DECISION ON REVIEW ON THE RECORD

PURSUANT TO SECTION 141, *POLICE ACT*, R.S.B.C. 1996, c. 267, as amended

In the matter of the Review on the Record into the conduct of

Constable Byron Ritchie of the

Delta Police Department

To: Constable Byron Ritchie, Delta Police Department

And to: Chief Constable Neil Dubord, Discipline Authority, Delta Police Department

And to: Mr. Stan T. Lowe, Police Complaint Commissioner

And to: Kevin Woodall, Counsel for Constable Ritchie

And to: Brad Hickford, Commission Counsel

And to: Joe Doyle, Counsel to Discipline Authority Chief Constable Dubord

Review date: November 20, 2018

Place: Vancouver, BC

Counsel for the Member: Kevin Woodall

Commission counsel: Brad Hickford

I. Overview and history of proceedings:

1. Following a discipline proceeding, Discipline Authority Chief Constable Neil Dubord of the Delta Police Department (the Former Discipline Authority) made the following key findings of fact concerning Constable Byron Ritchie (the Member), a constable with the Delta Police Department:

   a. On 11 separate occasions, Constable Ritchie wrote 11 separate British Columbia Violation Tickets to 11 individuals, for a total of 20 offences under the *Motor Vehicle Act*. These were offences Constable Ritchie did not have

reasonable and probable grounds to believe had occurred. Indeed, he knew they had not occurred at all. In the course of traffic enforcement work, when he encountered drivers breaching the rules about cell-phone use, he effectively substituted different violation tickets. His approach resulted in tickets and fines, but not for the actual conduct of the driver. This was found to constitute deceit under the *Police Act*.

b. The 11 noted allegations against Constable Ritchie arose as a result of his duties with the Integrated Road Safety Unit (IRSU). While conducting traffic enforcement, specifically distracted driving enforcement, there were occasions where Constable Ritchie felt the issuance of a distracted driving ticket with a first offence fine of $368 and four demerit points (an additional $175, for a total of $543) was too heavy-handed, and so he exercised his discretion not to issue the distracted driving ticket.

c. Instead, and rather than issuing a warning or not issuing any ticket, Constable Ritchie would issue a violation ticket for offenses which did not occur. Most often these were for failing to wear a seatbelt and failing to produce insurance, even though the subject was wearing a seatbelt and did produce insurance. Constable Ritchie's rationale for issuing these tickets was that the two fines combined total $248 and zero demerit points — approximately one half of the cost of the distracted driving combined penalty of $543. Thus he was giving the driver a break.

2. Having made those determinations, the Former Discipline Authority concluded on April 19, 2017 that the member committed 11 allegations of misconduct. All of the allegations were for deceit pursuant to section 77(3)(f)(i)(B) of the *Police Act*. That section provides that a member commits a disciplinary breach of public trust when, in the capacity of a member, he or she makes an entry in an official document or record knowing that the entry is false or misleading.

3. Submissions were received on an appropriate disciplinary outcome. On May 22, 2018 the Former Discipline Authority determined that the proposed disciplinary or corrective measures to be imposed against the Member were as follows:

a. Reduction of rank for 12 months (from First Class Constable to Second Class Constable for the first 12 months, then 'seniority reinstated provided he has satisfactory performance reviews).

b. Suspension without pay of two days (10 hours) for each of the 11 allegations, consecutive, totaling 22 days (220 hours) of suspension without pay. This suspension was to be completed upon the acceptance of the Form 4 by the Office of the Police Complaint Commissioner (OPCC) and prior to Constable Ritchie returning to active duty.

c. To work under close supervision for a period of one year and to participate, to the satisfaction of his supervisors, in a return to work plan. The return to work plan included a period of retraining, administrative duties and ultimately a return as a Constable in the Vehicle Inspectors Section. It provided that he would be closely supervised and monitored in order to ensure that he was participating to a satisfactory level.

4. In arriving at the conclusions that he did the Former Disciplinary Authority concluded that Constable Ritchie had given considerable thought to developing a process of how he was to give people a break from the new distracted driving laws. He concluded that the system involved the following considerations:

a. Constable Ritchie decided the total cost of the fines associated with the combination of tickets he would issue would be approximately one half the cost of the distracted driving fine.

b. Constable Ritchie decided there would be no demerit points for the tickets he would issue. The violation ticket for "no seatbelt" and "failing to produce insurance" do not have any demerits allotted to the driver. The distracted driving violation tickets involve the driver receiving four demerits points.

c. Constable Ritchie decided to write "work with" or "w/w" on the tickets, so that if contested he would recognize the tickets and could withdraw them.

5. The Former Disciplinary Authority concluded that these factors demonstrated planning and deliberation and an effort to avoid detection.

6. Pursuant to section 137 of the *Police Act*, where a Discipline Authority proposes a disciplinary measure of dismissal or reduction in rank, upon written request from the police member, the Commissioner must promptly arrange a Public Hearing or Review on the Record.

