



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 2023-23655

March 8, 2024

To: [REDACTED] (Complainants)
[REDACTED]
[REDACTED]

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 Wallace T. Oppal (ret'd) (Retired Judge)
Retired Judge of the British Columbia Court of Appeal
British Columbia

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

Between April 6 and 14, 2023, our office received registered complaints from [REDACTED], [REDACTED], and [REDACTED] describing their concerns with the conduct a member of the Vancouver Police Department (VPD). The OPCC determined the complaints to be admissible pursuant to Division 3 of the *Police Act* and directed the VPD to conduct an investigation.

On January 25, 2024, Sergeant [REDACTED] (Investigator) completed his investigation and submitted the Final Investigation Report (FIR) to Inspector [REDACTED] (Discipline Authority).

On February 8, 2024, the Discipline Authority issued her decision pursuant to section 112 of the *Police Act* in this matter. Specifically, the Discipline Authority identified one allegation of *Neglect*

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Police Complaint Commissioner

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of Duty against Constable [REDACTED] (Member). The Discipline Authority determined that the allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against the Member did not appear to be substantiated.

Pursuant to section 117(1) of the *Police Act*, having reviewed the Discipline Authority's decision and the investigation material, I have concluded that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect.

Background

On April 5, 2023, a photograph of the Member wearing a "thin blue line" patch on his external body armour carrier (EBAC) while on duty was posted on social media. At the time, section 5.54 of the VPD Regulations and Procedures Manual (RPM) pertaining to the appropriate use of body armour was in effect. This provision states that:

...members shall affix a VPD-issued 'Vancouver Police' identifier tag and identification tag (with PIN or surname and first initial) to the EBAC (External Body Armour Carrier); no other patches, tags or placards may be affixed to the EBAC without approval of the Uniform Committee. [Emphasis added.]

Discipline Authority's Decision

The Discipline Authority determined that the Member had a duty to follow VPD policy as it pertained to dress and deportment, and that the Member neglected his duty by adhering the patch at issue to his EBAC.

In assessing whether the Member had "good or sufficient cause" to neglect his duty, the Discipline Authority noted, in part, that the Member advised he was not aware of any policy prohibiting the wearing of the patch, the Member had not been required to make an electronic signature denoting that he had reviewed and understood RPM section 5.54, and it was not reasonable to assume that every member has memorized the entirety of the RPM.

The Discipline Authority concluded that there was no evidence that the Member "willfully adhered a patch to his External Body Armour Carrier to purposely not follow VPD Policy," and that the Member made an "honest mistake." Accordingly, the Discipline Authority found that the allegation was not substantiated on the basis that there was no intention or willfulness by the Member to neglect his duty.

OPCC Decision, Section 117 of the *Police Act*

Based on a review 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 Member's conduct does not constitute *Neglect of Duty*. Specifically, it appears that the Discipline Authority failed to adequately assess the impact that this patch has on members of the community and public confidence in policing, including the perception that the patch symbolizes a dividing line between the police and the public, as discussed in VPD's January 19, 2023, Briefing Report titled, "The Thin Blue Line." Additionally, the record reasonably supports that the Member had some awareness of such discourse, as demonstrated by the Member's

evidence that he was aware of “rumblings” and “background noise” related to the patch, and his stated opinion that the patch is not a symbol of hate or racism.

Furthermore, the Discipline Authority incorrectly applied the test for an allegation of *Neglect of Duty*. Section 77(3)(m)(ii) of the *Police Act* defines the default as “neglecting, without good or sufficient cause, to promptly and diligently do anything that it is one’s duty as a member to do.” After finding that the Member breached his duty to adhere to VPD RPM section 5.54, the Discipline Authority then erred by concluding that there had been good or sufficient cause excusing this neglect on the basis of intentionality. Specifically, the Discipline Authority, in reaching her conclusion that the allegation was not substantiated, found that there needed to be an element of willfulness on the Member’s part for there to be a finding of misconduct.

While section 77(3) of the *Police Act* specifies a mental element for many of the defined disciplinary breaches of public trust, there is no such mental element required for *Neglect of Duty*. I am of the view that the Discipline Authority improperly required a mental element of willfulness or intentionality in respect of *Neglect of Duty* not mandated by the *Police Act* or applicable jurisprudence, and that such improper analysis led to an incorrect decision.

Finally, I have a reasonable basis to believe that the Discipline Authority erred in not assessing whether the Member committed *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*. The Discipline Authority should have considered whether the Member knew or ought to have known that wearing the patch in question would be likely to bring discredit to the VPD, noting that he wore the patch during a “decampment” process in the Vancouver Downtown Eastside involving highly marginalized individuals.

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 Wallace T. Oppal, retired British Columbia Court of Appeal Judge, to review this matter and arrive at his own decision based on the evidence.

Pursuant to section 117(9) of the *Police Act*, 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 *Police 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.



Prabhu Rajan
Police Complaint Commissioner

cc: [REDACTED], Registrar