SUBMISSIONS OF THE MEMBER CONSTABLE BYRON RITCHIE

Contents

1. GENERAL INTRODUCTION

1. It is alleged that Cst. Ritchie committed deceit in the course of enforcing the cell phone use provisions of the *Motor Vehicle Act,* which had recently been amended. Some provisions of the cell phone regulations are well-known, and there is no excuse for drivers violating them (holding or manipulating a phone to make and receive telephone calls and texts.) Other provisions are less well-known (for example, it is illegal even to move a phone from the seat of a car to a cup holder). **(Record of discipline proceeding, Ex. 11)**

2. It is common ground that when Cst. Ritchie encountered certain drivers who were violating some of the less well-known prohibitions within the cell phone law he issued tickets for failing to produce insurance papers and failing to wear seatbelts instead of tickets for the violating the cell phone legislation. The fine payable for the tickets that were issued was still very substantial, but less than the fine for the cell phone ticket. Also, the tickets that he issued did not carry demerit points.

3. The drivers did not actually commit the infractions that were ticketed. However, all the drivers understood that they were being these tickets instead of a cell phone ticket because the combined fines for these tickets was much less than the fine for cell phone use, and these tickets did not carry demerit points. All the drivers understood they were getting a break, and they accepted the break, even though the tickets were for infractions they did not commit.

4. Police officers are taught that the primary purpose of enforcing the traffic laws is to educate drivers to change their driving behaviour. This means they often exercise discretion to correct the behaviour of drivers, rather than simply punishing. Police officers often do not charge the most serious offence the driver was found committing, but charge a lesser (and included) offence instead. Cst. Ritchie has also participated in educational campaigns in the past when legislation had been amended in which drivers were pulled over and warned about the penalties or amendments rather than being given fines.

5. Cst. Ritchie has served hundreds of times as a prosecutor of his own tickets in Provincial Court. Police officers, including Cst. Ritchie, are been given strong encouragement, if not outright direction, from supervisors and justices of the peace to "make deals" so drivers will accept and pay tickets they receive, rather than contesting them in court. There is simply not enough court time to try the cases of all drivers who may wish to do so. One way to reduce the number of tickets that are contested is to issue tickets in the first place that drivers will be willing to accept. Another way to reduce court challenges is to make deals with offending drivers just outside the courtroom. These deals often involve transparent fictions that the court is aware of, and is prepared to accept. However, some fictions are regarded as legal and unacceptable, and others are not.

6. Cst. Ritchie has seen many "plea deals" done by Crown counsel and the defence in many other cases he has investigated, where the accused pleads guilty to a different offence than the one originally charged. The legal basis for counts in the indictment the charge from the ones charged to new ones has never been explained to Cst. Ritchie.

7. Cst. Ritchie believed that that what he was doing in this case was no different than what he has done as a police officer issuing tickets, what he has done as a prosecutor prosecuting tickets, and what the Crown do in other cases: offering the offender a lesser offence than the one they actually committed, in the interest of driver education, and in the interest 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 offences. Cst. Ritchie believed that it was within his discretion to issue those tickets, provided that the drivers were aware of and accepted the deal. They did.

8. The focus of Cst. Ritchie's error was that he had never been trained in the principle of "lesser included offences": ie., when making a plea deal, the accused *can* plead to a different offence if it is included within the offence charged; but the court *cannot* accept a plea to an offence that is not within the offence charged.

9. Despite the great responsibility imposed on police officers in the position of Cst. Ritchie, to exercise discretion when issuing tickets, and to "make deals" when prosecuting tickets, Cst. Ritchie has never received any training on the legal principles and limits that apply to discretion

in these areas. There is no evidence that any police officers receive such training. In particular, Cst. Ritchie had never received training in the "lesser included offence" principle, and there is no evidence that other police officers receive such training.

10. The cases where Cst. Ritchie gave some drivers a break occurred in the weeks immediately after the cell phone legislation had been amended by increasing the penalties very substantially. The legislation prohibits the use of cell phones to make and receive calls and texts. As noted earlier, this is prohibition is, or should be, known by all drivers. Cst. Ritchie did not give any drivers who violated this aspect of the legislation a break. The drivers he did give breaks to had violated more obscure aspects of the legislation. Many drivers do not know that it is also an offence merely to move a cell phone from one place to another within the car; to use the GPS function of the phone; or to make hands free calls when the phone is not attached to the car. Cst. Ritchie believed that giving these drivers a break was consistent with his training and the educational function of traffic enforcement. He did not want to let the drivers off altogether, because they might not receive the full impact of the intended lesson. On the other hand, he believed that it was consistent with his discretion and training that he did not have to bring the full force of the law to bear on drivers who were not aware of the full ambit of the law, in the weeks immediately after the law had been substantially amended.

11. The discipline authority found as a fact that:

> [32] … Constable Ritchie derived no personal gain from this scheme and readily admitted fault at the earliest possible stage when he was questioned by his IRSU supervisor. Although his behaviour involved moral blameworthiness, the Alberta Court of Appeal has written, "…there must be some meaningful level of moral culpability in order to warrant disciplinary penalties (Allen v. Alberta Law Enforcement Review Board 2013 ABCA 187). Constable Ritchie's case differs from those involving deceit motivated by personal gain (or motivated by a perceived benefit to another officer) and those where respondents attempt to conceal their deceit.

12. The *Police Act* is not a criminal statute. It is a form of "specialized labour legislation." Under criminal law, ignorance of the law is not a defence. Under the *Police Act*, when a police officer commits what would otherwise be misconduct because he has not been trained in the relevant law, ignorance of the law can be an excuse. Ignorance of the law can be a full defence, not just a mitigating factor at the penalty phase.

13. None of the drivers were deceived by the tickets. Cst. Ritchie did not intend them to be deceived. They understood exactly why there were being given the tickets they received even though they had not committed the relevant infractions, they were understood that they were being given a break, and they accepted the break. As one of the drivers put it, Cst. Ritchie was "merciful and yet just at the same time": just, because he did not let the drivers off altogether, but merciful because he believed they learned their lesson, and would improve their driving in the future.

14. Cst. Ritchie's conduct in this case was not what the misconduct of deceit is intended to capture. He made an error in good faith, but in the absence of training about the applicable legal principles.

15. Therefore, the allegations of deceit should not be substantiated.

16. In the alternative, if Cst. Ritchie did commit deceit, the disciplinary or corrective measures should be much less harsh than the punishment of a twenty-two day suspension followed by a one year demotion. The financial impact alone would be between $60,000 and $75,000. The *Police Act* requires that disciplinary or corrective measures give priority to education and correction, and that more punitive measures be applied only if less punitive measures would bring the administration of police discipline into disrepute.

17. It is submitted that a reasonable, well-informed member of the public, would consider that the administration of police discipline would be brought into to disrepute by meting out harsh punishment on Cst. Ritchie, who was well-intentioned, albeit misguided about the scope of his discretion to find a balance between imposing the full weight of the law on drivers, and a more understanding approach that focuses on driver re-education.

2. WHETHER DECEIT HAS BEEN SUBSANTIATED

2.1 FACTS

18. Cst. Ritchie has been a member of the Delta Police Department since September 2000 **(Transcript, p. 13, line 270)**

19. His first eight or nine years were spent in patrol. He was then worked in the traffic section, and the commercial vehicle section. The traffic section enforces ordinary traffic laws, and the commercial vehicle section enforces regulations applicable to commercial vehicles.

20. At the time of the incident in this case he was seconded to the Integrated Road Safety Unit (IRSU), an integrated unit with members from the RCMP and several municipal police departments. It enforces ordinary traffic laws.

21. Cst. Ritchie understood that the primary purpose of enforcing the traffic laws is to improve drivers' driving behaviour. Officers are encouraged to exercise wider discretion in enforcing the traffic laws than they are when enforcing, say, the Criminal Code. Instead of issuing a ticket in every case, they may consider "a stern warning or finger wagging" when enforcing the traffic laws. When a driver has committed several offences, they may not ticket all the offences. When a driver has been speeding, they may allege a lower speed that the actual speed. In fact, Cst. Ritchie's supervisors routinely encourage the officers to use their discretion, and to give warnings – no ticket all – when the officer believes it to be appropriate **(Transcript, p. 13 line 286 to p. 14 ln 305).**

22. To this end, Cst. Ritchie carries with him educational literature about the two areas where he finds people are not fully informed: the cell phone laws, and the child seat laws **(Transcript, p. 20)** This is important evidence. It demonstrates the sincerity of Cst. Ritchie's concern with using traffic enforcement as an educational tool to improve driver behaviour.

