



**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:

**Chief Superintendent Steven Ing**  
Level III Conduct Authority, "E" Division

(Conduct Authority)

and

**Corporal Matthew Hare**  
Regimental Number 48836

(Subject Member)

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**Conduct Board Decision**

Christine Sakiris

May 28, 2023

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Ms. Janice Calzavara and Staff Sergeant Jon Hart, Conduct Authority Representatives

Mr. John Benkendorf, Subject Member Representative

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## **SUMMARY**

Corporal Hare is facing four alleged contraventions of section 8.1 of the RCMP Code of Conduct. All four allegations involve alleged false, misleading or inaccurate statements made in the context of a civil action and repeated, in substance, in the course of the present Code of Conduct investigation. Of concern were comments made by the judge in the civil action about Corporal Hare's credibility, including that he fabricated portions of his evidence, as well as the motives for his actions.

The Conduct Board proceeded by way of a written decision based on the Record. The Conduct Board found that it was not bound by the judge's comments. After considering the evidence, the Conduct Board found that the allegations were not established on a balance of probabilities.

## **INTRODUCTION**

[1] Corporal Matthew Hare is facing four alleged contraventions of section 8.1 of the RCMP Code of Conduct. All four allegations involve alleged false, misleading or inaccurate statements made in the context of a civil action and repeated, in substance, in the course of the present Code of Conduct investigation.

[2] The allegations are set out in the *Notice of Conduct Hearing*, dated January 19, 2022. On June 25, 2022, Corporal Hare filed his response to the allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. While Corporal Hare admitted to many particulars, he denied all four allegations.

[3] 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 Corporal Hare has contravened the RCMP Code of Conduct. If I find one or more of the allegations to be established, then I will seek submissions from the parties before imposing conduct measures.

### **Allegations**

[4] It is not contested that Corporal Hare was involved in a civil litigation related to the filing of a lien against Outback Developments Ltd. (Outback), a company owned by K.W. Outback was the owner of the property adjacent to Corporal Hare's, on which it had built a house to be sold. Corporal Hare filed a lien against Outback's property for non-payment of costs related to the construction of a retaining wall between their two properties. A civil action was advanced by Outback to resolve the question of whether the lien was valid, as well as to claim costs and damages (the Civil Action).

[5] The Civil Action was heard by the Honourable Madam Justice Matthews (Justice Matthews), of the Supreme Court of British Columbia. Justice Matthews' written decision (the Civil Decision) is dated May 17, 2019. Of concern, for the purposes of the present matter, are

Justice Matthews' comments about Corporal Hare's credibility and in particular that he fabricated portions of his evidence.

[6] The allegations and particulars, as set out in the *Notice of Conduct Hearing*, are 23 pages in length, and will not be reproduced in the body of this decision. Rather, the *Notice of Conduct Hearing* is attached as Appendix "A" to this decision. For ease of reference, I will provide a summary of the substance of the allegations.

[7] Allegation 1 is that, between April 16, 2019, and May 17, 2019, at or near Kelowna, in the Province of British Columbia, Corporal Hare made several false or misleading claims in his testimony during the Civil Action, in contravention of section 8.1 of the RCMP Code of Conduct. In particular, it is alleged that Corporal Hare provided false or misleading testimony with respect to the existence of an agreement with K.W. for the construction of the retaining wall, in which K.W. had agreed to pay for half of the materials, the cost of the materials, and to the reason why Corporal Hare had obtained a title search on Outback's property prior to filing the lien.

[8] Allegation 2 is that, between April 16, 2016, and May 17, 2016, at or near Kelowna, in the Province of British Columbia, Corporal Hare made several false, misleading or inaccurate claims in his affidavit filed in support of the Civil Action, in contravention of section 8.1 of the RCMP Code of Conduct. In particular, it is alleged that Corporal Hare provided false or inaccurate information in his affidavit with respect to: the existence of an agreement with K.W. for the construction of a retaining wall, the costs of the materials for the construction of the retaining wall, and changes to the grade of the properties. It is also alleged that Corporal Hare included this information despite being "aware that there was more to the general rule that the higher side is responsible for retaining walls". Consequently, it is alleged that Corporal Hare was inaccurate or misleading in his sworn statement to the Court.

[9] Allegation 3 is that, between June 26 and 29, 2021, at or near Kelowna, in the Province of British Columbia, Corporal Hare provided a voluntary statement in relation to this RCMP Code of Conduct matter, in which he "fabricated the existence" of an agreement with K.W. for the construction of a retaining wall, in contravention of section 8.1 of the RCMP Code of Conduct.

[10] Allegation 4 is that, between June 30, 2021, and July 15, 2021, at or near Kelowna, in the Province of British Columbia, Corporal Hare provided a voluntary response to questions from the Code of Conduct investigator, in which he made false statements in contravention of section 8.1 of the RCMP Code of Conduct with respect to: the existence of an agreement with K.W. for the construction of a retaining wall, the costs associated with its construction, and his reason for requesting a title search of Outback's property.

**Decision to proceed by way of a written decision based on the Record**

[11] Upon my initial review of the *Notice of Conduct Hearing* and the investigation materials, I held some concerns as to whether the allegations, as framed, effectively required me to re-litigate a private civil matter. I held a pre-hearing conference with counsel on June 9, 2022, in order to hear their perspectives.

[12] The Conduct Authority Representatives submitted that I may adopt the findings of the judge in the Civil Action, but that even if I am not inclined to do so, I will have the opportunity to hear the evidence for myself. As the Civil Action has been concluded, they submitted that this would not constitute re-litigation of the case.

[13] The Subject Member Representative indicated that he held concerns about the propriety of advancing the allegations and of my jurisdiction to hear the matter. He requested time to consider his client's position, which was granted.

[14] On June 26, 2022, the Subject Member Representative advised that he would not be filing a motion and would be submitting Corporal Hare's response to the allegations. He did so on June 28, 2022, and provided additional documentation in support of Corporal Hare's response over the next several months, in accordance with the timelines that I set. This process concluded on September 23, 2022.

[15] The additional documentation provided by Corporal Hare includes receipts that he asserts are for the materials used in the construction of the retaining wall, and affidavits from three individuals, which are advanced in support of Corporal Hare's stated belief that he had an agreement with K.W. to share the costs of these materials.

[16] On August 8, 2022, the Conduct Authority Representatives advised that they did not accept that the receipts submitted are properly attributable to the cost of the retaining wall. However, they conceded, in accordance with the Civil Decision, that a portion of the retaining wall lies on both properties. The need to conduct an excavation of the property, as proposed by the Subject Member Representative, was accordingly avoided.

[17] At our pre-hearing conference of October 12, 2022, I advised the parties of my intention to proceed by way of a written decision based on the Record, in accordance with section 23 of the *CSO (Conduct)*. My rationale, as reflected in the summary of the pre-hearing conference, dated October 13, 2022, was as follows:

[...]

The [Conduct Authority Representatives have] argued, since our first [pre-hearing conference], that I am not being asked to re-litigate the [Civil Action]. Rather, the allegations under section 8.1 are distinct from the material issues in the [Civil Action]. I agree, in principle, that a disciplinary action may flow from a civil action. Having received, on or about September 23, 2022, further supplementary material on which [Corporal] Hare intends to rely, I once again undertook a detailed review of the record before me. I have spent a considerable amount of time reviewing the particulars of each allegation. They refer, or rely on, the record of the [Civil Action]. This includes the transcript of the [Civil Action], including [Justice Matthews'] decision, as well as evidence tendered in the course of those proceedings. **Corporal Hare admits to virtually every particular. Where he disagrees, it is with respect to the interpretation given to, or inferences drawn from that evidence, rather than with the cited evidence itself.** After further consideration of the record before me, I have determined that I do not need to hear oral evidence.

[...]

[Bold added]

[18] I then invited comments from counsel. The Subject Member Representative expressed concern, noting that Corporal Hare's position is that Justice Matthews misapprehended the evidence. I noted that asking me to revisit the Justice Matthews' findings is in fact asking me to re-litigate the matter.

[19] The Conduct Authority Representatives also expressed concern, noting that the issue in this matter is not the existence of an agreement in law, but rather whether Corporal Hare was being truthful.

