

Protected A

File ACMT 2017-33822

2018 RCAD 4



ROYAL CANADIAN MOUNTED POLICE

IN THE CONDUCT MATTER PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "T" Division

(Conduct Authority)

and

Corporal Mark Jenkins

Regimental Number 50482

(Subject Member)

Conduct Board Decision

Insp Al Ramey, Conduct Board

April 23, 2018

Representative for the Conduct Authority, "T" Division:

Me Frances Saint-Denis

Representative for the Subject Member:

Corporal Joel Welch

TABLE OF CONTENTS

SUMMARY	3
INTRODUCTION	4
RESPONSE TO ALLEGATIONS	4
DECISION ON THE ALLEGATIONS:	12
SANCTIONS	13
Subject Member testimony.....	13
Cst. Feaver testimony.....	14
Submissions on sanction	14
Submissions by the Conduct Authority Representative	14
Submissions by the Member Representative.....	16
Decision on sanction	17
Range of appropriate sanction	18
Comments on the allegations.....	19

SUMMARY

A Notice of Conduct Hearing pursuant to Part IV of the Royal Canadian Mounted Police Act, RSC, 1985, c R-10, as amended (RCMP Act) was issued July 25, 2017, by the Commanding Officer and Conduct Authority for "T" Division ("Depot"). The Notice contained four allegations; (i) discreditable conduct, (ii) failure to respect a directive, (iii) actual, apparent or potential conflict of interest, and (iv) making a false, misleading or inaccurate statement to a supervisor on a non-operational matter. The Subject Member admitted the four allegations. A conduct hearing was held in Regina, Saskatchewan, from January 16 to 18, 2018, inclusively. The four allegations were established and the Conduct Board ordered the Subject Member's immediate, indeterminate demotion to the rank of constable, ineligibility for promotion for one year, a transfer at the discretion of the Commanding Officer and a financial penalty of 30 days pay at the constable pay grade.

INTRODUCTION

[1] On September 28, 2017, the Member Representative (MR) filed the Subject Member's responses to the four allegations in which he admitted to all the particulars. For the sake of clarity and completeness, the Subject Member's responses are reproduced in full; providing specific responses to each particular. The Subject Member's responses are highlighted.

RESPONSE TO ALLEGATIONS

Allegation 1

Between the 16th day of March, 2016 and the 5th day of September, 2016, inclusive, at or near Regina, in the Province of Saskatchewan, Corporal Mark Jenkins engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. - *Cpl. Jenkins admits Allegation 1.*

Particulars of the contravention:

1. At all material times, Corporal Mark Jenkins, regimental number 50482, was a member of the Royal Canadian Mounted Police (RCMP) posted to Depot "T" Division, in the province of Saskatchewan ("Corporal Jenkins") – *Admit.*
2. Corporal Jenkins began as an Applied Police Sciences facilitator at Depot on October 3, 2014. – *Admit.*
3. On November 6, 2014, Corporal Jenkins signed a "Letter of Expectation – Staff-Cadet Relationships" which reads:

The absence of a policy surrounding the behavior of facilitators and staff at Depot exposes the RCMP to risk in relation to criminal, civil, or administrative processes especially in the area of Human Rights and the RCMP Act. The behavior of Cadets in this regard is spelled out clearly in the Welcome Package Appendix 7 (Version 8 CTP). Cadets are advised that entering into any close association with any member of the facilitation staff is prohibited and that a professional relationship is to be maintained at all times.

The purpose of this letter is to ensure facilitators and staff fully understand that the same rules apply to them in relation to cadets. Facilitators and staff must be deemed an "abuse of authority" regardless of the presence of "consent" due to the very influential role you play in the lives of our cadets. A professional relationship is to be maintained at all times. Please acknowledge your understanding of this directive by signing below in the presence of your Line Officer.

– *Admit/Explain. Cpl. Jenkins admits to signing the letter of expectation but did not recall its the specific wording when he began the relationship with Cadet Feaver in late June 2016. Cpl. Jenkins admits to knowing he should not have become involved in a romantic relationship with a cadet.*

4. On March 16, 2016, Troop 32 commenced training at Depot and Sarah Feaver was a cadet in this troop (“Cadet Feaver” and after graduation “Constable Feaver”). – *Admit.*

5. Corporal Jenkins was one of three Applied Police Sciences facilitators assigned to this Troop 32 and, such, was one of Cadet Feaver’s facilitators. – *Admit.*

6. On or around June 24, 2016, during the halfway party, Corporal Jenkins learned from Cadet Feaver that she was no longer in a relationship and through the conversation that they had a lot in common. – *Admit.*

7. The same evening, after Corporal Jenkins had left the halfway party, Cadet Feaver sent him a text message to which he replied. A text messages conversation started that evening and continued the next day. – *Admit.*

8. The next day, on or around June 25, 2016: a. Corporal Jenkins agreed to meet with Cadet Feaver at his house. Corporal Jenkins and Cadet Feaver began a romantic, intimate and sexual relationship. – *Admit.*

9. Corporal Jenkins knew that he was not permitted to have a relationship with a cadet and that a relationship with Cadet Feaver was inappropriate. – *Admit.*

