OPCC File No. 2018-14638

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

AND

IN THE MATTER OF THE REVIEW ON THE RECORD
INTO THE ORDERED INVESTIGATION AGAINST CONSTABLE MARTY STEEN
OF THE VICTORIA POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION
REGARDING DISCIPLINARY OR CORRECTIVE MEASURES

TO: Constable Marty Steen (Member)
Victoria Police Department

AND TO: Kevin Woodall
Counsel for the Member

AND TO: Clayton Pecknold
Police Complaint Commissioner

AND TO: Mark Underhill
Counsel for the Police Complaint Commissioner

AND TO: Chief Constable Del Manak
Victoria Police Department

AND TO: Deputy Chief Constable Colin Watson (Discipline Authority)
Victoria Police Department

I. OVERVIEW

1. This review on the record concerns the appropriate disciplinary or corrective measure to be imposed on the subject member of the Victoria Police Department (the "VicPD"), Constable Marty Steen, for the misconduct of deceit under s. 77(3)(f)(i)(A) of the *Police Act*, R.S.B.C. 1996, c. 367 (the "*Act*"). In particular, I must interpret the meaning or scope of the phrase "reduce the member's rank" in s. 126(1)(b) of the *Act*, and determine whether it is appropriate to impose this or another measure in relation to Cst. Steen's misconduct.

II. BACKGROUND

2. Cst. Steen was scheduled to attend a work conference in Vancouver on February 14, 15, and 16, 2018. His attendance was paid for by the VicPD, and Cst. Steen submitted expense claims in connection with his attendance. Several weeks later, his superiors learned he may not have attended the entire conference.

3. On March 29, 2018, [redacted] asked him about his attendance at the conference, and Cst. Steen said he attended all but two presentations over the three days. Further inquiries with other sources raised questions about whether Cst. Steen had been truthful with [redacted]. The VicPD Professional Standards Section became involved in this matter before those inquiries were made, and in the course of its internal investigation the VicPD began sharing information with the Office of the Police Complaint Commissioner ("OPCC").

4. On April 11, 2018, [redacted] again questioned Cst. Steen about his attendance at the conference, and Cst. Steen said that on February 16 he had only attended one presentation.

5. The VicPD's internal investigation continued, and Cst. Steen ultimately admitted he had not been truthful on March 29 or April 11, and that he had in fact not attended any conference sessions on February 16. He also admitted to submitting expense claims for lunch on February 15 and 16, despite the fact that lunches had been provided at the conference on both dates.

6. On July 26, 2018, the VicPD advised the OPCC of these admissions. Upon reviewing this information, the Police Complaint Commissioner ("PCC") ordered an investigation into Cst. Steen's conduct pursuant to s. 93(1) of the *Act*. Sergeant Gubbins investigated the matter and submitted his Final Investigation Report to the Discipline Authority, Deputy Chief Cst. Colin Watson (the "DA").

7. Before the PCC ordered its investigation into Cst. Steen's conduct, Cst. Steen had been appointed to a ranked eligibility list for a promotion to the rank of Sergeant. However, the Chief Constable decided to hold Cst. Steen's promotion in abeyance pending the OPCC investigation. Promotions within the VicPD are at the discretion of the Chief Constable, although it does not appear to be in dispute that Cst. Steen was appointed to the top of the list and, but for the initiation of the OPCC investigation, he could have expected to be promoted to Sergeant around the time the investigation started.

8. A Discipline Proceeding was held on January 24, 2019. Cst. Steen admitted, and the DA accordingly substantiated, two allegations of misconduct: neglect of duty for failing to attend any conference presentations on February 6, 2018; and deceit, pursuant to s. 77(3)(f)(i)(A) of the *Act*, for knowingly providing false or misleading information about his conference attendance on March 29 and April 11, 2018.

9. On March 7, 2019, after receiving submissions as to the appropriate disciplinary or corrective measures in relation to these counts of misconduct, the DA proposed a verbal reprimand for neglect of duty and a reduction in rank for deceit. Specifically, in relation to the count of deceit, the DA proposed to remove Cst. Steen from the ranked eligibility list for a promotion to the rank of Sergeant, reasoning that this measure was captured by the language of s. 126(1)(b) of the *Act*, which authorizes a discipline authority to "reduce [a] member's rank" after a finding of misconduct. Essentially, the DA considered that removing Cst. Steen from the eligibility list amounted to a reduction of Cst. Steen's rank in the circumstances.

