



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 2024-26869

July 24, 2025

To: Special Municipal Constable [REDACTED] (Member)  
c/o Victoria Police Department  
Professional Standards Section

And to: Chief Constable Del Manak  
c/o Victoria Police Department  
Professional Standards Section

And to: The Honourable Justice Laura Gerow (Retired Judge)  
Retired Judge of the Supreme Court of British Columbia

And to: Micayla Hayes  
Chair, c/o Victoria and Esquimalt Police Board

On December 6, 2024, based on information provided by the Victoria Police Department (VicPD) and their request to initiate an investigation into this matter, I ordered an investigation into the conduct of Special Municipal Constable (SMC) [REDACTED].

On June 6, 2025, VicPD Professional Standards investigator Sergeant [REDACTED] completed her investigation and submitted the Final Investigation Report (FIR) to the Discipline Authority.

On June 25, 2025, Inspector [REDACTED], as the Discipline Authority, issued his decision pursuant to section 112 of the *Police Act* ("Act") in this matter. He identified three allegations of misconduct against SMC [REDACTED].

1. *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, operating a motor vehicle while impaired.

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Police Complaint Commissioner

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2. *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, providing a false statement and misleading the Saanich Police Department (SPD) member (“Saanich Member”) conducting the impaired driving investigation.
3. *Discreditable Conduct*, pursuant to section 77(3)(h) of the Act which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department. Specifically, disclosing his employment status to the Saanich Member conducting the impaired driving investigation.

The Discipline Authority found that allegation #1 and allegation #3 appeared to be substantiated. However, the Discipline Authority found that allegation #2 related to the member allegedly providing a false statement and misleading the Saanich Member did not appear to be substantiated.

Pursuant to section 117(1) of the 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 with respect to *Discreditable Conduct* allegation #2, that SMC [REDACTED] provided a false statement and misled the Saanich Member conducting the impaired driving investigation, is incorrect.

### **Background**

According to the information received from the VicPD, on November 1, 2024, an SPD member stopped a vehicle driven by SMC [REDACTED] after the vehicle failed to come to a complete stop at two stop signs. During the interaction, the Saanich Member formed reasonable suspicion that SMC [REDACTED] was operating his vehicle while impaired.

The Saanich member asked SMC [REDACTED] when his last drink was, to which SMC [REDACTED] reportedly replied that he had “one drink a couple hours ago.” SMC [REDACTED] subsequently provided two breath samples into an Approved Screening Device that both resulted in a “Fail” reading. During the interaction, it was learned that SMC [REDACTED] did not have his driver’s license with him. At some point during the encounter, SMC [REDACTED] allegedly advised the Saanich Member that he worked in the VicPD jail. SMC [REDACTED] was issued a 90-day Immediate Roadside Prohibition and a violation ticket for “Fail to Produce a Driver’s License”, and his vehicle was impounded.

In his statement provided as part of the investigation under the Act, SMC [REDACTED] estimated he had around three beers that evening and finished the last one approximately 30 minutes before the traffic stop.

### **Discipline Authority’s Decision**

The Discipline Authority determined that the allegations of SMC [REDACTED] operating a motor vehicle while impaired and disclosing his employment status in an attempt to gain favour appeared to be substantiated.

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The Discipline Authority found that the allegation of SMC [REDACTED] providing a false statement and misleading the Saanich Member during the impaired driving investigation did not appear to be substantiated.

The Discipline Authority noted that SMC [REDACTED] had admitted in his interview under the Act that he “may not have been accurate” when he told the Saanich Member he only had one beer a couple hours ago. However, the Discipline Authority found that it did not appear that SMC [REDACTED] had a legal or professional duty to avoid making a misleading statement to the Saanich Member conducting an impaired driving investigation. The Discipline Authority went on to find SMC [REDACTED] conduct would not be likely to bring discredit to the department.

The Discipline Authority began by considering a prior section 117 decision rendered by retired Mr. Justice Pitfield, formerly of the Supreme Court of BC (OPCC File No. 2015-10904). In that case, Mr. Pitfield noted that police officers are held to higher standards of honesty than ordinary citizens in their dealings with other officers, including when asked about recent consumption of alcohol:

*It is likely the case that many ordinary citizens, when asked about the consumption of alcohol at a roadblock will lie about their recent consumption. There is no sanction as regards the lie itself where a member of the general public is concerned. The same cannot be said of police officers subject to the strictures of the Police Act and subject to sanction should they commit a disciplinary breach of public trust defined by s. 77 of the Act to include discreditable conduct.*

*With good reason, the public places considerable trust in police forces to address and deter driving under the influence of alcohol. Moreover, the public can reasonably expect individual officers to be truthful in their dealings with other officers, whatever the circumstances, and whether on or off duty. It is unlikely that the public would condone the conduct of an officer who lies to another officer for the purpose of avoiding or attempting to avoid the requirement that he or she submit to an ASD test at a roadblock. Knowledge that an officer had engaged in conduct of that kind would be likely to bring discredit upon the police department of which the officer is a member.*

The Discipline Authority found the same high standards do not apply to SMCs, who were said to receive less training, perform a narrower range of duties limited to very specific functions, and “...function in support roles closer to civilian staff.” The Discipline Authority added that “while full constables are clearly held to the highest standards of conduct and integrity, both on and off duty, an SMC does not occupy the same position of trust, visibility, or legal authority in the community.”

