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2020 CAD 12



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:

Chief Superintendent Marlene Bzdel

Designated Conduct Authority of National Headquarters Division

Conduct Authority

and

Constable Ryan Stevenson

Regimental Number 52877

Subject Member

Conduct Board Decision

Josée Thibault

June 24, 2020

Staff Sergeant Jonathan Hart, Conduct Authority Representative

Staff Sergeant Peter Hearty, Subject Member Representative

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SUMMARY

Constable Stevenson was originally served with a *Notice of Conduct Hearing*, which contained three allegations: two for discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct and one for harassment pursuant to section 2.1. During the conduct process, Allegations 2 and 3 were withdrawn by the Conduct Authority. With regard to Allegation 1, Constable Ryan Stevenson denied engaging in discreditable conduct by frequently masturbating while lying in bed beside his spouse, who was asleep or feigning sleep.

The Conduct Board found that the allegation was not established and no conduct measures were imposed.

INTRODUCTION

[1] On April 18, 2019, the Conduct Authority signed a *Notice to the Designated Officer*, in which she requested the initiation of a conduct hearing in relation to this matter.

[2] The original *Notice of Conduct Hearing* (the Notice) contained a total of three allegations. Allegations 1 and 2 alleged that Constable Stevenson engaged in discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct, while Allegation 3 pertained to harassment contrary to section 2.1 of the RCMP Code of Conduct. The Notice was signed by the Conduct Authority on June 17, 2019. It was served on Constable Stevenson, together with the investigation package, on July 29, 2019.

[3] On April 24, 2019, I was appointed as the Conduct Board in this matter, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[4] On August 30, 2019, Constable Stevenson provided his response to the Notice, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He denied all three allegations.

[5] On November 20, 2019, following a pre-hearing conference with the parties, Allegations 2 and 3 were withdrawn by the Conduct Authority, as the main witness refused to testify. In addition, particular 10 of Allegation 1 was withdrawn by the Conduct Authority. It alleged that Constable Stevenson's action met the legal definition of sexual assault contrary to section 271 of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*].

[6] On December 11, 2019, both parties agreed that particulars 6, 7 and 8 of Allegation 1 occurred when Constable Stevenson was not a member of the RCMP as defined in section 2 of the *RCMP Act*. Following submissions provided by the parties on this issue, I determined that the alleged activities in the particulars fell outside of my jurisdiction and struck them from the Notice. Consequently, the only particulars to be determined are 1, 2 and 3, which were admitted in Constable Stevenson's response, and 4, 5, 9 and 11, which he denied.

[7] In considering the evolution of this file, on January 31, 2020, I informed the parties that I would no longer be holding a public hearing in this matter, which was scheduled for April 2020. Instead, I would render a decision on the written Record, which includes a copy of the Notice, the Investigation Report and accompanying materials, as well as Constable Stevenson's response.

[8] On April 1, 2020, I provided the parties with a *Determination of Established Facts*, which included my findings of fact based on my review of the Record. On May 12, 2020, I received the parties' final written submissions, which completed the Record.

[9] This written decision contains my reasons for not establishing Allegation 1.

ALLEGATION

[10] As previously noted, only one allegation remains to be adjudicated and it reads as follows:

Allegation 1

Between January 23, 2006 and August 31, 2006, at or near Parksville in the Province of British Columbia, Constable Ryan Stevenson did engage in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars of the contravention

1. At all material times you were a member of the RCMP posted to Parksville, British Columbia.
2. You graduated from Depot and became a member of the RCMP on January 23, 2006. At the time you were involved in a romantic relationship with Ms. A. M. and you moved in together upon arriving at your first posting in Parksville, British Columbia.
3. You remained in a romantic relationship with Ms. A. M. for 6 to 8 months after you arrived in Parksville.
4. During the period you lived with Ms. A. M. in Parksville, you frequently sexually assaulted her by masturbating with your penis in close proximity to her face while she was sleeping.

