

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)

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

**SUBMISSION OF THE MEMBER  
DISCIPLINARY OR CORRECTIVE MEASURES**

**Introduction**

1. It is submitted that the appropriate penalty in this case is a written reprimand.
2. Section 126 of the *Police Act* mandates that:  
  
(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.
3. Public Hearing Counsel has ignored this principle entirely. There is no mention of this principle at all in his submissions. Commission Counsel acknowledges this principle, but his submissions give precedence to punishment over correction.
4. Section 126 also sets out a number of other criteria, including the obvious one that the Adjudicator must take into account, “(g) the range of disciplinary or corrective measures taken in similar circumstances.” Public Hearing Counsel and Commission counsel have ignored this statutory requirement. Neither counsel has cited even one earlier decision in their submissions. This submission on behalf of Cst. Hobbs collects every decision on the disciplinary or corrective

measures for abuse of authority in British Columbia since the OPCC began collecting records (2003). It is clear on those authorities that there is no reasonable basis for a suspension in this case.

## **Facts**

5. It is acknowledged that Cst. Hobbs entered a private home without consent or a warrant. While in the home, he arrested and handcuffed Mr. Fraser, who had done nothing wrong. At the time, and in his testimony, Cst. Hobbs acknowledged that he had made a mistake. He tried to apologize to Mr. Fraser but, not surprisingly, Mr. Fraser was more interested in having Cst. Hobbs leave his home than he was in listening to an apology.

6. When the police enter a citizen's home without a warrant or consent, that is always a serious matter. When a citizen is arrested and handcuffed when the person is actually innocent, that is a serious matter. Cst. Hobbs has been found to have committed misconduct in this regard. However, based on the *Police Act* and on the authorities collected by the OPCC, recognizing that these are serious matters does not lead to the conclusion that Cst. Hobbs must be punished, as opposed to corrected. The fact that these were serious matters does not justify a suspension. Much less does that lead to the conclusion that Cst. Hobbs should receive an unprecedented suspension of 14-30 days, or a demotion.

7. There is no suggestion whatever that Cst. Hobbs was motivated by malice or bad faith. The Adjudicator has found that Cst. Hobbs was primarily engaged in civil recovery of property rather than a criminal investigation. This, however, should not be considered an aggravating circumstance when determining the appropriate disciplinary or corrective measures. The bottom line is that Cst. Hobbs was engaged in what he believed to be his duty, in response to a call he was dispatched to attend, with the ultimate success that he put a working person back into possession of equipment he needed to earn money.

8. Cst. Hobbs used no violence. He used a very moderate degree of force to place Mr. Fraser into handcuffs, but that degree of force was much less than the force used in many of the cases that will be cited, where the disciplinary or corrective measures did not include a suspension, much less a demotion as Public Hearing Counsel proposes.

### **Similar Cases**

9. Attached to this submission is a compilation of all the cases cited in the OPCC annual reports between 2003 and 2017 that mention “abuse of authority.” As will be seen, in cases where a person’s rights were violated, but little or no violence was used, the disciplinary or corrective measures consisted of reprimands and training, not suspensions. Even where considerable force was used the disciplinary or corrective measures often do not include suspensions. In a recent case, as yet unreported, a police officer punched a cyclist in the face during a traffic stop. The penalty was: “Retraining in use of force techniques with an emphasis on situation assessment and reassessment, and de-escalation techniques.” [REDACTED] OPCC File No. 2013-8522.

10. There is also a small number of cases where suspensions were ordered. However, in all but one of the suspension cases (that case is discussed in the next paragraph), the police used considerable violence – wanton use of pepper spray, multiple stabbings with a handcuff key, force that resulted in permanent brain injury. Even in those cases the suspensions were typically between one to three days – not 14 to 30 days coupled with a demotion.

11. The highest suspension was seven days. In that case, police officers lured a man who was in his home outside, and then arrested him for being drunk in a public place. Then, they did not take adequate notes, or submit a report of the arrest. In effect, the police officers created the offence, then arrested the man for the offence that the police officers had created, and then failed to record what they had done. This is obviously much more serious than the conduct in the present case, yet the suspension was one-half of the low end (14 days) of the suspension proposed by Public Hearing Counsel.

### **Illegal Entry Into Houses and Arrest**

12. The precedent closest to the present case is *Wilson and Sidhu* P.H. 09-02 (attached). In that case, following a public hearing, two officers were found to have committed abuse of authority by entering a dwelling house without consent to effect the arrest of youth inside, and a second allegation of abuse of authority by effecting the arrest of the youth. During the entry they pushed the youth’s mother aside, causing her to fall to the ground. The youth was in his

bedroom. The police officers forced their way into the bedroom, resulting in some damage to a door frame. The Honourable T. Singh, a retired judge, imposed the disciplinary or corrective measures of training and counselling.

