



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 2019-16763

August 11, 2020

To: Mr. [REDACTED] (Complainant)

And to: Constable [REDACTED] (Members)  
Constable [REDACTED]  
Constable [REDACTED]  
Constable [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section

And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

And to: The Honourable Judge Mr. Brian Neal, Q.C., (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 August 26, 2019, our office received a complaint from Mr. [REDACTED] describing his concerns with members of the Vancouver Police Department. The OPCC determined Mr. [REDACTED]'s complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the Vancouver Police Department to conduct an investigation.

On July 3, 2020, Sergeant [REDACTED] completed her investigation and submitted the Final Investigation Report to the Discipline Authority.

On July 17, 2020, Inspector [REDACTED] the Discipline Authority in this matter, issued his decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified one allegation of misconduct against Constables [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. He determined that the allegation of *Abuse of Authority* pursuant to

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section 77(3)(a)(ii)(A) of the *Police Act* against Constables ██████████ ██████████ ██████████, and ██████████ 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.

### **Background**

On February 20, 2019 Mr. ██████████ advised that he was injured at or near the ██████████ Hotel on ██████████ Street in Vancouver. The incident "resulted in Mr. ██████████'s hospitalization for serious injuries sustained at the hands of various police officers (he was tazed and beaten unconscious)."

Mr. ██████████ further advised, through his counsel, that he "was tazed, and beaten with baton(s), kicked, punched, and thrown in to furniture/glass." Mr. ██████████ noted he suffered numerous injuries including, but not limited to: "head injury; concussion; forehead split open; blood loss; scarring on face (forehead and under left eye); stitches; broken rib; all over bruising and pain; including genital area; trauma and complications arising from all of the above."

### **DA Decision**

Inspector ██████████ conducted a review of the evidence relative to section 108 of the *Police Act*. Inspector ██████████ noted that two potential *Neglect of Duty* conducts were reviewed by the investigator, noting they did not appear to meet the threshold for misconduct. Inspector ██████████ found that no evidence was presented to him that led him to believe additional allegations of misconduct were identified.

Inspector ██████████ determined Constables ██████████, ██████████ ██████████, and ██████████ had the power of arrest for cause a disturbance and trespass, noting that there was an imminent threat of assault, given Mr. ██████████'s actions. Inspector ██████████ found the force used was in the lawful execution of their duties, acting on reasonable grounds to believe the force was necessary, and used no more force than was reasonably necessary. Noting that the force used does not need to be measured with exactitude, nor the minimum required, and that the members can use as much force as is necessary. Inspector ██████████ noted that one must consider all of the circumstances at the time, including "the aura of potential and unpredictable danger."

Inspector ██████████ found the force was intentional, but only "after exhaustive uniform presence, communication, and de-escalation attempts had failed."

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

The evidence shows that Mr. ██████████ was transported, by ambulance, to hospital. There he received emergency care which included care to facial injuries sustained during the arrest process. Constable ██████████ attended to the hospital where Mr. ██████████ was being treated, and determined that Mr. ██████████ was treated for those injuries, as articulated in his Subject Behaviour Officer Response (SBOR) report completed at the time. Pursuant to section 108 of the

*Police Act*, an additional allegation of misconduct for *Neglect of Duty* relative to Constable ██████'s duty to report this injury should have been added and assessed. The duty is pursuant to Vancouver Police Department Regulations and Procedures Manual (VPD RPM) 1.16.7 *B.C. Police Act - Reportable Incidents - Injuries or Death*.

The video evidence shows that the Taser (CEW) was used on Mr. ██████ five minutes and fifteen seconds following police being observed entering the lobby. Constable ██████ can be seen arriving on scene first, and having discussions with Mr. ██████, on her own, for three minutes and eight seconds prior to Constables ██████ and ██████ arriving. During this time Constable ██████ is observed gaining some compliance from Mr. ██████ and making notes in her notebook, twice, in Mr. ██████'s presence.

Constable ██████ was observed drawing his Taser 35 seconds after arriving on scene, and used it one minute and eight seconds after arriving on scene. The BC Provincial Policing Standards stipulates the threshold for Taser use, an intermediate weapon. The threshold includes reasonable grounds to believe the subject's behaviour will imminently cause bodily harm either to themselves, the officer, or a third party. In addition, the standard prohibits officers from discharging a CEW against a person unless the officer is satisfied, on reasonable grounds, that crisis intervention and de-escalation techniques have not been, or will not be effective in eliminating the risk of bodily harm; and that no lesser force option has been, or will be, effective in eliminating the risk of bodily harm.

The evidence shows that Mr. ██████ was perceived, by the respondent members, to be in mental/emotional distress, and that the members were trained in crisis intervention and de-escalation techniques.

Neither the video, nor the evidence, appears to support imminent bodily harm, to anyone. The video fails to support the members claims that Mr. ██████ was clenching his fists. And, from the rapid presentation and use of the Taser, does not appear to support exhaustive communication and de-escalation attempts, nor does it appear to support the level of force applied to Mr. ██████.

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 Mr. Brian Neal, Q.C., retired Provincial 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 which I anticipate this will be September 2, 2020.

**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  
Inspector [REDACTED] Vancouver Police Department  
Sergeant [REDACTED] Vancouver Police Department