In his decision, the Discipline Authority held that “the *Police Act* itself recognizes various classes of officers, and it is reasonable to argue that disciplinary expectations should be calibrated accordingly” and that the same community expectations test for a regular police officer should not automatically be applied to an SMC. Instead, a “...contextual, role-specific lens” should be applied to SMCs when assessing their conduct under the Act.

In assessing whether an SMC’s conduct would likely bring discredit to the municipal police department, the Discipline Authority said that such an analysis “...must recognize that an

SMC's off-duty conduct is far less likely to impact the integrity or reputation of the police department in the eyes of the public and should be treated accordingly."

In the Discipline Authority's view, while a reasonable person in the community may expect that a fully trained constable would understand that misleading another officer at a traffic stop could undermine public trust, that same reasonable person may not assume that an SMC would have the same awareness.

With respect to the two allegations that appeared to be substantiated, the Discipline Authority found that the status of being an SMC rather than a fully sworn police officer was a mitigating factor that reduced the appropriate ranges of proposed disciplinary or corrective measures.

### **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 allegation #2 regarding *Discreditable Conduct* and the provision of a false or misleading statement to the Saanich Member.

Specifically, the Discipline Authority erred when concluding that, as compared to fully sworn officers, SMCs are held to lesser standards that do not include a duty to avoid misleading an officer conducting an impaired driving investigation.

Nothing in the Act states that SMCs should be held to a different standard than municipal constables in this regard. Section 35 of the Act permits a municipal police board to appoint SMCs to assist a municipal police department with its duties. Section 35(2) states that an SMC "has, while carrying out the duties of the special municipal constable's appointment, the powers, duties and immunities of a municipal constable." Section 3 of the *Special Municipal Constables Complaints Regulation* clarifies that the term "member" as used in Part 11 of the Act is to generally be read as including SMCs (subject to certain exemptions that are not material in the current context).

In a Review on the Record decision (RR 18-01, OPCC File No. 2017-13291), retired Judge Mr. Brian Neal, KC, formerly of the Provincial Court of BC, considered the appropriate disciplinary or corrective measures for an SMC who blew a "Fail" at a random check roadblock. The SMC argued it would not be appropriate to hold her to the same standards of conduct as regular municipal constables. Mr. Neal rejected that proposition, finding that an SMC's "...specific duties and assignments do not establish a lesser standard of conduct relative to other municipal constables." Mr. Neal also noted that there was no justification in law that recognized a different standard of conduct between municipal constables and SMCs:

*I find that as a matter of sound public policy, all members, including SMCs, must be held to a high standard of conduct to preserve public confidence in policing. There can be no varying standard based on duties of any member if we are to maintain confidence in the administration of justice and policing. It is conceivable, of course, that individual cases of misconduct may trigger consideration of more serious aggravating factors, but the core duty of all members cannot be eroded by assignment.*

*If a member is sworn to uphold the law, it matters not whether the member's duties are high profile, or administrative. There is no rational basis to distinguish between policing roles in something as basic as compliance with the law.*

*Where the misconduct is serious, as in impaired driving behaviours, there is also no rational basis to minimize or distinguish the significance of such misconduct between policing roles. The public expects, and has every right to expect, that all members will fully comply with the law, on and off duty.*

In my view, Mr. Neal's Review on the Record provides persuasive reasons that SMCs are held to the same high standards as municipal constables for their conduct. The Discipline Authority does not refer to Mr. Neal's decision. Consequently, it is my view that there is a reasonable basis for believing the Discipline Authority's decision regarding Allegation #2 is incorrect.

For these reasons, I am appointing a retired judge to make a decision on *Discreditable Conduct* allegation #2 regarding the making of a false or misleading statement to the Saanich Member. As explained above, the Discipline Authority found an appearance of misconduct with respect to *Discreditable Conduct* allegations #1 and #3. As a result, those allegations do not form part of this section 117 review.

### **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 *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 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 Laura Gerow, retired Supreme 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

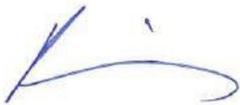
- d) any specific expertise or experience of a retired judge with respect to a particular issue or sensitivity associated with the matter

Retired judge Gerow has confirmed their availability to review this matter and reported no conflicts.

Pursuant to section 117(9) of the 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 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  
Inspector [REDACTED], Victoria Police Department  
Sergeant [REDACTED], Victoria Police Department