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TORONTO STAR

Youth jail 'alarming' to lawyers

The Toronto Star, HAROLD LEVY, Staff Reporter, Nov. 18, 2003 page B5

A lawyers' group says a jail for youths in Toronto is a source of "great shock and alarm" and has called on Correctional Services Minister Monte Kwinter to shut it down.

And Kwinter told the Star late yesterday he is "very troubled" by accounts he has heard about the institution, and that he plans to visit it within the next 10 days.

"The reports received by our members from young persons held in TYAC (The Toronto Youth Assessment Centre) have been a source of great shock and alarm in respect of the violence and atmosphere of fear that exists in the facility," the Law Union, a 300-member Toronto organization, wrote to Kwinter on Friday.

The letter, written by Law Union members Bob Kellermann and Richard Neary, says the centre, a 138-bed facility in Etobicoke, detains all 16- and 17-year-olds in the Greater Toronto Area who are either awaiting bail hearings or have been denied bail.

Kellermann and Neary refer to a court hearing in August in which a senior official gave evidence "that violence was a regular occurrence at TYAC, between two and 20 incidents a week, some involving gangs, weapons, innocent victims and or serious injuries requiring hospitalization."

People aren't informed of rights: lawyer

Canada Day police actions put scrutiny on search and seizure regulations

By PETER COWAN
Times Colonist staff

After criticism over Canada Day searches of city buses by police, Victoria lawyers say most people don't know their rights when dealing with police.

Prof. Benjamin Berger of the faculty of law at the University of Victoria said even his own students are surprised when they learn that police don't have the blanket right to search a person's bag.

"Most people aren't terribly informed of their rights," he said.

On Canada Day, police stopped city buses and searched riders' backpacks looking for alcohol, in an effort to control drunkenness at the celebrations downtown.

For someone walking on the street or riding on a bus, the only way police can search you against your will is if they have reasonable grounds to think you have committed or are going to commit a crime. Traffic offences or bylaw infrac-

tions are not crimes.

Richard Neary, a criminal defence lawyer, said that is why police will often ask permission to search a bag.

A lot of people give their OK because they don't know they are allowed to refuse a search.

"There is often the assumption that when police ask a question it is more of a direction," he said.

Some people agree to the search because they want to help police; others are afraid that refusing to provide information or give in to a search will put them under greater suspicion.

He said if police want to search you or get information, but you don't want them to, one option is to ask them politely whether you are required to or if it is optional. They have to answer honestly.

One common case where you don't have to answer police questions is at roadblocks where officers ask whether you've had anything to drink. He said most people think they are required to

answer the question.

Neary said you don't have any obligation to answer, and often the answer is what police use as the reasonable and probable grounds to suspect you are impaired. Then they can require you to provide a breath sample.

Even though it's not required, people often do answer because they are afraid they will look as if they have something to hide.

By law, you have to provide your driver's licence, insurance and ownership information to police when asked.

If police detain you because they have some evidence you have committed a crime, but haven't arrested you, they are allowed only to pat you down for weapons, but aren't allowed to go into your pockets or search your bag, unless they have a good reason to believe there are weapons there, Neary said. The purpose of their search is to make sure you don't have anything that could harm them; it's not designed as a fishing expedition

READER INPUT

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• Would you mind having a personal search of your backpack or other belongings in the larger interest of keeping an orderly crowd at public events?

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for evidence.

The protection against being searched is covered under the Charter of Rights and Freedoms. It says that everyone has the right to be free from unreasonable search and seizure.

To help people understand their rights, the B.C. Civil Liberties Association has produced an arrest guide that covers people's rights when they are dealing with police.

Association president Jason Grant, who

is a criminal lawyer, said the laws are often complex.

"Even lawyers have to research what the law is on search and seizure," he said. The definition of search and seizure evolves with new court decisions.

It is because of the law's complexities that when people are arrested they have the right to talk to a lawyer right away. That is also why it is difficult to create one set of guidelines for what a person's rights are in every situation.

Grant said information about individual rights when it comes to searches should be part of the public-school curriculum. That way, those graduating from high school would be better informed about what they are and are not required to do under the law.

Because of the lack of information, Neary said, he has had clients who have given in to searches or told police information thinking they were required to when they really weren't.

A copy of the arrest handbook can be downloaded from the publications section of the B.C. Civil Liberties Association website at www.bccla.org

THE CAPITAL AND VANCOUVER ISLAND

TO C
Comics, C3
Classified, C4
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TIMES COLONIST • TUESDAY APRIL 25 2006

Editor: Denise Mohr • Telephone: 380-5334 • E-mail: localnews@tc.canwest.ca

Prisoner gave death warning, inquest told

Sentence was nearly completed prior to suicide

By Jeff Bell
Times Colonist staff

Relatives hope a coroner's inquest into the 2004 death of Steven Michel Miller after he hanged himself at the Vancouver Island Regional Correctional Centre will shed light on how prisoner information is acted upon and help prevent similar tragedies.

Miller, 35, was found hanging from sheets in his cell on June 23, 2004. Staff and a prison nurse attended to him before he was taken by ambulance to hospital, where he died June 26.

Staff at the correctional centre, commonly known as Wilkinson Road jail, had

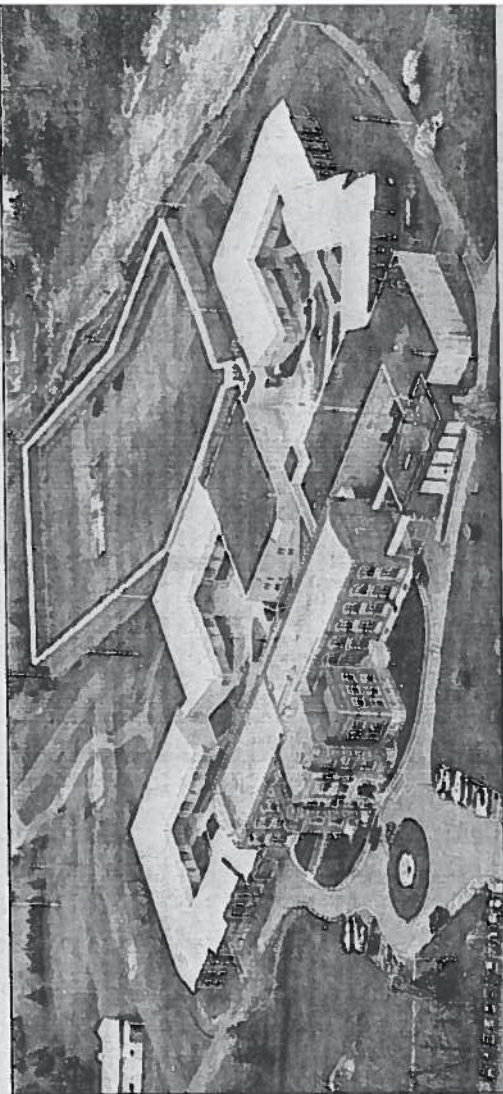
seen him 20 minutes before he was found. Lawyer Richard Neary, representing Miller's mother Diane Brown, said an unusual aspect of the case is that Miller has almost completed a sentence of one year, 11 months for robbery.

