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ROYAL CANADIAN MOUNTED POLICE

In the conduct matter pursuant to

the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10

BETWEEN:

Commanding Officer, "C" Division

Conduct Authority

and

Constable Kane Von Kramer Oré, Regimental Number 50969

Subject Member

Conduct Board Decision

Josée Thibault

March 12, 2020

Denys Morel and Staff Sergeant Chantal Le Dû, for the Conduct Authority

Sabine Georges and Daniel Pinsky, for the Subject Member

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SUMMARY OF DECISION

Constable Von Kramer Oré (Constable Kramer) faces five allegations of contravention of the Code of Conduct of the Royal Canadian Mounted Police. Four allege that Constable Kramer engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct. The fifth alleges that Constable Kramer failed to act with integrity, fairness and impartiality by abusing his authority, power or position, contrary to section 3.2 of the Code of Conduct. This matter involves

a personal dispute between Constable Kramer and his former spouse in which he identified himself to partner agencies as a member of the Royal Canadian Mounted Police.

Following a contested hearing, the Conduct Board established two of the five allegations. Given the nature of the two allegations established and the similarity of the events described, the Board imposed the following global conduct measures:

- a. a financial penalty equivalent to 40 days of Constable Kramer's pay; and
- b. ineligibility for promotion for a period of two years from the date of Constable Kramer's reinstatement.

INTRODUCTION

[1] On March 12, 2019, the Commanding Officer, “C” Division, by Notice to the Designated Officer, requested a conduct hearing in this matter. On March 14, 2019, I was appointed to the Conduct Board under subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMP Act].

[2] The Notice of Conduct Hearing was signed by the conduct authority on March 26, 2019, and was served on Constable Kramer with the investigative file on April 9, 2019. The Notice contained five allegations. Four alleged that Constable Kramer had engaged in discreditable conduct contrary to section 7.1 of the Code of Conduct of the RCMP. The fifth allegation stated that Constable Kramer failed to act with integrity, fairness and impartiality by abusing his authority, power or position, contrary to section 3.2 of the Code of Conduct.

[3] The particulars of the contraventions refer to a personal dispute between Constable Kramer and his former spouse, Ms. I.V., after they separated more than a decade ago. The dispute intensified from July 9 to 24, 2018, when Constable Kramer refused to sign a letter of consent for Ms. I.V. to travel to the Dominican Republic for four weeks with their then 11-year-old son. He refused because Mrs. I.V. was refusing to sign, before her departure, a new family agreement that included a decrease to his monthly support payments for his son.

[4] On May 22, 2019, Constable Kramer provided his response to the Notice of Hearing, pursuant to subsection 15(3) of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291.

[5] The hearing was held in Brossard, Quebec, from October 29 to November 1, 2019. Eight people testified, including Constable Kramer. An oral decision on the allegations was rendered on November 13, 2019. Two of the five allegations were established and an oral decision on conduct measures was rendered on November 15, 2019.

[6] Under subsection 45.1(7) of the RCMP Act, the Conduct Board issued the following publication ban on its own initiative at the hearing:

[Translation]

No person shall publish, broadcast or transmit to the public any information contained in the documents filed with the Conduct Board or any information heard at this hearing that could identify the member's son. This includes oral and written decisions rendered by the Board in these proceedings as well as hearing transcripts.

ALLEGATIONS

[7] The five allegations before the Conduct Board are as follows:

[Translation]

Allegation 1

Between July 9 and 23, 2018, inclusively, in or near Montréal, in the province of Quebec, Constable Kane Von Kramer Oré engaged in discreditable conduct contrary to section 7.1 of the Code of Ethics.

Particulars of the contravention

Particulars 1 to 6 apply to all five allegations.

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to "C" Division headquarters in the province of Quebec.
2. You had joint custody of your son with Ms. I.V. and made support payments to Ms. I.V. for your son.
3. You agreed in 2016 that each parent would spend one month of summer vacation with your son.
4. On March 1, 2018, you confirmed with Ms. I.V. by email that the summer vacation would be four weeks as in the past and that she would have the period from July 23, 2018, to August 20, 2018.
5. In June and July 2018, you contacted Ms. I.V. by email to ask her to agree to an informal settlement for a support payment adjustment.
6. On July 9, 2018, you began sending Ms. I.V. emails and text messages requesting that she agree to an informal settlement for a decrease in support payments; otherwise, you would not sign the authorization to travel to the Dominican Republic.
7. Beginning on July 17, 2018, your blackmail escalated and you sent a text message to Ms. I.V. stating that the Canada Border Services Agency (CBSA) had been advised that your son was not authorized to travel; referring to the travel authorization, you wrote, among other things, "You will not get it unless you resolve our situation". You continued your

blackmail by informing Ms. I.V. that your son would be turned back at the border.

8. On July 23, 2018, using your personal email address, you sent an email with the subject line “Important Alert: child leaving country without the authorization of both parents”. You sent the email to Ms. I.V., the Service de Police de la Ville de Montréal (SPVM), the Department of Homeland Security (DHS) and the CBSA.

9. On July 24, 2018, Ms. I.V. was about to cross the American border by car with her family. Ms. I.V. and your son were denied entry into the United States.

10. Ms. I.V. was detained by the American authorities for a number of hours, she was questioned, and her photograph and fingerprints were taken.

11. Your conduct towards Ms. I.V. and her family was inappropriate and caused them additional stress and expenses.

Allegation 2

Between July 23 and 24, 2018, inclusively, in or near Montréal, in the province of Quebec, Constable Kane Von Kramer Oré demonstrated a lack of integrity, fairness and impartiality by abusing his authority, power or position in contravention of section 3.2 of the Code of Conduct.

Particulars of the contravention

Particulars 1 to 6 of allegation 1 apply to this allegation.

7. On July 23, 2018, using your personal email address [redacted], you sent an email with the subject line “Important Alert: child leaving country without the authorization of both parents”. You sent the email to Ms. I.V., the SPVM, the DHS and the CBSA.

8. Your email stated that your employer was the RCMP.

9. On July 23, 2018, at approximately 12:20 p.m., you forwarded the email to Peter Mercaldi, the supervising officer at U.S. Customs and Border Protection.

