



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF

a conduct hearing pursuant to the

*Royal Canadian Mounted Police Act, RSC, 1985, c R-10*

BETWEEN:

**Commanding Officer, "K" Division**

(Conduct Authority)

and

**Constable Brett Werboweski**  
Regimental Number 54901

(Subject Member)

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**RCMP Conduct Board – Record of Decision**

Christine Sakiris

May 3, 2019

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Representative for the Conduct Authority:

Mr. Brad Smallwood

Representative for the Subject Member:

Mr. Gordon Campbell

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**SUMMARY**

The Subject Member was the Affiant in an investigation into four robberies. The *Notice of Conduct Hearing* contained five allegations under section 8.1 of the RCMP Code of Conduct.

The first four allegations involve alleged false, misleading or inaccurate written statements in four *Information to Obtain* judicial authorization forms that were drafted, and in three cases, sworn by the Subject Member. The fifth allegation involves statements made by the Subject Member to another member of the RCMP. A *Determination of Established Facts* was issued by the Conduct Board in November 2018. The primary issues to be resolved at the hearing were whether the Subject Member knowingly made a false, misleading or inaccurate statement when he swore to the truth of the applications for judicial authorizations at issue, and whether he knowingly made a false, misleading or inaccurate statement to another member of the RCMP. Following a hearing at which six witnesses presented evidence, including the Subject Member, an oral decision was delivered on February 7, 2019. The Conduct Board found none of the allegations to be established.

## INTRODUCTION

[1] On March 10, 2018, the Commanding Officer and Conduct Authority for “K” Division (the Conduct Authority) signed a *Notice to the Designated Officer* requesting a conduct hearing be initiated in relation to this matter. I was appointed as the Conduct Board on March 20, 2018, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] The *Notice of Conduct Hearing* contains five allegations and was signed by the Conduct Authority on June 4, 2018. It was served on the Subject Member, together with the investigation package, on July 10, 2018.

[3] All five allegations relate to alleged contraventions of section 8.1 of the RCMP Code of Conduct. Allegations 1 to 4 involve alleged false, misleading or inaccurate written statements in four *Information to Obtain* judicial authorization forms (ITOs) that were drafted and, in three cases, sworn by the Subject Member. Allegation 5 involves an alleged false, misleading or inaccurate oral statement to another member of the RCMP.

[4] The Subject Member provided his response to the original *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], on September 28, 2018.

[5] As is required in this process, I reviewed a copy of the *Notice of Conduct Hearing* and of the investigation package, as received on July 16, 2018, as well as the Subject Member’s response pursuant to subsection 15(3) of the *CSO (Conduct)*. These documents, together with those admitted as a result of the pre-hearing motion and as exhibits at the hearing, shall be referred to collectively as the Record.

[6] The hearing for this matter was held in Ottawa, Ontario, from February 5 to 7, 2019. Oral evidence was received from six witnesses, including the Subject Member. With the exception of the Subject Member, all witnesses testified via video conference, from Edmonton, Alberta. I delivered my oral decision on February 7, 2019, in which I found that none of the allegations had

been established on a balance of probabilities. This written decision incorporates and expands upon that oral decision.

## ALLEGATIONS

[7] This matter was referred to the Alberta Serious Incident Response Team (ASIRT) in March 2017. Criminal charges were not pursued.<sup>1</sup> The Code of Conduct Investigation, under Part IV of the *RCMP Act*, was also initiated in March 2017. The latter relies almost exclusively on the materials disclosed by ASIRT.

[8] The *Notice of Conduct Hearing* sets out the five allegations and particulars as follows:

### Allegation 1

On or about February 17, 2017, at or near [E.], in the province of Alberta, [the Subject Member], did while on duty, provide false, misleading or inaccurate information contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police regarding an Information to Obtain (or ITO) sworn before Justice of the Peace [I. Z.].

#### Particulars

1. At all material times [the Subject Member] was a member of the RCMP posted to “K” Division, [E.] detachment in Alberta as a member of the General Investigation Section (GIS) North team.
2. GIS North assumed carriage of four investigations into bank robberies which took place in various local communities and were believed to be linked. On January 31, 2017, [the Subject Member], as a member of the GIS team, was assigned the role of Affiant for this project.
3. In his Affiant role, [the Subject Member] was to prepare Informations to Obtain judicial authorization (or ITOs) and upon submitting them for judicial approval, swear to the truthfulness of their contents.
4. Although the ITOs were to be reviewed by the Primary Investigator, [the Subject Member] as the Affiant, was solely responsible for the accuracy of their contents.

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<sup>1</sup> This fact is noted as background information only. No weight was ascribed to the Crown’s decision not to pursue charges in this matter.

5. [The Subject Member] was tasked to draft an ITO for specified records of the [E.] Remand Centre related to one of the bank robbery suspects being held in custody.
6. [The Subject Member] drafted the ITO and filed it with the Court on February 17, 2017. At this time, he swore in front of Justice of the Peace [I. Z.] that the contents of the ITO were true.
7. The ITO sworn by [the Subject Member] before Justice of the Peace [I. Z.] on February 17, 2017 contained the following untruthful paragraphs:
  - i. Paragraph 25: “I read the written statement of [E. G.] who was an employee of the ATB...”
  - ii. Paragraph 26: “I read the written statement of [M. N.] who was a customer inside the ATB at the time of the Robbery...”
  - iii. Paragraph 27: “I read the written statement of [C. P.] given to [Constable (Cst.) G.]...”
  - iv. Paragraph 28: “I read the written statement of [S. K.] given to Cst. [G.]...”
  - v. Paragraph 31: “I listened to the audio statement of [G. R.] who was the lone employee of the [P.] ATB...”
  - vi. Paragraph 32: “I listened to [C. M.’s] audio recorded statement, given to [Corporal (Cpl.) M.]...”
  - vii. Paragraph 33: “I listened to [J. E.] audio recorded statement, given to Cpl. [M.]...”
  - viii. Paragraph 34: “I listened to [B. J. C.’s] audio recorded statement, given to Cpl. [S.]...”
  - ix. Paragraph 47: “I listened to [K. L.’s] audio recorded statement, given to [Sergeant (Sgt.) P.]...”
8. The ITO submitted on February 17, 2017 was rejected by Judge [C.] on grounds unrelated to the above allegation.
9. [The Subject Member] swore to an ITO, which he prepared, and which contained information he knew to be untrue. Therefore, he contravened section 8.1 of the Code of Conduct of the RCMP.

## **Allegation 2**

On or about February 22, 2017, at or near [E.], in the province of Alberta, [the Subject Member], did while on duty, provide false, misleading or inaccurate information contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police regarding an Information to Obtain sworn before Justice of the Peace [M. E.].

### Particulars

1. At all material times [the Subject Member] was a member of the RCMP posted to “K” Division, [E.] detachment in Alberta as a member of the General Investigation Section (GIS) North team.
2. GIS North assumed carriage of four investigations into bank robberies which took place in various local communities and were believed to be linked. On January 31, 2017, [the Subject Member], as a member of the GIS team, was assigned the role of Affiant for this project.
3. In his Affiant role, [the Subject Member] was to prepare Informations to Obtain judicial authorization (or **ITOs**) and upon submitting them for judicial approval, swear to the truthfulness of their contents.
4. Although the ITOs were to be reviewed by the Primary Investigator, [the Subject Member] as the Affiant, was solely responsible for the accuracy of their contents.
5. [The Subject Member] was tasked to draft an ITO for specified records of the [E.] Remand Centre related to one of the bank robbery suspects being held in custody.
6. [The Subject Member] drafted the ITO and filed it with the Court on February 17, 2017. The ITO was rejected by Judge [C.] on grounds unrelated to the above allegation.
7. [The Subject Member] made the changes requested by Judge [C.] and resubmitted the ITO on February 22, 2017. At this time, he swore in front of Justice of the Peace [M. E.] that the contents of the ITO were true.
8. The ITO sworn by [the Subject Member] before Justice of the Peace [M. E.] on February 22, 2017 contained the following untruthful paragraphs:
  - i. Paragraph 25: “I read the written statement of [E. G.] who was an employee of the ATB...”
  - ii. Paragraph 26: “I read the written statement of [M. N.] who was a customer inside the ATB at the time of the Robbery...”
  - iii. Paragraph 27: “I read the written statement of [C. P.] given to Cst. [G.]...”
  - iv. Paragraph 28: “I read the written statement of [S. K.] given to Cst. [G.]...”
  - v. Paragraph 31: “I listened to the audio statement of [G. R.] who was the lone employee of the [P.] ATB...”
  - vi. Paragraph 32: “I listened to [C. M.’s] audio recorded statement, given to Cpl. [M.]...”



vii. Paragraph 33: “I listened to [J. E.] audio recorded statement, given to Cpl. [M.]...”

viii. Paragraph 34: “I listened to [B. J. C.’s] audio recorded statement, given to Cpl. [S.]...”

ix. Paragraph 47: “I listened to [K. L.’s] audio recorded statement, given to Sgt. [P.]...”

