

In the Matter of the Review on the Record into the Ordered Investigation of
Constable Byron Ritchie of the Delta Police Department

SUBMISSIONS OF COMMISSION COUNSEL

Overview

1. On September 1, 2016 the Office of the Police Complaints Commissioner ordered an investigation into this matter.
2. The investigation involved 11 allegations of deceit that occurred between June 19, 2016 and July 22, 2016.
3. It was alleged that on 11 occasions Constable Ritchie wrote violation tickets for 20 offences that did not occur and that he knew did not occur.
4. On May 11, 2017 Chief Constable Dubord, pursuant to s. 12 of the *Police Act* concluded that the allegations appeared to be substantiated.
5. On May 22, 2018 Chief Dubord imposed Disciplinary or Corrective measures for all 11 counts. He reduced the rank of Constable Ritchie from 1st Class Constable to 2nd Class Constable for a period of 12 months. He suspended Constable Ritchie for two days for each of the 11 offences, consecutive for a total of 22 days and, furthermore directed that Constable Ritchie be required to work under supervision for a period of one year.

6. On July 12, 2018 the Police Complaint Commissioner issued a Notice of Review on the Record pursuant to s. 137(2) of the *Police Act*, RSBC 1996, c. 267. A copy of that Notice is attached.

Argument with Respect to Substantiation

7. In providing his findings of discipline authority in Form 3 on April 19, 2018, Chief Dubord correctly applied the test as being one on the balance of probabilities, specifically at paragraph 32 of his Reasons he cited *F.H. v. McDougall* 2008 SCC 53 and quoted as follows:

One legal rule applies in all cases and that is that evidence must be scrutinized with care by the trial judge in deciding whether it is more likely than not than an alleged event has occurred. Further, the evidence must always be clear, convincing and cogent in order to satisfy the balance of probabilities test.

8. In applying that test, Chief Dubord considered the following factors:
 - a. Violation tickets which are an official document;
 - b. The process developed by Constable Ritchie to falsely issue violation tickets;
 - c. The definition of deceit;
 - d. Discretion and training.
9. Commission Counsel, submits that Chief Dubord clearly considered all of the appropriate factors and correctly applied the law in determining that all 11 allegations of deceit had been made out.

10. It is one thing to exercise discretion and provide a warning rather than a traffic violation ticket or even to allege a lesser speed so as to reduce a fine amount for a violation ticket. It is something completely different to write two tickets for offences that have clearly not occurred and to do so knowing full well that the allegations set out in the ticket are in no way related to the actual offence committed.
11. Furthermore, Constable Ritchie did this with the specific intent of making false entries in an official document. That fact cannot be disputed. He essentially placed himself outside and above the law in viewing himself as judge, jury and executioner. This demonstrates 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, clearly amount to calculated deceit.
12. This review is not one that is considering the actions of a new or junior officer. Constable Ritchie joined the Delta Police Department in September of 2000 and spent nine years as a patrol officer and another seven working in traffic. Surely with those 16 years' experience under his belt at the time these allegations occurred, he knew full well that his conduct in issuing 11 false tickets amounted to making false entries into official documents. He clearly must have been aware that this was not a legitimate exercise of his discretionary power as a police officer. Those actions cannot be compared or likened to the issuing of a warning rather than a ticket, or the acceptance of a lesser but included offence that still fits within with the factual basis of the allegation.
13. Mr. Woodall attempts to liken Constable Ritchie's actions to that of a plea bargain, which is based on some form of a guilty plea to a lesser but included offence, or the withdrawing of one ticket for the entering of a guilty plea to another. Mr. Woodall also offers, as an excuse, the fact that Constable Ritchie did not have any training in

plea bargaining or in the notion of what amounts to a lesser included offence. That is because Constable Ritchie while involved in conducting traffic court is not a lawyer or prosecutor. His role in traffic court is monitored by a legally trained person known as a Justice of the Peace and, as such, ensured that Constable Ritchie's actions in advocating or accepting such plea bargains in traffic court would be conducted within the confines of the law.

