

IN THE MATTER of a public
Complaint of A.A.
Against S/Sgt. T. B. (Ret.) made under the
Royal Newfoundland Constabulary Act 1992

**Royal Newfoundland Constabulary Public
Complaints Commissioner**

AND

S/Sgt Tim Buckle (Retired)

RESPONDENT

AND

**Chief of the Royal Newfoundland
Constabulary**

THIRD PARTY

Merits Decision

Hearing Dates:	October 21-23, 2024 & February 26, 2025
Decision Date:	June 16, 2025
For the Commission:	James Strickland
For the Respondent:	Bernard Coffey, K.C.
For the Chief of the RNC:	Erin Matthews
Adjudicator:	John Whelan Q.Arb., Chief Adjudicator RNCPC

INTRODUCTION

1. This matter deals with two complaints filed by Andrew Abbass (Abbas) against Retired Staff Sergeant Tim Buckle (Buckle).

2. The first complaint deals with a text message exchange between Buckle and Constable Josephy Smyth (Smyth) that was entered at evidence during the Commission of Inquiry Respecting the Death of Donald Dunphy (the Dunphy Inquiry).

3. The second complaint deals with Abbas' detainment on 7 April 2015 and the testimony given by Buckle at the Dunphy Inquiry. I have previously ruled that the limitation period applies to the portion of the complaint related to Abbas' detainment on 7 April 2015.¹ Consequently, the second complaint focuses solely on Buckle's testimony at the Dunphy Inquiry.

4. I have concluded that neither complaint is well founded. My analysis follows.

EXHIBITS

5. The following table provides a listing of all exhibits from the hearing:

Exhibit Title	Description
Consent 1	Complaint March 23, 2017
Consent 2	Complaint May 16, 2017
Consent 3	Transcript of February 10, 2017 – Commission of Inquiry Respecting the Death of Donald Dunphy
Consent 4	Amended Reference of January 13, 2023
AA#1	Notice of Appeal for March 23, 2017 Complaint – Sept 5, 2017
AA#2	Notice of Appeal for May 16, 2017 Complaint – July 16, 2021
AA #3	Audio Transcript RNC File# 2018-33500 Part 1 & 2 – Apr 7, 2015

¹ This decision has been appealed by Abbas to the General Division of the Newfoundland & Labrador Supreme Court.

AA #4	Dowden Analytical Report
AA #5	Audio recording of conversation with AA and Amy Sharpe – Apr 7, 2015
AA #6	Part 2 of AA #5
AA #7	Email exchange between AA & R. Doyle - RNC PCC
AA #8	Blog Excerpt – “Six Days on the Floor.”
BS #1	VERSADEX & CPIC Printout
BS #2	April 6, 2015, Email from T. Buckle to All Staff RNC
BS #3	Communications Centre Recording – RNC File# 2017- April 7, 2015 @ 1023am
BS #4	Audio & Transcript of Call – April 7, 2015
BS #5	Tom Warren Interview w/ Brad Saint RNC File# 2017-34936 – July 11, 2018
AS #1	General Occurrence Hardcopy – Amy Sharpe – April 7, 2015, at 1156
AS #2	RNC File 2015-17844
AS #3	RNC File 2018-33500 Transcript of Interview – Amy Sharpe – March 14, 2019
AS #4	RNC Recording – Call to Comms Centre by Amy Sharpe seeking ACT Team Number – 1206pm April 7, 2015
DA #1	Transcript of Interview – Danny Abbass – February 2019 RNC File 2018-33500
RW #1	Transcript of Interview – Ryan Wentzell – June 7, 2018, RNC File 2017-34936
Consent 5	Gullage Report – RNC File #2017-18798
Consent 6	May 23, 2017, letter from Suzanne Bill to Chief Janes
Consent 7	June 22, 2017 – letter from Chief Janes to Suzanne Bill
Consent 8	August 24, 2017, letter from Joe Boland to Andrew Abbass – RNC 2017-18798
EO #1	21-01-26 Handwritten Notes – Edmund Oates

EO #2	21-03-11 – Handwritten Notes – Edmund Oates
TW #1	Excerpts of transcript of Buckle Interview with Tom Warren – RNC

ISSUES

6. The Complaint focuses on two issues.

7. First, did Buckle give inaccurate or misleading evidence during his testimony at the Dunphy Inquiry. If the testimony was inaccurate or misleading, would that conduct constitute a breach of the Royal Newfoundland Constabulary Public Complaints Regulations (the Regulations) under the Royal Newfoundland Constabulary Act, 1992 (the Act)?

8. Second, did Buckle’s electronic message exchange with Joseph Smyth constitute a breach of the Royal Newfoundland Constabulary Public Complaints Regulations (the Regulations) under the Royal Newfoundland Constabulary Act, 1992 (the Act)?

EVIDENTIARY STANDARD & ONUS

9. The appropriate evidentiary standard for administrative hearings is the balance of probabilities.

10. The onus rests upon the RNCPC to prove the allegations that are contained within the Reference. The Respondent has no obligation to disprove any of the allegations that have been made against him.

SUMMARY OF EVIDENCE

Testimony of Andrew Abbass

11. Andrew Abbass was called by the RNCPC.

12. Abbass confirmed that he filed the March 23 Complaint based on testimony that he heard during the Dunphy Inquiry. Abbass stated that he did not wish to file a complaint at the time of his detainment because he did not want to complain about the officers that were directly involved.

13. Abbass stated that it was his belief that the electronic messages between Buckle and Joseph Smyth indicated an intention to detain Abbass for the comments he had made on Twitter about the shooting of Donald Dunphy.

14. Abbass stated that he understood the text “Yup” sent by Buckle to indicate that Buckle agreed with Smyth’s comment that Abbass was a loser. Abbass stated that he interpreted the comment to mean that both Buckle and Smyth were winners while they considered Abbass to be a loser.

15. Abbass stated that he filed the May 16, 2017 complaint based on additional testimony at the Dunphy Inquiry.

16. Abbass stated that it was his understanding from the testimony at the Dunphy Inquiry that officer Buckle had intentionally detained him based upon the comments made by Abbass on Twitter.

17. Abbass stated that it was his belief that his detention was based on (i) his views of the Israel / Palestine situation, (ii) racial profiling based on his last name, and (iii) Abbass’ religious views.

18. Abbass stated that he was detained on April 7, 2015. Abbass stated that on April 6, 2015 he had been posting commentary to Twitter about the shooting of Donald Dunphy.

19. Abbass stated that based on his tweets, police ended up at his front door. Abbass stated that he was angry with how Dunphy was being portrayed in the media at that time.

20. Abbass stated that he was detained at Western Memorial Regional Hospital for 6 days. Abbass stated that he was concerned because the first doctor who treated him was Indian and that Abbass believed that she would have a bias against Abbass because of his support for Muslim causes.

21. Abbass stated that a habeas corpus application was made for his release, but that it was denied by the Trial Division. Abbass stated that this decision was overturned by the Court of Appeal and sent back for a fresh hearing. Abbass stated that he was eventually successful with the application.

22. Abbass stated that following the testimony at the Dunphy Inquiry, he began to see the Royal Newfoundland Constabulary in a different light.

23. Abbass stated that he was concerned that officers of the Royal Newfoundland Constabulary would use terms such as “Twitter troll” or “Loser.” Abbass stated that it was his belief that officers owed a duty of care to the public and that they should not talk about members of the public in such a negative manner.

24. Abbass was directed to the testimony contained at page 16 of Consent 3. Abbass stated that he considered this to be a brazen statement made under oath. Abbass stated that it cast doubt on his family. Abbass stated that there were a lot of issues in his life at the time that were unresolved and that the testimony was “like he pulled a pin on a grenade and threw it into my home.”

25. Abbass stated that the comment of Buckle made it seem like his brother had spoken with the remainder of the family and that the family had an issue with Abbass.

26. Abbass was directed to page 71 of Consent 3. Abbass stated that the phrase “additional aspect” made it seem like Buckle had conversations with Abbass’ brother and other family members that Abbass was not privy to. Abbass stated that he was not aware of any conversations that had happened with his family that day. Abbass stated that his brother had told Abbass that he had been contacted and asked whether Abbass had a gun. Abbass stated that he was not aware of any individual have a discussion with a member of his family that day in relation to the mental health of Abbass.

27. Abbass stated that the testimony caused arguments within his family. Abbass stated that his family did not want to discuss it because there was so much controversy. Abbass stated that the conflict caused him to have to leave his son with his parents and Abbass resided at a homeless shelter for about a month.

28. Upon cross-examination, Abbass stated that he and his brother had an initial argument about the Royal Newfoundland Constabulary in the fall of 2014 when a recruitment video was released that Abbass felt contained threatening imagery.

29. Abbass stated that his brother advised the purpose of the video was to demonstrate some of the new technology being used by the Royal Newfoundland Constabulary. Abbass stated that he recalled telling his brother that the video made the officers look like fascists. Abbass denied telling his brother that the video made the officers look like Nazis, but admitted to using the term Nazis in correspondence with the RNC Complaints Commission.

30. Abbass stated that additional conflict with his brother occurred when Abbass attempted to file a criminal complaint against Prime Minister Stephen Harper for charges of genocide.

31. Abbass acknowledged that during his detainment at Western Memorial, he published blog articles under the title "6 Days on the Fourth Floor." Abbass stated that he believed at the time that his personal electronic devices were being searched by the RNC during his detainment. Abbass admitted that he made commentary on the blog that was upsetting to his brother. Abbass acknowledged that the commentary was in relation to medical issues involving his brother's family.

32. Abbass admitted that following his detainment he made a public posting that essentially severed his relationship with his brother.

33. Abbass was directed to his twitter posts on the day of his detainment. Abbass acknowledged that during the conversation at his home the RNC officers allowed him to use his devices, take photographs, and make posts to Twitter.