10. From that weekend, Cadet Feaver spent most of the following weekends at Corporal Jenkins’ house. – *Admit.*

11. As a result of her sexual relationship with Corporal Jenkins, Cadet Feaver became pregnant a few weeks before graduating from Depot. – *Admit.*

12. On September 5, 2016, Cadet Feaver graduated from Depot training. – *Admit.*

13. The following day, on September 6, 2017 Corporal Jenkins reported to his supervisor Staff Sergeant Deneen Woodrow (then Sergeant) that:

a. He was going to begin a relationship with Constable Feaver.

b. Nothing had happen during training or prior to the graduation of Constable Feaver.

c. Another cadet had approach him at the graduation dinner to advise him that Constable Feaver was interested in him. – *Admit.*

14. On or around September 28, 2016, Constable Feaver started her first shift at her detachment in Coronach, Saskatchewan. – *Admit.*

15. On or around October 17, 2016, Constable Feaver reported to her detachment commander that she was pregnant. – *Admit.*

16. During the Code of Conduct investigation, Corporal Jenkins confirmed that he is the father of the baby. – *Admit.*

17. Corporal Jenkins, while been the facilitator of Cadet Feaver at Depot, engaged in discreditable conduct when he engaged in and pursued an inappropriate romantic, intimate and sexual relationship with cadet Feaver. – *Admit.*

Allegation 2

Between the 16th day of March, 2016 and the 5th day of September, 2016, inclusive, at or near Regina, in the Province of Saskatchewan, Corporal Mark Jenkins engaged in conduct which contravened section 3.3 of the Code of Conduct of the Royal Canadian Mounted Police. - *Cpl. Mark Jenkins admits allegation 2.*

Particulars of the contravention:

1. At all material times, Corporal Mark Jenkins, regimental number 50482, was a member of the Royal Canadian Mounted Police (RCMP) posted to Depot “T” Division, in the province of Saskatchewan (“Corporal Jenkins”) – *Admit.*

2. Corporal Jenkins began as an Applied Police Sciences facilitator at Depot on October 3, 2014. – *Admit.*

3. On November 6, 2014, Corporal Jenkins signed a “Letter of Expectation – Staff-Cadet Relationships” which reads:

The absence of a policy surrounding the behavior of facilitators and staff at Depot exposes the RCMP to risk in relation to criminal, civil, or administrative processes especially in the area of Human Rights and the RCMP Act. The behavior of Cadets in this regard is spelled out clearly in the Welcome Package Appendix 7 (Version 8 CTP). Cadets are advised that entering into any close association with any member of the facilitation staff is prohibited and that a professional relationship is to be maintained at all times.

The purpose of this letter is to ensure facilitators and staff fully understand that the same rules apply to them in relation to cadets. Facilitators and staff must recognize that any form of a sexual or close relationship with a cadet will be deemed an “abuse of authority” regardless of the presence of “consent” due to the very influential role you play in the lives of our cadets. A professional relationship is to be maintained at all times. Please acknowledge your understanding of this directive by signing below in the presence of your Line Officer.

– *Admit/Explain. Cpl. Jenkins admits to signing the letter of expectation but did not recall its the specific wording when he began the relationship with Cadet Feaver in late June 2016. Cpl. Jenkins admits to knowing he should not have become involved in a romantic relationship with a cadet.*

4. On March 16, 2016, Troop 32 commenced training at Depot and Sarah Feaver was a cadet in this troop (“Cadet Feaver” and after graduation “Constable Feaver”). – *Admit.*

5. Corporal Jenkins was one of three Applied Police Sciences facilitators assigned to this Troop 32 and, such, was one of Cadet Feaver’s facilitators. – *Admit.*

6. On or around June 24, 2016, during the halfway party, Corporal Jenkins learned from Cadet Feaver that she was no longer in a relationship and through the conversation that they had a lot in common. – *Admit.*

7. The same evening, after Corporal Jenkins had left the halfway party, Cadet Feaver sent him a text message to which he replied. A text messages conversation started that evening and continued the next day. – *Admit.*

8. The next day, on or around June 25, 2016:

a. Corporal Jenkins agreed to meet with Cadet Feaver at his house.

b. Corporal Jenkins and Cadet Feaver began a romantic, intimate and sexual relationship. – *Admit.*

9. Corporal Jenkins knew that he was not permitted to have a relationship with a cadet and that a relationship with Cadet Feaver was inappropriate. – *Admit.*

10. From that weekend, Cadet Feaver spent most of the following weekends at Corporal Jenkins’ house. – *Admit.*

11. As a result of her sexual relationship with Corporal Jenkins, Cadet Feaver became pregnant a few weeks before graduating from Depot. – *Admit.*

12. On September 5, 2016, Cadet Feaver graduated from Depot training. – *Admit.*

13. The following day, on September 6, 2017 Corporal Jenkins reported to his supervisor Staff Sergeant Deneen Woodrow (then Sergeant) that:

a. He was going to begin a relationship with Constable Feaver.

b. Nothing had happen during training or prior to the graduation of Constable Feaver.

c. Another cadet had approach him at the graduation dinner to advise him that Constable Feaver was interested in him. – *Admit.*

14. On or around September 28, 2016, Constable Feaver started her first shift at her detachment in Coronach, Saskatchewan. – *Admit.*

