

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367
AND
IN THE MATTER OF THE PUBLIC HEARING
INTO ALLEGATIONS AGAINST
CONSTABLE DANIEL DICKHOUT
OF THE SOUTH COAST BRITISH COLUMBIA TRANSPORTATION
AUTHORITY POLICE SERVICE

NOTICE OF ADJUDICATOR'S DECISION

ON

DISCIPLINARY OR CORRECTIVE MEASURES

- TO: Constable Daniel Dickhout, South Coast British Columbia Transportation Authority Police Service
- AND TO: Chief Officer Neil Dubord, South Coast British Columbia Transportation Authority Police Service
- AND TO: David Eby, Executive Director, British Columbia Civil Liberties Association
- AND TO: Chief Constable Brad Parker, Port Moody Police Department, Discipline Authority
- AND TO: Mr. Stan Lowe, Police Complaint Commissioner
- AND TO: Mr. Joseph M. Doyle, Public Hearing Counsel
- AND TO: Mr. Steven M. Boorne, Counsel for Constable Dickhout
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[1] On March 9, 2012, I provided reasons for my finding that Const. Dickhout abused his authority by discharging a conducted energy weapon, a Taser, in order to effect the arrest of Christopher Mr. Lypchuk. On April 18, 2012 I received the submissions of counsel with respect to the appropriate disciplinary or corrective measures to be taken as a result of my finding.

[2] Counsel jointly submitted that a two-day suspension without pay was the appropriate remedy in the circumstances. For the following reasons, I agree with the recommendation.

[3] The incident occurred on September 13, 2007 at the Scott Road Skytrain station when Const. Dickhout was attempting to issue a violation ticket to Mr. Lypchuk who had acknowledged that he had not paid the required fare. Mr. Lypchuk attempted to leave the scene before the ticketing process had been completed. Const. Dickhout and his fellow officer, Const. Chartrand, chased Mr. Lypchuk and stopped him in a stairwell. Const. Dickhout discharged the Taser and struck Mr. Lypchuk as Mr. Lypchuk was reluctantly responding to commands from Const. Dickhout. The officer testified that he construed the manner in which Mr. Lypchuk responded to mark an attempt to assault Const. Chartrand. On all of the evidence adduced at the public hearing into Const. Dickhout's conduct, I concluded that the officer did not believe that Mr. Lypchuk was about to assault Chartrand, but that if he held such a belief, it was unreasonable in the circumstances.

[4] Section 126 of the *Police Act*, R.S.B.C. 1996, c. 367, governs this imposition of disciplinary or corrective measures:

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [complainant's right to make submissions], the discipline authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

(a) the seriousness of the misconduct,

(b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,

(d) the likelihood of future misconduct by the member,

(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,

(f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,

(g) the range of disciplinary or corrective measures taken in similar circumstances, and

(h) other aggravating or mitigating factors.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

[5] In this case, consideration of the aggravating and mitigating circumstances supports the joint submission of counsel.

[6] While, from the public's perspective, the misconduct in this case would be regarded as serious, it was not so regarded by Mr. Lypchuk who did not complain about Const. Dickhout's treatment of him. Rather, it was a complaint filed with the Commissioner by the British Columbia Civil Liberties Association on April 18, 2008, seven months after the event that prompted an investigation into the ten instances to that point in which the transportation police had deployed a Taser against fare evaders. The complaint against Const. Dickhout was the only one of the ten to become the subject of investigation and disciplinary proceedings under the *Police Act*.

[7] Const. Dickhout has been employed as a police officer for a lengthy period of time, first as a military police officer for a period of four years, then as a member of the Vancouver

Police Department from 1976 to 2003, and from 2005 to present, with the Transportation Police Authority. He is now 60 years of age and from all indications, likely to retire within the next two years. Const. Dickhout has not been the subject of any disciplinary action whatsoever in the course of his lengthy career. He is highly regarded by superiors and co-workers. In my opinion there is little likelihood of further misconduct in the remainder of Const. Dickhout's career.

[8] I am satisfied that this incident has had a significant effect on Const. Dickhout. Prior to September 13, 2007, he had not deployed a Taser in the course of his duties notwithstanding that he was a qualified firearms and conducted energy weapon instructor. His evidence satisfied me that he was aware of the dangers associated with the use of such a weapon. In his present position he has a right to decline to carry a conducted energy weapon when on duty. I am satisfied that Const. Dickhout has declined to carry such a weapon since this incident because he was distressed and concerned about the injury to Mr. Lypchuk and the prospect of more severe injury to other targets of Taser use.

[9] Const. Dickhout has accepted complete responsibility for his conduct. At the close of the penalty portion of this proceeding he acknowledged that he erred in using the weapon, and stated that he was prepared to accept whatever disciplinary measures were imposed. Hearing counsel advised me of a discussion with Const. Dickhout following a difficult and thorough cross-examination in the course of the hearing process. At the time, Const. Dickhout acknowledged that it had been "tough" but said that he was happy to be part of the process, the concept of which he embraces. As counsel remarked, that demonstrates a positive and enlightened view of the purpose for which the disciplinary process exists.

[10] This incident occurred at an early point in the use of conducted energy weapons by police in this province and preceded the most regrettable and devastating Dziekanski incident in October 2007 that resulted in the Braidwood Inquiry and the 2010 Report with its many recommendations regarding the use of conducted energy weapons by police. Since then, the Province has issued new directives regarding the use of conducted energy weapons. The Transportation Police Authority states that its officers must adhere to the directives. One can only hope that the directive will have the intended effect.

[11] Under the new policing standard effective January 2012, the discharge of a conducted energy weapon will only be warranted if the target is causing bodily harm to either themselves, the officer, or a third party; or if the officer is satisfied, on reasonable grounds, that the person's behaviour will imminently cause bodily harm either to themselves, the officer, or a third party. Moreover, before discharging a conducted energy weapon, an officer must be satisfied, on reasonable grounds, that crisis intervention and de-escalation techniques have not been, or will not be, effective in eliminating the risk of bodily harm, and no lesser force option has been, or will be, effective in eliminating the risk of bodily harm.

[12] In sum, the Lypchuk incident was regrettable. The use of a conducted energy weapon against a fare evader cannot be justified, if ever, in any but the most unusual and unique circumstances, none of which were present in this instance. However, this is not an incident involving misconduct of the most serious kind. The joint submission of counsel is reasonable and appropriate. I therefore order that Const. Dickhout be suspended for two days without pay.

Dated at Vancouver, this 26th day of April 2012.

"Ian H. Pitfield"

Ian H. Pitfield
Adjudicator