



ROYAL CANADIAN MOUNTED POLICE

in the matter of
a conduct hearing pursuant to the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Between:

Designated Conduct Authority for “F” Division

Conduct Authority

and

Constable Craig Murray
Regimental Number 66199

Subject Member

Conduct Board Decision

Sandra Weyand, Conduct Board

March 14, 2025

Pierre-Olivier Lemieux, Conduct Authority Representative

Matthew Schmeling, Subject Member Representative

TABLE OF CONTENTS

SUMMARY	3
INTRODUCTION.....	4
ALLEGATIONS	5
EVIDENCE	8
Applicable legal principles to determine credibility and reliability of evidence	8
Constable Murray.....	9
Mr. Butler – Expert evidence.....	10
Staff Sergeant Malacko – Expert evidence.....	11
Expert evidence assessment.....	11
ANALYSIS	12
Representatives’ Submissions.....	12
Use of force – Applicable legal test	12
Allegation 1	14
<i>Findings of fact.....</i>	14
<i>Application of the use of force test.....</i>	16
Allegation 2	21
<i>Findings of fact.....</i>	21
<i>Application of use of force test</i>	22
Reporting – Applicable legal test.....	27
Allegation 3	28
<i>Findings of fact.....</i>	28
<i>Application of reporting test.....</i>	28
Allegation 4	30
<i>Findings of fact.....</i>	30
<i>Problematic framing of Allegation 4</i>	31
<i>Application of reporting test.....</i>	32
CONCLUSION	33

SUMMARY

The *Notice of Conduct Hearing* contains four alleged contraventions of the RCMP Code of Conduct. Allegations 1 and 2 involve Constable Craig Murray's use of force while interacting with a member of the public during his arrest and while escorting him to the cells at the Detachment. Allegations 3 and 4 involve Constable Murray's reporting of his interactions with that individual.

The Conduct Board found all four Allegations not established.

INTRODUCTION

[1] Constable Craig Murray faces four alleged contraventions of the RCMP Code of Conduct. The Allegations are related to Constable Murray's interactions with T.V., a member of the public, at the time of his arrest and upon his arrival at La Ronge Detachment.

[2] On July 11, 2022, Constable Murray arrested T.V. for assault and then transported him to cells at La Ronge Detachment. Constable Murray is alleged to have used more force than reasonably necessary against T.V., in contravention of section 5.1 of the Code of Conduct, when placing him into the police vehicle at the time of the arrest (Allegation 1) and when walking him down the Detachment hallway to be lodged in cells (Allegation 2). Constable Murray is also alleged to have drafted a false and misleading narrative about his interactions with T.V., in contravention of section 8.1 of the Code of Conduct, when emailing the Detachment Commander about the incident that occurred in the Detachment hallway (Allegation 3) and when filing the Subject Behaviour Officer Response (SBOR) Report (Allegation 4).

[3] The Allegations are set out in the *Notice of Conduct Hearing*, dated December 15, 2023. On March 8, 2024, and on April 29, 2024, Constable Murray filed responses to the Allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He denied all four Allegations.

[4] I have been appointed as the Conduct Board in this matter pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*]. In accordance with section 45 of the *RCMP Act*, I must decide whether each allegation is established on a balance of probabilities. In other words, for each Allegation, I must determine whether it is more likely than not that Constable Murray has contravened the Code of Conduct. If I find one or more of the Allegations to be established, then I must then impose conduct measures.

[5] The Conduct Hearing was held during the week of January 20, 2025. The oral decision on the Allegations was delivered on January 22, 2025. This written decision incorporates and expands upon that oral decision.

[6] I have carefully considered the Record, which includes documentary and video evidence before me, the oral evidence of witnesses, including expert witnesses on the use of force, as well as the representatives' submissions.

[7] For the reasons that follow, I find that all four Allegations are not established.

ALLEGATIONS

[8] The Allegations, as set out in the *Notice of Conduct Hearing*, are as follows:

Particulars common to all Allegations:

At all material times you [Constable Craig Murray] were a member of the Royal Canadian Mounted Police (RCMP) posted to "F" Division, in the Province of Saskatchewan.

Allegation 1: On or about July 11, 2022, at or near La Range, Saskatchewan, while on duty, Constable Craig Murray used more force than was reasonably necessary in the circumstances, contrary to section 5.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 1:

1. You received a call for service and attended a complaint where you lawfully physically searched, arrested, and handcuffed [T.V.], which was captured on WatchGuard video and audio. You used more force than was reasonably necessary in the circumstances in the arrest of [T.V.], a prisoner in your custody to whom you owed a duty of care, when you threw him head-first, while his hands were handcuffed behind him, into the rear passenger seat of a police vehicle.
2. You demonstrated an utter lack of respect toward [T.V.] when WatchGuard audio recording captured you boasting about your excessive use of force, and laughed and giggled while debriefing Constable Thomas Attardo subsequent to the arrest of [T.V.], stating that, "*you missed my moment of glory*", and "*... I just one armed him into the back of the vehicle*". You then told Constable Attardo, "*I gotta say right now, [T.V.]'s not too happy with me cause, I, like I chucked him*", and "*[T.V.] got into the back of my vehicle with a little bit of speed*", "*He's not gonna be happy when we get him back to the cell block though*".
3. Mr. Christopher Butler, a Subject Matter Expert in the area of police use of force, reviewed the totality of your interactions with [T.V.], and authored an independent expert opinion. In his report, Mr. Butler concluded that, in his opinion:

- a. A Physical Control Hard Technique was not proportionate to the totality of circumstances as described.
 - b. Therefore, I am of the opinion that while force was necessary to compel compliance to get [T.V.] into the vehicle, the chosen tactic exceeded the proportionality in accordance with police training and the [Incident Management Intervention Model (IMIM)] and several lesser options would have been available.
4. As a result, you used more force than was reasonably necessary in the circumstances, in contravention of section 5.1 of the RCMP Code of Conduct.

