



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 2024-25498

February 28, 2025

To: Mr. [REDACTED] (Complainant)

And to: Constable [REDACTED] (Member)
c/o Surrey Police Service
Professional Standards Section

And to: Chief Constable Norm Lipinski
c/o Surrey Police Service
Professional Standards Section

And to: The Honourable David Frankel, K.C. (Retired Judge)
Retired Justice of the British Columbia Court of Appeal

And to: Xwopokton (Harley Chappell)
Acting Chair, c/o Surrey Police Board

On February 28, 2024, our office received a complaint from Mr. [REDACTED] describing his concerns with a member of the Surrey Police Service (SPS). The OPCC determined Mr. [REDACTED] complaint to be admissible pursuant to Division 3 of Part 11 of the *Police Act* and directed the SPS to conduct an investigation.

On June 12, 2024, the Professional Standards Section investigator Sergeant [REDACTED] initiated an investigation, naming Constable [REDACTED] as a respondent. The investigation concerned an allegation of *Neglect of Duty* for failing to take appropriate steps to notify next of kin after Mr. [REDACTED] brother's death.

On January 14, 2025, the Investigator completed his investigation and submitted the Final Investigation Report to Acting Inspector [REDACTED], the Discipline Authority.

On January 30, 2025, the Discipline Authority issued his decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified one allegation of misconduct against

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Constable [REDACTED] He determined that the allegation of *Neglect of Duty* pursuant to section 77 of the *Police Act* did not appear to be substantiated.

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

Mr. [REDACTED] alleged that the SPS failed to take sufficient steps to notify next of kin of his brother's death. Mr. [REDACTED] brother was found deceased in his residence on September 13, 2023, after his landlord contacted police. Mr. [REDACTED] did not learn of his brother's death until December 12, 2023, when he received mail from the Canada Revenue Agency that was addressed to his brother's estate. By this time, Mr. [REDACTED] brother's remains had been cremated without input from his next of kin.

Constable [REDACTED] attended at the residence of Mr. [REDACTED] late brother on September 13, 2023, and subsequently took several steps to identify next of kin, including searching police databases and contacting Vital Statistics. He also consulted with his supervisors, seeking other options for identifying next of kin. However, Constable [REDACTED] did not search the electronics located in the suite including an unlocked cellphone. Mr. [REDACTED] eventually came into possession of his brother's electronics and confirmed that next of kin's contact information was available on the cellphone.

Discipline Authority's Decision

The Discipline Authority determined that Constable [REDACTED] acted professionally and completed a thorough investigation, conducting himself in a manner of a reasonable police officer with similar training and knowledge. The Discipline Authority noted that Constable [REDACTED] took a series of steps to identify next of kin and consulted with his supervisors.

The Discipline Authority reviewed case law from Ontario and Alberta that was claimed to be relevant or persuasive in *Neglect of Duty* investigations, and to variously require elements of willfulness, deliberateness, recklessness, or some meaningful level of moral culpability. He found that intention and recklessness had to be considered in deciding whether there was misconduct in this case. While recognizing that Constable [REDACTED] failure to search or seize electronic devices could be viewed as a failure to meet the expected standards of diligence, the Discipline Authority found Constable [REDACTED] "was acting in good faith" and his conduct was not willful, intentional, or deliberate. As a result, the Discipline Authority classified the matter as a "misstep" rather than misconduct.

Request for Appointment of a Retired Judge

On February 10, 2025, I received a request from Mr. [REDACTED] 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. Section 117 gives me authority to make such an appointment if I consider that there is a

reasonable basis to believe the Discipline Authority's decision is incorrect. Mr. [REDACTED] offered a number of reasons in support of his request that can be summarized as follows:

1. The Final Investigation Report and the Discipline Authority's decision focused inappropriately on the topic of willful neglect.
2. Constable [REDACTED] conduct was complacent to "a level that deserves the conclusion of neglect."

In addition to the foregoing, Mr. [REDACTED] mentioned several investigative steps that Constable [REDACTED] could have taken but did not take. One of the steps identified was searching the cellphone that was located at the scene.

OPCC Decision, Section 117 of the *Police Act*

I have reviewed the Discipline Authority's decision. Based on 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 allegation of *Neglect of Duty* against Constable [REDACTED]

In British Columbia, intent is not a necessary ingredient of *Neglect of Duty*. Instead, the conduct under consideration is to be evaluated based on an objective standard of what a reasonable officer would have done in similar circumstances. While the standard is not one of perfection, this type of misconduct can be inadvertent or result from a failure to pay attention. The Discipline Authority's decision relies inappropriately on case law from other jurisdictions that imports an intent requirement that is not present in the *Police Act* definition of *Neglect of Duty*, and is inconsistent with British Columbia jurisprudence interpreting and applying that definition. It is incorrect for the decision to rest its conclusions on whether Constable [REDACTED] conduct was willful neglect.

The number of steps that Constable [REDACTED] took to identify next of kin is not what is at issue. Neither is whether Constable [REDACTED] was acting in good faith or morally blameworthy. Rather, what is at issue is the overall reasonableness of his investigation. In my view, it is not reasonable for a member to neglect basic or obvious investigative steps, such as searching the electronic devices located on scene when attempting to identify a deceased person's next of kin. In 2025, it should be fairly standard, and what should be objectively expected, for an officer to look at the contacts in an unlocked cellphone to help identify a deceased person's next of kin.

An unsuccessful attempt to notify next of kin can have serious repercussions. In this case, Mr. [REDACTED] and his family in fact felt a significant impact. If Constable [REDACTED] had performed a basic check on the unlocked cellphone, next of kin would likely have been identified and could have provided input before arrangements were made for cremation.

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 David Frankel, K.C., retired BC Court of Appeal Justice, 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 Justice Frankel 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. 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.



Prabhu Rajan
Police Complaint Commissioner

cc: [REDACTED], Registrar
Sergeant [REDACTED], Surrey Police Service
Acting Inspector [REDACTED], Surrey Police Service