



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:

Staff Sergeant Charla Keddy

Regimental Number 49105

Applicant

and

Assistant Commissioner Jane MacLatchy

Designated Conduct Authority

Respondent

Conduct Board Decision
Motion for Abuse of Process

Gerald Annetts

September 16, 2020

Staff Sergeant Jonathon Hart, Conduct Authority Representative

Mr. David Bright, Subject Member Representative

SUMMARY

Staff Sergeant Keddy originally faced four allegations that she contravened the RCMP Code of Conduct. The Conduct Authority subsequently withdrew three of those allegations due to a lack of evidence to establish the allegations. Staff Sergeant Keddy brought a Notice of Motion for abuse of process asking the Conduct Board to stay the remaining allegation on the grounds that it was initiated out of time. The grounds for the motion are that the decisions by the Delegated Officer to grant two extensions of time under subsection 47.4(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, were unreasonable and should not be allowed to stand.

The Conduct Board first determined that it had the authority to hear the motion and to review the Delegated Officer's decisions. The Conduct Board then determined that the Delegated Officer exercised his discretion to extend the limitation period under subsection 41(2) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, in an unreasonable manner. Therefore, the conduct hearing was initiated outside the limitation period and the Conduct Board has no jurisdiction to hear the matter. Consequently, Allegation 1 is dismissed.

INTRODUCTION

[1] The conduct hearing in this matter was initiated by the Conduct Authority on January 3, 2020. Four allegations of misconduct were made against Staff Sergeant Keddy for off-duty conduct involving two different incidents. On January 6, 2020, I was appointed as the Conduct Board to adjudicate the matter. Subsequent to the initiation of the conduct hearing, three of the four allegations were withdrawn by the Conduct Authority.

[2] The lone remaining allegation contained within the *Notice of Conduct Hearing* reads as follows:

Allegation 1:

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "H" Division, Halifax, Nova Scotia.

2. Commencing in October 2015, [...]. [Sgt. D.L.] was married to Ms. [P.L.] [...]. You engaged in a pattern of harassing and intimidating tactics directed towards Ms. [P.L.] including the following:

a) On June 21, 2016, you [...] while the two of you were on a work related trip. [...] by Ms. [P.L.] who confronted her spouse.

b) On October 7, 2016, Ms. [P.L.] [...] after he had returned from a work related trip. [Sgt. D.L.] confirmed to Ms. [P.L.] on this occasion that [...].

c) On January 11, 2017, Ms. [P.L.] discovered inappropriate comments on her personal social media Pinterest profile. In her public complaint, Ms. [P.L.] stated that: “My Pinterest profile was anonymous, called “[name redacted]” (Norwegian for “[translation redacted]”) and therefore should not have been easily discoverable or linked obviously to me.”

d) Ms. [P.L.] noted that you were using the profile “Candy” and “Charli Roar” to make repeated inappropriate comments targeting her including:

I. “[P.L.] ... do you know what is really going on”

II. “[P.L.] you should be reading your comments, Your husband is still cheating”

III. “if you only knew ... “

IV. “[P.L.] .. you should have divorced your still cheating husband ... ”

V. “[P.L.] ... your husband is still cheating ... ”

VI. “still cheating ... ”

e) Ms. [P.L.] informed [Sgt. D.L.] of the harassing behaviours and he in turn contacted you directly informing you that: “[P.L.] was an innocent victim in [...] affair and that it was unnecessary and inappropriate to put me through additional stress, especially considering I was pregnant. My husband asked her to stop. The Pinterest profile "Candy" was deleted a few hours later. "Charli Roar" also stopped "following" me.”

f) On June 7, 2018, you confirmed to Ms. [P.L.] in a telephone conversation with her that you were responsible for the comments and that it was your “way of reaching out” to her.

g) On February 23, 2018, you attempted to connect with Ms. [P.L.] by FaceTime at 3:03 a.m. without excuse or justification, again causing her unnecessary distress.

h) On May 25, 2018, Ms. [P.L.] received an anonymous letter in the mail. The content of the letter stated: “Your husband is having an affair with [...] He took her to [...] and on courses She has left her husband for him She works in [...].”

i) On June 4, 2018, Ms. [P.L.] reported the above incidents to Ottawa City police, Ottawa Police Ref [number redacted]. Ms. [P.L.] advised police that she was fearful of you and that you were aware where she lived.

