

Office of the Police Complaint Commissioner

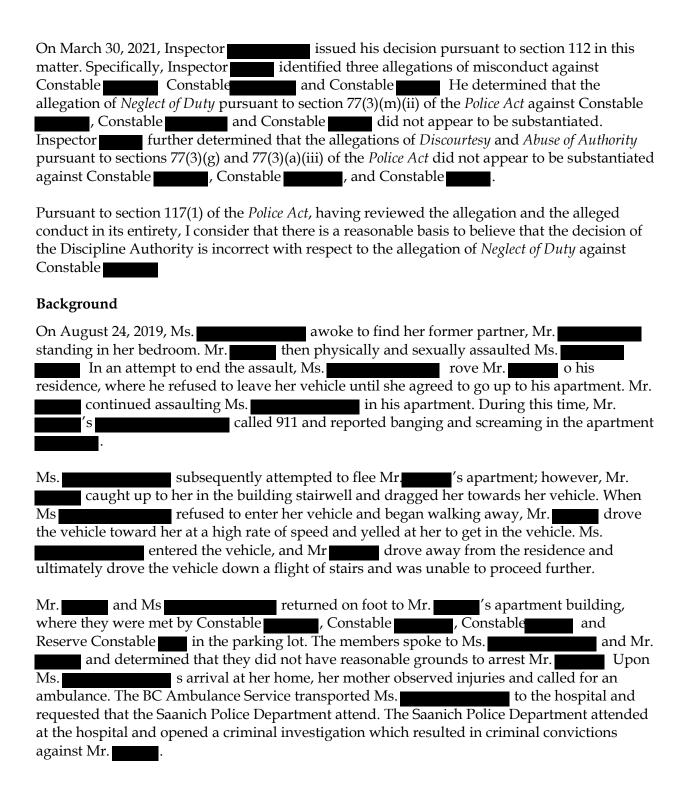
British Columbia, Canada

NOTICE OF APPOINTMENT OF RETIRED JUDGE

Pursuant to section 117(4) of the Police Act

OPCC File 2019-16869 April 29, 2021

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То:	Ms.	(Complainant)
And to:	Constable c/o Victoria Police Department Professional Standards Section	(Member)
And to:	Inspector c/o Victoria Police Department Professional Standards Section	
And to:	The Honourable Judge Brian Neal, Q.C., (ret'd) Retired Judge of the Provincial Court of British Columbia	(Retired Judge)
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	
describing determine	nber 26, 2019, our office received a complaint from Ms. The concerns with members of the Victoria Police Department. The d Ms. complaint to be admissible pursuant to Eand directed the Victoria Police Department to conduct an investigation.	Division 3 of the
	12, 2021, Sergeant completed his investigation stigation Report to the Discipline Authority.	and submitted the



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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. sinjuries, and failing to remain with Mr. failing to observe Ms. sinjuries, 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 obligation to conduct a risk-focused
investigation in a manner consistent with $\overline{ ext{VicPD pol}}$ icy, the provincial Violence Against Womer
in Relationships (VAWIR) policy, and mandatory domestic violence training. In my view, in
light of Constable 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 state '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.

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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

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