"He only had a couple of weeks left to go."

Neary said Brown, who is here from Kingston, Ont., to attend the inquest, and other family members are eager for a close examination of what happened.

"I think that the family's primary concern is just to see that a good, long, hard look is taken at all of the circumstances surrounding Mr. Miller's death."

Neary said it appears from certain



Vancouver Island Regional Correctional Centre on Wilkinson Road is where Steven Miller hanged himself in 2004 on the end of a robbery sentence of one year and 11 months.

notations, log-book entries and other sources that more continuity of information might have been needed in Miller's situation. On Monday, the opening day of the three-day inquest, he noted instances in which Miller was reported to be depressed and staying in bed all day.

The inquest heard that that many prisoners take medication for either depression or anxiety. Miller was on anti-anxiety medication at the time of his suicide.

"The issues that have really arisen are whether or not warning signs and cues were properly dealt with," Neary said, "And whether or not there was sufficient communication between various segments."

"It's my feeling that if everything had been correlated and looked at in a big picture sense, then perhaps something could have been done differently."

The family feels that "significant warning signs" were contained in Miller's

statements and behaviour in the months before he hanged himself, Neary said.

He said Miller was particularly upset that his common-law wife had recently begun seeing someone else and was perhaps using hard drugs, the latter a likely factor in her two children being taken away by the province. They were not biological children but he was very attached to them, Neary said.

"He was extraordinarily concerned about that."

Coroner's jury in prisoner suicide urges better communication

BY SANDRA McCULLOCH
Times Colonist staff

Mental-health professionals need to read all relevant information on their patients and sign a form so indicating.

That's the first of five recommendations made Wednesday by a coroner's jury looking into the 2004 death of Steven Michel Miller, a prisoner who hanged himself at Vancouver Island Regional Correctional Centre.

Miller was near the end of a one-year, 11-month sentence for robbery when he took his own life.

Lawyer Richard Neary, representing Miller's mother, Diane Brown, said the recommendations satisfy some concerns about the case.

Psychologists had seen Miller on June 8 and June 17 in 2004. He hanged himself on June 23.

"It turned out there were entries in the unit log books, and a database called the client case-plan comments that Mr. Miller hadn't been eating for days at a time, had been sleeping all day, not showering, making comments about possible self-harm. ... The psychologists

didn't know any of that because they didn't have access to those pieces of information."

Administration at the jail has since allowed mental-health professionals to access databases in hopes of preventing similar occurrences, Neary said.

A correctional officer also made a report after reading a letter in which Miller expressed suicidal thoughts, said Neary.

"But that report never made it to a psychologists' hands, so I think those are the kinds of things the jury was trying to address."

Three recommendations concerned a need for standardized training and competence for correctional employees.

The fifth suggested a change be made to cells that would prevent inmates from hanging themselves in similar ways.

The inquest was emotional but satisfying for Brown, said Neary.

"It was important for her to see her son's death acknowledged in a real and meaningful way. It was always very important for her to think that considering the issues might prevent a similar tragedy."

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Judge: Police overreacted with angry driver

An Esquimalt man, caught in a case of mistaken identity, is feeling partly vindicated after a provincial court judge dismissed a charge against him for obstructing justice.

By Times Colonist (Victoria) August 22, 2006

An Esquimalt man, caught in a case of mistaken identity, is feeling partly vindicated after a provincial court judge dismissed a charge against him for obstructing justice.

Now, Jayson Bitz, 24, is waiting to see what happens to his complaint against the Victoria police officers, who Bitz maintains beat him badly enough to give him a concussion when they made the July 29, 2005, arrest.

B.C. provincial court Judge Robert Higinbotham, in a decision made public on Monday, dismissed the case against Bitz after hearing two constables stopped him on Bay Street near Tyee Road in the late afternoon when one mistook him for a prohibited driver.

According to evidence supplied by police in court, Bitz became angry and abusive when police failed to provide him with a good reason for pulling him over. Finally he swore and accelerated away from the officers to park in a nearby lot where police arrested him.

Higinbotham wrote police could have defused the situation by telling Bitz the truth, intimating they could even have apologized. Instead the officers made the situation worse by making up phoney reasons for pulling him over.

One told Bitz he was pulled over because he was a man driving a car registered to a woman. Then his partner made things worse by deciding at that point to notice a crack in the windshield and implied that was reason enough to stop Bitz.

Richard Neary, Bitz's lawyer, successfully argued the officers had no just cause to detain Bitz once they realized their initial mistake. Not allowing him to go on his way made it an arbitrary detention and a violation of Bitz's constitutional rights.

Neary said in a Monday telephone interview, evidence of the beating Bitz maintains he received at the time wasn't entered into court once the constitutional argument was successful. But he confirmed Bitz has filed an official complaint with Victoria police.

Bitz said on Monday that, when he was originally pulled over, the officers insisted they didn't need a reason to stop him. After several requests, Bitz said he grew frustrated and swore. Then, because he wasn't safely pulled far enough off the road he drove along and parked in a nearby lot and turned off the engine.

When the officers showed up, one pulled him out of the car slammed him face first into the concrete and put him in handcuffs. Another two police officers came along and one of them joined in beating Bitz, while the fourth just stood by.

Bitz said his face was slammed several times into the concrete. There were blows to his ribs and the back of his head. He ended up with a black eye, bruises and a concussion.

"I didn't even get a chance to say anything," said Bitz.

"I actually had a concussion so bad my doctor even told me not to sleep for a day."

He said he has laid a complaint with the Victoria Police Department over his treatment and there may be a civil action.

Comment from the Victoria police was not available Monday.

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Murder charge dropped against Island man

CAMPBELL RIVER -- A second-degree murder charge against Vancouver Island resident Ken Jones in the 1999 death of his wife has been dropped due to lack of evidence.

BY TIMES COLONIST (VICTORIA) OCTOBER 12, 2007

CAMPBELL RIVER -- A second-degree murder charge against Vancouver Island resident Ken Jones in the 1999 death of his wife has been dropped due to lack of evidence.