10. On July 24, 2018, you spoke with Mr. Mercaldi and told him that you were a police officer.

11. On July 24, 2018, Ms. I.V. and your son were denied entry into the United States.

12. You lacked integrity by identifying yourself as a police officer in a personal situation.

Allegation 3

Between July 23 and 24, 2018, inclusively, in or near Montréal, in the province of Quebec, Constable Kane Von Kramer Oré engaged in discreditable conduct contrary to section 7.1 of the Code of Conduct.

Particulars of the contravention

Particulars 1 to 6 of allegation 1 apply to this allegation.

7. On July 23, 2018, using your personal email address, you sent an email with the subject line “Important Alert: child leaving country without the authorization of both parents”. You sent the email to Ms. I.V., the SPVM, the DHS and the CBSA.

8. Your email stated that your employer was the RCMP.

9. On July 23, 2018, at approximately 12:20 p.m., you forwarded the email to Peter Mercaldi, the supervising officer at U.S. Customs and Border Protection.

10. On July 24, 2018, you spoke with Mr. Mercaldi and told him that you were a police officer.

11. You identified yourself as an RCMP employee and a police officer to the American authorities to gain an advantage over Ms. I.V. in a personal dispute.

12. Ms. I.V. and your son were denied entry into the United States.

13. Your actions were inappropriate.

Allegation 4

Between July 23 and 24, 2018, inclusively, in or near Montréal, in the province of Quebec, Constable Kane Von Kramer Oré engaged in discreditable conduct contrary to section 7.1 of the Code of Conduct.

Particulars of the contravention

Particulars 1 to 6 of allegation 1 apply to this allegation.

7. On July 23, 2018, using your personal email address, you sent an email with the subject line “Important Alert: child leaving country without the authorization of both parents”. You sent the email to Ms. I.V. and partner agencies of the RCMP, such as the SPVM, the DHS and the CBSA.

8. Your email stated that your employer was the RCMP, and it contained false, misleading information such as the following:

- (a) [Translation of the French translation] “Since early 2018, Mrs. I.V. has been repeatedly advised to take the appropriate steps (mediation, lawyer, court) to regularize her legal status in the joint custody of our son. . . .”

(b) [Translation of the French translation] “I am not aware of the airport or flight in the United States from which Ms. I.V. plans to travel. . . .”

9. On July 24, 2018, you sent an email to Derik Curtis, a supervisor at U.S. Customs & Border Protection. The email contained false or misleading information such as the following:

[Translation of the French translation] Ms. I.V. was informed last night by the Service de police de Montréal of the consequences of leaving Canada with our son, contrary to the information contained in the decision. . . .

10. You identified yourself as an RCMP employee and shared false or misleading information with RCMP partner agencies.

Allegation 5

On or about July 30, 2018, in or near Montréal, in the province of Quebec, Constable Kane Von Kramer Oré engaged in discreditable conduct contrary to section 7.1 of the Code of Conduct.

Particulars of the contravention

Particulars 1 to 6 of allegation 1 apply to this allegation.

7. On July 23, 2018, using your personal email address, you sent an email with the subject line “Important Alert: child leaving country without the authorization of both parents”. You sent the email to Ms. I.V., the SPVM, the DHS and the CBSA.

8. On July 30, 2018, you had a meeting with your supervisor, Staff Sergeant Jean-François Proulx. During this meeting, you stated that you were refusing to consent to your son’s trip with his mother, Ms. I.V., because she wanted to leave for four weeks but the legal agreement provides for three weeks at a time. This statement is false and misleading:

(a) In 2016, you agreed that summer vacation would be four consecutive weeks, despite the ruling;

(b) The reason you refused to agree was not the number of weeks scheduled for the trip, but rather your desire for Ms. I.V. to agree to a reduction in support payments for your son.

9. You made false or misleading statements to your supervisor to justify your actions.

[French original quoted verbatim]

SUMMARY OF FACTS

[8] From the time that Constable Kramer and Ms. I.V. separated more than 10 years ago, their relationship has been contentious. To avoid misunderstandings, the parties communicate with each other primarily by email or text messaging.

[9] Constable Kramer pays Ms. I.V. monthly support payments for their son.

[10] Under a 2012 family court agreement, each parent may take three consecutive weeks of vacation with their son. The parents may also travel outside the country for three weeks.

[11] In 2016, the parties agreed to change the summer vacation from three weeks to four consecutive weeks for each parent. This new agreement was never put in writing by the parties.

[12] As well, Constable Kramer authorized Ms. I.V. and their son to travel to France in 2016 for four weeks instead of three as stated in the agreement. Once again, this new agreement was not put in writing by the parties.

[13] In 2017, Ms. I.V. did not travel out of the country with their son.

[14] On March 1, 2018, Constable Kramer confirmed with Ms. I.V. that she would have custody of their son in the summer for four weeks, from July 23 to August 20, 2018.

[15] On June 5, 2018, Constable Kramer sent an email to Ms. I.V. stating that the decision they had received on May 31, 2018, from the Service administratif de rajustement des pensions alimentaires pour enfants (SARPA) regarding an adjusted support payment amount was only a preliminary decision. Specifically, Constable Kramer was requesting that support payments back to 2012 be recalculated to include the parties' actual wages and that the number of days of custody for their son be adjusted. Constable Kramer stated that their son was spending more than 40% of the time with him, which changed the amount of support to be paid. In addition, Ms. I.V. owed him approximately \$30,000.00 in arrears. Lastly, Constable Kramer suggested that the matter be settled through mediation. Ms. I.V. did not respond to the email.

[16] On July 9, 2018, Ms. I.V. sent an email to Constable Kramer asking him to sign a letter of consent for her to travel with their son to the Dominican Republic for four weeks, from July 23 to August 19, 2018.

[17] On the same day, July 9, 2018, Constable Kramer sent an initial email reiterating that the SARPA calculation was only retroactive for one year. He explained the current problems with the support payments he was making, explained what Revenu Québec would do if she had to pay arrears, and indicated that he would be meeting with his lawyer on Thursday to begin the legal process. Lastly, he asked her to decide whether she wanted to [translation] “settle everything” through mediation before she left on her trip on July 23, 2018.

