



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 Andrew Smith
Regimental Number 62260

(Subject Member)

Conduct Board Decision

Christine Sakiris

July 15, 2022

Staff Sergeant Jon Hart, Conduct Authority Representative

Protected A

2022 CAD 11

Mr. Robb Beeman, Subject Member Representative

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SUMMARY

The *Notice of Conduct Hearing* contains a total of three alleged contraventions of the RCMP Code of Conduct. Allegation 1 involves Constable Smith’s use of force while interacting with a

member of the public. Allegations 2 and 3 involve Constable Smith's reporting of, and statement related to, his interactions with that individual.

Prior to the Conduct Board rendering its decision on the allegations, the Conduct Authority Representative withdrew Allegations 2 and 3. The Conduct Board found that Allegation 1 was not established.

INTRODUCTION

[1] Constable Smith is facing three alleged contraventions of the RCMP Code of Conduct. The contraventions are related to Constable Smith's interactions with T.H. at Red Deer RCMP Detachment.

[2] On June 20, 2020, T.H. was arrested for assault and lodged in cells at the Detachment. On June 21, 2020, Constable Smith was one of two members responsible for transferring T.H. to the Red Deer Remand Centre. He is alleged to have used more force than reasonably necessary against T.H., in contravention of section 5.1 of the RCMP Code of Conduct (Allegation 1). He is also alleged to have drafted a false and misleading narrative about his interactions with T.H., in contravention of section 8.1 of the Code of Conduct (Allegation 2). Finally, he is alleged to have given two false and misleading warned statements about his interactions with T.H., in contravention of section 7.1 of the Code of Conduct (Allegation 3).

[3] The allegations are set out in the *Notice of Conduct Hearing*, dated July 16, 2021. On October 15, 2021, Constable Smith filed his response to the allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He denied all three allegations.

[4] I have been appointed as the Conduct Board pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*]. In accordance with section 45 of the *RCMP Act*, I must decide whether each allegation is established on a balance of probabilities. In other words, for each allegation, I must determine whether it is more likely than not that

Constable Smith has contravened the RCMP Code of Conduct. If I find one or more of the allegations to be established, then I must impose conduct measures.

[5] The hearing was held the week of April 11, 2022. Prior to the conclusion of the allegations phase of the hearing, the Conduct Authority Representative withdrew Allegations 2 and 3.

[6] For the reasons that follow, I find that Allegation 1 is not established.

ALLEGATIONS

[7] In accordance with the *Notice of Conduct Hearing*, the allegations read as follows:

Allegation 1

On or about June 21, 2020, at or near Red Deer, in the province of Alberta, Constable Andrew Smith engaged in conduct contrary to section 5.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police (“RCMP”) posted to Red Deer detachment, in the province of Alberta, “K” Division.
2. On June 21, 2020, [T.H.] was in police custody at the Red Deer RCMP detachment and needed to be transported to the Red Deer Remand Center. [T.H.] was a vulnerable person as he was known to have addiction issues and was homeless. You volunteered to do this transport.
3. At approximately 4:25 p.m., [T.H.] was removed from his cell for the transfer. [T.H.] had been uncooperative and assaultive during this time in police custody therefore he was handcuffed and shackled for the transfer.
4. [T.H.] immediately complained that the shackles were too tight. You used force to take him to the ground and check his shackles.
5. You escorted [T.H.] to the cell bay and put him into the backseat of the police vehicle. As you were closing the door of the police vehicle, [T.H.] spat at you.
6. You closed the door of the police vehicle but then immediately opened it and struck [T.H.]. You then pulled him out of the vehicle and took him to the ground. You held [T.H.] down and struck him twice in the area of his face.

7. Your actions caused injuries to [T.H.].
8. You later told [Constable] Etienne Bergeron that you punched [T.H.] in the face and that your hand was sore. You also told the staff at the Red Deer Remand Centre that [T.H.] got an “attitude adjustment”.
9. Your use of force in this incident was unnecessary and excessive; you assaulted [T.H.].

Allegation 2

On or about June 21, 2020, at or near Red Deer, in the province of Alberta, Constable Andrew Smith engaged in conduct contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police (“RCMP”) posted to Red Deer Detachment, in the province of Alberta, “K” Division.
2. On June 21, 2020, [T.H.] was in police custody at the Red Deer RCMP detachment and needed to be transported to the Red Deer Remand Center. [T.H.] was a vulnerable person as he was known to have addiction issues and was homeless. You volunteered to do this transport.
3. At approximately 4:25 p.m., [T.H.] was removed from his cell for the transfer. [T.H.] had been uncooperative and assaultive during this time in police custody therefore he was handcuffed and shackled for the transfer.
4. [T.H.] immediately complained that the shackles were too tight. You used force to take him to the ground and check his shackles.
5. You escorted [T.H.] to the cell bay and put him into the backseat of the police vehicle. As you were closing the door of the police vehicle, [T.H.] spat at you.
6. You closed the door of the police vehicle but then immediately opened it and struck [T.H.]. You then pulled him out of the vehicle and took him to the ground. You held [T.H.] down and struck him twice in the are of his face.
7. You later told [Constable] Etienne Bergeron that you punched [T.H.] in the face and that your hand was sore. You also told the staff at the Red Deer Remand Centre that [T.H.] got an “attitude adjustment”.
8. Your use of force in this incident was unnecessary and excessive; you assaulted [T.H.].
9. At approximately 5:43 p.m., you completed a Supplementary Occurrence Report on PROS in relation to this incident where you indicated that:

“[Writer (WRI)] opened the door and WRI delivered a distractionary strike to the [Subject of Complaint (SOC)] to get his face away from WRI and prevent further spitting/biting and then pulled the SOC from the backseat and took him to the ground to secure him while waiting for other Members. WRI delivered distractionary blow to SOC to prevent further assault by the SOC. WRI held the SOC’s face away from the WRI so he could not spit further. SOC was on his left side to not restrict breathing. Once other Members arrived, the SOC was assisted back into the Police Car.”