10. On March 12, 2019, Cst. Steen requested a review on the record in respect of the DA's decision to reduce his rank, pursuant to s. 133(5) of the *Act*. Section 137 of the *Act* provides that, where a discipline authority has proposed reduction in rank as a disciplinary measure, the PCC must promptly arrange a public hearing or review on the record upon a written request from the member.

11. On April 9, 2019, the PCC provided notice of a review on the record pursuant to s. 138(1) of the *Act* (the "Notice"). However, the PCC determined that Cst. Steen was not actually entitled to a review on the record under s. 137. As set out in the Notice, the PCC reasoned that

> the proposed discipline and corrective measure of "reduction in rank" does not amount to an actual reduction in rank in these circumstances. Even though Constable Steen was set to be promoted to the rank of Sergeant, he was not promoted due to the Chief Constable exercising his discretion not to promote Constable Steen. Constable Steen remained a First Class Constable throughout the investigative and disciplinary process. Referring to this disciplinary measure as a "reduction in rank" is not correct as Constable Steen has not effectively had his current rank reduced.

12. The PCC therefore ordered a review of the record on his own initiative, on the ground that he considered there was a reasonable basis to believe the DA incorrectly applied s. 126 of the *Act* in proposing disciplinary or corrective measures under s. 128(1), and on the ground that a review on the record was necessary in the public interest, pursuant to ss. 138(1)(c)(ii) and 138(d) of the *Act*. The PCC wrote in the Notice that, as he had "determined that the only reasonable basis to believe that the Discipline Authority was incorrect was in proposing discipline or corrective measures, the Review on the Record will be confined to the issue of disciplinary or corrective measures."

13. The PCC accordingly arranged a review on the record pursuant to s. 141 of the *Act*. I was appointed to preside as the adjudicator pursuant to s. 142(2) of the *Act*.

III. ISSUES

14. The issues for me to decide on this review are:

(1) Whether the DA correctly applied s. 126(1) of the *Act* in proposing to reduce Cst. Steen's rank by removing him from the ranked eligibility list for a promotion to the rank of Sergeant; and

(2) Whether a reduction in rank is the appropriate disciplinary or corrective measure in respect of the count of deceit to which Cst. Steen admitted.

15. Cst. Steen submits that the DA correctly applied s. 126(1) of the *Act*, in the sense that removal from the ranked eligibility list amounted to a reduction in rank under s. 126(1)(b) in the circumstances. However, he submits the DA was incorrect in concluding that a reduction in rank was the appropriate disciplinary or corrective measure. Instead, Cst. Steen says he should be suspended without pay pursuant to s. 126(1)(c) of the *Act*. Cst. Steen takes the position that in normal circumstances the appropriate measure would be a moderate suspension of 15 days, but that in his particular circumstances a suspension of five days would be appropriate, having regard to the consequences he has already faced as a result of not having been promoted to Sergeant as anticipated.

16. The PCC submits that a reduction in rank under s. 126(1)(b) is the appropriate disciplinary or corrective measure, but that the DA was incorrect in proposing to remove Cst. Steen from the ranked eligibility list as a means of reducing his rank. The PCC argues that the DA had no jurisdiction to remove Cst. Steen from the ranked eligibility list as such a measure is not listed in s. 126(1), and that Cst. Steen should instead have his rank reduced from First Class Constable to Second Class Constable. In the alternative, the PCC submits that Cst. Steen should receive a "significant" suspension.

17. Pursuant to s. 141(9) of the *Act*, the applicable standard of review is correctness. Accordingly, I am not required to show deference to the DA's reasoning process, but rather I will undertake my own analysis of the issues and, if I do not agree with the DA's decision, substitute my own view: see RR 15-01, *In The Matter of the Review on the Record into the Conduct of Constable Felipe Gomes of the Delta Police Department* (26 June 2015), per Adjudicator Alan Filmer, QC, at pp. 1-2, citing *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 50.

