



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 2021-19515

November 24, 2021

- 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 Elizabeth Arnold-Bailey, (ret'd) (Retired Judge)
Retired Judge of the Supreme Court of
British Columbia
- And to: His Worship Mayor Kennedy Stewart
Chair, c/o Vancouver Police Board

On April 19, 2021, based on information provided by the Vancouver Police Department, I ordered an investigation into the conduct of Constable [REDACTED] Vancouver Police Professional Standards investigator, [REDACTED], conducted an investigation into this matter.

On October 19, 2021, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On November 2, 2021, the Discipline Authority, Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified one allegation of misconduct against Constable [REDACTED]. He determined that the allegation of *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act* against Constable [REDACTED] did not 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 is incorrect.

Clayton Pecknold
Police Complaint Commissioner

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Background

On April 11, 2021, Constable [REDACTED] (the Member) was working in full uniform in the company of three other constables. Their primary duty was to escort city of Vancouver workers as they conducted sidewalk cleaning in the Downtown Eastside of Vancouver.

At approximately 10:15 a.m., the four constables were standing on the northeast corner of Columbia Street and East Hastings Street when a female, later identified as [REDACTED], appeared to be taking photos and/or video of the constables using her cell phone while standing on the northwest corner of Columbia Street and East Hastings Street. A conversation ensued between [REDACTED] and the Member and [REDACTED] captured small portions of this interaction on video.

During the interaction, two comments were made by the Member that formed the basis for this *Police Act* investigation, specifically, he said something to the effect of, "I'll smack you" as well as saying, "I have no idea what you're talking about, no idea, no idea ma'am, go back to dealing drugs, see ya."

Discipline Authority Decision

On November 2, 2021, the Discipline Authority issued his decision. Having reviewed the evidence the Discipline Authority determined, "that the evidence is sufficiently clear, convincing and cogent to establish on a balance of probabilities that Constable [REDACTED] did not commit the misconduct of *Discreditable Conduct*." In his decision the Discipline Authority found that the Member "could have responded in a better manner during his interaction with the [REDACTED] but nevertheless noted that he was "not examining his conduct against a standard of perfection."

In reviewing the evidence, the Discipline Authority observed that [REDACTED] was provoking the Member to respond, in particular by getting physically close to him with her phone. Further, the Discipline Authority noted that the Member did respond at one point by saying that he would "smack the phone" that [REDACTED] had close to his face and also later saying, "I have no idea what you're talking about, no idea, no idea ma'am, go back to dealing drugs, see ya." The Discipline Authority concluded that as much as the Member did not need to say these words, it was in response to [REDACTED] provoking the Member, however he was "satisfied that Constable [REDACTED] responses did not reach the level required to become a misconduct, in particular *Discreditable Conduct*."

OPCC Decision, Section 117 of the *Police Act*

After review of the Discipline Authority's decision, I am of the view that the Discipline Authority has not properly considered the context of the available evidence in his assessment and decision. I have reasonable basis to conclude that the Discipline Authority's decision is therefore incorrect.

The Discipline Authority's decision and analysis of the evidence is insufficient. In particular the Discipline Authority found some divergence in evidence between that statements of [REDACTED]

and the Member. The Discipline Authority concluded that the Member's version should be given the benefit of the doubt. However, in reviewing the statements and the video evidence in the Final Investigation Report I am of the view that there is evidence to support [REDACTED] version of events.

In addition, it is my view that the Discipline Authority is incorrect when he determined that the Member did not commit *Discreditable Conduct*. Specifically, the Discipline Authority failed to properly consider the available evidence as against the expectations of a reasonable member of the community. The public expects that officers remain calm and professional in all circumstances including cases such as this. The video supports that the Member made a threat of physical violence towards [REDACTED] and when viewed in all of the circumstances this response and overall behavior can reasonably be seen to fall below that expected of a Member.

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 Elizabeth Arnold-Bailey, (ret'd), retired Supreme 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.



Clayton Pecknold
Police Complaint Commissioner

cc: [REDACTED], Registrar

Office of the
Police Complaint Commissioner