3. On January 12, 2017, [Sgt. D.L.] confronted you on the telephone with respect to the inappropriate and harassing comments directed towards Ms. [P.L.] on Pinterest. In this telephone conversation you admitted to [Sgt. D.L.] that you knew who was responsible and that it would stop immediately:

“And then on the 12th at 8:14 is when I called Charla and yeah, I told her that I didn’t want, I didn’t want to pursue an investigation but that my wife is pregnant and this is harassment and not good for her health nor was it fair to her. [...] I again asked her if she knew who was responsible for this and if she could have them stop immediately in order to avoid having to ask for .an investigation to be opened. I stated that she and or her friend who is doing this is most likely a police officer and should know better and this is harassment and will definitely fall under a Code of Conduct if not even criminal. She indicated that she knew who was responsible for it and could guarantee that it would stop immediately if I didn’t report it. [...] Oh yeah, and then on the 13th at 7:02 in the morning I received an incoming call from her, from Charla which lasted 18.6 minutes and during the call she indicated that she had been following my wife under the name of Charlie Roar and her friend was following her under Candy.”

4. On May 16, 2019, you provided a prepared written statement to Professional Responsibility Unit (“PRU”) investigators in which you admitted that you contacted Ms. [P.L.] via social media Pinterest: “[...] in an attempt to make her aware of a situation.”

[*Sic throughout*]

Motion

[3] The Applicant filed a Notice of Motion for abuse of process requesting that the conduct hearing involving Allegation 1 be stayed as it was initiated out of time due to the decisions to grant two extensions of time under subsection 47.4(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*] were unreasonable.

[4] Before getting into the analysis of the motion, it is important to provide some background on the conduct investigations and allegations against the Applicant. The undisputed timeline in relation to the important dates and events of this proceeding are as follows:

- July 18, 2018 – Inspector (Insp.) [...] is notified of the complaint made by Ms. P.L., which resulted in Allegation 1.
- August 6, 2018 – Insp. [...] received the written complaint from Ms. P.L.
- End of September 2018 – The Applicant attended a course in Ottawa as approved by Insp. [...].
- October 3, 2018 – Insp. [...] consulted with “H” Division PRU about the complaint.
- October 21 to 27, 2018 – The Applicant attended a course in [...] as approved by Insp. [...].
- October 22, 2018 – The incidents that resulted in Allegations 2 to 4 against the Applicant are alleged to occur while in [...].
- October 23, 2018 – “H” Division PRU received recommendations from the National Conduct Management Section.
- October 29 to November 1, 2018 – The Applicant attended a course in Bogota, Colombia, as approved by Insp. [...].
- Last week of November 2018 – The Applicant attended a course in Toronto as approved by Insp. [...].
- January 7, 2019 – The Applicant was served with the mandate letter for a Code of Conduct investigation resulting from the complaint made by Ms. P.L. on July 18, 2018.
- January 8, 2019 – “H” Division PRU commenced the investigation into Ms. P.L.’s complaint.

- End of February 2019 – The Applicant contacted “H” Division PRU and advised that she would provide a written statement in order to expedite the investigation, but PRU advised that they were not ready to speak to her yet.
- March 5, 2019 – The incident resulting in Allegations 2 to 4 are reported to Commanding Officer (CO) Lee Bergerman.
- March 7, 2019 – Insp. [...] was made the subject of a Code of Conduct investigation.
- March 14, 2019 – CO Bergerman removes herself as Conduct Authority due to a conflict of interest.
- March 19, 2019 – The CO of “D” Division (the Respondent) is made the new Conduct Authority.
- March 24, 2019 – The Applicant was served with a suspension order and a second mandate letter that added four new allegations. (Only four allegations were ultimately initiated against the Applicant)
- April 5, 2019 – The Applicant received an email from “H” Division PRU to advise her that “D” Division PRU was taking over the investigation.
- April 10, 2019 – “D” Division PRU received the material from “H” Division.
- April 30, 2019 – The Applicant received an email from investigators to advise her that they would be in town from May 13 to 17, 2019, and that she had until May 9, 2019, to advise whether she was going to provide a statement or not as the subject member.
- May 2, 2019 – The Applicant was advised by Superintendent Popik that the CO of “D” Division was the new Conduct Authority as CO Bergerman was a witness.
- May 7, 2019 – The Applicant was served with a new allegation that was reported to Superintendent Popik on March 29, 2019.

