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2020 CAD 05



ROYAL CANADIAN MOUNTED POLICE

in the matter of

a conduct hearing pursuant to the

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

Between:

Commanding Officer, "J" Division

Conduct Authority

and

Constable Trevor Belanger-Condo, Regimental Number 61817

Subject Member

Conduct Board Decision

Inspector Colin Miller

March 13, 2020

Sergeant James Rowland, Conduct Authority Representative

Mr. Gordon Campbell, Subject Member Representative

TABLE OF CONTENTS

SUMMARY OF FINDINGS	3
INTRODUCTION	5
ALLEGATIONS.....	7
Applicable tests to make a determination on the Allegations	12
DECISION ON ALLEGATIONS	13
Allegation 1	13
Allegation 2.....	14
CONDUCT MEASURES.....	16
Member Representative’s submission.....	16
Conduct Authority Representative’s submission	17
Decision on conduct measures	19
Aggravating factors	22
Mitigating factors	23
CONCLUSION.....	24

SUMMARY OF FINDINGS

Constable Condo was originally served with a *Notice of Conduct Hearing* containing 11 allegations: four allegations under section 8.1; six allegations under section 4.2; one allegation under section 7.1 of the RCMP Code of Conduct. All of the allegations related to alleged improper note keeping and providing inaccurate accounts in the investigations he conducted.

The Conduct Hearing for this matter was scheduled for the week of February 25, 2020. On the eve of the hearing, the parties reached a resolution. The original allegations were withdrawn and replaced with two allegations, to which Constable Condo admitted, and a joint submission on conduct measures was presented to the Conduct Board.

An oral hearing was held on February 25, 2020, at which the Conduct Board delivered its decision on the allegations and conduct measures. Both allegations were found to be established

on a balance of probabilities. The Conduct Board accepted the parties' joint submission on conduct measures and imposed: (1) a financial penalty of 30 days, to be deducted from Constable Condo's pay; (2) a transfer; (3) completion of a values and ethics course; (4) completion of an online note taking course; and, (5) work under close supervision for a period of not more than one year.

INTRODUCTION

[1] All of the alleged incidents in this matter took place between October 23, 2016, and February 2, 2018, while Constable Trevor Belanger-Condo (Constable Condo) was working as a general duty member, posted at Elsipogtog Detachment, in New Brunswick. Pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], an investigation into Constable Condo's actions was initiated on February 8, 2018.

[2] On February 1, 2019, the Commanding Officer and Conduct Authority for "J" Division (the Conduct Authority) signed a *Notice to the Designated Officer* requesting the initiation of a Conduct Hearing in relation to this matter. On February 8, 2019, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *RCMP Act*.

[3] The *Notice of Conduct Hearing* contained eleven allegations: four allegations under section 8.1; six allegations under section 4.2; one allegation under section 7.1 of the RCMP Code of Conduct. The particulars of the allegations described incidents of improper note keeping and providing inaccurate accounts in the investigations he conducted.

[4] The *Notice of Conduct Hearing* was signed by the Conduct Authority on May 21, 2019. It was served on Constable Condo on July 9, 2019, along with the investigation package.

[5] On August 30, 2019, Constable Condo provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. He admitted to some of the particulars, but denied every allegation.

[6] On February 10, 2020, Constable Condo provided an amended response in which he modified his response to particular 6 of Allegation 1¹ (Amended Response).

¹ Another version was subsequently provided on February 12, 2020, as only the odd pages had been included on February 10, 2020.

[7] On February 24, 2020, the day prior to the Hearing, I received correspondence from the Member Representative advising that the parties had reached an agreement to resolve this matter.

[8] Prior to the commencement of the Hearing on February 25, 2020, in Ottawa, Ontario, the Conduct Authority Representative provided me with a document entitled “Agreed Statement of Facts”, which was signed by the Conduct Authority Representative and Constable Condo.

[9] The “Agreed Statement of Facts” contained two allegations, broken down by “incidents” that occurred between November 9, 2016, and January 21, 2018. In effect, Allegation 1 now contained allegations 1 and 5 from the original *Notice of Conduct Hearing*, while Allegation 2 was comprised of allegations, 3, 4, 6, 7 and 8 of the original *Notice of Conduct Hearing*. Allegations 2, 9, 10 and 11 were withdrawn. The parties requested that I accept the facts contained within the “Agreed Statement of Facts”.

