

**Publication ban:** By order of the Conduct Board, the publication, broadcast or transmission in any way whatsoever of information that could identify Constable L. in this decision is prohibited. In addition, any medical documentation submitted by the subject member during the hearing and contained in the case before the Conduct Board cannot be published, broadcasted or transmitted.



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF

a conduct hearing pursuant to the

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

Between:

**Commanding Officer, "C" Division**

Conduct Authority

and

**Constable Maxime Lecours**  
Regimental Number 58636

Subject Member

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**Conduct Board Decision**

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Josée Thibault

November 18, 2020

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

Isabel Schurman and Francis Villeneuve-Ménard, for the Subject Member

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## SUMMARY OF DECISION

Constable Maxime Lecours is facing seven allegations of contravening the Code of Conduct of the Royal Canadian Mounted Police (the Code of Conduct). The first allegation is a contravention of section 2.1 of the Code of Conduct for harassment. Four allegations state that Constable Lecours contravened section 3.3 of the Code of Conduct for disobeying orders from his superiors. Lastly, two allegations of contravention concern section 7.1 of the Code of Conduct for discreditable conduct.

Following a contested hearing, the Conduct Board concluded that the seven allegations were not established on a balance of probabilities. Consequently, no conduct measure was imposed.

## INTRODUCTION

[1] On July 11, 2019, the Commanding Officer, “C” Division, by *Notice to Designated Officer*, requested a conduct hearing in this matter. On July 16, 2019, I was appointed to the Conduct Board

under subsection 43(1) of the *Royal Canadian Mounted Police Act, RSC 1985, c R-10* (the RCMP Act).

[2] On July 19, 2019, the Conduct Authority signed the *Notice of Conduct Hearing*, which was served on Constable Lecours with the investigative file on July 29, 2019. The Notice contained seven allegations.

[3] In Allegation 1, it is alleged that Constable Lecours contravened section 2.1 of the Code of Conduct with conduct that constitutes harassment towards Constable L. There are four allegations in which it is alleged that Constable Lecours contravened section 3.3 of the Code of Conduct for disobeying orders from his superiors. Lastly, there are two allegations of contravention of section 7.1 of the Code of Conduct for discreditable conduct.

[4] On September 13, 2019, Constable Lecours provided his response to the *Notice of Conduct Hearing*, in accordance with subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. Constable Lecours acknowledged all of the particulars of the seven allegations. However, he denies that his conduct contravened the Code of Conduct because the inappropriate actions resulted from his psychological state.

[5] The hearing was held by videoconference from September 8 to 11, 2020. The Conduct Board as well as the Conduct Authority Representatives were located in Ottawa, Ontario, whereas Constable Lecours and his representatives were in Montréal, Quebec. Two expert witnesses also testified by videoconference from Montréal, Quebec. The oral decision on the allegations was rendered by videoconference on September 21, 2020. The seven allegations were not established.

## **Allegations**

[6] The seven allegations before the Conduct Board are as follows: [TRANSLATION]

### **Allegation 1**

Between December 1 and October 9, 2019, inclusively, in or near Saint-Jean-sur-le-Richelieu, in the province of Quebec, Constable Maxime Lecours contravened section 2.1 of the Code of Conduct

#### *Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border

Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.

2. On or around November 9, 2017, Constable L. joined the Detachment’s IBET. You were both assigned to Team C.
3. In late December 2017, Constable L., realizing that you were showing personal interest in her, made it clear to you that she was not interested in having a personal relationship with you that goes beyond a friendship.
4. You understood that Constable L. was not interested in having a personal relationship with you. Despite her repeated refusals, you persisted with your comments, advances and text messages, making her uncomfortable and frustrated in her workplace. As a result of your behaviour, she asked to be taken off patrol with you.
5. Despite the intervention of superiors, you persisted in trying to contact Constable L., resulting in your reassignment to another team.
6. Despite the intervention of the [Quebec] criminal court and your undertaking not to communicate with Constable L., you persisted in your behaviour.
7. Your conduct towards Constable L. constitutes harassment.

## **Allegation 2**

On or around June 27, 2018, in or near Saint-Jean-sur-le-Richelieu in the province of Quebec, Constable Maxime Lecours contravened section 3.3 of the Code of Conduct.

### *Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.
2. You were the user of the telephone number [ending with 7729].
3. On June 6, 2018, Staff Sergeant (S/Sgt) R.S-J. met with you along with Corporal J.D. He gave you a verbal instruction not to make further contact with Constable L. and temporarily reassigned you to alternate duties on Team A. You confirmed that you understood the instruction.
4. On June 14, 2018, S/Sgt R.S-J. met with you along with Corporal C.M. and gave you a verbal instruction to stop communicating with Constable L. He modified your shift to avoid contact with her.
5. On June 27, 2018, at approximately 4:17 p.m., you used the telephone number [mentioned above] and contacted Constable L. to apologize.
6. You disobeyed the direction of S/Sgt R.S-J.

## **Allegation 3**

On or around July 10, 2018, in or near Saint-Jean-sur-le-Richelieu in the province of Quebec, Constable Maxime Lecours contravened section 3.3 of the Code of Conduct.

*Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.
2. On June 28, 2018, [S/Sgt] R.S-J. met with you along with Corporal C.M. They were trying to understand why you were still contacting Constable L. even though you had been directed not to contact her.
3. You explained that it was bigger than you and that the consequences of not following a direction were less important to you.
4. On 29, 2018, S/Sgt R.S-J gave you a formal verbal order to no longer communicate with Constable L. from your cell phone.
5. On July 10, 2018, Constable L. was with Constable V. They were finishing their shift and returning their equipment to the Detachment’s “key watcher” room when you initiated a conversation with them.
6. You disobeyed the order of S/Sgt R.S-J.

**Allegation 4**

On or around July 10, 2018, in or near Saint-Jean-sur-le-Richelieu in the province of Quebec, Constable Maxime Lecours contravened section 3.3 of the Code of Conduct.

*Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.
2. You were the user of the telephone number [ending with 7729].
3. On July 11, 2018, Inspector M.-J.D., Officer in Charge, West District, met with you and gave you a formal order not to contact Constable L. You understood the order and stated that you would comply with it.
4. On July 15, 2018, at approximately 4:07 p.m., using your telephone [ending with 7729] you attempted to contact Constable L. by leaving her a voice message asking if she wanted to go for a ride on your motorcycle with you.
5. On July 23, 2018, at approximately 6:40 p.m., as Constable L. began her night shift and was walking towards the Detachment, you stopped her in the parking lot.

6. You disobeyed the order of Inspector M.-J.D. by communicating with Constable L.

**Allegation 5**

Between July 15, 2018 and July 23, 2018, in or near Saint-Jean-sur-le-Richelieu in the province of Quebec, Constable Maxime Lecours contravened section 3.3 of the Code of Conduct.

*Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.
2. You were the user of telephone number [ending with 7729].
3. You were assigned to Team A.
4. On July 24, 2018, [S/Sgt.] R.S-J. met with you along with Corporal C.M. and gave you a formal written order to have no further contact with Constable L. They explained the consequences of not complying with this order, including the possibility of facing a conduct process. You understood and signed this order.
5. On August 5, 2018, at approximately 9:55 a.m., you used your telephone [ending with 7729] to call Constable L.
6. You disobeyed a formal written order.

**Allegation 6**

On or around August 7, 2018, in or near Saint-Jean-sur-le-Richelieu in the province of Quebec, Constable Maxime Lecours engaged in discreditable conduct, in contravention of section 7.1 of the Code of Conduct.

*Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.
2. Between April and August 2018, your supervisors met with you on several occasions and advised you to stop your behaviour towards Constable L. You received verbal and written instructions and orders not to communicate with her anymore.
3. On August 7, 2018, you met with your supervisor, Corporal C.M. In reference to Constable L, he asked you [TRANSLATION] “Is there anything you want to tell me? Have you tried to contact her? Did you call her? Did you text her?” You answered “no”, whereas on August 5, 2018, at approximately 9:55 a.m., you attempted to contact Constable L. [by phone].

4. Once confronted by Corporal C.M. with the information he had regarding your contravention of the order not to contact Constable L., you acknowledged that you had contacted her.
5. You gave false and misleading explanations to a supervisor.

### **Allegation 7**

On or around October 9, 2018, in or near Saint-Jean-sur-le-Richelieu in the province of Quebec, Constable Maxime Lecours engaged in discreditable conduct, in contravention of section 7.1 of the Code of Conduct.

#### *Particulars of the allegation:*

1. At all material times, you were and still are a member of the Royal Canadian Mounted Police (RCMP), posted to the Integrated Border Enforcement Team (“IBET”) of a “C” Division Detachment, in the province of Quebec.
2. On August 17, 2018, a warrant for your arrest was issued for criminal harassment.
3. On August 20, 2018, you were arrested and released on an undertaking to a peace officer. One of the conditions of your release was to have no further direct or indirect contact with Constable L.
4. On August 21, 2018, you were suspended from duty.
5. On October 9, 2018, at approximately 11:50 a.m., you contravened one of the conditions of your undertaking by contacting [by phone] Constable L.
6. You were arrested, detained and released on conditions, including the condition to have no further direct or indirect contact with Constable L.
7. You conducted yourself in a manner that brought discredit to the RCMP.

*[French original quoted verbatim]*

### **Summary of facts**

[7] At the time of the incidents in 2017, Constable Lecours was assigned to the Integrated Border Enforcement Team “IBET” in “C” Division (Province of Quebec).

[8] On November 9, 2017, Constable L. joined the Team and the two members worked together in Team C.

[9] As soon as Constable L. arrived at the Detachment, Constable Lecours developed a disproportionate and obsessive affection for her, which lasted from December 2017 to August 2018.



[10] In December 2017, Constable L. clarified things for the first time with Constable Lecours. She told him that she only wanted to maintain a professional relationship with him and not a romantic relationship as he desires.

[11] In February 2018, Constable L. tried once again to put an end to his advances. She specified that she did not want him to call or text her on days off because their relationship is strictly professional. She also advised him that the text messages must be work-related. Constable Lecours confirmed that he understood.