5. Ms. A. M. was awoken by you masturbating in close proximity to her face on approximately 30 occasions, but would normally turn over and just pretend to sleep to get you to stop.

6. Withdrawn – no jurisdiction

7. Withdrawn – no jurisdiction

8. Withdrawn – no jurisdiction

9. Ms. A. M. did not give consent to engage in the sexual activity described above and she could not consent to such activity while asleep.

10. Withdrawn – by Conduct Authority

11. Your actions constitute discreditable conduct contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

[*Sic throughout*]

Evidence in the Record

[11] On April 1, 2020, I issued the following *Determination of Established Facts*, which sets out the facts that are established in the written Record.

1. At all material times, Constable Stevenson was a member of the Royal Canadian Mounted Police (RCMP) and posted at the Parksville detachment, in the province of British Columbia.
2. In 2004, Constable Stevenson began a romantic relationship with Ms. A. M. This relationship continued while he was at Depot.
3. In January 2006, Constable Stevenson graduated from Depot and became a member of the RCMP and was posted in Parksville, British Columbia.
4. In May 2006, Constable Stevenson and Ms. A. M. moved in together in Parksville.
5. The parties' romantic relationship ended in September 2006.
6. During the period they lived together, the parties committed sexual acts in the privacy of their bedroom.

7. Ms. A. M. was frequently woken up by Constable Stevenson who was masturbating next to her in bed.
8. Ms. A. M. was aware that Constable Stevenson masturbated in proximity to her face. He did not physically touch her nor use force.
9. Although Ms. A. M. disapproved of Constable Stevenson's behaviour, she never confronted him or voiced her concerns. Instead, she turned over and pretended to sleep.
10. During the incidents described above, Constable Stevenson was off-duty and neither of the parties were intoxicated.
11. The allegation relates to historical incidents, which happened in 2006. With the permission of Ms. A. M., the incidents were reported to police in April 2018 by her dental hygienist following an appointment where she disclosed details about her past relationship with Constable Stevenson.
12. Due to the seriousness of the three allegations, and as requested by the RCMP, in April 2018, the Saanich Police Department conducted an independent external investigation into this matter.

[Sic throughout]

Decision on the allegation

[12] The burden is on the Conduct Authority to establish Allegation 1 on a balance of probabilities. In *McDougall*,¹ the Supreme Court of Canada has observed that this burden can only be satisfied by sufficiently clear, convincing and cogent evidence.

¹ *F.H. v McDougall*, 2008 SCC 53.

[13] In Allegation 1, Constable Stevenson admitted to particulars 1, 2 and 3, which are established in accordance with the *Determination of Established Facts*. However, Constable Stevenson denied particulars 4, 5, 9 and 11.

[14] With regard to particular 4, the Conduct Authority Representative (CAR) submitted that Constable Stevenson committed **sexual assault** on his spouse when masturbating approximately 30 times in close proximity to her face. According to the CAR, the actions of Constable Stevenson interchangeably amounted to a serious sexual misconduct or sexual assault.

[15] On the other hand, the Subject Member Representative (SMR) submitted that Constable Stevenson was neither convicted, nor charged with any criminal conduct of sexual assault. In addition, the CAR had failed to prove the criminal intent of Constable Stevenson's act. Moreover, there is no evidence of a threat or attempt of force, which is required when making a finding of sexual assault. In this instance, the evidence supports the notion that Constable Stevenson masturbated in the privacy of his bedroom while he believed his spouse was sleeping.

[16] I respectfully disagree with the CAR's position that sexual misconduct is interchangeable with sexual assault. In fact, sexual assault is a criminal offence clearly set out in the *Criminal Code*, which requires proof beyond reasonable doubt that the accused touched the victim, without consent, in circumstances that violated their sexual integrity. Furthermore, the Crown must prove that the accused intended to touch the victim while knowing or being reckless to a lack of consent to the sexual act in question.