- May 9, 2019 – The Applicant advised the investigators that she would be providing a statement.
- May 10, 2019 – The Applicant received an email from the investigators in which they set the date of May 16, 2019, to meet with them.
- May 16, 2019 – The Applicant met with the investigators as the subject member and provided them with her written statements to all the allegations.
- May 24, 2019 – The Applicant received an email from “D” Division to advise her that the matter was still under investigation.
- June 7, 2019 – The Applicant forwarded a report to the investigators with respect to Allegations 2 to 4.
- June 14, 2019 – The Applicant sent the investigators a statement from another witness with respect to Allegation 1 of which she was just made aware a week prior. This statement corroborated information within her written statement provided to them on May 16, 2019.
- June 14, 2019 – The Applicant emailed the investigators another witness statement with respect to the allegations against Insp. [...].
- June 19, 2019 – The investigators obtained a statement from a witness identified to them on June 14, 2019.
- June 21, 2019 – The Applicant received an email from “D” Division to advise her that the matter was still under investigation.
- July 2, 2019 – The Applicant received an email from “D” Division PRU, which included a Notice of Request for the Extension of Time Limitations (the Respondent’s Request), a new mandate letter with one less allegation, and new suspension order with one less allegation.

- August 15, 2019 – The Delegated Officer granted a 90-day extension to the prescription period for Allegation 1 to October 16, 2019.
- October 24, 2019 – The Delegated Officer granted a second 90-day extension to the prescription period for Allegation 1 to January 14, 2020.
- January 3, 2020 – The Respondent initiated a conduct hearing for four alleged contraventions of the Code of Conduct against the Applicant.
- Subsequent to the initiation of the conduct hearing against the Applicant, the Respondent withdrew all three allegations that arose from the incident alleged to have taken place in [...]. Therefore, at this point in time, only one allegation remains against the Applicant, the one which arose from Ms. P.L.'s complaint.

REASONS FOR DECISION

Can I consider the motion?

[5] Despite the fact that the motion alleged an abuse of process, it is common ground between the parties that the question of whether the limitation period under subsection 41(2) of the *RCMP Act* has been complied with is a jurisdictional issue. The Respondent acknowledges that, but for the two authorizations under subsection 47.4(1) of the *RCMP Act*, Allegation 1 would be statute-barred as being initiated beyond the limitation period and I would lack jurisdiction to hear the matter. However, she argues that I lack the authority to review the correctness of the Delegated Officer's decisions to extend the limitation period. Her position is that the Applicant must wait until I make a determination on the merit of Allegation 1, and if the Allegation is found to be established, then she can make this issue a part of her appeal of that decision. She indicates that the correct appeal mechanism was included at the end of each of the two decisions to extend the prescription period as follows:

[...] This decision may be challenged as part of an appeal presented in accordance with the provisions of Part IV of the *RCMP Act*, the *Commissioner's Standing Orders (Conduct)* and the *Commissioner's Standing Orders (Grievances and Appeals)* and the conduct policy. An

appeal may be submitted to the Office for the Coordination of Grievance[s] and Appeals within 14 days after the day on which the Respondent is served with the final Record of Decision of the conduct authority or the decision from a conduct board. [...]

[6] In support of her argument, the Respondent relies upon *Thielmann v The Association of Professional Engineers and Geoscientists of the Province of Manitoba*, 2020 MBCA 8 (CanLii) [*Thielmann*]. She also relies on ACMT 201633824 [*Solesme*]. The Applicant did not address the issue of whether I had the authority to review the Delegated Officer's decisions in her submissions, nor did I request that she do so.

[7] There are no express provisions contained within the *RCMP Act*, the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 [*RCMP Regulations*], the *Commissioner's Standing Orders*, or policy setting out who may review a decision made by the Delegated Officer with respect to an application for an extension to one of the limitation periods.

[8] Section 17 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*] allows a party to bring a motion before the conduct board at any time. Once a motion has been brought, a conduct board is obliged to deal with it in one way or another. In a case such as this, a conduct board can decline jurisdiction to hear the motion, but if it does so, it must be clear on why it lacks jurisdiction. I can see no reason why I would not have jurisdiction to hear the Applicant's motion. Every administrative tribunal has the power, to one degree or another, to interpret and apply its enabling statute, including determining jurisdiction over a given issue through reference to the provisions of its enabling statute (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLii)).

[9] *Thielmann* does not support the Respondent's position that a conduct board does not have the authority to conduct such a review. *Thielmann* involved a consideration of the extent to which a statutory tribunal ought to be allowed to fulfill its mandate before a party seeks recourse before the courts. That is not the issue here. What I must decide is whether an administrative tribunal may review an interlocutory decision made by another decision maker in the course of the same proceeding before the tribunal.

