

Restriction on publication: By order of the Conduct Board, the identity of a young person, and any information that might reasonably identify that young person, shall not be published in any document, or broadcast or transmitted in any way.



ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "E" Division

(Conduct Authority)

and

Constable Brian Eden, Regimental Number 56773

(Subject Member)

Conduct Board Decision

John A. McKinlay

November 8, 2017

Mr. Denys Morel and Corporal Chantal Le Dû, for the Conduct Authority

Mr. Steven Rogers, for the Subject Member

Table of Contents

SUMMARY	3
INTRODUCTION	5
ALLEGATIONS.....	7
SUMMARY OF FACTS	9
PRELIMINARY MOTION	13
Publication ban.....	13
FINDINGS ON THE ALLEGATIONS.....	13
Allegation 1	13
Allegation 3	15
Allegation 4	16
Allegation 2	18
Summary of established allegations.....	19
CONDUCT MEASURES PHASE	19
Documentary evidence.....	19
Testimony of the Subject Member	21
Testimony of Dr. H, MR's expert	21
Testimony of Dr. S, CAR's expert.....	21
Authorities	23
Mitigating factors	26
Aggravating factors	26
Analysis	28
CONCLUSION.....	33

SUMMARY

Note: This summary forms no part of the decision

The Subject Member, accessing RCMP electronic file information, obtained the cellular number for a seventeen-year-old complainant of sexual assault for non-duty reasons. He initiated text message exchanges, in which he requested photographs from her, sent her two photos of a male figure (one in form-fitting underpants, another under bed covers with an obvious erection) and two photos in which he wore no shirt, commented on her appearance, and raised meeting for coffee. The exchange ended when the complainant's text messages indicated suicidal thoughts and the Subject Member called for assistance to respond to her location.

The Subject Member issued a speeding ticket to a motorist, who asked if he and his policing partner were interested in going for coffee. Using unrelated RCMP electronic file information, the Subject Member later called her residence, identified himself as police, and obtained her cellular number from her employee. He then texted her, asking if she wanted to meet for coffee. When the motorist declined, he raised his interest in acupuncture from her husband as was mentioned at the roadside.

Two allegations of discreditable conduct (for the inappropriate communications) and two allegations of misuse of Force property (for accessing electronic files for non-duty-related purposes) were established.

Resignation within fourteen days or, in the absence of resignation, dismissal, was ordered. Several serious aggravating factors were present, including breach of trust and exploitation of a police client. There was conflicting expert evidence on the existence and effect of Persistent Depressive Disorder. Lengthy psychotherapy was still required to address the mental issues that, when the Subject Member experienced personal stressors, may have contributed to his misconduct. Absent further psychotherapy, no expert supported his immediate return to operational duties. In this instance, no other conduct measures sufficiently protected public confidence in the Force.

REASONS FOR DECISION

INTRODUCTION

[1] The undersigned was appointed as Conduct Board for this matter, involving Constable (Cst.) Brian Eden, Regimental Number 56773 (Subject Member), on February 4, 2016.

[2] Of note, the Subject Member was only served with the *Notice of Conduct Hearing*, signed by the Conduct Authority on July 28, 2016, together with the related investigative materials on August 9, 2016.

[3] The Conduct Authority Representative (CAR) filed his list of witnesses under section 18 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], on September 18, 2016.

[4] After receiving a filing extension, the Subject Member's responses, under subsection 15(3) and section 18 of the *CSO (Conduct)*, were filed on October 19, 2016. The Subject Member denied all of the allegations.

[5] The parties participated in a pre-hearing conference on November 16, 2016, at which a Conduct Hearing in Richmond, British Columbia, was set for January 24 – 26, 2017.

[6] On December 19, 2016, I denied the Subject Member's motion for a stay of proceedings based on an abuse of process arising from an unreasonable delay (with corrected written reasons issued on January 3, 2017).

[7] On December 23, 2016, the Subject Member's first representative advised that he would no longer be representing the Subject Member. The current Member Representative (MR), private legal counsel, confirmed his retainer and requested an adjournment of the hearing. At a pre-hearing conference on January 16, 2017, an adjournment of the hearing to March 28, 2017, was granted.

[8] A further pre-hearing conference took place on February 24, and on February 28, 2017, the MR filed a revised response under subsection 15(3) of the *CSO (Conduct)*. The Subject Member continued to deny Allegations 1 and 4, but made admissions to Allegations 2 and 3.

[9] At a pre-hearing conference on March 8, 2017, the MR advised that he anticipated the receipt of an expert report. On March 22, 2017, the MR filed the report and *curriculum vitae* of a psychologist expressing expert opinions in support of the Subject Member at the conduct measures phase of the hearing. I accepted the report; notwithstanding that it was not filed in compliance with the 30-day-advance filing requirement, as an adjournment was offered to the CAR in order to consider his response. The CAR requested time to consider his position. Therefore, the hearing was adjourned to May 24, 2017, with the MR's consent.

[10] On March 24 and April 6, 2017, pre-hearing conferences took place where the CAR provided updates on efforts to obtain guidance for cross-examination of the MR's psychologist and a possible contrary expert report. On April 6, 2017, the hearing date was set to September 11, 2017, as the CAR anticipated the receipt of his expert report by late July 2017; in addition, this new date reflected counsel's earliest availability.

[11] On July 5, 2017, the parties were agreeable to making written submissions in advance of the hearing to facilitate decisions on the establishment of the allegations for the allegations phase of the hearing. At that time, the MR asked that, before the allegations were adjudicated, the Subject Member be permitted to testify. However, on September 6, 2017, with the parties filing an agreed *Summary of Facts*, the MR advised that it was not necessary for the Subject Member to testify before the conduct measures phase of the hearing.

[12] On August 3, 2017, the CAR's office filed the report from its contradictory expert psychologist during the CAR's vacation absence.

[13] The CAR's submissions on the allegations were filed September 1, 2017; the MR's response, on September 1, 2017; and the CAR's brief reply, on September 6, 2017.

