

## Tasering violated man's rights, judge rules

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A Toronto police emergency task force officer used "unnecessary force" when he fired his Taser at a man "lying face down on the floor, handcuffed ... fully restrained and compliant," an Ontario Superior Court Justice ruled yesterday.

Justice David Brown also found the officer fired his Taser at the man's back almost two minutes after another ETF officer had fired his stun gun at the man.

Police denied the allegations but Brown said he rejected their evidence and was staying the cocaine trafficking charge against Francis Walcott, 41. The large man seemed surprised and bowed his head yesterday as the judge read excerpts from his 44-page ruling.

"We review our policies to see whether they need to be changed and if any action needs to be taken in the wake of this decision we will do that," said police spokesperson Mark Pugash.

Toronto Police Chief Bill Blair is a proponent of Tasers and wants all his frontline officers to be equipped with them. In Ontario, only tactical units, hostage rescue teams and qualified frontline supervisors may use Tasers.

Walcott has been in custody at the Toronto (Don) Jail since his arrest almost a year ago. Brown said in his ruling the infringement of Walcott's Charter rights outweighed the "legitimate societal interest" in prosecuting the drug offence.

"Officer (Michael) Fonseca deployed his Taser well after Mr. Walcott had been subdued and handcuffed," the judge concluded.

"In addition, since the discharge of a Taser after a person has been restrained and controlled would have no other purpose than to punish the person ... I find that Officer Fonseca's discharge of his Taser on Mr. Walcott constituted cruel and unusual treatment."

Defence lawyer Adam Weisberg applied for a stay of proceedings on the ground that the ETF used an excessive amount of force, thereby infringing Walcott's Charter rights.

"The judge is sending a clear message that if you're going to use force on an individual it better be done appropriately," Weisberg said after the decision.

"He's upholding and protecting the rights of other people that may be subject to the inappropriate use of Tasers or other police weapons."

Last March 29, ETF officers along with other Toronto police officers executed a search warrant at a Parliament St. boarding house. When the officers entered a room they found Walcott naked with a woman. While making the arrest, the ETF officers fired their Tasers.

There was no dispute that Walcott was Tasered separately by Fonseca and officer Eric Reimer.

At issue in proceedings before the trial began was the timing of when the Tasers were deployed. According to police witnesses, including Fonseca and Reimer, the Tasers were fired "almost simultaneously," as Walcott came towards them.

While a senior officer also testified that "firing sequence information contained on the Tasers' data chips showed a difference of about 2 1/2 minutes," there was also evidence submitted that the Taser clocks are subject to "drift" that could explain differences in firing times recorded on the two Tasers.

The ETF officers all testified that if a suspect was under control, restrained and cuffed, it would be inappropriate to deploy a Taser against him, Brown said, summarizing testimony heard over 10 days in February and early this month.

The Crown has 30 days in which to appeal.

Walcott, originally from St. Lucia, smiled broadly before he was handcuffed and led out of court. He remains in custody on an "immigration hold."