



Office of the  
Police Complaint Commissioner

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British Columbia, Canada

**NOTICE OF APPOINTMENT OF RETIRED JUDGE**

Pursuant to section 117(4) of the *Police Act*

OPCC File 2021-19627

July 16, 2024

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

And to: Inspector [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section

And to: The Honourable Judge Brent Hoy, (ret'd) (Retired Judge)  
Retired Judge of the Provincial Court of British Columbia

And to: Mr. Frank Chong  
Chair, c/o Vancouver Police Board

On May 28, 2021, based on information provided by the Vancouver Police Department (VPD) pursuant to section 89 of the *Police Act* (Act), the former Police Complaint Commissioner ordered a mandatory external investigation into the death of Ms. [REDACTED] (affected person) on [REDACTED], at the Vancouver Jail.

The investigation under the Act was suspended while the Independent Investigations Office (IIO) conducted its investigation into this matter. On August 2, 2023, the IIO issued their Public Report indicating that they did not consider that a police officer had committed an offence and would not be referring this case to crown counsel for consideration of possible criminal charges. Accordingly, the misconduct investigation resumed on September 1, 2023.

On May 30, 2024, Sergeant [REDACTED] completed his misconduct investigation and submitted the Final Investigation Report to Inspector [REDACTED] (Discipline Authority).

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Prabhu Rajan  
Police Complaint Commissioner

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On June 17, 2024, the Discipline Authority issued her decision pursuant to section 112 of the Act in this matter. The Discipline Authority determined that one allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Act against Constable [REDACTED] (Member) 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 [REDACTED], VPD members responded to a 911 call from the affected person who indicated that she was contemplating suicide. After speaking with the affected person, the Member determined that she did not meet the criteria to be apprehended under the *Mental Health Act*. The Member, however, arrested the affected person and transported her for fingerprinting after discovering that she had an outstanding warrant. The affected person was cooperative, coherent, and able to walk without issue at the time of the arrest, although she indicated that she had consumed alcohol throughout the night.

While being transported to the Vancouver Jail (Jail), the affected person's condition appears to have deteriorated; specifically, the Member noted that she became lethargic and less coherent. The Member, noting the affected person's deterioration, questioned the affected person on whether she had consumed any medication or drugs, to which she reportedly replied "no."

Upon arrival at the Jail approximately 35 minutes later, the affected person's condition had deteriorated even more to the point that she had to be roused awake, required assistance getting out of the police vehicle, and had to be placed into a wheelchair as she was unable to stand. The Member turned over custody of the affected person to the jail staff, advising that she was intoxicated. The Member, however, did not notify jail staff that the affected person's condition had rapidly deteriorated from the point of arrest to arrival at the jail, nor did he enter any notes to this effect in the medical remarks field of the jail intake form which he was required by policy to do.

Jail staff, believing the affected person to be intoxicated, placed her in a monitoring cell to sober up before being processed; the affected person was not medically assessed by a jail nurse prior to being placed in the cell or at any time while she was in the cell. Approximately three hours after she was placed in the cell, the affected person was found unresponsive and died, despite attempts at life-saving measures. An autopsy report for the affected person indicated the cause of death was complications of cirrhosis of the liver with combined prescription drug and alcohol intoxication.

## **Discipline Authority's Decision**

The Discipline Authority found that the Member had a duty to provide medical care to the affected person, noting that police are responsible for the well-being and protection of people in their custody and must ensure that a person in their custody receives appropriate medical assistance as they are entirely dependent on the police to obtain medical assistance for them.

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In finding that the Member did not appear to commit misconduct, the Discipline Authority noted that, while it would have been prudent for the Member to have communicated the affected person's deteriorating condition to the jail staff, it is unknown if doing so would have prompted further medical attention. The Discipline Authority further noted that the Member expected that the affected person would be medically assessed by a jail nurse upon being booked in and found that the Member's inaction was neither "deliberate or reckless," nor "unreasonable" given the information that the Member knew at the time.

The Discipline Authority also found that the Member had a responsibility to ensure all medical remarks were documented in the jail intake report and that the form was accurate and contained relevant details. The Discipline Authority, however, determined that the Member was not "deliberate in neglecting his obligation," and that it "would not have changed the outcome of the circumstances" had all the information been documented on the report.

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

Based upon my 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*.

As outlined in VPD policy and noted by the Discipline Authority, people in custody are vulnerable and entirely dependent on the police to obtain medical assistance for them. As such, members are responsible for the wellbeing of individuals in their custody and have a duty to ensure they receive appropriate medical assistance.

The evidence demonstrates that the Member observed the marked deterioration of the affected person's condition while in his custody. While these observations prompted the Member to make inquiries with the affected person as to the cause of her deterioration, the Member failed to seek immediate, or any, medical attention for the affected person. While the Member reports that he advised jail staff that the affected person was intoxicated and should be seen by a nurse, it appears that the Member failed to notify anyone, including the nurse, of the affected person's rapid decline in her condition, failed to adequately document such decline in the mandatory report that provides jail staff with relevant intake information, and failed to ensure the affected person received appropriate medical assistance. The Member's inaction and lack of documentation in these circumstances appears to be a breach of his duty of care toward the affected person.

Furthermore, the Discipline Authority incorrectly applied the test for an allegation of *Neglect of Duty*. Section 77(3)(m)(ii) of the 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 had a duty of care to the affected person and to ensure the jail intake form was accurate, the Discipline Authority found the Member's apparent inaction was not unreasonable, deliberate, or reckless.

While section 77(3) of the 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 imported criteria into this provision and also

required a mental element of willfulness or intentionality in respect of *Neglect of Duty* not mandated by the Act or applicable jurisprudence. The Discipline Authority's analysis appears to have been based on improper considerations, which led to an incorrect decision.

Additionally, the Discipline Authority appears to have, in part, based their decision on whether the affected person's outcome would have been different if the Member had informed others of her deteriorating condition. In other words, would she have died even if provided with appropriate medical care? The Discipline Authority concluded that the outcome would have been the same regardless. Aside from the summary basis for such conclusion, this appears to be an improper consideration that is not relevant to an analysis of possible misconduct.

### **Appointment of a Retired Judge**

Section 117(1) provides that the Commissioner may appoint a retired judge to review the investigating officer's report, and the evidence and records referenced in that report, and make a decision on the matter. An appointment under section 117(1) must be made pursuant to section 177.2 of the Act.

Section 177.2 of the Act, in turn, requires the Commissioner to request the Associate Chief Justice of the Supreme Court of British Columbia to consult with retired judges of the Provincial Court, Supreme Court and Court of Appeal and recommend retired judges who the Commissioner may include on a list of potential adjudicators. Appointments under the Act are to be made in accordance with published procedures established under section 177.2(3).

On June 13, 2024, I published the OPCC's appointment procedures under section 177.2(3) of the Act (Appointment Procedures) and the list of retired judges who may be appointed for the purposes of sections 117, 135 and 142.

In accordance with the Appointment Procedures, I have appointed the Honourable Brent Hoy, retired Provincial Court Judge, to review this matter and arrive at their own decision based on the evidence. I have considered the factors as set out in the Appointment Procedures, namely:

- a) the provision under which the appointment is being made;
- b) the current workloads of the various retired judges;
- c) the complexity of the matter and any prior experience with the Police Act; and
- d) any specific expertise or experience of a retired judge with respect to a particular issue or sensitivity associated with the matter

Retired Judge Hoy has confirmed their availability to review this matter and reported no conflicts.

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. 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 or in this notice.

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  
Sergeant [REDACTED], Metro Vancouver Transit Police