14. Mr. Woodall's attempts to characterize Constable Ritchie's actions in issuing completely false tickets as something akin to what would take place as a plea bargain in traffic court is completely unsupportable. The one involves working to resolve allegations within the system and confines of the law, the other involves making a decision to be completely deceitful by making false entries into official documents because you determine based on your own idea of discretion that it would be appropriate to do so.
15. Mr. Woodall's effort to paint Constable Ritchie as some sort of Knight in White Satin giving the citizenry a break on the basis of his personal consideration of the circumstances of the violation is simply put, not believable. Mr. Woodall says there is no personal gain to be made by Constable Ritchie by writing false tickets. It must not be lost that Constable Ritchie made the decision to write two tickets for offences that didn't occur rather than a single ticket for the offence that actually occurred.
16. It is common knowledge and recognized that IRSU officers write tickets if not on a quota basis, then on an expectation of performance basis. At the very least the doubling of the tickets would have reflected as enhancing the performance of Constable Ritchie as an IRSU officer. As Constable Ritchie testified at the Discipline Proceeding, there were "expectations".

17. In addition, it is trite to acknowledge that distracted driving is an offence of the Motor Vehicle Act that is to be of a most serious nature. This offence has been shown to be responsible for numerous traffic accidents, injuries and deaths. Indeed, the statistics show that distracted driving is a larger problem and has overtaken the issue of impaired driving when it comes to injuries, deaths and increased insurance premiums. As such, Constable Ritchie's duty was to enforce the law as it was proscribed.
18. As a police officer of 16 years, all of which were either in patrol or in traffic, Constable Ritchie must have had a clear understanding of the significance of the distracted driving legislation. He had the duty of enforcing those provisions of the *Motor Vehicle Act*. It was clearly the legislator's intent to ensure that police officers observing such violations would ticket them and that those tickets be of such a significant nature that the message of deterrence would be driven home.
19. One might ask the question, who does Constable Ritchie think he is? For him to step outside of the confines of the law and decide on his own what the proper basis was for when an individual who commits the offence should receive a violation ticket and when they should not is completely unacceptable. Worse yet, it is disturbing that Constable Ritchie attempts to justify his making false entries into official documents as something he is doing for the good of the citizenry. This amounts to him enforcing his own perspective of how the law should be applied as opposed to carrying out his obligations and duties as a police officer.
20. In my submission, this clearly demonstrates that he undertook these actions for personal gain and that he did them with the full knowledge that he was lying. His later efforts to attempt to justify his actions on the basis of his being fair and reasonable should be disregarded in their entirety. If Constable Ritchie truly felt that a particular individual was not deserving of a ticket, he could have dealt with

the matter by way of providing a warning. It certainly was not open for him to give them two tickets, one for not wearing a seatbelt and one for not driving with valid insurance in place of a distracted driving ticket.

21. Mr. Woodall submits at paragraph 59 of his submission that Constable Ritchie's issuing of two specific false tickets in place of one legitimate ticket was done for a particular reason. He stated that if one of the drivers who were ticketed in that manner disputed the violations in court, Constable Ritchie would immediately recognize that the particular dispute involved one of his false tickets and he would therefore withdraw it. In my submission, this demonstrates an even deeper level of deceit on Constable Ritchie's part. Clearly, by his own explanation, he would be withdrawing that ticket so as to avoid responsibility for having made a false entry into an official document. He would monitor the process to ensure that he would not be found out. Constable Ritchie fully understood that his actions were deceitful and he clearly took steps to ensure that he would not get caught. His whole system of issuing false tickets was not only pre-meditated but created with significant planning.
22. In addition, Constable Ritchie did not discuss what he was doing with his superiors or his peers. He kept his behaviour a secret because he knew that he was being deceitful and operating well outside of his police powers and the confines of the law.
23. Mr. Woodall references each of the ticket holders and refers to portions of their interviews to demonstrate that they were happy or satisfied with Constable Ritchie's actions. Whether or not they were happy or satisfied is completely irrelevant and does not speak to the issue of the disrepute that Constable Ritchie has visited upon the Delta Police Department. Their opinions should be entirely disregarded.

