

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

**AND**

**IN THE MATTER OF THE PUBLIC HEARING  
INTO THE COMPLAINT AGAINST  
CONSTABLE #369 ADAM PAGE  
OF THE ABBOTSFORD POLICE DEPARTMENT**

**DECISION ARISING FROM PUBLIC HEARING**

**PART II**

TO: Constable Adam Page, Abbotsford Police Department

AND TO: Chief Constable Bob Rich, Abbotsford Police Department, Discipline Authority

AND TO: Mr. Stan Lowe, Police Complaint Commissioner

AND TO: Mr. Joe Doyle, Counsel for Police Complaint Commissioner

AND TO: Mr. Kevin Woodall, Counsel for Constable Page

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***Introduction***

[1] I provided reasons on February 25, 2013 setting forth my finding that Const. Page committed the disciplinary default of abuse of authority when he assaulted Mr. Darrell Kerr on September 20, 2009, and the disciplinary defaults of deceit when he made false or misleading statements on December 21, 2010, and again on March 1, 2011, in relation to the assault. Counsel appeared on April 4, 2013 to make submissions with the respect to sanction or penalty.

[2] Public hearing counsel submitted that the circumstances surrounding the defaults and their character should compel consideration of dismissal from police service or a lengthy suspension without pay. Counsel for Const. Page submitted that dismissal was not an option that should be considered in the circumstances, but that a suspension of

three scheduled working days without pay in respect of the default of assault, and fifteen days in respect of the defaults of deceit would be appropriate.

***The Regulatory and Statutory Parameters***

[3] The default of abuse of authority by way of assault occurred on September 20, 2009. As a result, the imposition of a penalty is governed by the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98, in force at the time. The defaults of deceit occurred after March 31, 2010, by which time amendments to the *Police Act*, RSBC 1996, c. 267, had been proclaimed so that discipline was governed by the *Act* and not by the *Regulation*.

[4] In relation to sanction, s. 19 of the *Regulation* provided as follows:

19 (1) After finding that a disciplinary default has occurred, the discipline authority may impose one or more of the following disciplinary or corrective measures in relation to the police officer concerned:

- (a) dismissal;
- (b) reduction in rank;
- (c) transfer or reassignment;
- (d) suspension without pay for not more than 5 scheduled working days;
- (e) direction to work under close supervision;
- (f) direction to undertake special training or retraining;
- (g) direction to undertake professional counseling;
- (h) written reprimand;
- (i) verbal reprimand.

(2) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, the discipline authority must choose the least onerous

disciplinary or corrective measures in relation to the police officer concerned unless one or both of the following would be undermined:

- (a) organizational effectiveness of the municipal police department with which the police officer is employed;
- (b) public confidence in the administration of police discipline.

[5] Section 19(4) required consideration of aggravating and mitigating circumstances. That requirement did not differ in any material respect from the comparable provision continued in s. 126 of the *Police Act*. Section 126 provided as follows:

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [*complainant's right to make submissions*], the discipline authority must, subject to this section and sections 141 (10) [*review on the record*] and 143 (9) [*public hearing*], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,



- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
  - (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
  - (d) the likelihood of future misconduct by the member,
  - (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
  - (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
  - (g) the range of disciplinary or corrective measures taken in similar circumstances, and
  - (h) other aggravating or mitigating factors.
- (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.

[6] The principal difference between s. 19 of the *Regulation* and s. 126 of the *Act* is omission from the *Act* of a provision comparable to s. 19(3). In my opinion, s. 126(3) is broad enough to require consideration of the effect of any sanction on organizational effectiveness and consideration of its effect on public confidence in the administration of police discipline. While the requirement that the discipline authority choose the least onerous disciplinary or corrective measure unless organizational effectiveness or public confidence in the administration of police discipline would be undermined has been removed, the overriding principle under the *Act* remains the imposition of a sanction that corrects and educates the member unless it is unworkable or would bring the administration of police discipline into disrepute.



*Should Dismissal be Considered an Option?*

*(a) Assault*

[7] Dismissal is the most severe of the permitted sanctions. It neither corrects nor educates the member. It punishes by terminating the member's employment. Therefore, in the context of the abuse of authority by way of assault of a civilian, I must decide whether the imposition of a lesser sanction directed at correcting or educating the officer would undermine organizational effectiveness, or public confidence in the administration of police discipline. If not, then a lesser sanction should be considered provided the sanction that is selected does not undermine public confidence in the administration of police discipline.

[8] No mandatory minimum sanction is attached to any disciplinary default. Similarly, there is nothing that deems any particular assault to undermine organizational effectiveness or public confidence in the administration of police discipline. Rather, as so well stated by Adjudicator Clancy *In the Matter of Constables Gemmell and Kojima*, PH 2004-01, the question to be considered is whether a reasonable man or woman aware of all the relevant circumstances would regard the omission to impose a sanction of dismissal in the circumstances of this assault would undermine public confidence in the administration of police discipline, and whether, from the Abbotsford Police Department's perspective the omission would undermine organizational effectiveness.

[9] The assault that was committed by the application of excessive force when taking physical control of a civilian who was handcuffed and under arrest, was not of the most severe kind. Mr. Kerr did not require medical attention. He did not complain about the officer's conduct. The circumstances that resulted in the report of the incident to police discipline authorities some seven months after its occurrence were not described in the course of the hearing. While Const. Page denied that he had improperly applied excessive force to Kerr, he did plead guilty to assault when he was charged. The court's assessment of the nature and severity of the assault were reflected in the sentence imposed; namely a conditional discharge subject to one year of probation. The record

indicates that Const. Page had no prior disciplinary defaults in the course of his then five-year police career.

[10] I find that a reasonable member of the public would conclude that the failure to consider dismissal in the context of this default of abuse of authority by way of assault would not undermine public confidence in the administration of police discipline. Likewise, I cannot conclude that the nature and character of this assault are such that ongoing employment with the Abbotsford Police Department would undermine organizational effectiveness. This is an example of a one-off incident associated with the arrest and detention of a suspect that cannot be condoned, but that, of itself, should not result in the termination of the officer's career. Lesser sanctions can lead to the correction of the officer's conduct and his useful and continuing role as a member of the police department. The threshold for the consideration of dismissal in relation to the disciplinary default of deceit has not been reached.

