

**In the Matter of the
Public Hearing into the complaint against
Constable #2131 Aaron Hill and Constable #2521 Aaron McRae
of the Delta Police Department**

NOTICE OF ADJUDICATOR'S DECISION

TO: Constable Aaron Hill, Delta Police Department

AND TO: Constable Aaron McRae, Delta Police Department

AND TO: Chief Officer Jim Cessford, Delta Police Department

AND TO: Mr. Stan Lowe T. Lowe, Police Complaint Commissioner

AND TO: Mr. Joseph M. Doyle, Public Hearing Counsel

AND TO: Mr. M. Kevin Woodall, Counsel for Constable McRae

AND TO: Mr. David G. Butcher, Q.C., Counsel for Constable Hill

I. INTRODUCTION:

Constables Aaron Hill and Aaron McRae are alleged to have committed the following disciplinary breaches:

- 1) **Abuse of Authority:** contrary to section 77(3)(a)(ii)(A) of the *Police Act*; Constable Hill and Constable McRae committed the disciplinary default of Abuse of Authority when they intentionally or recklessly used unnecessary force on Mr. Pecaskie on September 17, 2011.

- 2) **Abuse of Authority:** contrary to section 77(3)(a)(ii)(B) of the *Police Act*, Constable Hill and Constable McRae committed the disciplinary default of Abuse of Authority when they intentionally or recklessly detained or searched Mr. Pecaskie without good and sufficient cause on September 17, 2011.
- 3) **Damage to Property of Others:** contrary to section 77(3)(e)(i) of the *Police Act*, Constable Hill and Constable McRae committed the disciplinary default of Damage to the Property of Others when they intentionally or recklessly damaged Mr. Pecaskie's property on September 17, 2011.

II. FACTS:

It is common ground that at approximately 8:00 a.m. on September 17, 2011, the two respondent police officers observed Edward Pecaskie and his room-mate, Glen Ryder, riding bicycles through a Starbucks parking lot, not wearing helmets, contrary to section 184 of the *Motor Vehicle Act*. The two cyclists were followed in a police vehicle by Constable McRae and a recruit officer. Ryder stopped when the police approached him; Pecaskie did not. Mr. Pecaskie was then followed and stopped by Constable Hill in a different police vehicle. Constable McRae arrived at the scene of the stop shortly thereafter.

All three allegations mentioned above arise from the ensuing brief roadside interaction. It is alleged that the officers detained and searched Mr. Pecaskie "without good and sufficient cause", used excessive force, and damaged his bicycle and his iPod.

III. THE LAW:

The law surrounding this situation is set out fully by Counsel for Constables Hill and McRae, and no issue is taken with it by Commission Counsel. It is my view that both officers were acting in the lawful execution of their duties, and if there were any delict in

this matter, it occurred in a very short space of time after Mr. Pecaskie was detained and searched.

IV. CREDIBILITY AND RELIABILITY:

Mr. Doyle, Commission Counsel, accepts that the evidence in this matter turns to a large degree on the believability of Mr. Pecaskie. He points out that significant differences exist between the evidence of the two officers, but also concedes that if these differences did not exist, it may well appear that their evidence had been tailored to minimize such discrepancies.

In analyzing Mr. Pecaskie's credibility and reliability, several factors are readily apparent, and I have taken them into my consideration. First, Mr. Pecaskie had recently lost his employment as a pressure washer and had begun scavenging for discarded metals which had a value. He freely admitted that even though he was fairly successful in this undertaking, he did not declare his approximately \$1,000.00 per month earnings against those sums his family received from Social Assistance. The fact that he or his spouse had to swear a declaration of no income each month did not seem to trouble him.

Second, Mr. Pecaskie was questioned about his use of illegal drugs. He again readily admitted the fact that he did use such drugs, but in his defence he said he would not use or permit illegal drugs to be used around his children.

Third, when questioned about the fact that he was carrying a prohibited weapon, to wit, bear spray, in a canister on his person, Mr. Pecaskie acknowledged that he knew it was a prohibited weapon. He claimed that he carried it for his personal protection.

Fourth, Mr. Pecaskie admitted that he rarely wore a bike helmet and that he had been stopped by the police numerous times because of that fact. He said he had worn a helmet previously, but that it had been stolen and he had not replaced it.

In weighing the reliability of Mr. Pecaskie's evidence, I noted his initial response when followed by the police car. It is uncontroverted that he and his room-mate rode their bicycles through a Starbucks parking lot, neither of them wearing bicycle helmets. His room-mate drew his attention to the police and said that he and Pecaskie would probably be stopped as a result. When questioned by Commission Counsel during his direct examination, Mr. Pecaskie's first reaction was to deny that he was aware that they would be stopped.

Day 1, page 7, line 6:

Q Okay, so 120th and 86th Avenue there's a McDonald's and that's where you see a police car doing a U-turn to head back north?

A Yes, with his lights on, and I had no reason to believe that he was coming for me, because I didn't do anything, so I was continuing on my route.