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24. If Mr. Woodall's argument regarding how Constable Ritchie's deceitful action should be interpreted then it would also be appropriate that we 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 believed to be a good reason and one the public might find acceptable. That cannot be the case.
 25. There can be no question that a police officer knowingly making false entries into official documents for any purpose cannot be justified or overlooked in any circumstances. To say otherwise would be to make a complete mockery of the purpose of the legislation and the law governing the actions of the police officers.
 26. The conduct of police officers remains within the confines of their duties, powers and authority granted to them according to the law. There is not any acceptable level of deceit when it comes to making false entries into official documents. To conclude otherwise would clearly bring the administration of justice into dispute.
 27. Mr. Woodall refers to Constable Ritchie as being the prosecutor in hundreds of cases in traffic court. To be clear, Constable Ritchie's role in traffic court is that of a police officer conducting a role akin to a prosecutor. As I stated earlier, there is a Justice of the Peace presiding over those matters and that person is legally trained to ensure that the dispositions are all conducted in a manner that is in keeping within the confines of the law.
 28. Mr. Woodall's example of a driver being ticketed as the registered owner and paying a higher fine as opposed to being ticketed as the driver and receiving demerit points as being the same as Constable Ritchie's actions is clearly not borne out. In paragraph 65 Mr. Woodall submits that when a person pleads guilty as a registered owner as opposed to the driver, that this amounts to some sort of false entry and that no one is disciplined for it and for deliberately undermining the insurance

system. Such a submission is clearly without merit. First, there is no giving of false information in that scenario, let alone the making of false entries into official documents. The acceptance of a plea as a registered owner as opposed to a driver is only done on the basis where in fact the driver is the registered owner and the court allows the disposition on the basis of a lesser included offence.

29. This process bears no similarity to the writing of a violation ticket that is based on completely false information to support allegations that the police officer fully knows did not occur.
30. Mr. Woodall's submissions that Constable Ritchie did not receive any training on the scope of discretion are, in my respectful submission, a red herring. The issue here is not one of whether or not Constable Ritchie's discretion should have been exercised. The issue is whether or not the allegation set out in the violation tickets that he wrote were false and that the information entered into them was done so by Constable Ritchie knowing they were false. It is not acceptable to characterize this as a misunderstanding of discretion. As I stated earlier, Constable Ritchie clearly decided to place himself above and outside of the law and knowingly made false entries into official documents. His stated reasons for doing so do not and cannot amount to a legitimate defence that he did not commit deceit. He selectively chose when he deemed it appropriate to write false tickets for his own personal reasons. More particularly, he determined, based on an exercise of his own discretion, when it was acceptable to deceive the justice system.
31. Mr. Woodall references *Lowe v. Diebolt* 2013 BCSC 1092 and in my submission that case must be completely distinguished from the case at bar. In *Lowe v. Diebolt*, the Court found that the evidence did not establish that the officer knew that she could not conduct a legal search. There was nothing to provide a basis to show that her

intention was to knowingly do something that she knew she did not have the legal authority to do.

32. Clearly Constable Ritchie intended to enter false facts into an official document knowing full well that they were false. He specifically intended to make those entries. Why he intended to be deceitful cannot be a defence to his actions.
33. Mr. Woodall also references *Scott v. British Columbia (The Police Complaints Commissioner)* 2016 BCSC 1970. Once again, the *Scott* case 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. 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.
34. Mr. Woodall references *Florkow v. British Columbia (Police Complaint Commissioner)* 2013 BCCA 92 and submits that *Florkow* stands for the proposition that the police department should ask whether the officer transgressed against the rules in a way that demonstrated willful defiance in the carrying out of their obligations and duties as opposed to carrying out their duties as they understood them but they made an error in good faith.
35. There can be no question that Constable Ritchie's actions demonstrated willful defiance of his obligations and duties. Those obligations and duties as a police officer required him to address a very serious problem of distracted driving as mandated by the law. He chose not to do so for his own personal reasons and did so knowing that he committed an act of deceit.

36. The *Police Act* is specialized legislation, dealing with police misconduct and ensuring proper civilian oversight of that misconduct. The Supreme Court of *Canada in Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360 at paragraph 31, has referenced it as a complete code for the resolution of disciplinary matters involving members of a police force.
37. Indeed, the public would be shocked and taken aback if Constable Ritchie's behaviour were to be determined as anything other than deliberately deceitful conduct undertaken by a police officer. Furthermore, the writing of two tickets as opposed to one with the knowledge that a quota, or expectation for performance basis existed would paint an even darker concern for the public. In conclusion, there can be no question that the Discipline Authority was correct in substantiating all 11 of the allegations of deceit.