34. Abbass acknowledged that he had a conversation with Amy Sharpe wherein she advised that the RNC would be coming to his home to meet with him about his posts.

35. Abbass stated that he has an adrenal response conditional that causes him to react significantly to flight or fight stimulus. Abbass stated that he would have reacted with rhetorical statements such as "will you shoot me coward" when the police advised him that they were coming to his home.

36. Abbass stated that he had characterized the shooting of Donald Dunphy as an execution. Abbass stated that it was his belief that "they" had okayed the execution and that the shooting was a state sponsored act.

37. Abbass was shown a tweet from April 7, 2015 at 0747 that said people should "execute politicians." Abbass stated that the term "execution" implies a lawful process and that if he had used terms such as "assassinate" or "lynch" then the statement would have different meaning.

38. Abbass was provided with the audio from his initial April 7, 2015 telephone call with Amy Sharpe. When asked why he used the phrase "that's exactly why I set this up for", Abbass could not recall what he had meant by that, only that "I sent a tweet in order to trigger a response to kick the hornet's nest at that point."

39. Abbass admitted that the tweet to execute politicians was controversial and intended to elicit a response from authorities.

40. Abbass admitted that he was attempting to be criminally charged so that he could get in front of a judge. Abbass stated that he wanted to get in front of a judge because he believed that was a way for Abbass to get his issues on the record.

41. On redirect, Abbass stated that during the testimony phase of the Dunphy Inquiry his brother was living in Corner Brook while Abbass was residing in Happy Valley – Goose Bay. Abbass could not recall whether he spoke with his brother on the day of his detainment.

Testimony of Bradley Saint

42. Bradley Saint is a retired officer of the RNC. Saint retired on June 30, 2020 and served the RNC for 32 years and 8 months.

43. Saint stated that he was involved with the detention of Abbass in April of 2015. Saint stated that he was assigned to the file by Buckle.

44. Saint stated that Buckle approached him in the NCO officer at the RNC West Coast Headquarters and advised him of the tweets that had been posted by Abbass.

45. Saint stated that he was not, and remains, unfamiliar with social media. Saint stated that he was the Patrol Sergeant for the day shift and that the tweets had generated an “uttering threats” file. Saint believed that given the recent issues involving Donald Dunphy and the media attention, that the matter was not within the capacity of regular patrol officers.

46. Saint stated that he brought his concerns regarding patrol officers to Buckle who agreed with the concerns and agreed that the file should be assigned to the Criminal Investigation Division (CID). Saint stated that he gave the file to Constable Amy Sharpe in CID and then Saint returned to his duties as the Patrol Sergeant.

47. Saint stated that he was not involved with the investigation of the file but that he did later discuss Abbass with Buckle. Saint stated that Buckle later came to the NCO office to instruct Saint to detain Abbass under the *Mental Health Care and Treatment Act*² (MHCTA) and to convey Abbass to Western Memorial for assessment.

48. Saint stated that his recollection of that day was that the office area was a beehive. Saint recalled that there were a lot of meetings that he was not privy to, but he could see what was

² SNL 2006, c. M-9.1

going on. Saint stated that Buckle was busy with those meetings. Saint recalled that there were meetings in the Inspector's office and conference calls to St. John's.

49. Saint stated that he was pretty sure that Inspector Terry Corden was present at RNCHQ that day and was involved with Buckle in relation to the investigation, but that Saint was not involved with that.

50. Saint stated that after receiving instructions from Buckle, he did a CPIC search and a registry check in the firearms registry.

51. Saint recalled that he had a phone call with Abbass' brother to determine whether Abbass posed a risk of violence or was in possession of any firearms. Saint recalled that Abbass' brother expressed no concerns in relation to potential violent.

52. Saint stated that he did not ask Abbass' brother about mental health concerns. Saint stated that he believed that if there was a mental health issue, he would have been informed of the issue during his call with Abbass' brother.

53. Saint stated that he got a call from Constable McMackin. Saint stated that it was his understanding that Abbass was going to repair a computer for McMackin and that McMackin had received a call from Abbass that day advising that Abbass would not be able to repair the computer because he expected to be arrested. Saint recalled that McMackin stated "[his brother] is going to kill him."

54. Saint stated that his only discussions with Abbass' brother focused on officer safety concerns and that there was no discussion regarding Abbass' mental health. Saint stated that he did not expressly ask any questions about mental health because it was his expectation that those concerns would have been proactively shared by Abbass' brother.

55. On cross-examination, Saint stated that he had been in Corner Brook since 2005 and had been the Patrol Shift Sergeant since 2010. Saint stated that Abbass' brother was not on his shift because the brother worked in CID.

56. Saint admitted that on the day of the detainment, he instructed a civilian employee to run a CPIC search on Andrew Abbass at 0837. Saint acknowledged that this was before 1000.

57. Saint stated that people in the RNC HQ were generally familiar with Abbass. Saint stated that people at the detachment were aware that Abbass had attempted to file a criminal complaint

against Stephn Harper. Saint recalled that Abbass had become upset when the RNC refused to accept the complaint.

58. Saint stated that it was common knowledge in the detachment that Abbass' brother was an officer. Saint stated that he had no prior conversation with the brother about Abbass or his conduct.

59. Saint stated that he requested the 0837 CPIC search on Abbass because of the email sent the night prior by Buckle advising that officer should be made aware of the online posts from Abbass. Saint stated that it was necessary to run the CPIC search so that patrol officers would have relevant information if needed.

60. Saint stated that the 0837 search would have had less detail than the search he requested at 1000.

61. Saint stated that as a police officer he was concerned about the post that mentioned executing politicians.

62. Saint stated that after his conversation with Buckle, he requested contact information for the brother from the communications centre. Saint stated that it would have been his common practice to reach out to a family member so that he could get a sense of the potential for violence from an individual.

63. Saint admitted that when he was initially interviewed by Inspector Tom Warren as part of the RNC investigation, he said nothing about officer safety and only stated that he was obtaining information on background.

64. Saint acknowledged that at points through the day he had discussions with Sharpe about Abbass. Saint stated that he likely suggested to Sharpe to call Abbass and tell him to come in to discuss the tweets. Saint also admitted that it was likely he told Sharpe to advise Abbass that if he did not come in to discuss the tweets, the RNC would send patrol officers to speak with him at his home.

65. Saint could not recall whether he had listened to the call between Sharpe and Abbass, listened to the recording of the call with Sharpe and Abbass, or was briefed on the call by Sharpe, but acknowledged that he was aware of the details of the call because of the information relayed by Saint to McMackin during their 1137 call.

66. Saint stated that when he was speaking with McMackin, the indicators were that Abbass was going to be arrested for uttering threats. Saint could not recall whether Sharpe expressed concerns about Abbass' mental health following the telephone conversation, but acknowledged "she probably did."

67. Saint admitted that he attended Abbass' house along with Wentzell and two other patrol officers. Saint stated that as he was leaving to attend the home, his instructions from Buckle were to detain Abbass under the MHCTA and bring him to Western Memorial.

68. Saint stated that McMackin's comment that "[his brother] is going to kill him" contributed to Saint's assessment that Abbass was not acting rationally.

69. Saint stated that he was not aware of Sharpe speaking with medical staff at Western Memorial, but he would have expected her to have done so.

70. Saint stated that because Wentzell was the trained negotiator, it made sense for Wentzell to take the lead when they attended Abbass' home.

71. Saint stated that when he and Wentzell arrived at Abbass' home, Saint observed that Abbass was excited, agitated, and non-violent. Saint recalled that Abbass was upset that the RNC had not arrested the Prime Minister, and was upset about the incident involving Donald Dunphy. Saint recalled that Abbass stated that Saint and Wentzell were just "pawns of the government." Saint recalled that Abbass may have said something about a lack of sleep.

72. When asked whether Saint objected to the detention of Abbass, Saint stated that based on his assessment of Abbass at his home, it was in the best interest of Abbass to be assessed by a medical practitioner. Saint stated that it remained his opinion that Abbass warranted assessment on the day and that Saint would have detained Abbass regardless of the instructions from Buckle.

73. Saint stated that while he had been ordered to detain Abbass, the order was immaterial because he would have independently detained Abbass based on his presenting behaviour.

Testimony of Amy Sharpe

74. Inspector Amy Sharpe is a member of the Royal Newfoundland Constabulary and is currently working at the Corner Brook detachment. Sharpe has worked for the RNC for over 19 years. In April of 2015, Sharpe was a Constable assigned to the Criminal Investigation Division in the Corner Brook detachment.

75. Sharpe recalled that Abbass first came to her attention on the morning of 7 April 2015 when Saint and Buckle had a discussion with her about the file. Sharpe recalled that Saint believed that the matter should be handled by CID.

76. Sharpe recalled that Saint and Buckle initially had a discussion without Sharpe. Sharpe recalled that Buckle told her that they should go and arrest Abbass for uttering threats. Sharpe recalled that she reviewed the file and concluded that there was insufficient grounds for arrest based on the information that was within the file.

77. Sharpe recalled making calls throughout the day attempting to obtain information, including calls to the local ACT team. Sharpe recalled that the ACT team reached out to Dr. Talper who expressed concerns on the behaviours based on the information that had been relayed.

78. Sharpe recalled that it was Dr. Talper's assessment that Abbass should be assessed.

79. Sharpe recalled that she attempted to speak with Abbass about the issue, but that it was difficult to keep Abbass focused on the issues at hand; specifically, his tweets and the potential threats contained therein.

80. Sharpe stated that she did not have discussions with Abbass' brother about Abbass on the day in question.

81. Sharpe stated that she had trained with Abbass' brother and that they were both officers in the CID. Sharpe stated that she did not know about Abbass' health issues until after he had been detained at Western Memorial.