[12] Nevertheless, during a shift, Constable Lecours suggested a list of activities they could do together, such as going to Costco, to the movies. He said that the last item on his list was to kiss her.

[13] Despite repeated refusals, Constable Lecours continued to send text messages to Constable L. In March 2018, he invited her for coffee at a place of her choosing. In addition, Constable Lecours informed Constable L. at work that he had written her a letter in which he admitted having feelings for her and asked her to go out with him.

[14] In April 2018, seeing that her conversations with Constable Lecours were in vain, Constable L. spoke to her supervisor. She asked to stop being paired with Constable Lecours during patrols. That same day, Constable Lecours was advised by his supervisor to no longer contact Constable L., failing which he would face a harassment complaint. Constable Lecours said he understood.

[15] Constable Lecours' actions affected Constable L.'s professional and personal life as she continually attempted to put an end to his persistent advances.

[16] On June 6, 2018, Staff Sergeant R.S.-J. gave an initial verbal instruction to Constable Lecours to not make further contact with Constable L. and removed his service weapon. Constable Lecours was advised that he would have to meet with the RCMP psychologist for a special health assessment.

[17] On June 14, 2018, Staff Sergeant R.S.-J. advised Constable Lecours that his hours of work had been changed to avoid any contact with Constable L. In addition, Staff Sergeant R.S.-J.

reiterated the instruction to avoid any contact with Constable L., whether by telephone, text message or email. Constable Lecours stated that he understood the order.

[18] On June 27, 2018, Constable Lecours disobeyed this order by calling Constable L. to apologize for his behaviour.

[19] Faced with the incomprehensibility of the situation, on June 28, 2018, Staff Sergeant R.S.-J. and Corporal C.M. met with Constable Lecours. He explained to them that communicating with Constable L. was more powerful and more important to him than contravening an order. To avoid any contact with Constable L, Constable Lecours' work schedule was modified.

[20] On June 29, 2018, Staff Sergeant R.S.-J. gave a second verbal order to Constable Lecours to refrain from communicating with Constable L. under any circumstances. To avoid calling Constable L., Constable Lecours deleted her name from his cell phone contact list.

[21] On July 4, 2018, Constable Lecours met with RCMP psychologist Dr. N.S. as part of the special health assessment requested by Staff Sergeant R.S.-J. On July 10, 2018, Dr. N.S. indicated in his report that Constable Lecours was fit for duty without restriction.

[22] On July 11, 2018, Constable Lecours returned to work where he returned to his regular duties as a patroller/investigator and his firearm was returned to him. He also changed shifts so that he did not work with Constable L. In addition, he received a verbal order from Inspector M.-J.D. not to communicate with Constable L. for personal purposes. Constable Lecours assured him that he understood the order.

[23] Four days later, on July 15, 2018, Constable Lecours disobeyed the Inspector's order by leaving a message on Constable L.'s voicemail inviting her for a ride on his motorcycle with him.

[24] On July 23, 2018, when he had already finished his work day at 4:00 p.m., Constable Lecours called Constable L. at approximately 6:40 p.m. while she was walking in the Detachment parking lot before her shift.

[25] Dismayed, on July 24, 2018, Staff Sergeant R.S.-J. and Corporal C.M. met with Constable Lecours once again. This time, he received a written order from his superiors not to communicate with Constable L. any more. They explained that he could face conduct measures if he did not

respect the order. He was then assigned administrative duties and advised that he would have to meet with the RCMP psychologist for a second special health assessment.

[26] On August 5, 2018, Constable Lecours called Constable L. using his cell phone, but he did not leave a message.

[27] On August 6, 2018, Constable Lecours' managers were advised by Dr. N.S., an RCMP psychologist, that Constable Lecours was once again fit to work without restrictions.

[28] On August 7, 2018, Constable Lecours showed up at Corporal C.M.'s office to talk about his infatuation with Constable L. That same day, Chief Superintendent C.C., Acting Commanding Officer, "C" Division, ordered the immediate removal of Constable Lecours' service weapon and all his access to the Detachment and the two satellite detachments. Constable Lecours was also assigned to administrative duties and was transferred to Westmount Headquarters effective August 9, 2018.

[29] On August 10, 2018, Constable Lecours was served with a RCMP Code of Conduct investigation mandate. A few hours after receiving the document, Constable Lecours sent a text message to Constable L. asking if he could see her for 15 minutes.

[30] That same day, Constable L. confessed to her superior that Constable Lecours' behaviour towards her worried her. At the end of her shift, for safety reasons, Constable L. was escorted to her residence where a friend was waiting for her.

[31] On August 17, 2018, an arrest warrant was issued for Constable Lecours to enter into an undertaking to refrain from communicating directly or indirectly with Constable L., pursuant to subsection 810(3) of the Criminal Code, R.S.C. (1985), c C-46 (Criminal Code).

[32] The arrest warrant related to incidents that occurred between November 1, 2017 and August 10, 2018, between Constable L. and Constable Lecours. Constable L. was concerned that he may cause her personal injury or damage her property.

[33] On August 20, 2018, Constable Lecours was arrested and released. Among the conditions of his release, he undertook not to communicate directly or indirectly with Constable L. anymore.