7. On June 13, 2018 the Police Complaint Commissioner received a request from Constable Ritchie's counsel, Mr. Kevin Woodall, for a Public Hearing. Supplementary information was provided on July 5, 2018. In his request Mr. Woodall indicated that the Disciplinary Authority had made a number of findings of fact in his penalty decision that were not borne out by the statements in the Final Investigation Report (FIR). Mr. Woodall wanted the adjudicator at the Public Hearing to hear the testimony of the motorists who received tickets from Constable Ritchie, to determine what the motorists were doing, whether they were deceived by the ticket, whether their interaction brought discredit upon the policing profession, and whether the interaction served the larger purpose of enforcing the law.

8. In reviewing the record of the Disciplinary Decision the Police Complaint Commissioner concluded that:

a. Constable Ritchie had had the assistance of Mr. Woodall through the investigation and disciplinary proceedings;

b. each of the motorists were interviewed during the course of the investigation and their evidence thoroughly canvassed as it related to the allegations under investigation; and
c. Constable Ritchie did not request any further investigation following the submission of the Final Investigation Report and did not request the attendance of any witnesses at the discipline proceeding.

9. The Police Complaint Commissioner concluded that it would not be necessary to examine or cross-examine witnesses or receive evidence that was not currently part of the record of disciplinary decision. He was, therefore, satisfied that a Public Hearing was not required to preserve or restore public confidence in the investigation of misconduct in the administration of police discipline.

10. As a result, the Police Complaint Commissioner, pursuant to sections 137(2) and 143(2) of the *Police Act*, ordered a Review on the Record. He ordered pursuant to section 141(2) that the Review on the Record would consist of a review of the disciplinary decision as defined by section 141(3) of the Act. He noted that pursuant to section 141(4) of the *Police Act*, Constable Ritchie could seek to establish special circumstances in which the adjudicator could exercise discretion to receive evidence that was not part of the record of disciplinary decision or his service record.

11. On July 12, 2018 I was appointed by the Police Complaint Commissioner to conduct this Review on the Record. Disclosure materials relating to the matter were provided to the parties by the OPCC.

12. At an administrative conference call convened on July 31, 2018, commission counsel and counsel for the Member confirmed receipt of the disclosure materials and were invited to provide written submissions. The Former Disciplinary Authority was represented at the administrative conference call by counsel Mr. Joe Doyle. Ultimately the Former Disciplinary Authority decided not to make written submissions and not to participate in any oral hearing. An oral hearing date was set for October 23, but was adjourned at the request of the member to November 20, 2018.

13. No notice of application to consider additional evidence was given by any party.

II. Standard of review

14. Section 141(9) of the *Police Act* confirms that the standard to be applied in my review of the Disciplinary Decision is correctness. Therefore, my obligation is to determine whether or not the specific allegations of deceit have been substantiated, and if so to determine the appropriate disciplinary or corrective measures that ought to be taken in relation to the member in accordance with section 126 of the *Police Act*.

III. The record

15. A Review on the Record has its limitations. In oral submissions, Member's counsel Mr. Woodall took exception to some of the arguments contained in commission counsel's written submissions. It was his position that in refusing the member's request for a Public Hearing, the Police Complaint Commissioner accepted the record that was before the Former Disciplinary Authority and therefore waived the right to speculate about evidence that might have been available if oral evidence had been lead. As a consequence, he argued, the adjudicator must accept the evidence given by Constable Ritchie at the disciplinary proceeding, unless there is other cogent evidence contradicting it.

16. Mr. Justice Myers in *Lowe v. Diebolt*, 2013 BCSC 1092 (aff'd 2014 BCCA 280) made a similar observation, noting at paragraph 53:

> ... the answer to that is the review by the retired judge under section 117 is one of the record. There is nothing to allow him or her to speculate on what might have been asked, but was not, and to then further speculate whether the blanks may be filled in at a possible(not, under the Act, an inevitable) further oral hearing.

17. The record before the Former Disciplinary Authority consisted of the FIR, some exhibits and the oral evidence of Constable Ritchie. Constable Ritchie was led through his evidence by Mr. Woodall, his counsel at the hearing. There was no cross-examination although the Former Discipline Authority did ask a few questions. As a consequence, the record before me contains Constable Ritchie's recollection of the facts and his position from his perspective. Rigorous cross-examination may well have elicited other facts, but in my role as adjudicator I cannot and will not speculate.