[20] In response, I noted the following:

[...] the Conduct Authority has an obligation to put it's "best foot forward" when filing the [Notice of Conduct Hearing]. The investigation materials and other documentation that accompany the Notice of Conduct Hearing form the basis for the [Conduct Authority's] case. In short, it must include all of the evidence on which the Conduct Authority Representative[s] will rely in presenting their case. In the present matter, it must include all evidence on which the Conduct Authority Representative[s] will rely to establish that [Corporal] Hare contravened section 8.1 of the Code of Conduct. The only evidence that accompanied the [Notice of Conduct Hearing] is the record of the civil matter, the "victim impact statement" provided by [K.W.], and [Corporal] Hare's written statement (including responses to follow-up questions and documentation from the lawyer who represented [Corporal] Hare in the civil matter). The [Conduct Authority's] case relies almost entirely on the record of the civil matter, and in particular on [Justice Matthews'] comments with respect to Corporal Hare's evidence. As such, the question is the extent to which I am bound to follow the findings of the [...] judge, and whether her comments with respect to Corporal Hare's evidence form part of the ratio or were made in obiter. This is a question of law, not of fact.

[...]

[21] I confirmed, following questions from both parties, that I would consider the entirety of the Record, including the documentation submitted by Corporal Hare. I advised that, in so doing, I would be mindful that this evidence has not been tested by cross-examination. The Subject Member Representative expressed concern that this evidence should be tested in order to inform my assessment of its weight. I disagreed, noting that oral evidence is to be called when a conduct board determines it is material and necessary to resolve a serious or significant unresolved conflict in the evidence. In this case, I have not identified such a need.

[22] I confirmed that I would be seeking written submissions on the merit of the allegations, including whether the Justice Matthews' comments about Corporal Hare's evidence form part of the ratio of her decision, or were made in obiter.

[23] Both parties requested extensions to the timelines I initially set for the provision of their written submissions, which were granted. The Conduct Authority Representatives provided their written submissions on December 23, 2022. The Subject Member Representative provided his on February 10, 2023. Finally, the Conduct Authority Representatives' reply was received on



March 10, 2023. Both parties have submitted numerous cases in support of their respective positions, which I have also reviewed.

[24] For the reasons to follow, I find that Allegations 1, 2, 3 and 4 are not established.

### **PERMISSIBLE USE OF THE CIVIL DECISION**

[25] The admissibility of the Civil Decision<sup>1</sup> and the associated record, including transcripts of the proceeding, as evidence in these conduct proceedings is not contested. However, the parties disagree on the use that may be made of the Civil Decision. The Conduct Authority Representatives urge me to adopt the Civil Decision, with respect to both its outcome and findings of fact, as proof of the allegations at issue. The Subject Member Representative argues that it cannot be relied upon in this manner, and that its weight must be assessed.

[26] In order to determine the use that may be made of the Civil Decision, I must first examine the legal issues that were to be determined, the results of the action, and the findings of fact that may be binding in this matter, namely those that form part of the ratio of the decision.

[27] I must then determine the extent to which those facts may be relied on as proof of the essential elements of the allegations before me. In doing so, I will consider the Conduct Authority Representatives' arguments with respect to the application of *Toronto v. CUPE*.<sup>2</sup>

### **Issues to be determined in the Civil Action**

[28] The central issues in the Civil Action, as framed by Justice Matthews in the Civil Decision,<sup>3</sup> are as follows:

- a) Whether the lien was validly filed in accordance with the provisions of the *Builders Lien Act*, SBC 1997, c 45, s 19 [*Builders Lien Act*], which requires a determination of whether:

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<sup>1</sup> *Outback Developments Inc. v Hare*, 2019 BCSC 2404 [*Outback*].

<sup>2</sup> *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 [*Toronto v CUPE*].

<sup>3</sup> *Outback*, at paragraphs 4 and 5.

- i. The retaining wall was built pursuant to an agreement between Outback and Corporal Hare such that Outback was an owner and Corporal Hare was a contractor;
  - ii. The retaining wall was built in part on Outback's lot; and if so,
  - iii. Outback was deemed to have authorized it.
- b) In the event that the lien was invalidly filed, whether the following damages should be awarded:
- i. costs and damages incurred by Outback as a result of an invalidly filed lien, pursuant to section 19 of the *Builders Lien Act*;
  - ii. punitive damages pursuant to section 45 of the *Builders Lien Act*, which holds that a person who knowingly files or causes an agent to file a claim of lien containing a false statement is guilty of an offence under the *Builders Lien Act*;
  - iii. exemplary damages, which are “appropriate where the processes of the law are used for ulterior purposes”;<sup>4</sup>
  - iv. punitive damages, which are intended to “punish conduct and deter similar conduct in others where the context is malicious, oppressive and highhanded”.<sup>5</sup>
- c) Whether special costs, which “may be ordered for reprehensible conduct deserving of reproof or rebuke”<sup>6</sup> should be imposed.
- d) Whether Corporal Hare's counterclaim for breach of contract should be granted.

### **Result of the Civil Action**

[29] Justice Matthews determined that the lien was not validly filed. She found that there was no agreement between Outback and Corporal Hare, with respect to the construction of the retaining wall. She found that the retaining wall was built in part on Outback's lot. She further found that Outback was aware of, but was not deemed to have authorized its construction.

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<sup>4</sup> *Outback*, at paragraph 87.

<sup>5</sup> *Outback*, at paragraph 88.

<sup>6</sup> *Outback*, at paragraph 96.

[30] Justice Matthews granted Outback damages for an invalidly filed lien, pursuant to section 19 of the *Builders Lien Act*. These damages reflected the cost of legal fees incurred by Outback to negotiate and draft a security arrangement, whereby the amount of the lien was held in trust, in exchange for which Corporal Hare released the lien so that Outback could proceed with the sale of its property.<sup>7</sup>

[31] Justice Matthews found that “only one of a [section] 45 fine or exemplary damages or punitive damages should be awarded on the facts of this case.”<sup>8</sup> She declined to impose damages pursuant to section 45 of the *Builders Lien Act*. Nor did she impose exemplary damages. Rather, she found punitive damages to be “most fitting”, imposing damages in the amount of \$8,400.00 to reflect what Corporal Hare “sought to wrongfully gain”.<sup>9</sup>

[32] Justice Matthews also imposed special costs, ordering Corporal Hare to pay Outback’s costs in the Civil Action.

[33] Finally, having found that “there were no discussions that amounted to an agreement that [Corporal] Hare would build the retaining wall and Outback would share in its construction”,<sup>10</sup> Justice Matthews dismissed Corporal Hare’s counterclaim for breach of contract.

### **Findings of fact that constitute the ratio of the decision**

[34] In *Perrick, Re*, the Law Society of British Columbia cited the Supreme Court of Canada in *Malik*:

A judgment in a civil or criminal case is admissible in evidence as proof of its findings and conclusions on similar or related issues. The party against whom the judgment is submitted as evidence may lead evidence to contradict it, or lessen its weight, unless preclude from doing so by the doctrines of *res judicata*, abuse of process or collateral attack.<sup>11</sup>

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<sup>7</sup> *Outback*, at paragraph 78.

<sup>8</sup> *Outback*, at paragraph 90.

<sup>9</sup> *Outback*, at paragraphs 93 and 94.

<sup>10</sup> *Outback*, at paragraph 107.

<sup>11</sup> *Perrick, Re*, 2018 LSBC 7, 2017 CarswellBC 3940, at paragraph 92, citing *British Columbia (Attorney General) v Malik*, 2011 SCC 18 [*Malik*], at paragraph 7.

[35] However, not every statement made by a decision maker is binding. Statements that form part of the ratio of a decision are binding. Those that form part of the obiter of a decision are not.

[36] The ratio of a decision is comprised of the “specific findings of fact”<sup>12</sup> that are essential to resolving the central issues before the decision maker.

