

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

RECEIVED/REÇU

BETWEEN

**THE CHIEF OF POLICE,
FREDERICTON POLICE FORCE**

SEP 06 2019
N.B. POLICE COMMISSION
COMMISSION DE POLICE DU N.-B.
(the "Complainant")

- and -

CONSTABLE ZACHARY COADY

(the "Respondent")

DECISION

Appearances:

For the Complainant

Jamie Eddy and Chris Pelkey
Cox and Palmer

For the Respondent

Thomas J. Burke, Q.C., and Jennifer Ingram
The Burke Law Group

Dates and Place of hearing:

Fredericton, New Brunswick
November 14, 2018
March 25 and 26, 2019
June 24 and 25, 2019 - July 18, 2019
August 16 (Written submission), 2019
August 23 (Written submission), 2019

Date of Decision:

September 5, 2019

Arbitrator:

Robert D. Breen, Q.C.

I. INTRODUCTION

1. Leanne Fitch, Chief of Police, Fredericton Police Force (“Chief”, “Fitch” or the “Complainant”) filed an October 3, 2018 Complaint alleging that between January 7, 2017 and September 14, 2017, these dates inclusive, Constable Zachary Coady (“Cst. Coady” or “Respondent”) did provide false or inaccurate statements as it pertains to his duties and police reports.

2. The Complaint “particulars” allege that the Respondent engaged in discreditable conduct, neglected to perform his duties and engaged in deceitful behaviour constituting a breach of subparagraphs 36(1)(a)(ii), 37(a)(ii) and 37(b) and subparagraph 38 and 38(b) of the *Code of Professional Conduct Regulation – Police Act*, NB Regulation 2007-81 (“*The Code of Conduct*”), set out below:

PARTICULARS OF THE ACTS THAT CONSTITUTE THE ALLEGED BREACH OF THE CODE

Count 1 — Discreditable Conduct

It is alleged that you, Cst. Zachary Coady, of the Fredericton Police Force, engaged in discreditable conduct when, between January 7, 2017 and September 14, 2017, both dates inclusive, did provide false or inaccurate statements as it pertains to your duties, thereby committing a breach of subparagraph 36(1)(a)(ii) of the *Code of Professional Conduct Regulation – Police Act*, NB Regulation 2007-81. This constitutes a breach of the *Code* under paragraph 35(a).

Section 35, A member of a police force commits a breach of the code if he or she does any of the following:

- (a) engages in discreditable conduct as described in section 36;

Section 36(1), A member of a police force engages in discreditable conduct if

- (a) the member, while on duty, acts in a manner that is
 - (ii) likely to bring the reputation of the police force with which he or she is employed into disrepute

Count 2 — Neglect of Duty

It is alleged that you, Cst. Zachary Coady, of the Fredericton Police Force, neglected to perform your duty when, between January 7, 2017 and September 14, 2017, both dates inclusive, did provide false or inaccurate statements as it pertains to your duties, thereby committing a breach of subparagraph 37(a)(ii) and 37(b) of the *Code of Professional Conduct*

Regulation — Police Act, NB Regulation 2007-81. This constitutes a breach of the *Code* under paragraph 35(b).

Section 35, A member of a police force commits a breach of the code if he or she does any of the following:

(b) neglects his or her duties as described in section 37;

Section 37, A member of a police force neglects his or her duties if

- (a) the member, without lawful excuse, fails to promptly and diligently
 - (ii) perform his or her duties
- (b) the member fails to work in accordance with official police force policies and procedures

Count 3 — Engages in Deceitful Behaviour

It is alleged that you, Cst. Zachary Coady, of the Fredericton Police Force, engaged in deceitful behaviour when, between January 7, 2017 and September 14, 2017, both dates inclusive, did provide false or inaccurate statements as it pertains to your duties, thereby committing a breach of subparagraph 38(a) and 38(b) of the *Code of Professional Conduct Regulation — Police Act*, NB Regulation 2007-81. This constitutes a breach of the *Code* under paragraph 35(c).

Section 35, A member of a police force commits a breach of the code if he or she does any of the following:

(c) engages in deceitful behaviour as described in section 38;

Section 38, A member of a police force engages in deceitful behaviour if the member, with intent to deceive, falsify or mislead,

- (a) destroys, mutilates, conceals, alters, expunges or adds to all or any part of an official document, record or report, or
- (b) willfully or negligently makes a false, misleading or inaccurate statement pertaining to his duties.

3. Cst. Coady was suspended with pay from his position as a Constable in late September 2017. Following an investigative stage and a failure of settlement conferences, a Notice of Arbitration Hearing setting forth the above “particulars” was served on him on October 3, 2018 by Chief Fitch. By letter dated October 17, 2018, over the signature of the Chair of the New Brunswick Police Commission, and pursuant to s. 33.02 of the *Police Act*, I was appointed Arbitrator. On October 31, 2018, following consultation with lawyers for the Complainant and Respondent,

I issued a Notice of Hearing to the parties advising of a hearing of the Complaint to be held in Fredericton on November 14, 2018.

4. The hearing in this matter commenced on Wednesday, November 14, 2018. The Complainant was represented by Jamie Eddy and the Respondent, initially, by David Mombourquette. The alleged breaches of the *Code of Conduct* were read by me to Cst. Coady, following which reading he was immediately given the opportunity to admit or deny each of the alleged breaches. Cst. Coady then denied each of the allegations.

5. The hearing was recorded by a stenographer sworn to before me to truly and faithfully report and transcribe the evidence. With the consent of the parties, the hearing was then adjourned with recommencement dates set for January 14, 15 and 16, 2019, followed by a further adjournment to the dates of March 25, 26, 27 and 28, 2019, so as to permit the timely production of an expected medical report.

6. Subsequent to this scheduling, and because of a personal medical situation, first Counsel for the Respondent, Mr. Mombourquette, transferred his file to the office of legal Counsel Thomas J. Burke, Q.C., and a further rescheduling was made for the conduct of this continuing matter on March 25, 26 and 28, 2019, then following July 18, 2019, with final written submissions filed on August 16 and August 23, 2019

7. Upon the recommencement of hearings on March 25, 2019, a second stenographer was sworn to truly and faithfully report and transcribe the evidence. The parties were offered a summary of the proceedings of November 14, 2018 and the denial of the alleged breaches of the *Code* by the Respondent were once again read into the record.

8. New Counsel for the Respondent, Mr. Burke, at this time advised this Arbitrator that Cst. Coady now admitted to the alleged breaches of the *Code*. These admissions were entered on the Record¹.

9. Upon the admissions entered, an Exhibit Book was then introduced on behalf of the Chief, and by consent marked as an Exhibit. The parties also advised that an Agreed Statement of Facts was expected to be entered as an exhibit as the hearing proceeded.

10. The Exhibit Book, in addition to copies of the Notice of Arbitration hearing and the Police Investigation Report, includes the several incident reports and specifics of the actions that constitute the alleged breaches of the *Code* specified in the Notice of Arbitration hearing issued to Cst. Coady.

11. By reference to the Exhibit Book, the Complainant then proceeded to an extensive opening statement which addressed the separate incidents alleged in support of the breaches of the *Code*, all five of which were later detailed in the parties' Agreed Statement of Facts, marked as an Exhibit, now below:

THE PARTIES SUBMIT THE FOLLOWING FACTS AS AGREED:

INCIDENT #1 - MAY 25, 2017

Background:

1. On May 25, 2017, Cst. Coady investigated a motor vehicle break-in causing \$200 worth of damage at Speedy Autoglass (Five Gears Auto Care) on 235 Bishop Drive, Fredericton, NB and spoke to Alan Prosser, the complainant and the owner of the vehicle, and Brock Hossack, the owner of Speedy Autoglass.
2. On May 25, 2017, Cst. Coady obtained a statement from Alan Prosser. (Exhibit CI, Tab 5)

¹ A finding of guilty of the alleged breaches of the *Code* in accordance with s.17 of the *Code* was subsequently also entered by this Arbitrator on the Record.

3. On May 25, 2017, Alan Prosser was expressly advised by Cst. Coady that Cst. Coady would update him "with *any information involving the case*". (Exhibit C1, Tab 6)
4. On May 25, 2017, based upon his discussion with Cst. Coady, Brock Hossack was left "*with the impression [Cst. Coady] would communicate in some manner*". (Exhibit C1, Tab 7)
5. Mr. Hossack received "no follow up report regarding any progress or lack of in this case". (Exhibit C1, Tab 7)
6. On May 25, 2017, Cst. Coady did not provide a business card or file number to Mr. Prosser or Mr. Hossack.
7. On May 25, 2017, Cst. Coady submitted a clearance block indicating that the Complainant/Victim was notified and rendered the file inactive. (Exhibit C1, Tab 8)
8. On May 26, 2017, an unidentified police officer advised Alan Prosser that a license plate, stolen off his vehicle, was located on a Toyota Ray 4. (Exhibit C1, Tab 4, page 4)
9. On May 26, 2017, Mr. Prosser left a message for Cst. Coady with the City of Fredericton Communications Centre (referred to as "Dispatch") stating that the license plate identified were the ones stolen off of his damaged vehicle. Based on his message, Mr. Prosser explicitly requested that Cst. Coady return his call to advise him as to the outcome of the investigation. Mr. Prosser was informed by the individual who took the call that his message would be relayed to Cst. Coady and Cst. Coady would call him back. Cst. Coady never returned his call. The file had been rendered inactive the day before. (Exhibit C1, Tab 6)
10. Alan Prosser did not receive any further follow up or report from Cst. Coady.

False Statements/Entries:

11. Cst. Coady entered the following false entry in his official occurrence report on May 25, 2017 (Exhibit C1, Tab 4):
 - a) "Prosser was *informed an information report would be created and rendered inactive pending further information*".
12. Cst. Coady unilaterally terminated the file without contacting the complainant, Alan Prosser. Cst. Coady never contacted the complainant, Alan Prosser, and never advised him that he would be closing the file.
13. Cst. Coady then submitted a clearance block on May 25, 2017 by indicating he had completed the required prior notification of the complainant. (Exhibit C1, Tab 8)

INCIDENT #2 - MAY 28, 2017

Facts:

14. On May 28, 2017, Cst. Coady failed to properly investigate a theft of gas at the Couche Tard Irving on Regent Street, Fredericton in response to a call to the police station from Tim Quackenbush. (call on flashdrive at Exhibit C1, Tab 16)
15. On May 28, 2017, Tim Quackenbush, Jessica Tsang, Assistant Manager, and Kathleen Oulton, Manager, witnessed a theft of gas in the amount of \$93.66 at the Couche Tard Irving on Regent Street, Fredericton. The theft was committed by a male who was not wearing any shoes, who appeared to Kathleen Oulton as being intoxicated and who left the Irving by cutting diagonally out of the driveway and making an illegal left turn into the wrong lane on the Vanier Highway.
16. Ms. Tsang reviewed the video surveillance, which was not blurry, with Ms. Oulton and obtained a license plate number. Ms. Tsang did not leave the Irving to determine the licence plate number of the vehicle.
17. Mr. Quackenbush was instructed to and did call the police.
18. Ms. Oulton drove Ms. Tsang home from the Irving at 7:00 a.m.
19. On May 28, 2017 or at any other time, Cst. Coady did not have any contact, discussion or conversation with Mr. Quackenbush, Ms. Oulton or Ms. Tsang in relation to this matter.
20. As Manager, Ms. Oulton is responsible for playing surveillance video for any attending police officer. In drive off scenarios, Ms. Oulton typically copies video surveillance to a usb stick to provide to the investigating officer.
21. On May 28, 2017 or at any other time, Cst. Coady did not view the video surveillance.
22. Ms. Oulton did not prepare a usb stick with the video footage as she did not meet with Cst. Coady. Ms. Oulton advises that pursuant to Couche Tard Policy, the surveillance video was recorded over approximately four months later.
23. Cst. Coady did not circulate a picture of the suspect to other officers of the Fredericton Police Force. (Exhibit C1, Tab 3, page 4)
24. Cst. Coady did not provide a card or a file number to Mr. Quackenbush, Ms. Oulton or Ms. Tsang.
25. Ms. Tsang did not provide Cst. Coady with a police statement or a Couche Tard drive-off statement.
26. Pursuant to Couche Tard policy, the only person who can speak to an officer regarding a theft is a manager, assistant manager or senior sales associate. Mr. Quackenbush, Ms. Oulton

and Ms. Tsang were the only managers, assistant managers or senior sales associates working the day of the theft and therefore were the only individuals authorized to show Cst. Coady the video surveillance. Neither Mr. Quackenbush, Ms. Oulton nor Ms. Tsang have ever been contacted by Cst. Coady in relation to this gas theft. (Exhibit C1, Tab 12, 13 and 14)

27. On June 20, 2017, Cst. Coady submitted a clearance block indicating that the Complainant/Victim was notified and rendered the file inactive. (Exhibit C1, Tab 15)

False Statements/Entries:

28. Cst. Coady made the following five false statements on May 28, 2017 in his official occurrence report (Exhibit C1, Tab 9):

- a) that he "spoke with Jessica Tsang";
- b) that Jessica Tsang had "*provided a written statement*" to him;
- c) that "*Tsang went outside to get the license plate and got JCA848*";
- d) that he had "*viewed the video surveillance and the plate is blurred so a correct plate can't be made out*";
- e) that he had "*sent out pictures of the male to the Fredericton Police Force*";
- f) that he had "*contacted the Irving and informed staff that the file would be rendered inactive pending further information*".

29. Cst. Coady also submitted a clearance block on June 20, 2017 by indicating he had completed the required prior notification of the complainant (Exhibit C1, Tab 15).

INCIDENT #3 - JUNE 8, 2017

Facts:

30. On June 8, 2017, Cst. Coady investigated the theft of a tip jar, containing approximately \$20, at Deluxe Fish and Chips on Prospect Street, Fredericton.

31. On June 8, 2017, Cst. Coady took a picture of the suspect from video shown to him by Karen Hunter, the Complainant and Manager at Deluxe. (photos at Exhibit C1, Tab 21) and obtained a statement from Ms. Hunter. (Exhibit C1, Tab 18)

32. Cst. Coady requested that Ms. Hunter copy the video surveillance to a disc and stated he would return at a later date to retrieve it. Ms. Hunter copied the video surveillance as requested.

33. On two separate occasions Ms. Hunter called Cst. Coady and left messages advising him that the statement and camera info was available for pick up. (Exhibit C1, Tab 20)

34. Cst. Coady never collected the disc containing video surveillance and did not return Ms. Hunter's calls. (Exhibit C1, Tab 20).

35. Cst. Coady never contacted Ms. Hunter regarding the conclusion of the file. (Exhibit C1, Tab 20).

36. On July 14, 2017, Cst. Coady submitted a clearance block indicating that the Complainant/Victim was notified and rendered the file inactive. (Exhibit C1, Tab 22)

False Statements/Entries:

37. Cst. Coady made the following false entry in his official occurrence report on June 8, 2017 (Exhibit Tab 17):

a) that he had "*called Deluxe and spoke with staff to inform them that the file would be rendered inactive pending the identity of the suspect.*"

38. Cst. Coady unilaterally terminated the file without contacting the complainant, Karen Hunter. Cst. Coady then falsely submitted a clearance block on July 14, 2017 by indicating he had completed the required prior notification of the complainant (Exhibit C1, Tab 22).

INCIDENT #4 - JULY 20, 2017

Facts:

39. On July 20, 2017, Cst. Coady investigated the theft of approximately \$1,200 worth of tools from Xport Atlantic, a company based in Saint John, New Brunswick, that was contracted to perform renovations to the Crowne Plaza on Queen Street in Fredericton.

40. On July 20, 2017, Tony Green, the Complainant and owner of Xport Atlantic provided Cst. Coady with a statement and list of missing tools (Exhibit C1, Tab 24).

41. There is no record in the occurrence report or the file that suggests Cst. Coady checked any pawn shops in the city for the missing tools.

42. Mr. Green "*did not receive any follow up communication from [Cst. Coady]*", nor did he "*receive a phone call from an officer on August 24, 2017 pertaining to this complaint*". (Exhibit C1, Tab 26)

43. On August 24, 2017, Cst. Coady submitted a clearance block indicating that the Complainant/Victim was notified and rendered the file inactive. (Exhibit C1, Tab 25)

False Statements/Entries:

44. Cst. Coady made the following false entries in his official occurrence report on July 20, 2017 (Exhibit Tab 23) that:

a) he had "*checked several pawn shops in the city for the missing tools but was met with negative results*";

b) on "*August 24, 2017, Cst. Coady contacted Green and informed him of the outcome of the investigation and that the file would be rendered inactive pending further information*"

45. Cst. Coady unilaterally terminated the file without contacting the complainant. Cst. Coady falsely submitted a clearance block on August 24, 2017 by indicating he had completed the required prior notification of the complainant (Exhibit Tab 25).

INCIDENT #5 - SEPTEMBER 14, 2017

Facts:

46. On August 7, 2017, at approximately 4:21 a.m., Cst. Coady was dispatched to a theft in progress complaint at the Legislative Assembly of New Brunswick ("LAW") at 706 Queen Street, Fredericton.
47. The call related specifically to the theft of \$26,206.50 worth of speakers and other audio equipment from outside the LANB (Exhibit C1, Tab 27, page 7).
48. At approximately 4:37 a.m. Cst. Coady was required to clear the LANB call to investigate a priority call relating to a rollover accident on Forest Hill Road, Fredericton.
49. Despite the fact that Sarah Rowe, Commissionaire, called the Fredericton Police Force on two separate occasions to notify them of the theft, Cst. Coady failed to return to the LANG to initiate an investigation or prepare a report after he had cleared the roll over call.
50. On August 8, 2017, Brad Harris, Commissionaire at the LANB, contacted Sgt. Eric MacLeod who advised him that he would have Cst. Coady call Brad Harris when Cst. Coady returned to work on August 12, 2017.
51. On August 18, 2017, Cst. Coady called Mr. Harris and left a voice mail message identifying himself as the investigating officer in the theft of the speakers. Mr. Harris returned Cst. Coady's phone call but was advised that Cst. Coady was off-duty and his next shift was August 20, 2017. Mr. Harris requested and received Cst. Coady's email address.
52. Cst. Coady admits he received an email regarding the LANG complaint.
53. Cst. Coady did not return the email.
54. On August 23, 2017, Shayne Davies, Assistant Clerk at the LANB, emailed Chief Leanne Fitch asking if she was available for a call to discuss the theft. (Exhibit C1, Tab 28, page 2)
55. This matter was subsequently assigned by Deputy Chief Martin Gaudet to Inspector Scott Patterson (Exhibit C1, Tab 28, page 1 and 2) who contacted the complainant to discuss the matter.
56. On September 6, 2017, Inspector Patterson emailed Deputy Chief Gaudet with a summary of his conversation with the complainant and subsequent search of the CAD Police database. In that email (Exhibit C1, Tab 28, page 1) Insp. Patterson concludes the following:
- a) *"My understanding is that the witness (a commissionaire) has been unsuccessful at reaching Cst. Coady during the month since this incident occurred.";*

- b) *"information and evidence has been prepared for police by the Commissionaires in addition to statements"*;
- c) *"no report had been submitted by Cst Coady"*; and
- d) Sgt MacLean had been instructed to *"attend the Legislature"* and *"complete the initial officers report"*.