10. On July 1, 2020, you completed a Subject Behaviour Officer Response report on PROS in relation to this incident where you indicated that:

“Consistent with my training, I removed the subject from the police car to gain positive control of him and prevent a continuation of any offence. I opened the door of the car and used my hand in an open palm to force the subjects face away from mine and prevent further spitting or biting. I then removed the subject from the car and he was taken to the ground. Once on the ground, I took positive control of the subject and held his face away from being able to face mine and keep spitting until another Member arrived.”

11. These reports are inconsistent with the evidence in relation to this incident. When you submitted these reports into the police database, you attested to the truthfulness of these reports with disregard for the accuracy and completeness of the information they contained.

12. You failed to provide a complete and accurate account pertaining to the carrying out of your responsibilities and the performance of your duties in relation to this incident. You submitted false and misleading police reports.

Allegation 3

On or between June 21, 2020 to November 19, 2020, at or near Red Deer, in the province of Alberta, Constable Andrew Smith engaged in conduct contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police (“RCMP”) posted to Red Deer Detachment, in the province of Alberta, “K” Division.

2. On June 21, 2020, [T.H.] was in police custody at the Red Deer RCMP detachment and needed to be transported to the Red Deer Remand Center. [T.H.] was a vulnerable person as he was known to have addiction issues and was homeless. You volunteered to do this transport.

3. At approximately 4:25 p.m., [T.H.] was removed from his cell for the transfer. [T.H.] had been uncooperative and assaultive during this time in police custody therefore he was handcuffed and shackled for the transfer.

4. [T.H.] immediately complained that the shackles were too tight. You used force to take him to the ground and check his shackles.

5. You escorted [T.H.] to the cell bay and put him into the backseat of the police vehicle. As you were closing the door of the police vehicle, [T.H.] spat at you.

6. You closed the door of the police vehicle but then immediately opened it and struck [T.H.]. You then pulled him out of the vehicle and took him to the ground. You held [T.H.] down and struck him twice in the area of his face.

7. You later told [Constable] Etienne Bergeron that you punched [T.H.] in the face and that your hand was sore. You also told the staff at the Red Deer Remand Centre that [T.H.] got an “attitude adjustment”.

8. Your use of force in this incident was unnecessary and excessive; you assaulted [T.H.].

9. At approximately 5:43 p.m., you completed a Supplementary Occurrence Report on PROS in relation to this incident where you indicated that:

“WRI opened the door and WRI delivered a distractionary strike to the SOC to get his face away from WRI and prevent further spitting/biting and then pulled the SOC from the backseat and took him to the ground to secure him while waiting for other Members. WRI delivered distractionary blow to SOC to prevent further assault by the SOC. WRI held the SOC’s face away from the WRI so he could not spit further. SOC was on his left side to not restrict breathing. Once other Members arrived, the SOC was assisted back into the Police Car.”

10. On July 1, 2020, you completed a Subject Behaviour Officer Response report on PROS in relation to this incident where you indicated that:

“Consistent with my training, I removed the subject from the police car to gain positive control of him and prevent a continuation of any offence. I opened the door of the car and used my hand in an open palm to force the subjects face away from mine and prevent further spitting or biting. I then removed the subject from the car and he was taken to the ground. Once on the ground, I took positive control of the subject and held his face away from being able to face mine and keep spitting until another Member arrived.”

11. These reports are inconsistent with the evidence in relation to this incident. When you submitted these reports into the police database, you attested to the truthfulness of these reports with disregard for the accuracy

and completeness of the information they contained. You submitted false and misleading police reports.

12. In June 2020, statutory and conduct investigations were initiated against you for excessive use of force in this incident.

13. On September 30, 2020, you provided a warned statement to [Corporal] Steven Ganes in which you described the interaction you had with [T.H.] when transferring him to the Red Deer Remand Center. Your description of the incident is false, misleading and inconsistent with the gathered evidence.

14. On November 19, 2020, you provided a warned statement to [Sergeant] Garry Tavernier in which you described the interaction you had with [T.H.] when transferring him to the Red Deer Remand Centre. Your description of the incident is false, misleading and inconsistent with the gathered evidence.

15. You failed to provide a complete and accurate account pertaining to the carrying out of your responsibilities and the performance of your duties in relation to this incident.

16. Your actions in relation to this incident were discreditable.

[Sic throughout]

EVIDENCE

Facts not in dispute

[8] With respect to Allegation 1, there are several facts that are not in dispute. At all material times, Constable Smith was a member of the RCMP, posted to “K” Division, Red Deer RCMP Detachment. T.H. was lawfully arrested and detained in cells. It is not disputed that T.H. was generally disruptive and assaultive while housed in cells. While some of the specifics with respect to T.H.’s actions over the night of June 20, 2020, and into the early hours of June 21, 2020, are disputed, it is agreed that T.H. assaulted Constable Charles Audet on June 20, 2020, by spitting in Constable Audet’s face.

[9] The incident at issue took place in the cell bay (the garage) of the Detachment. There were three officers present during the incident: Constable Jeremy Augustine, Constable Courtney Scott and Constable Smith. Their statements are found in the Record.

[10] Several other members, including Sergeant Jon England, Constable Sean McLeod, Constable Etienne Bergeron, Constable Eli Ndatuje, Constable Alex MacMillan-Corriveau and

Constable Valerie Rancourt, were present either before or after the initial incident. Their statements are also found in the Record.

[11] It is also not disputed that Constable Smith applied force to T.H. while he was in the garage. However, the circumstances preceding the use of force and the specific force applied are in dispute. My findings of fact in this regard will significantly impact my findings with respect to Allegation 1.

Applicable legal principles to determine credibility and reliability of evidence

[12] The statements of Constables Bergeron, Ndatuje, MacMillan-Corriveau and Rancourt were not challenged. I heard oral evidence from Constables Smith, Audet, Augustine, Scott and McLeod. I also received expert reports and heard oral evidence from Sergeant Blaine Kobeluk and Mr. Chris Butler. Both Sergeant Kobeluk and Mr. Butler were qualified as use-of-force experts.

[13] In assessing each witness's evidence, I must consider whether they are being truthful and whether their evidence is reliable (i.e., whether the witness is in a position to accurately perceive and recollect what they observed). I may find a witness's evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness's evidence on a given point.