IV. Facts

18. The facts are not seriously in dispute.

i. Between the period of June 1, 2016 and September 2, 2016, Constable Byron Ritchie, a 16-year member of the Delta Police Department, was seconded to the Integrated Road Safety Unit. Constable Ritchie had extensive experience as a Traffic Enforcement Officer. He had joined the Delta Police on September 5, 2000.

ii. On June 1, 2016, new BC *Motor Vehicle Act* (MVA) legislation regarding the use of electronic devices while driving came into effect. The result was that drivers caught using electronic devices behind the wheel were subject to increased fines, demerit points added to one's driving record, and driver's license suspensions.

iii. Constable Ritchie, believing the new legislation was heavy-handed, elected to provide breaks to some drivers he observed using an electronic device while driving. He did not exercise his discretion and provide a break if the driver was talking on his handheld device or texting. Rather, he decided to give a break to those drivers who he concluded were in breach of some of the less well-known provisions of the new legislation. For example, it was unlawful to move a phone from the seat of the car to a cup holder while operating a motor vehicle, and this could result in the increased sanctions under the new legislation.

iv. On [redacted], Constable Ritchie observed [redacted] using an electronic device while operating a motor vehicle. He detained [redacted] for the purposes of issuing [redacted] a violation ticket. At some point it was disclosed that [redacted]. Constable Ritchie for a variety of reasons determined to give [redacted] a break. He did so by writing [redacted] tickets for BC *Motor Vehicle Act* offences that did not occur, so that the fine amount would equal approximately one half of the value of what a "use electronic device offence" would be. In addition there would be no demerit points. If the tickets were contested Constable Ritchie testified he would withdraw the tickets.

v. When [redacted] learned of [redacted] violation tickets, which contained offences [redacted] did not commit, [redacted] reported the occurrence to Constable Ritchie's supervisor. When Constable Ritchie was questioned about the matter, he readily admitted what he had done. And he told his supervisor he had used the same pattern of writing traffic violation tickets for offences that did not occur in order to give other people a break in a number of other cases.

vi. The Delta Police Professional Standards Section was notified and the details of what Constable Ritchie had done were forwarded to the OPCC. Constable Ritchie was truthful with Professional Standards Section investigators and told them it did not occur to him that what he was doing was deceitful until his supervisor brought it to his attention. Constable Ritchie told the investigators that he was only using his discretion to be nice to people whom he believed deserved breaks.

vii. The subsequent investigation found a total of 11 occasions on which Constable Ritchie had written up drivers for failure to wear a seatbelt and failure to have insurance, when in fact the drivers were wearing a seatbelt and did have insurance. Constable Ritchie wrote "work with" or "w/w" so he would be able to identify the tickets he issued that way.

19. It is common ground that a violation ticket is an official document under the *Offence Act*. A copy of a violation ticket is used when the receiver of the violation ticket pays a fine, and is also used by the Provincial Court for convictions, dispositions, and stays of proceedings; hence the violation ticket is an official court document.

20. The wording on a British Columbia violation ticket states:

> ... the enforcement officer says that he or she has reasonable and probable grounds to believe, and does believe that....

21. The officer is then required to fill out whether the person was a driver, pedestrian, cyclist, passenger, registered owner or other. The officer must then fill out the date, time and location of the alleged offences, followed by the specific offences themselves.

22. In his evidence before the Former Disciplinary Authority, Constable Ritchie testified that he believed that what he was doing was no different than what he had done as a police officer issuing tickets, what he had done as a prosecutor prosecuting tickets, and what the Crown do in other cases: he offered the offender a lesser offence than the one they actually committed. He did so in the interests of driver education, and in the interests of reducing the number of court proceedings. The drivers had committed *Motor Vehicle Act* offences and they were being given tickets for *Motor Vehicle Act* offences, albeit less serious ones. Constable Ritchie believed it was within his discretion to issue those tickets provided that the drivers were aware of and accepted the deal. He testified that in every case they did.

V. Has the allegation of misconduct by deceit been substantiated?

A. Submissions of counsel for Constable Ritchie

23. The fact that Constable Ritchie wrote tickets for offences which did not occur is conceded. However, the issuance of these tickets was simply the misguided exercise of discretion and the misconduct allegation of deceit contained in section 77(3)(f)(i)(B) was never intended to capture and penalize such conduct.

24. The *Police Act* is not a criminal statute, but rather a piece of specialized labour legislation. *Florkow v. OPCC*, 2013 BCCA 92. It differs from police disciplinary legislation in other provinces which speaks of "penalties" for misconduct. In British Columbia the *Police Act* speaks of "disciplinary or corrective measures" that "seek to correct and educate". In consequence, if one interprets the *Police Act* in a broad purposive manner, conduct such as that committed by Constable Ritchie is deserving of education not punishment.

25. Although under criminal law ignorance of the law is no defence, under the *Police Act* ignorance of the law can be a defence. In this case Constable Ritchie was aware that police officers are expected to use discretion in issuing traffic enforcement tickets. However, he had never been trained in the legal scope of discretion. His decision to issue tickets for lesser offences, albeit not lesser included offences, was a result not of an intention to deceive, but rather a result of ignorance of the law that governs how discretion may be exercised when issuing traffic tickets.

26. Policing is different from other professions. Lawyers have a professional duty to get their own training and not to engage in areas where they have not been educated.

Police on the other hand don't choose their training or their assignments. They can't refuse an assignment because they don't know the law.