[34] On October 9, 2018, Constable Lecours broke the condition of his undertaking by calling Constable L.

[35] In October 2018, Constable Lecours appeared before the Quebec Criminal Court for his breach of condition. The judge ordered two psychiatric assessments of Constable Lecours at the Institut Philippe-Pinel de Montréal. The first five-day assessment was to determine whether he was fit to stand trial. The second assessment was to obtain a more in-depth assessment of his mental health, following the recommendation made by the psychiatrist during the first assessment.

[36] On November 27, 2018, the psychiatrist, Dr. M-A.S., concluded in her expert report on the criminal liability of Constable Lecours that he was suffering from an erotomanic delusional disorder with paranoid elements. According to the report, he also has traits of an obsessive-compulsive and avoidant personality. However, he does not present a danger to himself or others, nor does he have vindictive motives towards Constable L. or a desire to contravene a no-contact order again.

[37] As a result of this diagnosis, Constable Lecours was found not responsible on account of mental disorder under section 16 of the Criminal Code.

[38] Afterwards, he received psychiatric treatment. Finally, he appeared in 2019 before the Commission d'examen des troubles mentaux du Québec, which concluded that Constable Lecours did not represent a significant risk to public safety. He was therefore released unconditionally.

## **DECISION ON ALLEGATIONS**

### **Credibility of witnesses**

[39] At the hearing, I heard the testimony of Constable Lecours, as well as the testimony of two expert witnesses. I would like to point out that the testimonies of Drs. S.G. and L.B. were important in order to better understand the complexity of the psychological disorder from which Constable Lecours suffered during the events described above.

[40] In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada ruled on the issues of credibility and reliability of witnesses. It stated that “evidence must always be clear, convincing

and cogent in order to satisfy the balance of probabilities test.” Accordingly, I have carefully assessed each testimony in light of the evidence gathered.

[41] I found that Constable Lecours expressed himself clearly. He was direct. He expressed with emotion and frankness the sorrow and pain he still feels today when he looks back on his actions towards Constable L. He stated that he is also saddened by the comments of his colleagues towards him. Looking at the totality of the evidence, I did not note any major contradictions. I conclude that he was a credible witness and that his evidence was reliable.

[42] During his testimony, Dr. L.B. had significant expertise in erotomanic delusional disorders. As a witness for the Conduct Authority, Dr. L.B. was able to explain in plain language the results of his psychiatric assessments. His evidence was clear, direct, objective and convincing. I therefore conclude that he was credible and that the evidence presented was reliable.

[43] As for Dr. S.G., he is an independent psychiatrist. In March 2019, he was mandated by the RCMP to conduct a psychiatric assessment of Constable Lecours to determine whether he was fit for duty. This assessment took place after Constable Lecours was found not criminally responsible for his actions by the Quebec Criminal Court. At the hearing, Dr. S.G. testified primarily on the results of his assessment which confirmed that Constable Lecours is in remission from his psychological disorder. His testimony was convincing and did not contradict his report. I therefore conclude that Dr. S.G. was a credible witness and that his evidence was reliable.

### **Analysis of allegations**

[44] In the conduct process, the onus is on the Conduct Authority to demonstrate, on a balance of probabilities, that the allegations are established. Subsequently, the Conduct Board is responsible for determining whether the Conduct Authority has met this burden.

[45] With respect to establishing the particulars of the seven allegations, I agree with the position of the Conduct Authority that, based on the evidence on file and the member’s admissions, all the particulars of the seven allegations have been established on a balance of probabilities. This was not disputed by the Subject Member Representative.

[46] At issue in this case is the establishment of the allegations. While the arguments presented by the parties will be discussed in greater depth in the analysis that follows, the position of the parties is briefly set out below.

[47] On one hand, the Conduct Authority Representative maintains that Constable Lecours' psychological state explains the acts to which he admitted having committed. However, this psychological disorder does not relieve him of any responsibility or prohibit the imposition of conduct measures. The Conduct Authority Representative therefore asks the Conduct Board to establish the allegations and to treat the psychological disorder as a mitigating factor during the conduct measures phase.

[48] On the other hand, the Subject Member representative maintains that the allegations are not established despite the fact that Constable Lecours admitted to the acts enumerated therein. Indeed, at the time of the incidents, Constable Lecours was suffering from a rare psychological disorder that prevented him from appreciating the nature and quality of his actions or to know that his actions were wrong. Since his conduct was involuntary, the Conduct Board cannot establish the allegations. The Subject Member Representative strongly objects to the argument of the Conduct Authority Representative that Constable Lecours' psychological state should only be considered during the imposition of conduct measures. The Subject Member Representative maintains that to do so in the particular circumstances of this case would be an error of law.

*Was Constable Lecours diagnosed with a psychological disorder?*

[49] In order to establish the context of the case and answer this question, I believe it is important to review in greater detail the key facts that led to Constable Lecours' diagnosis.

[50] Thus, on October 11, 2018, after being arrested, the Quebec Criminal Court judge ordered a five-day assessment of Constable Lecours' mental state at the Institut Philippe-Pinel de Montréal to determine whether Constable Lecours' was fit to stand trial.