IV. DISCUSSION

1. Did the DA correctly apply s. 126 of the *Act* in proposing to remove Cst. Steen from the ranked eligibility list?

18. The imposition of disciplinary or corrective measures in relation to members is governed by s. 126 of the *Act*, which provides as follows:

> 126(1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 [complainant's right to make submissions], the discipline authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:
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> (a) dismiss the member;
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> (b) reduce the member's rank;
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> (c) suspend the member without pay for not more than 30 scheduled working days;
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> (d) transfer or reassign the member within the municipal police department;
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> (e) require the member to work under close supervision;
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> (f) require the member to undertake specified training or retraining;
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> (g) require the member to undertake specified counselling or treatment;
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> (h) require the member to participate in a specified program or activity;
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> (i) reprimand the member in writing;
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> (j) reprimand the member verbally;
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> (k) give the member advice as to her or his conduct.
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> (2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,
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> (a) the seriousness of the misconduct,

(b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,

(c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,

(d) the likelihood of future misconduct by the member,

(e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,

(f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,

(g) the range of disciplinary or corrective measures taken in similar circumstances, and

(h) other aggravating or mitigating factors.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

19. The list of possible measures in s. 126(1) is exhaustive. As mentioned, the DA proposed to remove Cst. Steen from the ranked eligibility list as a means of reducing his rank pursuant to s. 126(1)(b). The PCC submits that in doing so, the DA incorrectly interpreted s. 126(1)(b) and instead imposed a separate measure that is not listed in s. 126(1) and for which there is accordingly no jurisdiction. I agree.

20. In my view, to interpret the phrase “reduce the member’s rank” in s. 126(1)(b) as including the removal of a member from a ranked eligibility list for a promotion to a different rank misunderstands the relevant statutory and factual context, and strains the meaning of the words in the phrase beyond their reasonable meaning.

21. The *Act* does not define the phrase “reduce the member’s rank”, nor the terms “reduce” or “rank” in s. 126(1)(b). Therefore, the proper interpretation of this subsection falls to be determined according to the well-known approach to statutory interpretation, adopted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, whereby the

words of a statute are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the legislation, and the intention of the legislature.

22. I begin with the grammatical and ordinary sense of the relevant words. *The Concise Oxford Dictionary of Current English*, 8th ed. defines the verb "reduce" as meaning "make or become smaller or less" and "make lower in status or rank". The noun "rank" is defined as "a position in a hierarchy, a grade of advancement". In my view, there is nothing in the meaning of these words that suggests the phrase "reduce the member's rank" encompasses the act of making the member ineligible for a promotion to a higher rank or removing him from a list of eligible candidates for a higher rank. To the contrary, the relevant definitions of the verb "reduce" contemplate a change, in the negative direction, from present circumstances, not the prevention of a future positive change. I find that the grammatical and ordinary meaning of the phrase "reduce the member's rank" means to change the member's position within the hierarchy of a police force from her or his present position to one that is lower.

23. Further, I find there is nothing in the scheme, object, or legislative intent behind the *Act* that would support a departure from the grammatical and ordinary meaning of these words. Instead, I agree with the submissions of the PCC that the *Act* provides for enhanced procedural protections when a reduction in rank may be imposed precisely because this measure involves serious consequences, which generally exceed those that flow from the absence of a promotion to a higher rank.

24. Finally, I respectfully find that the interpretation of s. 126(1)(b) adopted by the DA and urged by Cst. Steen rests on an incorrect understanding or characterization of Cst. Steen's actual circumstances at the relevant time. As mentioned, promotions within the VicPD are within the discretion of the Chief Constable. While it is true that Cst. Steen was placed on a ranked eligibility list (indeed, at the top of the list), the fact is he was not promoted and has never held the rank of Sergeant. In his submissions, Cst. Steen submits that, based on the policies and practices of the VicPD, he had a "reasonable

expectation" that he would be promoted. Clearly this is not the same as an actual promotion.

