



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 2022-22259

April 30, 2025

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

And to: Chief Officer Suzanne Muir
c/o Metro Vancouver Transit Police
Professional Standards Section

And to: The Honourable Judge William Ehrcke, K.C. (Retired Judge)
Retired Judge of the Supreme Court of British Columbia

And to: Marnie Larson
Chair, Metro Vancouver Transit Police Board

On July 27, 2022, the Office of the Police Complaint Commissioner (OPCC) received information from the Metro Vancouver Transit Police (MVTP), pursuant to section 89(2) of the *Police Act*, in relation to an incident on July 26, 2022, where police attempted to stop a motorist who went on to collide with another civilian vehicle, tragically resulting in two deaths.

On September 15, 2022, the former Police Complaint Commissioner ordered a mandatory external investigation into the matter pursuant to section 89(2)(a) of the *Police Act*.

At the time, the Independent Investigations Office (IIO) asserted jurisdiction and started an investigation. The *Police Act* investigation was suspended to allow the IIO's process to unfold. On June 28, 2024, the IIO released a public report finding no reasonable grounds to believe an officer may have committed an offence and indicating the matter would not be referred to Crown counsel for consideration of charges. The *Police Act* investigation then resumed. On August 2, 2024, the OPCC identified the Vancouver Police Department (VPD) as the mandatory external police agency and designated VPD Inspector [REDACTED] as the external Discipline Authority.

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Police Complaint Commissioner

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On March 5, 2025, VPD Professional Standards investigator, Sergeant [REDACTED], completed his investigation and submitted the Final Investigation Report ("FIR") to the Discipline Authority.

On March 31, 2025, the Discipline Authority issued her decision pursuant to section 112 in this matter. First, she considered whether Constable [REDACTED] committed *Neglect of Duty* contrary to section 77(3)(m)(ii) of the *Police Act* by failing to comply with section 122 of the *Motor Vehicle Act* (MVA), the *BC Emergency Vehicle Driving Regulation* (EVDR) and MVTP Policy governing emergency driving. Second, she considered whether Constable [REDACTED] and/or Constable [REDACTED] committed *Neglect of Duty* contrary to section 77(3)(m)(ii) of the *Police Act* by failing to make accurate and contemporaneous notes in relation to the incident.

The Discipline Authority determined that none of the allegations against Constable [REDACTED] or Constable [REDACTED] appeared to be substantiated.

Pursuant to section 117(1) of the *Police Act*, I do not have a reasonable basis for believing that the Discipline Authority's decision with respect to the making of contemporaneous notes is incorrect.

However, I do consider that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect in relation to Constable [REDACTED] operation of the police vehicle.

Background

On July 26, 2022, Constable [REDACTED] and Constable [REDACTED] (together, the "Members") were on patrol duties wearing plain clothes in an unmarked police vehicle equipped with police lights and sirens. Constable [REDACTED] was driving and Constable [REDACTED] was in the passenger seat. At all material times the applicable speed limit was 50 km/hr.

The Members report that around 11 p.m., a motorist passed and nearly sideswiped them. They estimated the vehicle was traveling at 90 km/hr. The Members say they saw the motorist veer towards an on-coming lane, and they were concerned the driver could be impaired.

Constable [REDACTED] says he decided to follow the motorist and find a location to conduct a safe traffic stop to address the speeding offence and check the driver's sobriety. He eventually caught up when the motorist stopped at a red light. Based on GPS data described in the FIR, it appears it took about 90 seconds for the police vehicle to catch up to the motorist at the red light. During this time, the police vehicle exceeded the speed limit. Roughly 20 seconds after noticing the motorist, the police vehicle was traveling approximately 90 km/hr. Over the next two seconds, it decelerated to approximately 79 km/hr, then for the next 58 seconds fluctuated from that speed to a momentary high of 98 km/hr before coming to a stop. No police lights or sirens were activated during this time.

The police vehicle appears to have stopped at the red light for 30 seconds. By this time, it was determined the motorist's vehicle was not stolen, the female registered owner had a valid driver's licence, and a male associated to the vehicle had previously fled from police.

Constable [REDACTED] did not initiate a traffic stop while both vehicles were at the red light. Instead, he says he waited for the light to turn green, followed the vehicle through the intersection, then turned on his police vehicle lights. The vehicle did not stop and instead made a left turn which the police vehicle followed. During this period, it appears the police vehicle accelerated to 81 km/hr, decelerated to approximately 67 km/hr over the next 14 seconds, then slowed further to complete the left turn.

Constable [REDACTED] says he blipped his police siren several times, as the motorist did not appear to have noticed the police lights on the unmarked police vehicle. When the motorist still did not stop, Constable [REDACTED] turned on the sirens and let them run for three to four cycles to get the motorist's attention. By this time, both vehicles were going down a hill and picking up speed. It appears that within 14 seconds of making the left turn, the police vehicle reached a top speed of 124 km/hr, then decelerated over the next 13 seconds from 124 km/hr to 113 km/hr.

