

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

AND

IN THE MATTER OF THE PUBLIC HEARING INTO THE CONDUCT OF
CONSTABLE CHRISTOPHER CHARTERS OF THE VANCOUVER POLICE
DEPARTMENT

PART II

NOTICE OF ADJUDICATOR'S DECISION AS TO DISCIPLINE OR CORRECTIVE
MEASURES
(CORRECTED)

TO: Constable 2334 Christopher Charters
Vancouver Police Department

AND TO: Steven Boorne, Counsel for Chief Constable Jim Chu,
Vancouver Police Department

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

AND TO: Mr. Michael Tammen, Public Hearing Counsel

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

I. Introduction

1. On July 30, 2014, I delivered my *Notice of Adjudicator's Decision as to Whether any Misconduct Has Been Proven* (the "Reasons"). I found that Cst. Charters had committed the disciplinary defaults of deceit and neglect of duty. I must now impose the appropriate discipline for those defaults.
2. Mr. Boorne, counsel for the Chief Constable of the Vancouver Police Department (the "VPD"), and Mr. Tammen, Public Hearing Counsel, submit that dismissal is appropriate. Mr. Woodall, counsel for Cst. Charters, submits it should be a lengthy suspension.
3. To provide context for my discipline decision, I will first quote from the Reasons.

II. The Reasons

4. At paragraphs 1 – 6 I found:

In the early morning hours of Boxing Day, 2011, David Davidson stole a Jeep Cherokee SUV (the "Cherokee") and drove it recklessly and dangerously, at high rates of speed, through the streets of Vancouver. He eventually abandoned the Cherokee at approximately 2:26 a.m. in a laneway near the intersection of East Georgia Street and Skeena Street and was apprehended in a nearby residence.

The Cherokee first attracted the attention of officers with the Vancouver Police Department (the "VPD") at approximately 2:12 a.m. as it drove north on Commercial Drive at a high rate of speed past a marked police cruiser and turned left onto East 1st Avenue ("1st"). Soon after it was first seen by the VPD, the shift supervisor, Acting-Sgt. Weeks, broadcast an order to all members that they were not to engage in a "pursuit" of the vehicle. He repeated this order on several occasions.

Cst. Charters was a member of the VPD Dog Squad and was on duty at the time, working with his police service dog. He was driving an unmarked Chevrolet Tahoe SUV (the "Tahoe") and became involved in attempting to follow the Cherokee as it was driving east on East Hastings Street ("Hastings"). Cst. Charters attempted to keep visual contact with the Cherokee and broadcast his observations as the Cherokee drove east on Hastings and south on Nanaimo Street ("Nanaimo") to Kingsway Street ("Kingsway"). He lost sight of the Cherokee when it turned east on Kingsway but located it again, a block south of Kingsway, at the intersection of School Road ("School") and Rupert Street ("Rupert").

The Cherokee was stopped near the southwest corner of the intersection, close to the curb on Rupert, facing in a somewhat northerly direction. Cst. Charters attempted to block the Cherokee's forward progress by positioning the Tahoe in front of the Cherokee. As he attempted to do so, the Cherokee suddenly started driving forward causing the front of the Tahoe to strike the driver's side of the Cherokee. Cst. Charters abandoned his plan to block the Cherokee in favour of attempting to use the force of his vehicle to pin the Cherokee against the curb. He was unsuccessful and Mr. Davidson was able to extricate the Cherokee and drive north on Rupert. Cst. Charters followed in the Tahoe.

As the two vehicles drove north on Rupert, the distance between the vehicles varied. Just north of 1st and Rupert, Mr. Davidson lost control of the Cherokee and it ended up, momentarily, stopped on the grass in Rupert Park (the "Park"). Mr. Davidson quickly regained control of the Cherokee and drove it back onto Rupert and continued north. Mr. Davidson alleges that shortly after he returned onto Rupert, the Tahoe "smashed" into the rear of the Cherokee. He said he was able to keep control of the Cherokee and continued north on Rupert before turning down several side streets and lanes and abandoning his vehicle.