23. As one example, Cst. Ritchie testified how at the beginning of the school year they will often do "blitzes" in school zones, where the speed limit is lower than elsewhere. It is very important that drivers comply with the school zone speed limits, but the goal of improving driver behaviour can be met by issuing warnings in many cases, rather than bringing to full weight of the law to bear. In such cases, the driver may be given a warning, or a regular speeding ticket rather than a ticket for speeding in a school zone. **(Transcript, p. 14 ln. 310 to p. 14 ln. 328).**

24. The speeding laws recognize different tiers, 1-20 kph over the limit; 21-40 kph over the limit; and so on. The lower tiers are associated with lower fines and fewer points. In appropriate cases police officers often allege that drivers were driving more slowly than they actually were,

placing them in a lower tier with a lower fine and fewer points. This means the driver gets a ticket, but not necessarily one as expensive as their actual driving would dictate. This, in turn, sends an educational message that may be better received, and achieve the goal of altering driver behaviour, better than a strictly by-the-book approach. **(Transcript, p. 15-16)** Cst. Ritchie has never heard it alleged that a police officer committed deceit by filling out a ticket with a lower alleged speed than the driver was actually driving. **(Transcript, p. 16 ln. 346ff)**

25. When a driver receives fewer demerit points because a speeding ticket alleged a lower speed, that could be seen as frustrating the demerit point system, which is important in setting insurance rates. However, police officers routinely allege speeds lower than the actual violation, and the courts routinely accept this.

26. Similarly, it is not uncommon to find a driver committing more than one offence; say, speeding and not wearing a seat belt. Police officers are encouraged to consider whether to issue their discretion, and issue one but not both tickets.

27. No one has ever suggested to Cst. Ritchie that he commits misconduct by writing one, but not both tickets **(Transcript, p. 16 ln 351 to 17 ln 363),** or by alleging a lower speed than the driver was actually driving.

28. Being "merciful and yet just at the same time" enhances he public's perception of police officers, and therefore their support of traffic law enforcement. Police officers who act like "Traffic Nazis" do not earn support for, or respect for, the traffic laws or policing in general. **(Transcript, p. 17 ln. 360 to 374)**

29. Cst. Ritchie does not use his discretion arbitrarily. He will take into account a number of factors, including both the seriousness of the conduct (how blatant was the violation), and whether the attitude of the driver suggests that they have received the educational component of traffic enforcement. **(Transcript, p. 17 ln. 377 to p. 18 ln 384)**

30. Cst. Ritchie testified that he understands that when he is exercising his discretion, he is also entitled, or even expected, to take into account the impact that possible tickets will have on the individual driver before him. Cst. Ritchie gave a real world example, where he was engaged in a blitz to ticket people who were not wearing seatbelts. He pulled over a driver who was not

wearing a seatbelt. She was wearing a McDonald's uniform driving a "beater" car. In the back seat of the car were two child seats and a stack of text books. From this, Cst. Ritchie inferred that she worked at McDonald's (a notoriously low-paying job), and was trying to raise two children, while going to school. He concluded that a $169 ticket would be a serious penalty for such a person, and he used his discretion to issue a warning rather than issue a ticket. For some people a $169 ticket is just "the cost of doing business"; or others it can be a week's wages. **(Transcript, p. 17 ln. 377 to p. 30 line 430).**

31. As noted, one thing that Cst. Ritchie takes into account is whether the person was blatantly defying the law, or whether the person appeared to be generally trying to comply with the law, but fell short. This is of particular application to the present case. Everyone knows, or should know, that holding to your ear to make a cell phone to make or receive telephone calls, or sending or receiving texts, is illegal and dangerous. Many people are not aware that using a cell phone to check the time, or as a music player, or even simply moving the cell phone from one place to another place in the car is also illegal. With one exception, Cst. Ritchie did not exercise his discretion in favour of drivers who were holding a cell phone to make or receive calls, or to send or receive texts. He did use his discretion in favour of drivers who was doing something else with a cell phone, not realizing that the cell phone law covered that behaviour as well. This will be discussed below **(Transcript, p. 19-20).**

2.2 The Tickets in this Case

2.2.1 Lack Of Public Awareness About the Full Ambit of the Cell Phone Law

32. The cell phone use legislation changed on 1 June 2016. The tickets in this case were all issued between that date and the end of August 2016; that is, during the first few weeks after the amendments came into force. **(Transcript, p. 38)** The changes increased the fines and the demerit points substantially.

33. When the cell phone legislation changed, Cst. Ritchie carried literature about the full ambit of the cell phone law with him, to educate people when they broke the more obscure parts of the law **(Transcript, p. 20, 22)**

34. Cst. Ritchie testified that most people are aware that it prohibits using a phone as a phone to make and receive calls, and to send or receive texts. People who are holding their phone to their ear and making a phone have no excuse, and Cst. Ritchie does not give those drivers a break. **(Transcript, p. 39 line 890 to 904)**

35. However, many fewer people realize it is unlawful to play music on a handheld device; there is confusion about when and how people may use the GPS function on their phones; there is confusion about when earphones may be used with a handheld device. **(Ex. 11; Transcript, p. 40 p. 905 ff)**

36. Under the cell phone law, drivers may make full use of most of the features of the phone if a variety of conditions are met, depending on the feature in use. **(Ex. 11)** Many people do not realize that having a cell phone is in a cup holder, using certain features of it would be illegal, when if the same phone was attached, even in removable holder, the same feature can be used legally. Many people are unaware that using the GPS function of a phone in a cup holder or their lap is illegal, but they can use the GPS function if the phone is attached to the care more securely **(Transcript, p. 42 line 939).** If the goal of the legislation is to encourage people to use cell phones in some ways (attached to the car) and not in other ways (in a cup holder; loose on a seat) education is necessary. Some people believe that if they use a phone on hands-free speaker phone, but they are not holding it to their ear, that is legal. **(Transcript, p. 43 ln 964)** Those people have it half right: they are allowed to use a phone on hands-free speaker to make and receive calls, but only if it is attached to the car, and is not loose on a seat or in a cup holder. People can change the playlist on the music feature on a phone if it is attached to the car, but not if it is loose. Cst. Ritchie would educate such people by telling them that if they want to play music, get a long play list, turn it on before they turn on the car, and leave it playing. **(Transcript, p. 43 ln 972ff)**

37. In the past, when there had been a substantial change in traffic legislation, including an increase in fines for an existing infraction, Cst. Ritchie often participated in education campaigns when the legislation was new. For example, the *Motor Vehicle Act* has always required drivers to pull over for emergency vehicles, but the legislation was changed because people were not observing that rule as they ought to. Rather than giving every driver who didn't

pull over a ticket, Cst. Ritchie's unit used a tow truck, and when people didn't slow down and pull over to the side voluntarily, the police would pull them over, give them a warning, and some literature to explain the rule. In other words, the drivers were not initially subjected to the new higher fines, but there was a period of education. **((Transcript, p. 39 ln 874 ff)**

38. It is admitted that Cst. Ritchie saw a number of drivers using the cell phones in ways that were contrary to the cell phone legislation. Rather than giving them cell phone tickets, Cst. Ritchie explained the law to the drivers. With their agreement, he issued them tickets for not having insurance and not wearing a seat belt, rather than for the cell phone infraction.