[10] I thoroughly reviewed the “Agreed Statement of Facts” and determined that it accurately reflected the relevant materials in the record with the following two clarifications:

- a. In relation to Allegation 1, incident 2, although Constable Condo admitted that he documented in PROS the times he provided the *Charter*² rights and police caution to an individual in his custody based on guessing or approximation after the fact and presented such as being accurate (particular 15), I note that no time for the issuance of the police caution is included in his general report.
- b. Allegation 2, incident 5, is an exact replication of Allegation 2, incident 2; accordingly, the parties agreed that the former would be struck from the allegation.

[11] With these clarifications addressed, I adopted the “Agreed Statement of Facts” as an amended *Notice of Conduct Hearing*. I read the allegations, including the particulars to Constable Condo. I advised him that although a joint proposal was going to be made, I was not

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 [*Charter*].

bound to accept it and, in limited circumstances, I could depart from it. I informed him that if such a decision were made, then he would have the opportunity to make submissions in relation to that situation.

[12] Constable Condo indicated that he understood the allegations, as read to him; the caution I provided regarding a joint submission; and, subsequently, he admitted to the allegations on the record.

[13] The Hearing in this matter was completed on February 25, 2020, with the oral decision establishing the two allegations and, later that same day, on the imposed conduct measures. This written decision incorporates and expands upon those oral decisions.

ALLEGATIONS

[14] The amended *Notice of Conduct Hearing* contains the following two allegations:

Allegation 1:

Between January 3, 2017 and January 21, 2018 at or near Elsipogtog, in the Province of New Brunswick, while on duty, [Constable Condo] did not complete accurate accounts pertaining to the conduct of investigations, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 1

1. At all material times, [Constable Condo] was a member of the Royal Canadian Mounted Police (“RCMP”) posted at [Elsipogtog] detachment in the Province of New Brunswick.

a. incident #1

2. On January 21, 2018 [Constable Condo] conducted an investigation involving a suspected impaired driver believed to have driven his vehicle into a ditch (PROS file 2018-93618).

3. [Constable Condo] used two different police notebooks to document his actions during this investigation. [Constable Condo] explained this was the result of having forgotten his operational notebook (the operational notebook) at the detachment in a rush to get to the scene of the investigation and having used a spare blank notebook he kept in his duty bag to document his actions (the rough notebook).

4. [Constable Condo] subsequently transcribed his notes from the rough notebook into his operational notebook which he submitted as part of a court package. The operational and rough notebooks did not contain the same information about the actions [Constable Condo] took during the investigation, including time entries that did not match and the omission of information.

5. The rough notebook had notations that [Constable Condo] made an approved screening device (ASD) demand at [9:53 p.m.] whereas there was no mention of an ASD demand having been made in either the operational notebook or [Constable Condo]'s PROS general report (part of the RCMP electronic case database system) pertaining to the matter.

6. [Constable Condo]'s PROS report stated that he read the driver his *Charter* rights and police caution at [9:53 p.m.] and that “*At this point, the writer was acquiring his grounds*” with no mention of an ASD demand having been made.

7. [Constable Condo] admits that he knowingly omitted to include a reference to the ASD demand in his operational notebook and PROS report but explains that, while he did in fact read the demand to the driver, he never administered the ASD test to the driver. [Constable Condo] explains that he switched the course of his investigation towards a “straight impaired” after re-assessing at the scene, due to the driver's demeanour, as well as after contacting a senior RCMP Member in another detachment for advice on how to proceed.

8. [Constable Condo] admits that he should have disclosed his rough notebook and the fact that an ASD demand was made. [Constable Condo] further admits that the operational notes he had re-transcribed after the fact contained omissions and inaccuracies which were included as part of a court package that could lead a reader to believe that the notes were taken at the scene of the investigation.

9. The Conduct Authority concedes that, in light of new evidence brought forward by [Constable Condo], the available evidence is insufficient to support an inference that [Constable Condo]'s actions were done with the purpose of artificially bolstering the case against the suspected impaired driver.