9. [The Subject Member] swore to an ITO, which he prepared, and which contained information he knew to be untrue. Therefore, he contravened section 8.1 of the Code of Conduct of the RCMP.

### **Allegation 3**

On or about March 9, 2017, at or near [E.], in the province of Alberta, [the Subject Member], did while on duty, provide false, misleading or inaccurate information contrary to section 8.1 of the Code of Conduct of the RCMP regarding an ITO sworn before Justice of the Peace [A. W.].

#### Particulars

1. At all material times [the Subject Member] was a member of the RCMP posted to “K” Division, [E.] detachment in Alberta as a member of the General Investigation Section (GIS) North team.

2. GIS North assumed carriage of four investigations into bank robberies which took place in various local communities and were believed to be linked. On January 31, 2017, [the Subject Member], as a member of the GIS team, was assigned the role of Affiant for this project.

3. In his Affiant role, [the Subject Member] was to prepare Informations to Obtain judicial authorization (ITOs) and upon submitting them for judicial approval, swear to the truthfulness of their contents.

4. Although the ITOs were to be reviewed by the Primary Investigator, [the Subject Member] as the Affiant, was solely responsible for the accuracy of their contents.

5. [The Subject Member] was tasked to draft an ITO application for two GPS devices that were currently being held by the RCMP at the [T.] Detachment.

6. [The Subject Member] drafted the ITO and filed it with the Court on March 9, 2017. At this time, he swore in front of a Justice of the Peace [A. W.] that the contents of the application were true.

7. The ITO sworn by [the Subject Member] before Justice of the Peace [A. W.] on March 9, 2017 contained the following untruthful paragraphs.

i. Paragraph 25: “I read the written statement of [E. G.] who was an employee of the ATB...”

- ii. Paragraph 26: “I read the written statement of [M. N.] who was a customer inside the ATB at the time of the Robbery...”
- iii. Paragraph 27: “I read the written statement of [C. P.] given to Cst. [G.]...”
- iv. Paragraph 28: “I read the written statement of [S. K.] given to Cst. [G.]...”
- v. Paragraph 31: “I listened to the audio statement of [G. R.] who was the lone employee of the [P.] ATB...”
- vi. Paragraph 32: “I listened to [C. M.’s] audio recorded statement, given to Cpl. [M.]...”
- vii. Paragraph 33: “I listened to [J. E.] audio recorded statement, given to Cpl. [M.]...”
- viii. Paragraph 34: “I listened to [B. J. C.] audio recorded statement, given to Cpl. [S.]...”
- ix. Paragraph 47: “I listened to [K. L.’s] audio recorded statement, given to Sgt. [P.]...”

8. [The Subject Member] swore to an ITO, which he prepared, and which contained information he knew to be untrue. Therefore, he contravened section 8.1 of the Code of Conduct of the RCMP.

#### **Allegation 4**

On or about March 22, 2017, at or near [E.], in the province of Alberta, [the Subject Member], did while on duty, provide false, misleading or inaccurate information contrary to section 8.1 of the Code of Conduct of the RCMP regarding an ITO which had yet to be presented to a Judge or Justice of the Peace.

#### **Particulars**

1. At all material times [the Subject Member] was a member of the RCMP posted to “K” Division, [E.] detachment in Alberta as a member of the General Investigation Section (GIS) North team.
2. GIS North assumed carriage of four investigations into bank robberies which took place in various local communities and were believed to be linked. On January 31, 2017, [the Subject Member], as a member of the GIS team, was assigned the role of Affiant for this project.
3. In his Affiant role, [the Subject Member] was to prepare Informations to Obtain judicial authorization (ITOs) and upon submitting them for judicial approval, swear to the truthfulness of their contents.

4. Although the ITOs were to be reviewed by the Primary Investigator, [the Subject Member] as the Affiant, was solely responsible for the accuracy of their contents.

5. [The Subject Member] was tasked to draft an ITO application for the [E.] Remand Centre's records related to one of the suspects being held in custody.

6. On March 17, 2017, [the Subject Member] completed a draft of the requested ITO and attempted to file with the Court without having it reviewed by [Cst. T.]. However, [the Subject Member] was redirected back to the detachment prior to filing the application with the court. A review of the ITO revealed multiple untrue statements in the application.

7. The ITO drafted by [the Subject Member] on March 21, 2017 contained the following untruthful paragraphs:

i. Paragraph 25: "I read the written statement of [E. G.] who was an employee of the ATB..."

ii. Paragraph 26: "I read the written statement of [M. N.] who was a customer inside the ATB at the time of the Robbery..."

iii. Paragraph 27: "I read the written statement of [C. P.] given to Cst. [G.]..."

iv. Paragraph 28: "I read the written statement of [S. K.] given to Cst. [G.]..."

v. Paragraph 31: "I listened to the audio statement of [G. R.] who was the lone employee of the [P.] ATB..."

vi. Paragraph 32: "I listened to [C. M.'s] audio recorded statement, given to Cpl. [M.]..."

vii. Paragraph 33: "I listened to [J. E.'s] audio recorded statement, given to Cpl. [M.]..."

viii. Paragraph 34: "I listened to [B. J. C.'s] audio recorded statement, given to Cst. [S.]..."

ix. Paragraph 47: "I read a police report on PROS authored by Cst. [T.] dated March 21, 2017..."

8. In relation to this ITO, [the Subject Member] recorded information that he knew to be untrue and provided information to [Cst. T.] that he knew to be untrue. Therefore, he contravened section 8.1 of the Code of Conduct of the RCMP.

#### **Allegation 5**

On or between March 21, 2017 and March 24, 2017, at or near [E.], in the province of Alberta, [the Subject Member], did while on duty, provide false,

misleading or inaccurate information contrary to section 8.1 of the Code of Conduct of the RCMP regarding inquiries into the alleged false statements made on four ITO applications.

#### Particulars

1. At all material times [the Subject Member] was a member of the RCMP posted to “K” Division, [E.] detachment in Alberta as a member of the General Investigation Section (GIS) North team.
2. GIS North assumed carriage of four investigations into bank robberies which took place in various local communities and were believed to be linked. On January 31, 2017, [the Subject Member], as a member of the GIS team, was assigned the role of Affiant for this project.
3. In his Affiant role, [the Subject Member] was to prepare Informations to Obtain judicial authorization (ITOs) and upon submitting them for judicial approval, swear to the truthfulness of their contents.
4. Although the ITOs were to be reviewed by the Primary Investigator, [the Subject Member] as the Affiant, was solely responsible for the accuracy of their contents.
5. [The Subject Member] was tasked to draft and swear to three separate ITOs in support of the investigation.
  - i. The first ITO was sworn before Justice of the Peace [I. Z.] and rejected by the Judge [C.] on February 17, 2017.
  - ii. The first ITO was redrafted, sworn before Justice of the Peace [M. E.] on February 22, 2017 and was approved by the Court.
  - iii. The second ITO was sworn before Justice of the Peace [A. W.] and approved by the Court on March 9, 2017.
  - iv. The third ITO was drafted and upon review by superior officers was not submitted for Court approval.
6. A review of the ITOs prepared by [the Subject Member] revealed multiple statements which were suspected to be untrue. The statements related to information sources that [the Subject Member] attested that he had reviewed but it was unclear whether he had or not.
7. In an attempt to investigate the matter, on March 22, 2017, [Cst. T.] questioned [the Subject Member] as to whether he had reviewed all the material in question. [The Subject Member] responded that yes he had.
8. [Cst. T.] then asked [the Subject Member] to provide the documents and audio files that were reviewed. [The Subject Member] stated that the documents and audio files were in his possession and he would provide them.

9. Following this discussion, [the Subject Member] contacted various detachments to obtain the documents and audio files that he stated were already in his possession.