"We no longer had a viable prosecution," said Stan Lowe, communications counsel with B.C.'s Criminal Justice Branch, after the Crown entered a stay of proceedings in Campbell River provincial court earlier this week.

Jones, 55, a former candidate for municipal office in Campbell River, was arrested at his home in May 2006 in connection with his wife's death.

Juanita Dorothea Jones, 45, was reported drowned in a May 16, 1999, fishing accident. The couple had been fishing in float tubes.

The RCMP said Jones's arrest concluded a seven-year investigation, and the evidence against Jones was presented at a preliminary hearing that started in June.

The hearing was to resume in Campbell River on Tuesday with arguments from the Crown and defence.

Instead, the Crown entered the stay of proceedings.

"Senior lawyers with the Criminal Justice Branch had completed a comprehensive review of all the available evidence, including the evidence from the preliminary hearing, and determined that the state of the evidence no longer supports a viable prosecution," Lowe said this week. "In our view, there was no longer a substantial likelihood of conviction; therefore, the case no longer met our stringent charge assessment standards."

Jones declined comment yesterday, referring the matter to his lawyer.

"Obviously Mr. Jones is greatly relieved and we're also happy for him that this ordeal is over," said defence lawyer Richard Neary.

"The prosecution team did the right thing in staying the proceedings because it became clear, after taking a close and careful look at all of the evidence available, that there was no case against Mr. Jones."

Tethered teen gets \$60,000 in lawsuit

Police officers used excessive force, violated Kinloch's rights, jury rules

RICHARD WATTS
Times Colonist

Two Victoria police officers used excessive force against a teen in police cells, an eight-person jury ruled yesterday.

In a complicated verdict, the jury awarded a total of \$60,000 in compensation for violations of Willow Kinloch's rights when she was detained, handcuffed and tethered in a padded cell.

After the verdict, Kinloch said she holds no hard feelings against the police force. But she said she hopes they now know "that that's not the way to act and that's not the way you treat your community."

Kinloch, now 18, was picked up drunk shortly past midnight on May 7, 2005, in downtown Victoria. She was taken to the Victoria police station, where she spent about one hour screaming and banging on the walls of a cell.

About 4 a.m. two police officers, Acting Sgt. Ryan O'Neill and Const. Brian Asmussen, tried to take her home to an apartment near Cook Street and Pandora Avenue. But the building intercom was broken and the officers refused to allow Kinloch to get out of the car and shout up at a window.

After returning to the station, Kinloch objected to going back into a cell. In an encounter caught on videotape, a jailhouse matron was seen pushing Kinloch against a wall.

O'Neill and Asmussen handcuffed the five-foot, 100-pound Kinloch, bound her at the ankles and tethered her with a strap leading out under the cell door. She was left lying on the floor for four hours until she was released.

Police filed a charge of assault, but the Crown did not proceed on the case.

Kinloch sued the City of Victoria, jailhouse matron Merle Edmonds, O'Neill and Asmussen.

Richard Neary, Kinloch's lawyer, told the jury his client had no concerns with her initial treatment. It was when O'Neill and Asmussen tried to take her home and refused to allow her out of the car that problems began, he said.

At trial's end, the jury, working through questions posed by Supreme Court Jus-



DEBRA GRASH, TIMES COLONIST
Willow Kinloch: "Not the way you treat your community."

tice James Williams, came back with verdicts against the two police officers but clearing the jailhouse matron.

The jury found the two officers violated Kinloch's right not to be subjected to cruel and unusual treatment or punishment, as guaranteed under Section 12 of the Charter of Rights and Freedoms. They found the Section 12 violations were the result of malice, negligence or misconduct, and they awarded Kinloch \$30,000 in compensation. The jury said the officers' use of excessive force violated Kinloch's right under Section 7 of the charter to life, liberty or security of person. The violation was found to be the result of malice, negligence or misconduct, for which the jury awarded Kinloch an additional \$10,000.

The jury found Asmussen and O'Neill violated Kinloch's right, guaranteed under Section 9 of the charter, not to be arbitrarily detained. They said this was the result of no malice or misconduct but still awarded her \$20,000, resulting in total compensation of \$60,000.

"I knew at the time it wasn't OK, and people kept telling me it was OK, and I knew it wasn't," Kinloch told reporters after the verdict. Now, "I'm just going to live my life and just live," she said.

Her lawyer said the verdict was a sign people need not be treated badly at the hands of police or other authorities.

"This happened even though these people knew they were being videotaped, which I think is pretty scary," Neary said.

Court grants bail to pair of brothers charged after Victoria man's death

Canwest News Service; Victoria Times Colonist

October 8, 2009 01:00 AM

The B.C. Court of Appeal granted bail Wednesday to Kenneth Brotherston Jr. and his brother Gregory Brotherston.

The two are being released on \$100,000 bail and will live with their parents in the family home, said defence lawyer Richard Neary, who represents Ken Jr.

Former Highlands councillor Kenneth Brotherston Sr. and his two sons are charged with second-degree murder in connection with the May 30, 2008, death of Keith William Taylor, 33, who was from the Victoria suburb of Colwood. They are also charged with assaulting three people with a handgun.

"They're relieved and overjoyed to be going home," said Neary. "It puts them in a better position to prepare to defend the charges. It's a lot easier to do that when you have your freedom, than from a jail cell.

"It also means my client will be able to go home and hold his three-year-old daughter."

Ken Sr. was granted bail in July 2008. His sons have been held in custody at the Vancouver Island Regional Correctional Centre since early June 2008.

They are being released on strict conditions which include an 8 p.m. to 6 a.m. curfew. They are not allowed out during the day except with their mother Marie or another adult approved by their bail supervisor. They are banned with having contact with prosecution witnesses and the three people they are charged with assaulting.

In September, the B.C. Court of Appeal decided to review two B.C. Supreme Court orders refusing them bail.

"The court agreed it was very significant they'd surrendered themselves a few days after the incident. It shows a determination to be dealt with according to the law and to defend the charges," said Neary.

Their trial is set to begin in B.C. Supreme Court on Nov. 2.

Former councillor, sons not guilty of murder

A former B.C. town councillor and his two sons have been found not guilty of second-degree murder in the death of a drug dealer who had been trying to extort money from their family.

BY VANCOUVER SUN JANUARY 30, 2010

A former B.C. town councillor and his two sons have been found not guilty of second-degree murder in the death of a drug dealer who had been trying to extort money from their family.

