



Affidavit #1 of Barbara Desjardins
Dated May 6, 2016

File No. S-162351
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHIEF CONSTABLE FRANK J. ELSNER

PETITIONER

AND:

THE POLICE COMPLAINT COMMISSIONER and
BARBARA DESJARDINS and LISA HELPS,
in their capacity as INTERNAL DISCIPLINE AUTHORITY

RESPONDENTS

AFFIDAVIT OF BARBARA DESJARDINS

I, Barbara Desjardins, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Mayor of the Township of Esquimalt ("Esquimalt"), British Columbia, and as such am one of the Co-Chairs of the Victoria and Esquimalt Police Board. I have personal knowledge of the facts and matters set out herein, except where my knowledge is stated to be based upon my information and belief, and where so stated, I verily believe such facts and matters to be true.

2. The other Co-Chair of the Victoria and Esquimalt Police Board is the Mayor of the City of Victoria, Lisa Helps ("Mayor Helps"). Mayor Helps has held that office since the fall of 2014.
3. I have been the Mayor of Esquimalt since my election in 2008. I was re-elected Mayor in 2011 and 2014. Mayor Helps was elected Mayor of Victoria in 2014. Both Mayor Helps and I were elected to four year terms in the 2014 election.
4. The Esquimalt Police Department and the Victoria Police Department were amalgamated in 2003. The amalgamated department is called the Victoria Police Department ("VicPD").
5. The VicPD is governed by the Victoria and Esquimalt Police Board ("Board") in accordance with the *Police Act* (the "Act").
6. After the elections of 2014, Mayor Helps and I decided to split lead co-chair duties evenly between us. For the first two years of our respective terms, we decided that I would be the Lead Co-Chair, and Mayor Helps would be the Deputy Co-Chair. Those roles reverse for the second two years of our respective terms. This arrangement was approved by both the Board and the Policing and Security Branch of the Ministry of Justice of British Columbia.
7. During the period from August 2015 to December 2015, I was the Lead Co-Chair of the Board.
8. I am aware that the Act provides that the chair of a municipal police board is the discipline authority in respect of matters involving the Chief Constable and Deputy Chief Constables of a municipal police department.

9. In my capacity as Lead Co-Chair of the Board, information came to my attention on or about August 21, 2015 of a concern that Chief Constable Elsner ("Chief Elsner" or the "Petitioner") might be involved in a relationship with the wife of a member of the VicPD (referred to as Jane Doe and John Doe in Affidavit #1 of Chief Elsner at paragraph 19). The concern arose from digital messages ("Messages") which appeared to have been exchanged between Chief Elsner and Jane Doe. I was advised in various ways, and verily believe, that Jane Doe is a member of a different police department. Mayor Helps was also advised of this information.

10. Promptly upon receiving this information, I instructed legal counsel, Marcia McNeil, to contact the Office of the Police Complaint Commissioner ("OPCC") for direction and advice. Neither Mayor Helps nor I had been involved in a matter of this sort, and we were very reliant upon the advice of the OPCC and counsel we retained to assist us in handling this matter in a proper and fair manner.

11. Ms. McNeil arranged for delivery of the Messages to the OPCC so that the Police Complaint Commissioner ("PCC") and his office could review them and appreciate the nature of them. The Messages were delivered to the OPCC on or about August 31, 2015 for the purpose of our meeting with the PCC and his staff. The contents, time, date and "twitter handle" are all apparent on the Messages.

12. On August 31, 2015, Mayor Helps, Ms. McNeil and I met with the PCC and Rollie Woods, the Deputy Police Complaint Commissioner ("DPCC"). The meeting took place by phone and in the context of the PCC having already reviewed the Messages, the contents of which were discussed in

that teleconference.

13. Mayor Helps and I sought advice from the PCC about whether the matter should proceed as an internal discipline matter or one of public trust.