2.2.2 [redacted] – GPS

39. [redacted] and her husband provided a statement to the investigator in this case. She said that when she was pulled over she was looking at the GPS function on her phone. The GPS was not updated and it did not show her destination, so she was using a traditional map as well. **(FIR p. 270; Transcript, p. 44 line 993 ff)** She was not using the phone to communicate, either by making voice calls or texts. When she was looking at the GPS she was at a complete stop at a stoplight. It is lawful to use the GPS feature of a cell phone provided the cell phone is attached to the vehicle. However, many people may not know that it is illegal to hold the phone to use the GPS function in the same way that it is illegal to make calls and texts. Since she was not actually driving, and since she was not telephoning or texting, Cst. Ritchie believed this to be an opportunity to educate a member of the public. **(Transcript, p. 45)**

40. When Cst. Ritchie gave her the ticket, he was very clear about why he was giving the insurance ticket, that it would be less expensive, and more points. **(FIR p. 270, ln 50 to p. 273 ln 130)**

2.2.1 [redacted] – Looking at Photo

41. [redacted] had just moved back to Vancouver from Manitoba, and was not familiar with the cell phone laws. **(FIR p. 232)** He was looking at a picture on his phone that was on the arms rest of the car. **(FIR p. 227).** He was very apologetic, and he told Cst. Ritchie that he had just moved back to British Columbia. [redacted] said that Cst. Ritchie explained the cell phone law to him. "I think the point got across as clearly as its ever been from a police officer. **(FIR p.**

227 ln. 35 ff). He said, Cst. Ritchie was "merciful and just at the same time." **(FIR p. 227, ln. 35)**

2.2.2 [redacted] and [redacted] – Music Function

42. [redacted] was changing a song on his iPod (or iPad) **(FIR p. 98; Transcript, p. 46)**.

43. He fully understood that he was getting a break by receiving the tickets he received, instead of the more expensive ticket for using his iPod. **(FIR p. 100, line 99 to p. 101 ln. 112)**

44. [redacted] was turning of a podcast on his iPod **(FIR p. 222; Transcript, p. 52-53)** He fully understood that he was being given a break by receiving the two tickets instead of the one cell phone ticket **(FIR p. 223, ln 90 to 102)**.

45. Neither [redacted] or [redacted] was making a phone call or texting. It is lawful to do both these functions if an iPod is attached to the vehicle, but not if the iPod is not attached to the vehicle. Many people are not aware of this fine point of the law. As neither was using the phone to make or receive calls or texts, Cst. Ritchie believed that this violation was on the lower end of the scale of offences under the cell phone legislation. He believed he should treat this as a teaching opportunity. **(Transcript, p. 46)**

2.2.3 [redacted]; [redacted]; [redacted]; [redacted] – Merely Holding the PHone

46. [redacted] was merely moving her phone from the seat to the dash **(FIR p. 106; Transcript, p. 46 ln 1049 to p. 47 ln 1055).** She was not making or receiving a call, or texting.

47. [redacted] had her cell phone in her lap. **(FIR p. 124; Transcript, p. 50)** She was not making or receiving a call, or texting.

48. [redacted] picked up her phone and looked at it briefly at a stop light, as a habit. **(FIR p. 195; Transcript, p. 51 ln 1149 ff)** She was not making or receiving a call, or texting. [redacted] understood that she was getting a break because the tickets she received carried a lesser penalty than a cell phone ticket. **(FIR p. 196 ln 79 ff)**

49. [redacted] was using his cell phone as a watch or clock, and tapped the screen to wake it from sleep so he could see the time. **(FIR p. 247)** He understood full well that he was getting the tickets he received as a break from getting a cell phone ticket. **(FIR p. 247 ln 72 ff)**

50. [redacted]

51. None of these people were sending or receiving texts, or phoning. [redacted], [redacted] and [redacted] were not using any features of their phones.

52. Many people are not aware that merely holding a phone, in a hand or on the lap, is unlawful even if the phone is not in use for any function. **(Transcript, p. 47 ln 1061 to p. 48 ln 1073)** Cst. Ritchie believed that educating these people about this aspect of the cell phone law would be the best way to address their misunderstanding.

2.2.4 [redacted] – Speaker Phone

53. [redacted] had his cell phone in his hand, on speaker phone **(FIR p. 119; (Transcript, p. 48. line 1093 ff)**. It is lawful to use a cell phone on speaker phone mode, but only as long as it is attached to the vehicle or the person of the driver. Many people believe, incorrectly, that one can use a cell phone on speaker phone, but not holding it up to their ear. Many people are not aware that holding the phone while making a speaker phone call makes what would otherwise be a lawful act into an unlawful act. **(Transcript, p. 49 ln 1100 ff)**

54. [redacted] understood that he received the two tickets he received instead of the cell phone ticket because the officer was "being nice." **(FIR p. 118 ln 70)**

2.2.5 [redacted]

55. The investigator did not contact [redacted]. Cst. Ritchie admitted that this was one of the instances where he had given a driver a break, based on the combination of tickets that were issues.

2.2.6 [redacted]

56. [redacted] was a special case. He did not want to tell the PSS investigator what he was doing with his phone, but for the purposes of this submission it will be assumed that he was

using it as a telephone **(FIR p. 208; Transcript, p. 54 ln 1220 ff).** However, the consequences to [redacted] of a ticket for cell phone use would be out of all proportion to the infraction he committed. [redacted] needed to have his driver's licence to do his job, and he was very afraid that he was at risk of losing his job of 23 years. **(FIR p. 208-211)**. A few weeks earlier he had received a ticket which, if combined with the points from a cell phone ticket, might cause him to lose his job. [redacted] had been in a hurry to catch the ferry [redacted]. The highway leading into the ferry terminal at Swartz Bay has a very abrupt transition from normal highway speeds to 50 kph. The police officer on that occasion did not exercise his discretion in favour of [redacted], and wrote [redacted] a ticket for excessive speeding, even though [redacted] was only going 1 kph over the threshold for excessive speeding. As a result, the company car that [redacted] was driving was impounded. **(Transcript, p. 55 ln 1230)**

57. When Cst. Ritchie ran [redacted]' information after seeing him with a cell phone, Cst. Ritchie realized that the addition of a cell phone ticket could cost [redacted] his licence. [redacted] told Cst. Ritchie, tearfully, about his previous ticket, and his fear that he would lose his job of 23 years if he received the demerit points associated with the cell phone ticket. **(Transcript, p. 56, ln 1262 to p. 57 ln. 1293).** Cst. Ritchie was compassionate and exercised his discretion not to give [redacted] a cell phone ticket.

58. [redacted] fully understood that Cst. Ritchie was offering the two tickets instead of the cell phone ticket to help [redacted] keep his job. [redacted] thought that Cst. Ritchie was being a nice guy, and he would just go and pay the tickets and put it all behind him. **(FIR p. 211 line 168ff)**

2.3 THE COMBINATION OF TICKETS THAT CST. RITCHIE ISSUED

59. Instead of using a cell phone ticket, Cst. Ritchie issued tickets for failing to produce proof of insurance, and for not wearing a seat belt. He issued these specific tickets for two reasons. First, the combination of fines was still significant, but only about one-half the cost of a cell phone ticket. He would be giving the drivers a break, but not letting them off altogether. This was similar to the idea of issuing a speeding ticket for a speed lower than he had actually observed. Second, the combination of these two tickets was unusual. If one of the drivers did

contest the ticket in court, he would immediately recognize this was actually one of the cell phone cases, so he could withdraw the ticket.

60. Cst. Ritchie chose to exercise discretion he thought he had, and issue tickets that were substantial in cost to the drivers, but not as substantial as the fines that had been imposed only a few weeks earlier. He did not flout the new law by giving warnings (as he could have done without committing misconduct).

2.4 Discretion As Prosecutor and Deals in Court

61. Police officers act as prosecutors of the tickets they issue. Cst. Ritchie has been to court as a prosecutor hundreds of times. **(Transcript, p. 21)**

62. When offending drivers come before the court, the court encourages resolutions in which the person will plead guilty to lesser offences than the facts actually disclose, and the court encourages resolutions where the offender is ticketed not as the driver who committed the infraction, but only as the registered owner of the vehicle, the actual driver being unknown.