Allegation 2: On or about July 11, 2022, at or near La Ronge, Saskatchewan, while on duty, Constable Craig Murray used more force than was reasonably necessary in the circumstances, contrary to section 5.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegations 2:

5. You transported [T.V.], a prisoner in your custody, to whom you owed a duty of care, to the La Ronge RCMP Detachment, where WatchGuard video recording captured you escorting [T.V.] in the cell block corridor, and then using more force than was reasonably necessary in the circumstances, when you shoved [T.V.], whose hands were handcuffed behind him, into an adjacent metal door jamb, resulting in [T.V.] temporarily losing consciousness, suffering a hematoma to the occipital bone behind his right ear, dizziness, light-headedness, and a sore neck and back.
6. Mr. Christopher Butler, a Subject Matter Expert in the area of police use of force, reviewed the totality of your interactions with [T.V.], and authored an independent expert opinion. In his report, Mr. Butler concluded that:
 - a. I am of the opinion that given the mitigating factors of the controlled environment, the fact [T.V.] had been searched and had been handcuffed, that there was another officer in the immediate vicinity, and the significant size/strength disparity, that Physical Control Soft options would have been proportionate and effective to control [T.V.].
 - b. Constable MURRAY's push of [T.V.] into the wall was clearly a Physical Control Hard technique, and one especially of a high-risk nature given the predictability of the head striking the wall as a result of the loss of balance. As previously mentioned, based upon my review of the video, I do not agree that [T.V.] 'ducked his head as he moved towards the wall'.
 - c. The technique chosen by Constable MURRAY failed on the analysis of proportionality as required by a proper application of the IMIM in the totality of circumstances in this case.

7. As a result, you used more force than was reasonably necessary in the circumstances, in contravention of section 5.1 of the *RCMP Code of Conduct*.

Particulars of Allegations 3:

Allegation 3: On or about July 12, 2022, at or near La Ronge, Saskatchewan, while on duty, Constable Craig Murray failed to provide a complete and accurate account pertaining to the carrying out of his responsibilities, the performance of his duties, the conduct of investigations, and the operation and administration of the Force, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegations 3:

9. On July 12, 2022 (12:26 a.m.), you sent an email message to Staff Sergeant Dean Bridle, La Ronge RCMP Detachment Commander, in relation to your interactions with [T.V.], a handcuffed prisoner under arrest, while escorting him in the La Ronge RCMP Detachment cell block corridor, which forms the basis for Allegation 2 as set out above.
10. Your July 12, 2022 email message to Staff Sergeant Bridle, states that: "Last night while escorting [T.V.] into cell block, he tensed up and attempted to throw his shoulder into me. I responded by shoving him into the wall as a method to stop the behaviour. [T.V.] lowered his head during this response and caught his head on the wall, knocking himself unconscious."
11. Your July 12, 2023 email to Staff Sergeant Bridle, does not accord with the Watch Guard cell block video footage of the July 11, 2022 incident.
12. As a result, your email message of July 12, 2022 (12:26 a.m.), sent to Staff Sergeant Bridle, contained an inaccurate account of the incident involving [T.V.], that took place in the La Ronge RCMP cell block corridor, on the night of July 11, 2023, in contravention of section 8.1 of the *RCMP Code of Conduct*.

Particulars of Allegations 4:

Allegation 4: On or about October 9, 2022, at or near La Ronge, Saskatchewan, while on duty, Constable Craig Murray failed to provide a complete and accurate account pertaining to the carrying out of his responsibilities, the performance of his duties, the conduct of investigations, and the operation and administration of the Force, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

13. On October 9, 2022, you authored a [SBOR] report (2022-955748), wherein you documented that, on the night of July 11, 2022, while you were escorting [T.V.], a prisoner under arrest, handcuffed with his arms behind his back, in the La Ronge RCMP Detachment cell block corridor,

[T.V.] “tensed up his arms, clenched his fists into balls”, and called the members “pussies”.

14. In the October 9, 2022 SBOR, you wrote that, “*Constable Murray deemed this conduct as assaultive behaviour*”, and that, “[T.V.] *was psyching himself up to attack*”, and then [T.V.], “*began swinging his body and attempted to shove his shoulder into Constable Murray, so Constable Murray used force to push [T.V.] into the wall in an attempt to stop the assaultive behaviour. [T.V.] then ducked his head and it hit the door jamb in the hallway knocking himself out.*”
15. Your October 9, 2022 SBOR report, does not accord with the La Ronge RCMP Detachment cell block corridor Watch Guard video footage of the July 11, 2022 incident.
16. As a result, the October 9, 2022 SBOR that you completed, contained an inaccurate account of the incident involving [T.V.], that took place in the La Ronge RCMP cell block corridor, on the night of July 11, 2023, in contravention of section 8.1 of the RCMP *Code of Conduct*.

[*Sic throughout*]

EVIDENCE

[9] I received expert reports and heard oral evidence from Mr. Chris Butler and Staff Sergeant Brad Malacko, as well as from Constable Murray. Furthermore, I considered the oral and transcribed statements in the Record, particularly those from Commissionaire Wade Midgett and Constable Thomas Attardo.

Applicable legal principles to determine credibility and reliability of evidence

[10] In assessing each witness’s evidence, I must consider whether they are being truthful and whether their evidence is reliable. I may find a witness’s evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness’s evidence on a given point.

[11] In assessing credibility, I must not look at a witness’s evidence in isolation but as it relates to the totality of the evidence. I must also consider the impact of any inconsistencies on that evidence and whether, when taken as a whole in the context of the totality of the evidence, the witness’s credibility is impacted.¹

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

[12] Additionally, the British Columbia Court of Appeal notes that a witness's evidence cannot be assessed solely on their demeanour, that they appear to be telling the truth.² Rather, a decision maker must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts.

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

Constable Murray

[14] I found Constable Murray's evidence to be credible and reliable. He provided his evidence in a direct and forthright manner. His oral evidence was consistent with the video evidence and with the witness statements. Constable Murray did not attempt to overstate T.V.'s actions. While his recollection of certain events was not clear, such as what exact words were used by T.V. and when, I did not find that this significantly impacted the overall reliability of his evidence.

[15] I found Constable Murray's testimony especially impactful when he shared his mental health struggles stemming from working at a high call volume detachment and policing in particularly violent environments. Specifically, his recount of a shooting incident that had taken place in the area on June 19, 2022, and the impact this had on him was poignant. Constable Murray explained that his already disturbed sleep schedule became even worse after that incident, some nights resulting in no sleep at all, and that he twitched at the slightest sound. He sought help for these issues at his earliest opportunity. Moreover, Constable Murray continues to receive support from his psychologist and attends the River Valley Resilience Centre in Saskatchewan.

[16] Constable Murray thoroughly described his surroundings at the time he arrested T.V. and his perceptions during the incidents at issue. I will address his evidence in that regard at the relevant points within my analysis.

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

³ *McDougall*, at paragraph 58.

Mr. Butler – Expert evidence

[17] Mr. Butler had significant expertise in use-of-force intervention techniques and in analyzing video evidence. His evidence was clear, direct and objective. I found him to be credible, and the evidence he presented reliable.