[10] In my view, that issue was settled by the Federal Court of Canada in *Calandrini v The Attorney General of Canada*, 2018 FC 52 (CanLii) [*Calandrini*]. In *Calandrini*, the applicant sought judicial review of the review authority's decision to initiate a conduct board hearing against him and a decision by the delegated officer to extend the prescribed time for making that decision under subsection 47.4(1) of the *RCMP Act*. The applicant argued that the decision to extend the prescription period by the delegated officer was final and binding, except for judicial review under the *Federal Courts Act*, RSC, 1985, c F-7. He further argued that it was a decision by the Commissioner's delegate and any appeal of the conduct board's decision would go to the Commissioner, who had already determined through his delegate that an extension was warranted: "An appeal of the decision to extend the time period, if upheld by the conduct board, would be meaningless in these circumstances." Thus, the applicant argued that he had no effective remedy other than judicial review.

[11] The respondent in *Calandrini* countered in part that the application was premature as the internal administrative process had not been exhausted and the conduct board could determine whether the extension should have been granted. If the applicant was unsuccessful, then he could appeal the conduct board's decision.

[12] At paragraph 54 of *Calandrini*, the Federal Court held that, absent exceptional circumstances, the general rule with respect to judicial review of administrative decision-making is that parties cannot proceed to the courts until the internal process has run its course. Those who are dissatisfied with a decision made in the administrative process must pursue all effective remedies that are available within that process. Only when the process is finished, or affords no effective remedy, can they proceed to court.

[13] At paragraphs 59 and 60 of *Calandrini*, the Federal Court rejected the applicant's argument and accepted that of the respondent. It said that the decision to extend the time period was an interlocutory decision within the RCMP disciplinary process; therefore, there was an ongoing administrative process which would not be exhausted until every step open to the parties was completed. The remedy of judicial review would remain available for the applicant to challenge the results at the conclusion of the internal process.

[14] The Federal Court concluded on this issue at paragraph 61 of *Calandrini*:

[61] It is premature to predict what the conduct board's ultimate decision will be **on the procedures that were followed** or the merits of the alleged contraventions; or that of the Commissioner on appeal. The disciplinary scheme should be allowed to run its course. The decision to grant an extension does not bind future decisions by the Commissioner. It is worth noting that the Commissioner who would consider any appeal is not the same Commissioner who was in office when these decisions were made. The conduct board may make findings favourable to the Applicant and those findings may be upheld by the Commissioner. If the Applicant succeeds in the result, the Applicant would have no need to be before this Court seeking redress. [Emphasis added]

[15] My interpretation of this decision is that the Federal Court confirmed the conduct board's responsibility to decide "on the procedures that were followed" in the conduct proceeding that brought the matter before it. This includes the interlocutory decision of a delegated officer to extend the prescription period under subsection 41(2) of the *RCMP Act*. The Federal Court of Appeal confirmed that authority in its brief reasons in 2019 FCA 73 (CanLii).

[16] That result is consistent with a conduct board's obligation to ensure it has jurisdiction to hear the allegations against a subject member. This includes ensuring that the conduct hearing was initiated in time. The extension of the limitation period by a delegated officer under subsection 47.4(1) of the *RCMP Act* is essentially an extension of the jurisdiction of the conduct board to hear the matter that otherwise would have been initiated out of time. A conduct board must be able to ensure that the extension of its jurisdiction is valid. Refusing to entertain a motion casting doubt on the validity of that decision would be an abdication of the conduct board's responsibility to ensure it has jurisdiction to hear the matter.

[17] The conduct board in *Solesme* reached the opposite conclusion. With all due respect, I disagree with their interpretation of the designated officer's role. Contrary to their view, it is not the designated officer's role "to ascertain that s/he has the authority to appoint a conduct board. This would include ensuring the time for the initiation of a conduct hearing has not expired. The appointment of a conduct board should not simply be a "rubber stamp".

[18] In considering the accuracy of that statement, one must note the wording of subsection 43(1) of the *RCMP Act*:

43(1) On being notified under subsection 41(1) of an alleged contravention of a provision of the Code of Conduct by a member, the officer designated for the purpose of that subsection **shall**, subject to the regulations, appoint one or more persons as members of a conduct board to decide whether the member contravened the provision. [Emphasis added]

[19] This is a mandatory provision under the *RCMP Act*. Subsection 41(1) of the Act is clear that it is the conduct authority who initiates a hearing, not the designated officer. The designated officer does not have the discretion to not appoint a conduct board once a conduct hearing has been initiated by the conduct authority. In my view, “subject to the regulations” reflects Parliament’s intent to allow the government to restrict whom the designated officer can appoint as a conduct board. However, no regulations to that effect have yet been promulgated, so that portion of the provision is meaningless.

