



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: 2023-23872  
April 2, 2024

To: [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 Standard Section

And to: The Honourable Judge Elizabeth Arnold-Bailey, (ret'd) (Retired Judge)  
Retired Judge of the Supreme Court of British Columbia

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

On May 18, 2023, the Office of the Police Complaint Commissioner (OPCC) received a copy of [REDACTED] (Complainant) registered complaint describing her concerns with a member of the Vancouver Police Department (VPD).

While the registered complaint was filed outside of the statutory time limit, the Police Complaint Commissioner extended the time limit for making a complaint. The OPCC determined [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* (Act) and directed the VPD to conduct an investigation.

On February 15, 2024, Sergeant [REDACTED] (Investigator) completed his investigation and submitted the Final Investigation Report (FIR) to the Discipline Authority.

On March 1, 2024, the Discipline Authority issued her decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified one allegation of *Discreditable Conduct*

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Police Complaint Commissioner

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pursuant to section 77(3)(h) of the Act against Constable [REDACTED] (Member). The Discipline Authority determined that the allegation of *Discreditable Conduct* did not appear to be substantiated.

Pursuant to section 117(1) of the 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 September 23, 2021, the Complainant contacted the VPD to confirm whether an arrest had been made in relation to her sexual assault report. The Complainant spoke over the telephone with the Member, who was acting in a supervisory capacity at the time. The Complainant alleged that, during the call, the Member stated that she was "lucky" to have police investigating her sexual assault report and that "it's not as if [she] was handcuffed to the bed and bleeding." The Complainant reported that these comments resulted in her feeling that her assault was "not violent enough" and caused her distress as a sexual assault survivor.

## **Discipline Authority's Decision**

The Discipline Authority concluded that the allegation of *Discreditable Conduct* did not appear substantiated as the Complainant and the Member had different "versions" and "interpretations" about parts of the conversation, there were no witnesses to the conversation, and the Member denied making the specifically alleged statements or downplaying the significance of the Complainant's assault. The Discipline Authority noted that the Member provided an "extreme example" when attempting to explain to the Complainant why certain investigations take longer than others, which the Member assessed was "professional and appropriate."

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

On March 7, 2024, I received a request from the Complainant that I appoint a retired judge to review the FIR pursuant to section 117 of the Act and make their own decision in the matter.

## **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 *Discreditable Conduct*. Specifically, it appears that the Discipline Authority failed to adequately assess the Member's own evidence that, in response to the Complainant's concerns about the timeliness of the criminal investigation, he provided the Complainant with an "extreme example" to explain why other cases may be prioritized. The Member specified that he used the example of an investigation into an in-progress report of a person tied up and violently attacked as a matter that would be dealt with as a "higher priority."

In assessing whether the Member's conduct appeared to constitute *Discreditable Conduct*, the Discipline Authority does not appear to have considered the nature of the example the Member acknowledged and its foreseeable adverse impact on the Complainant, and the sensitivity of the approach used to communicate with survivors of sexual assault, noting the historic barriers to reporting faced by survivors in part due to prevailing stereotypes about sexual assault.

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 Elizabeth Arnold-Bailey, retired Supreme Court Judge, to review this matter and arrive at her own decision based on the evidence.

Pursuant to section 117(9) of the 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 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 them 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 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