

HEARING 2017-01
IN THE MATTER OF THE POLICE ACT,
R.S.B.C. 1996,
C. 367 AS AMENDED
*AND IN THE MATTER OF A POLICE ACT PUBLIC HEARING
INTO ALLEGATIONS AGAINST CONSTABLE BRIAN HOBBS,
VANCOUVER POLICE*

BEFORE: Adjudicator Brian M. Neal QC (rt)

PUBLIC HEARING COUNSEL: B. HICKFORD
COMMISSION COUNSEL: G. DELBIGIO, Q.C.
COUNSEL FOR CONSTABLE HOBBS: M.K. WOODALL

SUBMISSIONS OF COMMISSION COUNSEL ON DISCIPLINE

1. The Public Hearing into the allegations against Constable Hobbs took place on January 8, 9, 10, 11, 12, and April 23, 2018.
2. The allegations referred to conduct from 18 November 2015. In particular, the allegations were that:
 - a. Constable Hobbs committed Abuse of Authority, which is oppressive conduct towards a member of the public, contrary to s.77(3)(a) of the Police Act, by unlawfully entering a laundry room and conducting an unlawful search of the downstairs living room, and;
 - b. Constable Hobbs committed Abuse of Authority, contrary to s.77(3)(a)(ii)(B) of the Police Act, when in the performance, or purported performance, of duties he intentionally or recklessly detained the Complainant in handcuffs.
3. In its Decision dated 30 May 2018 (the "Decision"), this tribunal found that both allegations had been substantiated. (para.128)
4. Section 126 of the Police Act provides the statutory framework which guides the imposition of disciplinary or corrective measures. That section states:

Imposition of disciplinary or corrective measures in relation to members

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [*complainant's right to make submissions*], the discipline authority must, subject to this section and sections 141 (10) [*review on the record*] and 143 (9) [*public hearing*], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,
- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- (d) the likelihood of future misconduct by the member,
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,

(f)the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
(g)the range of disciplinary or corrective measures taken in similar circumstances, and
(h)other aggravating or mitigating factors.

(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.

5. Section 126 requires that the “aggravating and mitigating circumstances be considered in determining what is a just and appropriate disciplinary or corrective measures in relation to the misconduct of a member”.
6. The statutory language refers to both disciplinary measures and corrective measures. These are distinct concepts.
7. “Correction” refers to measures such as training which are designed to ensure that the member's misconduct will not be repeated.
8. On the other hand, “discipline” includes punishment and disciplinary measures that may be directed towards denunciation and deterrence of the misconduct.
9. While the goal of the correction of behaviour is not lost through the imposition of disciplinary measures, the methods of attaining that goal are different. For example, a suspension without pay or a reduction in rank are will both denounce misconduct and, at the same time, have the effect of deterring and thereby correcting against the risk of any future misconduct.
10. The Abuse of Authority which Constable Hobbs was found to have committed is serious and it is submitted that it must attract both disciplinary and corrective considerations.
11. Section 126(2) sets out a non-exhaustive list of aggravating and mitigating circumstances.
12. Commission Counsel submits that many of the findings contained within the Decision constitute aggravating circumstances that are appropriately considered

in determining what are just and appropriate disciplinary or corrective measures against Constable Hobbs.

13. In particular, Commission Counsel submits that the following facts and findings are aggravating circumstances (unless otherwise stated, paragraph references are to the Decision):

- a. Constable Hobbs was a member with approximately 9 years of experience. (para.30 (a)). Therefore, Constable Hobbs was a member of some considerable experience and the misconduct cannot be attributable to anything associated with a lack of experience.
- b. The circumstances that caused Constable Hobbs to become involved were not urgent, they did not constitute an emergency, they did not engage the safety or physical wellbeing of any person, they did not unfold quickly such that a split second decision was required and, the dollar value of the microphone in question was minimal. (para.68 (c) (d) (e))
- c. On important issues, Constable Hobbs was found, as a fact, to be "less than forthright" in his sworn testimony. In particular, he was found to be "selective, equivocal and unreliable in his recounting of events, at times exaggerating and minimizing evidence relevant to his involvement." (para.61)
- d. It is particularly significant that it was found that the Constable's explanation for entry into the residence in question had "no ring of truth". (para.63(b) It is submitted that this is aggravating because, a member who is intentionally less than forthright in his or her testimony potentially interferes with an Adjudicator's ability to make correct findings of fact and this, in turn, may undermine the public's confidence in the effectiveness of these public hearings.
- e. Constable Hobbs had no reasonable and probable grounds to arrest and had, "at best, a suspicion". (para.68; 69 (b))
- f. Constable Hobbs was primarily engaged in the civil recovery of property. (para.69 (a))