ALLEGATIONS

[14] On the first morning of the hearing, September 11, 2017, the Subject Member faced the following allegations (Exh. CAR-1):

Allegation 1

On or between January 8th, 2015 and February 11th, 2015, inclusive, at or near Richmond, in the Province of British Columbia, [the Subject Member] used government-issued equipment and property for unauthorized purposes and activities, contrary to Section 4.6 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, in the province of British Columbia.
2. On January 8th, 2015, you were on duty scheduled to work from [6 a.m.] to [6 p.m.].
3. On January 8th, 2015, you were tasked to contact the brother of Ms. [A], and schedule an appointment for a witness statement pertaining to a sexual assault investigation, file 2015-[XXX]. This was the only investigational task that was assigned to you in this file.
4. On January 8th, 2015, during your shift, you accessed the general occurrence for file 2015-[XXX] on three separate occasions. This access allowed you to retrieve personal information related to Ms. [A].
5. On January 8th, 2015, at approximately 4:34 pm, while on duty at the Richmond detachment, you spoke to Ms. [A], the victim in file 2015-[XXX]. This conversation was related to the investigation of her complaint and was documented on file.
6. Shortly after your conversation with Ms. [A], you used your personal cellular phone to forward a text message to her personal cellular number advising her to stay safe and be careful.
7. On January 11, and 24th, 2015, you accessed RCMP data systems and queried the general occurrence for file 2015-[XXX]. Those queries were not done as part of your duties, nor for any legitimate reason in the performance of your duties. As such. You used RCMP data systems for unauthorized personal reasons.

Allegation 2

On or between February 1st 2015, and February 11th, 2015, inclusive, at or near Richmond, in the Province of British Columbia, [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

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, in the province of British Columbia.
2. On or about February 1st 2015, you initiated contact and pursued a personal relationship with Ms. [A], the victim of a sexual assault in file 2015-[XXX]. Those contacts were made via cellular text messages.
3. You exchanged approximately 279 text messages and photographs with Ms. [A], including inappropriate photographs and messages with sexual connotations.
4. While you were in a position of trust and authority, you pursued a personal relationship with Ms. [A], knowing that she was 17 years old and that she was the victim of a sexual assault investigation.

Allegation 3

On or about February 3rd, 2015, at or near Richmond, in the Province of British Columbia, [the Subject Member] used government-issued equipment and property for unauthorized purposes and activities, contrary to Section 4.6 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, in the province of British Columbia.
2. While on duty, you issued a traffic violation ticket to Ms. [B].
3. You accessed RCMP data systems and queried the general occurrence for files 2012-[XXXX] and 2009-[XXXXX]. Those queries were not done as part of your duties, nor for any legitimate reason in the performance of your duties. As such, you used RCMP data systems for unauthorized personal reasons

Allegation 4

On or about February 3rd, 2015, at or near Richmond, in the Province of British Columbia, [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

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

2. On February 3rd, 2015, while off duty, you contacted the residence of Ms. [B]. You introduced yourself as a police officer to the person who answered the phone and obtained Ms. [B]'s personal cellular number
3. At approximately 1:31 pm, you sent a personal text message to Ms. [B]. You identified yourself as "Eden ... with police" and asked her to meet you for tea.
4. You used your position of trust and authority to obtain the personal cellular number of Ms. [B] contacted her for personal reasons.

[Sic throughout]

[15] The parties' *Summary of Facts* (Exh. CAR-2), dated September 6, 2017, expedited the Conduct Board's assessment of the evidence and, in particular, it avoided the necessity for the testimony of Ms. B and the member present at the Subject Member's roadside interaction with Ms. B, Cst. M.T. In this document, the Subject Member admitted to Allegations 1, 2 and 3, but he continued to deny Allegation 4.

SUMMARY OF FACTS

[16] Here are the relevant excerpts from the *Summary of Facts*:

ALLEGATION 1

[...] [The Subject Member] admits this allegation.

ALLEGATION 2

[...] [The Subject Member] admits this allegation.

1. At all material times, Constable Brian Eden (hereinafter "Member") was posted to "E" Division at the Richmond Detachment.
2. On January 3[rd], 2015:
 - a) the Member was on duty scheduled to work from [6 a.m.] to [6 p.m.];
 - b) the Member was tasked to contact [Ms. A's brother] in order to schedule an appointment time for an audio/video statement pertaining to file number 2015-[XXX]. The lead investigator in file number 2015-[XXX], a sexual assault investigation, was Constable [K.L.]. [Brother's name] was the brother of the victim in this file, Ms. [A];
 - c) between 6:29 am and 6:37 am, the Member accessed the general occurrence report and all text pages associated to file number 2015-[XXX]. This access allowed him to view personal information associated

to Ms. [A], including the details associated to the sexual assault investigation, her date of birth and personal cellular number;

d) between 1:57 pm and 2:07 pm, the Member accessed file number 2015-[XXX];

e) at approximately 4:34 pm, the victim, Ms. [A], called the Richmond Detachment and her call was transferred to the Member. Ms. [A] provided information about the males involved in her file. The Member documented the file and wrote that Ms. [A] appeared upset and was offered Victim's Services;

f) between 4:42 pm and 4:56 pm, the Member accessed file number 2015-[XXX] and shortly after, the Member sent a text message to Ms. [A]'s cellular number saying something along the lines of "stay safe and be careful"

g) Ms. [A] never provided the Member with her personal cellular number.

3. The Member was not assign[ed] any other task pertaining to file number 2015-[XXX].

4. On January 18 th and 24th, 2015, the Member accessed file number 2015-[XXX] and queried the general occurrence. As such, the Member had access to personal information associated to Ms. [A].

5. The Member had knowledge that Ms. [A] was 17 years old.

6. On February 1st, 2015, the Member, using his personal cellular number [604-XXX-XXXX], initiated and exchanged a series of inappropriate text messages and photographs with Ms. [A]. Attached as Appendix "A" to this Summary of Facts is a Summary of the Text Message Activity between [Subject Member] and Ms. [A] which includes:

"Are you working tomorrow?"

"I hope things are good ... we should meet for coffee."

"U still work at Sears?"

"sorry to bug ... keep smiling ... send a pic."

"Luv the smile pic btw ... mm"

"share sweet pic lol."

"Nice enjoy... I like to see pic of you too."

"I like your look."

The Member sent a generic photograph of a male (waist down) in boxer shorts and accompanied the image with "Shhhh."

"You like to swim or go to gym?"

“Awesome ... im a fan of yoga pants ... hint lol.”

“or whats under that ... all shapes.”

“Ok nite ... what wear to bed? Pj’s.”

7. On February 2nd, 2015, Ms. [A] communicated with her brother, [Brother’s name] asking for advice, writing, in part, that *“one of the cops investigating my case has been flirty texting me and asking for pics, he sent a shirtless pic of him. What should I do?”*. In the exchange of text messages with her brother, Ms. [A] mentions *“Idk just weird, he said we should go for coffee. I assumed to talk about the case, then he asked for a picture. I sent one of me smiling, then he’s like ‘I like your look’ and sent a shirtless pic of himself. Like I said it’s just weird.”*

8. Also on February 2nd, 2015, the Member exchanged a series of text messages with Ms. [A], confirming that he wanted to meet for personal reasons. After being asked by Ms. [A] *“Um.. Cst. Eden. When did you want to meet?”* the Member replied *“Hmmm want to meet to meet not biz related lol.”* And followed by saying *“Prob bad timing for u”, “I assume you don’t need to meet anyone”, “Ok hang in there maybe in 2-3 days we can grab a coffee... I wont bug u.”, “Thx for pic ... u are nice lookin woman”, “Unless u distract me somehow lol”*.