[14] In assessing credibility, I must not look at a witness's evidence in isolation, but rather look at the totality of the evidence. I must also consider the impact of the inconsistencies in that evidence and whether, when taken as a whole in the context of the totality of the evidence, they impact the witness's credibility.¹

[15] In *Faryna*,² the Court notes that a witness's evidence cannot be assessed solely on their demeanour, i.e., that they appear to be telling the truth. Rather, a trier of fact must determine

¹ *F.H. v McDougall*, 2008 SCC 53, at paragraph 58.

² *Faryna v Chorney*, (1952) 2 DLR 354 [*Faryna*], at page 357.

whether the witness's story is consistent with the most probable interpretation of the surrounding facts.

[16] The determination of whether the witness's account has an "air of reality" is subjective, but it must be grounded in the totality of the evidence.³

Evidence of Constable Audet

[17] I do not have any concerns with respect to the credibility or reliability of Constable Audet's evidence. He engaged directly with T.H. over the course of the evening of June 20, 2020, and he was accordingly in a clear position to independently observe T.H.'s actions. He provided a clear account of his interactions with T.H., including the circumstances of the assault by T.H. His oral evidence was consistent with his statement.

Evidence of Constable Augustine

[18] Constable Augustine interacted directly with T.H. at various times over the course of the evening of June 20, 2020, and into June 21, 2020. He was also the senior member present as T.H. was removed from his cell for transport, as well as for the majority of the incident in the garage. Therefore, he was in a clear position to independently observe both T.H.'s and Constable Smith's actions.

[19] I found certain elements of Constable Augustine's evidence to be credible and reliable. However, I found him to be defensive and evasive about the events surrounding the incident in the garage. He refused to give clear answers to the most basic questions, for example, whether he was in attendance at the morning briefing, or the approximate distance between the cells and the garage. He provided explanations of common phrases he had uttered, for example, "he got an attitude adjustment", that were not credible. In each of these instances, his answers appeared to attempt to deflect negative interpretations of his own actions, or failure to act prior to, during, or

³ *F.H. v McDougall*, 2008 SCC 53, at paragraph 58.

after the incident. Consequently, I have accepted his account of events only where it is corroborated by the other evidence before me.

Evidence of Constable Scott

[20] Like Constable Augustine, Constable Scott was present as T.H. was removed from his cell for transport and for the majority of the incident in the garage. Despite being very junior in service at the time of the incident, Constable Scott's report and statement are clear and complete. I found Constable Scott's evidence to be highly credible and reliable.

Evidence of Constable McLeod

[21] Similarly, I found Constable McLeod's evidence to be credible and reliable. His oral evidence was consistent with his statement. He answered questions clearly and in a forthright manner. While he did not witness the incident itself, he had interacted directly with T.H. over his time at the Detachment and was one of the members who responded to the call for assistance. He was also one of two members who ultimately applied a spit hood to T.H. and was, consequently, in a position to directly observe the members' response to the call for assistance and their interactions with T.H. thereafter.

Evidence of Sergeant England

[22] For the same reasons as those articulated for the evidence of Constable McLeod, I found the evidence of Sergeant England to be credible and reliable. I note that while Sergeant England did not directly assist in the application of a spit hood to T.H., he was present and engaged directly with T.H. both before and after the incident.

Evidence of Constable Smith

[23] On the whole, I found Constable Smith's evidence to be credible and reliable. He provided his evidence in a direct and forthright manner. His oral evidence was, on the whole, consistent with the video evidence, as well as that of the other witnesses. He did not attempt to embellish or overstate T.H.'s actions. Rather, he demonstrated a compassionate attitude toward

T.H. While his recollection of certain events was not clear, for example the specific words used by T.H. as he was yelling at the members, I did not find that this significantly impacted the overall reliability of his evidence.

[24] I did note a few small inconsistencies in Constable Smith's evidence. For example, he indicated, in his statement to Corporal Gains, at lines 68 to 72, that he witnessed T.H. fling feces "in the general direction of members" while in the fingerprint room. Other members, including Constable Augustine and Constable McLeod, who were present in the fingerprint room, testified that T.H. threatened to, but did not actually throw feces at any members. Rather, T.H. let the feces in his hand drop to the floor. During cross-examination, Constable Smith maintained that T.H. threw fecal matter at or near Constable Augustine, though he admitted that he did not actually witness it. Another example is the blood on the floor of the garage after the incident. Constables Scott and Rancourt reference the spot of blood on the floor in their statement and notes, respectively. Constable Smith does not. However, the video evidence clearly shows Constable Smith pointing at the spot on the floor after the incident as he is making notes. I specifically drew counsels' attention to this video evidence at a pre-hearing conference, and asked that it be addressed at the hearing. Constable Smith subsequently acknowledged, in his oral evidence, after viewing the video again, that there was blood on the floor of the garage. Collectively, the minor inconsistencies I identified did not significantly impugn the credibility or reliability of Constable Smith's evidence.

Evidence of T.H.

[25] T.H. passed away before the hearing took place. Consequently, I have only his statement to rely on. I hold some concerns about the reliability of his evidence as his statement is, at times, difficult to follow, and his answers unresponsive to the questions posed. I have considered it in the context of all of the other evidence before me.

Expert evidence of Sergeant Kobeluk and Mr. Butler

[26] The RCMP conducted an Incident Review into Constable Smith's use of force. Sergeant Kobeluk completed the Incident Review. His review involved an assessment of whether

Constable Smith had adhered to the Incident Management Intervention Model and supporting RCMP policies. In this case, Sergeant Kobeluk found that Constable Smith had not done so. Central to this conclusion is Sergeant Kobeluk's opinion that the car door was already in motion, and closed, after T.H. spat in Constable Smith's face. His opinion was that, once the door had closed, the assault had ceased and Constable Smith had no further lawful authority to act. He opined that, at this point, Constable Smith could and should have simply walked away. To do otherwise constituted "officer-created jeopardy".

[27] That said, Sergeant Kobeluk agreed that if Constable Smith had been acting with lawful authority, the delivery of the distractionary strikes that followed was consistent with the Incident Management Intervention Model and RCMP policies. However, it was not clear to Sergeant Kobeluk that the same could be said for the manner in which Constable Smith removed T.H. from the police vehicle.

