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2017 RCAD 3

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO

THE *ROYAL CANADIAN MOUNTED POLICE ACT*

Between:

Commanding Officer, "E" Division

Conduct Authority

- and -

Constable Fareez Vellani, Regimental Number 54533

Subject Member

Conduct Board Decision

Inspector James Robert Knopp, Conduct Board

March 29, 2018

Sergeant Julie Beaulieu and Civilian Member Denys Morel, for the Conduct Authority, "E" Division

Staff Sergeant Colin Miller, for the Subject Member

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Synopsis

The Subject Member reported to the Insurance Corporation of British Columbia (ICBC) that his pickup truck had been vandalized and broken into. In truth, the damage he claimed was owing to "vandalism" was in fact the result of the Subject Member's own single motor vehicle accident. In characterizing the totality of the damage as having arisen out of a single incident rather than two separate incidents he avoided paying a second deductible amount. The Subject Member admitted two allegations; the first concerned the making of a false, inaccurate or misleading statement to a member of the RCMP. The second allegation concerned the making of a false report to ICBC, which included a false declaration, under oath or affirmation, to a Notary Public.

Following a one-day contested hearing on conduct measures, the Subject Member was ordered to resign within fourteen days, in default of which he would be dismissed.

Summary

A Notice of Conduct Hearing (Notice) pursuant to Part IV of the *RCMP Act* was served upon the Subject Member November 6, 2015. The Notice, issued on October 28, 2015, by the Acting Commanding Officer and Conduct Authority for "K" Division, contained two allegations. Written submissions on these two allegations were submitted on Monday, June13, 2016. A decision was rendered, establishing both allegations, and contested hearing on conduct measures was held in Vancouver, British Columbia on September 20 and 21, 2016. This is the written decision.

Introduction

[1] Following a Code of Conduct investigation, the Subject Member faced the following two allegations:

> **Allegation 1**
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> On or about February 13th, 2015, at or near Maple Ridge, in the Province of British Columbia, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.
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> **Allegation 2**
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> On or between February 13th, 2015 and March 20th, 2015, at or near Maple Ridge in the Province of British Columbia, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

[2] On June 13, 2016 an Agreed Statement of Facts was signed, formally admitting the above allegations. The ASF explicitly called for the replacement of the particulars of each of the above allegations with the AST, the text of which is as follows:

AGREED STATEMENT OF FACTS

> 1. [The Subject Member] admits allegations 1 and 2 of the Notice of Conduct Hearing dated October 28, 2015. The parties agree that paragraph I to 17 and paragraph 23 below replace the particulars of Allegation 1 of the Notice of Conduct Hearing. The parties also agree that paragraph 1 to 12 and paragraph 18 to 23 below replace the particulars of Allegation 2 of the Notice of Conduct Hearing
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> 2. At all material times, [the Subject Member]was a member of the Royal Canadian Mounted Police ("RCMP") and posted to "E" Division.
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> 3. At all material times, [the Subject Member] was the registered owner of a 2014, Ford Fl 50 vehicle ("vehicle"), serial number 1FTFWIET8EKF65934 , bearing the British Colombia licence plate number HX2606.
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> 4. At all material times, [the Subject Member's] cellular telephone number was [Subject Member's cell phone number] with Rogers Communication.
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> 5. At all material times, [the Subject Member'svehicle was insured via the "Insurance Corporation of British Columbia ("ICBC") under policy number

HX2606-0 which carried a collision deductible of $500.00 and a comprehensive deductible of $300.00.

6. At all material times, [the Subject Member]also possessed additional insurance through Optiom Inc. which would reimburse up to $300 of any deductible on his primary insurance policy.

7. On February 12, 2015, [the Subject Member]parked his vehicle outside of a friend's residence for the night.

8. On February 13, 2015, at approximately 9:00hrs, when departing his friend's residence, [the Subject Member] noticed that the front passenger window of his vehicle had been broken. [The Subject Member]'s sunglasses, garage door opener, iPod and house keys were missing from the vehicle.

9. On February 13, 2015, at 9:25hrs, while driving to his residence, [the Subject Member]contacted the RCMP non-emergency line ("E-Comm"), to report the theft and the damages caused to his vehicle overnight. Attached as Exhibit "A" to this Agreed Statement of Facts is the transcript of [the Subject Member]' s report to E-Comm. Lines 51 to 58 show that the only damage reported by [the Subject Member]at that time was the smashed front passenger window.

10. While driving and on the phone with E:-Comm, [the Subject Member] had a single vehicle collision which caused damage to the front windshield , hood and front bumper of his vehicle. Attached as Exhibit "B" to this Agreed Statement of Facts is the audio recording of [the Subject Member]'s telephone conversation with RCMP E-Comm which, at 3 minutes 7 seconds captured the sound of ·the collision. Attached as Exhibit "C" to this agreed statement of facts is the expert report of [Mr. B.F.] (expert hired by ICBC) showing that [the Subject Member]’s cell phone ([the Subject Member’s cell phone number])was in motion while he was on the phone with E-Comm.

11. On February 13, 2015, at 9:57hrs, [the Subject Member] called ICBC and initiated a theft/vandalism claim (ICBC claim file AE65234.6). [The Subject Member]told the ICBC call taker, [Ms. L.D.], that his vehicle had been vandalised the night before and that the vehicle's side window, windshield and hood had been damaged. Attached as Exhibit "D" to this Agreed Statement of Facts is a copy of [the Subject Member]’sICBC claim of loss which, at page 2, shows the list of damage reported by [the Subject Member] that morning.

12. [The Subject Member] later took his vehicle to Westcoast Collision for repair. On site [the Subject Member] spoke with [Mr. P.M.], owner of the repair shop, and advised him that all the damage to his vehicle was the result of vandalism. Attached as Exhibit "E" to this Agreed Statement of Facts is a copy of the Westcoast collision estimate in which [Mr. P.M.] wrote

"Damage is not consistent with loss type". Mr. P.M.] later had a later discussion with Cst. Vellani during which he advised [the Subject Member] that ICBC had placed the repair on hold as they felt the reported damage might be from two separate claims.

13. On February 13, 2015, at approximately 12:00hrs, [the Subject Member] spoke with Cst Hawkins, the RCMP member conducting the theft investigation (Prime file 2015- 3497). During the conversation, [the Subject Member] stated that his vehicle's front passenger window, hood and windshield had been smashed overnight. He also reported body damage to the driver's side and provided a list of stolen items. [the Subject Member] failed to inform Cst. Hawkins that half of the reported damage was unrelated to the theft investigation and was caused during a subsequent collision. Attached as Exhibit "F" to this Agreed Statement of Facts is a copy of the Ridge Meadows Prime file 2015-3497 - Synopsis - 1 which outlines the information provided by [the Subject Member] to Cst. Hawkins during her theft investigation.

14. Without distinguishing between them, [the Subject Member] reported the damage caused by the theft and the damage caused by the subsequent collision to Cst. Hawkins, knowing that the latter was irrelevant to her investigation and that it would mislead Cst. Hawkins in her investigation .

15. On February 14, 2015, Cst. Hawkins sent [the Subject Member] an email requesting pictures of the vehicle damage for her investigation. [The Subject Member] attended the repair shop himself and took the requested pictures.

