



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

July 30, 2020

Grand Chief Stewart Phillip, President
Chief Don Tom, Vice-President
Kukpi7 Judy Wilson, Secretary-Treasurer
Union of BC Indian Chiefs

Latoya Farrell, Staff Counsel
BC Civil Liberties Association

Dear Grand Chief Phillip, Chief Tom, Kukpi7 Judy Wilson, and Ms. Farrell,

Re: VPD Service or Policy Complaint – 2018-14863, Union of BC Indian Chiefs and BC Civil Liberties Association

I write further to my letter of June 5, 2020 in which I provided you information pursuant to section 93(9) of the *Police Act* concerning an ongoing disciplinary conduct investigation by the Vancouver Police Department under the oversight of this office. This information was provided to you as the investigation arose as a result of the engagement by the Vancouver Police Board of Pyxis Consulting Group Incorporated (“Pyxis”) in response to your June 14, 2018 “Service and Policy” complaint regarding the practice of “Street Checks.” I have determined that you have a direct interest in the matter and am providing you further information.

You will be aware that I also wrote the Director of Police Services recommending that she initiate an examination of the “Pyxis Report” and the Vancouver Police Boards’ processes relative to the conduct of the study and the selection and retention of the contractor, Pyxis. I received a reply from the Director on June 24, 2020 indicating that she will proceed with that review after consultation with you regarding the terms of reference. I have therefore determined that it is in the public interest that I provide her a copy of this correspondence.

Information provided under section 93(9) of the Police Act

On July 14, 2020 I received a Final Investigation Report from the Vancouver Police Department, Professional Standards Section (“VPD-PSS”). That report outlined the investigative steps taken by them to respond to the Order of Investigation I issued on December 19, 2019. The Order was issued as a result of a request for investigation from the Vancouver Police Department into a

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Police Complaint Commissioner

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information of potential misconduct by unknown Vancouver Police officers appearing in a *draft* report of Pyxis which was then under review by Vancouver Police Department personnel.

The Order reads in part:

On December 11, 2019, the Office of the Police Complaint Commissioner (OPCC) received information from the Vancouver Police Department in relation to the conduct of officers participating in ride-alongs as part of an external review on a report about "Street Checks" by Pyxis Consulting Group Inc. ("Pyxis"), pursuant to a contract with the Vancouver Police Board.

According to the Vancouver Police Department, Pyxis researchers participated in ride-alongs with Vancouver Police members as part of the review. It is alleged that during one ride-along, an officer made a number of inappropriate, racially insensitive comments. During another ride-along, it is alleged that another officer made inappropriate comments about vulnerable and marginalized people, had anger issues, and was overly terse and extremely rude to a member of the public.

I have reviewed the information provided by the Vancouver Police Department and their request for an ordered investigation. I am of the opinion that the conduct alleged against the unknown member(s), if substantiated, would constitute misconduct. The misconduct could potentially be defined as follows:

1. 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.

2. Discourtesy pursuant to section 77(3)(g) of the Police Act, which is failing to behave with courtesy due in the circumstances towards a member of the public in the performance of duties as a member.

Accordingly, pursuant to section 93(1) of the Police Act, I direct that an investigation into this matter be conducted by the Vancouver Police Department.

I also order that the investigation include any other 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 procedural issues are identified, including but not limited to compliance with Provincial Policing Standards, the Police Act investigator shall notify the Office of the Police Complaint Commissioner for appropriate processing under section 177(4)(c) of the Police Act.

On January 28, 2020, in response to information received that the Pyxis personnel were unwilling to cooperate with the VPD-PSS, I issued a Direction for Further Investigative Steps and imposed additional and more frequent reporting requirements to this office. That direction

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was provided to ensure all reasonable steps were taken expeditiously to secure all available evidence held by the Vancouver Police Department, Vancouver Police Board and Pyxis. VPD-PSS conducted all directed steps and interviewed numerous Vancouver Police Department and Police Board members all of whom, cooperated fully with the investigation. VPD-PSS also attempted to interview eight Pyxis researchers including the principals. All declined to be interviewed or provide documentation in relation to the investigation. Additionally, the investigator was informed that Pyxis had destroyed all field notes.

On June 25, 2020 after having reviewed an initial submission of the Final Investigation Report, I issued a Further Order for Investigative Steps. That Order was issued for the specific purpose of attempting to ascertain when the field notes were destroyed. According to the Pyxis witness, the notes were destroyed “in late November” but no specific date was forthcoming.

According to the Final Investigation Report, the statements of concern appeared in a *draft* report dated October 9, 2018. Vancouver Police Department civilian employees raised concerns with the comments on November 15, 2019 to VPD executive who then informed VPD-PSS.

The VPD-PSS investigating officer has conducted a thorough, and responsive investigation to this point canvassing all available avenues of investigation. Despite this, the investigator was unable to identify the officers who are alleged to have made the comments due primarily to the lack of cooperation by the Pyxis personnel. Additionally, their lack of cooperation has made it unclear as to when precisely the field notes were destroyed.

After a complete review of the investigation to date, a Notice of Discontinuance was issued as further investigation is not reasonably practicable at this time. As no officers have been identified, no further steps under the *Police Act* related to the determination and adjudication of misconduct can occur. Additionally, while police officers are compellable to provide statements and answer questions under the *Police Act*, civilian witnesses are not. There are therefore no avenues available in the context of a disciplinary conduct investigation under *Part 11* of the *Police Act* to compel Pyxis employees to cooperate with this office. Should information become available at a future point making further investigation practicable, I will re-initiate the matter.

Futher Steps

In the interim I am hopeful the authorities granted the Director of Police Services under the *Police Act* will assist in providing further understanding of the practices employed in the retention and governance of the contractor and the the methodologies used by that contractor during a publically-funded enagement on this important matter. This includes the destruction of records and the circumstances of the removal of the paragraph containing the allegations of misconduct from the original *draft* report. These matters are outside of the purview of the disciplinary conduct investigation but I will recommend be fully canvassed by the Director.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Clayton Pecknold', written in a cursive style.

Clayton Pecknold
Police Complaint Commissioner

cc: Brenda Butterworth-Carr, Assistant Deputy Minister, Director of Police Services
cc: Inspector Trevor Burmachuk, Vancouver Police Department Professional Standards Section