10. On March 24, 2017, [the Subject Member] provided several PDF files of the statements that he stated he had reviewed prior to submitting the ITOs. All of the files were date stamped indicating that they had been created on March 23, 2017.

11. As of March 29, 2017, two of the audio statements that [the Subject Member] stated that he had listened to had not been located and were considered lost.

12. [The Subject Member] intentionally misled [Cst. T.] in an attempt to cover up untrue statements made in ITOs both drafted and sworn to by [the Subject Member]. This conduct contravenes section 8.1 of the Code of Conduct of the RCMP.

[*Sic throughout*]

[9] Pursuant to subsection 20(1) of the *CSO (Conduct)*, the aforementioned Allegations and Particulars were read to the Subject Member at the beginning of the hearing. The Subject Member denied each allegation.

[10] For ease of reference, and to be consistent with the Record, the ITO sworn on or about February 17, 2017, shall be referred to as BW1; the ITO sworn on or about February 22, 2017, as BW2; the ITO sworn on or about March 9, 2017, as BW3; and the ITO that the Subject Member took to the courthouse for the purpose of swearing to the truth of its contents on or about March 17, 2017, as BW4.

## **PRELIMINARY MOTIONS**

[11] There were two motions presented by the parties in advance of the hearing.

### **Request for written decision based on the Record**

[12] On October 10, 2018, the Conduct Authority Representative (CAR) made a motion requesting that the Conduct Board make a written determination on the allegations, based on the Record. The CAR argued that the ASIRT investigation materials were very thorough and that the Conduct Board had enough information before it to make a finding on the allegations. He argued

that the Subject Member's explanations of his actions, as set out in his response pursuant to subsection 15(3) of the *CSO (Conduct)*, were not exculpatory. Rather, they were more properly construed as mitigating factors to be considered in determining appropriate conduct measures. The CAR referenced RCMP Conduct Board decision 2018 RCAD 13 [*Goodyer*] in support of his motion.

[13] The Member Representative (MR) opposed the motion, asserting that the allegations were not clearly established in the Record. In particular, the MR argued that the CAR was required to establish the Subject Member's intent to mislead. He asserted that the Record did not establish on a balance of probabilities that the Subject Member **knowingly** made a false, misleading or inaccurate statement.

[14] I provided the parties with my decision on the motion on October 26, 2018. The motion was denied. While many particulars were clearly established in the Record, I did not find that there was sufficient information in the Record to establish all of the elements of the allegations on a balance of probabilities. Therefore, I advised the parties that I would prepare a *Determination of Established Facts*.

[15] The *Determination of Established Facts* was provided to the parties on November 13, 2018. A depersonalized copy is attached as Appendix A to this decision. In summary, the *Determination of Established Facts* confirmed the following:

- The Subject Member's identity and role in the period of time relevant for the purposes of the allegations.
- The four ITOs at issue contained the inaccurate written statements as outlined in Allegations 1, 2, 3 and 4 of the *Notice of Conduct Hearing*, in particular that the Subject Member improperly sourced information in the ITOs. There are eight instances of improperly sourced information in BW1, BW2 and BW3, and nine instances of improperly sourced information in BW4.

- The Subject Member swore to the truth of the contents of BW1, BW2 and BW3 before a Justice of the Peace. BW4 was not sworn.
- The Subject Member had not in fact read or listened to the statements referenced in the allegations.

[16] In short, the *Determination of Established Facts* confirmed that there were sourcing errors in all of the ITOs in question. It did not confirm that the Subject Member, at the moment of swearing to the ITOs, or of going to the courthouse to swear the ITO (in the case of BW4), **knew** that they contained false, inaccurate or misleading information.

[17] With respect to Allegation 5, both the making of a false, inaccurate or misleading statement as well as the Subject Member's intent to mislead or deceive remained to be established on a balance of probabilities.

#### **Admissibility of documents and approval of additional witnesses**

[18] On or about January 24, 2019, the MR made a motion to admit a series of documents at the allegations phase, including a letter from a psychologist. The MR's motion also included a request to call additional witnesses at the allegations phase.

[19] I provided my decision on the motion to the parties on January 30, 2019. I addressed each category of documents individually. I will not reproduce my reasons in full within this decision. By way of summary, I found several documents to be admissible at both the allegations and conduct measures phases, as they provided relevant information about the roles, responsibilities and processes for the preparation of applications for judicial authorizations; the Subject Member's training and experience in preparing same; or the Subject Member's workload and/or actions in or around the time of the alleged conduct.

[20] Of the many letters of support the MR sought to have admitted at both the allegations and conduct measures phases, only three letters spoke directly to the authors' experience working on investigations with the Subject Member. I acknowledged that letters of support are not typically admitted at the allegations phase. However, I agreed with the MR that the nature of the

allegations puts the Subject Member's character at issue. In light of the relevance of the three letters identified to the Subject Member's investigatory practices and demonstrated integrity (or lack thereof), I found these three letters to be admissible at the allegations and conduct measures phases of these proceedings. The balance was found to be admissible only at the conduct measures phase, if required.

[21] The MR requested to have each of the authors of the letters admitted at the allegations phases provide oral evidence. I noted that Sgt. L. was the only one of the three members who directly supervised the Subject Member in the course of an investigation. I found that his evidence was reasonably required and necessary to determine whether it is more likely than not that the Subject Member knowingly provided false or misleading information as alleged.

[22] Finally, I found that the letter from the psychologist was not admissible. I noted that the Subject Member began seeing this practitioner almost a year and a half after his suspension, for reasons unrelated to the allegations before me. In addition, most of what is contained in the letter is an account of what the Subject Member advised his practitioner. This information was more appropriately received directly from the Subject Member, who was scheduled to provide oral evidence at the hearing.

## **EVIDENCE**

[23] Oral evidence was received from six witnesses, including the Subject Member. Generally speaking, taking the totality of the evidence into consideration, I found all of it to be credible. Where applicable, I noted any concerns with respect to credibility and/or reliability as well as the reasons why I preferred one account over another.

[24] The CAR called four witnesses: Cst. T., Cpl. B., Sgt. R. and Cpl. S. Of these four witnesses, Cpl. B., Sgt. R. and Cpl. S. answered questions directly, and their responses were consistent with their notes and statements to the ASIRT.

[25] Cst. T. was sometimes evasive and defensive in his answers, particularly when questioned about whose role it was to request source materials and his role in reviewing the ITOs



in question. Unlike the other witnesses, Cst. T. did not acknowledge his responsibilities in this regard. He would only acknowledge them as “possibly” falling within his area of responsibility. On this point, his evidence was not consistent with the whole of the evidence received from other witnesses. Nor was it consistent with his own notes, which clearly indicate that he initiated the requests for information from the detachments.

[26] The MR called two witnesses. I found Sgt. L. to be credible on the whole. I found the Subject Member to also be a credible witness. He was forthright and recognized that his actions were problematic. His evidence was consistent throughout and it was also consistent with the whole of the evidence in the Record and as received from other witnesses.

[27] There is nothing in the evidence received at the hearing which contradicts the findings in the *Determination of Established Facts*. The following findings are based on the totality of the evidence, as found in the Record and as received from witnesses at the hearing.

[28] The evidence establishes that, in late 2016 and early 2017, the GIS North Unit was in a period of transition. It was moving away from a primarily task-based model, to one in which project work on serious investigations was to be the focus. The investigation of four robberies at issue in this case (the Investigation) was one of the first few undertaken within this new model. The Investigation involved four separate robberies which were initially investigated by four separate detachments. The GIS North Unit took the lead on the Investigation in late January 2017.

[29] The Subject Member was a fairly junior member in plain clothes, having joined the GIS North Unit in 2015. His performance reviews leading up to this posting are very positive and describe an above average performer. His Performance Evaluation and Learning Plan for the 2015-2016 year is also very positive. It describes a member who is adapting well to his new role in GIS. It also reflects the fact that the Subject Member completed the Search Warrant course in February 2016.

[30] In June of 2016, Sgt. R. joined the GIS North Unit. Over the fall of 2016, he and Cpl. B. had identified some aspects of the Subject Member’s performance that could benefit from

improvement. In particular, Sgt. R. and Cpl. B. reported that the Subject Member seemed distracted and that they wanted to facilitate direct mentoring by Cpl. B. They spoke to the Subject Member about their observations in January 2017. The Subject Member testified that the conversation came as a surprise to him. Following this discussion, the Subject Member's desk was moved, so that he could work more closely with Cpl. B. The Subject Member acknowledged that this was embarrassing for him.