Whether the Penalties and Corrective Measures Imposed by the Discipline Authority Were Appropriate

38. In the submission of Commission Counsel, Chief Dubord's approach in determining the correct imposition of disciplinary or corrective measures with respect to Constable Ritchie were well considered, thoughtful, and benevolent in nature. The seriousness of these allegations as substantiated could well have resulted in Constable Ritchie's dismissal.
39. Commission Counsel submits that the imposition of two days suspension without pay, consecutive for each of the 22 counts was appropriate in the circumstances and should not be disturbed. Clearly, each allegation of deceit was a separate act on a different day and, as such, the consecutive manner in which the Discipline Authority dealt with them was the correct approach. The precedent case law that he cited

clearly supports that the two day suspension that he imposed for each allegation was extremely reasonable.

G) The range of discipline in other cases

[22] In coming to a decision, I have carefully reviewed similar cases from British Columbia, Alberta and Ontario. The cases in British Columbia include two cases from the Abbotsford Police Department (OPCC File 2016-11497 & OPCC File 2016-11822, from the Delta Police Department (OPCC File 2013-8599), from the South Coast Transportation Authority Police Service (OPCC File 2010-5217) and from Central Saanich (OPCC File 214-9976). From Ontario I reviewed a York Regional Police Service Case (2017 CanLII 4791 (ON CPC)).

40. With respect to Constable Ritchie's demotion, it is the submission of Commission Counsel that this measure was also appropriate and necessary. However, there is an issue with respect to the time limit that was set by the Discipline Authority as being one year. In Commission Counsel's respectful submission, when a demotion is imposed a time limit cannot be placed upon it. The reasoning is as follows. If there was a one year time limit placed on a demotion and, in the course of that one year there were four more complaints that resulted in further issues with the member, it would not be appropriate for the member to be reinstated to their previous rank at the end of the one year period.
41. Equally, if the demotion was set for a longer period of time, such as five years, and the member conducted themselves in a manner that clearly warranted a return to their prior rank before the expiration of the five years, such consideration could not be given. It is, therefore, the submission of Commission Counsel that the demotion is appropriate but that the reinstatement process must proceed on a merit based approach rather than a time based approach.

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42. Constable Ritchie was a senior 1st Class Constable and his demotion would mean the following. He would be returned to the status of 2nd Class Constable and, through the normal process, it would take him two years to be completely reinstated. In the course of that two year period there would be a step program based on merit where his wage would be increased accordingly and at the end of two years, he would be returned to his prior status.
43. It is, therefore, the submission of Commission Counsel that the demotion was correctly imposed but that the period of demotion should not be set up in a durational manner but must be imposed on the basis of merit for reinstatement.
44. In considering the appropriateness of his decision Chief Dubord concluded in his Form 3 Findings of Discipline Authority of April 19, 2018 that Constable Ritchie must have given considerable thought to developing the system where he gave two tickets, one for driving without a seatbelt and one with driving without insurance as opposed to the single ticket for the actual offence of distracted driving that occurred. It was noted by the Discipline Authority that one of the reasons that Constable Ritchie created this system was so that he would know if and when one of those particular tickets was disputed and he could withdraw it. This demonstrates a system that prevented his conduct from being detected.
45. The reference to the definition of deceit as defined by the *Police Act* and set out by the Discipline Authority at paragraphs 43 and 44 of his Form 3 Findings of Discipline Authority of April 19, 2018 are most appropriate and clearly supportive of the Discipline Authority's conclusion that deceit as defined by the *Police Act* engage matters of fundamental importance to the public with regard to the actions of police officers.

[43.] As noted in *Kyle v. Stewart* 2017 BCSC 522:

[91] Constable Stewart also maintains that s. 101 of the Act must be interpreted in accordance with employment law or collective agreement principles of fairness.

[92] I have concluded that his argument in that regard cannot succeed.

[93] The Act clearly differentiates between: (1) internal discipline matters, which are internally handled by police departments and may be the subject of grievance proceedings under collective agreements; and (2) misconduct proceedings relating to public trust complaints which are governed exclusively by Part 11 of the Act and are conducted by discipline authorities or adjudicators.

[94] The clear statutory language of s. 101 does not leave room for employment or labour relations policies to modify the mandatory obligation of Constable Stewart to participate in this investigation and to attend, as often as Staff Sergeant Kyle requires, interviews in furtherance of her investigation.

[44.] Deceit is clearly defined in the Police Act, as set out above, and it clearly engages matters of fundamental importance to the public with regard to the actions of police officers. Similarly to *Kyle v. Stewart*, there is no room for employment or labour relations policies to modify the scope of s. 77.