***(b) Deceit***

[11] In my opinion, deceit is the most serious disciplinary default that can be committed by a police officer. The fact an officer knowingly makes a false or misleading statement in a duty report or in the course of reporting to, or being interviewed by, a senior officer must adversely affect one's assessment of the officer's integrity and honesty, and one's assessment of his or her suitability to be or remain a member of a police department. Integrity is a core value the public has a right to expect and demand of police officers in order that the public will have confidence in the fair, lawful, and trustworthy administration of justice. Lying or the making of misleading statements in relation to an officer's dealings with a member of the public cannot be condoned. In my opinion, the public has a right to expect that dismissal will always be a sanction for consideration where deceit is at the core of a disciplinary default.

[12] In addition, it must be apparent that deceit compromises internal organizational effectiveness. A police organization must be able to expect and receive honest accounts of incidents and the involvement of officers in them from its members. Nothing can



compromise police effectiveness more readily than loss of confidence in an officer's preparedness to tell the truth to superiors whatever the consequences may be.

[13] In sum, I conclude that dismissal is an option that must be considered in relation to the disciplinary defaults of deceit in this case as urged by public hearing counsel.

### ***The Appropriate Sanctions***

[14] I have noted that while in no way excusable, the assault of Mr. Kerr in this case was moderate in nature. It resulted from the unnecessary, unjustified and excessive use of force to control Mr. Kerr in order that he could be moved to a police vehicle and then transported to a detention centre. The assault resulted from the officer's sudden and unexplained loss of temper.

[15] Having regard for the nature and circumstances of the default, I am satisfied that Const. Page should be suspended for three scheduled working days without pay, that being somewhat less than the maximum stipulated by the *Code of Professional Conduct Regulation* that applies to this default.

[16] I was advised that the officer has been engaged in a program of anger management. I direct that he complete that program to the satisfaction of supervising officers.

[17] The sanctions I have imposed appropriately reflect the seriousness of the default, Const. Page's record of employment, his eventual admission of the default, and the steps on which he has embarked in an effort to avoid a recurrence of this kind of incident.

[18] The determination of the appropriate sanction in relation to the two disciplinary defaults of deceit is difficult. In the context of the aggravating and mitigating circumstances enumerated in s. 126 of the *Act*, I would reiterate that deceit of any kind is serious and the seriousness is compounded by the repetition of false or misleading statements on successive occasions. One cannot ignore the fact that dismissal would obviously have an adverse effect upon Const. Page although he is likely well qualified for his prior occupation as a corrections officer. While the seriousness of the misconduct has



been brought home to Const. Page and one would hope that there would be no recurrence of a similar default, there is no assurance that in difficult personal circumstances he would not resort to misleading information in an attempt to avoid consequences associated with other shortcomings in his conduct.

[19] There are certain mitigating circumstances that should be taken into account in deciding whether dismissal is appropriate. I must note that the Chief Constable as the original discipline authority determined that the disciplinary defaults of deceit had not been substantiated contrary to the recommendations of the investigating officer. The Chief removed Const. Page from active patrol duties and assigned him first to the telephone response unit, and later to a role as one of four patrol administrative constables in the force responsible for providing administrative support and assistance to active patrols.

[20] The evidence at the penalty portion of this proceeding indicates that Const. Page has made an effort to perform at an acceptable level in the roles assigned to him. His supervising officer reports that the quality of Const. Page's work has been above average. In a letter provided at the request of public hearing counsel, the Chief does not state that he expects Const. Page will return to active patrol service, but he notes that "he continues to provide the same level of diligent work" as a PAC that he did when with the telephone response unit. The Chief does not say that it will be difficult or impossible to accommodate Const. Page as a member of the department other than on active patrol. I construe the Chief's support for Const. Page to be neither positive nor negative, but neutral.

[21] Const. Page provided a number of letters from fellow officers and supervisors attesting to his satisfactory performance. Sergeant Marshall, his supervising officer, described Const. Page as a "valuable member of our department [who] has continually contributed towards the department's goals." Sergeant Olson reported favourably on Const. Page's work as a PAC and in the telephone response unit. Staff Sergeant Kingra wrote to like effect.

[22] Counsel for Const. Page urges me to refrain from dismissing Const. Page. He says that the circumstances that resulted in dismissal in the Gemmell and Kojima matter with which Adjudicator Clancy was concerned were markedly more egregious than those that prevail in this case. Gemmell and Kojima were dismissed as a consequence of having participated in a series of severe assaults of a civilian who was taken to Stanley Park by the officers and there beaten. In addition to denying any wrongdoing, Gemmell and Kojima were found to have been deceitful throughout the discipline process. The deceit was directed at covering up a series of severe assaults in which the officers engaged. The circumstances are not comparable to those with which I am concerned where all of the circumstances were captured in an audio-visual recording.

[23] Counsel for Const. Page referred to a second instance that resulted in dismissal at the conclusion of a disciplinary proceeding that did not proceed to a public hearing. The decision is therefore not in the public domain. The officer in question was dismissed after fabricating an explanation regarding damage to a police vehicle which he was operating after consuming alcohol and while off duty. In addition to fabricating the circumstances, the officer failed to remain at the scene of an accident, failed to report an accident involving damage to property, and falsified a report on the time and date of the accident. Overall, the officer fabricated a description of events from beginning to end in an effort to exculpate himself.

[24] In this instance, Const. Page's actions were observed by two other individuals; namely a fellow officer and a drugstore loss prevention officer. His actions were video and voice-recorded. It is difficult to comprehend how he thought his statements whether written or oral would successfully contradict the recording.

[25] Counsel for Const. Page also cites a decision of mine at the disciplinary level that cannot be reported in which I imposed a five-day suspension on an officer who had made false or misleading statements about the circumstances surrounding entry to a private dwelling. In that case, public hearing counsel did not ask that I consider dismissal. The case was decided under the *Code of Professional Conduct Regulation* when the maximum period of suspension was five days as opposed to the thirty days now permitted



under the *Act*. I imposed the maximum suspension and made the sanction consecutive to three concurrent, two-day suspensions that had been imposed by the discipline authority in relation to the unlawful entry to a private residence. In effect, given the limited differences in the positions advanced by opposing counsel, the recommendations appeared to be much like a joint submission, something that is lacking in this case. I am not prepared to equate the circumstances in the two cases. Const. Page made his first statement fully aware of the content of the audio-video recording clearly displaying and contradicting his description of events. In the other matter to which counsel referred, the officer's statements derived from a recollection of the events surrounding entry to a dwelling in order to effect an arrest on an outstanding warrant.