15. On or around October 17, 2016, Constable Feaver reported to her detachment commander that she was pregnant. – *Admit.*

16. During the Code of Conduct investigation, Corporal Jenkins confirmed that he is the father of the baby. – *Admit.*

17. Corporal Jenkins, while being the facilitator of Cadet Feaver at Depot, failed to respect the directive mentioned in the Letter of Expectation when he engaged in and pursued an inappropriate romantic, intimate and sexual relationship with Cadet Feaver. – *Admit.*

Allegation 3

Between the 16th day of March, 2016 and the 5th day of September, 2016, inclusive, at or near Regina, in the Province of Saskatchewan, Corporal Mark Jenkins engaged in conduct where there was an actual, apparent or potential conflict of interest, contrary to section 6.1 of the Code of Conduct of the Royal Canadian Mounted Police. - *Cpl. Mark Jenkins admits allegation 3.*

Particulars of the contravention:

1. At all material times, Corporal Mark Jenkins, regimental number 50482, was a member of the Royal Canadian Mounted Police (RCMP) posted to Depot “T” Division, in the province of Saskatchewan (“Corporal Jenkins”) – *Admit.*

2. Corporal Jenkins began as an Applied Police Sciences facilitator at Depot on October 3, 2014. – *Admit.*

3. On November 6, 2014, Corporal Jenkins signed a “Letter of Expectation – Staff-Cadet Relationships” which reads:

The absence of a policy surrounding the behavior of facilitators and staff at Depot exposes the RCMP to risk in relation to criminal, civil, or administrative processes especially in the area of Human Rights and the RCMP Act. The behavior of Cadets in this regard is spelled out clearly in the Welcome Package Appendix 7 (Version 8 CTP). Cadets are advised that entering into any close association with any member of the facilitation staff is prohibited and that a professional relationship is to be maintained at all times.

The purpose of this letter is to ensure facilitators and staff fully understand that the same rules apply to them in relation to cadets. Facilitators and staff must recognize that any form of a sexual or close relationship with a cadet will be deemed an “abuse of authority” regardless of the presence of “consent” due to the very influential role you play in the lives of our cadets. A professional relationship is to be

maintained at all times. Please acknowledge your understanding of this directive by signing below in the presence of your Line Officer.

– ***Admit/Explain. Cpl. Jenkins admits to signing the letter of expectation but did not recall its specific wording when he began the relationship with Cadet Feaver in late June 2016. Cpl. Jenkins admits to knowing he should not have become involved in a romantic relationship with a cadet.***

4. On March 16, 2016, Troop 32 commenced training at Depot and Sarah Feaver was a cadet in this troop (“Cadet Feaver” and after graduation “Constable Feaver”). – ***Admit.***

5. Corporal Jenkins was one of three Applied Police Sciences facilitators assigned to this Troop 32 and, such, was one of Cadet Feaver’s facilitators. – ***Admit.***

6. On or around June 24, 2016, during the halfway party, Corporal Jenkins learned from Cadet Feaver that she was no longer in a relationship and through the conversation that they had a lot in common. – ***Admit.***

7. The same evening, after Corporal Jenkins had left the halfway party, Cadet Feaver sent him a text message to which he replied. A text messages conversation started that evening and continued the next day. – ***Admit.***

8. The next day, on or around June 25, 2016:

a. Corporal Jenkins agreed to meet with Cadet Feaver at his house.

b. Corporal Jenkins and Cadet Feaver began a romantic, intimate and sexual relationship. – ***Admit.***

9. Corporal Jenkins knew that he was not permitted to have a relationship with a cadet and that a relationship with Cadet Feaver was inappropriate. – ***Admit.***

10. From that weekend, Cadet Feaver spent most of the following weekends at Corporal Jenkins’ house. – ***Admit.***

11. As a result of her sexual relationship with Corporal Jenkins, Cadet Feaver became pregnant a few weeks before graduating from Depot. – ***Admit.***

12. On September 5, 2016, Cadet Feaver graduated from Depot training. – ***Admit.***

13. The following day, on September 6, 2017 Corporal Jenkins reported to his supervisor Staff Sergeant Deneen Woodrow (then Sergeant) that:

a. He was going to begin a relationship with Constable Feaver.

b. Nothing had happen during training or prior to the graduation of Constable Feaver.

- c. Another cadet had approach him at the graduation dinner to advise him that Constable Feaver was interested in him. – **Admit.**
14. On or around September 28, 2016, Constable Feaver started her first shift at her detachment in Coronach, Saskatchewan. – **Admit.**
15. On or around October 17, 2016, Constable Feaver reported to her detachment commander that she was pregnant. – **Admit.**
16. During the Code of Conduct investigation, Corporal Jenkins confirmed that he is the father of the baby. – **Admit.**
17. Corporal Jenkins put himself in a situation where there was actual, apparent or potential conflicts between his professional responsibilities and his private interests because Corporal Jenkins engaged in and pursued an inappropriate romantic, intimate and sexual relationship with Cadet Feaver while he was one of the three facilitators of Cadet Feaver. – **Admit.**
18. Once engaged in an inappropriate romantic, intimate and sexual relationship with Cadet Feaver, Corporal Jenkins failed to immediately remove himself as a facilitator for Cadet Feaver. – **Admit/Explain. Cpl. Jenkins did not report the relationship with Cadet Feaver immediately as per policy because he feared the consequences of doing so in light of the letter of expectation.**
19. Some cadets from Troop 32 knew about the relationship between Corporal Jenkins and Cadet Feaver. – **Admit.**
20. Many cadets from Troop 32 suspected the relationship between Corporal Jenkins and Cadet Feaver. – **Admit.**
21. The situation of actual, apparent or potential conflict of interests lasted approximatively three months, from the halfway party to the graduation of Cadet Feaver. – **Admit.**