9. Between February 1st, and February 11th, 2015, the Member exchanged approximately 279 [corrected from 219 by representatives] text messages and photographs with Ms. [A], including texts with sexual connotations, a photo of himself as well as a generic photo of a male lying in bed with a blanket which covered an erection, and such as:

- On February 9th, 2015, when Ms. [A] said she was going downtown, the Member wrote *“No drinkin lol”, “Have a good time”* and Ms. [A] answered that it was too late, to which the Member replied *“Saucey little thing ... shoot a cool pic then”, “Don’t tell anyone but u have nice lips and nose lol”, “K cheers ... next time bring your suit ... or pretend and take pic lol.”*

- On February 11th, 2015, *“What is your Ethnic background?”, “Nice lips and eyes btw.”*

ALLEGATION 3

[...] [The Subject Member] admits this allegation.

ALLEGATION 4

[...] [The Subject Member] denies that his conduct breached s. 7.1 of the Code of Conduct.

10. On February 3rd, 2015, the Member was on duty scheduled to work from [4 p.m.] to [3 a.m.]. At approximately 0:53 am, patrolling with Constable [M.T.], the Member stopped a vehicle for speeding and issued a traffic violation ticket to Ms. [B].

11. During the traffic stop, which lasted approximately 27 minutes, Ms. [B] argued the merits of the traffic ticket and at some point, she asked the Member to go for coffee, which he refused. The Member asked Ms. [B] about her husband's occupation to which she replied that he was an acupuncturist. The Member mentioned to Ms. [B] that he was having some kind of back problems.

12. Ms. [B] did not provide her personal cellular number to the Member or Constable [M.T.].

13. At approximately 01:59 am, the Member signed off on the MDT (from his vehicle) and at approximately 02:03 am, using RMS (from the office desk), the Member queried the general occurrence for file number 2012-[XXXX] and 2009-[XXXXX] associated to Ms. [B].

14. The Member had access to personal information pertaining to Ms. [B], including:

- The subject of the complaint;
- The telephone numbers associated to Ms. [B];
- The personal information associated to Ms. [B]'s husband, including the contact information about his employment as an acupuncturist.

15. On February 3rd, 2015, while off duty, and sometime after 12:30 pm, the Member called the residence of Ms. [B] and her employee, Ms. [C], answered the phone. The Member identified himself as being from the RCMP, looking for Ms. [B]. Ms. [C] provided the Member with Ms. [B]'s cellular number.

16. At approximately 1:31 pm, Ms. [B] received a text message from the Member saying "*Hi [Ms. B's given name] ... it's Eden ... with police... i wanted to contact you.*"

17. At approximately 2:37 pm and shortly after, Ms. [B] and the Member exchanged the following text messages:

Who is this? (Ms.[B])

The speeding ticket last night? (Member)

What is it about? (Ms. [B])

You want to meet for tea? (Member)

Hey how did u get my number? (Ms. [B])

*I phoned your place to talk to you ... was provided your number from mom?
Sorry to have bothered you i just like to meet u again sorry ... I was thinkin
about the acupuncture and that u wanted to go to coffee (Member)*

*Sorry I don't think it's appropriate to meet for coffee but thank you for
asking. (Ms. [B])*

PRELIMINARY MOTION

Publication ban

[17] With the consent of the MR, the CAR's request for a publication ban concerning the identity of Ms. A was ordered. Accordingly, this Conduct Board orders that the identity of Ms. A and any information arising from this conduct process that would serve to identify Ms. A is hereby subject to a publication ban and shall not be published, distributed or disseminated.

FINDINGS ON THE ALLEGATIONS

[18] In the allegation phase, my task for each allegation is to assess the evidence on a balance of probabilities to determine whether the particulars are established. Having determined that the particulars are factually established, I must then determine if the acts or omissions established by the particulars, in all the circumstances, constitute a contravention of the Code of Conduct. Not all particulars may be proven, and some particulars may serve a narrative or contextual purpose to situate the acts or omissions at issue.

Allegation 1

[19] With respect to Allegation 1, Particulars 1 and 2 are established without issue. In fact, the identification of the Subject Member is not an issue in any of the allegations. With respect to Allegation 1, Particular 3, I find that it is established with greater details summarized in the parties' summary at paragraphs 2(b) and 3.

[20] With respect to Allegation 1, Particular 4, I find that it is established that the Subject Member accessed the electronic RCMP investigation file on three separate occasions. The specific times constituting the three separate occasions are accurately set out in paragraphs 2(c), (d) and (e) of the *Summary of Facts*.

[21] Furthermore, it is established that these access instances allowed the Subject Member to view personal information associated to Ms. A, including the details associated with the sexual assault investigation, in which she was the victim or complainant, and included her date of birth and her personal cellular phone number. These findings reflect the facts as set out in the *Summary of Facts*, paragraph 2(c).

[22] Allegation 1, Particular 5, there is no dispute that the Subject Member received an incoming call on January 8, 2015, from Ms. [A] at approximately 4:34 p.m. How that call was handled and how the Subject Member noted the call on the electronic file was not, in my view, alleged to be misconduct under section 4.6. The details and manner in which this call was documented are accurately set out in paragraph 2(e) of the parties' *Summary of Facts*.

[23] Particular 6 of Allegation 1 relates to the text message that the Subject Member sent to Ms. A's cellular phone. He used his personal cellphone to do so. Sending this text message required the Subject Member to use the cellular number for Ms. A. The content of the text message, words to the effect of "stay safe and be careful", was not offensive or inappropriate, although it was not, to my mind, sufficiently official in terms of the Subject Member formally identifying himself. It was also not in dispute that the Subject Member sent this text message, but it was never noted as having been sent by him on the investigative file.

[24] As set out at paragraph 2(b) of the *Summary of Facts*, I find that the Subject Member gained Ms. A's personal cellular number, which permitted him to text her, as a result of his accessing the electronic investigative file. Ms. A did not provide the cellular number to him during their telephone conversation after 4:30 p.m., on January 8, 2015.

