



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 2019-16759

June 23, 2020

- To: Constable [REDACTED] (Member)  
c/o Vancouver Police Department  
Professional Standards Section
- And to: Inspector [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section
- And to: The Honourable Judge Wally Oppal QC, (ret'd) (Retired Judge)  
Retired Judge of the British Columbia Court of Appeal
- And to: His Worship Mayor Kennedy Stewart  
Chair, c/o Vancouver Police Board

On October 10, 2019, based on information provided by the Vancouver Police Department (VPD), and a request to initiate an investigation into the matter, I ordered an investigation into the conduct of Constable [REDACTED] Vancouver Police Professional Standards investigator, Sergeant [REDACTED], investigated this matter.

On May 12, 2020, Sergeant [REDACTED] completed her investigation and submitted the Final Investigation Report to the Discipline Authority.

On May 27, 2020, Inspector [REDACTED] issued her decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified one allegation of misconduct against Constable [REDACTED]. She determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* against Constable [REDACTED] did not appear to be substantiated.

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

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Police Complaint Commissioner

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## Background

On August 24, 2019, at approximately 1447 hours, VPD members responded to a call of a physical altercation in front of a liquor store at [REDACTED] in Vancouver. A man later determined to be [REDACTED] was involved in a fight with a panhandler. [REDACTED] was armed with a knife, while the panhandler was armed with a skateboard.

VPD members Constables [REDACTED] and [REDACTED] were the first officers to arrive on the scene, and observed [REDACTED], still openly armed with a knife. In the process of arresting [REDACTED] Constable [REDACTED] deployed 9 beanbag rounds from his shotgun to [REDACTED] body. [REDACTED] was subsequently taken into custody and transferred to hospital for medical treatment.

The incident was captured on video taken by a civilian bystander witness.

## DA Decision

Inspector [REDACTED] as the Discipline Authority, found that the evidence did not appear to substantiate the allegation of misconduct against Constables [REDACTED] or [REDACTED]

The Disciplinary Authority assessed Constable [REDACTED] subjective perceptions pertaining to the reasonableness of the first five beanbag rounds, and then each of the subsequent rounds, focusing on the latter four. The Discipline Authority determined that while the incident was captured on video, the video did not capture the perspective of the officers or citizens that were observing the incident, particularly various pre-assaultive cues being demonstrated by [REDACTED]

In terms of assessing whether Constable [REDACTED] subjective perceptions were objectively reasonable, the Discipline Authority determined that he was in the midst of a rapidly unfolding, dynamic situation in an uncontrolled environment with bystanders nearby. [REDACTED] was mentally unwell, and had been threatening a citizen with a weapon. Constable [REDACTED] decision to use force was based on his perception that [REDACTED] was demonstrating pre-assaultive cues. The Disciplinary Authority determined that the evidence was not clear, convincing, and cogent that Constable [REDACTED] subjective perceptions were unreasonable.

## OPCC Decision, Section 117 of the *Police Act*

The Discipline Authority's framework for assessing Constable [REDACTED] subjective perceptions of the necessity of force, is consistent with the National Use of Force Framework, which requires officers to continually assess, plan, and act, in response to changes in subject behavior.

I am of the view, however, that in light of changes in [REDACTED] behavior as the incident unfolded, the Discipline Authority did not sufficiently assess the reasonableness of Constable [REDACTED] actions in response to [REDACTED] diminishing threat in regard to the initial five beanbag rounds, and then in regard to each of the subsequent rounds. I am further of the view that the Discipline Authority did not appropriately consider whether Constable [REDACTED] use of the beanbag gun to gain control of [REDACTED] was an acceptable use of an intermediate

weapon throughout the entirety of the event bearing in mind the requirement to transition to lesser and reasonable levels of force as subjects become compliant. As [REDACTED] was apparently suffering a mental health crisis due consideration by the Discipline Authority of the appropriateness of all force used is required.

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 Wally Oppal QC, retired Appeal Court Judge, to review this matter and arrive at his 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. I anticipate this will be within the next 10 business days.

**Take Notice: That on April 8, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. MO98, the Limitation Periods (COVID-19) Order, pursuant to section 10(1) of the *Emergency Programs Act*. That Order is in effect from the date of the Order until the end of the state of emergency the Provincial Government of British Columbia declared on March 18, 2020, in response to the COVID-19 pandemic. Should the appointed Retired Judge require further time to issue his decision, we refer him to section 3 of the Limitation Periods (COVID-19) Order.**



Clayton Pecknold  
Police Complaint Commissioner

cc: [REDACTED], Registrar

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