

**IN THE MATTER OF A PROCEEDING UNDER THE *POLICE ACT*, S.N.B., 1977 C. P-9.2**

**AND IN THE MATTER OF A NOTICE OF ARBITRATION HEARING DATED April 1<sup>st</sup>, 2014**

**AND IN THE MATTER OF A CONDUCT COMPLAINT OF BILL DOUCETT FILED OCTOBER 11<sup>th</sup> , 2013**

**BETWEEN:**

**THE NEW BRUNSWICK POLICE COMMISSION**

- and -

**CONSTABLE JOHN MORRISON**

Appearances:	For The New Brunswick Police Commission – Frederick C. McElman , <i>C.M.</i> , <i>Q.C.</i> and Lara McDougall Esq.
	For Constable John Morrison – Robert Davidson
Hearing Dates	June 3rd, August 5th and 6th, 2014
Decision Date	August 20th, 2014
Before	Gary J. McLaughlin Q.C., Arbitrator

**Decision**

1. This matter is before me as a result of a Notice of Arbitration Hearing dated April 1<sup>st</sup>, 2013.
2. My appointment as arbitrator pursuant to Section 33.03 of the Police Act, took effect April 2<sup>nd</sup>, 2014.
3. Portions of the Notice of Arbitration Hearing are set out herein as follows :

Particulars:

This Notice of Arbitration Hearing is being served on you pursuant to subsection 29.4(4) of the Police Act by virtue of paragraph 28.7(2)(d) of the said *Act* as you failed to attend the scheduled Settlement Conference on Wednesday, March 19, 2014 in Fredericton, N.B. and for which written notification had been given to you.

This Notice of Arbitration Hearing arises from a complaint from Mr. Bill Doucette, of Lower Sackville, N.S., regarding your conduct. It is alleged that you, Constable John Morrison, a member of the Woodstock Police Force, on or about the 6th day of October 2013, at or near Halifax, Nova Scotia, while conducting a private negotiation over the purchase of a collectible \$100.00 bill, after having identified yourself as a police officer, engaged in discreditable conduct and abused your authority as a police officer towards Mr. Bill Doucette, the complainant in this matter. This matter was characterized as a conduct complaint.

Considering it to be in the public interest to do so, the New Brunswick Police Commission (*"The Commission"*) processed this conduct complaint pursuant to Subsection 26.1(1) of the *Act*. Therefore, any provisions of the *Act* that apply to the powers that a Chief of Police or Civic Authority may exercise when processing a conduct complaint also apply, with the necessary modifications, to the Commission when it processes a conduct complaint. Pursuant to subsection 26.1 (1) and paragraph 28.1(1)(c) of the *Police Act* Mr. Chris McNeil, an investigator from the list the Commission establishes and maintains under the *Act*, was appointed to investigate the following allegations:

Allegations:

It is alleged that you, Constable John Morrison of the Woodstock Police Force, while off duty, asserted, or purported to assert, authority as a member of a police force and, after so identifying yourself as a police officer, abused your authority and acted in a manner that is likely to bring the reputation of the Woodstock Police Force into disrepute. The allegations, if sustained, were deemed to constitute a breach of subsections 35(a) and 35(f) of the *Code of Professional Conduct Regulation — Police Act Regulation 2007-81* as described in paragraphs 36(1)(c), subparagraph 36(1)(a)(ii) and subsection 41(c) which state:

**36(1)(c) A member of a police force engages in discreditable conduct if the member, while off duty, asserts or purports to assert authority as a member of a police force and does an act that would constitute a breach of the code if done while the member is on duty.**

**36(1)(a)(ii) A member of a police force engages in discreditable conduct if the member, while on duty, acts in a manner that is likely to bring the reputation of the police force with which he or she is employed into disrepute.**

**41(c) A member of a police force abuses his or her authority if the member, while on duty, uses language or acts in a manner that is discourteous, uncivil, abusive or insulting to a person or that tends to demean or show disregard to a person's race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status, sexual orientation, sex, social condition, political belief or activity, [...]**

The Investigator's findings and conclusions formed part of the investigation report submitted to the Commission under subsection 28.1(2) of the Act, copy of which has been provided to you. Having regard to the overall circumstances of the case, the investigator concluded that there was sufficient evidence that the *Code of Conduct* allegations of discreditable conduct and abuse of authority were sustained.

The Commission has thoroughly reviewed the Investigator's Report and concurred with the investigator's findings and conclusions. The Commission having determined that there was sufficient evidence that you had committed breaches of the *Code*, a Notice of Settlement Conference was served on you. It was to be held on Wednesday, March 19, 2014 at the Offices of the New Brunswick Police Commission. The purpose of the Settlement Conference was to provide you with an opportunity to respond to the alleged breach of the *Code* and to reach an agreement with the Commission concerning disciplinary and corrective measures. However, you notified the Commission that you would not be attending....