82. Sharpe stated that she did not speak with any other members of the Abbass family.

83. Sharpe stated that she was not aware that Saint had spoken with Abbass' brother.

84. Sharpe stated that her involvement with the file ended when she and Buckle had a disagreement about how the matter should be addressed. Sharpe stated that she was still engaged on the file, but was aware that Buckle was having discussions with other people without her involvement. Sharpe stated that there were a lot of decisions made on the file that she was not part of.

85. Sharpe recalled speaking with Wentzell prior to his attendance at the Abbass home. Sharpe recalled telling Wentzell that she did not believe there were sufficient grounds to detain

based on her knowledge of the file, but Sharpe was aware that Wentzell would be able to obtain more information when he attended the home.

86. On cross-examination, Sharpe agreed that she may have been aware of some concerns regarding Abbass when he attempted to file his criminal complaint against the Prime Minister, but that she was unable to recall specific information from specific times. Sharpe acknowledged that there has been a high volume of conversation about Abbass at the detachment and it is difficult to decisively state when she learned particular pieces of information.

87. Sharpe acknowledged that she understood why there would be concern about Abbass based on the nature and content of Abbass' tweets.

88. Sharpe recalled that her initial instructions from Buckle were to "Go arrest [Abbas] and get him on conditions." Sharpe stated that it appeared Buckle accepted her position that there were insufficient grounds for arrest.

89. Sharpe stated that she could not recall who provided her with the DSS recorder to record her call with Abbass. Sharpe stated that she had not wanted to record the phone call, but was handed the recorder so she made the recording. Sharpe stated that she filed the recording in her private drive and did not access it until she was interviewed by Inspector Warren. Sharpe stated that it is her practice to retain all such audio recordings.

90. Sharpe stated that after her phone call with Abbass, she was of the opinion that the matter warranted assessment from a mental health perspective.

91. Sharpe stated that it was her opinion that even though she was assigned the file, she was not in control of the file. Sharpe stated that while the investigation file may have her name as the investigator, there were numerous conversations regarding the file that she was not included on. Sharpe stated that such exclusion was atypical for files where she was the investigator.

Testimony of Danny Abbass

92. Sergeant Danny Abbass (DA) has been a member of the RNC since September of 2005 and has worked at the Corner Brook detachment since 2006. DA is the older brother of Abbass.

93. DA stated that he was contacted by Saint on 7 April 2015. DA recalled that Saint advised him that Saint and other officers were preparing to talk to Abbass at his residence and that Saint was querying potential violence or other concerns.

94. DA stated that Saint only asked about officer safety issues and asked no questions related to mental health concerns. DA recalled telling Saint that DA did not believe there would be any concerns or issues with Abbass when they went to his home.

95. DA stated that he offered no views on Abbass' mental health to Saint.

96. DA stated that he did not speak with Buckle or any other member of the RNC on 7 April 2015. DA stated that he was not aware of any of his family members, other than Abbass, speaking with the RNC on 7 April 2015.

97. On cross-examination, DA acknowledged that he was not surprised that Saint contacted him on 7 April 2015. DA stated that it was not surprising because of how "amped up" Abbass was about the Donald Dunphy incident and that content that Abbass had been posting online.

98. DA stated that he may have seen the Tweets from Abbass prior to the call from Saint. DA stated that he may have been directed to the Tweets by a family member. DA stated that he had received a call from Abbass shortly after the Donald Dunphy Incident wherein Abbass was upset with DA for being a police officer.

99. DA stated that with this type of family dynamic, police officers would be hesitant to reach out to him directly. DA stated that it was his opinion that officers would be embarrassed to tell DA that they had to go deal with his brother.

100. Following a review of his prior statement to Warren, DA acknowledged that he had concerns from the summer of 2014 onward about Abbass' mental health. DA agreed that his level of concern would have waxed and waned over that period of time. DA admitted that he was open about his concerns regarding Abbass, and that he would have spoken with other officers about it.

101. DA stated that Buckle would have been in the building when DA was speaking about Abbass and DAs concerns regarding his behaviour. DA stated that he would have had those discussions prior to and following the Donald Dunphy Incident. DA stated that while he could not recalled having a direct conversation with Buckle about his concerns, Buckle would have been present while DA was openly discussions his concerns about Abbass.

102. DA stated that it would not be surprising that Buckle was aware of DAs concerns about Abbass' mental health.

Testimony of Ryan Wentzell

103. Superintendent Ryan Wentzell joined the RNC in 2003 and was a Sergeant in charge of Support Services in Corner Brook on April 7, 2015.

104. In the fall of 2011, Wentzell attended a two week course at the Ontario Police College to be certified as a crisis negotiator. Wentzell maintained his certification as a crisis negotiator until the COVID-19 pandemic in 2020.

105. As the Sergeant in charge of support services, Wentzell would oversee file management, fleet, equipment, the communications centre, and police dog services. Wentzell described his role as management of all functions other than patrol and criminal investigation.

106. Wentzell described the detachment as being a “beehive” of activity on 7 April 2015. Wentzell stated that there was a lot of discussion happening between Patrol, CID, and Buckle’s offices.

107. Wentzell stated that when it became time to visit Abbass’ home, it was decided that Wentzell would attend and would take the lead role given his training in crisis negotiation.

108. Wentzell stated that while he was at the home, for approximately 30 -45 minutes, he made the independent decision to detain Abbass under the *MHCTA*. Wentzell stated that his detention decision was based on his observations of Abbass’ behaviour and his concern for Abbass’ well-being.

109. Wentzell stated that prior to his involvement with Abbass, he was aware that DA had a brother but was not aware that it was Abbass. Wentzell stated that he knew DA, but had little personal contact with him.

110. Wentzell confirmed that the decision to detain Abbass’ was made by Wentzell based on Abbass’ presenting behaviour and Wentzell’s concern for Abbass’ well-being.

111. Wentzell denied that the decision to detain Abbass was made by Buckle. Wentzell confirmed that he based his decision solely on the behaviour he observed when he attended Abbas’ home.

112. On cross-examination, Wentzell confirmed that information from DA, or from the Abbass’ family, was not used in the detention determination.

113. Wentzell was unable to recall whether information gathered by Saint from DA was relayed to Wentzell prior to his decision to detain Abbass.

114. Wentzell stated that he went to the door of the Abbass' home and Abbass invited the officers into the home and offered them coffee. Wentzell recalled that Abbass was speaking about issues in the Middle East, the political climate in the province and federally, and the Donald Dunphy matter. Wentzell stated that Abbass seemed to have rapid thoughts and speech progression, with intermittent tones of anger. Wentzell stated that he believed that Abbass' pregnant wife appeared nervous throughout their time in the home. Wentzell stated that Abbass would squat down and squeeze his own head before standing up again. Wentzell also stated that Abbass was taking pictures of the officers and posting them to his Twitter account in real-time.

Testimony of Edmund Oates

115. Deputy Chief Edmund Oates (Retired) joined the RNC in 1983 and retired in 2021. Oates stated that he was indirectly involved the investigation of Abbass' detention by the RNC.

116. Oates stated that Chief Boland thought that it would be a good idea to put a fresh set of eyes on the investigative report that had been compiled in relation to Abbass' complaint regarding his detention.

117. Oates stated that his role was to review the investigative file and then sign off on a report that would have been completed by internal counsel for the RNC. Oates stated that he reviewed the file and then discussed his conclusions with counsel for the RNC.

118. Oates stated that he was provided a draft copy of the report one week before his retirement date. Oates recalled having a discussion with Tom Warren about his involvement with the file. Oates stated that it was his belief at the time that Warren had not had a material role in the detention decision.

119. Oates stated that at the time he did not realize that Warren's investigation of the matter would have been prohibited because of his involvement in the original process.

120. On cross examination, Oates stated that it was still his belief that Buckle was untruthful during the Donald Dunphy Inquiry. Oates stated that it was his opinion that Buckle had lied about the email, lied about having information from the family of Abbass, and lied about not being in charge of events on April 7.

Testimony of Tom Warren

121. Tom Warren initially joined the RNC in 1990 and retired in December of 2022. In April of 2015, Warren was a Sergeant and Supervisor of the Major Crimes group. A part of Warren's role was to provide advisory services to members about the availability of various types of warrants. The majority of these warrants involved searches of persons and property.

122. Warren acknowledged that he was involved in the investigation of the complaint filed by Abbass against Buckle. Warren acknowledged that he had been called on April 7 in relation to the types of warrants that may have been available. Warren stated that according to the notes on the file, he had advised that there were no available warrants in relation to Abbass' behaviour.

123. Warren stated that he had included in his report that he was noted as having provided advice in the continuation report. Warren stated that he could not recall bringing the issue directly to anyone's attention.

124. Warren was asked additional questions around his investigative procedures when investigating the Abbass complaint and his interviewing techniques and cautions that would have been provided to certain people during the investigation process. This information has no bearing on the determination of the complaint made against Buckle by Abbass.

Commission of Inquiry Respecting the Death of Donald Dunphy - Transcript of 10 February 2017

125. It is necessary to reproduce in some detail the testimony of Buckle at the Commission of Inquiry Respecting the Death of Donald Dunphy. The detailed reproduction of the evidence is necessary to contextualize the statements made by Buckle during his testimony.

MS. CHAYTOR: – and makes no direct threats beyond bluster, and he leaves it to Chief of Staff Joe Browne's discretion as to whether or not he thinks that the premier should be made aware. And Joe Browne simply responds, thank you. Why are you flagging Mr. Abbass to all members of the RNC at this point in time if he isn't making any direct threats, as Corporal Noel indicates, no direct threats beyond bluster?

S/SGT. BUCKLE: Well, even bluster needs to be paid attention to and monitored in the policing world. There's a couple of reasons of why I would have been involved here, is that because I think – is this when – I'm trying to remember the date now. During a period of time while I was assigned in Corner Brook, I was an ad-hoc liaison for the Protective Services Unit. I would assist if they came to town. If Constable Smyth was coming alone, it was just him and he needed

assistance at a scene, I would either do it myself or task members of the Criminal Investigation Division to do it. So I was the liaison in Corner Brook to carry out those duties.

