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ACMT File Number: 2015-3382

Citation: 2016 RCAD 2



IN THE MATTER OF A CONDUCT HEARING PURSUANT TO
THE ROYAL CANADIAN MOUNTED POLICE ACT

Between:

Commanding Officer, "J" Division

Conduct Authority

- and -

Constable Jonathan Cormier, Regimental Number 55497

Subject Member

Conduct Board Decision

John A. McKinlay, Conduct Board

January 28, 2016

Ms. Julie Roy and Mr. Denys Morel, Conduct Authority Representative

Ms. Nicole Jedlinski, Member Representative

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Summary

The Subject Member faced four allegations, arising from his wish to return driving privileges to a driver whose breath samples were 90 milligrams percent and 100 milligrams percent. The Subject Member believed the driver would lose his employment if a charge was filed. A charge would trigger an extended license suspension and the driver's employment required driving.

The Subject Member forged an email exchange with a local Crown prosecutor supporting not laying a charge, and made oral and electronic file reports reflecting or repeating the gist of the email. The forged email was created so a supervisor would conclude the file. It was accidentally transmitted to the Crown prosecutor. Criminally charged with forgery, the Subject Member pleaded guilty and received a conditional discharge.

A motion to merge the two allegations of discreditable conduct and the two allegations of inaccurate account was denied at a pre-hearing. The Subject Member admitted his actions and all four allegations were found established. Absent any motivation for self-benefit, loss of employment was considered disproportionate. The Subject Member's dishonesty affected law enforcement and put the RCMP's relationship with the Crown at risk, warranting very significant forfeitures of pay. In total, the Subject Member was ordered to forfeit sixty days of pay, lose eligibility for promotion for two years, receive appropriate psychological treatment, and be transferred or reassigned as the Conduct Authority considered necessary.

Introduction

[1] Effective November 28, 2014, a new conduct management system has operated in the RCMP. As part of this system, a conduct board must adjudicate allegations considered by the applicable conduct authority to involve sufficient gravity, and surrounding circumstances, to warrant the member's loss of employment if established.

[2] This matter, involving the Subject Member, came to hearing before me in my capacity as a Conduct Board via teleconference on Monday, November 16, 2015. The hearing resumed on Thursday, November 19, 2015 in Moncton, New Brunswick where all parties were present.

[3] These written reasons confirm the decisions I delivered orally on November 16, 2015, denying a preliminary motion presented by the Subject Member seeking merger of the allegations, and finding all of the allegations made against him established.

[4] After hearing counsel's oral submissions on November 19, 2015, I reserved my decision on the appropriate conduct measures. These reasons conclude with my written decision on the conduct measures to be imposed.

Overview of Pre-Hearing Processes

[5] The first step in the process of this Conduct Board was the execution by the Conduct Authority of his Notice to the Designated Officer to Initiate Conduct Hearing on August 17, 2015. This notice was received by the Designated Officer on August 18, 2015, and pursuant to section 43(1) of the *RCMP Act*, I was appointed Conduct Board effective August 24, 2015.

[6] On September 8, 2015, the Subject Member was served with the Notice of Conduct Hearing (the "Notice"), signed by the Conduct Authority on September 2, 2015, and the investigation report materials.

[7] Beyond receiving notice of my appointment as Conduct Board, my next communication concerning this file was my receipt on September 28, 2015, of a filing extension request from the Member Representative (the "MR").

[8] The MR was granted an extension to October 26, 2015, for the submission of the Subject Member's response under sections 15 and 18 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291("CSO (Conduct)"). The Conduct Authority Representative (the "CAR") took no issue with the extension as I had not yet received the Notice and investigation report materials.

[9] On October 2, 2015, to comply with section 18 of the *CSO (Conduct)*, the CAR provided the list of witnesses whom the Conduct Authority would present at the hearing, if required.

[10] I received the paper copy of the Notice on October 8, 2015 and the electronic version of the investigation report materials on October 14, 2015. On the latter date, I also received video recorded copies of the statement provided by the Subject Member, as well as the audio recordings of the statements provided by the Subject Member's supervisor, Constable Roy and the involved Crown prosecutor, Mr. Lalonde.

[11] On October 19, 2015, a pre-hearing conference was scheduled for October 30, 2015.

[12] On October 26, 2015, the MR provided submissions, flagging difficulties viewing the Subject Member's video recorded statement. She also noted the absence, in the investigation materials, of a specific numbered police reporting and occurrence system ("PROS") summary and a general report described in Allegation 4 of the Notice. Seeking to address the Subject Member's obligations under section 15 of the *CSO (Conduct)*, the MR provided a comprehensive summary of materials related to the Subject Member's parallel criminal matter, health and other related matters. The MR, in answer to section 18 of the *CSO (Conduct)*, advised of the potential witnesses to be called at the hearing.

[13] On October 26, 2015, the MR was provided a further extension to October 30, 2015. Under this extension, the Subject Member's response under section 15 of the *CSO (Conduct)* was due in advance of the pre-hearing conference on that same date.

[14] On September 28, 2015, the MR's advised the Conduct Board that the Subject Member entered a guilty plea to forgery under the *Criminal Code*, and his sentencing was scheduled for October 19, 2015.

[15] On October 20, 2015, I requested that the CAR provide an update at the pre-hearing conference on the sentencing matter for the Subject Member. On October 27, 2015, the CAR provided the details of the sentence imposed, after a one week adjournment, on October 26, 2015. The Subject Member received a conditional discharge, four months' probation, and was ordered to make a \$1000 charitable contribution and continue psychological counselling. The contribution was made almost immediately.

[16] On October 29, 2015, the CAR filed a copy of a PROS report made by the Subject Member. On the same day, the MR filed the Subject Member's response to the allegations which were originally set out in the Notice. In addition, the MR submitted the summary of facts that was filed during the Subject Member's criminal matter.

Pre-hearing Conference (October 30, 2015)

[17] At the pre-hearing conference on October 30, 2015, I granted an oral motion presented by the CAR, to amend the Notice to replace the PROS file number used throughout with a different PROS file number. As a result of my granting this amendment, the MR was granted the opportunity to file a revised response under section 15 of the *CSO (Conduct)* by November 2, 2015.

[18] The MR's motion, contained in her initial response to the allegations, requested a merger of Allegations 1 and 4, and of Allegations 2 and 3. The MR was directed to provide written submissions in support of this motion (tantamount to a preliminary motion) on November 4, 2015, and the CAR would provide her written response by November 6, 2015.

[19] The documentary and other information filed by the parties, beginning with the Notice of Conduct Hearing and investigative materials, is considered the Record for this matter. I advised the parties that I was prepared to adjudicate on the allegation phase of the hearing by consideration of the Record, including any additional materials yet to be filed for that phase. The MR was prepared to file her arguments on the allegations together with her merger submissions.

[20] The CAR submitted transcripts of the statements obtained from the Subject Member, Constable Roy (the Subject Member's supervisor), and Mr. Lalonde.