27. Police officers are taught that the primary purpose of enforcing traffic laws is to educate drivers to change their driving behaviour. This means that they often exercise discretion to correct the behaviour of drivers, rather than simply punishing them. Similarly, when they go to traffic court, where they prosecute their own traffic tickets, they are encouraged to discuss the case with the motorist and if possible reach a resolution outside of court. That often involves agreeing on an offence that carries a lesser penalty than the one originally charged. They are encouraged to do this by the court, which would be overwhelmed with cases if such plea-bargaining did not take place.

28. The distracted driving offences enacted in June 2016 were complex and not well understood by the general public. What Constable Ritchie did was intended to educate the motorists he encountered and thus fulfil his duties in traffic enforcement. He could have given the motorists a warning but in deference to the seriousness and increased penalties in the new legislation he decided that a penalty of approximately one half the appropriate fine, with no demerit points, would be sufficient to make his point.

29. His good intentions, combined with his misunderstanding of the law as it relates to the exercise of his discretion, is a complete defence to the allegation of misconduct by deceit. This is so, because ignorance of the law can be an excuse in police discipline law. Authority for this proposition can be found in two cases: *Lowe v Diebolt*, *supra*, and *Scott v. Police Complaint Commissioner*, 2016 BCSC 1970. It is argued that the *Lowe* decision is authority for the proposition that in order to substantiate an allegation of abuse of authority, it is not sufficient to establish that a search or arrest was unlawful; there must also be evidence that the police officer arrested or searched knowing he lacked the grounds, or being reckless as to whether he or she had the grounds. In other words there must be something more than simply breaking the law.

30. Similarly in *Scott*, the Court was dealing with an allegation of abuse of authority under section 77(3). The BC Supreme Court found that the fact that the officer entered the house unlawfully does not without more amount to an abuse of authority. The Supreme Court Justice stated;

> In my view, the section should be read to apply to conduct which has a serious blameworthy element and not simply a mistake of legal authority alone.

31. Mr. Woodall argues that Constable Ritchie's actions were neither arbitrary nor abusive. They were not arbitrary because he had good reasons for what he did. They were not abusive because he made sure the drivers were all okay with accepting tickets for offences that they had not committed. Deceit, as defined under the *Police Act*, should be interpreted as involving a moral blameworthiness component. The question I should ask is whether or not the public trust has been violated. Because the *Police Act* is specialized labour legislation, and taking into consideration the philosophy set out in

section 126, whereas here the constable is simply trying to do his duty , public trust is not undermined and the offence of misconduct has not been made out.

B. Submissions of commission counsel

32. Commission counsel argued as follows. Deference should be given to the decision of the Former Disciplinary Authority. He applied the correct test as being one on the balance of probabilities. In doing so he considered:

a. violation tickets are an official document;
b. the process developed by Constable Ritchie to falsely issue violation tickets;
c. the definition of deceit; and
d. discretion and training.

33. The Former Disciplinary Authority clearly considered all of the appropriate factors and correctly applied the law in determining that all 11 allegations of deceit had been made out.

34. Constable Ritchie wrote tickets for offences that did not occur, and in doing so placed himself outside and above the law. He was judge, jury and executioner. His actions demonstrate a level of arrogance and disregard for any understanding of his responsibilities as a police officer and a proper understanding of the limits on his authority and power as a police officer. His actions by their very definition amount to calculated deceit.

35. Constable Ritchie is not a new or junior officer. He joined the Delta Police Department in September 2000 and spent nine years as a patrol officer and another seven working in traffic. With that level of experience Constable Ritchie must have been aware that writing 11 false tickets amounted to making false entries in an official document and that his actions were not a legitimate exercise of his discretionary power as a police officer.

36. The argument that Constable Ritchie's actions are like a plea bargain, and thus similar to accepting a guilty plea to a lesser but included offence, or the withdrawing of one ticket for the entering of a guilty plea to another, has no merit. Constable Ritchie's role in conducting traffic court prosecutions is not like that of a lawyer or prosecutor. His role in traffic court is monitored by a legally trained person who ensures that the officer's actions in advocating or accepting a plea-bargain are conducted within the confines of the law.

37. Constable Ritchie's conduct in giving motorists a break on the basis of his personal considerations was not selfless. In writing two tickets for offences that didn't occur, rather than a single ticket for an offense that did occur, Constable Ritchie was personally benefiting because performance as an IRSU officer is judged by the number of tickets he writes.

38. His actions amount to enforcing his own perspective of how the law should be applied as opposed to carrying out his obligations and duties as a police officer. Further, in utilizing the same two offences in each of the 11 cases, Constable Ritchie designed a process that would allow him to recognize the case should it be disputed in court. This would allow him to withdraw the tickets and therefore avoid responsibility for having made a false entry in an official document. Constable Ritchie fully understood that his actions were deceitful and took steps to ensure that he would not get caught. His whole process was not only premeditated but created with significant planning.

