



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 2021-20351
August 17, 2022

- To: Ms. [REDACTED] (Complainant)
- And to: Constable [REDACTED]
Constable [REDACTED] (Members)
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 Brian Neal, Q.C. (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
- And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

On September 14, 2021, our office received a complaint on behalf of Ms. [REDACTED] (“Complainant”) via her counsel describing concerns with members of the Vancouver Police Department (“VPD”). The OPCC determined this complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the VPD to conduct an investigation.

After I rejected his first Final Investigation Report (“FIR”), on July 7, 2022, Sergeant [REDACTED] the Investigator, completed his investigation and submitted the FIR to Inspector [REDACTED] as the Discipline Authority.

Clayton Pecknold
Police Complaint Commissioner

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On July 21, 2022, the Discipline Authority issued her decision pursuant to section 112 in this matter. Specifically, she identified one allegation of misconduct against Constables [REDACTED], [REDACTED], [REDACTED], [REDACTED], and Special Municipal Constable ("SMC") [REDACTED]. She determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* against the members did not appear to be substantiated. 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 in relation to the conduct of two members.

Background

Ms. [REDACTED] complaint concerns a traffic stop at around 10:45pm on July 17, 2021, during which the Complainant's vehicle was "boxed in" by three police cars. The Complainant was made to leave her vehicle, placed in handcuffs, and asked to provide a breath sample. The passengers in the Complainant's vehicle, namely an adult male and the Complainant's 8-year-old son, were also made to leave the vehicle, and a visual search of the vehicle's interior was undertaken. The Complainant raised concerns about the aggressive manner of the police actions and suggested that, but for the Complainant's African heritage, the stop would have been undertaken differently.

DA Decision

The Discipline Authority found that the stop occurred as a result of SMC [REDACTED] broadcasting observations of the Complainant's driving which he considered to be indicative of impairment, including that her vehicle was unable to stay centered in the lane, and failed to stop for a red light. The Discipline Authority found that there was no evidence that the members had any indication of the Complainant's race prior to conducting the stop. The Discipline Authority analyzed events by reference to section 25 of the *Criminal Code of Canada* and concluded that the application of force used in stopping the Complainant's vehicle was not inappropriate.

The Discipline Authority found that, once stopped, Constable [REDACTED] directed the Complainant to the rear of her vehicle, where she remained in handcuffs for approximately 5 minutes. This was an appropriate low level of force to ensure everyone's safety at that time, based on members' previous experiences with intoxicated persons behaving unpredictably and placing themselves and others in danger, and the fact that there were two more people inside the vehicle that police had to direct their attention to. Based on the entirety of the information provided, the Discipline Authority found that the members' actions were lawful and not oppressive or abusive.

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 the unsubstantiated allegation as it relates to Constables [REDACTED] and [REDACTED] for the reasons outlined below. I do not have a reasonable basis to consider that the decision of the Discipline Authority is incorrect in relation to the unsubstantiated allegation as it relates to Constables [REDACTED], [REDACTED], [REDACTED] and SMC [REDACTED]. Therefore, the decision of the Discipline Authority with respect to these members is final and conclusive under section 112(5).

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I consider that the Discipline Authority erred in finding that Constable [REDACTED] conduct in handcuffing the Complainant did not constitute misconduct. The evidence suggests that the Complainant was cooperative and in the circumstances the use of any force, including restraint (handcuffing), was neither reasonably necessary nor consistent with the National Use of Force Framework.

I further consider that the Discipline Authority erred in failing to adequately consider whether the actions of Constable [REDACTED] in removing the passengers from the Complainant's vehicle and conducting a visual search of the vehicle was oppressive such that it constituted *Abuse of 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 Honourable Judge 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 members 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: Sergeant [REDACTED], Vancouver Police Department
[REDACTED], Registrar

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