4. The said Notice was duly served and acknowledged by Cst. John Morrison.
5. 41(d) of the Code which refers to, "harasses, intimidates or retaliates against a complainant" was included in the original investigation report but was withdrawn.
6. A conference call was set up for April 25<sup>th</sup> 2014 for 2:00 PM. Notice of the conference call was served on Cst Morrison. Counsel for the Commission, Cst. Morrison and his representative participated in the conference call. It was agreed during the conference call that my appointment as arbitrator was confirmed and that I had jurisdiction to hear this matter. It was agreed that the matter could reconvene in person at a later date. Mr. Morrison waived the fifteen day requirement for the commencement of the hearing.
7. Mr Davidson asked that disclosure be made according to the legislation. It appeared from the Notice of Arbitration that disclosure had been effected however I asked counsel for the Commission to verify same and to advise if my understanding was incorrect. June 3<sup>rd</sup>, and 4<sup>th</sup> were scheduled by consent for the taking evidence in Fredericton.

8. We reconvened at the Wu Center in Fredericton June 3<sup>rd</sup>, 2014 at 09:30 AM.
9. The Court Stenographer was duly sworn. The Notice of Arbitration dated April 1<sup>st</sup>, 2014 was tendered and by consent became Exhibit "1".
10. The allegations of misconduct were read and Cst. Morrison indicated his denial of same.
11. Mr. McElman sought to introduce the investigator's report and attachments however Mr. Davidson objected to same pending the testimony of the investigator. The report was not admitted at that time.
12. Mr. McElman advised and in keeping with a conference call with the parties on May 31th, extra provincial summons under the Interprovincial Subpoena Act had become necessary because three witnesses require same on account of taking time from their employment. I directed that the summons be issued as requested.
13. Mr Davidson argued that disclosure has not been made as Mr. Bill Doucette's audio Statement was not provided and no written statements of any witness and consequently argued that the matter be dismissed. There is no obligation under the Act that the statements be in writing. Audio files were provided however the one containing Mr. Doucette's statement was defective and I directed that working audio file be provided to Mr. Davidson in a timely fashion. A copy was subsequently provided. Mr. Davidson also argued that the matter be dismissed as the Commission had no witnesses present and was requesting an adjournment. I declined to dismiss the matter and allowed an adjournment.
14. At the conclusion of the hearing of June 3<sup>rd</sup>, the parties agreed two days be fixed and that the hearing would resume August 5<sup>th</sup> and 6<sup>th</sup> in Fredericton commencing at 09:30 AM.
15. Mr. McElman's assistant several days before the resumption of the August hearing requested that the testimony of one witness, Ms. Misty Salter be taken by video link to which Mr. Davidson objected to. I did not hear argument or rule on this request as she was eventually withdrawn as a witness. Eventually an affidavit of Ms Misty Salter was admitted in evidence which will be addressed later herein.
16. The hearing resumed on August 5<sup>th</sup> in Fredericton at the Labour Board facility. Mr. Davidson requested the exclusion of witnesses. I declined to exclude witnesses as the basis thereof was not established.

17. Mr. Davidson introduced a witness list which is found in the investigators report and it was received as Exhibit "2". Mr. Davidson took issue with the fact that all witnesses listed were not being called. Mr McElman confirmed only two witnesses are being called, namely Mr. Doucette the complainant and Mr. Chris McNeil the investigator and same had been discussed with Mr. Davidson even before the June 3<sup>rd</sup> hearing date. Mr. McElman also indicated he would be offering the affidavit of Ms. Misty Salter.
18. I advised Mr. Davidson nothing prevented him from issuing a summons to whatever witness he deemed appropriate.
19. By consent the Notice of Appointment of Investigator and the Notice of the Complaint to Cst. Morrison were received as Exhibits "3" and "4" respectively. Both documents are dated November 19<sup>th</sup>, 2013.
20. Mr. Davidson requested that a summons be issued for Chief Collicott. Mr. McElman offered to prepare the summons for this witness for Mr. Davidson.
21. Mr. Doucette contacted the Police Commission to make the complaint and duly filed a formal complaint on October 11<sup>th</sup>, 2013.
22. The complaint of Mr. John Doucette is set out herein as follows:

"Formal complaint against Officer John Morrison

I would like to launch a formal harassment complaint against Officer John Morrison of the Woodstock RCMP in regards to interactions on Kijiji, the phone, and in person earlier this month. My details are as follows:

On Thursday, October 3rd I received a phone call from a gentleman introducing himself as "John" in regards to a Bill I had posted for sale on Kijiji Halifax (I live in the Lower Sackville area and this is our local site). The conversation did not last long, he asked a couple of questions and wanted to know if I had any time off over the next few days in order to show him the described item (that he would be traveling from Fredericton to see it). I gave Mr. Morrison my work schedule, letting him know I was available on the upcoming Saturday and Monday (but worked Sunday). At the end of the conversation he indicated he would call me on Saturday, October 5th to which I agreed.

Saturday, October 5<sup>th</sup>, John contacted me by telephone at 8:24pm. He indicated he had spoken with several coin *and* bill shops. According to John, these shops felt they could get a note as I advertised for \$1000 (my asking price was \$2,200), it was my suspicion he wanted to offer me the same, so I told John it was good for him as he could get the bill for less than half of my asking price and would not have to travel the distance to see it. John had paused, but then

indicated he still wanted to travel to see the item. We arranged for him to meet me Sunday on my lunch break (1:00pm).

