

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996, C.367

IN THE MATTER OF CONSTABLES "X" AND "Y"

NOTICE OF ADJUDICATOR'S DECISION

TO: Constable "X"
Constable "Y"
Nelson Police Department

AND TO: Chief Constable Wayne Holland
Nelson Police Department

AND TO: Sergeant Rhen Hallett
Delta Police Department

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

OVERVIEW

This matter arises out an ordered investigation from the office of the Police Complaints Commissioner concerning a cell block incident wherein it is alleged that Constables "X" and "Y" used unnecessary force upon Mr "A" while booking him into the police cells on April 30, 2011.

The matter was turned over to Sergeant Hallett of the Delta Police Department for investigation and following that investigation, he was of the opinion that excessive force was used by both officers. His report was presented to Chief Constable Holland of the Nelson Police Department who came to a contrary decision pursuant to section of 112 of the Police Act.

Consequently, the writer has been appointed under section 117(4) of the Police Act "to review this matter and based on the evidence, arrive at a decision with respect to Constable "X" and Constable "Y" 's treatment of Mr "A" ."

ALLEGATION

The allegation specifically says: "It is alleged that on April 30, 2011, Constable "X" and "Y" used unnecessary force on Mr "A" while booking him into the Nelson Police cell block and committed the misconduct of Abuse of Authority as per section 77(3)(a)(ii)(A) of the Police Act."

CIRCUMSTANCES PRECEEDING THE INCIDENT

Mr "A" stole a bottle of Crown Royal from the liquor store and ran. He was arrested by Constables "X" and "V" outside the local Nelson & District Youth Centre a short time later. His arrest involved a rather hard takedown in which Mr "A" and Constable "X" fell onto the ground outside the Youth Centre with the Constable landing on top of Mr "A" . It was not disputed that Mr "A" was attempting to run and that he did resist to some extent. There was more physical interaction between Mr "A" and Constables "X" and "V" as Mr "A" was handcuffed and ultimately placed in the police vehicle. Constable "Y" was also in attendance and, inter alia, cut a backpack off Mr "A" just before he was placed in the police vehicle. Constable "Y" was also dealing with several onlookers to the arrest, one of whom was yelling at the police to stop the arrest procedure.

This proceeding incident has been the subject of a complaint by a lady at the Youth Centre who was concerned about the manner of the arrest and the adverse effect of some staff and young persons who witnessed the whole or part of this incident.

This incident has been extensively described in the Investigative Report authored by Sergeant Rhen Hallett and was reviewed to understand the emotions and mindset of Mr "A" and the police officers as they appeared in the police cell block area a short time later. This was part of the process of my taking into account all the circumstances surrounding the event and all the evidence in coming to a decision concerning the allegations.

CIRCUMSTANCES OF THE INCIDENT UNDER REVIEW

The actions of Constable "X" involved the act of the officer grabbing the head and neck area of Mr "A" from behind with both hands, forcing him to look forward, toward the booking desk and Constable "Y"

The actions of Constable "Y" involved the act of the officer facing Mr "A" and grabbing his head and forcibly slamming Mr "A" head onto the surface of the booking desk.

These actions of the aforesaid officers were recorded on a cell block video which is self-explanatory and was carefully reviewed.

MATERIALS REVIEWED

The material received from the Office of The Police Complaints Commissioner included a thumbdrive containing Sergeant Hallett's Final Investigative Report (which included all source material), and separate folders containing the cell block video, audio files, photographs and Parts 9, 10, & 11 of the Police Act.

These materials were carefully and completely reviewed by the writer, especially the cell block video which was viewed several times.

THE LAW

As indicated in the Notice of Appointment of Adjudicator, the appropriate legal standard to be applied is a balance of probabilities (F.H. v McDougal, SCC)

The amount of force used under S. 27 may be "as much as necessary", which is assessed objectively. (Charter v Greaves, [2001] O.J. No.634) Also "whether force is excessive is a question of fact for determination upon the evidence and in the circumstances of each particular case under review." (Supra) In addition, "It is both unreasonable and unrealistic to impose an obligation on the police to employ the least amount of force to successfully achieve their objective. (Levesque v Zanibbi [1992] O.J. No. 512)"

REVIEW

As previously indicated, I have carefully read and viewed all the materials forwarded to me. It is, in my view, unnecessary to repeat the details and analysis so completely and carefully compiled, composed and forwarded by Sergeant Hallett in his Final Report. Suffice to say that I accept his compilation and analysis and conclude that in all the circumstances and on the evidence presented, and considering the legal principals aforesaid, that both Constable "X" and Constable "Y" used unnecessary force on Mr "A" while booking him into the Nelson Police cell block on April 30, 2011 and thus committed the misconduct of Abuse of Authority as per section 77(3) (a)(ii)(A) of the Police Act.

I would like to make specific reference to a portion of Sergeant Hallett's Final Report and paragraph 191 where he states: "The explanation provided for their actions was not held throughout their entire interaction with the prisoner. ""

presented himself as a somewhat obnoxious youth but not as a verifiable threat. The actions demonstrated by both officers appear to have been an over reaction, rather than based on fear for officer safety. If Mr "A" exhibited such a concern to the officers, then he should have been kept in handcuffs until the secondary search was completed in the cell block, as suggested by NPD policy."

NOTICE OF NEXT STEPS

As required by s. 117(8) of the Police Act, I hereby provide notice to Constable "X" and Constable "Y" as follows:

- (a) The evidence referenced in the Investigative Report completed by Sergeant Hallett and the legal authorities are sufficient to substantiate the allegation that Constable "X" and Constable "Y" abused their authority by grabbing the head of Mr "A", first Constable "X" to turn the head towards the booking desk, followed by Constable "Y" who grabbed the head and slammed it onto the booking desk.

- (b) A prehearing will be offered to both Constables "X" and "Y"
- (c) Both Constables have the right pursuant to s. 119 to request permission to call, examine or cross-examine witnesses at the discipline hearing, provided such request is submitted in writing within 10 business days following receipt of this notice of decision.
- (d) The range of disciplinary or corrective measures being considered include:
- (i) Reprimanding both constables verbally;
 - (ii) Reprimanding both constables in writing;
 - (iii) Giving advice as to their conduct;
 - (iv) Requiring both constables to undertake further training
In the appropriate use of force.

Dated at North Vancouver B.C. this 19th day of December, 2012.

William J. Diebolt

Hon. W.J. Diebolt (retired)