Allegation 4

On or about the 6th day of September, 2016, at or near Regina, in the Province of Saskatchewan, Corporal Mark Jenkins engaged in conduct which contravened section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police. - **Cpl. Mark Jenkins admits allegation 4.**

Particulars of the contravention:

1. At all material times, Corporal Mark Jenkins, regimental number 50482, was a member of the Royal Canadian Mounted Police (RCMP) posted to Depot “T” Division, in the province of Saskatchewan (“Corporal Jenkins”) – **Admit.**
2. Corporal Jenkins began as an Applied Police Sciences facilitator at Depot on October 3, 2014. – **Admit.**

3. On November 6, 2014, Corporal Jenkins signed a “Letter of Expectation – Staff-Cadet Relationships” which reads:

The absence of a policy surrounding the behavior of facilitators and staff at Depot exposes the RCMP to risk in relation to criminal, civil, or administrative processes especially in the area of Human Rights and the RCMP Act. The behavior of Cadets in this regard is spelled out clearly in the Welcome Package Appendix 7 (Version 8 CTP). Cadets are advised that entering into any close association with any member of the facilitation staff is prohibited and that a professional relationship is to be maintained at all times.

The purpose of this letter is to ensure facilitators and staff fully understand that the same rules apply to them in relation to cadets. Facilitators and staff must recognize that any form of a sexual or close relationship with a cadet will be deemed an “abuse of authority” regardless of the presence of “consent” due to the very influential role you play in the lives of our cadets. A professional relationship is to be maintained at all times. Please acknowledge your understanding of this directive by signing below in the presence of your Line Officer.

– *Admit/Explain. Cpl. Jenkins admits to signing the letter of expectation but did not recall its specific wording when he began the relationship with Cadet Feaver in late June 2016. Cpl. Jenkins admits to knowing he should not have become involved in a romantic relationship with a cadet.*

4. On March 16, 2016, Troop 32 commenced training at Depot and Sarah Feaver was a cadet in this troop (“Cadet Feaver” and after graduation “Constable Feaver”). – *Admit.*

5. Corporal Jenkins was one of three Applied Police Sciences facilitators assigned to this Troop 32 and, such, was one of Cadet Feaver’s facilitators. – *Admit.*

6. On or around June 24, 2016, during the halfway party, Corporal Jenkins learned from Cadet Feaver that she was no longer in a relationship and through the conversation that they had a lot in common. – *Admit.*

7. The same evening, after Corporal Jenkins had left the halfway party, Cadet Feaver sent him a text message to which he replied. A text messages conversation started that evening and continued the next day. – *Admit.*

8. The next day, on or around June 25, 2016:

- a. Corporal Jenkins agreed to meet with Cadet Feaver at his house.
- b. Corporal Jenkins and Cadet Feaver began a romantic, intimate and sexual relationship. – *Admit.*

9. Corporal Jenkins knew that he was not permitted to have a relationship with a cadet and that a relationship with Cadet Feaver was inappropriate. – *Admit.*

10. From that weekend, Cadet Feaver spent most of the following weekends at Corporal Jenkins' house. – *Admit.*

11. As a result of her sexual relationship with Corporal Jenkins, Cadet Feaver became pregnant a few weeks before graduating from Depot. – *Admit.*

12. On September 5, 2016, Cadet Feaver graduated from Depot training. – *Admit.*

13. The following day, on September 6, 2017 Corporal Jenkins reported to his supervisor Staff Sergeant Deneen Woodrow (then Sergeant) that:

- a. He was going to begin a relationship with Constable Feaver.
- b. Nothing had happen during training or prior to the graduation of Constable Feaver.
- c. Another cadet had approach him at the graduation dinner to advise him that Constable Feaver was interested in him. – *Admit.*

14. On or around September 28, 2016, Constable Feaver started her first shift at her detachment in Coronach, Saskatchewan. – *Admit.*

15. On or around October 17, 2016, Constable Feaver reported to her detachment commander that she was pregnant. – *Admit.*

16. During the Code of Conduct investigation, Corporal Jenkins confirmed that he is the father of the baby. – *Admit.*

17. Corporal Jenkins made a false, misleading or inaccurate statement to his supervisor Staff Sergeant Deneen Woodrow (then Sergeant) when stating that the relationship between himself and Constable Feaver began after graduation and that nothing happened during training or prior to the graduation of Constable Feaver. – *Admit.*

DECISION ON THE ALLEGATIONS:

[2] I have assessed the evidence and information in the record, including all submissions and the member's admissions. I find sufficient evidence exists to establish the particulars in each allegation. I find the particulars identify acts or omissions that contravene:

- a. Allegation 1: engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct,

- b. Allegation 2: failed to respect the directive mentioned in the Letter of Expectation, contrary to section 3.3 of the Code of Conduct,
- c. Allegation 3: was in an actual, apparent or potential conflict of interest, contrary to section 6.1 of the Code of Conduct, and
- d. Allegation 4: made a false, misleading or inaccurate statement to his supervisor, contrary to section 8.1 of the Code of Conduct.