False Statements/Entries:

57. On September 6, 2017, Sgt. Dave MacLean, spoke with Cst. Coady regarding the Legislative Assembly complaint. During that conversation, Sgt. MacLean asked Cst. Coady whether *"he received correspondence from the staff at the Legislature"*. Cst. Coady falsely stated that he had not. (Sgt. MacLean report at Exhibit C1, Tab 29, Also Investigation Report Exhibit C1, Tab 2, page 26)

58. On September 14, 2017, Cst. Coady attended a meeting with Chief Leanne Fitch, Deputy Chief Gaudet, Inspector Patterson and a union representative to discuss ongoing performance issues, Cst. Coady's current development plan and the Legislative Assembly complaint (Investigation Report, Exhibit C1, Tab 2, page 26).

- a) Upon discussing the LANB complaint, Deputy Chief Gaudet asked Cst. Coady: *"if he received any e-mails or telephone messages from the complainants"*. Cst. Coady falsely stated that he had not. (Investigation Report, Exhibit C1, Tab 2, page 26)
- b) Deputy Chief Gaudet again asked Cst. Coady: *"you're sure you didn't receive any emails or calls from the complainant."* Cst. Coady again falsely stated that he had not. (Investigation Report, Exhibit C1, Tab 2, page 26)
- c) Deputy Chief Gaudet then asked Cst. Coady if there were "other instances where he had failed to follow-up with the complainants". Cst. Coady falsely stated that there were not. (Investigation Report, Exhibit C1, Tab 2, page 26)
- d) Deputy Chief Gaudet advised Cst. Coady he *"would be requesting an audit be completed on Cst. Coady's calls for service and files to ensure they were accurate with regards to the appropriate response and proper notification of complainants."* Deputy Chief Gaudet further advised Cst. Coady that *"he was being given the opportunity now to advise if there were any discrepancies between his reports and actual actions taken on the files...you're sure we're not going to find anything."* Cst. Coady falsely stated again "no". (Investigation Report, Exhibit C1, Tab 2, page 26 and 27)"

12. In addition to the five incidents addressed in the Agreed Statement of Facts, above, a sixth incident (so-called Wood Motors) was proceeded upon as an aggravating circumstance, and testified to later by the witness Scott.

13. Following a summary given of each of the incidents framing the three-count charges shown above, Counsel for the Complainant then presented a “legal and factual overview”, or an evidence “road map” – later modified by agreement reached and entry before me of the parties’ Agreed Statement of Facts Exhibit (thereby reducing the number of expected witnesses in this case), as well an address offered as to alleged aggravating circumstances. The Complainant’s opening points are now summarized below.

14. The first position advanced commenced with a statement given by the Complainant that it is essential to recognize that a police officer is called-upon to a standard of conduct significantly higher than other professionals; a principle, it stated, confirmed by the *Code of Professional Conduct*, and in relevant caselaw. It was said, as shows before me here, that the described incidents of deceit, falsehoods and inaccuracies by Cst. Coady are strictly prohibited by the *Code*. It was further contended that the relevant caselaw confirms a “zero tolerance approach” for policing deceit and falsehoods.

15. As stressed in this opening statement, a police officer has the power to build a case for criminal charges and to handle evidence – he or she is regularly called upon also to testify in court. Further, it was stressed, a police officer is required to be truthful at all times. It was also offered up that a failure to meet the standard of zero tolerance will normally result in a termination, precisely as it submits appropriate here.

16. Following then in a second part of its opening statement, it was put to this Arbitrator that the Respondent Cst. Coady, with seven years of service leading to his termination date as a Constable, *i.e.*, a primary response position, would present in evidence as an employee with no formal discipline under the *Act*, but with significant performance related issues over his tenure with the Fredericton Police

Force. The Complainant referred to testimony to be heard which would demonstrate counselling offered to him, as well as development plans in place in 2012 and 2015, both with respect to ongoing performance related issues.

17. The Complainant then proceeded in its opening statement to address the relevant background to the alleged deceits, neglects of duty and discreditable conduct, settled in detail in the five incidents set out in the parties' Agreed Statement of Facts.

18. Turning specifically to number 5 Incident, note was made of a meeting held on September 14, 2017, between Senior Management and Cst. Coady – a meeting to address specific performance related issues with Cst. Coady, and the idea of an unofficial development plan. Reference also was made to testimony to be heard confirming false statements made at this time by Cst. Coady to senior Officers with respect to incidents undisclosed, but all incidents, which to Coady's knowledge, had in fact occurred.

19. It was then stated that the evidence to be heard would confirm (and here Complaint's Counsel read from the Incident Report of Inspector Patterson, testified to later) that Cst. Coady was on this September 14, 2017 date sent home, but that later meetings with Patterson led to admissions of falsifications made by him. Reference was also made to an audit that followed, with a review taken of 17 files where Cst. Coady had been the sole investigating officer, and six of these were returned as having inaccuracies or false entries.

20. It was specified by Counsel for the Complainant again that what is called for is a dismissal finding – that the evidence to be led would demonstrate that Cst. Coady can no longer deal with the public as a police officer. Reference was also made to obligations of Crown Counsel to disclose police inaccuracies to a Provincial

Court Judge in any case proceeded upon; *i.e.*, that Cst. Coady is, by his conduct admitted to, unable to appear in court as a police witness again.

21. Finally, a reference was made by the Complainant's Counsel to aggravating factors in support of Cst. Coady's dismissal. First, it says that it was a full seven days after first speaking with his superior officers that Cst. Coady ever offered up the truth of his deceptions. Also, as an aggravating issue, note was made of a specific case in 2018, to be testified to, where the Crown was called to withdraw a charge as Cst. Coady had been the only investigating officer on the file – this because of his admissions of falsehoods and deceptions and his lack of credibility as an investigating officer. Finally, reference was made to the 6th Incident, in September 2017, later referred to as “Cst. Coady doing the same thing” – and later confirmed as the Wood Motors incident.

22. Following the entry of the Agreed Statement of Facts, above, legal Counsel for Cst. Coady delivered an opening statement. Reference was made to Cst. Coady's admission made – what is called Cst. Coady's acceptance of responsibility here. Note was also made to the fact that Cst. Coady's father was for 35 years a member of the Fredericton Police Force – that the Coady family is a “policing family” – and that Cst. Coady himself is an Officer who presents before me without any record of discipline.

23. Reference was then made to the point that when a Police Officer is hired, he or she is assigned a Coaching Officer, and that all Police Constables are offered a personal development plan - an opportunity to correct deficiencies. It was observed that the evidence to be heard would show Cst. Coady had only two such plans, one in 2012 and one in 2015, and that he was not made aware of any so-called plan to be established in 2017.

24. It was further presented then that while admitted to, the specific incidents in this case, the evidence will show, are a result of an unbeknownst and underlying medical condition, calling here for an appropriate accommodation, not a dismissal.

25. Notice was given of the intent to call before me medical evidence that would, it was said, confirm to this Arbitrator that at the time the incidents incurred Cst. Coady was depressed, suffering difficulties in focusing, as well a loss of weight - all of which impacted on his ability to properly do investigations.

26. Specifically, it was offered up that the evidence to be led would demonstrate that Cst. Coady, following his suspension, has been provided medications for anxiety, and diagnosed with ADHD and anxiety – a condition that while left undiagnosed, Cst. Coady had dealt with as early as childhood and through to his adult life, without knowing that it existed until officially diagnosed and treated. The expert medical evidence to be heard, it was stated to me, would speak to a prognosis and management of Cst. Coady's conditions that shows positive for his return.

27. Acknowledging here that there is relevant caselaw that supports a termination for deceitful behaviour by a police officer, the law in general, it was so too contended, supports accommodations for undiagnosed individuals. Further, as to the referenced 17 audited files, it was said that the testimony would confirm there were 32 other files audited in a separate audit piece, here with 31 of 32 of these showing as without inaccuracies. It was stressed before me: Cst. Coady, his Counsel argued, was “more disorganized than deceitful” – and that his condition now calls for an accommodation.

28. Further presented to me in this opening statement was a reference to a point that the evidence led would show that the Fredericton Police Force itself has long gone understaffed and that most platoons have been exhausted and overworked. It

was underlined that while a “road map” ought be guided by the *Code*, it must so too be guided by the singular circumstances of the officer, Cst. Coady. It was offered up to this Arbitrator then that a “holistic approach”, with a focus on remedial opportunities to correct wrongful behaviour, is called upon in this case.

II. SUMMARY OF THE PARTIES’ WITNESSES

A. The Complainant

29. Following the presentations, above, as summarized, and the entry of the parties’ Agreed Statement of Facts, the Complainant proceeded to the calling of witnesses, including its principal police witnesses in this case, Inspector Scott Patterson (“Patterson”) and Deputy Police Chief Martin Gaudet.

30. Patterson, first hired as a Constable in 1996 with the Fredericton Police Department, outlined to me in detail his Fredericton police history, commencing on patrol, progressing to the Fredericton community police section, on to the major crime section, then to forensic and identification sections (at which time through to 2006, he noted, he worked closely with Cst. Coady’s father, Tony Coady). He spoke as well later, on promotion to a Corporal and later to Sergeant, to a move back to patrol, and as a frontline supervisor.

31. Patterson also outlined in evidence his relevant career path; *i.e.*, his promotion from a Fredericton Constable to a Corporal, to a Sergeant and Staff Sgt. (including special teams) and in 2016, his promotion to the role of Inspector. He testified that as an Inspector, a management side position, he supervised two Staff Sergeants, and four platoons (who, as the evidence before me attests to, regularly work on four-day cycles), in addition to Special Units of the Force.

32. Patterson testified that each platoon maintains a desired compliment of 12, but, as he observed, this was not a number always reached, a matter later testified to

by the witness Gaudet, as well as Sergeant Duffy (“Duffy”), a later witness called by Cst. Coady. He also offered to me, under a wide overview, a description of the Fredericton Police Force primary response team, *i.e.*, as queried upon, what it is and who comprised of.

33. Turned then to the creation of “Occurrence Reports”, regularly prepared by a primary Officer in any police investigation begun, Patterson testified that most calls do require this so-called “Officer’s report” – that that is even more so than in the past – and that some files are so big that the primary Officer does not carry on alone after a first report made. As Patterson addressed it, again undisputed in testimony heard following, all officers involved in investigations are expected to write something in an occurrence report prepared.

34. Patterson was then turned to an Exhibit part before me, found in the Consent Exhibit Book, showing as an example “Occurrence Report”. He indicated that a first part is directed to the “who” is involved, the victim, the witnesses, and then the responding officers. As also shows in this occurrence report exhibit, a file number is entered, and all the witnesses are listed. In this specific occurrence report testified to, it was observed by the witness that it is he, Patterson, who shows as the initiating officer, and that in fact his officer’s report in this particular file confirms the Complainant as the Chief; *i.e.*, as directly relevant here, this Report speaks to the Legislative Assembly of New Brunswick Incident, set out as #5 Incident in the parties’ Agreed Statement of Facts.

35. Patterson testified to his text part of this report, a part entered, he testified to, as soon as practicable in all cases – and regularly prepared before the end of a work shift, but in any event, by the end of a work cycle. Queried as to the importance of this document, Patterson testified that an officer’s report in all respects must be truthful – and also understood as a matter that the reporting officer may have to

testify to in a Court later. Patterson was then referred to what shows as a “Clearance Block”, an exhibit part reproduced below:

Clearance Block

Clearance agency *F’TON POLICE*

CCJS status *INACTIVE*

Date cleared *2017-Jun-06 (Tue.)*

Cleared by officers *JOHNSON L*
ROY K

Complainant/Victim Notified

Notified *YES*

Date *2017-May-25 (Thus.)* *Time*

By *COADY Z*

How

Persons involved

	<i>Males</i>	<i>Females</i>
<i>Adults charged</i>	<i>0</i>	<i>0</i>
<i>Young offenders charged</i>	<i>0</i>	<i>0</i>
<i>Young persons involved</i>	<i>0</i>	<i>0</i>
<i>Text</i>	<i>0</i>	

36. According to Patterson, as shows in the two sections of this exhibit, it confirms the “who” got the first call, and a conclusion as to further actions following. Patterson also noted that this exhibit demonstrates how it is that occurrence reports later go through a civilian reader (regularly a former Crown Attorney) to ensure that the file is either properly “concluded”, or as shows in this case marked “inactive”, or perhaps sent back for further investigation.

37. Patterson was then turned to questions surrounding both his personal and work relationships with the Respondent Cst. Coady. Patterson testified to a long-term personal relationship dating back from Cst. Coady's childhood, tied to his lengthy friendship with the Cst. Coady's family, in particular Cst. Coady's father, Tony. He spoke of spending a lot of time together, including Christmas dinners, and Cst. Coady getting married this calendar year, a day he testified to as "having saved".

38. Going to the question of workplace supervision, Patterson testified that he never directly supervised Cst. Coady, but had dealt with him in his role as an Officer in charge. He was then turned to personal observations made of Cst. Coady since 2016.

39. Patterson spoke to his knowing of Cst. Coady's "struggling" with performance by 2016, and development plans earlier developed for Cst. Coady – each to address shortcomings. He said he had told Cst. Coady that if he had problems to "come to him". He also specified the point, widely acknowledged throughout the testimony heard before me, that development plans are not punitive, but intended for improvement and development.

40. Following 2016, Patterson spoke of "issues raised" with Cst. Coady. He testified to another officer addressing him about Cst. Coady's "motivation", and self-generation and performance issues showing over the Fredericton Police Annual Safety Week. He noted several observations made to him about Cst. Coady – as he put it – some relatively minor, some not so much.

41. Going to 2017, Patterson testified to Cst. Coady's "status" here as one of keeping him on "a close watch". He observed the emphasis now was performance

related counselling - working with him – but no evidence of any wrongdoing up to the end of 2017, a point also observed in the later testimony of Gaudet and Duffy.

42. At this point, Patterson was directed again to his initial Officer's report in his Occurrence Report exhibit, testified to earlier. He was taken to page 16 of this 46-page report (which includes a supplemental text from other Officers (Deputy Chief Gaudet, and another). Turned specifically to his text notes made in August 2017 and Cst. Coady's status at this point, Patterson testified to no developmental plan in place for him and no discipline, but because of an ongoing recognition that Cst. Coady did not like doing interviews, the idea of an unofficial development plan to, as he spoke to it, give him comfort in talking to people - to get someone to help him. Questioned further on this, he spoke to an officer in charge complaining about Cst. Coady, but also acknowledging the point that people liked him - they saw him as struggling.

43. In any event, on August 24, 2017, as Patterson spoke to it, a meeting plan was sent to Cst. Coady for Thursday, September 14 by Deputy Chief Gaudet – later testified to by Gaudet – intended to lead a discussion of issues and outline performance expectations moving forward. Patterson testified that Cst. Coady was advised that those to be included in this developmental conversation were Chief Fitch, Constable Bourque (Union representative) and he, Patterson, as Cst. Coady's OIC, as well as Deputy Chief Gaudet. Patterson observed that prior to this meeting, however, he was advised by the office of the Chief of a citizen complaint filed with the Chief by staff at the NB Legislature, this regarding an alleged failure by Cst. Coady to respond to and investigate a theft complaint there on August 7, 2017 (Again: the details of this incident; *i.e.*, the facts and false statement entries that occurred, are set out in the Agreed Statement of Facts as Incident 5).

44. Patterson confirmed that this incident got on the discussion list for the September 14 meeting. Noting that it was an understanding that Cst. Coady had been dispatched to the Legislature, but that another call had come in while he was on the way and as a result redirected, the concern, according to Patterson, and raised with Cst. Coady at the meeting, was as to the why he did not follow up or respond to calls later made from the Legislature.

45. As Patterson attested once more, the September 14 meeting was called for “performance issue” disclosures. He said that the Legislative Assembly issue was brought up by the Deputy Chief, however – testified to by Gaudet - and that Cst. Coady told those present that he had not received post incident messages from the Legislature. Patterson acknowledged that on follow up chances for a different reply offered to him, Cst. Coady repeated the same answer. Patterson further testified that Cst. Coady was also asked if there were other incidents where he did not get back to messages received. He testified that Cst. Coady again responded “No”.

46. Patterson’s notes from this meeting, set out in his initial Officer’s report exhibit, and as testified to, confirms (as later testified to by Gaudet) that Deputy Chief Gaudet then advised Cst. Coady that he would be requesting an audit to be completed on Cst. Coady’s “calls for service and files to ensure they were accurate with regards to appropriate response and proper notification of complainants”. Patterson testified that Deputy Chief Gaudet also advised Cst. Coady that he was being given another opportunity to advise if there were any discrepancies between his reports and actual actions taken on files. He testified that Cst. Coady again told them “No”.

47. Patterson’s initial Officer’s report confirms, as he testified to it, that Chief Fitch then advised Cst. Coady that he could take the rest of the day off on administrative leave. He also spoke to statements made about a development

observation regarding the handling of the Legislative theft, but so too reiterations given to Cst. Coady as to his peers and his supervisors desire “to see him succeed”.

48. Patterson’s testimony as followed then related to a meeting he held with Cst. Coady alone. He attested that a short time after he left the first meeting on September 14, 2017, Cst. Coady attended his office, with an express intent given to speak to him privately. Patterson spoke to a conversation that then took place over an hour – one, as he put it, on a “personal level” and Cst. Coady becoming “visibly emotional”. According to Patterson, Cst. Coady attested that he had continued to struggle in his role as a police officer and had been questioning his choice of career for approximately a “year and a half”.

49. Patterson, who here spoke again to his personal relationship with Cst. Coady, said that he asked Coady if he had spoken to his father, he then retired from the Force, regarding his struggles to handle his job, and that Cst. Coady’s response had been that he had not, but that he would do so now. According to Patterson, Cst. Coady said here that he understood and appreciated the concerns expressed to him – that he would try to get the courage to discuss the situation with his father.

50. Patterson testified that in the early evening of the same day he then texted Cst. Coady to see “if he was okay” - he offered to come over and help if Cst. Coady wished – Cst. Coady, he said, advised he would appreciate the support. Patterson said that upon his arrival at Cst. Coady’s residence, Cst. Coady advised him he would appreciate it if he would explain the situation to his father who was there – that he didn’t know where to start, or how to say it. Patterson testified that he assured Cst. Coady’s father that his son was “OK” and safe but spoke of, as he put it, ongoing struggles that he had been facing, getting written up, and meeting with the Chief. Patterson confirmed this conversation was conducted in the presence of

Cst. Coady, who he said accepted the information given to his father by Patterson was accurate.

51. Patterson next testified to September 27, 2017; *i.e.*, several days following the first September meeting with superior officers, when he received an email from Chief Fitch inquiring as to the status of Cst. Coady. Patterson stated that he said he had spoken with Cst. Coady's direct Supervisors and that as there were then no updates to report, it was mutually decided upon that a follow-up meeting should take place, to be set for Friday, September 29, 2017.

52. Attesting that at this point he was still not aware of any inaccuracy issues, Patterson testified that he received a non-solicited text from Cst. Coady inquiring if he would be around, as he, Cst. Coady, would like to meet with him. Patterson stated that Cst. Coady arrived and told him he had "some good news and bad news". According to Patterson, Cst. Coady said the good news was that he had decided to make it work and continue as a Police Officer. He then turned to what he said was the bad news. Patterson testified that he interrupted Cst. Coady here and reminded him that he was not obligated to tell him anything. Patterson said that Cst. Coady told him there was nothing criminal involved, at which time Patterson stated again that he reminded Cst. Coady that he was entitled to have a Union Representative with him, if he wished.

53. Patterson testified that Cst. Coady then told him he had in fact not referenced an email received from the Complainant respecting the Legislature theft. Patterson testified, as his text notes reflect, that he then several times asked again if Cst. Coady wanted a Union Representative with him. Patterson testified that Cst. Coady went on to tell him he had failed to notify other complainants that their files had been concluded, yet had written in several occurrence reports that he had advised of file conclusions.