[31] The Subject Member testified that, in or around this time, he was undergoing significant personal stressors, including a family member going through potentially life-threatening health concerns and the break-up of his long-term relationship. He reported that he is a private person and that he did not mention these personal issues to his colleagues at the time. This is consistent with the evidence of the other witnesses, who describe the Subject Member as private, someone who keeps to himself.

[32] Cst. T., Cpl. S., Cpl. B. and Sgt. R. testified that the workload within the GIS unit was busy but not overly stressful. They indicated that most files involved incidents that had happened months prior, and that, as such, there was no "urgency". There was pressure to move files forward, but timelines could be flexible. Cpl. B. noted that, generally speaking, plain clothes members could spend extended periods of time at their desk if working on a file. I note that the witnesses' observations were generic, and not specific to the Subject Member's workload, nor of his workload relative to that of other members within the GIS North Unit.

[33] The Subject Member provided evidence of his above average task load in the months leading up to the transition to a project-based structure. He also provided details about other investigations in which he was involved, which by their nature, would not allow the same flexibility as described by his colleagues. In contrast to the Investigation at issue, these involved ongoing incidents and/or files where the personal safety of individuals was potentially at issue. The Subject Member asserted that, as a result, he did not have long periods of concentrated time at his desk to work on the ITOs. Rather, he had to work on these over short periods of time, whenever he could get some time at his desk or at home.

[34] All members who formed part of the Investigation team articulated a high level description of the Command Triangle, which includes the roles of Team Commander, Primary Investigator and File Coordinator. All provided a high level description of the role of the Affiant, and they agreed that the Affiant is not part of the Command Triangle. As such, the Affiant would not be privy to all investigatory decisions made on a file.

[35] All witnesses agreed that there were no formal business rules within the GIS North Unit at the relevant time. This is in contrast to the Major Crimes Unit, which has documented business rules. Cpl. B. and Sgt. R. noted that the latter were adapted to the GIS North Unit; however, there was no evidence indicating that they were documented or that anyone within the Investigation team had received any training on these rules.

[36] Cst. T. (the Primary Investigator), Cpl. S. (the File Coordinator) and the Subject Member (Affiant) were not able to clearly articulate the day-to-day activities associated with each role. Most of their responses to questions about their responsibilities with respect to the request, receipt and tracking of source materials from the detachments involved and review of ITOs demonstrated a lack of clarity about their own roles and how to work together. It is telling that only the Team Commander, Cpl. B., and Sgt. R. could explain, in any detail, how the members in those roles were to work together.

[37] The testimony of Cst. T. and Cpl. S. confirmed that, at some point early in the Investigation, the Command Triangle made a decision to initially request the hard copy investigation file from only one detachment. Requests to the other three detachments involved followed at various points over the following weeks. The collection of source materials was done on a piecemeal basis. The requests were all initiated by Cst. T. as the Primary Investigator. Cpl. S., as the File Coordinator, was not aware of the timing of these requests, or when materials were actually received. Materials from two detachments were received at some point in February 2017 and early March 2017. At least one of these files sat on the Primary Investigator's desk, unopened, for an undefined period of time. In the meantime, the Subject Member was being asked to reflect all four investigations in the ITOs.

[38] The Subject Member testified that this was, relative to his experience, a complicated file due to the volume of documents and multiple detachments involved. In building his grounds bank for the Investigation of the robberies, the Subject Member kept materials in a number of locations, both hard copy and electronic. He did not have one central repository or tracking system for his materials. He also noted that he was, in the period of time in question, working off two laptops and had difficulty transitioning his files from the old laptop to the new one. The Record includes a series of emails which appear to confirm these difficulties.

[39] The Subject Member's evidence, on both examination-in-chief and cross-examination, was consistent. He acknowledged the sourcing errors, and in particular, the fact that he had not actually read or listened to the statements in question at the time that he drafted the ITOs. He explained that, when he initially drafted BW1, it referenced one of the four robberies. In early February 2017, he received instructions from the Command Triangle to reference all four robberies.

[40] As it was the Subject Member's understanding that the hard copy files for all but one of the detachments were in transit, he referenced the PROS reports and or Will Says, and sourced the content accurately within the document. However, as he continued to work on the document, it became very muddled as there were many members and PROS entries involved. He asserts that the document did not read well chronologically.

[41] In anticipation of receiving the source files, he restructured the document to reflect primary sourcing of the statements, with the intention of going back to personally read or listen to the statements before finalizing his ITOs. He indicated that he did not highlight or otherwise mark the areas where he had done this, and as a result, he lost track of the statements he needed to review. He acknowledged that this was a poor drafting practice, but that he had no intent to mislead or deceive. He asserted that when he swore to the truth of their contents, he genuinely believed that he had read or listened to all of the statements as sourced in the ITOs.

[42] The parties agreed that each of the ITOs contained approximately 24 references to sourced information. The sourcing errors reflect about one third of these references. The

remaining two thirds of these references include both primary/direct sourcing as well as secondary sources, which the Subject Member asserted are accurately sourced. The latter is not contested. The statements at issue in the identified sourcing errors were from hard copy investigation files that the Primary Investigator, unbeknownst to the Subject Member, had yet to request.

### **Submission from the CAR**

[43] The CAR noted, at the outset of his submission, that the issues before the Conduct Board were narrowed as a result of the *Determination of Established Facts*. He argued that the Subject Member's explanation of his actions as a "drafting error" strains credulity. Rather, it is the CAR's position that the Subject Member was a high-performing general duty member who struggled in his new role within GIS. Sgt. R. and Cpl. B. identified performance issues, which culminated in the Subject Member's desk being moved. This caused great embarrassment for the Subject Member. These struggles led him to cut corners and take short cuts in order to avoid further embarrassment. In short, the CAR argued that the Subject Member acted dishonestly, having made a strategic decision to make false, misleading or inaccurate statements.

[44] The CAR argued that this position was supported by what he described as the Subject Member's lack of understanding of the gravity of his conduct. The CAR argued that this lack of understanding was evidenced by the Subject Member's attempts to blame other members of the team and his reliance on the fact that the descriptions of the contents of the statements sourced were accurate.

[45] With respect to Allegation 5, the CAR argued that when confronted by the inaccuracies in the ITOs during cross-examination, the Subject Member answered in the affirmative when he was asked directly whether he had read or listened to the statements sourced in the ITOs. The CAR acknowledged the different accounts of the specific phrasing of the question, but he argued that the Subject Member knew the substance of what he was being asked. This was further clarified by Cst. T.'s email outlining the specific statements at issue. The CAR argued that the Subject Member did not seek to clarify his prior statement to Cst. T. Rather he took steps to

surreptitiously obtain the materials and provide them as if he had them in his possession the entire time.

### **Submission from the MR**

[46] The MR argued that the primary issue was whether the CAR has established the *mens rea* component of the allegations, and that “knowingly” requires far more than a possibility. It must be established on a balance of probabilities. The MR also noted that it was open to the CAR to frame the allegations as neglect of duty, or to argue negligence. This was not done.

[47] The MR argued that character was at issue in this case and that in integrity cases, propensity is also an issue. The Subject Member has no prior discipline. The letters admitted at the allegations phase and the evidence of Sgt. L. speak to the Subject Member’s strong character and integrity.

[48] The MR suggested the evidence supporting an honest mistake was overwhelming. He argued that there were gaps in the Subject Member’s training and that many of the skills required for drafting ITOs are learnt through experience. He noted that the Subject Member was a junior plain clothes member, with limited experience in drafting applications for judicial authorizations. The nature of the errors themselves reflect common sourcing challenges faced by junior plain clothes members.

[49] The MR also noted the following factors that contributed to the errors made: 1) the Subject Member was working on the ITOs in a piecemeal fashion, while contending with personal and work-related stressors; 2) while the Subject Member does not deny his responsibility for the content of the ITOs, there were systemic issues with the manner in which the Command Triangle requested the investigation files from the detachments and with the review of the ITOs.

[50] With respect to Allegation 5, the MR argued that the Subject Member did not know the specific statements at issue until he received Cst. T.’s email on March 23, 2017. His actions to secure the missing statements were consistent with this email, which directed him to provide the

statements to the File Coordinator the next day. He then set about correcting the ITOs in the manner identified on March 21, 2017, when the first error was identified.