Highlands Coun. Kenneth Brotherston Sr. and his sons, Ken Jr. and Gregory, were found not guilty Friday in the May 30, 2008, death Keith Taylor of Colwood, B.C., outside Victoria.

B.C. Supreme Court Justice Janice Dillon also found both sons not guilty of assault causing bodily harm with respect to Taylor's ex-girlfriend, Devon Daughtry. Ken Jr. was found not guilty of assaulting Alan Arsenault and Andrea Olson.

As all the charges were dismissed, many people in the standing-room-only courtroom burst into applause.

Taylor's family, meanwhile, sat slumped in the front row in tears, arms around each others' shoulders

During the five-week trial, which began Nov. 16, court heard that Taylor, a Colwood crack-cocaine addict and dealer, tried to extort \$100,000 from the Brotherston family.

He was fatally injured during

an altercation with Brotherston Sr. at a home in Colwood.

Brotherston Sr. then drove Taylor to the RCMP detachment and told the dispatcher, "I beat the sh-- o of him," the court heard.

Defence lawyer Steven Kelliher argued that Brotherston Sr. was acting in self-defence during a life-and-death struggle with Taylor, who had a gun and a knife.

Crown prosecutors Patrick Weir and Carmen Rogers insisted the prolonged beating and extensive injuries suffered by Taylor were not the result of self-defence, arguing Ken Jr. and Greg were culpable in Taylor's death because they kept others at bay while their father beat him.

A few minutes after receiving the verdict Friday, a smiling Brotherston Sr. walked out of the Victoria courthouse, holding hands with his wife, Marie, and daughter Erica.

Asked how he was doing, he replied, "Feel great."

Asked if there was anything he wanted to say to Taylor's family and if he was sorry for what happened Greg replied: "Absolutely. Nobody wanted anybody to perish. Addiction is a horrible thing."

Steven Kelliher, who represented Brotherston Sr., said it was a "terrific" verdict.

"It's a delight this family can go back to normal life. It's a huge relief for them. It's been an ordeal for Ken and Marie."

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Arrested man didn't start fight: witness

Tyler Archer's role in melee used by police to support urgency in arrest

KATIE DeROSA
Times Colonist

A man involved in a brawl outside a Victoria nightclub testified at a public hearing Thursday that his friend picked a fight with Tyler Archer and was later knocked unconscious by an unknown man who came to Archer's aid.

The testimony by 28-year-old Michael Baron supports Archer's account that he was attacked and punched in the head about 12:30 a.m. on March 21, 2010.

Archer, then 18, was arrested after someone told police he had been involved in a fight.

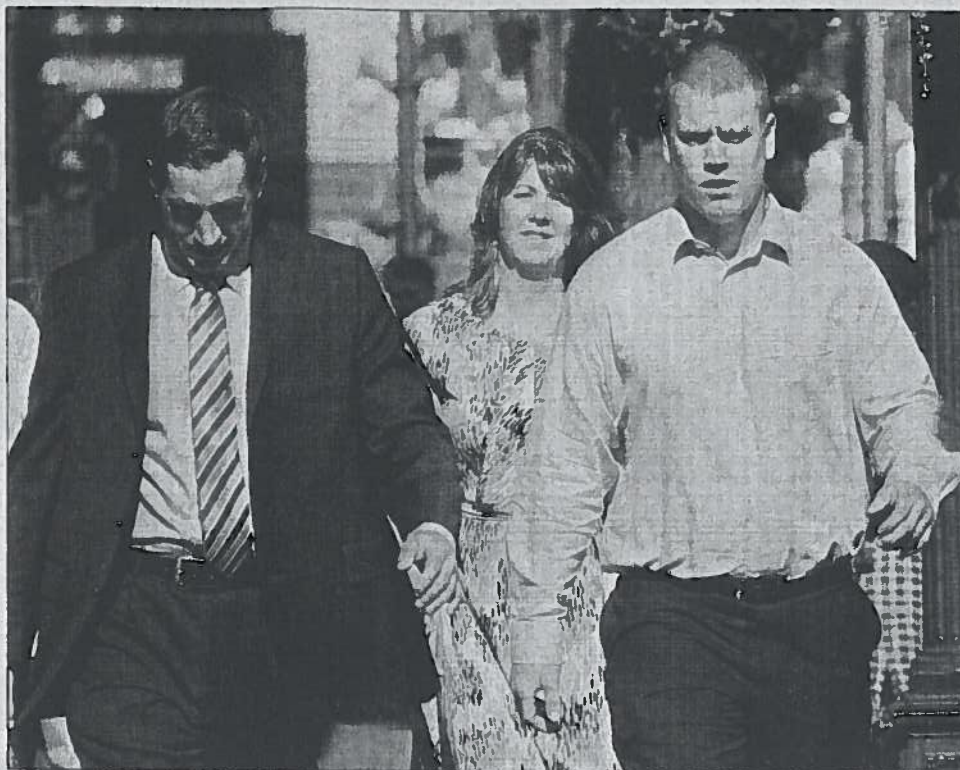
A retired judge appointed by the Office of the Police Complaint Commissioner is presiding over a public hearing that is trying to determine whether Victoria police constables Chris Bowser and Brendan Robinson used excessive force in arresting Archer.

A YouTube video showing the arrest, during which a police officer kicked Archer, brought public attention to the incident and is a key piece of evidence at the public hearing.

Baron said he was with a pub-crawl group that night and had about 20 drinks over 12 hours. He admitted to being extremely intoxicated and said he had a fuzzy memory of events.

He said as his group was coming out of Social Club, his friend, Ryan Friesen, saw a man approaching on the sidewalk. Baron heard Friesen say, "This was the guy who was mouthing me off earlier," before Friesen began punching Archer.

Baron said he does not recall hearing Archer hurl an insult at his group, something suggested by Robinson's lawyer. Friesen was the aggressor and appeared to be winning the fight, said Baron.



LYLE STAFFORD, TIMES COLONIST

Tyler Archer, right, whose arrest is the subject of a public hearing trying to determine whether excessive force was used, heads into a hearing in Victoria to testify this week.

Friesen was knocked to the ground by an unknown man who came to Archer's aid, Baron said.

Baron said the fight was broken up by police pepper spray. An officer handcuffed him and sat him against a pole on the grassy median where Archer was arrested. Baron, a 400-pound man visible in the video, said he didn't see Archer's arrest because he was blinded by pepper spray.

Lawyers for the police officers have previously suggested Archer had a role in Friesen's assault, which supported the urgency in arresting him.

