



Office of the  
Police Complaint Commissioner

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British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE**

Pursuant to section 117(4) of the *Police Act*

OPCC File 2018-15597

April 23, 2020

- To: [REDACTED] (Member)  
c/o Vancouver Police Department  
Professional Standards Section
- And to: [REDACTED] (External Investigator)  
c/o Abbotsford Police Department  
Professional Standards Section
- And to: Inspector [REDACTED] (External Discipline Authority)  
c/o Abbotsford Police Department  
Professional Standards Section
- And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section
- And to: The Honourable Judge Wallace T. Oppal, Q.C., (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 October 31, 2018, Police Complaint Commissioner Stan Lowe ordered an external investigation into the conduct of [REDACTED] based on information provided by the Vancouver Police Department. Abbotsford Police Department [REDACTED] conducted the investigation and on March 10, 2020, submitted the Final Investigation Report to the Discipline Authority.

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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)

On March 24, 2020, Inspector ██████ issued his decision pursuant to section 112 of the *Police Act*. Inspector ██████ considered two allegations of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against ██████. The first allegation considered ██████'s compliance with BC Provincial Standards when deploying his Police Service Dog (PSD). The second considered his compliance with Vancouver Police Policy for submitting a Subject Behaviour Officer Response Report. Inspector ██████ determined that neither of the allegations appear to be substantiated.

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 with relation to the deployment of PSD ██████ is incorrect.

### **Background**

According to the initial information provided by the Vancouver Police Department, on October 30, 2018, members of the Vancouver Police Department were in a parking lot located at ██████, Vancouver, BC, to effect the arrest of three suspects from inside a parked vehicle. One of the suspects fled from the passenger side of the vehicle and ██████ deployed PSD ██████ to assist in taking him into custody. PSD ██████ contacted a civilian bystander who had just exited his vehicle in the parking lot.

The bystander reportedly sustained a dog bite to his right lower leg and was transported to hospital where he received 25 stitches to close the dog bite wound.

### **DA Decision**

With respect to ██████'s deployment of PSD ██████, Inspector ██████ determined "that there was no lesser use of force options that would have been either appropriate or effective and that deploying a PSD to apprehend a fleeing suspect is reasonable and justified." Inspector ██████ also determined that ██████ "made an inadvertent error when he did not take into consideration that PSD ██████ was unable to see over or around parked police vehicles in order to visually target Mr. ██████" However, Inspector ██████ believes "that an officer with the same skill and experience would have done the same thing." Noting that ██████ "was operating under a dynamic and highly stressful situation and believed PSD ██████ had visually targeted Mr. ██████."

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

Vancouver Police Department Policy requires members of the Canine Unit to comply with the BC Provincial Standards for Police Service Dogs. Those standards contain a list of criteria that the handler must consider before and during the deployment of a PSD in order to conclude, on reasonable grounds, that the risk of a bite is justified. Based on the evidence in this matter, I have determined that there is a reasonable basis to conclude that the Discipline Authority was incorrect in determining that ██████ had reasonable grounds to conclude the risk of a bite was justified.

In my view, key criteria were not afforded appropriate weight by the Discipline Authority when considering the reasonableness of ██████'s risk assessment. Specifically, the suspect had been detained, identified and released by police earlier in the day based on suspicion that he had committed a residential break-in. ██████ was present during that detention. Police then observed the suspect commit a second break-in and obtained evidence that satisfied them they had reasonable grounds to arrest for the initial break-in. While reasonable grounds existed to arrest the suspect, I am of the view that the Discipline Authority did not adequately consider whether the need to arrest was sufficiently urgent to justify the risk of a bite given he was known to police.

Furthermore, the discipline authority did not afford sufficient weight to the potential risk to the public based on the time, location and environment. The deployment occurred just after 5 p.m. Video evidence depicts a busy parking lot with a busy street in the background. Both vehicle and pedestrian traffic are present. ██████'s own statement indicated that when he drove into the parking lot, he felt that it was "not a quiet area and was not ideal for doing an actual, umm, takedown of this nature." Based on the public risk created by the location, time and environment, when balanced with the considerations related to the objective level of urgency to arrest the suspect, it is my view that the totality of circumstances did not support the conclusion that the risk of a bite was justified.

Further, even if there were reasonable grounds to conclude the risk of a bite was justified, it is my view that the discipline authority was incorrect in determining that ██████ complied with BC Provincial Standards by maintaining adequate control when he deployed the PSD off leash. The increased public risk created by the time, location and environment elevated ██████'s duty to control his PSD in a manner that was commensurate with that risk. Based on the video evidence and ██████'s evidence, neither he nor PSD ██████ could maintain continual visual targeting of the suspect while running around his vehicle and the vehicle behind. It was not until they had cleared the second vehicle that ██████ had a clear and direct view to make target acquisition possible. At that point, the suspect was already exiting the parking lot and heading to the street. The video evidence also depicts the affected person in close proximity and in Sergeant ██████'s field of view at that time. ██████ points in the direction of the suspect sending PSD ██████ for the off-leash apprehension, but PSD ██████ runs directly at the affected party and contacts him. ██████'s evidence that he did not see the affected party is consistent with not taking adequate time to ensure that he had his PSD under control, given that the presence of innocent by-standers was a reasonable foreseeable factor and that he should only release that control once there was no risk to the public.

I am also of the view that ██████'s statement about his initial assessment of the area in which the takedown occurred indicates a consciousness of risk to the public and that sending the PSD off-leash in the circumstances led to an unnecessary use of force on the affected person. Therefore, the Discipline Authority should have considered whether, in the alternative, the deployment constituted an *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* as a reckless use of unnecessary force.

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 Judge Wallace T. Oppal, Q.C., 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 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

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