



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 2024-25721

March 25, 2025

- To: Special Municipal Constable [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section
- And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section
- And to: The Honourable Justice Wally Oppal, K.C. (Retired Judge)
Retired Judge of the British Columbia Court of Appeal
- And to: Mr. Frank Chong
Chair, c/o Vancouver Police Board

On April 17, 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* in relation to an incident which occurred on April 16, 2024, involving [REDACTED] (affected person). Subsequently, based on concerns with the force used on the affected person as well as concerns with respect to the accuracy of aspects of the respondent member's description of the incident, I ordered an investigation into the conduct of Special Municipal Constable (SMC) [REDACTED].

On February 7, 2025, Sergeant [REDACTED] completed his investigation and submitted the Final Investigation Report to the Discipline Authority.

On February 25, 2025, Inspector [REDACTED], as the Discipline Authority, issued her decision pursuant to section 112 in this matter. Specifically, the Discipline Authority identified three allegations of misconduct against SMC [REDACTED] and determined that the allegations of *Abuse of Authority*, pursuant to section 77(3)(a)(ii)(A); *Deceit*, pursuant to section 77(3)(f)(i)(A); and *Neglect of Duty*, pursuant to section 77(3)(m)(ii) of the *Police Act* against SMC [REDACTED] did not appear to be substantiated.

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Police Complaint Commissioner

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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.

Background

On April 16, 2024, the affected person was arrested by members of the Metro Vancouver Transit Police (MVTP) and transported to the Vancouver Jail. The affected person was escorted by jail staff when entering the VPD jail with their hands handcuffed behind their back. According to the respondent member, the affected person was reported to have made a “slurping sound” with their throat, which the respondent member claims was indicative of the affected person preparing to spit. There is jail video footage of the relevant events; however, it has no audio.

SMC [REDACTED] reportedly executed a leg takedown technique (“leg reap”) to “escort the affected person to the ground with as much [duty of care] as possible.” In his written notebook notes, SMC [REDACTED] said that, during the takedown, he felt the affected person “diving forward independently” and that he “pulled the affected person up as best he could, using both arms.” In a jail detainee record authored by SMC [REDACTED] he wrote that, “Subject acted dead weight and dove face forward on his own.” The affected person went face down to the floor suddenly and forcefully causing injury to their nose. The affected person was examined by the jail nurse who advised that the affected person be taken to hospital as their nose may be broken.

Discipline Authority’s Decision

In relation to the force used on the affected person, the Discipline Authority found that, based on SMC [REDACTED] belief that the affected person was preparing to spit, SMC [REDACTED] was acting on reasonable grounds to believe that force was necessary in order to quickly intervene to prevent the affected person from spitting and to maintain the safety of himself and other jail staff. The Discipline Authority did not find SMC [REDACTED] actions to be oppressive or reckless but rather the force used was lawful and reasonable.

In relation to the accuracy of the statement authored by SMC [REDACTED] that described the affected person as “diving forward independently”, the Discipline Authority found that it is true that the affected person did not dive forward independent of the leg reap which contributed to displacing his balance. However, the Discipline Authority found that the phrase can have different connotations and found that there are a “number of factors” that would lead SMC [REDACTED] to perceive, sense, and document that the affected person was “diving forward independently” such as the affected person was intoxicated and used dead weight/dropping his weight and could be seen leaning forward and walking in front of the members on the video. The Discipline Authority concluded that although SMC [REDACTED] statement could be perceived as being inaccurate, she did not find it clear that SMC [REDACTED] had any intention to mislead or falsify what occurred.

In relation to the accuracy of SMC [REDACTED] notes regarding his description of his “duty of care” towards the affected person, the Discipline Authority found that SMC [REDACTED] had a duty to author accurate, detailed and comprehensive notes as soon as possible after the incident. The Discipline Authority found that SMC [REDACTED] actions during and after encompassed a “duty of

care” which was documented in his police statement and notes. The Discipline Authority found that while SMC [REDACTED] could have expanded on how he ensured his “duty of care”, she did not find it met the threshold of misconduct in neglecting his duty to provide accurate notes.