[3] I therefore find allegations 1 to 4 established on a balance of probabilities. I must next consider the appropriate sanction.

SANCTIONS

[4] The ERC has articulated the definitive test for the imposition of conduct measures. This test has withstood the scrutiny of higher courts and holds that the first consideration must be the appropriate range of conduct measures applicable to the misconduct at issue. Then, the aggravating and mitigating factors must be considered. Finally, conduct measures which accurately and fairly reflect the gravity of the misconduct at issue, keeping in mind the principle of parity of sanction.

Subject Member testimony

[5] The Subject Member was raised in a Newfoundland out-port of 1,000 people. His family are hard-working and proud he joined the RCMP. As a youth he was involved in all manner of sports and he attended church regularly. He was on his high school's student council and was the vice-president of a Christian youth group. In 2003, at the age of 20, he attended Depot. His first posting was in Clearwater, BC. After 3 years of general duty he did a tour on the Musical Ride. Following this he was posted to Grand Bank, Nfld, an isolated, 4-year, limited duration, general duty post. He volunteered to complete a 5th year there. He was the acting detachment commander for most of his final 3 years. In October of 2014, he left Grand Bank to a promotion in Depot as a corporal-facilitator.

[6] The Subject Member was one of three corporal-facilitators that were assigned to Cadet Sarah Feaver's troop. He believed that the consequence of having a relationship with a cadet would be a transfer out of Depot.

Cst. Feaver testimony

[7] Cst Feaver attended Depot after holding several jobs; one of which was with the Calgary Flames hockey organization. She was sports-minded and involved in competitive cross-fit. A little before half-way through her Depot training her marriage dissolved.

[8] While speaking to a friend in the RCMP, she had heard of a Depot corporal-facilitator that became involved with a cadet; he was moved off the troop. Leading up to her troop's half-way party, she was mildly attracted to the Subject Member. After speaking with him at the party, she realized she had a lot in common with him. They began texting, arranged to meet off of the base, continued their discussions and eventually began a romantic relationship. She did not feel that the Subject Member pursued her, nor abused his authority to influence her.

[9] She became pregnant toward the end of her 6 month Depot training. She subsequently married the Subject Member and together they are raising their daughter.

Submissions on sanction

[10] Having established the four allegations, I considered the submissions from the representatives.

Submissions by the Conduct Authority Representative

[11] The CAR provided a series of aggravating factors. Of those I make the following comments:

- a. The Subject Member's conduct showed a lack of honesty towards a supervisor on an administrative matter.

- b. The Subject Member was one of three facilitators for Troop 32 and as such should have set the example for his cadets and co-workers, and conducted himself in a manner beyond reproach.
- c. The Subject Member involved a member of the public in his misconduct; namely Cadet Feaver. While a cadet is not an employee of the RCMP, nor are they members of the public in the purest sense. The aggravated damage when members of the public are involved is somewhat muted when the 'member of the public' is an RCMP cadet.
- d. The CAR suggested that the Subject Member's conduct was deliberate and pre-meditated. If the Subject Member had shown some predatory behavior or he had somehow manipulated the cadet into a romantic relationship then I would have found pre-meditation as an aggravating factor. The Subject Member's behavior was clearly not predatory, nor did he manipulate or beguile the cadet into a romantic relationship. I do not find this to be an aggravating factor.
- e. The CAR suggested that the misconduct was repetitive and that an ongoing, 3-month relationship made his misconduct worse. In these particular circumstances the duration of the misconduct had some relevance in that this was more than a one-time indiscretion. In my view a weekend tryste is just as serious as a 3-month relationship, as both put the RCMP at similar risk. The gravamen of the offence was entering into the relationship with a cadet in the first place.
- f. The CAR suggested that the Subject Member personally benefited from the misconduct and this is an aggravating factor. Personal gain can include benefits other than financial. Here, the Subject Member acted out of self-interest and personally benefited from participating in a romantic relationship with a cadet, to the detriment of the Depot as a safe place of police instruction.
- g. The CAR suggested that misconduct related to honesty and integrity will trigger a McNeil disclosure should the Subject Member should be retained. In criminal matters in which they provide evidence, members of the RCMP who have received formal or

informal discipline under the Code of Conduct must declare that fact in the prescribed form and provide it to Crown Counsel. Crown will then determine if the discipline record would have some relevance to the criminal matter and disclose same to defence. Members with a serious discipline history may have their credibility challenged by the defence. The disclosure is at the discretion of Crown and will be reviewed by a Court as to its relevance, magnitude, and impact. In this case, the misinformation provided by the Subject Member was regarding an administrative matter. The extent of the anticipated impact of a McNeil disclosure here is unknown and I have no evidence from the Representatives on this. I have no information on the long term effects of a McNeil disclosure on a member's viability in court, nor any possible remediation, be it by the passage of time, rigorous testing in court, or pro-action taken by a future RCMP member's union etc. It would likely not preclude the Subject Member from criminal investigative work.

