



ROYAL CANADIAN MOUNTED POLICE

Conduct Hearing in the matter of the

Royal Canadian Mounted Police Act, RSC (1985) c. R-10

BETWEEN:

Commanding Officer, "C" Division

Conduct Authority

and

Constable Dany Noël, Regimental No. 56001

Subject Member

Conduct Board Decision

Josée Thibault

August 5, 2019

Mr. Denys Morel, for the Conduct Authority

Ms. Sabine Georges, for the Subject Member

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SUMMARY OF DECISION

The Subject Member admitted to engaging in discreditable conduct pursuant to section 7.1 of the Royal Canadian Mounted Police Code of Conduct. The Conduct Board found that allegation 3 was established on a balance of probabilities. It is in connection with a family violence incident during which the Subject Member used force and caused injuries to his spouse. The Board also accepted the joint proposal on conduct measures submitted by the parties and imposed the following measures:

1. a reprimand;
2. a financial penalty of 160 hours, that is 20 days of pay;

3. a direction to attend counselling for alcohol abuse or any other counselling considered appropriate by the Health Services Officer for the Division or his delegate;
4. a direction to attend training identified by the Conduct Authority with respect to intimate partner violence within a timeframe specified by the Conduct Authority; and
5. ineligibility for promotion for a period of two years.

INTRODUCTION

[1] The Notice of Conduct Hearing was signed by the Commanding Officer, “C” Division, on October 26, 2018, and was served on the Subject Member on November 2, 2018. The notice of hearing contains four allegations relating to incidents of domestic violence between the Subject Member and his spouse, contrary to section 7.1 of the RCMP Code of Conduct.

[2] On March 15, 2019, the Subject Member filed a motion for a stay of proceedings with respect to allegation 1 on the Notice of Hearing. In fact, the Subject Member was seeking to set aside the decision rendered by the delegated officer in which he granted an extension of the limitation periods under subsection 47.4(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (RCMP Act). Before responding to the motion, the Conduct Authority notified the Board on April 24, 2019 that it wanted to withdraw allegation 1 from the notice of hearing. Consequently, the Subject Member’s motion was moot, and on April 30, 2019, the Board allowed the Conduct Authority’s motion to withdraw allegation 1 from the Notice of Hearing.

[3] On June 6, 2019, the parties notified the Board that a contested hearing was no longer required because they had reached an agreement on the allegations and on a joint proposal on conduct measures. The Board therefore cancelled the conduct hearing scheduled for the week of June 24, 2019.

[4] On July 3, 2019, the Board received the parties’ joint proposal in which they requested the removal of allegations 2 and 4 from the Notice of Hearing, and an amendment of the particulars in allegation 3, to which the Subject Member had admitted. The parties also submitted a joint proposal on conduct measures.

[5] This decision accepts the joint motion to amend the particulars in allegation 3. It also contains the Board’s findings with respect to establishing allegation 3 by the Conduct Authority, and the conduct measures suggested by the parties in the joint proposal.

DECISION ON THE JOINT MOTION

Removal of allegations from the Notice of Hearing

[6] Notwithstanding my appointment as Conduct Board to decide on the allegations against the Subject Member, the Conduct Authority has discretion to withdraw allegations from the Notice of Hearing.¹

[7] Consequently, I am granting the Conduct Authority's request to withdraw allegations 2 and 4 from the Notice of Hearing. I will therefore not render a decision on those allegations. I will also not render a decision on allegation 1, which was withdrawn by the Conduct Authority and approved by the Board on April 30, 2019.

ALLEGATION

[8] The Subject Member admits to allegation 3, which reads as follows:

[Translation] On or about September 1, 2016, and on or about December 30, 2016, in or near Drummondville, Quebec, [Subject Member] engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct.

SUMMARY OF FACTS

[9] The parties submitted the following facts, which replace the particulars in allegation 3 and were admitted by the member:

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP) assigned to "C" Division in the Province of Quebec.
2. You had been in an intimate relationship with [Ms. X] since June 2014.
3. On the evening of the incident, [Ms. X] was in your residence in Drummondville and you both had been drinking alcohol.

¹ *E Division Commanding Officer and Constable O'Brien*, 2017 RCAD 9.

4. At approximately 11:00 p.m., you and [Ms. X] were getting ready to go to bed. You went into your bedroom and started arguing about photos of your ex-spouse and your children which were in a drawer in your desk. You reacted aggressively, and took the drawer out of the desk. You took the drawer into the bathroom, and threw a glass frame containing a photo into the bathtub. You broke it. You then returned to the bedroom with the drawer and you threw it at the wall.
5. You scared [Ms. X] terribly, and she wanted to leave your residence. She went into the bathroom to gather her personal effects. You shouted that she would not be going anywhere, that she was in no condition to leave, and you told her to go to bed. [Ms. X] went to the kitchen to get her cellphone charger, and you took it out of her hands, threw it to the floor and broke it.
6. You grabbed [Ms. X] by the arm to prevent her from leaving your residence. You took her to a bed in a bedroom and positioned yourself on [Ms. X] and squeezed her arms, bruising her. She struggled and repeatedly told you to let her go.
7. You injured [Ms. X] when you tried to stop her from leaving your residence and frightened her.

