



Office of the
Police Complaint Commissioner

British Columbia, Canada

ORDER FOR EXTERNAL INVESTIGATION

Pursuant to ss. 93(1)(a) & (b)(ii) of the *Police Act*, RSBC 1996, c. 367, as am.

NOTICE OF DESIGNATION OF NEW DISCIPLINE AUTHORITY

Pursuant to s. 135 of the *Police Act*, RSBC 1996, c. 367, as am.

OPCC File No: 2015-11048
April 29, 2016

To: Chief Constable Frank Elsner (Member)
Victoria Police Department

And to: Chief Superintendent Sean Bourrie (External Investigating Agency)
Royal Canadian Mounted Police

And to: Mr. Ian H. Pitfield (External Discipline Authority)
Retired B.C. Supreme Court Judge

And to: Her Worship Mayor Barbara Desjardins
Her Worship Mayor Lisa Helps
Co-Chairs, Victoria and Esquimalt Police Board

On December 18, 2015, I issued two separate Orders for Investigation in relation to allegations of disciplinary breaches of public trust by Chief Constable Frank Elsner of the Victoria Police Department.

I determined that it was in the public interest to appoint an external police force to conduct both investigations. Chief Superintendent Sean Bourrie was appointed as Chief Investigator by Deputy Commissioner Craig Callens, the Commanding Officer of the Royal Canadian Mounted Police in British Columbia. Working under his supervision has been a senior team of external investigators, provided by Chief Constable Adam Palmer of the Vancouver Police Department, under the Command of Deputy Chief Constable Laurence Rankin.

In the first December 18, 2015 Order for Investigation, involving five allegations of disciplinary breaches of public trust, I determined it was in the public interest to appoint as Discipline Authority, Carol Baird Ellan, a retired Chief Judge of the Provincial Court of British Columbia.

Stan T. Lowe
Police Complaint Commissioner

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In the second December 18, 2015 Order for Investigation, involving three allegations of disciplinary breaches of public trust, I determined it was in the public interest to appoint as Discipline Authority Ian H. Pitfield, a retired Judge of the Supreme Court of British Columbia.

On April 21 and 22, 2016, our office received information from Chief Superintendent Bourrie and the investigative team containing further allegations of conduct involving Chief Constable Elsner which, if substantiated, would constitute disciplinary breaches of public trust. The new information arises from recent interviews of witnesses, as well as information obtained from the information technology systems at the Victoria Police Department.

The information includes allegations that Chief Constable Elsner attempted to inappropriately influence potential witnesses during the internal investigation in 2015 and during the current ongoing public-trust investigations.

In addition, the information supports an allegation that Chief Constable Elsner obtained access to the Victoria Police information system and may have deleted or attempted to delete information relevant to the internal investigation in 2015.

I have reviewed the information provided by Chief Superintendent Bourrie, and I am of the opinion that the conduct alleged against Chief Constable Elsner, if substantiated, would constitute misconduct under the *Police Act*, specifically:

1. *Deceit* pursuant to section 77(3)(f)(iii) of the *Police Act*: That Chief Constable Elsner did attempt to procure the making of an oral or written statement from a potential witness, knowing the statement to be false or misleading.
2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner made a request to a potential witness to destroy electronic data related to an ongoing external investigation.
3. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department: That Chief Constable Elsner did seek access to the Victoria Police GFI Archiver server, conducted various searches, and erased or attempted to erase emails during the course of an ongoing investigation.

Accordingly, I am of the opinion that it is necessary in the public interest that the alleged misconduct described above be investigated by an external police force. Therefore, pursuant to section 93(1)(b)(ii) of the *Police Act*, I order that the incidents involving Chief Constable Frank Elsner be investigated by the Royal Canadian Mounted Police. The Commanding Officer of the RCMP "E" Division, Deputy Commissioner Craig Callens, has agreed that Chief

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Superintendent Sean Bourrie will be the assigned Chief Investigator. Working under his supervision will be a senior team of external investigators with the Vancouver Police Department under the command of Deputy Chief Constable Laurence Rankin.

I also order that the investigation include any potential misconduct, or attempted misconduct, as defined in section 77 of the *Police Act*, that may have occurred in relation to this incident. In addition, if, during the course of this investigation, any policy or procedure issues are identified, the external *Police Act* investigator shall notify the Office of the Police Complaint Commissioner for appropriate processing under section 177(4)(c) of the *Police Act*.

Pursuant to section 135(2) of the *Police Act*, because this matter involves a Chief Constable of a municipal police department in a context where the internal disciplinary process to date has given rise to difficulties as outlined above and in my December 18, 2015 Order for Investigation, I consider it necessary in the public interest to appoint a retired judge as Discipline Authority in this case. (This provision of the Act provides that, any time after an investigation has been initiated into the conduct of a member or former member of a municipal police department who is or was a Chief Constable or Deputy Chief Constable at the time of the conduct of concern, the Police Complaint Commissioner may, if he considers it necessary in the public interest, appoint a retired judge to exercise the powers and perform the duties of a Discipline Authority under the applicable provision, in substitution of the Chair of the Board of the municipal police department.)

Based on a review of the information received by this office, I consider it necessary in the public interest that a person other than the Co-Chairs of the Victoria Police Board be the Discipline Authority for all purposes pursuant to the Act.

Therefore, pursuant to section 135(2) of the *Police Act*, in substitution, I am appointing Retired Judge Ian H. Pitfield, to exercise the powers and perform the duties of Discipline Authority in relation to this matter.

An investigation under Part 11, Division 3 of the *Police Act* must be completed within six months. Unless the circumstances of this investigation warrant a further extension, the investigation limitation period is scheduled to expire on **October 29, 2016**.



Stan T. Lowe
Police Complaint Commissioner

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