[51] In his October 16, 2018 report, Dr. B.D., a psychiatrist at the Institut Philippe-Pinel, concluded that Constable Lecours was fit to stand trial. However, his diagnosis stated that Constable Lecours showed signs of erotomania.

[52] Consequently, on October 18, the Quebec Criminal Court judge ordered Constable Lecours to undergo a second psychiatrist assessment in order to determine, this time, whether he was suffering from a mental disorder of such a nature as to not engage his criminal liability pursuant to subsection 16(1) of the Criminal Code.

[53] On November 27, 2018, Dr. M-A.S. confirmed that Constable Lecours has an erotomanic delusional disorder with paranoid elements and traits of an obsessive-compulsive and avoidant personality.

[54] Subsequently, this diagnosis was retained without convergence by three other psychiatrists and Constable Lecours' family doctor. In addition to Dr. A.K., who was Constable Lecours' treating psychiatrist, it is important to note that two independent psychiatrists also subscribed to this diagnosis. The first was Dr. S.G. who was mandated on March 13, 2019 by the RCMP to conduct a psychiatric assessment of Constable Lecours to determine whether he was fit to work. The second was Dr. L.B. who was mandated by the Conduct Authority as an expert witness at the hearing.

[55] I also want to make it clear that none of the parties disputed Dr. M-A.S.'s initial diagnosis.

[56] Based on the information on file, I conclude that Constable Lecours was diagnosed with a psychological disorder by Dr. M-A.S. in November 2018.

*Was Constable Lecours' conduct related to his psychological state?*

[57] To answer this question, I carefully reviewed Dr. M-A.S.'s report, as well as Dr. L.B.'s report because of their assessment of Constable Lecours and their knowledge of this type of diagnosis. In addition, I reviewed the testimonials given by Constable Lecours' colleagues who were in regular contact with him during the period in question.

[58] According to Dr. M-A.S., Constable Lecours suffers from a psychotic pathology that deprives him of any real ability to assess the nature and consequences of his actions and to distinguish right from wrong. In short, his behaviour towards Constable Lecours is motivated by his psychotic pathology which prevents him from behaving appropriately and respecting the law.

[59] She reported that Constable Lecours' attachment to Constable L. was such that even those around him had noticed the pervasive nature of this bond. For Constable Lecours, there was no doubt as to his interest in Constable L. He interpreted, for example, discussions with his mother, his friend and his neighbour or even a message in a foreign language recorded on his voicemail as signs that he had to check in with Constable L. about what was going on between them.

[60] Dr. L.B. testified at the hearing that he has great respect for Dr. M-A.S. and that she is one of the most rigorous psychiatrists he knows. He said that she asks a lot of questions and always reports the facts in a fair manner.

[61] At the beginning of his testimony, Dr. L.B. explained that erotomanic delusional disorder is a belief that a situation is real when it is not. A person with this psychological disorder is convinced that they are loved, desired, wanted by another person when this is not actually the case. Delirium affects the functioning or well-being of the person with the disorder. In the case of Constable Lecours, the delirium was that he believed he was desired, loved, and wanted by a colleague and he behaved accordingly.

[62] Dr. L.B. also explained that Constable Lecours was afflicted with a serious illness that destabilized a person who, up to that point, had functioned well in society and at work. He cannot explain how this rare disease came about because there are no precipitating factors such as stress or consumption. He explained that it [TRANSLATION] "just came over him out of nowhere."

[63] When questioned by the representatives at the hearing as to whether the subject member was aware of his actions and the consequences of those actions, Dr. L.B. made several specific assertions about Constable Lecours' mental state at the time of the incidents that demonstrate otherwise: [TRANSLATION]

. . . It is quite clear that, given his certainty that he was loved by a colleague, a delusion, this certainty led him to take actions that were determined by the certainty. And even if he could, at a very basic level, know that, for example, he was not complying with certain rules and guidelines, his ability to appreciate the importance of that was likely compromised.

. . . However, when we are struggling with a psychotic disorder, when we are convinced of someone's love, orders or rules, we do not take them as seriously, with the same wisdom, if you will, as we would if we were in our



right mind and especially when we have personality traits that value respect for authority and conformity to the rules.

. . . It is not so much that Constable Lecours did not know that he was breaking a rule or a direction, but that his illness was of such a magnitude, occupying such a place in his head that this knowledge was not sufficient to prevent him from contacting his work colleague.

. . . This disease, this delirium, has led him to contravene his Code of Conduct and certain laws of the Criminal Code, which is completely contrary to who he really is, a man of integrity who is upstanding and respectful of the rules.

. . . If we look at the assessment that we can make of the implications, of the seriousness of the consequences of the behaviour, I think he was not. Moreover, it will be said much more clearly not very long afterwards that yes, yes, he understood that he was violating an order, but it was stronger than him [he was contravening the order].