[21] On November 10, 2015, I indicated to the parties that while I appreciated their willingness to have me issue written decisions to the parties on the MR's merger motion, and on whether the allegations were found established, I had concerns that this approach failed to comply with the statutory requirement for a public hearing. Both counsel provided their views on this issue, and I determined that a video conference hearing would be held on November 16, 2015, where the Subject Member's procedural rights under section 20 of the *CSO (Conduct)* could also be strictly observed.

Notice of Conduct Hearing

[22] In agreement with the parties, the hearing ultimately proceeded via teleconference on November 16, 2015, with the Subject Member participating.

[23] The CAR submitted the amended Notice to reflect PROS file number "201593120", and not number "201593210".

[24] The parties made their written submissions on the MR's request for merger of Allegations 1 and 4, and of Allegations 2 and 3, relying on the amended Notice which read as follows:

Allegation 1

On or about February 26th, 2015, at or near Moncton, in the province of New Brunswick, [the Subject Member], did not provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties and his conduct of an investigation, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to "J" Division, in the province of New Brunswick.
2. On or about February 26th, 2015, while on-duty, you told Constable Pierre-Alexandre Roy, acting supervisor, that Crown Counsel was not

supporting criminal charges for PROS file 201593120 and that you had received an email from Crown Counsel to this effect.

3. Your statement to Constable Pierre-Alexandre Roy contained misleading and/or false information.

Allegation 2

On or about February 26th, 2015, at or near Moncton, in the province of New Brunswick, the Subject Member, engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to "J" Division, in the province of New Brunswick.
2. On or about February 26th, 2015, while on-duty, you removed the content of an original email you had received from Crown Counsel Eric Lalonde on an unrelated matter and replaced it with false information in regards to PROS file 201593120. The email you created appeared to have been authored by Eric Lalonde.
3. On February 26th, 2015, you sent the forged email to Crown Counsel Eric Lalonde using the RCMP Groupwise system.

Allegation 3

Between February 26th, 2015, and March 24th, 2015, at or near Moncton, in the province of New Brunswick, [the Subject Member], engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to "J" Division, in the province of New Brunswick.
2. On or about February 26th, while on-duty, you removed the content of an original email you had received from Crown Counsel Eric Lalonde] on an unrelated matter and replaced it with false information in regards to PROS file 201593120. The email you created appeared to have been authored by Eric Lalonde].
3. Between February 26th, 2015, and February 27th, 2015, you provided the forged email to acting supervisor Constable Pierre-Alexandre Roy, who instructed you to place it on file.
4. Between February 26th, 2015, and March 24, 2015, you placed the forged email on RCMP file 201593120.

5. On or about February 26th, 2015, you sent a facsimile letter to New Brunswick Motor Vehicle Branch in regards to File 201593120 indicating: “Charges will not be going forward.”

6. On February 27, 2015, acting supervisor Constable Pierre-Alexandre Roy closed file 201593210.

7. You did not maintain the integrity of the law, law enforcement and administration of justice.

Allegation 4

On or about February 26th, 2015, at or near Moncton, in the province of New Brunswick, [the Subject Member], did not provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties and his conduct of an investigation, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “J” Division, in the province of New Brunswick.

2. You prepared a summary for PROS file 201593120 indicating: “Member spoke to Crown. No charges to be laid and [Mr. A] advised.”

3. You prepared a general report for PROS file 201593120 indicating for February 19th, 2015: “Member sent an email to Crown as to the extrapolation and the Crown inquired about the driving evidence. Member didn’t have any driving evidence and went off of the signs of impairment at the time of the arrest.” Also you indicated for February 26th, 2015: “Member received the email from Eric Lalonde stating there would be no charges as RCMP policy is we don’t charge over 100 mg% and I had no driving evidence.”

4. Your PROS entries contained misleading and/or false information.

[sic throughout]

Preliminary Motion

[25] After considering the parties’ written submissions on the preliminary motion seeking the merger of allegations, I rendered an oral decision on the motion at the hearing on November 16, 2015. At the time I delivered this oral decision, I indicated that while it was final with respect to the motion, I reserved the right to expand upon and clarify my reasoning in the written decision which would follow.

[26] In order to notify a member of the allegations of misconduct alleged by the conduct authority, the member must be served with a written notice that complies with the *RCMP Act*, section 43(2):

As soon as feasible after making the appointment or appointments, the conduct authority who initiated the hearing shall serve the member with a notice in writing informing the member that a conduct board is to determine whether the member contravened a provision of the Code of Conduct.

[27] Sections 43(3)(a) and (b) of the *RCMP Act* then identify how a conduct authority is to allege any contravention of the Code of Conduct of the Royal Canadian Mounted Police (the “Code of Conduct”):

The notice may allege more than one contravention of any provision of the Code of Conduct and is to contain

- (a) A separate statement of each alleged contravention;
- (b) A statement of the particulars of the act or omission constituting each alleged contravention;

[...]

[28] In the present case, the Conduct Authority was authorized by section 43(3) of the *RCMP Act* to assert two contraventions under section 7.1 (Allegations 1 and 4) of the Code of Conduct, and two contraventions under section 8.1 (Allegations 2 and 3).

Decision on the Motion

[29] In my view, intervention by a conduct board to amend or strike allegations and particulars can only be justified where an element of the allegations or particulars asserted in a notice served under section 43(3) of the *RCMP Act* denies the Subject Member a reasonable level of procedural fairness, as may be the case where there are redundant or duplicitous elements.

[30] For the reasons provided below, the Member’s preliminary motion was denied in its entirety.

Merger of Allegations 2 and 3

[31] The MR requested that I amend the Notice to remove particular 3 of Allegation 2 (the Subject Member's alleged transmission of the forged email) and add it to the particulars of Allegation 3, and the remnants of Allegation 2 to be struck from the Notice.

[32] This motion relied on the overarching argument that as Allegation 3 included a series of alleged contravening acts described in a series of particulars, it would be adequate or sufficient if the Subject Member faced a single allegation of discreditable conduct, under Allegation 3. The CAR took no position on this motion, and suggested that if it were granted, then particular 3 of Allegation 2 could be inserted immediately below the second particular of Allegation 3, and, implicitly Allegation 2 then struck.

[33] Absent the CAR's consent, I am not prepared to amend Allegation 3, and then strike Allegation 2, as requested. Allegation 2 alleges discreditable conduct not in the creation of the forged email, but in its transmission to Mr. Lalonde. This is a distinct act, not repeated in the particulars for any other allegation. Thus, particular 3 of Allegation 2 is not redundant. Furthermore, given that particular 2 of Allegation 2 only identifies the forged email, as a prelude to the offending transmission alleged in particular 3, the acts and omissions alleged under Allegation 2 itself are not redundant.

[34] Specifically addressing the MR's submissions, I do not find that Allegations 2 and 3 allege contraventions of the Code of Conduct for the same act or sequence of events. In any scenario involving misconduct, there may well be a first event and subsequent events along a timeline. There is no obligation imposed on the Conduct Authority to ignore the qualitatively different nature of certain events taking place along a timeline and group all of those events as particulars under a single allegation.

[35] In deciding this motion involving Allegations 2 and 3, I do not consider the MR's submissions concerning the Subject Member's transmission of the forged email being unintended, as I find they do not engage the issue of procedural fairness of the allegations and

particulars. These submissions are, however, directly considered in my finding whether the Subject Member contravened the Code of Conduct under Allegation 2.

