

PIVOT LEGAL LLP

December 3, 2009

VIA FACSIMILE: (604) 660-1223

Office of the Police Complaint Commissioner
#320 - 1111 Melville Street
Vancouver, BC
V6E 3V6

Attention: Mr. Stan Lowe, Police Complaint Commissioner

Dear Sir,

RE: Public Trust Complaint against Chief Constable Jim Chu – Improper Disclosure / Service & Policy Complaint alleging Unfairness, Bias & Lack of Independence

As per our letter of August 12, 2009, we have been retained by the Hubbard family with respect to this Public Trust Complaint. As you are aware, Mr. Hubbard was shot and killed by a member of the Vancouver Police Department on March 20, 2009 (the “Incident”). Following the Incident, Chief Constable Jim Chu (the “Chief”) distributed a memorandum, on Saturday March 28, 2009 to all staff of the Vancouver Police Department (“VPD”), which is attached to this complaint (the “Memorandum”).

The Memorandum sets out the events leading up to Mr. Hubbard’s death in detail. In the Memorandum, the Chief states that there was “incontrovertible” evidence that was caught on video surveillance. He concludes that the officers responded in self-defence to a potential assault by Mr. Hubbard. The Memorandum was published in the Vancouver Sun on March 30, 2009.

Wendy and Kimberly Hubbard are launching a public trust complaint against the Chief for the reasons set out below.

At the time that the Chief distributed the Memorandum, he was fully aware that an external investigation was being conducted by the Abbotsford Police into the actions of the two police officers who were involved in Mr. Hubbard’s death. He knew, or ought to have known, that members of the VPD were potential witnesses for the purposes of that investigation. Given that other officers arrived at the scene of the Incident immediately after the police officer discharged her firearm, these other officers would be potential witnesses. This incident was not limited to the two officers who were involved in the Incident, but involved many other VPD officers.

Furthermore, given the broad distribution list and extremely sensitive nature of the material, the Chief knew, or should have known, that the Memorandum would reach the media and the public. The Chief made no attempts to ensure that this Memorandum remained confidential and internal. The Chief knew, or ought to have known, that release of the Memorandum to the public would prejudice other potential witnesses to the Incident.

It is the Hubbard family's submission that details of key evidence in an investigation, and opinions regarding the interpretation of that evidence, should not be shared with officers under investigation, who must later give a statement or testify in proceedings related to that incident. Similarly, details and interpretation of key evidence should not be released to the public when there were potential witnesses in this case that had not been interviewed.

The Hubbard family was informed by the Abbotsford Police Department, in the summer of 2009, that there were a number of witnesses that still had not been located. The Abbotsford Police Department provided our office, as counsel for Wendy and Kimberly Hubbard, a copy of the surveillance videos in the summer of 2009 on an undertaking not to release the videos to anyone other than the Hubbard family.

It was not until July 2009 that the Hubbard family was able to view these videos. The Hubbard family submits that the Chief improperly disclosed information to other members of the VPD, and to the public, before they even had an opportunity to view the videos themselves. Given the sensitive subject matter, the Chief's release of the Memorandum is callous, undermines the integrity of the investigative process and amounts to an inappropriate release of information pursuant to section 8(a)(i) of the *Code of Professional Conduct Regulation*, under the *Police Act*, which states:

Improper disclosure of information

8. For the purposes of section 4 (1) (d), a police officer commits the disciplinary default of improper disclosure of information if the police officer

(a) except as required in the performance of his or her duties, as authorized by his or her supervisor or as required by due process of law,

(i) discloses information that is acquired by the police officer in the course of being a police officer, or

(ii) removes or copies a record of any municipal police department or a police force,

The Hubbard family submits that the release of information in question, a description of the surveillance video footage depicting the Incident, was obtained by the Chief in the course of his employment as a police officer, but that the release of the detailed information was not required in the performance of his duties. In fact, the Hubbard family says that the Chief was required in this instance to provide the video to the Abbotsford Police Department without delay.

The Hubbard family can see that the Chief wished to show his support for the officers in question, hence writing a memorandum to all of his staff, which falls within the performance of duties of a Police Chief. However, in this case it could have been done without disclosing important details of the investigation for two reasons: the Memorandum could alter the testimony of the officers and witnesses and the Memorandum states that the evidence was "incontrovertible" which is false and misleading. Having viewed the videos, the Hubbard family submits that their interpretation of the video is clearly different than the Chief's, and it is their opinion that the police officers used excessive force in killing their father. Therefore, given the two different interpretations of the video surveillance, it is impossible to see how the Chief cannot be found to have been improperly disclosing information.

Furthermore, the Hubbard family states that their legal counsel is under strict undertakings not to disclose the contents of the video to the public as it would hamper the investigation. It is hard to see how these undertakings apply to outside counsel, yet the same principles do not apply to the VPD or the Chief.

The Hubbard family also questions the ability of the Vancouver Police Department to view evidence, integral to an external investigation, before any member of the family or public was allowed access to this evidence. If the matter is being investigated by an external body, as is the case here, then it was imperative that the Chief transfer that evidence to that external body, before spending time and energy on interpreting that evidence, to then mislead the public and members of the VPD with his own personal interpretation.

The Hubbard family is also launching a service and policy complaint regarding the investigative process into alleged misconduct of the Chief.

The Hubbard family submits that the Mayor is not independent and that there is a reasonable apprehension of bias when the Mayor is armed with making a disciplinary decision about the conduct of the Chief, as well as a clear conflict of interest. While the Mayor is the Chair of the Police Board and is charged with the duty of overseeing the Chief and the VPD, he is also politically required to demonstrate confidence in the ability of the Police Chief.

Furthermore, the Hubbard family is asking that there be accountability and fairness in the investigation of this public trust complaint. It is their submission that in order for this to occur, an independent investigation must be conducted into the Chief's actions as well as an opportunity for submissions to be made at a hearing regarding this complaint.

Yours truly,
PIVOT LEGAL LLP
per:

H. NINA PUREWAL, on behalf of Wendy & Kimberly Hubbard