MS. CHAYTOR: And are you saying that's what you're doing here, and that's your role in doing this?

S/SGT. BUCKLE: Yeah, I remember –

MS. CHAYTOR: But this went to all –

S/SGT. BUCKLE: – specifically these, those Twitter comments by Andrew Abbass being, being – I was approached by members of the Criminal Investigation Division to make me aware of this. I reviewed it myself and I also had concerns and a unique member of this, this matter was that there was – Andrew Abbass actually had a brother who was an RNC officer in the detachment in Corner Brook, and it was – there was some discussion with him too, and it was obvious to me that even the family had concerns about his mental health at the time.

MS. CHAYTOR: Okay. And so, though this is being distributed to all staff of the RNC, not just to the protective service unit individuals, so at this point in time it's a broadly distributed –

S/SGT. BUCKLE: Yes.

MS. CHAYTOR: – regarding cautions. And I understand, at this point in time, the comments were in relation to Mr. Abbass speaking out in the aftermath of Mr. Dunphy's shooting. Isn't that correct?

S/SGT. BUCKLE: Yes, yes.

MS. CHAYTOR: And he was expressing displeasure regarding that.

S/SGT. BUCKLE: Yes, and the comments on Twitter were brought to my account by members of the Criminal Investigation Division in Corner Brook. And I felt that it was important. I was aware that Andrew Abbass had presented himself at the RNC detachment, which is – you know, we have civilian employees that deal with the public at the front desk in the Corner Brook detachment. And so, I would have included civilian employees and I also felt it was important for all officers, including patrol officers who may have interaction with him in Corner Brook, to be aware of Mr. Abbass and his behaviours.

MS. CHAYTOR: Mr. Abbass presenting himself at the RNC, that's not April 6?

S/SGT. BUCKLE: No, no.

MS. CHAYTOR: That's some time before.

S/SGT. BUCKLE: But he had presented himself previously to make a complaint against Stephen Harper as is indicated there.

MS. CHAYTOR: Right.

S/SGT. BUCKLE: So I was aware that he had presented himself at the detachment previously. So based on this new bluster, as Doug Noel refers to it as, that I was concerned that all members, especially in the Corner Brook detachment, including civilian employees, should be aware.

MS. CHAYTOR: Okay. Ultimately, we understand that Mr. Abbass was detained in Corner Brook – and I believe it's the next day – under the Mental Health Care and Treatment Act. Was that in relation to his communications in the aftermath of Mr. Dunphy's shooting?

S/SGT. BUCKLE: I don't recall. I'd have to review the specific file. I know I was involved and had some discussion with members of the Criminal Investigation Division at the time. And I did actually participate in some conversation in regard to the decision to attend to his residence and have him detained under the Mental Health Act. And I believe Sergeant Ryan Wentzell was the officer that actually led the file, actually went to the residence, spoke to him and dealt with the actual incident. I didn't attend myself.

MS. CHAYTOR: Did you discuss Mr. Abbass's detention and arrest with Constable Smyth?

S/SGT. BUCKLE: I don't recall. I may have. I certainly wouldn't deny it. It's quite possible, but I don't recall.

MS. CHAYTOR: And I believe that you told me in your interview on December 14 that you very likely did.

S/SGT. BUCKLE: There's a very good chance I would have, yes, especially in light of the fact that it was in regard to his comments now – and I had forgotten that again, but now that you remind me, yes, in regard to the Mitchells Brook incident, if those comments were about the Mitchells Brook incident, I very likely would have mentioned it at some point to Constable Smyth. In fact, I think this is forwarded to him, isn't that correct?

MS. CHAYTOR: Yes, but that's – no, it wasn't forwarded to him –

S/SGT. BUCKLE: Yes, it was forwarded to all staff of the Royal Newfoundland Constabulary. He would have received it.

MS. CHAYTOR: – he received it, to everyone, and he forwards it Doug Noel.

S/SGT. BUCKLE: Yes, but my sending it out to all staff meant that Constable Joe Smyth would have received this email.

MS. CHAYTOR: Right, but my question was whether or not you discussed –

S/SGT. BUCKLE: I don't recall –

MS. CHAYTOR: He hadn't been arrested or detained at this point.

S/SGT. BUCKLE: I don't recall.

MS. CHAYTOR: Okay. Let's bring up P-0500, please. This is the next day. This is an extraction from Constable Smyth's cellphone records which has been produced to the inquiry in the last few days. If we could have page 10, please, of this document, Madam Clerk. These are BBM messages. This is you, Staff Sergeant Buckle, to Constable Smyth on April 7, 7:32 p.m.: "Arrested Abbass under MHCTA." He replies: "Saw that! Nice." You reply: "He's at hospital now." Smyth replies – Constable Smyth replies: "Loser." You reply: "Yup." Staff Sergeant Buckle, this is someone who has been detained for mental health issues; that's who you and Constable Smyth are referring to as a loser.

S/SGT. BUCKLE: Yes.

MS. CHAYTOR: Is that in keeping with your training as to the sensitivity to be shown to people with mental health issues?

S/SGT. BUCKLE: No, but this wasn't shown to the individual. It was a casual, private conversation.

MS. CHAYTOR: So what you're saying is you wouldn't say it to his face, but it is okay to say it behind his back.

S/SGT. BUCKLE: I'm not saying it's okay. I've readily acknowledged it is not okay, but sometimes in the business that we carry on there is no question that the language is less than professional in private that is not exposed to the public.

MS. CHAYTOR: What would Constable Smyth know about Andrew Abbass other than what you told him to be able – for him to be able to make the comment that he's a loser?

S/SGT. BUCKLE: I don't know what he knew other than maybe he saw the Twitter post, too. I really don't know what he would have known. The tweets that he posted were public, so Constable Smyth may have – and again, I'm certainly not denying that I didn't discuss it with him. I may very well have. I just can't recall and I can't say specifically what I would have said.

MS. CHAYTOR: Okay.

S/SGT. BUCKLE: But the fact that I'm sending him a private message on BBM saying he's been arrested kind of would indicate to me that I hadn't discussed it with him up to that point. If I had discussed it with him and was giving him a play by play as to what we were doing in regards to Andrew Abbass, I wouldn't have seen any need for this message. So, you know, that would lead me to believe that I wasn't discussing it with him online, but I certainly wouldn't deny that I was.

MS. CHAYTOR: Okay. And these communications are on your RNC-issued cellphones?

S/SGT. BUCKLE: No.

MS. CHAYTOR: Not for you?

S/SGT. BUCKLE: No. ³

...

MR. FLAHERTY: Was Mr. Abbass a Twitter troll?

S/SGT. BUCKLE: I'd use – I would use that in generic terms.

MR. FLAHERTY:

Okay. S/SGT. BUCKLE: You know, some of the, some of the postings on Twitter and social media are very disconcerting. You know, one I recent seen – just seen in recent days was that Constable Smyth should be Jason Bourque'd which is a reference to the killings of police officers in Moncton. Those kinds of things are a daily occurrence in social media.

MR. FLAHERTY: Uh-huh.

S/SGT. BUCKLE: And it's very upsetting, disconcerting for a personal safety issue.

MR. FLAHERTY: Yeah.

S/SGT. BUCKLE: And Twitter troll is a common term used on Twitter by everybody who basically constantly a barrage of comments about incidents or information or people that really they, they're not personally involved in –

MR. FLAHERTY: Yeah.

S/SGT. BUCKLE: – but they tend to just go on and on and on.

MR. FLAHERTY: Okay. So it's a generic term but was Mr. Abbass a Twitter troll? Based upon your definition of a Twitter troll, was Mr. Abbass one?

S/SGT. BUCKLE: He seemed to – someone that tweets with that much frequency, yes, in the – in the slang, colloquial terminology –

MR. FLAHERTY: Yeah.

S/SGT. BUCKLE: – yes, that's how you would refer to somebody.

MR. FLAHERTY: And so you said – you made your comment with respect to Twitter trolls and then you said: Eff them. Correct?

S/SGT. BUCKLE: Yes.

MR. FLAHERTY: So how could you –so you know Mr. Abbass is a Twitter troll, how are you going to eff with him?

³ Commission of Inquiry Respecting the Death of Donald Dunphy, Transcript of 10 February 2017, at pp. 16-19.

S/SGT. BUCKLE: I didn't say eff with him.

MR. FLAHERTY: Okay, but he could go eff himself.

S/SGT. BUCKLE: When I said eff him, that means ignore it.

MR. FLAHERTY: Ignore it?

S/SGT. BUCKLE: Yes.⁴

...

MR. FLAHERTY: You were concerned by Mr. Abbass's mental health, were you?

S/SGT. BUCKLE: Yes.

MR. FLAHERTY: Okay and what was that based upon?

S/SGT. BUCKLE: Based on the content of the tweets that was brought to my attention by a member of the Criminal Investigation Division in Corner Brook.

MR. FLAHERTY: What was the content of the tweets?

S/SGT. BUCKLE: I can't tell you off the top of my head, I'd have to –

MR. FLAHERTY: Did he say he was going to kill someone?

S/SGT. BUCKLE: I don't recall specifically right now.

MR. FLAHERTY: Yeah.

S/SGT. BUCKLE: But the additional aspect of Mr. Abbass is that he had a brother who was an RNC officer who echoed the concern about his mental health and that the family were concerned about his mental health.

MR. FLAHERTY: What did Constable Abbass say about the mental health?

S/SGT. BUCKLE: I don't recall specifically right now.

MR. FLAHERTY: Okay. And so Mr. Abbass may have had a mental illness. Is it your training or is it your opinion that people with mental illness are more likely to commit violent crimes?

S/SGT. BUCKLE: Well, people with mental illness may commit a crime that they might not even be responsible for in the extreme.

MR. FLAHERTY: True.

⁴ *Ibid.*, at pp. 68-69.