14. The PCC told us that the matter could proceed as an internal discipline matter if:

- a. we first spoke to John Doe and determined whether he wanted to proceed with the matter as one of internal discipline or public trust. The PCC advised that if John Doe wanted to proceed with the matter as a public trust matter, it would proceed as such; otherwise, I understood the PCC agreed that the matter would proceed as an internal discipline matter;
- b. we informed the Board in general terms of the allegations and updated the Board during the course of the matter.

15. We were extremely uncomfortable with the direction that we meet with John Doe to solicit his views about the manner in which the matter should proceed. That notwithstanding, we were advised (via Ms. McNeil) that the PCC was firm in this direction.

16. In accordance with the direction from the PCC, we promptly met in person with John Doe. We informed John Doe that there was evidence that Chief Elsner could be having a "relationship" with Jane Doe. We did not reveal the actual contents of the Messages. John Doe was visibly upset. He said he wanted to talk to Jane Doe.

17. Shortly after, on that same day, we met in person with Chief Elsner. We advised Chief Elsner in the same manner we had advised John Doe.

18. Later that same day, we again met with John Doe. John Doe advised us that he had spoken to Chief Elsner about the matter. John Doe told us he did not want a public trust investigation. To the contrary, John Doe did not want any investigation at all, citing the well-being of his family. We advised John Doe that, despite his personal concerns for himself and his family, the circumstances dictated that there must be an investigation. We told John Doe that we would advise the PCC that John Doe did not want the matter to be one of public trust. John Doe expressed his agreement. John Doe told us that he wanted this matter to remain confidential so that his family's privacy was not compromised.
19. On September 8, 2015, through Ms. McNeil, the PCC was advised that John Doe had confirmed that his preference was for the matter to proceed as one of internal discipline.
20. The PCC had earlier confirmed that, if Chief Elsner agreed, the matter could be investigated by an independent lawyer rather than another Chief Constable (as the internal discipline rules provided). We took the PCC's advice in this regard.
21. Since Chief Elsner did agree with that manner of proceeding, on September 8, 2015 we confirmed that state of affairs with the PCC, including the name of the lawyer who would conduct the investigation. The PCC acknowledged this communication, noting that the lawyer we had chosen to investigate was "excellent counsel".
22. Later that same day we convened an emergency meeting of the Board by telephone. At that time, we informed the Board that there was evidence that Chief Elsner could be having a "relationship" with Jane Doe and of the status of matters to that point, including that the PCC had directed that the matter be treated as one of internal discipline and that an investigation

would be undertaken by the counsel chosen to do so.

23. On or about October 27, 2015, at the initiative of Mayor Helps and with my agreement (so that the OPCC would be fully informed), the Board's Governance Committee copied the PCC with a letter from the Governance Committee addressed to Mayor Helps and me. Now produced and shown to me and marked Exhibit "A" to this my Affidavit is a copy of that letter.
24. Now produced and shown to me and marked Exhibit "B" to this my Affidavit is a letter dated October 29, 2015, from Mayor Helps and me.
25. I am advised by Ms. McNeil, and verily believe, that she corresponded with the DPCC regarding Exhibits "A" and "B" and the issues raised therein.
26. I am advised by Ms. McNeil, and verily believe, that on October 29, 2015, the DPCC acknowledged that the issue raised by the Board's Governance Committee (Exhibit "A") had "been resolved". Although this was a difficult and unusual matter, it appeared to me that any concerns of the PCC had been fully addressed. In this regard:
 - a. Now produced and shown to me and marked Exhibit "C" to this my Affidavit is an email from the DPCC to Ms. McNeil dated October 28, 2015 at 11:36 am.
 - b. Now produced and shown to me and marked Exhibit "D" to this my Affidavit is a two-page email string commencing October 28, 2015 at 2:51 pm, subsequent to the email which is Exhibit "C".
27. On or about November 17, 2015, Mayor Helps and I received a copy of the report of the independent investigator in this matter. We read, discussed and considered the report. We ensured that the Petitioner was

provided with a copy of the report.