Cst. Charters denies hitting the Cherokee as alleged. He says he was a block and a half behind the Cherokee as the Cherokee came out of the Park and all that occurred was Mr. Davidson pumped the brakes hard several times. Cst. Charters

says this was what caused him to broadcast the warning that the driver of the Cherokee was trying to “ram” him.

The Disciplinary Defaults

5. Cst. Charters faced three disciplinary defaults. I found the following two counts proven in whole or in part:

Count One: Deceit, section 77(3)(f)(i)(A) of the *Police Act* – That on or about December 26th, 2011, at or near Vancouver, British Columbia, it is alleged Constable Charters committed the disciplinary default of Deceit by making false or misleading oral statements regarding; the details of a police involved collision at School and Rupert Street, the denials that he was engaged in a pursuit and the claim that the suspect, Mr. David Davidson, was attempting to ‘ram’ his police vehicle.

Count Three: Neglect of Duty, section 77(3)(m)(ii) of the *Police Act* - That on or about December 26, 2011, at or near Vancouver, British Columbia, it is alleged Constable Charters committed the disciplinary default of Neglect of Duty when he engaged in an unauthorized pursuit, failed to broadcast and clarify essential information for responding members and the supervisor and continued to pursue the suspect driver post-collision.

The Findings

6. Count One contains three particulars of deceit:
- (i) making false or misleading oral statements concerning the collision at Rupert Street and School Road;
 - (ii) making false or misleading oral statements both before and after the collision at Rupert Street and School Road denying he was involved in a pursuit of the Cherokee; and
 - (iii) making a false or misleading oral statement after the two vehicles had driven north on Rupert Street that Mr. Davidson was attempting to ram his police vehicle with the Cherokee.
7. The oral statements were broadcasts made by Cst. Charters over his police radio as he followed the Cherokee. His radio broadcasts were heard and relied upon by other officers and the E-Comm operators.
8. In the Reasons, I found:

- particular (i) – his statements concerning the collision at Rupert Street and School Road – not proven;
- part of particular (ii) – his statements made before and during the collision at Rupert Street and School Road – not proven;
- part of particular (ii) – his statements made after the collision at Rupert Street and School Road – proven; and
- particular (iii) – his statement that Mr. Davidson was attempting to ram his vehicle with the Cherokee – proven.

9. I made the following findings at paragraphs 70 to 75 of the Reasons:

Considering the evidence as a whole, I am satisfied on a balance of probabilities that Cst. Charters did strike the rear of the Cherokee with his vehicle after it was stopped in the Park. I accept Mr. Davidson's evidence that Cst. Charters vehicle struck the rear bumper of the Cherokee and Mr. Davidson almost lost control of the vehicle.

I find on a balance of probabilities that Cst. Charters oral statement that the driver of the Cherokee was trying to ram Cst. Charters vehicle was false

Particular 2: Denials he was engaged in a Pursuit

I divide my analysis with respect to this particular into two parts: Cst. Charter's conduct before the incident at the intersection of School and Rupert, and his conduct after the incident.

With respect to the first part, I find on the evidence before me that the distinction between keeping a long eye and pursuing a suspect vehicle is a blurred one that incorporates a subjective component. I find that as Cst. Charters tried to keep visual contact with the Cherokee, he accurately broadcast where he was and what he saw prior to the incident at School and Rupert. He was not trying to hide his actions or his driving. While Cst. Charters got close enough to the Cherokee to see the licence plate, I accept his evidence that this was inadvertent and the result of the Cherokee slowing down after it turned on to Nanaimo. Cst. Charters was driving aggressively and at high speeds at times as he tried to keep contact with the Cherokee, but I accept his evidence that he did not believe he was engaged in a pursuit. I find the first particular is not proven.

With respect to the second part, for the reasons given with respect to particular 3, I find that Cst. Charters oral statements that he was not engaged in a pursuit as he proceed north on Rupert were knowingly false or misleading. He was knowingly and deliberately engaged in a pursuant whether at times he slowed down and whether he had his lights and siren on or not. Further he intentionally struck the Cherokee from behind in effort to stop the vehicle and apprehend the driver.

Accordingly I find that particular three and part of particular two are proven.