[17] The RCMP conduct process is an administrative proceeding and the standard of proof required in cases of **sexual misconduct** is on a balance of probabilities. However, contrary to what the parties indicated in their submissions, the CAR does not have to prove that Constable Stevenson committed sexual assault on the lower threshold of the balance of probabilities. In fact, the onus is on the CAR to establish that the alleged sexual conduct is discreditable and, consequently, contravenes section 7.1 of the RCMP Code of Conduct. I am of the view that the CAR must guard against wholesale importation of criminal law concepts into the RCMP conduct process.

[18] Although particular 4 is not established, the crux of Allegation 1 still resides in particular 5, which is similar to particular 4, as well as in particulars 9 and 11.

Test for discreditable conduct

[19] The RCMP External Review Committee developed a four-part test to determine whether conduct is discreditable. First, the Conduct Authority must prove on a balance of probabilities the identity of the member, which is not an issue in this matter given Constable Stevenson's response to the allegations. Second, the Conduct Authority must prove with sufficiently clear, convincing and cogent evidence that the acts particularized in the allegation occurred. Third, the Conduct Board must determine if Constable Stevenson's conduct is likely to discredit the Force. This determination is made by asking whether a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and of the RCMP in particular, would view Constable Stevenson's conduct as likely to discredit the Force. Finally, the Conduct Board must determine whether the conduct is sufficiently related to Constable Stevenson's duties and functions as to provide the Force with a legitimate interest in disciplining him.

[20] Whether or not a conduct is discreditable is a matter of law, which must be determined in the specific context and in view of all the circumstances of the case. Furthermore, the term "discreditable",² given its natural and popular meaning, must be applied in relation to the special obligations and duties of a profession.

[21] Particular 5 of Allegation 1 alleges that Ms. A. M. was awoken by Constable Stevenson's masturbation in close proximity to her face on approximately 30 times. She would normally turn over and just pretend to sleep to get him to stop. In the Determination of Established Facts, I found that Constable Stevenson frequently masturbated in proximity to Ms. A. M.'s face, as there was no evidence adduced to assist me in ascertaining precisely the number of times it happened. However, given the totality of the evidence, it can be said with confidence that

² See *Hughes v Architects Registration Council of the United Kingdom*, [1957] 2 All ER 436 (QB), at 442, for an understanding of "disgraceful" in this regard.

Constable Stevenson's behaviour was not an isolated incident and as such, it is more probable than not that it happened frequently as stated by Ms. A.M. Finally, although Ms. A. M. disapproved of the behaviour, the evidence establishes a pattern where she never confronted him or voiced her concerns. Instead, she turned over and pretended to sleep.

[22] In his submissions, the SMR disagreed with the Conduct Board's finding that Constable Stevenson masturbated in proximity to Ms. A. M.'s face, as no evidence in the Investigation Report described exactly what it meant. Although the evidence did not describe the parties' physical positions during the incidents, it confirmed that Constable Stevenson was close to Ms. A. M., but he did not physically touch her in any way, which is paramount to this allegation. In the end, the SMR conceded that Constable Stevenson did masturbate in the presence of Ms. A. M. when he stated that "this is simply a case of a member engaged in masturbation in his bedroom, when he maintained a belief that he was in private as his spouse was sleeping".

[23] For the aforementioned reasons, particular 5 is established on a balance of probabilities. However to establish Allegation 1, further analysis is required to determine whether or not his actions bring the RCMP into disrepute.

[24] In relation to particular 9 of Allegation 1, it is alleged that Ms. A. M. did not consent to engage Constable Stevenson's sexual activity as she was asleep. The CAR submitted that the issue of consent was a necessary and relevant consideration for the Conduct Board when determining if the impugned conduct is discreditable. As Ms. A. M. was asleep or pretended to be asleep at the time of the unwanted sexual acts, she could not freely give consent. Informed consent requires the conscious "voluntary agreement" of the victim to engage in every sexual act at the time of the sexual activity in question. Consequently, Constable Stevenson could not simply rely on Ms. A. M.'s silence, passivity or a "testing of the waters" to suggest that he took reasonable steps to obtain her consent.

