

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 2018–14770 May 14, 2020

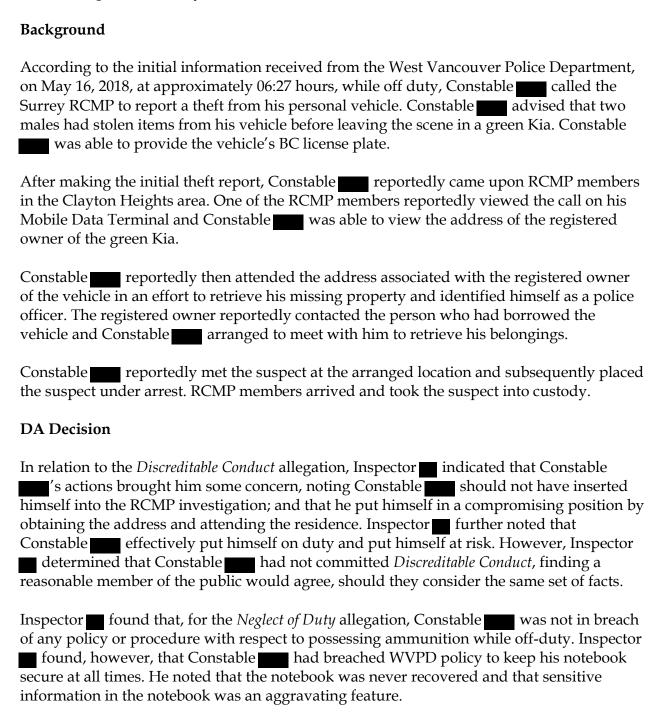
| То: | Constable c/o West Vancouver Police Department Professional Standards Section | (Member) |
|--|---|---|
| And to: | Inspector c/o West Vancouver Police Department Professional Standards Section | |
| And to: | The Honourable Judge David Pendleton, (ret'd) Retired Judge of the Provincial Court of British Columbia | (Retired Judge) |
| And to: | Her Worship Mayor Mary-Ann Booth Chair, c/o West Vancouver Police Board | |
| Department investigation | 2, 2018, based on information provided by the West Vancouver Fact and a request to initiate an investigation, Commissioner Stan I con into the conduct of Constable . West Vancouver Fact Police Professional Standards Investigator Sergeant completed, an investigation into this matter. | Lowe ordered an |
| | 4, 2020, Sergeant submitted the Final Investigation Repo | ort to the |
| wherein he Conduct puinvestigation of the Police | 7, 2020, Inspector issued his decision pursuant to section 112 e considered two allegations of misconduct against Constable is transported to section 77(3)(h) of the <i>Police Act</i> for inserting himself is on when he should not have; and <i>Neglect of Duty</i> pursuant to see the <i>Act</i> for leaving police property inside an insecure vehicle, property in the vehicle. Inspector determined that both allegations did not ted. | : Discreditable Into an RCMP Into an 77(3)(m)(ii) Interest that was |

Clayton Pecknold Police Complaint Commissioner

OPCC ID 1301-20191113

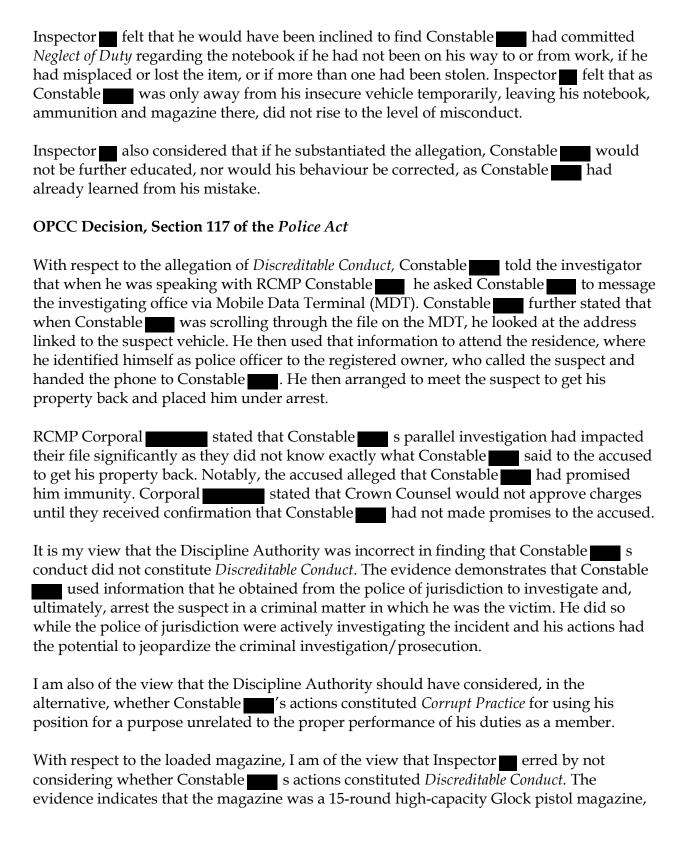
5th Floor, 947 Fort Street PO Box 9895 Stn Prov Govt Victoria, British Columbia V8W 9T8 Tel: (250) 356-7458 Fax: (250) 356-6503 Page 2 May 14, 2020 OPCC 2018-14770

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.



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making it a prohibited device.¹ When initially speaking with the RCMP, Constable indicated that the magazine was fully loaded when it was stolen, but later told the investigator that it may have had 6 to 8 rounds in it. The suspect stated he found 4 to 8 rounds.

Importantly, Constable provided evidence that he had found the loaded magazine in his garage when cleaning. He could not say how long the magazine had been there and was uncertain on how long he had left it in his vehicle after finding it in the garage. When providing a statement to the RCMP, he said the magazine was in his car for maybe a couple of days, but could not recall exactly. He then left the magazine in his vehicle, which was unlocked, when he went to use the washroom, during which time the magazine and his notebook were stolen.

In concluding that Constable had not committed *Neglect of Duty*, Inspector stated that when he went to the washroom "the better course of action would have been for [Constable] to take his notebook, magazine, and ammunition with him while he temporarily left his vehicle (paragraph 13)." Inspector characterized Constable s conduct as an oversight and, therefore, did not rise to the threshold of *Neglect of Duty*.

I am of the view that Constable s conduct does not reflect a temporary oversight, but a pattern of carelessness for an item that poses a significant risk to the public. This conduct falls far below the reasonable expectation of the community, particularly given concerns about gun-related violence in the Lower Mainland. Therefore, in my view, Constable conduct would likely bring discredit to the West Vancouver Police Department.

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 David Pendleton, retired BC 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,

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¹ Pursuant to Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted (SOR/98-462), Part 4, section 3(1)(b).

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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 March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. MO86, 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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