63. It is not simply a matter of recognizing that he *may* employ discretion to make deals if he wants to: there is a specific expectation by both his supervisors and the courts to make deals to avoid litigation tickets. Throughout the court day, justices will ask drivers if they have attempted to resolve their ticket with the police officer. The clear and simple fact is that there are many more tickets on the court lists than the courts can possibly accommodate. On many days, if even half of the tickets on the court list were actually contested, there would be no way to get through them all. On many days there are 20 to 30 tickets on a list for a courtroom which can try only about three. **(Transcript, p. 21-22)**

64. One common deal that Cst. Ritchie and other police officers make is to accept an amendment to the ticket, so the ticket is issued to the offender in his capacity as registered owner of the vehicle rather than as the driver who actually committed the offence, even when the offender was in fact the driver. When the driver who committed the offence is known, the driver usually has demerit points registered on his or her driving record. This can affect insurance premiums. By contrast, when an infraction is committed by an unknown driver, the registered owner may have to pay a fine, but there are no demerit points. Usually the fine is much lower

for the registered owner than for the actual driver. Therefore, one of the most common deals that prosecuting police officer ask justices of the peace to accept is an amendment to the ticket, changing the capacity of the offender from driver to registered owner. Everyone in the courtroom, including the justice of the peace, knows it is purely a fiction that the actual driver is unknown, and the offender is merely the registered owner. When a ticket is issued, the issuing officer obtains the particulars of the driver at roadside. That information is on the ticket. The justice of the peace has the actual ticket before him or her, with the information that the police officer took at the roadside. The person appearing in court is the same person as the driver who was identified at the scene. The justice knows that the driver was in fact identified, at roadside, and that person is the same person in court. The justice of the peace neither asks for, or expects, any explanation to be given for how the police officer at the roadside obtained the information from the driver, that driver is now before the court, but that person was not the driver of the vehicle at the time of the infraction, but only the registered owner. **(Transcript, p. 25 ln 554 to 28 ln. 619)** In many case, drivers will agree to pay a much greater fine than they would be facing, but with the ticket made out to the registered owner because they wish to avoid demerit points. For example, Cst. Ritchie has seen a case where a driver agreed to pay a $1000 fine for a $200 ticket, but with the ticket being issued to him as registered owner rather than as driver. The combination of otherwise inexplicably high fine, and the change of accused to registered owner from driver, makes the fiction completely obvious to the justice who agrees to the change and imposes the fine but saves the driver from receiving demerit points. **(Transcript, p. 29 ln 650 to 656)**

65. The recording of demerit points is integral to the insurance system, ensuring that bad drivers pay higher premiums that good drivers. The fiction that the driver is not known goes on every day, with the support of the justice of the peace, and no one is disciplined for giving false information or for deliberately undermining the insurance system.

66. Cst. Ritchie does not recall any case where the court has questioned changing a ticket form one against the driver to one against the registered owner, even when the driver and the registered owner are one and the same **(Transcript, p. 25, ln 554-558),** even where the fiction is made doubly obvious because the accused accepts a fine five times as great as the value of the ticket in return for a change of designation from driver to registered owner **(Transcript, p. 669**

to 678). Much less has the court ever refused to go along with such a fiction. To the contrary, the courts actively encourage the police officers to come to just this sort of deal.

67. Cst. Ritchie has never heard of a case where agreeing to such a deal was alleged to constitute deceit.

68. Similarly, the court routinely accepts the fiction that the driver was driving at a lower speed that he or she actually was. Many police officers regularly exercise their discretion to allege that the driver was driving one kilometer over the posted speed limit, so the fine will be in the lowest tier, reducing both the fine and the demerit points. Again, the demerit points is often a bigger problem for the driver than the fine. When the ticket charges driving at a rate of speed in one of the higher tiers, the facts are recorded on face of the ticket that the justice has in front of him or her: the posted limit, the speed the driver was actually travelling, and the method of calculating the driver's speed. As noted earlier, throughout the day, justices will ask drivers if they have attempted to resolve their ticket with the police officer. The justices see the police officers go out into the hall with the driver, and then come back in, with the police officer now alleging that the driver was driving more slowly that he or she was actually seen driving. The reduction in the alleged speed is an obvious fiction, which is routinely accepted without question by the court. Cst. Ritchie has never been told that changing a ticket to allege a speed lower than the driver was actually driving constitutes deceit. **(Transcript, p. 29 line 646 to 649)**

69. In all these cases where a police officer or the court exercises discretion, a fiction is accepted and acted upon: the fiction that the driver's conduct was not as serious as it actually was. The fiction is accepted because the public also expects the motor vehicle enforcement system to be administered with compassion and understanding, as long as the beneficiaries of the compassion and understanding get the point, learn the lesson and, most importantly, alter their driving behaviour. The fact that such fictions save drivers from receiving demerit points, which undermines the theory that bad drivers should pay more insurance, is ignored by the police officers' supervisors and the court.

70. Cst. Ritchie expects, quite understandably, that if he stood his ground and said that he refused to make deals based on fictions, the court would become quite annoyed and would express its annoyance, directly or indirectly. **(Transcript, p. 31 ln. 702 to p. 31 ln 707)**

71. Similarly, if Cst. Ritchie stood his ground and said he was going to try every ticket where the accused refused to plead guilty, it would take him weeks rather than single days to prosecute all his tickets (if the court would even give him that much time). He believes his supervisor would be very unhappy **(Transcript, p. 32)** if he spent that much time prosecuting tickets, rather than making deals.

2.5 Cst. Ritchie Has Received No Training on the Scope of His Discretion

72. As noted earlier, Cst. Ritchie has never received any formal training on the scope of his discretion, either at the stage of issuing tickets, or at the stage of prosecuting them in court. **(Transcript, p. 22 ln. 476ff; p. 32 ln 727 ff)** There is no evidence that such training is part of the training curriculum of police officers generally, or even traffic members who prosecute tickets in court.

73. More specifically, Cst. Ritchie has never been given any training on the lesser included offence principle that draws a line between plea deals that are legally acceptable, and those that are not. He has some understanding of the lesser included offence principle, but he was not aware of how it would apply to his exercise of discretion.

74. In cases other than traffic cases, Cst. Ritchie has had the experience of sending a report to Crown counsel for one offence, and the accused later pleads guilty to a different offence. Specifically, Cst. Ritchie had very little understanding of the concept of lesser included offences, which allows a different offence to be charged provided it is a lesser and included offence within the original charge. **(Transcript, p. 33)**

75. Since the allegations were made to Cst. Ritchie in this case, on his own he has undertaken to learn about the lesser included offence rule, and how that affects discretion to make deals to accept a plea to lesser offence than the one that the offender actually committed.

76. At the time the tickets were issued in this case, Cst. Ritchie's understanding was that as long as the offence named on the ticket was a *Motor Vehicle Act* offence, and he had the agreement of the driver, he had discretion to issue a lesser *Motor Vehicle Act* ticket, even if the offence alleged was not the offence he had witnessed. **(Transcript, p. 34 line 1 to 35 line 775).** He saw people committing infractions under the *Motor Vehicle Act* and he issued tickets for

infractions under the *Motor Vehicle Act*. He believed that was within the scope of his discretion. **(Transcript, p. 33 ln 734 to 750)** Cst. Ritchie thought he was just making a road side deal, similar to the ones he made routinely in court, with the acquiescence of the justice **((Transcript, p. p. 35 line 774-775).** He believed what he was doing was very similar to what he had seen Crown counsel do when they accepted a deal to a lesser offence than the one that the offender had actually committed. **(Transcript, p. 35 ln. 781).**

2.6 Drivers All Understood the Break They Were Receiving, and Agreed to It

77. Usually, when Cst. Ritchie is exercising his discretion to give a driver a break, he focuses on explaining the law that they have actually broken, the consequences, and why he is giving them a break. He believes that he did that for the drivers at issue here. **(Transcript, p. 58 ln. 1303 to 1316)** He understood that the drivers in this case understood the break they were receiving, and the educational component about the circumstances in which they could not touch or manipulate their cell phones. **(Transcript, p. 59, ln 1330 to 1338)**

78. Cst. Ritchie did not commit deceit against the drivers. They were all told exactly what they could be ticketed for, what they were going to be ticketed for instead, and why the latter was beneficial to them. It is evident that the drivers all agreed to accept the lesser ticket, they understood that it was of benefit to themselves, and they left the process with a good opinion of Cst. Ritchie and policing in particular.