III. Discipline Hearing Evidence

10. Counsel entered additional evidence, including:

- a letter from Chief Constable Chu, dated September 8, 2014, with attachments that include some of Cst. Charters' employment history;
- a supplemental letter from Chief Constable Chu;
- a letter from Cst. Charters;
- a letter from the VPD Union President, Tom Stamatakis;
- an email from Inspector Zanatta, as well as a Report he authored in December 2010 concerning Cst. Charters;
- a number of letters of character and support from other VPD members, including his spouse, Cst. Mary Charters, as well as a letter from an elementary school teacher who had brought in Cst. Charters as a guest to speak with students on a number of occasions; and
- performance appraisals, commendations and letters of congratulations.

11. The Chief Constable's position is that termination is the only workable and appropriate discipline. He summarizes his position at the conclusion of his letter of September 8, 2014 as follows:

In closing, I will reiterate that based on his previous record of disciplinary defaults, his history of ethically questionable decisions, his sub-standard work history, and the seriousness of the latest breaches of VPD policy and the *Police Act*, I do not believe corrective measures are appropriate. They have not worked in the past and to consider them again in such serious circumstances would bring the administration of police discipline into serious disrepute. The potential outcome would be damage to the reputation of the VPD, a reduction in the confidence of the public, and impairment of the ability of the VPD to be effective in the community. These are not consequences that should be accepted lightly. I, therefore ask the adjudicator to dismiss Constable Charters from employment with the Vancouver Police Department.

12. Mr. Stamatakis and Mr. Woodall take issue with the contents of the Chief Constable's letter and his description or characterization of many of the past incidents to which he refers. They also take issue with the Chief Constable's concern with respect to other

officers trusting Cst. Charters and relying on his integrity in the event he is reinstated. Mr. Stamatakis writes:

Cst. Charters is generally regarded as a hard-working, enthusiastic go-getter. As a dog-handler, patrol members came to rely on him and trust him. I have not heard one single member say that they thought that Cst. Charters is not trustworthy, or that they would not work with him because he is unreliable.

13. Insp. Zanatta's Report of December 4, 2010 concluded that it was not in Cst. Charters' best interests or the best interests of the VPD that he be transferred to the Dog Squad at that time. Insp. Zanatta explained that Cst. Charters "lacks in the professional maturity required to be a successful Dog handler" and required "a sufficient period of time in development to gain professional maturity and insight into the impact his behaviour has on his professional status." Insp. Zanatta recommended deferring his transfer to the Dog Squad.
14. Insp. Zanatta reiterated that opinion in his email message of September 21, 2014 and placed some responsibility for Cst. Charters' current misconduct on the Human Resources Section and the VPD for transferring him to a job for which he was not ready. Insp. Zanatta acknowledged that he did not know the facts surrounding the misconduct but believed that Cst. Charters had the "requisite skills to be a successful police officer."
15. Cst. Charters provided a lengthy letter, which he read to me during the hearing. In the letter he explains (as does his spouse, Mary Charters, in her letter) the enormous impact this event and the protracted disciplinary process has had on his life. With respect to his actions on December 26, 2011, he states, in part:

... I made many mistakes on this night, however, it was undeniably me just trying to do my job and do what is expected of me as a member of the dog squad.

I admit to the mistakes I made that night and have learnt a great deal about myself and the decision I have made. I have learned a hard lesson that I have to restrain myself and my enthusiasm when driving or doing other things that may create risk to the public.

16. Cst. Charters concludes his letter with the following assurances:

If reinstated, you may have complete confidence that I have learned the lesson that I must not let my enthusiasm get the better of me, but instead I have to recognize that many things we do as police officers carry risks, and that it is just as much a part of my job to recognize and minimize the risks as it is to protect the public by catching the “bad guys.”

17. The performance appraisals, commendations, and letters of congratulations for Cst. Charters are consistent with his letter. His annual performance evaluations state that he generally meets or exceeds expectations in the different areas of policing for which he is evaluated. Striking is the evaluation of Sgt. David Bruce Thomas, who was his patrol supervisor for most of 2010 and former supervisor of the Dog Squad. He writes:

Chris is a loyal and high functioning police officer. He handles stressful police situations without any problem. His tactical skills and abilities are second to none. He uses his presence tactics and ability to think when most would fail. His judgment under those types of situations is exceptional. Chris has never had a use of force complaint against him and I was never made aware of any complaint by a civilian or member against him for inappropriate use of force while he was under my command.