16. On February 17, 2015, [the Subject Member] sent Cst. Hawkins an email stating "I got the pics for you. Still no word on the estimate for the damages, I should know sometime in the next couple of days." The eleven pictures sent by [the Subject Member] show the damage that had been caused during the theft and also the damage caused by the subsequent collision. Five of the eleven sent pictures exclusively depicted the damage caused during the subsequent collision. [The Subject Member] sent Cst. Hawkins these five pictures knowing that they were irrelevant to her investigation and that it would mislead Cst. Hawkins in her investigation. Attached as Exhibit "G" to this Agreed Statement of Facts are the pictures sent by [the Subject Member] to Cst Hawkins.

17. [The Subject Member] reported the damage caused by the collision to Cst. Hawkins to corroborate his insurance claim.

18. On February 24, 2015, [the Subject Member] provided a verbal statement to ICBC adjuster [Mr. D.C.] in support of his insurance claim. During the statement, [the Subject Member]stated that the damage caused to the windshield, side window and hood of his vehicle had all been caused by an act of theft and vandalism. Attached as Exhibit "H" to this Agreed

> Statement of Facts is a signed copy of the voluntary statement [the Subject Member] provided to ICBC adjuster [Mr. D.C.].
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> 19. On February 25, 2015, [the Subject Member] authored an "Automobile Proof of Loss" form in which he solemnly declared, before notary public Ms. C.C., that the loss of $4,000 reported to ICBC on February 13th, 2015, was caused by Vandalism
>
> /Mischief/Theft. Attached as Exhibit "I" to this Agreed Statement of Facts is a signed copy of [the Subject Member]'s "Automobile proof of loss".
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> 20. On March 20, 2015, [the Subject Member]provided a warned statement to ICBC investigator [Mr. B.K.] in support of his insurance claim. During his statement, [the Subject Member] again stated that the damages to the windshield, bumper and hood of his vehicle had been caused by an act of theft and/or vandalism and not by a collision. Attached as Exhibit "J" to this Agreed Statement of Facts is a transcript of [the Subject Member]'s statement in which, from lines 159 to 166, [the Subject Member] clearly rejects investigator [Mr. B.K.]'s suggestion that some of the claim damage resulted from a collision and not a theft.
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> 21. [The Subject Member] knew that the damage to the hood and windshield had not been caused by an act of theft and/or vandalism , but by a collision and knowingly provided false and inaccurate information to ICBC. [The Subject Member] knew that the damage caused during the collision should have been reported to ICBC under a separate claim which carried out its own deductible, but failed to do so.
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> 22. On April 29, 2016, [the Subject Member] pleaded guilty to a charge of providing false or misleading information contrary to section 42.1(2) (a) of the *Insurance (Vehicle) Act* of British Columbia. Attached as Exhibit "K" to this Agreed Statement of Facts is a copy of [the Subject Member]'s certificate of conviction. Attached as Exhibit "L" to this Agreed Statement of Facts is the audio recording of [the Subject Member]'s court appearance.
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> 23. [The Subject Member] agrees that his actions were discreditable and could bring discredit to the Force contrary to section 7.1 of the *Code of Conduct* of the *Royal Canadian Mounted Police.*

[3] I requested written submissions from the Representatives on the allegations. The Member Representative (MR) chose not to make written submissions, stating the ASF spoke for itself. The Conduct Authority Representative (CAR) submitted her representations to me on June 15, 2016.

Submissions of the CAR on the allegations

[4] With respect to Allegation 1, the CAR submits the Subject Member's actions were deliberate. He knew the information he provided to Constable Hawkins would likely be shared with the Insurance Corporation of British Columbia (ICBC). His actions amounted to a serious contravention of the Code of Conduct because they were not a one-time error in judgement. Rather, his actions were indicative of his dishonest intent to support a fraudulent insurance claim.

[5] With respect to the second allegation, the CAR submits the deliberate and repeated nature of the misrepresentations provided to ICBC personnel, on several occasions and over an extended period of time, negatively affect his credibility and undermine the trust between the RCMP and ICBC. On February 13, 2015, he knowingly provided false information to a call taker at ICBC. On February 24, 2015, he knowingly provided false information to an insurance adjuster. The next day, he made a deliberately misleading statutory declaration before a Notary Public regarding the nature of the damage to his vehicle to a Notary Public. This statutory declaration has the same force and effect as if it were made under oath. On March 20, 2015, he knowingly made a false statement to an insurance investigator.

[6] In support of her position, the CAR offers two RCMP disciplinary decisions; in the first, cited at 5 A.D. (4^{th}) 264, the Board found it disgraceful for a police officer to have provided false and misleading assertions to ICBC in order to obtain insurance benefits to which he was not otherwise entitled. In the second, cited at 5 A.D. (4^{th}) 1, the Board found it disgraceful for a police officer to lie to an officer of another police force in the course of an investigation in which he was involved.

My decision on the two allegations

[7] I did not solicit submissions on the effect of the word "discreditable" as opposed to "disgraceful" conduct. Stated succinctly, the tests applicable under the previous legislation to a finding of "disgraceful" conduct continue to apply with equal vigour to the amended version of the RCMP Act.

[8] These tests, articulated by the RCMP's External Review Committee (the ERC), have been considered and approved by higher courts and I find they continue to provide a useful framework. The first aspect of the test involves ascertainment of the identity of the member in question. At no point was the identity of the Subject Member in issue in these proceedings; indeed, the investigation report and other documents on record, alongside the Subject Member's admissions by way of the ASF, leave no room for doubt on the issue of identity.

[9] The second stage involves a determination of whether or not the facts alleged actually took place. The standard of proof applicable to administrative proceedings was a central issue in *F.H. v. McDougall* [2008] 3 S.C.R. 41 (hereinafter *McDougall*). Proof must be made by way of sufficient clear, convincing and cogent evidence on the balance of probabilities. The Subject Member's admissions as well as the sum total of the information contained within the investigation report and other documents on record clearly establish the facts took place as alleged.

[10] The third stage consists of analysis of the acts found to have taken place, in the context of whether or not they bring the RCMP into disrepute. The applicable test for this analysis hearkens back to Lord Denning's invocation of "the reasonable man on the Clapham omnibus" and has been articulated by the ERC as being whether or not the reasonable person, with knowledge of all of the facts of the case, as well as knowledge not only of policing in general but policing in the RCMP in particular, would find the conduct in question to be disgraceful, and bring the reputation of the RCMP into disrepute.

[11] Lord Devlin's treatment of the word "disgraceful" in the case of *Hughes v. Architects Registration Council of the United Kingdom*, 1957, 2 All E.R. 436, is instructive. The word "disgraceful" is by no means a term of art, and must be given its natural and popular meaning. The acts must be seen, by the reasonable person, to be such as to disgrace the Subject Member in his capacity as a police officer.

My decision on Allegation 1

[12] For reasons having to do with good governance of the Force, any member must be able to rely on information provided by another member as being true. Constable Hawkins relied upon the information provided to her by the Subject Member on February 13 and 17, 2015, as being true. The ASF makes it clear the Subject Member deliberately withheld the truth from Constable Hawkins about the origin of certain damaged areas of his truck. He knew a considerable amount of the overall damage was the result of his own single-vehicle accident and not from vandalism, a break-in or attempted theft, yet he deliberately withheld the totality of this information from Constable Hawkins.

