



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 2021-19727

December 16, 2022

To: Mr. [REDACTED] (Complainant)

And 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 Carol Baird Ellan, (ret'd) (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 May 20, 2021, our office received a complaint from Mr. [REDACTED] ("Complainant"), father of [REDACTED] ("affected person"), describing his concerns with a member of the Vancouver Police Department (VPD). The OPCC determined Mr. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the VPD to conduct an investigation.

On November 3, 2022, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report (FIR) to the Discipline Authority.

On November 18, 2022, Inspector [REDACTED], as the Discipline Authority, issued her decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified one allegation of misconduct against Constable [REDACTED] ("respondent member"). She determined that the allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* against the respondent member did not appear to be substantiated.

Clayton Pecknold
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

On February 13, 2021, a concerned citizen called 911 after observing the affected person, who was later determined to be a [REDACTED] Indigenous youth, and a friend damaging property. VPD members attended and maintained foot surveillance of both parties observing them commit further acts of mischief.

The respondent member and his Police Service Dog (PSD) attended the area and assisted as part of an apprehension plan. The respondent member challenged the two youths for the purposes of effecting an arrest. The PSD was released on the affected person resulting in bite injuries. On May 20, 2022, the Complainant, who was not present during this incident, alleged a PSD was released on his Indigenous [REDACTED] without warning when [REDACTED] was not trying to run away.

Discipline Authority Decision

The Discipline Authority determined that the respondent member had reasonable grounds to arrest the affected person. In addition, as it was dark and snowing at the time, members were unable to determine the age and ethnicity of the affected person and [REDACTED] friend.

The Discipline Authority also determined that the respondent member gave two or three verbal commands to the affected person and [REDACTED] friend to get on the ground and were advised of the potential outcome for non-compliance. The respondent member was under the belief that the affected person was “going to attempt to flee” when the PSD was released.

The Discipline Authority concluded that the use of force by the respondent member was “proportional, necessary and reasonable in the circumstances” and that Constable [REDACTED] followed BC Provincial Standards for Police Service Dogs.

Request for review

On December 2, 2022, I received a request for a review of this matter from the Complainant. The Complainant disagreed with the necessity of releasing a PSD on a minor. The Complainant stated that it did not appear as though anyone’s safety was at risk and that his [REDACTED] was not resisting arrest.

OPCC Decision, Section 117 of the *Police Act*

Based on a review of the evidence contained in the FIR, I am of the view that the Discipline Authority was incorrect in determining that the affected person was preparing to flee and that the release of the PSD was consistent with BC Provincial Policing Standards. There is evidence to support that the affected person and [REDACTED] friend may have been complying with the request of the respondent member to get on the ground when the PSD was released.

Further, I have concerns with the proportionality of the force used which resulted in dog bite punctures to the affected person. Evidence supports that the level of risk posed to the respondent member, the affected person and the public was not proportional to the use of the PSD and was contrary to VPD policy.

Additionally, the evidence does not support that exigent circumstances existed at the point in time when the respondent member engaged the affected person. The two youths were under surveillance by multiple members for almost an hour prior to arrest. The respondent member deployed the PSD despite other members in the area and within seconds of being on scene.

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 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
Sergeant [REDACTED], Vancouver Police Department

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