



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 2019-16226

March 17, 2020

- To: Constable [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section
- And to: Inspector [REDACTED]
c/o Vancouver Police Department
Professional Standards Section
- And to: The Honourable Judge Brian Neal (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 May 14, 2019, based on information provided by the Vancouver Police Department (VPD), I ordered an investigation into the conduct of Constable [REDACTED] VPD Police Professional Standards investigator, Sergeant [REDACTED] conducted an investigation into this matter.

Background

On April 25, 2019, the Office of the Police Complaint Commissioner (OPCC) received information from the VPD in relation to the off duty conduct of Constable [REDACTED] on April 17, 2019.

According to the VPD, on April 17, 2019 at approximately 1030 hours, [REDACTED] RCMP Constable [REDACTED] responded to a parking lot dispute in the [REDACTED] block of [REDACTED], BC.

It was reported that Constable [REDACTED] s wife was waiting for her husband to return to their vehicle when a male opened the door to the vehicle parked next to theirs. Constable [REDACTED] s wife heard the male s car door strike their vehicle and an argument ensued. Constable [REDACTED] s wife called Constable [REDACTED] and requested he attend the scene. Constable [REDACTED] attended and produced his police badge in order to have the male provide his identification.

Clayton Pecknold
Police Complaint Commissioner

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RCMP Constable [REDACTED] arrived and mediated the dispute. RCMP Constable [REDACTED] allowed Constable [REDACTED] to take a photograph of the male's driver's license while advising both parties that there was no damage to either vehicle and therefore ICBC would be taking no action.

[REDACTED] RCMP subsequently reported Constable [REDACTED]'s conduct to the VPD.

On May 8, 2019, the OPCC asked the VPD whether they would be requesting an order for investigation into the conduct of Constable [REDACTED]. The VPD advised they had determined that the conduct in question did not meet the criteria for a request for ordered investigation.

Based on the information received, I ordered that Constable [REDACTED]'s conduct be investigated by the VPD pursuant to section 93(1) of the *Police Act* to determine whether the conduct constituted misconduct, specifically *Corrupt Practice*, pursuant to section 77(3)(c)(iii) of the *Police Act*, which is using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member.

During Sergeant [REDACTED]'s investigation, the OPCC identified additional areas that required further assessment. Specifically, whether Constable [REDACTED]'s conduct constituted *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act*, and, or, *Discourtesy*, pursuant to section 77(3)(g) of the *Police Act*.

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

DA Decision

On February 18, 2020, Inspector [REDACTED] issued her decision pursuant to section 112 in this matter. Inspector [REDACTED] considered three allegations of misconduct:

1. *Corrupt Practice*, pursuant to section 77(3)(c)(iii) of the *Police Act*. Specifically, Constable [REDACTED]'s identification of himself as a police officer to the male civilian and to the attending RCMP members.
2. *Discreditable Conduct*, pursuant to section 77(3)(h) of the *Police Act*. Specifically, Constable [REDACTED]'s conduct in relation to the male civilian, and in relation to his interaction with the attending RCMP members.
3. *Discourtesy*, pursuant to section 77(3)(g) of the *Police Act*. Specifically, Constable [REDACTED]'s conduct during the incident at the [REDACTED].

Additionally, Inspector [REDACTED] considered whether Constable [REDACTED] complied with VPD's Conflict of Interest Policy, but did not assess a *Police Act* allegation with respect to that Policy or in relation to conflicts of interest, generally.

Inspector [REDACTED] determined that the evidence in the FIR did not appear to substantiate any of the allegations of misconduct.

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.

In relation to the first allegation considered by the Discipline Authority, I am of the view that the Discipline Authority erred in not assessing whether, in the alternative, Constable █████ committed *Neglect of Duty* or *Discreditable Conduct* when taking action in relation to an incident in which he had a personal interest.

With respect to Constable █████'s conduct towards civilians and the RCMP, the Discipline Authority identified the correct test for *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*. In *Mancini v. Constable Martin Courage*, OCCPS #04-09, the Ontario Civilian Commission on Police Services adopted the following definition of *Discreditable Conduct*:

The concept of Discreditable Conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.

While I am not bound by the view of the Ontario Commission, I do agree that the test was fairly stated in *Mancini* and appropriate in the context of the *Police Act* in this province. The above test has been consistently applied by Discipline Authorities and adjudicators to assess allegations of *Discreditable Conduct*.

It is my view that while the Discipline Authority did reference *Mancini* in her assessment, she did not reach the correct outcome based on that test. Specifically, I have a reasonable basis to believe that the decision of the Discipline Authority was incorrect in her determination that, when measured against the reasonable expectations of the community, Constable █████'s conduct did not constitute *Discreditable Conduct*.

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 Honourable Judge Brian Neal, retired Provincial Court Judge, to review this matter and arrive at his own decision based on the evidence.

It is important to note that, in accordance with section 117(8) of the *Police Act*, the retired judge must list or describe the allegations considered as part of his or her review of the matter. Therefore, the retired judge is not limited to the allegations considered by the Discipline Authority, or the Police Complaint Commissioner's assessment of those allegations.

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