

IN THE MATTER OF THE POLICE ACT, RSBC 1996, c. 267

**AND IN THE MATTER OF THE PUBLIC HEARING
INTO THE COMPLAINT AGAINST
CONSTABLE JOHN GIBBONS OF THE
VANCOUVER POLICE DEPARTMENT**

**NOTICE OF ADJUDICATOR'S DECISION REGARDING
DISCIPLINE OR CORRECTIVE MEASURES**

INTRODUCTION

On August 12, 2014, Cst. Gibbons was found to have abused his authority by intentionally or recklessly using unnecessary force on Mr. Feng. The allegation was specified in a Notice of Public Hearing, and my decision sets out fully the circumstances and reasons for the finding made.

At this point, a decision must be made to determine the appropriate disciplinary or corrective measures pursuant to section 126 of the Police Act.

FACTS

Constable Gibbons and a brother officer, concerned that a vehicle was being driven by a prohibited driver, initiated a traffic stop. After the vehicle stopped, both officers approached it. The driver, Mr. Feng, failed to obey the officers' commands that he lower the driver's side window. Constable Gibbons, on the passenger side of the vehicle, waved his baton at Mr. Feng, indicating that if

Feng did not obey, the constable intended to smash the passenger window with his baton. When Mr. Feng did not respond, Cst. Gibbons smashed the window, entered the vehicle, and immediately struck Mr. Feng three times with his fist. The first blow split Mr. Feng's scalp and was of sufficient force to break Cst. Gibbon's hand.

Constable Gibbons was found to have abused his authority by using unnecessary and excessive force on Mr. Feng. The facts are discussed fully in the Notice of Adjudicator's Decision filed on the OPPC website.

APPROPRIATE DISCIPLINE OR CORRECTIVE MEASURES

Section 126(1) of the Police Act sets out the measures available. Section 126(2) sets out the aggravating and mitigating circumstances which must be considered in determining the just and appropriate measures in relation to the misconduct found.

I am indebted to Counsel for their thoughtful and comprehensive submissions. I also thank Chief Jim Chu of the Vancouver Police Department for his detailed letter of August 21, 2014.

Counsel have referred me to several previous decisions of adjudicators in other matters, and I have taken these decisions into consideration.

In my decision in this matter, I found that Constable Gibbons had several courses of actions available to him when he entered Mr. Feng's vehicle. As suggested by Counsel, had the constable paused, he would have realized that the use of force was unnecessary. In my view, this matter is a fairly serious failure to adhere to the professional standards expected of a police officer when he intends to use force.

Chief Constable Jim Chu notes that Constable Gibbons has served 10 years with the Vancouver Police Department and has a well-documented history of achievements, with strong leadership skills and an excellent work ethic. His only recorded misconduct was in 2010, when a strip search of a suspected drug dealer was not conducted in private. For that misconduct, he received additional training and a written reprimand, which is part of his Service Record of Discipline. Otherwise, his police career is replete with commendations and nominations for commendations, including a nomination for police officer of the year (2013).

Chief Chu suggests that if the punishment for this current delict is seen as too punitive, it could prove detrimental to the constable's high level of self-motivation.

APPROPRIATE MEASURES

Mr. Doyle, Public Hearing Counsel, suggests that the following disciplinary or corrective measures are appropriate:

- a. Suspension without pay for one to two scheduled working days (one working day is equal to an eleven hour shift);**
- b. A requirement to undertake the following specified training or retraining: additional training from use of force experts in the Vancouver Police Department Force Options Training Unit on:
 - i. the law regarding the use of force;**
 - ii. appropriate situation assessment and de-escalation techniques; and**
 - iii. best practices when use of force is required.****

Mr. Woodall, Counsel for Constable Gibbons, notes that his client understands that his conduct fell short after breaking the car window, in that

he did not pause and reassess whether further or greater force was needed. Cst. Gibbons on his own initiative has already approached a senior use-of-force instructor with the VPD, who provided him with advice and guidance about how to conduct himself in similar circumstances. It is Mr. Woodall's view that the corrective policy of the Police Act has already been accomplished.

In attempting to decide the appropriate measures, I note a comment by Adjudicator Cassons in the matter of Constable Bowser (paragraphs 5 and paragraphs 18-28) that an "assessment" might be of assistance to identify potential anger management issues. I can find no specific direction in section 126 that would allow for such an order.

DECISION

I appreciate that in some situations the use of force, even violent force, is necessary. In this matter, however, I feel the force used was gratuitous and unnecessary. There will therefore be a suspension without pay for one scheduled working day, followed by a course of specified training or retraining, as suggested by Mr. Doyle.

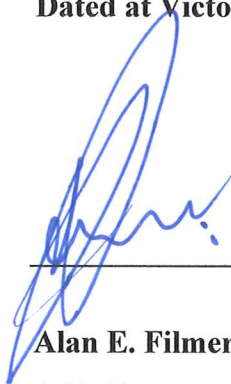
CONCLUSION

As Adjudicator in this matter, I find that the following disciplinary or corrective measures are necessary for Constable Gibbons:

- a. Suspension without pay for one scheduled working day;
- b. Training or retraining from the use-of-force experts in the Vancouver Police Department Force Options Training Unit on:
 - i. the law regarding use of force;

- ii. appropriate situation assessment and de-escalation techniques; and
- iii. best practices when use of force is required.

Dated at Victoria, British Columbia, on September 18, 2014.



Alan E. Filmer, Q.C.
Adjudicator