On Sunday, October 6th, Mr. Morrison arrived at my workplace promptly at 1:00pm, introducing himself using his full name. I suggested we go into the back area (the lunchroom) to see the item (feeling it was safe as he had mentioned during one of our conversations he was a police officer). On the way to the back area he indicated he would like to take the bill out of the protective case, I agreed but mentioned I did not have the proper screwdriver to open the case and that we should go to the janitorial office in the mall we were in to see if they have the correct tool. We approached a female employee in the janitorial office, she knew who I was so I introduced Mr. Morrison to her and indicated he was a police officer so she felt secure allowing us into the office. Once I explained what we were doing and what tool we required I opened the case on her desk with the screwdriver she supplied (she stayed with us). After briefly examining the bill Mr. Morrison asked if we could have the bill checked out at the local RCMP detachment. He indicated firmly that he was taking the bill by himself. Feeling uncomfortable with this situation (thinking I would never see the bill again), I made it clear, "where this bill goes so do I". At this point Mr. Morrison became irate and moved towards me in a threatening manner. He pointed his finger and started hollering "you're a scam artist, you're a criminal, this bill is not real, and you are a con artist!" At this point I was becoming very scared and upset, looking over at the female who let us in the office I could see she was very uncomfortable as well and maybe a little scared. I asked Mr. Morrison to leave as I no longer wanted to associate or do business with him (not to contact me again). He started to leave but caused another scene yelling the same things through, "criminal, scam artist". At this point I looked at the female in the office and apologized, she indicated she was frightened and questioned whether or not he was a real police officer.

After Mr. Morrison had left, I went back to my workplace. Within an hour and a half an RCMP officer from the Lower Sackville detachment came to see me. He asked if I would take the bill to Corporal Supervisor Commercial Crime Section, Michael Kidd. I agreed to take it over when I finished work for the day. After work, I kept my word and went to see Corporal Kidd; he thanked me for coming to see him and said he was interested in reviewing the rare bill I had. After an hour of visually and physically handling the bill he was convinced it was real and told me I could take the note home. I thanked him for his time and asked if he could please pass along the findings to Mr. Morrison but also ask him not to contact me as I felt there was something not right about the police officer. When getting into my car I mentioned to Corporal Kidd I wouldn't be surprised if I still received a threatening phone call from Mr. Morrison based on the behavior he displayed.

Monday, October 7th at 4:14pm a call came in and I was unsure of the number. When I answered the call someone whispered "Bill". I asked who was calling, the caller said "the guy who came to see your bill". I said in shock "John, the RCMP have their results and will be telling you not to bother me again, and I already told you not to contact me." Mr. Morrison became enraged, he began screaming "you're a scam artist", to "take the ad off the website" and that I had "better watch my back". I responded to him "you're crazy" then hung up the phone. At this

point I was fearful for my safety and upset, I went to the RCMP detachment and the officer who answered the door asked I contact Corporal Kidd who would be on duty that evening at 7:00pm. At this point I went to the mall I worked at to calm down and be around others. Someone had asked if I had checked Kijiji lately to which I hadn't. There was an ad indicating I was selling a "counterfeit" bill (I have attached the ad for you to review as well). I printed this off, went back to see Corporal Kidd, handed him the document and said 'he called'. Reading the document, Corporal Kidd responded, "What's his problem" while shaking his head. I consulted with him for his advice and he suggested I launch a formal complaint (in which I am doing here).

Since that day I have had no contact with Mr. Morrison, I briefly spoke with his Chief of Police in Woodstock (Dana Collicott) to inform him of the situation. Shortly after my conversation with Chief Collicott I received a return call from the Chief confirming he spoke with Mr. Morrison, that he would no longer be contacting me and that the "counterfeit" ad would be removed the website.

Sincerely,

Bill Doucette. "

23. Christopher John McNeil was called as a witness. Mr. McNeil of Dartmouth N.S. was appointed as an investigator by the Police Commission to conduct an investigation concerning the complaint of Mr. John Doucette. He prepared an Investigation report dated January 29<sup>th</sup>, 2014 which was received as Exhibit "5". This report was provided to Cst Morrison in accordance with the Police Act.
24. Mr. McNeil is an experienced police officer and investigator presently retired.
25. Mr. McNeil interviewed the complainant Mr. Bill Doucette, Ms. Misty Salter, Chief Dana Collicott, Corporal Michael Kidd, and Constable John Morrison and summaries of these interviews were contained in the investigation report. These interviews were all recorded with the exception of that of Cst Morrison, and the audio files were provided to Cst Morrison and his representative Mr. Davidson. Mr. McNeil testified that all the audio files taken in this investigation and resumed and referred to in his investigation report were taken by him personally.
26. Mr. McNeil testified that Cpl Kidd who became involved in this matter was an RCMP officer of 27 years with six years experience in counterfeit investigation.
27. The series of events that lead up to the present complaint originates with a Kijiji ad posted at the request of Mr. Bill Doucette concerning the advertising for sale of a Canadian currency one hundred dollar bank note hereinafter referred to as "the note". I will refer to this ad as "the first Kijiji ad".