39. Mr. Woodall's argument that the court should consider all deceitful actions on the part of police officers on a case-by-case basis, to determine if they were being deceitful for what they believe to be a good reason and a reason that the public might find acceptable, has no merit. Further, the contention that Constable Ritchie did not receive any training on the scope of discretion is a red herring. The sole issue to be determined is whether or not the violation tickets that he wrote were false and whether the information entered into them was done by Constable Ritchie knowing that the statements were false.

40. Both the *Scott* case and the *Lowe* case can be distinguished. In *Scott* the Court was dealing with a determination of intention and recklessness and conduct which had a serious blameworthy element as opposed to being a mistake of legal authority alone. In *Lowe* the Court found that the evidence did not establish that the officer knew that she could not conduct a legal search. It would be ludicrous to accept that Constable Ritchie's actions of knowingly being deceitful could be considered as a mistake of legal authority as opposed to intentional actions that were deceitful by their very definition, and designed to achieve a purpose derived from the personal perspective of Constable Ritchie.

VI. Analysis

41. The *Police Act* sets out a comprehensive code for the investigation and adjudication of disciplinary proceedings with respect to municipal police in British Columbia. *Regina Police Association Inc. v. Regina (City) Board of Police Commissioners,* [2000] 1 S.C.R. 360.

42. In *Florkow*, *supra*, at paragraph 2, the British Columbia Court of Appeal described the *Police Act* as follows:

> At the beginning of his submissions to this court, counsel for the Police Complaints [*sic*] Commissioner ("PCC") suggested that the *Police Act* is "highly specialized labour relations legislation dealing with the employment of police officers and the protection of the public by means of the disciplinary tools provided by the statute." I see no reason to disagree with this description, but the focus of this appeal is the role of the PCC under Part XI.

43. The *Police Act* sets the ground rules for police discipline and civilian oversight over the police discipline system. The modern-day legislation arose out of a series of reforms to the police discipline system, which may usefully be traced to the 1994 Report of the Honourable Wallace T. Oppal, *Closing the Gap, Policing and the Community*. The Oppal Report recommendations led to reforms implemented in the 1998 *Police Act*. In turn, calls were made for further reform including a 2005 White Paper from then-Police Complaint Commissioner Dirk Ryneveld, QC and the important 2007 *Report on the Review of the Police Complaint Process in British Columbia* by Josiah Wood, QC. The Wood Report was largely implemented in the 2010 reform of the *Police Act*. In addition, the Frank Paul Inquiry led by William H. Davies, QC included recommendations relating to the police disciplinary process.

44. The trend in these reports and reforms has been to make the police disciplinary process more rigorous, and to provide for greater civilian oversight. In many respects, the reforms have sought to limit the old approach of "the police investigating themselves", and passing judgment on their fellow officers.

45. From the language of the *Police Act*, there is no threshold of "serious moral blameworthiness" for something to amount to misconduct. The legislature could have adopted a two-part test, requiring one of the listed types of misconduct and also a level of moral blameworthiness on the part of the officer but it did not.

46. In sum, based on the statute's language, it seems that misconduct is a broad category, not limited to serious misconduct involving deliberate wrongdoing.

47. Section 77 of the *Police Act* defines misconduct as conduct that constitutes a public trust offence.

48. Section 77(3) states that any of the conduct described in subheadings (a) through (m) constitutes a disciplinary breach of public trust when committed by a member.

49. Section 77(3)(a) deals with abuse of authority. Included under that heading are conduct that involves

> (i) intentionally or recklessly making an arrest without good and sufficient cause and
>
> (ii) in the performance, or purported performance, of duties, intentionally or recklessly
>
> > (A) using unnecessary force on any person, or
> >
> > (B) detaining or searching any person without good and sufficient cause.

50. Both of the above noted offences involve conduct that must be intentional or reckless in order to constitute a disciplinary breach of public trust.

51. Section 77 (3) (f) defines deceit:

(f) "deceit", which is any of the following:

(i) in the capacity of a member, making or procuring the making of

(A) any oral or written statement, or

(B) any entry in an official document or record, that, to the members knowledge, is false or misleading

52. The *Police Act* does not require that the member's actions be either intentional or reckless.

53. Mr. Woodall, on behalf of Constable Ritchie, argues that ignorance of the law can be a defence to the allegation of deceit. In my view the gravamen of the offence is the making of a false statement in an official document. Here, the fact that Constable Ritchie knowingly made false statements in an official document is conceded. The argument is that this is not sufficient to constitute the offence of deceit; that it is necessary to go further and to examine the motive behind the making of the false or misleading statement in an official document. If the intent is good and the public would understand, then the fact that Constable Ritchie misunderstood the law that governs how discretion may be exercised when issuing traffic tickets affords a full defence.

54. In my view, unlike the sections involving abuse of authority, the offence of deceit is complete when the false entry is made in an official document knowing that it is false. If the legislature intended that the motives of the member be a factor it would have added words to that effect. What the legislative language does is require knowledge (the member knows the information is false), but it does not go further and require any particular motive for the false statement.

