



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 2024-26734

August 19, 2025

And to: Constable [REDACTED] (Members)  
Constable [REDACTED]  
Special Municipal Constable [REDACTED]  
c/o Vancouver Police Department  
Professional Standards Section

And to: Chief Constable Steve Rai  
c/o Vancouver Police Department  
Professional Standards Section

And to: The Honourable George Macintosh, K.C. (Retired Judge)  
Retired Justice of the Supreme Court of British Columbia

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

On February 14, 2024, the Office of the Police Complaint Commissioner (OPCC) received information from the Vancouver Police Department (VPD) pursuant to section 89 of the *Police Act* (Act), in relation to an incident which occurred at the VPD Jail on February 13, 2024, involving [REDACTED] (the affected person).

On April 30, 2024, an external police agency was appointed to investigate the matter pursuant to section 89 of the Act as it appeared that the affected person suffered an injury constituting serious harm as defined under the Act. The investigation was suspended while the Independent Investigations Office investigated the matter.

On October 23, 2024, the section 89 investigation was discontinued as the OPCC determined that the affected person's injury did not constitute serious harm. However, based on a review of the related information, I ordered an investigation pursuant to section 93(1) of the Act into the conduct of then Special Municipal Constables [REDACTED] and [REDACTED]. Both

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Police Complaint Commissioner

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members have become constables since the incident in question. The order was based on my concerns with the members' conduct in relation to their duty of care towards the affected person, specifically in relation to the decision to remove her from the holding cell while she still seemed intoxicated or unable to care for herself, and the subsequent physical control which led to the injury. VPD Professional Standards investigator Sergeant [REDACTED] conducted an investigation into this matter.

On May 22, 2025, I amended the Order for Investigation to include the conduct of Special Municipal Constable [REDACTED], based on information indicating he had assessed the affected person's suitability for release and advised members to bring the affected person out of the cell for release.

On July 4, 2025, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On July 21, 2025, the Discipline Authority issued their decision pursuant to section 112 of the Act in this matter. Specifically, the Discipline Authority identified one allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the Act against Constable [REDACTED], Constable [REDACTED] and Special Municipal Constable [REDACTED] (Members). The Discipline Authority determined that the allegation against the Members did not appear to be substantiated.

Pursuant to section 117(1) of the 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**

On February 13, 2024, the affected person was arrested by members of the Metro Vancouver Transit Police for being intoxicated in a public place. She was lodged in the VPD Jail at approximately 1:15 AM to be released once she was able to care for herself. The affected person then spent nearly seven hours in the cell which had no mattress or place to sit.

At some point later that morning, a decision was made to bring the affected person from her cell to the release desk. At approximately 7:52 AM, Constables [REDACTED] and [REDACTED] in the presence of Special Municipal Constable [REDACTED] entered the cell. The affected person was lying on the floor in a fetal position. Constables [REDACTED] and [REDACTED] attempted to rouse her. When she did not respond or comply with directions, the Constables physically removed the affected person from the holding cell and escorted her to the front counter using twist or wrist locks on her arms.

During the escort, the affected person moved slowly and eventually dropped her weight and went to the ground. The members continued to hold the affected person's arms and attempted to raise her to her feet. In doing so the members "heard and felt something occur" from the shoulder/upper arm region of the affected person. The affected person was transported to the hospital where an early medical assessment determined she had suffered a humeral fracture to her right shoulder.

The material incidents are captured on surveillance video from the VPD jail. The recordings do not include audio. The video shows that physical control was applied to remove the affected person from the cell less than twenty seconds after Constable [REDACTED] first touched her arm in an attempt to rouse her.

Although the investigator made multiple attempts to reach her, the affected person did not provide a statement during the investigation.

### **Discipline Authority's Decision**

The Discipline Authority began by quoting from a prior s. 117 decision in which a retired judge found that intention is not a necessary ingredient of neglect of duty (OPCC File 2023-23655). The Discipline Authority then quoted from a different s. 117 decision (OPCC File 2020-18123) in which a different retired judge applied Ontario case law stating that neglect of duty requires either willfulness or a degree of neglect that makes a matter cross the line from a mere performance consideration to a matter of misconduct.

In concluding the discussion about the test for neglect of duty, the Discipline Authority said that (i) a deliberate or intentional act is not required, and a member may act recklessly without intent and still be found to have committed misconduct, and (ii) in considering whether there was good or sufficient cause to justify neglect, it is important to consider the reasonableness of the member's conduct in all of the circumstances.

Applying these principles, the Discipline Authority accepted the Members had a duty to adequately assess if the affected person could reasonably care for herself before being removed from her cell and eventually released from the VPD Jail.