28. It is my understanding that Kijiji is a centralized network of online urban communities for posting classified advertisements.
29. It is also my understanding that according to the ad the note in question was rare as it had no serial numbers and as a result would be worth substantially more than its face value. According to the ad which is dated Sept 24<sup>th</sup>, 2013 and contained in Exhibit "5" at page 24 the price is \$2,200.00. Mr. Doucette acquired this note from his boss.
30. Mr. McNeil testified that during the course of his investigation that he met with Cst Morrison on December 5<sup>th</sup>, 2013 for about an hour in Fredericton. He has previously met with him in Woodstock on December 4<sup>th</sup>, 2013. Mr. McNeil asked for a statement from Cst Morrison relative to this matter.
31. During this last meeting Cst Morrison raised the aspect of a polygraph test and indicated he would give a statement provided it was with a polygraph. Mr. McNeil did not see the usefulness of a polygraph as it is an interrogation tool and also a method of eliciting a statement. He explained this to Cst Morrison. He asked Cst Morrison why he insisted on the polygraph as a condition of his statement to which he responded in a vague and uncomfortable manner. No statement was obtained from Cst Morrison.
32. Mr. McNeil testified that a complaint was made to the RCMP in Nova Scotia about a counterfeit bill. The person making the complaint described himself as a New Brunswick Police Officer namely Cst John Morrison.
33. Mr. McNeil also included in his report that Corporal Kidd of the RCMP was working as quality assurance NCO on the material day and since he had experience in dealing with counterfeit banknotes he inserted himself in the file.
34. Corporal Kidd made arrangements to examine the banknote in issue and determined that it was legitimate, describing it as pristine.
35. Corporal Kidd left a voice mail to Constable Morrison that he was satisfied the banknote was genuine and not an incident of counterfeiting.
36. Mr. Bill Doucette was called as a witness. He is 52 years of age and other than teaching for two years his work career involved and still involves being a Clerk at a Liquor store. He has a Bachelor's degree in Political Science and a Bachelor's degree in Education.
37. Mr Bill Doucette identified his complaint as contained in Exhibit "3". He testified that the hundred dollar note involved in this matter was sold sometime between May 20<sup>th</sup> to 26<sup>th</sup>, 2013 and as a result could not bring it with him. The following represents a summary of his testimony.

38. Mr. Doucette testified that he received a call from a gentleman expressing interest in purchasing the note listed on Kijiji. This call occurred on Thursday October 3<sup>rd</sup>, 2013 and the caller identified himself as John. On October 5<sup>th</sup> another call was placed by John and they discussed the price of the note. John said he could acquire such a note for one thousand dollars to which Mr. Doucette responded purchase it and avoid a lengthy trip to Nova Scotia. Nevertheless he arranged to visit with Mr. Doucette at his place of employment a liquor store in Halifax area to see the note. During this second conversation he identified himself as a police officer. He indicated they would meet Sunday October 6<sup>th</sup> at Mr. Doucette's place of employment.
39. On Sunday October 6<sup>th</sup>, 2013 in the morning Cst Morrison appeared at Mr. Doucette's place of employment and identified himself as John Morrison. Mr. Doucette invited Cst Morrison into a backroom lunch area. Cst Morrison wanted to see the note out of its protective case. Mr. Doucette went next door in a custodial room where a Mall employee Ms Misty Salter was and asked her to retrieve a screw driver to open the case. Mr. Doucette assured Ms. Salter there was nothing to worry about as Cst Morrison was a police officer.
40. Ms Salter works in the Atlantic Superstore Mall as a cleaner. She helped Mr. Doucette post the first Kijiji ad concerning the note earlier.
41. The note was removed from the case and Cst Morrison took the note and after a brief examination as described by Mr Doucette as several seconds, after which Cst Morrison stated it was not real, that it was a counterfeit bill. At this point Mr. Doucette retrieved the note to return it to its case.
42. Then Cst Morrison stated he wanted to take the note to the RCMP to be checked to which Mr. Doucette answered he had no problem with that. Cst Morrison wanted to take the note and go to the RCMP alone. Mr. Doucette insisted upon accompanying the note with Cst Morrison to the RCMP to which Cst Morrison responded with disparaging comments calling him inter alia a fraud, a counterfeiter and a scam artist, and stepped forward in a threatening manner, pointing his finger at Mr. Doucette.
43. Ms Misty Salter was present during this exchange.
44. Mr. Doucette noticed that Ms. Salter was getting nervous and Mr. Doucette asked Cst Morrison to leave and not to call him as their business was done. . Mr. Doucette testified he became afraid because of Cst Morrison's behaviour. Cst Morrison did leave however continued with his disparaging comments as he walked down the hallway.
45. Then Ms Salter asked Mr. Doucette whether he was sure Cst Morrison was a police officer to which he responded, "he told me he was a police officer".