Archer testified Wednesday that he thought officers were coming to help him since he had been punched in the face and had blood

dripping from a broken nose. He denied trying to resist arrest.

A use-of-force expert also testified Thursday, saying Archer was not resisting and the officers used "unnecessary" force.

Orville Nickel, a retired RCMP officer who wrote a report on the incident, said Archer did not pose a threat to the two officers.

"What we saw here was not resistance that warranted that kind of behaviour from the officers," Nickel said. "There was no threat to the officers at all."

Nickel said Bowser's hard kick to Archer's side could have broken a rib. Two knee strikes delivered to the spinal column were "totally inadvisable" since they could have caused permanent

damage, he said.

Nickel said officers are taught to be specific with their commands, such as lie flat on your stomach. He said Bowser could have handcuffed Archer while he was sitting on the ground, and there was no need for Robinson to manhandle Archer.

Robinson's lawyer, David Butcher, contested Nickel being relied on as an expert, saying he hasn't worked as a use-of-force trainer in more than a decade. Butcher called him "not qualified and dangerous."

The adjudicator dismissed that argument, given that Nickel has testified in many other use of force cases.

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Witnesses recall fears for arrested man

Police officers' level of force was unnecessary, public hearing told

BY KATIE DEROSA, TIMES COLONIST JUNE 27, 2012



An image from a film uploaded to YouTube shows two officers standing over a person during the incident.

Photograph by: Screenshot, YouTube

Witnesses who saw Victoria police constables Chris Bowsér and Brendan Robinson arrest a man after a brawl outside a downtown nightclub told a public hearing Tuesday that the force they used was "inappropriate" and "not necessary" since the man looked to be co-operative.

Joel Hibbard, 27, called 911 at about 12: 30 a.m. on March 21, 2010, after he saw Bowser kick Tyler Archer in the side and then knee him in the back as Archer was down on the grass.

Hibbard was with friends at Swans Brew Pub, on the corner of Pandora and Store streets, and saw the brawl outside Social Club, followed by Archer's arrest.

Asked by Mike Tammen, a lawyer for the Office of the Police Complaint Commissioner, why he called 911, Hibbard replied: "I thought the individual on the ground was going to wind up getting hurt. He was definitely being treated in a way that could cause some serious harm to him and I didn't think it was appropriate and I decided to step in."

The public hearing was ordered by the OPCC after video footage of the incident appeared on YouTube,

sparking outrage and debate over whether the level of force used by the officers was acceptable.

Robinson's lawyer, David Butcher, referred to Hibbard's statement to Vancouver police in which he said the officer's actions were inappropriate because it looked as if Archer was not being combative and he was handcuffed.

Butcher pointed out that Archer was not handcuffed.

"I don't feel like that level of force is ever really acceptable on a person lying on the ground," Hibbard said. "He didn't . . . look to be fighting back."

Adjudicator Ben Casson, a retired provincial court judge, heard Hibbard's 911 call in which he called for "fresh" cops to come down to the club. The call taker said there were already police officers there, to which Hibbard replied: "The police right now are doing a terrible f---ing job."

Grace McCrimmon, 62, was driving over the Johnson Street Bridge and stopped her car on Store Street when she witnessed officers running to break up the brawl. She told the hearing: "I saw officer Chris Bowser . . . just kind of bashing and kicking and I was going, 'Is that the way you treat the people?' I didn't like that . . . and I stayed to witness the rest."

McCrimmon said she heard Bowser tell Archer, with a very authoritative voice, to get down on the ground. "And the young man sat down, and an officer with dark hair pushed him on his side. And I thought, 'Wow, that was a heavy push.' And the fellow, Tyler, I would say was being very co-operative and he didn't fight, he wasn't combatting the police or anything like that."

McCrimmon said she honked her horn over and over to try to distract Bowser. "The young man was going 'Ow,' and I was feeling the pain for him. I feel the need for the knee on the back and the kicks, it was not necessary."

McCrimmon was so angry she got out of her car and tried to get another officer to help Archer, pointing out that his nose was bleeding. "My heart was bleeding for the kicks that Tyler got," she said.

Michael Morellato, from Burnaby, who filmed the 56second video and uploaded it to YouTube, told the hearing he had been visiting Victoria with his wife and friends when they came upon the aftermath of the brawl.

Morellato started recording with his digital camera, capturing Bowser as he kicked Harpinder Kang, who was being arrested in front of Social Club, and then filmed Robinson and Bowser handcuff Archer.

Morellato said while Archer quickly complied with the demand to get down on the ground by sitting and then getting down on all fours, "he kind of looked like a guy who didn't know to go straight down on the ground and put his face on the ground."

Morellato said he filmed the incident because he thought he was witnessing something "unique."

After the hearing, Morellato said: "Regardless of the outcome of this, I think it's good to show what

really did happen."

Two investigations cleared the officers of wrongdoing, but Police Complaint Commissioner Stan Lowe disagreed and ordered the public hearing. kderosa@timescolonist.com

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THE CAPITAL

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Use-of-force expert defends police actions

Man who was kicked and kneed seemed to be crawling away: cop

LEAH DEARDEN
Times Colonist

The defence lawyer for Tyler Archer, a 20-year-old man whose arrest by two Victoria police officers has sparked three investigations and now a public hearing, grilled a use-of-force expert Monday over whether a video of the incident posted on YouTube showed excessive force.

Richard Neary went through the 56-second video frame by frame, dissecting the amount of time that passes between Const. Chris Bowser giving orders to Archer and subsequent

kick and knee strikes by Bowser.

Archer's forcible arrest on March 21, 2010, after a brawl outside the downtown Social Club, is the subject of a public hearing by the Office of the Police Complaint Commissioner.

Vancouver police Const. Darren Hall, a certified use-of-force instructor, has written a report supporting the actions of the officers.

Hall agreed with Neary Monday that on the video, Archer appears cooperative as he sits down on the ground within two seconds of being ordered to do so by Bowser.

"Did you see any actions by Archer that show aggression?" Neary asked.

"By the time he comes into view, he seems to be responding to commands from Const. Bowser. I don't see anything in the body language that he would represent an imminent threat," Hall said.

Archer can be heard saying, "I'm fine, I got punched in the face," once he's on the ground. Const. Brendan Robinson comes quickly into the frame, grabbing Archer and pushing him onto his hands and knees.

Neary pointed out a frame where Archer brings his right hand back and is in Robinson's grip. He said says his client would have fallen flat on his face if he'd offered his left hand to be

handcuffed.

Archer was already bleeding from a broken nose suffered during the late-night brawl. There was never any proof Archer had a role in an assault against Ryan Pylesen, who was lying unconscious on the sidewalk.