54. Patterson's initial Officer's occurrence report here notes the following observation taken by him: "he, Cst. Coady", stated he was aware all of this information would have been revealed in the file audit and email search, but he wanted to get it off his chest now to start fresh and put this behind him". This admission shows to follow a reference made by Cst. Coady to inaccurate occurrence reports, and Cst. Coady stating to Patterson "more than a few" and "several".

55. Patterson testified to his then contacting Sergeant MacKenzie via police radio (as a Union Representative), who arrived and was advised of the situation, and given the opportunity to speak with Cst. Coady in private in Patterson's office. Patterson also testified he told Cst. Coady he was required to contact Chief Fitch, which he says he then did. He also said that upon advising the Chief and Deputy Chief Gaudet of this information received, he was directed to initiate the instant file for investigation under the *Police Act*.

56. In continuing direct, Patterson said a meeting was then set up for September 29 - that he had told Cst. Coady he was proud of him for coming forward, but that he had lied to the Chief - he said that Cst. Coady had "nodded" in agreement to this, and said "he was ashamed". Patterson confirmed that Cst. Coady was suspended with pay at the September 29 meeting. He also confirmed that Cst. Coady had not identified the other inaccuracy files he spoke about with Patterson.

57. Under cross-examination, Patterson agreed that electronic documents have replaced much of old police paperwork previously used. Patterson also confirmed under cross that CAD reports are created to provide Crown Prosecutors information on a criminal complaint - under question he also again reiterated that "truth" is an essential element of being a Police Officer - that a Police Officer takes an oath to be truthful.

58. Turned to his close relationship with the Cst. Coady family, Patterson agreed that when Cst. Coady first came on there had been discussion with Cst. Coady's family about helping him, but that he had no memory of anything specific. As put to him, he acknowledged there was a lot of respect in the Fredericton police force for Cst. Coady's father, Tony - and that he, Patterson, personally had an attachment with Cst. Coady beyond other young officers.

59. Questioned as to Cst. Coady's personal development plans in 2012 and 2015, Patterson attested he only reviewed them briefly, and that Cst. Coady was not the only officer with such plans. As to whether he had ever dealt with an unofficial personal development plan previous, Patterson agreed it was never done before but that he did recall instances of helping officers with certain issues, so-called non-formal plans. He repeated, as it was put to him, that a personal development plan was not punitive - not even corrective, but developmental.

60. Confirming that he had heard reports that Cst. Coady was struggling, he testified to changes he saw in 2017 with Cst. Coady. He acknowledged that Cst. Coady, who had always been likable, and liked to laugh, was "getting quieter" - that he, Patterson, felt Cst. Coady was overwhelmed by the stress of the job, that he had gotten thinner and that he was seeking medical assistance. He agreed that Cst. Coady was not eating properly - as put to him, "Cst. Coady's weight was almost "sickly".

61. Turned then to the manning levels of the Fredericton police force in recent years, Patterson agreed that patrols had been reduced from the intended 12 officers on patrol down to as low as 7 at times, and that in some evenings, there could be as many as 17 incident reports to complete. Patterson also agreed, as put to him, higher stress faced by officers over staffing levels, the many more requests made, higher expectations by the Courts, and increased paperwork and follow-ups, all with

understaffing. Put to him that the status was almost in a crisis mode, Patterson agreed that the 2017 numbers were “desperate”, and that the Force had implemented measures to take officers from other units to keep the Platoons up to full staff.

62. Questioned once more about Cst. Coady personally, Patterson confirmed that he did not know him as an angry person – he noted that he also had involvement with motor bikes and the Canada Safety Council.

63. Turned then to questioning on zones assigned with floaters, and the Legislature so-called #5 Incident, Patterson attested that the Legislature was a Zone 3. He also agreed that an officer’s meeting with the Chief and Deputy Chief over a performance issue was not a common event, and so too that the Force’s Officer of Professional Standards was sometimes involved with such issues – he said that this Officer, to his knowledge, however, only became involved when it was sent up to him/her.

64. Patterson acknowledged that the current chain of command does not include Corporals and said once more that as to his attendance at the meeting with Cst. Coady on September 14, it was because it was a meeting set about performance – that he had brought performance observations - that it was the Deputy Chief who asked the questions about the Legislature incident. He also agreed, as put to him, that prior to and after this meeting there was no intent to suspend, that there was no video tape of the meeting, and that what he had written down in his Officer’s report was all taken from his memory of discussions.

65. Accepting that at the September 27 meeting, when Cst. Coady came to him alone, that both were emotional, he acknowledged here again that no written notes were taken during the meeting – but, he observed, the notes he made were written just after - and to the best of his ability.

66. Patterson was then turned to a statement provided by a representative of the Legislative Assembly; *i.e.*, that showing in the Agreed Statement of Facts as the #5 Incident. Patterson said that he had never seen it before. Put to Patterson that the email confirms that Cst. Coady attempted on two occasions to call back, this was not disputed by Patterson. A suggestion was put to Patterson that this contradicts the Legislative staff person email later that he had never corresponded with Cst. Coady.

67. Patterson was also directed to questions surrounding interactions with the general public during the course of investigations, and what was suggested to him as “different styles”. Patterson agreed that Cst. Coady was not “an aggressive individual” and that “being a mediator” plays a big part in investigations.

68. Several hypotheticals were then put to Patterson involving the canvassing of neighborhoods, and “closing a case pending further investigation”, as well as the issue of the clearance blocks, and the point suggested to him that possible miscommunications can arise between the police and the public about files, as well as dispatchers and police officers. As Patterson testified to these points raised “you’re not striving for perfection, you’re striving for excellence. You do the best you can”.

69. In a further line of questioning, Patterson acknowledged, as put to him, that he knew of Cst. Coady’s depression but testified also that the ADHD diagnosis was only mentioned to him after September 27, 2017. He also acknowledged, as suggested to him, that Cst. Coady looks better now than he did in 2017.

70. Under redirect, Patterson was directed to the questions raised about the Fredericton Police workplace in 2017 and the case of the same occasions of stress, calls made, and reports required, existing for all officers. Accepting of this,

Patterson testified here that there was no other occasion of an officer falsifying police records or lying to superior officers.

71. Turned to cross-examination questions put to him surrounding attempted call backs made in the matter of the Legislative Assembly incident, Patterson stated again that what he had been told by Cst. Coady was repeated in his notes taken at the time; *i.e.*, that Cst. Coady had said he attempted to call the Legislative Complainant back but that he did not reply to emails received.

72. Patterson was finally turned on redirect to questions raised under cross respecting the preparation of his text in his Occurrence Report exhibit. Specifically, he was turned to the last meeting that he held with Cst. Coady, and his notes following from this meeting. Patterson acknowledged this meeting with Cst. Coady commenced around 4 p.m., and that the meeting lasted about an hour. He testified that he commenced his report a little more than an hour later.

73. The Complainant's second police witness, the City's Deputy Chief, Martin Gaudet, testified as well to the course of meetings and discussions leading to the Complainant's suspension in September 2017.

74. Gaudet, on the Fredericton Police Force since 1995, and progressing from a frontline Constable to a Corporal to a Sergeant to a Staff Sergeant and to an Inspector in 2013, and then to Deputy Chief in 2015 (a position largely in charge of operations and personnel), spoke to a Policing Force comprising 113 sworn officers, but also 24 or so civilians, 16 or so volunteers, as well as several auxiliaries.

75. Gaudet then addressed at length the job responsibilities of a Patrol Officer or, as he described it, the "foundations of the job". Gaudet, who reports directly to the Chief, previously Chief Fitch and now Chief Brown, was turned to a Supplemental

Exhibit Book, entered as an Exhibit. He spoke to an officer's initial Oath taken as the foundation of a police officer – one, as he put it, who “serves by consent” - and who is called upon to prepare occurrence reports that must be relied-upon as truthful.

76. Gaudet then was examined on the “key duties” listed in the Administration Manual of the Fredericton Police Force, here again referred to by him as underlining the “true foundation of the job”. Observing that a regular day for a patrol officer starts with a briefing for a 12-hour shift, the signing out of equipment, the assignment of vehicles for patrol, and zones to be worked – normally alone – he testified to an environment “more complicated” than 25 years ago. He then testified to the regular documents necessary to be prepared, truthfully, by every patrol officer.

77. First to this, Gaudet referenced the occurrence report exhibit of Patterson; *i.e.*, here noting the officer's responsibility for a particular event to not only gather facts, but to gather evidence, complete and prepare exhibits – and the need to explain events under the Criminal Code sections involved, if such the case, so that the Crown may determine if it should proceed.

78. Gaudet was also referred to an Exhibit Sheet document, again paperwork, he said, that must be truthful. Following a lengthy review of the regular duties of a Patrol Officer, settled upon in the Administration Manual, Gaudet spoke then to another document, again, he stressed, called upon to be truthful, referred to as the Crown Summary, a file which includes an initial report, documents, photographs and related material, all necessary to be submitted to the Crown.

79. Gaudet testified next to the regular requirement of a Patrol Officer to ensure the service of summonses, appearance notices, and to execute warrants, and in the

case of accidents, the requirement to compile statistics and formulate further reports. He once again spoke to occurrence reports, regularly, as he described it, typed in a mobile or a station at the central office, and modifications that would follow by additions to, after a first text is, as he described it, “locked”.

80. Gaudet so too testified to the responsibilities of a police officer that follow under the *Police Act*, as well the *Criminal Code of Canada*, including an arrest right or committal without warrant and the authority of seizure without warrant.

81. Here, once more addressing what he referred to as the regular documents to “be prepared truthfully”, Gaudet spoke to a Prosecutor’s Information Sheet, an Arrest Booking Sheet, a Property Sheet, and a Booking Sheet. Referencing again the Crown Summary file, Gaudet noted that a patrol officer can be expected to testify – he spoke of a requirement of a police officer to be able to testify.

82. Turned then under questioning to Cst. Coady personally, Gaudet testified as having known him for approximately seven years – but that while aware of performance reviews, not involved in these. He spoke, as did other witnesses, to no prior discipline for Cst. Coady to his knowledge.

83. Going to the events leading to September 2017, Gaudet identified an email he received from Patterson on June 15, 2017, citing a development observation taken for Cst. Coady and, as there stated, “four separate and distinct instances where Cst. Coady continues to demonstrate a complete lack of ability in work ethic despite his two development plans and having been served a notice of short comings...”. He testified here that Patterson’s email also referenced that “...most, if not all of the force, both sworn and civilian, are aware of Cst. Coady’s lack of ability and continued poor performance...”.

84. It was observed by the Deputy Chief that Patterson had ended this email to him with the following statement: “As hard a memo as this is to send, it pales in comparison to what I imagine I would have to send in the event we do nothing and Cst. Coady’s poor performances is allowed to continue to the point of costing him, a co-worker or a member of the public their life”.

85. Upon receipt of this email, Gaudet testified that he determined that a developmental conversation with Cst. Coady was then called for, intended to discuss performance. In August, he followed this with a meeting planner to Cst. Coady for a meeting to take place with himself, Patterson and Chief Fitch. He noted in this email to Cst. Coady, the following:

As mentioned in our conversation, we are not discussing termination at this point, but we will be having a very clear and pointed conversation regarding your work performance.

86. Prior to the meeting date set, however, according to Gaudet, another email was received by him from Patterson in early September with respect to the so-called Legislative Assembly issue. Patterson, in this email, had noted his understanding taken from the Commissioner at the Legislature that he had been “unsuccessful at reaching Cst. Coady during the month since the incident occurred August 7, 2017”.

87. Gaudet, who testified that the Department’s Record Management System showed that Cst. Coady had said this file was “concluded”, said he saw this as “more of the same” – *i.e.*, not following-up on files as a continuing issue. Gaudet confirmed that to this stage, however, there was still no information about falsifying files – that he intended to approach the September 14 meeting as a developmental stage, and that the Legislative Assembly issue would be added.

88. Confirming then that the Chief, himself, Patterson, and a Union Representative were at the meeting with Cst. Coady on September 14, he attested

that Cst. Coady had met first with the Chief, in a private session, following which the meeting was conducted to address his ongoing performance, or “lack thereof”.

89. Gaudet spoke to raising the issue of Cst. Coady’s failure to interview suspects, and a failure “to know how to do his files”, after seven years. He observed that Cst. Coady in response was very polite and professional, but that when questioned how it was that he had “concluded” the legislature file, said that Cst. Coady had told those present he had been dispatched, then redirected, and then following, as he saw it, the complaint was not his file.

90. Gaudet specified here that he had said to Cst. Coady directly - it is you not responding. He testified that under question put as to whether he had received a text or email that Cst. Coady had then told him “No”. According to Gaudet he had then told Cst. Coady he had “a hard time believing that”, that the complaint received had come right up to the Chief - that this appeared as “bizarre” to him – and that he asked him the question again, and once again, Cst. Coady said “No”. Gaudet testified he then asked Cst. Coady if there was any reason to believe there was anything in other files saying he had done something, but in fact did not - to this again, Gaudet testified that Cst. Coady answered “No”.

91. Gaudet testified that the meeting ended with him advising of the audit to be taken on Cst. Coady’s files – to which Cst. Coady answered...” I’ve never written anything in my files I haven’t done”. He also spoke to a direct point made to Cst. Coady that if they found something “then the next time ... it won’t be about the files, it will be about you lying to me”. Gaudet acknowledged that the Chief, at that point, gave Cst. Coady the rest of the day off on administrative leave.

92. According to Gaudet, his next involvement followed the occasion of Patterson coming to him and the Chief and advising them both that Cst. Coady told

him that he had lied to Gaudet about the Legislature event, and that the Department would in fact find discrepancies in his files on the audit to be taken. Testifying that he now saw this as *Police Act* violations, and a need to prepare final documents, Gaudet confirmed that he inquired of the Director of Professional Standards for the right documents, so as to get these to Cst. Coady on his next shift, beginning on the 29th, and to advise the Union and issue a suspension.

93. Gaudet confirmed that at the meeting on September 29, as testified to by Patterson – Cst. Coady was apologetic and polite – but offered no details. Gaudet then, in detail, testified the steps taken to conduct the audit, and the assignment following of this function to another officer.

94. Addressing here the “Scope of the Audit” under the headings (or Code files) crimes against people/property, break and enter and so-called dry files (all Group A), he was turned to a document introduced demonstrating the samples of the files selected, 154 in total. He spoke of 17 files then reviewed in the so-called Group A, and 32 files in a Group B (non-criminal files). He testified that 6 Group A’s files were confirmed as inaccurate (showing now in 5 incidents listed in the Agreed Statement of Facts of the parties, above - the 6th being the so-called Wood Motors aggravating circumstance). He also commented that upon receipt of a Memorandum produced from the audit, showing in detail the 5 of 6 inaccurate Group A audit files, he determined no need to go any further – as he put it “How many lies do we have to prove in order to move forward”? As Gaudet further put it, at this stage it was not just a matter of Cst. Coady lying to him, his Supervisor, but now 5 confirmed incident file lies – again, later admitted to in the Agreed Statement of Facts of the parties in this case. In the result, according to Gaudet, there was no need, as he saw it, for any further audit to be taken. Accordingly, the file was put together to move forward under the *Police Act*. Gaudet spoke to a settlement conference following in the process without a resolve, then leading to this referral to arbitration.

95. Questioned finally as to incidents following Cst. Coady's suspension, Gaudet spoke to an impairment file, where Cst. Coady was scheduled to testify, but his determination taken against him giving evidence *i.e.*, in light of the files falsified and about his ability to tell the truth - as he explained it, the impairment file had to be pulled - that the Crown Summary prepared could not be testified to - "he was the main officer on that file".

96. In closing on his direct, Gaudet confirmed that a dismissal was now sought in this case. He testified to the so-called *McNeil* disclosure concerns he would have if Cst. Coady was sworn as an officer - now Cst. Coady not ever able to testify in Court, and no job that he could think of where Cst. Coady could execute the duties of a police officer - that he saw no possibility of a return. As he put it "...the fact that he lied to a superior officer and lied in files. That touches every file that he could testify to". Gaudet also spoke to the loss of public trust if Cst. Coady was seen to come back as a police officer - he referenced this point in the context of this public arbitration hearing, and so too, the requirement that the chain of command calls for trust - that 25% of the time, showing in the 5 of 17 audited files, Cst. Coady was shown to file inaccuracies. How, he asked, could the force know if he is lying or not. As he testified to it: "Every time I ask a question I'm supposed to figure out if this is part of the 25 percent, will be telling the truth or not? Gaudet testified as well to the Wood Motors case, a September 2017 incident - as he put it - he was still "doing the same thing".

97. Under cross-examination, Gaudet was tested with respect to the issue of no police officer in his 28 years of policing ever lying. Gaudet testified that he knew of no one, but also accepted that the matter of lying to him or to the Chief was not the same as lying under oath - here, he acknowledged, it is not perjury.

98. Gaudet also agreed to points put to him that a number of other Fredericton police officers who have been charged criminally have been returned to work, and some have been accommodated – and they are still there.

99. Turned to the September 14 meeting, Gaudet agreed that he was by this time aware of Cst. Coady's anxiety, and that it was not a common practice to have a meeting with the Chief and Deputy Chief together with an officer over performance issues. He also accepted, as suggested to him, that this could be a "nerve wracking experience". He further accepted, as also put to him, that it is possible that an answer can be given where there is a need to take more time – "Should have said this, could have said this, could have added to my...".

100. Going then to questions about the Fredericton Police Force in 2017, Gaudet agreed, as suggested, that it was under staffed - that this went on for a long period of time – that there was a culture of over work. Gaudet also acknowledged, as put to him, that some were feeling burnt out and under stress. Questioned as to the nature of the work – attending at accidents and other grotesque issues arising – suicides, domestic violence – the mental pressures of the job – to all of this Gaudet agreed - as he did too to the point that a "forget" situation is not the same as an "intend" situation. He so too accepted, as suggested to him, that police work is more complicated for an officer now – that "It just appears that every time we turn around there's another sheet to fill out".

101. Going to the three charges (Counts) in this case, set out in the Notice of Arbitration Hearing, Gaudet agreed that his testimony in direct focused on Cst. Coady's lying – he agreed, however, that there is no evidence that Cst. Coady lied in court, nor is there anything in the files showing that he did not effect an arrest – that, as he testified to it:

"A" The files here "the allegations are if I did this...

Q. Yeah

A. "...but I didn't do it".

102. Queried then as to when there are times a "conclude" of an occurrence file must occur, Gaudet agreed, but also said that an "inactive" can happen – and that files can be reopened – that there is difference between a concluded and an inactive file. Turned then to the questions concerning a police officer's duties, Gaudet was referred to community policing, school resources officers and neighborhood action teams – also a youth at risk Coordinator. As put to him, there is little need for these officers to go to court - he also agreed, he, as a Deputy Chief, as is the case for other officers, has not made an arrest in years – but Gaudet also observed, speaking to officers who have not made an arrest in some time "they are willing, ready and able...to do so".

103. Questioned as to Cst. Coady's physical condition, Gaudet agreed that he had looked "frailer" in 2017 – "was slender" - and that he also heard from others about anxiety issues. Gaudet here was also questioned about Cst. Coady's father Tony, put to him as a guy from "the old school", and about the problem of "walking in the shoes of his father". Gaudet agreed that no one should suffer in silence, and that now it is recognized as a requirement to "look after each other more" – he also once more agreed that it's important to give persons time to think about something before answering. He acknowledged here that he had referred to Cst. Coady's behaviour at the September meeting held as "bizarre". Gaudet acknowledged as well that he did not himself say "we are going to seek to take your job" – he did state, however, as testified to, below, the following:

A. I would hope...I would assume that the undertone was strong enough that obviously "If were talking about files and if you lie to me, and now it's a *Police Act* matter...