[18] Mr. Butler highlighted limitations with respect to the use of the video evidence, notably the absence of audio, the inability to detect threat cues based on body tensing or other body language, and potential issues with the reliability of the video in the absence of a forensic analysis. He opined that Constable Murray acted within his lawful authority, but that his use of force was disproportionate in the circumstances. In particular, Mr. Butler concluded that the decision to toss T.V. into the vehicle was not a taught technique and is inconsistent with the IMIM and with RCMP policies.

[19] Similarly, Mr. Butler concluded that the control technique used by Constable Murray during the La Ronge Detachment cell block corridor incident was disproportionate.

[20] Mr. Butler provided a detailed explanation of the IMIM model and the assumptions he made in reaching his conclusions with respect to Constable Murray's actions (or uses of force). More specifically, he explained that the IMIM is the tool RCMP members use to assess and manage risk in all encounters with the public. It helps members determine what intervention is needed by continually assessing risk, based on the totality of the situation.

[21] He then outlined the fundamental differences between his and Staff Sergeant Malacko's expert reports. During cross-examination, he conceded a number of points, including that he was unable to say how much force Constable Murray would have exerted on T.V.; what Constable Murray would have perceived from his vantage point (which is a different angle than from the video evidence); what Constable Murray's intentions were; what his background was; and what the history with T.V., the Lac La Ronge Reserve or the Detachment area in general might have been. Mr. Butler agreed that all of these points represented relevant factors to consider and that he did not have the benefit of knowing them when he rendered his opinion.

[22] Mr. Butler's specific evidence with respect to Constable Murray's impugned actions (or uses of force) will be incorporated in my analysis of each Allegation.

Staff Sergeant Malacko – Expert evidence

[23] Staff Sergeant Malacko completed an assessment of the use of force employed by Constable Murray as part of the RCMP's review of the incidents with T.V. His review involved an assessment of whether Constable Murray had adhered to the IMIM and supporting RCMP policies. Staff Sergeant Malacko found that Constable Murray's use of force was consistent with the requirements of the IMIM.

[24] Staff Sergeant Malacko's testimony was clear, forthcoming and convincing. The factual basis for his opinion is consistent with the evidence before me. He was a credible witness and his evidence was reliable.

[25] Staff Sergeant Malacko raised similar concerns with the video footage as those of Mr. Butler. He also explained the importance of a member's perception of the circumstances and the environment. He emphasized that members in use-of-force situations are handling extremely dynamic events and must make quick decisions that may not result in the intended outcome. To that extent, Staff Sergeant Malacko also highlighted that body mechanics are unpredictable, especially where there is a size difference between individuals or when intoxication is a factor. He concluded that the risk of injury may be predictable, which in and of itself is not determinative of whether force used was excessive, but that the extent of injuries or how an event may play out is not.

[26] Further details of Staff Sergeant Malacko's evidence will be addressed where relevant within my analysis of each Allegation.

Expert evidence assessment

[27] An expert's evidence may assist me in evaluating the overall evidence. However, I must ensure that the factual basis for the expert's opinions is consistent with the evidence and assess the weight to be given to their evidence. I cannot simply adopt their conclusions as my own. Rather, Mr. Butler's and Staff Sergeant Malacko's reports and oral testimony are one aspect of the

evidence I will consider in my determination of the ultimate issue—whether the force used by Constable Murray was reasonably necessary in the circumstances.

[28] There are several factors that have led me to place greater weight on Staff Sergeant Malacko’s opinion than on Mr. Butler’s opinion. While the methodology and evidence relied upon in Mr. Butler’s expert report and in his oral evidence were more clearly set out, Mr. Butler made several assumptions without the benefit of Constable Murray’s testimony and his perception of the incidents. When further facts were put to Mr. Butler in cross-examination, he conceded that these details would impact his opinion.

ANALYSIS

Representatives’ Submissions

[29] In coming to my decision, I have considered the representatives’ submissions in their entirety and will incorporate all relevant portions, where applicable, within my analysis of each Allegation.

Use of force – Applicable legal test

[30] Allegations 1 and 2 state that Constable Murray used more force than was necessary in the circumstances, contrary to section 5.1 of the Code of Conduct, which provides that “Members use only as much force as is reasonably necessary in the circumstances.”

[31] To establish Allegations 1 and 2, the Conduct Authority must prove each of the following on a balance of probabilities:

- a) the identity of the subject member;
- b) the member’s actions, which constitute the use of force; and
- c) that the use of force was not reasonably necessary for one of the following reasons:
 - i. the member was not acting within the scope of his lawful duties;
 - ii. the member did not have reasonable grounds for using force; or
 - iii. the amount of force used was not objectively reasonable.

[32] I must find that it is more likely than not that the conduct attributed to Constable Murray by the Conduct Authority occurred. The burden of proof in that regard is satisfied by sufficiently clear, cogent, and convincing evidence. I note that, although the particulars are set out in the *Notice of Conduct Hearing*, the Conduct Authority is not obligated to prove each specific element of a particular. Some are in place solely to give context to the allegation.

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

[32] [...] police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, **the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness.** [...] ⁴

[Emphasis added]

[34] The question then becomes what factors are to be considered in assessing whether these principles have been met. As set out by the Supreme Court of Canada, the “constraints on a police officer's use of force are deeply rooted in our common law tradition and are enshrined in the [*Criminal Code*, RSC, 1985, c C-46 (*Criminal Code*)]” at section 25.⁵

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

Protection of persons acting under authority

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

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

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

⁵ *Nasogaluak*, at paragraph 33.

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

[36] As such, the following elements must be established on a balance of probabilities:⁶

- a) Constable Murray was acting within the scope of his lawful duties.
- b) Constable Murray's subjective belief that it was necessary to apply force to carry out his lawful duties was objectively reasonable in the circumstances.
- c) Constable Murray did not use an unnecessary amount of force.

[37] Constable Murray's subjective belief in the need to use force and the amount of force required must be objectively reasonable in "the circumstances as they existed at the time the force was used".⁷ Numerous factors are to be considered when assessing the amount of force used. These will be detailed in my analysis.

Allegation 1

[38] I will begin by providing my findings of fact with respect to Constable Murray's interactions with T.V. on July 11, 2022, both at the time of the arrest and when placing T.V. into the police vehicle. I will then provide my findings for each element of the use of force test under section 5.1 of the Code of Conduct.

Findings of fact

[39] On July 11, 2022, at 11:21 p.m. CST, Constable Murray responded to a call of assault on the Lac La Ronge Reserve, namely, an assault by T.V. on his father. Constable Murray was the first officer to arrive on the scene. He identified T.V. after asking him his name several times. T.V. was intoxicated and slightly argumentative when he repeatedly questioned the reason for his arrest. T.V. was holding a cell phone in his right hand and a can of food in his left hand. Constable Murray took the cell phone, placed it on the hood of the police vehicle and cuffed T.V.'s right arm.

