



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: 2024-25237

January 13, 2025

To: Mr. [REDACTED] (Complainant)

And to: Constable [REDACTED] (Member)  
Constable [REDACTED] (Former Member)  
c/o Saanich Police Department  
Professional Standards Section

And to: Chief Constable Dean Duthie  
c/o Saanich Police Department  
Professional Standards Section

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

And to: His Worship Mayor Dean Murdock  
Chair, c/o Saanich Police Board

On January 14, 2024, our office received a complaint from Mr. [REDACTED] (Complainant) describing his concerns with members of the Saanich Police Department (SPD). The OPCC determined Mr. [REDACTED] complaint to be admissible pursuant to Division 3 of the *Police Act* and directed the SPD to conduct an investigation.

On May 13, 2024, an investigation was initiated naming Constable [REDACTED], Constable [REDACTED], Constable [REDACTED], and Constable [REDACTED] as respondents. The investigation concerned an allegation of *Abuse of Authority* for unnecessary force in relation to the arrest of the Complainant and two allegations of *Neglect of Duty*, one for failing to provide access to medical care for the Complainant while in custody at SPD cells and one for failing to provide access to counsel. Over the course of the investigation, Professional Standards Section Investigator Sergeant [REDACTED] (Investigator) identified Constable [REDACTED], Constable [REDACTED] and Constable [REDACTED] as the arresting officers. The Investigator also identified Constable [REDACTED] with respect to the allegation of failing to provide access to medical care and Constable [REDACTED] with respect to the allegation of failing to provide access to counsel.

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Police Complaint Commissioner

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On November 13, 2024, the Investigator completed the investigation and submitted the Final Investigation Report to Inspector [REDACTED], the Discipline Authority.

On December 11, 2024, the Discipline Authority issued their decision pursuant to section 112 in this matter. Specifically, the Discipline Authority made the following determinations with respect to the three allegations of misconduct identified above:

- i. The allegation of *Abuse of Authority* pursuant to section 77(3)(a)(ii)(A) of the *Police Act* against Constable [REDACTED] Constable [REDACTED] and Constable [REDACTED] did not appear to be substantiated.
- ii. The allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against Constable [REDACTED] did not appear to be substantiated.
- iii. The allegation of *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act* against Constable [REDACTED] 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 with respect to both allegations of *Neglect of Duty*.

## Background

SPD members arrested the Complainant on January 1, 2024, for State of Intoxication in a Public Place (SIPP). A physical struggle took place between the Complainant and the arresting members, which may have resulted in an injury to the Complainant's left arm. The Complainant was then arrested and transported to SPD cells.

Constable [REDACTED] read the Complainant his *Canadian Charter of Rights and Freedoms* immediately after his arrest. However, the arresting officers believed the Complainant to be heavily intoxicated and felt that it was unclear whether the Complainant properly understood his *Charter* rights. When the Complainant was booked into cells, he requested access to counsel, but members considered him too volatile to facilitate access to counsel at that time. Constable [REDACTED] then left cells and did not return to attempt to clarify or implement the Complainant's *Charter* rights. Constable [REDACTED] also did not ask any other member to do so. According to the Complainant, he requested access to counsel repeatedly while in cells and was never provided access. Most of the requests occurred after Constable [REDACTED] departure and when Constable [REDACTED] was the only SPD member in cells. The Complainant was in custody for approximately seven hours.

Additionally, while in cells, the Complainant repeatedly indicated to Constable [REDACTED] that his arm was hurt and requested medical attention. However, Constable [REDACTED] did not provide him with access to medical attention or notify his Watch Commander of the alleged injury. On January 4, 2024, Mr. [REDACTED] was diagnosed with a non-displaced left elbow coronoid fracture.

## Discipline Authority's Decision

The Discipline Authority found that the arresting officers did not use unnecessary force during the arrest of the Complainant. Initially, the arresting officers used communication and soft physical control, which corresponded to the Complainant's initial cooperation. Although more force options became available once the Complainant began to resist and pull away, the arresting officers continued to use soft physical control. The Discipline Authority noted "tremendous restraint" on the members' part in the force they used to control the Complainant.

The Discipline Authority acknowledged that jail video clearly shows the Complainant gesturing at his left arm and that the Complainant stated in his interview that he was telling Constable [REDACTED] that his arm hurt. The Discipline Authority also acknowledged the duty of care for individuals in custody that was described in *Roy v Canada (AG)*, 2002 BCSC 1021 at para 118: "...prisoners in police custody are vulnerable, and entirely dependent on the police to obtain medical assistance for them."