[36] Accordingly, the Subject Member's merger motion with respect to the amendment of Allegation 3, and the striking of Allegation 2, is denied.

Merger of Allegations 1 and 4

[37] With respect to the Subject Member's motion that particular 2 of Allegation 1 be inserted into the particulars of Allegation 4, and Allegation 1 then struck, I find that Allegations 1 and 4 as presently asserted by the Conduct Authority do not give rise to any issue of procedural fairness.

[38] I find, as was argued in the CAR's submissions, that Allegation 1 (specifically the act described in particular 2) pertained to an alleged misleading verbal communication by the Subject Member with his supervisor, Constable Roy, which is distinct from the PROS entry-related actions alleged in the particulars of Allegation 4.

[39] There is nothing redundant about the particulars of Allegation 1 and Allegation 4. I find there is no duty imposed on this Conduct Board to merge Allegations 1 and 4 in order to create a single, sufficient or adequate allegation under section 8.1 of the Code of Conduct. There is no duty imposed on the Conduct Authority to group all alleged acts or omissions that might support a contravention under a single allegation. I decline to amend Allegation 1 and 4 as requested by the MR.

[40] Accordingly, the Subject Member's motion with respect to the amendment of Allegation 4, and the striking of Allegation 1, is denied.

Decision on the Allegations

[41] The *RCMP Act*, section 45(1), requires that I assess and determine the relevance, the probative value, and the weight to be assigned to the materials contained in the Record. Before rendering my oral decision on November 16, 2015, I also considered the parties' written

submissions, including the Subject Member's admissions articulated by his MR. The parties were again advised that I reserved the right to expand upon or clarify my reasoning in the written decision on the allegations.

[42] In deciding whether or not each alleged contravention identified in the Notice is established, the *RCMP Act*, section 45(1), requires that I apply a balance of probabilities standard of proof.

[43] To determine that a particular is established on a balance of probabilities, a sufficient basis has to exist in the Record, including any admissions by the Subject Member, to find it is more likely than not that the act, omission, or aspect of the necessary factual narrative described in the particular took place or existed.

[44] I then need to determine if any of those particulars found to be established, singly or in combination, support a contravention of the Code of Conduct as alleged in the allegation under scrutiny.

[45] If I find that one or more particulars established, and support a contravention, I must then consider all the evidence submitted and apply the reasonable person assessment.

[46] Therefore, ultimately, I adjudicate Allegations 2 and 3 by applying a test for conduct likely to discredit the Force in keeping with the definition of disgraceful conduct enunciated by Justice Devlin in *Hughes v. Architects Registration Council of the United Kingdom*, [1957] All ER 436, at 442. I also applied the RCMP External Review Committee's standard of a reasonable person with knowledge of all relevant circumstances including the realities of policing in general, and the RCMP in particular, found at (1991), 4 A.D. (2nd) 103, at page 106. In the same way, the reasonable person test, appropriately modified for section 8.1 of the Code of Conduct, was applied when adjudicating Allegations 1 and 4.

[47] It was never in issue that the Subject Member was a member of the RCMP on February 26 and 27, 2015, the specific dates straddled by his working shift, and on which all of his misconduct was alleged to have taken place. I find the first particular for all four allegations to be

established. There were references to March 24, 2015, in Allegation 3, but no issue or significance was raised by either party.

Allegation 2

[48] Having denied the MR's motion to have Allegations 2 and 3 effectively merged, I am required to determine if Allegation 2 is established after following the multi-stage process I have just described.

[49] I find that on February 26, 2015, the Subject Member transmitted the forged email to Mr. Lalonde using the RCMP GroupWise system based on the following:

- the unchallenged verbal and written statements of Mr. Lalonde,
- the email communications obtained from Mr. Lalonde ,
- the emails retrieved from the RCMP email system related to the Subject Member, and
- the Subject Member's admission as to how the forged email was physically assembled.

[50] Accordingly, I find that all of the particulars supplied by the Conduct Authority for Allegation 2 are established on a balance of probabilities.

[51] However, the MR argued that notwithstanding the establishment of all of the particulars for Allegation 2, the contravention should not be found established because the Subject Member's transmission to Mr. Lalonde of the forged email was not intended.

[52] I find the transmission of the forged email by the Subject Member to Mr. Lalonde was not intentional. I base this finding on my close examination of the Subject Member's clearly surprised reaction when the transmission of the forged email was revealed to him by the investigator. This was captured in the Subject Member's voluntary video recorded interview on March 20, 2015. I also base this finding on the fact that deliberately providing the forged email to Mr. Lalonde would have been a bizarre, inexplicable and self-incriminating action by the Subject Member.

[53] And as I found in rejecting the merger of Allegation 2 with Allegation 3, the fundamental element of the misconduct alleged in Allegation 2 was the act of sending Mr. Lalonde the forged email, not its creation. The creation of the forged email is captured, as an independent act of misconduct, under particular 2 of Allegation 3. Therefore, as was argued by the MR, the issue before me is whether the unintended transmission of the forged email constitutes a contravention of section 7.1 of the Code of Conduct, which provides, “Members behave in a manner that is not likely to discredit the Force.”

[54] Neither party provided any precedent decision or other legal commentary on the issue of whether accidental email transmission of discreditable content should be considered employee misconduct. In RCMP Adjudication Board decision (2003), 17 A.D. (3d) 31, the member admitted his disgraceful conduct to have accidentally distributed sexually explicit images on a disc intended only to contain legitimate presentation materials.

[55] In that case, the member acquired the images on a disc he had received from a friend which also contained humorous images used for a legitimate visual presentation. The member was not aware it contained sexually explicit images. It was only after giving the presentation that he realized they were unintentionally copied to his presentation disc. In that instance, applying the reasonable person test to whether the conduct was disgraceful, the board stated:

The fact this sexually explicit material was provided through inadvertent copying to other governmental organizations who maintain a working relationship with the RCMP is certainly disgraceful to all involved.

[56] In the RCMP Commissioner’s appeal decision (2004), 24 AD (3d) 119, it was determined that the board did not consider a *mens rea* component when it found disgraceful conduct was not established. It did however evaluate all of the circumstances and information surrounding the member’s action in order to reach their conclusion. In that decision, the board had found that swiping material off a dresser in one’s own home during an argument and accidentally having an object strike one’s spouse was not disgraceful. Importantly, the appeal decision added, “I do not discount, however, that in some circumstances conduct that is accidental may be disgraceful if it is reckless.”

[57] I find that a reasonable person, with knowledge of all relevant circumstances including the realities of policing in general, and the RCMP in particular, and instructed that accidental or unintended conduct may be found to discredit the Force when it is reckless, would be of the opinion that the Subject Member's transmission of the forged email to Mr. Lalonde is likely to discredit the Force and therefore a contravention of section 7.1 of the Code of Conduct. Accordingly, I find Allegation 2 established.

Allegation 3

[58] The basis for Allegation 3 is an alleged contravention of section 7.1 of the Code of Conduct under discreditable conduct. Examination of the record, including the PROS file documentation submissions, provides reliable and conclusive evidence that the Subject Member committed the acts described in particulars 2, 4 and 5.