25. Cst. Steen submits that there is "no functional difference between being demoted, and being denied a promotion that an employee had earned through a competition, that had been announced to the entire workplace, and was formally to take effect in a few days." In my respectful view this submission misapprehends the relevant factual context. Cst. Steen was appointed to the ranked eligibility list but, given the concerns raised regarding his conduct, the Chief Constable decided not to promote him, pending the outcome of the investigation. The decision whether to promote him always remained within the Chief Constable's discretion. Cst. Steen was not entitled to a promotion by virtue of his appointment to the ranked eligibility list. Cst. Steen's submission that a reduction in rank and removal from the ranked eligibility list both entail consequences such as lower-than-expected income; lost opportunity for greater responsibilities and career prospects; and workplace shame, all ignore the fact that at best Cst. Steen was eligible for a promotion in the future. Cst. Steen's promotion was not guaranteed, no matter how reasonably – and imminently – he expected it to occur before the initiation of the investigation into his conduct. Cst. Steen's submissions tend to treat the promotion as if it had already been made, when in fact the Chief Constable specifically exercised his discretion not to make it pending the conclusion of this matter. The superficial similarities between a reduction in rank and the loss of an opportunity for promotion cannot overcome the fundamental difference that one results in a member actually being moved to a lower rank, while the other results in the member holding the same rank as before.

26. In my view the DA was under this same misapprehension when he reasoned that there was no practical distinction between the "revocation of a planned appointment following a selection process and a revocation of that appointment following a promotion", since the "impacted member will not hold the higher substantive rank moving forward in either case." Again, respectfully, this line of reasoning incorrectly

assumes Cst. Steen's promotion was guaranteed or a foregone conclusion, even after it was held in abeyance pending the outcome of the OPCC investigation and proceedings.

27. I also reject Cst. Steen's argument that it is "inconsistent" for the PCC to argue that the DA was incorrect to remove him from the ranked eligibility list on the one hand, while on the other hand arguing that he should have his rank reduced to Second Class Constable. Cst. Steen submits that if the DA had not removed him from the eligibility list then he would have been promoted to Sergeant, in which case a reduction in rank would leave him at his present rank of First Class Constable. He says that he has been denied a promotion as a disciplinary or corrective measure, per the DA's decision, and that a reduction in rank from First to Second Class Constable assumes the legitimacy of his lack of a promotion as a disciplinary or corrective measure under the *Act*. In my view this submission again ignores the fact that Cst. Steen's promotion was never guaranteed, let alone effective. Cst. Steen was eligible for a promotion in the discretion of the Chief Constable. It was for the Chief Constable to decide whether to actually promote Cst. Steen, and he has not chosen to do so. That is a separate matter from the question of the appropriate disciplinary or corrective measure, for the reasons I have already explained. In the absence of an actual promotion, Cst. Steen's rank remains a First Class Constable, and there is no inconsistency in the PCC's submission that his rank should be reduced to Second Class Constable.

28. For these reasons, I conclude that the DA incorrectly decided he could remove Cst. Steen from the ranked eligibility list for a promotion to Sergeant pursuant to s. 126(1)(b) of the *Act*. The measure proposed by the DA is not available under s. 126(1)(b) or any other provision in s. 126(1), and thus was lacking jurisdiction. This leaves the question of the appropriate disciplinary or corrective measure for Cst. Steen's deceit.

2. What is the appropriate disciplinary or corrective measure under s. 126?

29. There is no dispute that deceit is a serious form of misconduct under the *Act*. It has been described as "the most serious disciplinary default that can be committed by a

police officer" in light of the importance of honesty and integrity to the administration of justice and the internal organizational effectiveness of police forces: PH 12-02, *In the Matter of the Public Hearing into the Complaint Against Constable #369 Adam Page of the Abbotsford Police Department* (17 April 2013), per Adjudicator Ian Pitfield at paras. 11-12.

30. A review of other decisions under the *Act* demonstrates that the disciplinary or corrective measures that are typically imposed for deceit range from a suspension up to dismissal.

31. In the *Page* matter, *supra*, the member received two concurrent suspensions of 25 days for two counts of deceit. The member had made false statements on two occasions concerning an assault he had committed, where he had inexplicably lost his temper and used unnecessary force on a detainee. His deceit was intended to justify his actions. The member's deceit was not admitted but found after a public hearing. The Adjudicator did not discuss the suitability of a reduction in rank as an appropriate measure – in this case the PCC argued the member should be dismissed or suspended for a lengthy period, and the member submitted that a suspension of 15 days was appropriate.

32. In PH 13-02, *In the Matter of the Public Hearing into the Complaint Against Constable #134 Ken Jansen of the South Coast British Columbia Transportation Authority* (13 February 2014), the member received a 14-day suspension and was demoted to the rank of Third Class Constable for creating false notes and reports, and making false statements, in order to assist a fellow officer in defending his decision to use a Taser against a member of the public. Cst. Jansen's deceit was not admitted.