[51] The MR argued that this matter should never have been before a Conduct Board. He submitted that people jumped to conclusions and that if someone had just spoken with the Subject Member, then they may have given it a sober second thought. The MR argued that the CAR had not established on a balance of probabilities that the Subject Member **knowingly** made false, misleading or inaccurate statements. Rather, the issues in this case were of performance, not discipline.

### **Rebuttal from the CAR**

[52] The CAR provided a reply on two points raised by the MR. First, the CAR submitted that the Subject Member's view of shared responsibility was problematic. He argued that if the Subject Member, at any point post-conduct, acted in a way that took responsibility, the matter would not be before a Conduct Board. However, the Subject Member's post-conduct behaviour indicated to two and ultimately four officers that there was an intent to deceive. That his behaviour was viewed as deceitful by both Cst. T. and Cpl. S. showed that he had something he wanted to hide.

[53] Second, with respect to the evidence of Sgt. L. and the letters of support, the CAR argued that these reflected interactions with the Subject Member prior to his position with GIS. The only exception is the letter from Sgt. M. C. It is the CAR's position that it was only once with GIS that the Subject Member began to struggle. In the face of those challenges, he cut corners and ultimately allowed himself, with full knowledge, to provide false statements on sworn documents as a way to disguise those struggles and to give himself time to meet other demands.

### **DECISION ON THE ALLEGATIONS**

[54] At the outset of the hearing, I reviewed the nature of the allegations and the elements of those allegations which remained to be established following the *Determination of Established Facts*. As set out in paragraph 15, the *Determination of Established Facts* established that all

four ITOs clearly contained sourcing errors. Section 8.1 of the RCMP Code of Conduct provides the following:

Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigations, the actions of other employees and the operation and administration of the Force.

[55] There are several behaviours which fall within the scope of Section 8.1 of the Code of Conduct. The allegations are narrowly construed and rely on the requirement that members do not **knowingly** make false, misleading or inaccurate oral or written statements.

[56] The inclusion of the word “knowingly” means, in this context, that the CAR needs to establish on a balance of probabilities that the Subject Member not only made a false, misleading or inaccurate oral or written statement, but that he knew that this statement was false, misleading or inaccurate and appreciated the possible consequences of making it.

[57] The question here is not whether the Subject Member “ought to have known” that the statement was false, misleading or inaccurate, but rather what he **actually** knew. In other words, it must be established on a balance of probabilities that the Subject Member **knew** he was acting dishonestly, i.e. with the intent to mislead or deceive.<sup>2</sup>

[58] There are eight instances of improperly sourced information in each of BW1, BW2 and BW3. The sourcing errors repeat in each ITO and can be described as statements that the Subject Member had read or listened to, when in fact, he had not. BW4 includes these, and one additional sourcing error.

[59] With respect to Allegations 1, 2, 3 and 4, the issue before me at the hearing was whether the CAR had established on a balance of probabilities that the Subject Member’s intent was to be dishonest. In the case of Allegation 5, the CAR had to establish on a balance of probabilities that

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<sup>2</sup> For examples of these general principles, see: RCMP Conduct Appeal decision ACMT 2016335373 [*Oates*], at paragraph 63; and *Dayfallah v Attorney-General of Canada*, 2018 FC 1120, at paragraph 35.



the Subject Member had in fact made a false, misleading or inaccurate statement, and that he had done so knowingly.

[60] With respect to Allegations 1, 2, 3 and 4, there was no direct evidence of the Subject Member's intent. Rather, I am required to draw inferences from the evidence before me. From a practical point of view, I am left to determine whether the evidence establishes that it was more likely than not that the Subject Member made a strategic decision to falsify the ITOs in order to save time, and to mislead his colleagues in order to cover up his actions, as suggested by the CAR; or whether the errors in question were the result of the Subject Member's inexperience and poor drafting practices, in which case, as the MR suggested, his actions are more properly characterized as a performance matter, rather than a conduct issue.

### **Allegations 1, 2, and 3**

[61] The Subject Member testified that, when he initially drafted BW1, it contained references from only one of the four robberies, namely the file for which a hard copy had been requested and provided by the detachment. He was then instructed to incorporate evidence of the other three robberies in BW1. The Subject Member asserts that Cst. T. had advised him that the other files were being requested from the detachments. There is no evidence to contradict his assertion in this regard.

[62] While Cst. T.'s evidence was somewhat ambiguous on the question of whose responsibility it was to request the files from the detachments, every other witness was clear that the Primary Investigator is responsible for initiating requests for materials from detachments. Cst. T.'s own notes establish that he initiated the requests for materials. Cpl. S. testified that a decision was made, early in the Investigation, to delay those requests. This would have been known to the Command Triangle. The Subject Member was not part of the Command Triangle; therefore, he would have been unaware of this decision.

[63] The Subject Member testified that, when he began the drafting process, he accurately sourced the statements that were on hand as primary sources. After being instructed to incorporate evidence from all four robberies, he sourced the PROS reports accurately, as

secondary sources, as this was the only information he had on hand. However, he asserted that the ITO did not read well chronologically.

[64] The Subject Member then decided to draft the ITO “proactively” in anticipation of receiving the source files and personally reviewing the statements. He acknowledged that, looking back, this was probably not the best way to approach the drafting process, and that this error was further compounded by the fact that he did not highlight or otherwise mark up the text referencing the statements that had to be reviewed. He acknowledged that he found the drafting of the ITO to be complex and that he lost track of the statements he intended to go back to review. He explained that everything started to blend or blur together.

[65] I find that the Subject Member was operating in good faith in his drafting process. One hard copy investigation file was on hand. This was the only investigation referenced in the initial drafts of BW1. After receiving direction to include all four robberies, and in anticipation of receiving the hard copy investigation files from the other three detachments, the Subject Member began drafting “proactively”. The evidence clearly established that drafting “proactively” was, for better or worse, an accepted practice. The practice was acknowledged by each witness who testified.

[66] At the time he was drafting the ITOs, the Subject Member had understood that the hard copy investigation files from the remaining three detachments had been requested. The statements at issue in the sourcing errors were in the hard copy investigation files from these three detachments. As noted in paragraph 62, the decision not to request those files was made by the Command Triangle, unbeknownst to the Subject Member.

[67] Much was made of the review of the ITOs. All witnesses acknowledged that the Primary Investigator would have the best knowledge of the grounds in an investigation. It was established that Sgt. R. and Cst. T., as the Primary Investigator, reviewed at least one of the ITOs in question. It was the Subject Member’s assertion that members of the team, including Cst. T., reviewed several drafts of the various ITOs. This is corroborated by Cst. T.’s notes, which

confirm that he reviewed draft ITOs on February 13 and 17, 2017. His notes indicate that a draft ITO would be ready for his review on March 3, 2017.

[68] Notwithstanding the fact that all witnesses, including the Subject Member, agreed that it is ultimately the Affiant who is responsible for the truth of the contents of an ITO, the MR suggested that the Primary Investigator should have caught the errors when reviewing the ITOs. It would be inappropriate for me to comment on those assertions. The review of the ITOs is relevant to these proceedings in only one respect. The fact that others on the team, with as much if not more knowledge of the evidence and the status of requests for materials, also did not notice the errors demonstrates a general level of confusion or lack of organization of the evidence in the Investigation. This adds plausibility to the Subject Member's explanation that everything had started to blur together and he lost track of which statements he had personally read or listened to, and which he had yet to review.

[69] It is also clear that the Subject Member's materials were not well organized during the drafting process. He noted having some documents in hard copies, in various folders, and some electronically, with the latter saved on one of two laptop computers. I note that more experienced plain clothes members testified to the importance, when acting as an affiant, of keeping one source file. However, the Subject Member had documents in multiple places. In short, his source file was not well organized.

[70] The CAR argued that the Subject Member testified that he knew that the sourcing references were not accurate **when he drafted them**; therefore, his dishonesty is established. This requires me to find, effectively, that each and every draft ITO produced by a member must be 100% accurate at all times. I do not find this to be a realistic proposition. Drafting is an iterative process during which errors can be honestly made and wording is clarified.

[71] A document takes on significance when it is finalized and signed by the author, or in this case, sworn before a Justice of the Peace. The question then is whether, at the time that he swore to the truth of the contents of the ITO, the Subject Member actually knew that the contents of the

ITO were false, inaccurate or misleading and that, despite this knowledge, he swore to the truth of their contents. In other words, he intended to be dishonest.

