

IN THE MATTER OF A PUBLIC HEARING pursuant  
to Section 137(1) of *The Police Act* into an Allegation of  
Abuse of Authority against Constable Christopher Bowser #90  
of the Victoria Police Department

**NOTICE OF ADJUDICATOR'S DECISION ON  
DISCIPLINARY OR CORRECTIVE MEASURES**

- TO: Constable Christopher Bowser #90 (Member)  
Victoria Police Department
- AND TO: Chief Constable Jones (External Discipline Authority)  
New Westminster Police Service
- AND TO: Michael Tammen (Public Hearing Counsel)
- AND TO: Dennis T.R. Murray, Q.C. (Counsel for Constable Bowser)
- AND TO: John S. Heaney (Counsel for Stan T. Lowe, Police Complaint  
Commissioner)
- AND TO: Richard Neary (Counsel for Tyler Archer)

1. By Notice of Public Hearing dated March 1, 2012, Stan T. Lowe, B.C. Police Complaint Commissioner, alleged as follows:

**That Constable Bowser and Constable Robinson committed the following disciplinary default pursuant to section 77 of the *Police Act*:**

**(a) Abuse of Authority: contrary to section 77 of the *Police Act*, Subject members committed the disciplinary default of abuse of authority, In the performance of duties, intentionally or recklessly used unnecessary force on Mr. Tyler Archer.**

2. On March 27, 2013, I held that Cst. Robinson did not abuse his authority, as alleged, but I held that Cst. Bowser did abuse his authority and on April 5, 2012, I heard submissions with respect to the appropriate disciplinary or corrective measures to apply in concluding this Public Hearing.

3. The facts on which I based my decision are extensive. It will suffice, for the purposes of this proceeding, to extract certain findings I made in that decision.

4. Under the heading: **G. Handcuffing of Tyler Archer – The Video Evidence**, I quote from paragraphs 46 to 63 as follows:

46. In the course of their conversation, Borthwick is seen gesturing with his left arm in the direction to where (we learn a second or two later) Archer is located.

47. At 0.22 secs., Cst. Bowser is seen to turn his head suddenly, ease Borthwick from obstructing his views, with his hand, to get a better view of Archer, whose conduct is concerning him.

48. At 0.24 secs., Borthwick and Cst. Bowser walk towards Archer. As they approach the curb which borders the grassy area, Cst. Bowser points to the ground where Archer is standing and in a clear loud voice, commands Archer to “get on the ground.” At this time, Archer is not seen in the video.

49. At 0.26 secs., the scene shows Archer, Cst. Bowser and Borthwick, just a few feet apart from each other. Again, Cst. Bowser points to the ground where Archer is standing and gives a second clear and loud command to “get on the ground.”

50. At this time, Archer is standing still, feet apart, arms forward and down, hands open, back slightly arched and is looking directly at Cst. Bowser and appears to have his mouth open as if he is speaking to Cst. Bowser.

51. On the second command, Archer goes down, leaning on his left arm with his left hand on the grass and his left leg folded under him. He then, at 0.28 secs., rolls onto his buttocks with his right arm supporting him, right hand on the grass and with his left arm and open hand held up, appears to be speaking and gesturing to Cst. Bowser, who appears to be listening to him.

52. Cst. Bowser moves closer to Archer in a stance that suggests that he is about to handcuff Archer.

53. At 0.30 secs., Cst. Robinson is seen charging toward Archer, obviously unseen by Cst. Bowser, and tackles Archer, grabbing him by his clothing on his left side and tries to roll Archer over and down onto his stomach.

54. The struggle by Cst. Robinson to force Archer into a prone position continues, largely obstructed by a rock monument, but Archer is seen, at 0.31 secs., with his black jacket pulled over his head while in a squat position and then forced forward on his knees.