[28] Mr. Butler highlighted limitations with respect to the use of the video evidence, notably the absence of audio and potential issues with the reliability of the video in the absence of a forensic analysis. He opined that Constable Smith was acting within his lawful authority at all times, and that his use of force was reasonable and necessary in the circumstances. Central to this opinion is Mr. Butler's view that the closing and reopening of the door occurred in one fluid motion and that Constable Smith's actions were consistent with his training, namely to stop the continuation of the assault. In particular, he opined that the decision to remove T.H. from the vehicle and the delivery of distractionary strikes were consistent with the Incident Management Intervention Model and RCMP policies. However, he did acknowledge that the manner in which T.H. was removed from the vehicle may be problematic, depending on how the evidence is interpreted. For example, a "controlled balance displacement takedown" that was improperly executed may still be consistent with the Incident Management Intervention Model and RCMP policies. However, a "dynamic takedown", in which Constable Smith intentionally threw T.H. to the ground in an uncontrolled fashion, would not.

[29] Both Sergeant Kobeluk and Mr. Butler agreed that the spit constituted an assault, and that the nature of this assault, in light of T.H.'s stated health conditions, could cause grievous bodily harm or death.

[30] An expert's evidence may, as a result of their special knowledge or training, assist me in evaluating the evidence. However, I must ensure that the factual basis for their opinions is consistent with the evidence and assess the weight to be given to their evidence. I cannot simply adopt their conclusions as my own. Rather, their reports and oral evidence are one aspect of the evidence I will consider in my determination of the ultimate issue, namely whether the force used by Constable Smith was reasonably necessary in the circumstances.

[31] There are several factors which have led me to place greater weight on the opinion of Mr. Butler than that of Sergeant Kobeluk. First, I have made findings of fact with respect to the mechanics of the force applied by Constable Smith that do not align with Sergeant Kobeluk's assessment of the incident. Second, and without imputing any impropriety on the part of Sergeant Kobeluk, I agree with the Subject Member Representative that the fact that Sergeant Kobeluk was called upon to provide his opinion at multiple stages is problematic. An expert who provides a preliminary opinion, on limited evidence, for the purposes of interim administrative measures should not then be called upon to provide a full use of force review. Doing so creates a potential conflict of interest as they may be required to contradict their own prior opinion, on which a senior officer has relied in the administration of the conduct file. In this case, I was unable to fully negate this concern, as Sergeant Kobeluk's report and oral evidence were not sufficiently clear to allow me to appreciate the methodology and evidence he relied on in arriving at his opinion. The methodology and evidence relied upon in Mr. Butler's expert report, as well as in his oral evidence, were more clearly set out. Finally, I agree with the Subject Member Representative that the scope of Sergeant Kobeluk's opinion strays into offering a conclusion on the ultimate issues to be determined in this case.

ANALYSIS

[32] In his submission on the allegations, the Conduct Authority Representative advised that, as written, Allegations 2 and 3 require that a member's notes are intended to be an objective representation of what transpired. As noted by the experts in their evidence, a member's notes are necessarily subjective. Consistent with his duty as a Conduct Authority Representative to continually review the strength of the case, he advised that Allegations 2 and 3 were withdrawn. The Subject Member Representative had no objection. Consequently, only Allegation 1 remains before me.

Applicable legal tests

[33] Allegation 1 states that Constable Smith used more force than was necessary in the circumstances, contrary to section 5.1 of the Code of Conduct.

[34] Section 5.1 of the RCMP Code of Conduct provides that "Members use only as much force as is reasonably necessary in the circumstances."

[35] In order for Allegation 1 to be established, the Conduct Authority must prove each of the following on a balance of probabilities:

- a. the identity of the member;
- b. the member's actions, which constitute the use of force; and
- c. that the use of force was not reasonably necessary in the circumstances.

[36] The first two elements are fairly self-explanatory. The third is more nuanced.

[37] The Supreme Court of Canada sets out the following guiding principles in assessing whether a police officer's use of force was reasonably necessary in the circumstances:

[...] police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from

escaping police custody, **the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness.**⁴

[Emphasis added]

[38] The question then is what factors are to be considered in assessing whether these principles have been met. As recognized by the Supreme Court of Canada in *Nasogaluak*, the constraints on a police officer's use of force, as previously set out, are "deeply rooted in our common law tradition and are enshrined" in section 25 of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*].⁵

[39] Where a police officer's use of force is subject to review, section 25 of the *Criminal Code* describes the circumstances in which that use of force will be justified. Subsection 25(1) of the *Criminal Code* provides:

Protection of persons acting under authority

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[40] For the reasons set out in *Bigras*,⁶ I find that Constable Smith may rely on section 25 of the *Criminal Code* in order to establish that his use of force was justified in the circumstances. In order to do so, Constable Smith must establish each of the following elements on a balance of probabilities:⁷

⁴ *R. v Nasogaluak*, 2010 SCC 6 [*Nasogaluak*], at paragraph 32.

⁵ *Nasogaluak*, at paragraph 33.

⁶ *Commanding Officer "K" Division v. Constable Bigras*, 2020 RCAD 02 [*Bigras*], at paragraphs 19 to 22.

⁷ *R. v Crampton*, 2005 ABCA 81 [*Crampton*], at paragraph 44; and *Day v Woodburn*, 2019 ABQB 356 [*Day*], at paragraph 221.

- a. At the time in question, he was required or authorized by law to perform an action in the administration or enforcement of the law. In other words, he was acting within the scope of his lawful duties.
- b. He acted on reasonable grounds in using force. In other words, Constable Smith's subjective belief that it was necessary to apply force in order to carry out his lawful duties was objectively reasonable in the circumstances.
- c. He did not use unnecessary force. This third element focusses on the amount of force used.

[41] Constable Smith's subjective belief in the need to use force and the amount of force required must be objectively reasonable on the totality of the circumstances, as they existed at the time the force was used.⁸ Numerous factors are to be considered when assessing the amount of force used. These will be detailed in my analysis.

[42] As previously indicated, Constable Smith's identity as the member who applied force to T.H. is not in dispute. The nature of his actions that constitute the use of force and the circumstances under which he came to apply that force are in dispute.