[72] The uncontested evidence from all witnesses was of the Subject Member's general good character and history of performing his duties with honesty and integrity. There is no evidence of any concerns prior to the events in question. The Subject Member's performance evaluation for the 2012-2013 fiscal year notes in part: "[The Subject Member] possesses a hard working ethic and completes his investigations thoroughly taking no short cuts."

[73] His colleagues in the GIS North Unit describe him as a quiet and reserved person, who was nonetheless friendly and got along with everyone. Cpl. S., in his capacity as Acting Sergeant, completed the Subject Member's performance evaluation for the 2015-2016 fiscal year, in which he stated: "I have seen his confidence improve greatly over time and he takes great pride in completing a well investigated/documented file and helping all members who reach out for assistance." The Subject Member was given an Acting Corporal position for two weeks over that year. Superintendent S., who completed the line officer acknowledgment, stated: "[The Subject Member] continues to develop his investigat[iv]e and leadership skills and his desire to learn and improve is outstanding."

[74] All witnesses professed surprise at the alleged behaviour, describing it as out of character. Sgt. L. testified to his personal experience working alongside the member and as a personal friend over the course of almost nine years. He attested to the Subject Member's strong character, both on and off duty. He indicated that the alleged behaviour would be a drastic departure from his demonstrated character.

[75] The CAR's explanation for the Subject Member's drastic change in character is as follows. In the face of a negative performance discussion, the Subject Member's desk was moved, causing him significant embarrassment. Feeling the pressure to impress his supervisors, he made a strategic decision to falsify the ITOs in order to save time and to deliver a "better" product, which referenced primary sources, as opposed to secondary sources. When his colleagues discovered the false statements, he then sought to conceal his actions. In support of

this latter point, the CAR relied on Cst. T.'s and Cpl. S.'s assessment of the Subject Member's behaviour.

[76] With respect to the Subject Member's performance within the GIS North Unit, Cpl. B., Sgt. R. and the Subject Member all testified to the fact that they met sometime in January 2017, prior to the Subject Member's involvement in the Investigation. They are in agreement that the purpose of this very brief conversation was to discuss the Subject Member's work. All agreed that this was not a formal performance discussion. No 10-04 performance report was completed. All also agreed that shortly thereafter, the Subject Member's desk was moved closer to that of Cpl. B. The Subject Member further acknowledged that he found this embarrassing. However, he denied that there was any significant performance issue identified.

[77] The Subject Member's interpretation of this conversation is corroborated by Cpl. B.'s statement to the ASIRT, in which he stated at pages 14-15 of the statement (page 179 of the Investigation Binder):

[...] So we were trying to get him more engaged in some of the files, 'cause he'd stated that he'd previously, he, he has a interest in Major Crimes. So in order to assist him with that, we're trying to get him engaged in these larger files, and get roles into them. There'd been some issues in relation to motivating him to get him working on these files. So Sergeant "R" and I decided that we would move him in front of me, and then I'd be able to I guess get him more engaged that way, 'cause I'd right, be sitting right with him.

Q: Right.

A: Other than that, like his, like when we were task chasing...

Q: Gets along with everybody?

A: Yeah, like when we're task chasing, like he goes takes the statements, gets the synopsis done quick, documents it on the file and, and hands it in. He gets along with everybody. The past summer we golfed all together. Played hockey all together at times. So he gets along with, like our Unit gets along fairly well. Very sports oriented, so.

Q: No issue with performance in the past? Like major issues.

A: No, nothing like ... nothing major, right? Like just trying to get him more engaged in some of these bigger files, and more, lead him more, in relation to his career aspirations.

[*Sic throughout*]

[78] Based on the totality of the evidence, I do not find that any significant performance issues were identified with respect to the Subject Member in January 2017.

[79] With respect to Cst. T.'s and Cpl. S.'s assessment of the Subject Member's behaviour, their observations about the Subject Member's demeanour on the afternoon of March 22, 2017, are somewhat vague. They were unable to point to a definitive aspect of the Subject Member's behaviour that caused them pause. Rather, they testified that his behaviour "changed", and they felt he was being "sneaky". The Subject Member explained that his mood was subdued as a result of the personal stressors in his life at that time.

[80] The basis for Cst. T.'s, Cpl. S.'s and Sgt. R.'s belief that the Subject Member's behaviour was deceptive or "sneaky" is equivocal at best. While Cst. T. and Cpl. B. indicate that they did not know where the Subject Member had gone on March 21, 2017, and suggested that he had "snuck off" to the courthouse to have BW4 sworn, the evidence does not support their interpretation of events. Cpl. S.'s statement to the ASIRT, on April 26, 2017, clearly indicated (at page 13; page 147 of the Investigation Binder) that the Subject Member had advised the team, at a meeting that morning, of his intention to have BW4 sworn that day.

[81] When the first sourcing error was discovered within BW4 later that day, the Subject Member readily admitted that he had made an error and that he had not in fact read the statement in question. All of the CAR's witnesses indicated that they attributed this error to a "cut and paste" problem.

[82] Both Cpl. S. and Cst. T. acknowledged, in their evidence, that they were very worried when they later discovered the extent of the errors in the ITOs. They both expressed concern over the impact on the Investigation. Cpl. T. expressed considerable frustration that all of their work would be wasted. I do not attribute any ill will to any of the members of the Investigation team. They discovered multiple sourcing errors in sworn documents, and it was necessary to investigate the matter.

[83] I also accept that the number of errors ultimately discovered would have given them pause and may have led them to question whether these discrepancies were intentional. It appears that the basis for attributing malicious intent to his actions was, at least in part, Cst. T.'s and Cpl. S.'s vague assessments of a change in the Subject Member's demeanour on the afternoon of March 22, 2017. When questioned as to what tipped the scales, as it were, from his belief that the sourcing errors were mistakes or a performance issue to one that they were intentional, Sgt. R. explicitly stated that he relied heavily on Cst. T.'s assessment of the events. (Transcript of February 5, 2019, at page 283)

[84] The totality of the evidence puts into question the reliability of Cst. T.'s and Cpl. S.'s assessment of the Subject Member's state of mind. In particular, it appears to have been a retrospective assessment rather than a change in behaviour that was evident in the moment. I note that, at page 8 of his statement to the ASIRT (at page 142 of the Investigation Binder), Cpl. S. stated: "**And I didn't think anything of it at the time**, [the Subject Member is] fairly quiet, shy guy normally [emphasis added, sic throughout]."

[85] Perhaps most telling is the evidence from Cst. T, who acknowledged the following in cross-examination (at pages 199-200 of the Transcript of February 5, 2019):

**Q:** [...] Isn't it still possible that this was all a screw-up and not an intentional campaign to lie and mislead to you and others? Isn't it possible?

**A:** Oh, absolutely. I mentioned that in my statement. I said it's possible that – I even said it wasn't – I don't believe it was done maliciously or out of intent. All of the information in there was just sourced improperly or incorrectly, and mistakes were made. And we're trying to fix those mistakes.

[86] I do not accept the CAR's position that the Subject Member made a strategic decision to falsify the ITOs in order to hide deficiencies in his abilities, and thus knowingly made false, misleading or inaccurate statements. The elements that are essential to support this position, namely that a significant performance issue had been identified, and that the Subject Member had behaved in a deceptive way, are not supported by the evidence. Rather, I find that it is more likely that the Subject Member, as a relatively junior plain clothes member, made serious mistakes in his drafting process. These arose in the context of an evolving GIS team, without the

benefit of clear business rules to guide their activities. The Subject Member's drafting practices were, without question, deficient. However, his actions are more properly characterized as a deficiency in performance, rather than as a conduct issue. For all of these reasons, I find that the CAR has not established on a balance of probabilities that the Subject Member **knowingly** made a false, inaccurate or misleading statement. As a result, Allegations 1, 2 and 3 are not established.

#### **Allegation 4**

[87] My analysis with respect to Allegation 4 is essentially the same as that for Allegations 1, 2 and 3. However, there are two aspects to the particulars in Allegation 4 that differ from those in Allegations 1, 2 and 3, which I would like to specifically address.