55. At 0.33 secs., Archer is heard to exclaim: “ow”, “ow”, “ow”, as he is being forced into a prone position.

56. At 0.34 secs., Archer is seen on his knees supporting his upper body from falling face down on the grass with his arms. Cst. Robinson is trying to pull Archer’s right forearm up for handcuffing and Cst. Bowser is standing beside Archer’s head and is heard to say “put your hands behind your back or it’s going to go bad for you”.

57. At 0.37 secs., Cst. Bowser is seen delivering a hard forceful kick to the left side of Archer’s exposed upper torso.

58. At 0.38 secs., Cst. Robinson delivers a knee strike to Archer’s left side (abdomen area) with his left knee.

59. At 0.39 secs., Archer goes down on the grass on his left side. At .40 secs., Cst. Bowser pins him at the waist with his left knee while holding his handcuffs in his right hand. At this time, Cst. Robinson is trying to grab hold of Archer’s left and right wrists and appears to have them but then loses hold.

60. At 0.41 secs., Archer is heard to exclaim “ow”, “ow”, “ow”.

61. At 0.43 secs., Cst. Bowser knees Archer in the middle of the back with a forceful knee strike. Cst. Robinson is holding Archer’s right arm and hand. At 0.45 secs., Cst. Bowser delivers a second forceful knee strike in the middle of Archer’s back.

62. At 0.50 secs., Cst. Bowser is heard to say “there you go.”

5. Further, in paragraphs 120 to 124, I state as follows:

120. Any perception that Cst. Bowser held about Archer being a threat because of his “thousand yard stare” and that “he was coming back for no good” should have reasonably been dispelled the instant that Archer got down on the ground, as commanded, rolled onto his buttocks with his right arm supporting him: his right hand on the grass; and with his left arm and open hand held up; and appears to be speaking and gesturing to Cst. Bowser, who appears to be listening to him. This was at 0.28 seconds of the video.

121. From 0.28 seconds to 0.55 secs. when Cst. Bowser is heard to say “there you go”, Cst. Bowser knows that Archer would have cooperated with him to be handcuffed had it not been for the unnecessary intervention of Cst. Robinson.

122. Both officers know that Archer was injured and hand been pepper-sprayed.

123. Not only did Cst. Bowser not intervene to prevent Cst. Robinson’s unnecessary use of force, he escalated the use of such force by delivering foot and knee strikes to vulnerable parts of Archer’s body.

124. I find, on the balance of probabilities, that Cst. Bowser used unnecessary force on Tyler Archer and has, thereby abused his authority.

6. Prior to April 5, 2012, I informed Mr. Tammen, Public Hearing Counsel, that I would consider a joint submission from Counsel on appropriate disciplinary or corrective measures in this matter.

7. On April 5, 2013, I learned that Mr. Tammen and Mr. Murray, Counsel for Cst. Bowser, had agreed to a joint submission.

8. Also, on April 5, 2013, Mr. Neary was granted permission to make an unfettered submission on behalf of Mr. Archer.

9. The options for considering appropriate disciplinary and/or corrective measures following a finding of abuse of authority pursuant to section 4(1)(f) of the *Code of Professional Conduct*, Reg. B.C. Reg. 205/98, a disciplinary default, are as follows:

- (a) dismissal;
- (b) reduction in rank;
- (c) transfer or reassignment;
- (d) suspension without pay for not more than 5 scheduled working days;
- (e) direction to work under close supervision;
- (f) direction to undertake special training or retraining;
- (g) direction to undertake professional counselling;
- (h) written reprimand;
- (i) verbal reprimand.