[40] Constable Murray's vehicle was equipped with WatchGuard video to capture the view in front of the vehicle as well as the backseat of the vehicle. The video evidence shows that, when he

⁶ *Crampton v Walton*, 2005 ABCA 81 [*Crampton*], at paragraphs 42 to 44;

⁷ *Nasogaluak*, at paragraph 35.

was being handcuffed, T.V. pointed back towards the house with his left hand to indicate where his father was. Having said that, I accept that Constable Murray's perception was that T.V. was pulling his arm away as Constable Murray was trying to handcuff him and that he did not hear T.V. refer to his father being in the house. As Mr. Butler pointed out, what is seen on the video is not what would have been seen from Constable Murray's vantage point and he may not have seen or heard everything that is captured by the audio and video of the cameras and microphone.

[41] I also find that Constable Murray heard T.V. say, "or what?" when Constable Murray asked T.V. to hand him the can of food he was holding in his left hand. The transcript of the WatchGuard video confirms this exchange.

[42] Once T.V. was in handcuffs, Constable Murray searched him, out of the view of the WatchGuard camera, but the audio recording corroborates this step.

[43] Audio and video are once again captured when Constable Murray attempts to place T.V. into the back of the police vehicle. Furthermore, I find that the evidence shows that T.V. was being uncooperative. Constable Murray verbally directed T.V. to get into the vehicle twice. When T.V. did not comply, Constable Murray attempted to help him into the vehicle. T.V. then took a step back, rotated his hips and pushed his body away from the vehicle, as evidenced by the stance of his legs seen in the video. Constable Murray explained, and I accept, that T.V.'s movements made it difficult for Constable Murray to maintain his grip. It is at this point that Constable Murray lifted T.V. up to physically place him into the vehicle. T.V. entered the police vehicle horizontally, head first, and landed on his right side on the backseat. He did not sustain any injuries and righted himself shortly after the door closed.

[44] After T.V. is put into the police vehicle, Constable Attardo arrived on the scene for backup and Constable Murray relayed to him what previously transpired. I find that during this conversation, Constable Murray stated "you missed my moment of glory", "I just one armed him into the back of the vehicle", "I gotta *[sic]* say right now, [T.V.]'s not too happy with me cause *[sic]* I, like I chucked him", "[T.V.] got into the back of my vehicle with a little bit of speed", and "he's not gonna *[sic]* be happy when we get him back to the cell block though" or words to that effect.

[45] Constable Attardo read T.V. his rights while standing at the open door of the back of the police vehicle. Given that T.V. had been uncooperative when directed to get into Constable Murray's vehicle, both officers agreed to leave T.V. in the back of Constable Murray's police vehicle to take him to the Detachment instead of transferring him to Constable Attardo's vehicle. Constable Attardo was the lead investigator on the file; as such, had circumstances been different, he would have been the one to drive T.V. to the Detachment.

[46] I also heard evidence relevant to the environment in which Constable Murray was operating during his interaction with T.V. As such, I find that the residents of Lac La Ronge Reserve are generally known to exhibit anti-police sentiment. In particular, I find that T.V. was known to the police and, in the past, had displayed assaultive behaviour with officers when intoxicated.

[47] Furthermore, there had been a recent shooting incident on June 19, 2022, that took place less than one kilometre from where Constable Murray arrested T.V. During that incident, an unknown assailant shot at police officers. Moreover, the assailant had yet to be identified and located at the time of T.V.'s arrest. In addition to feelings of unease due to the uncertainty of the assailant's whereabouts, this incident affected Constable Murray's sleep pattern, concentration and levels of anxiety.

Application of the use of force test

[48] The first step of the test is not in dispute: Constable Murray is the member who, on July 11, 2022, arrested T.V. on the Lac La Ronge Reserve. Furthermore, the action that constitutes the use of force is that Constable Murray applied force to T.V. by picking him up and by throwing him horizontally into a police vehicle. This was established in my findings of fact; therefore, the second step is founded.

[49] Thus, I will focus on the three elements under the third step of the use of force test: a) whether the subject member was acting in the scope of their lawful duties; b) whether the subject member had reasonable grounds for using force; and c) whether the amount of force used was objectively reasonable.

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

[50] I heard no evidence challenging that Constable Murray was acting within the scope of his lawful duties. I find that he was on duty, affecting an arrest.

Was it reasonable for Constable Murray to believe he had reasonable grounds to use force?

[51] Both use-of-force experts concluded that T.V. displayed actively resistant behaviour when being asked to get into the police vehicle. I agree, which leads me to further outline the risk assessment in the next element of the test.

Was the amount of force used by Constable Murray objectively reasonable?

[52] As noted by the Supreme Court of Canada, the question is not simply whether an officer honestly believed that the force was necessary and that the amount of force used was a measured response to the situation, the officer's belief must also be objectively reasonable.⁸

[53] That said, the Supreme Court of Canada also recognizes that a member's actions are not to be held to a standard of perfection.⁹ Furthermore, the Court of Appeal of Alberta states that members cannot be "expected to measure the precise amount of force the situation requires".¹⁰ As such, it is important to note that the failure to use the least amount of force possible will not, in and of itself, render the amount of force used unreasonable.

[54] I agree with what Staff Sergeant Malacko and Mr. Butler have both relayed regarding use-of-force intervention in any given situation. Circumstances are, by nature, complex, dynamic and constantly evolving. Split-second decisions are made based on the officer's individual risk assessment. Moreover, officers must assess tactical considerations, their perceptions, situational factors and the subject's behaviour. The IMIM and associated training is the framework by which RCMP officers assess and manage risk through justifiable, proportionate and reasonable

⁸ *Nasogaluak*, at paragraph 34.

⁹ *Nasogaluak*, at paragraph 35.

¹⁰ *Crampton*, at paragraph 45.

intervention. The IMIM guides officers to determine the risk and the most appropriate tools to use for intervention.

[55] Constable Murray testified that the following factors informed his risk assessment at the time of T.V.'s arrest:

- a) He was the sole officer present at the time of the arrest.
- b) It was very dark out, as the incident occurred just prior to midnight.
- c) T.V. was reported as having assaulted his father while he was sleeping.
- d) T.V. was intoxicated.
- e) There was a prior history of violence and anti-police sentiment at the Lac La Ronge Reserve.
- f) There had been a shooting within one kilometre of the site of the arrest two weeks prior to the incident, and the shooter was still at large and was assumed to be hiding out somewhere in the area.
- g) T.V. refused to get into the police vehicle when asked verbally.
- h) The way in which T.V. was standing when being asked to enter the vehicle.
- i) He perceived T.V.'s behaviour to be escalating as he had pulled his arm away when being handcuffed, stated "or what?" when asked to hand over the can of food he was holding and tried to pull away when getting into the vehicle.
- j) T.V. had a prior history with the police, specifically, his tendency to become assaultive when intoxicated.

