



ROYAL CANADIAN MOUNTED POLICE

IN THE CONDUCT MATTER PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "F" Division

(Conduct Authority)

and

Constable Jonathan Tremblay

Regimental Number 60681

(Subject Member)

Conduct Board Decision

Inspector Al Ramey, Conduct Board

October 31, 2018

Representative for the Conduct Authority, "F" Division:

Staff Sergeant Jonathon Hart

Representative for the Subject Member:

Nicole Jedlinski

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SUMMARY

A *Notice of Conduct Hearing*, pursuant to Part IV of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, was issued on January 23, 2018, by the Commanding Officer and Conduct Authority for “F” Division (Saskatchewan). The Notice contained four allegations: three of discreditable conduct, and one of unauthorized use of government equipment. Two allegations

were withdrawn and an allegation of discreditable conduct was admitted to. A conduct hearing to adjudicate the remaining allegation of discreditable conduct was held in Saskatoon, Saskatchewan, from October 16 to 18, 2018, inclusively. That allegation was not established. The allegation admitted to by the Subject Member was established and the Conduct Board ordered the Subject Member be reprimanded, transferred and pay a financial penalty of 12 days' salary.

INTRODUCTION

[1] On May 4, 2018, the Member Representative (MR) filed the Subject Member's response in which he denied the three allegations and provided some explanation. Allegation 4 had been withdrawn by the Conduct Authority Representative (CAR) prior to May 2, 2018. At the hearing, the MR and the CAR submitted an *Agreed Statement of Facts* in which the particulars for Allegation 2 were modified and consequently admitted to by the Subject Member. The CAR withdrew Allegation 3. Only Allegation 1 was contested at the hearing:

Allegation 1

On or between August 3, 2015, and August 4, 2015, at or near Meadow Lake, in the Province of Saskatchewan, [the Subject Member] behaved 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 on-duty and a member of the Royal Canadian Mounted Police (RCMP) and posted to "F" Division, in the Province of Saskatchewan.
2. On July 27, 2015, [Ms. A.] was arrested on outstanding warrants and brought to the Meadow Lake RCMP Detachment cells where she remained until August 4, 2015. Ms. [A.] was placed in cell number one.
3. You attended to the cell block area and proceeded to act in an unprofessional manner that included sexualized flirting with Ms. [A.]. While standing in front of Ms. [A.]'s cell door, you danced around in full RCMP uniform and pretended to remove your bullet proof vest. Ms. [A.] observed your flirtatious actions via the door openings that permit viewing or external access into cell number one. You then motioned via hand signals to Ms. [A.] for her to expose her breasts to you in exchange for a cigarette.
4. Ms. [A.] complied with your request and did expose her breasts to you. You observed Ms. [A.]'s exposed breasts while watching the video monitor feed of cell one. You continued to encourage Ms. [A.] to expose her breasts.
5. You later rewarded Ms. [A.] for her actions by taking her to the detachment parking garage and proceeded to give her a cigarette to smoke. Ms. [A.] did not report this incident given your status as a police officer and inherent position of authority.
6. You also provided Ms. [A.] with a lighter that you permitted her to maintain in her possession when she returned to cell number one. Ms. [A.]'s

possession of a lighter in cells not only unnecessarily jeopardized her personal safety but also that of fellow female prisoner Ms. [K.].

Allegation 2 [as amended by agreement of the MR and the CAR]

On or between January 2, 2016, and January 17, 2016 at or near Meadow Lake, in the Province of Saskatchewan, [the Subject Member] engaged 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”) and posted to “F” Division, in the province of Saskatchewan.
2. On January 2, 2016, [Ms. H.] contacted the Meadow Lake RCMP to have her intoxicated cousin removed from her property. PROS file 2016-7273 was created and the member attended the scene alongside [Constable (Cst.) A. G.]. As part of his duties, the member obtained the contact information including the personal cell phone number for Ms. [H.]. **The member obtained Ms. [H.]’s personal cell phone number from dispatch because Ms. [H.] would not open the door for the members.**
3. Later on that evening, **the member sent Ms. [H.] a text message updating her on the file, letting her know that her cousin was in custody, and then asked if there was anything else the police could do to assist her.**
4. Sometime subsequent to the above noted police file, the member sent Ms. [H.] a clothed picture of himself by text message.
5. Sometime after the above noted file and text messages between the member and Ms. [H.], the member picked up Ms. [H.] in a marked police vehicle while on-duty and drove to her personal residence.
6. The member returned to Ms. [H.]’s residence after his regular shift. The member arrived around 4am and was still in uniform, and for this reason Ms. [H.] could have perceived that he was still on duty. **The member and Ms. [H.] engaged in consensual sexual activity at this time. Ms. [H.] had been drinking, but was not intoxicated.**

