



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 2020-18195

April 14, 2021

To: Mr. [REDACTED] (Complainant)

And 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 Carole Lazar, (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 July 2, 2020, our office received a complaint from Mr. [REDACTED] describing his concerns with members of the Vancouver Police Department (VPD). The OPCC determined Mr. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the VPD to conduct an investigation.

On March 2, 2021, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On March 15, 2021, Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified two allegations of misconduct against Constable [REDACTED] Constable [REDACTED] and Constable [REDACTED]. He determined that the allegations of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) and section 77(3)(a) of the *Police Act* against the members did not appear to be substantiated.

Clayton Pecknold  
Police Complaint Commissioner

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On March 25, 2021, Mr. [REDACTED] (through his legal counsel) advised the OPCC that he disagreed with Inspector [REDACTED] decision and requested that I exercise my authority to appoint a retired judge to review the matter.

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

Mr. [REDACTED] was stopped on April 5, 2020, by Constable [REDACTED] and Constable [REDACTED] while driving his pickup truck on Nelson Street. Mr. [REDACTED] was accompanied by a female co-worker who he was transporting to a work site where he is employed as a licensed security officer. Constable [REDACTED] advised that he stopped Mr. [REDACTED] because of his plastic covers on his licence plate. Mr. [REDACTED] refused to provide his driver's licence and requested that a police supervisor attend as he did not agree with the validity of the traffic stop.

Constable [REDACTED] told Mr. [REDACTED] that he was being arrested for obstruction and was subsequently handcuffed while Constable [REDACTED] conducted a (approximately 30-minute) search of Mr. [REDACTED] truck. Constable [REDACTED] provided evidence that he searched through the cab area as well as the bed of the truck, including Mr. [REDACTED] occupational first aid equipment and camping gear. Constable [REDACTED] located several small knives and a cannister of bear spray. Mr. [REDACTED] was then released with a violation ticket for an obstructed plate and a notice to have his vehicle inspected.

## DA Decision

With respect to the allegation of *Abuse of Authority* related to the search of Mr. [REDACTED] vehicle, Inspector [REDACTED] found that the evidence did not support that any of the officers committed misconduct. In assessing the search of Mr. [REDACTED] vehicle, Inspector [REDACTED] determined that the officers had lawful authority to search, incident to arrest and for officer safety purposes, highlighting the presence of weapons and the uncertain disposition of the vehicle. The Discipline Authority concluded that the search did not amount to misconduct and noted that the search was not motivated by "abusive purposes."

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

I am of the view that the Discipline Authority has not appropriately considered the scope and extent of the search in determining that it was a reasonable and proper search incident to a lawful arrest or that such an intrusive search was required for "officer safety" reasons. I note that the evidentiary record is consistent between both Constable [REDACTED] and Mr. [REDACTED] with respect to the scope and manner of the vehicle search.

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 Carole Lazar,

retired Provincial Court Judge, to review this matter and arrive at her 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 her decision, we refer her to section 3 of the Limitation Periods (COVID-19) Order.**



Clayton Pecknold  
Police Complaint Commissioner