[56] I find that Constable Murray's risk assessment was justified and is in line with the facts. I further agree that T.V. displayed actively resistant behaviour and conclude that force was necessary to place him into the police vehicle. As previously mentioned, both use-of-force experts came to the same conclusion.

[57] In terms of the intervention used, the evidence indicates that Constable Murray tossed T.V. into the police vehicle. T.V. then landed on his right side, on the backseat of the vehicle and righted himself quickly.

[58] As outlined, a member's actions are not to be held to a standard of perfection. As stated by the conduct board in an RCMP decision provided to me by both Parties, "[t]he jurisprudence points to a number of factors that are to be considered by a trier of fact in assessing whether the force used by a police officer was reasonable in the circumstances".¹¹ These include but are not limited to events preceding the use of force; the number and personal characteristics of the officer(s) involved as well as their abilities or restrictions; the suspect's physical stature, state of mind, actual or apparent intoxication and interaction with police; the presence and use of weapons; and the nature, duration and apparent motive for use of force employed by the police.

[59] I have already set out the events preceding the use of force as well as Constable Murray's subjective reasons and motive for the use of force in some detail. While T.V. had allegedly assaulted his father, he was slight in stature, intoxicated and handcuffed. Constable Murray was certainly stronger than T.V. Constable Murray explained that he took this into account in his risk assessment; otherwise, the risk assessed would have been higher.

[60] In Constable Murray's mind, T.V. had already tried to pull away twice. Constable Murray explained that he nearly lost his grip when T.V. tried to pull away at the vehicle door. He further explained that this was the reason he did not employ strikes or a dynamic takedown, as he would have needed a better grip for those tactics to be effective. Coupled with the environmental factors previously outlined and, in particular, the fact that Constable Murray found himself in an area with a potential person who was actively looking to harm or kill police officers, Constable Murray's main objective was getting T.V. secured and into the vehicle.

[61] Constable Murray's personal characteristics are also relevant in assessing how the incident unfolded. In this case, he testified that he had been suffering from a disturbed sleep pattern, poor concentration and increased anxiety. These elements played an additional role in Constable Murray's assessment to get T.V. into the vehicle as quickly as possible.

[62] The IMIM allows for physical control soft and hard techniques when a member is presented with an active resistant risk scenario. Physical control means any physical technique used to control the subject that does not involve the use of a weapon. Soft techniques may be used to cause

¹¹ *Commanding Officer for "K" Division v Smith*, 2022 CAD 11, at paragraph 105.

distraction. These include open hand strikes, pressure points and joint locks. Hard techniques are intended to stop a subject's behaviour. These may include punches and kicks or vascular neck restraints.

[63] Mr. Butler opined that Constable Murray should have opted for physical control soft techniques to control T.V. to get him into the police vehicle. However, on cross-examination, he conceded that his opinion did not consider the concern that the residents in the area hold an anti-police sentiment nor that there was a shooting two weeks prior, which would be relevant to the urgency of controlling the situation. Mr. Butler also stated that the technique employed was preferable to a takedown onto the ground outside the vehicle.

[64] In choosing the technique he did, there is no indication that Constable Murray did not take care to place T.V. into the vehicle, even though he had to escalate the amount of force used. He was losing his grip on T.V. and his objective was to get T.V. into the vehicle as quickly as possible, given the totality of the circumstances.

[65] In accordance with the IMIM, a physical control hard technique is a viable option when one is faced with an actively resistant individual. Mr. Butler agreed that there are harder techniques than tossing someone into the back of a police vehicle, and one is not required to try all options and move up a line from least injurious to most injurious.

[66] Thus, I find that Constable Murray's decision to toss T.V. into the police vehicle was a reasonable technique given the overall circumstances. While other options might also have been available, based on the totality of the circumstances, it was best to get T.V. into the police vehicle as quickly as possible to prevent any further escalation. The potential of T.V. escaping became an imminent possibility after his second attempt to pull away, which resulted in Constable Murray nearly losing his grip. Taking T.V. to the ground had a greater potential for injury and would have left Constable Murray further exposed to the environmental factors he was facing. Getting T.V. into the police vehicle meant that he would be secured and that everyone's safety would be ensured, which both use-of-force experts agreed was the primary objective.

[67] As a result, I find that the Conduct Authority has not established on a balance of probabilities that the technique chosen was not an objectively reasonable and proportionate option. Thus, the third step of the use of force test is not established.

[68] I also note that Constable Murray's recount to Constable Attardo of how he got T.V. into the police vehicle corroborates that he lifted him up and tossed him into the police vehicle. However, the language Constable Murray used when he relayed what had happened to Constable Attardo is not an element of the offence. Therefore, the lack of respect the Conduct Authority alleges in Particular 2 of this Allegation plays no part in my analysis other than to provide context.

[69] Given the foregoing, I find Allegation 1 not to be established.

Allegation 2

[70] The following are my findings of fact with respect to Constable Murray's interactions with T.V. on July 11, 2022, when he escorted T.V. to cells at the La Ronge Detachment. I will then provide my findings with respect to each element of the use of force test.

Findings of fact

[71] During the ride to the Detachment, T.V. attempted to bring his handcuffed hands from behind his back to the front. Furthermore, the evidence supports that T.V. used foul language and made comments such as "My uncle's a cop" and "you're going to get fucking fired tomorrow, bro".

[72] Once at the secure garage of the Detachment, Constables Murray and Attardo removed T.V. from the police vehicle and walked him down the hallway of the Detachment. Specifically, as he escorted him down the hall, Constable Murray was holding T.V. by the left arm while his hands were still handcuffed behind his back. Furthermore, Constable Attardo was walking two steps behind.

[73] The video footage at the Detachment does not contain any audio. That said, the video shows that, while walking down the hall, T.V. rotated his torso to his left, planted his foot to attempt to

resist further forward movement and looked up at Constable Murray. It also appears as though he was speaking to Constable Murray.

[74] Constable Murray stated in the SBOR and testified before me that T.V. tensed up his arms, balled his hands into fists and commented that the officers were “pussies”. He stated that T.V. began swinging his body and was ‘psyching’ himself up to attack.