[26] In sum, I conclude that dismissal is not warranted and find that a fully informed reasonable member of the public would concur. At the same time, I find that a reasonable member of the public would conclude that anything less than a lengthy suspension would bring the administration of police discipline into disrepute by failing to recognize the deleterious effect of deceit on the reasonable expectation that officers will act with integrity and honesty in their dealings with the public and their law enforcement agency.

[27] I conclude that the appropriate sanction in relation to each of the disciplinary defaults of deceit is suspension for twenty-five scheduled working days without pay. The suspensions will be concurrent, but consecutive to the three-day suspension for the disciplinary default of abuse of authority such that the total period of suspension will be twenty-eight days.

DATED at Vancouver, British Columbia, the 17<sup>th</sup> day of April, 2013.

"Ian H. Pitfield"

Ian H. Pitfield  
Adjudicator



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***Introduction***

[1] The Police Complaint Commissioner ordered a public hearing into the conduct of Constable Adam Page, a member of the Abbotsford Police Department. The hearing proceeded in Vancouver on February 18 and 19, 2013. At the commencement of the hearing, counsel outlined the allegations to be addressed at the hearing, namely that Const. Page abused his authority on September 20, 2009 when he used unnecessary force on Mr. Darrell Kerr, and that he made misleading or false statements in a written duty report dated December 21, 2010, and when being interviewed by Staff Sergeant C. Vreeman on March 1, 2011, in the course of an investigation into the officer's conduct.

[2] Const. Page was charged by indictment as a result of the assault of Kerr. He eventually pleaded guilty to the summary conviction offence of assault. He was given a conditional discharge in respect of which a one-year term of probation was imposed. At

the outset of this public hearing, Const. Page admitted the allegation of misconduct by abuse of authority. He denied the allegations of deceit. It follows that these reasons are concerned only with the question of whether misconduct by way of deceit has been proved on the balance of probabilities

*Overview*

[3] Counsel filed an agreed statement of facts, annexed to which were relevant documents. A digital audio-visual recording of Const. Page's interaction with Kerr was entered as an exhibit. Four witnesses testified: Ms. Risa Assimes, a loss prevention officer employed by London Drugs, Mr. Kerr, Constable Poulin and Const. Page. The relevant evidence is the following.

[4] Ms. Assimes was working as a loss prevention office at the Seven Oaks Shopping Mall, Abbotsford premises of London Drugs. On September 20, 2009, she detained Mr. Kerr alleging that he had stolen an electric toothbrush. Kerr accompanied Ms. Assimes to her office. The office was equipped with an audio-visual recording system which was operational. The relevant interaction between Assimes, Kerr, Const. Page and Const. Poulin was recorded and subsequently converted to VHS, and later DVD, format.

[5] Ms. Assimes called the Abbotsford Police Department to report the incident. In due course Const. Page and Const. Poulin arrived at Ms. Assimes's office. Kerr was seated on a bench against a wall in the office. Ms. Assimes was seated at her desk preparing a report to crown in relation to the alleged offence of shoplifting. In response to a question from Const. Page, Ms. Assimes said Kerr had been very, very cooperative and a "real nice guy". All was calm.

[6] The DVD shows that Const. Page donned gloves and approached Kerr who then stood up apparently in response to a direction from Const. Page although the audio is not clear. In response to a direction from Const. Page, Kerr turned around and placed his hands behind his back whereupon Const. Page handcuffed him.

[7] Const. Page asked Kerr a number of questions about his activities that day, his past contacts with police, and his alcohol and drug use. Kerr was generally forthcoming, but stated that had not used drugs or alcohol for two years. At the hearing, Kerr admitted that statement was false. Const. Page searched the pockets of Kerr's coat but did not search Kerr. In response to a request for identification, Kerr produced a driver's licence that he said did not contain his current address. He said the sticker that had been issued to reflect the change of address had come off and been lost. When asked where he was living, Kerr said he lived alone at 3665-264<sup>th</sup> Street, in Langley. There is no evidence on the question of whether that was or was not his correct address at the time.

[8] Const. Page asked about a phone at the residence and Kerr replied that there was none but he had a cell phone. Const. Page asked where the cell phone was. Kerr attempted to move his handcuffed hands to the left pocket of the pants he was wearing, seemingly to produce the cell phone. There is no evidence on the question of whether Kerr actually had a cell phone in his pocket.

[9] As Kerr was reaching for his pocket, the following conversation ensued:

Page: Cell phone?

Kerr: I do have a cell phone.

Page: Where's that at?

Kerr: Pardon

Page: Where's that at?

Kerr: (indecipherable)

Page: J - just so you know, is it - so you for sure live there right, by yourself?  
Nobody else?

Kerr: Well it's the -

Page: Because when I send the RCMP there and they show up it's obstruction,  
that's what it is.

Kerr: Oh, I'm (indecipherable) I don't know, I -

Page: (indecipherable) if not -

Kerr: -just gave you m stinking address, alright? Fuck.

Page: Okay, then fine. Answer my questions straight up.

Kerr: I have been. You haven't been straight with me. Y - You're asking me  
double questions.

Page: Now you're gonna go. All the way out to the fuckin car... you got me?  
Come on.



[10] The visual component of the DVD gives context to the transcript. Const. Page's voice was calm, as were his actions, up to the point at which he asked Kerr where his cell phone "was at". His tone of voice changed markedly at that point. He became verbally aggressive with Kerr as he warned him about obstruction. Immediately after Kerr said in a raised voice "you're asking me double questions" Const. Page grabbed Kerr who was seated on the bench, pulled him up, turned him around, placed him in a combination arm and head lock, and pushed him forward into the wall. The impact with which Kerr's right shoulder hit the wall openly fractured the drywall at the point of contact.

[11] Kerr did not file a complaint with the Police Complaint Commissioner. However, on April 13, 2010, the Commissioner received information from Staff Sergeant Vreeman of the Abbotsford Police Department's Professional Standards Section advising of allegations of on-duty misconduct on the part of Const. Page. On April 19, 2010, the Commissioner ordered an investigation into the allegations. Staff Sgt. Vreeman also undertook a criminal investigation and on March 14, 2011, crown approved a charge of assault against Const. Page.