46. The Discipline Authority also dealt with Constable Ritchie's complaint that he received no legal training respecting the limits on the exercising of his discretion. It is the submission of Commission Counsel that the Discipline Authority not only considered Constable Ritchie's submission in that regard but came to the correct conclusion that any reasonable police officer or member of the public would not consider that the distinction with respect to the line between discretion and deceit would require some sort of formal training. As the Discipline Authority concluded, at paragraph 47 of his Form 3 Findings of Discipline Authority of April 19, 2018:

The submission that Constable Ritchie's issuing of violation tickets for offences that he absolutely knew never occurred as part of the discretion he can undertake as a police officer on the road, and that this discretion

required training would be suggesting that he would need training in basic honesty.

47. It is the submission of Commission Counsel that it is necessary to recognize that Constable Ritchie's deceitful actions and lack of basic honesty go to the issue of how those actions not only reflect on the integrity of the police department but also reflect adversely on the administration of justice. It must be remembered that his actions did not occur on one occasion but on 11 separate occasions spanning a significant time frame. It is also apparent that had it not been for a another police officer's wife having been issued such a ticket, and then telling her husband about this, these matters would likely have gone on for an even greater period of time and may never have come to light.
48. In the Discipline Authority's Form 4 Finding of Discipline Authority of May 22, 2018, it is apparent that he considered and took guidance from the appropriate sections of the *Police Act*. The Discipline Authority clearly and correctly referenced s. 126 of the *Act* and considered all of the aggravating and mitigating circumstances.
49. In the submission of Commission Counsel, the Discipline Authority's consideration of the seriousness of the allegations of misconduct clearly support the conclusions that he came to regarding what would be the correct imposition of disciplinary and/or corrective measures.
50. The Discipline Authority references the importance of the trust of the community in policing and what the impact of the use or misuse of the justice system might have on the reputation of police officers. Clearly, acts of a dishonest nature such as those committed by Constable Ritchie would seriously impact the opinion of the public regarding the police departments' policing of their community.

51. The Discipline Authority also noted that violation tickets themselves, while not being sworn documents, bear a strong similarity to the swearing of an Information before a Provincial Court. It is the submission of Commission Counsel that this is of central importance in considering the level of seriousness of the deceitful actions on the part of Constable Ritchie. It cannot be lost that only police officers can make such entries into Motor Vehicle Act violation tickets and that those entries set into motion a series of events that bring the recipient of that ticket into conflict with the law. This is a special power bestowed upon police officers. Constable Ritchie's designed abuse of that power is of an extremely serious nature.
52. It is clear that the Discipline Authority recognized that Constable Ritchie gave considerable thought to developing a process of how he was going to implement a system that would allow him to give those people, who he deemed appropriate and deserving, a break from the new distracted driving laws. That included a mechanism which allowed him to know when and if one of his false tickets was disputed. He could then withdraw the false ticket and avoid detection.
53. The notions of integrity and honesty exist in unison. Where a police officer undertakes actions which are clearly dishonest, this impugns not only his integrity but the integrity of the whole police force. Clearly, if the public were to perceive that a police officer was acting dishonestly, the natural conclusion would be that the police officer was acting without integrity and, as such, cannot be seen as trustworthy, reliable or credible.
54. It is the submission of Commission Counsel that a police officer's integrity must be beyond reproach. Without honesty and integrity the trust that the public must have in the police will not be upheld and will adversely affect the ability for the police department to effectively and successfully carry out their obligations and duties.

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55. As was noted by the Discipline Authority, the Delta Police Department's commitment to excellence which in turn, is obviously, tied to the trust of the community, depends on the public's trust and confidence in their police department. The Discipline Authority is correct when he states that the actions of Constable Ritchie clearly violated those commitments. Once again, this underscores the seriousness of Constable Ritchie's actions.
56. The Discipline Authority also referenced the fact that the 11 acts of misconduct committed by Constable Ritchie clearly have a negative effect on the justice system itself as they violate the principles of fairness, impartiality and the accurate portrayal of the facts.
57. The 11 separate acts of deceit on the part of Constable Ritchie strongly demonstrate that they are at the most serious level. They clearly reflect poorly on the reputation of the police department and indeed on the justice system as a whole. There can be no doubt that the disciplinary and corrective measures imposed by the Discipline Authority were appropriate and necessary in the circumstances.
58. In consideration of the aggravating and mitigating factors, the Discipline Authority did not overlook the effect his proposed measures would have on the employment of Constable Ritchie. The factors affecting Constable Ritchie were given adequate consideration and balanced against the concern for the level of seriousness of his deceitful acts. While the Discipline Authority also recognized that where there was not any concern for the likelihood of future misconduct and that Constable Ritchie expressed remorse for his actions, he did not consider that this made the acts of misconduct any less serious.
59. In the the submission of Commission Counsel the Discipline Authority gave proper consideration to all aspects of this matter in arriving at the conclusions that he did.