[20] Nor does the designated officer have any ability to make the necessary enquiries to determine if the limitation period has expired. There are no provisions within the Act, the CSOs, or policy that would provide him with the authority to do so. That function falls under the conduct board responsibilities to ensure both that it has jurisdiction to hear the matter and to uphold the appropriate level of procedural fairness owed to a member subject to conduct proceedings.

[21] Furthermore, just because a review of a delegated officer’s decision under subsection 47.4(1) is not expressly included in the part of the *CSO (Conduct)* entitled “Conduct Board Rules of Procedure”, does not mean that a conduct board has no authority to do so. The hearing of motions is clearly listed as one of those procedural components and the *Commissioner’s Standing Orders* do not limit what type of motion can be brought forward by the parties or entertained by the conduct board. That is what this is, a motion alleging that the conduct hearing was initiated out of time, due to an unreasonable decision by the Delegated Officer to extend the limitation period. A conduct board cannot simply opt out of considering such a motion in relation to a discretionary decision that seriously impacted a member’s legal rights in the course of the same proceeding against them.

[22] The Respondent relies on both the decision in *Solesme* and the statement at the end of each of the extension decisions to argue that an appeal of the Delegated Officer's decision to the Commissioner at the conclusion of the conduct hearing is the appropriate appeal mechanism. However, she did not provide any statutory authority to substantiate that position.

[23] A review of the appeals provisions provided for in the *RCMP Act* and the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [*CSO (Grievances and Appeals)*], dealing with conduct reveals that no such support exists for that position. The provisions in the *RCMP Act* are contained in Part IV and those in the *CSO (Grievances and Appeals)* are contained in Part 2.

[24] Section 45.11 of the *RCMP Act* allows for either party to appeal a conduct board's decision that an allegation is established or not and/or a conduct measure imposed as a result of a finding that an allegation is established. It also allows a member to appeal the decision of a conduct authority that an allegation is established and/or a conduct measure imposed as a result of a finding that an allegation is established. The rules relating to that right of appeal start at section 21 of the *CSO (Grievances and Appeals)*. There is no explicit provision to appeal the decision of a delegated officer to extend a limitation period under subsection 47.4(1) of the *RCMP Act*.

[25] However, Part 3 of the *CSO (Grievances and Appeals)* that deals with appeals of decisions other than conduct matters is illuminating. It specifically sets out the decisions that can be appealed. Section 37 of the *CSO (Grievances and Appeals)* provides the process for appeals:

- a. by a complainant of a written decision referred to in subsection 6(1) and paragraph 6(2)(b) of the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints);
- b. of a written decision referred to in subsection 9(2) of the Commissioner's Standing Orders (General Administration);
- c. of the written decisions referred to in subsection 20(1) of the Commissioner's Standing Orders (Employment Requirements);

- d. of the directive referred to in subsection 20(2) of the Commissioner's Standing Orders (Employment Requirements); and
- e. of the written decisions referred to in **subsection 32(1) of the Commissioner's Standing Orders (Conduct)**. [Emphasis added]

[26] It is the appeal of those decisions referred to in subsection 32(1) of the *CSO (Conduct)* that are relevant here. That subsection deals with decisions to temporarily reassign a member during a Code of Conduct investigation, to suspend a member during a Code of Conduct investigation, to direct the stoppage of a member's pay and allowances during a Code of Conduct investigation, and to deny or discontinue representation of a member subject to conduct proceedings. Those decisions, while not actual conduct process matters, are very closely related to the conduct process. Given that there is an explicit right of appeal for each of the aforementioned closely related decisions, but none for the decision to extend the limitation period, it seems reasonable that it is reviewable by the conduct board as part of the conduct proceedings leading to the conduct hearing.

[27] As previously indicated, it is common ground that, but for the extensions granted by the Delegated Officer, the conduct hearing was initiated out of time and I would have no jurisdiction to hear the matter. In essence, the impugned decisions extended the jurisdiction of the conduct board. In that way, reviewing the Designated Officer's decisions to extend the limitation period pursuant to subsection 47.4(1) of the *RCMP Act* is no different than reviewing the decision of a conduct authority to initiate a conduct hearing. Therefore, I conclude that I have the authority, and indeed the responsibility, to entertain the motion and to review the decisions of the Delegated Officer in order to ensure the extensions were reasonably granted.