[59] I am satisfied the evidence, including factual admissions by the Subject Member, establishes that the Subject Member created the forged email as described in particular 2, placed a hardcopy of the forged email on the investigative file as described in particular 4, and sent a facsimile to the New Brunswick Motor Vehicle Branch which repeated the import of the forged email, as described in particular 5. Applying a reasonable person standard to all of the circumstances pertaining to particulars 2, 4, and 5, I find these three acts by the Subject Member constituted, singly and collectively, a contravention of section 7.1. These actions by the Subject Member are likely to bring discredit on the Force.

[60] A more editorial characterization of the Subject Member's conduct is found in particular 6 stating, "You did not maintain the integrity of the law, law enforcement and administration of justice". Particular 6 does not describe a free standing act or omission, beyond those in particulars 2, 4, and 5. It does correctly assert an overarching basis for finding a contravention of section 7.1. The Subject Member's actions as established under particulars 2, 4, and 5 undermine the integrity of the law, law enforcement and the administration of justice.

[61] With respect to particular 3, I assessed Constable Roy's stated belief that he asked the Subject Member to place a copy of the forged email on the investigative file. While I do not find

Constable Roy's recollection of his verbal communications alone to be conclusive proof that this request was made, the Subject Member's specific admissions in the summary of facts filed in his criminal matter establish particular 3 on a balance of probabilities.

[62] At paragraph 8 of the summary of facts, it is stipulated that the Subject Member put the forged email on the file with the intent that his supervisor act on it as if it were genuine. Constable Roy made a request for a hardcopy to be placed on the file after he was shown the forged email. But there is no act or omission by the Subject Member described in the second aspect of particular 3, there is only Constable Roy's request to the Subject Member for a copy to be placed on the file.

[63] I find the Subject Member initially showed the forged email to Constable Roy as asserted in the first aspect of particular 3, and this constituted conduct is likely to bring discredit to the Force. The subsequent request for a hardcopy to be placed on file is not itself a contravention under section 7.1 of the Code of Conduct. The misconduct perpetrated by the Subject Member in placing a hardcopy on the file was captured by particular 4, and it is distinct from his initially showing it to Constable Roy.

[64] The treatment to be given particular 6 is not clear cut. The evidence, including an admission by the Subject Member in the criminal summary of facts, established that Constable Roy's decision to close the file is the direct result of the documentation the Subject Member had placed on the file. But particular 6 merely states that Constable Roy, implicitly after these documents and entries were placed on the file, closed the file. It does not state that he relied or based his decision on the forged email and other inaccurate entries to close the file.

[65] I find it is not appropriate to expand the act or omission described under particular 6 to include reliance by Constable Roy on the inaccurate file information resulting in his file closure. Therefore, as it is worded, I do not find that particular 6 alone or in combination with any other particular under Allegation 3, supports a finding of a contravention of the Code of Conduct. I advised the parties that Constable Roy's reliance on the inaccurate information was not

precluded from consideration when the appropriate conduct measure or measures for established contraventions were discussed.

[66] Accordingly, I find Allegation 3 established.

Allegation 1

[67] Particular 3 of Allegation 1 provides a pithy summary of the misconduct alleged under particular 2. It states, “Your statement to Constable Roy contained misleading and/or false information.”

[68] Admitted by the Subject Member, particular 2 alleges he lead Constable Roy to believe that the email he received from Mr. Lalonde indicated he was not supporting an impaired driving charge involving the impaired driver, Mr. A. The verbal communication of this fact is substantiated by both Constable Roy and the Subject Member. The MR’s submissions contained an admission under particular 3 to this effect. I did not find any meaningful difference between the use of the word “told” in particular 2 and the Subject Member’s use of “lead to believe” in his admission. Accordingly, I find particular 2 to be established on a balance of probabilities.

[69] Furthermore, applying the same standard of proof, and based on the Subject Member’s admission, by all accounts, I find his verbal communications with Constable Roy as described in particular 3 are false and misleading.

[70] I find that a reasonable person with knowledge of all relevant circumstances including the realities of policing in general, and the RCMP in particular, would find the Subject Member’s actions as proven under particulars 2 and 3 constituted a deliberate inaccurate verbal account pertaining to his carrying out of his responsibilities, the performance of his duties, and the conduct of this specific investigation.

[71] Taking all of the circumstances into account, I find the Subject Member contravened section 8.1 of the Code of Conduct as alleged under Allegation 1.

Allegation 4

[72] Particular 4 of Allegation 4 provides a pithy summary of how the acts and omissions captured in particulars 2 and 3 constitute a contravention of section 8.1 of the Code of Conduct. It states, “Your PROS entries contained misleading and/or false information.”

[73] After considering the following facts:

- Mr. Lalonde’s statements denying specific discussion of the Mr. A’s charges,
- the email communications contained in the Record,
- the Subject Member’s recollection of only generic discussions with Mr. Lalonde concerning the filing of charges in circumstances similar to those of Mr. A,
- the admissions of the Subject Member, and
- the PROS documents filed by the CAR on October 29, 2015.

I find that particulars 2, 3 and 4 are established on a balance of probabilities. I note that the Subject Member’s partial entry that Mr. A was advised no charges were to be laid, captured as part of particular 2, is accurate and is excluded from further scrutiny.

[74] I find that a reasonable person with knowledge of all relevant circumstances including the realities of policing in general, and the RCMP in particular, would find that the Subject Member’s actions as proven under particulars 2, 3 and 4 constitute deliberate inaccurate accounts on the PROS system that pertain to his carrying out of his responsibilities, the performance of his duties, and the conduct of this specific investigation.

[75] Taking all of the circumstances into account, I find the Subject Member contravened section 8.1 of the Code of Conduct as alleged in Allegation 4.

Intent or Motivation

[76] The MR, citing specific portions of the Subject Member's voluntary statement, submitted as part of her merger written argument that the intent or motivation for what he did was to "close the file" and "help Mr. A get his driver's licence back". This is entirely consistent with the Subject Member's warned statement.

[77] I chose to consider the issue of intent or motivation as part of the circumstances taken into account before my final decision on the establishment of each of the four allegations. I nevertheless determined that each allegation was established, for the reasons provided. The Subject Member's intent or motivation was not precluded from consideration when the appropriate conduct measure or measures for established contraventions were discussed.

Decision on Conduct Measures**Pre-hearing conference (November 17, 2015)**

[78] After delivering my oral decision on the allegations on November 16, 2015, a second prehearing conference was scheduled for November 17, 2015. This pre-hearing conference included confirmation by the parties of the content of the Record to date, my receipt of additional materials, and the timing and potential content of the CAR's further conduct measures materials. A process by which the MR might be afforded greater opportunity to consider and respond to CAR materials was articulated, including an initial mini-hearing on November 19, if admissibility was contested by the MR. Ultimately, the MR advised on the morning of November 19, 2015, that there was no issue concerning the materials filed by the CAR.

[79] It was anticipated that no witnesses would be called by either party, nor required for cross-examination by either party. It was understood that the Subject Member, unsworn, would be afforded the opportunity to address the Conduct Board before the close of the hearing on November 19, 2015.