The Discipline Authority acknowledged Constable [REDACTED] prior experience as a Correctional Officer and his advanced First Aid training. He also noted Constable [REDACTED] statement in his interview that the Complainant pointed at his arm and stated "you guys effed up my arm" on more than one occasion, as well as Constable [REDACTED] expressed view that he did not believe that the Complainant had a serious injury.

Based on the statements of Constable [REDACTED] and the video evidence, the Discipline Authority concluded that Constable [REDACTED] neglected his duty to obtain medical care for the Complainant. However, the Discipline Authority concluded that Constable [REDACTED] had good or sufficient cause for neglecting his duty owing to a deficiency in management of the cell area including policy and procedure on detention facility operations, how the facility is staffed, and the training provided to members performing these duties. The Discipline Authority noted that insufficient direction has been provided regarding notifying the Watch Commander in every instance where a detainee reports an injury.

The Discipline Authority stated that Constable [REDACTED] had a duty to provide the Complainant with his *Charter* rights upon arrest and that he satisfied the informational aspect of the duty by reading the Complainant his rights. The Discipline Authority went on to acknowledge that there is an implementational duty on members to ensure the person understands their rights and to facilitate access to counsel.

According to the Discipline Authority, the Complainant's "intoxicated and agitated state" prevented Constable [REDACTED] from satisfying the implementational duty. Constable [REDACTED] had good or sufficient cause not to implement access to counsel immediately after arrest, given the Complainant's mental state and behaviour. The Discipline Authority indicated that this left the outstanding issue of determining whether Constable [REDACTED] had an ongoing duty to reassess the Complainant's mental state and to make further attempts to facilitate his access to counsel or transfer that duty to another member.

Notably, the Discipline Authority's analysis of this outstanding issue is incomplete; he did not return to explicitly consider this issue. However, in a separate "Service and Policy" section, the Discipline Authority concluded that current SPD policy does not provide sufficient direction regarding following up on access to counsel for persons arrested while intoxicated. It appears that the Discipline Authority's implicit conclusion was that Constable [REDACTED] had this ongoing duty to make further attempts or transfer his duty, but that he had good or sufficient cause – again based on lack of training – to neglect his duty.

#### **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 *Abuse of Authority* for force used during the arrest of the Complainant. Therefore, the decision of the Discipline Authority with respect to the allegation of *Abuse of Authority* against Constable [REDACTED] Constable [REDACTED] and Constable [REDACTED] is final and conclusive under section 112(5).

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 the allegations of *Neglect of Duty* against Constable [REDACTED] and Constable [REDACTED]

In my view, it is clear that Constable [REDACTED] knew of his duty to report injuries and facilitate access to medical care and would have exercised them had he believed the Complainant about his injury. Given Constable [REDACTED] first aid training, he ought to have known that serious injuries such as fractures do not always result in obvious signs of injury. Also, a level of intoxication can further mask pain responses and injuries. In this case, the Complainant was reported to be highly intoxicated at the time of arrest and transport to cells. Video evidence and statements suggest that the Complainant was treating his arm carefully and complaining of pain and injury throughout his time in cells. Constable [REDACTED] had a duty to facilitate access to medical care regardless of whether he thought the injury was minor and despite potential cell management and/or policy and procedure deficiencies.

In addition, I do not believe that there was good or sufficient cause for Constable [REDACTED] to neglect his duty to facilitate access to counsel. While the Complainant was initially deemed unsafe to be provided access to counsel, there was no reassessment undertaken or further attempt to facilitate access, and no sufficient reason identified not to. The lack of specific SPD training related to following up with respect to access to counsel does not justify the neglect of the Complainant's *Charter* rights, especially given the complete absence of follow-up. The implementational obligation under section 10(b) of the *Charter* is suspended only under special circumstances such as public safety or police safety. Even then, police must take reasonable steps to minimize the delay. Even if there were concerns about implementing the Complainant's rights just after arrival at cells due to police safety, it does not appear there would have been good or sufficient cause for Constable [REDACTED] to leave cells and neither return to facilitate access to counsel nor pass the duty to another member once safe to do so.

## 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 William Ehrcke, K.C., retired British Columbia 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 *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 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], PSS Investigator, Saanich Police Department  
Inspector [REDACTED], Discipline Authority, Saanich Police Department