[37] As noted by the Conduct Authority Representatives:

[31] Black’s Law Dictionary defines *obiter dictum* as a “latin term meaning said in passing, it is a judge’s statement that is based on some established facts, but does not affect the judgment.” The Federal Court has defined *obiter* to mean “An opinion given by a judge which is not required to support the decision he is making.” [Internal citations omitted]<sup>13</sup>

[38] The Conduct Authority Representatives go one step further, arguing that obiter is “simply superfluous commentary that may assist a reader in understanding the case generally, but it does not affect the judgment itself.”<sup>14</sup> This is, in my view, understating the role of obiter. Rather, obiter may have persuasive value:

[27] The term *ratio decidendi* describes the process of judicial reasoning that was necessary in order for the court to reach a result on the issues that were presented to it for a decision. All other comments contained within the reasons of the prior court are termed *obiter dicta*, and in essence such incidental remarks are treated as asides. They may have persuasive value, but they are not binding.<sup>15</sup>

[39] An expression of a decision maker’s opinion is accordingly obiter. As noted by the Ontario Superior Court of Justice in *Groia*, a decision maker’s opinion may “assist a trier of fact” in a subsequent action, but is not binding. “Opinions have no preclusive effect on what must be the required factual finding, even when the opinion expresses a view on the ultimate issue.”<sup>16</sup> The Subject Member Representative relies on *Aslam* in support of his argument that “findings of

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<sup>12</sup> *Law Society of Ontario v Manzianni*, 2020 ONLSTH 24 [*Manzianni*], at paragraph 36.

<sup>13</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 31.

<sup>14</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 33.

<sup>15</sup> *R. v Gerrond*, 2021 ONSC 4475, 2021 CarswellOnt 9526 (Westlaw) [*Gerrond*], at paragraph 27.

<sup>16</sup> *Groia v Law Society of Upper Canada*, 2015 ONSC 686 [*Groia*], at paragraph 132, as cited in *Manzianni*, at paragraph 42.

credibility are not findings of fact, but rather, constitute an opinion of the judge or panel who heard the case.”<sup>17</sup>

[40] At issue in the present case are Justice Matthews’ comments with respect to Corporal Hare’s credibility and motives for his actions.

[41] The Conduct Authority Representatives argue that Justice Matthews’ comments that Corporal Hare “made up” or “concocted” his version of events, or made a “false assertion”<sup>18</sup> are findings of fact that are required to support Justice Matthews’ findings on the ultimate issues, including whether to award damages. Consequently, they form part of the ratio of her decision and are binding.<sup>19</sup>

[42] The Subject Member Representative argues that Justice Matthews’ comments about Corporal Hare’s evidence are obiter dicta as they do not form part of her rationale when determining the central issues in the Civil Action, namely: whether the lien was validly filed; whether special costs should be awarded; and whether special damages should be awarded.<sup>20</sup>

[43] Finally, the Subject Member Representative refers to Justice Matthews’ rationale for determining whether Constable Hare was a contractor (i.e., whether there was an agreement with respect to the construction of the retaining wall), and the basis for the award for special costs. He draws particular attention to Justice Matthews’ decision not to impose a fine pursuant to section 45 of the *Builders Lien Act*, which may only be awarded where false statements are made in relation to a lien that is invalidly filed.<sup>21</sup>

[44] Following the analysis of the Ontario Superior Court of Justice in *Gerrond*, I must determine what were the specific or essential findings of fact that supported Justice Matthews’ rationale on the ultimate issues before her. Those issues are set out in paragraph 28 of this decision.

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<sup>17</sup> *Ontario (College of Pharmacists) v Aslam*, 2018 ONCPDC2 (CanLII) [*Aslam*], at paragraph 27.

<sup>18</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 29, citing *Outback*, at paragraphs 55 to 58, 91 and 100.

<sup>19</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraphs 27 to 42.

<sup>20</sup> Subject Member Representative’s written submission, dated February 10, 2023, at paragraphs 19 to 32.

<sup>21</sup> Subject Member Representative’s written submission, dated February 10, 2023, at paragraphs 24 to 34.

*Validity of the filed lien*

[45] In order to determine the validity of the filed lien, Justice Matthews had to answer three questions. First, whether the retaining wall was built pursuant to an agreement between Outback and Corporal Hare such that Outback was an owner and Corporal Hare was a contractor. Second, whether the retaining wall was built in part on Outback's lot; and third, whether Outback was deemed to have authorized its construction.

[46] In the context of the first question, as to whether there was an agreement between Outback and Corporal Hare, Justice Matthews indicated that she preferred the evidence of K.W. with respect to the nature of the conversations he and Corporal Hare had about the construction of the retaining wall, and at their meeting on September 19, 2015. She also noted the absence of any documentation confirming an agreement and at what price.<sup>22</sup>

[47] Justice Matthews ultimately concluded that Outback and Corporal Hare "did not reach an agreement for Corporal Hare to build the retaining wall".<sup>23</sup> She further found that Corporal Hare was not a contractor "because he was not engaged to supply the materials for the retaining wall or to build the retaining wall".<sup>24</sup>

[48] The Conduct Authority Representatives submit that the following comments by Justice Matthews are also essential to her finding that an agreement did not exist:

[55] [...] [Corporal] Hare testified that he paid cash for the balance and that the materials for which he paid cash totalled almost as much as the amount he had receipts for. I do not believe this evidence. I conclude that [Corporal] Hare made that up to be in a position to recoup all of the material costs he incurred in building the retaining wall.

[56] [Corporal] Hare did not come to the meeting on September 19, 2015, to present the invoices for one half of the materials and submit them for payment in accordance with the agreement he asserts existed. He simply went to the meeting to try to convince [K.W.] to pay. As I have explained, he did not even have invoices for the entirety of the materials. In addition, [Corporal] Hare did the title search prior to sending the text to [K.W.] inquiring about payment and prior to the meeting at which he demanded payment for the retaining wall.

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<sup>22</sup> *Outback*, at paragraph 52.

<sup>23</sup> *Outback*, at paragraph 59.

<sup>24</sup> *Outback*, at paragraph 59.

He agreed he did it for the purposes of filing a lien. I conclude he knew the property was going to be sold and he wanted to be in a position to file a lien.

[57] [K.W.'s] evidence makes sense, and [Corporal] Hare's evidence does not make sense to such an extent that I conclude that [Corporal] Hare concocted it. I accept [K.W.]'s evidence as to the content of the discussion on September 19, 2015. With regard to the disputed discussion about the uphill property, the evidence that [Corporal] Hare relied on this factor is consistent with the balance of the evidence in which he repeatedly asserted this building guidelines as supporting his view on who was responsible for the wall. As to the dispute as to whether he threatened to file a lien or pull down the wall, those threats are consistent with the facts that he did a property search shortly before he sent the text for the purpose of using the threat of the lien and the imminent sale of the Outback property to assert pressure on Outback.

[58] [Corporal] Hare made up the suggestion that there was an agreement that Outback would pay for one half of the materials in order to assert the lien claim. When that did not work, he relied on the building guidelines. When the survey and the developer concluded that the building guidelines did not help him, he did not perfect his lien by filing a civil claim, he refused to remove it.<sup>25</sup>

[49] The issue to be determined by Justice Matthews at this point was whether K.W. and Corporal Hare had an agreement for Corporal Hare to build the retaining wall and the terms of that agreement. None of the commentary in the cited paragraphs is essential to that finding.

[50] With respect, Justice Matthews' opinion as to what may or may not have motivated Corporal Hare to file the lien is not relevant to the question of whether that lien was in fact validly filed. It was either valid or it was not. The first question to be determined was whether or not there was an agreement.

[51] Justice Matthews' comment that Corporal Hare "made up" the fact that he paid for part of the materials in cash is not conclusive of whether K.W. and Corporal Hare had an agreement. The actual cost of the wall was not in any way determinative of the existence of an agreement. Rather, that finding rests, in part, on her determination that K.W. and Corporal Hare did not discuss a specific price for the cost of the construction.

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<sup>25</sup> *Outback*, at paragraphs 55 to 58.

[52] Justice Matthews' opinion that Corporal Hare "concocted" his evidence writ large is not essential to her finding that an agreement did not exist. Nor is it consistent with her later finding that the Geotech anchor did, in fact, extend onto Outback's property.

[53] Justice Matthews did not, as the Conduct Authority Representatives argue, conclude that the wall only cost \$8,367.59.<sup>26</sup> Rather, she consistently stated that Corporal Hare only had receipts totalling that amount. At no point in her decision did she make a finding as to the actual cost of the construction.

[54] The second question was whether, in the absence of an agreement, Outback was an owner and whether there was a deemed authorization within the meaning of section 3 of the *Builders Lien Act*.