[43] I will begin by providing my findings of fact with respect to Constable Smith's interactions with T.H. on June 21, 2020. I will then provide my findings with respect to each element of the test under section 5.1 of the Code of Conduct.

Findings of fact

[44] I find that T.H. was known, through his many interactions with RCMP members in Red Deer, to be a vulnerable person experiencing homelessness, an intravenous drug user, and likely experiencing mental health issues. He was known to be aggressive, unpredictable and uncooperative with police.

⁸ *Nasogaluak*, at paragraph 35.

[45] Constable Smith was assigned to the downtown area and had frequent interactions with T.H., either while doing foot patrols through shelters or soup kitchens, or in response to calls for service involving T.H.

[46] T.H. was arrested by RCMP members on June 20, 2020, for assault against his intimate partner. He was uncooperative and aggressive upon arrest and transport to the Detachment. He was searched and lodged in cells.

[47] It was subsequently determined that T.H. would be charged with assault with a weapon. In light of the increase in jeopardy, Constable Audet went to T.H.'s cell to read him his rights and to take him to be fingerprinted.

[48] T.H. refused to exit his cell. Constable Audet remained at or near the cell door and used his radio to call for assistance. Before anyone arrived, T.H. quickly approached Constable Audet and spat in his face.

[49] Constable Audet used force to take T.H. to his mattress to prevent the continuation of the assault, and placed another call for urgent assistance. T.H. continued to act out, trying to kick Constable Audet, who then took him to the ground. When another member arrived, they switched positions in order to allow Constable Audet to decontaminate and seek medical attention. I note that, during this incident, T.H. stated having one or more serious communicable diseases.

[50] At the start of his shift on June 21, 2020, Sergeant England was advised that T.H. had assaulted a member on the night shift by spitting on him. At that morning's briefing, attended by Constable Smith, Constable Augustine and Constable Scott, Sergeant England advised that T.H. had spat on a member the night prior and that, for officer safety concerns, more than one officer needed to be present when interacting with T.H. He did not direct members to apply a spit hood to T.H. when doing so.

[51] Constable Smith interacted with T.H. several times over the course of that day.

[52] The first interaction occurred mid morning, when he accompanied Sergeant England and Constable Augustine to T.H.'s cell to escort T.H. to his call with duty counsel. T.H. refused to leave his cell.

[53] The second interaction was in the early afternoon, when Constables Smith and Augustine attended T.H.'s cell in order to escort him to his judicial interim release hearing. T.H. was escorted a short distance down the hall to the designated room. He and Constable Smith sat in the room. Constable Augustine stood inside the room. Other members were present in the hall in the event their assistance was required.

[54] T.H. became upset at the conditions that were to be imposed for his release. He was yelling, was very agitated and stood up. Constable Augustine directed him to sit, and then pushed him back down into his chair.

[55] At being advised that he would be remanded, T.H. grabbed the receiver of the phone. Constable Smith took the phone out of T.H.'s hand and, due to his continued resistance, escorted him using a soft control technique to the fingerprint room.

[56] T.H. was in the fingerprint room with Constables Augustine and McLeod when he reached into his pants and pulled out feces. He did so twice, dropping it on the floor. Standing close to Constable Augustine, T.H. then threatened that the next handful would be thrown at him, to which Constable Augustine pushed T.H. away from him. T.H. did not throw the feces at Constable Augustine. Rather, he dropped it to the floor. Sergeant England directed that T.H. be returned to cells. T.H. was refusing to walk and so Constables Smith and Augustine took positive control and escorted him back to cells.

[57] While in cells, T.H. was urinating on the floor, causing it to flood into the hallway. He defecated in his cell, smearing feces on the walls and floor. At various times, he was yelling, swearing, making aggressive comments about or to police.

[58] A few hours after the fingerprint room incident, the remand paperwork was received. Constable Smith heard the call over the radio and returned to the Detachment to effect the

transfer. This was not uncommon given that the Remand Centre and the Detachment were within his assigned zone.

[59] Upon arriving at the Detachment, Constable Smith parked his police vehicle in the garage and asked Constable Augustine to accompany him in effecting the transfer. They discussed a plan for their interactions with T.H. They agreed that, in light of his behaviour while in cells, he would be handcuffed and shackled. They did not discuss whether they should place a spit hood on T.H.

[60] T.H. was initially compliant. Once handcuffed and shackled, he complained that the shackles were too tight and refused to walk. Constables Smith and Augustine checked his shackles and determined that they were loose and did not require adjustment. Constable Scott was also present, further down the hall, while this occurred. I note that the Conduct Authority Representative has acknowledged that there was nothing improper in the application of the restraints. Nor did either expert identify any concern with Constables Smith's or Augustine's actions.

[61] Constable Smith then escorted T.H. to the garage with one hand on T.H.'s arm. Constable Augustine was beside him, and Constable Scott walked ahead to open doors so that they would have an unobstructed path to the police vehicle.

[62] As they passed the guard desk, Constable Augustine stopped or shortly thereafter went back to collect the remand paperwork. Constable Smith did not stop and continued to escort T.H. to the garage where Constable Scott was holding the door open.

[63] Constable Smith placed T.H. in the police car, backwards, so that he could sit and then swing his legs into the vehicle. As he was closing the door, T.H. spat in Constable Smith's face. While Constable Smith was wearing sunglasses, as well as a mask and medical gloves, there was a large amount of spit on his forehead. It is not contested that this constituted a serious assault, which, in light of T.H.'s stated medical conditions, entailed a high risk of harm.

[64] The door, already in motion, closed. Constable Smith's hand remained on the side of the door as it was closing and then, within less than one second, slid to the car door handle and opened the door.

[65] Constable Smith delivered an open palm distractionary strike to T.H.'s head or face area with this right hand. He then pulled T.H. from the car and onto the ground. In executing this takedown, he began with two hands on T.H. As he was pulling T.H., Constable Smith lost his grip with his right hand, leaving his left hand gripping T.H.'s loose shirt. This caused him to lose control of T.H., who then landed and rolled a few feet away on the concrete garage floor.

[66] Constable Smith executed a half mount on T.H., who was now lying on his side.