Submissions by the Member Representative

[12] The Member Representative provided a series of mitigating factors. I make the following comments:

- a. The Subject Member accepted responsibility for his conduct in his statement to the professional standards investigators, in his Section 15 response, in his letter of apology to the Board, and in his testimony before me.
- b. The Subject Member showed a great deal of remorse. Often members are remorseful that they were caught; not the case here. From watching him in the stand and throughout the proceeding, I feel his apology was heart-felt and his remorse was genuine.
- c. The CAR confirmed that the Subject Member has no record of formal discipline. The MR advised that he has had little in the way of negative reporting.
- d. I have reviewed the Subject Member's performance evaluations. These official documents describe a consistently above-average performer, who has taken on difficult

duties and accomplished them with aplomb. Of particular note was his almost three years of shining success as an acting unit commander at a relatively junior service.

- e. According to the Subject Member, this misconduct was out of character. His letters of reference corroborate this; and while most were from friends, I note that several senior NCOs and external partners share this sentiment.
- f. Further to this, the Subject Member's numerous letters of reference from friends and family, cadets, subordinates, peers and supervisors, external partners etc. were uniformly salutary and gave me the impression that the Subject Member would be an asset to the RCMP if given a chance.
- g. The Subject Member cooperated with the professional standards investigation and he made early admissions that avoided a prolonged hearing and displacement of witnesses.
- h. The Subject Member assured the Board that this misconduct would not be repeated. He is in control of his own actions and from having presided over this matter, I believe him.
- i. Though the Subject Member did not self-report his misconduct, the misinformation he provided his sergeant, just after Cst Feaver's graduation, effectively kicked off the investigation. Other members might have laid low and hoped for the best.
- j. The MR stated that the Subject Member did not intend to hurt anyone, nor the organization. The CAR did not respond to this, but regardless, the Subject Member hurt himself, Cst Feaver and the RCMP.

Decision on sanction

[13] The Conduct Authority is seeking a global sanction of dismissal. In the event the CB does not dismiss, the Conduct Authority is seeking a demotion, inability to promote for 3 years, a transfer out of Depot at the Conduct Authority's discretion and a 40 day forfeiture of pay. The Member Representative suggests that a serious sanction less than dismissal would be appropriate.

Range of appropriate sanction

[14] With the ‘concept of parity’ of sanction in mind, I established a ranged of sanction, first by reviewing the cases provided by the Representatives, then by reviewing the Conduct Measures Guide. The cases include:

- a. *R. v Sergeant E.B. Thompson*, 2008 CM 2011
- b. *Lethbridge College Board of Governors v Lethbridge College Faculty Association*, 2008 ABQB 316
- c. *School District No. 62 and Sooke Teachers' Assn.*, RE, 1995 Carswell BC 4104 (Board of Arbitration)
- d. 24 A.D. (3rd) 146 – *AO “C” Division v Insp. Redmond*
- e. 14 A.D. (4th) 139 – *AO “National Division” v Supt. Young*
- f. 10 A.D. (4th) 237 – *AO “K” Division v S/Sgt. Ray*
- g. 9 A.D. (4th) 351 – *AO “HQ” Division v Sgt. Marquis*
- h. 16 A.D. (4th) 416 – *AO “D” Division v Cst. A*
- i. 10 A.D. (4th) 278 – *AO “E” Division v Cst. Gaschler*
- j. 14 A.D. (4th) 431 – *AO “F” Division v Cst. Koshman*
- k. 14 A.D. (4th) 164 – *AO “E” Division v Civilian Member Van Leeuwen*
- l. 13 A.D. (4th) 246 – *AO “HQ” Division v Cst. Nault*
- m. 11 A.D. (4th) 439 – *AO “C” Division v Cst. Girard*
- n. 10 A.D. (4th) 254 – *AO “B” Division v Cst. Blackmore*

- o. 2 A.D. (4th) 1 – *AO “J” Division v Cst. Moulton*
- p. File 2016-33572 (C-017) Conduct Appeal – *CO “J” Division v Cst. Cormier*
- q. ERC C-2014-001 (C-006) – *Cpl. (Vetted) v Supt. (Vetted)*
- r. 2017 RCAD 5 – *Commanding Officer, “B” Division v Cst. S. Green*

[15] Since the change in the RCMP Act in November 2014, there is not a large volume of Conduct decisions upon which to establish a range. Most of the cases provided by the Representatives were from the discipline regime where the maximum financial penalty was 10 days pay, then dismissal. Many of these were joint proposals on sanction. I have considered the cases and have assigned the appropriate weight.

[16] I have made use of the Conduct Measures Guide for assistance in setting the modern range of sanction. While an instructive and very useful document, it is my understanding that the Conduct Measures Guide is a guide and I am not bound by it.

[17] From a review of the cases provided and resort to the Conduct Measures Guide, I have determined that the four allegations merit conduct measures ranging from a substantial financial penalty, demotion, ordered transfer, up to and including dismissal from the RCMP.