- g. The officer's assumption that the rear door to the residence was a public door to suites was "both objectively and subjectively unreasonable." (para. 69(g) (i))
- h. In summary, and in relation to the member's entry into the residence, it was found that "there was nothing whatsoever that would abrogate the fundamental rights of a home's occupant to security of the home from unreasonable entry and search as guaranteed by s.8 of the Charter of Rights and Freedoms." (para.69 (j))
- i. A private home, as distinct from a public or commercial space attracts special protections in law.
- j. When Constable Hobbs first saw the complainant inside of the residence, he could not be sure that the complainant was the suspect and the officer acknowledged that, at that point, he had no grounds to arrest. (para.72-73) Despite this, the officer persisted in his actions and placed the complainant under arrest and into handcuffs.
- k. It was found that the officer had no statutory authority to conduct an arrest (para.76)
- l. It was found that the officer had a "weak suspicion" (para.76) and "no reasonable person, or officer with the Member's training and experience, could conclude objectively that reasonable and probable grounds existed to arrest the Complainant or, indeed, the Suspect, prior to entry into 3390." (para. 77)
- m. The expanded entry into and search of the residence was made without consent or warrant (para.81), it was made without reasonable and probable grounds (para.82) and the officer was found to have "acted on impulse without due consideration of all relevant facts." (para.82)
- n. On this basis, it was further concluded that the entry and search constituted a violation of the complainant's rights as guaranteed by s.8 of the Charter. (para.83)

14. In the context of imposing a sentence for a criminal offence committed by a police officer, Hill J. in R v. Cook, 2010 ONSC 5016 (CanLII) wrote that “police officers, as officials discharging public duties, occupy a special position of trust within the community.”
15. In citing this passage, it is not suggested that the considerations in imposing a criminal sentence are identical to the considerations in determining what is a “just and appropriate disciplinary or corrective measures in relation to the misconduct of a member”.
16. The passage itself, however, is apt to these proceedings.
17. The job of a police officer is, at times, undoubtedly challenging but the public trust in the institution of policing rests upon the premise that police officers will maintain and uphold the law, and respect and protect rights and freedoms as guaranteed by the Charter of Rights.
18. The public trust in the institution of policing rests upon and demands that police officers will conduct their duties within the limits of the law and the Charter of Rights.
19. It is an imperative that the trust that the public extends to police officers be maintained and, where there has been misconduct, disciplinary and corrective measures can be used to restore the trust that will have been lost through the misconduct.
20. When a police officer conducts him or herself outside of the bounds of the law or outside of his or her professional duties and responsibilities, one goal of discipline must be to restore the public trust that will have been lost as a result of that misconduct.
21. Disciplinary or corrective measures that do not reflect the seriousness of the misconduct will undermine rather than restore public trust and confidence.
22. In the present case, Mr. Fraser had done nothing wrong and he had every right to expect that he would, and should be able to enjoy the peace and comfort of his home and go about his business within his home.

23. The maxim that a person's home is his or her castle is relevant to the determination of discipline in the present case. There was no law, policy or exigent circumstance that would justify Constable Hobbs first intrusion into Mr. Fraser's home. Furthermore, it is aggravating that there was also no law, policy or exigent circumstance that would justify Constable Hobbs further intrusion into and search of Mr. Fraser's home.
24. In plain language, the first intrusion into the home, the detention and handcuffing of Mr. Fraser, and the further intrusion into and search of the home amounted to a trampling upon Mr. Fraser's rights.
25. The misconduct and the violation of Mr. Fraser's rights was more than momentary and the misconduct was not limited to a single act.
26. Having regard to all of the circumstances, Commission Counsel submits that the appropriate disciplinary and corrective measures are:
- a. A significant suspension without pay, and;
 - b. A requirement that Constable Hobbs work under close supervision.

Dated at Vancouver, BC this 23rd day of June 2018.



Greg DelBigio, Q.C.

Commission Counsel