



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: 2018-14353

April 3, 2020

- To: Ms. [REDACTED] (Complainant)
- To: Constable [REDACTED] # [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section
- To: Staff Sergeant [REDACTED] (External Investigator)
c/o South Coast British Columbia Transportation Authority Police Service
Professional Standards Section
- To: Inspector [REDACTED] (External Discipline Authority)
c/o South Coast British Columbia Transportation Authority Police Service
Professional Standards Section
- To: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section
- And to: The Honourable Judge James Threlfall, (ret'd) (Retired Judge)
Retired Judge of the Provincial Court of
British Columbia
- And to: His Worship Mayor Kennedy Stewart
Chair, c/o Vancouver Police Board

On January 19, 2018, our office received a complaint from Ms. [REDACTED] describing her concerns with members of the Vancouver Police Department. The OPCC determined Ms. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the South Coast British Columbia Transportation Authority Police Service to conduct an investigation.

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Police Complaint Commissioner

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On March 5, 2019, based on information received from Staff Sergeant [REDACTED] pursuant to section 108 of the *Police Act*, an additional allegation of misconduct for *Neglect of Duty* was identified against Constable [REDACTED].

On February 21, 2020, Staff Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On March 6, 2020, Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified one allegation of misconduct against Constable [REDACTED]. He 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.

Inspector [REDACTED] identified one allegation of misconduct against Constable [REDACTED]. He determined that the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against Constable [REDACTED] appeared to be substantiated. The allegation related to Constable [REDACTED] is currently following its own independent process.

On March 27, 2020, Ms. [REDACTED] advised the OPCC that she disagreed with Inspector [REDACTED] decision and requested that I exercise my authority to appoint a retired judge to review the matter.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegation and the alleged conduct related to Constable [REDACTED] in its entirety, I consider that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect.

Background

In her registered complaint, Ms. [REDACTED] reported that on October 3, 2017, she and her mother attended a social gathering at the [REDACTED]. While at this gathering, Ms. [REDACTED] backpack containing house keys, bank book, personal address, and other items went missing. A friend of Ms. [REDACTED] also reported that his cell phone was missing, so 911 was called. A police dispatcher advised it would be several hours before an officer could attend.

Ms. [REDACTED] further reported that upon returning to their residence after dinner, she discovered the door to one of her rooms was opened. Frightened that a thief may have found her address in her backpack and entered their residence, Ms. [REDACTED] and her mother attended the Vancouver Police Station located on Cambie Street. The time was approximately 10:00 p.m. and she had to press a buzzer to enter the police station.

According to Ms. [REDACTED] a police officer with badge number [REDACTED] answered the door and let them in the office to report the matter. After consulting with his supervisor, the officer recommended Ms. [REDACTED] have the locks changed and told them to go home. Ms. [REDACTED] reported that she thought it was too late to have the locks changed and wanted to stay until daylight.

Ms. [REDACTED] alleged that, while waiting, a Caucasian male and female officer came into the office and started yelling at them to leave. She further alleged that the male officer tried to forcibly remove her, removing her hat, pulling her hair and attempting to pull her out of the station. Ms. [REDACTED] reported that she began crying and screaming, so the officer let go and he went up a flight of stairs and out of the lobby.

After Constable [REDACTED] left the lobby, a supervisor attended. Arrangements were made for two members to stay with the [REDACTED] who were allowed to remain in the lobby, until after the lobby opened to the public in the morning.

DA Decision

Inspector [REDACTED] articulated that Constable [REDACTED] was in the lawful execution of his duty and was duty bound to challenge and ultimately remove the [REDACTED] from the building. Inspector [REDACTED] found Constable [REDACTED] intentionally used force on [REDACTED] for the purpose of removing her from the VPD Lobby, that her hair may have been pulled or grabbed unintentionally, but that she was never dragged by the hair.

Inspector [REDACTED] further found that the [REDACTED] were trespassers as soon as they were asked to leave and repeatedly refused and that Constable [REDACTED] had a duty imposed upon him to remove the trespassers in accordance with the VPD building security policy. Inspector [REDACTED] found that Constable [REDACTED] possessed the legal authority to remove the [REDACTED] and that he used an appropriate amount of force to do so under the circumstances.

OPCC Decision, Section 117 of the *Police Act*

Inspector [REDACTED] finding in this case relied upon authorities that Constable [REDACTED] never cited to explain his attempt to remove the [REDACTED] from the VPD lobby. When considering whether Constable [REDACTED] was acting lawfully, his conduct is to be assessed on what he did, not what he could have done (*R. v. Whitaker*, 2008 BCCA 174).

Ms. [REDACTED] and her elderly mother were invited into the VPD lobby while Constable [REDACTED] attempted to assist them. Neither Ms. [REDACTED] nor her mother speaks English fluently. Both were at the police station to report a crime and wished to remain at the police station out of concern for their safety.

Constable [REDACTED] asserted that he had authority to use force on Ms. [REDACTED] because she and her mother were committing mischief. However, none of Constable [REDACTED] actions were consistent with taking enforcement action for that offense. Rather, he attempted to forcibly remove Ms. [REDACTED] from the property after she had declined to leave. In all of the circumstances, including that the [REDACTED] were permitted access into the lobby, were simply sitting in chairs, had no access to any other portion of the building and were being monitored via CCTV, I am of the view that Constable [REDACTED] did not have authority to attempt to physically remove Ms. [REDACTED] from the property.

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 James Threlfall, retired Provincial Court Judge, to review this 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.

Take Notice: That on March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. MO86, 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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