Comments on the allegations

[18] I would like to comment on the specific sanction for each allegation separately. I will address what I consider the most serious allegation last.

[19] **Allegation 2** is a contravention of s. 3.3 of the Code of Conduct; failing to respect the directive mentioned in the Letter of Expectation (LoE). Romantic relationships between cadets and facilitators were prohibited by the Commanding Officer and for good reason. Such relationships detract from a cadet’s training, from unit cohesion and from general order. These relationships can attract civil liability to the RCMP. No cadet attends Depot with the expectation that they will be the target of their facilitator’s romantic attentions; they are at Depot to learn to be police officers.

[20] The Conduct Measures guide sets out the range for failing to follow a direction from remedial in the mitigated range of sanction, to 2-10 days pay in the normal range, to dismissal in the aggravated range. Compromising an investigation or placing persons at risk moves the misconduct into the aggravated range; and this did not occur here. I find Cpl Jenkins' conduct to be within the normal range for Allegation 2.

[21] **Allegation 3** is a contravention of s 6.1 of the Code of Conduct; engaging in conduct where there is an actual, apparent or potential conflict of interest. As police officers we are bound to avoid potential conflicts of interest. Police officers with any years of service are often exposed to potential conflicts of interest and for the vast majority, they are deftly avoided. I have found that the Subject Member was aware that conflicts of interest must be avoided.

[22] Cst Feaver gave evidence that she was the instigator of this relationship, but I did not accept this as a mitigation of the Subject Member's misconduct. She was a cadet in training and was, in fact, a victim. The Subject Member is a seasoned officer, with around a decade of police experience, and was certainly not naïve. The Subject Member was in a position of authority over Cadet Feaver and knew better than to place himself in a potential conflict of interest.

[23] I accept that the Subject Member found a loving spouse in Cst Feaver. This retrospective confirmation does not detract from the initial conflict of interest he placed himself in and the potential liability to which he exposed the RCMP. I agree with the CAR that no one could have predicted how this relationship might have turned out.

[24] The sanction for an allegation of conflict of interest, set out in the Conduct Measures Guide, increases from an admonishment for conflicts of interest involving a minimal value or an unsolicited benefit at the mitigated range, to dismissal where the member solicited a benefit of high monetary value at the aggravated range. The Subject Member was not solicitous of this relationship and thus I find his misconduct to be within the normal range for Allegation 3.

[25] **Allegation 4** is a contravention of s 8.1 of the Code of Conduct; making a false, misleading or inaccurate statement to a superior. Members must have confidence in their supervisors and supervisors must be able to trust the word of their members. The Subject

Member decided to approach his supervisor to come clean, so to speak, regarding his relationship with Cst Feaver. Rather than tell the whole truth, the Subject Member made an oblique attempt to legitimize his relationship with misinformation and mislead his sergeant and staff sergeant.

[26] The misinformation was administrative in nature and was not related to criminal investigations. This is specifically deemed 'non-operational' in the Conduct Measures Guide. For relatively insignificant matters a sanction of 3-5 days pay is suggested in the mitigated range. Misinformation which places the RCMP at high-risk, prolonged deceit or deceit which adversely affects a third party's rights warrants a sanction of 11-20 days pay in the aggravated range. Misleading a supervisor, on an inappropriate relationship with a cadet, disrespects the supervisor and weakens trust that I mentioned above. Had the relationship not worked out with Cst Feaver, the RCMP could have found itself facing civil liability.

[27] Though the Subject Member's misleading statement to his supervisors was of an administrative nature, it was not insignificant in the Depot context. I find the misconduct on this allegation to be in the normal range of sanction.

[28] **Allegation 1** is a contravention of s 7.1 of the Code of Conduct; discreditable conduct by engaging in an inappropriate romantic relationship with a cadet. This is the most serious of the allegations because the sanction at the mitigated range is from 20-30 days pay; the normal and aggravated range is dismissal. In considering the sanction for this allegation, I must take into account the goal the Conduct Authority has in seeking dismissal as a global sanction. It is certainly to serve as a general deterrent for Depot staff and /or facilitators considering similar behaviour and meant to maintain the integrity of Depot as a police training institution. I consider general deterrence as one goal of sanctioning a member's conduct.

[29] With respect to the need for specific deterrence, from reading the Subject Member's letter of apology, listening to his direct evidence and reading his letters of reference, I believe that the Subject Member has learned a hard lesson. I do not believe there is a real risk that he will repeat this particular misconduct.

[30] The Subject Member is corporal-facilitator at Depot and had signed the LoE. He should have known that this misconduct would be seen as discreditable. Cst Feaver stated that the romance was consensual, but by virtue of his position as her facilitator, her consent had little bearing on my deliberations.

[31] Romantic attraction is part of human nature and occasionally occurs when women and men are in the same workplace. The RCMP recognizes this in its national policy, but romantic attraction is denied between cadets and facilitators. These relationships are prohibited in the context of Depot. A teacher being attracted to a student is not a unique situation. It generally addressed by policies of disclosure and separation of the parties, so as to mitigate any damage to the integrity of the teaching institution. I recognize that there is a clear power imbalance so students are vulnerable.