[Bold in original; *sic throughout*]

THE EVIDENCE

Allegation 1

[2] The Conduct Board reviewed the entire Record and received several exhibits from the Representatives. The Conduct Board heard four witnesses: Ms. A., Ms. K., Guard W. C. and the Subject Member.

[3] The Subject Member's identity is admitted. The Subject Member was posted to Meadow Lake Detachment on December 21, 2013. It was his first posting. The Non-Commissioned Officer in Charge (NCO i/c) of Meadow Lake Detachment is a staff-sergeant.

[4] On July 27, 2015, at 1:45 a.m., Ms. A. was arrested on a Form 7 warrant and lodged in the Meadow Lake Detachment cells. She was to be sentenced on a serious matter involving drug possession or distribution. She was not happy with her plight and was often crying. The cell block guards are mandated by policy to check on the condition of the prisoners every 20 minutes. They record their observations of prisoners, as well as activities in the cell block in a Prisoner Log Record Book (the Prisoner Log). The Prisoner Log is a business record, created per RCMP policy, and contemporaneously maintained by the guards on shift. The cell block guards are employees of the Corp of Commissionaires. Guard shifts are 8 hours in length and guards are present 24 hours per day.

[5] In anticipation of attending court for her sentencing, Ms. A. was given an orange jumpsuit or coverall to wear. Beneath the coverall, she had her underwear on. Because prisoners are not allowed to wear brassieres, she was given a t-shirt for modesty. On Thursday, July 30, 2015, at 9:16 a.m., Ms. A. went to court. She returned that day at 3:50 p.m.; she was crying and angry. The Prisoner Log indicated that Ms. A. cried most of the day at court.

[6] Soon after her return from court, members came and spoke with Ms. A. She was given phone calls to her family. She was taken to the secure bay by Cst. W. A secure bay is akin to a parking garage. The outer secure bay door can be closed and locked down prior to a prisoner exiting the police vehicle and entering the cell block. She was given another phone call before

returning to her cell. Within an hour, some clothing arrived for Ms. A. and she was taken out of her cell by another constable and placed in the phone room. Within minutes after returning to her cell, she received yet another phone call from family. At 9 p.m. that evening, Ms. A. was joined by Ms. K. and, for the duration of their time at Meadow Lake cells, they shared cell 1. Needless to say, a lot occurred this day.

Description of cell block

[7] The Meadow Lake cell block is comprised of cells arranged along a linear hallway. Beginning at one end, there is the secure bay. Next to the secure bay is a kitchen, then showers, then cell 1. Cell 1 is the first of nine cells in the range. Most cells can accommodate two prisoners, with the exception of a drunk tank which can hold more. Next to cell 1 is cell 2 and so on. Cell 2 is immediately across the hall from the guard post. The remaining seven cells are arranged to the right of the guard post and on either side of the hallway. There is an emergency exit at the far end of the range. The prisoner phone room is across the hallway from the shower stall. Between the phone room and the guard post is a door that leads to the detachment. That door is opposite cells 1 and 2. Cell doors are built of heavy metal, with an upper window and a lower meal slot. The meal slot is approximately 1.5 feet from the floor and has a hinged door which folds downward and out into the hallway, allowing meal trays to be slid in. Both the window and meal slot are secured from the outside. Neither the window nor meal slot can be opened from the inside of the cell and are generally kept closed.

[8] The guard post is comprised of a desk flanked by a wall that is approximately waist height. If the guard were seated, he would likely not be seen from the hallway. If the guard stood, he could see most of the cells if he reached to look. More importantly, if he stretched and looked around a wall, he would be able to see the door to cell 1. The guard's washroom is inside the guard post.