Q. Um-hmm

A. "...well, things are going to get much more serious..."

104. Questioned as to the inaccuracies as admitted to in the Agreed Statement of Facts, Gaudet confirmed that all of these inaccuracies were in 2017. A series of disputed matters followed as to relevance, given the Agreed Statement of Facts on Incident #5, and the role of other officers asserted in issue here. Gaudet acknowledged that the officer involved on the audit had nothing to do with the Legislative incident.

105. Gaudet, under continuing cross, again attested to the point that other officers charged have been accommodated – he acknowledged as an example a police officer who has been accommodated for alcoholism - because he was recognized as having a disability requiring an accommodation. He also acknowledged that officers under charges laid have been put in administrative roles, and he readily accepted, as put to him, that there was no evidence here that Cst. Coady has a past history with drugs or alcohol abuse. As he repeated, this case is about incidents and about lying – and that if a liar. as a police officer, testified: "I just believe that's a showstopper".

106. Under redirect, the question was put to Gaudet as whether anyone else lied on occurrence reports, or anyone else was in a different situation than Cst. Coady in 2017, respecting to over work. Gaudet answered "No".

107. A series of discussions then arose as to whether or not Counsel disagreed with Gaudet's version of facts on the withdrawal of the impairment case testified to. These discussions ended with Counsel for Cst. Coady acknowledging that he was "going to agree with the fact that the charges were withdrawn for the reasons that the Deputy Chief has explained".

108. Questions were also put to Gaudet respecting persons who may be mentally ill, with charges not following in the result, *i.e.*, no capacity to form an intent. Another, as stated by Counsel for Cst. Coady, “example” put to Gaudet as to relevant circumstances here was the right of an officer to utilize force in making an arrest, as well as questions on the *McNeil* disclosure, directed by this Arbitrator as better set for legal arguments.

109. Additional questions followed as to the impairment case withdrawal, with Gaudet acknowledging that he did not himself directly speak to the Crown, but that this role was assigned to Inspector Patterson, on his instructions.

110. The second witness called by the Complainant in this case was Kimberly Scott (“Scott”), a 19-year employee of Wood Motors in Fredericton, and currently its Office Manager. She was referred to two statements given with respect to a stolen license plate incident at Wood Motors, one given September 21, 2017 to Cst. Coady, and a second given to Cst. B on November 17, 2017, both testified by her on review as “truthful and accurate”, as stated.

111. Scott testified to being advised of license plates stolen, an issue described by her as “not unusual”, and her contact first made with Service New Brunswick about getting the paper work replaced. She testified then to a visit from Cst. Coady on September 21, which followed a call taken from the Saint John Police asking questions about the license plates, and them wanting these plates reported stolen, so that they could be in a position to serve a warrant.

112. Scott confirmed this is why she had made the call to the Fredericton Police, and the why as to Cst. Coady then turning up on the 21st. She confirmed in testimony that it was Cst. Coady, and under questioning as to how long he stayed, said up to an hour. Scott attested that she was with Cst. Coady the whole time he

was at the dealership, and that she told him all that she knew. Turned to what was shown to her as Cst. Coady's initial officer's report, and specifically her statement given, she confirmed telling Cst. Coady about the Saint John Police Force request made to her.

113. Scott, having confirmed then that there was nothing communicated to her at the time by Cst. Coady as to the Fredericton Police file concluded, she was then turned to the statement that she gave to Officer B, in November.

114. Scott was taken to a question showing put to her that she answered "No", this regarding whether, since the day of her first statement, or on that day, did the first officer (Cst. Coady) tell her that the theft file of the license plate was to be concluded. She was also asked the question of whether, during this same timeframe, if Cst. Coady advised her that the Saint John Police Force was investigating the possession of stolen property – again her answer given was "No". She attested once again that both "No" answers given were true and accurate. That ended Scott's direct examination.

115. Under cross-examination, Scott was turned, first, to the police interview in November by Officer B. She confirmed that she, at that time, was not shown any documents, and that no CAD was shown to her. Under question as to what was explained to her as to why Cst. B was there for, Scott said she was told that Cst. Coady's files "were being audited". She acknowledged here that at the November meeting she had not recalled the name of the officer (Cst. Coady) to whom she had given her first report and following several questions as to how she knew it was in fact Cst. Coady, she testified that she only knew the officer's name when Cst. B came and took her statement.

116. Scott further acknowledged that her first statement to Cst. Coady was not shown to her by the Officer B, and under question as to how she could be so certain as to the questions put to her and specifics given in light of the fact that she did not recall who the officer was on the first day involved, she responded as follows:

“Well, I only had contact with one officer.”

117. Scott was then turned to questions with respect to the license plates missing and the vehicle being resold. Acknowledging that the vehicle was on the Wood Motor’s lot, and it was already sold, she said that she did not have access to any police documents and confirmed that she would have been unaware of the fact that when the dispatch contacted Cst. Coady to go to Wood Motors, what the priority markings were; *i.e.*, “There was a set of license plates. Plates had been located in Saint John”. As put to her...you would not have been aware of this. She agreed.

118. Testifying, under continuing cross, as to the Saint John Police Department, Scott attested that she had no further contact with them following the first call made to her. She also acknowledged that she would not be aware of any follow-up conversations between the Saint John Police Department and Cst. Coady.

119. Scott was then pressed with several questions with respect to the arrival of Cst. Coady, including questions as to the layout of the building, the timing of his arrival, the meeting with Officer Cst. Coady, and what was said to her. She acknowledged that she just did not remember details, save to say she explained to him why she made the call to the Fredericton Police - that the Saint John Police Force had requested that Wood Motors make a report.

120. Scott was also turned to the answer she gave with respect to anyone telling her that the file would be rendered inactive or concluded, to which she answered: “No”. The following questions were also put to her:

1. Did Cst. Coady explain to you that because there was nothing on the surveillance, that he couldn't arrest anybody or investigate anybody, and that the file would have to be rendered or concluded?
2. Were there any direct witnesses at Wood Motors that came to you that day to say, "we saw somebody who stole the license plates"?

Again, to each of these questions put, Scott answered "No"

121. Scott also answered "No" to the question "Do you recall being asked by Cst. B, "Has there been any other occasions where you reported the theft of a license plate at the request of the Saint John Police?"

122. There was no redirect.

B. The Respondent

123. The first witness called on behalf of Cst. Coady was Sergeant Shane Duffy, a 21-year veteran with the Fredericton Police Force, whose career advancement shows his commencement as a Constable, to then a Corporal, and his promotion to a Sergeant in and about 2015.

124. Duffy spoke of his role as both a primary and secondary Supervisor for Cst. Coady on shift and described him as an officer requiring some effort in some areas, including paying attention to timelines. As he put it, when a Sergeant "it still required some effort in some areas to do the job function". Duffy also spoke to what he saw as over the years, and up to the end – he was noticeably thinner and looked and, as he put it, "like he was carrying more stress".

125. As did witnesses Patterson and Gaudet, Duffy spoke to workload issues in 2016-2017 – as he put it, “lots going on, readjustments”, service delivery, and the numbers doing it. “He, as did also the previous witnesses, speak of shifts often unfilled - as he put it, six was a good night”, and often shifts “that went unfilled”. As to the stress levels, he stated “everyone was bearing the burden”.

126. Detailing what the average calls look like for a normal platoon – the twelve-hour shifts (seven to seven), he then described his interaction with Cst. Coady as inclusive of group interactions on the start of a shift, meetings, individual work files and follow-ups from the courts, all, as he put it, leading to him seeing Cst. Coady on a regular basis about once or a couple of times an hour at the station.

127. Duffy testified that he first saw the beginning of some issues for Cst. Coady when he was a Corporal, *i.e.*, problems with multiple tasks and a reference made to the point of “something else might fall off the plate and start not being done”. Turned to and about 2017, and when asked specifically as to this timeframe, he testified that he thought “overall” “... it had improved in a lot of ways”, pointing expressly to finger printing and photograph skills of Cst. Coady.

128. Duffy did address also, however, an overall change in mood – as he put it, Cst. Coady was less engaging in conversations and as he also put it, performance issues arising – the number of tickets – timeliness of reports. Duffy advised of no knowledge of the Wood Motors incident and concluded his direct testimony with statements on the completion of clearance blocks, the role of readers and possible miscommunications, not unlike as earlier testified to by Patterson.

129. Under cross-examination and queried as to whether, as his Supervisor, Duffy had ever reviewed Cst. Coady’s files, Duffy testified that he had no reason to believe there was any falsification issues. Confirming no knowledge of anyone else

falsifying reports, he attested that he had no knowledge that Cst. Coady was doing this and, as did the previous witnesses, acknowledged that truthfulness is “fundamental” in what a police officer does.

130. The second witness called by Counsel for Cst. Coady was Tony Coady, Cst. Coady’s father, a 30-year veteran with the Fredericton Police Department, had retired in 2015 at the rank of NCO. As Tony Coady described his work history, he worked pretty well everywhere, noting especially the Drug Unit, Forensics, and Patrolling. He spoke as well to a primary duty as the crime scene analyst.

131. Turned to “past times” at the Fredericton Police Force, he spoke of the 1985 culture with shifts well maned, and lots of availability. Addressing the issue of stress issues then, he said that they were there but - as he put it, less prevalent and often dealt by him as NCO directly – that a lot of issues came to him – he also spoke of persons more secretive, but a lot comradery, “a lot of get together”.

132. Turned to his son, he spoke of him as a child with zero issues – “never caught in a lie – everyone liked him”. He also spoke of his son as always wanting to be a police officer - that there had been no mental health issues with him growing up, although he admitted his son did struggle in school. He spoke of him as “just a good kid. Everybody liked him”.

133. Referred to the issues arising in September 2017, Tony Coady spoke to his son asking him to “pop over” for a discussion. He said he had “a feeling” that things weren’t good by that time - that Cst. Coady had fallen to about 125lbs – “he just wasn’t healthy”. Tony Coady also referred to a trail walk that he had taken with his son, him telling his son about Dr. Cook, but also, for the most part, just “trying to stay around” – “scared to talk about it” – “thought somebody at work... .

134. Tony Coady spoke of being “devastated” when Cst. Coady told him about the September letter of suspension – that he didn’t know what to do. Questioned then as to what Cst. Coady has done since his suspension, Tony Coady spoke about the diagnosis for ADHD, and upon the treatment that followed Cst. Coady “coming out of his shell”, “starting to put on good weight”, and “clearly getting better”. Tony Coady also spoke of Cst. Coady becoming more of a social person, following, as he put it, years of not being engaged – that now he is.

135. There was no cross-examination.

C. Summary of Independent Expert Witnesses of the Parties

136. Both parties in this case led evidence of two independent expert psychiatric evaluations taken of Cst. Coady. Cst. Coady’s counsel called Dr. Edward Yuzda, MD, MSc, FRCPC, CIME (“Dr. Yuzda”)², and the Complainant, in reply testimony, called Dr. Jonathan Rootenberg, MD, FRCRC, DABPN (Certified Forensic Examiner) (“Dr. Rootenberg”). Both of these distinguished psychiatrists entered their extensive curriculum vitae, and both were immediately accepted by the respective parties as expert witnesses. This Arbitrator accepted and declared Dr. Yuzda as an expert in general adult psychiatry, and Dr. Rootenberg, who followed as a witness, as an expert in forensic psychiatry.

137. Dr. Yuzda, currently showing as Head of Psychotherapy for the Horizon Health Network, Saint John, New Brunswick, and engaged privately as an ongoing Psychiatric Consultant, filed with me his professional independent psychiatric evaluation (“Report”), following his interview held with Cst. Coady on November 29, 2018 from 10 a.m. to 11:45 a.m.

² Dr. Yuzda described, speaking to his CIME designations as a “certified independent medical examiner (addressed by him as “not so relevant in Canada, but allows “one to be an independent evaluator in the States”), described his specialty as follows: “...the meat and potatoes of psychiatry”. So depression, anxiety, doing co-morbid personality issues, addictions, throw ADHD in there as well, cause it’s so common”

138. This Report, accepted by both parties and entered as an exhibit, confirmed, as then testified to by Dr. Yuzda, a list of previous documents, letters and clinical notes from previous physicians, all reviewed by him, as well as, as also referred to him by then Counsel Mombourquette, the Notice of Arbitration hearing, dated October 3, 2018, and a letter authored by Mombourquette setting forth specific questions for response by Dr. Yuzda.

139. These cited documents, reports and clinic notes from previous physicians, as testified to, were relied on by Dr. Yuzda, as were a number of tests completed, including an Adult ADHD questionnaire. These all, as testified to by Dr. Yuzda, were taken as informing information for him prior to his November 29, 2018 interview with Cst. Coady from, he said, “about 10.00 to 11.45 hours”.

140. Dr. Yuzda underlined to this Arbitrator that his assessments are “high quality”. His Report, before addressing a Formulation part, proceeds with his thorough review under the following headings: (i) Patient Identification; (ii) History of Present Illness; (iii) Past Psychiatrist History; (iv) Past Medical History; (v) Family Psychiatric History; (vi) Psycho Social History; (vii) Functionality; (viii) Mental Status Examination. Dr. Yuzda then, as he testified to it, addressed the profiles, checklists and questionnaires presented from Cst. Coady, all considered prior to formulating Cst. Coady on a “biopsychosocial axis”.

141. In the Report’s Formulation part Dr. Yuzda opines below, taken directly from the Report, and covered in his testimony:

...I do not feel that Mr. Coady meets criteria for an anxiety condition of any sort. Rather, his symptoms seem congruent with a diagnosis of an Adjustment Disorder in response to both workplace stressors and his being suspended from work. His anxiety symptoms in response to workplace stressors are attributable to the fact that his ADHD symptoms were poorly controlled. Now that they are effectively controlled with lisdexamphetamine, anxiety in the workplace will likely be at a minimum

for this fellow... . An Adjustment Disorder typically resolves once the source of the stressor has been resolved. In Mr. Coady's case, this would be a return back to the workplace. Moreover, with his treated ADHD symptoms, any anxiety he experiences should also be kept at a minimum. It is quite likely that with proper treatment of his ADHD disorder, Mr. Coady would not manifest any anxiety problems... .

142. Also addressing Cst. Coady's ADHD, spoken to in his testimony as a possible genetic disposition, Dr. Yuzda referred to medication received by Cst. Coady for his ADHD and, in his Report, highlights the following:

More relevant in Mr. Coady's case is his ADHD medication lisdexamphetamine. This highly effective stimulant medication is one that Mr. Coady has now been on for almost a year. He denies any side effects to it and clearly, both according to his own account and the medical documentation I have been provided and his self-assessment questionnaires that I asked him to fill out prior to my interview with him, his symptoms have improved to the point where they are not impairing his functioning anymore... .

143. Dr. Yuzda here concludes, having stated that "Psychologically this fellow normally is quite resilient...", the following, also in the Formulation part of his Report:

Socially, this fellow made some very poor calls with regards to his work with the City of Fredericton Police Force. His decisions were based at least in part on sequelae related to his diagnosis of ADHD. He seems truly remorseful for his decisions and seems genuine in his desire to return to the City of Fredericton Police Force. Moreover, he is in a supportive situation with regards to his present relationship. This bodes well regarding a successful return to work for this fellow if he is allowed to do so.

144. Testifying to this point of "on sequelae" related to his diagnosis of ADHD Dr. Yuzda said: "what I mean by this is that the ADHD symptoms led to this growing problem with regards to his capacity to do the paperwork and stay on top of things". Further on, under questioning, he also testified to the following:

A. But it's... once the ADHD symptoms that gave rise to the problems that he had in the workplace are addressed properly this situation

I don't think would've occurred. Though lying, that is a separate issue, the deceit. If he has a history of it, fair enough. If it's not an ADHD thing. It's not going to be treatable by the medications.

145. Dr. Yuzda was then turned his in his Report to the questions placed before him by Lawyer Mombourquette. He addressed, first, the initial question set below:

Whether he has a medical condition or conditions that (a) could have impacted Mr. Coady's ability to concentrate on his work, meet timelines and complete necessary paperwork accurately and in a timely manner.

146. To this question, Dr. Yuzda's Report, and as he testified to it, focuses on the following points of response. As he states:

- (i) there is no question that Mr. Coady suffers from a psychiatric diagnosis;
- (ii) The most appropriate diagnosis according to the DSM-5 are as follows:
 - Attention Deficit Hyperactivity Disorder (inattentive type) (in full remission) – ADHD
 - Adjustment Disorder with mixed anxiety and depressed mood (resolved) - AD
 - Major Depressive Disorder (single episode) (in full remission)

147. Addressing then, as he puts it, "this fellow's diagnosis of Adjustment Disorder", Dr. Yuzda observed that in November 2018 his finding of ADHD in "full remission". He stated the following in his Report as to ADD:

If he is allowed to return back to work with the City of Fredericton Police Force, any residual symptom should remit entirely.

148. As follows next in his Report, and his conclusion reached that any Major Depressive Disorder Order is also in full remission, he further states in response to the first question set before him:

Regarding whether Cst. Coady's diagnosis above could have impacted his ability to concentrate on his work, meet timelines, and complete necessary paperwork accurately and in a timely manner, there is no question of this. His untreated Attention Deficit Hyperactivity Disorder symptoms would certainly have affected all aspects of his work.

149. Going to the second question placed before him by Lawyer Mombourquette, *i.e.*, as to the severity of the condition or conditions, and while noting in his Report, again, that these symptoms should be considered in full remission, he testified to symptoms still showing; but, as he spoke to it, he could look different – there could be a loss of weight.

150. Turned to the third question put by Lawyer Mombourquette, *i.e.*, as to whether Cst. Coady's condition or conditions would have contributed to his decision to cover up work deficiencies by falsifying police records, and the extent to which they would have so contributed, Dr. Yuzda, in testimony, referred to Cst. Coady's ADHD symptoms as "leading to difficulties in the workplace", but did also acknowledge that deceit is a "separate issue". In testimony he specified the following points:

The question really of whether he... or the deceit that's a separate issue. If he has a history or being deceitful, of antisocial traits, then that would be of concern, obviously. But if this is an isolated incident largely due to... or at least contributed to in part by the ADHD symptoms when this situation should not occur or at least the chances it's going to occur are greatly diminished.

151. Also, in his Report, Dr. Yuzda stated the following:

Mr. Coady's ADHD symptoms impacted his capacity to fulfill his routine duties as a police officer. This then led to his decision to cover up his work deficiencies by falsifying police records. This is something he readily admits to and indicates he is truly remorseful for moreover; his problems should not recur now that he is having his ADHD symptoms properly treated.

152. Finally, turning to a fourth question put by Lawyer Mombourquette; *i.e.*, the prognosis for Cst. Coady to manage his condition conditions, in testimony, Dr. Yuzda spoke to Cst. Coady remaining on medication and other treatment for psychotherapy. He also noted in testimony that there is a lot of new work on ADHD treatment - that some patients require medications for a lifetime.

153. In his Report, he recommended in this part routine Bloodwork and continuing medication, including medication for ADHD treatment, and Cognitive Behavioral therapy.