46. About an hour and a half later that day an RCMP officer visited Mr. Doucette and asked him to bring the note to the police station. At the end of his shift he went to the RCMP station and met with Cpl Michael Kidd.
47. Cpl Kidd explained there has been a complaint about the note and if it was counterfeit it would have to be seized and have it destroyed. Mr. Doucette indicated he understood.
48. Mr. Doucette testified that when he acquired the note he had the note verified at a Bank and had reason to believe it was real.
49. Cpl Kidd examined the note for about forty five minutes and it was determined to be not counterfeit and Mr. Doucette was at liberty to leave with his note. Mr Doucette advised Cpl Kidd that he anticipated a threatening call from Cst Morrison and asked that he call Cst Morrison to advise him not to call him and that the note was genuine.
50. On October 7<sup>th</sup> the next day Mr. Doucette received a phone call around 4:14 PM in which the caller whispers, "Bill". Mr. Doucette asked who it was to which the caller answered this is the guy that came to see your bill. Mr. Doucette then said John the bill was real as confirmed by the RCMP and reminded him that he was not to call him. After this the disparaging language of the earlier day was repeated and the voice was raised and then a higher pitch like a scream. Then he said take it off Kijiji and you better watch your back. Mr. Doucette responded telling the caller he was crazy and hung up. Mr. Doucette from the voice which he recognized had no doubt the caller was Cst Morrison. During the testimony of Cst Morrison he admitted to having placed a call to Mr. Doucette around this time.
51. After this incident Mr. Doucette immediately went up to the RCMP station see Cpl Kidd, however he was not in and only expected later. He returned to see Cpl Kidd at 7 o'clock, and he explained the recent conversation with Cst Morrison , and Cpl Kidd responded by saying what's the officer's problem, and after a brief discussion of options Cpl Kidd mentioned to Mr. Doucette that Mr. Doucette may want to lodge a formal complaint.
52. Contemporaneous with these events a further "second" Kijiji ad was posted which stated the note in question was counterfeit and referred to the seller as "Bill "who worked at the lower Sackville liquor store and the ad referred to him as a con man.
53. The ad also employed the term, "fake". It was eventually established by the investigation that the author of this Kijiji ad was Cst John Morrison. I will refer to this ad as "the second Kijiji ad".

54. Around the time of the posting of the second Kijiji ad Mr. Doucette was approached by two people at the Mall who asked him if he had seen the disparaging ad essentially calling him a con.
55. After Mr Doucette became aware of the second Kijiji ad he called Chief Collicott of the Woodstock police department to explain what had transpired and subsequently a complaint was filed as contained in Exhibit “3”.
56. Chief Collicott confirmed Cst Morrison was a member of the Woodstock Police Department.
57. After Chief Collicott spoke with Mr. Doucette, the Chief indicated he would speak with Cst Morrison and among other things would ensure the offending second Kijiji ad disparaging Mr. Doucette would be taken down. The Chief called later and confirmed the offending ad had been removed from the site by the constable.
58. At the end of Mr Doucette’s cross examination the admissibility of the Affidavit of Ms Misty Salter dated August 1<sup>st</sup>, 2014 was addressed by the parties. Mr. Davidson opposed its acceptance.
59. The affidavit is not being offered as direct testimony but solely its *corroborative* value and her explanation of her inability to attend today. Her affidavit states she is having complications with her pregnancy she fears for her health and that of her unborn child. Her Dr has put her off work. The Commission has elected not to call her as a witness as a result. They had previously offered her testimony and the opportunity of cross examination her via video conference link but same was declined by Mr. Davidson.
60. In keeping with section 33 of the Police Act and section 8 of the Inquiries Act I received the audio files of the witnesses as Exhibit number “6”. These audio files are referenced in the investigation report. These audio files are of the entire interviews of witnesses upon which Mr. McNeil used to prepare his statement summaries.
61. I also admitted the Affidavit of Ms. Salter as Exhibit “7”.
62. Cst Morrison was called to testify. He is 39 years of age and is from the Woodstock area. He has been working as a police officer for approximately ten years with the Woodstock Police Department. He said he suffers from insomnia.
63. At the request of his representative Cst Morrison proceeded to show the major portion of his collection of currency. He described the contents of his collection. It contained a variety of bills. He testified that he started collecting bills and some coins approximately two years ago.