[12] In the course of the discipline investigation Staff Sgt. Vreeman required Const. Page to prepare a duty report recounting the incident involving Kerr. In that report dated December 21, 2010, Const. Page said the Kerr had exhibited a "1,000 yard stare", he had instructed Kerr to stand up before he grabbed him, Kerr unsuccessfully attempted to pull away from Const. Page, and he stepped on Kerr's right calf and ankle, lost his balance, and fell forward into Kerr, pushing him into the wall.

[13] Staff Sgt. Vreeman interviewed Const. Page on March 1, 2011, at which time Const. Page repeated much of what he had said in the duty report, namely that Kerr stared down Const. Page which he took to be unnerving, Kerr tried to pull away from Const. Page, and he stepped on the back of Kerr's right calf which caused him to lose his balance and fall against Kerr. In that interview Const. Page also stated that he had contacted Ms. Assimes on September 20, 2008 to advise her that someone would attend at London Drugs to take a picture of the wall, get a statement from her, and obtain a copy of the video.

[14] Staff Sgt. Vreeman considered the statements made by Const. Page on December 21, 2010 and March 1, 2011 to be false or misleading. He submitted a final investigation report to the designated discipline authority, Deputy Chief Goerke of the Abbotsford Police Department, in which he recommended that the allegation of abuse of authority and the allegations of deceit be substantiated. The Deputy Chief concluded that the evidence appeared to substantiate all allegations and the matter was referred to a discipline proceeding. The discipline proceeding commenced on July 5, 2011 before Chief Constable Rich of the Abbotsford Police Department, but was adjourned pending the outcome of the assault charge.

[15] Const. Page pleaded guilty to the summary conviction offence of assault on April 12, 2012. The discipline proceeding continued thereafter and concluded on June 18, 2012. On July 3, 2012, Chief Constable Rich issued his decision stating that he had concluded that the disciplinary default of abuse of authority had been substantiated, but that the disciplinary defaults of deceit had not been substantiated.

[16] The Commissioner reviewed the Chief Constable's determination, concluded that there was a reasonable basis to believe that the finding in relation to the allegations of misconduct by way of deceit were incorrect, and ordered that this public hearing be convened.

[17] Section 77 (1) of the *Police Act* provides that "misconduct" means conduct that constitutes a public trust offence described in s. 77(2). Section 77(2)(f) provides that deceit includes the making of any oral or written statement in one's capacity as a member of a police force that, to the member's knowledge, is false or misleading. It is readily apparent from the structure of the definition that the making of false or misleading statements in the course of one's duty as a police officer is a breach of the trust the public is entitled to expect from those in police service when reporting to superiors in relation to the performance of their duties.



*The Statements of December 21, 2010 and March 1, 2011*

[18] Const. Page described the duty report that he prepared on December 21, 2010 as a “pure version” report by which he meant one that recounted his memory of events without being influenced by anything said or done after the incident, nor by observation of any video or audio recording of the incident. In fact, Const. Page had been provided with a copy of the audio-visual recording of the incident and he had viewed it before or in the course of preparing his report.

[19] Nowhere in the report does Const. Page say it is intended to be a report setting forth his memory of the incident without regard for other information that had come to his attention post-event, such as the video. Nowhere in the report does Const. Page acknowledge that his recollection of events is quite obviously contradicted by the audio-visual recording.

[20] There is very little of substance in the report that is accurate. Const. Page acknowledged that to be the case in the course of his evidence, but testified that it was a reliable record of his involvement in the incident as he remembered it at the time. The report is replete with factual inaccuracies:

- “Apparently, the arrested party would not give their name. I attended on my own. Towards the end of my attendance, I was joined by Const. Poulin”. The audio-visual recording clearly indicates that Ms. Assimes had received full cooperation from Kerr. Assimes was in the process of writing up a report to crown. I find that Kerr had provided his name to her. Const. Page never asked for his name. Const. Page did not attend on his own. Const. Poulin was with Const. Page in the office throughout the incident.
- “He gave a 1,000 yard stare. I handcuffed him quickly.” The DVD contradicts both statements. While it is not possible to clearly see Kerr’s gaze, he remains seated calmly on the bench, Const. Page slowly dons protective gloves, and he approaches Kerr without haste, telling him to stand up and to put his hands behind his back. None of Const. Page’s actions are consistent with any perception of a potential for difficulty when dealing with Kerr. Const. Poulin testified that he did not observe any assaultive cues in the course of the officers’ dealings with Kerr.
- “I instructed him to stand up. He followed that direction, but turned away from. [sic] I reached out towards him and grabbed his left left arm [sic]. I felt him move



forward and away from me. I moved forward towards him. I misjudged the distance and stepped on Kerr's right calf and ankle. I lost my balance and fell forward into Kerr, pushing him back into the wall. The impact with the wall caused a softball sized hole in the drywall. Kerr unsuccessfully attempted to pull away. I regained my balance, and full control of Kerr and escorted him to the police car, using an arm lock. The escort was uneventful." This description bears no relationship whatever to the manner in which Const. Page dealt with Kerr. Rather than instructing Kerr to stand up, Const. Page gruffly grabbed him and pulled him up and immediately placed him in an arm lock and headlock. Const. Page testified that his purpose in taking hold of Kerr as he did was to pin him against the wall in order to assert control over him. The DVD clearly indicates that Const. Page never lost his balance, nor did he step on Kerr's right calf and ankle and Kerr never attempted to resist any of Const. Page's actions. Simply stated, for whatever reason, Const. Page applied wholly unnecessary and inappropriate force to Kerr's person.

[21] The transcript of the interview with Staff Sgt. Vreeman on March 1, 2011 reflects the fact that Const. Page stood by his assertion that the stare or the eye lock that he detected from Kerr was unnerving, repeated his assertion that he told Kerr to stand up before he grabbed him to put him in an arm lock, and repeated his assertion that he lost his balance which caused him to step on Kerr's calf and ankle thereby causing Kerr to fall into the wall.

### *Analysis*

[22] In both the duty report and the interview, Const. Page's basic assertion was that, as he recalled the incident, he did nothing but subdue an individual whom he perceived to be threatening him with stares and body motions that suggested fight or flight. Counsel on his behalf attributes the obvious discrepancies between his statements, verbal and oral, and the audio-visual recording to the fact that human perception and memory tend to be dynamic with the result that one may honestly perceive and remember a state of affairs that does not conform to reality.

