mr. [REDACTED] did not appear to be substantiated and therefore determined that the comments did not amount to racial discrimination.

The Discipline Authority also considered whether the conduct of Constables [REDACTED] or [REDACTED] would fall into another category of misconduct. Specifically, the Discipline Authority considered whether Constable [REDACTED]’s “fucking Flava Flav” comment would amount to *Discreditable Conduct*, pursuant to s.77(3)(h) of the *Police Act*. The Discipline Authority found that this allegation did not appear to be substantiated.

The Discipline Authority also considered whether Constable [REDACTED]’s “fucking Flava Flav” comment would amount to *Discourtesy*, pursuant to s.77(3)(g) of the *Police Act*. The Discipline Authority found that this allegation did not appear to be substantiated.

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

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***

I am concerned at the acknowledged comments and remarks from Constable [REDACTED] as he approached and interacted with Mr. [REDACTED] and his group. These comments pertain to Mr. [REDACTED]'s costume, characterizing him as a racialized person in a manner that Mr. [REDACTED] felt to be demeaning.

Given Mr. [REDACTED]'s largely accurate recollection of the incident, I am also concerned that Mr. [REDACTED] alleged that Constable [REDACTED] stated, "what kind of a fucking name is this?" in response to viewing Mr. [REDACTED]'s identification. I have also determined that Constable [REDACTED]'s statement to Mr. [REDACTED] that, "he could thank his friends for this ticket" was not appropriate in the circumstances and is indicative of the tone of the interaction from the officers.

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

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

cc: [REDACTED], Registrar