28. We subsequently received a written submission on behalf of the Petitioner which Mayor Helps and I duly considered.

29. After considering the report of the independent investigator together with the Petitioner's written submission, Mayor Helps and I made the decision which we understood to be our duty under the Act. As the Discipline Authority we (not the Board) decided that we would accept the findings of the independent investigator. We determined that the conduct of Chief Elsner was discreditable conduct which fell below the ethical standard expected of a police chief, was potentially damaging to John Doe and, more generally, was potentially damaging to the reputation of the VicPD and to the reputation and credibility of Chief Elsner himself as a leader of the VicPD and its disciplinary authority. We were of the view that the impugned conduct, while worthy of discipline, was at the low end of the scale and we decided, with the benefit of information from our counsel who had reviewed similar disciplinary issues, that an appropriate censure for the conduct in issue was a written letter of reprimand to be placed on the Petitioner's personnel file.

30. Mayor Helps and I met with the Petitioner on the morning of December 4, 2015 and provided him with our proposed letter of discipline.

31. Although the Petitioner, after again expressing his remorse for his impugned conduct, expressed dissatisfaction with the report of the independent investigator, he advised Mayor Helps and me that he felt that the discipline was appropriate in the circumstances and he advised that he accepted it. The Petitioner also advised us that he had been in communication with John Doe with a view to repairing their relationship

going forward, and as a result, the letter we issued was amended.

32. In our view, this was the final determination of this matter.

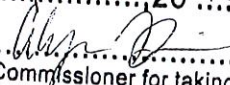
33. I make the Affidavit in relation to the matter herein.

SWORN BEFORE ME at the city)
of Vancouver, in the Province of)
British Columbia, this 6th day of)
May, 2016)


_____)
A Commissioner for taking Affidavits in)
and for the Province of British Columbia)


_____)
Barbara Desjardins

Alyson Dorin
2-195 Alexander Street
Vancouver, B.C.
V6A 1B8

This is Exhibit " A " referred to in the affidavit of Barbara Desjardins made before me this 6th day of May, 20 16

A Commissioner for taking Affidavits

Peter Ryan
399 Fraser Street
Esquimalt, British Columbia
V9A 6G6

October 27, 2015

Mayor Barbara Desjardins
Township of Esquimalt
1229 Esquimalt Road
Esquimalt, British Columbia
V9A 3P1

Mayor Lisa Helps
City Hall
1 Centennial Square
Victoria, British Columbia
V8W 1P6

Dear Mayor Desjardins and Mayor Helps:

RE Disciplinary Process involving a chief constable, Division 6 Police Act

I am writing to you in your capacities as Co-Chairs of the Victoria and Esquimalt Police Board and in my capacity as Chair of the Board's Governance Committee. I am directed by the Governance Committee to write to you in respect of the appropriate role of the Board when you may have occasion to exercise your responsibilities as the Discipline Authority as contemplated by subsection 174(b) of the *Police Act*.

I confirm your advice to the Board that the Police Complaint Commissioner has advised you, and the Board's legal counsel has confirmed her agreement, that in the case of an internal discipline matter (a matter concerning conduct or deportment) involving the chief constable, one of three things that must happen immediately is that the Board be advised of the disciplinary matter at hand. In the Committee's respectful view, advising the Board early on is a requirement that requires some degree of detail to be provided to the Board. It is the Committee's position that what must be provided is a copy of the completed "Complaint Form" as contemplated by section 4.1 of our Department's Policy AC140 if one exists or at the very least sufficient detail to enable the Board to understand with some precision just what conduct is alleged to have been engaged in by the chief constable and how the matter came to your attention. The Committee questions whether the Police Complaint Commissioner contemplated that the Board should be advised of a disciplinary matter involving the chief constable in only the vaguest of terms.