...

Chris has a large personality and IS the elephant in the room. As he develops more in his career he will learn to tone down his first impression and scale back his *persona* to a small degree to allow his co-workers to see Chris as he really is, which is a highly driven loyal and highly skilled police officer.... His best asset and virtue is his honest concern for the citizens and his compassion and sense of service to the City of Vancouver and the people he serves.

IV. Section 126

18. Section 126 of the *Police Act* (the “*Act*”) governs discipline and corrective measures for discipline authorities and adjudicators. It states:

126 (1) After finding that the conduct of a member is misconduct and hearing submissions ... the discipline authority must ... 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.

19. Section 19 of the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98 (the “*Code*”) governed police discipline prior to March 31, 2010, after which date s. 126 of the *Act* came into force. Subsections 126(1), (2) and (3) essentially mirror subsections 19(1), (2), and (4) of the *Code*. The significant change is the elimination of s. 19(3) of the *Code* from the *Act*. Section 19(3) read:

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. .

20. The effect of this change is that the mandatory requirement under the *Code* that an adjudicator or discipline authority “must choose the least onerous disciplinary or corrective measures” is no longer part of the analysis when determining what are “just and appropriate disciplinary or corrective measures”. What remains is the requirement that an adjudicator or discipline authority give “precedence to an approach that seeks to correct and educate ... unless it is unworkable or would bring the administration of police discipline into disrepute”.
21. The *Act* does not define “unworkable”, “disrepute”, or “precedence” so I turn to the Dictionary for assistance. The *Oxford Dictionary of English*, Second Edition, Revised, defines “unworkable” as: “not able to function or be carried out successfully; impractical”; “disrepute” as: “the state of being held in low public esteem”; and “precedence” as: “the condition of being considered more important than something else; priority in importance”.
22. Applying these definitions and the modern principle of statutory interpretation, s. 126(3) requires that I give priority to measures that rehabilitate (correct and educate) unless doing so would be impractical or cause the administration of police discipline to be held in low public esteem.

23. However, there is not always a bright line between what measures would or would not be workable, and would or would not bring the administration of police discipline into disrepute. Further, although the two factors are stated in the alternative, in my view, they may be considered cumulatively. As such, the closer the proposed rehabilitative measures move along the spectrum towards the unworkable or what would bring the administration of police discipline into disrepute, the more likely the appropriate and just discipline will be more punitive measures.

V. **Positions of Counsel**

24. Mr. Boorne, counsel for Chief Constable Chu, submits that Cst. Charters' usefulness as a police officer is spent and dismissal is the only just and appropriate measure to impose. In support of that submission he reviews the Chief Constable's letters and attached evidence and the factors set out in s. 126(2) of the *Act*.

25. He highlights the seriousness of a finding of deceit in light of the responsibilities of a police officer and argues at paragraphs 14 – 15 of his written submissions that:

The cases have established that deceit is the most serious form of misconduct which can be committed by a police officer. Deceit actively undermines the core values of integrity and honesty which the public demands of police officers and which are required to remain suitable for the office of police constable.

The cases have also established that deceit compromises internal organizational effectiveness. Police officers perform their duties under the auspices of their Chief Constable. That Chief Constable must be able to expect and receive honest accounts of incidents and the involvement of his officers in them. As was stated by Adjudicator Pitfield in the *Page* case [In the Matter of The Public Hearing into the Complaint Against Constable #369 Page of the Abbotsford Police Department, April 13, 2013]:

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

26. Mr. Boorne refers me to the VPD Motor Vehicle Incidents Policy on ramming and submits it was dangerous and a serious breach of that policy for Cst. Charters to ram the Cherokee. He reviews Cst. Charters' disciplinary defaults and informal briefings with respect to the VPD Motor Vehicle Incidents Policy on Police Pursuits and submits that

Cst. Charters is not learning from his mistakes and has not accepted responsibility for his actions. He says this suggests that Cst. Charters is likely to engage in high risk behaviour in the future and will be deceitful to his superior officers if permitted to remain a member of the VPD.