10. Furthermore, the PROS general report and disclosed notes indicated that [Constable Condo] twice read the suspect his *Charter* rights and police caution, once beginning at [9:52 p.m.] when [Constable Condo] wrote the driver was being detained for impaired operation of a motor vehicle and a second time beginning at [10:09 p.m.] then saying the driver was arrested for impaired driving. [Constable Condo]'s rough notebook only made reference to a single reading of those warnings, beginning at [10:06 p.m.].

11. Despite the fact that there were no notes taken at the scene in the rough notebook about the exact times the *Charter* rights were read the first time (at detention), [Constable Condo] completed his operational notebook and PROS report the following day detailing the exact times (to the minute) the *Charter* warnings were read and detailed the responses provided by the driver. [Constable Condo] admits he documented the time he provided the driver with his *Charter* rights and police caution based on guessing or approximation after the fact and presented such as being factually accurate.

b. incident #2

12. At approximately [11:51 p.m.] on January 3, 2017 [Constable Condo] responded to a call reporting a suicidal female (PROS 2017-11914) and subsequently arrested a female person under the *Mental Health Act*.³

13. In the general report [Constable Condo] authored on PROS, he wrote that the female was arrested under the *Mental Health Act* at [12:20 p.m.] and wrote the exact times her *Charter* rights and police caution were read ([12:21 p.m.] and [12:22 p.m.] respectively).

14. [Constable Condo]'s handwritten notes in his operational notebook however only indicated the time [Constable Condo] placed her under arrest at [12:20 p.m.] without consigning the specific time at which the rights and caution were read.

15. [Constable Condo] admits that he documented in PROS the time he provided the female with her *Charter* rights and police caution based on guessing or approximation after the fact and presented such as being accurate.

16. The Conduct Authority accepts that the evidence supports [Constable Condo]'s assertion the he did in fact read the female her *Charter* rights and police caution and that the evidence does not support the inference that his actions were designed to deprive her of rights or done for a nefarious purpose.

Allegation 2:

Between November 9, 2016 and September 1, 2017 at or near Elsipogtog, in the Province of New Brunswick, while on duty, [Constable Condo] was not diligent in the performance of his duties and the carrying out of his responsibilities, contrary to section 4.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 2

³ *Mental Health Act*, RSNB 1973, c M-10 [*Mental Health Act*].

1. At all material times, [Constable Condo] was a member of the RCMP and posted at [Elsipogtog] detachment in the Province of New Brunswick.

a. incident #1

2. On November 9, 2016 [Constable Condo] conducted a traffic stop which evolved into a drug investigation that resulted in a “no case seizure” of a small quantity of Marijuana (PROS 20161487610).

3. According to [Constable Condo]’s general report in PROS (dated November 24, 2016) the driver of the vehicle had an odour of liquor on his breath and [Constable Condo] made an ASD demand at [4:50 p.m.].

4. [Constable Condo]’s handwritten notes for the day in his operational notebook made no mention of an ASD demand, the driver’s response to that demand, or any indication that [Constable Condo] conducted an impaired driving investigation.

5. [Constable Condo] admits that he failed in his obligation to make adequate notes that accurately reflected what transpired during the investigation and that the time he reported administering the ASD in his PROS report was an estimation.

b. incident #2

6. On April 3, 2017 [Constable Condo] conducted a traffic stop and impaired driving investigation against a male driver (PROS 2017- 386476).

7. According to the general report [Constable Condo] authored in PROS, he ordered the driver to submit to an ASD test at [12:15 p.m.] which resulted in a “warn reading” and he issued the driver a 7-day driving suspension.

8. [Constable Condo] took no field notes during this investigation and left pages blank in his notebook.

9. [Constable Condo] admits that he failed in his obligation to adequately document the enforcement action he took and that he approximated the exact time the ASD demand was administered.

c. incident #3

10. On September 1, 2017 [Constable Condo] conducted a traffic stop and subsequent drinking and driving investigation against a male driver (PROS 2017-1177871).

11. According to the general report [Constable Condo] authored in PROS, he ordered the driver to submit to an ASD test which resulted in a “14mg%”. Given the driver was not permitted to drive with any alcohol in his system pursuant to New Brunswick’s new driver laws, [Constable

Condo] suspended the driver's licence and issued a violation ticket under the *Highway Safety Act*.⁴

12. [Constable Condo] took no field notes in his operational notebook during this investigation and left pages blank in his notebook.