OPCC Decision, Section 117 of the *Police Act*

Based on a review of the available evidence, I have a reasonable basis to believe that the decision of the Discipline Authority is incorrect with respect to the determination that the Member’s conduct does not constitute *Abuse of Authority, Deceit, and Neglect of Duty*.

The Discipline Authority appears to have failed to consider the entirety of the evidence. The Discipline Authority relies on pre-assaultive cues identified in SMC [REDACTED] Subject Behaviour Officer Response report presumably referencing events that occurred several minutes before the event in question and before the affected person was even inside the jail. However, such evidence was not weighed against the objective video evidence and other evidence provided by SMC [REDACTED] (holding the affected person left side) that she was told by SMC [REDACTED] to let go of the affected person once inside the jail in preparation for a ground search. Also, the Discipline Authority simply accepted that the affected person made a “slurping” sound and, if such sound was made, that it indicated imminent spitting that justified the leg reap.

In her decision, the Discipline Authority identified factors that contributed to the affected person injuring his nose, including that “...Mr. [REDACTED] was not expecting the leg reap and could not brace his fall being in handcuffs; and his level of intoxication.” I question how an individual handcuffed behind his back who is suddenly, forcefully, and unexpectedly tripped with forward momentum, as evident in the jail CCTV video, could possibly brace his fall given the force applied that was captured on jail CCTV. I also question how the affected person’s level of intoxication, of which we have no clear evidence, would have affected the impossibility of the affected person bracing himself when his hands were handcuffed behind his back. The affected person was in a vulnerable position and a leg reap created a risk of injury that was not reasonable in the circumstances.

In addition, I consider that the Discipline Authority erred in her assessment of the *Deceit* allegation. Under the *Police Act*, a member commits *Deceit* if, in their capacity as a member, they make or procure the making of an oral or written statement, or an entry in an official document or record, that to the member’s knowledge is false or misleading.

The Discipline Authority’s discussion of *Deceit* appears to have focused on SMC [REDACTED] police statement and written notes, both of which use the phrase “diving forward independently” but also make separate reference to the leg reap. In my view, the discussion does not sufficiently address the jail detainee record also completed by SMC [REDACTED] which says the affected person “acted dead weight and dove face forward on his own” and does not mention the leg reap at all. The Discipline Authority should have conducted a thorough analysis of whether SMC [REDACTED] made this statement in the jail detainee record knowing it to be false or misleading.

In addition, even if the test for *Deceit* is not met, the Discipline Authority should have fully considered the potential for *Neglect of Duty* in relation to the various statements provided. Members have a duty to make accurate, detailed, and comprehensive notes. Under the

applicable test for *Neglect of Duty*, these qualities would be assessed on an objective standard that asks whether the member's efforts fell short of what a reasonable officer would have done in similar circumstances, and whether there was good or sufficient cause for any such shortfall.

With regard to SMC [REDACTED] accuracy in articulating the incident and his attempts to meet his "duty of care" towards the affected person, the Discipline Authority acknowledged that SMC [REDACTED] could have expanded on 'how' he ensured his "duty of care." The Discipline Authority then concluded, without further analysis, that this did not meet the threshold of misconduct in neglecting his duty to provide accurate notes. In my view, the notetaking by SMC [REDACTED] falls below the objective standard of what a reasonable officer would have recorded, taking into account the totality of the available evidence, including the jail video. There does not appear to be any good and sufficient cause to excuse such neglect. Therefore, this decision appears to be incorrect.

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 Wally Oppal, K.C., retired British Columbia Court of Appeal 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:

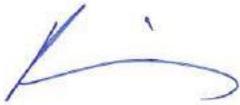
- a) the provision under which the appointment is being made;
- b) the current workloads of the various retired judges;
- c) the complexity of the matter and any prior experience with the *Police Act*; and
- d) any specific expertise or experience of a retired judge with respect to a particular issue or sensitivity associated with the matter

Retired judge Oppal 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], Vancouver Police Department
Inspector [REDACTED], Vancouver Police Department