27. Mr. Boorne argues that dismissal is within the range of discipline that has been imposed in other cases and addresses the adverse impact on the VPD of employing Cst. Charters if he is not dismissed, which is further exacerbated by the requirement of disclosure of police disciplinary records after the decision of the Supreme Court of Canada in *R. v. McNeil*, [2009] 1 S.C.R. 66.

28. He summarizes his position at paragraph 55 of his written submissions:

The legal, reputational and operational costs of allowing this police officer to remain a member of the Vancouver Police Department are simply too high. It is submitted that retaining a police officer who has been found to be deceitful on the payroll will damage the reputation of the department in the eyes of the community. The public has the right to expect that police officers are honest, forthright, and possess the personal integrity necessary to perform a difficult job without putting the administration of justice at risk due to their compromised credibility. This officers' conduct demonstrates a clear lack of suitability for the office of Police Constable.

29. Mr. Tammen, Public Hearing Counsel, adopts the position and submissions of the Chief Constable. He reviews the *Act*, other disciplinary decisions and what he submits are the aggravating and mitigating factors I should consider.

30. Mr. Woodall, counsel for Cst. Charters, submits that a suspension of 15 to 20 days for the default of deceit and suspension of one or two days for the default of neglect of duty are appropriate. He refers me to s. 126(1)(b) of the *Act* and submits that I can consider a member's record of employment and service record of discipline but not undocumented hearsay. He says that the words "record of employment" in the *Act* must be restricted to misconduct that is recorded and that such an interpretation is consistent with basic employment law.

31. He argues that a 2006 pursuit incident involving Cst. Charters should not form part of the evidence for these reasons and, in any event, the assessment at the time was that the

members' actions were reasonable. Similarly, the 2008 pursuit incident was one in which Cst. Charters was a passenger not the driver and neither member was the subject of discipline proceedings.

32. Mr. Woodall submits that it would be an error in principle to dismiss Cst. Charters for the default of deceit given the facts of this case and the absence of any similar past finding against him. Mr. Woodall refers me to four decisions in which retired judges did not impose dismissal for deceit in what he describes as much more serious circumstances than the present. Further, he says that there are no cases under the current *Act* where a retired judge has ordered dismissal for deceit.
33. Mr. Woodall argues that the Chief Constable's opinion that there is no place for Cst. Charters within the VPD is based on a misunderstanding of the facts and, as such, his opinion should be given little weight. Mr. Woodall challenges the Chief Constable's assertions concerning the impact of *R. v. McNeil* on Cst. Charters' ability to continue as a member of the VPD. He also reviews other "facts" relied upon by the Chief Constable and argues that they are inaccurate or should be ignored as irrelevant. Finally, he says that the Chief Constable's position that Cst. Charters cannot be reformed is inconsistent with the experience of other members of the VPD who have been convicted of criminal offences and have gone on to have successful careers with the VPD.
34. He emphasizes that:
 - The misconduct was for all practical purposes a single act that occurred in the heat of the moment, over only a few minutes.
 - Cst. Charters' only purpose was to stop and apprehend someone who had stolen a vehicle and was endangering the public, and was not done for personal benefit or out of malice. The essence of his misconduct was that he became overzealous in circumstances where he should have been cautious and restrained.
 - The disciplinary proceedings have already borne a significant punitive effect upon Cst. Charters and no further punishment need be imposed to bring home

the consequences of his actions or to accomplish the educational and corrective goals set out in the *Act*. Further, the finding of deceit in and of itself has an inherent and serious punitive effect.

- The misconduct flows from Cst. Charters being assigned to a demanding, specialized job – the Dog Squad – when he was not ready. He needed, as Insp. Zanatta identified, more experience and seasoning as a police officer.

VI. Analysis

35. The question before me is whether the just and appropriate discipline is a lengthy suspension or dismissal? To answer this question I first consider the aggravating and mitigating circumstances enumerated in s. 126(2) of the *Act*, recognizing that the list is not exhaustive and the importance of any one factor may vary with the individual case.