13. [Constable Condo] admits that he failed in his obligation to adequately document the enforcement action he took.

d. incident #4

14. On July 22, 2017 [Constable Condo] conducted a traffic stop which transformed into an impaired driving and drug investigation against a female driver (PROS 2017955830).

15. The general report [Constable Condo] authored in PROS included the following passage:

[Female Driver] admitted to having 1 drink (she specified a "soda" with liquor in it). Therefore, the writer had reasonable suspicion to believe that she had liquor inside her blood alcohol concentration. The ASD demand was read (add time).

@ [1:23 p.m.] DYU?

"Yeah" Results: "O".

16. [Constable Condo]'s handwritten notes of event in his operational notebook made no mention of giving an ASD demand, the driver's responses or the corresponding results.

17. [Constable Condo] admits that he failed in his obligation to adequately document the enforcement action he took and that he approximated the exact time the ASD demand was administered.

e. incident #5

18. On April 3, 2017 [Constable Condo] conducted a traffic stop and impaired driving investigation against a male driver (PROS 2017- 386476).

19. According to the General Report [Constable Condo] authored, he ordered the driver to submit to an ASD test at [12:15 p.m.] which resulted in a "warn reading" and that he issued a 7-day driving suspension.

20. [Constable Condo] took no field notes during this investigation and left pages blank in his notebook.

⁴ There is no New Brunswick legislation bearing this title. It is believed to be a reference to the *Motor Vehicle Act*, RSNB 1973, c M-17.

21. [Constable Condo] admits that he failed in his obligation to adequately document the enforcement action he took and that he approximated the exact time the ASD demand was administered.

[Incident 5 was struck as it is identical to Allegation 2, incident 2]

f. incident #6

22. On January 3, 2017 [Constable Condo] conducted a traffic stop on a vehicle driven by a female person (PROS 20178065) whom he suspected of impaired driving.

23. The occurrence summary [Constable Condo] authored states that he administered an ASD on the driver who provided 8 insufficient samples prior to registering a “Warn” and a 7-day administrative licence suspension was issued.

24. [Constable Condo] made no detailed notes about this investigation aside from writing the driver’s name and [2:10 a.m.] in his notebook and left pages blank.

25. [Constable Condo] admits that he failed to adequately document the actions he took in this investigation.

[*Sic throughout*]

Applicable tests to make a determination on the Allegations

[15] The burden is on the Conduct Authority to establish the Allegations on a balance of probabilities. Practically speaking, this means that I must find that the Conduct Authority has established for each Allegation that it is more likely than not that Constable Condo has contravened sections 8.1 and 4.2 of the RCMP Code of Conduct.

[16] Section 8.1 of the RCMP Code of Conduct reads as follows:

Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigations, the actions of other employees and the operation and administration of the Force.

[17] In order for this Allegation to be established, the Conduct Authority must prove the following on a balance of probabilities:

- a. the identity of the member;
- b. the statement or account of actions on a file in question;

- c. that the statement or account provided was inaccurate; and
- d. that the member knew it was inaccurate.

[18] Section 4.2 of the RCMP Code of Conduct reads as follows:

Members are diligent in the performance of their duties and the carrying out of their responsibilities, including taking appropriate action to aid any person who is exposed to potential, imminent or actual danger.

[19] In order for this allegation to be established, the Conduct Authority must prove the following on a balance of probabilities:

- a. Constable Condo knew he had a duty to discharge or a responsibility to carry out; and
- b. he willingly or neglectfully failed to discharge that duty.

DECISION ON ALLEGATIONS

Allegation 1

[20] By virtue of Constable Condo's admission, I find that the first two elements of the test for a contravention to section 8.1 have been met.

[21] In regard to incident 1 of Allegation 1, an examination of the materials provided in the record clearly demonstrates that the information contained in Constable Condo's operational notebook and general report is inaccurate when compared to the rough notes that he had made at the scene.

[22] By his admission, Constable Condo has agreed that he knowingly omitted to include a reference to the issuance of the ASD demand in his operational notebook. He also admitted that he submitted notes as part of a court package, knowing that they contained omissions and inaccuracies and that they would be relied upon.

[23] As it relates to incident 2, the materials in the record show that only the time this individual was placed under arrest is included in Constable Condo's notebook. However, his general report contains additional times pertaining to the provision of her *Charter* rights.