[23] The argument might be more persuasive if there were any acknowledgment by Const. Page in the duty report that his perception of events as he remembered them differed from the audio-visual recording that he had been afforded the opportunity to observe and which so clearly demonstrates the nature of his actions. In my view, it does not suffice to say that marked differences between the report and the audio-visual

recording must be rationalized on the basis that misperception and a poor memory combined to produce the content of the duty report.

[24] Nowhere in the duty report does Const. Page say or suggest that because of the passage of time he was unable to accurately recall what happened some 15 months before the report was made. At no point does he say that he acted as he did because he may have incorrectly perceived Kerr's actions, a fact that might explain the differences between the recording, the duty report, and what was said in the interview. Rather he positively asserts that Kerr's conduct justified the officer's actions. Neither Ms. Assimes nor Const. Poulin perceived any threatening actions on the part of Kerr and testified to surprise at the fact that Const. Page had applied force to Kerr.

[25] If Const. Page's evidence is to be accepted on this point, he told both Ms. Assimes and a supervising officer that the incident would probably be the subject of investigation. Notwithstanding that he was aware from the outset of the fact an investigation might ensue, he made no notes of the incident, or, if he did, none were tendered as evidence. In addition, the general occurrence report authored by Const. Page suggests nothing but the ordinary apprehension of a suspected shoplifter.

[26] In sum, I do not accept Const. Page's evidence that he truly recounted the incident as he recalled it in his duty report or as he again described its basic elements to Staff Sgt. Vreeman. It follows that I do not accept the submission that Const. Page was mistaken but honest in his duty report about the nature and character of the events, his actions, and those of Kerr. In my opinion, the exculpatory explanations offered by Const. Page on both occasions were contrived and intended to mislead others so that they would believe his use of force was justified in the circumstances. Both the duty report and Const. Page's statements in the course of the interview are so seriously contradicted by the audio-visual recording of the officer's conduct and actions that they have to be seen as unbelievable. Nothing but intent to mislead can explain the contradictions.

[27] Const. Page testified that he was under stress at the time because of work-related and personal issues so that his judgment and patience may have been adversely affected at the time of the incident. An explanation that attributed the officer's actions to stress



with the result that they were out of character might have been better received than was his description of and attempt at justification for conduct that bore no relationship to the reality.

[28] I find that Const. Page knew that his description of the incident as it unfolded was false or misleading. The allegation of assault and, with a single exception, the allegations of deceit by the making of false or misleading written or oral statements have been substantiated on the balance of probabilities.

[29] The exception pertains to the allegation that in the course of the interview with Staff Sgt. Vreeman Const. Page said that he told Ms. Assimes there was likely to be an investigation and that someone would come by to photograph the wall, to obtain the audio-visual recording of the incident, and to obtain a statement about the incident from her. Ms. Assimes's evidence on the point is not sufficiently affirmative to warrant a finding on the balance of probabilities that she had no post-incident discussion with Const. Page, or if she did, that the taking of pictures and the procurement of the audio-visual recording and her statement were part of the conversation. That allegation has not been proved on the balance of probabilities.

[30] Pursuant to s. 126 of the *Police Act*, I invite the parties to make submissions with respect to the appropriate disciplinary or corrective measures in relation to the allegations of deceit that have been proved, and the allegation of assault that has been admitted.

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DATED at Vancouver, British Columbia, the "25<sup>th</sup>" day of February, 2013.

"Ian H. Pitfield"

Ian H. Pitfield  
Adjudicator

IN THE MATTER OF A PUBLIC HEARING pursuant  
to Section 137(1) of *The Police Act* into an Allegation of  
Abuse of Authority against Constable Christopher Bowser #90  
of the Victoria Police Department

**NOTICE OF ADJUDICATOR'S DECISION ON  
DISCIPLINARY OR CORRECTIVE MEASURES**

TO: Constable Christopher Bowser #90 (Member)  
Victoria Police Department

AND TO: Chief Constable Jones (External Discipline Authority)  
New Westminster Police Service

AND TO: Michael Tammen (Public Hearing Counsel)

AND TO: Dennis T.R. Murray, Q.C. (Counsel for Constable Bowser)

AND TO: John S. Heaney (Counsel for Stan T. Lowe, Police Complaint  
Commissioner)

AND TO: Richard Neary (Counsel for Tyler Archer)

1. By Notice of Public Hearing dated March 1, 2012, Stan T. Lowe, B.C. Police Complaint Commissioner, alleged as follows:

**That Constable Bowser and Constable Robinson committed the following disciplinary default pursuant to section 77 of the *Police Act*:**

**(a) Abuse of Authority: contrary to section 77 of the *Police Act*, Subject members committed the disciplinary default of abuse of authority, In the performance of duties, intentionally or recklessly used unnecessary force on Mr. Tyler Archer.**

2. On March 27, 2013, I held that Cst. Robinson did not abuse his authority, as alleged, but I held that Cst. Bowser did abuse his authority and on April 5, 2012, I heard submissions with respect to the appropriate disciplinary or corrective measures to apply in concluding this Public Hearing.
3. The facts on which I based my decision are extensive. It will suffice, for the purposes of this proceeding, to extract certain findings I made in that decision.
4. Under the heading: **G. Handcuffing of Tyler Archer – The Video Evidence**, I quote from paragraphs 46 to 63 as follows:

46. In the course of their conversation, Borthwick is seen gesturing with his left arm in the direction to where (we learn a second or two later) Archer is located.

47. At 0.22 secs., Cst. Bowser is seen to turn his head suddenly, ease Borthwick from obstructing his views, with his hand, to get a better view of Archer, whose conduct is concerning him.

48. At 0.24 secs., Borthwick and Cst. Bowser walk towards Archer. As they approach the curb which borders the grassy area, Cst. Bowser points to the ground where Archer is standing and in a clear loud voice, commands Archer to “get on the ground.” At this time, Archer is not seen in the video.

49. At 0.26 secs., the scene shows Archer, Cst. Bowser and Borthwick, just a few feet apart from each other. Again, Cst. Bowser points to the ground where Archer is standing and gives a second clear and loud command to “get on the ground.”