[18] Wanting Ms. I.V. to fully understand the situation, Constable Kramer wrote to her again on July 9, 2018, to tell her that he was not opposed to her summer vacation of four consecutive weeks. However, if she decided to settle their differences in family court, she would receive the travel consent letter during that process. Alternatively, if she decided to go through mediation, she would obtain the letter of consent once the new agreement between the parties was signed and approved by the family court.

[19] On July 11, 2018, Constable Kramer sent a text message to Ms. I.V. informing her that the mediator was not available before she would be leaving on her trip. He therefore asked her whether she wanted to proceed through their lawyers or through an urgent application to the court. Ms. I.V. did not reply.

[20] On July 13, 2018, Constable Kramer sent a text message to Ms. I.V., this time telling her that there was only one week left before she was scheduled to travel and that he would not sign the letter of consent if she did not resolve the situation before leaving. He ended by stating, [translation] “It’s too bad if this affects your trip with our son, but it’s up to you—the decision is yours.” In response, Ms. I.V. asked him to stop harassing and threatening her.

[21] On July 17, 2018, Constable Kramer sent a text message to Ms. I.V. telling her that the CBSA had been advised that their son was not authorized to leave Canada. He also told her that the law was clear and that she could not leave the country for four weeks without his consent,

since the 2012 decision granted her only three weeks. He ended by stating, [translation] “. . . you will not get it unless you resolve our situation”.

[22] On July 20, 2018, Constable Kramer sent a new text message to Ms. I.V. telling her that he respected her decision not to resolve the situation; however, he also warned her that [translation] “in the coming days, many people will suffer the consequences of your actions. But it’s your decision”. He concluded by stating that, at the end of the day, he would send his email to a number of recipients in the United States. Ms. I.V. replied by telling him once again to stop harassing and blackmailing her.

[23] A few minutes after Ms. I.V. replied, Mr. L.V., Ms. I.V.’s spouse, sent a text message to Constable Kramer asking him to stop harassing his spouse and family with endless, threatening messages. He asked the constable to use his good judgment [translation] “because this is really going too far”.

[24] In response to Mr. L.V., Constable Kramer stated in a text message that the decision was clear, and his son could not leave the country for four weeks without his consent. He asked Mr. L.V. to take him seriously or else he would “see him and turn him over to customs”. He went on to state, [translation] “. . . you will definitely understand that it was serious, but unfortunately it will be too late, because we won’t be able to see any lawyers on Friday evening”.

[25] Mr. L.V. replied that Constable Kramer’s threats were fraught with consequence. Constable Kramer replied, [translation] “My position won’t change until everything is settled and approved. Then and only then will I sign the consent letter”.

[26] On July 23, 2018, at approximately 12:20 p.m., Constable Kramer carried out his plan. Using his personal email address, he sent the SPVM, DHS, CBSA and Ms. I.V. an email with the subject line: “Important Alert: Child leaving the country without the authorization of both parents.” In the email, Constable Kramer gave a physical description of Ms. I.V., his son and himself. In Ms. I.V.’s description, he stated that she worked at the National Bank of Canada. In his own description, he stated that he worked for the RCMP.

[27] On July 23, 2018, Constable Kramer also followed up on his email by telephoning U.S. Customs and Border Protection. In his conversation with Peter Mercaldi, a supervising officer, Constable Kramer identified himself as a member of the RCMP. He again told Officer Mercaldi that his son could not leave Canada without his consent. At Officer Mercaldi's request, Constable Kramer sent him a copy of the email.

[28] After receiving the email, Ms. I.V. and Mr. L.V. were very worried. They saw a notary and contacted Constable Louis-Guillaume Buist of the SPVM to try to determine whether they could still travel. In an attempt to resolve the situation, Constable Buist contacted Constable Kramer. Even so, Constable Kramer refused to sign the letter of consent. He asked Constable Buist to warn Ms. I.V. of the possible consequences if she decided to travel without the letter of consent.

[29] On July 24, 2018, Ms. I.V. and their son attempted to cross the U.S. border but were detained by border officials. Ms. I.V. was questioned for approximately two hours and, before she returned to Canada with their son, the authorities took her photograph and fingerprints. Mr. L.V. was forced to continue the trip with their two other children.

[30] A few days later, Ms. I.V. and their son joined Mr. L.V., this time departing from Canada.

DECISION ON ALLEGATIONS

Credibility of witnesses

[31] At the hearing, I heard testimony from eight people:

1. Arturo Ventura, a CBSA border official;
2. Constable Louis-Guillaume Buist, an SPVM police officer;
3. Peter Mercaldi, a supervising officer at the U.S. Department of Homeland Security;
4. Derik Curtis, a supervising officer with U.S. Customs and Border Protection;

5. Erik Schmitz, a border official with U.S. Customs and Border Protection;
6. Mr. L.V., Ms. I.V.'s spouse;
7. Ms. I.V.; and
8. Constable Kramer.

[32] The credibility of the witnesses and the reliability of their evidence are central to my determination of the allegations. I am also guided by the principles set out by the Supreme Court of Canada in *FH v McDougall*, 2008 SCC 53, and the authorities cited in *Commanding Officer, "D" Division, and Constable Irvine*, 2019 RCAD 3.

[33] I find Constable Buist and officers Ventura, Mercaldi and Curtis to be credible and their testimony to be reliable. They answered questions without hesitation. They had good insight and recall despite the passage of time and the number of people they encounter each year in their work.

[34] Officer Schmitz was in charge of interviewing Ms. I.V. at the U.S. border. He was working under the supervision of Officer Curtis. Although I find him to be credible, some of his testimony is not as reliable as that of the other witnesses. I attribute this to his being a junior employee at the time of the incident and to the number of people with whom he came into contact each day. For example, during direct examination at the hearing, he acknowledged that he knew Constable Kramer worked for the RCMP: "We were aware that Mr. Kramer claimed to work for RCMP". On cross-examination, however, he stated that he was not aware that Constable Kramer was a police officer when he questioned Ms. I.V. This testimony contradicts that of his supervisor, Constable Curtis, who stated that he was aware that Constable Kramer was a police officer as a result of the information in the email and his discussions with his counterparts.