It appears the police vehicle then rapidly decelerated over the next 14 seconds to reach a full stop. Constable [REDACTED] says he stopped at this time and turned off his emergency equipment because he saw the motorist driving dangerously close to an on-coming lane, and concluded the motorist was now attempting to evade police. Constable [REDACTED] says he had no intention of pursuing the motorist due to the associated risk to the public. Instead, he used the police radio to broadcast a "Fail to Stop."

The motorist continued driving at a high rate of speed and collided with another civilian vehicle. Constable [REDACTED] and Constable [REDACTED] say they were fully stopped when they saw the collision take place down the road. The motorist and his passenger sustained injuries. Tragically, the two occupants of the other vehicle were killed.

Constable [REDACTED] made typed notes on July 30, 2022, four days after the incident. Constable [REDACTED] made typed notes on August 5, 2022, 10 days after the incident. Both Members have said their mental health and recall was negatively affected by the incident and that they prepared their notes as soon as they were reasonably able to do so.

Discipline Authority's Decision

The Discipline Authority noted that the elements of the test for *Neglect of Duty* are (i) whether a duty exists in the circumstances, and if so, what is its nature, (ii) whether the respondent officer's conduct neglected that duty, and (iii) if neglect of a duty is established, is there "good and sufficient cause" to excuse the neglect.

The decision adds that the test for *Neglect of Duty* is resolved through the application of an objective standard of reasonableness.

Neglect of Duty – Emergency Vehicle Driving

The Discipline Authority found that in attempting to conduct a traffic stop of a motorist who was speeding and suspected of being impaired, Constable [REDACTED] was acting in the lawful execution of his duties to protect life, enforce the law, and apprehend offenders.

The Discipline Authority further found that Constable [REDACTED] had a duty to drive with regard for safety when exercising his emergency response privileges under section 122 of the MVA and the BC EVDR. As described in the FIR, those provisions allow police to exceed speed limits and disobey other traffic laws in certain defined circumstances.

Constable [REDACTED] was also said to have obligations under the South Coast British Columbia Transportation Authority Police Service Policies and Procedures Manual (the "MVTP Policy"). Under the MVTP Policy, relevant portions of which are reproduced in the FIR, the determination of whether a member is in a pursuit "...does not depend on whether or not the Member has activated their Emergency Equipment." Instead, a member is considered to be in a "pursuit" where:

- a. "The Member is exercising the privileges in s. 122 of the *Motor Vehicle Act*;
- b. The Member follows a vehicle, attempts to Close the Distance to a vehicle, with the intent to stop it, or identify the vehicle or the driver; and
- c. The driver intentionally continues, takes evasive action or ignores the Member's direction to stop, in order to avoid apprehension."

The MVTP Policy further says, "When all of these elements are present and the Member has determined they are about to engage in a Pursuit but the Member immediately disengages at that point, the incident is not considered a Pursuit." After mentioning the existence of three factors from the MVTP Policy, the Discipline Authority adds, "...should the officer determine that a pursuit is about to occur, they must immediately disengage."

The Discipline Authority found no *Neglect of Duty* relating to the MVA, the BC EVDR, or the MVTP Policy. She found it reasonable to conclude the motorist was unaware of the presence of the unmarked police car and plain clothes officers until Constable [REDACTED] turned on his siren after making the left turn. Because the motorist could not be said to have been fleeing from police until that point, no "pursuit" was engaged.

Once the sirens were on for approximately five seconds, the Discipline Authority found that the subsequent exercise of privileges under section 122 of the MVA "...could be objectively perceived as a pursuit." However, the Discipline Authority also found that if there was a pursuit, Constable [REDACTED] complied with the requirements of the EVDR, and in any event followed the MVTP Policy by pulling over to broadcast a "fail to stop" rather than continue a pursuit that could put the public in danger.

In sum, the Discipline Authority found that Constable [REDACTED] fulfilled his common law duties to protect life and enforce the law, lawfully exercised his emergency driving privileges, and did not commit *Neglect of Duty* in relation to his emergency driving.

Neglect of Duty – Making Contemporaneous Notes

The Discipline Authority identified an MVTP Notebook and Notes policy requiring that "All Members will take careful, accurate and contemporaneous notes during their investigations". She determined that the Members had a general duty to author notes as soon as possible after the

collision. The Discipline Authority commented that “contemporaneous” means existing or occurring in the same period of time and the expectation is for notes to be written “during the officer’s investigations”.

The Discipline Authority found that Constable [REDACTED] and Constable [REDACTED] appeared to have neglected their duty under this policy by submitting their notes 4 and 10 days after the collision, respectively.

However, the Discipline Authority also found that neither of the Members committed misconduct, as both had good and sufficient cause for making their typed notes when they did. The Discipline Authority accepted that both Members provided sincere and open explanations for delay based on the impacts the traumatic and profoundly sad event had on their mental well-being and ability to focus.

OPCC Decision, Section 117 of the *Police Act*

Neglect of Duty – Emergency Vehicle Driving

I have a reasonable basis to believe that the Discipline Authority’s decision is incorrect in relation to the *Neglect of Duty* allegation regarding Constable [REDACTED] compliance with the MVA, EVDR, and MVTP Policy.

