



Office of the  
Police Complaint Commissioner

British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE**

Pursuant to section 117(4) of the *Police Act*

OPCC File 2019-16656

March 12, 2020

- To: [REDACTED] (Complainant)
- And to: Acting Sergeant [REDACTED] (Members)  
Constable [REDACTED]  
Constable [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section
- And to: Deputy Commissioner Jennifer Strachan (External Investigative Agency)  
c/o Royal Canadian Mounted Police  
Professional Standards Section
- And to: Acting Inspector [REDACTED] (External Discipline Authority)  
c/o Delta Police Department  
Professional Standards Section
- And to: Chief Constable Adam Palmer  
Vancouver Police Department  
Professional Standards Section
- And to: The Honourable Judge Ron McKinnon, (ret'd) (Retired Judge)  
Retired Judge of the British Columbia Supreme Court
- And to: His Worship Mayor Kennedy Stewart  
Chair, Vancouver Police Board

On August 1, 2019, based on information provided by the Vancouver Police Department pursuant to section 89 of the *Police Act* in relation to an incident which occurred on July 30, 2019, I ordered an investigation into the conduct of Acting Sergeant [REDACTED] Constable [REDACTED] [REDACTED] and Constable [REDACTED] Royal Canadian Mounted Police (RCMP) Corporal [REDACTED] [REDACTED] of the North Vancouver RCMP serious crime unit, conducted an investigation into this matter.

Clayton Pecknold  
Police Complaint Commissioner

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On August 30, 2019, our office received a complaint from [REDACTED] describing his concerns with members of the Vancouver Police Department in relation to this incident. That complaint was deemed admissible. [REDACTED] was formally added to the record as a complainant and was afforded all the reporting and appeal rights as set out by Part 11 of the *Police Act*.

On February 3, 2020, Corporal [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On February 13, 2020, Acting Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Acting Inspector [REDACTED] identified one allegation of misconduct against Acting Sergeant [REDACTED] specifically *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* for not establishing incident command by virtue of being the senior officer on scene. Additionally, Acting Inspector [REDACTED] identified an allegation of *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* against both Constable [REDACTED] and Constable [REDACTED] for using unnecessary force.

Acting Inspector [REDACTED] determined that the allegations did not appear to be substantiated based on the evidence contained in the Final Investigation Report.

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.

## Background

On July 30, 2019, according to the police report provided by the Vancouver Police Department, several members responded to a report of an unwanted male, later identified as [REDACTED] [REDACTED] in the lobby of the [REDACTED] Hotel in Vancouver, BC.

Acting Sergeant [REDACTED] attempted to engage the male in conversation in order to have him leave the area. According to the police report, [REDACTED] displayed "possible drug psychosis" and responded "incoherently." The police report further indicated that [REDACTED] was not responsive to police requests to vacate the area.

Several officers responded and maintained a presence in the area while the male reportedly paced the area in the [REDACTED] block of E Hastings Street. After some time, the male returned to the front of the [REDACTED] Hotel and, according to the police report, "charged" at Acting Sergeant [REDACTED]

According to the police report, Constable [REDACTED] deployed a Conducted Energy Weapon in probe discharge mode and [REDACTED] fell to the ground. It is reported that [REDACTED] was not compliant to verbal commands and reportedly "attempted to rise and lunge further at members" on scene.

According to the police report additional officers attended, including Constable [REDACTED] who deployed multiple bean bag rounds.

Several members reportedly applied empty hand control tactics in order to handcuff and restrain [REDACTED]. According to the police report [REDACTED] was subsequently transported to [REDACTED] Hospital where he was treated for minor abrasions and bruising and [REDACTED].

### DA Decision

Acting Inspector [REDACTED] found that Acting Sergeant [REDACTED] actions at the scene were “indicative of taking command.” Acting Inspector [REDACTED] also found that, once Acting Sergeant [REDACTED] had been the target of an attempted assault by [REDACTED] his ability to maintain command was diminished. This command role then switched to Sergeant [REDACTED] who was on scene.

In relation to Constable [REDACTED] Acting Inspector [REDACTED] found that the Conducted Energy Weapon (CEW) was cycled multiple times and found that use was proportionate to the incident, which evolved rapidly, given the aggressive actions by [REDACTED] toward Acting Sergeant [REDACTED] toward Constable [REDACTED] himself, and [REDACTED] lack of compliance despite police commands. Acting Inspector [REDACTED] found Constable [REDACTED] appropriately used his experience, training, and assessment of [REDACTED] size, combative behaviour and potential for harm and the CEW use was based on calculated decision-making by Constable [REDACTED].

With respect to Constable [REDACTED] Acting Inspector [REDACTED] found that Constable [REDACTED] conducted an independent assessment into the use of the less lethal shotgun, which was used multiple times against [REDACTED]. Acting Inspector [REDACTED] found that Constable [REDACTED] articulation for the use of the less lethal shotgun was consistent with his training, including using it multiple times against [REDACTED].

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

Based on the evidence in the Final Investigation Report, it is my view that Acting Inspector [REDACTED] erred in finding that Constable [REDACTED] deployment of the less lethal shotgun was consistent with both his training and the requirements of section 25 of the *Criminal Code*. In particular, when Constable [REDACTED] arrived on the scene, [REDACTED] was lying on his back with his hands on his head and midriff exposed. Although [REDACTED] was not complying with verbal directions to roll onto his stomach, deploying the less lethal shotgun was not consistent with Constable [REDACTED] training on the threshold for using intermediate weapons in accordance with the National Use of Force Model. Further, deploying the less lethal shotgun as a method of gaining compliance of a non-combative subject is inconsistent with its purpose and not a justifiable use of the weapon.

With respect to the lawful authority to deploy the less lethal shotgun, Constable [REDACTED] subjective grounds were based on the limited information he had received prior to arriving on scene and the brief observations he made upon arrival. Those subjective grounds do not, in my view, render the deployment of the less lethal shotgun objectively reasonable in the circumstances. In particular, [REDACTED] position and behavior when Constable [REDACTED] arrived and the presence of numerous other officers suggest that there was no urgency or imminent threat that would support immediate escalation to the deployment of an intermediate weapon.

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 The Honourable Judge Ron McKinnon, retired British Columbia Supreme Court Judge, to review this entire matter and arrive at his own decision based on the evidence.

It is important to note that, in accordance with section 117(8) of the *Police Act*, the retired judge must list or describe the allegations considered as part of his or her review of the matter. Therefore, the retired judge is not limited to the allegations considered by the Discipline Authority, or the Police Complaint Commissioner's assessment of those allegations.

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.



Clayton Pecknold  
Police Complaint Commissioner

cc: [REDACTED], Registrar  
cc: Chief Superintendent Dave Attfield, Royal Canadian Mounted Police