50. At this time, Archer is standing still, feet apart, arms forward and down, hands open, back slightly arched and is looking directly at Cst. Bowser and appears to have his mouth open as if he is speaking to Cst. Bowser.

51. On the second command, Archer goes down, leaning on his left arm with his left hand on the grass and his left leg folded under him. He then, at 0.28 secs., rolls onto his buttocks with his right arm supporting him, right hand on the grass and with his left arm and open hand held up, appears to be speaking and gesturing to Cst. Bowser, who appears to be listening to him.

52. Cst. Bowser moves closer to Archer in a stance that suggests that he is about to handcuff Archer.

53. At 0.30 secs., Cst. Robinson is seen charging toward Archer, obviously unseen by Cst. Bowser, and tackles Archer, grabbing him by his clothing on his left side and tries to roll Archer over and down onto his stomach.

54. The struggle by Cst. Robinson to force Archer into a prone position continues, largely obstructed by a rock monument, but Archer is seen, at 0.31 secs., with his black jacket pulled over his head while in a squat position and then forced forward on his knees.

55. At 0.33 secs., Archer is heard to exclaim: "ow", "ow", "ow", as he is being forced into a prone position.

56. At 0.34 secs., Archer is seen on his knees supporting his upper body from falling face down on the grass with his arms. Cst. Robinson is trying to pull Archer's right forearm up for handcuffing and Cst. Bowser is standing beside Archer's head and is heard to say "put your hands behind your back or it's going to go bad for you".

57. At 0.37 secs., Cst. Bowser is seen delivering a hard forceful kick to the left side of Archer's exposed upper torso.

58. At 0.38 secs., Cst. Robinson delivers a knee strike to Archer's left side (abdomen area) with his left knee.

59. At 0.39 secs., Archer goes down on the grass on his left side. At .40 secs., Cst. Bowser pins him at the waist with his left knee while holding his handcuffs in his right hand. At this time, Cst. Robinson is trying to grab hold of Archer's left and right wrists and appears to have them but then loses hold.

60. At 0.41 secs., Archer is heard to exclaim "ow", "ow", "ow".

61. At 0.43 secs., Cst. Bowser knees Archer in the middle of the back with a forceful knee strike. Cst. Robinson is holding Archer's right arm and hand. At 0.45 secs., Cst. Bowser delivers a second forceful knee strike in the middle of Archer's back.

62. At 0.50 secs., Cst. Bowser is heard to say "there you go."

5. Further, in paragraphs 120 to 124, I state as follows:

120. Any perception that Cst. Bowser held about Archer being a threat because of his “thousand yard stare” and that “he was coming back for no good” should have reasonably been dispelled the instant that Archer got down on the ground, as commanded, rolled onto his buttocks with his right arm supporting him: his right hand on the grass; and with his left arm and open hand held up; and appears to be speaking and gesturing to Cst. Bowser, who appears to be listening to him. This was at 0.28 seconds of the video.

121. From 0.28 seconds to 0.55 secs. when Cst. Bowser is heard to say “there you go”, Cst. Bowser knows that Archer would have cooperated with him to be handcuffed had it not been for the unnecessary intervention of Cst. Robinson.

122. Both officers know that Archer was injured and hand been pepper-sprayed.

123. Not only did Cst. Bowser not intervene to prevent Cst. 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.

124. I find, on the balance of probabilities, that Cst. Bowser used unnecessary force on Tyler Archer and has, thereby abused his authority.

6. Prior to April 5, 2012, I informed Mr. Tammen, Public Hearing Counsel, that I would consider a joint submission from Counsel on appropriate disciplinary or corrective measures in this matter.

7. On April 5, 2013, I learned that Mr. Tammen and Mr. Murray, Counsel for Cst. Bowser, had agreed to a joint submission.

8. Also, on April 5, 2013, Mr. Neary was granted permission to make an unfettered submission on behalf of Mr. Archer.

9. The options for considering appropriate disciplinary and/or corrective measures following a finding of abuse of authority pursuant to section 4(1)(f) of the *Code of Professional Conduct*, Reg. B.C. Reg. 205/98, a disciplinary default, are as follows:

- (a) dismissal;
- (b) reduction in rank;
- (c) transfer or reassignment;
- (d) suspension without pay for not more than 5 scheduled working days;
- (e) direction to work under close supervision;
- (f) direction to undertake special training or retraining;
- (g) direction to undertake professional counselling;
- (h) written reprimand;
- (i) verbal reprimand.

10. In considering these options, the following provisions apply:

(2) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, the discipline authority must choose the least onerous disciplinary or corrective measures in relation to the police officer concerned unless one or both of the following would be undermined;

- (a) organizational effectiveness of the municipal police department with which the police officer is employed;
- (b) public confidence in the administration of police discipline.

(4) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures for a breach of this Code by a police officer of a municipal police department, including without limitation,

- (a) the seriousness of the breach,
- (b) the police officer's record of employment as a police officer, including, without limitation, his or her service record of discipline, if any, and any other current record



- concerning past discipline defaults,
- (c) the impact of proposed disciplinary and corrective measures on the police officer and on the police officer's career and family,
- (d) the likelihood of future breaches of this Code by the police officer,
- (e) whether the police officer accepts responsibility for the breach and is willing to take steps to prevent a recurrence of the breach,
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures or the actions of the police officer's supervisor contributed to the breach,
- (g) the range of disciplinary or corrective measures imposed in similar circumstances, if known, and
- (h) other aggravating or mitigation factors.
- (5) Nothing in this Code prevents a chief constable or a municipal police board from doing one or both of the following:
  - (a) issuing an apology on behalf of the municipal police department concerned or, with the consent of the police officer concerned, on behalf of both the department and the police officer;
  - (b) considering, proposing or implementing police changes to prevent recurrence of a breach of this Code.

### **SUBMISSION OF MR. TAMMEN, PUBLIC HEARING COUNSEL**

11. Mr. Tammen stated the three basic terms of the joint submission as follows:

- 1. Suspension of two days without pay; (disciplinary measure)
- 2. Participate in 6 hours of retraining in the area of use of force, with an emphasis on de-escalation training; (a corrective measure)
- 3. Participate in an assessment by a qualified professional to address any potential anger management issues, such assessment to be forwarded to the Chief Constable for determination of follow up, if recommended in assessment. ( corrective measure)

12. As to aggravating factors to be considered, Mr. Tammen states:

“What I perceive to be aggravating factors in this case is Officer Bowser's role as a supervisor during the incident, the findings that this tribunal made in particular at paragraph 123 that not only did Cst. Bowser not intervene to prevent Cst. Robinson's unnecessary

use of force, but he, Officer Bowser, escalated the use of force by delivering foot and knee strikes. I would submit that an aggravating factor is the areas of the body which were targeted. And finally, the finding that this tribunal made that Officer Bowser knew that Archer was being compliant but chose to escalate to hard physical control nonetheless after Cst. Robinson's intervention."