[9] There are cameras in every cell giving a fish-eye view of the interior. There are at least four cameras along the length of the cell block, a camera in the secure bay and a camera behind the guard post. The feed from these cameras is stored in some manner and the video is available

for a period of time, in the event it is needed for investigative purposes. The guard post has a series of video monitors, one for each camera in the cell block. This allows the guard to monitor movement and ensure the safety of prisoners. There are two sets of these monitors, allowing two guards to work at the same time. For the duration of Ms. A.'s stay, there was only one guard on duty at any time.

Cell block activity

[10] The next four days were uneventful for Ms. A. and Ms. K. The Prisoner Log described them sitting, lying down, sleeping, reading or playing cards. Ms. A. was on medication and there were several notations concerning her getting appropriate medication. Police cells are boring for the prisoners. Prisoners will converse with one another by yelling between cells. If there are two prisoners in a cell, there is more of an opportunity to chat. When police enter the cell block, and especially with a new arrival, prisoners are provided some distraction from the boredom.

[11] On Saturday, August 1, 2015, at 9:05 p.m., the Subject Member brought an intoxicated female into cells. The female refused to remove her bra and was being very difficult. The NCO i/c of Meadow Lake Detachment had forbidden the wearing of bras in cells because of the safety risk to prisoners. A prisoner presumably might use a bra to hang themselves. The Subject Member decided to leave the prisoner her bra, but he asked that the guard closely monitor her. Other prisoners became aware of the kerfuffle and loudly offered their opinions to the Subject Member. Ms. A. and Ms. K. would have heard this kerfuffle. At 9:25 p.m., the Subject Member had a conversation with Ms. A. through the open door of cell 1. It is not known what they discussed.

[12] On Sunday, August 2, 2015, at 12:20 p.m., Ms. K. spoke to the guard. The Prisoner Log shows: "apparently her lawyer is to contact S/Sgt regarding "sexual harassment"". This was not explored by either Representative and is included for context. Not much happened in the cell block thereafter, with the Prisoner Log showing Ms. A. sleeping, lying down, playing cards, etc.

[13] The Subject Member worked from July 30 to August 5, 2015. The Subject Member and senior Cst. B. were working together. According to the Prisoner Log, they appeared in the cell block at various times with prisoners and dealing with matters in the cell block.

[14] On Monday, August 3, 2015, the Subject Member began his shift at 4 p.m. and was to work until 4 a.m. Guard W. C. also started his shift at 4 p.m. There were nine prisoners in the cell block, including Ms. A. and Ms. K. They occupied cells 1, 2, 3, 4, 5 and 8. All cells opposite the guard post were occupied. The time of concern for this allegation is between 4 p.m., the Subject Member's shift start, and midnight, the time the Subject Member takes Ms. A. for a cigarette in the secure bay.

[15] I have reviewed witness statements taken during the investigation and heard testimony at the hearing. I have referred to the Prisoner Log. Neither the Subject Member's police notes for the evening, his police files generated for the shift, nor his police vehicle GPS locations are on the Record or were offered in evidence during the hearing.

[16] At 3:11 p.m., Ms. A. received two acetaminophen pills from the guard. Ms. A. was noted to be lying down or sitting or playing cards. Ms. A. received another two acetaminophen pills at 5:45 p.m. At 7:20 p.m., Guard W. C. removed Ms. A.'s personal effects and street clothing from a storage locker and placed them in the hallway in preparation for her departure the next day. Guard W. C. noted that her purse had been seized by investigators and subsequently replaced into the storage locker with her effects. His notation mentions that her purse had "a lot of things in it". No inventory of the purse was placed in evidence; it was likely not done.

[17] Until this point, the Prisoner Log did not record a police officer entering the cell block since the 4 p.m. shift start. Although Guard W. C.'s notes were comprehensive, the Subject Member could have entered the cell block and not be documented in the Prisoner Log.

[18] At 8:00 p.m., the Subject Member began providing the prisoners with showers. Ms. A. was first to receive a shower. Since she was to travel the next day, she would have changed out of her orange coverall and into her street clothes for the trip. While the showers were being administered, the Subject Member was busy moving prisoners to and from their cells and the

shower. Guard W. C. was busy documenting the prisoner movements. During the shower parade, Ms. K. and Ms. A. were noted by Guard W. C. on several occasions to be sitting in their cell. At 9:35 p.m., the showers were done. At 9:50 p.m., the Subject Member placed Ms. A. in the phone room for a phone call. This was at her request. She returned to her cell at 9:55 p.m.