[67] T.H. struggled and moved his head toward Constable Smith. Constable Smith delivered an open palm distractionary strike to T.H.'s head or face area with his right hand. There was some dispute as to whether Constable Smith delivered a second strike at this time. Sergeant Kobeluk identified two strikes. Mr. Butler identified one. The evidence of Constables Smith, Scott and Augustine is that a single controlled strike was delivered. The video evidence is not sufficiently clear to rebut this evidence. Consequently, I find that Constable Smith delivered a single strike while T.H. was on the ground.

[68] As this was happening, Constable Augustine placed a call for urgent assistance on his radio, reporting that T.H. had spat in Constable Smith's face. Neither he nor Constable Scott intervened in any other fashion.

[69] While on the ground, T.H. was laughing and taunting Constable Smith about having communicable diseases, including COVID-19. Constables Smith, Scott and Augustine all witnessed this behaviour.

[70] Having now regained control of T.H., Constable Smith held him on the ground for a few moments. He then helped him up, placed him in the back of the police vehicle, and shut the door. All three members then exited the garage and Constable Smith proceeded to the eye wash and sink to decontaminate.

[71] Sergeant England, Constable McLeod and Constable MacMillan-Corriveau entered the garage a few minutes later. Sergeant England looked in the car, noticed that T.H. appeared to be having difficulty breathing, and opened the door slightly to speak with him. Constables McLeod and MacMillan-Corriveau went to the other side of the vehicle, quickly pulled T.H. out, applied a spit hood and attended to his apparent medical distress. T.H.'s breathing regulated in short delay. Emergency Medical Services were called. T.H. refused treatment and the paramedics cleared him for transfer to the Remand Centre.

[72] Constables Smith and Augustine then transported him to the Remand Centre. Once there, a member is heard, on the audio to the dash-cam video, referring to T.H. having had "an attitude adjustment". Constable Smith denies that it is him. Constable Augustine testified that he was the one who made the comment. The audio is not sufficiently clear for me to discern, with any certainty, who is speaking. Consequently, I accept that Constable Augustine made the reference to T.H. having had "an attitude adjustment".

[73] The question of whether Constable Smith requested a spit hood at any point after removing T.H. from the police vehicle was the subject of considerable debate. Constable Smith testified that it had been his intent to place a spit hood on T.H. after removing him from the police vehicle. The Conduct Authority Representative challenged him on this point.

[74] Constable Smith testified that while he was struggling with T.H. on the floor of the garage, someone said to get a spit hood. He could not say with any certainty whether it was him, or someone else. Constable Scott adamantly testified that it was Constable Smith who requested the spit hood. Constable Augustine could not remember. Nor could he recall whether he requested one when he issued the call for assistance.

[75] Constable Smith further testified that once he had T.H. under control, and realized a spit hood was not readily forthcoming, he decided that the best course of action would be to secure T.H. in the police vehicle so that he could decontaminate. On the balance of the evidence before me, I find that Constable Smith requested a spit hood. The fact that neither Constable Scott, who

had just finished probation, and Constable Augustine, a senior constable and the most senior member on scene, did not go to secure a spit hood, cannot be held against Constable Smith.

[76] Constable MacMillan-Corriveau and Sergeant England confirm that Constable Augustine reported, in his call for assistance, that T.H. had spat on Constable Smith. Constable MacMillan-Corriveau reports that is why he collected a spit hood on his way to the garage. However, by this time, Constable Smith had already left the garage and was decontaminating at the sink.

[77] Finally, while there is no photo of T.H. upon his arrival at the Detachment, the photo of him at the Remand Centre clearly shows a laceration or scrape on his forehead. There was a small blood stain on the floor of the garage, where T.H. had been laying. Sergeant England, as well as Constables Rancourt, Bergeron and Scott also report observing a fresh cut on T.H.'s forehead area. Consequently, I find that T.H. was injured as a result of Constable Smiths' use of force and, in particular, that he suffered a laceration or scrape on his forehead.

Application of the test under section 5.1 of the Code of Conduct

Identity of the member who applied force

[78] The identity of the member is not in dispute. Constable Smith is the member who, on June 21, 2020, had a physical encounter with T.H. in the garage of the Red Deer Detachment.

Actions that constitute the use of force

[79] The actions that constitute the impugned use of force by Constable Smith are as follows: Constable Smith delivered an open hand strike to T.H.'s head or face area while he was in the back of the police vehicle. Constable Smith then executed a takedown manoeuver to remove T.H. from the police vehicle, taking him to the floor of the garage. He delivered a second open hand strike to T.H.'s head or face area before gaining physical control of T.H. and returning him to the back of the police vehicle.

Reasonableness and necessity of the use of force

[80] At issue is this third branch of the test, namely whether the use of force was reasonably necessary. In undertaking this analysis, I must determine whether Constable Smith has established that he may avail himself of the protection of section 25 of the *Criminal Code*.

Was Constable Smith acting within the scope of his lawful duties?

[81] The Conduct Authority Representative's position is that Constable Smith was acting within the scope of his lawful duties prior to the assault by T.H., namely to effect T.H.'s transfer from the Detachment to the Remand Centre. However, he argues that Constable Smith did not act with lawful authority after the assault.

[82] He relies on Sergeant Kobeluk's opinion that the door of the police vehicle was in the process of closing when T.H. spat in Constable Smith's face, and that it closed immediately thereafter. At that point, the assault had ended. Constable Smith could and should have simply walked away. The Conduct Authority Representative argues, in accordance with Sergeant Kobeluk's opinion, that Constable Smith's lawful authority to prevent the continuation of the assault, in order to preserve officer safety, ceased as soon as the door to the police vehicle closed.

[83] The Subject Member Representative rejects the Conduct Authority Representative's arguments with respect to officer-created jeopardy. He argues that the jeopardy in this situation was created by T.H., who assaulted Constable Smith. The assault held the risk of grievous bodily harm or death. Given T.H.'s actions over the course of the prior 24 hours, it was reasonable for Constable Smith to believe that T.H. would continue his assaultive behaviour. He submits that Constable Smith acted within his lawful authority to prevent the continuation of the assault and preserve officer safety by seeking to apply a spit hood to T.H.

[84] He further argues that the closing and re-opening of the door happened in one fluid motion. Here he relies on the evidence of the experts, with respect to reaction times.