The Seriousness of the Misconduct

36. This is always a crucial factor but particularly so when considering dismissal. Here, the two disciplinary defaults committed by Cst. Charters are serious. They disclose a continuing course of misconduct during which Cst. Charters deliberately disobeyed the order of his supervisor not to pursue the Cherokee, deliberately breached the VPD Vehicle Pursuit Policy, attempted to stop the Cherokee by ramming or striking the rear bumper of the Cherokee with the push bar attached to the front of his vehicle and then broadcasted a false description of what had occurred to try to cover up his actions.
37. There are, however, mitigating circumstances. The misconduct occurred over only a few minutes and was in response to Mr. Davidson's actions at the intersection of Rupert Street and School Road when he drove or pushed the Cherokee out of Cst. Charters' "box and pin", what Cst. Charters perceived as ramming. Cst. Charters was surprised and likely provoked by what occurred and became even more determined to apprehend the driver of the Cherokee. This is what led Cst. Charters to breach the Vehicle Pursuit Policy and follow the Cherokee.

38. I find that while Cst. Charters tried to stay some distance back from the Cherokee as it drove north on Rupert Street, after the Cherokee lost control in Rupert Park and came to a standstill, Cst. Charters seized the opportunity. As the Cherokee drove out of the Park and back onto Rupert Street, Cst. Charters struck the rear of the Cherokee with the front of his vehicle in an effort to stop or immobilize the Cherokee. After failing to do so, he broadcast a false and misleading description of what had just occurred in an effort to cover-up his own misconduct. These decisions were made quickly and in the heat of the moment. Cst. Charters' purpose or motivation throughout was to stop the Cherokee and apprehend the driver.

Record of Employment

39. Cst. Charters' record of employment as a member of the VPD includes two incidents of past misconduct. They are as follows:
- In February 2007, Cst. Charters admitted that he improperly conducted a CPIC query on December 11, 2005 concerning a West Vancouver Police officer who had been charged with impaired driving. He did so out of curiosity and did not divulge the information to any outside source. He was provided with "managerial advice".
 - In November 2008, Cst. Charters received a one day suspension for neglect of duty and a one day suspension for discreditable conduct for failing to record or report the accidental discharge of a firearm by another officer while they were conducting an investigation in a private residence.
40. In addition, in 2006 and 2008, Cst. Charters was involved in driving incidents which resulted in him being formally advised about the VPD Vehicle Pursuit Policy. There was no finding of misconduct on either occasion and the relevance of these two incidents is primarily that Cst. Charters must have been aware of the policy and its purpose when he breached it on the morning of December 26, 2011.
41. On the other hand, Cst. Charters has received positive performance appraisals, commendations and letters of congratulations over his ten plus years as a member of the VPD. He is an officer who loves his work and does it with enthusiasm, courage and determination. He was described by Insp. Zanatta in his Report of December 4, 2010 as having "exceptional instinct policing qualities".

42. Underlying his positive qualities is a concern that he lacks maturity, judgment, insight and restraint as a police officer. There was also a concern with his integrity. This was Insp. Zanatta's assessment in his December 2010 Report and why he recommended deferral of Cst. Charters' transfer to the Dog Squad. These are the same negative qualities I found Cst. Charters' displayed on the morning of December 26, 2011.
43. Cst. Charters' lack of judgment and restraint on December 26, 2011 extends beyond his disciplinary defaults. It includes his driving from the time he initially began to keep a "long eye" on the Cherokee. He drove at very high rates of speed over many kilometres without lights or a siren in an effort to catch what he would describe as the "bad guy". Catching the driver of a stolen car does not justify driving dangerously and putting others at risk.

The Impact of the Proposed Disciplinary Measures

44. A lengthy suspension would have a significant impact as it would result in loss of income and leave Cst. Charters with a record that reflects the seriousness of his misconduct. Dismissal would, however, have a drastic impact as it would end Cst. Charters' career as a police officer.