13. In mitigation, Mr. Tammen emphasizes the absence of any prior disciplinary record as a significant factor and agrees with Mr. Murray that Cst. Bowser has faced significant financial and promotional consequences as a result of his involvement in the events of March 21, 2010.

**SUBMISSION BY MR. MURRAY:**

14. In support of the joint submission, Mr. Murray stresses the following factors in mitigation:

- Very favourable Performance Appraisals found in Tabs K, L, M, N and O of a Book of References and Supporting Documents filed by Mr. Murray.
- The impact that was felt by Cst. Bowser and his family as a result of the posting of the video on YouTube including threats made, electronically, by a person who, investigation revealed, was of questionable stability.
- The financial impact on Cst. Bowser, calculated at \$21,900, as a result of loss of overtime and acting pay by being assigned to desk duty following the commencement of a criminal investigation into the events of March 21, 2010.
- The indefinite postponement of any chance for promotion to the rank of Sergeant.
- Cst. Bowser "thought he was doing the right thing on the night of March 21, 2010, but he has completely accepted the proceedings and completely accepted the outcome."
- Mr. Archer sustained no physical injuries as a result of Cst. Bowser's use of force.
- Cst. Bowser has no record of service discipline.

**SUBMISSION BY MR. NEARY:**

15. In his submission, Mr. Neary recognizes that the absence of any prior disciplinary history is a mitigating factor in considering an appropriate disposition in this matter.

16. As to aggravating factors, he emphasizes:

- Cst. Bowser's "attitude towards his misconduct as demonstrated in all the statements that he provided about the incident and his testimony in these proceedings".

He refers, specifically to statements made to Vancouver Police investigators and his testimony before the Public Hearing where he expresses the view that "he did a good job" and that "he was proud of what he did." And "that he should be commended for his efforts".

- Mr. Neary submits that Cst. Bowser's statements suggest that he has not accepted responsibility for his misconduct and that should raise concerns about the likelihood of future misconduct.
- As to the serious nature of the misconduct, Mr. Neary states: "Well, you found, sir, that Constable Bowser kicked a man on the ground who he knew would cooperate with verbal commands, he knew if there had been de-escalation would cooperate and had been submissive, in moments completely submissive."
- Mr. Neary tendered two letters, one from Marnie Forest (Ex. 1), mother of Mr. Archer and one from Mr. Archer (Ex. 2). He quotes from Mr. Archer as follows:

"Initially I hoped that I would receive an apology from the officers following the incident. However, one has never been extended. Not only was an apology not offered, I found that my character was attacked both publicly and privately by the Victoria Police Department following the release of the video on YouTube.

I became depressed and suffered from anxiety following this incident and withdrew from friends and family. I suffered with feelings of worthlessness and sought counselling. I also gained a lot of weight and struggled to find enjoyment in my day-to-day life."

17. In his submission, Mr. Neary states as follows:

"I respectfully submit that a suspension is inadequate, that a reduction in rank would be appropriate for one year from first class constable to constable second class and that the retraining and assessment issues addressed by Mr. Tammen are appropriate but should likely be amplified. I should like there to be more than six hours retraining and that the report as far as anger management and other issues, a copy of that also perhaps be provided to the Police Complaint Commissioner. That's my submission on the appropriate disposition."



**CONCLUSIONS AND OBSERVATIONS:**

18. I do not share Mr. Neary's concern with the likelihood of future misconduct. Surely, after this process is concluded, Cst. Bowser will understand that any further proven misconduct, involving use of force, will jeopardize his career as a police officer.

19. I have no doubt that Mr. Archer did not want or expect a confrontation with the police and I believe I made it clear in my earlier decision how I viewed the evidence which attempted to portray Mr. Archer as a threat.

20. Obviously, my earlier finding that Cst. Bowser used unnecessary force in handcuffing Mr. Archer is an aggravating factor as is the nature of the force used and the vulnerability of the areas where the strikes were delivered.

21. In mitigation, of particular significance is the absence of any prior history of misconduct, of any kind, over fifteen years of service as a police officer in Oak Bay and Victoria.

22. It is also significant, in mitigation, that Mr. Archer suffered no physical injuries as a result of Cst. Bowser's use of force.

23. Mr. Murray has assured me that Cst. Bowser has accepted the findings and conclusions of the decision of March 27, 2013.

24. I have no doubt that events and proceedings which followed the posting of the video on YouTube have severely impacted on the Bowser family.

25. I accept that Cst. Bowser has paid a price financially and by way of loss of promotion following the commencement of the criminal investigation into his conduct.

26. I have read the very favourable letters of reference from family, friends and members of the Victoria Police Department.

27. I have considered *Police Act* decisions cited by Counsel involving Willow Kinloch, Constable Daniel Dickout, Constables Steve Wilson and Sukhprit Sidhu and Constable Greg Smith and have concluded that this case should be decided on its own unique set of facts and circumstances.

28. In conclusion, I accept without change, the joint submission of Mr. Tammen and Mr. Murray and impose the following disciplinary and corrective measures:

- (i) Suspension for two days without pay;
- (ii) Participate in 6 hours of retraining in the area of use of force, with an emphasis on de-escalation training;
- (iii) Participate in an assessment by a qualified professional to address any potential anger management issues, such assessment to be forwarded to the Chief Constable for determination on follow up, if recommended in assessment.

DATED AT VICTORIA, B.C. THIS        DAY OF APRIL, 2013.