33. In RR 15-01, *In the Matter of the Review on the Record into the Conduct of Constable Felipe Gomes of the Delta Police Department* (26 June 2015), the member was dismissed for creating false notes, which he attempted to pass off as being made contemporaneously with certain events for which he was under investigation. Cst. Gomes initially lied to investigators about the notes being contemporaneous but he

eventually admitted his deceit. The Adjudicator found that the member's ADHD explained his struggle to take proper notes in a timely fashion, but faulted him for fabricating evidence rather than providing the investigators with his inadequate notebooks and seeking assistance in overcoming his difficulties in that regard. The Adjudicator did not discuss whether a reduction in rank would be appropriate in this case; the PCC argued that the appropriate measure was dismissal, while the member submitted that a lengthy suspension would be adequate.

34. In PH 14-01, *In the Matter of the Public Hearing into the Conduct of Constable Christopher Charters of the Vancouver Police Department* (31 October 2014), the member was suspended for the maximum of 30 days for making false and misleading statements about whether his police car had been rammed by a stolen vehicle, and whether he was engaged in a pursuit of that vehicle when he subsequently followed it. The member did not admit his deceit. After a public hearing, he was found to have deliberately disobeyed his supervisor and breached the VPD Vehicle Pursuit Policy in his pursuit of the stolen vehicle, and then "broadcast a false and misleading description of what had just occurred in an effort to cover-up his own misconduct." The Adjudicator noted that these decisions were "made quickly and in the heat of the moment."

35. In RR 18-02, *In the Matter of a Review on the Record Ordered with Respect to Constable Geoffrey Young of the Delta Police Department* (12 October 2018), the member was suspended for four days for giving a false statement to RCMP members in an interview after a pharmacist contacted the police regarding irregularities in the member's prescription for hydromorphone. Separate measures, designed to address the member's addiction issues, were imposed for multiple incidents of altering and filling prescriptions.

36. In another matter, PH 12-02, *In the Matter of the Public Hearing into the Complaint Against Constable Nathan Brown of the Abbotsford Police Department*, a public hearing was scheduled, but then cancelled at the request of the member, following a discipline hearing. According to the Notice of Public Hearing dated May 11, 2012, the member was alleged to have been in a single vehicle accident while driving

home in his police car after consuming alcohol, which he had been specifically advised by a senior member not to do. He then falsely reported to his supervisors that he had been involved in a collision the following morning on his way to work. The discipline authority appointed to preside over the ensuing discipline proceeding found the member had committed deceit and proposed that he be dismissed.

37. In addition to these decisions under the *Act*, I have reviewed the decision of the Alberta Law Enforcement Review Board in *MacDonald v. Camrose (Police Service)*, 2014 ABLERB 055, the facts of which bear a striking similarity to the circumstances of this matter. In that case, a member of the Camrose Police Service had been sent to a seminar and conference in Calgary during the week of September 5-9, 2011. He did not attend the seminar on September 5, and also failed to attend the last day of the conference on September 9. He later filed expense and overtime claims as if he had attended on all dates. The member also made false statements to a Staff Sergeant, first verbally and then in a memorandum, in which he minimized his lack of attendance. The member ultimately admitted his deceit and accepted responsibility in the disciplinary proceedings. He received an 80-hour suspension and was ordered reduced to the lowest seniority within his rank for a period of three years.

38. There is some dispute as to the use that can be made in this review of the *MacDonald* decision given that it is from another jurisdiction. In his decision in OPCC File No. 2017-14249, *In the Matter of a Review on the Record into the Ordered Investigation Concerning* [redacted] *of the Vancouver Police Department* (18 July 2019), Adjudicator Brian M. Neal, QC, declined to consider authorities from other jurisdictions and concerning other professions in determining the correctness of a disciplinary decision. Adjudicator Neal found that his authority to consider other disciplinary decisions was found in s. 126(2)(g) of the *Act*, which provides that "the range of disciplinary or corrective measures taken in similar circumstances" must be considered in determining just and appropriate disciplinary and corrective measures in relation to misconduct. At para. 111 of his decision, Adjudicator Neal reasoned as follows:

> I cannot find on the material before me that the disciplinary or corrective measures set out in the Supplemental Authorities did in fact arise in "similar circumstances". Each province and professional organization appear to have their own legislative and policy regimes. Some of the decisions provide partial insights into those regimes. However, without further evidence as to the "similar circumstances" under which the Supplemental Authorities arose, including the relevant legislative framework and police discipline standards, I am unable to conclude that they are indeed directly relevant to the current proceedings arising in "similar circumstances".

