



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 2022-22042

April 12, 2023

To: Ms. [REDACTED] (Complainant)

And to: Constable [REDACTED]
Constable [REDACTED] (Members)
c/o Vancouver Police Department
Professional Standards Section

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

And to: The Honorable Judge David Pendleton (Retired Judge)
Retired Judge of the Provincial Court of
British Columbia

And to: His Worship Mayor Ken Sim
Chair, c/o Vancouver Police Board

On January 27, 2022, our office received a complaint from Ms. [REDACTED] describing her concerns with members of the Vancouver Police Department. The OPCC determined [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed Vancouver Police Department to conduct an investigation.

On February 28, 2023, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report (FIR) to the Discipline Authority.

On March 14, 2023, Inspector [REDACTED], as Discipline Authority, issued his decision pursuant to section 112 in this matter. Specifically, Inspector [REDACTED] identified one allegation of *Neglect of Duty* against Constable [REDACTED] and Constable [REDACTED]. The Discipline Authority determined *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against both Constable [REDACTED] and Constable [REDACTED] did not appear to be substantiated.

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Police Complaint Commissioner

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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.

Background

The Complainant called 911 to report an assault on January 27, 2022. The person who reportedly assaulted her was a male known to her. The Complainant alleged that the male pushed her into the bushes multiple times after accusing her of stealing his dog. Although the Complainant did not report any physical injuries, her coat was damaged and she was shaken by the incident.

The Complainant alleged that the members failed to conduct a thorough and complete investigation, failed to return her phone calls or sufficiently respond to her enquiries.

Discipline Authority's Decision

The Discipline Authority found that Constable [REDACTED] and Constable [REDACTED] performed an adequate investigation based on the evidence. The Discipline Authority applied a three-part assessment of *Neglect of Duty*:

- i. Did the member have a duty?
- ii. If so, did the member neglect his/her duty?
- iii. If so, did the member have good or sufficient cause to neglect his/her duty?

The Discipline Authority determined that Constable [REDACTED] lacked reasonable grounds to believe an assault had occurred but still made three separate efforts to get in touch with the offender who allegedly assaulted the Complainant. The Discipline Authority referenced the belief of both Constables that monetary compensation was a primary concern of the Complainant due to her damaged jacket.

The Discipline Authority addressed the divergence in perspectives regarding the number of phone calls Constable [REDACTED] made to the Complainant by giving the benefit of the doubt to the member. The Discipline Authority referenced Constable [REDACTED] *Police Act* statement to the Investigating Officer, where Constable [REDACTED] asserted that they made two additional phone calls to the Complainant to provide updates.

Request for Appointment of a Retired Judge

On April 1, 2023, I received a request from the Complainant that I appoint a retired judge to review the FIR and the records and evidence referenced in it, pursuant to section 117 of the Act, and to make their own decision on the matter. Section 117 gives me authority to make such an appointment if I consider that there is a reasonable basis to believe the Discipline Authority's decision is incorrect. A number of reasons were offered in support of their request that can be summarized as follows:

The Complainant disagreed with the DA's characterization of the evidence with respect to Constable ██████ investigative steps, including the number of phone calls and attempts to contact the offender alleged by Constable ██████. The Complainant noted that the General Occurrence Report is missing a number of the investigative steps alleged by Constable ██████ and the Complainant disagreed with the perception that monetary compensation was the primary motivation for contacting Vancouver Police Department.

OPCC Decision, Section 117 of the *Police Act*

Based on a review of all of the available evidence, I have a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to the determination that the members' conduct does not constitute *Neglect of Duty*. In particular, the Discipline Authority accorded undue weight to the member's statement regarding attempts to locate and speak to the alleged perpetrator in light of the lack of documentation in notes or within the General Occurrence. The Discipline Authority relied on information from the members about their investigative steps that was not documented within any notes or General Occurrence reporting as is required by VPD report writing policy 1.16.1 where the member, "must provide full details of the results of their investigation." The record also reasonably supports the conclusion that the members did not conduct a reasonable investigation overall. The record supports a reasonable conclusion that they did not obtain a written or recorded statement from the Complainant. Additionally, they did not appear to sufficiently investigate or document the information provided regarding the incident including the damage to the Complainant's jacket.

Finally, there are concerns with the Discipline Authority's application of the legal test referred to in the decision when addressing *Neglect of Duty*. The Discipline Authority's decision incorporated a requirement of willfulness into the test for *Neglect of Duty* which is not a requirement.

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 David Pendleton 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 prehearing 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], Vancouver Police Department