[25] As for the SMR, he submitted that the evidence established that Constable Stevenson engaged in the simple act of masturbation in his own bedroom, in the comfort of his bed, while his spouse slept. Ms. A. M. was not engaged in the sexual activity with Constable Stevenson,

who also did not intend to involve her. In fact, there is no evidence that he tried to wake her and therefore, her consent was not required. According to the SMR, the inference to be drawn is that Constable Stevenson was engaged in private sexual activity while believing his spouse was sleeping. The clear evidence is that while she awoke during the incidents, she continued to pretend to sleep and, even then, Constable Stevenson never involved her in his actions.

[26] *R. v Ewanchuk*, 1999 CarswellAlta 99, [1999], 1 SCR 330, is the leading decision on consent. The Supreme Court of Canada determined at paragraph 49 that “Consent means that the complainant had affirmatively communicated by words or conduct her agreement **to engage in sexual activity with the accused** [emphasis added]”. The Court also explained at paragraph 31 that, in cases where implied consent is argued, the “trier of fact may only come to one of two conclusions: the complainant either consented or not. There is no third option.”

[27] The evidence in the Record confirms that Constable Stevenson never tried to wake Ms. A. M. when masturbating, nor involved her in his personal sexual activity. In her statement to the Saanich Police Department, Ms. A. M. explained that only after a few months into the relationship, which started in 2004, she began to wake up midway through the night due to the bed shaking and Constable Stevenson masturbating with his penis pointed at her face. She did not know if Constable Stevenson knew she was awake or did not care if she was.³ This behaviour continued in 2006, after Depot. According to Ms. A. M., at one point in the relationship, Constable Stevenson’s masturbation “was really the only sexual contact we were having, if you can call that sexual contact”.⁴

[28] In light of the aforementioned, the evidence establishes that Ms. A. M.’s consent was not required in the specific circumstances described in this matter. Consequently, particular 9 is not established.

[29] I will now review the submissions of the parties in relation to particulars 5 to determine if the acts established against Constable Stevenson amount to discreditable conduct.

³ 2018-09-12, transcript page 16.

⁴ 2018-09-12, transcript page 20.

[30] In his submissions, the CAR raised several issues regarding Constable Stevenson's discreditable behaviour, which I categorized into the following three categories:

- a. Unwanted physical contact or force is not required to establish "sexual assault";
- b. Constable Stevenson used Ms. A. M. as an object of his personal sexual gratification; and
- c. Ms. A. M. was a sleeping vulnerable victim, which constitutes an aggravating factor.

a) Unwanted physical contact or force is not required to establish "sexual assault"

[31] The CAR acknowledged the Conduct Board's finding in the *Determination of Established Facts* that Constable Stevenson did not physically touch Ms. A. M. nor use force when masturbating in her presence. He stated that case law firmly supports that not all victims of "sexual assault" must be submitted to aggressive unwanted physical touching. Hence, he concludes that the Conduct Board can make a finding of sexual misconduct without evidence of actual physical contact or force.

[32] In support of this position, the CAR referred to the Ontario Court of Appeal decision in *R. v. Edgar*,⁵ in which the accused forced his way into the complainant's home and, prior to leaving, asked that she watch him masturbate. The complainant complied and sat on the couch next to the accused while he put his hands down his pants. Although the accused did not expose his penis or touch the complainant, he was charged with sexual assault. The Ontario Court of Appeal concluded that sexual assault can still be established even if the accused does not touch or even verbally threatens the victim. More specifically, at paragraph 10, it states:

A person's act or gesture, without words, force or any physical contact, can constitute a threat to apply force of a sexual nature, if it intentionally creates in another person an apprehension of imminent harm or offensive contact that affronts the person's sexual integrity. Coupled with a present ability to carry out the threat, this can amount to a sexual assault.