64. He testified he checks Kijiji for possible purchases to augment his collection. He said he had a bit of extra money in October 2013 and he was interested in purchasing more bills.
65. He noticed a Kijiji ad, which was dated Sept 24<sup>th</sup>, 2013 and is contained in Exhibit "5" at page 24. The note was listed at \$2,200.00. Cst Morrison said he really wanted to get it to add it to his collection.
66. He related that he called the gentleman in the ad to express his interest. He called a second time and spoke with Bill and told him he was a police officer. On the second call Cst Morrison indicated to Bill that he was calling from Fredericton. He testified he said he was a police officer to save time suggesting if it was counterfeit he thought Bill would decline a meeting.
67. Cst Morrison and Bill arranged a mutually agreeable meeting time for the next day at the liquor store in the Halifax area.
68. Cst Morrison went to Mr. Doucette's place of employment the next day and introduced himself as John looking for Bill.
69. The note was in a solid glass case and Cst Morrison asked that it be opened up. Mr. Doucette said he could not but Cst Morrison indicated he could not purchase the note without touching it to which Mr. Doucette replied that they must find a screw driver.
70. They went to another room a short distance away for the purpose of finding a screw driver and there was a lady there. He does not recall how he was introduced to her. I can only conclude this was Ms Misty Salter. The cover was removed and Mr. Doucette asked Cst Morrison if his hands were clean.
71. Cst Morrison examined the note and looked at both sides. He noticed a white mark on the note. In Cst Morrison's mind this may indicate it was a counterfeit. He was also uncertain of the paper. He testified the examination took five minutes. He wanted the note to be real.
72. He told Mr. Doucette he thought it was counterfeit and not worth the paper it was printed on.
73. He flatly denied using derogatory names or raising his voice and pointing his finger during his meeting with Mr. Doucette and Ms. Misty Salter. He still does not believe the ad he posted on Kijiji is inappropriate and still maintains the note is a counterfeit.

74. Then he offered \$2,200.00 for the note on the condition he could take it to the RCMP to be verified and come back for a refund if the note was not real. Mr. Doucette refused to give up the note. Cst Morrison then left.
75. Upon leaving Cst Morrison went to see Mr. Doucette's boss to advise him that one of his employees was trying to sell a counterfeit bill.
76. Then Cst Morrison went to the RCMP station which was close by. The door was locked so he had to use an exterior phone to speak with a dispatcher to explain the situation concerning the counterfeit he found. He felt he was not getting anywhere with the dispatcher so he added that he was a police officer and eventually two officers came to retrieve him. Cpl Kidd was one of the officers. He related his meeting with Mr. Doucette to Cpl Kidd.
77. Cpl Kidd asked him about his collection to which Cst Morrison said he had been collecting for about a year.
78. Cpl Kidd advised Cst Morrison that he would look into the matter.
79. Cst Morrison admitted in direct testimony to posting the second Kijiji ad on October 7<sup>th</sup>, 2013 warning that the note was a counterfeit bill.
80. He admits to calling Mr. Doucette on October 7<sup>th</sup> and said it was John who he met. He states he spoke in a normal voice and made no threats. He recalls Mr. Doucette referred to having met with the RCMP.
81. The next occurrence was a meeting with Chief Collicott where Cst Morrison was advised about a complaint, to which he responded, "I don't give a shit". The second Kijiji ad was given to the Chief by Cst Morrison.
82. Cst Morrison testified that a couple of days later he received a voicemail message from Cpl Kidd of the RCMP indicating that the note was seized and was being sent off. He told Cst Morrison not to contact Mr. Doucette. He asked Cst Morrison to call him back but he did not as he thought he should not on account of the complaint. He has no recollection of Cpl Kidd advising him that the note was genuine.
83. On cross examination Cst Morrison frankly admitted he does not dispute Cpl Kidd's position that the note was genuine and this was part of the voicemail message received.
84. Cst Morrison admitted he had no training in counterfeiting, but he had an interest in collecting and attended coin and currency shows. He admitted he was not qualified as

Cpl Kidd was. He however would love to take such courses. He also admitted he possessed no books on counterfeiting.

85. Mr. Collicott the former Chief of the Woodstock Police Department was called as a witness by Mr. Davidson. He was Chief for six and half years and was Chief when this matter arose.
86. He testified he received a call from Mr. Doucette on October 9<sup>th</sup>, 2013 complaining about a Kijiji ad concerning one of his officers and his intention of lodging a formal complaint against Cst Morrison. Chief Collicott said he would tell Cst Morrison to take down the ad and not to contact M. Doucette. He subsequently called Mr. Doucette to confirm he had done this. Cst Morrison had brought a copy of the ad to Chief, which was eventually remitted to the investigator Mr. McNeil and included in his investigation report.
87. He testified that Cst Morrison was honest and hardworking.
88. On cross examination Chief Collicott admitted that it was inappropriate for Cst Morrison to post the ad.
89. Chief Collicott confirmed Cst Morrison has no training in fraud or counterfeit detection.
90. Chief Collicott stated there were minor complaints on Cst Morrison's record. The most recent complaint involved allegations of claiming mileage improperly. The claims were not substantiated however Cst Morrison was taken off a interjurisdictional task force and a written advice was sent to him concerning his conduct. He does not recall the particulars of other complaints.
91. After the parties concluded their cases I offered the parties the option of either addressing closing arguments orally or in writing. They elected to present oral submissions. The matter was adjourned to the next day at 09:30 AM for final submissions

## **Analysis**

92. After reviewing the exhibits, testimonies, law and arguments I find the issues to be determined are whether the allegations of breaches of the Code of Professional Conduct have been established on a balance of probabilities and further determinations relative to credibility of the two primary witnesses namely the complainant Mr. Bill Doucette and the police officer which is the object of the alleged breaches of the Code of Professional Conduct. I also addressed the application of section 8 of the **Inquiries Act R.S.N.B 1972, c. I-11**.