[55] Justice Matthews found that the retaining wall, and in particular the Geotech netting anchor of the retaining wall extended into Outback's property, and was an improvement to the property.<sup>27</sup> On this point, she preferred Corporal Hare's evidence as to the manner in which the wall was constructed. She further preferred Corporal Hare's evidence in finding that Outback had failed to establish on a balance of probabilities that the construction of the wall was completed in July 2015. Rather, she found that it was completed in September 2015.<sup>28</sup>

[56] Despite finding that the retaining wall was built with Outback's prior knowledge, Justice Matthews found that Outback did not have prior knowledge that the Geotech anchor extended onto its property. Consequently, she concluded that Outback did not have prior knowledge of the retaining wall as an improvement to its property.<sup>29</sup>

[57] Justice Matthews' conclusion with respect to the validity of the lien, and the essential reasons for her finding, are set out as follows:

[75] The retaining wall is an improvement. [Corporal] Hare was not a contractor, subcontractor or worker as he was not engaged by Outback or anyone else to build the retaining wall. Outback was not an owner in relation

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<sup>26</sup> Conduct Authority Representatives' written submission, dated December 22, 2022, at paragraph 27, citing *Outback* at paragraphs 55, 91 and 100.

<sup>27</sup> *Outback*, at paragraph 39.

<sup>28</sup> *Outback*, at paragraph 45.

<sup>29</sup> *Outback*, at paragraphs 60 to 70.



to the retaining wall as it did not request the retaining wall nor did it have prior knowledge that the retaining wall would be built on Outback's land. The lien was invalidly filed.<sup>30</sup>

*Awarding damages*

[58] Turning to damages, Justice Matthews found that, by virtue of a wrongfully filed lien, damages were in order pursuant to section 19 of the *Builders Lien Act*. Outback was awarded the costs of legal fees incurred to prepare a security arrangement whereby Outback paid the amount of the lien into trust in order to allow the sale of its property to proceed.

[59] The Conduct Authority Representatives assert that Justice Matthews made a finding of fact that Corporal Hare made a "false assertion" with respect to the costs of the wall.<sup>31</sup> Here, they note that his stated cost was double the amount of the receipts that he had produced. As previously stated, Corporal Hare's ability to establish the actual cost of the construction of the wall was not in any way determinative of Justice Matthew's finding that an agreement did not exist. Rather, that determination was founded on her preference of K.W.'s account of their conversations, over that of Corporal Hare's.

[60] Justice Matthews declined to impose a fine, pursuant to section 45 of the *Builders Lien Act*. As noted, a fine may only be imposed under this provision where the person who filed the invalid lien knowingly makes a false statement.<sup>32</sup> That Justice Matthews declined to do so confirms that she did not make a finding of fact that Corporal Hare had made a false statement or that he had "made up" or "concocted his evidence".

[61] Rather, she determined that it was more appropriate to impose exemplary or punitive damages. She found punitive damages most fitting. While she characterized Corporal Hare's "false statements" in relation to the invalidly filed lien a "subset of the conduct" that needed to be deterred, her opinions in this regard do not constitute the basis for her awards of punitive damages or special costs.

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<sup>30</sup> *Outback*, at paragraph 75.

<sup>31</sup> Conduct Authority Representatives' written submission, dated December 22, 2022, at paragraph 28, citing *Outback*, at paragraph 91.

<sup>32</sup> *Outback*, at paragraph 84.

[62] Justice Matthew found as follows:

[93] I find punitive damages most fitting. Had the conduct been limited to the improper filing of the lien and the abuse of the builders lien legal process, exemplary damages would have been significantly fitting as described in *Guildford Industries*. However, in this case, [Corporal] Hare's conduct continued past the filing of the invalid lien and included not pursuing the lien claim but at the same time failing to agree to pay out the security. This position required Outback to engage significant resources and energy into two trials, the summary trial before Mr. Justice Bretton and this three day trial before me.<sup>33</sup>

[63] Here, she highlighted that Corporal Hare did not pursue the lien claim, but that he did not pay out the security. This in turn led Outback to start the present Civil Action. The matter proceeded to trial notwithstanding that a summary judgment determined that the lien did not attach to the property. It was this conduct that Justice Matthews ultimately determined was worthy of rebuke.<sup>34</sup> While her comments with respect to Corporal Hare's credibility may have been persuasive, they were not determinative.

#### *Special costs*

[64] Again, in awarding special costs, it is Corporal Hare's decision to pursue the matter to trial that led to the award. While Justice Matthews acknowledged that the justice at the summary trial ultimately determined that he could not determine the validity of the lien on the basis of contested evidence, which was the issue to be resolved at trial, she argues that it "should have been apparent" to Corporal Hare "that the writing was on the wall" and that there was no justification to "insist on a trial" and he is accordingly "responsible for the consequences".<sup>35</sup>

#### *Dismissal of the counterclaim*

[65] Finally, Justice Matthews dismissed Corporal Hare's counterclaim for breach of contract on the grounds that she found that no agreement existed. She then provided the following rationale for this determination: "[...] there were no discussions that amounted to an agreement that

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<sup>33</sup> *Outback*, at paragraph 93.

<sup>34</sup> *Outback*, at paragraphs 90 to 95.

<sup>35</sup> *Outback*, at paragraphs 100 and 101.

[Corporal] Hare would build the retaining wall and Outback would share in its construction.” With respect to the ultimate cost of the materials for the retaining wall, she found that she did not “need to determine whether there was certainty around price as there were no discussions that support the finding of any sort of an agreement.”<sup>36</sup>

[66] Once again, it is Justice Matthews’ finding that an agreement did not exist that forms the basis of her rationale. As previously noted, her opinions on Corporal Hare’s credibility and motives may be persuasive, but they are not essential to her finding that an agreement did not exist.

[67] Consequently, while I agree with the Conduct Authority Representatives that Justice Matthews made a finding of fact that there was no agreement between Corporal Hare and K.W. that K.W. would pay for a portion of the retaining wall, I do not agree that she made a finding of fact that the wall only cost \$8,367.59. Nor do I agree that her comments that Corporal Hare “made up” or “concocted” his evidence, or that he made a “false assertion” formed part of the ratio of her decision. Rather, these comments were an expression of her opinion, which constitutes obiter.

[68] In the event that I am wrong, and that these statements do in fact constitute part of the ratio of Justice Matthews’ decision, I must consider whether, as the Subject Member Representative argues, they should not be binding on me in the present proceedings.

### **Decision on the CUPE Motion**

[69] The Civil Decision constitutes a final decision. Corporal Hare did file an appeal of the Civil Decision; however, this was discontinued.

[70] In their written submissions, the Conduct Authority Representatives refer and rely on *Toronto v. CUPE* for the principle that “[t]here is a judicial imperative that matters not be re-litigated.”<sup>37</sup> The Supreme Court of Canada held in part that the doctrine of abuse of process precludes re-litigation “in circumstances where the strict requirements of issue estoppel [...] are

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<sup>36</sup> *Outback*, at paragraph 107.

<sup>37</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 14.

not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality, and the integrity of the administration of justice.”<sup>38</sup>

[71] There are three circumstances in which a court may find that re-litigation is required:

- a) When the first proceeding is tainted by fraud or dishonesty;
- b) When fresh, new evidence, previously unavailable, conclusively impeaches the original results; or
- c) When fairness dictates that the original result should not be binding in the next context.<sup>39</sup>

[72] As noted by the Conduct Authority Representatives, the doctrine of abuse of process also precludes “the re-litigation of a material fact determined in a prior proceeding.”<sup>40</sup>

[73] The Conduct Authority Representatives argue that none of the circumstances identified by the Supreme Court of Canada in *Toronto v. CUPE* are applicable in this case. They state that there was no fraud or dishonesty by K.W. in the Civil Action. Rather, the only dishonesty or fraud was that of Corporal Hare. They further state that the documentation provided by Corporal Hare in support of his response to the allegations does not constitute fresh evidence. Both the receipts, and the proposed evidence advanced in the affidavits were known and available to Corporal Hare at the time of the Civil Action. Finally, they argue that fairness considerations, be they with respect to the prior proceeding itself or in its application, do not preclude a conclusion that the Civil Decision should be binding in the present proceedings as “the findings being used here pertain to Corporal Hare’s honesty during that civil matter”.<sup>41</sup>

[74] The Conduct Authority Representatives urge me to rely on these principles in order to find that I should adopt Justice Matthews’ findings of fact.