[19] Guard W. C. documents his activities in the cell block as cleaning up after the showers. At 10:45 p.m., he documented leaving the cell block when he took the payroll to the front counter. This action appeared to take a minute or less because, at 10:46 p.m., he entered a note concerning the dishwasher. Cst. B. came into the cell block at 10:50 p.m. and dealt with a prisoner for five minutes. At 11:06 p.m., Ms. A. was documented as sitting, then lying down, then asleep by 11:35 p.m. At midnight, Guard W. C. finished his shift and he was replaced by Guard S. It was at midnight that the Subject Member took Ms. A. from her cell to the secure bay to have a cigarette. There is nothing unusual about the timing of this cigarette. Members on the night shift fit activities in when they can. Prisoners that sleep most of the day in their cells are easily roused at night.

Reasons for the cigarette

[20] This is where the witness accounts diverge. The Subject Member suggests that, at some point in the shift, Ms. A. had indicated that she wanted to talk to a member. He felt that, since she was going to jail the next day on what he described as a significant drug conviction, it may be worthwhile speaking with her. He felt that perhaps she was prepared to provide information which could lead to a fruitful investigation. During the cigarette break in the secure bay, she was not forthcoming with drug information, she simply enquired about her eldest son. This has an air of reality, in that she distrusted the Subject Member, had been sentenced to a lengthy period of incarceration, and was concerned about her son.

[21] The Subject Member consistently denied any wrongdoing in his statements to the Moose Jaw Police investigators, despite being interrogated by a very proficient serious crime investigator using many interrogation tricks. The Subject Member persisted in his denial in his oral testimony before the Conduct Board. His story was consistent for the most part.

[22] In her statement to police investigators and in her testimony before the Conduct Board, Ms. A. stated that the Subject Member, in what can be best described as explicit body language, encouraged her to expose her breasts to him in exchange for the opportunity to smoke a cigarette. She described him doing a striptease-type dance, unzipping his ballistic vest and feigning exposing his chest. She said he then made a 'V' with his second and middle finger, bringing it to his mouth in a 'cigarette-smoking' gesture. She understood this to mean that if she exposed her breasts to the Subject Member, he would allow her to smoke a cigarette. Ms. A. is a smoker. She stated that no words were spoken. She stated that she observed the Subject Member's gyrations through a crack around the closed meal slot of her cell door. As previously described, the door to cell 1 had a window and a meal slot. I find that, for the duration of the period in question, both the window and meal slot were closed from the outside and could not be operated by the prisoners.

[23] For Ms. A. to observe the Subject Member in the hallway, she would have had to sit or squat down to about 1.5 feet from the floor and peer through the narrow crack she described around the meal slot door. Ms. A. stated that, during the Subject Member's flirtatious dance, he positioned himself in the hallway adjacent to cell 1, approximately 4 feet away.

Opportunity to invite exposure

[24] In her testimony, Ms. A. said that the request for exposure occurred after the showers, so after 9:25 p.m. She stated that she waited between one and two hours to smoke. This narrows the window of opportunity for the exposure invitation from 9:25 p.m. until 10 p.m. or 11 p.m. The Subject Member would have done this dance when Guard W. C. was either absent or busy working somewhere on the cell block. Otherwise, the Subject Member would risk being seen. Guard W. C. said he would document any unusual activity by a prisoner or in the cell block. He was the head guard and held the rank of sergeant. His guard duties took him to the cell block kitchen and shower; but these are not large spaces and he would be mere steps from re-entering the cell block hallway just next to cell 1.

[25] The Subject Member would have done the flirtatious dance in view of the eight other prisoners on the block. All the cells along the side opposite the guard post were occupied. Ms. A. suggested that she could see through the meal slot. Presumably the other prisoners on her side of the range could see through their meal slots, or one cell may have had a window or meal slot open. The Subject Member would have been at risk of Cst. B. entering the cell block unexpectedly during his dance. The door to enter the cell block was placed immediately opposite to cells 1 and 2.