[25] The MR's submission states:

[The Subject Member] admits that he breached section 4.6 of the Code of Conduct by using the cellular telephone numbers of Ms. [B] and Ms. [A] for unauthorized purposes.

[26] I find that the "stay safe" or "be careful" text message sent by the Subject Member on January 8, 2015, after his telephone conversation with Ms. A, was a result of the Subject

Member's use of her cellular number, a number he had no authorized purpose in accessing from the electronic file, nor in using to contact Ms. A.

[27] However, Allegation 1 appears to primarily assert a breach of section 4.6 for the acts described in Particular 7; that is, the Subject Member's accessing of electronic files on January 18 and January 24, 2015. The Subject Member argued that these acts of accessing the file were a typical follow-up or constituted professional curiosity; therefore, they were not unauthorized. These are his main justifications for these two acts of file access.

[28] It is my view that the Subject Member had only one task on the file, as accurately set out in paragraphs 2(b) and 3 of the parties' *Summary of Facts*. Having had phone contact on January 8, 2015, which was handled appropriately, the Subject Member sent a text message later on that date that was, in my view, odd to have sent.

[29] Even if Ms. A was upset in the initial telephone call that preceded the Subject Member's first text message, I must assess whether the Subject Member's admitted access of the electronic file on January 18 and 24, 2015, constitutes use of the RCMP electronic file system for an unauthorized purpose.

[30] It is my finding that these acts of accessing the system were a contravention of section 4.6 of the Code of Conduct because the Subject Member had no further tasks assigned to him with respect to Ms. A's sexual assault file.

[31] On the basis of the text message sent to Ms. A's personal cellular number, which relied on his initial unauthorized file access, and his further unauthorized accesses on January 18 and 24, 2015, I find that Allegation 1 is established.

Allegation 3

[32] With respect to Allegation 3, it is clear that the Subject Member contravened section 4.6 of the Code of Conduct, when he obtained a phone number from an unrelated general occurrence file that related to Ms. B, the motorist he had pulled over for a traffic violation, and used this number to place a telephone call that was answered by Ms. B's employee, who in turn provided

the Subject Member with Ms. B's cellular number. I find that the Subject Member contravened section 4.6 as the queries identified in Particular 3 were clearly not done for any duty-related or authorized purpose.

[33] The contravention of section 4.6 in this Allegation is not simply gaining a phone number used to seek a meeting with Ms. B. It is the completely unauthorized accessing of the actual files by the Subject Member.

Allegation 4

[34] With respect to Allegation 4, the obtaining of any phone number to call Ms. B's residence is captured in my findings with respect to Allegation 3. The improper *use* of that number to contact Ms. B's residence is what initiates the misconduct alleged under Allegation 4.

[35] I have carefully considered the MR's submissions that the Subject Member's conduct, while inconsistent with his duties to maintain boundaries with the public in his role as a police officer, and inappropriate and reflecting poor judgment, nevertheless did not rise to the level that the RCMP would be discredited by the conduct in the eyes of the public. In determining whether Allegation 4 is established, I am guided by the interpretation of "discreditable conduct" offered by the RCMP External Review Committee (ERC C-2015-001, C-008, February 22, 2016, paragraphs 92-93):

[92] Section 7 of the Code of Conduct requires that "[m]embers behave in a manner that is not likely to discredit the Force". Section 7 differs from its predecessor provision, found in subsection 39(1) of the prior Code of Conduct. Subsection 39(1) required that members not engage in any disgraceful or disorderly act or conduct that could bring discredit on the Force. The [External Review Committee] and the Commissioner have stated that the test under subsection 39(1) asked whether a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that the conduct was a) disgraceful, and b) sufficiently related to the employment situation so as to warrant discipline against the member (ERC 2900-08-006 (D-123), para. 125; ERC 2400-09-002 (D-121), Commissioner, para. 100).

[93] Section 7 of the Code of Conduct does not import the requirement of disgraceful or disorderly conduct in order to discredit the Force. However,

the Force's Code of Conduct Annotated Version (2014) largely adopts the test under the prior Code of Conduct for discreditable conduct under the new section 7, noting that "discreditable behaviour is based on a test that considers how the reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the behaviour" (p. 21). The language used in the Code of Conduct Annotated Version (2014) is consistent with the tests established in other police jurisdictions to establish that misconduct is "likely" to discredit a police force. As pointed out in P. Ceyssens, *Legal Aspects of Policing*, Vol 2 (Toronto: Earls court, 2002, pp. 6-17, 6-18), where statutory language governing discreditable conduct addresses acting in a manner "likely" to discredit the reputation of a police force, actual discredit need not be established. Rather, the extent of the potential damage to the reputation and image of the service should the action become public knowledge is the measure used to assess the misconduct. In conducting this assessment, the conduct must be considered against the reasonable expectations of the community.

I find that the Subject Member's inappropriate conduct, when considered by a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general, and the RCMP in particular, would be found to discredit the RCMP.

[36] It was unacceptable conduct under Allegation 4 for the Subject Member to identify himself to Ms. B's employee in order to gain access to Ms. B's cellular number. This aspect of his behaviour, in itself, constitutes discreditable behaviour.

[37] Taking Ms. B up on her offer to go for coffee—in some places in the record referenced as "tea"—did not justify the Subject Member seeking to contact her using a number gained in an improper, unauthorized manner. The invitation to go for coffee or tea by Ms. B, made at the time she was in her vehicle and about to receive a speeding ticket, may have been an effort on her part to avoid receiving a ticket or otherwise receive favourable treatment from the Subject Member and Cst. M.T.

[38] With the speeding ticket only just issued to Ms. B, there remained the opportunity for Ms. B to challenge the ticket through whatever appropriate processes existed. The Subject Member, in seeking to meet socially with Ms. B, compromised his role as the investigator on that traffic infraction matter.

[39] While not the facts of this case, a member seeking social contact with a motorist closely after a ticket has been issued may jeopardize public confidence where the issuance of the ticket comes to be viewed as some form of ruse to obtain the motorist's contact details. What the Subject Member did is clearly a bad practice, one in which I find the Force has a genuine interest in imposing discipline.

Allegation 2

[40] For Allegation 2, Particular 2, I am satisfied and, on the balance of probabilities standard of proof, I find established that the Subject Member initiated contact with Ms. A knowing she was 17 years old.

[41] Through the text messages, in particular by requests or suggestions that he and Ms. A meet, as well as other content in the text messages and attached photographs that clearly contained sexual connotations and images, I find that the Subject Member pursued a personal relationship with Ms. A. There was no duty-related connection of any kind.