[85] I find that Constable Smith's interactions with T.H. were initially in the execution of his duty to transfer T.H. to the Remand Centre. However, those circumstances changed when

Constable Smith was subjected to an unprovoked assault by T.H., to which he had a lawful duty to respond. In particular, he had a lawful duty to prevent the continuation of the assault and preserve officer safety.

[86] The door to the police vehicle was in motion when T.H. spat on Constable Smith. I have considered the evidence before me, including the expert evidence with respect to the time required for a person's brain to respond to a physical stimulus. In this case, that stimulus was the assault by T.H. The video establishes that Constable Smith's hand does not leave the door and slides immediately to the handle. The time between the door closing and reopening is less than one second. This closing and reopening of the door was in one fluid motion, without pause.

[87] I am mindful of well-established jurisprudence that recognizes that members often find themselves in dynamic and fluid situations, in which they are required to make "rapid, on-the-spot decisions".⁹ The assessment of a member's actions is to be based on the circumstances, as they existed at the time of the event. A decision maker is not to rely on hindsight in assessing the propriety of their actions.¹⁰

[88] While Sergeant Kobeluk opined that Constable Smith could and should have simply left the door closed at this point, I find that this view is not reflective of the circumstances, as experienced by Constable Smith, at the time in question. Rather, it is offered with the benefit of hindsight.

[89] I find that Constable Smith was acting reflexively, in accordance with his training to prevent the continuation of the assault, in order to preserve officer safety. I find it highly unlikely, from a physiological point of view, that he could have interrupted this response when the door closed for a fraction of a second.

⁹ *R. v DaCosta*, 2015 ONSC 1586, 2015 CarwellOnt 3348 [*DaCosta*], at paragraph 99.

¹⁰ *Crampton*, at paragraphs 44 and 45.

[90] In light of the foregoing, I find that Constable Smith was acting with lawful authority at the time that he applied force to T.H. Thus, the first branch of the test under section 25 of the *Criminal Code* is satisfied.

Was Constable Smith's belief that it was necessary to apply force objectively reasonable?

[91] Here again, the Conduct Authority Representative argues that Constable Smith could and should have contained T.H. in the back of the police vehicle. He states that, once the door was closed, there was no further risk of imminent harm. There were many members present in the Detachment who could have responded and applied a spit hood to T.H., who remained handcuffed and shackled, while he was in the back of the police vehicle. T.H. could then have been safely transported to the Remand Centre. The only urgency at that time was for Constable Smith to decontaminate. Constable Smith's actions only served to further delay his ability to do so.

[92] The Conduct Authority Representative further argues that Constable Smith's stated intention of applying a spit hood is not credible, and that his actions were, in fact, retributive. Here, he submits that the fact that neither Constable Smith nor Constable Augustine thought to apply a spit hood when they removed T.H. from his cell suggests that Constable Smith did not consider T.H. to be at a high risk of spitting. He further submits that the fact that Constable Smith did not apply a spit hood to T.H. prior to returning him to the police vehicle is clear evidence that his stated intention is not credible.

[93] The Subject Member Representative argues that Constable Smith had to take steps to contain and control T.H., in order to prevent the continuation of the assault. He states that Mr. Butler, and all of the other member witnesses, testified that it would not only be very difficult, but also tactically unsound to seek to apply a spit hood to someone in the back of a vehicle. He points to the fact that Constables McLeod and MacMillan-Corriveau removed T.H. from the police vehicle before applying the spit hood as evidence that Constable Smith's stated intention was tactically sound.

[94] He further argues that there is absolutely no evidence to suggest that Constable Smith acted out of retribution. To the contrary, all available evidence indicates that Constable Smith did not act out of anger.

[95] I have found that in reopening the door to the police vehicle, Constable Smith acted reflexively in accordance with his training, which was to prevent the continuation of the assault. The question is then, having opened the door, whether it was reasonable for him to believe it was necessary to apply force in order to do so.

[96] A member's assessment of a threat must be objectively reasonable.¹¹ In this case, the parties agreed that spitting is a serious assault and that, on the facts of this case, entailed the risk of grievous bodily harm or death. I also find that, as this was the second time T.H. had spat on a member while in custody, Constable Smith's stated belief that there was a risk that he would continue to do so was objectively reasonable.

[97] I do not accept the Conduct Authority Representative's argument that the failure to apply a spit hood to T.H. when removing him from his cell undermines the objective reasonableness of this belief. The evidence before me indicates that the application of a spit hood often causes a person to act out. The Conduct Authority Representative suggests that T.H. had already been acting out, necessitating the application of handcuffs and shackles. He questions whether the application of a spit hood would have caused a further escalation in T.H.'s behaviour.

[98] However, at the time that T.H. was removed from his cell, he was relatively calm and compliant. It had been many hours since he had spat on Constable Audet. Constable Smith's explanation that he would avoid the application of a spit hood unless absolutely necessary is consistent with the approach and experience of the other member witnesses, as well as the expert evidence.

[99] I do not accept that Constable Smith's failure to successfully apply a spit hood to T.H. after removing him from the police vehicle undermines the objective reasonableness of his

¹¹ *Day*, at paragraphs 239 to 241.

belief, or the credibility of his stated intent. I have found that Constable Smith did request a spit hood after he had secured T.H. on the ground. The fact that a spit hood was not applied to T.H. before he was placed back in the police vehicle is not solely attributable to Constable Smith's actions. I do not accept that it is evidence of a lack of good faith on Constable Smith's part.

[100] All of the witnesses, with the exception of Sergeant Kobeluk, testified that it would be tactically unsound to attempt to apply a spit hood to T.H. while he was in the back of the police vehicle. Although he was shackled and handcuffed, he still had the ability to cause injury to members who interacted with him. For example, he could kick or headbutt a member who tried to approach him. Similarly, both experts, as well as several member witnesses, testified that members are trained to bring an assaultive subject to the ground in order to gain positive control. Constable Smith's actions, like those of Constable Audet on June 20, 2020, were consistent with that training. Moreover, as noted by the Subject Member Representative, T.H. was ultimately removed from the police vehicle and brought to the ground prior to the spit hood being applied.

