



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 2021-20136

July 18, 2022

To: Constable [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Inspector [REDACTED] (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

And to: The Honourable Judge Mark Takahashi, (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 August 12, 2021, based on information provided by the Vancouver Police Department (VPD) and a request to initiate an investigation into the matter, I ordered an investigation into the conduct of Constable [REDACTED] (the Member). VPD Professional Standards investigator, Sergeant [REDACTED], conducted an investigation into this matter.

On June 6, 2022, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On June 20, 2022, Inspector [REDACTED] issued her decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified three allegations of misconduct against the Member. Inspector [REDACTED] determined that the following allegations of misconduct against the Member did not appear to be substantiated:

1. *Discreditable conduct*, pursuant to section 77(3)(h) of the *Police Act* which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department.

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Police Complaint Commissioner

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Specifically, in reference to the Member's behavior and comments throughout a Car 88 shift to a VCH nurse.

2. *Improper use or care of firearms*, pursuant to section 77(3)(k) of the *Police Act*, which is failing to use or care for a firearm in accordance with standards or requirements established by law.

Specifically, in relation to the Member drawing his pistol and holding it out to show the VCH nurse.

3. *Corrupt practice*, pursuant to section 77(3)(c)(iv) of the *Police Act*, which is using or attempting to use any equipment or facilities of a municipal police department, or any other police force or law enforcement agency, for purposes unrelated to the performance of duties as a member.

Specifically, in relation to the Member using VPD police programs to run the VCH nurse's name on police databases.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegations 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

On [REDACTED], the Member was working a shift alongside a Vancouver Coastal Health ("VCH") nurse clinician in "Car 88", under a partnership between the VPD and VCH which enabled VCH clinicians to provide in-site assessments and intervention for individuals in mental health and substance abuse crisis. The clinician reported that while they were working together the Member made concerning remarks and other behavior which made her feel uncomfortable. The concerning remarks and behaviours included, but was not limited to, comparing the use of the word "Cops" to the "N-Word" and displaying a video with themes that included inappropriate racial stereotypes. The clinician also alleged that the Member inappropriately drew his pistol across his lap on two occasions.

Additionally, during the course of the investigation, the investigator determined that the Member queried the clinician's name on police databases.

DA Decision

The Discipline Authority unsubstantiated the allegation of *Discreditable Conduct*. The Discipline Authority determined that while the Member "used poor judgment in showing the video", none of the behaviour would bring discredit to the department.

The Discipline Authority unsubstantiated the allegation of *Improper Use or Care of Firearms*. She found that there were no witnesses and no video to support the clinician's allegation that the Member had drawn his pistol from its holster. As a result, the Discipline Authority determined that it was a matter of credibility and that both the clinician and the Member were "equally

credible.” According to the Discipline Authority, “based on the fact there are no witnesses, no video and no other presented evidence, I can only base my decision on the credibility of [the Member] and [the clinician]. Both appear to be equally creditable and reliable in regards to their statements.”

Finally, the Discipline Authority unsubstantiated the allegation of *Corrupt Practice* finding that Member’s explanation that he had queried the clinician in order to spell her name accurately for his police report was a reasonable explanation and that the search was not done for personal use.

I agree with the Discipline Authority’s determination that the Member’s query did not amount to *Corrupt Practice*.

OPCC Decision, Section 117 of the *Police Act*

I have reviewed the Discipline Authority’s decision and have determined that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect in relation to the *Discreditable conduct* and *Improper use or care of firearms* allegations and that a retired judge should be appointed pursuant to section 117 of the *Police Act*.

There are concerns with the Discipline Authority’s analysis on the issue of *Discreditable conduct*. In our view, as per the Honourable Ian H. Pitfield in OPCC 2009-4716, the following is the relevant test for determining *Discreditable conduct*:

[17] In *Mancini v. Constable Martin Courage*, OCCPS #04-09, the Ontario Civilian Commission on Police Services adopted the following definition of discreditable conduct:

The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.

The Discipline Authority found that the Member compared the use of the word “Cops” to the “N-word.” It is my view that the member’s references to these terms inappropriately diminishes the historical context and impacts of discrimination faced by Black persons. Additionally, in showing a video depicting inappropriate racial stereotypes to the civilian clinician that the member acknowledged was “off-side”, the member demonstrated what the Discipline Authority determined to be “poor judgment.” Taken together, the conduct of the member must be considered against the primarily objective standard and then considered against what the community’s expectations are.

I also consider that the Discipline Authority is incorrect in her assessment of the allegation of *Improper Use or Care of a Firearm*. There are concerns with the Discipline Authority’s assessment of credibility and reliability against the standard as set out by *Faryna v Chorny*, [1952] 2 DLR 354. Specifically, there are factors which speak to the reliability and credibility of the parties involved which were not, in my view, sufficiently considered by the Discipline Authority.

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 Mark Takahashi, 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.



Clayton Pecknold
Police Complaint Commissioner

cc: [REDACTED], Registrar