. . . I respectfully submit that the Criminal Court judge was absolutely right. He was not responsible. . . [*French original quoted verbatim*]

[64] Dr. L.B. also confirms that in 2018, Constable Lecours suffered, for several months, from a delusional disorder of the erotomanic type. According to him, Constable Lecours was [TRANSLATION] “really at the heart of his psychotic experience” during a RCMP special health assessment conducted on July 4, 2018 by Dr. N.S. When questioned by the Conduct Authority during the examination in chief, Dr. L.B. raises an important contradiction in Dr. N.S.’s report. First, Dr. N.S. states that Constable Lecours has a strong tendency to appear otherwise free of deficiencies. Consequently, the validity of the clinical scales as a faithful representation of his functioning is compromised. Nevertheless, he concludes that Constable Lecours is fit to work without restriction. According to Dr. L.B., this conclusion by Dr. N.S. requires further explanation.

[65] Dr. L.B. stated at the hearing that he noticed that Constable Lecours’ explanations became unclear when he tried to explain the events that occurred during 2018, which is the period during which he was experiencing psychosis. Dr. L.B. added that Dr. M-A.S. had made the same observation during her assessment of Constable Lecours. She found, for instance, that he was engaging in lengthy explanations where the chronological order was no longer being followed. Finally, Dr. L.B. explained that this state of being is not surprising for a person undergoing a psychotic experience because there is also [TRANSLATION] “considerable disorganized thought.” It is therefore subsequently very difficult for the person who has come out of psychosis to explain what happened during this period.

[66] In addition to the expert evidence in this case, I note that six witnesses who worked with Constable Lecours at the time of the incidents all agreed that he did not understand the instructions and the associated consequences. In particular, Constable S.F. said the following in his statement to the investigator of the conduct investigation: [TRANSLATION]

. . . I could see that he had no idea what harassment meant, “I do not get how he failed to understand the message. . . .” [*French original quoted verbatim*]

[67] As for Corporal J.D., he confirms that, even in the presence of two supervisors during the events of August 7, 2019, Constable Lecours did not seem to understand the consequences of his actions when he said: [TRANSLATION]

. . . I said [Constable Lecours] it’s now August 7, and you have 2 supervisors sitting at your table in your kitchen. Do you realize how serious this is? In his eyes, it was nothing. He never admitted anything. He saw nothing wrong with it. . . . [*French original quoted verbatim*]

[68] As for Corporal C.M., he explains in his statement that he himself had difficulty understanding what was going on with Constable Lecours when he said: [TRANSLATION]

. . . When we asked Constable Lecours something, like when we give him an order, he does it. That’s what’s difficult to understand in all this. He’s the type of person that when you look at him from a work-related point of view, he’s still professional. He didn’t deviate from the directions that were given to him. And yet, when he is in the other situation that we find ourselves in now, and we give him instructions, we give him orders, he deviated. I didn’t doubt his intellectual or psychological abilities in relation to work, but it was obvious that there was something wrong with him on a personal level. I was somewhat torn because he’s a very good member, very good at his job. It’s hard to understand. . . . [*French original quoted verbatim*]

[69] Lastly, Inspector M.-J.D. states that she had spoken with the RCMP’s conduct unit because she felt that Constable Lecours failed to understand. She even questioned the use of a conduct process to deal with Constable Lecours’ problem when she said: [TRANSLATION]

. . . He does not seem to understand. I think, certainly not the extent, the consequences of his repeated actions. I was trying to understand why he kept on repeating his actions, and then I told myself the most plausible reason I could see was that he doesn’t quite grasp it. We’re looking at conduct, but is that the right approach? Does he understand? . . . [*French original quoted verbatim*]

[70] In light of the evidence on record from Constable Lecours' expert witnesses and colleagues, I conclude that all agree that Constable Lecours' conduct was irrational in 2018. He understood neither the magnitude nor the consequences of his actions. Therefore, I conclude that this unintentional conduct was related to the psychotic pathology diagnosed by Dr. M-A.S. in November 2018.

*Did Constable Lecours' conduct contravene the Code of Conduct?*

***Position of the Conduct Authority Representative***

[71] In his argument, the Conduct Authority Representative asserted that the notion of criminal liability under section 16 of the Criminal Code does not apply in employment law, including conduct cases such as that of Constable Lecours.

[72] The Conduct Authority Representative further submits that the conduct alleged against Constable Lecours is related to his employment under the RCMP Act. The RCMP Act does not contain a provision equivalent to section 16 of the Criminal Code, which provides that no person shall be found criminally responsible on account of a mental disorder when determining the allegations. Rather, in a conduct process such as that of the RCMP, it proposes that the Conduct Authority need only prove the actions of the subject member and not their intent (*mens rea*) at the time of the incidents.

[73] The Conduct Authority Representative stated, in particular, that in reforming the RCMP Act in 2014, Parliament could have added criteria similar to section 16 of the Criminal Code, but did not do so. Hence the reason why all provisions of the RCMP Code of Conduct no longer contain the words knowingly and wilfully.

[74] Finally, the Conduct Authority Representative alleges that Constable Lecours' psychological state at the time of the incidents may provide an explanation or justification for his actions. However, the psychological disorder is not a legitimate excuse for his conduct. Therefore, his psychological disorder must be considered by the Conduct Board as a mitigating factor in determining the conduct measures imposed.