The Committee respectfully requests that you promptly provide the Board with copies of any completed "Complaint Forms" giving rise to any internal discipline matters as defined in the *Police Act* that pertain to our Chief Constable.

We note further that subsection 175(1) of the *Act* provides that the chief constable and the chair of the board of a municipal department must establish procedures, not inconsistent with the *Act*, for dealing with internal disciplinary matters and taking disciplinary or corrective measures in respect of them. Also, subsection 175(2) provides that such procedures take effect after the board approves them and filed with the Police

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Complaint Commissioner. As you will recall, the Board has previously discussed 6.2.3 of the Board Policy and Procedure Manual which currently provides that "the Chair shall obtain the approval of the Board before concluding an investigation or imposing any discipline" in respect of the chief constable.

It now seems evident to the Committee that it is your collective view that the Board Policy referred to above is not applicable and that the relevant provisions of the *Police Act* provide you with exclusive authority to investigate and conclude an internal disciplinary matter involving the chief constable and advise the Board of your decision in respect of any disciplinary decision taken by you, only after the fact. The Committee's view is that the process contemplated by the *Police Act* is instead as follows:

1. when an investigative report is made available in respect of any disciplinary matter involving the chief constable, the whole of that report should be promptly provided to the Board;
2. the Board should be convened *in camera* to comprehensively discuss the results of any such report;
3. the final decision in respect of discipline, subject of course to review by the PCC, would be made by you only after full consultation with the Board.

The issue raised by the Committee is one of process. It is the view of the Committee that it is imperative that the Board ensure that our chief constable receive the benefit of the appropriate process in any disciplinary matter involving him. As instructed to do so by the Committee, I am taking the liberty of copying this letter to the Board's legal counsel to ensure that the Board ultimately has the benefit of her comprehensive advice in regards to the appropriate process to be followed in internal disciplinary matters involving the chief constable.

It is the hope of the Committee that you will confirm your agreement with the Committee as to the appropriateness of the process set out above.

Thank you.

Yours truly,



Peter Ryan

cc: Marcia McNeil
OPCC ✓
Victoria and Esquimalt Police Board.

This is Exhibit " B " referred to in the affidavit of ... *Barbara Desjardins* ... made before me this ... *6th* ... day of ... *May* ... , 20 *16*

.....
A Commissioner for taking Affidavits



VICTORIA AND ESQUIMALT
POLICE BOARD
850 Caledonia Ave
Victoria, British Columbia
Canada V8T 5J8

October 29, 2015

Peter Ryan
Chair, Governance Committee
Victoria and Esquimalt Police Board
399 Fraser Street
Esquimalt BC V9A 6G6

CONFIDENTIAL

Dear Peter Ryan:

Re: Disciplinary Process Involving a Chief Constable, Division 6 Police Act

We are in receipt of your letter dated October 27, 2015.

In clarification of your request and concerns we want to provide clarity.

First of all, we have received no formal complaint and as such we cannot provide you with any completed forms. The chairs have strived to provide the board with information regarding the concern, and the process. We do not have details regarding the facts as the investigation has not yet concluded nor has a report been provided to us.

We are seeking advice from legal counsel and OPCC regarding further response to you and our next steps. We will respond to the issues you raise at the next scheduled or a special board.

Sincerely,

Barbara Desjardins

Mayor Barbara Desjardins
Lead Co-Chair, Victoria and Esquimalt Police Board

L. Helps

Mayor Lisa Helps, City of Victoria
Deputy Co-Chair Victoria and Esquimalt Police Board

Mayor Barbara Desjardins
Lead Co-Chair
Victoria and Esquimalt
Police Board

Mayor Lisa Helps
Deputy Co-Chair
Victoria and Esquimalt
Police Board

cc: Victoria & Esquimalt Police Board Members
Marcia McNeil

Marcia McNeil

From: Rollie Woods <RWoods@opcc.bc.ca>
Sent: October-28-15 11:36 AM
To: Marcia McNeil
Subject: Internal Investigation