[75] I note that Constable Attardo’s account of the incident corroborates Constable Murray’s evidence in that T.V. was pulling against the members and was quite verbal. He stated that T.V. was mouthing off, for example, “saying profane things” such as “you guys are being bitches”. Furthermore, Commissionaire Midgett, the cell block guard on duty at the time, also noted that T.V. was defiant coming in, wriggling as he was escorted down the hall and not obeying the officers’ words to settle down.

[76] Given the foregoing, I find that T.V. did tense up his body, balled his fists and made disrespectful comments towards Constable Murray, including calling the officers “pussies”.

[77] In response to T.V.’s behaviour, Constable Murray lifted T.V.’s arms up behind him and then grabbed T.V. by the left shoulder and pushed him towards the wall. As he pushed T.V., T.V. lost his balance and his head hit the door jamb on the wall. T.V. was knocked instantly unconscious and his body slumped. Constable Murray lowered him to the ground, put him in the recovery position and summoned additional help.

[78] Emergency medical service providers attended the scene and took T.V. to the hospital where he was checked over. The medical records indicate that T.V. suffered a hematoma behind his right ear. After regaining consciousness, T.V. was dizzy but his vitals were good, and he was able to walk. He was treated and released from the hospital that same day.

Application of use of force test

[79] As in Allegation 1, the member’s identity is not at issue for Allegation 2. Therefore, the first step of the test—the identity of the member—is established.

[80] The member's actions that constitute the use of force are outlined in my findings of fact, specifically, Constable Murray pushing T.V. against the wall, which resulted in T.V.'s head hitting the door jamb and losing consciousness. Therefore, the second step is established.

[81] I will now focus on the three elements under the third step of the use of force test: a) whether the subject member was acting in the scope of their lawful duties; b) whether the subject member had reasonable grounds for using force; and c) whether the amount of force used was objectively reasonable.

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

[82] There is no dispute that Constable Murray was acting within the scope of his lawful duty, escorting T.V., whom he had just arrested, into cells. Therefore, this element is established.

Was it reasonable for Constable Murray to believe that he had reasonable grounds to use force?

[83] Both experts agreed that T.V. displayed assaultive behaviour leading up to the incident. Furthermore, the evidence supports Constable Murray's assessment in that regard. As such, I find that he had reasonable grounds for using force. Indeed, there was no dispute in the evidence that some amount of force was necessary in the circumstances.

Was the amount of force used by Constable Murray objectively reasonable?

[84] A certain level of deference should be granted to the member on the scene as they do not have the luxury of analyzing the subject's behaviour over and over, on video or otherwise, before determining the perfect course of action. I note that there is also a permissible range of responses that may be considered as reasonable. Two officers in the same situation may employ different techniques. As such, I place great weight on Constable Murray's perception of the situation.

[85] I have considered the evidence provided by the video footage and Constable Murray's as well as the experts' interpretations of same. I am mindful of the limitations of the video; however, I agree with the experts that it allows me to determine the chain of events and chronology of what transpired.

[86] There is no dispute that Constable Murray owed a duty of care to T.V., and that this duty was elevated by the fact that T.V. was in restraints. However, T.V.'s restraint by handcuffs was limited as he attempted to bring his handcuffed hands from his back to his front during transport to the Detachment. Therefore, this indicates that he had some flexibility in his movement. This, together with T.V.'s comments on the way to the Detachment and his history of how he interacts with police while intoxicated, would have caused Constable Murray to elevate his risk assessment when removing T.V. from the police vehicle.

[87] Constable Murray explained that as he and T.V. were walking down the Detachment hallway, T.V. was tensing up his body; he was balling his fists and he was uttering threatening language. None of these elements can be seen on the video, but I have found Constable Murray's account of the events credible and I find these actions to be established fact. I note as well that this behaviour was corroborated by the accounts of Constable Attardo and Commissionaire Midgett as outlined in their statements. Both were present in the cell block hallway at the time of the incident. Both experts also agree with Constable Murray's assessment in that regard and place T.V. in an assaultive state category at the time of the incident.

[88] Constable Murray's initial risk assessment during his dealings with T.V. was active resistance when getting T.V. into the vehicle. He was then confronted with elevating risk factors during the car ride to the Detachment, given T.V.'s commentary. Finally, Constable Murray assessed T.V.'s risk as assaultive when walking down the Detachment hallway. Constable Murray had no way of knowing whether T.V.'s behaviour would escalate further.

[89] While walking in the cell block hallway, Constable Murray further explained that he felt T.V. swinging his body, then plant his feet, twist his torso and shift his hips towards him. He felt T.V.'s shoulder hit the front of his soft body armour, which he interpreted as an assaultive action.

[90] Given that he had already nearly lost his grip of T.V. once, Constable Murray did not want to run the risk of taking T.V. to the floor. His intention was to pin his chest against the wall and then reassess the situation. Upon being questioned, Constable Murray outlined that he used as minimal force as he could to execute this manoeuvre. As he implemented that force, he observed

T.V.'s head move to the right and hit the door jamb. Constable Murray was clear in that his intent was not to push T.V.'s head into the wall.

[91] Mr. Butler explained that the intention when choosing an intervention option is what is important, even though the result may be something that was not meant to occur, given many different factors.

[92] Constable Murray's intent was to bring T.V.'s chest up against the wall to de-escalate his behaviour. Both experts agreed that this is a physical control hard technique. The nature of hard techniques is that they are more likely to cause injury. In this case, the size difference between T.V. and Constable Murray and the fact that T.V. was intoxicated led to T.V. losing his balance and striking the wall head first.

[93] While the two experts both agree on the risk assessment executed by Constable Murray, they differ in their opinion on the type of tactic and amount of force that was reasonable and proportionate in the circumstances. Most notably, the two opinions diverge on whether it was foreseeable or predictable that T.V.'s head would hit the wall.

[94] Mr. Butler outlined the following factors: the incident took place in a controlled environment, in the Detachment hallway; there were two members present, with Constable Attardo two steps behind Constable Murray and T.V.; the size difference between Constable Murray and T.V. was significant; T.V. was handcuffed and had no weapons; and T.V. was intoxicated. Mr. Butler stated that these factors should have prompted Constable Murray to employ a control soft technique to de-escalate the situation.

[95] Mr. Butler's analysis of proportionality then focused on the foreseeability of T.V.'s head hitting the wall. Mr. Butler believed it was foreseeable that an intoxicated, slight in stature and handcuffed individual would knock into something if they are pushed sideways with a high degree of force.

