



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 2020-18123

August 11, 2021

To: Ms. [REDACTED] (Complainant)

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

And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

And to: The Honourable Judge Carol Baird Ellan, (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 June 24, 2020, our office received a complaint from Ms. [REDACTED] describing her concerns with a member of the Vancouver Police Department (VPD). The OPCC determined Ms. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the Vancouver Police Department to conduct an investigation.

On June 28, 2021, Sergeant [REDACTED] (Investigator) completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On July 13, 2021, Inspector [REDACTED] (Discipline Authority) issued his decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified four allegations of misconduct against Constable [REDACTED]. He determined that the allegations of *Discreditable Conduct* pursuant to section 77(3)(h); *Neglect of Duty* pursuant to section 77(3)(m)(ii); *Discourtesy* pursuant to section 77(3)(g); and *Abuse of Authority* pursuant to section 77(3)(a) of the *Police Act* against 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 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

Ms. [REDACTED] reported that on June 25, 2019, Constable [REDACTED] attended her residence to advise her that her son, who had been reported missing on [REDACTED], was deceased. Constable [REDACTED] was accompanied by another member and a Victim Services representative.

Ms. [REDACTED] reported that Constable [REDACTED] body language was hostile and aggressive. Ms. [REDACTED] further reported that Constable [REDACTED] provided no preface to the information she was delivering but instead entered the room and stated, "First of all, [REDACTED] is dead."

Ms. [REDACTED] advised that Constable [REDACTED] offered no consoling words or compassion, and described Constable [REDACTED] delivery as "clinical, distant, curt, and antagonistic." Ms. [REDACTED] advised that both she and her son are registered status First Nations, and questioned whether Constable [REDACTED] delivery would have been the same if she were Non-Indigenous, or if her son had not had prior interactions with the police and/or his death had not occurred near the Downtown Eastside.

Ms. [REDACTED] alleges that Constable [REDACTED] failed to treat her with dignity and her behaviour was discourteous and lacked compassion causing her further trauma.

## DA Decision

The Discipline Authority was satisfied that Constable [REDACTED] was acting in "good faith" in her conduct as she believed the best way to deliver the news to Ms. [REDACTED] was to be direct and concise with the information as per her training. The Discipline Authority was satisfied that a reasonable person in the community would not find Constable [REDACTED] manner in her delivery to bring discredit on the VPD. The Discipline Authority was also satisfied that Constable [REDACTED] did not contravene any departmental policy in her delivery.

The Discipline Authority found that the members attended Ms. [REDACTED] residence without any undue delay and conducted the Next of Kin (NOK) notification. The Discipline Authority stated that Constable [REDACTED] delivered the news to Ms. [REDACTED] felt that Ms. [REDACTED] had the support she needed from family members; ensured Victim Services provided Ms. [REDACTED] with supporting documentation; and that Constable [REDACTED] felt that leaving the residence was the best decision. The Discipline Authority stated that Constable [REDACTED] advised she was "very uncomfortable" in the situation, she was "nervous," and was "extremely saddened" at how this happened. The Discipline Authority found that there was "no evidence" to suggest that Constable [REDACTED] was "negligent" in carrying out her duties.

The Discipline Authority found that "Ms. [REDACTED] perceived compassionate level of Constable [REDACTED] when she delivered the NOK notification level has not reached a level above the threshold of being a misconduct of *Discourtesy* pursuant to the *Police Act*." The

Discipline Authority commented that the other member felt that Constable [REDACTED] delivery of the notification was “textbook.” The Discipline Authority did not find that the evidence was sufficient to establish that Constable [REDACTED] committed *Discourtesy*.

The Discipline Authority further found that the Final Investigation Report (FIR) revealed “no evidence of oppressive conduct of any kind.” The Discipline Authority was satisfied that there was “no basis upon which to bring an allegation of *Abuse of Authority* based upon race-based oppressive conduct.”

