

In the matter of the Public Hearing into the Complaint against Constable #2742  
Brian Hobbs of the Vancouver Police Department

**Submissions of Public Hearing Counsel, Bradley Hickford**  
**Re: Disciplinary or Corrective Measures**

1. On May 30, 2018 Adjudicator Neal provided extensive Reasons for his decision at the completion of the Public Hearing wherein he concluded that both allegations of misconduct as alleged against Constable Hobbs had been substantiated.
2. In concluding that a disciplinary breach of trust had been proven, the Adjudicator considered not only the common law and Criminal Code provisions relevant to Cst. Hobbs' action but also the *Charter* rights of Mr. Fraser. In assessing the evidence that was in dispute, Adjudicator Neal did not have any credibility or reliability concerns with respect to the evidence of the complainant, Mr. Fraser. In fact, he found him to be not only a credible and reliable witness who was unshaken in cross-examination, but also a witness who was honest and trustworthy who carefully and reliably described his encounter with the police on the evening in question.
3. In assessing the evidence of the other two attending officers, Constable Birzneck and Cst. Ward, the Adjudicator concluded that there were some concerns with respect to Constable Birzneck's reliability as a witness as a result of his inability to recall many details. Constable Ward, who was Constable Hobbs' partner on the evening in question was found by the Adjudicator to not be a credible or reliable witness.
4. Perhaps most significantly, Adjudicator Neal determined that Constable Hobbs was a less than forthright witness and expressed strong concerns with respect to both his credibility as a witness as well as his reliability. Adjudicator Neal ultimately concluded that Constable Hobbs' evidence was to be rejected where it conflicted with the evidence provided by other witnesses and, in particular, evidence provided by the complainant, Mr. Fraser.

5. As Public Hearing Counsel, I make specific reference to Adjudicator Neal's findings with respect to the issues of credibility and reliability as, in my respectful submission, this is a serious aggravating factor when considering the disposition regarding disciplinary and/or corrective measures. It is also significant to note that Adjudicator Neal in referencing *R. v. Silveira* [1995] 2 S.C.R. 297, quoted extensively with respect to the sanctity of a private home. He noted that the home represents the highest expectation of privacy and that "the unauthorized presence of agents of the state in a home is the ultimate invasion of privacy." He definitively concluded that Constable Hobbs' entry into Mr. Fraser's home was made without lawful authority and in breach of Mr. Fraser's s. 8 *Charter* rights.
6. In considering Constable Hobbs' next actions, Adjudicator Neal concluded that he entered into Mr. Fraser's home knowing that he did not have lawful authority to do so and then when confronted by Mr. Fraser went further, arrested and placed him in handcuffs. Adjudicator Neal determined that Constable Hobbs had not subjectively turned his mind to the issue of whether he had reasonable and grounds to even detain Mr. Fraser. The Adjudicator could not find any objectively reasonable criteria to support the arrest of Mr. Fraser. Adjudicator Neal quoted the following from *R. v. Storrey* [1990] 1 S.C.R. 241 "Everyone has the right not to be arbitrarily detained or imprisoned." It is an aggravating factor that this second breach of Mr. Fraser's s.9 rights followed immediately on the heels of the first s. 8 breach.
7. Despite ample factors negating Constable Hobbs having any lawful authority for his actions, he nevertheless expanded his entry and search into Mr. Fraser's home by going into the living room area to conduct a search of a briefcase that did not fit the description that had been provided earlier.
8. The conclusions that have been reached by Adjudicator Neal on the evidence that was in dispute clearly establish that Constable Hobbs did not undertake his actions in any manner of good faith and was reckless as to whether or not there were any grounds for those actions. Constable Hobbs was acting impetuously and deliberately ignored factors that brought into sharp focus the illegitimacy of his actions. Additionally, Adjudicator Neal concluded that the issue of those actions being taken for good and sufficient cause could not be made out. Rather he concluded that Constable Hobbs simply made an impulsive and reckless decision to proceed, hoping things would work out and allow him to recover the stolen property that was the subject of this matter. It is important to note that Adjudicator

Neal also concluded that this matter was not a criminal investigation but rather was a civil recovery action on the part of the police.

9. Adjudicator Neal further concluded that Constable Hobbs' actions demonstrated serious blameworthy conduct and could not be explained or justified by any mistake of law or understanding of police authority, or lack of training.
10. This is an important factor in determining the appropriate disposition. Clearly this is not a case where further training would be a beneficial corrective measure.
11. It has been determined by the Adjudicator that not only have the allegations of misconduct been substantiated, but also that Constable Hobbs' testimony demonstrated efforts on his part to avoid responsibility by providing evidence that was not only unreliable but also raised serious concerns with respect to his credibility.
12. There have been a number of decisions under the *Police Act* which involved unlawful detentions and searches. Many of these were dealt with dispositions that ranged from minimal suspensions without pay to corrective measures being employed by requiring further training related to search and seizure and detention. I have not included those cases as they are of extremely limited assistance given the determinations made by the Adjudicator in this Public Hearing.
13. Adjudicator Neal concluded that Constable Hobbs knew before entering Mr. Fraser's residence that it was not a suited home and was solely occupied by Mr. Fraser and his girlfriend.
14. It was also determined by Adjudicator Neal that Constable Hobbs' actions in detaining and handcuffing Mr. Fraser were done with the specific knowledge that Constable Hobbs was aware that he did not have the grounds to do so but pressed on impetuously.
15. These are factors that speak to the level of seriousness of blameworthy conduct on the part of Constable Hobbs and, in my respectful submission, support the focus of the disposition being on discipline and not a consideration of corrective measures such as further training.

16. In my respectful submission, an appropriate disposition would be a significant period of suspension without pay in the range of 14 to 30 days. In addition, serious consideration should be given to the demotion of Constable Hobbs.

All of which is respectfully submitted.

Dated this 13<sup>th</sup> day of June, 2018.

  
Bradley L. Hickford  
Public Hearing Counsel