[13] The CAR has suggested the Subject Member's motivation for misleading Constable Hawkins was to support a fraudulent insurance claim, and I agree. I will go further, however, and add that additional motivation was to avoid being held accountable for his single-motor-vehicle accident. He was clearly in an agitated state when he called the Maple Ridge RCMP call centre the morning of February 13, 2015. This is understandable, because he had just discovered his new pickup had been broken into, and amongst the many valuable items stolen was his set of house keys and a garage door opener. He was driving home to make sure the thieves had not ascertained his address from documents within the vehicle and broken into his house as well as his truck. His degree of anxiety is understandably elevated at this point, and to a significant degree. Talking on a cell phone while driving is a dangerous activity in and of itself; doing so while in such an agitated state is even more dangerous. The Subject Member is extremely fortunate that the resulting collision was with a sign post or some such object; it could just as easily have been a pedestrian, a cyclist, or another motorist.

[14] Many provinces have statutory prohibitions against various forms of "distracted driving", but depending upon the consequences, a charge of Criminal Negligence can also ensue. In failing to disclose the circumstances under which the single-vehicle accident took place, the Subject Member deliberately evaded accountability for his actions. He did not report this accident, and no one is better placed than a regular member, employed in contract policing, to know of the importance of reporting motor vehicle accidents.

[15] One question that remains unanswered is the nature of the object with which he collided. From the damage, it appears it was likely some kind of a road sign. If so, what if the road sign was an important one, warning motorists of an intersection, a rail crossing, a pedestrian right-of-way, a construction site? The absence of the sign could have had fatal consequences for others. I do not wish to extrapolate, since the facts provided do not permit a more fulsome discussion along these lines, but in mentioning these potential consequences, I only wish to highlight that while misleading Constable Hawkins is a serious contravention of the code of conduct, of equal importance is the set of facts he deliberately withheld from her. The Subject Member stood to realize a personal benefit from misleading Constable Hawkins, in the form of being liable for one instead of two deductible insurance claims, and in the form of evading accountability for distracted driving and his resulting accident.

[16] I find a reasonable person, with knowledge of all of the circumstances of the case, as well knowledge not only of policing in general but policing in the RCMP in particular, would find the Subject Member's deliberately having misled Constable Hawkins about the circumstances under which a significant portion of the overall damage to his truck occurred to be discreditable. His actions bring the reputation of the RCMP into disrepute.

[17] His actions took place while he was off duty, but the nexus to his employment situation is obvious in that he deliberately misled a fellow member of the RCMP. Allegation 1 is therefore established in its entirety.

My decision on Allegation 2

[18] The Subject Member embarked upon an extended campaign to deliberately mislead various ICBC employees, ranging from complaint-intake personnel to claims evaluators to investigative staff. He also misled a Notary Public in a solemn affirmation pertaining to this same insurance claim. The CAR's analysis of the various stages at which the Subject Member offered misleading statements in support of his fraudulent insurance claim is comprehensive and need not be repeated here.

[19] The above analysis with respect to the Subject Member's motivation applies with equal vigour here. He was acting in self-interested fashion, to avoid paying the deductible amount for a second claim and to evade accountability for his single-vehicle accident.

[20] The number of times he repeated his dishonest acts accentuates the gravity of his misconduct. Equally serious is his having lied in a solemn affirmation before a Notary Public. In its totality, given the motivation for self-benefit underlying his actions, this is a very serious contravention of the code of conduct.

[21] I find a reasonable person, with knowledge of all of the circumstances of the case, as well knowledge not only of policing in general but policing in the RCMP in particular, would find the Subject Member's deliberately having misled ICBC personnel as well as a Notary Public, on several different occasions, for reasons of personal gain, about the circumstances under which a significant portion of the overall damage to his truck occurred, to be discreditable. His actions bring the reputation of the RCMP into disrepute. Allegation 2 is likewise established in its entirety.

Conduct Measures hearing

[22] The contested hearing on conduct measures took place in Vancouver, British Columbia, on Tuesday, September 20, 2016. The Conduct Authority sought an order for dismissal. The Subject Member felt this was disproportionate to the gravity of the misconduct and sought a forfeiture of pay.

Witness for the CAR on conduct measures, Inspector Julie Moss

[23] Inspector Moss is the Executive Officer for the Commanding Officer of "E" Division (British Columbia). In her present capacity, as well as in the course of her previous postings, this witness has gained considerable experience in working with the office of the Attorney General for the Province of British Columbia, the prosecuting authority for criminal charges.

[24] In British Columbia, members of various police forces do not swear an Information to bring criminal charges forward against an accused. Rather, the Crown enjoys what has come to

be known as “charge authority”, and will only swear an Information after thorough review and assessment of the investigative file and all relevant material. The threshold for laying a criminal charge in this province is “a substantial likelihood of conviction”.

[25] One of the relevant factors under consideration is the Crown’s positive duty to disclose the relevant police disciplinary history of any officer involved in the investigation who may be called as a witness in the criminal proceedings, as per the Supreme Court of Canada case of *R. v. McNeil,* [2009] 1 S.C.R. 66, 2009 SCC 3 (*McNeil*).

[26] In *McNeil*, the police in Barrie, Ontario charged Mr. McNeil with various drug-related offences, including possession of marijuana and cocaine for the purpose of trafficking. Following his conviction, Mr. McNeil learned that one of the Barrie police officers who testified against him had himself been charged with drug-related criminal offences which resulted in internal police discipline proceedings. Mr. McNeil then brought a motion seeking production of all documents pertaining to the police disciplinary proceedings, claiming this material was fresh evidence in his appeal from the drug convictions. The Barrie Police Service and both the federal and provincial Crown refused to produce these materials.

[27] The case was ultimately heard by the Supreme Court of Canada, which confirmed the existing duty to disclose all relevant information so that an accused may make full answer and defence. While acknowledging the separate and distinct roles of the Crown and the police, the SCC found that the police also have a duty to participate in this disclosure process, since the police must first disclose to the Crown. Included in this “first-party” disclosure package must be any records relating to findings of serious misconduct by police officers involved in the investigation where the misconduct in question could “reasonably impact” upon the case.

[28] The police disciplinary history information is in turn disclosed to the accused, who may use this information in cross-examining the police witness(es) in question. In British Columbia, according to Inspector Moss, the Crown has been increasingly insistent on being provided with police disciplinary records as soon as possible so an assessment can be made as to whether or not

placing a police officer with a disciplinary history on the witness stand can impact upon the "substantial likelihood of conviction".

[29] This witness testified to instances she knew of in which the Crown, upon learning of a potential police witness's disciplinary history, either withdrew existing charges or refused to lay them in the first place.

[30] As a result, the RCMP in British Columbia has been increasingly reluctant to deploy members with a disciplinary history in duties which may give rise to *McNeil*-related disclosure issues. The situation is most keenly felt in disciplinary matters involving issues of honesty and integrity. In fact, related this witness, many unit commanders or Line Officers in the province will refuse to accept a member under their command who has such a disciplinary history because of the difficulty in deployment.

[31] Inspector Moss conceded that some disciplinary matters involving issues of honesty and integrity were more serious than others, and provided two examples, at opposite ends of the scale. Less serious would be a case in which a member called in sick in order to go skiing for the day. Much more serious would be perjuring oneself under oath in a murder trial. Generally speaking, though, all issues of honesty and integrity create deployment problems for the RCMP from a human resources perspective, according to Inspector Moss.

[32] In this witness's experience, she would find the placement of the Subject Member to be problematic, given the nature of the misleading statements he made, the frequency with which he made them, and to whom they were made. He had multiple opportunities to correct, adjust or rectify his misstatements, and did not. This, she felt, would ultimately have a negative impact upon his credibility on the witness stand.