[35] I find Mr. L.V. to be a very credible witness whose testimony was reliable. Despite his bias, he was fair and balanced in what he said. He made no attempt to embellish the evidence or disparage Constable Kramer. He relied on the facts to explain his fears for his family.

[36] In her submissions, the member's representative stated that Ms. I.V. was not credible because she had been contradicted by certain witnesses and was arguing on cross-examination. I disagree. Although Ms. I.V. did become impatient in cross-examination and was anticipating questions, she expressed herself clearly. In addition to being direct and forthright, Ms. I.V. had an excellent understanding of the issues between herself and Constable Kramer. Looking at the testimony as a whole, I find that she is a credible witness and that her testimony is reliable.

[37] Constable Kramer also expressed himself clearly despite his emotions, and he had a good memory of the facts as he perceived them. Constable Kramer could not answer the questions at the hearing directly because, in his view, everything is complicated. In fact, it was the complexity of his responses throughout the hearing and his refusal to take responsibility for his conduct in his personal dispute with Ms. I.V. that cast doubt on his credibility and the reliability of his testimony. Looking at the testimony as a whole, I find Constable Kramer to be less credible and less reliable than Ms. I.V.

Discreditable Conduct – section 7.1 of the Code of Conduct

[38] Under section 7.1 of the Code of Conduct, a member's discreditable conduct is assessed using a four-step test developed by the RCMP External Review Committee. In steps 1 and 2, the conduct authority must establish, on a balance of probabilities, the acts constituting the alleged conduct and the identity of the member who committed those acts. I find that the identity of the member in relation to the five allegations is not an issue in this case.

[39] In Step 3, the Conduct Board must determine whether the member's conduct brings the RCMP into disrepute. This involves determining whether a reasonable person in society who is aware of all the relevant circumstances, including the realities of police work in general and the RCMP in particular, would consider the conduct to be discreditable.

[40] Finally, in Step 4, the Board must determine whether the conduct is sufficiently related to the member's duties and functions for the RCMP to have a legitimate interest in disciplining the member.

Analysis of allegations

[41] In the conduct process, the onus is on the conduct authority to demonstrate to the Board that, on a balance of probabilities, the allegations are established. The Board is then responsible for determining whether this burden has been met.

Allegation 1 – Blackmail

[42] Allegation 1 contains 11 particulars. Constable Kramer acknowledges all but particulars 6, 7 and 11.

[43] Regarding Particular 6, Constable Kramer denies that, starting on July 9, 2018, he sent emails and text messages to Ms. I.V. stating that he would sign the travel consent letter only if she agreed to informally settle for reduced support payments.

[44] Constable Kramer states that he wanted to resolve not only the issue of support, but rather a series of disputes surrounding their separation, including the length of summer vacations and trips out of the country, the sharing of school holidays, and communication between the parents and the child. Ultimately, he wanted [translation] “an updated decision that reflected the actual access” to their son.

[45] The evidence establishes that the parties do indeed have a set of disputes to resolve. However, support payments are at the heart of the conflict. Rightly or wrongly, Ms. I.V. is refusing to initiate another process to resolve this dispute. As shown in a number of emails, Constable Kramer is extremely frustrated with the situation.

[46] For example, Constable Kramer states in his email of July 9, 2018, [translation] “Unfortunately, I am not the one who will have to pay out money, and every month since 2018 there has been an overpayment of some \$450, despite SARPA’s recalculation”. Constable Kramer further states that “you shouldn’t joke with Revenu Québec when there is an overpayment or if you are not making the support payments. It’s all a simple calculation. You can’t fight facts and figures—well, you can but it’s at your own risk”.

[47] Furthermore, during his cross-examination, Constable Kramer stated that he did not object to Ms. I.V. going on a four-week trip out of the country provided that she signed a new agreement: [translation] “If everything is settled, I will sign the four-week [vacation] letter”. The new agreement would then contain the support reduction that Constable Kramer so strongly desired.

[48] For these reasons, I conclude that Particular 6 is established on a balance of probabilities.

[49] In her submissions, the member's representative argues that this allegation is unrelated to the member's duties and functions, and I agree. In fact, I conclude that Allegation 1, as written in the notice of hearing, is outside the jurisdiction of the Conduct Board of the RCMP. The record in this case is one of a highly contentious personal situation between the two parties that falls within the purview of family court. As the Conduct Board states in paragraph 125 of its decision in *Commanding Officer, "E" Division, and Corporal Hollingsworth*, 2019 RCAD 8:

There is no doubt the Code of Conduct applies to members when they are off duty. This is proper and coincides with the member's agreement to abide by a higher standard than that expected of the ordinary citizen. But the RCMP does not and cannot “own” a member 24/7 in everything they do. . . . There has to be a line, but where is it? . . .

[50] The Board further states in paragraph 147:

. . . I do not think that the Code of Conduct is automatically engaged just because a member is involved in matters that are exclusively of a personal nature. . . . **The key is the activities undertaken in these personal relationships and how they relate to their employment . . .**

[Emphasis added]

[51] It is my view that each case of misconduct involves different circumstances and that the Code of Conduct does not automatically apply to all situations that are exclusively personal in nature. In such circumstances, the conduct authority must demonstrate that there is a sufficient link between the member's employment and the misconduct to warrant a penalty. As stated in Allegation 3 in this decision, a link to employment was created in this case when Constable Kramer abused his authority by identifying himself as a police officer to U.S. authorities without a legitimate reason or excuse.

[52] Although Constable Kramer's conduct with respect to Ms. I.V. in Particular 7 of this allegation leaves something to be desired, I cannot conclude that it was discreditable for him to refuse to sign the letter of consent or to continually pressure Ms. I.V. to try to resolve the support payment issue. Constable Kramer can, as a private citizen, assert his rights while opposing proposals from his former spouse that he does not believe are in his best interest. It is clear in this case that the family history of both parties has exacerbated the situation.

[53] With respect to the stress and additional travel expenses incurred by Ms. I.V. and her family, I again agree with the position of the member's representative. These are aggravating factors in relation to the impact on the victim and therefore have no merit in the allegations phase. I would point out that the Conduct Board cannot financially compensate Ms. I.V. for the stress and additional costs incurred in relation to Constable Kramer's conduct.

