



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 2021-19628

March 1, 2022

- To: Mr. [REDACTED] (Complainant)  
c/o [REDACTED]  
[REDACTED]
- And to: Constable [REDACTED] (Member)  
c/o Vancouver Police Department  
Professional Standards Section
- And to: Acting Inspector [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section
- And to: The Honourable Judge William Ehrcke, (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 30, 2021, the Office of the Police Complaint Commissioner (OPCC) received a registered complaint from Mr. [REDACTED] (complainant) describing his concerns with members of the Vancouver Police Department (VPD). The OPCC determined that Mr. [REDACTED] complaint was admissible pursuant to Division 3 of the *Police Act* and directed the VPD to investigate the complaint.

On January 17, 2022, Sergeant [REDACTED] of the Vancouver Police Department Professional Standards Section completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On January 31, 2022, Acting Inspector [REDACTED] (Discipline Authority) issued his decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified two allegations of misconduct against Constable [REDACTED] and Constable [REDACTED]

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)

(respondent members). He determined that the allegations of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* and *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against the respondent members did not appear to be substantiated.

Pursuant to section 117(1) of the *Police Act*, having reviewed the matter I consider that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to the conduct of Constable [REDACTED]. I do not have a reasonable basis to believe the decision is incorrect with respect to Constable [REDACTED].

## Background

On March 15, 2021, the complainant and a female acquaintance were walking on the sidewalk of East Hastings Street when Constable [REDACTED] exited his police vehicle and approached them. According to Constable [REDACTED] his attention was drawn to the complainant as it appeared he was causing a disturbance by yelling and swearing in the street. The member gave evidence that he exited the police vehicle to investigate the situation and to ensure everyone's safety, as he did not know if an assault occurred or if someone was hurt.

CCTV video evidence of the interaction appears to depict Constable [REDACTED] approaching the complainant and taking the complainant to the ground. Once on the ground, cellphone video evidence from the female acquaintance depicts Constable [REDACTED] deploying strikes to the complainant, including to the complainant's head.

According to the member's partner, Constable [REDACTED] she initially remained in the police vehicle as she believed that Constable [REDACTED] would quickly de-escalate the situation. Constable [REDACTED] subsequently exited the police vehicle to assist in handcuffing the complainant.

Constable [REDACTED] reported that the complainant was initially arrested for *Assaulting a Peace Officer, Uttering Threats, Causing a Disturbance, and Breach of the Peace*. However, the complainant was ultimately arrested for *Breach of the Peace* and transported to the Vancouver Jail where he was released a short time later without charges.

The complainant alleged that the respondent members used excessive force during his arrest and that he was never advised of the reason for his arrest.

## DA Decision

On January 31, 2022, the Discipline Authority issued his decision. Having reviewed the evidence, the Discipline Authority determined that the respondent members had a duty to investigate the complainant when they observed him causing a disturbance. Additionally, the Discipline Authority determined that Constable [REDACTED] had reasonable grounds to believe he was about to be assaulted, as the complainant took up a "fighting stance" and cocked his fist back, and formed reasonable grounds to arrest the complainant for assaulting a police officer when the complainant grabbed the collar of Constable [REDACTED] shirt.

In examining the force utilized, the Discipline Authority found that the complainant actively fought with Constable [REDACTED] on the ground, that Constable [REDACTED] used strikes to gain

compliance from the complainant for handcuffing, and the respondent members' actions were reasonable and justified.

In regard to the allegation that the complainant was not advised of the reason for his arrest, the Discipline Authority found that the respondent members had a duty to advise the complainant of the reasons for his arrest, and that the testimonial and video evidence clearly demonstrates that the complainant was advised of the reasons for his arrest.

### **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 appears to have erred in not adequately and independently assessing all of the available evidence as to whether Constable [REDACTED] had lawful authority to use force and whether the force deployed by Constable [REDACTED] was necessary and proportional in the circumstances.

In assessing Constable [REDACTED] lawful authority to use force, the Discipline Authority does not appear to sufficiently consider the available video evidence and independent witness testimony with respect to the complainant's conduct prior to being taken to the ground. Specifically, the evidence of the female acquaintance and the independent witness support the complainant's contention that he did not grab Constable [REDACTED] as alleged by the member, and the complainant and the independent witnesses gave evidence that the complainant had his hands down at the time Constable [REDACTED] initiated the take-down. Additionally, the CCTV video evidence appears to depict a rapid take-down by Constable [REDACTED] upon approach.

I further note that it does not appear the Discipline Authority considered the inconsistencies between Constable [REDACTED] statement in his General Occurrence report (that the complainant immediately charged at the member upon approach) and his testimonial evidence, as well as the video evidence, which does not appear to support this initial assertion.

Finally, the Discipline Authority does not sufficiently analyze Constable [REDACTED] assertion that he was "in a fight for [his] life," and other statements made by Constable [REDACTED] describing the actions of the complainant, in light of other available sources of objective evidence, such as video, in order to appropriately determine whether the force used in these circumstances was necessary, reasonable and proportional in the circumstances.

I therefore have a reasonable basis to conclude that the Discipline Authority was incorrect in determining that Constable [REDACTED] had lawful authority to use force and that the force used was not excessive in the circumstances.

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 William Ehrcke, retired Supreme 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.



Clayton Pecknold  
Police Complaint Commissioner

cc: [REDACTED], Registrar