60. With respect to the range of discipline, Chief Dubord referred to a number of cases and cited them in Discipline Authority's Form 4 Findings of Discipline Authority of April 22, 2018,

G) The range of discipline in other cases

[22] In coming to a decision, I have carefully reviewed similar cases from British Columbia, Alberta and Ontario. The cases in British Columbia include two cases from the Abbotsford Police Department (OPCC File 2016-11497 & OPCC File 2016-11822, from the Delta Police Department (OPCC File 2013-8599), from the South Coast Transportation Authority Police Service (OPCC File 2010-5217) and from Central Saanich (OPCC File 214-9976). From Ontario I reviewed a York Regional Police Service Case (2017 CanLII 4791 (ON CPC)).

61. Furthermore, the Discipline Authority also considered two cases involving Public Hearings which dealt with the issue of deceit as an allegation of misconduct. The first of these was regarding Constable Page, OPCC No. PH 12-03.

[29.] In Page, Adjudicator Pitfield, a retired justice of the Supreme Court of BC, noted as follows:

[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.

[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 we 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.

...

[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 the right to expect and demand of police officers in order that the public will have confidence in the fair, lawful, and trustworthy administration of justice. Lying or the making of misleading statements in relation to an officer's dealings with a member of the public cannot be condoned. In my opinion, the public has a right to expect that dismissal will always be a sanction for consideration where deceit is at the core of a disciplinary default.

[12] In addition, it must be apparent that deceit compromises internal organizational effectiveness. A police organization must be able to expect and receive honest accounts of incidents and the involvement of officers in them from its members. Nothing can compromise police effectiveness more readily than loss of confidence in an officer's preparedness to tell the truth to superiors whatever the consequences may be.

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

62. The second case he referred to was Constable Jansen, OPCC 13-02 and stated the following:

[30.] In Jansen, Adjudicator Lazar, a retired Judge of the Provincial Court of BC, echoed and adopted Adjudicator Pitfield's comments. In that case, Adjudicator Lazar found it compelling that Constable Jansen had not committed deceit with a view of covering up his own egregious misconduct, but rather in hopes of assisting another officer justify the use of a Taser.

63. While neither the Page decision nor the Jansen decision resulted in dismissal, they both clearly support the disciplinary and corrective measures imposed by Chief Dubord.

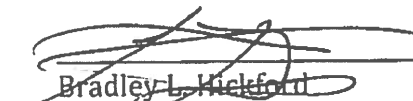
64. It cannot be lost that Constable Ritchie's actions bring into sharp focus the effect that his deceit visits upon any consideration of justice as a whole. As was noted by the Discipline Authority at paragraph 26 of his Form 4 Findings of the Discipline Authority of April 22, 2018, the RCMP Conduct and Measures Guide 2014 states:

False reports strike at the heart of policing, as members are expected to provide accurate accounts of what transpired while in the course of their duties...therefore, members who willfully produce a false report, with the intention to induce the courts or other official bodies to make an erroneous finding, can bring the administration of justice into disrepute and, and would likely warrant termination.

65. As stated earlier, chief Dubord's approach in determining the appropriate disposition of these matters was benevolent in nature. The dismissal of Constable Ritchie could well have been support were it not for the Chief's recognition and application of the mitigating factors that exist.
66. In conclusion, the dispositions as set out by the Discipline Authority should not be interfered with expect for the characterization of the demotion as the time period for the demotion as being durational as to merit based in nature.

All of which is respectfully submitted.

Dated this 1st day of October, 2018.