[42] The content of the text messages is captured exactly as a result of their duplication from Ms. A's personal cellular phone, as are the times for the text messages.

[43] I find the Subject Member to have contravened section 7.1 of the Code of Conduct by his pursuit of a personal relationship with Ms. A. His acts, as detailed in Particular 3, were done with knowledge of Ms. A's circumstances, knowledge gained in his capacity as a police officer. She was 17 years old and the victim in a sexual assault investigation. I believe that the established conduct, namely the Subject Member's repeated participation in the captured text message correspondence, clearly brings discredit on the Force and any reasonable person with knowledge of the facts of this Allegation, and the expectations placed upon RCMP members, would find his conduct to discredit the Force.

[44] There are two components to this finding of discreditable conduct. The first are the acts committed by the Subject Member in the text message exchange; the second important element

is the knowledge that he possessed of Ms. A's circumstances and his status as a person in authority when he committed those acts.

Summary of established allegations

[45] To summarize, with respect to Allegations 1 and 3 that rely on contraventions of section 4.6 of the Code of Conduct, I find the allegations established. With respect to Allegations 2 and 4, which rely on contraventions of section 7.1 of the Code of Conduct, I find the allegations established.

CONDUCT MEASURES PHASE

Documentary evidence

[46] Without opposition from the CAR, the MR filed materials with the Conduct Board concerning the Subject Member's shoulder injury (Exh. MR-1) and a document prepared by the Subject Member, which contains positive supervisory commentary and character-reference type information (Exh. MR-2).

[47] The Subject Member appears to have initially suffered an off-duty shoulder injury in a motor vehicle accident on November 6, 2012. On May 2, 2014, massage therapy for the Subject Member's neck and back was medically prescribed. By July 23, 2014, he was deemed not medically fit to undertake the physical abilities test (PARE) that was required of all "front line" (operational) members. On January 6, 2015, a doctor determined that the Subject Member was medically unfit to perform the pushing element of the PARE test, supporting his restriction to non-operational duties. An arthroscopic surgical repair of the Subject Member's rotator cuff tendons was completed on September 8, 2015.

[48] I must observe that the sources of commentary and information in Exh. MR-2 were not aware of the Subject Member's present misconduct. While offering specific examples of positive work performance or personal acts of kindness, these materials were of limited weight and did not in themselves establish the Subject Member as an outstanding employee. They did establish that the Subject Member was publicly recognized for his enforcement of impaired driving laws

over the period of 2010 to 2014, and that he participated in various off-duty volunteer activities, including laudable activities with youth.

[49] For ease of reference at the conduct measures phase of the hearing, the MR also filed a volume of selected documents contained within the record (Exh. MR-3). The filing of this collection of relevant documents was helpful and certainly expedited the hearing. Under Tab 1, activity for the Subject Member's personal cellular phone is identified in a comprehensive print-out obtained from Telus Communications Company. At page 7 of 80, the Subject Member's initial text message to Ms. A is shown for January 8, 2015. It is followed by a reply text message by Ms. A, and a further text message by the Subject Member. The exact content of the Subject Member's two text messages and Ms. A's reply is unknown. Based on Ms. A's statement of February 21, 2015, and the *Summary of Facts* agreed upon by the parties, I find that it was at this time that the Subject Member stated words along the lines of "stay safe" or "be careful". The parties did not reference the Telus print-out in their written submissions on the establishment of the allegations. I acknowledge that my oral decision on the allegations indicated no response was received after the Subject Member's initial text message on January 8, 2015, which overlooks these Telus activity entries.

[50] The CAR filed a series of RCMP reports and evaluations documenting the Subject Member's performance as a cadet while in training at "Depot" Division (graduating November 24, 2008), and in his general duty investigator postings at Hope Detachment (2009-2010, 2010-2011, 2011-2012) and Richmond Detachment (2013-2014). Summarized below, the Subject Member's intermediate supervisors provided succinct comments on his performance, which reflect the uniformly positive entries made by his immediate supervisors about the performance of his duties and off-duty activities:

- good progress into a strong investigator, a willingness to volunteer at community events, an excellent job having volunteered to maintain the vehicle fleet (2009-2010)
- a strong worker, demonstrating progress the writer is pleased with, whom other members look to for direction and advice (2010-2011)

- continuing to develop his professional skills, showing a strong desire to conduct impaired driving investigations, he has become the “go to” member in this field (2011- 2012)
- “[the Subject Member] is a solid member of “A” Watch and can always be counted upon to do a good job [...]” (2013-2014)

Testimony of the Subject Member

[51] While part of the record, for ease of reference, the CAR filed a comprehensive collection of the February 2015 text exchanges between the Subject Member and Ms. A, including all attached colour images (Exh. CAR-3). This exhibit was put to the Subject Member on cross-examination.

Testimony of Dr. H, MR’s expert

[52] In advance of the hearing, the Conduct Board determined that the report of Dr. H (undated, submitted March 22, 2017) would be treated as his direct expert testimony, upon which he would be cross-examined by the CAR. The parties agreed to the Conduct Board qualifying Dr. H as an expert in psychology, including assessment, diagnosis, treatment and prognosis. Dr. H was provided with the report of the CAR’s expert in advance of his testimony. For ease of reference, Dr. H’s report and *curriculum vitae* were combined as an exhibit (Exh. MR-4).

Testimony of Dr. S, CAR’s expert

[53] In advance of the hearing, the Conduct Board determined that the report of Dr. S, dated July 30, 2017, would be treated as his direct expert testimony, upon which he would be cross-examined by the MR. The parties agreed to the Conduct Board qualifying Dr. S as an expert in psychology, including assessment, diagnosis, treatment, prognosis, and in forensic psychology.

[54] The MR agreed that Dr. S could observe the testimony of Dr. H before he testified himself. For ease of reference, Dr. S’s report and *curriculum vitae* were combined as an exhibit (Exh. CAR-4).

[55] In the MR's submissions, he correctly points out that, while an expert may form their opinions on the basis of all forms of information provided to them, when an item of information is relied upon that is contradicted by information cited by the opposing party, or when an item of contentious information is received from a collateral source who is not produced for cross-examination conducted by the opposing party, any opinion that relies on such a contradicted or untested out-of-court source of information may be undermined. The accuracy or reliability, in some cases the admissibility, of the impugned item of information is not established simply because it is received by the expert in order to form their expert opinions.

[56] On this basis, in my assessment of Dr. S's opinions, I have excised his references to information received from the Subject Member's present partner (Ms. A.G.) and, in a slightly less strict manner, the information he received from Dr. A, the psychologist who provided the Subject Member with treatment seven times, between November 2010 and March 2011, and twice in the summer of 2012 (Exh. CAR-4, pages 22-26).