55. Furthermore, the mistake of law argued here lies in Constable Ritchie:

a. believing he could short-circuit the court process and in effect plea-bargain on the street;
b. in doing so he did not have to charge an offence that could be alleged based on the facts; rather he could charge whatever offence he wanted, with a penalty he liked, and therefore fulfil his role as a traffic enforcement officer, provided he had the agreement of the motorist.

56. I do not accept the argument that his ignorance of the law in this regard affords a defence. As stated, in my view the offence is made out when the false statement is knowingly made. His motive is irrelevant.

57. If I am wrong, then I also am of the view that no experienced Constable (here 16 years of total service, with at least nine years on patrol or traffic) would have reasonably believed that an appropriate use of his or her discretion meant that he or she could plea-bargain on the street by deliberately laying charges that had no basis in fact. In

other words, it is unreasonable to think that, as part of plea bargaining discretion, an officer could allege offences that the officer knew did not actually take place.

58. I am unable to accept the contention that Constable Ritchie's ignorance of the law was due to a lack of training. Some things are fundamental. I find it inconceivable that this experienced traffic enforcement officer did not receive training in the laying of an information or alleging an offence, be it under the *Motor Vehicle Act* or the *Criminal Code*. The evidence discloses that Constable Ritchie has laid thousands of charges. He well knew that it was highly improper to assert in a traffic violation ticket that he had reasonable and probable grounds to believe in a set of facts that never occurred.

59. Finally, Constable Ritchie's actions breached the public trust. The end does not justify the means. Any reasonable member of the public would be concerned at the thought of police officers writing tickets or laying charges for offences that never occurred. A reasonable member of the public would conclude that such an action would be a breach of the trust the public places in police officers to act within the confines of the law.

60. In reaching this conclusion I have considered the cases of *Lowe v. Diebolt* and *Scott v. Police Complaint Commissioner*. I have concluded that both are distinguishable.

61. In *Lowe*, the issue was whether or not the constable had committed an abuse of authority by intentionally or recklessly detaining or searching a person without good and sufficient cause. The Court pointed out that the question of misconduct under the *Police Act* is different from whether a *Charter of Rights* breach occurred. The court noted that the definition of the charged misconduct required recklessness or intent..

62. At paragraph 46 Mr. Justice Myers had this to say:

> The intent cannot refer to the physical act of the search, because it is virtually impossible conduct a physical search non-intentionally. It must refer to the *mens rea*, or state of mind of the officer. Recklessness must be interpreted in the same manner. The fact that an officer is ignorant of the law related to searches does not, by itself, indicate intent or recklessness. It is more in line with negligence, or, for that matter, poor training.

63. And at paragraph 52:

> On several occasions, I invited the petitioner's counsel to point me to anything in the record indicating either intentional or reckless misconduct by Constable Burridge other than the search itself. He could not do so other than to point out her acknowledgement that she did not have grounds to arrest. But that factor merely circles back to the validity of the search. There was nothing in the evidence to show that Constable Burridge knew that the lack of grounds for arrest meant that she could not do the search, something which might amount to intention.

64. The Court was doing no more than pointing out the fact that the constable's lack of understanding that she could not do a strip search without grounds for an arrest, was not sufficient to constitute misconduct which amounted to an abuse of authority as defined in section 77(3)(a). In my view it cannot be taken to stand for the assertion that good faith or intent should be read into the deceit misconduct in section 77(3)(f), which does not require either intent or recklessness to do something improper.

65. *Scott v. The Police Complaint Commissioner* involved allegations of abuse of authority contrary to section 77(3)(a). Members of the Abbotsford Police Department received a report that an individual had assaulted his girlfriend and taken her five-year-old daughter. Abbotsford Police attended at the home to make an arrest for assault and to apprehend the child and to return her to her mother. The police entered the home without a warrant and apprehended the child. As a result of the altercation at the door, charges were laid against an occupant of the house for assaulting police. The assault charges were heard in Provincial Court and the occupant of the house was acquitted.

66. The police officer who entered the house was accused of misconduct, specifically with abuse of authority. A *Police Act* Disciplinary Hearing was ordered and the Discipline Authority found that the officer had acted in good faith. The Commissioner appointed a retired judge under section 117 to review the decision. The Supreme Court was called upon to judicially review certain decisions made by the retired judge in that review.

67. At paragraph 36 the Court had this to say:

> Provincial Court Judge Rounthwaite decided the petitioner did not have authority to enter the house of the complainant and arrest her, but made no decision that the petitioner had abused his authority within the meaning of section 77(3) of the *Police Act*, which is reproduced at paragraph seven of these reasons. Abuse of authority is defined for the purpose of the complaint against the petitioner [the police officer] as the intentional or reckless arrest of the complainant without good and sufficient cause. I do not read the phrase without limitation, as the retired judge apparently did, to mean that intention or recklessness can be ignored when considering the petitioner's conduct. In my view, the section should be read to mean conduct which has a serious blameworthy element and not simply a mistake of legal authority alone.

68. The Court went on to hold that the retired judge improperly conflated the issue of whether the petitioner was in the course of his lawful duties when he entered the complainant's home and arrested her, with the other issue of whether the petitioner was guilty of misconduct by abusing his authority as defined in the *Police Act*.