[101] I have also found no evidence to suggest that Constable Smith acted out of retribution. In considering the totality of the circumstances, I note that, throughout his interactions with T.H. over the course of the day, Constable Smith demonstrated patience and restraint. While he may have been understandably upset following the assault, the evidence before me, including that of several of the members present when or immediately after the assault took place, indicates that he remained in control of his emotions.

[102] Consequently, I find that Constable Smith's belief that it was necessary to apply force in order to execute his lawful duty to prevent the continuation of an assault by T.H. was objectively reasonable. The second branch of the test under section 25 of the *Criminal Code* is satisfied.

Was the amount of force used by Constable Smith reasonable?

[103] As noted in *Nasogaluak*,¹² the question is not simply whether an officer honestly believed that the force was necessary and the amount of force used was a measured response to the situation, the officer's belief must also be objectively reasonable.

[104] That said, the Supreme Court of Canada also recognizes¹³ that a member's actions are not to be held to a standard of perfection. Also, members cannot be expected to measure the "precise amount of force the situation requires".¹⁴ The failure to use the least amount of force possible will not, in and of itself, render the amount of force used unreasonable.

[105] The jurisprudence points to a number of factors that are to be considered by a trier of fact in assessing whether the force used by a police officer was reasonable in the circumstances. These include, but are not limited to: the events preceding the use of force; the number and personal characteristics of the officer(s) involved as well as their abilities or restrictions; the suspect's physical stature, state of mind, actual or apparent intoxication and interaction with police; the presence and use of weapons; and the nature, duration and apparent motives for use of force employed by the police.¹⁵

[106] I have already set out the events preceding the use of force as well as Constable Smith's motives for the use of force, in some detail. While T.H. may, at one time, have been a member of the Canadian Forces, his health had suffered over the years. Constable Smith was certainly stronger than T.H. at the time of the incident. T.H. was a vulnerable person under the law.

[107] While T.H. was known to use drugs, there is no evidence to suggest he was under the influence of any substances at the time of the incident. However, he may have been experiencing mental distress or illness. He was also shackled and handcuffed.

¹² *Nasogaluak*, at paragraph 34. This paragraph is also cited in *DaCosta*, at paragraph 102.

¹³ *Nasogaluak*, at paragraph 35.

¹⁴ *Crampton*, at paragraph 45.

¹⁵ A comprehensive list can be found in *Day* at pages 28 to 30.

[108] It is not disputed that the open hand strikes and the takedown constitute physical hard control techniques. Nor is it disputed that in the face of a risk of grievous bodily harm or death, physical hard control techniques may reasonably be employed.

[109] The first strike was delivered as a distractionary measure as soon as the door to the police vehicle was opened. The second strike was also delivered as a distractionary measure to prevent further spitting as Constable Smith sought to regain control of T.H. on the ground. Neither expert raised any concern with respect to their application, in principle, in the circumstances. The question is whether the manner in which these techniques were executed by Constable Smith was reasonable.

[110] There is no evidence to suggest that these were “high-energy strikes”. Rather, the video evidence and that of Constables Smith, Scott and Augustine, indicate that the strikes were delivered in a measured and controlled fashion. Neither expert identified any concerns about the manner in which they were executed. Consequently, I find that the two open-hand distractionary strikes, and the manner in which they were executed, constituted a reasonable use of force in the circumstances.

[111] While I have found that Constable Smith’s decision to remove T.H. from the vehicle was consistent with his training, the takedown itself is more problematic. There is no dispute that Constable Smith owed a duty of care to T.H., and that this duty was elevated by the fact that T.H. was in restraints. Nor is it disputed that T.H. hit the garage floor in an uncontrolled fashion. Blood is noted on the floor, where T.H. landed, and he was observed to have a small scrape or laceration to his forehead afterwards. Mr. Butler opined, in particular, that if Constable Smith intentionally initiated a dynamic takedown (i.e., one in which the subject’s descent is uncontrolled by design), it would not be consistent with the Incident Management Intervention Model, RCMP policies or use of force training.

[112] The Conduct Authority Representative cites *Day* for the proposition that the presence of an injury, while not determinative, has probative value in assessing the amount of force used. In the present case, the cut to T.H.’s forehead appears to have occurred when he hit, and then rolled,

on the garage floor. There is no question that T.H.'s fall to the garage floor was uncontrolled. The question is whether it was the result of a dynamic takedown or, as submitted by the Subject Member Representative, a controlled manoeuvre that was not properly executed, for reasons not wholly within Constable Smith's control.

[113] Neither Constable Augustine nor Constable Scott had a clear view of Constable Smith's actions in the back of the police vehicle. They could not provide a description of how T.H. was removed from the vehicle. T.H.'s account of the incident, as found in his statement, is not helpful in this regard. Therefore, I must rely on the statements and testimony of Constable Smith, and the video evidence. I have considered the expert evidence in interpreting this evidence, including the limitations of the video evidence. However, I agree with the Conduct Authority Representative that the video allows me to determine the basic elements of the events.

[114] I find that Constable Smith did not initiate a dynamic takedown. Rather, he attempted to initiate a controlled manoeuvre. When he initiated the manoeuvre, Constable Smith had both hands on T.H.'s upper body area. As he pulled, his right hand lost its grip. I accept that Constable Smith's ability to grip was negatively impacted by the medical gloves he was wearing. It is at this point that T.H. begins an uncontrolled descent to the floor and rolls as he lands.

[115] While Constable Smith's execution of the manoeuvre was flawed, on the totality of the circumstances, I cannot find that it constituted an unreasonable use of force. Consequently, I find that the third element of the test under section 25 of the *Criminal Code* is met. Having found on a balance of probabilities that Constable Smith's use of force was justified in the circumstances, I find that Allegation 1 is not established.

[116] In light of this finding, it is not necessary for me to consider whether section 34 of the *Criminal Code* is applicable.

CONCLUSION

[117] Allegations 2 and 3 have been withdrawn by the Conduct Authority Representative. I have found that Allegation 1, the only remaining allegation, is not established.

[118] Any interim measures in place should be resolved, in a timely fashion, in accordance with section 23 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[119] Finally, either party may appeal this decision by filing a statement of appeal with the Commissioner in accordance with section 45.11 of the *RCMP Act*.

July 15, 2022

Christine Sakiris

Date

Conduct Board