



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 2019-16208  
January 28, 2020

To: Ms. [REDACTED] [REDACTED] [REDACTED] (Complainant)

And to: Constable [REDACTED] [REDACTED] [REDACTED] (Members)  
Constable [REDACTED] [REDACTED] [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 David Pendleton, (ret'd) (Retired Judge)  
Retired Judge of the Provincial Court of British Columbia

And to: His Worship Mayor Kennedy Stewart,  
Chair, Vancouver Police Board  
c/o Vancouver Police Board

On April 22, 2019, our office received a complaint from Ms. [REDACTED] [REDACTED] [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 Vancouver Police Department to investigate.

On December 13, 2019, Sergeant [REDACTED] [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

### Background

On April 22, 2019, Ms. [REDACTED] [REDACTED] called 911 to report a street-involved man blocking the entrance to her business' storage locker located at [REDACTED] Ms. [REDACTED] recognized the man and reportedly had safety concerns for herself and her employees due to the man's behaviour in the past. Approximately two hours after Ms. [REDACTED] called 911, Constables [REDACTED] and [REDACTED] attended Ms. [REDACTED] workplace and spoke with her and her contractor, Mr. [REDACTED] [REDACTED]. An argument ensued concerning Ms. [REDACTED] and Mr. [REDACTED] frustrations about the police response to their safety concerns

Clayton Pecknold  
Police Complaint Commissioner

5<sup>th</sup> Floor, 947 Fort Street  
PO Box 9895 Stn Prov Govt  
Victoria, British Columbia V8W 9T8  
Tel: (250) 356-7458 Fax: (250) 356-6503

Toll Free 1 877-999-8707 ☎ Website: [www.opcc.bc.ca](http://www.opcc.bc.ca)

and the effect on Ms. [REDACTED] business, and the officers' concerns about the inappropriate usage of 911 resources for non-emergencies.

As the officers approached their vehicle to leave the scene, Mr. [REDACTED] and Constable [REDACTED] had a verbal exchange which caused the officers to approach and re-engage with Mr. [REDACTED]. After another brief verbal exchange, Constable [REDACTED] and Constable [REDACTED] arrested Mr. [REDACTED] and used force in bringing him to the ground and handcuffing him. A video of the incident was captured by a street-facing camera nearby.

### **DA Decision**

On December 31, 2019, Inspector [REDACTED] [REDACTED] as the Discipline Authority, issued his decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* against Constables [REDACTED] and [REDACTED] did not appear to be substantiated.

Inspector [REDACTED] noted at the outset of his analysis that the officers had a duty to prevent Mr. [REDACTED] from assaulting them. He found that Mr. [REDACTED] was "heated and animated and holding a cup of coffee" and that Mr. [REDACTED] made a "direct" threat to Constable [REDACTED] by saying words to the effect of "I'm going to fucking rock you" or "I can rock both of you", which meant he was going to assault Constable [REDACTED]. Inspector [REDACTED] found that while the exact words exchanged prior to Mr. [REDACTED] arrest were disputed by the complainant, they were overall congruent and that there were no other facts in dispute.

Inspector [REDACTED] determined that it was reasonably necessary for the officers to use force on Mr. [REDACTED] due to his behaviour and the circumstances of the arrest, namely that Mr. [REDACTED] had threatened Constable [REDACTED] was displaying pre-assaultive behaviour, and was actively resisting the officers upon being placed under arrest. Inspector [REDACTED] noted that the force used by Constables [REDACTED] and [REDACTED] was no more than was necessary to place Mr. [REDACTED] in handcuffs, and was not a departure from what a reasonable officer would have used. He determined that the force used by Constables [REDACTED] and [REDACTED] was not unnecessary, and did not appear to be an *Abuse of Authority*.

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.

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

Ms. [REDACTED] and her associate, Mr. [REDACTED] were seeking assistance from the Vancouver Police Department in order to safely operate Ms. [REDACTED] business. It is my view that the immediate duty of Constables [REDACTED] and [REDACTED] was to preserve the peace and to render assistance to Ms. [REDACTED] according to law and consistent with the *Charter of Rights and Freedoms*.

There are factual differences between the account of the complainant, Ms. [REDACTED] and Constables [REDACTED] and [REDACTED]. These differences require assessment in light of the available evidence. In particular, Ms. [REDACTED] recounts that the officers called Mr. [REDACTED] a "skinny guy" in the verbal exchange immediately prior to Mr. [REDACTED] arrest, a statement that Constable [REDACTED] denies saying, and that Constable [REDACTED] does not recall saying.

Furthermore, the evidence does not demonstrate that the officers used de-escalation techniques pursuant to the mandated and binding *British Columbia Policing Standards* in dealing with Mr. [REDACTED]. Rather, Constable [REDACTED] evidence is that rather than de-escalating the situation, he decided to re-engage Mr. [REDACTED] in order to “educate” him on the proper usage of 911. Also, the video shows that Mr. [REDACTED] body language does not markedly change when speaking to the officers, and his posture does not indicate pre-assaultive cues. After a brief verbal exchange, Constables [REDACTED] and [REDACTED] abruptly grab Mr. [REDACTED] and take him to ground, causing him to drop his coffee cup from his hands. Constable [REDACTED] appears to be agitated with Mr. [REDACTED] as he shoves Mr. [REDACTED] to the ground, pinning him with his knee.

The Discipline Authority characterized Mr. [REDACTED] behaviour as “assaultive”. It is my view that the evidence does not sufficiently support this conclusion. Further, the evidence does not support that Constables [REDACTED] and [REDACTED] reasonably feared an imminent assault from Mr. [REDACTED] and it is my view that the use of force was unnecessary in the circumstances.

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 David Pendleton, 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. I anticipate this will be within the next 10 business days.



Clayton Pecknold  
Police Complaint Commissioner

cc: [REDACTED] Registrar

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