79. Cst. Ritchie testified that in each case the drivers realized that they were going to receive tickets for offences they did not commit, and that as a result they would not receive a ticket for a more serious offence that they did commit. He testified that he had "buy in" from each of the drivers. If any of the drivers had indicated in any way that they were not happy with the arrangement, he would not have issued the tickets he did issue. "I am not going to force anybody to take a break." **(Transcript, p. 57 line 1296 to 1302)** There was no doubt in Cst. Ritchie's mind that the drivers were prepared to admit that they had committed offences. **(Transcript, p. 60 ln 1335)**

2.7 Cst. Ritchie Had Nothing To Gain By Issuing the Tickets

80. There is no suggestion that Cst. Ritchie had anything to gain by issuing the two tickets rather than one cell phone ticket. If anything, it was (slightly) more work to issue to tickets than one.

81. Cst. Ritchie was also asked about whether he had a "quota" of tickets to issue. He testified that there were "expectations", but not a quota. He had no problem meeting his supervisors' expectations. His most recent performance review notes that in 2016, "He continues to be one of the top performers in the unit." **(FIR p. 303)**

82. The discipline authority found as a fact that this case was different from other cases where misconduct was found on two bases: (1) in most other cases, an officer committed deceit for personal gain, or to assist another officer; and (2) in this case, Cst. Ritchie readily admitted the conduct. **(Decision on Penalty, paras. 26, 32)**

3. LAW AND ARGUMENT: WHETHER DECEIT IS SUBSTANTIATED

83. It is submitted that the misconduct of "deceit" is not intended to capture and punish conduct like the misguided exercise of discretion in this case.

84. The *Police Act*, including the forms of misconduct specified in it, must be interpreted in a purposive manner. The *Police Act* is not a criminal statute, but a piece of "specialized labour legislation": ***Florkow v. OPCC* 2013 BCCA 92,** discussed below.

85. Under criminal law, ignorance of the law is no defence. Under the *Police Act*, ignorance of the law can be a defence. Here, Cst. Ritchie was aware that police officers are expected to issue discretion in issuing traffic enforcement tickets. However, he had not been trained in the legal scope of discretion. His decision to issue tickets for lesser offences, albeit not lesser *included* offences, was the result not of an intention to deceive, but of ignorance of the law that governs how discretion may be exercised when issuing traffic tickets.

86. The relevant portions of the definition of deceit in the *Police Act* are as follows:

> s. 77(3) (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 member's knowledge, is false or misleading;

87. Cst. Ritchie acknowledges that the tickets he filled out were false or misleading in that they said that he had reasons to believe that the ticketed individuals had committed offences that he did not believe they had committed.

88. However, that is not the end of the analysis. It is submitted that when one considers the *Police Act* in a broad, purposive manner, the legislature did not intend that conduct such as that committed by Cst. Ritchie would be stigmatized and punished as deceit. Rather, seeing the *Police Act* in its full context, Cst. Ritchie's behaviour is deserving of education, not punishment.

89. What Cst. Ritchie did in this case fits fully within the traffic enforcement policy and philosophy. The core of the cell phone law is well understood: don't drive and use your phone as a phone; don't drive and text. But other aspects of the law are not as well understood. With one exception, the drivers who got a break from Cst. Ritchie were not using cell phones like ordinary telephones (holding the phone in their hand, phone to ear), and none were texting. They did, however, commit technical violations of a technical law.

90. The nature of what he did – allowing the drivers to accept the penalty for offences that were lesser than what they actually did – was fully within the spirit of how motor vehicle infractions are ordinarily ticketed and prosecuted, even though issuing tickets for non-included offences, as Cst. Ritchie did here, was not.

3.1 Cst. Ritchie Misunderstood His Discretion

91. As noted earlier, police officers have discretion when ticketing, and when prosecuting, to pursue offences which are markedly less serious than the conduct of which the offender was actually guilty.

92. It is acknowledged that the manner in which Cst. Ritchie employed his discretion in this case involved a legally significant departure from plea bargains that are entered into by lawyers

for the Crown and defence. Lawyers know that a plea agreement has to be based on offences that are lesser but included within more serious offences that an offender could be charged with, or was actually charged with.

93. Cst. Ritchie has received no training on what are the legal limits on the exercise of his discretion. In particular, Cst. Ritchie has not received any training on the concept that when giving a person a break, the police officers may ticket only offences that are lesser included offences within the maximum offence for which the person might be ticketed.

94. It is submitted that the average police officer would not be aware of the concept of lesser included offences, much less how the concept is applied in decisions to charge someone with an offence, or to accept a lesser charge after the fact.

3.2 Ignorance of the Law Can Be an Excuse under the *Police Act*

95. In *Florkow v. OPCC* 2013 BCCA 92 the Police Complaint Commissioner submitted that 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." **(*Florkow*, para. 2)** It is submitted that in a labour context the employer should not interpret rules of procedure as if they were criminal statutes. Rather, the employer should ask whether the employee transgressed against the rules in a way that demonstrates wilful defiance of the employee's obligations and duties, or whether the employee intended to carry out his duties as he understood them, but committed a good faith error of law.

96. The central philosophy of the *Police Act* is that correction and education take precedence over punishment: s. 126(3). Although this provision is found in the section that governs disciplinary or corrective measures, it is submitted that this approach is consistent with an approach to the *Police Act* as "labour relations legislation" rather than a quasi-criminal statute.

97. It is sometimes said that ignorance of the law is no excuse. That is certainly the case in criminal law, but ignorance of the law can be an excuse in police discipline law. In *Lowe v. Diebolt* 2013 BCSC 1092 a police officer conducted an unlawful strip search incident to arrest, mistakenly believing she had legal authority to do so. The discipline authority dismissed the allegation on the following grounds:

> [9] On November 4, 2011, Abbotsford Chief Constable Bob Rich, acting as a discipline authority (the "Discipline Authority"), issued a Notice of Discipline Authority's Decision pursuant to s. 112 of the *Act*. The Discipline Authority held that:
>
> > a) reasonable and probable grounds existed to stop and conduct a drug search of Ms. Gowland and her vehicle;
> >
> > b) after the initial search of Ms. Gowland's vehicle and person, there were not enough grounds to continue the detention or arrest or to perform a strip search. The strip search was therefore a violation of the *Charter*;
> >
> > c) nevertheless, Cst. Burridge "did not commit an abuse of process" and "she was acting in good faith and was not acting in an arbitrary or abusive fashion".
>
> [10] Although the Discipline Authority did not find misconduct, he directed that Cst. Burridge receive an update on the law surrounding strip searches.

98. The police complaint commissioner ordered a review of that decision under s. 117 of the *Police Act*. The retired judge (called "the Adjudicator" in the *Lowe v. Diebolt* reasons for judgment) upheld the decision of the discipline authority. The police complaint commissioner then sought judicial review of the decision of the Adjudicator. The Supreme Court defined the question under judicial review as follows:

> [32] The ultimate question that the Adjudicator had to answer was whether, paraphrasing s. 77(3)(a)(ii)(B) and 117 (9) and (10) of the *Act*, it appears that Cst. Burridge negligently or recklessly searched Ms. Gowland without good and sufficient cause (ss. 9) or whether she did not (ss. 10). A decision in the negative (ss. 10) is subject to the privative clause; an affirmative decision is not.
>
> ...
>
> [52] In this case, the difficulties with the Adjudicator's approach to the validity of the search were apparent, and therefore not a "treasure hunt". However, as I have stated, that is only the starting point. On several occasions, I invited the petitioner's counsel to point me to anything in the record indicating either intentional or reckless misconduct by Cst. Burridge other than the search itself. He could not do so other than to point out her acknowledgment 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 Cst. Burridge knew that the lack of grounds for arrest meant she could not do the search, something might amount to intention.*** While there might be cases in which the misconduct bespeaks intention or recklessness, this is not one of them.

99. In summary, 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. Recklessness in this context means that the officer did not even turn his mind to whether he had grounds in circumstances where the officer knew he should turn his mind to that question.

100. In *Scott v. Police Complaint Commissioner* 2016 BCSC 1970 **2)** the Supreme Court of British Columbia came to a similar result on a slightly different basis. In that case, a woman was charged with resisting arrest and assault of a police officer. Police officers had tried to enter her house to apprehend a child under the *Child, Family and Community Services Act.* The judge ruled that the police officers lacked grounds to enter the house, and acquitted the woman.