Officers driving emergency vehicles can exercise emergency response privileges under the MVA, EVDR, and MVTP Policy in prescribed circumstances. However, the exercise of those privileges carries risks for the public as well as for officers and, in the case of pursuits, those being pursued. For these reasons, the EVDR and departmental policy impose obligations around the use of emergency lights and sirens and require proportionality assessments that balance the relative risks of harm associated with exercising versus not exercising the emergency privileges.

In this case, Constable [REDACTED] made use of emergency response privileges by driving at speeds well above the posted speed limit (50 Km/hr) for extended periods when catching up to the speeding motorist and attempting to conduct a traffic stop. In the period before stopping at the red light, it appears he drove for more than a minute at speeds from 79 km/hr to 98 km/hr without any use of emergency lights or sirens. After making the left turn, he drove for at least 13 seconds at speeds ranging from 113 km/hr to a high of 124 km/hr – nearly 2.5 times the maximum speed limit.

I am concerned the Discipline Authority’s decision fails to adequately assess Constable [REDACTED] potential non-compliance with the MVA, EVDR, and MVTP Policy at each stage, starting from the initial choice to drive at high speeds to catch up to and observe the motorist, and including the choice to follow the driver at very high speeds for at least 13 seconds before calling off the traffic stop. I am also concerned with the Discipline Authority’s conclusions that (i) there was no “pursuit” until Constable [REDACTED] activated his siren and let it run through several cycles, and (ii) once there was objectively a “pursuit,” Constable [REDACTED] complied with the requirements of the EVDR and MVTP Policy in that regard.

In my view, the Discipline Authority has not given sufficient weight to aggravating factors that should affect the assessment of how a reasonable officer would have responded in the circumstances.

For example, the only observable offence was speeding. By the time they caught up to the motorist when stopped at the red light, the Members knew the car was not stolen, that the registered owner had a valid licence, and that the motorist was not ignoring all rules of the road. I acknowledge that the Members raised concerns the motorist might be impaired, and that there is a strong public interest in ending the harms of impaired driving. However, I question the proportionality of engaging in extended periods of high-speed emergency driving in the absence of an observable offence more serious than speeding.

I also note that there was an opportunity to initiate a traffic stop when the vehicles were stopped at the red light. By that time, Constable [REDACTED] had had sufficient time to observe the motorist's driving, gather information, and decide on the traffic stop. However, rather than take steps to conduct a traffic stop at the red light, he waited for the light to change then tried to initiate the stop while following the motorist at a relatively high rate of speed. The Discipline Authority does not appear to have considered whether this was consistent with the objective standard of what a reasonable officer would have done in the circumstances.

Finally, the Discipline Authority states at one point that the MVTP Policy requires that if an officer determines a pursuit is about to occur, they must immediately disengage. It is difficult to reconcile the Discipline Authority's finding that Constable [REDACTED] was objectively in a pursuit after he activated his sirens following the left-hand turn but complied with the EVDR during that period of pursuit.

For all these reasons, it appears that the Discipline Authority erred in her analysis of whether Constable [REDACTED] departed from objective standards of what a reasonable officer with similar training and experience would have done in the situation and thereby committed *Neglect of Duty*.

I wish to acknowledge the tragic deaths that occurred when the motorist collided with the civilian vehicle causing the deaths of two people. These events surely had a traumatic impact on their loved ones and others involved in the accident, including the Members. In sending this matter for a s. 117 review, I am not determining that events would have unfolded any differently if different choices had been made. The fatal accident was a product of a variety of factors. My goal in sending this matter to a section 117 review is because of, in my opinion, a faulty analysis and apparent incorrect conclusion by the Discipline Authority, and to seek clarity about areas of concern relating to the Discipline Authority's interpretation of the facts and policies related to emergency driving responses.

Neglect of Duty - Making of Notes

I do not have a reasonable basis to believe that the Discipline Authority's decision is incorrect with respect to the allegation of *Neglect of Duty* as it relates to the making of contemporaneous notes.

It is always preferable for detailed, accurate, and comprehensive notes to be made as soon as possible after an incident. In addition, I do not agree with the Discipline Authority's citation of an Ontario case (*Hawkes v. McNeilly*, 2016 ONSC 6402) that purports to add an element of wilfulness to the test for *Neglect of Duty* under the *Police Act*. That case is not binding in BC and is not persuasive due to material differences in the wording of the relevant statutes in Ontario and BC.

However, I accept based on the evidence described in the FIR that the events here had mental health impacts on both officers and notes were made within a reasonable time frame in the circumstances. Therefore, the Discipline Authority's decision to dismiss these allegations of *Neglect of Duty* is final and conclusive under section 112(5) of the *Police Act*.

Appointment of a Retired Judge

Section 117(1) of the *Police Act* 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 *Police Act*.

Section 177.2 of the *Police 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 *Police 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 *Police 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 William Ehrcke, K.C., retired Supreme 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 Ehrcke 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

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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] Vancouver Police Department
Inspector [REDACTED], Vancouver Police Department