



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 2023-23724

March 25, 2024

To: [REDACTED] (Complainant)

And to: Constable [REDACTED] (Members)
Constable [REDACTED]
Constable [REDACTED]
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 Brian Neal (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 April 17, 2023, our office received a complaint from [REDACTED] (Complainant) describing their concerns with the conduct of members of the Vancouver Police Department (VPD). The OPCC determined the complaint to be admissible pursuant to Division 3 of the *Police Act* (Act) and directed the VPD to conduct an investigation.

On February 9, 2024, Sergeant [REDACTED] (Investigator) completed his investigation and submitted the Final Investigation Report (FIR) to Acting Inspector [REDACTED] (Discipline Authority).

On February 26, 2024, the Discipline Authority issued her decision pursuant to section 112 of the Act in this matter. Specifically, the Discipline Authority identified an allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the Act against Constables [REDACTED] and [REDACTED] and an allegation of *Discourtesy* pursuant to section 77(3)(g) of the Act against Constables

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██████████ and ██████████ The Discipline Authority determined that neither of the allegations appeared to be substantiated against any of the members.

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 with respect to the *Discourtesy* allegation against Constables ██████████ and ██████████ (Members) is incorrect. I do not have a reasonable basis to believe the decision is incorrect with respect to the allegation of *Abuse of Authority*.

Background

On April 6, 2022, VPD members responded to 911 calls reporting that an Indigenous female (Affected Person) was threatening a security guard with a knife in the Downtown Eastside of Vancouver. VPD members attended, identified the Affected Person, and gave the Affected Person multiple commands to stop and drop the knife. After the Affected Person moved away from the members and did not comply with their commands, a member deployed a less lethal beanbag shotgun to assist in the arrest of the Affected Person.

The use of force, arrest and post-detention conduct of the involved VPD members can be seen and heard on surveillance video from the area. In particular, the Members can be seen standing over the Affected Person and repeatedly laughing with each other. The Affected Person, who is in a prone position facing the ground with her hands cuffed behind her back, is repeatedly wailing while the Members are apparently sharing a joke. The video also depicts a bystander expressing concerns with the conduct of police during this interaction.

Discipline Authority's Decision

The Discipline Authority concluded that the allegation of *Discourtesy* did not appear substantiated because the Members' laughter did not pertain to the Affected Person or the situation. The Discipline Authority did note that the timing of the Members' laughter was "not ideal."

Request for Appointment of a Retired Judge

On March 19, 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 his or her 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 Members' conduct does not constitute *Discourtesy*. Specifically, the Discipline Authority's analysis is limited to an assessment of the reason for the Members' laughter and fails to assess the impact of their laughter in the circumstances and how it may have been perceived by the Affected Person and the public.

Specifically, I note that the affected person was on the ground, handcuffed, recently shot by a beanbag shotgun and seemingly in distress while three police officers remained standing over and around her expressing their laughter while engaging in conversation. This all occurred without an apparent concern for how the affected person or the public may perceive such conduct, or the wellbeing of the affected person. A bystander expressed concerns to police regarding their conduct during this interaction.

The Discipline Authority appears to have improperly focused on the reason for the laughter rather than considering all the circumstances, including the Members' apparent lack of sensitivity for the Affected Person noting the historic and ongoing systemic issues with the policing of Indigenous peoples.

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 Brian Neal, retired Provincial Court Judge, to review this matter and arrive at his 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 Members 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 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 the 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