Reasonableness of the Delegated Officer's decisions

[28] The Applicant argues that the decisions of the Delegated Officer were unreasonable. She states that, in both of his reasons for the decisions, he made inconsistent findings and also acknowledged that there was no reasonable explanation for much of the delay in mandating and

completing the investigation. Yet, he granted the requested extensions anyway. I agree with the Applicant.

[29] In the course of the review of a decision, the reviewer is concerned mostly with determining whether justification, transparency and intelligibility exist within the decision being appealed. The reviewer is also concerned with whether the decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law (see *Dunsmuir v New Brunswick*, 2008 SCC 9, paragraph 47). The decision maker enjoys considerable discretion in exercising their responsibilities and their decision is entitled to a significant degree of deference as long as their reasons demonstrate justification, transparency and intelligibility. Unfortunately, in the present case, there are significant problems with the Delegated Officer's decisions, which are not defensible. Extensions of the limitation period simply cannot be justified in the circumstances of this case.

[30] I will begin my analysis by quoting the relevant statutory and policy provisions allowing for an extension of the limitation period.

[31] Section 47.4(1) of the *RCMP Act* states:

47.4(1) If the Commissioner is satisfied that the circumstances justify an extension, the Commissioner may on motion by the Commissioner or on application, and after giving due notice to any member affected by the extension, extend the time limited by any of subsections 31(2), 41(2), 42(2) and 44(1), for the doing of any act described in that subsection and specify terms and conditions in connection with the extension.

[32] Neither the *RCMP Regulations* nor the *Commissioner's Standing Orders* deal with this issue. However, there are policy provisions contained *Administration Manual* XII.1.19:

19. Requests for an Extension of Time Limitations

19. 1. General

19. 1. 1. Conduct authorities must adhere to the limitation periods for the initiation of a hearing or the imposition of conduct measures, as prescribed by the *RCMP Act*, subsection 41(2) and 42(2).

19. 1. 1. 1. When the prescribed limitation period has expired, a conduct authority has no jurisdiction to impose conduct measures or initiate a

hearing in respect of a member, except in cases where a time extension has been granted.

19. 1. 2. An application for an extension of time limitation may be made by a conduct authority in respect of a member, or by a member who is subject to any proceeding referred to under the *RCMP Act*, subsection 41(1) or 42(1).

19. 1. 3. The Commissioner, or a member with the delegated authority, may extend the limitation period under the *RCMP Act*, subsection 41(2) and 42(2), **if they are satisfied that the circumstances justify an extension**, after due notice is given to the member affected by the extension, pursuant to the *RCMP Act*, subsection 47.4(1).

19. 1. 4. Before an extension is granted, the party making the application must serve the other party with a Notice of Request for the Extension of Time Limitations, unless the service of the request might compromise or hinder any investigation of an offence under an Act of Parliament, pursuant to *RCMP Act*, subsection 47.4(1.1). Service of the request on a subject member may also not be required where there is a medical restriction preventing service. Refer to App. XII-1-27 and App. XII-1-28.

19. 1. 5. The *RCMP Act*, subsection 47.4(1), does not place any limitations on the authority of the Commissioner or delegated member to provide an extension after the expiry of a limitation period referred to in the *RCMP Act*, subsection 41(2) and 42(2).

19. 1. 6. When determining whether the circumstances justify an extension, the Commissioner or the delegated member **must consider** the following factors:

19. 1. 6. 1. **whether there has been a continued intention to pursue the conduct proceeding** referred to under the *RCMP Act*, subsection 41(1) or 42(1);

19. 1. 6. 2. **whether it appears that there is an arguable case that the subject member contravened a provision of the RCMP Code of Conduct;**

19. 1. 6. 3. **whether there is a reasonable explanation for the delay;**

19. 1. 6. 4. **whether there is prejudice to the other party in allowing the extension;** and

19. 1. 6. 5. any other relevant factors (e.g. public interest).

NOTE: These factors are based on well-established principles used by the courts.

19. 1. 7. The appropriate weight given to each factor depends on the circumstances of each matter. **The overriding consideration in a request to extend time is to ensure that justice is served between the parties.**

[...] [Emphasis added]

[33] Policy is clear then that the Delegated Officer must be satisfied that the circumstances justify an extension and the factors to be considered in determining whether the aforementioned circumstances justify the extension.

[34] The comment in policy that these factors are based on well-established principles used by the courts and that “the overriding consideration in a request to extend time is to ensure that justice is served between the parties” is key to this analysis. That must be top of mind in assessing the most important factors to be considered in this case: whether there is a reasonable explanation for the delay and the public interest.