154. Under cross-examination, Dr. Yuzda attested that the hour and forty-five minutes spoken to was the only meeting time he had with Cst. Coady. He also acknowledged that in Cst. Coady's self-assessment he followed here it was important that Cst. Coady be truthful – that truthfulness is an expectation he would have – as he testified to it, “without question”.

155. Confirming once more that Cst. Coady's ADHD is in complete remission and under control with medication, Dr. Yuzda acknowledged that the only information details or specifics he had with respect to the falsification incidents involving Cst. Coady were settled in the Notice of Arbitration Hearing before him. He did not, he acknowledged, have the list of five Incidents or false Statements/Entries set out in Agreed Statement of Facts of the parties.

156. Dr. Yuzda was referred next to the History of Present Illness part of his Report, where Cst. Coady had self-reported that his handling of files and alleged falsification actions had at least, in part, been contributed to by his longstanding symptoms of ADHD and its impact on his capacity to manage files, “keeping deadlines”, Dr. Yuzda here testified to his descriptive of the Legislature incident and

where he shows in his Report asking Cst. Coady to provide some details, and Cst. Coady telling him:

“...he added that in one case, it was ‘particular file...minor things...stealing gas...mischief...on the night shift...I would type in the report that I would call the complainant back...but I would forget to do it”.

157. Dr. Yuzda agreed, under cross, that this was the only “information or detail or specific” provided to him with respect to Cst. Coady’s falsifying police reports. Continuing on this line of questioning, he was then referred to and given the opportunity to read the parties’ Agreed Statement of Facts. On doing so, he was referred to the False Statements and Entries parts of the 5 listed specific Incidents in this Agreement.

158. Dr. Yuzda acknowledged, upon being taken through each of these entries, that he had no knowledge of these when preparing his Report. He also agreed that what is in the Agreed Statement of Facts is “more significant than what was disclosed”. The following exchange shows in the transcript of testimony:

Q. ...Would you agree with me that Constable Coady was not truthful with you during the interview process and the self-reporting to you?

A. In the context of my assessment of him, I’m not a... this wasn’t a forensic assessment as it were. It was an assessment of his psychiatric diagnosis. So it might be also said that I simply did not go into the detail about the specifics of these sorts of things. That’s not really a reflection of ADHD. It’s a reflection of other issues not germane to what I was assessing.

....

Q. He doesn’t give you any of this detail that I just read to you?

A. No, he did not.
And what I’m saying to you, with respect to the detail of the falsification of the police records he was not truthful to you. Would you agree with that?

A. Not truthful. Well, by omission, I suppose.

159. Turned then to the question of Cst. Coady lying to a superior officer, Dr. Yuzda was referred to Dr. Rootenberg's Report (later testified to and marked as Exhibit, but marked here for Identification only at this stage). Specifically, he was turned to the following Report part of Dr. Rootenberg, presented to him for comment:

Approximately one week later, Cst. Coady received an e-mail from Sgt. McLeod who works in "stores" in the police department; he had received an e-mail from a security officer at the Legislature, and he forwarded the complainant's contact information to Cst. Coady, who called and left a message for that individual, but never heard back from him. Around one month later, Cst. Coady was called to a meeting with the Chief, Deputy Chief, and Inspector Patterson, the Inspector in charge of his Division. Cst. Coady stated that during that meeting, the Deputy Chief asked if he had received an e-mail from the Legislature; he replied that he had not, despite being aware that he had in fact received that e-mail, stating, "I'm not sure why I said no, I panicked, felt overwhelmed and stupidly said that. After that meeting, I spoke to Inspector Patterson on a personal level. I was having a hard time with the job, especially the paperwork and follow-up, but had no issue going to the calls. Inspector Patterson said he'd support whatever decision I'd make"...

In terms of being dishonest about having received the e-mail in question, Cst. Coady stated that he was "overwhelmed and embarrassed ... ADD didn't affect me not being honest with the Chief and Deputy Chief at that meeting". He also noted that he dealt with that situation poorly – "obviously lying to the Deputy Chief was a stupid mistake"...

160. Dr. Yuzda here stated agreement with a position put to him that Cst. Coady's ADHD is not linked "to his deception of the Chief". He so too agreed with a Conclusion part arrived upon by Dr. Rootenberg, set out at page 20 of his Report, placed before him, below:

In my clinical psychiatric opinion, Cst. Coady's Attention Deficit Disorder likely contributed to his inability to complete paperwork on time, and also impacted upon his ability to focus and concentrate properly. It did not, however, impact upon his decision to lie to the Deputy Chief when Cst. Coady stated that he had not received an e-mail from the security officer at the Legislature, and Cst. Coady himself acknowledges this. In addition, in

my psychiatric opinion his Attention Deficit Disorder did not *cause* him to falsify incident reports that were described in the Agreed Statement of Facts (Incidents 1-5).

161. Dr. Yuzda acknowledged “that’s right”, as expressly put to him, that “lying or deceit” is not a symptom of ADHD. Finally, Dr. Yuzda agreed that there was nothing before him to conclude that Cst. Coady did not have the mental capacity to be truthful – as Dr. Yuzda testified to it: “He had the mental capacity”... to be truthful.

162. Under redirect, Dr. Yuzda confirmed that when asking a patient to provide “some details” that this does not mean “every single detail”. He also confirmed that in reference to Cst. Coady not answering to full particulars “by omission” that every omission is not fundamental to an assessment taken. As he described it:

No, I didn’t steer...like, I wouldn’t have steered him in this direction to go through all the details of the things that he had been accused of.

163. Questioned then as to whether the parties’ full Agreed Statement of Facts would have changed or affected his independent medical examination, Dr. Yuzda answered this by stating that if Cst. Coady “had a history of obfuscation of the truth or whatever, if he had a...if there was a long history of this sort of behaviour and that’s a separate issue. That’s not ADHD”.

164. Dr. Yuzda continued here to state that:

“If this is sort of an isolated incident in the context of all of these other sorts of things going on, including his difficulties keeping up with the workload, I would still say that the ADHD symptoms, untreated ADHD symptoms are at least in part contributed to this cascade of events”.

165. Following a series of questions arising out of inquiries as to Dr. Rootenberg’s Report, in particular his statement that “there is no real evidence of psychopathy”, Dr. Yuzda was then referred again to the Agreed Statement of Facts and the

question was put to him as to whether it would change his opinion. Here, he stated the following:

It would not change my diagnostic evaluation and nor would it change the fact that the untreated AD...my opinion, the untreated ADHD symptoms at least in part contributed to some of the events that occurred of which he has been accused of.

166. Dr. Jonathan Rootenberg, as noted, was the Complainant's expert in psychiatry, called in response to Dr. Yuzda. Accepted and declared an expert in forensic psychiatry, Dr. Rootenberg is a recognized certified forensic examiner and currently staff psychiatrist at the Law and Mental Health Program Centre for Addiction and Mental Health in Toronto, as well as engaged as in private-psycho practice involving a wide range of forensic issues.

167. Dr. Rootenberg testified to a broad psychiatric practice which includes screening and assessment processes for police agencies throughout Ontario, acting as a frequent witness in police hearings (on both police agency and officer sides), engagement in the regulatory field for physicians, lawyers and teachers, in addition to regular involvement in the criminal field with respect to dangerous offenders, including assessments of fitness for those not found criminally responsible.

168. Dr. Rootenberg attested that he has been declared an expert as many as 400 or 500 times in forensic psychiatry at several levels of court in Ontario over the last 20 or 25 years, as well as in police discipline hearings, largely in Ontario. Addressing his mandate here, he testified to a request from the Complainant's counsel for an independent psychiatric assessment of Cst. Coady.

169. Turning to his Report, marked as an Exhibit, Dr. Rootenberg testified to an interview on May 10, 2019 in Toronto for approximately three hours, and the completion then taken by Cst. Coady of several tests for completion (approximately two hours) as well as his utilization of a psychologist colleague and social worker

for test scoring. He as well spoke to arranging interviews to be taken with Tony Coady and Cst. Coady's fiancée.

170. Dr. Rootenberg specified that in addition to this information made available to him prior to the writing of his Report, he as well reviewed the earlier independent expert Report of Dr. Yuzda and all of the clinical records, notes and reports that were made available to Dr. Yuzda. He so too accessed the parties' Agreed Statement of Facts, above, a Psychological Report authored by the consulting psychologist, N.B., Horizon Health Network records from Dr. Bhargava, and a patient medical history for Cst. Coady from a Fredericton pharmacy.

171. Dr. Rootenberg testified that he used all of this information, as would be his regular practice for the conduct of an independence psychiatrist assessment, in the preparation of his Report. Dr. Rootenberg also noted that he was made aware of the charges entered against Cst. Coady, but stated that it was not his role to offer any comment as to a possible return to work.

172. Turned to his conclusions reached in his 23-page Report prepared and placed before me, Dr. Rootenberg told this Arbitrator that at the time of the interview Cst. Coady did not manifest any mood issues, such as depression or bi-polar, and while not ruling out previous ADHD, as had Dr. Yuzda, testified that he did not see this condition present in May 2019 – as he put it, the treatment given “appears to have been beneficial to him”.

173. Queried as to the term of usage ADHD or ADD, Dr. Rootenberg explained that the standard DSM System uses ADHD – *i.e.*, a persistent pattern of one of two subsets, marked either by an inattention component or hyperactivity. He explained that there was no dispute that the issue in Cst. Coady's ADHD pattern was the

functionality issue of inattention - that Cst. Coady's previous history appears consistent with this.

174. Specifically directed under question to honesty or deceit as a ADHD condition, Dr. Rootenberg testified that neither were linked to either ADHD subset. As he put it, a "focusing problem" is not the same as dishonesty.

175. Turned then to the question of lying to superior officers and the question of whether there was any connection between Cst. Coady's ADHD and lying, Dr. Rootenberg firmly stated "No" – he also indicated that in his interview, Cst. Coady agreed with this.

176. Directed to the falsification of Reports in issue, as are set out in the Agreed Statement of Facts, Dr. Rootenberg testified to no connection in the medical or psychological sense with these falsifications and Cst. Coady's ADHD functionality. Questioned finally as to Cst. Coady's capacity to tell the truth he testified to a firm "Yes" - he again underlined his opinion that being truthful in reports entered had nothing to do with or was in any way connected with Cst. Coady's ADHD.

177. In his Report, Dr. Rootenberg, as cited above, stated the following:

In my clinical psychiatric opinion, Cst. Coady's Attention Deficit Disorder likely contributed to his inability to complete paperwork on time, and also impacted upon his ability to focus and concentrate properly. It did not, however, impact upon his decision to lie to the Deputy Chief when Cst. Coady stated that he had not received an e-mail from the security officer at the Legislature, and Cst. Coady himself acknowledges this. In addition, in my psychiatric opinion, his Attention Deficit Disorder did not cause him to falsify incident reports that were described in the Agreed Statement of Facts (Incidents 1-5).

178. Continuing in his Report, and noting Dr. Yuzda's statement that "ADHD symptoms impacted his capacity to fulfil his routine duties"... and "led to his

decision to cover up his work deficiencies by falsifying police records”, Dr. Rootenberg observed the following:

However, he does not explain how Cst. Coady’s ADD symptoms led to his decision to cover up his work deficiencies by falsifying police records – there is no direct link between ADD and consciously being deceitful and there is no guarantee from a medical perspective that he will not be dishonest in the future by falsifying records, as being deceitful is not linked to ADD per se. Specifically, deceit is not part of the ADD condition or disability.

179. Under cross-examination, Dr. Rootenberg confirmed that he had not spoken with Dr. Yuzda – he noting here that it was not usual for one consulting psychiatrist to consult with another over an independent Report.

180. Dr. Rootenberg attested that in his professional practice, since 1997, he has had many patients with ADHD functionality issues, and agreed that his work with not criminally responsible patients is a different referral issue – and that here he was not specifically asked to assess the mental capacity of Cst. Coady lying to the Chief falsifying reports. Queried again as to nexus between lying and ADHD, Dr. Rootenberg stated that lying is a separate issue from ADHD and that it is not a major mental issue. He spoke again to “no link” between lying and fabricating symptoms and an ADHD diagnosis.

181. Questioned as to the work environment that Cst. Coady was working in, and a possible nexus between that environment and Cst. Coady’s covering up, Dr. Rootenberg agreed that there were a number of issues officers faced in the policing workplace that “may account for why someone covers up”; he also said that he didn’t think that “trouble focusing means you would necessarily lie to cover that up”.

182. Turned to Dr. Yuzda’s Report, and his disagreement taken in part, Dr. Rootenberg agreed that the medication provided to Cst. Coady for ADHD has

apparently helped him, but repeated once more that Cst. Coady himself did not see his lying as linked to his ADHD - and that Cst. Coady said he was sorry for the way he conducted himself.

183. Queried further as to someone who could be so sick that they can't internally think – and losing weight – just not the same guy, Dr. Rootenberg again stated that there is a differentiation between ADHD and the ability to think – that ADHD doesn't change the ability to know reality and rationally think. As then put to him, under continuing cross, Dr. Rootenberg agreed that Cst. Coady was truthful with him when he met with him, and that his Report is based on Cst. Coady's self-reporting as well as the collateral information referenced and the earlier Report of Dr. Yuzda.

184. Questioned as to the history of Cst. Coady's deceit – a May to September 2017 falsifying of Records, Dr. Rootenberg agreed that this was a limited history - four months. Turned also to his Report and comments made by him about Cst. Coady's possible return to his policing career with the benefit of additional support of an individual therapist to assist with successful reintegration, Dr. Rootenberg specified that he was only speaking generally here – and not with respect to weighing in on whether Cst. Coady should return to work but rather on what, as he put it, would to allow him to stay well if such event. He did agree, however, that persons with ADHD can work as police officers.

185. Dr. Rootenberg, under continuing cross, further spoke to helpful ideas if a return to work, specifying a reference to a coach officer. Under question as to circumstances that could be an exasperation for Cst. Coady's symptoms of anxiety and depression, Dr. Rootenberg did agree that many issues could impact on the conduct of regular duties. He also agreed that the meeting held on September 14, 2017, with three Superior Officers could, in a general sense, be seen to increase

anxieties for Cst. Coady, but also repeated his opinion that lying is a choice. He noted here that he deals with people on a regular basis with severe stress who don't lie – once more he stated no link between lying and ADD – as he testified to it:

Q. Would that with the ADHD not... would not coupled with those two not have contribution to Constables (sic) Coady's decision to lie to the Deputy Chief of Police at that particular meeting?

A. You know, lying is a very specific set of circumstances. You're making a choice to fabricate an account. I deal with a lot of people under severe stress and many people don't lie.

So, you know, I can't say that there's a linkage there between even being under stress and deciding to actually lie based on anxiety and ADD. Again, there's really no link between those two.

186. Turned specifically to Dr. Yuzda's analysis that Cst. Coady's untreated ADHD "symptoms could certainly have affected all these aspects of his work", and "his ability to concentrate on his work, meet timelines and complete necessary paperwork effortless and in a timely manner", Dr. Rootenberg agreed with this, save to say that there could be other reasons as well – he stated that different people can have different results. Dr. Rootenberg was then read the, as disputed by him, part of Dr. Yuzda's Report below:

Cst. Coady's ADHD symptoms impacted his capacity to fulfil his routine duties as a police officer. This then led to his decision to cover-up his work deficiencies by falsifying police records.

187. Dr. Rootenberg testified once more to his disagreement with this – he spoke to separate issues here – specifying that there is no correlation between ADHD and lying and that paying attention does not correlate with dishonesty. He also stated that with respect to deceit, he does not share Dr. Yuzda's view on deceit or fabricating – under ongoing questions put to him he offered the following testimony:

A. I would say that, again, I respectfully don't share his view about that particular correlation. Whether or not anxiety or any other reason his

contributing to your lack of functionality, whether it's ADD worsening or anxiety worsening, it still doesn't lead to or is linked with fabricating different accounts.

So, no, I don't... I don't share his view about that.

188. Questioned again as to whether extreme anxiety and stress in the workplace, are stressors of ADHD, Dr. Rootenberg repeated that view that he saw these as separate issues. He did accept however that when ADHD is treated properly, while not a factor in lying, it would assist Cst. Coady in carrying out regular duties.

189. There was no Redirect.

III. ARGUMENTS

A. The Complainant

190. The Complainant filed with this Arbitrator a 60-page written submission of law, inclusive of a reliance taken on over 50 legal citations, in addition to cites of provisions of the *Police Act*, the *Code of Professional Conduct Regulation*, as well as a list of secondary sources, including Ceyskens Text on *Legal Aspects of Policing*.

191. Drawing on this cited text, and the principle of proportionality advanced here – as well as the governing principles set to determine a fair disposition – followed by the considerations to be then applied³ reflecting the circumstances of a particular case, the Complainant underlines that in this case Cst. Coady has admitted to and has been found guilty of the charges of falsification of records and lying to superior officers.

192. With this “intent to deceive” taken as acknowledged, I summarize the central arguments offered by the Complainant at the hearing.

³ (Set out in full in my Reasons, below)

193. A first reference is made to, again as admitted to, the charges under the *Code* here; namely, counts of discreditable conduct, neglect of duty, and engagement in deceitful behaviour. It is stressed by the Complainant that the numb of this case is count three - “deceitful behaviour” – a *Code* violation under paragraph 35(c), set below:

A member of the police force commits a breach of the Code if he or she does any of the following, he engages in deceitful behaviour as described in s. 38, (a) A member of the police force engages in deceitful behaviour if the member, with intent to deceive, falsify or mislead; (b) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to his duties.

194. The Complainant goes then to what it describes as inquiry set to assess professional conduct, and this Arbitrator’s role that follows. It cites s. 6 of the *Code* as to disciplinary and corrective measures made available, and at s. 3, the principles of discipline and correction set under the *Code*, including the direction showing that an arbitrator’s role is to correct and educate the member of a police force alleged to have committed a breach of the *Code*, unless the disciplinary and corrective measures “would bring the administration of police discipline into disrepute or the circumstances make it impractical for the arbitrator to impose disciplinary and corrective measures that seek to correct and educate the member”.

195. Directed by the *Code* as such, it is submitted that the appropriate discipline in this case is a dismissal – that Cst. Coady’s actions do not “meet the threshold” to hold the office of a police officer – that anything short of a dismissal would bring the administration of the police force into disrepute. The Complainant goes then to the question - how to assess the fitness threshold for a police officer?

196. As underlined in its opening statement, the Complainant speaks, first, to the high professional standard called for – linked to the high level of public interest and the public component set for a police officer. It cites from s. 34 of the *Police Act* as

to the right standard. It focuses on the direction here that every member of a police force is called upon in ss. (b) to maintain the integrity of the law, law enforcement and the administration justice; (c) to perform his or her duties promptly, impartially and diligently in accordance with the law and without abusing his or her authority; (e) to ensure that the proper or unlawful conduct of any member of police force is not concealed or permitted to continue; (g) to act at all times in a manner that will not bring discredit on his or her role as a member of the police force.

197. The Complainant here also refers to caselaw addressing what it stresses as this “high bar” set to be met, including the Arbitration Awards in *New Brunswick Police Commission v. Cst. John Morrison*, 20 August 2014 and *Fredericton Police Force v. Cst. Sherry Campbell*, 6 January 2016, and the directions of the New Brunswick Court of Appeal in *Smiley v. New Brunswick Police Commission*, 2017 NBCA 58, at para. 40, below, where Green, J.A., for the Court, emphasized the unique position of trust held by a police officer, below:

Because of the enormous authority, trust and responsibility, we place in or on police officers, which is well known before they pursue such a career, must is expected. In New Brunswick, these expectations have been codified and are set out above. In my opinion, where the code states, for example, that a member of a police force is “to act at all times in a manner that will not bring discredit on his or her role as a member of a police force”, it means exactly what it says: at all times.