[24] Constable Condo admitted that he documented in PROS the times he provided the *Charter* rights and police caution to an individual in his custody based on guessing or approximation after the fact and presented such as being accurate.

[25] I must note that, upon close inspection, no time for the issuance of the police caution is included in his general report on PROS. While this precludes me from finding particular 15 to be established, not every particular in every allegation needs to be established in order for the allegation to be established.

[26] As previously set out, an examination of Constable Condo's notes and general reports in PROS clearly demonstrates that his reports were inaccurate. Coupled with his admission of knowing that his documentation contained inaccuracies, I find that the third and fourth elements of the test are satisfied. Consequently, I find Allegation 1 to be established on a balance of probabilities.

Allegation 2

[27] Constable Condo was, at all times noted in this Allegation, a member of the RCMP. He was also on duty and discharging the duties of his position, engaging in proactive policing activities, such as vehicle stops and conducting impaired driving investigations. One duty which is paramount in the carrying out of policing activities is the collection of evidence. Chapter 25.2 of the RCMP *Operational Manual* states at section 1.1:

1. 1. Investigator's notes serve to refresh memory, justify decisions made, and record evidence. Well-documented notebook entries lend credibility to testimony and can substantiate information years after the original entry was made. Inadequate and inaccurate entries in a notebook can compromise an investigation and subsequent criminal, civil, and/or administrative proceedings.

[28] It also sets out a member's obligations in relation to note taking. Specifically, in section 1.2 states:

1. 2. Members must make written and/or electronic notes, as soon as practicable, in order to prepare accurate, detailed, and comprehensive notes articulating observations made and actions taken during the course of their duties.

And further, section 1.6 says:

1. 6. Contents of forms, either written or electronic, which are not made contemporaneously to an event, are not considered notes and are not a substitute for an investigator's notebook.

[29] Hence, I find that in discharging his duty (i.e., conducting impaired driving investigations), as a member of the RCMP, Constable Condo did know that he had a duty to discharge or a responsibility to carry out. In the context of collecting evidence, that duty includes taking accurate and contemporaneous notes.

[30] Upon review of the record, it is clear that Constable Condo failed to discharge his duty in the manner expected. Evidence of this failure is as follows:

- a. Incident 1 – Constable Condo failed to make any notebook notes in relation to the traffic stop recorded in Occurrence 20161487610, and estimated the times for the related activities when completing his general report.
- b. Incident 2 – Constable Condo failed to make any notebook notes at the time the traffic stop recorded in Occurrence 2017-386476;
- c. Incident 3 – Constable Condo failed to make any notebook notes at the time the traffic stop recorded in Occurrence 2017-1177871;
- d. Incident 4 – Constable Condo failed to document any steps taken in relation to the impaired driving investigation he conducted as part of Occurrence 2017955830;
- e. Incident 5 – Stricken;

- f. Incident 6 – In reference to Occurrence 20178065, Constable Condo failed to make any notes in relation to an impaired driving investigation he conducted, with the exception of a name and time.

[31] It should be noted that each of these incidents pertained to impaired driving investigations, in which the chronology of events is extremely important.

[32] For the aforementioned reasons, including Constable Condo's admission, I find that Constable Condo had a duty to make accurate notes as soon as practicable and that, by not making notes in relation to the incidents described, he failed to discharge that duty. Therefore, I find Allegation 2 to be established on a balance of probabilities.

CONDUCT MEASURES

[33] The Member Representative and the Conduct Authority Representative jointly submitted a set of proposed conduct measures, consisting of (1) a financial penalty of 30 days, to be deducted from Constable Condo's pay; (2) a transfer; (3) the completion a values and ethics course; (4) the completion of an online note taking course; and, (5) to work under close supervision for a period of not more than two years.

Member Representative's submission

[34] The Member Representative stated that, in coming to the agreement, the parties agreed that the reference to "false police report", found on page 66 of the *Conduct Measures Guide*, was the most relevant section, as it more appropriately captured Constable Condo's misconduct.

[35] The Member Representative also drew attention to the notation on page 67, which states:

[...] An inaccurate report, filed in good faith, may be treated as a performance issue, not conduct. A Member can be wrong without be deceitful. [...]