### **Request for Appointment of a Retired Judge**

On July 28, 2021, I received a request from Ms. [REDACTED] pursuant to section 117 of the *Police Act*, that I appoint a retired judge to review the Final Investigation Report (FIR) and records referenced in it to make their own decision on the matter.

In her request, Ms. [REDACTED] believed that Constable [REDACTED] has “not shown accountability and is not taking any responsibility for her actions.” Ms. [REDACTED] stated that “facts according to witness details show there is misconduct, discourtesy and abuse of authority.”

Ms. [REDACTED] included examples of how little respect Constable [REDACTED] had for her and her son by noting that Constable [REDACTED] had an opportunity to ensure that the details of the missing person’s file were correct and included the correct location of where Ms. [REDACTED] son died as well as the time frame from when Ms. [REDACTED] last saw her son. Ms. [REDACTED] highlighted these as important details an officer should be aware of.

Ms. [REDACTED] stated that Constable [REDACTED] claimed she was “uncomfortable” in the situation, “was just a bad situation,” was “nervous,” and did “not like giving” NOKs. Ms. [REDACTED] stated that it does not matter if the member is uncomfortable or if the situation is bad, Constable [REDACTED] still has a duty to perform the duty with “professionalism.”

Ms. [REDACTED] acknowledged that when the members and Victim Services arrived, she was “very anxious and emotional,” which would be common for a mother whose only child had been missing for four days. Ms. [REDACTED] noted that Constable [REDACTED] stated that Ms. [REDACTED] was “aggressive and hostile” when she answered the door and Constable [REDACTED] stated it appeared that Ms. [REDACTED] knew the reason for police attendance which was in relation to her son’s death. Ms. [REDACTED] stated that it is “presumptuous” for Constable [REDACTED] to think Ms. [REDACTED] knew they were there to tell her that her son had died.

Ms. [REDACTED] stated that she did not find that the issue of racial discrimination was addressed. Ms. [REDACTED] stated that if Constable [REDACTED] who advised of her lack of Indigenous Cultural Safety training, had some informed training about how Indigenous people in Canada have been treated after colonization, then Constable [REDACTED] may have some compassion and understanding of intergenerational trauma and the effects it has had on Ms. [REDACTED] her son, and their Ancestors.

Ms. [REDACTED] further advised that Constable [REDACTED] is deflecting and placing blame on Ms. [REDACTED] which is the reason Constable [REDACTED] feels her body language and the way she delivered the news was appropriate. Ms. [REDACTED] stated that through witness accounts and evidence in the FIR, it “clearly proves beyond a reasonable doubt” that Constable [REDACTED] was “negligent” in her duty.

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

After review of the Discipline Authority’s decision, I am of the view that the Discipline Authority has not properly considered all the available evidence in his assessment and decision. I have a reasonable basis to conclude that the Discipline Authority’s decision is therefore incorrect.

The Discipline Authority stated that, “Ms. [REDACTED] and her family were dissatisfied with Constable [REDACTED] delivery of the NOK and described her body language as being ‘hostile and aggressive’ and offered no compassion or words of consolation.” However, in arriving at his decision, the Discipline Authority did not appear to sufficiently consider the evidence of Ms. [REDACTED] and her family that described Constable [REDACTED] conduct.

In addition, the Discipline Authority appears to have minimized the evidence of the Victim Services worker which supports the evidence of Ms. [REDACTED]

In his decision, the Discipline Authority stated that Constable [REDACTED] acted in “good faith.” However, the Discipline Authority does not provide any assessment as to how Constable [REDACTED] acted in good faith and the relevance to his finding.

Ms. [REDACTED] alleged that Constable [REDACTED] treatment of her amounts to a discrimination based on race. The Discipline Authority provided an insufficient assessment of this consideration and the evidence in the FIR.

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 Ms. 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 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. I anticipate this will be within the next 10 business days.



Clayton Pecknold  
Police Complaint Commissioner

cc: Sergeant [REDACTED], Vancouver Police Department  
[REDACTED], Registrar