S/SGT. BUCKLE: But, you know, the reality is that we have to investigate. And sometimes even, especially if it's violent incidents – and on a routine basis, like, we constantly get a barrage of commentary about police need more training in de-escalation in dealing with mental health individuals and I support it 100 per cent. The more training we can get, the more able we are to do our job. But I've routinely responded to the Waterford Hospital which is full of people with Ph.Ds. in deescalation and they call the police when the person becomes violent. We still have to respond.

MR. FLAHERTY: Yeah.

*S/SGT. BUCKLE: Even when you have professionals, an abundance of professionals under the roof of a building, a single building, police still have to respond to that because it gets to the point of violence or danger to people, the police are still called to deal with it. And in the case of Mr. Abbass, based on the information we had – and I don't have the file in front of me, I would have to review it to give specifics. **But there arose a concern about his mental health to the point that we decided to pay him a visit. And we did so and we took him for an assessment.***⁵

...

MS. CHAYTOR: Okay. And my – one last question and, again, forgive me, Commissioner, but I have reason for asking this; I just want to be fair to Mr. Abbass. And you indicated that his family had made – expressed concerns regarding his mental health. In saying that, you mean his brother, Danny Abbass. Is that correct?

S/SGT. BUCKLE: Yes.

MS. CHAYTOR: And are you aware at that time whether or not he was estranged from his brother.

S/SGT. BUCKLE: I am not aware of the details of the family, no.

MS. CHAYTOR: Okay. And there was no other family member who brought that to the attention of the RNC or lodged any complaint again Andrew Abbass.

*S/SGT. BUCKLE: No.*⁶

[Emphasis Added]

126. The text exchange between Smyth and Buckle includes the following statements:

7:32:08 p.m., Buckle to Smyth, "Arrested Abbass under MHCTA"

7:32:19 p.m., Smyth to Buckle, "Saw that! Nice"

7:32:23 p.m., Buckle to Smyth, "He's at the hospital now"

⁵ *Ibid.*, at pp 70-71.

⁶ *Ibid.*, at pp 93-94.

7:32:48 p.m., Smyth to Buckle, "Loser"

7:33:00 p.m., Buckle to Smyth, "Yup"

Arguments of the RNCPPC

127. The RNCPPC argues that this case revolves around two key issues. First, whether Buckle gave statements that were intentionally misleading or at least negligently inaccurate in his testimony at the Dunphy Inquiry? Specifically, whether DA communicated concerns over Abbass' mental health leading up to the detainment?

128. Second, whether Buckle engaged in conduct unbecoming of an officer during his electronic text exchange with Smyth on 7 April 2015?

Testimony at the Dunphy Inquiry

129. The RNCPPC argues that Buckle breached the *Royal Newfoundland Constabulary Public Complaints Regulations* (the *Regulations*) by "wilfully or negligently [making] a false, misleading or inaccurate oral or written statement."

130. The RNCPPC directed me to consider the offence of deceit as articulated in *P. v. M.*⁷ wherein Provincial Court Judge Smith noted:

[61] In my view, given the overall purpose of the statute, it is more likely that the legislature, by failing to qualify the statement, intended to cast a wide net. I interpret the disciplinary default to encompass both negligently untrue or inaccurate and wilfully false statements. I also find that a material omission may render a statement false. The public has a right to expect police officers, who hold such significant powers, to not only act - without malice, but to live up to professional standards of reasonable care in discharging their duties.

[62] If officers are careless in their reports and statements - especially in regard to material matters, citizens can suffer significant negative consequences. The case at bar may illustrate this danger. The public has a right to expect that officers will exercise care and be as accurate as possible when they document their investigations. Police officers generally ought not to record their conclusions, or even their honest beliefs, but rather they ought to record their observations and the information they receive in the course of an investigation. Special care should be taken when the reports may be relied on in civil proceedings, such as in this case on a review of the officer's suspension order.

⁷ Law Enforcement Review Act Complaint No. 3771, Manitoba

*[63] On the other hand, in interpreting the ambit of this disciplinary default I have no doubt that courts **will not find simple errors on non-material matters with in its scope**. Such matters would likely be screened out of the process as frivolous or too trivial to merit a public hearing. Police officers are human and can make errors. In addition, **there must be evidence that the false statement affected the Applicant in some material way. In any event, an intentional or malicious false statement will doubtless be treated more seriously than a negligent one at the penalty stage.***

[Emphasis Added]

131. The RNCPC states that based on the analysis of Paul Ceyssens in “Legal Aspects of Policing” there are only three possible outcomes when a statement is inaccurate or misleading:

- i. Actual intention to deceive, falsify, or mislead (likely misconduct)
- ii. Negligence (misconduct, depending on the jurisdiction)
- iii. Honest Mistake (likely not misconduct)⁸

132. The RNCPC argues that I should consider whether the statements by Buckle constitute negligence.

133. The RNCPC argues that certain statements made by Buckle at the Dunphy Inquiry were inaccurate. Specifically, information concerning Buckle’s involvement on the file, information regarding information obtained from DA, and

134. The RNCPC argues that a reasonable person reviewing Buckle’s evidence would come to the conclusion that the Abbass family was consulted prior to the detention of Abbass on 7 April.

135. The RNCPC argues that neither Saint, Wentzell, or Sharpe indicated any information from DA in relation to the mental health or well-being of Abbass’ was obtained on 7 April, or was widely known prior to 7 April within the detachment.

136. The RNCPC argues that police officers have a positive obligation to provide accurate testimony. The RNCPC suggests I find parallels with the offence of perjury when determining the standard to which an officer be held when testifying. The RNCPC directed me to consider the analysis in *R. v. King* where the court stated:

6 For the offence of perjury, deterrence and denunciation are key sentencing principles. Perjury is an offence "that strikes at the heart of the judicial system": R. v. Jordan, 1986 ABCA 168 (Alta. C.A.). "The freedom, or . . . the incarceration of accused persons in serious

⁸ Paul Ceyssens, *Legal Aspects of Policing*, Earls Court, Legal Press Inc., 6-28.

criminal offences depends totally upon the truthfulness of those witnesses" R. v. Glauser [1981 CarswellAlta 176 (Alta. C.A.)], 16 C.C.C. (2d); R. v. Schertzer, 2015 ONCA 259 (Ont. C.A.). Perjury is always considered to be serious and the courts tend to impose sentences of significant incarceration even in cases where the perjury had minimal practical impact: see R. v. Reyat, 2014 BCCA 101 (B.C. C.A.) at para. 31.

7 The objective of denunciation has heightened significance in perjury offences with certain classes of offenders who have special issues attached to their credibility. For example, perjury is treated more seriously when committed by police officers who have special duties of faithfulness to the justice system: R. v. Schertzer, 2015 ONCA 259 (Ont. C.A.) at para. 136; R. v. Millington, 2015 BCSC 1380 (B.C. S.C.) at para. 69⁹

137. The RNCPC submits that the statements made by Buckle at the Dunphy Inquiry caused harm to Abbass because it showed disregard for Abbass and trivialized the issue of how he had been previously determined to be suffering from a "mental disorder" and subject to detainment. The RNCPC submits that I should also consider the impact that the statements had on Abbass' family unit and the distrust that was caused by the statement.

138. The RNCPC submits that the following statements made by Buckle constitute negligence:

Andrew Abbass actually had a brother who was an RNC officer in the detachment in Corner Brook, and it was there was some discussion with him too, and it was obvious to me that even the family had concerns about his mental health at the time.

...

But the additional aspect of Mr. Abbass is that he had a brother who was an RNC officer who echoed the concern about his mental health and that the family were concerned about his mental health.

139. The RNCPC states that the test for negligence requires (i) a duty of care; (ii) breach of the standard of care; (iii) damage to the plaintiff; and, (iv) the damage was caused by the breach.

140. The RNCPC suggests that Buckle's evidence was unclear and that he gave a flippant and/or muddled answer that the Abbass' family had made concerns known that would constitute Abbass having a "mental disorder" under the *MHCTA*. The RNCPC states that the answer was either an outright lie or negligence and in either case falls below the standard expected of officers to provide clear and accurate testimony.

⁹ *R. v. King*, 2019 ONSC 2166, at paras 6-7.

141. The RNCPC directed me to consider *R. v. Millington* and its commentary on the principles of police testimony in the context of a public inquiry:

30 Aggravating circumstances in this case are that perjury is a very serious offence and is even more serious when committed by someone such as a police officer whose sworn duty is to uphold rather than undermine the administration of justice.

[...]

47 The present case is unusual in that Cst. Millington's perjury did not occur in the course of a criminal trial, but rather in the course of a public inquiry. Counsel have not referred me to any cases dealing specifically with perjury at a public inquiry. Nevertheless, in my view, the factors enumerated in Jordan and endorsed by our Court of Appeal in Reyat, remain a useful guide in determining the fit and appropriate sentence in the present case.

LJ

52 The inquiry comprised 61 days of evidentiary hearings at which 91 witnesses testified under oath or affirmation, followed by five days of closing submissions. In my view, while the inquiry was not a criminal trial, it was a proceeding of comparable gravity, solemnity, and importance to society and to the administration of justice ...¹⁰

142. The RNCPC argues that Buckle owed a duty of care to Abbass because Buckle was an officer and Abbass was a member of the public. Further, the RNCPC argues that Buckle had a positive obligation to uphold the administration of justice. The RNCPC alleges that Buckle breached his duty when he provided insufficient and negligently inaccurate evidence to the Dunphy Inquiry. The RNCPC contends that this breach caused damage to Abbass because it impacted the relationship that Abbass was having with his family and further damaged Abbass' relationship with the police. The RNCPC argues that Buckle fell below the standard of a reasonable and prudent officer in like circumstances.