Materials and Case Law

[80] In advance of counsel's oral submissions in Moncton on November 19, 2015, the MR had filed the following additional materials:

- the recording of the oral criminal sentencing decision, rendered October 26, 2015 (containing the sentencing judge's reasons for imposing a conditional discharge)
- the Subject Member's statement, with appendices, signed on November 12, 2015
- the pre-sentence report for the Provincial Court, dated October 15, 2015
- the letters of Ms. Cormier, psychologist, dated November 10, 2015 and October 15, 2015
- the *curriculum vitae* for Ms. Cormier, submitted November 18, 2015
- the performance logs, completed on December 9, 2014; October 11, 2014; September 17, 2014; August 5, 2014; January 20, 2014; and, November 18, 2013
- the performance evaluations received by the Subject Member on January 2, 2010; March 3, 2011; March 13, 2012; and March 7, 2013
- the reference letters dated:
 - November 9, 2015 from Constable Agnew, co-worker and acting supervisor
 - November 10, 2015 from Constable Dubuc, co-worker, together with his emails dated November 11 and 15, 2015
 - October 7, 2015, from an extended family member
 - September 19, 2015, from Auxiliary Officer McEachern, former co-worker and without a date:
 - from Corporal Tardif, supervisor.

- from Mr. Babineau, former paramedic colleague
- the letter of apology to Mr. Lalonde, Crown prosecutor, dated August 11, 2015
- the letter of apology to Mr. Leblanc, Crown prosecutor dated August 11, 2015
- the letter of apology to Constable Roy
- the two news media documents concerning the Subject Member's sentencing
- the email from Constable Roy to the MR, sent November 18, 2015

[81] In advance of counsel's oral submissions in Moncton on November 19, 2015, the CAR had filed the following materials:

- Email of Regional Director, Public Prosecutions, Mr. Leblanc, received November 18, 2015
- Email of Crown prosecutor, Mr. Lalonde received November 18, 2015
- Administrative guidance, dated December 15, 2014 (previously disclosed)
- Member-involved shooting (M-IS) Review Report, dated September 11, 2014 (previously disclosed)

[82] After my receipt of Mr. Lalonde's email of November 18, 2015, I sought clarification on two aspects. I directed my request for clarification to the CAR and copied the MR. The CAR forwarded Mr. Lalonde's second, clarifying email to me and the MR later on that same day.

[83] The CAR submitted the following authorities.

- RCMP Adjudication Board decisions:
 - (2005), 27 AD (3d) 228
 - (2013), 13 AD (4th) 267

- (2013), 14 AD (4th) 269
- (2014), 15 AD (4th) 331
- (2015), 15 AD (4th) 547
- *R. v. McNeil*, 2009 SCC 3 (CanLII)

[84] The MR submitted the following authorities.

- RCMP Adjudication Board decisions:
 - (2010), 5 AD (4th) 264
 - (1998), 1 AD (3d) 194
 - (2008), 3 AD (4th) 257
 - (2009), 4 AD (4th) 322
- RCMP Commissioner decisions:
 - (2007), 32 AD (3d) 292
 - (1999), 5 AD (3d) 1
- RCMP External Review Committee decision:
 - (1999), 4 AD (3d) 137
- *Pizarro v. Canada (Attorney General)*, 2010 FC 20 (CanLII)
- Two news media documents concerning the criminal sentencing of a member for uttering a forged document, published in September and December, 2013

[85] In her submissions, the MR directed my attention to parts of RCMP Conduct Measures Guide, November 2014 (the “Guide”), an internal publication created to coincide with the new

conduct management system operating effective November 28, 2014. Both counsel agreed that this guide was not RCMP policy. It was not filed by either party as material to be considered during the conduct phase of the hearing. Rather than append this 76 page document to this decision, I have now provided the Registrar with a copy of this document, to incorporate into the Record for this matter.

[86] After the close of oral submissions on November 19, 2015, I became aware of a decision rendered by an RCMP Adjudication Board that was not referenced by the parties but appeared relevant; (2012), 12 AD (4th) 272. I notified the parties on December 1, 2015, received the CAR's submissions on December 7, 2015, and the MR's submissions on December 9, 2015.

[87] By reason of this matter being assigned to me in my capacity as a Conduct Board, the Conduct Authority necessarily seeks the Subject Member's loss of employment as the appropriate conduct measure for the four established allegations. The Conduct Authority seeks an order for resignation within fourteen days, and not immediate dismissal.

[88] The Subject Member opposes any order which would result in loss of employment. The MR submits lesser conduct measures are appropriate, including ranges of forfeiture of pay for allegations 1, 3, and 4.

Requirement for Proportionate Conduct Measures

[89] A conduct board must act in accordance with *C S O (Conduct)*, section 24(2), by imposing conduct measures that are "proportionate to the nature and circumstances of the contravention of the Code of Conduct."

[90] Any determination of appropriate conduct measures should also consider the stated purposes of Part IV of the amended *RCMP Act*, in particular section 36.2(e):

(e)[...] in relation to the contravention of any provision of the Code of Conduct, for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

Personal and Professional Overview

[91] The Subject Member was born and raised in Moncton, and has a sibling diagnosed with cerebral palsy. His parents continue to assist this sibling, but with time the Subject Member will likely assume a greater role in his care. The Subject Member is married, and the couple are parents of twins not yet four years of age. Shortly after birth, one child was diagnosed with a congenital disorder requiring tertiary medical care and ongoing monitoring.

[92] Before attending the RCMP training academy at “Depot” Division in 2007, the Subject Member had served ten years as an advanced life support paramedic based in Moncton.

[93] Upon his graduation from Depot in December, 2007, the Subject Member was posted to the Blackville Detachment in “J” Division.

[94] In October, 2011, he began work at an isolated northern posting in Cambridge Bay, “V” Division. Appropriate medical services for the one infant were not available in Cambridge Bay, and the Subject Member and his family were prepared to move to Iqaluit. Given the costs associated with such a transfer, the decision was made to post him back to Moncton, where he took up his duties in March, 2013. At this point in his career, he had been trained as a breathalyzer technician, and as a drug recognition expert.

Performance Evaluations

[95] The MR submitted recent performance evaluations. Supervisors and superiors are uniformly very positive in their assessment of the Subject Member’s performance. He repeatedly performed acts of exemplary compassion over the assessment period covered by the documentation.

[96] The Subject Member has shown above average commitment and diligence as an investigator and has been an exceptional source of self-generated work. He has proven himself to be a flexible, effective, trusted co-worker and mentor. He has been subjected to extensive cross-examination while testifying, and has maintained accuracy and composure when responding. His March 7, 2013, assessment indicates he is the type of member “that will give his shirt off his

back if it would assist another member.” The assessment materials indicate that among his co-workers, the Subject Member’s enthusiasm and team-oriented attitude make him a recognized leader.