10. In considering these options, the following provisions apply:

- (2) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.
- (3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, the discipline authority must choose the least onerous disciplinary or corrective measures in relation to the police officer concerned unless one or both of the following would be undermined;
  - (a) organizational effectiveness of the municipal police department with which the police officer is employed;
  - (b) public confidence in the administration of police discipline.
- (4) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures for a breach of this Code by a police officer of a municipal police department, including without limitation,
  - (a) the seriousness of the breach,
  - (b) the police officer's record of employment as a police officer, including, without limitation, his or her service record of discipline, if any, and any other current record

- concerning past discipline defaults,
  - (c) the impact of proposed disciplinary and corrective measures on the police officer and on the police officer's career and family,
  - (d) the likelihood of future breaches of this Code by the police officer,
  - (e) whether the police officer accepts responsibility for the breach and is willing to take steps to prevent a recurrence of the breach,
  - (f) the degree to which the municipal police department's policies, standing orders or internal procedures or the actions of the police officer's supervisor contributed to the breach,
  - (g) the range of disciplinary or corrective measures imposed in similar circumstances, if known, and
  - (h) other aggravating or mitigation factors.
- (5) Nothing in this Code prevents a chief constable or a municipal police board from doing one or both of the following:
- (a) issuing an apology on behalf of the municipal police department concerned or, with the consent of the police officer concerned, on behalf of both the department and the police officer;
  - (b) considering, proposing or implementing police changes to prevent recurrence of a breach of this Code.

### **SUBMISSION OF MR. TAMMEN, PUBLIC HEARING COUNSEL**

11. Mr. Tammen stated the three basic terms of the joint submission as follows:

1. Suspension of two days without pay; (disciplinary measure)
2. Participate in 6 hours of retraining in the area of use of force, with an emphasis on de-escalation training; (a corrective measure)
3. Participate in an assessment by a qualified professional to address any potential anger management issues, such assessment to be forwarded to the Chief Constable for determination of follow up, if recommended in assessment. ( corrective measure)

12. As to aggravating factors to be considered, Mr. Tammen states:

“What I perceive to be aggravating factors in this case is Officer Bowser's role as a supervisor during the incident, the findings that this tribunal made in particular at paragraph 123 that not only did Cst. Bowser not intervene to prevent Cst. Robinson's unnecessary

use of force, but he, Officer Bowser, escalated the use of force by delivering foot and knee strikes. I would submit that an aggravating factor is the areas of the body which were targeted. And finally, the finding that this tribunal made that Officer Bowser knew that Archer was being compliant but chose to escalate to hard physical control nonetheless after Cst. Robinson's intervention."

13. In mitigation, Mr. Tammen emphasizes the absence of any prior disciplinary record as a significant factor and agrees with Mr. Murray that Cst. Bowser has faced significant financial and promotional consequences as a result of his involvement in the events of March 21, 2010.

**SUBMISSION BY MR. MURRAY:**

14. In support of the joint submission, Mr. Murray stresses the following factors in mitigation:

- Very favourable Performance Appraisals found in Tabs K, L, M, N and O of a Book of References and Supporting Documents filed by Mr. Murray.
- The impact that was felt by Cst. Bowser and his family as a result of the posting of the video on YouTube including threats made, electronically, by a person who, investigation revealed, was of questionable stability.
- The financial impact on Cst. Bowser, calculated at \$21,900, as a result of loss of overtime and acting pay by being assigned to desk duty following the commencement of a criminal investigation into the events of March 21, 2010.
- The indefinite postponement of any chance for promotion to the rank of Sergeant.
- Cst. Bowser "thought he was doing the right thing on the night of March 21, 2010, but he has completely accepted the proceedings and completely accepted the outcome."
- Mr. Archer sustained no physical injuries as a result of Cst. Bowser's use of force.
- Cst. Bowser has no record of service discipline.

**SUBMISSION BY MR. NEARY:**

15. In his submission, Mr. Neary recognizes that the absence of any prior disciplinary history is a mitigating factor in considering an appropriate disposition in this matter.

