



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 2019-16869

April 29, 2021

- To: Ms. [REDACTED] (Complainant)
- And to: Constable [REDACTED] (Member)  
c/o Victoria Police Department  
Professional Standards Section
- And to: Inspector [REDACTED]  
c/o Victoria Police Department  
Professional Standards Section
- And to: The Honourable Judge Brian Neal, Q.C., (ret'd) (Retired Judge)  
Retired Judge of the Provincial Court of  
British Columbia
- And to: Her Worship Mayor Lisa Helps  
Lead Co-Chair, c/o Victoria & Esquimalt Police Board
- And to: Her Worship Barbara Desjardins  
Deputy Co-Chair, c/o Victoria & Esquimalt Police Board

On September 26, 2019, our office received a complaint from Ms. [REDACTED] describing her concerns with members of the Victoria Police Department. The OPCC determined Ms. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the Victoria Police Department to conduct an investigation.

On March 12, 2021, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

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Police Complaint Commissioner

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On March 30, 2021, Inspector ██████ issued his decision pursuant to section 112 in this matter. Specifically, Inspector ██████ identified three allegations of misconduct against Constable ██████, Constable ██████ and Constable ██████. He determined that the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against Constable ██████, Constable ██████ and Constable ██████ did not appear to be substantiated. Inspector ██████ further determined that the allegations of *Discourtesy* and *Abuse of Authority* pursuant to sections 77(3)(g) and 77(3)(a)(iii) of the *Police Act* did not appear to be substantiated against Constable ██████, Constable ██████, and Constable ██████.

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 with respect to the allegation of *Neglect of Duty* against Constable ██████.

### Background

On August 24, 2019, Ms. ██████ awoke to find her former partner, Mr. ██████ standing in her bedroom. Mr. ██████ then physically and sexually assaulted Ms. ██████. In an attempt to end the assault, Ms. ██████ drove Mr. ██████ from his residence, where he refused to leave her vehicle until she agreed to go up to his apartment. Mr. ██████ continued assaulting Ms. ██████ in his apartment. During this time, Mr. ██████'s ██████ called 911 and reported banging and screaming in the apartment ██████.

Ms. ██████ subsequently attempted to flee Mr. ██████'s apartment; however, Mr. ██████ caught up to her in the building stairwell and dragged her towards her vehicle. When Ms. ██████ refused to enter her vehicle and began walking away, Mr. ██████ drove the vehicle toward her at a high rate of speed and yelled at her to get in the vehicle. Ms. ██████ entered the vehicle, and Mr. ██████ drove away from the residence and ultimately drove the vehicle down a flight of stairs and was unable to proceed further.

Mr. ██████ and Ms. ██████ returned on foot to Mr. ██████'s apartment building, where they were met by Constable ██████, Constable ██████, Constable ██████ and Reserve Constable ██████ in the parking lot. The members spoke to Ms. ██████ and Mr. ██████ and determined that they did not have reasonable grounds to arrest Mr. ██████. Upon Ms. ██████'s arrival at her home, her mother observed injuries and called for an ambulance. The BC Ambulance Service transported Ms. ██████ to the hospital and requested that the Saanich Police Department attend. The Saanich Police Department attended at the hospital and opened a criminal investigation which resulted in criminal convictions against Mr. ██████.

## DA Decision

With respect to the allegation of *Neglect of Duty*, Inspector █████ considered whether the officers failed to conduct a reasonable domestic assault investigation – specifically by failing to adequately separate Ms. █████, failing to canvas Ms. █████'s genuine consent to remain with Mr. █████, failing to observe Ms. █████'s injuries, and failing to remain on scene until she had safely departed. Inspector █████ concluded that the officers conducted a reasonable investigation, consistent with policy and law, and that they did not neglect their duty.

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

Based on the evidence in the Final Investigation Report, I am of the view that the Discipline Authority erred in not assessing Constable █████'s obligation to conduct a risk-focused investigation in a manner consistent with VicPD policy, the provincial Violence Against Women in Relationships (VAWIR) policy, and mandatory domestic violence training. In my view, in light of Constable █████'s awareness of a no contact condition between Ms. █████ and Mr. █████ except with her express consent, and Mr. █████'s criminal history, Constable █████ did not adequately assess the risk Mr. █████ posed to Ms. █████. Further, I am of the view that, considering the context of a serious domestic violence investigation, the Discipline Authority did not employ a sufficiently high standard of care in his overall assessment of Constable █████'s 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 the Honourable Judge Mr. Brian Neal, Q.C., retired Provincial 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 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