The Discipline Authority accepted evidence from the Members indicating that the affected person made eye contact with them in the cell and was not showing signs of obvious intoxication at that time. The Discipline Authority was satisfied that the affected person heard and understood the Members' English commands and engaged in both passive and active resistance by failing to come out of the cell on her own, stopping and pausing during the escort, then completely dropping her weight in a show of non-compliance.

In the circumstances, the Discipline Authority found the Members had complied with their duties and used appropriate physical controls. The allegation of *Neglect of Duty* was not substantiated against any of the Members.

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

Based on a review of all of the available evidence, I have a reasonable basis to believe the Discipline Authority's decision is incorrect.

At the outset, the Discipline Authority appears to have misstated the applicable test for neglect of duty. While correctly stating at times that intent is not required, the Discipline Authority's decision also mentions Ontario case law that includes a reference to wilfulness. The Discipline

Authority's summary of applicable principles further suggests that recklessness may be a necessary element under the Act.

References to wilfulness and recklessness are inconsistent with recent decisions from retired judges stressing that the test for neglect of duty in BC is an objective one that asks whether an officer took reasonable steps to fulfill their duties (see for example the s. 117 decision in OPCC File 2024-25498, and the misconduct decision in OPCC File 2021-19627). These decisions are to be preferred as they properly engage with the legislative history of the *Police Act* and material differences in wording between the relevant legislation in BC and Ontario.

In any event, the Discipline Authority's decision fails to adequately consider and address the video evidence. The video appears to show an affected person who was unresponsive, unsteady on her feet, and unwell. Based on the video evidence, reasonable officers in the Members' circumstances should have paused and made further inquiries about the affected person's wellbeing and ability to take care of herself before applying twist or wrist locks and physically removing her from the cell for possible release. If this had happened, the affected person would likely have avoided injury.

I have concerns with several aspects of the Discipline Authority's decision to the contrary.

First, the Discipline Authority found that the Members made an adequate initial assessment that the affected person could be removed from the cell. This conclusion was based on evidence from the Members about the passage of time since the affected person's arrival, eye contact that was allegedly made as the affected person was lying on the floor, the absence of an odor of liquor, and the affected person's act of pulling a sweater over her face while lying on the floor of the cell. In accepting this evidence, the Discipline Authority does not appear to have adequately considered the rapid nature of the assessment and physical removal.

My review of the available surveillance video indicates that the affected person was removed from the cell within approximately one minute of the Members entering, and that physical control, including a twist lock, was applied within approximately 17 seconds of Constable [REDACTED] shaking the affected person's arm to rouse them. If any eye contact was made, the video appears to show it was very brief at best. This rapid sequence of events did not provide reasonable opportunity for the affected person to comply with commands or engage in dialogue about her condition, or for the Members to fully evaluate her condition and readiness for release.

Second, the Discipline Authority's finding of wilful non-compliance is based in part on a conclusion that the affected person heard and understood the Members' commands. This appears to be an inference drawn from an absence of evidence showing that the affected person did not speak English. In drawing this inference, the Discipline Authority did not account for information from Constable [REDACTED] stating that the affected person spoke in a language other than English while being guided down the hallway and that there was the possibility of a language barrier.

Third, the Discipline Authority accepted the Members' account that the affected person intentionally engaged in acts of passive and active resistance by failing to respond to commands

to get up, pulling a sweater over her head to continue to sleep, stopping and pausing while being escorted with twist or wrist locks, and dropping their weight. However, based on the video evidence, these same behaviours could equally be interpreted as consistent with continuing intoxication or other forms of incapacity.

For example, Constable [REDACTED] stated the affected person was unsteady on their feet but was able to walk on their own. Constable [REDACTED] stated that the affected person was able to walk properly. The Discipline Authority appears to have accepted these statements, despite video showing that the Members maintained continuous control of the affected person's arms during escort and the affected person nevertheless struggled to remain upright before falling forwards.

Finally, the Discipline Authority properly acknowledged evidence that the acting jail supervisor, Special Municipal Constable [REDACTED] had requested that the affected person be brought out to be assessed for release. However, the Discipline Authority does not assess whether there was any exigency around the request or what information the request was based on. In the absence of any indications of urgency, there is at least an appearance that reasonable officers in the Members' circumstances would have carried out their duties by slowing down, making further inquiries about the affected person's readiness for removal and release, and seeking clarification or further guidance as needed.

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

Section 117(1) of the 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 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 George Macintosh, K.C., retired Supreme Court 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 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 George Macintosh, K.C., 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 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 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