93. Relative to section 8 of the Inquiries Act, R.S.N.B 1972, c. I-11. I would refer to the Court of Appeal decision in N.B. v. Moreau-Bérubé (2000), 233 N.B.R.(2d) 205 (CA) and in particular paragraphs 20 and 21:

[20] Section 8 of the **Inquiries Act**, R.S.N.B. 1973, c. I-11 provides that:

"8 The commissioners may hear and accept any relevant evidence even though it is not admissible under the rules applying to trials in The Court of Queen's Bench of New Brunswick."

[21] The panel therefore had to consider statements and documents filed, including the statements of Judge Moreau-Berube giving them the weight that it deemed appropriate.

94. I refer also to the SCC in the same matter:

N.B. v. Moreau-Bérubé (2002), 245 N.B.R.(2d) 201 (SCC);

[6] As dictated by s. 6.11(1) of the **Act**, the panel was then required to conduct an inquiry and report its findings "of fact and its findings as to the allegations of misconduct, neglect of duty or inability to perform duties of the judge whose conduct is in question". To this end, the panel was required under s. 6.10(1) to hear and accept any relevant evidence, even if not admissible under normal trial rules within the Province of New Brunswick (as per s. 8 of the **Inquiries Act**, R.S.N.B. 1973, c. I-11). The panel heard 17 witnesses, and 25 documents were filed.

95. The above caselaw clearly illustrates how section 8 of the **Inquiries Act** should be applied.

96. I find that the investigation report, audio files, and affidavit submitted are properly received and admitted. Same are all relevant and should be admitted.

97. At page 12 of the investigation report Mr. McNeil describes role and status of police officers which I adopt as follows;

"Police Officers hold one of most trusted positions in the public service because they have significant authority over the lives of members of the public. Their authority is both specific and general in nature. Legislated powers of arrest are an example of specific authority. The status of a police officer also includes significant public esteem and influence which leads to a more subtle general authority. Citizens expect that police will act with integrity at all times, and, as such in all circumstances, police officers are afforded an elevated level of trust. That trust is

fundamental to law enforcement in a democratic society. The *Code of Professional Conduct* is intended to protect that trust.”

98. The allegations set out in the Notice of Arbitration , if sustained, will constitute a breach of subsections 35(a) and 35(f) of the *Code of Professional Conduct Regulation — Police Act Regulation 2007-81* as described in paragraphs 36(1)(c), subparagraph 36(1)(a)(ii) and subsection 41(c) .
99. The Investigation report filed in this matter is mandatory and must be provided to police officer. It was duly provided and was received as Exhibit number “5”
100. I find that at all material times relative to this complaint Cst Morrison held himself out to be a Police Officer. He had stated this to Mr. Doucette, he was introduced to Ms Salter as such and indicated to the Nova Scotia RCMP that he was a police officer.
101. I find there was no need at any time in the events material to this complaint that Cst Morrison identify himself as a Police Officer.
102. I find he held himself out to be a police officer for personal gain and preferential treatment.
103. No statement from Cst Morrison was given during the course of the investigation as Cst Morrison insisted it be given with a polygraph. The only explanation advanced for this pre condition as explained by his representative Mr. Davidson was that the condition of the polygraph was on account of the importance of Cst Morrison’s statement to the investigation. I attach no weight to this turn of events as it is Cst Morrison’s right to decline giving a statement.
104. In considering the question of credibility I would refer to the British Columbia Court of Appeal case, *Faryna v. Chorney*, [1952] 2 D.L.R. 354 (B.C. C.A.) (which was quoted with approval by the Ontario Court of Appeal in *Phillips v. Ford Motor Co.*, [1971] 2 O.R. 637): as follows:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses,

and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self direction of a dangerous kind."

105. In my assessment Mr. McNeil the investigator appeared to be forthcoming and consistent and his testimony and report were very helpful. I find he conducted a complete and impartial investigation.

106. Mr. Davidson made allusion on several occasions to the versions of events put forward by his client Cst Morrison when compared to the version of Mr. Doucette the complainant as being , "180 degrees ". I would add that they are essentially diametrically opposed. Certain facts are consistent in both versions but the core issues are categorically opposed.

107. I find that the most reliable description of what occurred during the events leading up to this complaint are as related by Mr. Bill Doucette and accept his account as more probable and reasonable.

108. Ms Misty Salter was present during this exchange in the custodial room and corroborates Mr. Doucette's account of the meeting.

109. Mr. McNeil pointed out that Cst Morrison is a large physically fit man who would be imposing if he was angry.

110. The exact derogatory words relative to the description of Mr. Doucette vary somewhat from statements and testimony however I find they are consistent in that they are essentially derogatory and pejorative words to describe Mr. Doucette as a fraud and counterfeiter. Mr. Doucette does not have a perfect memory nor is he a professional witness but the gist of the derogatory and demeaning words stated are consistent and also in keeping with the second Kijiji ad posted by Cst Morrison.