[57] Having treated contentious information from an untested collateral source as, in effect, inadmissible, I nevertheless view Dr. S's opinions as still cogent and sufficiently supported by other information, primarily information obtained from the Subject Member and the extensive documents provided to Dr. S by the CAR for his review.

[58] Therefore, I find Dr. S's opinions to be persuasive on the following important considerations:

- Whether the Subject Member had a psychological condition in January and February 2015 (Exh. CAR-4, Report, pages 33-37)
- The probability that any such condition caused or contributed to the Subject Member's acts of misconduct (Exh. CAR-4, pages 37-38)

[59] With respect to Dr. S's view that the Subject Member was not suffering from Persistent Depressive Disorder at the time of his misconduct, it is based on a detailed review of a number of factual points that show that the Subject Member may at times have experienced low mood after

the break-up of his marriage and the investigation for domestic assault, but his low mood was transitory.

[60] I can see little factual or clinical support in Dr. H's report for his opinion that the Subject Member began suffering from a depressive disorder in 2010 that was still not adequately treated at the time of his misconduct in 2015. I do not view Dr. H's opinion that the Subject Member was experiencing a low-grade depression, since at least March, 2015, "and probably much longer", overcomes Dr. S's better factually supported opinion that low-grade depression was not present during the acts of misconduct involving Ms. A and Ms. B.

[61] An observation I find particularly powerful is that the "distinctly upbeat and playful tone" of the Subject Member's text messages to Ms. A was not consistent with a depressed mood. In addition, the Subject Member's text messages reference going for a swim and attending a gym, suggesting sufficient levels of energy, motivation and interest.

[62] When the Subject Member completed psychological tests for Dr. H in March 2015, his suspension and potential criminal prosecution provided ample cause for him to present as moderately depressed.

[63] Even if one accepts that the Subject Member was experiencing Persistent Depressive Disorder in the misconduct commission period, Dr. S provides extensive reasons for why there is "limited reason" to believe its symptoms "were so severe that they caused or contributed to [the Subject Member's] inappropriate behaviour". I accept this opinion over the opinion that Dr. H seeks to support in his brief analysis and reasons (Exh. MR-4, page 32 "Impressions", page 33, paragraph 1 "Conclusions").

Authorities

[64] The CAR filed a number of authorities in support of its position that loss of employment was the appropriate conduct measure:

- *Appropriate Officer for "HQ" Division and Cst. [WM]* (2005), 27 A.D. (3d) 3

- *Gordon v Canada (Solicitor General)*, 2003 FC 1250
- *Ennis v Canadian Imperial Bank of Commerce*, [1986] BCJ No 1742 (SC)
- *Commanding Officer, “E” Division and Cst. [FV]*, 2017 RCAD 3

[65] The MR filed a number of authorities, which pertain to different submissions contained in his written and oral submissions, considered by the Conduct Board at the time of his oral submissions. For ease of reference, I have grouped the authorities under a number of general headings:

Appropriate role of expert evidence

- *Brough v Richmond*, 2003 BCSC 512
- *M.B. v British Columbia*, [2000] BCJ No. 638 (SC)
- *R. v J.-L.I.*, [2000] 2 SCR 600
- *Sengbusch v Priest*, 1987 CanLII 2796 (BC SC)
- *William et al. v BC et al.*, 2005 BCSC 131 (CanLII)

Mitigating and aggravating considerations affecting disposition

- Ceyssens, *Legal Aspects of Policing*, 2012, at pages 5-197
- *Lee v Canada (RCMP)*, [2000] FCJ No. 887 (FCTD)
- *Pizarro v Canada (Attorney General)*, [2010] FCJ No 23 (FCC)

Non-dismissal decisions involving sexual impropriety

- *College of Physicians and Surgeons of Ontario v Lambert* (1992), 11 OR (3d) 545 (Div. Ct.)

- *Re Dicken*, 2016 CarswellAlta 2851 (Tribunal)
- *Ontario College of Teachers v Burdett*, 2011 ONOCT 8 (Discipline Cmtee)
- *Re Ontario (Ministry of Children and Youth Services) and OPSEU*, 2015 CarswellOnt 14159

Evidence on which expert opinion may be based

- *R. v Abbey*, [1982] SCR 24
- *R. v Collins*, 2001 CanLII 24124 (Ont. C.A.)
- *R. v Truscott* (2006), 81 OR (3d) 689 (C.A.)

Non-culpable misconduct and decision-making impairment

- *Vancouver Police Board v Teamsters, Local 31*, 2002 CarswellBC 3519

[66] In my determination of conduct measures for the Subject Member's contraventions, I am guided by section 24 of the *CSO (Conduct)*, which states:

(1) In determining the appropriate conduct measures to impose, the conduct board may examine any material submitted by the parties and hear their oral submissions and any witness, including those referred to in subsection 18(1).

(2) The conduct board must impose conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct.

[67] In addition, to comply with section 11.15 of the *RCMP Administration Manual* (c. XII.1 "Conduct"), aggravating and mitigating circumstances must be considered in determining the appropriate conduct measures. In this decision, I will substitute "factor" for "circumstance".

Mitigating factors

[68] The MR's submissions addressed appropriate conduct measures, and the nature and circumstances of the contraventions. He argued that the following constituted mitigating factors:

- The existence of personal circumstances and a disability at the time of the misconduct, which influenced the Subject Member's deficient moral judgment.
- The likelihood of rehabilitation and low risk of repeated conduct if the Subject Member commits himself to the recommended psychological treatment.
- The short period of time over which the misconduct took place.
- The Subject Member's positive work history and devotion to his job.
- The Subject Member's recognition of the seriousness of the misconduct and his expression of willingness to rehabilitate.
- Significant delay by the Conduct Authority in proceeding with the allegations and the corresponding two-and-a-half-year period which the Subject Member has been off duty.

Aggravating factors

[69] In his oral submissions, the CAR commented on the nature and circumstances of the contraventions. He argued the following respecting aggravating, and absent mitigating, factors:

- The discreditable conduct is akin to a breach of trust because the Subject Member used information he gained as a result of his position as a police officer to pursue two inappropriate relationships.
- The misconduct was not spontaneous and did not involve a single lapse of judgment. It involved two different persons and a number of opportunities for the Subject Member to stop his misconduct.