Reasonable explanation for the delay

[35] Three important details emerge from the timeline in relation to the delay in this matter. Some of those details are considered in the Delegated Officer’s decisions to grant the extensions of the limitation period. It is primarily with respect to these details that the Applicant argues the Delegated Officer’s decisions are unreasonable. I will focus my analysis on the granting of the first extension, but the comments are equally applicable to the second.

[36] The first detail is that it took the original conduct authority six months to mandate a Code of Conduct investigation into Ms. P.L.’s complaint. This includes a delay of over three months after H” Division PRU became aware of the complaint.

[37] In his reasons for decision, the Delegated Officer found the six-month delay in mandating the Code of Conduct investigation into Allegation 1 to be unreasonable. He also found that the three-month delay, within those six months, between when “H” Division PRU became aware of Allegation 1 and when the investigation was mandated was unreasonable. This is contained in paragraphs 25 through 29 of his decision. Those conclusions are eminently sound and justifiable in the circumstances of the case as there is no reasonable explanation provided for that delay.

[38] That brings me to the second detail that arises from the timeline: the decision to combine the investigation of Ms. P.L.’s complaint (Allegation 1) with the investigation into the incident in [...] (Allegations 2 to 4), which further significantly delayed the completion of the investigation

into Allegation 1. The Designated Officer concluded that this was necessary and reasonable at paragraph 36 of his decision, stating that “given the totality of the circumstances [he] found that a reasonable explanation for the delay exists.” I take issue with this determination.

[39] The Designated Officer reached this conclusion after making similar comments earlier in his decision. At paragraphs 31 to 33, he stated:

Taken together, these alleged behaviours, if true, demonstrate a concerning [...] misconduct and behaviours [...] misconduct:

- a) Ms. [P.L.] alleged that [...], deliberately, in order that Ms. [P.L.] would [...] and terminate her marriage to [Sgt. D.L.];
- b) The alleged online and mail communications [...] and is the alleged impetus for the harassing behaviours); and
- c) [...].

32. Given the potential that, taken together, these allegations show [...], it is appropriate and reasonable that these allegations would be investigated and considered together, particularly in order to ensure, that if found established, the most appropriate and fair conduct measures (or dismissal) could be imposed by the Conduct Authority (or Board).

33. Moreover, this is a unique case in that the former Conduct Authority for the [Applicant] for this allegation is alleged to have [...] that forms the basis for new allegations.

[40] His conclusion that it was necessary for the Respondent to combine the Code of Conduct investigations in order to deal with all of the allegations globally is directly attributable to inaccurate statements and omissions in the Respondent’s Request. The Respondent included in her Request the fact that four additional “serious” and [...] allegations in nature were added to the investigation mandate arising from the incident that occurred in [...].

[41] There was no explanation provided as to why it was necessary to add those unrelated allegations to this mandate or to investigate them all together, a decision that significantly added to the complexity of the investigation and the length of time it took it to be completed. That is a serious omission given the probability that, but for adding those additional allegations to this mandate, Allegation 1 would have been fully investigated and concluded by the time the Respondent’s Request was necessary. The Delegated Officer’s assumption that it was necessary to investigate all of the allegations together was unsupported by the material before him.

[42] The Respondent was also less than fulsome in her Request at page 4 where she indicates that Ms. [...] incident. That statement would leave any reader of the Request to assume that the [...] Ms. [...] However, the Respondent failed to mention that, prior to her Request being made, Ms. [...] had provided a statement to investigators in which she indicated that she did not have any recollection of [...], nor did she believe it occurred. This inappropriate lack of full and frank disclosure influenced the Delegated Officer's decision to extend the limitation period.

[43] That detail is also important in assessing the Delegated Officer's comments at paragraph 33 of his decision. As previously noted, by the time her Request was made, the Respondent was aware that there was no evidence [...].

[44] Continuing along this line, and disregarding the [...], there is no basis for the Delegated Officer's conclusion that there was any [...] The delay caused by combining the two investigations cannot be justified by the mistaken assumptions on the part of the Delegated Officer, which were fuelled by inaccuracies and omissions in the Respondent's Request.

[45] In addition, there is no evidence nor is it even alleged that the Applicant conspired with Insp. [...] to delay mandating the Code of Conduct investigation as implied in the Delegated Officer's decision. To the contrary, the evidence reveals that she attempted to speed up the investigation by providing a statement in relation to Allegation 1 in February 2019.

