



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: 2020-17551

December 22, 2020

To: [REDACTED] (Complainant)

And to: [REDACTED] (Member)  
c/o [REDACTED]  
Professional Standards Section

And to: [REDACTED]  
c/o [REDACTED]  
Professional Standards Section

And to: The Honourable Judge Wally Oppal, Q.C. (ret'd) (Retired Judge)  
Retired Judge of the British Columbia Court of Appeal

And to: [REDACTED]  
[REDACTED]

On February 24, 2020, our office received a complaint from [REDACTED] describing her concerns with members of the [REDACTED] Police Department. The OPCC determined [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the [REDACTED] Police Department to conduct an investigation.

On November 10, 2020, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On November 24, 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 *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against Constable [REDACTED] did not appear to be substantiated.

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Police Complaint Commissioner

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## Background

On December 22, 2019, ██████████ reported a sex assault to the ██████████ Police Department that occurred in the ██████████ of ██████████ in ██████████ British Columbia. The respondent member investigated ██████████ complaint, and ultimately determined that the evidence did not support an arrest of the subject of the complaint and did not recommend charges to Crown Counsel.

During the sex assault investigation, Constable ██████████ communicated with ██████████ by phone and email. ██████████ alleged that while she had concerns over the quality of the investigation, her main concern was the manner in which Constable ██████████ spoke to her on the telephone. ██████████ alleged that Constable ██████████ repeatedly cut her off and interrupted her, and when asking her questions failed to allow her a reasonable amount of time to respond. He challenged her to “be honest.” He also made statements about the negative impacts that the investigation had on the subject male, such as causing him to lose sleep, miss work, and potentially affecting his job. ██████████ stated that these statements made her feel that the investigator was expressing sympathy for the subject.

██████████ also alleged that Constable ██████████ told her that it was unlikely that the subject male would do this to another female again, and that “she should try to be more careful next time she goes on a date.” ██████████ also stated that the investigator inappropriately argued with her about the issue of consent.

On April 15, 2020, the OPCC determined that ██████████ allegation in relation to the manner in which Constable ██████████ failed to appropriately communicate with ██████████ during his investigation of an alleged sexual assault would, if substantiated, constitute misconduct, potentially as follows:

1. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* by neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one’s duty as a member to do.

## DA Decision

The Discipline Authority found that there was “nothing” in the evidence that would lead him to believe that Constable ██████████ acted outside the scope of standard police investigation techniques for a sexual assault investigation. With respect to the allegation that Constable ██████████ was unprofessional in how he explained the investigation and his conclusion to ██████████, the Discipline Authority determined that this “appear[ed] to lie in a difference of interpretation and voice tone rather than explicit words or dialogue.”

The Discipline Authority considered the legal test for *Neglect of Duty*, and found that while constable ██████████ had a duty to properly and reasonably investigate ██████████ sexual assault complaint, he did not neglect his duty.

### Request for S.117 Review

██████████ requested that this matter be referred to a retired judge pursuant to s.117 of the *Police Act*. In her request, ██████████ stated that the reports she received from the ██████████ were almost entirely focused on the investigative steps taken by the officer during the sexual assault investigation, which was not the matter of her complaint. Her complaint was about the manner and treatment she received during the investigation. ██████████ felt that the focus of her complaint was minimized.

██████████ also took issue with the characterization of the matter as a “miscommunication.” ██████████ stated that the officer was clear, and he was sexist and intimidating. ██████████ was disappointed with how “misleading” the reports were.

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

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.

I agree with ██████████ that the Discipline Authority, Inspector ██████████ does not properly assess the admissible allegation and the core of ██████████ complaint, namely the manner in which Constable ██████████ communicated with her during his investigation into her complaint of a sexual assault. I also am of the view that the Discipline Authority insufficiently assesses the available evidence in arriving at his conclusion that ██████████ concerns “appear to lie in a difference of interpretation and voice tone rather than explicit words or dialogue.” Officers investigating sexual assaults have a positive obligation to employ trauma-informed practices in interviews and interactions with survivors of sexual assaults, and it appears from the evidence that Constable ██████████ may not have done so in this matter.

I find it necessary for a retired judge to make a new determination based on the evidence as to whether the actions of Constable ██████████ amount to a *Neglect of Duty* pursuant to s.77(3)(m)(ii) of the *Police Act*. I note that the retired judge may make a finding of misconduct in regard to a different subsection of the *Police Act*, including *Discourtesy* pursuant to s.77(3)(g) if upon review of the evidence they determine that consideration of other misconduct is appropriate 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 Wally Oppal, Q.C., retired judge of the British Columbia Court of Appeal, 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