[54] For these reasons, I determine that Allegation 1 is not established on a balance of probabilities.

Allegation 2 – Status as police officer in personal situation

[55] Allegation 2 contains 12 particulars. Constable Kramer acknowledges all the particulars except particulars 6 and 12. The Conduct Board has established Particular 6 under Allegation 1. Particular 12 alleges that Constable Kramer lacked integrity in identifying himself as a police officer in a personal situation.

[56] In her submissions, the member's representative asserts that Constable Kramer's simply identifying himself as a police officer on July 23, 2018, in his telephone call with Officer Mercaldi at U.S. Customs and Border Protection is not in itself an abuse of his authority, power or position in contravention of section 3.2 of the Code of Conduct.

[57] I agree. It is not enough for the conduct authority to show that the member identified himself as a police officer. It must also show that the member is, without legitimate reason or excuse, using his status as a peace officer to obtain a benefit or advantage. This was done in

Allegation 3 of this decision. In the absence of such evidence in this second allegation, I therefore conclude that Allegation 2 is not established on a balance of probabilities.

[58] In the member's response and at the hearing, the member's representative reiterated that allegations 2 and 3 are essentially the same and that the legal principle in *Kienapple v R*, [1975] 1 SCR 729 [*Kienapple*], applied. I agree, and the Supreme Court of Canada ruled in *Kienapple* that an accused cannot be convicted of two offences when they both arise from the same acts. In this case, Allegation 2 is not established and therefore the *Kienapple* principle does not apply.

Allegation 3 – Advantage of identifying as police officer

[59] Allegation 3 contains 13 particulars. Constable Kramer acknowledges all the particulars except Particular 6, which the Board has already established under Allegation 1, and particulars 11 and 13. In these particulars, it is alleged that Constable Kramer identified himself as an RCMP employee and police officer to American authorities in order to gain an advantage in a personal dispute. Therefore, his actions were inappropriate.

[60] Based on the information in the record, Constable Kramer used his status as an RCMP member twice: (1) in his email of July 23, 2018, to the SPVM and to Canadian and U.S. border agencies, with the subject line “Important Alert”, in which he stated that his employer was the RCMP; and (2) in his telephone call with Officer Mercaldi on July 23, 2018, to inform Officer Mercaldi that his son was not authorized to leave Canada without his consent.

[61] Constable Kramer denies that he used his status as a police officer to gain an advantage over Ms. I.V. With respect to the email of July 23, 2018, he states that he simply provided the names of his employer and Ms. I.V.’s employer for personal identification, since this type of information is often requested by border officials. In addition, he adds that the content of the email comes from templates found on the Internet.

[62] With respect to the call with Officer Mercaldi, Constable Kramer states that he identified himself as a police officer in response to the general identification questions posed by the officer. In addition, Constable Kramer was concerned that his past and current positions with the RCMP

might create a sensitive situation, so he felt compelled to disclose that he was a member of the RCMP. Lastly, Constable Kramer submits that he used his status without any particular intent or desire to gain an advantage. At all times, he acted with integrity as a father concerned for the safety of his son.

[63] The evidence in the record does not corroborate Constable Kramer's statements. During his testimony at the hearing, Officer Mercaldi stated that Constable Kramer introduced himself as an RCMP member at the beginning of the conversation. In cross-examination, Officer Mercaldi confirmed that he had not asked Constable Kramer any questions about his employment. Therefore, it is more likely than not that Constable Kramer deliberately chose to identify himself as a police officer in the circumstances. In doing so, he linked his status as a police officer to his personal situation.

[64] U.S. border officials confirmed at the hearing that Constable Kramer's information was considered to be more credible than Ms. I.V.'s because he was a member of the RCMP. Moreover, Constable Mercaldi states that he used the information in Constable Kramer's email and information obtained during the telephone call to conclude that there was enough credible evidence to take the necessary steps to stop Ms. I.V. and her son from entering the United States.

[65] In addition, Officer Curtis testified at the hearing that he knew Constable Kramer was a police officer from the "Important Alert" email and from discussions with his counterparts. He says that Constable Kramer's version of events was considered to be more credible than Ms. I.V.'s because he was a member of the RCMP.

[66] Lastly, the evidence in this case shows clearly that, had Ms. I.V. consented to reduced support payments prior to her travel, Constable Kramer would have signed the travel consent letter. However, there was no need to settle everything before Ms. I.V.'s departure. Indeed, as of the date of the hearing, the parties had yet to initiate a process to resolve the situation. Constable Kramer could have gone to family court to achieve his objectives, but he preferred to take the law into his own hands.

[67] Whether intentionally or incidentally, persons who self-identify as police officers in a personal situation where there is no legal or practical obligation to do so place themselves in a precarious position. In his testimony, Constable Buist of the SPVM stated that he discussed this issue with Constable Kramer on July 23, 2018. He stated that the email sent by the constable to the American authorities placed the constable in a grey area because of his status as a police officer: [translation] “. . . you may have done something that could cause you problems. . . . Well, I’m a Montréal police officer; I would have checked before doing something like that”.

[68] As stated by the court in *Campbell v New Brunswick (Chief of Police)*, 2016 NBBR 225, filed by the conduct authority:

. . . Canadians believe that we are all equal before the law and we are offended when a person’s position appears to influence the outcome of cases before the courts. Police officers should understand that using their position as a means of influencing other police officers is a serious breach of their duty. . . .

[69] Based on the evidence in this case, I conclude that Constable Kramer knowingly abused his authority by using his status as an RCMP member without legitimate reason or excuse. Subtly and strategically, Constable Kramer used his status at every opportunity.

[70] As confirmed by the testimony of the U.S. border officials, Constable Kramer’s status automatically gave him an advantage in a situation where credibility was at issue. Specifically, Officer Mercaldi stated the following:

. . . Anytime we get information from any law enforcement, we assume it’s credible. . . .

. . . I certainly thought that information was more credible than if he was not in law enforcement. He identified himself as an RCMP officer and that’s as far as it was. Again, at that point, we have a—I think law enforcement has a mutual understanding that whatever they say is going to be credible. . . . [Translation of the French translation] I used the information to take the necessary steps to ensure that [Ms. I.V.] would be interviewed. . . .