The Subject Member, on his own behalf, on conduct measures

[33] The Subject Member has been a member of the RCMP for nine years, and was an auxiliary member for two years prior to his engagement as a regular member. He is active in the community, especially in Scouting, and is a frequent volunteer in his church. He also volunteers

with the RCMP's auxiliary constable program. He also helps with Coquitlam's Junior Mountie Program, an opportunity for children ages eight to twelve to participate in a week-long camp featuring some fitness and drill exercises, as well as presentations from specialized sections such as the police service dog unit, emergency response team, and traffic services.

[34] The Subject Member testified to having been the recipient of a great deal of racial discrimination in the early stages of his career. His first Staff Sergeant would harass members of East Indian descent, trying to get them transferred or otherwise removed from his Watch. This Staff Sergeant frequently directed racial slurs at the Subject Member and told him "he was in the wrong job, and should be a taxi driver or janitor". This Staff Sergeant was ultimately suspended facing Code of Conduct allegations, and took his retirement before proceedings could be commenced against him.

[35] In his personal life at the time, the Subject Member suffered a setback when his partner, whom he had been coaching in her efforts to become a police officer, ended their relationship. This created a series of complications in the Subject Member's personal life which are of a highly personal nature, and since they are a matter of record in the proceedings, need not be related in this written decision. The Subject Member sought and received professional counselling to assist him in learning coping mechanisms to deal with depression and anxiety.

[36] In the Fall of 2014, things took a turn for the better when he met his current partner and embarked upon the long-term relationship which he currently enjoys. They have a daughter, who is now six months old.

[37] The Subject Member then recounted the events giving rise to the two Code of Conduct contraventions. Having spent the night at a friend's apartment, he went out to his truck the morning of February 13, 2015, to find it had been broken into. The passenger's side window had been smashed, and objects strewn about the cab of the truck. He noticed his remote-control garage door opener was among the many items stolen, and was worried about the possibility the thieves took note of his address from the various papers in the glovebox and had burglarized his residence as well, using the garage door opener to gain entrance.

[38] He testified to being in a state of panic, and he immediately drove his truck in the direction of his residence in order to confirm whether or not a subsequent break-and-enter had taken place. He emphasized his use of Bluetooth "hands-free" technology, permitting him to conduct his conversation with the RCMP dispatcher while operating his truck. As he was engaged in this conversation, some of the remaining glass in the passenger side of the truck window came loose and crashed into the inside of the truck, startling him and causing him to jump the meridian and collide head-on with a traffic sign. He came to an immediate stop. After the phone call was complete, he went out and replaced the traffic sign he had knocked down. The sign had apparently only popped free from its mooring, and he was able to simply put it back in place before continuing his drive home.

[39] When he subsequently provided his version of events to the various investigators, the Subject Member testified to acting impulsively in characterizing the totality of the damage as arising out of a single incident of theft and vandalism. He said he felt trapped, and did not know how to fix his mistake, and so he just went along with his story.

[40] He said that since the incident, he has accepted responsibility for all his actions. He has paid the penalties imposed as a result of the proceedings against him promptly, and paid for the damages to his vehicle well in advance of the Insurance Corporation of British Columbia making any decision concerning the claim. He knew pleading guilty to the Vehicles Act offence could jeopardize his career, but he knew he had to do what was right. He also spoke to his friends and apologized for having involved them in the ordeal.

[41] In cross-examination, the Subject Member admitted to having had many opportunities to set the matter straight rather than perpetuate the false story he initially provided. He knew his report to Constable Hawkins would form part of the ICBC report, and several days after his initial report to Constable Hawkins, he sent her photographs he had taken of the damage to his truck. He took photographs of all of the damage - that which was caused by the initial act of theft as well as that which was incurred as the result of his single-vehicle accident with the traffic sign – and characterized it all as having arisen out of once incident, which he falsely characterized as an act of theft and vandalism. In the days and weeks which followed, in his various

conversations with ICBC personnel and in one instance in particular, with a Notary Public, under oath, he had many opportunities to tell the truth about the true origin of the damage but did not.

Submissions of the CAR on conduct measures

[42] The CAR submitted the range of sanctions for instances of police misconduct involving issues of honesty and integrity includes dismissal.

[43] With respect to aggravating factors, the first is the loss of confidence of the Commanding Officer. Under the amended *RCMP Act*, the only conduct measure not available to the Commanding Officer, in his capacity as the Conduct Authority, is dismissal. Therefore, the request to appoint a Conduct Board demonstrates his lack of confidence in the Subject Member.

[44] The second aggravating factor is the planned and deliberate nature of the Subject Member's misconduct. It did not occur on the spur of the moment, it was not an impulsive act. There was a full twenty minutes from the time of the Subject Member's collision with the traffic sign and the time he called ICBC. He had time to think about the consequences of reporting a second source of damage, namely, his own collision with the signpost, and for reasons of increased premiums and having to pay a second deductible, he chose to characterize the damage as all arising out of a single incident.

[45] Later that same day, after he found a collision centre to repair his vehicle, the Subject Member once again lied about how the damage to his vehicle occurred. Two hours after that, in speaking with Constable Hawkins, he lied again, knowing his report to her would be shared with ICBC. This was not a spur-of-the-moment decision, it was part of a larger fraudulent plan.

[46] The third aggravating factor is the length of time over which the fraud was perpetuated. The Subject Member lied to six different individuals on seven different occasions, over the period of a month and a half, all in support of a fraudulent insurance claim.

[47] Another aggravating factor is the self-benefit underlying the Subject Member's misconduct. He made a false insurance claim to avoid paying a second deductible and perhaps to avoid accountability for his single-vehicle motor vehicle accident.

[48] The impact of the *McNeil* disclosure obligations is another aggravating factor which the CAR argued should be taken into account. In the RCMP disciplinary case cited at 13 A.D. (4th) 246, at paragraph 24, the Chair noted:

> . . . Any sanction administered in this post-*McNeil* era must take into account the potential negative impact upon not only the career of the member involved, but on the Force itself. Faced with a positive duty to disclose relevant disciplinary action, the Force may find itself compromised in its ability to deploy members like the Subject Member who have been found to have breached the core values of honesty, integrity, professionalism and accountability. Sanctioning a breach of those core values must act as a significant deterrent.

[49] The Force's difficulty in the deployment of members obliged to disclose serious integrity- based misconduct is recognized in the case cited at 11 A.D. (4th) 389, at paragraph 52:

> In my view, there is no question that this misconduct restricts the Force's ability to deploy the Subject Member. I cannot in good conscience retain a member under these circumstances where it becomes a burden on the Force to accommodate him with positions for the rest of his career in order to minimize that risk.

[50] This view was repeated at paragraph 67 of the decision cited at 13 A.D. (4th) 267.

[51] Another aggravating factor is the involvement of other agencies, the Insurance Corporation of British Columbia and the Provincial Crown. Factors such as these were accepted in the case cited at (Tab 4, CAR's materials, Corporal Frechette, not cited).

[52] Finally, the Subject Member lied in a solemn declaration before an officer of the court, a Notary Public, on February 24, 2015. This was clearly not an impulsive act, as the Subject Member had to turn his mind to the content of the declaration before he signed the document. As a police officer, he knew the importance of such a declaration.

[53] As an indication of the seriousness with which the Force treats this form of misconduct, the Conduct Guide only provides for dismissal, in the mitigating, normal and aggravating range, for "knowingly providing false or misleading evidence while under oath or swearing to the truthfulness of an affidavit or other sworn legal document which the Member knows to contain false or misleading information."

[54] The CAR also pointed out how the Subject Member's conduct is inconsistent with section 37 of the *RCMP Act*, to "maintain the integrity of the law, law enforcement, and the administration of justice". It is also contrary to the core values of the Force.