39. Adjudicator Neal then concluded that, since s. 126(2)(g) was inapplicable, he had no authority under the *Act* to consider authorities arising outside the *Act*.

40. In my respectful view, Adjudicator Neal's comments and conclusions in the [redacted] decision do not stand for the proposition that authorities arising outside of the *Act* can never be considered in imposing disciplinary or corrective measures under s. 126. Rather, I interpret these comments as applying to the specific authorities that were placed before him in that matter. I draw support for this conclusion from Adjudicator Neal's comments in para. 111, which suggest that the authorities at issue simply did not contain sufficient information to allow him to determine whether they involved "similar circumstances" as regards the applicable legislative and policy regimes. I note as well that, unlike the list of available measures in s. 126(1) of the *Act*, the list of circumstances to consider in s. 126(2) is non-exhaustive.[1] Finally, I note that the context in which Adjudicator Neal made these comments in [redacted] was different from the present context, in that the PCC in that case sought to rely on authorities from other professions and jurisdictions in support of a "reset" of disciplinary outcomes for the misconduct at issue in that case (improper access of police databases), or at least a higher-than-usual sanction on the particular facts of that case. Here the issue is the appropriate disciplinary or corrective measure within a well-established and generally accepted range.

41. With respect to the *MacDonald* decision, I find that it is of some assistance in determining the just and appropriate disciplinary or corrective measures to impose on

[1] Nor are all of the circumstances listed in s. 126(2) of the *Act*, including particularly s. 126(2)(g), properly characterized as aggravating or mitigating circumstances, though I do not consider that anything turns on this point.

Cst. Steen. The conduct at issue is remarkably similar. The decision provides ample insight into the police discipline regime in Alberta: see paras. 77-122. In that regard, I note that under the Alberta regime "a remedial approach that seeks to correct and educate, rather than punish, should, where appropriate, be the priority in selecting a penalty": see para. 89. This language approximates but does not exactly match the statutory requirement in s. 126(3) that "an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute." The factors that are considered under the Alberta police discipline regime do not exactly match the factors listed in s. 126(2) of the *Act*, but there is considerable overlap and in my view there are no significant inconsistencies. I conclude that the measures in *MacDonald* were taken in similar circumstances and may be considered in this matter, bearing in mind that the legislative and policy regimes in BC and Alberta are not identical, and that my decision must be made in accordance with the *Act* and on its own particular facts.

42. With respect to the factors in s. 126(2), I find that Cst. Steen's misconduct was serious. The authorities are clear, and the parties agree, that deceit by a police officer must always be considered a serious form of misconduct. That said, I agree with Cst. Steen's submission that there is a range of severity with respect to deceit and that the specific context of each case must be considered. Within the range of deceitful acts for which disciplinary or corrective measures were imposed in the cases discussed above, I find that Cst. Steen's deceit was moderate. He made false statements to his superiors on two separate occasions in order to prevent the discovery of his prior misconduct in failing to attend the full conference as required. In my view it is aggravating that he engaged in further deceit on April 11 after he was initially asked about his attendance on March 29; there was ample time for him to consider the matter in the interim and he regretfully chose to continue not to be forthright.

43. There is no suggestion of any other issues with respect to Cst. Steen's record of employment or past conduct. I accept that a reduction in Cst. Steen's rank will negatively impact his career and his family's financial situation. A suspension would

tend to have the same effect, albeit to a lesser degree. I find that given Cst. Steen has no prior history of misconduct, and the probable deterrent effect of these proceedings, there is a relatively low likelihood he will engage in future misconduct. Cst. Steen has accepted responsibility for his misconduct by admitting to his deceit in the VicPD's internal investigation and admitting this constituted misconduct in the Discipline Proceeding.

