



Office of the  
Police Complaint Commissioner

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British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE**

Pursuant to section 117(4) of the *Police Act*

OPCC File 2018-15276

August 1, 2019

To: Constable [REDACTED] (Members)  
Constable [REDACTED]  
Constable [REDACTED]  
Constable [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section

And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

And to: The Honourable Judge Carol Baird-Ellan, (ret'd) (Retired Judge)  
Retired Judge of the Provincial Court of  
British Columbia

And to: His Worship Mayor Kennedy Stewart  
Chair, c/o Vancouver Police Board

On September 19, 2018, based on information provided by the Vancouver Police Department, Former Police Complaint Commissioner, Stan Lowe, ordered an investigation into the conduct of Constable [REDACTED], Constable [REDACTED] and Constable [REDACTED]. Vancouver Police Department Police Professional Standards investigator, Sergeant [REDACTED] conducted an investigation into this matter. On March 7, 2019, based on information received from Sergeant [REDACTED] pursuant to section 108 of the *Police Act*, additional allegations of misconduct were identified and included Constable [REDACTED].

On May 31, 2019, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

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Clayton Pecknold  
Police Complaint Commissioner

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Upon review of the Final Investigation Report, I determined that the investigator's assessment of the evidence and analysis of the facts was incomplete. I therefore directed further investigative steps to ensure a proper weighing of witness evidence and an objective assessment of the officers' subjective beliefs. I also directed the investigator to consider the Charter and leading precedents regarding warrantless entries and provided guidance on the application of the Doctrine of Good Faith. On June 27, 2019, Sergeant [REDACTED] resubmitted the Final Investigation Report.

On July 5, 2019, Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Inspector [REDACTED] noted that Sergeant [REDACTED] had complied with my direction "to the best of his abilities." My review of the resubmitted Final Investigative Report is that it minimally complied with my direction. Rather than integrate the direction into his analysis, Sergeant [REDACTED] maintained his original analysis and created a separate section of the Report wherein he spoke to each directed step. This is not consistent with the obligation to conduct a thorough and unbiased investigation.

Inspector [REDACTED] identified six allegations of misconduct against Constable's [REDACTED] [REDACTED] [REDACTED] and [REDACTED] five allegations of *Abuse of Authority* pursuant to sections 77(3)(a), 77(3)(a)(i) and 77(3)(a)(ii)(A) of the *Police Act*, and one allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*. Inspector [REDACTED] determined that the allegations did not appear to be substantiated.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegations 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.

Vancouver Police Department members attended a Single Room Occupancy (SRO) building to locate a male on an outstanding arrest warrant stemming from an event in 2016. The members forced entry into the suite for the stated purpose of ensuring the safety of the woman inside. Although the members were acting in the performance of their common law duties, it is my view that the forced entry was not a justifiable use of their powers in the circumstances. There were no reports to police that suggested violence in the suite and no information was received at the scene to suggest a potential emergency or imminent risk of harm to any of the occupants. The officers' police reports and communications with Crown Counsel reflect a lack of certainty with respect to who was inside the suite. Any reliance on a risk to the safety of the occupants was speculative. Therefore, the warrantless entry was not in my view consistent with section 8 of the Charter.

Further I am of the view that not only was entry into the suite unlawful, but the conduct of the officers contained blameworthy elements that should properly have resulted in a recommendation of substantiation by the Discipline Authority. First, the evidence supports a conclusion that officers intentionally entered the suite and rapidly escalated the incident by using unjustified force on the parties inside, causing injuries to one of the occupants. Force was also used on the individual about whose safety the officers were purportedly concerned.

Although the members' evidence suggested that they believed they had been assaulted with a weapon, there was no effort to investigate those charges and the officers' initially cited obstructing a peace officer as the reason for arrest. It is also noteworthy that the purported assaultive action - the deployment of bear spray- occurred after the officers had begun their efforts to unlawfully enter the suite.

Second, the evidence indicates a singular focus to access the suite and determine whether the subject of the warrant was inside and a disregard for the rights of the occupants. Notably, the officers' initial attempt to gain entry occurred only a few minutes after arriving at the scene, by obtaining a key from the landlord. The members were not deterred when those efforts were unsuccessful and determined that they would breach the door. It is my view that the evidence supports a finding that the members either intentionally determined that they were going to enter the suite to achieve their objective, despite not having the authority to do so, or at minimum, were reckless regarding their authorities.

In my view, the conduct of the officers in this case is characterized by a blameworthy element, rather than a simple mistake of legal authority or an error forgivable because of a lack of training, and therefore constitutes *Abuse of Authority* pursuant to 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 Carol Baird Ellan, 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 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], Registrar