



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 2022-22748

June 29, 2023

To: [REDACTED] (Complainant)

And to: Constable [REDACTED] (Member)  
c/o Surrey Police Service  
Professional Standards Section

And to: [REDACTED] (Discipline Authority)  
c/o Surrey Police Service  
Professional Standards Section

And to: The Honourable Carol Baird Ellan (Retired Judge)  
Retired Judge of the Provincial Court of British Columbia

And to: Her Worship Mayor Brenda Locke  
Chair, c/o Surrey Police Board

On October 24, 2022, our office received a complaint from [REDACTED] (Complainant) describing their concerns with a member of the Surrey Police Service (SPS). The OPCC determined [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the SPS to conduct an investigation.

On May 18, 2023, Sergeant [REDACTED] (Investigator) completed his investigation and submitted the Final Investigation Report (FIR) to the Discipline Authority.

On June 2, 2023, [REDACTED], as Discipline Authority, issued his decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified two allegations of misconduct against Constable [REDACTED] (Member), including *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, and *Corrupt Practice* pursuant to section 77(3)(c)(iii) of the *Police Act*. He determined that neither of these allegations appeared to be substantiated.

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Clayton Pecknold  
Police Complaint Commissioner

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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**

The Complainant alleged that on October 24, 2022, they were employed as a security person at the [REDACTED] restaurant in Langley, BC. The Member, who was off-duty, was a patron of the restaurant and allegedly stated that he was going to drive home, causing staff of the restaurant to become concerned as the Member had consumed alcohol and showed signs of intoxication. As the Member was walking out of the restaurant, the Complainant asked the Member how he would get home, and in response, the Member allegedly stated "I'm going to drive". The Complainant advised the Member that he would call police if the Member attempted to drive. In turn, the Member allegedly advised the Complainant that he was "the police" and subsequently displayed his police badge to the Complainant. During their conversation, the Complainant alleged that the Member was belligerent and used disrespectful language toward the Complainant.

## **Discipline Authority's Decision**

The Discipline Authority stated that it was his belief that the Member had no intention to drive while intoxicated and submits that the Member was not stupefied and intoxicated to a point that he knew, or ought to know, would likely bring discredit on the police community. The Discipline Authority found that both the Complainant and the Member intended to diffuse and de-escalate the situation, however they did not believe one another, which created conflict.

The Discipline Authority stated that he was certain that the Member produced his identification and identified himself as a police officer. However, the Discipline Authority detailed that it was his belief that the Member did not identify himself as a police officer for personal gain.

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

Based upon my review of all the available evidence, I have a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to both unsubstantiated allegations against the Member. In particular, the Discipline Authority erred in failing to consider evidence which corroborated the derogatory comments alleged by the Complainant, and the Member's admission of demeaning comments and swearing towards the Complainant.

Additionally, the Discipline Authority erred in failing to consider whether the Member's action of displaying his police badge was for other purposes unrelated to the proper performance of duties as a member and not just for personal gain.

Finally, the Discipline Authority erred in failing to properly consider the Member's adherence to relevant SPS policy, as it relates to off-duty conduct and displaying one's badge.

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 Carol Baird Ellan, retired Provincial 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.



Clayton Pecknold  
Police Complaint Commissioner

cc: [REDACTED], Registrar