101. The woman then brought a complaint under the *Police Act* that the police officers police officers had committed abuse of authority. Her complaint was eventually heard by a retired judge on a review on the record under s. 117. The retired judge held, in effect, that since the provincial court judge had found the police officers lacked grounds to enter the house, therefore they had committed abuse of authority.

102. The decision of the retired judge was then considered on judicial review in the British Columbia Supreme Court. The Supreme Court judge held that the retired s. 117 judge had erred. A finding that an officer entered a house unlawfully does not, without more, amount to abuse of authority:

> The question before Rounthwaite P.C.J. [the provincial court judge who heard the assault trial of the woman] was whether the complainant was guilty beyond a reasonable doubt of assaulting a police constable in the execution of his duty and of resisting arrest. The issue of the complainant's guilt or innocence is not the same as the issue of whether the petitioner was guilty of misconduct by abusing his authority. 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 s. 77(3) of the Police Act, which is reproduced at para. 7 of these reasons. "Abuse of authority" is defined for the purpose of the complaint against the petitioner 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 apply to conduct which has a serious blameworthy element and not simply a mistake of legal authority alone.***

103. In the present case, Cst. Ritchie had agreement from all of the drivers to accept the lesser tickets as a break from the full rigour of the new cell phone fines. In each of the cases except one, the drivers had understandable misconceptions about the scope of the cell phone law, and were not actually using their devices for telephoning or texting.

104. Cst. Ritchie was aware from his experience as a police officer generally, and from his experience in prosecuting traffic tickets, that the Crown and the courts often accept pleas to offences which do not actually reflect the conduct of which the offender was guilty. To persons now trained in the law, plea deals can often appear to be somewhat arbitrary, simply substituting one offence for another. Lawyers know about the "less included offence rule"'; that is, that a person who is charged with one offence may plead to a lesser offence if all the elements of the lesser offence are included within the definition of the greater offence. Non-lawyers, including police officers like Cst. Ritchie, may have no knowledge of the lesser included offences rule. Cst. Ritchie has testified that he certainly did not understand the legal limits imposed upon his ability to accept what amounted to a road-side plea deal.

105. Cst. Ritchie testified that he never received training in the legal rules governing plea-deals or road-side discretion. He realized he had to give effect to the fact that the amended legislation had significantly raised fines. The combination of the fines from the offences Cst. Ritchie ticketed was greater than $250.00. That was significantly higher than the previous penalty for cell phone use ($196). Yet, because the drivers' conduct in the cases at issue (except one) did not include using devices as cell phones or for texting, Cst. Ritchie believed that giving significant tickets, together with advice to the drivers about the actual scope of the cell phone law, was an appropriate exercise in educating the drivers, the principal objective of traffic law enforcement.

106. As noted earlier, Cst. Ritchie understood that the drivers all agreed with his plan for giving them a break, and were not misled either by the ticket or its consequences. Cst. Ritchie understood, correctly, that police officers have discretion to issue tickets that allege less than the full misconduct committed by drivers. He did not intend to mislead anyone. His intention was

to use discretion he believed he had, in a manner consistent with both the public interest in encouraging education about a technical law that is not well understood, and in a manner that was self-evidently in the interests of the individual drivers.

107. It is acknowledged that the misconduct under consideration in *Lowe v. Diebolt* is different from the misconduct alleged here. Nevertheless, it is submitted in both *Lowe v. Diebolt* and the present case, the central issue is whether the member "intentionally" violated the citizen's rights (*Lowe*), or prepared the ticket "knowing" that ticketing for lesser but not included offences was not permissible. In a narrow sense, Cst. Ritchie knew that the statements of the offences in the tickets were not accurate, but his belief that the drivers were not misled was reasonable. His belief that he could ticket lesser offences than the offence that the offender had actually committed was reasonable. His failure to understand that the lesser offence also had to be an included offence was understandable, given his lack of training on this point of law.

108. If one were to interpret the *Police Act* as a criminal statute, it is acknowledged that the tickets that Cst. Ritchie issued would fit within the narrow technical definition of deceit in s. 77. But the *Police Act* is not a criminal statute. If one considers the concept of deceit in a broad, purposeful manner, as a matter of labour relations law where the priority is to educate and correct rather than punish, the conduct of Cst. Ritchie should not be considered misconduct pursuant to s. 77 of the *Police Act*.

3.3 Conclusion on Whether Cst. Ritchie Committed Deceit

109. There is no evidence or suggestion in the record that Cst. Ritchie attempted to deceive anyone. The drivers fully understood they were receiving a break, and accepted the two tickets for a lesser fine in place of the one cell phone ticket.

110. Cst. Ritchie's purpose was to educate drivers about more obscure aspects of the cell phone legislation. He did not give breaks to anyone who was breaching the obvious prohibition against making and receiving calls and texts. Cst. Ritchie had participated in similar educational campaigns on earlier occasions. The fact that Cst. Ritchie did not simply let the drivers off

altogether demonstrates an awareness that the new legislation was important, and had to be enforced. The penalties the driver received were still substantial.

111. Cst. Ritchie had absolutely nothing to gain by issuing the two tickets in place of the cell phone ticket.

112. Cst. Ritchie was fully cooperative with the investigation. The drivers other than [redacted] would not have been discovered but for Cst. Ritchie's cooperation in giving information that enabled the investigator to discover the other tickets and drivers.

113. The intent of the *Police Act* is not to punish police officers who try to do the right thing, but err because they have not been trained in the law, or are otherwise unclear about the law. That is what happened here.

114. It is therefore submitted that the allegations of deceit should not be substantiated.

4. PENALTY

4.1 INTRODUCTION

115. In the alternative, if the allegations of deceit should be substantiated, the penalty imposed by the chief constable was harsh and unreasonable. The authorities simply do not support a penalty of 22 days suspension, plus a demotion. It is submitted that the proper range of disciplinary or corrective measures in this case would be between a reprimand, and a suspension of up to four days in total.

116. The essential principle of discipline under the *Police Act* is stated as follows:

> (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.

117. Reading paragraph 126(3) and 126(2)(c) together, the Adjudicator must assess whether the educational and corrective goals of the *Police Act* can be met by disciplinary or corrective measures that are not unduly punitive. The fact that a member is subjected to lengthy

proceedings often has a strong corrective and educational effect, even before any disciplinary or corrective measures are imposed.

118. In assessing whether a penalty is fit and proper, the Adjudicator should look at the penalties as a whole, and the facts as whole, to ensure that the mandatory principles set out in s. 126 are met. While suspension is expressed as eleven two-day suspensions, it cannot be overlooked that the totality of the suspension is twenty-two days. It is submitted that it would be more just to assess Cst. Ritchie's conduct not as a series of discrete instances of misconduct, but rather as a single episode of misconduct that spanned a few weeks. If the totality of the suspensions is harsh and punitive, rather than educational and corrective, then the disciplinary or corrective measures as a whole to not comply with s. 126.

119. Therefore, when the Adjudicator is considering what measures are needed to accomplish the corrective and educational objective, he should ask himself this question: given all that the member has been through, what more, if anything, is necessary to meet the corrective and educational objective? If something more is necessary to educate and correct the member, the Adjudicator must not shrink from imposing the necessary measures. But the Adjudicator must also ensure that the consequences on the member of his or her misconduct do not go beyond what is reasonably necessary for correction and education, so that the disciplinary or corrective measures take on an excessively punitive aspect.

120. Punishment may take precedence over correction and education only where: (1) a corrective or educational approach is "unworkable"; or (2) a non-punitive approach would being the administration of police discipline into disrepute. There is no evidence that a reprimand or short suspension would be unworkable.

121. The second criterion brings into consideration whether disciplinary or corrective measures in a particular case would bring the administration of justice into disrepute. It is submitted that whether disciplinary or corrective measures would bring the administration of justice into disrepute is to be assessed by the perspective of a hypothetical reasonable well-informed person, full apprised of the facts. It is further submitted that such a person would not consider that the administration of police discipline is brought into disrepute if Cst. Ritchie receives correction and education rather than harsh punishment. To the contrary, such a person

would conclude that punishing Cst. Ritchie with the harsh combination of punishments proposed by the Chief Constable brings the administration of police discipline into disrepute. Police officers should not be punished harshly for being "merciful, but just at the same time", where they have nothing to gain, and where they admitted their conduct immediately.