Measure Taken in Similar Circumstances

45. With respect to measures taken in similar circumstances, I refer to three other decisions.

In the Matter of the Public Hearing Into The Complaint Against Constable Duncan Gemmell and Constable Gabriel Kojima [Part Two], PH 2004 – 01

46. In this disciplinary decision, Adjudicator Clancy ordered dismissal of both officers. The officers and four other members of the VPD had transported three known drug dealers or users from the Granville Street area to a parking lot in Stanley Park where they were assaulted by the officers. The officers' motivation was to dissuade the three from trafficking or purchasing drugs in the Granville Street area of the City. The officers admitted various disciplinary defaults, including deceit by Cst. Gemmell with respect to a General Occurrence Report he filed after the incident. The two officers had earlier pleaded guilty to assault in parallel criminal proceedings.

47. Discipline was governed at the time by s. 19 of the *Code*. Adjudicator Clancy highlighted the seriousness of the officers' misconduct at page 18, quoting from *Appropriate Officer E-Division v. Cst. K.P.N.*:

It is not an exaggeration to suggest that if egregious misconduct such as occurred here is seen to be tolerated, other officers may be encouraged to decide which laws to obey. Respect for the law in this country may be endangered. The police are not above the law. They must not be seen to be able to act improperly and yet escape suffering the full consequences of their illegal or inappropriate conduct. No matter how frustrating dealing with criminal conduct becomes, police officers must respond with actions within the law. Attempts to cover up misconduct are unacceptable. Discipline imposed must reflect those principles. ...

48. The police misconduct in *Gemmell and Kojima* was more serious as compared to the circumstances in this case as the officers effectively kidnapped the victims and assaulted them and were also convicted in criminal proceedings. Further, the deceit was contained in a report written some time after the assaults, not an oral statement made in the heat of the moment.

In The Matter Of The Public Hearing into the Complaint Against Constable #369 Adam Page [Part Two]

49. In this disciplinary decision, Adjudicator Pitfield considered the just and appropriate measures to impose on a member of the Abbotsford Police Department, who had committed the default of abuse of authority by assaulting a civilian and the default of deceit when he made false or misleading statements weeks later concerning that assault. He imposed a 25 days suspension for the default of deceit and a consecutive suspension of three days for the default of abuse of authority. I refer to the following passages from Adjudicator Pitfield's reasons, which I find helpful:

[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.

50. While he ordered a lengthy suspension as opposed to a dismissal for the default of deceit, he stressed the seriousness of that default:

[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.

In The Matter Of the Public Hearing Into The Complaint Against Constable #134 Ken Jansen

51. In this disciplinary decision, Adjudicator Lazar imposed a 14 day suspension and a demotion in rank upon a British Columbia Transit Authority police officer who she found had committed the default of deceit under the current *Act*.
52. Adjudicator Lazar adopted Adjudicator Pitfield's description of the seriousness of the default of deceit committed by a police officer but added the qualifier that some acts of deceit are more serious than others and the intention behind the deceit often colours its

seriousness. She noted that Cst. Jansen was an officer of less than two years at the time of the misconduct and his intention was not to cover up his own misconduct. She addressed the question of the likelihood of future misconduct at page 6 of her reasons and found:

This is not a case that arises because the officer lacked self-control or lied under pressure. It was a serious case of poor judgment. Jansen's misdirected effort to demonstrate solidarity with another officer resulted in his suspension and then dismissal. I am satisfied that if given a second chance this is not a mistake he would make again.

53. She found that notwithstanding the disclosure requirements mandated by *R. v. McNeil, supra*, discipline that sought to correct and educate would not be unworkable. She also addressed the question of whether anything short of dismissal would bring the administration of police discipline into disrepute and found at page 10:

In summary, I find that a reasonable person who was aware of the facts of this case would conclude from the behaviour Constable Spears and the response of the SCBCTA Police Service that Jansen's decision to support a fellow officer even if that meant filing less than a full and fair report did not reflect the culture within that police force. For these reasons I find that an approach that seeks to correct and educate the member would not bring the administration of police discipline into disrepute.

54. There are other decisions referred to by counsel but these three are the ones I find most relevant and helpful. They demonstrate that a finding of deceit is always very serious but does not inevitably lead to dismissal. The appropriate disciplinary measure depends on the totality of the circumstances.

Whether the VPD Contributed to the Misconduct

55. Insp. Zanatta did not believe Cst. Charters was ready for the Dog Squad. In hindsight, he was probably correct. I do not find, however, that the VPD contributed to Cst. Charters' misconduct. It was Cst. Charters' decision to apply and accept the position. He had been a member of the Dog Squad for over a year at the time of this incident. It was Cst. Charters who made the decisions he made on the morning of December 26, 2011.