[26] The greatest risk of detection in the cell block was the constant video monitoring. The Subject Member would have done his flirtatious dance in full view of the four cameras placed along the cell block hallway. These cameras would have recorded the Subject Member's actions and stored them for a period of months. The Subject Member knew there was video surveillance and the images were stored because he had previously used this video system for impaired investigation downloads. Immediately after the flirtatious dance and invitation for Ms. A. to display her breasts, the Subject Member would have had to move from in front of cell 1 to the guard post to watch Ms. A.'s exposure on the cell video monitors. The guard post would have had to be vacated by the guard. There was a video camera in the guard post, which would have recorded the Subject Member watching the video monitors.

[27] Again, through the crack in the meal slot of her cell door, Ms. A. said that she could see the Subject Member watching her on the guard post video monitors, or at least laughing at her exposure. I previously found that anyone at the guard post would have had to stretch to see the door to cell 1. Therefore, it strains credulity that anyone could see the guard post through the cracks in the meal slot door, which presumably had a much more restricted view. According to Ms. A., the Subject Member missed her first exposure so he returned to his flirtatious non-verbal dance in front of her cell and encouraged her to repeat the exposure. There were at least two invitations and exposures before the Subject Member was apparently satisfied. Two invitations and exposures would require that the Subject Member spend more time in front of cell 1, increasing the chances of detection and further narrowing his apparent successful window of opportunity.

[28] The CAR suggested that the invitation and exposure would have taken a matter of seconds. I believe that these repetitive flirtatious dances, followed by a displacement to the video monitors, would have taken a period of minutes. The Subject Member only had a 35- to 95-minute window of opportunity, during which Guard W. C. would have been occupied or absent, to conduct his flirtatious dance undetected by the guard, other prisoners or Cst. B. The Subject Member knew that the cell block surveillance cameras recorded his every move and was stored for months. Of note, when this allegation came to light, sufficient time had passed that the cell video recordings had been purged and were no longer available.

Evidence of Ms. K.

[29] Ms. A.'s description of the incident was corroborated by her cellmate of the past few days, Ms. K. Ms. K. testified before the Conduct Board and reported seeing Ms. A. expose herself in front of the cell camera on several occasions. Ms. K. said that Ms. A. told her that it was in response to the Subject Member's invitation. Ms. K. stated that she also peered out through the crack of the closed meal slot door and saw the Subject Member flexing his bicep. She would have been cheek to cheek with Ms. A., peering through the meal slot, or they would have alternated looking through. Ms. K. stated that what Ms. A. was doing was none of her business.

[30] Ms. K. had been incarcerated with Ms. A. for a period of days and they had the opportunity to chat for many hours. As noted in the Prisoner Log, Ms. K. had advised the guard, the day before this incident, that she was going to have her lawyer contact the Staff Sergeant about a "sexual harassment". She described the next day's invitation and exposure incident to the Conduct Board as "sexual harassment".

[31] Ms. K. volunteered to the Conduct Board that, around the time of the incident, she'd had an injury that resulted in her being in a coma for several days and, as a result, she had difficulties with her memory. That said, she insisted that she recalled everything about this incident. As a witness, I found that she was quick to agree with leading questions put to her by counsel.

[32] If the Subject Member was indeed doing a flirtatious dance in front of cell 1, Ms. K. would have had to move down on the floor, up next to Ms. A. in order to see through a crack in the meal slot. It is more likely that Ms. K. was repeating what Ms. A. might have told her. I do not find Ms. K. a particularly credible witness; therefore, I give her evidence little weight.

Evidence of Mr. H.

[33] During her transport from Meadow Lake to the Pine Grove Women's Facility the next day, Ms. A. shared the prisoner van with Mr. H. In his statement to investigators, Mr. H. stated that he questioned Ms. A. on how she managed to get a cigarette at midnight the day before. Ms. A. was going to jail for several years. Mr. H. was insinuating that Ms. A. might be an informer for getting the cigarette from the Subject Member. Prison is a hard place and one doesn't want to be known as an informer. It was then that Ms. A. told him about the invitation and exposure incident. While this is hearsay, it could be seen as a "first-disclosure" by Ms. A. to Mr. H. A sexually harassing cop encouraging a woman to expose herself for a cigarette was a believable scenario for Mr. H. In fact, Mr. H. was pleased to hear such a story and stated that he'd like to use the incident as future leverage against a police officer. He stated that Ms. A. asked him not to repeat the story, saying to him: "[...] 'Fuck that.' She said, 'I'm going to use it.' That's what she told me. 'Fuck that, I'm going to use it.'" [Transcript of Mr. H.'s statement to investigators, page 20 of 42.]