4.2 Mandatory Criteria in Assessing Disciplinary Or Corrective Measures

122. Section 126(2) provides that the discipline authority must consider a number of factors when assessing the appropriate disciplinary or corrective measures.

4.2.1 (2)(a): Seriousness of the Misconduct

123. The discipline authority found as follows:

> [32.] It has been mentioned earlier, however it is worthy of mentioning again, that as a primary factor in the decision surrounding penalty, ***Constable Ritchie derived no personal gain from this scheme and readily admitted fault at the earliest possible stage when he was questioned by his IRSU supervisor.*** Although his behaviour involved moral blameworthiness, the Alberta Court of Appeal has written, "…there must be some meaningful level of moral culpability in order to warrant disciplinary penalties *(Allen v. Alberta Law Enforcement Review Board 2013 ABCA 187)*. ***Constable Ritchie's case differs from those involving deceit motivated by personal gain (or motivated by a perceived benefit to another officer) and those where respondents attempt to conceal their deceit.***

124. The discipline authority cited an RCMP guideline that focuses on false reports **(Form 4, para. 28).** In that guideline, the author notes that one of the reasons making a false report can be serious is where the author intends the report to be introduced as evidence in court or before some other body. Here, Cst. Ritchie gave a specific combination of tickets as an *aide memoire* so there would be no risk that they would be prosecuted if the driver changed his or her mind and decided to challenge the tickets.

4.2.2 (2)(b) Cst. Ritchie's Employment Record

125. Cst. Ritchie has no service record of discipline; ie., he has never been found to have committed misconduct in the past.

4.2.2.1 Performance Appraisals

126. In Cst. Ritchie's performance appraisal for the year 2015-2016, his supervisor said this about him:

> Cst Ritchie strives to create a positive team environment by ensuring that all team members are included and engaged in team building activities. Team building activities to help foster collaboration and communication are encouraged and scheduled on a regular frequency to ensure consistent team efforts. Cst Ritchie's professional skills and interpersonal style have helped him to receive no complaints in this reporting period, even after serving approximately 2500 violations tickets. As a supervisor I have no doubt that I could call any of the people Cst Ritchie dealt with on any given day and I would hear that they had been treated fairly, with respect, and possibly with humour. Cst Ritchie has great communication skills and a calm professional demeanor. **(Final Investigation Report p. 298)**

127. In terms of the number of tickets issued, Cst. Ritchie has been described as "one of the top performers in the unit." **(FIR p. 303)**

128. Performance appraisals for Cst. Ritchie for previous years are similarly laudatory.

129. These passages show two complementary sides to Cst. Ritchie's character that are particularly relevant for the present case. The first demonstrates that Cst. Ritchie treats members of the public, "fairly, with respect, and possibly with humour." It is this approach that led Cst. Ritchie to attempt to exercise his discretion "mercifully," in favour of the drivers in cases where education as opposed to punishment was a justifiable approach because the drivers' conduct was not within the core of the concerns about distracted driving. However, the second aspect of Cst. Ritchie's character – that he is consistently one of the top performers in his unit – explains why he had to be just as well as merciful, why he did not consider it appropriate to let the drivers off altogether.

4.2.2.2 Commendations and Police-Related Community Service

130. Cst. Ritchie has received commendations for his participation in the Tac Troop during forest fire policing, and the Vancouver Stanley Cup riot.

131. He has also received two Superintendent's commendations. One commendation was awarded to a group of four members, including Cst. Ritchie, who entered a burning building to

rescue people in side. The second was awarded to a group of three members including Cst. Ritchie for organizing a major road enforcement event, where 120 police officers from several jurisdictions were brought together to do a commercial truck enforcement blitz.

132. In 2007 the Delta Police Department nominated Cst. Ritchie and two other officers for the CCMTA Police Partnership Award. **(Cst. Ritchie's Submissions on Penalty, with Attachments)**

133. Cst. Ritchie has been very involved in police and community service events, including the Torch Run for cancer, the Ride to Survive and the Cops for Cancer bicycle rides, and Pink Shirt Day.

4.2.3 I(2)(c) Impact of The Disciplinary Or Corrective Measures

4.2.3.1 Lost Overtime

134. Cst. Ritchie has been suspended with pay since 1 September 2016. Prior to that, he worked approximately 200 hours of overtime per year. Overtime can be paid at his regular rate ($52.31) or double time ($104.462), depending on many factors. Assuming that half the overtime would be paid at regular time, and half would be paid at double time, he would earn over $15,000 ($15,693.93) in year in overtime. Between 1 September 2016 and 1 August 2018, this amounts to over $30,000 in lost over time opportunities.

4.2.3.2 Financial Impact of the Demotion

135. The immediate financial impact of the combined suspension and demotion is extremely harsh. At Cst. Ritchie's present hourly rate ($52.31), a suspension of 220 hours will cost Cst. Ritchie $11,508.20.

136. Cst. Ritchie's present annual salary is $109,176. His salary during the period of demotion will be $89,328. The difference is $19,848.00.

137. The total cost of the suspension plus demotion would be $31,356.20. The loss of overtime to date, plus suspension, plus demotion, could be over $61,000.

4.2.3.3 Impact of Working Under Close Supervision

138. As Cst. Ritchie has now returned to work, we can see what "working under close supervision" means in practice.

139. The "Return to Work Plan" appended to the Form 4 states that Cst. Ritchie should have an opportunity to take part training relative to core patrol duties, including use of force and firearm recertification. That has not happened.

140. At present, Cst. Ritchie has been assigned to the training section. He has been given menial duties, like cleaning ear and eye protection gear, cleaning rifles, disposing of old ammunition, driving injured employees from home to work and back again. Although he regularly handles firearms, he has been denied the opportunity to train and requalify in the use of firearms.

141. He has not been given any overtime opportunities since returning to work after the discipline proceeding. One may assume that his overtime opportunities during the period of demotion will be severely curtailed, if not eliminated altogether.

142. Therefore, the direct financial impact on Cst. Ritchie will be at least $61,000 ($30,000 from lost overtime, $31,356.20 for suspension and demotion.) If Cst. Ritchie continues to be denied overtime opportunities during the period of demotion, the direct financial impact may rise to $75,000 (historically, $15,000 per year in overtime)

Further impact on pension.

143. Cst. Ritchie is eligible to retire in four years. If he does so, his pension will be calculated on the basis of the average of the best five years of income. Thus, a demotion at this time will have an enduring effect on his pension throughout his retirement, if he chooses to retire when he is eligible to do so.

Other Impacts of Discipline and Corrective Measures

144. Further, the impact that the *Police Act* proceedings have on a member can have a punitive aspect that goes beyond what is necessary to correct and educate, whether that was intended or not.

145. The IRSU, where Cst. Ritchie was working when he was suspended, is an integrated unit of RCMP members and members of municipal detachments. His suspension was thus well known beyond the Delta Police Department.

146. Before he was suspended Cst. Ritchie was a medic with the Lower Mainland Tactical Troop, another integrated unit with RCMP and municipal police officers. When he was suspended he was summarily removed from that unit as well. The summary and unexpected way he was removed from the team, without even formal notice to him, cannot have gone unnoticed by his troop mates. (In his Form 4, the Chief Constable has said that Cst. Ritchie was scheduled to be removed in any event as part of the ordinary process of cycling members through the troop. However, when troop members leave there is usually a formal announcement explaining the reason for the departure.)

147. When Cst. 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. Thus, he was required to wait in the public waiting room until he was able to sign in. The wait was often quite long. Many members of the Delta Police Department use the same entrance for coming and going from the headquarters building. Requiring Cst. Ritchie to check in in person in this way was like forcing a child at school to stand in the corner as punishment, before all the other children. This continued for every working day during the first four months of the suspension. After four months this was reduced to two days per week. It is understandable that the department would wish to confirm that Cst. Ritchie is still in the area, and is not on vacation somewhere, but there are many ways the department could confirm Cst. Ritchie's presence other than the humiliating method that was used.