[88] Unlike the first three Allegations, which reference the Subject Member swearing to the truth of an ITO, particular 8 of Allegation 4 reads as follows:

8. In relation to this ITO, [the Subject Member] recorded information he knew to be untrue; and provided information to [Cst. T.] that he knew to be untrue.

[89] As previously noted, the mere recording of information **in draft form** is not sufficient to constitute a violation of section 8.1 of the RCMP Code of Conduct. If I ascribe a broad interpretation to the particulars, as written, the substance of this aspect of the Allegation remains the same as for Allegations 1, 2 and 3. The difference is that the ITO in question was not actually sworn. Rather, the Subject Member was on his way to the courthouse. As noted in paragraph 71 of the present decision, the document takes on significance at the point that it is finalized and signed by the author. In this instance, the point at which the document takes on significance is when the Subject Member is on his way to the courthouse, with the intent to have the document sworn. The balance of my reasoning, as previously set out, applies.

[90] Second, with respect to the Subject Member providing information to Cst. T. that he knew to be untrue: I find that the particulars, as written, do not provide a clear indication of what untrue information **was provided to** Cst. T. at the relevant time. However, I do not find that this



results in a significant deficiency in the Allegations. Rather, the substance of the Allegation is the same as that for Allegations 1, 2 and 3.

[91] Subject to the nuances previously set out, my reasoning for Allegations 1, 2 and 3 applies to Allegation 4. I find that Allegation 4 is not established on a balance of probabilities.

### **Allegation 5**

[92] In order to find Allegation 5 to be established, I must find that it is more likely than not that the Subject Member knowingly misled Cst. T. during their conversation of March 22, 2017, and that the actions taken by the Subject Member to obtain copies of the eight statements at issue were undertaken with the goal of concealing his prior deception. At issue are the Subject Member's actions between March 21, 2017, and March 23, 2017.

[93] The first sourcing error was discovered on March 21, 2017. As noted in paragraph 81 of the present decision, the Subject Member readily admitted to this sourcing error. On the morning of March 22, 2017, following a detailed review of the ITOs by Cst. T. and Cpl. S., it was discovered that there were seven other source documents referenced in the ITOs that were not in the possession of the File Coordinator. Cst. T. and Cpl. S. have given evidence that, at this point, they weren't sure whether the Subject Member had requested the source documents directly from the detachments.

[94] The conversation between Cst. T. and the Subject Member took place at their desks, in the presence of Cpl. S. Cst. T., Cpl. S. and the Subject Member are all consistent in their accounts that the Subject Member was seated at his desk and that Cst. T. was standing. Cpl. S. was seated at his desk. His cubicle is beside the Subject Member's. While Cpl. S. indicated that he was not a direct participant in the conversation, he heard the conversation clearly.

[95] Each member's account of the general content of the conversation is consistent: Cst. T. asked the Subject Member whether he had the statements referenced in the ITOs, as these were required for disclosure purposes. It was a very brief conversation. Later that afternoon, Cst. T.

sent the Subject Member an email outlining the specific statements that they were looking for and asked the Subject Member to provide the statements to Cpl. S.

[96] There are two conflicts in the evidence: 1) if Cst. T. asked one or two questions, namely whether the Subject Member had reviewed the statements and whether he had the statements on hand; and 2) the level of specificity in Cst. T.'s question(s) to the Subject Member. In particular, whether he outlined the specific statements at issue or whether he asked a general question.

[97] Cst. T. testified that he asked two specific questions. The first, whether the Subject Member reviewed all the statements; and the second, whether the Subject Member had the statements that they could not locate on hand. Cst. T. asserted that the Subject Member answered "yes" to both questions. Cst. T. indicated that he then followed up with an email to confirm their conversation.

[98] Cpl. S. testified that the conversation was more general. Cst. T. asked the Subject Member a general question as to whether he had "them" and whether he had listened to "them". The Subject Member's response was that he had, and that he would get the statements to Cpl. S. and Cst. T.

[99] The Subject Member also testified that the conversation was general in nature. He acknowledged Cpl. S.'s account and explained that he answered in the affirmative because, at that time, he believed that he had actually reviewed all the statements, other than the missing statement identified on March 21, 2017. He was adamant that he didn't know which statements were at issue until he got the email from Cst. T. later that afternoon.

[100] Having considered the totality of the evidence, including each member's statement to the ASIRT, their oral evidence at the hearing, and their notes (as provided to the ASIRT), I find that the conversation was general in nature. I find that the Subject Member was asked whether he had reviewed the statements and whether he had them on hand. The Subject Member answered both questions in the affirmative.

[101] Given that all three members describe a very brief interaction, I find it unlikely that Cst. T. itemized the missing statements in the course of the conversation. These were listed in his follow-up email. I note that Cst. T.'s email of March 22, 2017, begins with the following: "**Since our briefing** at [1:30 p.m.], [Cpl. S.] and I have been reviewing the previous applications and require the following documents [...] [Emphasis added]." This further corroborates the Subject Member's version of events.

[102] It is debatable as to whether, in the context of this general conversation, the Subject Member's answers constituted false, misleading or inaccurate statements. Even if they do, the question is whether the Subject Member **knowingly** misled his colleagues when he answered their questions in the affirmative. Once again, the basis for the conclusion that the Subject Member was being deceptive begins with the reported change in his demeanour at the time of this conversation. As noted in paragraphs 83 to 85 of the present decision, I do not find this to be a compelling argument.

[103] The CAR also relied heavily on the Subject Member's actions following this conversation as evidence of his dishonesty. In particular, the CAR asserted that following receipt of Cst. T.'s email, itemizing the statements that were at issue, the Subject Member began a covert enterprise to surreptitiously obtain the statements directly from the detachments and to trick his colleagues into believing that they had been in his possession the whole time.

[104] The Subject Member testified that he was simply collecting the statements identified in the email. He was adamant that he made no attempt to hide his actions. Rather, he secured the statements, and as he was now aware of his errors, spent the weekend personally reviewing the statements in question. His intent was to review the statements and correct the ITOs in the same manner as he had been instructed to do so for the sourcing error identified on March 21, 2017.

[105] I note that the testimony of Cpl. S. and the Subject Member established that, on the morning of March 23, 2017, the Subject Member was uploading the statements, and then took a break to have coffee with Cpl. S. They discussed the manner in which he should provide the information. Cpl. S. asked him to provide the statements as well as the emails indicating when

they were requested and received. The evidence established that this was the normal practice. The Subject Member had to have known that he would have been required to provide the emails in question. He forwarded these emails, which clearly establish when the statements were requested, to Cpl. S.

[106] The electronic versions of the statements were date stamped. The Subject Member testified that he was fully aware that they were date stamped. I find it highly unlikely that he would not have known that the date stamp would have been easily detectable.

[107] The Subject Member had been directed to amend the ITOs, in order to correct the sourcing error identified on March 21, 2017. He was not directed to cease work on the ITOs until March 27, 2017. I note that Cpl. S. testified that the ITOs were ultimately corrected in exactly the same manner undertaken by the Subject Member. This lends plausibility to his rationale that doing so was a reasonable course of action and not an attempt to deceive.

[108] On the totality of the evidence, I find that the Subject Member's account is more consistent with the evidence and that his actions do not demonstrate dishonesty. I find it more likely that, at the time of the conversation on March 22, 2017, he remained unaware of the scope of the sourcing errors. Once made aware of the missing statements, he set about requesting the statements and then reviewing same with a view to amending the ITOs in a manner consistent with prior direction.

[109] The CAR has not established on a balance of probabilities that the Subject Member knowingly made a false or misleading statement to his colleague, Cst. T. Therefore, I find that Allegation 5 is not established on a balance of probabilities.

## **CONCLUSION**

[110] I find that none of the allegations have been established. The conduct process in this matter is concluded.

[111] Either party may appeal this decision by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.11 of the *RCMP Act*, and in

accordance with the rules contained in the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

May 3, 2019

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Christine Sakiris

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Date

RCMP Conduct Board

## **APPENDIX A**

### **Determination of Established Facts**

On October 26, 2018, the Conduct Board advised the Conduct Authority Representative (CAR) and the Member Representation (MR) of its intent to prepare a *Determination of Established Facts* (DEF) in this matter. The DEF sets out those facts that the Conduct Board finds established, on the record. Oral testimony at the hearing, currently scheduled for the week of January 7, 2019 in [E.], AB, will not be required on any of the facts set out below.