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<sup>38</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 16, citing *Toronto v. CUPE*, at paragraph 37 (WL).

<sup>39</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 18, citing *Toronto v. CUPE*, at paragraph 51 (WL).

<sup>40</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 19, citing *Greater Essex County District School Board and CUPE, Local 1348, re, [2013] OLAA No 480, 117 CLAS 53, 230 LAC (4th) 194*, at paragraph 28 (WL).

<sup>41</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 26.

[75] Finally, the Conduct Authority Representatives argue that I can rely on these findings of fact to find that all four allegations are established.

[76] The Subject Member Representative argues that the abuse of process doctrine, as articulated in *Toronto v CUPE*, is clearly applicable in the context of a criminal conviction. This principle is reflected in subsection 23(2) of the *CSO (Conduct)*, which provides that conduct boards “may rely on a finding by a court in Canada that a member is guilty of an offence under an Act of Parliament or of the legislature of a province to decide that the member has contravened the Code of Conduct.” However, he submits that it is not clear whether the principles are directly applicable in this case.

[77] The Subject Member Representative goes on to argue that, in the administrative context, a party may bring a “CUPE Motion”, by which they seek “to have factual findings made by a judge in a prior civil proceeding admitted for proof of those facts, while precluding the member from re-litigating them” or providing fresh evidence.<sup>42</sup> He submits that this is what the Conduct Authority is doing in this case. I agree.

[78] Drawing examples from a number of administrative decisions,<sup>43</sup> the Subject Member Representative submits that even when a decision is admitted following a CUPE Motion, the underlying findings of fact are not necessarily admissible as proof of those facts. Rather, once the prior decision is admitted, a conduct board must still determine the weight to be given to it.

[79] The Subject Member Representative submits, with respect to consideration of a CUPE Motion, that fairness dictates that the results of the Civil Decision are not binding on the present proceedings. He argues that the parties differ, and the issues to be resolved in the Civil Action differ substantially from that of the allegations. In particular, Corporal Hare was the respondent in the Civil Action, in which the core issues were whether the lien was valid and if any costs or damages should be awarded. It was not, as in the present proceedings, whether Corporal Hare lied under oath.

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<sup>42</sup> Subject Member Representative’s written submission, dated February 10, 2023, at paragraph 16.

<sup>43</sup> Subject Member Representative’s written submission, dated February 10, 2023, at paragraphs 15 to 18, citing *Law Society v Piersanti*, 2018 ONLSTA 10 (affirmed by the Divisional Court, 2019 ONSC 1826) [*Piersanti*]; *Malik*; *Law Society of Ontario v Bush*, 2022 ONLSTH 133 (CanLII).

[80] The Subject Member Representative further argues that in the context of those issues, Corporal Hare did not have notice of the scope of the case that he would ultimately have to defend, namely “having to defend himself on allegations of having ‘concocted’ evidence”.<sup>44</sup> Therefore, he should have the opportunity to fully defend himself against the allegations. Consequently, the Subject Member Representative argues that I should deny the Conduct Authority Representatives’ CUPE Motion.

[81] The parties agree on the applicable principles in *Toronto v CUPE*. Namely, that the doctrine of abuse of process will bar a party from relitigating an issue or fact previously determined unless one or more of the stated exceptions are met.

*Fraud or dishonesty*

[82] The Conduct Authority Representatives submit, and the Subject Member Representative does not dispute, that there is no evidence of fraud or dishonesty in the Civil Action. I agree.

*Fresh evidence*

[83] Corporal Hare has submitted documentation in support of his response to the allegations. This documentation falls under two categories: (1) receipts and bank statements submitted as proof of payment for materials he asserts were purchased in the construction of the retaining wall; and (2) affidavits from three individuals (J.H., R.D. and A.S.), who indicate an awareness of an agreement between Corporal Hare and K.W. to share the costs of these materials.

[84] The Conduct Authority Representatives argue that all of this evidence was known, and available to Corporal Hare at the time of the Civil Action. They submit that he cannot now seek to advance it as fresh evidence.

[85] Referencing *Palmer*,<sup>45</sup> the Subject Member Representative concedes that the receipts and bank statements were arguably available to Corporal Hare at the time of the Civil Action, and may accordingly be inadmissible. However, he argues that the same cannot be said of the affidavits. He explains that the latter were only required in the context of the present proceedings in order to

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<sup>44</sup> Subject Member Representative’s written submission, dated February 10, 2023, at paragraph 23.

<sup>45</sup> *Palmer v The Queen*, [1980] 1 SCR 759 [*Palmer*].

corroborate “what Corporal Hare deposed to with respect to the lien and facts relevant to” the Civil Action.<sup>46</sup>

[86] I agree with the Conduct Authority Representatives that Corporal Hare knew that his credibility and his version of events would be assessed in the context of the Civil Action.<sup>47</sup> Corporal Hare’s ability to provide receipts or other proof of payment for the materials used to construct the retaining wall was relevant to the value of the lien that was filed. This evidence would have been in Corporal Hare’s possession or control and could have been produced at that time.

[87] Similarly, the need to provide proof of the existence of his agreement with K.W. to share the costs of the materials was relevant to establishing that the lien was validly filed. Corporal Hare would have known, at that time, of his conversations with, or presence of J.H., R.D. and A.S. before the Civil Action was heard. I note, in particular, that Corporal Hare testified that a friend of his was present at one of the three or four conversations he had with K.W. He refers to J.H. by name.<sup>48</sup> Yet the evidence of J.H., R.D. and A.S. was not presented at the Civil Action.

[88] In light of the foregoing, I conclude that the additional documentation submitted by Corporal Hare, namely the receipts, bank statements and affidavits of J.H., R.D. and A.S. do not constitute fresh evidence.

*Fairness in the original result being binding*

[89] Had Corporal Hare been found guilty of a criminal offence of perjury, subsection 23(2) of the *CSO (Conduct)* would govern. Similarly, if one of the legal issues to be determined in the Civil Action was whether Corporal Hare had made a false or misleading statement, the Conduct Authority Representatives’ position may have prevailed.

[90] However, I agree with the Subject Member Representative that the legal issues to be determined in the Civil Action and the present matter are markedly different. In the Civil Action, the legal issues to be determined were whether the lien was valid, if any costs or damages should be awarded, and whether Corporal Hare’s crossclaim for breach of contract should be awarded.

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<sup>46</sup> Subject Member Representative’s written submission, dated February 10, 2023, at paragraphs 47 to 50.

<sup>47</sup> Conduct Authority Representatives’ reply, dated March 10, 2023, at paragraphs 24 to 29.

<sup>48</sup> Transcript, Final Investigation Report, at page 327, lines 24 to 26, and at page 345, lines 13 to 25.

Here, I am asked to determine whether Corporal Hare lied under oath, and then repeated those lies in his statements to the Code of Conduct investigator. There is no “precise connection between the previous finding and the allegations.”<sup>49</sup>

[91] I agree with the Subject Member Representative that, in the face of this difference, it cannot be said that Corporal Hare had notice of the full scope of the case that he would have to defend. In addition, the jeopardy that he faced in the Civil Action, namely that the lien would be determined to be invalid, he would not recoup K.W.’s stated share of the costs of the retaining wall and may be subject to an award for costs or damages, is considerably less than the jeopardy he faces in the present proceedings: the loss of his employment and career as a police officer.

[92] Consequently, even if Justice Matthews’ comments on Corporal Hare’s credibility and motives for his actions constitute findings of fact, it would be unfair to admit them as proof of those facts in the present proceedings.

[93] The Conduct Authority’s CUPE Motion is allowed in part. Justice Matthews’ findings on the ultimate issues and the following specific findings of fact are admissible in these proceedings and cannot be re-litigated:

- a) The lien was not validly filed:
  - i. Outback and Corporal Hare did not reach an agreement for Corporal Hare to build the retaining wall.
  - ii. Corporal Hare was not a contractor because he was not engaged to supply the materials for the retaining wall or to build the retaining wall.
  - iii. Outback was an owner of the property subject to the lien.
  - iv. The retaining wall, and in particular the Geotech netting anchor of the retaining wall, extended into Outback’s property and was an improvement to the property.
  - v. Outback did not have prior knowledge of the retaining wall as an improvement of its property.
    1. The retaining wall was built with Outback’s prior knowledge.
    2. However, Outback did not have prior knowledge that the Geotech anchor would extend onto its property.