198. The Complainant also turns to what it describes as the “list of disposition considerations”, or “factors”, citing expressly from the Ceysens text, above. It argues that a right focus in this case includes an address of the following factors, following a proportionality analysis: (i) The seriousness of the misconduct, including remorse; (ii) The Public Interest; (iii) Disability and other relevant considerations; (iv) Potential to reform or rehabilitate; (v) Specific and general deterrence; and (vi) Damage to the reputation of the police force.

199. The Complainant cites too from the Alberta Court of Appeal decision in *Edmonton Police Service v. Furlong*, 2013 ABCA 121, underlining from here the point directed that “it is a given that employment on a police force is not an ordinary type of employment” and that “police officers are, in many respects, subject to different standards of conduct, and a higher level of workplace discipline than ordinary employees”.

200. In its written submission, again from the Alberta Court here, at para. 29, it argues that it follows that a dismissal of a police officer may sometimes be appropriate even for a “first infraction”, and “even if there has been no prior history of lesser sanctions”. Citing also from the Court, at para 29, it notes the “fitness to hold office” direction offered.

201. Following from the above, the Complainant submits that the primary consideration, or the key test for determining whether a dismissal is in this case appropriate, is framed by the question of whether Cst. Coady is “fit to hold office”. To this, it cites again from the Ceyskens text, and turns to its first consideration listed, the “seriousness of the misconduct” factor in this case.

202. In its written submission it observes again caselaw which directs that the seriousness of an offence alone may justify dismissal, notwithstanding the presence of other significant mitigating factors. The Complainant restates the point – it says that “suitability to hold office” is the “gut check” in a case like this – a para – military organization.

203. Following this “lens” set, it stresses the seriousness of the misconduct here; *i.e.*, the charges, admitted to, including Cst. Coady lying to superior officers. It observes that Cst. Coady, in the September 14, 2017, meeting held with superior

officers, was given repeated opportunities to tell the truth – he instead chose to lie it says.

204. Further, it notes, the audit of Cst. Coady's files that followed confirmed occurrences of falsifications of reports – acts that were pre-meditated - intentional acts of deceit - not isolated - this for over a period of May through September of 2017. It submits that such falsehoods go to the core of what a police officer does – that they violate the truth requirement set by his oath of office taken, a factor, it says, emphasized time and again by the witnesses Patterson and Gaudet in this hearing.

205. Citing further from the audit taken, which confirms that there were 150 files accessed, but only 17 of 50 in fact audited – it notes that 6 of these were accurate, 5 were inaccurate, and the others inconclusive. It also notes that by the time of September 2017, and as an aggravating circumstance here, Cst. Coady did, it is argued, the same thing in the Wood Motors incident; *i.e.*, a 6th falsification.

206. The Complainant frames the point, as follows: it says that lying is lying, and deceit is deceit. And, as it also states it, intentional falsifications and deceit are close to what is known as acts of perjury – that deceit itself may still attract a potential interference with the administration of justice charge. In addition to the *Smiley* case and the *Campbell v. Fredericton (City) Police Force*, 2018 NBCA54 Appeal Court Decision, both upholding police officer's dismissals, the Complainant cites the Court decisions in *Furlong*, *Toy* (infra) and *Nesbeth* (infra), the latter two decisions upholding dismissals, and both with respect to charges of deceit. The Complainant also cites the following caselaw for support of a dismissal in this case for the deceits described:

- (i) *Robin v. Saskatchewan Police Commission*, 2016 SRCA 159, (the Court of Appeal here, at para. 117 observing "...it is difficult to

comprehend how the appellant could be given another chance not to be deceitful, when deceit by its very nature is difficult to detect);

- (ii) *Welfare v. Peel Regional Police*, 2018 ONCPC 15;
- (iii) *Karkins v. The Chief of Police*, [2010] O.J. No. 418;
- (iv) *Bolt v. Chief Constable of Merseyside Police*, [2007] ECWC 2607.

207. The Complainant then turns to a second “disposition of consideration”, factor: the public interest. It notes here the significant degree of autonomy which a patrol officer has, including the right to detain citizens, arrest citizens, search citizens, and build a case and testify in a court of law. It also cites at length from Deputy Chief Gaudet’s testimony, including his point stressed that police officers, as he described it, “we have to tell the truth when we execute our duties and our words and our writings. Every time...”

208. The Complainant cites as supportive caselaw here the Alberta decisions referenced above in *Toy v. Edmonton (Police Service)*, 2016 ABLERB 021, and *Toy v. Edmonton (City Service)*, [2018] ABCA 37. Drawing from the first decision, it notes a reference made to the essential demand of a police force to maintain public trust and respect, as well as the holding of a dismissal here. It also refers to the point expressed that the appellant’s “deceitfulness and misconduct was wilful and premeditated” - and “committed for the purposes of avoiding accountability established within the processes of the *Police Act*”.

209. Citing then from the Appeal Court 2018 decision in *Toy*, at para. 57, it notes that Court’s reference to the presiding officer’s decision below that the deceit: “...was not mere social lies, nor lies respecting administrative matters, but related to core operational matters such that it fell within the highest range of seriousness, attracting the most severe penalty”. The point is stressed: the same can be said here.

210. The Complainant restates this emphasis: Cst. Coady's falsehoods, it says, go to core policing duties – as such, the public trust is broken. The Complainant so too cites support from the decision in *Robin v. Saskatchewan (Police Commission)*, [2016] SKQB 36, upheld on appeal and, again, the observation in the Appeal Court at para. 117 that...:

...Making false statements, which are likely to injure reputation, has always been regarded as a serious matter and harmful to societal interests...

211. Reference is also made by the Complainant to the Ontario decision referenced above in *Nesbeth and Windsor Police Service*, 2015 ONCPC 23, and the direction here on differences between honest mistakes and patterns of deceit and dishonest conduct, highlighting a conclusion taken from a case cited that “good character in a police officer is essential to both the public’s trust in the officer, and to a police service’s ability to utilize that officer”.

212. Further to this public trust consideration, reference is made to the evidence led with respect to the withdrawal of a driving when intoxicated charge because Deputy Chief Gaudet just did not consider it possible for Cst. Coady to testify before a Court in the circumstances. Reference is also made to what is referred to by the Complainant as a subset of the public interest, the so-called *McNeil* disclosure rule, settled by the Supreme Court of Canada in *R. McNeil*, 2009 SCC 3.

213. As here argued, the Court in that case outlined a two-step process for the disclosure of relevant information to an accused in a situation, as it is stressed relevant in this case. The Complainant cites from the Court, below:

15 ...records relating to findings of serious misconduct by police officers involved in the investigation against the accused properly fall within the scope of the “first party” disclosure package due to the Crown, where the police misconduct is either related to the investigation, or the

find of misconduct could reasonably impact on the case against the accused.

214. Following this, it is argued, Cst. Coady's actions of deceit – his actions of falsifying police records – would plainly fall within a disclosure package due to the Crown in the case to be testified to - that again, Cst. Coady demonstrates as not fit to be a police officer. The Complainant also cites further supportive caselaw in support of Gaudet's conclusion taken that a potential call for future *McNeil* disclosures is a significant aggravating factor that weighs heavily in favour of a dismissal of Cst. Coady.

215. To this point as well, particular reference was once more made to the *Toy* decision, above, at the Enforcement Review Board Level, where the issue was addressed, and the below direction, at para. 88, cited:

As to impact on the police service, the Presiding Officer referred to *McNeil* and the limitations that would result to the appellant's usefulness as an officer in the future. Further, he stated, if an officer cannot be relied-upon to be truthful in critically – important matters, a breakdown in accountability will follow and the work of the service would be severely undermined.

216. So too, note was made again to the Alberta Court of Appeal decision in the *Toy* case, and the instruction offered there:

60 Whether his credibility could successfully be attacked in this way would, no doubt, depend on the nature of the evidence he gave and upon whether any of it was contentious. In our view, however, it was not unreasonable for the Presiding Officer to consider the potential that the EPS would be hindered in providing effective policing if one of its officers could be successfully challenged when testifying, based on a prior finding that he had lied under oath. The fact that this was a possibility and not a given, does not make negligible the risk of it arising.

[Underlining for emphasis]

217. Finally, on this, and asserted as an aggravating circumstance, the Complainant cites once more from the Trial decision in *Robin v. Saskatchewan*

(*Police Commission*), and comments cited from the Commission under review respecting findings shown in the public record – as noted, providing “a fertile basis for any cross-examiner to successfully impeach credibility” of a witness in a future criminal proceeding.

218. Continuing on, as it presents it, the considerations to be followed, *i.e.*, the factor of potential for reform, reference is again made to the September 14, 2017 meeting of Cst. Coady with his superior officers and his intentional lies to them then - when he knew that he was under scrutiny – and that an audit was pending. Also noted here, only seven days later, at Wood Motors, Cst. Coady did the same thing – he falsified a report – all while expecting an audit of falsified records. Reference so too is made to the fact that when Cst. Coady met with Dr. Yuzda, he directly misled as to what he did - he spoke of one case only, and then only “forgetting”. The point is stressed: the evidence does not support Cst. Coady’s potential for reform.

219. Going then to the disposition consideration of “specific and general deterrence”, the Complainant relies on the Presiding Officer’s direction cited in the ALBERB decision in *Toy*, at para 101:

The Presiding Officer considered the applicant’s deceitful conduct to be brazen in nature, given that he was initially caught “red handed”, and then later blatantly denied it. As such, this exasperated the misconduct, particularly as it occurred during the statutorily mandated investigation and hearing responding to a complaint. The Presiding Officer stated that if this did not attract a severe penalty, it would serve to encourage others to adopt a similar “nothing to lose” strategy of deceit.

220. Going next to damage to reputation of the Police Force as a consideration, it is submitted, first, that the admission to count one – with this Arbitrator’s finding of guilty then entered – is fully informing on this factor – the reputation of the Fredericton Police Force is plainly brought into disrepute, it is asserted. It is also submitted that the seriousness of the offence and the arguments advanced above as to the public interest fall under this factor.

221. Finally, the Complainant turns to any “Disability” or “other relevant personal consideration” factors. Here, it acknowledges that it is accepted that a police force and the work of a police officer involves stress, high public expectations, under staffing issues at times, but it also repeats: this is a case that involves a falsification of police records - no other officer falsified occurrence reports - the evidence here, it is asserted, establishes that Cst. Coady does not fit within the scope of an officer’s job.

222. Further, it is submitted that the expert medical evidence led in this case demonstrates there is no nexus – no link – between Cst. Coady’s ADHD condition, and his acts of untruthfulness and dishonesty. It points out that Dr. Yuzda did not have the Agreed Statement of Facts before him at the time of his interview taken with Cst. Coady – and that Cst. Coady’s self-assessment that Dr. Yuzda relied upon was not truthful. It stresses the point that what is in issue here is not a matter of “forgetfulness”, as Cst. Coady told Dr. Yuzda – it is a matter of deceit and, as Dr. Rootenberg testified to, there is no causal link between lying and fabricating records and ADHD which link, as an Arbitrator, I need to find for Cst. Coady’s disability to be considered a mitigation factor in this case.

223. Once again, the Complainant cites the ABLERB decision in *Toy* and the reference there to the point observed that previous Boards, as well as the Alberta Court of Appeal, have clearly established that in order for a disability to be used to mitigate misconduct the medical evidence led must demonstrate “a causal link between mental health concerns and the misconduct”. Reference is so too made to the Alberta Court of Appeal decision in *Braille v. Calgary (City Police Service)*, [2018] A.J. No. 33, and the cite below:

26 Thus, when an officer “adduces evidence to establish” a causal relationship between misconduct and disability or extenuating personal circumstances, mitigation in disposition may follow. This suggests the legal burden of proof lies with the officer on the issue of mitigation.

224. Reference here is also made to a decision of the Ontario Civilian Police Commission in *Welfare v. Peel Regional Police Service*, above, and the referral in that case to the Hearing Officer's considerations there; *i.e.*, as was drawn from the testimony heard, a finding that deceitfulness "is not a symptom of a disability".

225. In closing on this consideration, the Complainant says that Cst. Coady plainly had the capacity to be truthful – but he was not. As follows, and as it sets forth in its written brief, it submits that Cst. Coady's actions have made it such that his continued employment with the Fredericton Police Force is now impossible – that the deceitful and negligent behaviour testified to goes directly to Cst. Coady's integrity, and to the core functions of a police officer – Cst. Coady, it repeats, is not fit to serve as a Fredericton Police Officer.

226. Then restated, there are, as confirmed in the testimony heard, it says, several aggravating factors that are relevant to Cst. Coady's serious misconduct, including, as argued, the harm to the public interest and the Police Force's reputation. Reputation damage, it asserts, has occurred, and will continue to occur if Cst. Coady was to return – it also once more points to the implications of future *McNeil* disclosures here.

227. The Complainant so too underlines before me again the long-term and ongoing nature of Cst. Coady's deceits - the premeditated and intentional nature of these – directly related, it says, to core policing duties. All of this – and the loss of trust, it repeats, including a need for general deterrence – demonstrate before me a dismissal as the only appropriate penalty to now follow.

B. The Respondent's Oral Submission

228. Counsel for Cst. Coady addressed from the outset of his oral submission his intent to file a following written submission no later than August 23, 2019; *i.e.*, that

his oral submission made would be an address of summary points only. A review of that follows.

229. Acknowledging, first, an admission of guilt and the fact that this case comes down to a matter of penalty, the Respondent accepts that it does rely on the mitigation factor of disability – that Cst. Coady accepts a nexus between his disability and his actions must be shown – and that the expert evidence was required to be led – and it was heard.

230. Acknowledging then that the burden to be met here is high, it is submitted that on the independent expert Report filed, and the testimony of Dr. Yuzda, a causal link has been demonstrated. The Record shows, it is stated, that Dr. Yuzda made specific reference to Cst. Coady “lying by omission” – that the evidence also shows that the Fredericton Police employment atmosphere added to his admitted deceitfulness - it increased Cst. Coady’s anxiety.

231. Reference is particularly made to the testimony of Cst. Coady’s immediate Supervisor, Sergeant Duffy, who spoke of knowing Cst. Coady on shift on a daily basis, and his reference made to “plates piling up” for Cst. Coady.

232. The point is also made: it is here asked: who was best able to assess Cst. Coady in his daily duties for the Fredericton Police Force – it is submitted it was Duffy alone. Duffy, it is also noted, testified to observations of a sickly looking Cst. Coady, an officer able to follow first instructions but when told to do something else, things piling up for him – all prior to treatment.

233. Accepting of a public interest component, it is noted also that the evidence led confirms that there are a number of Fredericton Police officers who have faced “problems” – a number who have in fact gone to criminal court and have had

criminal charges laid against them – but none in issue here – and those officers are still working. It is repeated, Cst. Coady did lie – but Cst. Coady was a police officer with a mental health issue, it is repeated.

234. It is observed further that this is not a case of perjury; it is not a case of forging or obstructing witnesses, and that with respect to the so-called *McNeil* case, this may be relevant, or it may not – that here it is an issue of deceitfulness – but this may not be a relevant issue to credibility on a case in issue. Reference is made to the point of the right test here: whether an issue is contentious or not.

235. Reference again is made to the testimony that shows there are officers out there - officers with convictions who still carry on their duties – officers who do not have restrictions from giving testimony. It is so too noted that on the driving charge pulled – this was done on the Deputy Chief’s request. The right question, it is repeated, is whether the matter is contentious.

236. Note is also made to the audit conducted of Cst. Coady’s files, a limited four-month window – with no reference made to what was referred to as the category B files identified in testimony. Reference is also made to both “Dr. Yuzda” and “Dr. Rootenberg” testimony that Cst. Coady was truthful with them. It is observed too that while Duffy spoke to Cst. Coady not looking the same – *i.e.*, issues showing of physical or mental health apparent, there is no evidence led of any reference made by superior officers to him about his health and welfare – it says that this will be an issue that will be addressed in its written submissions that follows.

C. The Respondent’s Written Submissions

237. The Respondent commences its written submission (24 pages long, with a list of 28 authorities), as it did its oral argument, by noting Cst. Coady’s admission of

guilt, and one issue remaining – what is the appropriate sanction in the circumstances?

238. Underlining that s. 3 and 6 of the *Code* are the penalty provisions here and, as directed by the Court of Appeal in the *Campbell* decision, to be read and applied in conjunction, the Respondent, as did the Complainant, then turns to the governing principles for determining a fair disposition, settled in the Ceyskens text, including the position point directed that corrective disposition should prevail, where possible. And, as it states it, proportionality must govern in all events.

239. The Respondent, following in its submission, states that the factors to be considered here are those it lists below:

1. Seriousness of the misconduct
2. Recognition of the seriousness of the misconduct
3. Disability and other relevant personal circumstances
4. Employment History, and potential to reform or rehabilitate

240. The Respondent says that the Ceyskens text confirms that once having identified the relevant considerations, as above, the next step is the determination of whether each factor is a mitigating, aggravating or a neutral factor. It argues, again citing from the text, that while some caselaw says that the seriousness of the offence alone may justify dismissal, the weight of caselaw is that even reprehensible misconduct may not be determinative. It restates this point – the law it says, requires an appropriate balancing of all relevant and mitigating and aggravating disposition factors.

241. While then acknowledging that deceit is one of the most serious categories of misconduct, citing from the *Jansen and Transit Police* decision, BC Adj, 13 February 2014, it states the position, addressed there, that “though any deceit is a serious discipline default, some of these acts are more culpable than others”. The

Respondent also cites from the Alberta Court of Appeal decision in *Camrose Chief of Police v. MacDonald*, 2013 ABCA 422, where that Court held that a hearing officer below had erred in concluding that “deceit must be a career ender”. Addressing as it did in its oral submission, it also notes here that the deceit in this case does not involve lying under oath – what it says is the most serious.

242. Next, noting that there is an admission made of falsification of Records here, it argues it is clear that Cst. Coady was not motivated by improper motives such as personal gain or revenge – his actions were not of a criminal nature it says – and the deceit was limited. The point is offered:

Arguably this forms an isolated occurrence where in the face of a 7-year career. Cst. Coady has no other history of deceit, and testimony supports no historical concerns of deceit, either professionally or personally

243. It is so too argued:

In light of the lack of deceitful history, the absence of personal gain, revenge, or improper motives, Cst. Coady’s deceitful behaviour is further reduced, and the seriousness of the misconduct complaint as a consideration is reduced as an aggravating factor.

244. Turning then to Recognition of the seriousness of the misconduct; *i.e.*, Cst. Coady’s remorse, reference is made to the decision in *Gauthier and Timmins Police*, 2015 ONCPC 19, where an officer’s guilty plea was accepted as evidence that he took responsibility for his actions.

245. In this case, it is noted, Cst. Coady also agreed to the Agreed Statement of Facts – he admitted to all actions informing the basis of the charges under the *Police Act*. It is further observed that in both Dr. Yuzda and Dr. Rootenberg expert reports, both experts’ reference Cst. Coady admission of guilt made, his feelings of remorse and embarrassment and a desire to take steps to prevent a recurrence. It is submitted that with these considerations, his recognition of the seriousness of the misconduct ought be taken as a mitigating factor.

246. Turning next to Disability and other relevant personal circumstances, it is observed, citing caselaw, that a disability may mitigate a misconduct because the employer owes an obligation to accommodate a police officer's disability to the point of undue hardship.