[36] He opined that the nature of Constable Condo's misconduct straddles the line between performance and discipline. He suggested that there was the question of intent, though noting that *mens rea* is not required in the Code of Conduct process. He further acknowledged that

Constable Condo had admitted to “knowingly” omitting to include details in his report and completing his notes.

[37] The Member Representative addressed the criteria delineated to meet the aggravated and mitigated ranges, as set out on page 67 of the *Conduct Measures Guide*, but he suggested that the normal range is the most appropriate in the circumstances. The normal range for filing a false police report goes from the forfeiture of 30 days’ pay to dismissal; thus, he suggested that Constable Condo’s misconduct falls at the bottom end of the normal range. In support of this assertion, he noted that Constable Condo was able to produce subsequent evidence (text message) that mitigated his actions; there was no premeditation; and, there was no miscarriage of justice as a result of his actions.

[38] The Member Representative concluded by submitting that the measures being proposed include a significant financial sanction, not only addressing Constable Condo’s misconduct, but also providing general deterrence; the other measures would address his identified shortcomings; and, he would have the opportunity to regain the trust that was lost.

Conduct Authority Representative’s submission

[39] Given the gravity of the misconduct, the Conduct Authority Representative submitted that the conduct measures should fall in the normal range for providing a false police report. He cited *Rault*⁵ and *Cook*⁶ as authorities that recognize the deference afforded to joint submissions.

[40] The Conduct Authority Representative stated that members are not held to a standard of perfection, but the intent or motive for the member’s actions must be considered. In this instance, the Conduct Authority Representative referenced the decision in *Cormier*,⁷ in which the conduct board found that dismissal was not always necessary in instances where there was no personal

⁵ *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 [*Rault*].

⁶ *R v Anthony-Cook*, 2016 SCC 43, [2016] 2 SCR 204 [*Cook*].

⁷ 2016 RCAD 2

gain or benefit. However, he distinguished this case from *Cormier*⁸ in that no criminal convictions resulted in the present matter.

[41] The Conduct Authority Representative emphasized that Constable Condo's misconduct was not the result of a failing memory, as he knowingly included inaccurate information and deliberately omitted other details, which could result in the judicial system being compromised. Furthermore, the manufacturing of notes after the fact may lead others to believe that they were made at the scene.

[42] The Conduct Authority Representative spoke to the significance of the failure to accurately record the times that the various investigative steps occurred in impaired driving investigations, noting the specific time frames that are legislated, such as those pursuant to subsection 254(2) of the *Criminal Code*.⁹

[43] The Conduct Authority Representative added that, although Constable Condo was relatively junior in service, considering the number of impaired driving investigations he had conducted, he should have known the importance of the details by now.

[44] However, the Conduct Authority Representative stated that the Conduct Authority's position on dismissal changed upon receiving the new evidence from the defence, i.e., text messages to another member from whom Constable Condo was seeking direction at the scene of incident 1. He stated that the misconduct no longer appeared to be motivated by self-benefit; therefore, it negated the inference that his actions were an effort to bolster his case.

[45] As it relates to Allegation 2, the Conduct Authority Representative submitted that although leaving blank pages and filling them in afterward from memory or best estimation is concerning, the Conduct Authority was giving him the benefit of the doubt that it was a failure to properly document as opposed to an intent to mislead.

⁸ *Ibid.*

⁹ RSC, 1985, c C-46.

[46] Though he acknowledged that Constable Condo was a good performer, the Conduct Authority Representative provided the following aggravating factors for consideration:

- a. Constable Condo had previously received a performance log (Form 1004) for providing a false or misleading statement.
- b. Due to the discrepancies between his notebooks in relation to Allegation 1, incident 1, charges for that offence were not forwarded.
- c. The Crown had to review all of the charges that Constable Condo had laid which were before the court.
- d. Given that Constable Condo's notes were made on approximation or guessing, one can only wonder how he would testify or how far things would go.
- e. Constable Condo's conduct raises issues of integrity. Being junior in service can explain mistakes, but not a lack of integrity.
- f. There would be *McNeil*¹⁰ implications.

[47] The Conduct Authority Representative suggested that Constable Condo would have to work to regain trust and that the joint recommendations would afford that opportunity.

Decision on conduct measures

[48] With my finding that both Allegations have been established, I am now required, in accordance with paragraph 36.2(e) of the *RCMP Act*, to impose conduct measures that are: “proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, which are educative and remedial rather than punitive.”