143. The RNCPC further argues that I should draw an adverse inference from Buckle's decision not to testify at the hearing into the complaint against him. In support of this argument, the RNCPC directed me to consider the decision in *Cross v. Wood*, 1993 CarswellMan 435 at para 15, wherein the Manitoba Court of Appeal cited the words of Arbour J.A. in *R. v. Johnson* (1993), 79 C.C.C. (3d) 42 (Ont C.A.) at page 50, where the rationale was described as:

It is not so much that the failure to testify justifies an inference of guilt; it is rather that it fails to provide any basis to conclude otherwise... If the Crown's case cries out for an explanation, an accused must be prepared to accept the adverse consequences of his

¹⁰ *R. v. Millington* 2015 BCSC 1380

decision to remain silent; R. v. Boss (1988), 46 C.C.C. (3d) 523 at p. 542, 68 C.R. (3d) 123, 42 C.R.R. 166 (Ont. C.A.)

144. The RNCPC also directs me to consider the analysis outlined in *The Law of Evidence in Canada*, which states:

In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it.

[Emphasis added]

Electronic Text Messaging Exchange

145. The RNCPC acknowledges that there was no RNC policy in place at the time that would have prohibited Buckle from texting Smyth information related to the detention of Abbass under the *MHCTA*.

146. The RNCPC states that in order to find that the Complaint is well founded, I must conclude that Buckle engaged in conduct unbecoming a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary.

147. The RNCPC directed me to the Discreditable Conduct test outlined in *Spurrell v. Priddle and Puddicombe (2014)* which states at pg. 117:

a) The test is primarily an objective one.

b) The board must measure the conduct of the officer by the reasonable expectations of the community;

c) In determining the reasonable expectations of the community, the Board may use its own judgement, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprised of the circumstances of the case;

d) In applying the standard the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time;

e) Because of the objective nature of the test, the subjective element of good faith is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.¹¹

148. The RNCPCCC noted the following:

- i. Smyth had no involvement with the Abbass' matter
- ii. There was no operational purpose to informing Smyth of the detention
- iii. Buckle agreed with either or both of Smyth's comments of "nice" and "loser"

149. The RNCPCCC states that placing Buckle's comments in context requires me to be aware that at the time Abbass was detained and in a vulnerable position and that the commentary became public and caused further harm to Abbass. Further, disclosure of the text messages resulted in harm to the reputation of the RNC.

150. The RNCPCCC suggested that I consider the commentary of Buckle to be similar to the commentary made in *The Matter of the Ontario Provincial Police Constable Sasa Sljivo #65711*¹² wherein two officers made negative comments about an individual who had Downs Syndrome. The officers were on-duty but did not realize that their comments were being recorded by their microphones. The officers described the individual as being "disfigured," "born differently," and "artistic." One stated "That's going to be my new code word for, for different, artistic."

151. The RNCPCCC notes that in its decision, the Tribunal found

The conversation between the officers in their scout car was recorded and provided in disclosure. It is not relevant that the officers thought they were having a private conversation. They are still expected to conduct themselves with professionalism. The conversation later became public and the subject of a public complaint.

... The fact that the comments were made about a vulnerable member of the public added to the seriousness of the misconduct and is an aggravating factor [with respect to discipline].¹³

152. The RNCPCCC argues that it is irrelevant that the communication between Smyth and Buckle was intended to be private. The RNCPCCC has taken the position that because the text message exchange became public, there is no longer an expectation of privacy in relation to the communication because it is no longer a private conversation.

¹¹ *Spurrell v. Priddle and Puddicombe*, RNCPCCC 24 Mach 2016 at pg. 117.

¹² January 18, 2018

¹³ *The Matter of the Ontario Provincial Police Constable Sasa Sljivo #65711* – January 18, 2018 at pp 24-26.

153. The RNCPC also directed me to consider the decision in *The Matter of the Ontario Provincial Police And Detective Constable Douglas Holmes (10301), discreditable conduct. Dated February 21, 2023* wherein one officer used vulgar and derogatory language towards another officer. Again, the communication between the officers was private but it was found that the foul, offensive and completely inappropriate language used by the officer warranted a finding of misconduct.

154. In *Holmes*, the officer texted:

"Dude you are pathetic and a dummy. I was very ill on that Monday I was suppose to talk to you and took meds that kept me asleep until later that day and again took them to go to bed. I didn't get up until late afternoon when you jumped the gun and were trespassing in my backyard you are a piece of shit. so that means you are a bitch

155. The RNCPC also suggested I consider Justice Barry's analysis in the Dunphy Inquiry report where Justice Barry noted:

The BBM conversation between Cst. Smyth and Sgt. Buckle is worthy of further comment. Although I do not find the exchange to raise a serious concern about Cst. Smyth's credibility, it raises some concern about the RNC's culture given that two mid-career officers were engaged in such inappropriate and unprofessional banter about a man who had been detained for mental health evaluation. While I appreciate that superior officers can neither monitor nor control all conversations between members, the tone that creates a culture of compassion and respect for all citizens comes from the top. In a true culture of compassion and respect, such comments would simply not be made.¹⁴

156. The RNCPC seeks a finding that Buckle breached s. 3(1) and s.3(1)(k) of the *Regulations* and has requested reasonable costs as per s.33(1)(e) of the *Act*.

Arguments of the Respondent

157. In relation to the first issue, the Respondent has taken the simple position that his testimony at the Dunphy Inquiry did not contain a falsehood nor was it misleading.

158. The Respondent provided a detailed analysis of the testimony at the Inquiry, drawing particular attention to the responses given by Buckle to particular questions from Commission Counsel and Third Party Counsel.

¹⁴ Report of the Commission of Inquiry Respecting the Death of Donald Dunphy, at p. 178.

159. The Respondent notes that at no point did Buckle state that Abbass was detained based on information obtained from DA. The Respondent notes that Buckle testified that the Caution Email was sent out based, in part, on information known by Buckle from DA.

160. The Respondent also noted that DA acknowledged that his concerns about Abbass' mental health would have been generally known in the detachment prior to 7 April and that those concerns would have been known by Buckle prior to 7 April.

161. In relation to the text message issue, the Respondent notes the following

- i. That the entirety of the exchange occurred in under one minute
- ii. Buckle was using his private cell phone at the time of the exchange
- iii. Neither Smyth nor Buckle was on-duty at the time of the exchange.

162. The Respondent argues that (i) Buckle has a reasonable expectation of privacy over the text messages; (ii) that the use of the text messages in this complaint amounts to an abuse of process; and (iii) that even if admitted into evidence, the text messages do not reach the threshold for determining that Buckle engaged in disreputable conduct.

163. The Respondent argues that despite the text messages being a matter of public record, Buckle retains a reasonable expectation of privacy over the exchange. The Respondent suggests that I should consider the Dunphy Inquiry to be an inquisitorial process not bound by the normal rules of evidence.

164. The Respondent notes that the discussions between Buckle and Smyth should be viewed as the private correspondence between two close friends. Further, text messages fail to convey the tone of voice and are prone to being taken out of context.

165. The Respondent suggests that I should consider the communication between Smyth and Buckle against the public commentary of Justice Barry at the Dunphy Inquiry. The Respondent notes that during the broadcasted portion of the hearing, Justice Barry described correspondence from Abbass received by the Commission as "way out there." The Respondent suggests that Justice Barry had the right to make that observation similarly to Smyth and Buckle's right to refer to Abbass as a loser.

166. The Respondent directed me to consider the contextual elements of the communication, including the significant volume of online posting made by Abbass prior to his detainment and the nature of those posts particularly in relation to Smyth.

167. The Respondent suggested that I consider the analysis of Chief Justice McLachlin in *R. v. Marakah* wherein McLachlin C.J. noted “Indeed, it is difficult to think of a type of conversation or communication that is capable of promising more privacy than text messaging. There is no more discreet form of correspondence.”¹⁵ McLachlin C.J. then noted that “preservation of a ‘zone of privacy’ in which personal information is safe from state intrusion is the very purpose of s.8 of the Charter.”¹⁶

168. The Respondent suggests that I consider the majority analysis in *R. v. Ahmad* where it was noted that

*36 Of course, a phone number is not the same thing as a public physical location. A phone is a means of private communication between persons, and calling a number, or exchanging text messages, is an inherently private activity (unlike conversing on a busy downtown Vancouver street, as in Barnes, where we might expect chance encounters with the state). A phone number provides access to an intensely private virtual space. We cultivate personal, work and family relationships through our phones; they are a portal of immediate access reserved for the select few closest to us. We carefully guard access to that space by choosing to whom we disclose our phone number and with whom we converse. Similarly, this Court has held that a person reasonably expects privacy in most digital communications, precisely because conversations over text message, social media messaging, or email, are not analogous to a "public post."*¹⁷

169. The Respondent also directed me to consider the analysis in *ATU, Local 1587 and Ontario (Metrolink) (Juteram) Re*,¹⁸ where the Arbitrator concluded that there was a distinction between social media posts for the general public versus communications that were shared among a private group. The Arbitrator concluded that a reasonable expectation of privacy existed for electronic communication that was shared among a private group of individuals.¹⁹

170. The Respondent relied on the analysis of MacDonald J. in *Power v. Mount Pearl (City)*²⁰ which has since been overturned by the Newfoundland and Labrador Court of Appeal. However, I find that the articulation of the test in *R. v. Cole*, 2012 SCC 53 by MacDonald J. remains a succinct and accurate articulation of the test for expectation of privacy.

171. I find that it is settled law in Canada that Buckle would have a reasonable expectation of privacy over his private and off-duty communication with Smyth. The issue in this

¹⁵ 2017 SCC 59, at para. 35.

¹⁶ *Ibid.*, at para 37.

¹⁷ 2020 SCC 11, at para 36.

¹⁸ 2023 CarswellOnt 11202 (Ont. Grievance Settlement Board).

¹⁹ *Ibid.*, at para 105-106.

²⁰ 2022 NLSC 129 (NLSC)

case is whether Smyth's decision to surrender his phone to the RCMP displaces Buckle's reasonable expectation of privacy. In other words, if one party discloses your private communication, is it still private?