⁵ *R. v. Edgar*, (2016) 344 OAC 399 (CA) [*Edgar*].

[33] In addition to the *Edgar* decision, the CAR also relied on the decision of the Ontario Superior Court of Justice in *R. v Bourbon*,⁶ which supported the notion in *Edgar* that physical contact is not necessary to establish “sexual assault”. In *Bourbon*, the Court rejected “the submission by defence counsel that a sexual assault requires circumstances of sexualized violence, control and confinement”.

[34] Finally, the CAR submitted that Constable Stevenson deliberately attempted to avoid responsibility for his actions by not physically touching Ms. A. M. while engaged in his selfish acts of non-consensual masturbation. The CAR suggested that this degree of preplanning by Constable Stevenson demonstrates a lack of empathy towards Ms. A. M.

[35] In his submissions, the SMR found the reliance by the CAR on the *Edgar* decision perplexing. He stated that the latter could easily be distinguished from this matter as there is no element of breaking and entering, followed by forcible confinement. Furthermore, the essential part of the quote cited at paragraph 10 of that decision is: “a person’s act, without [...] physical contact can constitute a **threat** to apply force of a sexual nature [emphasis added].” There is no evidence in the conduct investigation material that supports the notion that Constable Stevenson used any threat of force. In addition, the SMR relied on the Conduct Board’s finding in the *Determination of Established Facts* that Constable Stevenson did not use force during the incidents.

[36] The SMR also distinguished the *Bourbon* decision relied upon by the CAR as, in that instance, the Court found a need for a finding of “threat to apply force”, which is a requirement under paragraph 265(1)(b) of the *Criminal Code*. The SMR stated that, in this instance, there was no threat to the physical or sexual integrity of Ms. A. M.

b) Constable Stevenson used Ms. A. M. as an object of his personal sexual gratification

[37] As per his submissions, the CAR stated that the evidence supports that, when Constable Stevenson repeatedly masturbated, he used Ms. A. M. as an object for his own personal sexual

⁶ *R. v Bourbon*, 2016 ONSC 5707 [*Bourbon*], paragraph 709.

gratification. The seriously invasive actions of Constable Stevenson were not fleeting in nature, but rather repetitive. This demonstrates that he “sought to exert his power over Ms. A. M. by using his own personal sexual gratification as a weapon.” The CAR alleged that the actions of Constable Stevenson amounted to a form of spousal abuse and caused Ms. A. M. to suffer needless humiliation and shaming.

[38] The CAR further submitted that the findings of the Conduct Board in the *Determination of Established Facts* that Ms. A. M. “disapproved of the Constable Stevenson’s behaviour and purposefully pretended to sleep” to avoid him is clear evidence of an affront to Ms. A. M.’s sexual integrity. Furthermore, since the Conduct Board held that the allegations were serious in nature and that the complaint was not frivolous nor vexatious, this demonstrated that the actions of Constable Stevenson amounted to an overt act of exerting power and control over Ms. A. M. This exemplified what a sexual assault perpetrator commonly seeks. As stated at paragraph 16 in *Edgar*:

It must be remembered that sexual assault is an act of power, aggression and control, and that a threat to invade the bodily or sexual integrity of another person or to otherwise apply force is a hostile act.

[39] The CAR further submitted that Ms. A. M. did not confront him because she was scared of him. This argument is supported by her statement of May 28, 2018, given to the Saanich Police Department. Ms. A. M. described that when Constable Stevenson returned from Depot in January 2006, he portrayed himself as an individual who sought to exert power and authority over her, which are the very elements of sexual assault. More specifically, she stated:

M – ...[when he returned from Depot he was] Totally different person. ... I mean to say that all of his behaviours were amplified after Depot. [...]