13. In another matter (OPCC file No. 2006-3287) police officers intervened in a family dispute, allowing two siblings to enter into the house of their mother to recover property. A third sibling complained that the siblings who entered the house had been harassing their mother, and had stolen her property. The police officers were under the mistaken belief that they had the power under the civil law to escort the two siblings into the house, which was an error. The officers received a verbal reprimand. (See Appendix, p. 3).

14. In OPCC File No. 2005-2975 police officers entered private rooms of a rooming house or low-income hotel, without lawful authority. The allegation was substantiated, but no penalty was imposed.

#### **Reply to Public Hearing Counsel and Commission Counsel**

15. Public Hearing counsel has proposed a penalty in the range of 14 to 30 days suspension, with the possible addition of a demotion.

16. This submission appears to have been picked randomly out of the air, without any connection to mandatory statutory considerations provided in the Act, and orders of magnitude higher than even the most serious cases collected by the OPCC. Public Hearing Counsel has not cited s. 126 of the Act. Public Hearing Counsel has not considered the principle that correction takes precedence over punishment. Public Hearing Counsel has not cited any similar cases. Public Hearing Counsel has not even acknowledged the requirement that the Adjudicator consider similar cases.

17. Commission Counsel focussed on what he described as aggravating circumstances, and submits that a “significant” suspension, with an order to work under close supervision, is appropriate. Again, however, Commission Counsel has not acknowledged the principle that the Adjudicator must consider the disciplinary or corrective measures in similar cases, nor has Commission Counsel cited even one prior case to support his position. The submission of

Commission Counsel does not give precedence to correction over punishment, but appears to give precedence to punishment over correction.

18. Both Public Hearing Counsel and Commission Counsel stress the principles that a person's home is his or her castle, and the police officers hold positions of trust within society, especially when they exercise coercive powers like search, seizure and arrest. These principles are both true, and are both very important. The finding that Cst. Hobbs committed misconduct gives full effect to these principles.

19. However, at this stage reciting those principles provides very little guidance in selecting the disciplinary or corrective measures that give priority to correction over punishment. In Cst. Hobbs's earlier written submission on the merits, many cases from British Columbia to Newfoundland were cited in which police officers had violated the home or person of citizens, thereby infringing their legal and *Charter* rights. Yet, in these cases, the police were found not to have committed misconduct at all. These included a strip search – a personal intrusion much more serious than the incident in this case – and several instances where police officers entered and searched houses. In other words, finding that a police officer has violated the rights of a citizen, even seriously, does not by itself dictate that the police officer should punishment instead of correction.

20. Even where, as here, the police officer was found to have committed misconduct, the fact that the misconduct consisted of a violation of a citizen's rights does not lead to the conclusion that the police officer should receive punishment as extreme and unprecedented as a 30 day suspension and a demotion. In every one of the cases in the Appendix to this submission, the person or residence of a citizen was violated, the citizen's legal and *Charter* rights were infringed, and police officers abused the trust placed in them to some degree. Yet, as noted earlier, suspensions were not ordered unless there was significant violence, or some other unusual and serious aggravating factor not present here.

## **Conclusion**

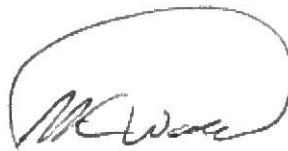
21. The present case is very similar to the case of *Wilson and Sidhu* where a suspension was not ordered, and is no more serious than the many other cases cited in the Appendix where no

suspension was ordered. The cases where suspensions were ordered involved considerable violence (not present here), or some other form of serious aggravating misconduct (creating the offence, and then arresting the person for that offence, also not present here).

22. It cannot be overlooked that this matter is more than two and a half years old. That is an unconscionably long time to resolve an issue of this nature. During that time Cst. Hobbs has had to answer *McNeil* disclosure requests with information about this allegation. Following the conclusion of this public hearing he will have to continue reporting it for several years.

23. The question may arise as to whether training would be in order. Cst. Hobbs agrees with the submission of Public Hearing Counsel that, "Clearly, this is not a case where further training would be a beneficial corrective measure." (**Public Hearing Counsel submissions, para. 10**) In a case where a police officer abused his or her authority in carrying out the ordinary duties of a police officer, like a street arrest for example, and where it may be expected that the police officer will have to carry out similar duties in the future, there is merit in requiring the police officer to undergo remedial training so that he or she will not commit similar errors in the future. However, the present case was unusual. Cst. Hobbs was trying to find a quick and creative solution to a problem; namely, locate the possessor of stolen property, and try to convince that person to return it voluntarily. Further, Cst. Hobbs's error was based on a belief about the nature of multi-suite homes in the relevant neighborhood, and his powers to enter them without warrant. Cst. Hobbs has already learned the lesson that he may not enter such a home without permission or a warrant, so there is no need of further training in that regard. If training were ordered, that would extend the time before Cst. Hobbs's record can be expunged, and he would no longer have to report this matter in *McNeil* disclosure.

24. Therefore, it is submitted that the appropriate remedy in this case is a written reprimand.



6 July 2018

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M. Kevin Woodall, Counsel for the Member