Recognition of Exemplary Performance

[97] The performance logs identify events where the Subject Member’s actions exemplified the RCMP’s Core Values. These events include:

- December 7, 2014, compassionate handling of a detained intoxicated person
- October 3, 2014, apprehension of a robbery suspect who was armed
- September 12, 2014, eventual deployment by the Subject Member of his conduct energy weapon (CEW) in response to a knife-wielding, disturbed individual
- July 31, 2014 and August 3, 2014, development of a coded source out of an Motor Vehicle Accident/*Control Drugs and Substances Act* matter and, unrelated, the prompt location and apprehension of two break-and-enter perpetrators
- December 31, 2013, his actions responding to a call of an armed, suicidal, intoxicated individual, taken “while putting [his] own life at risk”
- November 17, 2013, his part in the planning and execution of a search warrant and arrest arising from a death threat by a potentially armed suspect

Psychological Assessment

[98] On June 4, 2014, a Moncton gunman murdered three RCMP members, and physically wounded two of their fellow officers. Beyond physical injury, the traumatic events of that time caused some members to experience mental health challenges.

[99] As documented in materials filed by the MR, the Force responded to this tragedy with sensitivity, including the provision of two weeks special leave for relevant members. Before members returned to work, screening assessments were conducted to confirm fitness for duty.

[100] In his first week off, the Subject Member drove a health professional to meetings with a deceased member's family, and witnessed their emotional pain. He took no additional time off, but advised at his screening appointment on June 17, 2014, he would be seeing Ms. Cormier, psychologist, beginning June 24, 2014.

[101] In the Subject Member's case, the events of June 4, 2014, had a prolonged, negative influence on his mental health, and followed the critical incident experienced on December 31, 2013. By September, 2014, after dealing with a knife-call, he was noted (at the ensuing Critical Incident Stress Debriefing) as still encountering hyperarousal and sleep pattern issues.

[102] At the second pre-hearing conference on November 17, 2015, I advised the parties that I intended to deem Ms. Cormier an expert in psychology, including psychological assessment and treatment, and then attribute the appropriate weight to the content of her two letters, dated October 15, 2015, and November 10, 2015. Her *curriculum vitae* confirms her training, professional registration and experience working as a psychologist. I confirm that in reaching my decision on the appropriate conduct measures, I treated Ms. Cormier as qualified to express expert opinions within the parameters I identified on November 17, 2015.

Letter of October 15, 2015

[103] Ms. Cormier treated the Subject Member on a regular basis commencing on June 24, 2014. She identified numerous problems he was exhibiting, including discouragement about the future, and feeling some sense of failure. It is unclear which of the identified problems persisted throughout their sessions. Of potential relevance to his misconduct, she noted he "had more difficulty concentrating on paper work and dealing with red tape."

[104] Ms. Cormier's role included consulting with the RCMP psychologist in Fredericton on several occasions about the Subject Member. The topic discussed was whether further medical

leave was appropriate. She does not indicate when the need for further medical leave was last discussed. Based on the documentation filed, from June 24, 2014, right up to the established contraventions, there is nothing suggesting stress related leave was taken. This is consistent with the Subject Member's minimization of his symptoms and belief he would feel guilty when his co-workers remained working.

[105] Because the two events occurred within six weeks of the first session of June 24, 2014, it is noted that:

- On August 10, 2014, the Subject Member stumbled while carrying a number of duty-related items, including an RCMP 12 gauge shotgun, through the entry door of his detachment. A shell was inappropriately chambered when the gun fell. While the safety was engaged on the shotgun, it nevertheless discharged when the butt struck the ground. He was later directed to take remedial shotgun training.
- On August 12, 2014, the Subject Member argued with his children's 33 year old babysitter, and caused minor damage to a wall. The babysitter did not want the matter pursued and it was therefore concluded. The Subject Member and his wife met with RCMP Health Services and it was determined that this incident was out of character, there was "a lot of stress related to June 4", and to the accidental shotgun discharge of August 10. Administrative guidance was administered.

Letter of November 10, 2015

[106] Ms. Cormier's second letter, dated November 10, 2015, contains three paragraphs, stating:

The purpose of this letter is to provide my opinion regarding [the Subject Member's] likelihood of repeating any similar behavior to the incident which took place in February 2015.

I have been seeing [the Subject Member] as a client in my psychology practice since June 24, 2014. It is my opinion that this was an isolated incident and the chances of reoccurrence are very unlikely. [The Subject

Member] was under a significant amount of stress prior to this incident which I believe could have contributed to his poor judgement that day.

Please do not hesitate to contact me further if clarification is needed.

[107] The CAR has argued that little if any probative value and weight should be placed on the opinions expressed by Ms. Cormier in her second letter. The CAR did not dispute that the Subject Member was experiencing a significant amount of stress, but took the position that the letter did not establish any causal connection between his experience of significant stress and his acts of misconduct.

Previous Disciplinary Case Law

[108] After review of the cases submitted by both parties, it is apparent that the range of sanctions imposed by previous adjudication boards for cases involving dishonesty is from a reprimand and the imposition of a significant forfeiture of pay to an order for resignation.

[109] It is important to emphasize, however, that in all of the cases submitted by the parties, the act or acts of dishonesty involved some sort of gain or advantage being sought or accruing to the member. Dishonesty was used in order for the member to obtain personal financial gain or benefit, to conceal the member's work-related deficiencies, to thwart investigation of the member, or to alter deficient documents to further an investigation. Self-benefitting dishonesty was at the root of misconduct matters where:

- the RCMP was defrauded of gas,
- operational funds were converted for personal use and accompanied by a forged loan application,
- forged prescriptions were uttered to obtain anabolic steroids,
- numerous and repeated false and deceptive statements were given to supervisors and investigators that were ultimately rejected after a contested hearing,

- one day of imprisonment was imposed for an attempted defrauding of a provincial vehicle insurance system,
- a finding of guilt was imposed for a false statement to a provincial vehicle insurance system,
- a Continuation Report was created two years after the fact differing from the original used for a search warrant, to respond to allegations warrants were obtained by misrepresentation,
- homicide crime scene notes were concealed, and false notes disclosed,
- numerous and repeated false statements were made to conceal willful investigative neglect, and
- after being observed masturbating in a surveillance vehicle, efforts were made to influence another police force's treatment of the complaint, misleading and false statements were made, and inappropriate data bank checks were requested.

[110] However, where dishonesty or a lack of integrity has been ascribed to a member, dismissal typically only occurs where there has been personal gain sought or obtained, and significant mitigating factors are absent.

[111] Based on my review of the Subject Member's videotaped statement, I find that the Subject Member's decision to create the forged email exchange was not premediated, but only took hold while he had a number of emails open on his work computer screen on February 26, 2015, including an unrelated email from Mr. Lalonde. The creation of the forged email exchange, with the intention that Constable Roy would rely on it, constituted criminal behaviour. It was preceded by a false oral account to Constable Roy, and followed by misleading PROS file entries. None of these acts were for personal benefit.

[112] The Subject Member's actions did not seek to compromise the integrity of any investigation or prosecution by falsifying documentation or evidence to the detriment of a suspect or an accused.

[113] Instead, his acts were prompted by his wish to avoid Mr. A's possible loss of employment as a result of an extended driver's license suspension. I accept the Subject Member's account that while interacting with Mr. A, he learned that Mr. A had booked his airfare for a job out west, and this job required Mr. A to be able to drive.