Bradley L. Hickford
Commission Counsel



Office of the
Police Complaint Commissioner

British Columbia, Canada

NOTICE OF REVIEW ON THE RECORD

Pursuant to section 137(2) *Police Act*, R.S.B.C. 1996, c.267

**In the matter of the Review on the Record into the Ordered Investigation of
Constable Byron Ritchie of the Delta Police Department**

OPCC File: 2016-12506

July, 12, 2018

To: Constable Byron Ritchie (#1020)
c/o Delta Police Department
Professional Standards Section

(Member)

And to: Chief Constable Neil Dubord
c/o Delta Police Department
Professional Standards Section

(Discipline Authority)

WHEREAS:

Investigation

1. According to the Delta Police Department (DPD), on August 29, 2016, a Sergeant of the Greater Vancouver Integrated Road Safety Unit (IRSU) advised DPD Acting Sergeant McKie that a complaint had been received concerning Delta Police Constable Byron Ritchie, a seconded member of IRSU.
2. The complaint was from a member of the public whose wife had been issued a violation ticket by Constable Ritchie on July 15, 2016. The female driver had been stopped by Constable Ritchie after she had been observed talking on her cell phone while driving. Constable Ritchie issued the female driver a violation ticket for "failure to wear a seat belt" and for "failure to produce vehicle insurance." The female driver stated she had been wearing her seat belt and had produced the vehicle's insurance papers for Constable Ritchie. Constable Ritchie informed the female driver she was "getting a break" with the noted offences, as the combined fines were less than receiving a ticket for distracted driving.

Stan T. Lowe
Police Complaint Commissioner

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3. The IRSU Sergeant subsequently spoke to Constable Ritchie who advised that the reason for the traffic stop was because the female driver had been talking on a cell phone while driving. Even though the female driver had been wearing a seatbelt and did produce proof of vehicle insurance he issued her a violation ticket for "failure to wear a seat belt" and for "failure to produce vehicle insurance," as the combined fines were less than receiving a ticket for distracted driving. Constable Ritchie advised that he was trying to give the female driver a break and has written tickets this way before.
4. The IRSU Sergeant was in the process of having the violation ticket withdrawn.
5. Based on a review of this information, on September 1, 2016, I ordered an investigation into the conduct of Constable Byron Ritchie. I was of the opinion that the conduct alleged against Constable Ritchie, if substantiated, would constitute misconduct.
 - a) *Deceit*, pursuant to section 77(3)(f)(i)(B) of the *Police Act* which is, in the capacity of a member, making or procuring the making of any entry in an official document or record, that, to the member's knowledge, is false or misleading. Specifically, that Constable Byron Ritchie knowingly issued motor vehicle violation tickets in relation to offences that he knew had not been committed.
6. On February 28, 2017, the OPCC received a request to amend the *Order for Investigation* from Acting Staff Sergeant Kevin Jones of the Delta Police Department. In this request, Acting Staff Sergeant Jones advised that the investigation materials gathered to date identified further allegations of misconduct involving Constable Ritchie.
7. Based on the information received, I amended the assigned *Order for Investigation* to include the additional allegations of *Deceit*, pursuant to section 77(3)(f)(i)(B) of the *Police Act*.
8. Accordingly, I ordered this investigation to include the conduct described above involving Constable Byron Ritchie, and to include any other potential misconduct, or attempted misconduct, as defined in section 77 of the *Police Act* that may have occurred in relation to this incident.
9. The Delta Police Department Professional Standards Investigator completed the investigation into this matter and on April 28, 2017, he submitted the Final Investigation Report (FIR) to the Discipline Authority.
10. On May 11, 2017, following his review of the FIR, Chief Constable Neil Dubord, as the Discipline Authority, substantiated the 11 allegations of *Deceit*, pursuant to section 77(3)(f)(i)(B) of the *Police Act*. Chief Constable Dubord set out a proposed range of discipline from requiring the member to work under close supervision up to an including dismissal.

Discipline Proceeding and Proposed Discipline

11. On March 7, 2018, a discipline proceeding was held where Constable Ritchie denied the 11 allegations of *Deceit*. On April 19, 2018, following the discipline proceeding and on May 22, 2018, following the Discipline Disposition Record, after considering the available evidence and submissions, the Discipline Authority made the following determinations in relation to the allegations:

Allegation One:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 15, 2016, Constable Ritchie knowingly issued/served a British Columbia *Motor Vehicle Act* violation ticket to the driver of a motor vehicle for offences that did not occur.