44. Cst. Steen submits that he was under some type of investigation as of April 11, 2018, and the fact he was not advised of this should be found to have contributed to his misconduct on that date under s. 126(1)(f) of the *Act*. Cst. Steen submits that if he had been told he was under investigation and provided with the option of seeking assistance from a union representative, then he may have provided accurate information to [redacted], as the union representative would have advised him to focus on the matter and not minimize the number of sessions he missed. I reject this submission. It was Cst. Steen's sole responsibility not to deceive [redacted] on April 11, and the suggestion that the involvement of a union representative would have made any difference is speculative. In my view this is not the sort of circumstance meant to be captured by s. 126(2)(f) and it is not a relevant circumstance in this case.

45. I have already discussed the range of disciplinary or corrective measures taken in similar circumstances. The authorities suggest the range of appropriate measures for deceit is anywhere from a suspension to dismissal, depending on the particular facts of the case. A reduction in rank has been imposed in some cases, including the *MacDonald* case, which is factually very similar to this matter although that decision arose in a slightly different legislative and policy context. The Alberta regime encourages a remedial approach where appropriate but does not appear to place quite the same emphasis on such an approach or provide the same level of guidance on the question as the *Act* does in s. 126(3).

46. Finally, Cst. Steen submits that he has suffered financial consequences as a result of not being promoted to Sergeant in 2018 as he expected he would, and says this should be considered as a mitigating factor in determining the appropriate

disciplinary or corrective measure to impose. He submits that, if he had been promoted to Sergeant as and when he expected, then he would have earned a greater salary in the intervening period, the loss of which is equivalent to the financial impact of a suspension of over thirty days. I agree with the PCC that this submission must be rejected. As previously discussed, Cst. Steen's promotion was not guaranteed, was in the sole discretion of the Chief Constable, and is properly viewed as a separate matter from the appropriate disciplinary or corrective measure for his misconduct. I accept that he was not promoted as a result of generally the same conduct for which disciplinary or corrective measures will also be imposed. However, I do not consider that his failure to actually be promoted is a relevant circumstance in my decision as to the appropriate measure to impose. The promotion represented a potential benefit to which Cst. Steen was not entitled, and the fact that it did not materialize as and when expected does not represent a separate punishment so much as a prudent exercise of the Chief Constable's discretion, no doubt intended to ensure that the facts of Cst. Steen's impugned conduct were known before the decision was made whether to entrust him with the additional responsibilities that come with the higher rank for which he was being considered. I find that any lost opportunity to earn a greater salary as a result of that decision is irrelevant to determining the appropriate measure in this case.

47. In imposing a disciplinary or corrective measure, I am required by s. 126(3) to give precedence to an approach designed to correct and educate Cst. Steen, unless such an approach would be unworkable or would bring the administration of police discipline into disrepute. While the measures proposed by the parties could both be described as being more "disciplinary" than "corrective," I find the proper interpretation of s. 126(3) is that measures that are less punitive should take precedence over stricter measures that are equally likely to correct and educate the member (subject to workability and the repute of the administration of police discipline) since this would favour approaches that have correction and education, as opposed to punishment, as their primary aims. In the circumstances of this case, I find a suspension and a reduction in rank are equally likely to correct and educate Cst. Steen, while a reduction in rank is the more punitive outcome.

48. There is no suggestion that the imposition of a suspension, as opposed to a reduction in rank, would be unworkable in this case. The issue of whether a more corrective and educative approach would bring the administration of police discipline into disrepute has been interpreted with reference to the expected views of a reasonable person who is dispassionate and fully apprised of the circumstances of the case: RR 18-02, *In the Matter of a Review on the Record Ordered with Respect to Constable Geoffrey Young of the Delta Police Department* (12 October 2018). The question, then, is whether such a person would hold the system of police discipline in lower regard upon learning that Cst. Steen was suspended for his deceit while maintaining his rank of First Class Constable.

49. In my view, a reasonable person viewing all the facts of this case and particularly Cst. Steen's long and otherwise unblemished career, would not consider the imposition of a suspension as tending to diminish the repute of the administration of police discipline. I find that a suspension of 20 days without pay is the appropriate sanction in light of all the circumstances. This measure adequately reflects the seriousness of Cst. Steen's misconduct and falls within the range of measures that have generally been taken in similar circumstances.

Dated this 21 day of November 2019.

Ronald McKinnon, Retired Judge