[114] No benefit was sought by the Subject Member, nor offered by Mr. A. The two had never met before the roadside encounter. He had no previous familiarity or association with this person. Mr. A was driving a yellow Hummer, and the Subject Member's reason for approaching this distinctive vehicle was to determine if the driver was a potential violator known thought by Moncton RCMP members to drive a Hummer. Instead, the Subject Member came in contact with Mr. A, who had been operating his vehicle in a reasonable manner.

[115] Based on the Subject Member's written statement filed at the conduct measures phase of the hearing, I accept that early in his service, the Subject Member was involved in the successful prosecution of an impaired driver who provided 100 milligrams percent samples. On a balance of probabilities I am satisfied that, on February 26, 2015, the consequent loss of employment of this earlier driver played some part in the Subject Member's thought process.

Aggravating and Mitigating Factors

[116] Determining proportionate conduct measures requires consideration of mitigating and aggravating factors. I adopt and apply the meanings given the terms aggravation and mitigating factors presented in the RCMP Adjudication Board decision (2013), 14 AD (4th) 269:

[19] Aggravation, as a legal term, is any circumstance attending the commission of a crime or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself.

[...]

[20] Mitigating factors do not constitute a justification or excuse for the offence, but in fairness to the subject member, these factors must be taken into consideration to reduce the severity of the sanction that would otherwise be appropriate for the misconduct being dealt with.

[117] The vast majority of the mitigating and aggravating factors identified below can be found within a greater list of potential mitigating and aggravating circumstances in the RCMP's Administration Manual, Appendix XIII-I-20.

Aggravating factors

[118] I find the following to be aggravating factors:

- The misconduct was not planned in advance but nevertheless comprised a deliberate sequence of actions that, while occurring during the last hours of a single shift, reflected a profound error in judgment.
- The misconduct involved a lack of honesty and integrity. However, the Subject Member's actions were not motivated by self-benefit. RCMP Adjudication decision (2012), 12 A.D.(4th) 472, raised with the parties, involved a member who, in order to extend leniency to suspected impaired drivers, falsely noted they had refused to provide breath samples into roadside screening device when in fact on each of the three occasions, the drivers had provided breath samples which registered a "fail". One of the drivers needed his license for work. Like the Subject Member, the member's considerable respect for the law was deemed to have been overshadowed by his empathy for three drivers in difficult situations. It is notable that the board in that decision did not cite the *McNeil* disclosure as an aggravating factor. A global forfeiture of ten days' pay was imposed.
- The misconduct was committed by a senior constable.
- Given the *McNeil* implications, the misconduct imposes a significant but not untenable administrative burden on the Force. While it was double hearsay, at the hearing in Moncton, the MR relayed information she had recently received from the Subject

Member of a call with his line officer in which a number of positions suitable for the Subject Member were apparently mentioned. While I must give this little weight, it does resonate with the submitted case law in which members were retained notwithstanding serious *McNeil* issues.

- The misconduct caused the Subject Member's supervisor to close an operational file without proper consideration, despite legitimate options being available to help Mr. A. In response to my question, the CAR confirmed that discretion resided with the Subject Member not to charge Mr. A, but the RCMP procedure of supervisory oversight was not followed.
- Crown resources were required to conduct a review of all files involving the Subject Member. The misconduct affected law enforcement in the Moncton area, given the Crown's decision to withdraw a prosecution for assault with a weapon (pepper spray), and approximately twenty impaired driving matters, as they involved the Subject Member. While the Crown was fully satisfied with the Force's response, the misconduct had the potential to put the RCMP's reputation and partnership at risk.
- The Subject Member admitted his guilt to a *Criminal Code* charge of uttering a forged document, receiving a conditional discharge.
- The misconduct has damaged the Subject Member's credibility, but not irreparably, and brought negative media coverage.

[119] I do not consider the Conduct Authority's lack of support for the Subject Member's retention as a member of the RCMP to be an aggravating factor, but it does deny the Subject Member a mitigating factor.

Mitigating factors

[120] I find the following to be mitigating factors:

- At the first opportunity, the Subject Member admitted his actions, accepted criminal responsibility, admitted allegations, and instructed his MR to conduct his representation in a manner that did not demand formal proof of exhibits nor the attendance of any CAR witnesses, minimizing the use of administrative resources.
- The Subject Member has made formal written apologies to relevant Crown prosecutors, and has maintained the trust of Constable Roy, to whom he shall deliver a written apology now that his MR has advised it is appropriate to do so.
- The Subject Member's actions in dealing with employment and criminal processes demonstrated his remorsefulness, and his address to the Conduct Board exhibited profound regret and genuine remorse.
- The Subject Member has no prior formal discipline. His operational guidance and remedial training matters do not relate to his honesty and integrity.
- The Subject Member has an above-average work record, and has been recognized for his strong work ethic.
- The misconduct represents an isolated incident that was out of character for the Subject Member. As captured in his performance assessments, his willingness to extend compassion to various individuals has never involved reticence concerning vigilant enforcement of the law.
- It is my finding that on February 26, 2015, the Subject Member was still dealing with significant stressors, including stressors relating to critical incidents encountered while on duty. I am not prepared to find that his misconduct was, on a balance of probabilities, caused by the significant stressors he was experiencing, and for which he was receiving psychological treatment. It may have been Ms. Cormier's intention to convey such a causal connection, but I find the wording of her opinion establishes this connection as possible but not probable. However, given that the Subject Member's dishonesty was not in aid of any personal gain, a causal connection between his compromised mental health

and his unethical actions is not essential to find loss of employment a disproportionate outcome.

- I am satisfied the Subject Member is undergoing and will continue with any counselling considered appropriate.
- The Subject Member has been recognized as a committed team player.
- The Subject Member has been recognized for individual acts of exemplary professionalism.
- The Subject Member has maintained the support of peers and supervisors within the Moncton sub-division detachment, as confirmed by reference letters from his last supervisor and acting supervisors. This includes Constable Roy's continued trust.
- The Subject Member demonstrated his accountability when he provided a statement admitting his actions.
- The Subject Member has a long record of commitment to community and, in the wake of the shootings of June 4, 2014, to attendees at a local support centre. Community members provided reference letters.
- There is a minimal likelihood of any future misconduct. I base this finding on not only Ms. Cormier's opinion, but on the Subject Member's demeanour and words when addressing the Conduct Board.
- Restitution to the community has, indirectly, been made in the form of a significant charitable contribution under the terms of the Subject Member's conditional discharge.

[121] I have considered the established contraventions, the parties' materials, submissions and case law, the aggravating and mitigating factors, and the considerations and forfeiture ranges cited from the Conduct Measures Guide. I find it would not be proportionate to the nature and circumstances of the Subject Member's contraventions to dismiss him from the Force under the

RCMP Act, section 45(4)(a), nor to direct him to resign within fourteen days and in default dismiss him, under section 45(4)(b).

[122] In the Subject Member's highly unique circumstance, I find his actions do not amount to repudiation of his employment contract, and his misconduct does not represent a breach of an essential condition of his employment.

[123] Accordingly, consideration must be given to the remedial, corrective and serious conduct measures available to a conduct board under the *CSO (Conduct)*, section 5(3). The measures must be primarily directed to correcting improper conduct, both specifically and generally, to rehabilitation, and to preserving the public trust in the RCMP.

