



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 2023-24746

March 3, 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: Mr. Mark Takahashi (Retired Judge)
Retired Judge of the Provincial Court of British Columbia

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

On October 23, 2023, our office received a complaint from Mr. [REDACTED] describing his concerns with members of the Surrey Police Service (SPS). The OPCC determined Mr. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* (Act) and directed the SPS to conduct an investigation.

On January 7, 2025, Sergeant [REDACTED] completed her investigation and submitted the Final Investigation Report (FIR) to the Discipline Authority.

On January 31, 2025, the Discipline Authority issued her decision pursuant to section 112 of the Act. The Discipline Authority identified an allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Act against Constables [REDACTED] and [REDACTED] and determined that this allegation did not appear to be substantiated against either member.

Pursuant to section 117(1) of the Act, I have determined that there is a reasonable basis to believe that the decision of the Discipline Authority is incorrect in relation to Constable [REDACTED]

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Police Complaint Commissioner

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Background

On January 14, 2023, Mr. [REDACTED], while an inmate at the [REDACTED] advised [REDACTED] staff that he had been assaulted by another inmate, who he identified as [REDACTED]. [REDACTED] staff relayed this information to police. SPS Constable [REDACTED], a recruit constable, and Constable [REDACTED], her field training officer, attended the [REDACTED] on that same date and obtained a statement from Mr. [REDACTED].

On February 8, 2023, the [REDACTED] provided the members with video of the assault and Mr. [REDACTED] "client health assessment report."

The video appears to depict Mr. [REDACTED] being struck in the face by an inmate (the suspect), who is partially concealed behind a pillar. Mr. [REDACTED] then leaves the area and a few seconds later four [REDACTED] staff converge toward the pillar; the video then abruptly ends. Throughout the duration of the video, other inmates are depicted in the proximity of Mr. [REDACTED] and the suspect.

Mr. [REDACTED] "client health assessment report" states the name of an inmate involved in the alleged assault, cites that Mr. [REDACTED] was assaulted by the named inmate, and lists the names of four [REDACTED] staff who made entries on the report.

During the criminal investigation, the members did not obtain formal statements from any party aside from Mr. [REDACTED]. Constable [REDACTED] gave evidence during the *Police Act* investigation that he did not obtain statements from any [REDACTED] staff as on the date of the incident, the staff that he spoke to had not been working at the time of the alleged assault due to a time delay from when the incident occurred to when he arrived on scene. Constable [REDACTED] further advised that the video, which was subsequently obtained appeared to depict an assault, did not allow for identification of the suspect and confirmed that no other [REDACTED] staff or inmates directly witnessed the assault.

Constable [REDACTED] further specified that he did not obtain a statement from the suspect as there was no positive identification and he had concerns about obtaining a voluntary statement in a custodial setting. According to Constable [REDACTED] such an interview may have been a violation of the suspect's rights under the *Canadian Charter of Rights and Freedoms*.

The members concluded their investigation on April 10, 2023, on the basis that there was insufficient evidence to confirm the identity of the suspect.

During the *Police Act* investigation, the Investigator obtained several documents that were not obtained by the members during their criminal investigation, including an [REDACTED] incident report form. These documents make multiple references to Mr. [REDACTED] being assaulted by a named inmate [REDACTED] and include the names of [REDACTED] staff who made entries on the documents. In particular, the incident report form notes that, in relation to the assault against Mr. [REDACTED] a named inmate was being "*charged under CAR Section 21(1) An Inmate must not (w) assault another inmate*" (this is presumably pursuant to the *Correction Act Regulation*).

According to Constable [REDACTED] he believed that the [REDACTED] had provided him with all relevant information. In previous investigations at the [REDACTED] he acknowledged that he had been given an incident report form. However, he assumed that the [REDACTED] failure to proactively provide him with an incident report meant that an incident report was not created or that [REDACTED] staff did not have any relevant information.

Discipline Authority's Decision

The Discipline Authority found that at the time of the alleged misconduct, Constable [REDACTED] duty was limited to following the directions of her field trainer and direct supervisor, Constable [REDACTED] and that she complied with that duty.