Accepts Responsibility/Willingness to Take Steps to Prevent its Recurrence/Likelihood of Future Misconduct

56. I have combined these factors because, in my view, they overlap in the present circumstances.
57. While Cst. Charters did not repeat his deceit in any written report, he has not admitted it and has maintained it in his evidence at this hearing. His failure to accept responsibility is relevant for the same reason it would have been relevant if he had admitted his misconduct.
58. Cst. Charters was born on October 13, 1981. He was 22 years old when he joined the VPD in 2002. His previous misconduct occurred in 2005 and 2007. He is now 33 years of age. He is married and is a father. He enjoys the support of his family, other members of the VPD, and his Union.
59. I accept the sincerity of his statement to me in his letter that he has learned his lesson and will not repeat the mistakes he made on December 26, 2011. The question is whether he will follow through.
60. Common sense, good judgment, restraint and integrity are key qualities needed by police officers, in addition to the ability to follow the rules and instructions. If Cst. Charters is not dismissed, will he in the future follow the rules, follow the instructions of his superior officers and act with honesty and integrity? Will he exercise good judgment and restraint? Has he learned that the ends do not justify the means?
61. People can learn from their mistakes. Rehabilitation is a concept which society embraces and accepts can occur. Rehabilitation is an objective of sentencing found in s. 718 of the *Criminal Code* and it is expressed in s. 126(3) of the *Act* which directs that priority be given to correction and education unless doing so would be unworkable or would bring the administration of police discipline into disrepute.
62. It is critical to my decision whether I am satisfied Cst. Charters has learned from his mistakes and will not repeat them. If he has not and cannot, then it would be unworkable

to have him continue as a member of the VPD and doing so would bring the administration of police discipline into disrepute.

63. Cst. Charters has been through a long protracted internal process over many months at the end of which he lost his job. He has been unemployed for months waiting for this hearing to complete. He has had many months to think about what he did and the consequences of his actions. He has been on the edge of losing a job that means more to him than anything else in the world, other than his family. I am satisfied that the emotion he displayed when reading his letter to me was genuine and that this experience has had a profound effect on him. I find that he can and will learn from his mistakes and will not repeat them.

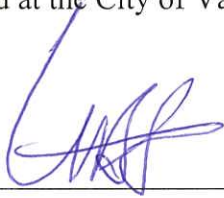
VII. Conclusion

64. I am not satisfied that it is unworkable to keep Cst. Charters as a member of the VPD. Doing so will cause difficulties for the VPD and for Cst. Charters. It is inconvenient but it is not unworkable. Cst. Charters will likely have to be assigned to duties for some time that are less desirable but at which he must perform well if he is to regain the trust and confidence of the VPD.
65. I am also not satisfied that discipline short of dismissal would bring the administration of police discipline into disrepute in the eyes of reasonable citizens who know all of the circumstances of these defaults and Cst. Charters' strengths and positive qualities as a police officer.
66. I find that the appropriate and just discipline is a lengthy suspension. The defaults comprise distinct although connected misconduct. The suspensions should be consecutive but not unduly harsh or excessive in their totality. I find that the just and appropriate suspension is 10 working days on Count 3 and 30 working days on Count 1.
67. The total suspension is 40 working days.

The Chief Constable's Letter

68. The opinion of a Chief Constable and the evidence he or she may be able to present at a disciplinary hearing can provide valuable assistance to an adjudicator. Doing so also ensures that an adjudicator appreciates the impact their decision may have on that Police Department. It is self-evident, however, that any opinion and evidence from a Chief Constable is expected to be balanced, fair, complete and accurate.
69. The letter provided by the Chief Constable in this case failed to meet those expectations. Its preparation was delegated to others. This is understandable given the Chief Constable's many other responsibilities. My criticism is not directed at the Chief Constable personally but rather at the Department and is meant to encourage the Department to exercise more care in the future.

Dated at the City of Vancouver, Province of British Columbia, this 31st day of October, 2014.



Adjudicator William B. Smart, Q.C.