[71] It is trite law that the standards of conduct for peace officers, whether on or off duty, are higher than those set for ordinary citizens. Moreover, as stated in the RCMP’s annotated Code of Conduct,

. . . Any conduct which places in doubt your integrity, honesty or moral character may weaken your effectiveness to perform your duties and cause the public to lose confidence in the Force. The responsibilities contained within the Code of Conduct are meant to promote sound ethical decision making that goes beyond the boundary of the work environment. . . .

[72] For these reasons, I find that the conduct of Constable Kramer in particulars 11 and 13 was inconsistent with his role as a member of the RCMP, and these particulars are established on a balance of probabilities.

[73] I also conclude that a reasonable person in society who is aware of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would conclude that Constable Kramer identified himself as an employee of the RCMP in a personal dispute to gain an advantage. This discreditable conduct affected the image and integrity of the RCMP and brought the RCMP into disrepute. This conduct is sufficiently related to the member's duties and functions for the RCMP to have a legitimate interest in disciplining the member.

[74] Therefore, Allegation 3 is established on a balance of probabilities.

Allegation 4 – False, misleading information to partner agencies

[75] Allegation 4 contains 10 particulars. Constable Kramer acknowledges all the particulars except particulars 6, 8, 9 and 10. The Board has already established Particular 6 under Allegation 1.

[76] Particular 8 states that the two emails sent to the RCMP's U.S. partner agencies contained false, misleading information. The first email was sent on July 23, 2018, with the subject line "Important Alert", and the second email was sent on July 24, 2018, to Constable Curtis. Constable Kramer submits that he included the information because it was true.

Email dated July 23, 2018: "Important Alert"

[77] The conduct authority states that the email of July 23, 2018, contains two major errors. The first is found in paragraph (a) of Particular 8, where Constable Kramer states that Ms. I.V.

had been repeatedly advised to take the necessary steps, either through mediation, a lawyer or the court, [translation of the French translation] “to regularize her legal status in the **joint custody of their son**” [emphasis added].

[78] According to the information gathered, Constable Kramer was well aware that joint custody of their son was not an issue and had been settled by Justice Emery in 2008. The parties disagree on the number of days the constable has access to their son, and this affects the amount of support he pays each month. Consequently, I conclude that Constable Kramer’s use of the words [translation of the French translation] “to regularize her legal status in the joint custody of their son” is false and misleading. In fact, this misrepresentation significantly increased the seriousness of the situation because it led the American authorities to believe that the parents were fighting over custody of their son, which was completely untrue.

[79] The second error in the email of July 23, 2018, is in paragraph (b) of Particular 8. The conduct authority submits that Constable Kramer falsely and misleadingly stated that he was unaware of the name of the airport or the number of the flight that Ms. I.V. and their son were going to take to fly to the Dominican Republic.

[80] The consent letter of July 9, 2018, prepared by Ms. I.V. stated that the trip would be by car to Burlington, United States, and then by air to Santo Domingo, Dominican Republic. Moreover, in the text message sent to Ms. I.V. on July 17, 2018, Constable Kramer states that he provided the border services agency with their son’s passport number and the flight number.

[81] This is a major contradiction in the evidence presented by Constable Kramer, which casts doubt on his honesty and integrity in this case. For these reasons, I conclude that the information in paragraph (b) is also false and misleading.

[82] Having reviewed the email of July 23, 2018, I must note that the email as a whole is problematic. It created a great deal of confusion and cast doubt on Ms. I.V.’s credibility when she was interviewed by U.S. border officials. For example, instead of indicating the number of the 2012 decision, the constable gave the number of the 2009 decision. Despite Constable Kramer’s explanations at the hearing, the evidence confirms that this serious error was one of the

reasons that Ms. I.V. was detained at the U.S. border. This again cast doubt on his credibility and the reliability of his evidence in this conduct process.

[83] In light of the circumstances above, Particular 8 is established, on the balance of probabilities.

Email dated July 24, 2018

[84] Particular 9 states that the email of July 24, 2018, sent by Constable Kramer to Officer Curtis, a supervisor with US Customs and Border Protection, contained false and misleading information. Specifically, he wrote that Ms. I.V. had been informed the day before by the SPVM of the consequences she would face if she left Canada with their son, contrary to the decision.

[85] Although the evidence shows that the information sent to Officer Curtis was not used in his decision to detain Ms. I.V. and her son at customs, the evidence nonetheless establishes that the contents of the email of July 24, 2018, were false and misleading.

[86] Based on the information gathered, I conclude that Constable Kramer is a member of the RCMP who is well aware of the importance of truthful evidence because of the various positions he has held within the organization. Moreover, he is very careful with his language and meticulous in the wording of his emails to Ms. I.V. Despite this, he assumed that Constable Buist had conveyed the message to Ms. I.V. because he had talked [translation] “officer to officer”. As the conduct authority pointed out at the hearing, Constable Kramer did not attempt to characterize the accuracy of his information using words such as [translation] “I believe Ms. I.V. was advised”.

[87] Throughout the conduct process, Constable Kramer blamed Ms. I.V. and constantly tried to justify his actions. The evidence is clear that Constable Kramer’s deliberate actions contributed to Ms. I.V. and her son being detained by U.S. border authorities.

[88] For these reasons, Particular 9 is established on a balance of probabilities.

[89] What troubles me in this case is that Constable Kramer was fully aware of the risks that Ms. I.V. would face when he notified U.S. border officials that she was leaving the country with their son without the letter of consent. Moreover, Constable Kramer knew that his son was excited to go on a trip and that he was safe with Ms. I.V. and her family. In his text message of July 20, 2018, he told her, [translation] “I waited before warning [United States Border Patrol] because once that was done, well, the United States does not work like we do here in Canada if you try to enter the [United States] illegally with a child”.

[90] Even though he refuses to admit it, I conclude that Constable Kramer acted in bad faith in this situation. His misconduct undermined the public trust and the RCMP’s reputation with the partner agencies that had to testify against their colleague at the hearing.

[91] I therefore conclude that a reasonable person in society who is aware of all the relevant circumstances, including policing realities in general and the RCMP in particular, would conclude that Constable Kramer shared false, misleading information with the RCMP’s partner agencies. This discreditable conduct has brought the RCMP into disrepute.