[75] In support of his arguments, the Conduct Authority Representative cites three decisions of the Ontario Civilian Police Commission appeals tribunal. In *Carter*,<sup>1</sup> the Constable was ordered to resign. She threatened to kill herself and her child with a knife and drive head-on into a transport truck on the 401, a busy highway in Ontario. Reports from two expert witnesses were presented at the hearing, but no witnesses testified to establish a link between the Constable's psychological disorder and her conduct at the time of the incident. In that decision, the Commission concluded that "In our view, the same principle should be applied to this matter. The appropriate stage of a misconduct hearing to consider the mental state of an officer, in most circumstances, should be, as in *Favretto*, when the penalty is being decided."<sup>2</sup>

[76] In *Favretto*,<sup>3</sup> Constable Favretto was acquitted by the Criminal Court judge for pointing his firearm at or in the direction of a colleague. Following the testimony of three expert witnesses, the judge accepted the defence of automatism and non-insane dissociation. The adjudicator at the conduct hearing found that the differing evidence of the three expert witnesses did not support a finding that Constable Favretto was in a state of automatism or dissociation at the time of the incident. Accordingly, he ordered Constable Favretto's resignation. The Commission, in upholding the conviction, wrote the following: "Even had the Hearing Officer accepted the medical theory of Dr. Orchard, it would merely offer an explanation for Constable Favretto's actions and not an excuse. The conduct of Constable Favretto...was clearly and undeniably discreditable."<sup>4</sup>

[77] *Favretto* upholds the *McCoy*<sup>5</sup> decision, which was rendered three years earlier by the Ontario Civilian Police Commission. In that decision, Constable McCoy had been dismissed for discreditable conduct. He had stolen a cribbage board and pegs from a store. At the hearing, the psychiatrist treating Constable McCoy stated that he had been suffering from a fair amount of stress at the time of the occurrence. On appeal, the Ontario Civilian Police Commission stated that [TRANSLATION] "while the psychiatric evidence can explain the conduct, it is not a lawful excuse for that same conduct."

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<sup>1</sup> *Carter v Ontario Provincial Police*, 2018 ONCPC10 (CanLII) [*Carter*].

<sup>2</sup> *Carter*, supra note 1, at paragraph 55.

<sup>3</sup> *Provincial Constable A.L. Favretto v. Ontario Provincial Police*, 2002 CanLII 6720 (ONCPC) [*Favretto*].

<sup>4</sup> *Carter*, supra note 1, at paragraph 53.

<sup>5</sup> *Provincial Constable Robert Charles McCoy v. Ontario Provincial Police*, 1989 CanLII 6720 (ONCPC) [*McCoy*].

*Position of the Subject Member Representative*

[78] The Subject Member Representative asserts that the voluminous and uncontested medical evidence in this case demonstrates that constable Lecours did not have the capacity to appreciate the nature and quality of his actions during the incidents in question or to know that his actions were wrong. This is why Constable Lecours' psychological state must be considered by the Conduct Board when determining the allegations and not only when imposing conduct measures as suggested by the Conduct Authority Representative.

[79] The Subject Member Representative agrees with the position of the Conduct Authority Representative that the notion of not being criminally responsible under section 16 of the Criminal Code does not apply in this conduct process. However, she argues that section 16 is a codification of the *common law* and that the same principles apply with respect to conduct.

[80] In addition, the Subject Member Representative asserts that the insanity defence codified in section 16 of the Criminal Code does not apply only to offences where intent (*mens rea*) is required as is maintained by the Conduct Authority. It relies on the criminal law treaties of Hugues Parent<sup>6</sup> and Ken Roach<sup>7</sup> to state that this irresponsibility applies as much to traditional crimes as it does to strict and absolute liability regulatory offences.

[81] In addition, in support of this argument, the Subject Member Representative cites *Stuart*<sup>8</sup> in which a teacher was found guilty of professional misconduct by the College of Teachers. It concluded that the teacher's psychological disorder was not relevant in determining whether the alleged conduct constituted professional misconduct. The Court of Appeal overturned this decision, stating that disciplinary offences are strict liability offences, not absolute liability offences. Thus, the College of Teachers erred in concluding that the teacher's psychological disorder was irrelevant to a determination of whether his conduct amounted to professional misconduct.

[82] Lastly, the Subject Member Representative argues that where mental disorder renders the person incapable of appreciating the nature and quality of their actions or of knowing that they are

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<sup>6</sup> Parent, H., *La Culpabilité, traité de droit criminel*, Volume 2, 3rd Edition, Les Éditions Thémis.

<sup>7</sup> Roach, K., *Criminal Law*.

<sup>8</sup> *Stuart v British Columbia College of Teachers*, 2005 BCSC 645 (CanLII) [*Stuart*].

wrong, this creates incapacity, such that the member cannot be held liable for a breach of the Code of Conduct. In support of this position, the Subject Member Representative cited the onerous test set out in *Law Society of Canada v. Cox*<sup>9</sup>, cited in *Law Society of Ontario v. Stewart*.<sup>10</sup> This 2007 Law Society Tribunal of Ontario decision relied on the defence of insanity in which the lawyer had to prove “by reason of mental disorder, he did not appreciate the nature and quality of his actions; or did not have the capacity to know that they were wrong.”