¹⁰ *R v McNeil*, 2009 SCC 3, [2009] 1 SCR 66 [*McNeil*].

[49] As noted by the Member Representative, conduct similar to that of Constable Condo may straddle the line between performance and conduct. This notion is captured on page 20 of the *Conduct Measures Guide*, where it states:

[...] Neglect of duty matters have always been a balancing act in trying to determine if the member's conduct amounted to a breach of the Code of Conduct or represented a performance management issue. [...]

[50] The drafters of the *Conduct Measures Guide* recognized the inherent difficulty in parsing out misconduct from performance in various circumstances. However, given that I have already determined that both Allegations against Constable Condo have been established, in part because of his admission that he knowingly provided inaccurate reports, the question of intent is not in issue.

[51] As submitted by the Conduct Authority Representative, there is no evidence to demonstrate that Constable Condo was acting out of personal benefit and that this matter is less serious than that which occurred in *Cormier*.¹¹

[52] However, I echo his sentiment about the seriousness of improperly recording his activities and/or providing inaccurate information in his police reports. Regardless of what may have been the motive for his actions, conduct of this nature causes the public and, potentially, the courts, to question their perception of the police.

[53] Furthermore, as previously noted and emphasized by the Conduct Authority Representative, in investigations where the chronology of events is crucial to completing a thorough investigation, making accurate and timely notes is of the utmost importance.

[54] I note that dismissal is the most serious punishment that can be imposed in a disciplinary process such as this one. Before imposing the appropriate conduct measures, I must first consider the appropriate range of measures and take into account the aggravating and mitigating factors.

¹¹ *Ibid.*

[55] I have reviewed the parties' joint submission on conduct measures and supporting documentation. Instead of dismissal, the parties jointly propose: 1) a global sanction of the forfeiture 30 days' pay; 2) a transfer, to be implemented in accordance with the operational needs of the division; 3) the completion of the values and ethics training offered through the Canadian School of Public Service; 4) the completion of the online RCMP (AGORA) course on note taking; and 5) to work under close supervision for a period of no more than two years.

[56] When a conduct board is presented with a joint submission, there are very narrow circumstances in which it may refuse to accept the proposed conduct measures. Generally speaking, courts or administrative tribunals, such as this one, will not override a settlement reached by the parties unless doing so would be against the public interest. The public interest test has a very high threshold. In 2016, the Supreme Court of Canada recognized the value of settlement discussions and indicated that a joint submission should not be rejected lightly.¹²

[57] The public interest test was also applied in the context of professional discipline in the case of *Rault*, and by the Commissioner of the RCMP in decision (2018) 18 AD (4th) 270.

[58] According to *Rault*, a conduct board has an obligation to give serious consideration to a joint submission unless it is unfit, unreasonable or contrary to the public interest. In addition, when departing from a joint submission, a conduct board must also give good or cogent reasons as to why it is inappropriate.

[59] In order to determine whether the proposed conduct measures submitted by the parties are against the public interest, I must first determine what the possible measures, short of dismissal, may be.

¹² See for example *Rault*, at paragraph 19; and *Cook*.

[60] In their joint submission, the parties provided a detailed analysis of the appropriate range applicable to the various elements found in Constable Condo's misconduct. In support of their position, the parties cited *Cormier*,¹³ which was upheld by the Commissioner in 2017.

[61] Following my review, I find that the proposed range of sanction is reasonable and includes between 30 days' financial penalty up to dismissal.

[62] To determine if it is a proportionate measure in this case, I must consider the aggravating and mitigating factors.

Aggravating factors

[63] I have considered the aggravating factors presented by the Conduct Authority Representative and I find the following to be aggravating factors:

- a. The charge in relation to incident 1, in Allegation 1, was not forwarded to the Crown Attorney due to Constable Condo's note-taking inaccuracies that were discovered.
- b. The discovery of the various note-taking inaccuracies required the Crown Attorney to review all of Constable Condo's matters presently before the court, which would affect the Force's operations and possibly their relationship with the Crown.
- c. That knowingly providing information or completing reports that are inaccurate reflects issues of integrity and strikes at the very heart of the trust that the public places on the police.
- d. This happened numerous times and cannot be considered a single occurrence.
- e. In Constable Condo's retention, an administrative burden is placed on the Force due to the *McNeil*¹⁴ implications, which may impact his ability to fill certain roles.

