

**In the matter of the Public Hearing into
The complaint against Constable Jason Howell and
Constable John Gibbons of the Vancouver Police Department**

**SUBMISSIONS OF Cst. JOHN GIBBONS
CORRECTIVE OR DISCIPLINARY MEASURES**

1. INTRODUCTION

1. It is submitted that the appropriate corrective measures in this case is advice as to future conduct or a reprimand.
2. The philosophy of the purpose of corrective or disciplinary measures in the *Police Act* is set out in section 126(3):
 - (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.

2. FACTS

2.1 THE INCIDENT

3. The Adjudicator has substantiated one allegation of misconduct, that Cst. Gibbons recklessly or intentionally used unnecessary force on Mr. Feng, contrary to section 77(3)(a)(ii)(A) of the *Police Act*.

4. During the incident that led to that finding, Cst. Gibbons was lawfully engaged in the execution of his duties as a police officer. The Adjudicator has found that Cst. Gibbons (and his partner, Cst. Howell) were engaged in a proper traffic stop, having good and sufficient cause to believe that the driver might be prohibited. The driver, Mr. Feng, refused to open the window and door. Cst. Gibbons broke the window to gain entry. The Adjudicator has found that this was not wrongful conduct.

5. The object of breaking the window was to gain entry to the vehicle, to immobilize it, to prevent Mr. Feng from driving away. That is a legitimate law enforcement objective. Breaking the window does not, by itself, immobilize the vehicle. To do that, Cst. Gibbons had to put the car in park and turn off the engine. That, in turn, required him to enter into the car while the transmission was still in park, the engine on, and Mr. Feng was still in control of the vehicle. This was a necessary but risky manoeuvre for Cst. Gibbons. The time between breaking the window and immobilizing the car is dangerous for the police officers, because Mr. Feng had the ability to accelerate the car when Cst. Gibbons was half in and half out.

6. It is implicit from the decision of the Adjudicator that it was appropriate for Cst. Gibbons to use some measure to stun or distract Mr. Feng so that Cst. Gibbons could immobilize the car quickly and without opposition. However, in this case breaking the window was itself sufficiently startling and distracting to ensure that Mr. Feng would not resist Cst. Gibbons's efforts to immobilize the vehicle. Cst. Gibbons interpreted Mr. Feng's "turtle" position as active-resistant, a sign that Mr. Feng may become actively aggressive and attempt to prevent Cst. Gibbons from immobilizing the vehicle. In fact, if Cst. Gibbons had paused to assess the situation after he broke the window, he would have realized that Mr. Feng was not actively resistant, but simply reacting to the breaking of the window. That is, no further distraction tactics were necessary or justified. In short, Cst. Gibbons error was that after he used force to gain entry to the vehicle, he failed to pause and assess the situation to determine whether further force was called for. Had he paused and assessed, he would have realized that no further force was necessary.

7. Officers are trained that when they have escalated the use of force they are required to assess the impact before using further or greater force (sometimes referred to as tactical

assessment, or re-assessment). Cst. Gibbons's error was in failing to pause after he broke the window to give himself time to make an accurate assessment of the situation. As a result, he punched Mr. Feng to distract him, when he should have realized that no further distraction was necessary, and therefore the punches were unnecessary. In so doing, Cst. Gibbons's conduct fell below the professional standards of police officers in the use of force. It is culpable conduct for any professional to fail to meet the standards of his or her profession, but the culpability must be put into proper context.

8. Abuse of authority is a delict with a wide range of culpability. It is submitted that this case is at the low end of culpability. This is not a case where a police officer used force for an improper purpose, or wantonly used excessive force for a purpose that would otherwise be appropriate. Rather, it is a case where a police officer, in the proper execution of his duties, had to make a split-second judgment. His judgment was in error, and he therefore failed to meet professional standards.