[46] Further to that, when it comes to determining the start of the limitation period under subsection 41(2) of the *RCMP Act*, the knowledge of any conduct authority is sufficient to start the clock. Insp. [...]’s knowledge is attributed to the Respondent; it is one and the same for the purpose of determining if the limitation period has been respected. Therefore, the Delegated Officer had a situation before him in which he clearly and correctly concluded that there was no reasonable explanation for the delay in mandating the investigation. Once his incorrect assumptions are corrected in terms of the allegations being related and differentiating between conduct authorities, there is no reasonable basis for his ultimate finding “that a reasonable explanation for the delay exists”.

[47] As set out in policy, “the overriding consideration in a request to extend time is to ensure that justice is served between the parties”. Policy also requires the decision be based on well-established principles used by the courts. In my view, the most applicable principles used by the courts are those set out by the Supreme Court of Canada in *R. v Grant*, [2009] SCJ No 32 [Grant], in criminal cases. The *Grant* analysis is to be used when a *Charter*¹ breach is found to have occurred and the Court must decide whether the evidence collected in the course of that *Charter* breach is to be excluded under subsection 24(2) of the *Charter*. The final principle in the *Grant* analysis is the public interest criterion, which is society’s interests in the adjudication of the case on its merit. It calls for an assessment of the seriousness of the charges against the accused. The more serious the charges, the greater the desire to have them adjudicated on their merit; the less serious the charges, the more the balance shifts to protecting the integrity of the criminal justice system.

[48] In the context of RCMP conduct proceedings, the public interest criterion also requires an assessment of the seriousness of the allegation. The more serious the allegation, the greater the desire to have the allegation adjudicated on its merit. The less serious the allegation, the more the balance shifts to protecting the integrity of the RCMP conduct process.

[49] The lone remaining allegation in this case falls under section 7.1 of the Code of Conduct. If proven, it amounts to the Applicant, in a self-serving, repetitive and insensitive manner, attempting to anonymously inform Ms. P.L. that her husband was cheating on her. She did that in the hope that Ms. P.L. would leave him [...]. I am not in the business of casting moral judgments and, to paraphrase former Prime Minister Pierre Elliott Trudeau, the RCMP has no business in the bedrooms of the nation. Therefore, in assessing the seriousness of this allegation, I will not judge [...] Nor will I judge the other married member for having an extramarital sexual affair. I will only note that it takes [...] and that some would condone the actions of the Applicant in attempting to inform Ms. P.L. of the fact that her husband was cheating on her.

¹ *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].

[50] However, the Applicant's actions may have crossed the line when it comes to the online Pinterest postings. This brought the affair to the attention of Ms. P.L.'s family and friends, thereby possibly causing her significant embarrassment at a time when she was already dealing with a very personal betrayal. There is a case to be made for discreditable conduct and for the allegation to be established at a hearing. Had her intentions been sincere towards Ms. P.L., the Applicant could have called or emailed her directly to inform her of what was happening and then left her to make her own choices.

[51] Having said all that, even the Respondent acknowledges that the Allegation is not serious enough, that if established, it would warrant the Applicant's dismissal. But for the delay in mandating the Code of Conduct investigation and the addition of the allegations arising from the [...] incident, it would not have resulted in the initiation of a conduct hearing. The Allegation would have remained with a lower level conduct authority and would have resulted in remedial or corrective conduct measures only. Therefore, in balancing the desire to have the Allegation adjudicated on its merit versus protecting the integrity of the RCMP conduct process, the scales tip in favour of protecting the integrity of the RCMP conduct process.

Conclusion

[52] In summary, the Delegated Officer had an allegation before him that involved six months of unexplained and unreasonable delay before the conduct authority mandated the Code of Conduct investigation. It was then further delayed by combining the investigation with the one for an unrelated incident that took place months later on a different [...]. Once the Delegated Officer's mistaken assumptions, due to the inaccuracies and omissions contained in the Request, are removed, there is no [...] that called for the matters to be investigated together. Nor was the Applicant responsible in any way for that unwarranted delay.

[53] Under these circumstances, the Delegated Officer's determination that the overall delay was reasonable, is itself unreasonable. Justice would not be served between the parties by allowing the extension of the limitation period to stand. Therefore, this matter was initiated out of time and I lack jurisdiction to hear it.

[54] Given that this is a final decision disposing of the matter, any interim measures in place should be resolved in accordance with section 23 of the *RCMP Regulations*. 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 Staff Sergeant Keddy, as set out in section 45.11 of the *RCMP Act* and section 22 of the *CSO (Grievances and Appeals)*.

September 16, 2020

Gerald Annetts

Edmonton, Alberta

Conduct Board