247. Following caselaw cited, including *Purbrick and Ontario Provincial Police*, 2011 ONCPC7, which calls upon a disability and/or other relevant personal considerations to have a connection to the misconduct in issue, it is stated that the nexus here is made most clear by Dr. Yuzda who testified, it observes from the transcript, that "the ADHD symptoms led to the difficulties in the workplace which led to a very, very, very, very poor decision on his part to try and hide that from his supervisors and to not admit that he was struggling". Citing also from the transcript, it notes as well Dr. Yuzda testifying:

If he has a history of being deceitful, of anti-social traits, then that would be of concern obviously. But if this is an isolated incident largely due to...or at least contributed to in part by the ADHD symptoms when the ADHD symptoms are treated properly, this situation should not occur or at least its chances it's going to occur are greatly reduced.

248. It is further noted that when asked "about the factors that were placed" on Cst. Coady, at the particular time, including whether the stress, and the undiagnosed underlying medical condition led him to act in a particular manner, Dr. Yuzda replied "Yes". It is argued that his untreated and undiagnosed ADHD's stress and anxiety here are also mitigating factors for a fair disposition in this case.

249. Addressing then Cst. Coady's Employment History, it is stressed that is the totality of conduct here that must be considered - not just the presence of misconduct. It is submitted that the evidence shows no prior police convictions, no disciplinary measures, and in fact no prior misconduct by Cst. Coady at all. Citing

Duffy's reference to "never an issue with specific tasks or direction" and reliance on him by his peers in finger printing procedures and photographing, it is argued that Cst. Coady's positive employment history is therefore a strong mitigation factor in this case.

250. Turning next to Potential to Rehabilitate, reference is made to the Ontario Police Commission decision in *Andrews and Midland Police*, OCCPS, 1 May 2001, at 19-21, and the following explanation offered in support of rehabilitation:

Unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration.

Rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the officer has a prior unblemished employment record.

251. Here, it is submitted the expert evidence confirms that Cst. Coady's ADHD disorder and his anxiety have been treated. It is argued that he is then an ideal candidate for rehabilitation and capable of returning to duty as an active police officer.

252. Noting next the arguments before me as to the *McNeil* analysis, it is argued that this consideration does not outweigh the mitigating factors listed above. Citing caselaw, including the adjudication Award in *CUPE 1190 v. N.B.*, 2009 N.B.L.A.A. No. 23, it is submitted that the *McNeil* analysis may not even be appropriately determined in a Police Act manner at all, but is instead more appropriately addressed only if the *McNeil* disclosure requirements become an issue for Cst. Coady. As stated by the Respondent here:

"This leaves the uncertainty associated with trying to assume the possible implications of a *McNeil* disclosure to a later time. Either the *McNeil* disclosure never becomes an issue for Cst. Coady, but even if it does, there is a separate and apart employment issue that must be addressed at that time."

253. Further, as presented, even if a *McNeil* disclosure is considered at this stage it says that it cannot be stated with any certainty that such disclosure will ever become an issue for Cst. Coady – that it is the risk of a possible *McNeil* disclosure that must be weighed as a factor. This, it is argued, does not outweigh the numerous mitigating factors in support of Cst. Coady in this case.

254. The Respondent argues then that to determine an appropriate sanction – *i.e.*, a weighing of relevant factors - my analysis must turn to a parity of sanctions consideration. A series of cases are then highlighted as case examples, all with penalties imposed short of dismissal, now listed below:

1. *MacDonald and Camrose Police*, 2014 ABLERB 055
2. *The Chief of Police, Saint John Police Force v. Constable Christopher Messer* (April 30, 2015)
3. *New Brunswick Police Commission v. constable Lacey Johnson* (April 17, 2015)
4. *New Brunswick Police Commission v. Constable John Morrison* (August 20, 2014)
5. *Chief of Police, City of Saint John Police Force v. Constable Christopher Messer* (September 11, 2013)
6. *The Chief of Police, Fredericton Police Force v. Corporal Randy Reilly* (January 3, 2012)
7. *Constable Ken Jansen v. South Coast British Columbia Transportation Authority*
8. *Constable A v. Edmonton Police Service*, 2017 ABCA 38
9. *Gauthier and Timmins Police*, 2011 ONCPC 7
10. *Toronto Police Service v. Kelly*, 2006 CanLII 14403 (Ont. SCJ)
11. *Petropoulos v. Edmonton Police Service*, 2015 ABLERB 6, affd 2016 ABCA 216 (sub nom *Rogers v. Edmonton Police Service*)

255. The weight of this caselaw, in particular the cases involving New Brunswick Police Forces, largely speak to charges with respect to discreditable conduct and/or abuse of authority. The sanctions that follow in these range from written reprimands to suspensions. Other sanction or corrective terms shown are directions to undertake special training or retraining, or rehabilitation when medical issues are demonstrated to be linked to the conduct in issue; e.g., in *Purbrick*, a case of a discreditable conduct relating to the thefts while on duty, with a monitoring for mental health directed in that case.

256. Three cases cited, however, address, as is here in issue, deceitful conduct. The *Camrose Police* cases, there being three decisions here, including a final decision following from a remit from the Alberta Court of Appeal, and an imposition of a sanction of an 80-hour unpaid suspension, with a reduction in rank to the lowest seniority within his rank for three years. This final decision references serious misconduct in issue and, as is here argued as called upon for me to address, a number of mitigating factors relevant to a fair disposition.

257. So too, in the *Ken Jansen* case, a case involving a finding of guilt for deceit, the officer was suspended for 14 working days and demoted to the rank of Third-Class Constable, with future promotions to be determined in accordance with usual practices and policies of the police authority. This case addressed, it is highlighted, the provision of a duty report that the officer knew was false or misleading.

258. Finally, as to a deceit case, reference was made to the *Constable A* decision, where an officer was terminated from her employment following her actions of entering false information and obtaining a false statement. Her termination was upheld on judicial review but appealed to the Court of Appeal which quashed the decision, and then remitted the case to the LERB for further consideration on appropriate sanction.

259. It is understood that a sanction has not yet been addressed in *Constable A*, but it is stressed that the Court of Appeal in that case addressed the point of the Hearing Officer failing to give adequate consideration to the parity principle and the possibility of the officer's rehabilitation.

260. The Respondent argues that these cases, fairly considered, now support a sanction of a suspension without pay, or alternatively a suspension without pay and a demotion, with future promotions to be determined in accordance with the usual practices and policies of the police authority.

261. The Respondent offers the final conclusion point in its submission:

79. Constable Coady respectfully submits that, given a weighted analysis of the mitigating/aggravating factors for disposition, that the mitigating factors outweigh the aggravating factors. Constable Coady is capable of reforming his career as a police officer, he shows remorse for his actions, he has a good employment history, and he has been diagnosed and treated for attention deficit hyperactive disorder and anxiety, two disabilities which are linked to his actions resulting in his suspension. The aggravating factors of the seriousness of the misconduct and a potential *McNeil* disclosure, do not outweigh the mitigating factors.

D. The Complainant's Response

262. The Response position of the Complainant is pursued under six points.

A. Seriousness of misconduct

263. The first response position to Cst. Coady's Brief of Law is found in a referral made to the *Krug and Ottawa Police* decision, 2003 CanLII 8585, cited in its first Brief, and a recognition taken there, at para. 70, that the relevant jurisprudence indicates that the seriousness of an offence alone "may justify dismissal".

264. It is further noted that the reference to the motives of Cst. Coady, as made in the Respondent's Brief, cannot be addressed as he did not testify – that there is no direct evidence on the record regarding his motivation.

265. Finally, it is noted here that the references made to the May to September 17 dates as an isolated occurrence ignores the fact of an audit taken, but intentionally limited - that the evidence is that the Police Force felt it had sufficient evidence to proceed on the audit size used – and that this cannot be taken as evidence that Cst. Coady did not engage in other deceitful behaviour.

B. Remorse

266. The second point addressed is the issue of remorse raised by the Respondent – here it is referenced again that this Arbitrator did not hear from Cst. Coady, and it is argued that any statements he made to Dr. Yuzda and Dr. Rootenberg regarding feelings of remorse is hearsay.

C. Disability – Personal Circumstances

267. Turning to this, it is argued again that the nexus requirement was not met in the expert evidence led here – that this consideration cannot then be elevated “from a neutral to mitigating factor”. Reference is once more made to Dr. Rootenberg’s testimony of no link between Cst. Coady’s deceits, lies and his ADHD condition. Reference is also made to Dr. Yuzda’s testimony to the effect that lying and deceit – that’s not a “reflection of ADHD at all”, and that “lying, that is a separate issue, the deceit”. It is further noted again that both experts confirmed that Cst. Coady had the mental capacity to tell the truth - and that Dr. Yuzda acknowledged that Cst. Coady did not provide him with any particulars of false allegations showing in the five separate Incidents listed in the parties’ Agreement of Facts.

D. Potential to Reform

268. Turning to this potential, it is argued that the Respondent’s submission of significant improvement presents an unbalanced view. Reference is made to Cst. Coady’s continuing dishonest behaviour by lying to Dr. Yuzda, “by omission” – despite the fact his ADHD symptoms were in complete remission. As well,

reference is made to the Wood Motors theft case – again a falsification made despite the fact that Cst. Coady at the time had been warned that his files were being audited.

E. McNeil Analysis

269. Going next to the *McNeil* analysis, again, and the reference made by the Respondent that this should be addressed only if the disclosure requirements become an issue, it is submitted that the caselaw cited by the Respondent is irrelevant as it was decided outside of the context of the *Police Act* – *i.e.*, the workplace adjudication decision cited. It is also argued that it is clear that the *McNeil* disclosure requirements have already impeded Cst. Coady’s ability to serve as a police officer – once more reference is made to the withdrawal of the impaired driving charge.

F. Parity Sanctions

270. Finally, as to parity and to the question of the range of sanctions, it is the position of the Police Force that all but three of the cases cited are not relevant – that they did not involve allegations of deceit or other analogous misconduct.

271. It is so too stressed here that, as stated in the Ceyssens text, that while parity allows a decision-maker “to consider analogous types of misconduct” – “the nature and quality of plainly dissimilar misconduct remains problematic”.

272. A referral is made, however, to the *MacDonald and Camrose Police, Janson and Constable A* cases cited by the Respondent. As to *MacDonald*, it is stated that the officer’s misconduct was less severe than in this case – that the deceit was administrative in nature only – and it was isolated. It is also noted that it was accepted that the officer’s depression in that case had a direct causal relationship –

that “subsequent attempts to cover up his indiscretion were all directly related to the depressive disorder”.

273. Turning to the *Ken Jansen* case, again a deceit case, it is noted that the deceit here too was an isolated incident, and the action in that case of exaggerating in a report was an altruistic event - taken as a significant mitigating factor. It so too refers to the finding that a second chance was in that case warranted. Here, it is stressed again that the evidence shows that Cst. Coady continued his deceitful behaviour even after warned about it – it is argued that it is likely that his behaviour is likely to reoccur.

274. Finally, turning to the *Constable A* case, again a deceit case, it is noted in that case no decision was made on the issue of deceit, but instead a remit back as a result of a number of procedural defects – and there has been no subsequent decision regarding sanction.

275. It is submitted as to the whole of the parity issue that the analogous police discipline cases of the Respondent do not support the imposition of a penalty less than a dismissal in the present matter. Dismissal of Cst. Coady, “it is argued, is “the only reasonable option in circumstances such as those in the present matter”, the Complainant noting once more that Cst. Coady’s misconduct “has triggered public interest considerations” that “cannot be ignored when considering sanction”.

III. REASONS FOR DECISION ON PENALTY

276. The parties before me agree that the single “live issue” that remains for Decision is: what is the appropriate penalty in all of the circumstances of this case?

277. Why this is the only question remaining to be determined by this Arbitrator is because Cst. Coady has admitted to and been found guilty of all of the charges made

against him by the Chief, as set out in the Notice of Arbitration hearing, above; *i.e.*, counts of Cst. Coady's discreditable conduct, neglect of duty, and engaging in deceitful behaviour.

278. The Complainant seeks a dismissal – the Respondent a return to work on suspension terms to be set by this Arbitrator.

279. Count three of the Complaint, “engages into deceitful behaviour”, fairly taken as the numb of this case, speaks to a member of a police force who commits a breach of s. 35 of the *Code* if he or she does any of the following in violation of s. 38 of the *Act*; “acts with intent to deceive, falsify or mislead, or wilfully or negligently makes a false, misleading or inaccurate statement pertaining to his duties”. Here, to repeat, these acts are admitted to – a guilty finding has been entered.

280. Section 3 of the *Code* addresses the principles to be applied by this Arbitrator with respect to the appropriate discipline and/or corrective action to follow. This section of the *Code* specifically speaks to corrective measures imposed by an adjudicator which “seek to correct and educate the member of the police force” who is alleged to have breached the *Code* under s. 35 rather than “to blame and punish” unless; (a) the disciplinary and corrective measures would bring the administration of police discipline into disrepute; (b) the disciplinary and corrective measures would bring the reputation of the police force with which the member is employed into disrepute; or (c) “the circumstances make it impracticable” for this Arbitrator to impose “disciplinary and corrective measures that seek to correct and educate the members”.

281. Section 6 of the *Code* then settles the spectrum of disciplinary and corrective measures that may be imposed, including, as sought here by the Complainant, a

dismissal, or as the Respondent seeks, a return to work on conditions. It is accepted, as directed in the *Campbell* decision, above, that s. 6 of the *Code*” must be read and applied in conjunction with s. 3 of the *Code*”.

282. I accept, as testified to by the Deputy Chief in this case, that the charges admitted to and found guilty of speak to the question of the suitability of Cst. Coady to serve – a question settled, as the Deputy Chief described it, on a foundation that exists because police officers’ police by consent – “they are members of the public who work for the public and with the public”.

283. The Agreed Statement of Facts of the parties in this case specifies the false statements and entries by Cst. Coady for five separate Incidents, this over the period of May 25, 2017 to and including September 14, 2017. These include Incident No. 5, the so-called Legislative Assembly Incident, leading to the false statements made to superior officers, and Incident No. 2, with five false statements showing in one official Occurrence Report, in addition to a Clearance Block entered which, if taken as true, which it was not, reported that Cst. Coady had completed the required prior notification in this case.

284. These separate, ongoing and persistent Incidents of misconduct, as testified to, arose from the audit undertaken of Cst. Coady’s files following the September 14, 2017 meeting held with superior officers, an occasion when he was confronted with questions with respect to his Reports and when he lied to his superior officers. The evidence before me establishes falsehoods in 5 of 17 audited files; *i.e.*, pre-meditated falsifications in Police Reports - intentional – not isolated. A sixth Incident, Wood Motors, followed – again an intentional act of deceit related to a core operational matter – in brief, a pattern of behaviour.

285. These falsifications, undisputed, were made in Police Occurrence Reports, one of the many documents or forms testified to as called upon to be truthfully completed in the regular duties of a Fredericton police officer – an officer, who under the Criminal Code of Canada may arrest without warrant, may seize without warrant – and who, as specified by the *Police Act*, at s. 12(1), is charged with an ongoing responsibility for:

- (a) maintaining law and order,
- (b) preventing offences against the law,
- (c) enforcing penal provisions of the law,
- (d) escorting conveying persons in custody to and from court or other place,
- (e) serving and executing court process in respect of offences against the law, and
- (f) maintaining order in the courts,
- (f.1) assisting in the taking of a child into the protective care of the Minister of Social Development as well as in the enforcement of warrants, custody orders, protective intervention orders, restraining orders and similar court orders issued in family proceedings, when the safety or security of a child or other person is at risk,
- (f.2) assisting in the enforcement of any court order when requested by the Minister,
- (g) performing all other duties and services that may lawfully be executed and performed by him,

and shall discharge his responsibility throughout the Province.

286. The Deputy Chief, in his testimony, spoke at length as well to the Administration Manual of the Fredericton Police Force, and the regular officer duties set forth in that manual, including the truth requirements for the preparation

of arrest booking sheets, property sheets, Crown summaries (as called upon), as well as the expectation to testify on any part of their duties.

287. As the Deputy Chief also spoke to it, people expect police officers to tell the truth, to be honest – that it is expected that when a member of the public sees a police officer, whether they are Fredericton Police or any police officer - that they “are men and women of the highest integrity and they tell the truth”.

288. All of the above offers, I accept, an informing evidentiary “lens” for an appropriate “penalty” analysis to be now taken in this case. The Ceysen text, cited by the Complainant, the Police Code, as well as caselaw cited, I also take for further guidance in this process, below.

289. First, I go to the Ceysens text, *Legal Principles of Policing*, which speaks to the process of “crafting” a fair penalty disposition. Here, the author lists a number of guiding principles, including those settled below:

- (i) the public interest: ensuring a high standard of conduct in the police force and public confidence in that force;
- (ii) the employer’s dual interest in maintaining discipline in the police workplace and as a “public body responsible for the security of the public”;
- (iii) the rights of police officers charged treated fairly and the interest of the members of the public involved protected.

290. A fourth principle set speaks to when members of the public are involved – that that process must as well protect their rights.

291. Further turned to as relevant is s. 34 of the Police *Code*, which settles the standards of conduct to be followed by a police officer, below:

34 It is incumbent upon every member of a police force:

- (a) to respect the rights of all persons;
- (b) to maintain the integrity of the law, law enforcement and the administration of justice;
- (c) to perform his or her duties promptly, impartially and diligently, in accordance with the law and without abusing his or her authority;
- (d) to avoid any actual, apparent or potential conflict of interests;
- (e) to ensure that any improper or unlawful conduct of any member of a police force is not concealed or permitted to continue;
- (f) to be incorruptible, never accepting or seeking special privilege in the performance of his or her duties or otherwise placing himself or herself under any obligation that may prejudice the proper performance of his or her duties;
- (g) to act at all times in a manner that will not bring discredit on his or her role as a member of a police force; and
- (h) to treat all persons or classes of persons equally, regardless of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.

292. The Ceyskens text, again taken as instructive here, directs that “Corrective Dispositions” should prevail, following a proportional approach, unless “it would bring the administration of police discipline into disrepute”.

293. Also taken for instruction for a penalty analysis to follow is the New Brunswick Court of Appeal in *Smiley v. New Brunswick*, cited by the Complainant, the Court directly addressing the position police officers occupy within our New Brunswick communities, as follows:

40...because of the enormous authority, trust and responsibility we place in or on police officers, which is well known before they pursue such a career, much is expected. In New Brunswick, these expectations have been codified and are set out above. In my opinion, where the Code states, for example, that a member of a police force is “to act at all times in a manner

that will not bring discredit on his or her role as a member of a police force”, it means exactly what it says: at all times.

[underlining for emphasis]

294. So too on point, the Alberta Court of Appeal in *Edmonton Police v. Furlong*, above, in like terms addresses the unique context for a police discipline analysis:

28...those texts, as least they are developed in the caselaw on wrongful dismissal, are not helpful in this context. As has been observed many times, service on a police force is not an ordinary type of employment. Apart all together from the extraordinary powers that police officers are given, their continuing service is governed by a public disciplinary regime, set out in the *Police Act*, RSA, 2000, C.P-17 and the Police Service Regulation. Police officers are, in many respects, subject to different standards of conduct, and a higher level of workplace discipline in ordinary employees.

[underlining for emphasis]

295. This Appeal Court case went on to discuss, as I in particular take note of for direction, the “fitness to hold office” factor, addressed at para. 29, below:

It follows that dismissal may sometimes be appropriate even for a “first infraction”, and even if there has been no prior history of lesser sanctions. Generally speaking, “fitness to hold office” will be a more important factor than the strength of the relationship between the officer and the police service.