[92] Moreover, as set out in Allegation 3, Constable Kramer used his status as an RCMP member twice with the American authorities. Consequently, his conduct is sufficiently related to his duties and functions as a member for the RCMP to have a legitimate interest in disciplining him.

[93] Allegation 4 is established on a balance of probabilities.

Allegation 5 – False, misleading explanations to supervisor

[94] Allegation 5 contains 9 particulars. Constable Kramer acknowledged all the particulars except Particular 6, which the Board has already established under Allegation 1, and particulars 8 and 9. These particulars allege that Constable Kramer gave false, misleading explanations to his supervisor to justify his actions.

[95] In Particular 8, Constable Kramer admits that he had a meeting with Staff Sergeant Jean-François Proulx (S/Sgt. Proulx) on July 30, 2018. At this meeting, he explained that he was

refusing to sign the travel consent letter because Ms. I.V. wanted to leave the country for four weeks, whereas the 2012 decision provided for three weeks.

[96] In the view of the conduct authority, Constable Kramer should have informed his supervisor of the real reason for his refusal to sign the letter of consent. It was not because of the number of weeks that Ms. I.V. and her son were travelling but because he wanted her to agree to a decrease in support payments before she left.

[97] In his response to the Board, Constable Kramer explained that he had reported the entire situation to his supervisor in a transparent and fully cooperative manner.

[98] In his statement to the Conduct Board, S/Sgt. Proulx did not mention that Constable Kramer had omitted some explanations. During the discussion, he stated instead that he had asked Constable Kramer whether the email of July 23, 2018, had been sent from his RCMP address, whether he had identified himself as a police officer, whether he had used the RCMP's signature when sending the email, and whether the situation amounted to a kidnapping.

[99] S/Sgt. Proulx also indicated that Constable Kramer [translation] "talked a lot" and that he spoke of an agreement and a number of issues regarding the shared custody of his son. He added that Constable Kramer [translation] "wanted to give his side of the story right away" and that he wanted to provide supporting documentation.

[100] Lastly, S/Sgt. Proulx stated that Constable Kramer spoke at length about the monetary aspect relating to support payments. Although Constable Kramer did not explicitly admit that he had pressured Ms. I.V. in this regard, S/Sgt. Proulx understood that Constable Kramer's refusal to sign the consent letter was [translation] "clearly related to support payments" and not to the number of weeks of vacation.

[101] The evidence presented by the conduct authority for this allegation does not enable me to conclude on a balance of probabilities that Constable Kramer gave, in his discussion with S/Sgt. Proulx, false and misleading explanations as set out in particulars 8 and 9 of Allegation 5.

[102] Throughout the conduct process, Constable Kramer denied that he refused to sign the travel consent letter because Ms. I.V. was refusing to adjust the amount of his support payments to her. The explanation given to his supervisor is therefore consistent with his evidence and leads me to conclude that Constable Kramer attempted to tell his side of the story. As well, he did not attempt to deliberately withhold relevant information from his supervisor. Lastly, the information was personal and did not relate to the operations or administration of the RCMP.

[103] Consequently, Allegation 5 is not established on a balance of probabilities.

DECISION ON CONDUCT MEASURES

[104] In summary, allegations 1, 2 and 5 are not established on a balance of probabilities. However, allegations 3 and 4 are established, and I must now impose conduct measures that are proportionate to the nature and circumstances of the contraventions of the Code of Conduct.

Analysis of conduct measures

[105] To determine the appropriate conduct measures, I must first consider the range of measures applicable to the misconduct in question. Next, I must take into account the aggravating and mitigating factors. Finally, I must 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 conduct measures

[106] In its submissions, the conduct authority sought a Board order directing Constable Kramer to resign within 14 days of the date of my oral conduct decision at the hearing.

[107] The member's representative requested that the Board impose the forfeiture of 20 days' pay as a global sanction for both allegations.

[108] As both parties indicated in their submissions, the two established allegations do not fall within a specific category in the *Conduct Measures Guide 2014* (the 2014 Guide). I note,

however, that the 2014 Guide provides guidance on considerations for imposing conduct measures, and I am not bound by it in making my decision.

[109] In support of the proposed conduct measures, the parties submitted case law as well as decisions from the RCMP's new conduct process. The member's representative also submitted decisions from the former RCMP conduct process.

[110] In its submissions, the conduct authority cautions the Board about using these earlier decisions to establish the range of conduct measures that apply in this case. In its view, a large proportion of the decisions were based on joint proposals where the penalty, if it was not dismissal, was limited to the forfeiture of 10 days' pay. In the new conduct process, that is no longer the case.

[111] The member's representative argues that great deference was owed to previous decisions resulting from a joint proposal. In addition, she submits that the Board should consider these decisions in determining the range of conduct measures because the previous decision maker had, before accepting the joint submission, carried out the public interest test. Therefore, he would not have accepted the proposal if dismissal had been the appropriate measure in the circumstances.

[112] I cannot support this position for three reasons. First, a joint proposal is the result of compromises and considerable factors negotiated by the parties without the decision maker's knowledge.

[113] Second, as a general rule, even if the Conduct Board does not fully agree with the proposal, it will not rule it out unless it can be shown to be contrary to the public interest. The threshold is very high and was applied by the Supreme Court of Canada in *R v Anthony-Cook*, 2016 SCC 43, as well as in the context of professional discipline in *Rault v Law Society (Saskatchewan)*, 2009 SKCA 81, and lastly in the RCMP conduct process in *Commissioner Constable Coleman and Appropriate Officer, "F" Division*, (2018) 18 AD (4th) 270.

[114] Finally, the new range of conduct measures has changed considerably and is no longer compatible with the old one. Although the old process limited the maximum financial penalty to 10 days, the new RCMP Act has no limit. The 2014 Guide recognizes that imposing an unlimited financial penalty offers almost no benefit in correcting the member's conduct and maintaining public confidence. Therefore, a practical maximum forfeiture of 45 days' pay is recommended as the maximum financial penalty. Above this threshold, the 2014 Guide suggests that the conduct authority request the member's dismissal.