172. On this issue, the Respondent directed me to consider the analysis in *Aqueci, Re*,²¹ where the Board held compelled testimony was admissible because it arose in the same hearing. The Respondent suggests that the principle naturally flows that compelled testimony would not necessarily be admissible during a separate or different proceeding.

173. The Respondent directed me to consider the analysis of Binnie J. in *Doucette (Litigation Guardian Of) v. Wee Watch Day Care Systems Inc.*²² where Justice Binnie stated:

25 The public interest in getting at the truth in a civil action outweighs the examinee's privacy interest, but the latter is nevertheless entitled to a measure of protection. The answers and documents are compelled by statute solely for the purpose of the civil action and the law thus requires that the invasion of privacy should generally be limited to the level of disclosure necessary to satisfy that purpose and that purpose alone. Although the present case involves the issue of self incrimination of the appellant, that element is not a necessary requirement for protection. Indeed, the disclosed information need not even satisfy the legal requirements of confidentiality set out in Slavutych v. Baker, 1975 CanLII 5 (SCC), [1976] 1 S.C.R. 254. The general idea, metaphorically speaking, is that whatever is disclosed in the discovery room stays in the discovery room unless eventually revealed in the courtroom or disclosed by judicial order.

26 There is a second rationale supporting the existence of an implied undertaking. A litigant who has some assurance that the documents and answers will not be used for a purpose collateral or ulterior to the proceedings in which they are demanded will be encouraged to provide a more complete and candid discovery.

27 For good reason, therefore, the law imposes on the parties to civil litigation an undertaking to the court not to use the documents or answers for any purpose other than securing justice in the civil proceedings in which the answers were compelled (whether or not such documents or answers were in their origin confidential or incriminatory in nature).²³

174. The Respondent argues that I should find that the messages are inadmissible given the expectation of privacy retained by Buckle in the messages. The Respondent asks that I conclude that admission of the text messages would amount to an abuse of process. Again, the Respondent relies on the articulation of the abuse of process doctrine contained within Justice

²¹ 2013 ONSEC 45 (Ontario Securities Commission)

²² 2008 SCC 8

²³ *Ibid.*, at para 25-27

MacDonald's analysis in *Power v. Mount Pearl*. Again, while the decision in *Power* was overturned, I find that MacDonald J. provides a valuable articulation of the doctrine.

175. In the event that I conclude that the text messages are admissible, the Respondent argues that the text messages do not meet the threshold for the disreputable conduct test. The Respondent noted that the RNC did not conclude that the text messages amounted to disreputable conduct and dismissed the complaint internally. The Respondent acknowledges that I am not bound to follow these conclusions but suggests they should be of persuasive weight.

176. The Respondent suggests that I should consider the same factors articulated by the RNC in their internal analysis when making my determination of whether Buckle engaged in disreputable conduct. The Respondent seeks a cost award in his favour.

ANALYSIS & FINDINGS

177. I will first consider whether Buckle gave false testimony at the Dunphy Inquiry. I will then consider the admissibility of the text message exchange and, if admissible, whether the text messages amount to disreputable conduct.

Testimony at the Dunphy Inquiry

178. Having reviewed the transcript of Buckle's testimony in detail, I cannot conclude that he either intentionally misled or negligently testified during the Dunphy Inquiry.

179. As noted by the Respondent, the first mention of Abbass by Buckle during his testimony is in relation to the decision to send the All-Staff Caution email on 6 April. I find, based on the evidence of DA, that Buckle would have been aware of DAs concerned about Abbass' behaviour. I can find no factual inaccuracy with the statement made by Buckle when he was explaining part of his rationale for the All-Staff Caution email.

180. Further, I agree with the Respondent's position that Buckle did not articulate that the detention of Abbass was driven by information from DA. Buckle's testimony was that information from DA drove his decision to send the All-Staff communication. Buckle did not state that information from DA was made for the detainment determination.

181. During his testimony, Buckle next mentions Abbass while being questioned by Mr. Flaherty. Buckle notes that he was concerned about Abbass' mental health based, in part, on information obtained from "the family." It is unclear from the questions whether Mr. Flaherty was referring to the decision to send the All-Staff email, or the detainment of Abbass on 7 April.

182. It is entirely possible that, watching the Inquiry at home, Abbass assumed that Buckle was talking about the decision to detain Abbass, but such a conclusion cannot be drawn from the transcript.

183. Later, on re-direct, Commission Counsel has Buckle clarify that when answering Mr. Flaherty's question "family" was restricted to DA.

184. I cannot conclude that use of the term "family" as an expansive term is sufficient to conclude that Buckle was either misleading or negligently testifying. While "family" was not accurate, I cannot conclude that it was sufficiently inaccurate to warrant a finding of negligence. This conclusion is, in my mind, further strengthened by the fact that Commission Counsel causes the matter to be clarified shortly after Buckle used the overly broad term.

185. Consequently, I conclude that Buckle was neither untruthful nor negligent when he testified at the Dunphy Inquiry.

BBM MESSAGES

186. I have previously considered the admissibility of the text exchange between Smyth and Buckle in my decision regarding the Complaint filed by Abbass against Smyth. The arguments made by Smyth in that instance mirror many of the arguments made by Buckle in the instant case.

ADMISSIBILITY OF MESSAGES

187. The Respondent argued that he had a reasonable expectation of privacy over the BBM messages and that they should not be admissible in this hearing.

188. I will not provide a detailed analysis of the Respondent's position in relation to the expectation of privacy. For the purposes of this hearing, I find that it is settled law that Canadians have a reasonable expectation of privacy over their electronic communications. As I noted above, the relevant question in this instance is whether that presumptive expectation has been rebutted.

189. The Respondent relied upon the decision of MacDonald J. in *Power v. Mount Pearl (City)*, 2022 NLSC 129 (NLSC) in support of the contention that the Respondent's reasonable expectation of privacy in this instance precluded the admission of the BMM messages. That case examined, *inter alia*, whether the former Chief Administrative Officer of the City of Mount Pearl

(Steve Kent) had a reasonable expectation of privacy over Facebook Messenger messages that were received on a City owned tablet.

190. To summarize the facts of *Power v. Mount Pearl*, CAO Kent was on leave during a workplace investigation and had returned the City owned tablet to the City. Kent had changed his Facebook password prior to the return of the City owned tablet and believed this act was sufficient to prevent the City from obtaining his electronic messages. The City discovered that Facebook messages sent to Kent were still being received by the tablet and were displayed as banners on the tablet lock screen. During the investigation, the City kept a record of the messages that were visible on the lock screen of the tablet. The City did not inform Kent that the messages were being received by the tablet.

191. As the NLCA has overturned the decision of MacDonald J., and returned the matter to the General Division, I will not rely on the conclusions reached by MacDonald J, but I will continue to rely on this articulation of the various tests.

192. Respondent Counsel suggested that the implied undertaking rule supported this argument that the text messages should not be admitted into evidence. Counsel raised the decision of Binnie J. in *Doucette (Litigation Guardian of) v. Wee Watch Day Care Systems Inc.*, 2008 SCC 8, at paragraphs 25-27.

193. As I noted in the *Smyth* decision,

there is a distinct difference between civil litigation and the instant case. Civil litigation deals with the private rights of individuals and, generally, private issues between private individuals. In this instance, we are not dealing with the rights of two private parties. Instead, we are dealing with the conduct of a state actor and whether or not his conduct satisfied his statutory and regulatory obligations.

Further, I note that Binnie J. summarized “the general idea, metaphorically speaking, is that whatever is disclosed in the discovery room stays in the discovery room unless eventually revealed in the courtroom.”²⁴ The evidence clearly established that the Complainant based his complaint on the public testimony at evidence at the CIDDD. The information relied upon by the Complainant was public information. Had the Respondent wished to keep the text messages from reaching the public, he could have claimed his reasonable expectation of privacy at the CIDDD and relied upon s.12(1) of the Public Inquiries Act, SNL 2006 c. P-38.1.²⁵

²⁴ *Supra*, at para 25.

²⁵ In the Matter of a Public Complaint by AA vs Cst. J. Smyth – 16 January 2025 at paras 31-32

194. Using the framework articulated in *R. v. Cole*, 2012 SCC 53 and endorsed by MacDonald J. in *Power v. Mount Pearl*,²⁶ I find the following:

- i. The subject matter of the search was personal electronic correspondence that was deleted but remained stored on Smyth's work issued cellular phone
- ii. The Respondent has a direct interest in the subject matter of the search
- iii. The Respondent had a subjective expectation of privacy in the subject matter of the search
- iv. The subjective expectation of privacy was not objectively reasonable having regard to all the circumstances

195. The Respondent was sending communication to Smyth shortly after an officer involved shooting that resulted in the death of Donald Dunphy. A senior police officer such as Buckle ought to have known that there was a strong probability that a review of Smyth's communications would occur as part of that process. That the Respondent was communicating to Smyth on Smyth's employer issue phone would have strengthened that presumption.

196. Further, it is important to note that the Abbass has based his complaint on the public record of the Dunphy Inquiry. Once the information was released into the public sphere, it is difficult to suggest that the Respondent retained any expectation of privacy.

197. Respondent Counsel has argued that a public inquiry is different from a criminal or a civil action. The point is well taken. However, it does not negate that what was private communication became public knowledge. It is reasonable to conclude that the public have the right to access and utilize evidence that becomes available through the public inquiry process.

ADMISSIBILITY OF BBM MESSAGES – Abuse of Process

198. Similar to *Smyth*, the Respondent has also argued that the BBM messages should be excluded because to allow the record from the Dunphy Inquiry to be introduced would constitute an abuse of process. The Respondent again relies on the decision of MacDonald J., in *Power v. Mount Pearl*, in support of this position.