[34] Mr. H. had no opportunity for independent observation of any of the contentious facts. His evidence on the invitation and exposure was hearsay and was a repetition of what Ms. A. told him. It is as believable as Ms. A's evidence and I give it little weight. His evidence on the use of the exposure to leverage a police officer has an air of reality and I accord it more weight.

Analysis of the credibility of witnesses – Opportunity for exact observation

[35] Both Representatives observed how this allegation hinges on witness credibility. There is a triumvirate of cases routinely invoked to provide a framework for witness credibility; although they are dated, they continue to be cited with approval by courts at all levels:

1. The test in *Wallace v Davis*, (1926) 31 OWN 202, is to be found at page 203:

[...] the credibility of a witness in the proper sense does not depend solely upon his honesty in expressing his views. **It depends also upon his opportunity for exact observation**, his capacity to observe accurately, the firmness of his memory to carry in his mind the facts observed, his ability to resist influence, frequently unconscious, of interest to modify his recollection, his ability to reproduce in the witness-box the facts observed, the capacity to express clearly what is in his mind [...] all these are to be considered in determining what effect to give to the evidence of any witness. [Emphasis added]

2. In *MacDermid v Rice*, (1939) R. de Jur. 208, Archambault, J. said at page 210:

[...] when the evidence of an important fact is contradictory [...] the Court must weigh the motives of the witnesses, their relationship or friendship with the parties, their attitude and demeanour in the witness box, the way in which they gave evidence, the probability of then facts sworn to, and come to a conclusion regarding the version which should be taken as the true one.

3. In *Faryna v Chorney*, [1952] 2 DLR 354, the following test was set out by the Court at page 357:

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

[36] Ms. A. spent days in a police cell with Ms. K. They both heard the Subject Member arguing with an intoxicated female prisoner over the removal of her bra on August 1. On August 2, Ms. K. declared to the guard that her lawyer was going to talk to the NCO i/c about sexual harassment. Ms. K. described the invitation and exposure incident of August 3 to the Conduct Board as sexual harassment. There was the opportunity during their time in cells to discuss all sorts of things. Ms. A. was facing a lengthy incarceration period. When she was questioned by Mr. H. as to how she obtained a cigarette from the Subject Member, she recounted the invitation and exposure scenario to deflect the risk of being suspected as an informer. Faced with Mr. H.'s

questions, Ms. A. had a neat explanation. That this was a fabrication on Ms. A.'s part is explored further below.

[37] What is most concerning about Ms. A.'s credibility was her opportunity to make the observations she said she made. She testified that she watched the Subject Member's flirtatious dance through the crack around the closed meal slot of her cell door. She testified that she was able to observe him at the guard post as well. During the hearing, the MR presented the Conduct Board with three images: cell 1's door with the window (1) open and (2) closed, and (3) a full-length image of the interior face of the cell 1's door showing the meal slot. This was of little use to the Conduct Board. However, on the electronic record disclosed by the CAR, there were additional images, close-ups of the meal slot from the interior of cell 1: one with the meal slot open and the other with it closed. These images would be the perspective Ms. A. and Ms. K. had. The image of the closed meal slot shows a black line or shadow that Ms. A. likely described as the crack around the door, through which she said she was able to look out into the cell block hallway. What was more illustrative for the Conduct Board was the image of the open meal slot which showed the meal slot door. The meal slot door is a flat, rectangular piece of metal, hinged at the bottom, opening out in the cell block hallway. The door is in fact two pieces of heavy sheet metal bonded together; the outer sheet larger than the inner by about a half inch around its perimeter. On the inside of the cell door, the meal slot is surrounded by a heavy metal frame, like a flat picture frame. When the meal slot door is closed, the smaller, inner sheet metal fits closely within the metal frame. The outer sheet metal overlaps the outside of the metal frame, by the half inch, preventing any possibility of seeing through the closed meal slot. Guard W. C. stated that the meal slot was always closed; both Ms. A. and Ms. K. agreed that the window and meal slot were closed. There was no crack to see through. There was no opportunity for Ms. A. or Ms. K. to see what they testified they saw.