- With respect to Ms. A, the Subject Member admitted that, at one point, he realized his communications with her were inappropriate, but he nevertheless continued texting with her.
- While not involving the same type of misconduct, the Subject Member received informal discipline in 2011 (for the application of excessive force to his then spouse during a domestic dispute). Therefore, he has now committed misconduct on two separate occasions within seven years of employment.
- The Subject Member initiated highly inappropriate text messages with sexual connotations, including sexual images, with the knowledge that the recipient was not only 17 years old, but the complainant in a (recent and still active) sexual assault investigation.
- The texting exchanges only ended because Ms. A began expressing suicidal thoughts and the Subject Member, in essence, was forced to call for a response to her location and provide his name.
- The misconduct occurred after the Subject Member's present partner lost her civilian employment with the RCMP as a result of her inappropriate use of an internal RCMP communication system to exchange messages with the Subject Member.
- In his testimony, the Subject Member failed to acknowledge the serious potential impact his misconduct might have had on Ms. A, minimized the nature of his actions by suggesting some initial texts were out of concern for Ms. A, and denied that he was pursuing a personal relationship despite the reasonable inference to be drawn from the text messages.
- The absence of any support from RCMP peers, including supervisors, concerning appropriate conduct measures for the Subject Member.
- While it is mitigating that the Subject Member made admissions, he did not cooperate with the investigation from the outset and he did not immediately accept responsibility.

- While the Subject Member's admissions may have expedited the hearing, this is a case where the evidence of his misconduct was immediately very clear and the testimony of Ms. A and Ms. B would never have been required, given the evidence in the investigative report provided to the Conduct Board.
- The Subject Member failed to seek immediate treatment for whatever mental issues he was experiencing when his misconduct occurred, suggesting a lack of willingness to undergo treatment and a lack of awareness concerning the seriousness of his misconduct.
- In his treatment by Dr. H, [the Subject Member] never provided the full details of his exchange of text messages with Ms. A, thus preventing meaningful treatment.
- The Subject Member expressed to Dr. H that he expected to be "vindicated" concerning the present allegations, which undermines his more recent taking of some responsibility.
- The Subject Member has yet to show any progress in treatment and still requires a significant treatment regime to potentially present a low risk of recidivism.
- The proposed significant treatment regime constitutes an administrative burden on the Force, given that there is no progress through treatment at this time.

Analysis

[70] After assessing admissible evidence, the following is not in dispute during the time of the Subject Member's established misconduct, spanning from January 8, 2015, until February 11, 2015: he was not living in the same residence as his present partner; he was experiencing some financial strain as a result of payments related to the breakdown of his previous relationship; and he was experiencing physical discomfort and frustration related to his unresolved shoulder injury, which resulted in a restriction to administrative duties. I do not find these factors to have imposed such significant stress upon the Subject Member that he experienced mental impairment involving compromised moral judgment, as he continued to perform his duties satisfactorily despite these factors.

[71] I have carefully considered Dr. H's testimony to the effect that workaholism may mask underlying depression, but there are no independent observations suggesting this was the case for the Subject Member. To the contrary, the Subject Member advised Dr. H that he had been functioning extremely well at work, receiving positive performance appraisals, and working lots of overtime.

[72] I prefer Dr. S's view that the Subject Member's self-report to Dr. H was consistent with the Subject Member having the **capacity** for critical thought, sound decision-making and sound judgment during the period of his acts of misconduct.

[73] With the greatest respect, I am not prepared to accept Dr. H's view that Persistent Depressive Disorder, when combined with the above-noted stressors being experienced by the Subject Member, contributed to the Subject Member's decision to pursue contact with Ms. A via sexualized text messages, a decision so fundamentally at odds with the duties he clearly knew he owed a 17-year-old sexual assault complainant. Even if his initial communications were significantly influenced by some sort of depressive mental state and personal stressors, or were (as he claims) motivated simply by an initial concern over her well-being, the Subject Member admitted in his testimony that, during the period of the text message exchanges, he knew what he was doing was inappropriate and should not continue. It was despite this knowledge that the Subject Member then transmitted the egregious generic image involving a bed-cover obscured erection, and later, in what I find a highly manipulative manner, expressed his willingness to receive a picture of Ms. A while she was wearing a bathing suit. He testified that during the exchange of messages with Ms. A he was "kind of excited".

[74] I was prepared to accept and consider Dr. H's report, notwithstanding that he first served as the Subject Member's therapist, and then served in the role of assessor. I accept without reservation that Dr. H, in his role as assessor, worked conscientiously to avoid any bias in coming to his expert opinions. Nevertheless, I must treat with a degree of caution his findings about the Subject Member's mental condition in the commission period from January 8 to February 11, 2015 (only articulated in March, 2017), because of the patient-psychologist therapeutic relationship that was established in March, 2015.

[75] I also view it as significant that, while the stress brought on by the Subject Member's suspension with pay, and arrest, appears to have triggered his seeking treatment with Dr. H in March 2015, it appears as though the Subject Member never directly raised his compromised mental state **during the misconduct commission period** while in therapy with Dr. H.

[76] Dr. S's analysis is not wholly dependent on information gleaned from collateral sources or information which was successfully contradicted by the Subject Member in his testimony. I accept that the Subject Member's misconduct was likely influenced by long-standing personality features, including the need for admiration. My view is bolstered by the fact that Dr. S's analysis includes his assessment of the Subject Member's misconduct involving Ms. B. This independent episode of misconduct was not actively considered or synthesized by Dr. H. I find that the Subject Member's initial motivation in contacting Ms. B was not his painful shoulder and Ms. B's husband's abilities as an acupuncturist. Plainly, located in Richmond, British Columbia, the Subject Member could have located a suitable acupuncturist by searching the web or opening the Yellow Pages. If the need for acupuncture was the real motive for contacting Ms. B, then it would have been the first thing mentioned in the Subject Member's text messaging, and not mentioned only after Ms. B questioned how he got the number for her cellular phone.

[77] Moreover, I accept Dr. S's evidence that the influence of some long-standing personality traits may not be readily changed through psychotherapy. I share Dr. S's reluctance to accept Persistent Depressive Disorder as the most plausible diagnosis. I am also skeptical that the proposed year of intensive psychotherapy will be effective in reducing the risk of recidivism to an acceptable level **approaching nil**, given that the proposed psychotherapy may not correct a probable contributor to the misconduct, the Subject Member's personality traits.

[78] In addition, I do not fully accept the benign explanations offered by Dr. H concerning the Subject Member's attendance at therapy. The Subject Member's decision to abandon regular, unfractured treatment by Dr. H and his willingness to see him again only for Dr. H's present report are just not consistent with a person genuinely committed to addressing clearly problematic behaviour.