[55] At page 31 of the disciplinary case cited at 27 A.D. (3d) 228, the Board in that case noted that "deterrence may override rehabilitation when the incident is so serious as to overcome the employment contract. In 28 AD (2d) 213, the ERC [the RCMP's External Review Committee] stated:

> Good character and rehabilitative potential are normally central to considerations of appropriate sanctions; principles of progressive and positive discipline for a single act of misconduct will normally require a sanction of less than termination where good character and rehabilitative potential are present. However, the presence of good character and rehabilitative potential do not absolutely require a sanction less than termination: rather, these factors still must be measured against the severity of the misconduct. There may be disciplinary situations where these factors, while relevant, are not sufficient to overcome the employer's right to terminate the employment relationship . . . The breach of trust represented by the misconduct in the present case goes to the heart of the employer-employee relationship, as well as to the heart of the public's expectations of police officers in their dealings with vulnerable members of the public.

[56] At page 32 of that same case, the Board continued,

> Even though the member has been able to show the Board he is repentant and rehabilitated to a significant degree and that he feels he can still be a productive member of the Force, his actions have very seriously damaged his integrity and thus his career in the Force.

[57] In the case cited at 25 A.D. (3d) 276, the member similarly had more than one occasion to come forward and admit his falsehood but did not do so. Again, the confidence of the Commanding Officer was lost and the member was dismissed.

[58] In the case cited at 29 A.D. (3d) 20, the member committed a theft while suffering from considerable stress in his life, but the Board did not believe stress was a significant factor. At page 25, the Chair stated, "It is the ability to withstand the difficulty that life presents that is the essence of what we call good character".

[59] Finally, in two cases decided under the auspices of the newly-amended *RCMP Act*, the defining factor is some form of personal gain. At paragraph 133 of the case cited at 2016 RCAD 3, "Dismissal tends to occur where there has been some form of personal gain sought or obtained, and where significant mitigating factors are absent."

[60] The CAR, in anticipating submissions to be made by the MR, addressed the issue of the letter provided by the Subject Member's treating psychologist. To be a truly mitigating factor, there must be a causal connection between an individual's state of mind at the time of the misconduct and the nature of the misconduct itself. Such a connection, he submitted, is not apparent in the present case.

[61] The CAR also addressed comments made by the sentencing judge at the Subject Member's Provincial Court proceedings, which were made in the absence of the Agreed Statement of Facts characterizing the present proceedings. The CAR respectfully disagreed with the presiding Judge's observations, "You did not perpetuate the lie; you did not get paid out, you did not try and extend it and use your influence as a police officer to do so . . .". The CAR also disagreed with the observation, ". . . I think this is an extremely isolated act".

[62] The CAR submitted an ordered resignation is appropriate given all the circumstances.

Submissions of the MR on conduct measures

[63] The MR took issue with the loss of confidence of the Commanding Officer as an aggravating factor. Rather, this should be viewed as the lack of a mitigating factor, since "support of the CO or Line Officer" is listed as a mitigating factor in the Conduct Measures guide.

[64] The MR also addressed the idea of "self-benefitting" behaviour. As indicated in paragraph 6 of the ASF, the Subject Member had additional insurance which would reimburse up to three hundred dollars of any deductible on his primary insurance. On one of the vehicle damage events he would have had to pay a five hundred dollar deductible, so this additional insurance policy meant he would only have had to pay an additional two hundred dollars.

[65] The MR submitted the *McNeil* related factors are not particularly persuasive, as Inspector Moss was only able to point to one instance of a Crown attorney who expressed concern over such matters. Nor was Inspector Moss aware of any instance in which a police witness was found to be lacking in credibility as a witness in a criminal proceeding by virtue of a *McNeil*-related disclosure. The Provincial Court Judge who sentenced the Subject Member certainly seems to appreciate how this might become an issue, but absent from this decision was any indication the Judge would not find the Subject Member a credible witness. It was certainly open to the Judge to do that, but he did not.

[66] The MR submitted ICBC had not borne the brunt of the financial impact of the Subject Member's actions, as the Subject Member paid full restitution for the costs of the investigation.

[67] The MR distinguished the case cited at 25 A.D. (3d) 276 from the present set of circumstances. In that case, the member instructed his brother to claim possession of marihuana that had been found in the member's wallet when in fact the drugs belonged to the member himself. A criminal conviction resulted. In that case the member had a prior record of discipline, unlike the Subject Member, yet in that case a joint submission was accepted and a forfeiture of pay resulted.

[68] The MR referred to the Conduct Measures guide for an indication of the nature and weight of the conduct measures proportional to the Subject Member's misconduct. With respect to Allegation 1, misleading Constable Hawkins, the MR suggested it was analogous to lying to supervisors, which indicates a normal range of fifteen to twenty days' forfeiture of pay.

[69] Previously decided RCMP disciplinary cases seem to indicate a forfeiture of pay is warranted for this sort of misconduct. The case cited at 7 A.D. (4^{th}) 202, in which a member lied to internal investigators on four separate occasions about whether or not she had been inside the residence of a person of interest, drew a sanction consisting of a reprimand plus the forfeiture of five days' pay. Like the present matter, this was a post-*McNeil* case in which the core values of honesty and integrity had been compromised.

[70] Similarly, the case cited at 13 A.D. (4th) 246 involved two allegations in which the member made false, misleading or inaccurate statements to a member investigating her code of conduct matter. Following a contested hearing on sanction, the Board in that case imposed a global sanction consisting of a reprimand plus the forfeiture of six days' pay. Again, this was a post-*McNeil* case. At paragraph 24 the Board in that case noted:

> There is increasing recognition in police discipline cases of the significance of the *McNeil* decision, which also serves to distinguish seemingly similar cases of misconduct. Any sanction administered in this post-*McNeil* era must take into account the potential negative impact upon not only the career of the member involved, but on the Force itself. Faced with a positive duty to disclose relevant disciplinary action, the Force may find itself compromised in its ability to deploy members like the Subject Member who have been found to have breached the core values of honesty, integrity, professionalism and accountability. Sanctioning a breach of those core values must act as a significant general deterrent.

[71] Despite such strong language, a reprimand plus the forfeiture of six days' pay was the sanction in that case.

[72] In the case cited at 14 A.D. (4th) 269, the member temporarily converted two thousand dollars in project funds for his own personal use and then forged his wife's signature on a loan application without her knowledge. The member admitted the allegation and was sanctioned by means of a reprimand plus the forfeiture of ten days' pay. Like the present matter, the decisions were not made on the spur of the moment, but mitigating factors included the member's remorse and his acceptance of responsibility. He was a good performer and had taken steps toward rehabilitation. He was also under extreme financial stress at the time.

[73] The decision cited 5 A.D. (4th) 264 is strikingly close to the circumstances of the present matter in that it involved insurance fraud. In that case, the Board accepted a joint submission and imposed a sanction consisting of a reprimand plus the forfeiture of ten days' pay. That case was arguably more serious because she contested the matter and it went to a full criminal trial, which resulted in a finding of guilt; only after the conviction did she accept responsibility.

[74] In the case cited at 3 A.D. (4th) 257, an Ident member who had seized a weapon at a crime scene noted it was not loaded, but the exhibit custodian found two live rounds in it. She falsified her notebook, re-writing it so it mentioned a round of live ammunition. Then she told investigators her first notebook had been contaminated by blood at the crime scene, but she had actually painted the notebook to make it look like blood. That member voluntarily entered into an agreement with her Commanding Officer to step down from her corporal's position, accepting a demotion, a transfer and a reprimand as sanction. Those were very serious allegations, and the Board noted, "The main goal of any disciplinary action is not necessarily to punish but to offer the chance for rehabilitation while affording a sobering and preventive solution for the member involved, and for those members who would fall into the same form of misconduct.