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<sup>49</sup> *Piersanti*, at paragraph 66, as cited in *Manziani*, at paragraph 38.



- b) Corporal Hare was liable for damages pursuant to section 19 of the *Builders Lien Act*.
  - i. The lien was invalidly filed.
  - ii. Outback was awarded costs of legal fees incurred to prepare a security arrangement whereby Outback paid the amount of the lien into trust, in order to allow the sale of the property to proceed.
- c) Corporal Hare was not liable for a fine pursuant to section 45 of the *Builders Lien Act*.
- d) Corporal Hare was liable for punitive damages.
  - i. Corporal Hare filed an invalid lien.
  - ii. Corporal Hare did not pursue the lien claim, but he did not pay out the security, which required Outback to begin the Civil Action.
  - iii. The matter proceeded to trial, notwithstanding a summary judgment that determined that the lien did not attach to the property.
- e) Corporal Hare was liable for special costs.
  - i. Corporal Hare's conduct in pursuing the Civil Action was deserving of rebuke.
    - 1. The justice at the summary trial determined that the lien did not attach to the property. He found that it would be inappropriate for him to determine the validity of the lien on the basis of contested evidence.
    - 2. The validity of the lien was the ultimate issue to be resolved at trial.
    - 3. Following the summary trial, Corporal Hare reasonably should have anticipated the outcome of the Civil Action.
    - 4. Corporal Hare did not have justification to continue with this matter to trial.
- f) Corporal Hare's counterclaim for breach of contract is dismissed.
  - i. Outback and Corporal Hare did not reach an agreement for Corporal Hare to build the retaining wall.

[94] Corporal Hare is not precluded from relitigating Justice Matthews' comments or, in the event I am wrong that they constitute obiter, her findings with respect to his credibility or motives for his actions in filing the lien.

## DECISION ON THE ALLEGATIONS

[95] I have before me four allegations, under section 8.1 of the RCMP Code of Conduct, which provides:

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.

[96] In the present case, it is alleged that Corporal Hare provided false, misleading or inaccurate accounts. The allegations will be made out if Corporal Hare acted with knowledge that the report was false, misleading or inaccurate, or was negligent or reckless as to the validity of the report.

[97] Allegation 1 alleges that the following statements made by Corporal Hare, in his oral testimony in the course of the Civil Action, are false and misleading:

- a) K.W. agreed to pay for half of the materials.<sup>50</sup>
- b) The total cost of the wall was between \$15,000.00 and \$16,000.00.<sup>51</sup>
- c) He did not request a title search prior to his meeting with K.W. on September 19, 2015.<sup>52</sup>
- d) He was not contemplating a lien when he requested the title search.<sup>53</sup>

[98] Allegation 2 alleges that the following statements made by Corporal Hare, in his affidavit in support of the Civil Action, are false and misleading:

- a) K.W. agreed to pay for half of the materials.<sup>54</sup>
- b) Half of the cost of the materials was \$8,367.59.<sup>55</sup>
- c) Incomplete explanation of the rules governing responsibility for retaining walls in order to imply that K.W. was responsible for the cost of the retaining wall.<sup>56</sup>

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<sup>50</sup> *Notice of Conduct Hearing*, Allegation 1, at Particular 26.

<sup>51</sup> *Notice of Conduct Hearing*, Allegation 1, at Particulars 39 and 40.

<sup>52</sup> *Notice of Conduct Hearing*, Allegation 1, at Particular 48.

<sup>53</sup> *Notice of Conduct Hearing*, Allegation 1, at Particular 45.

<sup>54</sup> *Notice of Conduct Hearing*, Allegation 2, at Particulars 51 and 52.

<sup>55</sup> *Notice of Conduct Hearing*, Allegation 2, at Particular 54.

<sup>56</sup> *Notice of Conduct Hearing*, Allegation 2, at Particular 59.

[99] Allegations 3 and 4 are inextricably linked to Allegations 1 and 2 as they allege that Corporal Hare's repetition of these statements in his written statement and response to questions from the Code of Conduct investigator. If Allegations 1 and 2 are not established, then Allegations 3 and 4 cannot be established.

[100] The evidence on which the Conduct Authority relies to establish the allegations consists of the Final Investigation Report, which includes:

- a) The Civil Decision;
- b) The record in the Civil Action, including all exhibits and transcripts of the evidence given; the record of appeal filed and subsequently discontinued;
- c) A written "Impact Statement" provided by K.W.;
- d) Corporal Hare's voluntary written statement (undated);
- e) Additional questions posed by the Code of Conduct investigator on June 30, 2021;
- f) Corporal Hare's voluntary written response to the additional questions posed by the Code of Conduct investigator, dated July 15, 2021, including:
  - i. A letter dated December 17, 2020, from Corporal Hare's counsel, C.F.;
  - ii. Photos of the retaining wall;
  - iii. Copy of the Black Mountain building/construction guidelines referenced in his statement;
- g) A copy of the *Builders Lien Act*;
- h) Email correspondence between the Code of Conduct investigator and the National Police Federation;
- i) Google satellite map of the properties at issue in the Civil Action.

[101] The Conduct Authority Representatives proposed K.W. as its sole witness. I do not need to hear from K.W.

[102] Corporal Hare does not dispute the accuracy of the excerpts of his evidence in the Civil Action, as cited in the *Notice of Conduct Hearing*. Rather, he disputes the inferences to be drawn from that evidence. He states that he believed that he had an agreement with K.W., and that he filed the lien in good faith after consulting counsel. It is not contested, and the evidence supports, that Corporal Hare did consult counsel prior to filing the lien.

[103] In support of his response to the allegations, Corporal Hare has filed:

- a) Correspondence from the RCMP, dated October 2, 2015, advising K.W. that his complaint to the Civilian Review and Complaints Commission, dated September 29, 2015, that Corporal Hare sought to extort money from him, will not be investigated under Part VII of the *RCMP Act* or criminally;
- b) Correspondence from the RCMP, dated May 12, 2016, advising K.W. that his criminal complaint that Corporal Hare uttered threats against him was investigated and determined to be unfounded;
- c) Receipts and bank statements advanced as proof of the costs of materials for the construction of the retaining wall;
- d) Affidavits from J.H., R.D. and A.S. advanced as proof that there was an agreement between K.W. and Corporal Hare to share the cost of the materials for the construction of the retaining wall.

[104] The Subject Member Representative proposes that I hear oral evidence from J.H., R.D. and A.S., as well as from Corporal Hare. He submits that the heart of this matter is Corporal Hare's credibility, and as such, oral evidence is required.

[105] I disagree. Corporal Hare does not dispute the accuracy of the impugned statements. There is no conflict in the evidence in so far as what was said and when.

[106] Nor do I need to hear from J.H., R.D. and A.S. Taken at face value, their affidavits establish, at most, that K.W. refused to pay for the cost of the retaining wall, and that Corporal Hare consulted counsel prior to filing a lien on the property. These are not contested facts.

[107] Having found that Justice Matthews' comments with respect to Corporal Hare's credibility and motives for filing the lien are not binding, I must consider them in conjunction with the totality of the evidence before me and the parties' submissions.

## **Allegation 1**

*a) Did Corporal Hare give false, misleading or inaccurate testimony that K.W. agreed to pay for half of the cost of the materials?*

[108] The fact that Justice Matthews' found that an agreement could not be established in law, or that she preferred K.W.'s evidence on this point, does not in and of itself constitute proof on a balance of probabilities that Corporal Hare gave false, misleading or inaccurate evidence.

[109] It is not contested that K.W. denies the existence of an agreement, while Constable Hare asserts to an oral agreement. The Conduct Authority Representatives argue that Corporal Hare's subjective belief in the existence of an agreement is "irrelevant":

[...] by the time Corporal Hare was engaged in active litigation, he would have known that no agreement had been made. A contract requires a meeting of the minds. In this case, after a request for payment was made, [K.W.] met with [Corporal] Hare and expressly stated that he never agreed to pay for the materials. Therefore, [Corporal] Hare ought to have known by the time the litigation occurred that [K.W.] did not take from their meeting what [Corporal] Hare had, meaning no contract could exist.<sup>57</sup>

[110] With respect, by that logic, the denial of the existence of a contract by one party would preclude the other from seeking to defend their claim in court. This is an untenable proposition. The question I have to answer is not whether Corporal Hare had a reasonable likelihood of success in his action. The question is whether Corporal Hare made a false, misleading or inaccurate statement by testifying that K.W. had agreed to pay for half the costs of the materials for the construction of the retaining wall.