Hi Marcia,
I had an opportunity to discuss with the PCC the internal investigation into the incident involving Chief Elsner that the Victoria Police Board has initiated. He is away on vacation so he directed me to inform you that he was concerned to learn that the Police Board was not fully informed of this matter. One of his conditions to agree that the matter could be handled through the internal discipline process was that the Police Board members be fully informed. If the chairs maintain that there is no need to inform the full board, the PCC is going to revisit his decision. If there is no oversight provided by the board as contemplated in the legislation, then the PCC feels a public trust investigation may be required to ensure proper oversight of this very serious matter. The PCC will be back in the office on Monday next if you wish to discuss with him personally.
Rollie Woods
Deputy Police Complaint Commissioner

This is Exhibit " C " referred to in the
affidavit of ... *Barbara Desjardins* ...
made before me this ... *6th* ... day
of ... *May* ... , 20 *16* ...
.....
A Commissioner for taking Affidavits

This is Exhibit " D " referred to in the affidavit of ... Barbara Dujardin made before me this 6th day of May, 2016

Marcia McNeil
.....
A Commissioner for taking Affidavits

From: Marcia McNeil
Sent: October-30-15 5:38 AM
To: Rollie Woods
Subject: RE: OPCC Call

Hi Rollie

It would be helpful to chat today as the issue may arise again once the Mayors receive the investigator's report.

Marcia

-----Original Message-----

From: Rollie Woods [mailto:RWoods@opcc.bc.ca]
Sent: October 29, 2015 12:44 PM
To: Marcia McNeil <mmcneil@samlaw.ca>
Subject: RE: OPCC Call

Hi Marcia,

We are all teed up for the phone conference tomorrow morning, I have received an email from Peter Ryan who advised me that the issue has been resolved. I am still happy to speak with you but it appears now that there may not be a need and I know you are busy but I leave it up to you, I am happy to call in at 9:30 tomorrow.

Rollie

-----Original Message-----

From: Marcia McNeil [mailto:mmcneil@samlaw.ca]
Sent: October 28, 2015 3:27 PM
To: Rollie Woods; Kerry Ringdahl
Subject: RE: OPCC Call

Rollie

My intent was that the call would just be with me as I have some concerns about this direction and wanted to clarify it. The Board has had disclosure about the nature of the allegations and the fact of the investigation and no report has been received yet.

Marcia

-----Original Message-----

From: Rollie Woods [mailto:RWoods@opcc.bc.ca]
Sent: October-28-15 3:24 PM
To: Kerry Ringdahl <KRingdahl@opcc.bc.ca>; Marcia McNeil <mmcneil@samlaw.ca>
Subject: RE: OPCC Call

Marcia,

Stan won't be available to speak to the chairs, he just wanted me to reiterate that he is disappointed that his advice wasn't followed previously and he is considering his options. He feels he was quite clear in that the board members needed to have full disclosure, I would suggest that any report received by the chairs should be disclosed to the board

and they should be included in any decision making. This office is entitled to receive a copy of the report at some point, it might be a good idea to share it with us at the same time but I'll leave that up to you and the board
Rollie

From: Kerry Ringdahl
Sent: Wednesday, October 28, 2015 2:51 PM
To: mmcneil@samlaw.ca
Cc: Rollie Woods
Subject: OPCC Call

Hi Marcia,

Stan is actually returning on Tuesday, November 3. Could we please arrange a time for a call on that day? How many parties will be dialing in? Do you think 30 minutes will suffice?

Thank you,
Kerry

Kerry Ringdahl | Senior Executive Assistant | Office of the Police Complaint Commissioner
250.953.4128 | kringdahl@opcc.bc.ca<mailto:kringdahl@opcc.bc.ca> | www.opcc.bc.ca<http://www.opcc.bc.ca/>
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