¹³ *Supra.*

¹⁴ *Supra.*

[64] I reject the Conduct Authority Representative's arguments that the issuance of a performance log (Form 1004) to Constable Condo for providing a false or misleading statement constitutes prior misconduct and his suggestion that one could only wonder how far things would go if Constable Condo's misconduct wasn't discovered, for the following reasons:

- a. The issuance of a Form 1004 is not to be considered prior discipline – the very title of the form is indicative of its purpose; furthermore, there is no indication that the issuer of the Form 1004 was even a conduct authority.
- b. The Conduct Authority Representative's pondering is speculative in nature and should not be considered.

[65] In my oral decision, I originally accepted the fact that Constable Condo had previously received guidance in relation to his note taking; however, the Conduct Authority Representative clarified that this guidance was actually given after the misconduct occurred. Accordingly, I have disregarded this factor.

Mitigating factors

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

- a. Constable Condo's admission of the amended allegations and particulars have avoided a contested public hearing.
- b. Constable Condo has no record of prior discipline.
- c. Constable Condo has demonstrated an appreciation for the seriousness of his actions. While he did not provide an oral submission during the hearing, the manner in which he conducted himself signified genuine contrition.
- d. The letters of reference provided from colleagues and former supervisors confirm that Constable Condo has their ongoing support.

- e. There is no indication that Constable Condo committed the misconduct for personal benefit or for any nefarious purpose.
- f. He was a junior member; however, the weight given to this factor is diminished in consideration of the number of impaired driving investigations that he has undertaken.
- g. Constable Condo is a hard worker and has a strong work ethic as evidenced by his performance evaluation, letters of reference and the materials contained within the record.
- h. Constable Condo is of Mi'kmaq descent and is involved in that community.
- i. The Conduct Authority is no longer seeking Constable Condo's dismissal.

[67] While the Member Representative also included the lack of assistance and supervision at the detachment, Constable Condo's efforts to gain assistance and his family tradition of policing, I attributed no weight to these factors for the following reasons:

- a. Even if there may be limited guidance at a given detachment, there is still an onus on the member to seek assistance if they are unsure. The only evidence of Constable Condo doing so is the text message exchange provided with Constable Condo's Amended Response.
- b. Though I can appreciate the intrinsic pride Constable Condo has in following in his father's footsteps, special consideration cannot be afforded to him as opposed to another member whose family does not have this tradition.

CONCLUSION

[68] Having considered the record before me, the nature of the misconduct, the mitigating and aggravating factors, and the cases referenced by the parties, I cannot find that the proposed measures submitted by the parties are unfit, unreasonable or contrary to the public interest. In fact, the measures respect the range of sanction imposed for this type of misconduct as set out in

the *Conduct Measures Guide*. The measures, as proposed, are quite serious and will not only serve as a deterrent to the Subject Member, they will also serve as a general deterrent as well.

[69] I believe that Constable Condo has significant rehabilitative potential and I trust that he will not repeat the same mistakes in the future and that he will hold himself to the high standard required of an RCMP employee in the performance of his duties.

[70] Consequently, I accept the parties' joint submission on a global sanction and impose the following conduct measures:

- a. A financial penalty consisting of the forfeiture of 30 days' pay, to be deducted from Constable Condo's pay.
- b. A transfer to another work location, to be implemented in accordance with the operational needs of the division.
- c. To complete the values and ethics training offered through the Canadian School of Public Service.
- d. To complete the RCMP online (AGORA) course on note taking.
- e. To work under close supervision for a period of not more than one year. Although the parties proposed that Constable Condo be ordered to work under close supervision for a period of no more than two years, paragraph 3(1)(b) of the *CSO (Conduct)* only allows for a period of not more than one year.

[71] Constable Condo is being given an opportunity to continue in his career with the RCMP. However, any future contravention of the Code of Conduct will be seriously reviewed by the appropriate conduct authority and could lead to his dismissal from the Force.

[72] Any interim measures in place should be resolved in accordance with section 23 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[73] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on the Subject Member, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

Inspector Colin Miller

March 13, 2020

Ottawa, Ontario

Conduct Board