[96] In contrast, Staff Sergeant Malacko explained that due to body dynamics when dealing with two individuals, their size differences and level of intoxication, it becomes impossible to predict how a given situation may unfold. As such, Staff Sergeant Malacko opined that it was

difficult to predict where T.V.'s head would land at the time of the incident. In addition, he explained that a cell block may appear to be a controlled environment, but a lot of incidents occur because of the fight or flight response of those in custody and because of their desire to launch a last-ditch effort to try to escape prior to being lodged in cells. He added that holding someone against the wall is a tactic commonly used to try to de-escalate behaviour in those types of situations.

[97] Mr. Butler conceded on cross-examination that he, in fact, did not know with what amount of force Constable Murray pushed T.V. and with what force T.V.'s head hit the wall. Forensic analysis of the video, which could have shed further light on those forces, was not performed in this case. He also agreed that someone under the influence of alcohol can be rendered unconscious with a modest amount of force. However, Mr. Butler maintained that a control soft technique would have been the proportionate response in this instance.

[98] I find that the evidence shows that Constable Murray did initially attempt a control soft technique by employing a pain control technique, lifting T.V.'s arm up and putting pressure on T.V.'s shoulder, but this did not alleviate T.V.'s behaviour.

[99] Constable Murray then took an additional intervention step, which was to bring T.V. against the wall. When he initiated the manoeuvre, Constable Murray grabbed T.V.'s shoulder to bring his chest against the wall. As he pushed, T.V. lost his balance and his head lowered, which made it the first part of his body to hit the door jamb.

[100] In consulting the IMIM, I fail to see how Constable Murray can be faulted for using a physical control hard technique based on an assaultive risk assessment and after having already attempted a physical control soft technique. The visual IMIM tool clearly shows the physical control hard technique ring adjacent to the assaultive risk wedge of the model. No part of the physical control soft gradient touches the assaultive state part of the IMIM circle depiction. As such, in my opinion, Mr. Butler's suggestion that Constable Murray should have employed a physical control soft technique is contrary to what would have been front of mind for Constable Murray based on his training and on the guiding intervention tools outlined in the IMIM.

[101] I find that a risk of injury was predictable by the nature of using a physical control hard technique. However, the extent of those injuries and whether T.V.'s head would hit the wall first were not. I agree with Staff Sergeant Malacko that body mechanics and movements are not accurately foreseeable, especially in a dynamic situation such as the one faced by Constable Murray. The tactic employed by Constable Murray was sound as per the IMIM; the resulting injury was secondary and unpredictable.

[102] While Constable Murray's execution of the manoeuvre was such that it did not achieve the desired result, I cannot find that it constituted an unreasonable use of force based on the totality of the circumstances. Consequently, I find that on a balance of probabilities Constable Murray's use of force was justified in the circumstances and the third step is established.

[103] Consequently, while it is truly unfortunate that T.V.'s head hit the wall and he lost consciousness, I find that Constable Murray's use of force was proportionate. Thus, Allegation 2 is not established.

Reporting – Applicable legal test

[104] Allegations 3 and 4 state that Constable Murray falsely or inaccurately reported the events subject of Allegation 2, contrary to section 8.1 of the Code of Conduct.

[105] This Code of Conduct section states: "Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigations, the actions of other employees and the operation and administration of the Force."

[106] To establish Allegations 3 and 4, the Conduct Authority must prove each of the following on a balance of probabilities:

- a) the identity of the subject member;
- b) the statement or account of actions on a file in question;
- c) that the statement or account provided was false, misleading or inaccurate; and
- d) that the member:
 - i. knew the statements were false, misleading or inaccurate; or

- ii. was reckless or careless as to the validity of the statements.

Allegation 3

Findings of fact

[107] For the purposes of my analysis of Allegation 3, I find, as an additional fact to the facts laid out as part of Allegation 2, that Constable Murray sent an email to Staff Sergeant Bridle at 12:26 a.m. on July 12, 2022, relaying the incident that had occurred with T.V. while escorting him in the cell block corridor of the Detachment.

Application of reporting test

[108] As in the previous Allegations, the member's identity is not at issue. Therefore, the first step is met.

[109] The statement or account of action in question for this Allegation is the email message Constable Murray sent to Staff Sergeant Bridle on July 12, 2022, reporting his interactions with T.V. while escorting him in the cell block corridor of the Detachment. As this was determined in my findings of fact, the second step is also met.

[110] In relation to the third step—whether the statement or account provided was false, misleading or inaccurate—I note that the part of the email at issue, as outlined in Particular 10 of the *Notice of Conduct Hearing*, states:

Last night while escorting [T.V.] into cell block, he tensed up and attempted to throw his shoulder into me. I responded by shoving him into the wall as a method to stop the behaviour. [T.V.] lowered his head during this response and caught his head on the wall, knocking himself unconscious.

[111] I have previously found that T.V. did tense up and turn his torso so that his shoulder was angled towards Constable Murray. I also found that T.V. did not lower his head but that his head hit the wall due to the momentum and shift in body position resulting from the push towards the wall.

[112] As such, the last sentence of Constable Murray's email recount does not accord with the evidence before me. Consequently, the third step is met.

[113] However, for the fourth step of the test, I am also required to find that the subject member knew the statements were false, misleading or inaccurate or that the subject member was reckless or careless as to the validity of the statements.

[114] Inaccuracy alone is not sufficient. The conduct authority should start by asking whether the member intended to deceive. If the answer is no, then the next question is whether their error constituted negligence or an honest mistake. Furthermore, the *RCMP Conduct Measures Guide* (November 2024), at page 206, states: "If the member makes an honest but mistaken statement that ultimately turns out to be false, misleading or inaccurate, a finding of misconduct will not generally be found."

[115] I find that Constable Murray relayed the events to Staff Sergeant Bridle as he perceived them. He crafted his email to Staff Sergeant Bridle immediately following the incident without the benefit of further reflection or video footage review. Constable Murray had handled a dynamic situation and immediately reported his actions to Staff Sergeant Bridle. The account provided is described as it was subjectively perceived by Constable Murray. From his vantage point and given the assaultive behaviour being exhibited, Constable Murray may well have believed that T.V. lowered his head. I have no evidence to suggest that Constable Murray did not assess the situation with care and that he reported information he believed to be false to Staff Sergeant Bridle.

[116] Constable Murray explained that he now realizes, after the benefit of reviewing the video, that T.V. did not lower his head. This was not his belief at the time of the incident and when he sent the email.

[117] I find that Constable Murray made an honest but mistaken statement that ultimately turned out to be inaccurate. I agree with the Subject Member Representative that Constable Murray cannot be held to a perfect standard. Furthermore, I find that the error was the result of an honest mistake.