[111] The Conduct Authority Representatives submit that "there is simply no credible evidence"<sup>58</sup> that K.W. agreed to pay for half the cost of the retaining wall.

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<sup>57</sup> Conduct Authority Representatives' reply, dated March 10, 2023, at paragraph 15.

<sup>58</sup> Conduct Authority Representatives' written submission, dated December 22, 2022, at paragraph 75.

[112] The Conduct Authority Representatives further argue that the evidence “points towards” K.W. not entering into an oral contract.<sup>59</sup> They rely on the evidence of K.W. and his spouse that their normal bid/tender process involves getting quotes and receipts. However, K.W. also testified that he will sometimes proceed without quotes or by oral contract if he has an established positive relationship with a subcontractor.<sup>60</sup>

[113] Both Corporal Hare and K.W. testified to having had a cordial relationship prior to their conversation on September 19, 2015. They both testified that they had conversations about the construction of a retaining wall between the two properties. Corporal Hare asserts that there were three conversations prior to September 19, 2015. K.W. testified that there were two, but acknowledges that there could have been more.<sup>61</sup> Their evidence is consistent that, in the course of those conversations, they discussed the construction of a retaining wall between their two properties, the guidelines that governed such constructions, as well as the materials that Constable Hare intended to use in its construction. However, it is clear that they did not interpret those conversations in the same way.

[114] With respect to the text messages exchanged between K.W. and Corporal Hare on September 18, 2015, the Conduct Authority Representatives argue that K.W. “appeared more confused than anything else.”<sup>62</sup> This is not the only reasonable inference from the evidence. As noted by the Subject Member Representative, the text messages can be objectively interpreted as reflective of an agreement.

[115] The inference that K.W. was confused by Corporal Hare’s text, asking “where we stand on the costs of the retaining wall,” would be more compelling if the construction of the wall had, as asserted by K.W., been completed two months prior, in July 2015. However, Justice Matthew’s found that the construction of the retaining wall was completed in September 2015. The timing of Corporal Hare’s text, is consistent with this timing and Corporal Hare’s stated position that he wanted to seek payment for K.W.’s share of the materials. K.W.’s explanation that he thought the

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<sup>59</sup> Conduct Authority Representatives’ written submission, dated December 22, 2022, at paragraph 77.

<sup>60</sup> Transcript, Final Investigation Report, at page 249, at line 10.

<sup>61</sup> Transcript, Final Investigation Report, at page 230.

<sup>62</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 76.

text meant that Corporal Hare wanted to know if he got a good deal on the work,<sup>63</sup> two months after the wall was completed, is not compelling.

[116] Both K.W. and Corporal Hare's evidence is consistent that when they met in person on September 19, 2015, Corporal Hare asked K.W. how he wanted to settle his share of the costs of approximately \$8,300.00, or words to that effect. K.W.'s response was that he never agreed to pay for any of it. K.W. then testified that he told Corporal Hare that he could not put a lien on a property that he did not work on. K.W. went on to testify that they also discussed the application of the guidelines and after he "made it clear" that Corporal Hare had altered the grade, he then asked what Corporal Hare was "looking for".<sup>64</sup> K.W. did not explain why he wanted to resolve the issue, if they had never had any prior conversations about the application of the guidelines or sharing the costs of the materials for the construction of the retaining wall.

[117] Finally, the Conduct Authority Representatives submit that Corporal Hare's reliance on the guidelines, in the Civil Action, is inconsistent with the existence of an agreement.<sup>65</sup> In short, if K.W. was required to pay for the retaining wall, in accordance with the guidelines, there would be no need for an agreement with respect to the associated costs. However, they do not address Corporal Hare's response on this point. Corporal Hare's assertion of an agreement is consistent with his stated understanding of the guidelines, namely that K.W. was responsible for building the retaining wall. He saw the agreement to share the costs of the materials as a "win-win". He would have a say as to the materials that were used in the construction, ensuring that they aligned with his esthetic, and K.W. would save money.<sup>66</sup>

[118] In short, while Corporal Hare was unable to prove the existence of an agreement in law, the evidence before me provides some support for his assertions. There is no direct evidence that Corporal Hare knowingly, or recklessly made a false, misleading or inaccurate statement with respect to the existence of an agreement, between him and K.W., to share the costs of the materials. There are multiple inferences that can reasonably be drawn from the evidence. Those asserted by

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<sup>63</sup> Transcript, Final Investigation Report, at page 233, at lines 29 to 40.

<sup>64</sup> Transcript, Final Investigation Report, at page 299; and *Outback*, at paragraphs 48 to 50.

<sup>65</sup> Conduct Authority Representatives' written submission, dated December 23, 2022, at paragraph 79.

<sup>66</sup> Corporal Hare's written response to questions from the Code of Conduct investigator, Final Investigation Report, at page 573.

the Conduct Authority Representatives are not, on the evidence before me, established on a balance of probabilities. Consequently, I find that the Conduct Authority has failed to establish on a balance of probabilities that Corporal Hare's statement that he and K.W. made an agreement to share the costs of the materials for the construction of the retaining wall is actually false, misleading or inaccurate.

*b) Did Corporal Hare give false, misleading or inaccurate testimony that the cost of the materials for the construction of the retaining wall totalled between \$15,000.00 and \$16,000.00?*

[119] The Conduct Authority Representatives assert that the receipts provided by Corporal Hare in the Civil Action only total \$8,367.59. They argue that, "other than vague assertions", there is no evidence that he spent more than that amount.<sup>67</sup> They argue that the additional receipts provided by Corporal Hare, in support of his response to the allegations, have not been tested and should be given little to no weight. In support of this argument, they identify receipts that are clearly not related to the construction of a retaining wall, such as floor vent covers.<sup>68</sup>

[120] The Conduct Authority Representatives assert that what "makes more sense, and is what actually happened" is that the total cost of the wall was \$8,367.59. They argue that this is consistent with Corporal Hare's "original argument" that K.W. should have to pay the full cost of the wall in accordance with the guidelines.<sup>69</sup>

[121] However, this argument does not accord with the evidence. The receipts provided by Corporal Hare in the Civil Action only totalled \$7,651.38. These receipts, included as exhibits in the Civil Action, were for excavation services, ready-mix concrete, Allan Blocks, and 1 inch fractured rock used as drain rock.<sup>70</sup> These four items do not reflect all of the materials that would reasonably have been used in the construction of the retaining wall.

[122] Corporal Hare testified to additional costs for materials, for which he paid cash, including the Geotech anchor that Justice Matthews found had been installed. He readily admitted that he

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<sup>67</sup> Conduct Authority Representatives' written submission, dated December 23, 2022, at paragraph 78.

<sup>68</sup> Conduct Authority Representatives' reply, dated March 10, 2023, at paragraph 27.

<sup>69</sup> Conduct Authority Representatives' written submission, dated December 23, 2022, at paragraph 79.

<sup>70</sup> Transcript, Final Investigation Report, at pages 334 and 335.



did not have receipts for all of the materials purchased, and that while not sure of the exact total, he estimated it to be in the range of \$15,000.00 to \$16,000.00.<sup>71</sup>

[123] The Conduct Authority Representatives have not argued that the additional costs to which Corporal Hare testified are unreasonable or that they could not have been paid for in cash. Rather, they argue that the total costs were not proven. They further argue that even if accepted, Corporal Hare was still unable to account for approximately \$6,000.00 in expenses.<sup>72</sup> The Conduct Authority Representatives do not address the fact that Justice Matthews did not make any finding with respect to the **actual cost** of the materials for the retaining wall.

[124] Corporal Hare has provided additional receipts for his expenses in support of his response to the allegations, which I have reviewed. These include receipts for the rebar (\$118.72 and \$55.45) and adhesive (\$150.98) referred to in Corporal Hare's testimony. These are consistent with Corporal Hare's evidence with respect to the total cost of materials.