16. As to aggravating factors, he emphasizes:

- Cst. Bowser’s “attitude towards his misconduct as demonstrated in all the statements that he provided about the incident and his testimony in these proceedings”.  
He refers, specifically to statements made to Vancouver Police investigators and his testimony before the Public Hearing where he expresses the view that “he did a good job” and that “he was proud of what he did.” And “that he should be commended for his efforts”.
- Mr. Neary submits that Cst. Bowser’s statements suggest that he has not accepted responsibility for his misconduct and that should raise concerns about the likelihood of future misconduct.
- As to the serious nature of the misconduct, Mr. Neary states: “Well, you found, sir, that Constable Bowser kicked a man on the ground who he knew would cooperate with verbal commands, he knew if there had been de-escalation would cooperate and had been submissive, in moments completely submissive.”
- Mr. Neary tendered two letters, one from Marnie Forest (Ex. 1), mother of Mr. Archer and one from Mr. Archer (Ex. 2). He quotes from Mr. Archer as follows:

“Initially I hoped that I would receive an apology from the officers following the incident. However, one has never been extended. Not only was an apology not offered, I found that my character was attacked both publicly and privately by the Victoria Police Department following the release of the video on YouTube.

I became depressed and suffered from anxiety following this incident and withdrew from friends and family. I suffered with feelings of worthlessness and sought counselling. I also gained a lot of weight and struggled to find enjoyment in my day-to-day life.”

17. In his submission, Mr. Neary states as follows:

“I respectfully submit that a suspension is inadequate, that a reduction in rank would be appropriate for one year from first class constable to constable second class and that the retraining and assessment issues addressed by Mr. Tammen are appropriate but should likely be amplified. I should like there to be more than six hours retraining and that the report as far as anger management and other issues, a copy of that also perhaps be provided to the Police Complaint Commissioner. That’s my submission on the appropriate disposition.”

**CONCLUSIONS AND OBSERVATIONS:**

18. I do not share Mr. Neary's concern with the likelihood of future misconduct. Surely, after this process is concluded, Cst. Bowser will understand that any further proven misconduct, involving use of force, will jeopardize his career as a police officer.

19. I have no doubt that Mr. Archer did not want or expect a confrontation with the police and I believe I made it clear in my earlier decision how I viewed the evidence which attempted to portray Mr. Archer as a threat.

20. Obviously, my earlier finding that Cst. Bowser used unnecessary force in handcuffing Mr. Archer is an aggravating factor as is the nature of the force used and the vulnerability of the areas where the strikes were delivered.

21. In mitigation, of particular significance is the absence of any prior history of misconduct, of any kind, over fifteen years of service as a police officer in Oak Bay and Victoria.

22. It is also significant, in mitigation, that Mr. Archer suffered no physical injuries as a result of Cst. Bowser's use of force.

23. Mr. Murray has assured me that Cst. Bowser has accepted the findings and conclusions of the decision of March 27, 2013.

24. I have no doubt that events and proceedings which followed the posting of the video on YouTube have severely impacted on the Bowser family.

25. I accept that Cst. Bowser has paid a price financially and by way of loss of promotion following the commencement of the criminal investigation into his conduct.

26. I have read the very favourable letters of reference from family, friends and members of the Victoria Police Department.

27. I have considered *Police Act* decisions cited by Counsel involving Willow Kinloch, Constable Daniel Dickout, Constables Steve Wilson and Sukhprit Sidhu and Constable Greg Smith and have concluded that this case should be decided on its own unique set of facts and circumstances.

28. In conclusion, I accept without change, the joint submission of Mr. Tammen and Mr. Murray and impose the following disciplinary and corrective measures:

- (i) Suspension for two days without pay;
- (ii) Participate in 6 hours of retraining in the area of use of force, with an emphasis on de-escalation training;
- (iii) Participate in an assessment by a qualified professional to address any potential anger management issues, such assessment to be forwarded to the Chief Constable for determination on follow up, if recommended in assessment.

DATED AT VICTORIA, B.C. THIS            DAY OF APRIL, 2013.

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THE HON. H. BENJAMIN CASSON, Q.C.  
ADJUDICATOR