[38] Given the discrepancy between the images of cell 1's door on the Record and the witness testimony, I ascribe no weight to Ms. A.'s and Ms. K.'s evidence on this point. They could not have seen the Subject Member dancing or flexing through the closed meal slot.

[39] If I am wrong, I make the following observations. Mr. H. had no opportunity to observe the invitation and exposure. His evidence was hearsay, repeating what was told to him by Ms. A. I cannot accord much weight to his statement on this point. Ms. K. admitted to a head trauma, a multi-day coma and difficulties with her memory thereafter. Ms. K. may have observed what she testified to, but it is more likely that she was repeating what Ms. A. told her. Ms. K. felt that Ms. A. was wearing an orange coverall during the incident. This is what Ms. A. testified to as well. This does not correspond with what Ms. A. was wearing after her shower, in preparation for her departure the next day (i.e., her street clothing). This causes me to ascribe less weight to Ms. K.'s evidence. Ms. A., Ms. K. and Mr. H. are acquaintances, meeting occasionally in and out of jails. They shared a strong disdain for the Subject Member, recounting that he had a bad reputation in Meadow Lake. Ms. A.'s story, given in response to Mr. H.'s queries as to why she had a cigarette in police cells, was palatable to Mr. H., who wanted to "use it" against the police later. Ms. A. did not want to be known as an informer in jail. The Subject Member consistently denied Allegation 1, but he admitted to Allegation 2. The cell block guard spent the majority of his shift in the cell block, leaving a very limited opportunity for the invitation and exposure to occur. Given the above and the certainty that the video surveillance system would record the invitation and exposure, there simply isn't an air of reality to this incident.

The lighter in cell 1

[40] Particular 6 of Allegation 1 alleges that the Subject Member allowed Ms. A. to carry a lighter into her cell. At midnight, it is not contested that the Subject Member took Ms. A. to the secure bay to smoke a cigarette. There are two versions of whence the cigarette and lighter appeared. Either the Subject Member had a package of cigarettes and a lighter on his person, or Ms. A. retrieved them from her personal effects laid out in the hallway in preparation for her departure the next day.

[41] Though cigarettes and a lighter were not listed on her prisoner record, form C-13, Guard W. C. noted that her purse had been seized for investigation and, upon its return to the effects bag, he saw that the purse was "loaded with stuff". It is not clear when the purse was seized, nor whether an inventory of its content was completed. Be that as it may, nothing hinges on this.

During the cigarette break, the Subject Member explained that he allowed Ms. A. to light her own cigarette. Ms. A. reported that the interlude was awkward as neither spoke much. The Subject Member said that he was hoping to obtain criminal drug information from Ms. A., but none was forthcoming. Ms. A. smoked one cigarette and, within 5 to 15 minutes, her sojourn to the secure bay was over. On the way back to her cell, the Subject Member testified that he directed Ms. A. to return the cigarettes and lighter to her effects. Ms. A. reported that she was able to retain the lighter which she brought into her cell and dissimulated in her underwear. Ms. K. corroborated that Ms. A. returned to their cell with a lighter.

[42] There is no indication in the Record of a lighter being found in the subsequent, inevitable searches of Ms. A., during her transport by sheriffs the next day and incarceration in the Pine Grove Women's Correctional Facility (in Prince Albert). Ms. A. and Ms. K.'s discounted testimony that they could look through the closed meal slot casts doubt on the entirety of their evidence. I find that Ms. A. did not have a lighter in her cell.

[43] The Subject Member said he hadn't provided cigarettes to many prisoners during his service. Allowing a prisoner to light their own cigarette is not a best practice, nor is asking a prisoner to simply toss a lighter back into their effects. To allow a lighter into a cell is poor prisoner handling on the Subject Member's part and would present a safety risk to the occupants of Ms. A.'s cell. If I am wrong and Ms. A. did carry a lighter into her cell, I find that it was poor performance and not sanctionable conduct.

DECISION ON THE ALLEGATIONS

Allegation 1

[44] I have reviewed the Record, heard testimony from witnesses, received and reviewed exhibits and listened to submissions from the Representatives. Particulars 3 through 6 have not been made out; therefore, I determine that Allegation 1 has not been established on a balance of probabilities.