Allegation Two:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on June 23, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Three:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on June 23, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Four:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on June 23, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Five:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on June 19, 2016, Constable Ritchie knowingly issued/served to

the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Six:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 15, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Seven:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 15, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Eight:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 12, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Nine:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 22, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for offences that did not occur.

Allegation Ten:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 15, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for an offence that did not occur.

Allegation Eleven:

That Constable Ritchie committed *Deceit* pursuant to section 77(3)(f)(i)(B) of the *Police Act*, which is, in the capacity of a member, making or procuring the making of any entry in an official document or record. Specifically, in relation to the allegation on July 15, 2016, Constable Ritchie knowingly issued/served to the driver of a motor vehicle a British Columbia *Motor Vehicle Act* violation ticket for an offence that did not occur.

12. The Discipline Authority made the following findings with respect to proposed discipline:
- a) Reduction of rank for twelve (12) months. The reduction in rank will be from First Class Constable to Second Class Constable for the first twelve months. At the end of the twelve months Constable Ritchie's seniority will be reinstated provided he has attained satisfactory performance reviews.
 - b) Suspension without pay of two (2) days (10 hours) for each of the eleven offences, consecutive, totalling twenty two (22) days (220 hours) of suspension without pay. This suspension is to be completed upon the acceptance of this Form 4 by the OPCC and prior to Constable Ritchie returning to active duty.
 - c) To work under close supervision for a period of one (1) year and to participate, to the satisfaction of his supervisors, in a return to work plan.

Constable Ritchie's Request for a Public Hearing

13. 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.
14. On June 13, 2018, the Police Complaint Commissioner received a request from Constable Ritchie's counsel, Mr. Kevin Woodall, for a Public Hearing. Mr. Woodall provided supplementary information to our office on July 5, 2018. In his request, Mr. Woodall indicated that the discipline authority made a number of findings of fact in his penalty decision that were not borne out by the statements in the FIR. Mr. Woodall is of the view that an Adjudicator should 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 interactions served the larger purpose of enforcing the law.

Decision

15. I have reviewed this matter and note that the member had the assistance of Mr. Woodall throughout the investigation and discipline proceedings. Each of the motorists were interviewed during the course of the investigation and their evidence was thoroughly canvassed, as it related to the allegations under investigation. The member did not request any further investigation following the submission of the Final Investigation Report, nor did the member request the attendance of any witnesses at the discipline proceeding. In my view, the nature of the evidence the member seeks to elicit from the witnesses is at best neutral in nature. I have determined that it will not be necessary to examine or cross-examine witnesses or receive evidence that is not currently part of the record of disciplinary decision. Furthermore, I am satisfied that a Public Hearing is not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline.
16. Accordingly, pursuant to sections 137(2) and 143(2) of the *Police Act*, I am arranging a Review on the Record. Pursuant to section 141(2) of the Act, the Review on the Record will consist of a review of the disciplinary decision as defined by section 141(3) of the Act. Pursuant to section 141(4) the *Police Act*, Constable Ritchie, or his agent or legal counsel, may seek to establish special circumstances in which the adjudicator may exercise their discretion to receive evidence that is not part of the record of disciplinary decision or his service record.
17. Pursuant to section 141(6) the *Police Act*, the Police Complaint Commissioner, or his commission counsel, may also make submissions concerning the matters under review.
18. Pursuant to section 141(7) the *Police Act*, the Adjudicator may permit the Discipline Authority to make submissions concerning the matters under review.

THEREFORE:

19. A Review on the Record is arranged pursuant to section 137(2) and 141 of the *Police Act*.
20. Pursuant to the recommendation of the Associate Chief Justice of the Supreme Court of British Columbia, the Honourable James Threlfall, Retired Provincial Court Judge, is appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

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TAKE NOTICE that all inquiries with respect to this matter shall be directed to the Office of the Police Complaint Commissioner:

501 - 947 Fort Street, PO Box 9895 Stn Prov Govt, Victoria, BC V8W 9T8
Telephone: 250-356-7458 • Toll Free: 1-877-999-8707 • Facsimile: 250-356-6503

DATED at the City of Victoria, in the Province of British Columbia, this 12th day of July, 2018.

A handwritten signature in black ink, appearing to read 'Stan T. Lowe', with a long horizontal flourish extending to the right.

Stan T. Lowe
Police Complaint Commissioner

Office of the
Police Complaint Commissioner

British Columbia, Canada