[French original quoted verbatim]

[10] I have analyzed the information in the Investigation Report related to allegation 3, the Subject Member's response, and Ms. X's new statement dated April 3, 2019. I therefore accept the parties' proposal to amend the particulars in allegation 3 with those in the joint motion.

DECISION OF THE ALLEGATION

[11] After reviewing the evidence on the record, I must now decide whether allegation 3 was established on a balance of probabilities.

Principle of discreditable conduct – section 7.1 of the Code of Conduct

[12] Discreditable conduct under the Code of Conduct is based on a test that considers how a reasonable person in society, with knowledge of all the relevant circumstances including the realities of policing in general, and the RCMP in particular, would view the behaviour.

[13] To determine if the allegations were established on a balance of probabilities under section 7.1 of the Code of Conduct, I applied a test similar to that developed by the RCMP External Review Committee in recommendation (1991), 4 A.D. (2d) 103, with respect to disgraceful conduct pursuant to subsection 39(1) of the *Royal Canadian Mounted Police Regulations* (1988), SOR/88-361, in force prior to the legislative reform of November 28, 2014.

[14] The three elements of the test are:

1. The Conduct Authority must prove the actions related with the alleged behaviour and the identity of the member who committed these acts.
2. The Board must conclude that the member's behaviour is likely to discredit the Force.
3. The Board must determine whether the behaviour is sufficiently related to the member's duties and functions to provide the Force with a legitimate interest in disciplining the member.

[15] Given the Subject Member's admissions in his response to the allegation and the documentary evidence on file, I find that the identity of the member and the actions related to the allegation have been established.

[16] I also find that the Conduct Authority established that, during an argument with his spouse, the Subject Member reacted aggressively by throwing a glass frame containing a photo into the bathtub and breaking it. He also threw a drawer at the wall. Frightened, his spouse wanted to leave the residence. The Subject Member then took his spouse's cellphone charger, threw it to the floor and broke it. Then, to prevent her from leaving the residence, he held her on the bed in a bedroom by positioning himself on top of her. He wounded her by squeezing her

arms and bruising her. His spouse struggled and repeatedly asked the Subject Member to release her.

[17] I would reiterate that RCMP members play an important role in preventing domestic violence because they are called upon daily to intervene in such situations to ensure the safety of those affected. Whether on duty or on leave, members must think of the impact of their actions and behaviour in order to maintain public trust and confidence. In this case, the Subject Member's behaviour towards his spouse was completely unacceptable. The public would be disappointed because it expects the Subject Member to act in an exemplary manner and to uphold the RCMP's core values such as honesty, integrity, professionalism, compassion, accountability and respect.

[18] Therefore, I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the member's behaviour in allegation 3 as likely to discredit the RCMP. Finally, his behaviour is related to his duties and functions as an RCMP member, and conduct measures are necessary.

[19] Allegation 3 was established on a balance of probabilities.

DECISION ON CONDUCT MEASURES

Analysis of conduct measures

[20] The RCMP External Review Committee decided that the Board's analysis of conduct measures had to be carried out in three stages. First, the Board had to establish the appropriate range of conduct measures. It then had to take into account the aggravating and mitigating factors in order to determine the seriousness of the misconduct. Finally, it had to impose a fair and equitable conduct measure proportionate to the seriousness of the misconduct at issue while taking into account the principles of parity of the sanction and deterrence.

Range of disciplinary measures

[21] In the joint proposal, the parties stated that, under the *Conduct Measures Guide, 2014* (the Guide), the range of conduct measures imposed in a case of domestic violence involving the use of force causing injury warrants a sanction ranging from the forfeiture of 15 days' pay to dismissal. I agree with this analysis. In addition, I would like to point out that, according to the Guide, the Subject Member's misconduct is also a serious case involving gratuitous and unprovoked violence: "Assaults involving a member's spouse or children should be considered an aggravating factor, considering the vulnerability of the victims"

Aggravating factors

[22] I accept the following aggravating factors submitted by the parties:

1. The Subject Member has record of previous discipline related to an incident relating to his integrity.
2. The Subject Member is responsible for having caused injury to Ms. X and caused her to fear for her safety. His conduct is the equivalent of a criminal offence and is inconsistent with the RCMP's operational objectives as set out in chapter 2.4 of the *Operations Manual* entitled *Violence/Abuse in Relationships*. Among other things, it states that "Violence/abuse in relationships investigations are a high priority and will be thoroughly investigated and handled expeditiously, maintaining the safety of those involved."