111. In light of the fact that Cst Morrison made a complaint of counterfeiting to the RCMP I find it odd that he continued to participate in the matter.

112. As a police officer he should have been aware that it was improvident and ill advised to contact the suspect, and as well contacting Mr. Doucette's employer to advise his employee was selling counterfeit notes at work. It was equally improvident posting a Kijiji ad referring to counterfeiting while sufficiently identifying Mr. Doucette.

113. I find his conduct egregious in telling Mr. Doucette's employer Mr. Doucette was selling counterfeit bills at work. It had not been established as a fact that it was counterfeit and secondly if Cst Morrison's assertion is to be believed that it was counterfeit he was purposely interfering with an investigation.

114. Cst Morrison's explanation that he advised Mr. Doucette's employer and posted the second ad on Kijiji to protect the public does not ring true. I find he was still angry and was acting out of anger.

115. It is abundantly clear that this matter was in the local RCMP jurisdiction and should be dealt with by them without interference.

116. Cst Morrison has no training in counterfeiting or the detection thereof as confirmed by himself and Chief Collicott. He has an interest in collecting notes that developed recently, perhaps a year or two ago. He possesses no books on the subject and states he attends shows and reads on the internet. He indicated however he would really like to take a course on counterfeiting.

117. I find Cst Morrison is not qualified or possessed of sufficient knowledge to make a determination of whether the note in question was counterfeit. I advance it would require the skill and expertise of a person such as Corporal Kidd of the RCMP.

118. It has been suggested by Chief Colicott and Cst Morrison that the note examined by Cpl Kidd was not the same as seen earlier by Cst Morrison. They said same was possible. I find this to be pure speculation without any basis or foundation to be taken seriously.

119. There was much made about the amount of time used to inspect the note by Cst Morrison by Mr. Davidson. From seconds according to Mr. Doucette to up to five minutes by Cst Morrison. No one has a perfect memory. I find the truth probably lies somewhere in between but I find that said examination was of a very short duration. Cpl Kidd with experience in the field counterfeiting took forty five minutes to examine the note.

120. I find the conduct , and acts of Cst Morrison as produced in evidence before me offends and breaches the Code of Professional conduct and find inter alia that a reasonable person fully aware and or apprised of the circumstances would conclude that the reputation of the Woodstock Police Department has been brought into disrepute.

121. Abusive conduct, actions, and words on the part of Cst Morrison were established which I find in breach of the Code.
122. I find that on a balance of probabilities that the charges and allegations of the breaches of the Code of Professional Conduct in particular a breach of subsections **35(a) and 35(f) of the Code of Professional Conduct Regulation , — Police Act Regulation 2007-81 as described in paragraphs 36(1)(c), subparagraph 36(1)(a)(ii) and subsection 41(c)** have been established and proven.
123. I find the evidence clear and convincing.
124. I would have arrived at this conclusion even absent the audio statement of Ms Misty Salter as well as her affidavit. It is however clear that same corroborates the complaint as laid.
125. I note on several occasions Cst Morrison stated he really wanted the note as part of his collection and he wanted it to be real. This may possibly in part explain his outbursts conduct, and actions.
126. In light of my findings and considering what I consider a lack of insight on the part of Cst Morrison sanctions must be imposed. A letter of reprimand, certain additional training, and a suspension without pay are warranted.
127. The Regulations set out the Disciplinary and Corrective measures as follows:

New Brunswick Regulation 2007-81 under the Police Act (O.C.2007-503)

Disciplinary and corrective measures

6 The parties to a settlement conference may agree to or an arbitrator may impose one of the following disciplinary and corrective measures or any combination of the following disciplinary and corrective measures:

- (a) a verbal reprimand;
- (b) a written reprimand;
- (c) a direction to undertake professional counselling or a treatment program;
- (d) a direction to undertake special training or retraining;
- (e) a direction to work under close supervision;

- (f) a suspension without pay for a specified period of time;
- (g) a reduction in rank; or
- (h) dismissal.

## **Order**

- 128. I impose the following sanctions in accordance with the relevant regulation.
- 129. I direct under s. 6(a) that a written reprimand be issued to Cst Morrison relative to the breaches of the Code of Professional Conduct.
- 130. I direct under s. 6(c) and (d) that Cst Morrison undertake and successfully complete an ethics program for police officers and also take training and counselling in anger management. These courses and or programs are to be approved by the Chief of Police of the Woodstock Police Force or by the Executive Director of the Police Commission.
- 131. I further direct under s. 6(f) a suspension without pay for a period of one week.

Dated at Edmundston, N.B. this 20<sup>th</sup> day of August, 2014.

Gary J. McLaughlin Q.C.  
Arbitrator

## **List of Exhibits**

1. Notice of Arbitration Hearing
2. Witness List
3. Notice of Appointment as Investigator
4. Letter to Police Officer advising of the Complaint
5. Investigation Report
6. CD containing the audio statements of witnesses interviewed
7. Affidavit of Ms. Misty Salter