[125] Corporal Hare also included receipts for materials that are consistent with the manner of construction to which he testified, as accepted by Justice Matthews. These include receipts, contemporaneous with the timeline of construction as found by Justice Matthews, for the caps for the Allan blocks (\$1031.69), form material (\$44.15) as well as concrete sealer and stakes to hold forms in ground (\$150.98). Corporal Hare also lists cash purchases for drainage pipes, equipment rentals, irrigation materials, etc.

[126] The evidence before me demonstrates that the receipts filed by Corporal Hare during the Civil Action do not reflect the full costs of the construction of the retaining wall. The receipts provided in support of his response to the allegations corroborate his testimony. Even if I do not accept the additional accounting of expenses provided by Corporal Hare, reflecting a total cost of \$16,665.50 for the materials at face value, I find that the evidence establishes that the total costs of the retaining wall were far more than \$8,367.59. Consequently, the Conduct Authority Representatives' argument that the full cost of the materials was \$8,367.59 is not supported by the evidence. It necessarily follows that the Conduct Authority has failed to establish on a balance of

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<sup>71</sup> Transcript, Final Investigation Report, at page 336, at lines 39 to 41.

<sup>72</sup> *Notice of Conduct Hearing*, at paragraph 35.

probabilities that Corporal Hare provided false, misleading or inaccurate testimony with respect to the total cost of the materials for the construction of the retaining wall.

*c) Did Corporal Hare provide false, misleading or inaccurate testimony about the timing of the title search?*

[127] The Conduct Authority Representatives assert that Corporal Hare misled the Court as to the purpose and timing of the title search. They allege that Corporal Hare testified that he did not request the title search prior to his conversation with K.W., and that he falsely stated that the title search was not requested for the purpose of filing a lien.<sup>73</sup>

[128] Corporal Hare does not contest that the date of the title search is September 16, 2015. While the Conduct Authority Representatives parse out Corporal Hare's statements, when his evidence is read in its entirety, Corporal Hare clearly states that he requested the title search for the purposes of filing a lien. He also states that he doesn't recall when he requested the lien.<sup>74</sup>

[129] In addition, Corporal Hare asserts that he was not permitted to present evidence on the reasons for the title search.<sup>75</sup> This is corroborated by the letter from C.F., Corporal Hare's counsel in the Civil Action.<sup>76</sup>

[130] The Conduct Authority Representatives argue that Corporal Hare's assertion that he requested the title search in order to confirm that Outback was the owner of the property, as he had concerns about his ability to collect K.W.'s share of the expenses,<sup>77</sup> is not credible as it would not be necessary to obtain a title search if his claim was in fact based in contract.<sup>78</sup> I do not agree. If a party to a contract suspects its terms may not be honoured, it would be reasonable to conduct a title search prior to seeking to enforce that contract.

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<sup>73</sup> *Notice of Conduct Hearing*, Allegation 1, at Particulars 42 to 47.

<sup>74</sup> Transcript, Final Investigation Report, at page 346, at line 30.

<sup>75</sup> Corporal Hare's written response to questions from the Code of Conduct investigator, Final Investigation Report, at page 571.

<sup>76</sup> Letter from C.F., dated December 17, 2020, Final Investigation Report, at page 579.

<sup>77</sup> Corporal Hare's written response to questions from the Code of Conduct investigator, Final Investigation Report, at page 571.

<sup>78</sup> Conduct Authority Representatives' written submission, dated December 23, 2022, at paragraph 80.

[131] Moreover, the Conduct Authority Representatives' argument is reliant on an assumption that Corporal Hare was seeking to leverage the impending sale of Outback's property in order to file an unlawful lien. This is unsupported by the evidence. There is no direct or indirect evidence to suggest that Corporal Hare knew that the property had in fact been sold, or when the sale was to close. The lien was filed on September 25, 2015. Corporal Hare was advised of the sale, through Outback's counsel, after the lien was filed.

[132] Moreover, Corporal Hare's actions are inconsistent with an intent to use the impending sale as leverage in his dispute with K.W. Upon being advised of the sale, he agreed to have the amount of the lien held in trust so that the sale of the property, which was to take place at the end of that month, could proceed. Ultimately, the sale was delayed by only one day, from September 28, 2015, to September 29, 2015.<sup>79</sup>

[133] In light of the foregoing, I find that the Conduct Authority has not established that Corporal Hare's testimony with respect to the date on, or purpose for, which the title search was requested was false, misleading or inaccurate.

[134] The Conduct Authority Representatives have failed to establish on a balance of probabilities that any of the three impugned statements are false, misleading or inaccurate. Consequently, I find that Allegation 1 is not established.

## **Allegation 2**

*a) Did Corporal Hare give false, misleading or inaccurate testimony that K.W. agreed to pay for half of the cost of the materials?*

[135] For the same reasons as those articulated under Allegation 1, I find that the Conduct Authority has failed to establish on a balance of probabilities that Corporal Hare made a false, misleading or inaccurate statement in his affidavit in support of the Civil Action, that K.W. agreed to pay for half of the cost of the materials.

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<sup>79</sup> Agreed Statement of Facts in the Civil Action, Final Investigation Report, at page 114, at paragraph 19.

*b) Did Corporal Hare give false, misleading or inaccurate testimony that the cost of the materials for the construction of the retaining wall totalled between \$15,000.00 and \$16,000.00?*

[136] For the same reasons as those articulated under Allegation 1, I find that the Conduct Authority has failed to establish on a balance of probabilities that Corporal Hare made a false, misleading or inaccurate statement in his affidavit in support of the Civil Action that the cost of the materials for the construction of the retaining wall totalled between \$15,000.00 and \$16,000.00.

*c) Did Corporal Hare provide an incomplete explanation of the rules governing responsibility for retaining walls?*

[137] The Conduct Authority Representatives argue that Corporal Hare deliberately sought to mislead the reader of his affidavit in order to lead them to believe that K.W. was legally required to pay for the cost of the retaining wall.<sup>80</sup> They base this assertion on the “non-binding comment” of Mr. A.B., in his email of October 21, 2015, that Outback had “virtually preserved” the pre-construction elevation.<sup>81</sup> However, they do not address the substance of Corporal Hare’s objections to the accuracy of Mr. A.B.’s conclusions, including that Mr. A.B. was biased as a result of its business with Outback, and that the “plot plan” or survey on which he relied was done prior to Outback’s construction on the property.<sup>82</sup>

[138] I am troubled by the Conduct Authority Representatives’ argument, which is essentially that the failure to plead evidence against one’s own position, in a civil action, constitutes false, misleading or inaccurate evidence. As is his right, Corporal Hare did nothing more than state his position as to how the guidelines are to be interpreted and applied on the facts of his case.

[139] Consequently, I find that Allegation 2 is not established.

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<sup>80</sup> Conduct Authority Representatives’ written submission, dated December 23, 2022, at paragraph 85.

<sup>81</sup> Final Investigation Report, at page 103.

<sup>82</sup> Corporal Hare’s written response to questions from the Code of Conduct investigator, Final Investigation Report, at page 573.

### **Allegations 3 and 4**

[140] Allegations 3 and 4 are, at their core, that Corporal Hare repeated the impugned statements cited in Allegations 1 and 2 in his written statements to the Code of Conduct investigator. They are inextricably linked. Having found that Allegations 1 and 2 are not established, Allegations 3 and 4 cannot be established.

### **CONCLUSION**

[141] The statements on which the Conduct Authority seeks to rely as proof of the allegations, in the Civil Decision, were made in obiter. Consequently, I am not bound by them. Even if I am wrong on this point, I have found that their use, as proof that Corporal Hare made a false, misleading or inaccurate statement, is precluded in accordance with the principles articulated in *Toronto v. CUPE*.

[142] The Conduct Authority's position is almost entirely reliant on the impugned statements as proof of the alleged misconduct. When viewed in the context of the evidence as a whole, I have found that the Conduct Authority has failed to establish Allegations 1 and 2 on a balance of probabilities. As the substance of Allegations 3 and 4 is inextricably linked to Allegations 1 and 2, I have found that they are not established.

[143] 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.

[144] 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*.

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Christine Sakiris  
Conduct Board

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May 28, 2023  
Date

**APPENDIX "A": *NOTICE OF CONDUCT HEARING***