Bowser gets his handcuffs, tells Archer to put his hands behind his back and within two seconds, delivers a hard kick to Archer's side. That is followed by two knee strikes to the middle of Archer's back.

Hall said during those two seconds, Archer appears to be crawling away, which is what he believes prompted Bowser's decision to deliver the kick. "He is not putting his hands behind his back and

he's crawling away from police," Hall said.

Hall said officers are taught to tell people exactly what they want the person to do, such as "The flat on your stomach with your arms at your side." Bowser did not do this, Hall said.

Hall testified earlier in the day that officers should avoid striking the spine or kidneys of people they are subduing, since it can do permanent damage.

Neary said the kick was to Archer's kidney and the knee strikes to his spine. Hall disagreed, saying the impact was close but not directly on the kidneys or back.

Hall refused to use the word "kick. He said that while the action looks like a kick to the average person,

the word has a negative connotation and doesn't communicate the purpose behind the action. He called the action a "stun."

Neary said Hall has examined about 30 use-of-force cases by police and in every one, found the force used was appropriate.

Neary also quoted Bowser's statement to police investigators that when Bowser watches the video, he sees excellent police work and that he should be get a commendation.

While three investigations by outside police departments cleared the officers of wrongdoing, the adjudicator Ben Casson has the power to recommend discipline if he decides excessive force was used. leahd@timescolonist.com

Expert relied on police version of arrest, hearing told

Officers' use of force during downtown brawl come under scrutiny

LOUISE DICKSON
Times Colonist

A use-of-force expert relied on the police version of what happened during a chaotic brawl outside Social Club in March 2010 even though it was inaccurate, a public hearing learned this week.

John McKay, a former member of the RCMP, a former member of the Police Department, was asked to prepare a report on the actions of Victoria police constables Chris Bowser and Brendan Robinson, which were caught on camera and seen more than 270,000 times on YouTube.

McKay's final report, submitted to the public hearing, clears both officers of allegations of abuse of force against 20-year-old Tyler Archer and Hanyard Kang.

McKay concluded that "if the police version of events is correct, the officers' use of force in handcuffing Archer and Kang was within training and use-of-force guidelines."

The public hearing, which is examining the force used by Bowser and Robinson, was ordered in February by the Office of the Police Complaint Commissioner.

During cross-examination, Archer's lawyer, Richard Neary, asked McKay if he had ever prepared a draft report on the incident. McKay said he could not remember. However, over the lunch hour, Robinson's lawyer, David Butcher, found a copy of a use-of-force document marked "draft."

As he scanned the draft, Neary noted that it contained statements by Kang and Archer describing what happened outside the Shore Street bar that night.

Kang said he was standing in line and had a pushing match with an unknown man. Suddenly, he was pepper-sprayed, taken to the ground, handcuffed and kicked.

Archer said he had been attacked by several men as he walked by the club. He went to speak to a police officer and was told to get on the ground, which he did. As he complied, one officer knelt on him and another kicked him.

In the first draft, McKay concluded that if Kang's and Archer's version of events were correct, the use of force by the officers did not fall within training and use-of-force guidelines.

That version of events was deleted from McKay's final report, noted Neary.

"The police version becomes your version," he said.

McKay replied that the video of the event was closer to the police version. Archer's version of events wasn't supported by the video because he left things out, he said.

Neary argued that the video does not support the police version, either. In a statement to Vancouver police, Bowser said he told Kang twice to put his hands behind his back and gave him a chance to comply before he kicked him.

McKay agreed that did not happen. In the 55-second video of the incident, Bowser walks over, says nothing and kicks Kang in the buttocks twice.

Bowser also told Vancouver police he gave Archer two commands to put his hands behind his back before he kicked him, Neary said.

The video shows Bowser yelling at Archer twice to get down on the ground. Archer sits on the grass. Robinson rushes in and pushes him over. Bowser yells, "Put your hands behind your back," and a second later delivers a hard kick to Archer's side. The kick is followed by two more knee jabs to Archer's back.

Archer was compliant within seconds of Bowser telling him to

get on the ground, Neary said. McKay agreed. "Yes. He got his butt on the ground."

Bowser thought Archer was compliant, McKay said. But Robinson thought Archer was resisting because he sat on the ground rather than getting down in a prone position — which he was never told to do.

Neary suggested the officers could have told Archer to lie on his stomach.

"Precise instructions would have been better than a wrestling match," Neary said.

McKay said the officers were dealing with a volatile bar brawl, a crowd of about 60 people, and an unconscious man who needed medical help. They believed they had to get the situation under control as quickly as possible.

"These situations can quickly escalate and grow into a full-blown riot," he said.

McKay told the hearing he has written more than 500 opinions on use of force and testified at more than 40 trials, public hearings and tribunals. He has testified four times against police, he said, noting that about 10 per cent of his reports did not support police.

McKay told the hearing he testified that he believed the force used by North Vancouver RCMP Const. Donovan Tait, who punched a handcuffed suspect three times in the face, breaking his jaw, was reasonable. Tait was convicted of assault causing bodily harm in 2015.

Initially, New Westminster police Chief Dave Jones, as disciplinary authority, substantiated allegations of excessive force against Bowser and Robinson in their treatment of Archer and recommended the officers receive a reprimand.

However, during the disciplinary proceedings, both officers and a use-of-force expert testified.

Archer and Kang, who were not allowed legal representation, with drew their complaints.

Jones reviewed and reversed his decision. At that point, Police Complaint Commissioner Sean Lowe ordered a public hearing.

Neary said the hearing continues Sept. 28. ldickson@timescolonist.com



A video posted online in March 2010 shows Victoria police officers making arrests during a brawl outside the Social Club.

THE MAKING OF A VIRAL VIDEO

March 21, 2010 — Const. Chris Bowser and Const. Brendan Robinson are caught on telephone camera in the midst of a brawl outside a Shore Street bar. Bowser is seen kicking Tyler Archer, and the video quickly goes viral on YouTube.

March 25, 2010 — Office of the Police Complaint Commissioner (OPCC) issues an order to investigate in an order to investigate.

May 4, 2010 — Richard Neary, lawyer for Tyler Archer and Hanyard Kang, officially submits complaint forms to the OPCC on behalf of his clients.

May 12, 2010 — Concerned citizen Gordon Reynolds files a third-party complaint.

April 14, 2010 — V690 Chief James Graham asks Calgary Police Services members, led by Sgt. Hany Danks, to investigate the incident. Graham delegates his discipline authority to New Westminster Police Service Chief Dave Jones.