[79] Moreover, I do not accept that the existence of personal circumstances and a disability (i.e., Persistent Depressive Disorder) at the time of the Subject Member's misconduct influenced his deficient moral judgment to any significant degree. Accordingly, I do not attribute significant weight to this factor as a mitigating one.

[80] I accept that the misconduct took place over a relatively short period of time, but it involved the Subject Member inappropriately obtaining information about two unrelated persons, on separate occasions, where the opportunity to reconsider further misconduct clearly existed.

[81] I accept as a mitigating factor what the MR describes as the Subject Member's positive work history and devotion to his job, but this is somewhat diminished by the informal disciplinary action the Subject Member received in June 2011, which was, generously, treated as an episode involving excessive use of force during a domestic dispute.

[82] To a limited extent, I accept as a mitigating factor the Subject Member's admissions as indicative of his acceptance of responsibility and accountability for his actions. However, in his testimony, I did not observe the Subject Member fully and without reservation acknowledge the serious nature of his misconduct. It is noteworthy how long it took the Subject Member to even mention Ms. A in his testimony. The lack of insight and deep remorse noted by Dr. S were apparent during the Subject Member's testimony.

[83] The Subject Member's expression of willingness to rehabilitate must be considered mitigating, but my acceptance of it is tempered by his past abandonment of treatment.

[84] My decision to deny the Subject Member's stay application, on the basis of unreasonable delay, speaks for itself in terms of the months of delay the Subject Member experienced between my appointment as Conduct Board and his receipt of the *Notice of Conduct Hearing* and the investigative materials. He has remained on paid suspension throughout. As noted above, the Subject Member's first representative agreed to the initial hearing date of January 24, 2017. The adjournment of the hearing to its eventual commencement on September 11, 2017, mainly reflected the time granted the CAR to respond to Dr. H's report, a report only filed on March 22, 2017. While the present conduct management system should operate in an expeditious manner, it

must respect the principles of procedural fairness, which may sometimes include acceptance of a late expert report submitted by recently retained counsel and the granting of suitable adjournments to permit the other party to respond to that report.

[85] In the case of the Subject Member, the time required to complete this conduct hearing process cannot operate as a mitigating factor, where the MR now proposes that a further year of psychotherapy be provided to the Subject Member, further reports be submitted to this Conduct Board, and a decision on the ultimate conduct measures only then be made.

[86] I find a number of aggravating factors to be present, including:

- The fact that two different citizens were improperly contacted using unauthorized information
- The Subject Member's knowledge of the vulnerable personal circumstances being experienced by Ms. A at the time of the misconduct
- The Subject Member's knowledge of the under-age status of Ms. A, who was immediately troubled by "flirty" communications from a forty-year-old male
- The Subject Member's knowledge of Ms. A's status as a complainant in a sexual assault complaint, and therefore the acutely inappropriate nature of the text correspondence involving sexual images and connotations
- The Subject Member's status as a person in authority when he chose to engage in communications with not only Ms A but also with Ms B
- The Subject Member's repeated requests for images of Ms. A, including potentially in yoga pants and a bathing suit
- The element of breach of trust present, given that the Subject Member exploited his position as a police officer to gain Ms. B's cellular number, and used information

gathered for legitimate investigative purposes to further his discreditable conduct with both Ms. A and Ms. B

- Prior informal discipline imposed in 2011, albeit for a different type of misconduct that involved the Subject Member's ex-wife
- Even if no discipline was imposed upon the Subject Member, and carrying limited aggravating weight, the fairly recent loss of his present partner's RCMP employment for her misuse of an internal messaging system

CONCLUSION

[87] Pursuant to subsection 25(2) of the *CSO (Conduct)*, this decision takes effect as soon as a copy of it is served on the Subject Member.

[88] I have considered the range of conduct measures for a contravention under section 4.6 of the Code of Conduct, where there is a deliberate breach of a citizen's privacy through unauthorized accessing of personal information maintained in an RCMP system. As a stand-alone contravention, I view the range of potential measures as highly influenced by mitigating and aggravating factors; therefore, they span from a formal reprimand and a modest to significant forfeiture of pay.

[89] Discreditable conduct that contravenes section 7.1 of the Code of Conduct, involving inappropriate personal texting by an investigator with a traffic violator would ordinarily attract non- dismissal conduct measures, whereas extraordinarily inappropriate communications with a complainant would, subject to aggravating and mitigating factors, fall in a range from a severe forfeiture of pay and other measures that sufficiently address public confidence and other important interests, to loss of employment.

[90] The MR has proposed that the issue of the Subject Member's retention could be put over to a further decision by this Conduct Board, with an immediate order issued for the Subject Member to undergo one year of psychotherapy, involving frequent treatment sessions and specific therapeutic elements proposed by Dr. H, and canvassed in cross-examination with Dr. S.

At the end of that year of treatment, further expert reports would be submitted to this Conduct Board, commenting, among other subjects, on the efficacy of the treatment. I would then render an ultimate, final conduct measure or measures. I decline to pursue this option, as it does not accord with the expeditious resolution of conduct matters that is one of the central obligations and priorities of the conduct system. It was open to the Subject Member to obtain appropriate treatment from the time his misconduct took place (January and February 2015), and then come before this Conduct Board with evidence concerning his rehabilitation. The notion that, over the next year, the Subject Member's paid employment could continue (while he remains further suspended or restricted to highly supervised administrative duties) is not reasonable.

[91] The MR has submitted other disciplinary decisions that arose in other regulated professions where, he submits, the severity of the misconduct far exceeds the misconduct established against the Subject Member, and yet loss of employment did not result. I have carefully considered these cases, but I take the view that loss of employment may be proportionate even where a case does not involve the worst type of employee or an employee committing the worst type of misconduct.

[92] The powers granted a police officer are considerable; the public justifiably expects members of the RCMP to observe the highest ethical and professional standards. This necessarily includes the bedrock expectation that members shall only act to protect the health and safety of Canada's youth, and shall never deliberately and repeatedly exploit any vulnerable young person. Retention of the Subject Member would clearly imperil the public's confidence in the Force.

[93] Having considered the nature and circumstances of the four contraventions, as well as the aggravating and mitigating factors in this case, I find the following to be the proportionate conduct measure to be globally imposed upon the Subject Member for Allegations 1, 2, 3 and 4: Under paragraph 45(4)(b) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, I direct the Subject Member to resign from the Force, and in default of resigning within 14 days after being directed to do so, I impose dismissal as the conduct measure for the Subject Member.

[94] The parties may file an appeal of this decision to the Commissioner, as provided for under the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10.

November 8, 2017

John A. McKinlay

Conduct Board