[75] The case cited at 4 A.D. (4th) 322 involves a member who was found masturbating while on surveillance in an unmarked police vehicle. He made inquiries with the police force of jurisdiction to determine whether or not his licence plate was being queried, misleading them as to the nature of his inquiries so as to cover things up. In that case, psychological evidence was entered, and the member was given a reprimand, forfeiture of ten days' pay, and a recommendation for continued professional counselling.

[76] In the case cited at 7 A.D. (4th) 101, which made its way through the Commissioner's office on appeal as well as through the Federal Court, a joint submission was accepted and the member received a reprimand plus the forfeiture of ten days' pay. The psychologist in that case concluded that the member's behaviour was out of character, and it was highly unlikely that he would engage in it again having been successfully treated.

[77] In the case cited at 15 A.D. (3d) 147, a staff sergeant provided false information to another member in an effort to obtain a warrant. He instructed the author of the affidavit to indicate he (the staff sergeant) had seen the person of interest inside the residence in question when in fact he had not. When approached, the staff sergeant initially made a false statement to investigators. The Board in that case imposed a reprimand plus the forfeiture of ten days' pay.

[78] The MR also alluded to the recent decision cited at 2016 RCAD 2, in which the member faced four allegations of dishonest behaviour arising out of a desire to restore driving privileges to a person accused of impaired driving. The member was charged criminally, and as in the present case, pled guilty and also admitted the disciplinary allegations. He was given a sixty-day forfeiture of pay, recognizing there may still be opportunities to employ the member in the Force.

[79] Another recent decision, cited at 2016 RCAD 3, involved a member who likewise lied to supervisors, and was sanctioned by way of a forfeiture of thirty-five days' pay.

[80] The MR argued the strength of the mitigating factors in the present case.

[81] First of all, the Subject Member accepted responsibility for his actions, admitting the allegations and assisting in the preparation of the ASF in order to expedite these proceedings. He has apologized and demonstrated his remorse. He has no prior discipline and a good work record. Multiple performance-related documents attest to his good performance from 2008 to 2014.

[82] In particular, the performance assessment covering the period from April 1, 2014 to March 31, 2015 contains the following observation, "[The Subject Member] is a valuable resource to the watch with his traffic knowledge and he is always willing to share that with his fellow co-workers."

[83] Similarly, under the heading Client-Centred Service Group,

> [The Subject Member] was recently recognized by Corporal Singh of "A" Watch for his efforts on a recent file. The investigation was for a missing dementia patient from a senior's care home in Coquitlam. [The Subject Member] located the missing patient and Corporal Singh noted in a 1004 that[the Subject Member] was able to use effective communication by speaking to the patient in a kind, caring and empathetic manner that appealed to the patient and allowed for return back to the care home with police assistance. The family of the patient was very impressed with [the Subject Member] in bringing a successful conclusion to the incident.

[84] The first two sentences of the next paragraph state, "[The Subject Member] works very well with the rest of his peers in "D" Watch. He is always willing to assist members with their investigations as backup, and completes his assigned tasks in a timely manner for the lead investigator."

[85] The previous year's performance assessment, from April 1, 2013 to March 31, 2014, contains a passage in the mid-year review:

> [The Subject Member] volunteers a great amount of time in the community as well. He assisted with the Junior Mountie Camp by helping with event planning and taking photos during the week-long event. . . . [The Subject Member] was also recognized for his involvement with the police observer program by his crime prevention unit. This was also documented in a Performance Log.

[86] In that same assessment, under the Client Centred Service Group – Meeting Client Needs, it is written,

> During the last year, [the Subject Member] took out two volunteers with the Tri-Cities Speed Watch program. These two volunteers were more than impressed with [the Subject Member] and took the time to speak with the Crime Prevention / Victim Services Unit about [him]. They both made comments that [the Subject Member] showed great professionalism, honesty and integrity when dealing with situations and the general public.

[87] In the performance document from April 1, 2011 to September 30, 2011, the second sentence under the "Commitment to Learning" group states, "[The Subject Member has become our resource for our in-car digital video systems, crash photography, and commercial vehicle checks. He always has the time to help and share his expertise with this team, and other members in general."

[88] On the last page of Section 3 of this performance evaluation, it reads, "[The Subject Member] continues to contribute to the successes of this unit, and works well within a team environment." The second paragraph states, "[the Subject Member] continues to be an active member in a variety of volunteer functions as an instructor for our [auxiliary constable] classes, he has volunteered as a photographer for the Junior Mountie Camp, introduction to policing for local High School students and will be assisting at the "Junior Mountie Academy" again this

year. The next paragraph continues, "[the Subject Member continues to work at being well rounded and a solid performer. I know from personal experience through the last four years that he doesn't come to work to do the minimums." And finally, "I know I can count on [the Subject Member] on a moment's notice to dive into a major crash investigation without complaint."

[89] The MR drew attention to the efforts made by the Subject Member to address his depression and anxiety. He has gone to counselling, taken medication, completed courses, including the "Living Life to the Full" course, for which a certificate is on file.

[90] The letters submitted on his behalf support the contention that his misconduct was an isolated incident and out of character. This did take place over a five-week period, but he has testified to the many stressors present in his life at that time. Although not being entered as an expert opinion, the letter from Dr. Nemetz indicates, "While I cannot clinically state that his psychological state caused his lapse of judgement I am comfortable suggesting that his depression and anxiety could certainly have clouded his judgement and have significantly reduced his resiliency to deal with any stressful situations."

[91] The Subject Member has never given up, and hopes to be reinstated as a productive member of the Force.

Rebuttal by the CAR

[92] In rebuttal, the CAR cautioned against placing too much weight on previously-decided disciplinary decisions arising out of a joint submission. The Board in the case cited at 13 A.D. (4^{th}) 286 noted, at paragraph 21, "When Boards sanction misconduct on the basis of a joint submission on sanction, their decision becomes less valuable as a precedent because of the high degree of deference owed to a joint submission.". The cases relied upon by the MR featured joint submissions. Even the case involving a contested hearing on sanction was not a dismissal case, it was a case in which the Appropriate Officer was seeking forfeiture of eight days' pay and the Member thought it should be a single day's pay.

[93] In addition, the CAR stressed the two decisions cited at 2016 CARD 2 and 2016 CARD 3 respectively both featured an absence of motivation for personal gain, which was a primary factor in the retention of the member.

Decision on conduct measures

[94] Having established contraventions of the Code of Conduct, I am now statutorily obliged to appropriate and proportionate conduct measures. Section 24(2) of the *Commissioner's Standing Orders (Conduct)* obliges the imposition of conduct measures that are "proportionate to the nature and circumstances of the contravention of the Code of Conduct". Section 36.2(e) of the amended *RCMP Act* holds, ". . . in relation to the contravention of any provision of the Code of Conduct, for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive".

[95] Although these proceedings arise under recent amendments to the *RCMP Act*, the test for the imposition of an appropriate conduct measure remains unchanged from the test which applied to appropriate sanctions. First, the range must be considered, and then aggravating and mitigating factors must be taken into account. The submissions of the representatives, alongside the cases submitted for analysis, certainly suggest a range of sanctions applicable to misconduct involving issues of honesty and integrity that includes dismissal. I disagree that dismissal is a starting point in every such case, however.