Sept. 15, 2010 — Archer and Kang draw the notices of civil claim.

Dec. 29, 2010 — New Westminster Police Chief Dave Jones, as disciplinary authority, substantiated allegations of excessive force against Bowser and Robinson in their treatment of Archer and recommended the officers receive a reprimand.

Ferries cancelled after mechanical failure

A mechanical failure cancelled two B.C. Ferries sailings between Vancouver and Victoria on Saturday morning.

B.C. Ferries spokeswoman Deborah Marshall said mechanical issues had to replace a hearing on the Spirit of British Columbia.

route continued their service. The Queen of New Westminster and Coastal Celebration sailed in place of the Spirit of British Columbia. The one-sailing wait was cleared up by noon.

—Times Colonist

NOTICE OF WATERMAIN FLUSHING

In order to maintain satisfactory water quality throughout the distribution system, water main flushing is scheduled to start October 1st to December 31st, 2012, weather permitting.

Business and other customers who wish advance notification of flushing in their immediate area are requested to call Waterworks at 250-475-5481 between 8:00 am and 4:30 pm, Monday to Friday. Any discolouration is temporary and users are asked to minimize consumption if a change in water appearance is noticed. The District of Saanich accepts no liability for inconvenience or damages caused by water use during its flushing program.

Your cooperation and understanding are appreciated.

Louise Dickson and Jeff Bell (/authors?author=Louise Dickson and Jeff Bell) / Times Colonist
March 28, 2013

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Images from video posted to YouTube from downtown Victoria showing Const. Chris Bowser kicking a suspect. Photograph by: YouTube

Images from video posted to YouTube from downtown Victoria showing Const. Chris Bowser kicking a suspect. Photograph by: YouTube

A Victoria police officer abused his authority and used unnecessary force when he arrested Tyler Archer on March 21, 2010, a hearing has determined.

The kicking and kneeling incident involving constables Chris Bowser, 40, and Brendan Robinson, 26, was captured on video and posted to YouTube, where it has been watched thousands of times. The officers had been called to deal with a brawl outside a bar on Store Street.

On Wednesday, adjudicator Ben Casson, who presided over the hearing ordered by the Office of the Police Complaint Commissioner, found both Bowser and Robinson used excessive force during the arrest of Archer, a then 21-year-old Claremont Secondary School graduate who played for the Junior Shamrocks lacrosse team.

Casson found Bowser abused his authority by not intervening when Robinson rushed in and tackled Archer, and by delivering foot and knee strikes to Archer's body.

Bowser will face a disciplinary hearing, tentatively scheduled for April 5.

The adjudicator did not find Robinson abused his authority. Rather, he found Robinson, who was in his first year on the job, made a series of errors before tackling Archer, who was sitting on the ground, about to be handcuffed by Bowser. Casson found Robinson failed to pause and assess the situation, misinterpreted Archer's behaviour as non-compliant and failed to give clear commands.

"I do not believe that it is the intention of the Police Act to subject a police officer to disciplinary proceedings when they used unnecessary force based on an honest but mistaken perception of an occurrence," Casson said.

Bowser's perception that Archer was a threat should have been dispelled when the young man got down on the ground as he was commanded to do and rolled onto his buttocks, Casson said.

Archer's lawyer, Richard Neary, who is also representing him in a civil suit, said the decision has been a long time coming. "The way Const. Bowser has been exonerated up to this point has been a real appalling miscarriage of justice. ... That's been exposed now and that's a tremendous relief." Bowser's actions were cleared in probes by three other police forces.

"I would wager that the City of Victoria has spent hundreds of thousands of dollars trying to defend Bowser's actions and refusing to admit that what happened to Archer was wrong," Neary said.

"It's been a long road and I'm just relieved that it's over," said Archer, who attended Casson's announcement with his mother.

Acting Victoria police chief John Ducker expressed disappointment in the ruling but said the department respects the process. "These officers are called to move in on very difficult, very challenging situations . . . and make perfect decisions in a matter of seconds." Ducker said video of the incident provided only a "narrow focus." He said it will take careful analysis of the ruling before a decision is made on whether to appeal.

Penalties can range from a verbal warning to dismissal, Ducker said.

"These are some of the best officers we have in the department. I don't feel they were acting unreasonably."

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Victoria police officer used unnecessary force in nightclub brawl, hearing finds

By Daniel Palmer - Victoria News

Published: March 27, 2013 5:00 PM

Updated: March 28, 2013 10:54 AM

A public hearing into the conduct of two Victoria Police Department officers found one officer used unnecessary force and abused his authority when he kicked a Saanich man outside a downtown Victoria nightclub three years ago.

B.C.'s police complaint commissioner ordered the hearing after New Westminster Police and Vancouver Police both conducted separate investigations into the March 24, 2010 incident and cleared Const. Chris Bowser and Const. Brendan Robinson of wrongdoing.

But on Wednesday, retired provincial court judge Ben Casson said Bowser overstepped his duties when he delivered a "thrusting, forceful kick" to the back of Tyler Archer, then 19 years old, outside the now-defunct Social Club in Market Square. Video of the incident went viral on YouTube.

Casson also vindicated Robinson of any wrongdoing. Bowser will now face disciplinary action from the police complaint commissioner that ranges from a written reprimand to being fired.

"We're disappointed in the ruling," said Acting VicPD Chief John Ducker outside the Office of the Police Complaint Commissioner. "These officers are charged with going into very challenging situations, fuelled by alcohol and drugs, and making perfect decisions in a matter of seconds."

In the video, Bowser kicks Archer and thrusts his knees into Archer's back several times. Archer displayed no signs of aggressive behaviour and was complying with Bowser's demand to get on the ground, Casson said.

Casson said the video evidence placed him like a "fact-finder" at the scene of the incident, and "the chaos Const. Bowser and Robinson have described" in justifying their actions was not apparent in the footage.

VicPD is still discussing whether or not to appeal the decision, Ducker said, as the process has dragged out for more than three years already.

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Apr 19, 2013

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Images from video posted to YouTube from downtown Victoria showing Const. Chris Bowser kicking a suspect. Photograph by: YouTube

Images from video posted to YouTube from downtown Victoria showing Const. Chris Bowser kicking a suspect. Photograph by: YouTube

A Victoria police officer who abused his authority by using excessive force when he arrested a young man during a drunken brawl on Store Street three years ago will be suspended without pay for two days.

Const. Chris Bowser must also take six hours of use-of-force retraining with an emphasis on reducing potentially violent conflict and participate in an anger-management assessment.