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THE HON. H. BENJAMIN CASSON, Q.C.  
ADJUDICATOR

**IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367**  
**AND**  
**IN THE MATTER OF THE PUBLIC HEARING**  
**INTO ALLEGATIONS AGAINST**  
**CONSTABLE DANIEL DICKHOUT**  
**OF THE SOUTH COAST BRITISH COLUMBIA TRANSPORTATION**  
**AUTHORITY POLICE SERVICE**

**NOTICE OF ADJUDICATOR'S DECISION**  
**ON**  
**DISCIPLINARY OR CORRECTIVE MEASURES**

TO: Constable Daniel Dickhout, South Coast British Columbia Transportation Authority Police Service

AND TO: Chief Officer Neil Dubord, South Coast British Columbia Transportation Authority Police Service

AND TO: David Eby, Executive Director, British Columbia Civil Liberties Association

AND TO: Chief Constable Brad Parker, Port Moody Police Department, Discipline Authority

AND TO: Mr. Stan Lowe, Police Complaint Commissioner

AND TO: Mr. Joseph M. Doyle, Public Hearing Counsel

AND TO: Mr. Steven M. Boorne, Counsel for Constable Dickhout

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[1] On March 9, 2012, I provided reasons for my finding that Const. Dickhout abused his authority by discharging a conducted energy weapon, a Taser, in order to effect the arrest of Christopher Mr. Lypchuk. On April 18, 2012 I received the submissions of counsel with respect to the appropriate disciplinary or corrective measures to be taken as a result of my finding.



[2] Counsel jointly submitted that a two-day suspension without pay was the appropriate remedy in the circumstances. For the following reasons, I agree with the recommendation.

[3] The incident occurred on September 13, 2007 at the Scott Road Skytrain station when Const. Dickhout was attempting to issue a violation ticket to Mr. Lypchuk who had acknowledged that he had not paid the required fare. Mr. Lypchuk attempted to leave the scene before the ticketing process had been completed. Const. Dickhout and his fellow officer, Const. Chartrand, chased Mr. Lypchuk and stopped him in a stairwell. Const. Dickhout discharged the Taser and struck Mr. Lypchuk as Mr. Lypchuk was reluctantly responding to commands from Const. Dickhout. The officer testified that he construed the manner in which Mr. Lypchuk responded to mark an attempt to assault Const. Chartrand. On all of the evidence adduced at the public hearing into Const. Dickhout's conduct, I concluded that the officer did not believe that Mr. Lypchuk was about to assault Chartrand, but that if he held such a belief, it was unreasonable in the circumstances.

[4] Section 126 of the *Police Act*, R.S.B.C. 1996, c. 367, governs this imposition of disciplinary or corrective measures:

126 (1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [complainant's right to make submissions], the discipline authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or activity;
- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,
- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- (d) the likelihood of future misconduct by the member,
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
- (g) the range of disciplinary or corrective measures taken in similar circumstances, and
- (h) other aggravating or mitigating factors.

(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.

[5] In this case, consideration of the aggravating and mitigating circumstances supports the joint submission of counsel.

[6] While, from the public's perspective, the misconduct in this case would be regarded as serious, it was not so regarded by Mr. Lypchuk who did not complain about Const. Dickhout's treatment of him. Rather, it was a complaint filed with the Commissioner by the British Columbia Civil Liberties Association on April 18, 2008, seven months after the event that prompted an investigation into the ten instances to that point in which the transportation police had deployed a Taser against fare evaders. The complaint against Const. Dickhout was the only one of the ten to become the subject of investigation and disciplinary proceedings under the *Police Act*.

[7] Const. Dickhout has been employed as a police officer for a lengthy period of time, first as a military police officer for a period of four years, then as a member of the Vancouver



Police Department from 1976 to 2003, and from 2005 to present, with the Transportation Police Authority. He is now 60 years of age and from all indications, likely to retire within the next two years. Const. Dickhout has not been the subject of any disciplinary action whatsoever in the course of his lengthy career. He is highly regarded by superiors and co-workers. In my opinion there is little likelihood of further misconduct in the remainder of Const. Dickhout's career.

[8] I am satisfied that this incident has had a significant effect on Const. Dickhout. Prior to September 13, 2007, he had not deployed a Taser in the course of his duties notwithstanding that he was a qualified firearms and conducted energy weapon instructor. His evidence satisfied me that he was aware of the dangers associated with the use of such a weapon. In his present position he has a right to decline to carry a conducted energy weapon when on duty. I am satisfied that Const. Dickhout has declined to carry such a weapon since this incident because he was distressed and concerned about the injury to Mr. Lypchuk and the prospect of more severe injury to other targets of Taser use.

[9] Const. Dickhout has accepted complete responsibility for his conduct. At the close of the penalty portion of this proceeding he acknowledged that he erred in using the weapon, and stated that he was prepared to accept whatever disciplinary measures were imposed. Hearing counsel advised me of a discussion with Const. Dickhout following a difficult and thorough cross-examination in the course of the hearing process. At the time, Const. Dickhout acknowledged that it had been "tough" but said that he was happy to be part of the process, the concept of which he embraces. As counsel remarked, that demonstrates a positive and enlightened view of the purpose for which the disciplinary process exists.

[10] This incident occurred at an early point in the use of conducted energy weapons by police in this province and preceded the most regrettable and devastating Dziekanski incident in October 2007 that resulted in the Braidwood Inquiry and the 2010 Report with its many recommendations regarding the use of conducted energy weapons by police. Since then, the Province has issued new directives regarding the use of conducted energy weapons. The Transportation Police Authority states that its officers must adhere to the directives. One can only hope that the directive will have the intended effect.



[11] Under the new policing standard effective January 2012, the discharge of a conducted energy weapon will only be warranted if the target is causing bodily harm to either themselves, the officer, or a third party; or if the officer is satisfied, on reasonable grounds, that the person's behaviour will imminently cause bodily harm either to themselves, the officer, or a third party. Moreover, before discharging a conducted energy weapon, an officer must be satisfied, on reasonable grounds, that crisis intervention and de-escalation techniques have not been, or will not be, effective in eliminating the risk of bodily harm, and no lesser force option has been, or will be, effective in eliminating the risk of bodily harm.

[12] In sum, the Lypchuk incident was regrettable. The use of a conducted energy weapon against a fare evader cannot be justified, if ever, in any but the most unusual and unique circumstances, none of which were present in this instance. However, this is not an incident involving misconduct of the most serious kind. The joint submission of counsel is reasonable and appropriate. I therefore order that Const. Dickhout be suspended for two days without pay.

Dated at Vancouver, this 26<sup>th</sup> day of April 2012.

"Ian H. Pitfield"

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Ian H. Pitfield  
Adjudicator