M – Because he was still socially awkward, he was still doing all of these things, the masturbating, the porn, all of that stuff, but now he had power, and he had authority, and he talked a lot about having that power and having that authority. So it wasn’t like two different people, it was one person and then another with the volume cranked. [...]

M – His ego got pretty big uh, when he became a Mountie... [...]

[40] In addition, the CAR also relied on the decision of the British Columbia Supreme Court in *R. v Field*,⁷ in which the accused used the victim as the object of his own personal sexual gratification. He asked if he could watch her while he masturbated. The *Field* decision followed the *Edgar* decision as well as the decision of the Supreme Court of Canada in *Chase*,⁸ which stated that sexual assault is not limited to those instances involving actual physical contact.

[41] In his submissions, the SMR distinguished the *Field* decision as the Court found an element of violence and engagement with the victim by asking her to remove her clothes. None of those elements are present in this matter. The SMR also submitted that the CAR had to prove on a balance of probabilities that Constable Stevenson intended to involve Ms. A. M. for his sexual gratification. There is no evidence of this. Finally, the SMR submitted that, as in this instance, it is probable that a person lying in bed beside his spouse, can be in proximity to her face, while not involving that person, or intending to involve that person, in the sexual act.

c) Ms. A. M. was a sleeping vulnerable victim, which constitutes an aggravating factor

[42] Finally, the CAR submitted that Constable Stevenson took advantage of Ms. A. M. while sleeping, which is a court recognized vulnerable state. The fact that Constable Stevenson purposefully victimized Ms. A. M. when she was defenceless further supports that his conduct was discreditable. In accordance with section 37 of the *RCMP Act*, RCMP members are responsible of aiding those in a vulnerable state. They should not use the person's vulnerability for their own personal advantage.

[43] The CAR referred to the decision *R. v S.W.P.*⁹ of the British Columbia Provincial Court, which addressed a fact scenario in which a complainant was awoken to find the accused masturbating in close proximity to her without consent. The CAR acknowledged that in contrast to the facts in this instance, the accused in *S.W.P.* admitted physical contact with the victim: "he spent about 30 minutes masturbating while touching the complainant's buttocks". In *S.W.P.*, the

⁷ *R. v Field*, 2019 BCSC 2341 [*Field*].

⁸ *R. v Chase*, [1987] 2 SCR 293.

⁹ *R. v S.W.P.*, 2018, BCPC 71 [*S.W.P.*].

Court recognized the tremendous psychological impact that this type of unwanted sexual activity can have on its victims. The Court also found that taking advantage of a sleeping, vulnerable victim constituted an aggravating factor.

[44] Although the SMR did not specifically address whether Ms. A. M. was a vulnerable victim as described by the CAR, his argument was consistent throughout his submissions. There was no threat to apply force in this instance. Constable Stevenson simply masturbated in the privacy of his bedroom while he believed his spouse was sleeping.

Analysis

[45] Members of the RCMP must adhere to the RCMP Code of Conduct both on- and off-duty. By the terms of their engagement, members of the RCMP have voluntarily agreed to abide by a higher standard of conduct than that of the ordinary citizen (*The Queen and Archer v White*, [1956] SCR 154, at page 158). However, this standard does not call for perfection.

[46] The parties agree that criminal behaviour—with or without conviction—can constitute discreditable conduct; thus, it satisfies the third-part test of section 7.1 of the Code of Conduct, which requires the Conduct Board to make an objective finding based on a reasonable person. In light of the remaining allegation and particulars before me, I find that, as submitted by the SMR, there was no criminal act engaged in by Constable Stevenson and no criminal intent on his part.

[47] On the totality of the evidence, I find that Constable Stevenson lacked respect and compassion for Ms. A. M., which are two core values of the RCMP. I also agree with the CAR that the actions of Constable Stevenson caused Ms. A. M. “needless humiliation and shaming”. However, unlike submitted by the CAR, I cannot find that Constable Stevenson’s behaviour was an “overt act of exerting power or control over Ms. A. M.” and that he took advantage of a sleeping vulnerable victim.

