

# Civilian watchdog finds constable guilty of using excessive force

## Internal probe had cleared officer in Taser incident

Paula McCooey, with files from Joanne Laucius  
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An Ottawa police officer who was earlier cleared by his colleagues in an internal investigation has been found guilty of misconduct by the Ontario Civilian Commission on Police Services.

The Ottawa police professional standards unit had cleared Const. Paulo Batista and Const. James Jordon of criminal wrongdoing and professional misconduct after Paul Smith complained they needlessly used a Taser gun on him at a demonstration in 2003. But an adjudicator with the civilian commission has found that Const. Batista committed "unnecessary exercise of authority."

The ruling was made by adjudicator Robert Fitches after several months of hearings. In it, Mr. Fitches said Const. Batista "applied unnecessary force by using a Taser" on Mr. Smith, contrary to the Police Services Act.

Mr. Smith's lawyer, Matthew McGarvey, said yesterday the ruling is further evidence that the Ottawa police force should not be allowed to investigate its own officers.

"The Ottawa police investigated internally, saw the same videos and dismissed (Mr. Smith's) complaint as unfounded," Mr. McGarvey said. "And now another independent tribunal has found an officer guilty. It suggests to me that the internal investigation process is meaningless and we really should just have an independent mechanism for all of these (police organizations)."

Ottawa police Chief Vince Bevan disagreed, saying the findings "are not necessarily contradictory."

"One is an investigation and the other is a hearing, which is akin to a trial," Chief Bevan said. "These are two different streams in the discipline process. This doesn't necessarily mean there was a flaw in the original investigation." Still, the chief said he accepts the adjudicator's findings. "The officer subjected Mr. Smith to more force than was necessary," he said.

Until he is sentenced by the commission, Const. Batista will be reassigned to another position within the force, with pay. While Const. Batista has the option of appealing the decision, Chief Bevan said the department won't appeal.

Const. Batista's lawyer could not be reached for comment.

The Police Services Act charges against the two officers stemmed from a May 29, 2003, protest outside a Citizenship and Immigration office.

Const. Jordon was acquitted because he was not the officer who used the "pain compliance device" on Mr. Smith -- a self-described expert in civil disobedience. Mr.

Smith said Const. Jordon asked Const. Batista to get the Taser while he held Mr. Smith down.

"At least there is something," Mr. Smith said of the ruling. "I wouldn't have been surprised if there was nothing." After the internal police investigation, Mr. Smith took the matter to the civilian commission, which ordered the charges in October 2004.

At the time, the commission found there was sufficient evidence that by using a stun gun on Mr. Smith, the officers may have used "unnecessary force" and "may have committed misconduct of a serious nature."

During the protest, Mr. Smith was on release conditions stemming from a charges laid at a previous protest.

During the May 2003 protest, an RCMP officer recognized Mr. Smith from the previous protest and said he was under arrest for violating his conditions. Mr. Smith said he told the officer he was not violating the conditions, and was simply watching the protest.

According to police and Mr. Smith, he was arrested despite providing the officers with a copy of the release conditions, which he was carrying.

Central to the case were three videotapes of the arrest. The tapes show several protesters and police in a confused scene on the street. Mr. Smith is seen being held against a vehicle and handcuffed. As he is being led away, he goes limp and falls to the ground. Minutes later, the video shows him screaming as an officer zaps his upper leg twice with the 50,000-volt Taser. He is then pulled to his feet and led to a police car.

"I was not resisting the arrest and he (Const. Jordon) escalated the incident by twisting my arms behind my back and strangling me," Mr. Smith said. Rather than co-operate at this point, he said, "I thought 'This is ridiculous, it can't get any worse than this.' So I ... let my entire body go limp."

Const. Jordon told him to get up, then asked his partner to get the Taser, Mr. Smith said.

Mr. McGarvey said the video evidence was "key" to yesterday's ruling.

"Officer Batista testified that Paul Smith was moving quite (aggressively) and that is inconsistent with everybody's else's videotaped evidence," said Mr. McGarvey.

The Ontario Civilian Commission on Police Services is an independent provincial agency that hears appeals of police disciplinary penalties an investigates civilian complaints.