[115] In addition to quantitative changes, the new conduct measures also reflect the ever-changing values of the RCMP and society. What was considered acceptable conduct in the police community and the RCMP a few years ago may no longer be acceptable today. That is also why the 2014 Guide, which contains a range of conduct measures, continues to be merely a guide to which the Conduct Board is not bound when imposing measures.

[116] In my opinion, the range of conduct measures in the old conduct process is incompatible with that of the new process. Therefore, the use of past decisions to establish the range of conduct measures applicable to similar misconduct should be extremely limited. However, I believe that past decisions remain useful where the stated principles support or identify cases where dismissal is requested by the conduct authority.

[117] Based on the decisions submitted by the parties and having reviewed the range of conduct measures set out in section 7.1 of the Code of Conduct, I am satisfied that a proportionate measure for the misconduct complained of in both allegations is within the range from forfeiture of six days' pay to dismissal.

[118] I realize that dismissal is the most serious measure and, in determining whether such a measure is appropriate in this case, I must take into account the aggravating and mitigating factors presented by the parties.

Aggravating factors

[119] I consider the following factors to be aggravating:

- a. Constable Kramer's actions to stop Ms. I.V. from travelling out of the country with their son were deliberate.
- b. His misconduct, related to a personal situation. It involved a lack of honesty and integrity. It was motivated by personal gain.
- c. Constable Kramer's misconduct had a significant financial and psychological impact on Ms. I.V. and their son.
- d. I agree in principle with the obligations arising from *R v McNeil*, 2009 SCC 3, because I am of the opinion that Constable Kramer's misconduct imposes a significant, but not unsustainable, administrative burden on the RCMP.
- e. I give relative weight to the previous discipline of April 20, 2018, since the alleged contraventions of Constable Kramer go back a number of years (between 2011 and 2012). Moreover, his involvement was limited to that of an enforcer and not a decision maker in this case.

Mitigating factors

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

- a. Constable Kramer has 15 years of service with the RCMP.
- b. His performance appraisals are very positive. They describe him as a member with an excellent work ethic who is a resource person on his team because of his experience, dedication and language skills. He listens to feedback from his supervisors and improves accordingly. He has a positive and enthusiastic attitude; he seeks opportunities to improve in order to achieve results that reflect his potential.
- c. Letters of support from a former supervisor, a friend and his brother, who is also a member of the RCMP, indicate that Constable Kramer demonstrates professionalism and has their continued support. Constable Kramer is also actively involved in the community as a volunteer with his son's sports teams.

- d. Constable Kramer's misconduct is non-criminal. It is related to a personal dispute between him and his former spouse while he was off duty. I emphasize that this factor does not excuse the member's misconduct, but rather places it in the context of the circumstances surrounding this case.
- e. Constable Kramer's misconduct does not affect any active RCMP file or operation.
- f. I note that Constable Kramer attends counselling sessions in relation to his personal problems.
- g. I consider that Constable Kramer will learn positive lessons from this situation and that the likelihood of recidivism is minimal.

[121] Rehabilitation and remedial potential are important factors to consider in the RCMP's conduct process. Overall, I conclude that the mitigating factors in this case show that Constable Kramer has the ability to reform and rehabilitate himself.

[122] As the conduct authority indicated in its submissions, the concepts of personal benefit and integrity have been explained in two recent Conduct Board decisions. In *Commanding Officer, "E" Division, and Constable Vellani*, 2017 RCAD 3 [Vellani] at paragraph 96, the Board stated the following:

. . . Issues of honesty and integrity are never black and white, and it is overly simplistic to characterize them that way. In considering issues of honesty and integrity, the individual's motivation for his or her actions must be closely examined, and the degree of moral turpitude inherent in the activity must be assessed.

[123] In *Vellani*, the member was dismissed because the Board found that the member's deliberate deception of three different institutions for personal gain indicated a fundamental character flaw that made him unfit for continued employment with the RCMP. Specifically in this case, the constable made a misrepresentation to a member of the RCMP, his insurer and a notary under oath. The member continued this very harmful and destructive behaviour for five weeks.

[124] As submitted by the member's representative at the hearing, the member's conduct in *Vellani* was criminal in nature and the Board considered this to be an indication of the seriousness of the misconduct. Ultimately, the Board considered the member's personal gain to be the most significant aggravating factor. By his actions, the member sought to avoid paying the insurer's second deductible and being held responsible for his car accident.

[125] Considering the evidence before me as a whole, I find that Constable Kramer's personal gain and the degree of moral turpitude inherent in his conduct are far less significant than those in *Vellani*. I am of the opinion that Constable Kramer allowed his emotions and family issues to cloud his judgment.

[126] The second decision presented by the conduct authority regarding a member's personal gain and integrity is *Commanding Officer, "J" Division, and Constable Cormier, 2016 RCAD 2*, which was reiterated in *Vellani*. In *Cormier* at paragraph 110, the Board stated the following:

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

[127] Specifically, in *Cormier*, the member falsified an email exchange with Crown counsel to prevent Crown counsel from laying charges against a person of interest. The member's actions affected an active RCMP file and operations. The member also pleaded guilty to a criminal charge of falsifying documentation. In the absence of personal gain, the member was not dismissed. This decision was upheld by the Commissioner of the RCMP.

[128] In my opinion, although Constable Kramer gained personally, there are significant mitigating factors in the circumstances that reduce the seriousness of his misconduct. I therefore conclude that dismissal is not an appropriate conduct measure. Moreover, I am unable to conclude, as in *Vellani*, that Constable Kramer's misconduct disrupted his working relationship with the RCMP.

[129] Nevertheless, I conclude that serious conduct measures are necessary not only to deter Constable Kramer but also to warn other members and to ensure that this type of misconduct does not recur.

[130] In the future, I expect exemplary behaviour from Constable Kramer when he brings the RCMP's reputation into play in both his professional and personal conduct.

CONCLUSION

[131] Given the nature of the two allegations established and the similarity of the events described, I am imposing, under subsection 45(4) of the RCMP Act, the following global conduct measures:

- a. a financial penalty equivalent to 40 days of Constable Kramer's pay; and
- b. ineligibility for promotion for a period of two years from the date of Constable Kramer's reinstatement.

[132] 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).

March 12, 2020

Josée Thibault

Date

Conduct Adjudicator