[118] In addition, the Conduct Authority Representative suggests that Constable Murray may have intended to provide an inaccurate report to minimize the incident that had occurred and justify

his use of force as was discussed in a prior conduct board decision.¹² However, this is not supported by the evidence in the Record before me. I have nothing other than the Conduct Authority Representative's submissions to support that position and I find it entirely speculative.

[119] Given the foregoing, the fourth step of the test is not met. I find that the Conduct Authority has failed to demonstrate on a balance of probabilities that Constable Murray contravened section 8.1 of the Code of Conduct. Consequently, Allegation 3 is not established.

Allegation 4

Findings of fact

[120] For the purposes of my analysis of Allegation 4, I outline the following additional facts to those outlined as part of Allegation 2.

[121] On July 12, 2022, Constable Murray authored an SBOR report for the incident outlined in Allegation 2. In the SBOR, Constable Murray used similar language as in Allegation 3 to describe what transpired on the night of July 11, 2022.

[122] Specifically, Constable Murray documented that T.V. "tensed up his arms, clenched his fists into balls" and called the members "pussies" while T.V. was handcuffed behind his back and being escorted down the La Ronge Detachment cell block corridor.

[123] Furthermore, I find the wording, as outlined in Particular 14 of the *Notice of Conduct Hearing*, to accord with the evidence before me. It reads as follows: "Constable Murray deemed this conduct as assaultive behaviour" and "[T.V.] was psyching himself up to attack", and then T.V.:

[...] began swinging his body and attempted to shove his shoulder into Constable Murray, so Constable Murray used force to push [T.V.] into the wall in an attempt to stop the assaultive behaviour. [T.V.] then ducked his head and it hit the door jamb in the hallway knocking himself out.

¹² *Commanding Officer for "H" Division v MacGillivray*, 2021 CAD 16, at paragraph 123.

Problematic framing of Allegation 4

[124] I note here that the date captured in reference to the SBOR report in Allegation 4 is October 9, 2022. The evidence shows that Constable Murray completed the report on July 12, 2022. The October 9, 2022, date appears to relate to the day on which the SBOR was reviewed and approved and is, as such, the latest date noted on the report. However, it is clear that it does not represent the date on which Constable Murray authored the report.

[125] When specifically putting the question of the date discrepancy to the Conduct Authority Representative, he did not have an explanation for the error other than that the individual who drafted the *Notice of Conduct Hearing* must have assumed that the completion date noted at the bottom of the report was the date on which the report was produced. He also pointed me to the language in the allegation that reads “on or about” the October 9, 2022, date, which affords some flexibility in the date range. However, when I pointed out to him that the particulars themselves each reference October 9, 2022, without the benefit of the “on or about” qualifier, he conceded that this was problematic.

[126] The Record also includes an email sent by Constable Murray to Staff Sergeant Bridle on July 12, 2022, at 1:33 a.m., which informs Staff Sergeant Bridle that the SBOR report was completed and had been submitted for his review. This email, coupled with the “last modified” date on the SBOR itself leaves little doubt that the SBOR was authored on July 12, 2022, and not on October 9, 2022, some three months after the event. The individual who drafted the *Notice of Conduct Hearing* had sufficient information in the file to be able to appropriately identify the SBOR.

[127] I would also suggest that if there had been any confusion with respect to when the SBOR was drafted, Allegation 4 could have referred to a range of time, spanning both possible dates, and each Particular did not need to reference a specific date at all.

[128] While I believe that the Conduct Authority Representative should have taken greater care when drafting the *Notice of Conduct Hearing*, I do not find this to be a fatal error, based on the

specific circumstances of this case. As in the Federal Court’s reasoning in *Okornor*¹³, I am satisfied that the error in this matter was inadvertent and that it did not lead to genuine confusion as to which document Allegation 4 was referencing. While he pointed out the error in date, Constable Murray addressed each particular of the Allegation as if it was referring to the SBOR drafted on July 12, 2022. He was able to make fulsome representations and knew the case he had to meet. There was no prejudice to him arising out of the reference to the incorrect date.

[129] As such, I will proceed to my analysis of the elements of Allegation 4.

Application of reporting test

[130] The identity of the member continues not to be at issue; thus, the first step of the test is met.

[131] The statement or account in question is the SBOR, specifically where Constable Murray documented that T.V. “tensed up his arms, clenched his fists into balls” and called the members “pussies”, while T.V. was handcuffed behind his back and being escorted down the La Ronge Detachment cell block corridor.

[132] Furthermore, Particular 14 of the *Notice of Conduct Hearing* reads: “Constable Murray deemed this conduct as assaultive behaviour” and “[T.V.] was psyching himself up to attack”, and then T.V. “began swinging his body and attempted to shove his shoulder into Constable Murray, so Constable Murray used force to push [T.V.] into the wall in an attempt to stop the assaultive behaviour. [T.V.] then ducked his head and it hit the door jamb in the hallway knocking himself out.”

[133] As I have already determined this account in my findings of fact, the second step is also met.

[134] As for the third step on whether the statement or account was false, misleading, or inaccurate, the reasoning follows much the same as in Allegation 3. I have found that T.V. did tense up his arms, clenched his fists into balls and used inappropriate language towards the

¹³ *Okornor v Canada (Citizenship and Immigration)*, 2024 FC 1693, at paragraph 25.

members, including calling them “pussies”. I have also found that this conduct was correctly assessed as assaultive behaviour and that T.V. did turn his body towards Constable Murray with his shoulder angled towards Constable Murray, causing him to react with additional force and to push him against the wall.

[135] Where my findings differ from Constable Murray’s report are with his assessment that T.V. lowered his head, which, in turn, resulted in him knocking his head against the wall.

[136] Having said that, for Allegation 4 to be established, my analysis must include a finding that Constable Murray knew the statements were false, misleading or inaccurate or that he was reckless or careless as to the validity of the statements.

[137] On this point, I find that Constable Murray reported the incident as he perceived it. He did not knowingly or recklessly provide a false account. With the benefit of the review of video footage and a frame-by-frame analysis, one is able to more accurately reflect on the incident that occurred on the night of July 11, 2022. Constable Murray, in the midst of the incident, responding to assaultive behaviour, perceived that T.V. lowered his head as he was pushed towards the wall. I find that Constable Murray believed he was providing an accurate report at the time he completed his SBOR report and that the discrepancy in the reporting was an honest mistake about the biomechanics of the movements of T.V.’s head. Therefore, the fourth step is not met.

[138] As such, the misconduct is not founded, and Allegation 4 is not established.

CONCLUSION

[139] I have found that Allegations 1, 2, 3 and 4 are not established. As such, there is no need to consider the imposition of conduct measures in this matter.

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

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

Sandra Weyand
Conduct Board

March 14, 2025
Date