Allegation 2

[45] Similarly, I have reviewed the Record and the amended Allegation 2. I find on a balance of probabilities that all the particulars in the allegation have been made out. I find that a reasonable person, with knowledge of all the relevant circumstances, including the realities of policing in general, and the RCMP in particular, would be of the opinion that a police officer committing the acts described in this allegation amounts to discreditable conduct. Given that the acts began while the Subject Member was in uniform, the RCMP has an interest in sanctioning his misconduct.

SANCTION

[46] The RCMP External Review Committee has articulated the definitive test for the imposition of conduct measures. This test has withstood the scrutiny of higher courts and holds that the first consideration must be the appropriate range of conduct measures applicable to the misconduct at issue. Then, the aggravating and mitigating factors must be considered. Finally, conduct measures must accurately and fairly reflect the gravity of the misconduct at issue, keeping in mind the principle of parity of sanction. In this matter, Allegation 2 was the subject of an agreement to amend the particulars, an admission by the Subject Member and a joint proposal on sanction. While I am not bound by any agreement between the Representatives, it must be given a degree of deference.

Submissions on sanction

[47] Having established Allegation 2, I considered the submissions from the Representatives.

Submissions by the CAR

[48] The CAR reiterated that this was a consensual relationship, but it existed because of the Subject Member's employment with the RCMP. The trappings of work were present: the uniform and a ride in a police car. Ms. H. may well have been under the impression that the Subject Member was on duty during their brief tryst.

Submissions by the MR

[49] The MR made a series of points to the Conduct Board to which I make the following comments:

- a. The Subject Member eventually took responsibility for his conduct.
- b. He stated that he was remorseful and apologized.
- c. No record of formal discipline was cited.
- d. I reviewed the Subject Member's performance evaluations. These official documents describe a solid performer; something the RCMP expects from all its employees.
- e. The letters of reference describe that this misconduct was out of character.
- f. The Subject Member assured the Board that this misconduct would not be repeated.

[50] The Subject Member advised the Conduct Board on how the conduct system had adversely affected him. The Subject Member has no one to blame but himself. What I failed to discern from the Subject Member's apology and letter to me was that he appreciated the harm his actions caused the Force and the victim.

Decision on sanction

[51] The Representatives made a joint proposal on sanction of a financial penalty of between 10 and 12 days' pay, a reprimand and an ordered transfer. No cases were presented to the Conduct Board setting a range of appropriate sanction. Since the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, changed in November of 2014, there is not a large volume of conduct decisions upon which to establish a range. I have made use of the *Conduct Measures Guide* for assistance in setting the modern range of sanction. While an instructive and very useful document, it is my understanding that the *Conduct Measures Guide* is a guide and I am not bound by it.

[52] The Representatives suggested that section 29 of the Guide, “Sexual Activity on-Duty – Pre-existing relationship”, is the most applicable to Allegation 2 and I agree. While the Subject Member was technically off-duty, he began the misconduct while in RCMP uniform and he may have left Ms. H. with the impression that he was on-duty. They had met several weeks earlier and exchanged a series of text messages, including images of one another. In the modern context, this could be construed as a pre-existing relationship. The normal range would consist of 11 to 15 days’ pay, whereas the mitigated range would vary between 7 to 10 days’ for an isolated incident, with an aggravated range of 16 to 30 days’ where there was potential to be caught in the act in uniform, or there were several incidents. I acknowledge the fact that, prior to the hearing into this matter, the Subject Member admitted to the modified Allegation 2, thus avoiding the displacement of additional witnesses and saving the RCMP the expense of a protracted hearing. Therefore, a financial penalty in the normal range is appropriate in this case.

[53] For engaging in discreditable conduct, contrary to section 7.1 of the Code of Conduct, I impose the following conduct measures:

- a. a financial penalty of 12 days’ pay;
- b. the Subject Member’s ability to continue duty in Meadow Lake Detachment has been compromised; as a result, I am ordering that he be transferred at the discretion of the Commanding Officer of “F” Division;
- c. a reprimand.

[54] The Subject Member has been sanctioned for a serious breach of the Code of Conduct. He must comport himself with the strictest professionalism and in all activities beyond reproach. If he appears before a Conduct Board again, I suggest that the sanction will be less lenient. I hope that the Subject Member has learned a lesson from this difficult experience. I hope that he will go on to be a productive member of the RCMP.

[55] Either party may appeal this decision by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.11 of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10.

October 31, 2018

Inspector A.O. Ramey

Date

Conduct Board