69. In my view the statement that in order to constitute misconduct under the *Police Act* the actions of the police officer should have a serious blameworthy element, is nothing more than a statement that to constitute an abuse of authority requires either intent or recklessness. The case does not stand for the proposition that intent, motive, or moral blameworthiness should be required for the misconduct of deceit. The

legislation spells out what amounts to deceit, and I am not persuaded that it is appropriate or justifiable to read in additional requirements beyond what the legislature has mandated.

70. I have no hesitation in concluding that all 11 allegations of deceit have been substantiated.

VII. Disciplinary or corrective measures

71. Having found the allegations substantiated, it is necessary to determine the appropriate disciplinary or corrective measures to be taken in relation to the Member in accordance with section 126, which provides 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.

72. In completing my review of the record, I am required to consider all aggravating and mitigating circumstances in order to determine the just and appropriate disciplinary or corrective measures in relation to the misconduct of the Member.

73. If I determine that one or more disciplinary or corrective measures are necessary, section 126(3) provides that 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.

74. An approach that seeks to correct and educate the member is appropriate in this case. I am satisfied that such an approach would not be unworkable or bring the administration of police discipline into disrepute. While deceit is, in many or most cases, an exceedingly serious form of misconduct, there are considerations arising in the present case that are distinctive, if not unique. I speak here of the motivation behind the officer's approach, and his willingness to acknowledge what he did. This is far from a situation in which a police officer committed deceit for corrupt reasons that stood directly against the public interest.

75. Constable Ritchie made a serious error in judgement. It is difficult to understand how a member with Constable Ritchie's unblemished record, and solid performance reviews could have so misconceived the discretion that he had as a police officer.

76. On the evidence before me I am satisfied that what Constable Ritchie did, in attempting to give motorists a break in the face of new and complex distracted driving legislation, was well-intentioned. Clearly, in an effort to educate motorists a warning would have been much more appropriate, given the somewhat more technical breaches of the legislation committed by the motorists involved in the allegations in this case.

77. However, I am satisfied that Constable Ritchie did not engage in an elaborate scheme designed to defeat the administration of justice, nor did he take special measures to ensure that his actions were hidden from his superiors. I am also satisfied that Constable Ritchie's actions were not motivated by personal gain. The evidence discloses that Constable Ritchie had written hundreds of tickets and was already considered a "top performer". He was not trying to pad his stats.

78. I am satisfied that for whatever reason Constable Ritchie simply did not think through the consequences of what he was doing. It was one of those things that "seemed like a good idea at the time".

A. Mandatory criteria in assessing disciplinary or corrective measures

1. 126(2)(a): Seriousness of the misconduct

79. As the Former Disciplinary Authority found, Constable Ritchie derived no personal gain from the scheme and readily admitted fault at the earliest possible stage. He cooperated with the investigators throughout. His cooperation, in fact, resulted in the additional allegations after the first complaint. I agree with the Former Disciplinary Authority that Constable Ritchie's case differs from those involving deceit motivated by personal gain (or motivated by a perceived benefit to other officers), and those where officers attempt to conceal their own dishonest or deceptive conduct.

80. The misconduct is serious in that it had the potential to undermine the public's trust in the police. Issuing tickets to motorists for offences that they did not commit suggests a lack of integrity.

2. 126(2)(b): Record of employment

81. Constable Ritchie has no service record of discipline; he has never been found to have committed misconduct in the past. In his performance appraisal for 2015/2016, his supervisor had this to say:

Constable Ritchie's professional skills and interpersonal style have helped him to receive no complaints in this reporting period, even after serving approximately 2500 violation tickets. As a supervisor I have no doubt that I could call any of the people Constable Ritchie dealt with on any given day and I would hear that they had been treated fairly, with respect and possibly with humour. Constable Ritchie has great communication skills and a calm professional demeanour.

82. Indeed, a review of the interviews with all 11 of motorists involved in the allegations in this case indicates that Constable Ritchie deals with people in a professional and courteous manner.

83. Constable Ritchie has received commendations for his participation with the Tac Troop and during the Stanley Cup riots. He is also received two Superintendent's commendations. Constable Ritchie has also been highly involved in police and community service events, including the Torch Run for Cancer, the Ride to Survive and the Cops for Cancer bicycle rides as well as Pink Shirt day.