The Conduct Board will rely on the DEF in rendering its finding on the allegations, and if required, in determining appropriate conduct measures. The DEF will be considered in conjunction with oral testimony and submissions heard at the hearing.

#### *Facts Relevant to All Five Allegations:*

1. At all materials times [the Subject Member] was a member of the Royal Canadian Mounted Police (RCMP) posted to “K” Division, [E.] detachment in Alberta as a member of the General Investigation Section (GIS) North team.
2. GIS North assumed carriage of four investigations into bank robberies which took place in various local communities and were believed to be linked (“the Investigation”). On January 31, 2017, [the Subject Member], as a member of the GIS team, was assigned the role of Affiant for this project.

3. In his Affiant Role, [the Subject Member], was to prepare Informations to Obtain judicial authorization (ITOs) and upon submitting them for judicial approval, swear to the truthfulness of their contents.
4. As the Affiant for this project, [the Subject Member] drafted the following four ITOs:
  - a. An ITO for specified records of the [E.] Remand Centre related to one of the bank robbery suspects being held in custody, sworn before Justice of the Peace [I. Z.] on February 17, 2017 and hereinafter referred to as “BW1”.
  - b. An ITO for specified records of the [E.] Remand Centre related to one of the bank robbery suspects being held in custody, sworn before Justice of the Peace [M. E.] on February 22, 2017 and hereinafter referred to as “BW2”.
  - c. An ITO for two GPS devices that were being held by the RCMP at the [T.] Detachment, sworn before Justice of the Peace [A. W.] on March 9, 2017 and hereinafter referred to as “BW3”.
  - d. An ITO for the [E.] Remand Centre’s records related to one of the suspects being held in custody, which [the Subject Member] attempted to file with the Court on March 21, 2017, hereinafter referred to as “BW4”.
5. All four ITOs (BW1, BW2, BW3 and BW4) contained paragraphs which referenced written or audio statements that [the Subject Member] swore he had personally read or listed to. These written or audio statements referenced were not in fact in the possession of the investigation team at the time [the Subject Member] prepared the ITOs. Rather, [the Subject Member] relied on Will Says and/or PROS reports of the interviewing members in preparing the ITOs. [The Subject Member] had not in fact read or listened to the statements referenced in the paragraphs below, when he swore to the truth of the contents of the ITOs before a Justice of the Peace or, in the case of BW4, sought to file the ITO with the Court.

- a. “I read the written statement of [E. G.] who was an employee of the ATB...” (paragraph 25 of BW1 and BW2; paragraph 27 of BW3 and BW4)
  - b. “I read the written statement of [M. N.], who was a customer inside of the ATB at the time of the robbery...” (paragraph 26 of BW1 and BW2; paragraph 28 of BW3 and BW4)
  - c. “I read the written statement of [C. P.] given to [Constable (Cst.) G.]...” (paragraph 27 of BW1 and BW2; paragraph 29 of BW3 and BW4)
  - d. “I read the written statement of [S. K.] given to Cst. [G.]...” (paragraph 28 of BW1 and BW2; paragraph 30 of BW3 and BW4)
  - e. “I listed to the audio statement of [G.R.], who was the lone employee of the [P.] ATS...” (paragraph 31 of BW1 and BW2; paragraph 33 of BW3 and BW4)
  - f. “I listed to [C. M.’s] audio recorded statement, given to [Corporal (Cpl.) M.]...” (paragraph 32 of BW1, BW2, BW3, and BW4)
  - g. “I listened to [J. E.’s] audio recorded statement, given to Cpl. [M.]...” (paragraph 33 of BW1 and BW2; paragraph 35 of BW3 and BW4)
  - h. “I listened to [B. J. C.’s] audio recorded statement, given to [Corporal (Cpl.) S.]...” (paragraph 34 of BW1 and BW2; paragraph 36 of BW3 and BW4)
6. Three ITOs (BW1, BW2, and BW3) also contained the following paragraph which referenced an audio statements that [the Subject Member] swore he had personally listened to. The audio statement referenced was not in fact in the possession of the investigation team at the time [the Subject Member] prepared the ITOs. Rather, [the Subject Member] relied on Will Says and/or PROS reports of the interviewing member(s) in preparing the ITO. [the Subject Member] had not in fact listened to the statement referenced in the paragraphs below, when he swore to the truth of the contents of the ITOs before a Justice of the Peace.

- a. “I listened to [K. L.’s] audio recorded statement, given to [Sergeant (Sgt.) P.]...”  
(paragraph 47 of BW1, paragraph 49 of BW2, and paragraph 53 of BW3)
7. In addition to the foregoing, BW4 included a reference to a PROS report authored by [Constable (Cst.) T]. This PROS report did not in fact exist at the time the ITO was prepared:
  - a. “I read a police report on PROS authored by [Cst. T.] dated March 21, 2017...”  
(paragraph 72(a) of BW4)
8. BW1, BW2, BW3 and BW4 are not identical. At each instance, amendments were made to the documents prior to [the Subject Member] swearing to the truth of their contents or, in the case of BW4, seeking to file the ITO with the Court.

*Facts Relevant to Allegation #1:*

9. BW1 was rejected by Judge [C.] on grounds unrelated to this allegation.

*Facts Relevant to Allegation #2:*

10. [The Subject Member] drafted and filed BW1 with the Court on February 17, 2017. The ITO was rejected by Judge [C.] on grounds unrelated to Allegation #2.
11. [The Subject Member] amended BW1 in order to make the changes requested by Judge [C.] and resubmitted the ITO (BW2) on February 22, 2017. That same day, [the Subject Member] swore in front of Justice of the Peace [M. E.] that the contents of the ITO were true.

*Facts Relevant to Allegation #3:*

*There are no additional established facts relative to this allegation.*



*Facts Relevant to Allegation #4:*

12. On March 21, 2017, [the Subject Member] attempted to have BW4 filed with the Court. [The Subject Member] was redirected back to the detachment prior to filing BW4 with the court.

*Facts Relevant to Allegation #5:*

13. On or about May 2, 2016, Cpl. [S.] took an audio statement from [B. J. C.], one of the victims of the robberies. He entered a summary of the statement in the PROS file.
14. [The Subject Member] contacted Cpl. [S.] via email on or about March 23, 2017 to request a copy of [B. J. C.'s] audio statement. Cpl. [S.] provided a copy of the statement to [the Subject Member], via email, on March 24, 2018.
15. Cpl. [S.] had not received any other inquiries with respect to or requests for a copy of this statement.
16. On or about March 22, 2017, [the Subject Member] contacted [K. K.] to request copies of the following written statements: [S. K.]; [E. G.]; [M. N.]; [C. P.]. [K. K.] sent [the Subject Member] copies of the statements for all four witnesses, via email, at 4:25 p.m. Wednesday, March 22, 2017.
17. Approximately one week later, on or about March 29, 2017, [K. K.] received a request from (then) [Constable (Cst.) S.], for copies of everything that she had sent to [the Subject Member]. [K. K.] sent Cst. [S.] copies of the same four statements on March 30, 2017.
18. [K. K.] has had no other contact with anyone from the GIS team with respect to the Investigation.
19. Cst. [T.] contacted [Constable (Cst.) K. C.] in late January or early February 2018 to request the surveillance video from the Esso station and the audio statement of [K. L.]. Cst. [C.] downloaded the video footage from the Esso station and left it with another

member, who advised Cst. [C] he had forwarded it to Cst. [T.]. Cst. [C.] was unable to locate the audio statement of [K. L.]. Cst. [C.] has had no contact with [the Subject Member].

20. [The Subject Member] contacted [Corporal (Cpl.) M.] on March 22, 2017 at approximately 5:00 p.m. to request audio statements of the following four witnesses: [G. R.], [C. M.], [W. M.] and [J. E.]. Cpl. [M.] was not able to locate the audio statement of [G. R.]. He sent the audio statements for [C. M.] and [J. E.] to [the Subject Member], via email dated March 22, 2017. Cpl. [M.] also provided a synopsis (via email) of the statement from [W. M.].
21. Prior to March 22, 2017, Cpl. [M.] had only spoken with [the Subject Member] about the Investigation on one other occasion. On this occasion, [the Subject Member] had called to discuss a photo line-up done in [Ed.], AB.
22. Cst. [T.] was Cpl. [M.'s] primary point of contact on the Investigation, as Cst. [T.] was the Primary Investigator.

*Original signed by*  
Christine Sakiris  
Conduct Board

November 13, 2018