4.2.4 (2)(d) Likelihood of Future Misconduct

148. There is no likelihood of future misconduct. See the next paragraph.

4.2.5 S. 122 (2)(e) Whether Member Admitted Misconduct, and Has Taken Steps to Prevent Its Recurrence

149. The discipline authority found that:

> [20.] From the onset Constable Ritchie expressed remorse for his actions. I noted a clear and abject apology and willingness to accept responsibility. Constable Ritchie explained in detail his thought pattern for making the decisions he did and believed he was doing a good thing by exercising his discretion. Constable Ritchie's ownership of his fault in this matter is a mitigating consideration. **(Form 4, para. 20)**

150. Although Cst. Ritchie has never received training in the scope of his discretion when issuing tickets, since then he has done his own research **(Transcript, p. 34)** And, of course, these proceedings have given him a hard, sharp, shock.

4.2.6 S. 122(2)(f) Whether Department's Polices, Procedures Contributed to the Misconduct

151. The nub of the problem in this case is that neither Cst. Ritchie, or any other police officers, are trained in the legal rules that govern the exercise of discretion in when writing tickets or accepting plea deals.

152. This is a major mitigating factor.

4.2.7 Section 126(2)(g): Other Similar Cases

4.2.7.1 Other Cell Phone Cases

153. In a recent incident that received wide-spread media attention, Vancouver police sopped a driver who was operating both a tablet and a cell phone while driving a manual-transmission car. The driver was also wearing headphones, which is also prohibited by the cell phone regulations. The driver was issued a ticket for failing to produce a driver's licence, but he did not receive a distracted driver ticket **(Ritchie Penalty Submissions with Attachments, p. 20)**. The Vancouver Police Department publicized the incident on its Twitter account. It is evident that the Vancouver police publicized the ticket to educate the public about distracted driving and the ticket the driver received to educate drivers, not to "confess" to misconduct by the police officer who issued the insurance ticket instead of a more expensive distracted driving ticket.

154. What Cst. Ritchie did in this case was in the same spirit as the Vancouver police officer, whose conduct was not punished by publicized.

4.2.7.2 Other Deceit Cases

155. It is submitted that, on the facts of this case, it would be an error of principle for the Adjudicator to order that Cst. Charters be dismissed.

156. Retired judges have recently decided four cases involving findings of deceit in much more serious circumstances than the present. In none of these cases was the respondent police officer dismissed. In each of these cases, the respondent officer was found to have lied in a duty report about an underlying event that also constituted misconduct. In each case, the officer then repeated the deceitful story in a PSS interview. The officers then repeated the deceitful story again in evidence. None of the officers were dismissed. They received lengthy suspensions ranging from five days to twenty-five days. In one case, the member was demoted in addition to receiving a suspension.

> ***WB (New Westminster Police Service),* 27 December 2012 per Ian H. Pitfield, Discipline Authority**
>
> ***Constable Adam Page of the Abbotsford Police Department* 17 April 2013, I.H. Pitfield, Adjudicator**
>
> ***Constable GP of the Abbotsford Police Department* January 2013, D. Overend, Discipline Authority**
>
> ***Constable K. Jansen of the South Coast British Columbia Transportation Authority,* C. Lazar, Adjudicator**

157. The discipline authority relied on the decision of the Alberta Law Enforcement Review Board in the *A v. Edmonton Police Service* 2018 ABLERB 003. Decisions from other provinces, particularly decisions on "punishment", must be applied very cautiously. As noted, in British Columbia the legislature has mandated (in s. 126 of the *Police Act*) that "an approach that seeks to correct and educate the member concerned takes precedence" over other measures. This approach is emphasized in the fact that s. 126 of the *Police Act* refers not to "punishment" but to "disciplinary or corrective measures."

158. There is no similar provision in the police acts of most other provinces, including Alberta. In Alberta, the equivalent provision to s. 126 of the British Columbia *Police Act* is found in s. 17 of the *Police Service Regulation* AR 356/90. It is headed, "Punishment" and, as noted, it does not include a policy statement like that found in s. 126 of the British Columbia *Police Act* favouring correction and education over punishment.

159. Further, the facts in *A v. Edmonton* were much more egregious than those in the present case. The facts in that case were summarized as follows:

> Constable A was a 15 year veteran with an unblemished performance record with EPS when she was involved in an investigation into the theft of property. In an attempt to protect the identity of a confidential informant, Constable A put incorrect information in an Information to Obtain a Search Warrant ("ITO"), obtained a false statement from the confidential informant, and prepared a police report that contained the same false information. After the charges were laid against the suspect, she disclosed the false information in the ITO and police report to the assigned Crown prosecutor. ***The matter came to the attention of the Professional Standards Branch of EPS and, in an effort to explain the circumstances giving rise to the original falsehood, Constable A denied having wilfully included false information in the ITO. Constable A maintained that position at the subsequent disciplinary hearing.***

160. Thus, this case was similar to the British Columbia cases cited above, where the member initially lied to cover up misconduct, and persisted in the lie throughout the disciplinary process, including in testimony at the discipline proceeding.

161. In ordinary cases of deceit, where retired judges have ordered lengthy suspensions, the deceit was committed initially to cover up misconduct, and the deceit was then repeated to continue the cover up of the initial misconduct, and also to conceal the deceit itself. However, we are not aware of any case where a member was given a lengthy suspension, and then demotion, for a case of deceit where the member did not commit deceit for his own benefit (or for the benefit of a colleague) and where he readily admitted his conduct from the outset.

162. In the present case, when the complaint was brought to Cst. Ritchie's attention he immediately admitted his conduct, even in cases where it might have been difficult to prove without his admissions.

163. No member of the public was prejudiced, or misled, by the tickets. To the contrary, to drivers understood that they were receiving a break, and willingly (and no doubt gratefully) accepted the break.

164. In *Page* Adjudicator Pitfield found that, "there is no minimum sanction attached to any disciplinary default", including deceit:

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

165. The discipline authority also cited the case of *Allen v. Alberta Law Enforcement Review Board* 2013 ABCA 187, which recognizes that moral blameworthiness is a factor to be considered in assessing disciplinary or corrective measures. **(Discipline Authority's Decision On Disciplinary Or Corrective Measures, para 32)**

166. It is submitted that the discipline authority correctly recognized the principle that the degree of moral blameworthiness, *if any*, in the misconduct is a critical factor in determining the appropriate disciplinary or corrective measures. However, it is also submitted that the discipline authority did not properly apply the principle that he had identified as applicable. The fact that Cst. Ritchie's the misconduct was not motivated by personal gain, was immediately admitted, and was well-intentioned if misguided, argue in favour of disciplinary or corrective measures significantly less than those in the case cited above. The combination of a 22 day suspension and a demotion makes the punishment in this case much harsher than in those cases.

4.2.8 Section 122(2)(h): Other Factors

167. Cst. Ritchie has been the subject of adverse media attention. On 13 July 2018 Chief Constable Dubord gave an interview to the Delta Optimist about this case. Similar articles were published on the CBC, the CTV, the Vancouver *Province*, the Surrey *Leader Now* and other

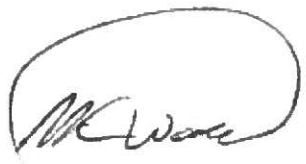
smaller outlets. In his interview, Chief Constable Dubord focused on the financial impact that the penalty will have on Cst. Ritchie.

4.3 Conclusion on Penalty

168. Section 126 of the ***Police Act*** emphasizes that the purpose of disciplinary or corrective measures are to correct, not punish. In the present case, Cst. Ritchie has been punished significantly by the loss of overtime pay, as noted above. Further, Cst. Ritchie is now fully aware of the legal limits on his ability to exercise discretion. No further education is required. Any disciplinary or corrective measures will be punitive in nature, not corrective.

169. It is submitted that a reasonable man or woman, aware of all the circumstances, would consider the imposition of the harsh punishment in this case to be out of all reasonable proportion to the conduct that Cst. Ritchie readily admitted. Indeed, it is submitted that such a person would not find that Cst. Ritchie committed misconduct at all, but was rather well-intentioned but misguided.

170. It is therefore submitted that if the Adjudicator finds that Cst. Ritchie's conduct amounts to misconduct, the disciplinary or corrective measures should be in the range from a written reprimand a four-day suspension in total for all eleven allegations.



M. Kevin Woodall