The disciplinary measures were imposed Friday by adjudicator Ben Casson at the conclusion of a public hearing ordered by the Police Complaint Commissioner.

Last month, Casson found that Bowser, 41, and Const. Brendan Robinson, 27, used excessive force when they arrested Tyler Archer on March 21, 2010. A video of the incident, captured on video and posted to YouTube, has been viewed more than 280,000 times.

The video shows Bowser commanding Archer to get on the ground. On the second command, Archer sits down. Bowser moves forward, suggesting he is about to handcuff Archer, when Robinson charges toward Archer and tackles him. In the ensuing struggle, Bowser delivers a hard kick to the left side of Archer's exposed torso and knees Archer twice in the middle of the back.

Casson found Robinson, who was in his first year on the job, made mistakes but did not abuse his authority. He found

Bowser abused his authority by not intervening when Robinson tackled Archer.

"Not only did Const. Bowser not intervene to prevent Const. Robinson's unnecessary use of force, he escalated the use of such force by delivering foot and knee strikes to vulnerable parts of Archer's body," Casson found.

Any perception that Archer was a threat should have been dispelled the instant he got down on the ground as commanded, Casson said.

At Bowser's disciplinary hearing on April 5, Bowser's lawyer, Dennis Murray, and public hearing counsel Michael Tammen made a joint submission asking for a two-day suspension, retraining and anger-management assessment. Casson accepted their submission without change.

Casson said he was not concerned with the likelihood of future misconduct and noted that Bowser had no prior history of misconduct during his 15 years as a police officer.

He found the aggravating factors in the case to be the nature of the force used by Bowser to handcuff Archer and the vulnerable areas of the body Bowser struck.

Victoria Police Chief Jamie Graham said the department respects the sanctions imposed by Casson.

"We will review the details of the decision and the circumstances of this case to determine if changes or adjustments should be made to our policies and procedures," Graham said in a statement.

"The department continues to support the civilian oversight mechanisms that are in place in this province and the important work that they do ensuring public confidence in the work that we do."

Victoria lawyer Richard Neary, who is representing Archer in a civil suit, said Casson did an admirable job.

"Chris Bowser says he now accepts responsibility and he knows what he did is wrong. The Victoria Police Department says they accept the outcome of these proceedings," said Neary.

"It's time now for the long-awaited apology that my client asked for for three years, and it's time for Victoria police to quit denying liability in the civil suit. If they don't, frankly, all of these comments about accepting responsibility and accepting this outcome are meaningless."

Much of the disciplinary hearing was overshadowed by comments made by Victoria Deputy Police Chief John Ducker immediately after Casson's finding that Bowser abused his authority.

Ducker, in his role as acting police chief, said: "These are some of the best officers we have in the department. I don't believe they were acting unreasonably."

Tammen called the remarks unfortunate, ill-advised and inappropriate, particularly because they were made before the hearing concluded.

Casson called the remarks outrageous and on Friday said he would write to Police Complaint Commissioner Stan Lowe and suggest an amendment to the Police Act that would give adjudicators the power to instruct counsel to apply for a contempt order.

"Adjudicators do not have power to hold people in contempt," Tammen said. "So the adjudicator is powerless to do anything about the comments that offended him. All the commissioner can do is ask the legislature to make changes to the Police Act. Whether the legislature makes the changes is anybody's guess."

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Saanich officer cleared of deceit in arresting man 'found' drunk in a public place

Louise Dickson / Times Colonist

July 8, 2013 09:26 PM



A 56-year-old with more than a dozen previous break-in convictions is back in jail after being arrested in connection with two break-ins in Saanich in mid-August. Photograph By ADRIAN LAM, Times Colonist

A Saanich police officer who persuaded a drunken, combative man to leave his house, then arrested him for being intoxicated in a public place, has been cleared of deceit and will be reinstated as a first-class constable.

On Monday, a public hearing ordered by the Office of the Police Complaint Commissioner found Const. David Smit did not make false statements to his supervisors after the May 20, 2011, incident.

A Saanich police investigation in 2012 found Smit was deceitful and abused his authority when he falsely arrested the man by pretending he had been found intoxicated in a public place. Smit was suspended for seven days without pay for abusing his authority. His rank was reduced to third-class constable on the deceit allegation.

In his five-page decision released Monday, adjudicator Jakob de Villiers upheld the finding that Smit abused his authority and agreed that a seven-day suspension without pay was a proper and adequate punishment. He found the case for deceit was not proved.

"My client is grateful that he has been cleared of the most serious and troubling allegations of deceit," said Smit's lawyer, Richard Neary. "He was deeply troubled, because at no time did he ever intend to deceive anyone. He accepts the finding with respect to the impropriety of the arrest, but maintains that

something needed to be done and he was simply trying to do the right thing ... It was just a matter of not going about it in the right way."

Smit had appealed the findings of misconduct and requested the public hearing, which began in May and sat for about 10 days.

On the evening of May 20, 2011, police received a telephone call from a woman, complaining that her intoxicated husband had assaulted her son. When Smit arrived at the house, the woman met him at the door and asked Smit to intervene to prevent another assault.

Smit, wrongly, did not believe he had the legal power to arrest the father for assault, said de Villiers.

"He was, however, of the opinion that if the father were to be found in a public place while under the influence of alcohol, he could lawfully be arrested pursuant to the Liquor Control and Licensing Act, held in custody until he sobered up and then released with or without a charge," de Villiers wrote in his decision.

Smit misunderstood the law, de Villiers said. He did have the right to enter the house and had grounds to arrest the father for assault. Instead, Smit asked the father to come outside onto the public sidewalk and arrested him for being found drunk in a public place.

"Whatever Const. Smit's motive for the arrest was, it was unlawful and dishonest, and he ought to have known that," de Villiers wrote.

The incident came to the attention of a superior officer, who became outraged by what he perceived to be improper conduct. The supervisor ordered the father released and returned home, without considering whether he might be detained for assault. When the father returned home, the mother and son left for a friend's home for the night.

Disciplinary proceedings ensued against Smit.

During a meeting after the incident, Smit was in emotional distress and struggling to articulate, de Villiers found. Although Smit inadvertently misstated the facts, he did correct himself and his superiors were not misled, the adjudicator found.

"It is clear that he, understandably, was very upset by the hostile allegations against him," de Villiers said.

Smit made the arrest not for any improper personal purpose but to prevent further violence and protect the mother and son, he found. "The father had nothing to complain about. His violent conduct and threats deserved consequences. He was lucky he was not prosecuted for assault."

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