3. 126(2)(c): The impact of proposed disciplinary or corrective measures on the member and on her or his family and career

84. The impact on Constable Ritchie and his family has been significant.

a. Constable Ritchie has been suspended with pay since September 1, 2016. Prior to that he worked approximately 200 hours of overtime per year. Mr. Woodall, counsel for Constable Ritchie, has estimated that lost overtime from September 1, 2016 through August 1, 2018 amounts to over $30,000.

b. Mr. Woodall estimates that the financial impact of the combined suspension and demotion would be approximately $31,356.20. Combined losses therefore would exceed $61,000.

c. The return to work plan that was part of the Former Discipline Authority disposition was, to my understanding, imposed. It has seen Constable Ritchie assigned to menial duties such as cleaning rifles, disposing of old ammunition and driving injured employees from home to work and back again. Constable Ritchie has not had the opportunity to participate in further training.

d. Constable Ritchie is eligible to retire in four years. His pension will be calculated on the basis of the average of his best five years of income and thus a demotion will have an enduring effect on his pension throughout retirement.

e. Mr. Woodall points out that there are other serious consequences. The integrated unit of RCMP members and members of municipal detachments where Constable Ritchie worked are well aware of his suspension and the misconduct allegations. He was a medic with the Lower Mainland Tactical Troop and that assignment has ended . The Chief Constable of Delta has said that Constable Ritchie was scheduled to be rotated out in any event however, ordinarily, movement from that Troop would involve a formal announcement explaining the reason for departure.

f. When Constable Ritchie was suspended he was required to report to the front counter of the Police Department in person every day. Because he was suspended he was not permitted to enter the building. As a result, he was required to wait in the public waiting room until he was able to sign in. In some cases it was a long wait. The requirement to check in daily ended after four months, when it was changed to a requirement to check in two days per week. There is no question that this process involved humiliation. In my view the impact of the charges of misconduct and the suspension should not be minimized. Police operate in a special environment where peer relationships can be very important and where allegations of serious misconduct and lengthy suspensions can have a much greater impact than in other occupations.

4. 126(2)(d): The likelihood of future misconduct by the member

85. The Former Disciplinary Authority noted that the 11 proven misconduct matters were unique and observed that he had no doubt they will not occur again. I have no hesitation in concluding that after having been through this process the likelihood of future misconduct is minimal. I note that there were no allegations of misconduct prior to these allegations.

5. 126(2)(e): The acceptance of responsibility

86. Constable Ritchie accepted responsibility for his actions as soon the matter was brought to his attention. He expressed genuine remorse and cooperated fully with the investigation. That cooperation resulted in the 10 additional allegations of deceit. The Former Disciplinary Authority noted in his reasons that on the surface Constable Ritchie "made the decision to develop and implement the system to give violators a break without recognizing the fault in the plan." Indeed when it was pointed out to him that what he was done was wrong he responded to the effect that the "lightbulb went on".

6. 126(2)(f): The effect of policies, orders and procedures

87. There is no evidence before me that would indicate that there was any direct policy order or procedure in the Delta Police Department that would relate to the circumstances surrounding this matter.

7. 126(2)(g): The range of discipline in other cases

88. I have reviewed all of the cases of deceit mentioned in the Former Disciplinary Authority's reasons. I have also reviewed the cases contained in Mr. Woodall's written submission. In my view this case is unique. All of the other cases of deceit involve a police officer who was found to have lied in a duty report about an underlying event which in itself also constituted misconduct. In many of the cases the officer then repeated the deceitful story when being investigated. In some cases the deceitful story was repeated a number of times. In virtually all of the cases personal benefit or gain was a factor. That is not the case here. Constable Ritchie's actions involved a misguided use of discretion to achieve what he thought were proper objectives in the enforcement of new and relatively complex distracted driving legislation.

8. 126(2)(h): Other aggravating or mitigating factors

89. As stated earlier, significant mitigating factors include Constable Ritchie's genuine remorse, his immediate acceptance of responsibility, his cooperation with the investigators and his motivation for doing what he did.

90. The Former Disciplinary Authority viewed each of the 11 allegations as separate and distinct offences. The discipline subsequently ordered involved 11 two-day suspensions, consecutively, resulting in a total suspension of 22 days.

91. The actions of Constable Ritchie amount to a single episode of misconduct done on a number of occasions. The offence is really his misguided understanding of his discretion, applied 11 times. Given what I have said earlier about the aggravating and mitigating circumstances, I have concluded that an approach that seeks to correct and educate the member would not require a suspension of 22 days. In my view a suspension of four days without pay, as a global measure, is appropriate in these circumstances.

92. In that context I am troubled that Constable Ritchie with his significant amount of service, clear skill in interacting with the public, and very good performance reviews, could have such little understanding of the significance of what he did and the potential consequences. Under section 126(1)(f), I will also require Constable Ritchie to undertake training specifically on the procedure and process for swearing informations and commencing proceedings for any offences, criminal, driving or otherwise. I am hopeful that this training will emphasize that any officer faced with an uncertainty should not be shy to consult with his supervisor, and to use one's colleagues as an ethical sounding board. I am confident that had such consultations occurred in this case, the

misconduct would not have arisen. I am uncertain as to precisely how this training will be implemented, but I wish to ensure that it is monitored and completed. As such, I direct that Constable Ritchie complete 10 hours of said training, within 10 months of receipt of this decision, and that he furnish proof of completion to the Office of the Police Complaint Commissioner.

[Signed electronically]

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James Threlfall, Retired Judge

Dated this 7th day of December, 2018.