[underlining for emphasis]

296. Continuing in the Ceyskens text and following the “principles” enumerated above to a “crafting” of a fair disposition, the author cites a list of considerations (factors), mitigating, aggravating, or neutral, relevant to a fair disposition – and, as directed, proportionate to the misconduct in evidence. From those listed, I address the following, now restated:

1. Seriousness of the misconduct.
2. Public interest and Damage to Reputation of the Police Force.
3. Rehabilitation and Extenuating circumstances, including remorse.

4. Disability and other Personal circumstances.

297. I as well consider it appropriate below to address the parity principle. I proceed as follows.

1. Seriousness of the misconduct in this case

298. In *Toy v. Edmonton*, the Alberta Law Enforcement Review Board, cited by the Complainant, addressing an appeal of a Presiding Officer below and a finding made as to the seriousness of deceit in issue, noted, as I find relevant here, that there “the appellants’ deceitful misconduct was wilful, pre-meditated and blatantly committed for the purpose of avoiding accountability established within the processes of the *Police Act*. Accountability, stated the Presiding Officer is placed in grave jeopardy ‘when an officer cannot be counted on to tell the truth in critical and important matters’.

299. In this case, I have no doubt that the false entries and statements by Cst. Coady were so too carried-out wilfully and in circumstances that must be taken as pre-meditated. Cst. Coady’s deceitful misconduct shows as a persistent pattern – this was not a case of forgetfulness or a mistake, or about paperwork or meeting timelines, as Dr. Yuzda wrote about following what he was told by Cst. Coady – further, the evidence does not support the position advanced in the opening statement of the Respondent of an officer more disorganized then deceitful.

300. Nor is this a case of “social” lies or “administrative” negligence – this is a case of misconduct related to the core operational matters of the Fredericton Police Force. And, as found, the misconduct was continuing – again, I refer to the Wood Motors incident and the intentional misleading of Dr. Yuzda – the latter at a point when Dr. Yuzda testified to Cst. Coady’s ADHD symptoms as in “full remission”.

301. In brief, the degree and the persistently of deceits (falsehoods) and his lying to superior officers, settled in the evidence here, I find, must be taken as a most serious aggravating consideration in this case. This is not to say that I accept that those acts of misconduct are then career ender in themselves. Accordingly, I continue.

2. Public Interest and Damage to the Reputation of the Police Fore

302. As advanced by the Complainant, I find that in addition to a finding of serious misconduct, the charges admitted to here also go directly to the factor of public confidence in the Fredericton constabulary and its reputation. Deputy Chief Gaudet, speaking to the several police reports, documents and forms regularly called upon to be completed by every police officer, testified to the following:

A. ... Everyone assumes that what we see on paper and what we hear in testimony is the truth. We're police officers. It is the foundation of what we do. It builds public trust and when that doesn't happen, it...it just...is an insult to our profession, it's an insult to our organization and it breaks down the public trust.

We police through consent. The public allows us to police them...

303. Speaking later to concerns about a possible reintegration of Cst. Coady to reemployment as a Fredericton police officer, Deputy-Chief Gaudet spoke as well to the public hearing, which was this Arbitration. As he put it – “Media is here reporting. We can't unhear what we've heard, we can't un-see what we've seen on paper”. He went on to say:

It's just...it's not good for the profession, it's not good for the police service itself and it certainly eats to the public trust. The public has a trust with police officers, that they will execute their duties at the highest standards and tell the truth. It's pretty well a basic approach.

304. I find that the public trust in the police force and respect for Cst. Coady is directly compromised by the circumstances described in this case – his lying to supervisor officers is plainly a trust event in a paramilitary organisation. As well, as

stated by the Review Board in *Toy*, above, at para. 100: “Confidence in the service is essential in order to maintain public trust and respect”. Also, as cited in the Ontario case in *Nesbeth*, above, “Good character in a police officer is essential to both the public’s trust in the officer, and to a police service’s ability to utilize that officer”. I find these analyses offered as informing here.

305. Reference at this point can also be given to the *McNeil* concerns which, I accept, may follow if a return to the Force by Cst. Coady in view of his pre-meditated intentional false entries in police reports. I refer to the decision of the Saskatchewan Court of Queen’s Bench in *Robin v. Saskatchewan (Police Commission)*, [2016] S.J. No. 55, at para. 32, where that Court, reviewing a decision of the Saskatchewan Police Commission and a concern raised that an officer was “inherently unsuitable for police service”, cited the following considerations:

124 The above described findings are now a matter of public record and would provide a fertile basis for any cross-examiner to successfully impeach his credibility as a witness in any future criminal proceeding, where Cst. R’s evidence is necessary. It raises serious concerns about his future effectiveness as a witness, and therefore as a police officer.

[underlining for emphasis]

306. I also note, argued before me by the Complainant as a subset of the public interest consideration, that the *McNeil* concerns are displayed in the evidence led with respect to a withdrawal of an impaired driving charge – testified to in this case by the Deputy-Chief.

307. The public interest and Fredericton Police Force reputation concerns are grounded in what shows as Cst. Coady’s persistent falsifying of police records - a core policing function – he required to be truthful – and he then lying about these. Again, taken as instructive here is the Appeal Court Decision in *Toy*, at para. 60, where, addressing *McNeil*, it is plainly directed: the fact there is a possibility” of not

“providing effective policing”, and not a given, “does not make negligible the risk of it arising”.

308. I find the public interest (trust) and Police Reputation factor as a second most serious aggravating consideration in this case.

3. Rehabilitation and Extenuating Circumstances, and Remorse

309. To this factor, I begin with the Wood Motors Incident. This falsification of entries Incident followed little more than a week after the September 14, 2017 meeting - a meeting at which Cst. Coady lied and denied any inaccuracies, but what later showed as intentional falsehoods entered by him – *i.e.*, choices made.

310. Reference here too, as argued by the Complainant, must be taken again with respect to his attendance before Dr. Yuzda, where it is shown he misled Dr. Yuzda in November 2018 as to the details of his intentional falsehoods - he at this time speaking about one incident case only, and then to a circumstance of “forgetfulness” only. This, as noted, led Dr. Yuzda to write about problems over paperwork and meeting timelines – not a persistent pattern of deliberate falsifications.

311. I turn for direction once again to the considerations in *Toy*, above, where the Reviewing Board in its Decision noted the following points at para. 101:

The Presiding Officer considered the appellant’s deceitful conduct to be brazen in nature, given that he was initially caught “red handed”, and then later blatantly denied it. As such, this exasperated the misconduct, particularly as it occurred during the statutory mandated investigation and here in responding to a complaint. The Presiding Officer stated, if this did not attract a severe penalty, it was certain to encourage others to adopt a similar “nothing to lose” strategy of deceit.

[underlining for emphasis]

312. In summary terms, I find, at best, that the Rehabilitation factor can be taken here as a neutral consideration for Cst. Coady, and this notwithstanding his considerable effort, as Tony Coady expressed it...in “clearly getting better”. Cst. Coady did also, I recognize, after a first denial entered at arbitration admit to his guilt, again fairly taken as a mitigating circumstance. Further, I reference Cst. Coady’s 7 years and no record of discipline.

313. Notwithstanding these mitigating considerations, Cst. Coady’s misconduct, to repeat, was not just a question of “forgetfulness” – it was a case of deliberate falsehoods entered with respect to police operational work. As well, while no record of discipline, it cannot be said that Cst. Coady was without workplace issues. Inspector Patterson’s June 2017 email to the Deputy Chief and testified to by the Deputy Chief is telling of this. To repeat, I take the Rehabilitation factor as a neutral consideration in this case.

4. Personal Circumstances and Disability

314. As to personal circumstances, first, I do acknowledge again Cst. Coady’s record of no discipline and his apparent physical and health changes in the period leading to 2017, as well the testimony heard as to the work environment, what I accept as evidence of ongoing stress issues in the Fredericton Police workplace. I further accept, as the testimony shows, no doubt that Cst. Coady suffered an ongoing loss of weight, and appeared to be less engaged than previous, even if his directing Sergeant Duffy saw him, as he testified to it, improving “in a lot of ways”.

315. Inspector Patterson, to be fair, plainly spoke to Cst. Coady’s apparent workplace problems. Nonetheless, there is again the Inspector’s troubling email of June 2017 to the Deputy Chief. Both he and Deputy-Chief Gaudet did speak, however, to the under-staffing issue as a problem for all officers – and that workplace stress applied to every other police officer. What did not apply to every

other police officer was a course of conduct of falsifying police records, and then a police officer lying – even if not a lie under oath, but still a trust breaking event - to his superior officers about these falsifications, and this pattern of behaviour then continuing (Wood Motors and Dr. Yuzda).

316. At end, I do not find Cst. Coady's personal circumstances, even if an admission of guilty entered, on balance, a mitigating factor here or signalling significant remorse, but again a neutral consideration in this case.

317. I turn then to the medical evidence - in this case extensive - and with a strong reliance taken by the Respondent here from the outset of this case. In effect, from both the initial and later arguments presented from the Respondent, the ADHD disability issue advanced in this case was clearly intended to be taken as a key consideration in this case. That may be the result, but not as the mitigation factor the Respondent hoped to be used when, as here, a case of serious misconduct.

318. To a disability analysis, it is undisputed, first, that the *onus* is on a claimant to establish a reliance on a disability to mitigate a penalty.

319. On this point, in *Braille*, the Alberta Court of Appeal, at para. 26, offered the following direction, which I accept:

Thus, when an officer “adduces evidence to establish” a causal relationship between misconduct and disability or extenuating personal circumstances, mitigation in disposition may follow. This suggests the legal burden of proof lies with the officer on the issue of mitigation.

[underlining for emphasis]

320. Here, I find, on the whole of the expert evidence heard in this case no nexus established between Cst. Coady's ADHD condition, acknowledged, and his continuing misconduct. The legal burden on the Complainant, I conclude, has not

been met in this case. Cst. Coady's acts of deceitful behaviour and his lying, including his misleading of Dr. Yuzda, I find, were choices made. I continue.

321. While Dr. Yuzda in his Report stated that Cst. Coady's ADHD symptoms "impacted his capacity to fill his routine duties as a police officer", and that this "led to his decision to cover-up his work deficiencies by falsifying police records", he at no time in the preparation of his Report had the parties' Agreed Statement of Facts before him, or any details of the five falsifying Incidents, admitted to.

322. Facts and context are important - Dr. Yuzda, having noted in testimony his reliance on Cst. Coady's self-reporting to him, acknowledged in his Report that when he asked Cst. Coady to provide "some details", Cst. Coady in response spoke to one case only - and said: "that he would type in the report" - that "I would call the complainant back...but I would forget to do it".

323. The self-reporting of Cst. Coady, I find, plainly informed Dr. Yuzda's Report, as well as the direct testimony of Dr. Yuzda. Dr. Yuzda, it shows, who testified that ADHD symptoms led to a "growing problem" to "do the paper work and to keep on top of things", and who acknowledged that "though lying, that's a separate issue, the deceit", and who later stated that "the undiagnosed medical condition led to him [Cst. Coady] to act in a particular manner", under cross, upon his reading the Agreed Statement of Facts, and upon a reference to him of the specifics of the false statements and entries, answered under question as to whether he agreed Cst. Coady had not been truthful to him: "Not truthful. Well, by omission, I suppose".

324. Further, under cross, and questioned as to whether he would agree that the detailed falsifications were "far more significant" than what Cst. Coady disclosed to him, Dr. Yuzda stated "certainly". Continuing under cross, and upon referral to Dr.

Rootenberg's Report, and specifically the express conclusion reached here that Cst. Coady's ADHD did not impact upon his decision to lie to the Deputy-Chief, Dr. Yuzda answered as follows:

I would agree with that. I don't think the ADHD is linked to his deception of the Chief.

325. So too, under cross, asked to answer as to whether lying or deceit is not a symptom of ADHD, Dr. Yuzda expressly responded: "That's right". He further acknowledged Cst. Coady's ability to be truthful with the Deputy Chief.

326. Dr. Rootenberg's summary points from his Report are cited more fully, above. In brief, in his clinical psychiatric Report, Dr. Rootenberg stated that Cst. Coady's ADHD "likely contributed to his inability to complete paperwork on time, and also impacted upon his ability to focus and concentrate properly. It did not, however, impact upon his decision to lie to the Deputy Chief...". Dr. Rootenberg also concluded:

"...his Attention Deficit Disorder did not cause him to falsify incident reports that were described in the Agreed Statement of Facts."

327. Challenged under cross, Dr. Rootenberg, I find, firmly repeated these clear positions – he spoke again to "no link" between lying and fabricating symptoms and Cst. Coady's ADHD – he also offered the following answers, in part:

- (i) So you know, I can't say there's a linkage there between even being under stress and deciding to actually lie based on anxiety and ADD. Again, there's really no link between these two"; and
- (ii) Whether or not anxiety or any other reason [is] contributing to your lack of functionality, whether its ADD worsening or anxiety worsening, it still doesn't lead to or is linked with fabricating different accounts.

328. To be noted, both expert witnesses were in agreement that upon their examinations made of Cst. Coady, he was not at either time manifesting symptoms of depression or anxiety, or ADHD, although previously diagnosed with same. Both experts also spoke to Pharmacological interventions possible to be continued, and a need of Cst. Coady to adhere fully to recommendations from treating physicians or therapists. This, I accept, is all to the good.

329. However, taken as determinative here, on the expert evidence led in this case, I restate my finding that Cst. Coady failed to prove a nexus between his ADHD and his pattern of deceitful behaviour - his lying and his persistent fabrications – these, the weight of the expert’s testimony satisfies me, even if Dr. Yuzda not of a single mind on redirect, are not symptoms of ADHD.

330. Further, Cst. Coady, the expert evidence fully supports, maintained the mental capacity to make truthful entries in police reports, and to be truthful with his superior officers – again, I find, he chose not to do so. His ADHD disability, I therefore repeat, does not serve to mitigate an appropriate penalty in this case for the serious misconduct in issue.

331. Aggravating factors, it is acknowledged, can serve to diminish the weight of mitigating factors – or alternatively the case. Here, on the whole of the evidence heard in this case, I find that any mitigating considerations that may be taken are heavily outweighed by the seriousness of the pattern of misconduct, the trust considerations and the, as linked, consequences for the public and the administration of law, as well as the reputation of the Fredericton Police Force. Further determining, there is, to repeat, no disability factor here that weighs as a mitigating factor, a consideration the Respondent in its opening statement spoke to as “a condition” calling for an accommodation.

332. What then is fit sanction in the case – what is the appropriate disposition to now follow?

333. I accept, as taken from the caselaw cited, that disposition consistency is to be sought, but also that appropriate sanctions must be tailored to the individual circumstances of a particular case, and address, where appropriate, distinguishing factors. I am also mindful of the direction in the Ceysens text that:

Parity allows a decision-maker to consider analogous types of misconduct...but attempting to calibrate the nature and quality of plainly dissimilar misconduct remains problematic.

334. Following this instruction, I note, first, the caselaw of the Complainant cited, including the dismissal cases, upheld on review, in the *Campbell* and *Smiley* cases – both, as here, addressing very serious misconduct and, in effect, the suitability or fitness to hold office factor or test.

335. I also note here the *Toy* and *Robin* decisions cited by the Complainant, both deceit cases with dismissals directed and upheld on review as acceptable penalties for the misconduct of the nature in question.

336. I then turn to the “parity” caselaw of the Respondent. I accept, as argued by the Complainant that the three cases addressing analogous deceit issues are those three answered in its Response submission. I also address each, below.

337. The *Jansen* case, cited by the Respondent, a deceit case, is not this case. The single deceit here was committed with an intention to assist in another officer’s own egregious conduct. It was addressed as an act of altruism.

338. The *Constable A* case, also a deceit case, shows a remission back for further consideration on sanction, it concluding the failure of “unreasonableness of review”

by the Alberta Review Board below of a Presiding Officer's decision where several "important sanctioning principles, including the principle of parity, were given inadequate or no consideration". There has, as I understand, been no decision since. I do note from that case that the Alberta Court of Appeal cited from its *Furlong* decision, above; *i.e.*, as to the question of a "fit sanction" and its dependence on numerous factors, there repeated. It then stated the following:

53. A fit sanction is also proportional; it reflects the moral blameworthiness of the person being sanctioned and the gravity of misconduct.

339. I acknowledge this direction. The *Constable A* case remitted, I am satisfied, however, is not the case here.

340. I turn finally to the *Camrose* decisions. The Alberta Court of Appeal decision, in its *Camrose* decision, directed a remission of a Review board decision below as it had concluded that this Board ought not to have considered that deceit was a career ender in the circumstances. Of note, in the same remit the Court also directed that a right question was whether, the officer having admitted to deceit, he could again function effectively as a member of the Camrose Police Service.

341. As shows, the Court of Appeal remit did lead to a final Review Board decision. This decision, however, taken as a fair comparator here, addressed the deceit behaviour in that case as a single act of deceit – and administrative in nature. Further of comparator relevance, the police officer's depression in that case was taken as an express mitigating circumstance. The Review Board, directing itself then to a conclusion of a "fit sanction", including the "interest of an efficient policing, deterrence of others, and the public interest in maintaining trust and confidence in the police", directed a lessor penalty than a dismissal.

342. That case, again however, is not this case. That case, which included the above described mitigating factors – not present here – shows as before it letters of reference, as well as positive performance reviews. The letters of reference spoke to the officer’s work ethic and quality of work. In this case, there were no letters of reference or support – and, the only evidence heard as to a possible return to work was from the Deputy Chief – he confirmed a dismissal sought – and said: “the fact that he [Cst. Coady] lied to a superior officer and lied in files. That touches every file that he could testify to”, and, “if you have an office(*sic*) that cannot testify, I have no idea where I would place an officer in the organization”.

343. At end, the deceit in the Camrose case is not the pattern of deceits here – the mitigating factors there are not found here.

IV. CONCLUSIONS ON DISCIPLINE

344. I do not accept that suspension terms, as sought by the Respondent, ought now follow in this case. I do not find these appropriate in the circumstances, or any other disciplinary or corrective measures designed for a possible return to work. As stated, I accept that each case must be addressed by reference to its own circumstances. Here, as concluded, I find serious misconduct with other aggravating factors present and, also determining, no mitigating disability factor.

345. This has been a long and difficult case, and I recognize that a penalty of a dismissal is obviously severe and will rest as a disappointment for Cst. Coady and his family. However, I am satisfied, mindful of the “proportional” direction cited above, as well as the parity instruction in the Ceysens text, also above, that the “fit sanction”, in all the circumstances of this case, is a dismissal.

346. I conclude that by his actions Cst. Coady has closed the door – made it impractical – for the possibility of any penalty less than a dismissal. I also find that Cst. Coady does not meet the cited “suitability to hold office” test to serve on the Fredericton Police Force. Cst. Coady’s actions of deceit were related to core police functions and, with his lying, raise in issue significant trust issues. His return to work would bring the reputation of the Fredericton Police Force into continuing disrepute. I, too, find that anything less than a dismissal would erode the confidence of the general public – who have a right to expect their police officers are honest and truthful – as well as all those involved in the justice system.

347. As follows from all of the above, Dismissal of Cst. Zachary Coady from the Fredericton Police Force is now imposed in accordance with the *Code of Professional Conduct Regulation – Police Act* as the disciplinary measure in this case.

Dated at Saint John, New Brunswick, this 5^h day of September 2019.



Robert D. Breen, Q.C.
Arbitrator