Mr. Pecaskie says that he was not attempting to evade the police when he made an abrupt left turn between buildings after being confronted by Constable McRae. It is obvious his companion stopped immediately, but Mr. Pecaskie kept going, increasing his speed. His assertion that he was not trying to evade the police is clearly not truthful. He might have appeared more credible had he responded to Counsel's question by admitting that he was tired of being harassed, so had left.

It is my view that Mr. Pecaskie's evidence must be considered with a degree of skepticism.

V. FINDINGS BASED ON THE ACCEPTED EVIDENCE:

A number of findings can be made, based on the accepted evidence in this matter.

- 1) Mr. Pecaskie says that on being stopped by Constable Hill, the constable told him to get off his bicycle, and that before Constable McRae arrived, Constable Hill almost immediately took him forcefully to the ground. I do not find this statement credible.

- 2) Mr. Pecaskie says that Constable McRae, on his arrival, kicked the bicycle and sustained an injury to his leg. However, Constable Hill contradicts this statement and says that he was the one receiving the leg injury, and that it was a result of the struggle with Mr. Pecaskie. I do not accept that either Constable McRae or Constable Hill kicked the bicycle, as described by Mr. Pecaskie.
- 3) Mr. Pecaskie says that his iPod was damaged when Constable McRae threw it to the ground. However, the police testimony says that the iPod remained in Mr. Pecaskie's pocket and was damaged when he was wrestled to the ground. I do not believe that Constable McRae threw the iPod, and I find the police evidence more consistent with the photograph of the damaged iPod.

VI. THE MAIN ISSUE:

When Constable Hill first approached Mr. Pecaskie, Hill observed an object in Pecaskie's cargo shorts. He made Constable McRae aware of the object, and asked Mr. Pecaskie if he had anything sharp on his person. That object was a large screwdriver, and it was sufficient to cause the two officers to be concerned about their safety.

I accept the officers' evidence that they determined that a "pat down" search was necessary. They asked Mr. Pecaskie to place his hands on his head, and the officers began the search. I also accept their evidence that almost immediately Mr. Pecaskie brought one or both of his hands down toward his waist and that a struggle began. Constable McRae says that he applied an arm-bar and that Mr. Pecaskie was taken forcibly to the ground. It is obvious that such a maneuver in an area of gravel and asphalt would cause at least a contusion to Mr. Pecaskie's face, and also probably an injury to his leg or hip.

I find that the officers were in the lawful execution of their duties, and considering that Mr. Pecaskie had fled to avoid a stop by the police, were not unreasonable in determining

that a pat down search was necessary, whether for officers' safety or to determine if anything in Mr. Pecaskie's possession might indicate the commission of a criminal offence.

Both officers testified to the training they had received for dealing with an incident of this nature. I accept that the force that they considered necessary was reasonable and not excessive.

I find nothing untoward about what occurred, except the obvious fact that injury will probably occur in such a situation. Here, the injury was fairly minimal, but it could have been much worse. The officers are trained to use a reasonable amount of force and even though I might suggest less force would probably have sufficed, they did not intentionally or recklessly use unnecessary force.

VII. CONCLUSION:

Counsel has referred me to a decision of the Hon. Ian H. Pitfield, dated 22 November 2012. This decision was also under the *Police Act*. I quote the Adjudicator in that matter at paragraph 21:

The view that proof on a balance of probabilities is required in a police discipline proceeding in British Columbia has been derived, incorrectly, from the decision of the Supreme Court of Canada in F.H. v. McDougall, 2002 SCC 53. The conclusion is not warranted because McDougall considered the question of standard of proof in the context of what was clearly civil litigation. A discipline proceeding under the Police Act is an administrative proceeding that should not be viewed as civil litigation in the conventional sense of the word, nor equated to civil litigation. McDougall does not stand for the proposition that proof on a balance of probabilities applies to all proceedings that are not criminal in nature. To the contrary McDougall provides support for the view that an intermediate standard should apply to a proceeding that cannot be characterized as criminal or civil litigation but rather one that is governed by statute and supervised by an officer of the legislature, and that may result in the imposition of a penalty. The standard is or should be proof that is clear and convincing and based upon cogent evidence.

There are two standards suggested by Counsel – first, the balance of probabilities, and second, the standard as described by Adjudicator Pitfield. I have considered the delicts in this case by applying these two standards. In the matter of the complaints against Constable Aaron Hill and Constable Aaron McRae, I find:

1. that neither officer intentionally or recklessly used unnecessary force on Mr. Pecaskie on 17 September 2011;
2. that neither officer intentionally or recklessly detained or searched Mr. Pecaskie without good or sufficient cause on 17 September 2011; and
3. that neither officer damaged the property of Mr. Pecaskie, whether his iPod or his bicycle, on 17 September 2011.

Dated at Victoria, British Columbia, on Friday 27 June 2014.



Alan E. Filmer, Q.C.
Adjudicator