2.2 CST. GIBBONS'S PROFESSIONAL HISTORY.

9. Cst. Gibbons has been a police officers since April 2005. In recent years he has been awarded the following citations, commendations and nominations for commendations, by Cst. Gibbons's supervisors at the Vancouver Police Department:

- *Chief Constable's Unit Citation (2009)*
 - lead investigator for the civil forfeiture of the district priority problem residence
- *Inspector's Unit Citation (2nd quarter 2009)*
 - consistent performance for highest tickets, arrests and reduction in crime for the district.
- *Inspector's Unit Citation (1st quarter 2010)*
 - consistent performance for highest tickets, arrests and reduction in crime for the district.
- *Alexa's Team Award -Impaired driving investigations (2011)*
 - top percentage of police for enforcing impaired driving regulations

- *Certificate of Appreciation -Blockwatch recognition for 'dial-a-dope' arrests (2012)*
--recognizing consistent and sustained efforts for drug investigations
- *Nominated for Police Officer of the Year (2013)*
--overall sustained performance
- *Nominated for Deputy Chief commendation (2013)*
--recommended for involvement in the investigation of a violent robbery suspect that led to his apprehension and conviction.

10. As noted, Cst. Gibbons has been nominated for Police Officer of the Year (2013) by his supervisor, Sgt. Fred Ullrich. **(Letter to be submitted separately)**. The finding in this case will no doubt have a serious detrimental effect on that nomination (the selection process is still underway). Nevertheless, it is clear that Cst. Gibbons enjoys the strong support and confidence of the supervisor who is best able to assess Cst. Gibbons's actual performance as a police officer.

3. DISCUSSION

11. As noted earlier, the philosophy of the *Police Act* is to correct rather than simply punish. Corrective measures may achieve two related purposes. First, corrective measures carry some form of denunciation, to communicate to the police officer that his conduct has fallen below acceptable standards. Second, corrective measures may include training that addresses the manner in which the police officer's conduct fell short.

12. Cst. Gibbons's record as a police officer, and the opinion of his supervisor, show that he is a dedicated and active police officer who gets results. The misconduct that Cst. Gibbons committed in the present case was the result of excessive zeal in the performance of important duties. This is not a case where a police officer used violence gratuitously, or for an improper purpose.

13. It is submitted that no form of denunciation is necessary beyond the finding of the Adjudicator. An official finding of misconduct often has a greater impact on a person with high professional pride than on others who may take their job or their profession less seriously. Cst. Gibbons is in the former category. He is a dedicated, professional, and conscientious police

officer. It is submitted that the stress of the investigation, the discipline proceeding, the public hearing, and the finding of misconduct, have been more than sufficient to bring home to Cst. Gibbons the nature of the misconduct he has committed.

14. As noted earlier, Cst. Gibbons conduct fell short in that he did not pause and reassess whether further or greater force was needed after he broke the car window. That can and should be corrected by training. In fact, Cst. Gibbons has on his own initiative already approached a senior use-of-force instructor with the Vancouver Police Department, Sgt. Clive Milligan. Sgt. Milligan was provided a copy of the decision of the Adjudicator finding that misconduct is substantiated, and provided his advice and guidance to Cst. Gibbons about how to conduct himself in similar situations. Sgt. Milligan has provided an e-mail report of his meeting with Cst. Gibbons. It is submitted that this additional training meets the corrective policy of the *Police Act*.

15. The absence of the need for further denunciation, together with the fact that Cst. Gibbons has already sought and obtained additional training specific to the type of incident at issue in this case, suggests that the corrective policy of the *Police Act* has already been accomplished. Therefore, it is submitted that the appropriate disciplinary or corrective measures is advice as to future conduct.

16. In the alternative, if the Adjudicator concludes that the finding in the Adjudicator's reasons for decision is not sufficiently denunciatory, it is submitted that an oral or written reprimand would fully accomplish any additional denunciation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

5 September 2014

A handwritten signature in blue ink, appearing to read "M. Woodall", enclosed within a large, loopy blue oval scribble.

M. Kevin Woodall

Counsel for Cst. Gibbons