



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 2018-14770

May 14, 2020

- To: Constable [REDACTED] (Member)  
c/o West Vancouver Police Department  
Professional Standards Section
- And to: Inspector [REDACTED]  
c/o West 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: Her Worship Mayor Mary-Ann Booth  
Chair, c/o West Vancouver Police Board

On May 22, 2018, based on information provided by the West Vancouver Police Department and a request to initiate an investigation, Commissioner Stan Lowe ordered an investigation into the conduct of Constable [REDACTED]. West Vancouver Police Department Police Professional Standards Investigator Sergeant [REDACTED] began, and Sergeant [REDACTED] completed, an investigation into this matter.

On April 14, 2020, Sergeant [REDACTED] submitted the Final Investigation Report to the Discipline Authority, Inspector [REDACTED].

On April 17, 2020, Inspector [REDACTED] issued his decision pursuant to section 112 of the *Police Act*, wherein he considered two allegations of misconduct against Constable [REDACTED]: *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* for inserting himself into an RCMP investigation when he should not have; and *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* for leaving police property inside an insecure vehicle, property that was stolen from the vehicle. Inspector [REDACTED] determined that both allegations did not appear to be substantiated.

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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

According to the initial information received from the West Vancouver Police Department, on May 16, 2018, at approximately 06:27 hours, while off duty, Constable [REDACTED] called the Surrey RCMP to report a theft from his personal vehicle. Constable [REDACTED] advised that two males had stolen items from his vehicle before leaving the scene in a green Kia. Constable [REDACTED] was able to provide the vehicle's BC license plate.

After making the initial theft report, Constable [REDACTED] reportedly came upon RCMP members in the Clayton Heights area. One of the RCMP members reportedly viewed the call on his Mobile Data Terminal and Constable [REDACTED] was able to view the address of the registered owner of the green Kia.

Constable [REDACTED] reportedly then attended the address associated with the registered owner of the vehicle in an effort to retrieve his missing property and identified himself as a police officer. The registered owner reportedly contacted the person who had borrowed the vehicle and Constable [REDACTED] arranged to meet with him to retrieve his belongings.

Constable [REDACTED] reportedly met the suspect at the arranged location and subsequently placed the suspect under arrest. RCMP members arrived and took the suspect into custody.

## DA Decision

In relation to the *Discreditable Conduct* allegation, Inspector [REDACTED] indicated that Constable [REDACTED]'s actions brought him some concern, noting Constable [REDACTED] should not have inserted himself into the RCMP investigation; and that he put himself in a compromising position by obtaining the address and attending the residence. Inspector [REDACTED] further noted that Constable [REDACTED] effectively put himself on duty and put himself at risk. However, Inspector [REDACTED] determined that Constable [REDACTED] had not committed *Discreditable Conduct*, finding a reasonable member of the public would agree, should they consider the same set of facts.

Inspector [REDACTED] found that, for the *Neglect of Duty* allegation, Constable [REDACTED] was not in breach of any policy or procedure with respect to possessing ammunition while off-duty. Inspector [REDACTED] found, however, that Constable [REDACTED] had breached WVPD policy to keep his notebook secure at all times. He noted that the notebook was never recovered and that sensitive information in the notebook was an aggravating feature.

Inspector [REDACTED] felt that he would have been inclined to find Constable [REDACTED] had committed *Neglect of Duty* regarding the notebook if he had not been on his way to or from work, if he had misplaced or lost the item, or if more than one had been stolen. Inspector [REDACTED] felt that as Constable [REDACTED] was only away from his insecure vehicle temporarily, leaving his notebook, ammunition and magazine there, did not rise to the level of misconduct.

Inspector [REDACTED] also considered that if he substantiated the allegation, Constable [REDACTED] would not be further educated, nor would his behaviour be corrected, as Constable [REDACTED] had already learned from his mistake.

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

With respect to the allegation of *Discreditable Conduct*, Constable [REDACTED] told the investigator that when he was speaking with RCMP Constable [REDACTED] he asked Constable [REDACTED] to message the investigating office via Mobile Data Terminal (MDT). Constable [REDACTED] further stated that when Constable [REDACTED] was scrolling through the file on the MDT, he looked at the address linked to the suspect vehicle. He then used that information to attend the residence, where he identified himself as police officer to the registered owner, who called the suspect and handed the phone to Constable [REDACTED]. He then arranged to meet the suspect to get his property back and placed him under arrest.

RCMP Corporal [REDACTED] stated that Constable [REDACTED]'s parallel investigation had impacted their file significantly as they did not know exactly what Constable [REDACTED] said to the accused to get his property back. Notably, the accused alleged that Constable [REDACTED] had promised him immunity. Corporal [REDACTED] stated that Crown Counsel would not approve charges until they received confirmation that Constable [REDACTED] had not made promises to the accused.

It is my view that the Discipline Authority was incorrect in finding that Constable [REDACTED]'s conduct did not constitute *Discreditable Conduct*. The evidence demonstrates that Constable [REDACTED] used information that he obtained from the police of jurisdiction to investigate and, ultimately, arrest the suspect in a criminal matter in which he was the victim. He did so while the police of jurisdiction were actively investigating the incident and his actions had the potential to jeopardize the criminal investigation/prosecution.

I am also of the view that the Discipline Authority should have considered, in the alternative, whether Constable [REDACTED]'s actions constituted *Corrupt Practice* for using his position for a purpose unrelated to the proper performance of his duties as a member.

With respect to the loaded magazine, I am of the view that Inspector [REDACTED] erred by not considering whether Constable [REDACTED]'s actions constituted *Discreditable Conduct*. The evidence indicates that the magazine was a 15-round high-capacity Glock pistol magazine,

making it a prohibited device.<sup>1</sup> When initially speaking with the RCMP, Constable [REDACTED] indicated that the magazine was fully loaded when it was stolen, but later told the investigator that it may have had 6 to 8 rounds in it. The suspect stated he found 4 to 8 rounds.

Importantly, Constable [REDACTED] provided evidence that he had found the loaded magazine in his garage when cleaning. He could not say how long the magazine had been there and was uncertain on how long he had left it in his vehicle after finding it in the garage. When providing a statement to the RCMP, he said the magazine was in his car for maybe a couple of days, but could not recall exactly. He then left the magazine in his vehicle, which was unlocked, when he went to use the washroom, during which time the magazine and his notebook were stolen.

In concluding that Constable [REDACTED] had not committed *Neglect of Duty*, Inspector [REDACTED] stated that when he went to the washroom “the better course of action would have been for [Constable] [REDACTED] to take his notebook, magazine, and ammunition with him while he temporarily left his vehicle (paragraph 13).” Inspector [REDACTED] characterized Constable [REDACTED]’s conduct as an oversight and, therefore, did not rise to the threshold of *Neglect of Duty*.

I am of the view that Constable [REDACTED]’s conduct does not reflect a temporary oversight, but a pattern of carelessness for an item that poses a significant risk to the public. This conduct falls far below the reasonable expectation of the community, particularly given concerns about gun-related violence in the Lower Mainland. Therefore, in my view, Constable [REDACTED]’s conduct would likely bring discredit to the West Vancouver Police Department.

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 BC 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,

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<sup>1</sup> Pursuant to *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted* (SOR/98-462), Part 4, section 3(1)(b).

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