[124] As noted above, the MR submitted lesser conduct measures were appropriate, and proposed:

- a reprimand for Allegation 2,
- significant forfeitures of pay for Allegations 1, 3, and 4,
- a transfer and a two year ineligibility for promotion for Allegation 3, and
- an order for continuing professional health services.

Conduct Measures Imposed

[125] For each of the allegations, I impose a reprimand pursuant to *CSO (Conduct)*, section 3(1)(i). For Allegations 1, 3 and 4, I further impose a direction for the Subject Member to undergo medical treatment in the form of psychological services as specified by the Health Services Officer for "J" Division, pursuant to *CSO (Conduct)*, section 3(1)(d).

Allegation 2

[126] For Allegation 2, I find no other measure beyond a reprimand is required to address the contravention.

[127] In my allegation phase decision, I found the Subject Member's transmission of the forged email to Mr. Lalonde, while clearly unintentional, nevertheless contravened the Code of Conduct as it constituted a reckless act. It is not appropriate under Allegation 2 to impose a loss of pay, as in reality it was the content of the forged email which triggered Mr. Lalonde's concerns, and the creation of the forged email is addressed by the serious conduct measures imposed under Allegation 3. To do otherwise, I would be imposing forfeiture of pay in a duplicitous manner.

Allegation 3

[128] With respect to Allegation 3, in addition to a reprimand and direction for specified health treatment, I impose a forfeiture of thirty days' pay pursuant to *CSO (Conduct)*, section 5(1)(j). I further impose the Subject Member's ineligibility for promotion, effective immediately, for a two year period. In addition, I hereby direct the transfer of the Subject Member.

[129] The forfeiture of pay to be imposed under Allegation 3 is significant but considered proportionate. The allegation comprises not only the creation of the forged email, but its filing on the investigative file, and the fax transmission to the Department of Motor Vehicles to achieve the lifting of the license suspension. The Guide, section 23, indicates that dishonesty involving *actual theft* may still attract an order for thirty days' loss of pay in certain mitigated circumstances. I also note that under section 35 the mitigated range for false police reporting extends to twenty-nine days' loss of pay.

[130] The MR filed two news media documents concerning a member's 2013 criminal finding of guilt for forgery of an administrative document, and the resulting conditional discharge. While properly highlighting the lack of details conveyed by these media accounts, the CAR nevertheless confirmed that in this 2013 case, there was no formal disciplinary process initiated against that member. Even with details lacking for this other case, the imposition of thirty days' forfeiture of pay here is clearly a considerable measure.

[131] With respect to the order for transfer, it shall remain in the discretion of the Conduct Authority whether the Subject Member is reassigned to a new position not involving a relocation under *CSO (Conduct)*, section 3(1)(h), or is physically transferred to a new work location under

section 5(1)(g). Given the forged email dialogue involved Mr. Lalonde, the Subject Member's working contact with him should be minimized. This conduct measure should be understood to grant the Conduct Authority the discretion to effect a physical transfer if reassignment is not sufficient.

[132] The Subject Member's ineligibility for promotion for a two year period is imposed under *CSO (Conduct)*, section 5(1)(b). The Subject Member has demonstrated leadership and effectiveness when serving in acting supervisory roles in the past. Provided he resumes his duties with dedication and professionalism, his career may still include promotion. However, the seriousness of the contravention under Allegation 3 warrants a considerable period of ineligibility. During this period, the Subject Member should actively reflect on the Force's requirement that all members, and in particular experienced ones such as him, observe the highest ethical standards in every facet of their work.

Allegation 1

[133] For Allegation 1, in addition to a reprimand and direction for specified health treatment, I impose a pay forfeiture of ten days.

[134] The MR's preliminary motion sought to merge the Subject Member's inaccurate oral account to Constable Roy under Allegation 1 with the particulars for Allegation 4. Merging Allegations 1 and 4 was denied, as I determined the Conduct Authority was permitted to advance an independent contravention based on a false oral account to a supervisor. However, the short period of time that elapsed from when this oral account was made, until the last of the actions identified under Allegation 4 took place, must be taken into account.

[135] Also, while the Force has a legitimate expectation that reports to supervisors will be accurate, the out of character nature of the Subject Member's actions mitigates the forfeiture of pay to be imposed. The Guide, section 33, indicates a mitigated range that includes ten days' loss of pay for misconduct involving lying to a superior concerning an operational event.

Allegation 4

[136] For Allegation 4, in addition to a reprimand and direction for specified health treatment, I impose a pay forfeiture of twenty days.

[137] While occurring within the same compressed time period encompassing the other allegations, there remained an opportunity for the Subject Member to reconsider his improper course of action rather than make the PROS entries identified under Allegation 4. The Guide, section 33, indicates a normal range that reaches twenty days' loss of pay for lying to a superior, and under section 35, a mitigated range up to twenty-nine days for a false police report.

Closing Observations

[138] Under the previous disciplinary system, where all formal allegations were adjudicated by an RCMP Adjudication Board, the maximum forfeiture possible under a single notice of hearing was ten days' pay, even with multiple allegations established. There is no such restriction on the total amount of forfeiture that may be imposed under a notice of conduct hearing considered by a conduct board.

[139] Therefore, as detailed above, I have imposed a total pay forfeiture of sixty days, or 480 hours. This represents a loss of gross pay in excess of \$18,000. When compared with the sanctions imposed by RCMP Adjudication Boards in the cases submitted, this represents a significant increase in loss of pay. However, it is apparent that the new conduct regime grants conduct boards the authority and flexibility to impose much greater financial consequences for misconduct in order to impose proportionate measures short of ordered resignation or dismissal. This broader authority is reflected in the pay forfeiture considerations outlined in the Guide.

[140] As articulated above, I find it is not proportionate to the nature and circumstances of the contraventions to order the Subject Member's loss of employment. I have carefully considered the Guide's suggestion, at page 7, that where a forty-five day forfeiture of pay is insufficient, dismissal cannot be too harsh. In this instance, loss of employment is too harsh, but given the

need for deterrence and protection of the public trust placed in the Force, it is not unreasonable that the Subject Member's total loss of pay exceeds forty-five days.

[141] Based on the research provided at page 6 of the Guide, the Subject Member's total loss of sixty days' pay is commensurate with the highest loss of pay permitted under the statutory maximum of a number of other Canadian police agencies.

[142] The forfeiture of pay and the promotion ineligibility measures are punitive and are intended to deter misconduct. Specifically, these measures should be understood by the Subject Member to be a sharp condemnation of his serious misconduct, notwithstanding the absence of any motivation for personal gain. Generally, they should tell all RCMP members that misconduct involving dishonesty risks severe employment consequences, and could well result in dismissal. On the other hand, the direction for appropriate psychological services is intended to assist in the Subject Member's rehabilitation and successful return to his duties as a member of the RCMP.

[143] This written decision may be appealed by the Subject Member under the *RCMP Act*, sections 45.11 (1)(a) and (b), and by the Conduct Authority under section 45.11(b).

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John A. McKinlay	January 28, 2016
	Date

Conduct Board