[32] The Depot LoE contained a simple prohibition and the suggestion of a deemed abuse of authority if the signator pursued a relationship with a cadet. There was no mechanism set out in the LoE to announce this sort of forbidden relationship. The LoE begins: “The absence of a policy surrounding the behavior of facilitators and staff at Depot exposes the RCMP to risk...”. RCMP national policy, which applies to all employees, contains a mechanism by which nascent relationships can be made known and possible damage mitigated. I acknowledge that cadets are not employees of the RCMP. It was open to Depot senior management to draft divisional policy on cadet-facilitator relationships, but if there was policy, it was not in the record before me.

[33] There were no consequences set out in the LoE other than the reference to a deemed abuse of authority and criminal or civil liability. I have no good evidence before me of any consequences made known to the Subject Member by any other means. The only evidence I have is hearsay from both witnesses and their understanding of what the consequences might be; gossip or folklore of a transfer meted out to an unnamed facilitator for similar misconduct. The lack of specific consequences does not excuse the Subject Member’s misconduct, but had consequences been clearly set out in the LoE, such as demotion or dismissal for cadet-facilitator relationships, then the risks of his misconduct would have been more palpable.

[34] From my review of the record and in particular the statements from most, if not all, of the cadets of Troop 32 I find there was little to no impact on the morale of the Troop.

[35] There was potential risk to the RCMP because of the Subject Member's misconduct, but this risk was at the lower end, compared with the other situations of facilitator-candidate / supervisor-subordinate relationships described in the cases provided. Relationships with cadets can run the spectrum from a facilitator serially preying upon vulnerable, naïve cadets, offering some advantage in exchange for romantic favours, to the other end of the scale where similarly sophisticated individuals eventually marry. There were no cases provided to me reporting a Depot facilitator in an inappropriate relationship with a cadet. I may not be wrong in assuming this is a first.

[36] I must turn my mind to the Subject Member's attempt to conceal his involvement in the relationship. An attempt to conceal the relationship may bring the Subject Member into the normal range of sanction; dismissal. While the Subject Member did conceal his involvement in the relationship, citing a fear of possible transfer and resultant harm to the Troop, the Subject Member eventually reported his intention to embark on a relationship with Cst Feaver. This took the form of misinformation to his Sergeant and Staff Sergeant, which was met with some circumspection and was very short-lived. The Subject Member effectively self-reported his misconduct, because within days, his staff sergeant reported the facts to her manager who immediately considered a Code of Conduct investigation to get to the bottom of things.

[37] General principles inform us that if a police officer is dismissed from the force it must be for misconduct that is established that the officer is not fit to remain a member of the force. Corrective discipline should take precedence over punitive where appropriate. The lowest sanction possible should be considered; it starts at a reprimand and goes to dismissal. The sanction should bolster the public confidence in the Force; bolstered by the fact that the Conduct Board dealt with the matter with an appropriate sanction. I must impose conduct measures that are proportionate to the nature and circumstances of the contraventions of the Code of Conduct.

[38] The Conduct Measures Guide suggests dismissal as an appropriate sanction for conduct in the normal range. Though the Subject Member's misconduct remains serious, but I am not able to conclude that dismissal is the only solution. The Subject Member's years of above-average service to Canadians, honest testimony, sincere apology and admitting his conduct at the earliest opportunity, has tipped the balance in his favour.

[39] I therefore impose the following conduct measures:

- a. For allegation 1: engaging in discreditable conduct, contrary to section 7.1 of the Code of Conduct:
 - i. The Subject Member was promoted to Corporal as a Depot Facilitator, but by his actions, he repudiated that relationship. I direct that he be immediately demoted to the rank of Constable, for an indeterminate period of time, and not be eligible for promotion for a period of one year.
 - ii. The Subject Member's ability to continue duty as a Depot Facilitator has been compromised. As a result I am ordering that he be transferred at the discretion of the Commanding Officer of Depot Division.
 - iii. Because a demotion carries with it a significant financial disadvantage, I will not assess a financial penalty for this allegation.
- b. For allegation 2: failing to respect the directive mentioned in the Letter of Expectation, contrary to section 3.3 of the Code of Conduct, I order a sanction of 10 days pay.
- c. For allegation 3: being in an actual, apparent or potential conflict of interest, contrary to section 6.1 of the Code of Conduct, I order a sanction of 10 day pay.
- d. For allegation 4: making a false, misleading or inaccurate statement to his supervisor, contrary to section 8.1 of the Code of Conduct I order a sanction of 10 days pay.

[40] Since the Subject Member has been demoted to the rank of Constable, the sanction of 30 days pay will be calculated at the Constable pay grade.

[41] I trust that this sanction will serve as a deterrent for Depot staff if they ever consider embarking on an inappropriate relationship with a cadet.

[42] The Subject Member has been sanctioned for serious breaches of the Code of Conduct. If he appears before a Conduct Board again, I suggest that the sanction will be less lenient. I hope that the Subject Member has learned a lesson from this difficult experience. I believe that he will go on to be a productive member and enjoy a long career.

[43] Either party may appeal this decision by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.11 of the RCMP Act.

April 23, 2018

Inspector A.O. Ramey
Conduct Board

Date