[96] I am particularly at odds with the approach taken in the 2014 case cited at 14 A.D. (4^{th}) 269, paragraph 17, "In any case where the misconduct involves honesty, I believe dismissal is in order, absent of any significant mitigating factors." Issues of honesty and integrity are never black and white, and it is overly simplistic to characterize them that way. In considering issues of honesty and integrity, the individual's motivation for his or her actions must be closely examined, and the degree of moral turpitude inherent in the activity must be assessed.

[97] I prefer the approach taken by the Conduct Board in the very recent 2015 case cited at 2016 RACD 2, in paragraphs 108 to 110, under the heading "Previous Disciplinary Case Law":

> [108] After review of the cases submitted by both parties, it is apparent that the range of sanctions imposed by previous adjudication boards for cases involving dishonesty is from a reprimand and the imposition of a significant forfeiture of pay to an order for resignation.
>
> [109] It is important to emphasize, however, that in all of the cases submitted by the parties, the act or acts of dishonesty involved some sort of gain or advantage being sought or accruing to the member. Dishonesty was used in order for the member to obtain personal financial gain or benefit, to conceal the member's work-related deficiencies, to thwart investigation of the member, or to alter deficient documents to further an investigation. Self-benefitting dishonesty was at the root of misconduct matters where:
>
> • the RCMP was defrauded of gas,
>
> • operational funds were converted for personal use and accompanied by a forged loan application,
>
> • forged prescriptions were uttered to obtain anabolic steroids,
>
> • numerous and repeated false and deceptive statements were given to supervisors and investigators that were ultimately rejected after a contested hearing,
>
> • one day of imprisonment was imposed for an attempted defrauding of a provincial vehicle insurance system,
>
> • a finding of guilt was imposed for a false statement to a provincial vehicle insurance system,
>
> • a Continuation Report was created two years after the fact differing from the original used for a search warrant, to respond to allegations warrants were obtained by misrepresentation,
>
> • homicide crime scene notes were concealed, and false notes disclosed,
>
> • numerous and repeated false statements were made to conceal willful investigative neglect, and
>
> • after being observed masturbating in a surveillance vehicle, efforts were made to influence another police force's treatment of the complaint, misleading and false statements were made, and inappropriate data bank checks were requested.
>
> [110] However, where dishonesty or a lack of integrity has been ascribed to a member, dismissal typically only occurs where there has been personal gain sought or obtained, and significant mitigating factors are absent.

[98] Following my own analysis of the cases provided by both parties, I agree with the observations of the conduct board in paragraph (110) of the decision cited immediately above. Dismissal tends to occur where there has been some form of personal gain sought or obtained,

and where significant mitigating factors are absent. In the present case, I find the Subject Member was motivated by personal gain when he falsely characterized the totality of damage to his vehicle as having arisen out of an act of theft, mischief, and/or vandalism. He sought to avoid paying a second deductible amount and to avoid accountability for his single-vehicle accident involving the traffic sign. His repetition of a falsehood, on many occasions to different people, were not a series of impulsive acts. They were part of an extended campaign to defraud.

[99] The Conduct Measures guide has proven to be a useful document in guiding those unfamiliar with the disciplinary process in assessing which conduct measures may apply in a given set of circumstances. It is just that, though, a guide: it cannot be seen as a penalty matrix. It is a frame of reference, into which must be incorporated all of the other circumstances surrounding the event, as well as the aggravating and mitigating factors.

[100] For one particular form of misconduct, however, the guide is most clear. For "knowingly providing false or misleading evidence while under oath or swearing to the truthfulness of an affidavit or other sworn legal document which the Member knows to contain false information", dismissal is suggested, even for what is described as the "mitigated" range. This is precisely what the Subject Member did, on February 25, 2015, before a Notary Public.

[101] I do not consider myself bound by the decisions of other boards, but previously-decided cases of a similar nature do help to establish the range of sanctions applicable. The principle of parity of sanction seeks to ensure fairness, so that similar forms of misconduct are treated in similar fashion. This lends continuity, stability, and predictability to conduct matters.

[102] With this in mind, I carefully reviewed the cases submitted for consideration. For misconduct involving issues of honesty and integrity, the range of sanction is fairly narrow, extending from a reprimand plus a forfeiture of pay (in older cases) at the upper end of the forfeiture-of-pay scale, and under the amended Act, heavier forfeitures, all the way to dismissal, depending upon the circumstances.

[103] It is worthwhile keeping in mind that as our amended Act evolves, we will still turn, from time to time, to cases decided under the "old" RCMP Act. Obviously, the wider range of

sanctions available under the amended version means that one cannot take the older cases strictly at face value, but they are still a valuable in that reference is made to the principles underlying cases where dismissal is within the range of sanctions under contemplation.

[104] For the present matter, the Subject Member seeks a hefty forfeiture of pay, while the Conduct Authority seeks his dismissal from the Force in the form of an ordered resignation.

[105] There are two contraventions of the Code of Conduct to be considered, and under the circumstances I find it appropriate to impose conduct measures that are global in nature. The underlying circumstances are identical for both contraventions: in Allegation 1, the lack of honesty was directed towards a fellow member of the RCMP, and in Allegation 2, towards ICBC personnel and a Notary Public.

[106] Many of the cases submitted for consideration featured sanctions imposed as a result of the acceptance of a joint submission. Joint submissions place a sanction hearing in a unique context. A decision-maker is not bound by a joint submission, but must pay great deference, and can only reject it in extreme circumstances. They are frequently, if not always, the result of considerable negotiation and compromise, involving factors both tangible and intangible known only the parties themselves, and not to the decision-maker. It would undermine the negotiation process and risk bringing the administration of justice into disrepute if the parties, as noted by the Saskatchewan Court of Appeal in the case of *Rault v. The Law Society of Saskatchewan*, 2009 SKCA 81 (CanLii) "cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution."

[107] Therefore, I find relatively little weight can be attached to those decisions on sanction arising out of the acceptance of a joint submission. All but one of the cases submitted by the MR in support of conduct measures falling short of dismissal fall into this category.

[108] The next step is to examine the aggravating and mitigating factors at play. The MR argued many, some of which I accept and some of which I do not. First, I cannot accept the Subject Member's performance record as a mitigating factor. It is a well-accepted principle in sanctioning professional misconduct that a consistent pattern of above-average performance can

act in a member's favour, but the Force has a right to expect at least average performance from its employees, and this seems to be what the Subject Member has delivered over the years. To quote from his most recent performance assessment:

> [The Subject Member]'s work ethic was discussed and documented in a performance log [1004]. [The Subject Member] was observed to be not actively taking calls for service compared to other members in his zone. As well, his investigations were not documented to a level of a similar member with his service. [The Subject Member] made great strides in improving his work ethic on the Watch, and is now taking calls for service at a comparable level to others he works with on a daily basis. [The Subject Member] is active on the radio and assists other members with their investigations by providing leadership and guidance to junior members at all calls.

[109] This note is from the performance assessment covering the period April 21, 2014 to March 31, 2015. From his 2011 review: "[The Subject Member] continues to perform at a satisfactory level." What this tells me is that the Subject Member may have been a bit of an underachiever who, after receiving a talking-to, brought his performance up to an average level. To accept average performance as a mitigating factor would do a disservice to all those who have turned in year after year of above-average work.