With respect to Constable [REDACTED] the Discipline Authority determined that he had a primary duty to respond to and investigate the assault alleged by Mr. [REDACTED] and that his investigation was "not exhaustive but nor was it significantly deficient." Specifically, the Discipline Authority noted that Constable [REDACTED] carried out several investigative steps, including obtaining an audio-recorded statement from Mr. [REDACTED] and video evidence. The Discipline Authority determined that the video had "limited evidentiary value" because the suspect was concealed behind a pillar and no [REDACTED] staff witnessed the assault.

In determining that Constable [REDACTED] investigation was reasonable and did not constitute *Neglect of Duty*, the Discipline Authority noted that although she "question[ed]" Constable [REDACTED] decision not to conduct a custodial interview with the suspect, she found that his explanation was "credible and reasonable" and that he reached his conclusion "...in an honest and forthright manner based on his knowledge and experience." Additionally, the Discipline Authority noted that she placed significant weight on the fact that Constable [REDACTED] investigation was reviewed and determined to be acceptable by both an RCMP supervisor and the RCMP Operational Review Unit (ORU).

Request for Appointment of a Retired Judge

On February 11, 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.

OPCC Decision, Section 117 of the *Police Act*

I have reviewed the Discipline Authority's decision. I do not have a reasonable basis to believe that the decision is incorrect with respect to the allegation of *Neglect of Duty* as it pertains to Constable [REDACTED] for the reasons cited by the Discipline Authority. Therefore, the decision of the Discipline Authority with respect to the allegation of *Neglect of Duty* against Constable [REDACTED] is final and conclusive under section 112(5) of the Act.

However, 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] While the Discipline Authority's assessment focuses on Constable [REDACTED] decision not to conduct a

custodial interview with the suspect, it does not appear that the Discipline Authority has sufficiently analyzed the reasonableness of Constable [REDACTED] investigation as a whole. In particular, the Discipline Authority does not appear to have assessed the failure by Constable [REDACTED] to obtain apparently available evidence which would have identified the suspect.

The Discipline Authority's analysis does not assess Constable [REDACTED] decision not to obtain statements from the [REDACTED] staff depicted in the video, despite the video demonstrating that staff converged on the suspect's location within seconds of the assault occurring. Similarly, the Discipline Authority failed to properly assess other aspects of Constable [REDACTED] investigation, including his decision not to obtain statements from other inmates depicted in the proximity of the assault.

The Discipline Authority's analysis further omits Constable [REDACTED] failure to obtain and/or confirm the existence of other documentary records from the [REDACTED] that might have assisted in confirming the identity of the suspect, including the incident report that appears to confirm an inmate was charged under the *Correction Act Regulation* in relation to the alleged assault.

Furthermore, with respect to Constable [REDACTED] decision not to interview the suspect, this seems to be somewhat of a red herring; there were numerous other investigative steps that could have been taken before reaching one that could have *Charter* implications. Regardless, the Discipline Authority does not appear to have considered whether there were any steps that Constable [REDACTED] could reasonably have taken to mitigate his concerns, such as arranging for counsel to be present for an interview, or inquiring when the suspect would be released from custody (so that an interview might take place outside of a custodial setting). The Discipline Authority also does not appear to have considered whether an interview with the suspect was even reasonably required for the investigation.

In addition, I have a reasonable basis to believe that the Discipline Authority was incorrect when "placing significant weight" on the fact that Constable [REDACTED] investigation was reviewed by an RCMP supervisor and the RCMP ORU. While the investigation conducted into this complaint did not assess the nature of such reviews and/or the evidence made available to the reviewers, the evidentiary record appears to support that neither the video nor the client health assessment report was attached to the police file. It therefore appears the RCMP reviewers did not have access to all the information that was available to Constable [REDACTED] at the time the investigation was concluded, and that is now available for use in the *Police Act* investigation. In these circumstances, the views of the RCMP reviewers are of limited relevance in determining whether Constable [REDACTED] met the objective standard of what a reasonable officer would have done in similar circumstances.

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 Mr. Mark Takahashi, 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 Takahashi has confirmed their availability to review this matter and reported no conflicts.

Pursuant to section 117(9) of the *Police 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 *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 *Police 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 *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
Inspector [REDACTED], Surrey Police Service