[48] As submitted by the SMR, and to borrow from the conduct board decision in the *Appropriate Officer “E” Division and Sergeant Wlodarczak*,¹⁰ even if not everyone agreed with Constable Stevenson’s actions in this case, it does not mean that the act is discreditable. More specifically, the conduct board stated: “Just because you and I would have done things differently does not amount to [discreditable] conduct that justifies a disciplinary response.”

[49] In his submissions, the SMR also indicated that the *Conduct Measures Guide* (2014) (the *Guide*) includes behaviours that the Force has recognized to be discreditable. Since Constable Stevenson’s conduct does not fall into one of the categories found in the *Guide*, it cannot be considered discreditable.

[50] To support his position, the SMR relied on the *Wlodarczak* decision, which states the following at paragraph 52:

[...] any profession subject to a Code of Conduct must know in advance what conduct is prohibited and what is not, in order for a finding of fault to be later made against them. [...]

[51] I respectfully disagree with this position, as the *Guide* is only a guide of the conduct measures to be imposed once the allegation is established. As explicitly stated in the *Guide* at page 3:

[...] This Conduct Measures Guide provides a “starting point” for members and conduct authorities to engage in discussions on appropriate measures, with a shared goal of timely, fair and appropriate disposition. This will eliminate a significant level of subjectivity in identifying possible measures, and provide a framework for discussion. [...]

[52] The SMR further relied on *Wlodarczak*, where the Conduct Board indicated at paragraph 69: “To label someone’s actions as disgraceful or shameful or dishonorable is a serious matter.” The SMR submitted that should the Conduct Board in this matter make a finding of discreditable conduct, it will affix a label that the “mere act of masturbation in the privacy of the bedroom while his spouse slept is disgraceful or shameful or dishonorable.” Also, there is currently no

¹⁰ *Appropriate Officer “E” Division vs. Sergeant Wlodarczak*, 12 A.D. (4th) 388 [*Wlodarczak*], paragraph 59

RCMP case law where the simple act of masturbation in the privacy of the bedroom, has constituted discreditable conduct. Doing so now, would force the Conduct Board to “needlessly intrude on acceptable sexual practices in the bedroom”.

[53] I agree with SMR that no current RCMP case law can provide guidance in this instance. In addition, I note that the parties were unable to find disciplinary decisions from other Canadian police forces or administrative tribunals where an employee (or police officer) was disciplined under the specific circumstances we are dealing with.

[54] The evidence confirms that, more than 14 years ago, Constable Stevenson and Ms. A. M. had a complex romantic relationship. In her statements, Ms. A. M. explained that Constable Stevenson watched a lot of pornography and there “was a ton of awkwardness”.¹¹ There were also incidents that caused her to mistrust him. She felt that the relationship was not a “healthy or safe environment” for her to live in.¹²

[55] In the *Determination of Established Facts*, I found that, based on the Record, Ms. A. M.’s complaint was not frivolous or vexatious. However, I cannot find that the actions of Constable Stevenson, as specifically described in particular 5 of Allegation 1, breached the public’s confidence and affected the reputation of the RCMP.

[56] Consequently, I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would not view Constable Stevenson’s conduct, as described in the remaining Allegation 1, to bring discredit to the Force.

[57] In addition, I find that Constable Stevenson’s actions are not sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[58] In light of the above, Allegation 1 is not established on a balance of probabilities.

¹¹ 2019-09-12, transcript page 30

¹² 2018-10-03, transcript page 14.

CONCLUSION

[59] The Conduct Authority has not established on a balance of probabilities that Constable Stevenson engaged in discreditable conduct as alleged in Allegation 1 of the Notice of Conduct Hearing.

[60] Consequently, the conduct process in this matter is concluded.

[61] 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 Constable Stevenson, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

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Josée Thibault	June 24, 2020
	Date

RCMP Conduct Board