[110] Second, and perhaps more significantly, I cannot accept as a significant mitigating factor the Subject Member's psychological state at the time of the commission of his Code of Conduct contraventions. Dr. Georgia Nemetz, in her letter of July 15, 2016, stated,

> Although I did not see him in the months prior to the incident which caused his suspension, I am aware that his depression and vocational stressors were increasing and that he indicated a recurrence of his symptomology. While I cannot clinically state that his psychological state caused his lapse of judgment, I am comfortable suggesting that his depression and anxiety could certainly have clouded his judgment and significantly reduced his resiliency to deal with any stressful situations."

[111] What is missing is a causal link to the misconduct. Dr. Nemetz cannot make such a link, and clearly says as much.

[112] I cannot help but agree with her that depression and anxiety can potentially impair judgement and affect one's ability to deal with stress, but there is a very good reason Dr. Nemetz

did not see the Subject Member in the months prior to his misconduct: by his own admission, he was actually doing relatively well, psychologically speaking. Things were going better for him at work, and he began seeing a woman who has become his long-term partner and the mother of his six month old daughter. I cannot find whatever stress might have been weighing upon the Subject Member at the time of his misconduct to have been an underlying factor.

[113] I do accept as a mitigating factor his occasional flashes of brilliance at work. There are certificates dating back to 2009 and 2011, certificates of appreciation for commitment and diligence in the enforcement of impaired driving cases and road safety, as well as the Junior Mountie Police Academy and the Tim Horton Children's Foundation.

[114] His performance assessments are replete with instances of extracurricular work and there are a series of performance logs (Forms 1004) which show him to be innovative and compassionate, especially that which is dated December of 2014, just a couple of months before the events in question. This is the one referred to by the MR in which he showed a compassionate approach to dealing with a patient suffering from dementia who had gone missing from his care facility.

[115] There are also many letters of support from peers and colleagues which show him to be a tireless supporter of causes he believes in. This quality acts in mitigation.

[116] I accept as a mitigating factor the Subject Member's admissions by way of the ASF, designed to eliminate the need for a protracted hearing. I also accept his unconditional and obviously very sincere and heartfelt apology to those involved, and to the members of the Force in general.

[117] The CAR has argued as an aggravating factor the loss of confidence of the Commanding Officer. I think the time has come, once and for all, to dispense with this antiquated concept. To begin with, the decision to dismiss an employee cannot be based upon the subjective evaluation of an employee's worth by any one individual. It is an objective, legal analysis. Besides, under the current legislation, the concept of a loss of confidence is a tautology: the only cases a conduct board has the jurisdiction to decide are cases in which the Commanding Officer, as the conduct

authority, has lost confidence and is seeking dismissal. It is not so much an aggravating factor as it is a precondition to the conduct board hearing the case at all.

[118] There are, however, several compelling aggravating factors to consider. First, the misconduct cannot be viewed as a one-time lapse in judgement, because there are two similar contraventions involving three different institutions: the RCMP in Allegation 1, the ICBC and the office of a Notary Public in Allegation 2. This was a very harmful and destructive pattern of behaviour, over a five-week period.

[119] The second aggravating factor is the context for the falsehoods and misrepresentations. It is one thing to omit essential details in discussions with the RCMP investigator, as in Allegation 1, or to deliberately lie about the origin of damage to ICBC investigators as in Allegation 2, but to make misrepresentations in a solemn declaration, which I find is the same as making those misrepresentations under oath, strikes at the very heart of the position of trust held by police officers in the administration of justice.

[120] An oath or solemn affirmation must be considered sacrosanct. Otherwise, public confidence, so essential to policing, is eroded. Police officers enjoy special statutory powers of arrest, detention, search and seizure, and occasionally, use of force, and one of the checks and balances acting upon these special powers is the existence of the oath. When, in the administration of justice, a police officer (on or off duty) swears an oath or makes a solemn affirmation to tell the truth, the justice system must be able to count on that which follows to be exactly that – the truth.

[121] The third aggravating factor is the criminal conviction. It is with the greatest of respect for the presiding Provincial Court Judge that I disagree with the characterization of events as “an extremely isolated act”. Had the contents of the ASF been made available, a different perspective may well have been gained. In any case, the presence of a criminal conviction is an indication of the gravity of the misconduct at issue.

[122] Fourth, the reputation of the RCMP has been tarnished in the eyes of important law enforcement partners, namely, the investigative arm of ICBC, and in the eyes of those involved in the administration of justice.

[123] The fifth aggravating factor resides in the so-called *McNeil* considerations. Stated plainly, the obligation to proactively disclose a relevant disciplinary history creates a burden that would simply not exist in the absence of a disciplinary record. By definition, this is an aggravating factor.

[124] The burden is borne not only by the member implicated, but by the Force and by the Crown. The severity of this aggravating factor, however, is still somewhat undecided because of the inconsistent application of the principles arising out of the *McNeil* decision. Some provinces seem to have a less risk-averse approach than is the case in British Columbia, and are more willing to manage the adverse fallout from placing a police witness on the stand who must account for a disciplinary history. Still, the fact remains that disclosure would not be necessary in the absence of a police disciplinary record, and the attendant problems of deployment create an administrative burden on the Force. Thus, the *McNeil* considerations are to be treated as an aggravating factor.

[125] The most serious aggravating factor is the personal benefit sought by the Subject Member in failing to disclose the true source of all of the damage to his vehicle. The additional insurance police notwithstanding (which would have lowered the amount of deductible payable), the Subject Member attempted to avoid paying the second deductible and he attempted to avoid being held accountable for his single-vehicle accident with the traffic sign, which resulted in considerable damage to his truck. I do not find the mitigating factors in this case to be of sufficient weight to overcome this very significant aggravating factor.

[126] It is a well-established principle that dismissal is only to be considered in the most extreme cases, and that rehabilitation is the primary purpose of the imposition of conduct measures. As articulated by the Ontario Court of Appeal in the case of *Trumbley v Fleming* (19860 29 Dominion Law Reports 557,

> A police discipline matter is a purely administrative internal process. Its most serious possible consequence makes it analogous to a discipline matter in ordinary employer/employee relationships, even though the procedure governing it is clearly more formal. The basic object in dismissing an employee is not to punish him or her in the usual sense of the word, or to deter or reform or possibly to extract some form of modern retribution, but rather to rid the employer of an employee who has shown that he or she is not fit to remain an employee.

[127] The case of *Ennis v. The Canadian Imperial Bank of Commerce* (1986) BCJ 1742 develops this theme:

> Real misconduct or incompetence must be demonstrated. The employee's conduct and the character it reveals must be such as to undermine or seriously impair the essential trust and confidence the employer is entitled to place in an employee in the circumstances of their particular relationship. The employee's behavior must show that he is repudiating the contract of employment or one of its essential ingredients."

[128] I find the Subject Member has failed to live up to the terms of his contract of employment, which are clearly stated. Section 37(b) of the *RCMP Act* reads, "It is the responsibility of every member to maintain the integrity of the law, law enforcement and the administration of justice." Section 37(h) reads, "It is the responsibility of every member to maintain the honour of the Force and its principles and purposes." The core values of the Force include honesty, integrity, professionalism, accountability and respect.

[129] The Subject Member's willful deception, for reasons of personal benefit, of a fellow RCMP constable, as per Allegation 1, and in Allegation 2 his willful deception of ICBC personnel and, more importantly, a Notary Public, collectively indicate a fundamental character flaw which make him unsuitable for further employment in our organization.

[130] I hereby order the Subject Member to resign from the Force within fourteen days, in default of which he will be dismissed.

March 29, 2018

Inspector James Robert Knopp — Date

Conduct Board