



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 2022-22930

May 22, 2024

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

And to: Chief Constable Adam Palmer  
c/o Vancouver Police Department  
Professional Standards Section

And to: To be confirmed (Retired Judge)

And to: His Worship Mayor Ken Sim  
Chair, c/o Vancouver Police Board

On December 20, 2022, based on information provided by the Vancouver Police Department (VPD) pursuant to section 89 of the BC *Police Act*, the former Police Complaint Commissioner ordered an investigation into the conduct of Constable [REDACTED] and Constable [REDACTED] [REDACTED] West Vancouver Police Professional Standards investigator, Sergeant [REDACTED], conducted an investigation into this matter.

On April 9, 2024, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority, Inspector [REDACTED].

On April 23, 2024, Inspector [REDACTED] issued his decision pursuant to section 112 in this matter. Inspector [REDACTED] identified an allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* against Constables [REDACTED] and [REDACTED] respectively and determined that the allegations did not appear to be substantiated.

Pursuant to section 117(1) of the *Police Act*, having reviewed the allegations 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.

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Prabhu Rajan  
Police Complaint Commissioner

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## Background

On November 24, 2022, VPD members conducted a high-risk traffic stop of a taxi transporting a 29-year-old Black male, Mr. [REDACTED] (affected person). The purpose of the stop was to effect an arrest for breach of probation. The affected person exited the taxi after some delay. In the ensuing interaction, Constable [REDACTED] deployed four less-lethal bean bag shotgun (BBSG) rounds at the affected person and Constable [REDACTED] deployed a Police Service Dog (PSD) which bit the affected person twice. VPD members subsequently took control of the affected person.

## Discipline Authority's Decision

With respect to the allegation of *Abuse of Authority* (unnecessary force) against Constable [REDACTED] for the deployment of the BBSG, the Discipline Authority found that the member took a measured response when [REDACTED] deployed four bean bag rounds to the affected person who was reportedly refusing to obey police commands.

With respect to the allegation of *Abuse of Authority* (unnecessary force) against Constable [REDACTED] pertaining to the deployment of the PSD, the Discipline Authority noted that the member took a measured response when [REDACTED] deployed the PSD after the four BBSG rounds were ineffective in gaining compliance from the affected person.

In assessing the allegations of force, the Discipline Authority referenced a use of force expert opinion and the National Use of Force Framework (NUFF). The Discipline Authority adopted the expert's assessment that the affected person's subject behaviour fell within the "grievous bodily harm or death" category. The Discipline Authority concluded that the application of force by the members was reasonable and consistent with the NUFF. The Discipline Authority further noted that neither the affected person nor the taxi had been searched for weapons prior to the deployment, which presented an imminent threat to officers and the public.

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

Based upon my review of all the available evidence, I have a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to both unsubstantiated allegations.

I consider that the Discipline Authority erred in relying upon a use of force expert opinion that categorized the affected person's subject behaviour as "grievous bodily harm or death" and failed to adequately consider the affected person's behaviour as demonstrated by the video evidence. The video indicates that, at the time the first BBSG round was fired, the affected person was turning slowly with his hands empty in the air and appeared to be moving to place his hands on the roof of the taxi.

Similarly, at the time of the PSD deployment, the video appears to show that the affected person was sitting against the vehicle with his hands empty by his sides. The video evidence does not support that the affected person was in position to cause grievous bodily harm or death at that time to justify use of a PSD.

As such, the record reasonably supports that the affected person did not pose an immediate safety risk to officers or the wider public in both circumstances.

Furthermore, I have a reasonable basis to believe that the Discipline Authority erred in failing to consider whether material discrepancies between Constable [REDACTED] evidence and other available evidence, including video, could constitute *Deceit* as defined under section 77(f)(i)(A) of the *Police Act*. These include, but are not limited to, Constable [REDACTED] evidence that the affected person was reaching for his waistline, the waistband was not visible, and the affected person would not show his hands. In the video, prior to the deployment of the PSD, the affected person's hands are clearly visible without any apparent attempt to conceal them.

I note that on April 25, 2024, Bill 17 – 2024: *Police Amendment Act* received Royal Assent which immediately brought into force amendments relating to the appointment of retired judges under Part 11 of the *Police Act*. Section 177.2(1) of the Act requires the Commissioner to maintain a list of retired judges who may be appointed under sections 117(1), 135(2), or 142(1). The Commissioner must, from time to time, request the Associate Chief Justice to consult with retired judges of the Provincial Court, the Supreme Court and the Court of Appeal, and to recommend retired judges who the Police Complaint Commissioner may include on that list.

The Commissioner is currently in the process of compiling the list of retired judges and creating the necessary procedures for the newly introduced appointment process. A retired judge will be appointed from the list maintained under section 177.2(1) and consistent with procedures developed pursuant to section 177.2(3) in due course.

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 them.



Prabhu Rajan  
Police Complaint Commissioner

cc: [REDACTED], Registrar  
Sergeant [REDACTED] Investigator, West Vancouver Police Department  
Inspector [REDACTED] Discipline Authority, West Vancouver Police Department