



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 2020-18168

April 16, 2021

To: [REDACTED] (Complainant)

And to: Constable [REDACTED] (Member)  
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 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 July 2, 2020, our office received a complaint from [REDACTED] describing concerns with a member of the Vancouver Police Department (VPD). The OPCC determined [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the Vancouver Police Department to conduct an investigation.

On March 3, 2021, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On March 17, 2021, 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.

Clayton Pecknold  
Police Complaint Commissioner

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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 1, 2020, a protest occurred at the [REDACTED] in downtown Vancouver, BC. Members of the VPD were present and had formed a perimeter cordon around the [REDACTED] in an effort to protect it from any damage. During the protest, the affected person (AP) who identifies as female and Constable [REDACTED] became involved in a physical incident where it was alleged that Constable [REDACTED] grabbed the AP and attempted to pull her into a circle of police officers. However, the AP pulled away and other protestors intervened and pulled the AP away.

### **DA Decision**

Inspector [REDACTED] found that Constable [REDACTED] was acting in accordance with his common law duties to preserve the peace and protect property, as well as statutory duties under section 26(2) of the *Police Act*, while working as a member of the Public Safety Unit (PSU). Inspector [REDACTED] further found it reasonable that Constable [REDACTED] could have interpreted pushing as an attempt to breach the cordon and that, under the circumstances, Constable [REDACTED] could interpret a push by the AP as an assault on himself.

In addition, Inspector [REDACTED] considered the National Use of Force Framework (NUFF) and characterized the force used by Constable [REDACTED] as soft physical control. Inspector [REDACTED] noted that the grab by Constable [REDACTED] as unsuccessful as other protestors pulled the AP free. Constable [REDACTED] reassessed and decided against pursuing an arrest. Inspector [REDACTED] found that Constable [REDACTED] used only as much force as was necessary for his purpose and the force was reasonable and proportional to the given facts.

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

After review of Inspector [REDACTED] decision, I have concerns that Inspector [REDACTED] has not properly considered all the available evidence in his assessment and his decision.

I note that Inspector [REDACTED] found the AP's statement "to be credible in that she appears forthright and does not appear to be attempting to mislead the investigation". However, despite Inspector [REDACTED] finding the AP's statement to be credible, as well as reliable, he does not sufficiently consider and reconcile her evidence as against the evidence of Constable [REDACTED] in the assessment of the allegation. In addition, Inspector [REDACTED] noted that the AP did not appear to be "attempting to mislead the investigation" yet Inspector [REDACTED] does not make the same assessment of Constable [REDACTED] evidence.

Further, the AP's evidence brings into question the lawful authority for Constable [REDACTED] to arrest the AP and therefore the authority to use force on her to effect that arrest.

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  
Inspector [REDACTED] Vancouver Police Department

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