199. The Respondent notes that MacDonald J. considered the applicability of the doctrine of abuse of process at paras. 94-96:

94 *However, in Donald J. M. Brown and J. M Evans, Judicial Review of Administrative Action in Canada, looseleaf (Toronto:*

²⁶ Supra.

Thomson Reuters, 2015) at page 6 - 61 states, "[I]t is within the court's discretion to refuse to admit evidence ... on grounds of abuse of process ... "

95 Justice Boone discussed the conceptual basis for an abuse of process remedy in *O'Dea*. In particular he said:

(a) "[A litigant] read the private communications of another. This kind of intrusion has always been considered as morally wrong. The right of privacy in electronic communication is now guaranteed by tort law, by statute and by regulation. Unauthorized access is prohibited and subject to sanction." (para. 23);

(b) "[T]he regulation of process and the doctrine of abuse of that process, is concerned less with respect for the court itself and more for the respect for the administrative process the court has adopted to ensure fair adjudication of disputes." (para. 39);

(c) The Ontario Court of Appeal decision of *"Canam Enterprises Inc. v. Coles, (2000) 2000 CanLII 8514 (ON CA), 51 OR. (3d) 481 (Ont. C.A.) "*, which said at paragraph 55, "The doctrine of abuse of process engages the inherent power of the court to prevent misuse of its procedure, in a way that would be manifestly unfair to a party to litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as estoppel." [emphasis added] (para. 39); and

(d) "[T]he purpose of a remedy for abuse of process is, if possible, to restore fairness in a proceeding in order to protect the integrity of the administration of justice. In fashioning a remedy, the court must be mindful that the administration of justice in our system embraces the adversarial process in the search for truth." (para. 43).²⁷

200. Again, I make no comment or reliance on the conclusions drawn by MacDonald J., on the above framework. However, the articulation of the test is a useful one.

201. As noted above by Boone J., quoting from *Canam Enterprises Inc. v. Coles*,²⁸ the goal of the doctrine of abuse of process is to prevent the misuse of judicial powers or procedures

²⁷ *Power v. Mount Pearl (City)*, 2022 NLSC 129 (NLSC), at para. 94-95.

²⁸ 2000 CanLII 8514 (ON CA), 51 OR. (3d) 481 (Ont. C.A.)

to avoid manifest unfairness or bring the administration of justice into disrepute. As noted above, it is to maintain fairness in proceedings to protect the administration of justice.

202. As I noted in *Smyth*

*It is widely accepted that the application of the doctrine requires a balancing of interests between the parties. On one hand, the Respondent raises strong and well taken concerns about the administration of the Public Complaints Process – including the duration of time taken to obtain a hearing and the impact that such delay has had on the Respondent. On the other hand, the Complainant was determined to have been improperly detained by the state and the public has a legitimate interest in assessing the facts surrounding that detention.*²⁹

203. Consequently, I find that the abuse of process doctrine is not a bar to the admissibility of the BBM messages. Abbass' is alleging that an officer engaged in improper conduct and mocked him following the questionable application of the *MHCTA*. Buckle is a retired officer who faces no practical sanction regardless of the outcome of this hearing. The interests favour the inclusion of the evidence in order to address the underlying public concern raised by Abbass' allegations.

204. The text message exchange between Smyth and Buckle is admissible as evidence.

DO THE MESSAGES CONSTITUTE MISCONDUCT?

205. Having concluded that the messages are admissible, I must now consider whether they constitute disreputable conduct.

206. The following sections of the *Act* and *Regulations* are relevant to the determination of this matter:

3. (1) A police officer shall not conduct himself or herself in a manner unbecoming to a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary, which shall include but not be limited to the following:

(a) without good and sufficient cause make an arrest or detain a person;

²⁹ *Smyth*, supra at note 25, at para 44.

(b) use unnecessary force with a prisoner or other person contacted in the execution of duty;

(c) be discourteous to a member of the public;

(d) neglect or omit to promptly and diligently perform his or her duties as a police officer;

(e) fail to record or report promptly a complaint made to him or her;

(f) without proper authority, disclose, directly or indirectly to a person, information which he or she has acquired as a police officer;

(g) attempt to commit, aid, abet, counsel or procure another police officer to contravene these regulations;

(h) improperly use his or her character and position as a police officer for private advantage;

(i) obstruct a police officer or investigator either in the course of an investigation or in the carrying out of that person's duties under an Act;

(j) carry out his or her duties in a manner contrary to the Policy and Procedures Manual;

(k) wilfully or negligently make a false, misleading or inaccurate oral or written statement or entry in an official document or record, or otherwise pertaining to official duties;

(l) without lawful excuse destroy, mutilate or conceal an official document or record, or alter, erase or add to an entry in that document;

(m) place himself or herself under pecuniary or other obligation to a person in a manner that might affect the proper performance of his or her duties as a member of the Royal Newfoundland Constabulary;

(n) report for duty or be on duty while unfit for duty as a result of impairment by alcohol or a drug; or

(o) conduct himself or herself in a manner contrary to the Act.

(2) A police officer who violates the provisions of subsection (1) commits a breach of these regulations and is liable to the penalties set out in section 33 of the Act.³⁰

207. The RNCPC has alleged that the Respondent is in breach of s.3(1) of the Regulations having engaged in Discreditable Conduct.

208. The Discreditable Conduct test was articulated in *Spurrell v. Priddle and Puddicombe*.³¹ Chief Adjudicator MacGrath concluded that:

a) The test is primarily an objective one.

b) The board must measure the conduct of the officer by the reasonable expectations of the community;

c) In determining the reasonable expectations of the community, the Board may use its own judgement, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprised of the circumstances of the case;

d) In applying the standard the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time;

e) Because of the objective nature of the test, the subjective element of good faith is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.³²

209. The RNCPC argues that I should rely on the following contextual factors when objectively assessing the messages:

- i. That the Complainant had been detained earlier that day under the *MHCTA*;
- ii. That the Complainant was in a vulnerable position, having been removed from his home and detained in a mental health facility;
- iii. That the Respondent responded “Yup” to Smyth’s statement that Abbass was a “Loser”

³⁰ *Royal Newfoundland Constabulary Regulations* under the *Royal Newfoundland Constabulary Act, 1992* (OC 96-244), at s.3

³¹ A decision of the RNCPC 24 March 2016.

³² *Ibid.*, at p. 117

210. As in *Smyth*, the RNCPC relies primarily on two Ontario cases in support of its position. First, *The Matter of the Ontario Provincial Police Constable Sasa Slijivo #65711 Dated January 18, 2018* wherein two officers were ultimately found guilty of misconduct for private comments that had been recorded. The officers in that instance were making fun of a disabled child while on duty. Second, *The Matter of the Ontario Provincial Police And Detective Constable Douglas Holmes (10301), discreditable conduct. Dated February 21, 2023* wherein one officer used vulgar and derogatory language towards another officer. Again, the communication between the officers was private.

211. The RNCPC also alleges that the conduct of the Respondent in this instance had a detrimental impact on Mr. Abbass, his relationship with his family, and his general perspective of the police.

212. The Respondent acknowledges that the text exchange was inappropriate, but argues that it falls short of disreputable conduct.

213. The Respondent argues that I should consider, *inter alia*, the following contextual elements:

- i. The conversation was a casual conversation between two off duty officers
- ii. *Smyth* acknowledged that his statement was an emotional response in relation not the public statements that had been previously made by Abbass
- iii. There was no breach of policy by Buckle
- iv. Both Buckle and *Smyth* believed that it was a private message that would not be shared
- v. Buckle, nor *Smyth*, were speaking in an official capacity at the time of the messages

214. No evidence was placed before me by either of the parties regarding what the reasonable expectations of the community would have been in circumstances similar to this one.

215. Essentially, the question becomes whether a reasonable person, dispassionate and fully apprised of the circumstances in this case, would consider the conduct of the Respondent to be discreditable.

216. I find that the following circumstances are relevant to the determination of this matter:

- i. The Respondent acknowledges that the statement was not appropriate
- ii. The Respondent did not make the comment “loser” he simply replied “Yup” to the statement
- iii. The Respondent was replying to a personal friend who was undoubtedly in a highly emotional state having been recently involved in a shooting
- iv. There was no policy breached by the Respondent in sharing the information with Smyth
- v. Compared to the language used in cases raised by the RNCPC, both the term “loser” and “yup” are on the lower end of the insensitivity spectrum

217. I also find that the following factors are relevant when considering whether Buckle engaged in Disreputable Conduct:

- i. Buckle was a senior officer of the RNC in a position of relatively authority
- ii. Buckle ought to have been more sensitive to the issues of mental health
- iii. Buckle ought to have been more sensitive to the issue of personal liberties engaged by a detention under the MHCTA

218. Based on the totality of the circumstances before me, I conclude that Buckle’s text exchange with Smyth was inappropriate, but does not rise to the level of disreputable conduct. I do not believe that an objective observer would conclude that the language used rises to the level of disreputable conduct.

219. As I noted in *Smyth*

*I find that the decisions in Sljivo and Holmes, relied upon by the RNCPC are distinguishable from the instant case. In Sljivo, the officers were on-duty and the nature of the comments by the officers towards the disabled child were, in my view, significantly more damaging to the individual specifically and to the reputation of the police force generally. Similarly, I find that the language used by the officer in Holmes was [significantly] more inflammatory than the language used by the Respondent in this instance.*³³

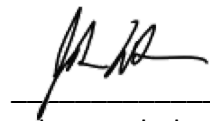
ORDER

220. Both complaints filed by Abbass against Buckle are hereby dismissed.

221. The Respondent is entitled to his reasonable costs as per s.33(1)(e) of the Act.

³³ *Smyth*, supra at note 24, at para 59

Dated at St. John's this 16th day of June, 2025

A handwritten signature in black ink, appearing to read 'John R. Whelan', positioned above a horizontal line.

John R. Whelan Q.Arb

Chief Adjudicator

Royal Newfoundland Constabulary Public Complaints Commission