Mitigating factors

[23] I accept the following mitigating factors:

1. The Subject Member accepts responsibility, admits to allegation 3, and acknowledges that his conduct was inappropriate.
2. The Commanding Officer, "C" Division, is no longer seeking the Subject Member's dismissal, and he will be reinstated in accordance with section 23 of the *Royal Canadian Mounted Police Regulations, 2014* (SOR/2014-281).

3. This resolution means that a vulnerable witness will not have to testify, demonstrating the Subject Member's willingness to resolve the matter.
4. The Subject Member has a good record of service.
5. The Subject Member has the support of his supervisor to return to work.

Appropriate sentencing

[24] In accordance with paragraph 36.2(e) of the *Royal Canadian Mounted Police Act*, the conduct measures must be proportionate to the nature and circumstances of the contravention and, where appropriate, they are to be educative and remedial rather than punitive.

[25] In support of the joint proposal on the requested conduct measures, the parties submitted two previous RCMP Conduct Board decisions dealing with family violence. In both decisions, the Board accepted the parties' joint proposal on conduct measures.

[26] In the matter of *Commanding Officer of National Division and Constable Wyant*, 2016 RCAD 4, the Subject Member admitted, among other allegations, that he had pushed his spouse and prevented her from calling 911 when she feared for her safety. The Subject Member faces criminal charges and entered into a recognizance to keep the peace for a period of one year pursuant to section 810 of the *Criminal Code*, R.S.C. (1985), c. C-46. The Board agrees that the incident of domestic violence was a minor case and accepts a recommended sanction of one to two days' forfeiture of pay. Considering all of the allegations, the Board accepted the parties' joint proposal and imposed a sanction including a forfeiture of 25 days' pay, 20 days of annual leave, a warning and a recommendation to undergo therapy.

[27] In the matter of *Commanding Officer of "D" Division and Constable El Aste*, 2018 RCAD 18, the Subject Member admitted to two allegations of family violence. In the first allegation, the Subject Member grabbed his spouse following a family dispute and pushed her out of the house. In the second allegation, the Subject Member, in the presence of the children, approached his spouse with his hand raised in a threatening manner. He backed off when his spouse said she would call the police if he touched her. The spouse feared for her safety and left

the residence. Criminal charges were laid against the Subject Member, and he entered into a recognizance to keep the peace for a period of one year pursuant to section 810 of the *Criminal Code*, R.S.C. (1985), c. C-46. The parties alleged that the recommended conduct measures in a routine case involving relatively minor use of force was 3 to 10 days' forfeiture of pay. Considering the mitigating and aggravating factors, the Board accepted the joint proposal and imposed a global sanction of 15 days of annual leave.

[28] Notwithstanding these decisions, the Board has discretion to impose more severe discipline for cases involving similar facts. This discretion is limited, however, when a joint disciplinary proposal is submitted to the Board by the parties as in this case. As a general rule, in order to reject the proposal, the Board must demonstrate that the proposal is contrary to public interest.

[29] The threshold for the public interest test is very high. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada states in paragraph 34 that a joint proposal should not be rejected so readily because:

“...Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.”..

[30] The public interest test was also adopted in the context of professional discipline in *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 [*Rault*] as well as in the RCMP Commissioner's decision *Constable Coleman and Appropriate Officer, "F" Division*, (2018) 18 A.D. (4th) 270 (available in English only). In *Rault*, the joint proposal must be seriously considered by the Board unless it is unsuitable, unreasonable or not in the public interest.

Conduct Authority's Comment

[31] In the joint proposal, the Conduct Authority added the following comment, which I strongly support:

[Translation]

“Subject to the Board’s decision on the joint proposal in this case, the Disciplinary Authority, the Commanding Officer of “D” Division, expects the Subject Member to demonstrate exemplary conduct in the future. This joint proposal represents an opportunity for the Subject Member to pursue his career while respecting the values of the RCMP and the standards of conduct imposed by the Code of Conduct. Any future contraventions will be treated seriously by the Subject Member’s supervisors and disciplinary authorities and may lead to the Subject Member’s dismissal.” [French original quoted verbatim]

CONCLUSION

[32] After reviewing the evidence on the record, the nature of the Subject Member’s misconduct, the aggravating and mitigating factors, and the authorities in support of the conduct measures, I conclude that the joint proposal on conduct measures is not unsuitable, unreasonable or contrary to the public interest.

[33] I therefore accept the joint proposal on conduct measures, and I am imposing the following measures:

1. a reprimand;
2. a financial penalty of 160 hours, that is 20 days of pay;
3. a direction to receive counselling for alcohol abuse or any other counselling considered appropriate by the Health Services Officer for the Division or his delegate;
4. a direction to attend training identified by the Conduct Authority with respect to intimate partner violence within a timeframe specified by the Conduct Authority; and
5. ineligibility for promotion for a period of two years.

[34] This decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of this decision on the Subject Member (section 45.11 of the *RCMP Act*; section 22 of the *Commissioner’s Standing Orders (Grievances and Appeals)*, SOR/2014-289).

August 5, 2019

Josée Thibault

Date

Conduct Adjudicator