[83] In *Cox*, the hearing panel admitted that stress, anxiety and mental illness are rarely an acceptable defence for an allegation of professional misconduct. However, given the unusual circumstances of the case, the expert evidence proved that the lawyer’s mental capacity was seriously compromised. The Subject Member Representative maintains that Constable Lecours’ file satisfied the test cited in *Cox*.

[84] The Subject Member Representative also explains that, since *Cox*, the Law Society Tribunal of Ontario has evolved to take into account in their discipline proceedings mental health issues experienced by the member at the time of the misconduct. In *Luzius*,<sup>11</sup> the hearing panel concluded that, in circumstances where it is demonstrated that there is a compelling nexus between the mental illness and the alleged misconduct, “it can neither be said to be just nor in the public interest to declare a licensee guilty of professional misconduct.”

### ***Conduct Board analysis***

[85] First, I agree with the position of the parties that the defence of insanity specifically found in section 16 of the Criminal Code does not apply in this conduct process. A contravention of the RCMP Code of Conduct is not a criminal offence. Therefore, it is recommended that parties avoid importing elements of criminal law into this administrative process.

[86] With respect to absolute liability offences and strict liability offences, I agree with the Subject Member Representative that an offence in this conduct process is a strict liability offence and not an absolute liability offence.

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<sup>9</sup> *Law Society of Ontario v. Cox*, 2007 ONLSHP 40, at paragraph 70

<sup>10</sup> *Law Society of Ontario v Stewart*, 2019 ONLSTH 118 [*Stewart*], at page 5.

<sup>11</sup> *Law Society of Upper Canada v. Luzius*, 2013 ONLSHP 193 [*Luzius*].

[87] The purpose of Part IV of the RCMP Act is to regulate the conduct of members of the RCMP within a limited sphere of activity. Since the reform of the RCMP Act in 2014, a hearing before a Conduct Board is initiated by the Conduct Authority when it requests the dismissal of a member. In an absolute liability offence, mere evidence that the defendant committed the prohibited action results in a conviction. This would mean that in the RCMP conduct process, the subject member could not exonerate themselves by demonstrating that they did not commit any fault. I doubt that this was the intention of the legislature at the time of the legislative reform.

[88] As to the appropriate time to consider a psychological disorder, generally, I agree with my colleagues in *Commanding Officer "F" Division and Constable Mills*, 2019 RCAD 04 [*Mills*] as well as *Commanding Officer "E" Division and Constable Brown*, 2017 RCAD 01 [*Brown*]. Psychological disorders should, in most cases, be considered a mitigating factor in the conduct measures phase. I would add to this, however, that to consider the psychological state of a subject member in determining allegations rests on a very high evidentiary threshold that is only met in the rarest of cases.

[89] As noted by the Subject Member Representative, in *Mills* and *Brown*, the determining factor in these cases was whether the member was acting voluntarily or [TRANSLATION] "fully of his own free will" despite his psychological state. More specifically, in *Brown*, the Conduct Board stated at paragraph 47 that:

Where inappropriate conduct takes place while the member suffers significant mental issues (short of automatism or some other condition robbing the member of a reasonable degree of free will), the fact that their mental status greatly contributes to their behaviour does not exonerate them or preclude disciplinary action.

. . . I find that she nevertheless possessed sufficient mental awareness to know that her conduct brought discredit on the Force. . . .

[90] Similarly, in *Mills*, the Conduct Board states at paragraph 22 that it takes more than a psychological disorder to excuse conduct. The member must not act of their own free will:

Having said that, I don't accept that the existence of mental illness excuses him from being culpable for his misconduct without more. Dr. C. C. was very clear in his testimony in response to my questions that the Subject Member was both aware of what he was doing and of the fact that there would be consequences to his actions. His state of the mind at the time was simply that self-preservation was more important than those consequences. His free will

was still present and he made the conscious choice to do what he did on each occasion.

[91] I note that the conduct boards in *Mills* and *Brown* were not as categorical in their statements as the Ontario Civilian Police Commission in *Favretto* and *McCoy* presented by the Conduct Authority Representative in that the member's psychological state should only be considered in conduct measures. I note, among other things, that in *Carter*, the Ontario Civilian Police Commission appears to show an openness on the issue when it states that the position in *Favretto* should apply in [TRANSLATION] "most cases."

[92] I must admit that Constable Lecours' file is rare. He had to be assessed twice by psychiatrists from the Institut Philippe-Pinel de Montréal in order to be correctly diagnosed with a psychotic pathology. As Dr. L.B. explained at the hearing, delusional disorders are unique diseases. Those of the erotomanic type are the rarest of delusional disorders: [TRANSLATION]

. . . Constable Lecours is one of a handful of patients suffering from the rarest manifestation of a rare disease. . . .

. . . He suffered from a disease called delusional disorder, which came upon him, God knows why, and disappeared, God knows why and may or may not come back . . . Today, we know that he is in remission. . . . [*French original quoted verbatim*]

[93] I acknowledge that I am not bound by the decision of the Quebec Criminal Court in which Constable Lecours was found not criminally liable for a breach of the condition of his undertaking. However, as indicated by the Subject Member Representative, this is nonetheless an important fact in the sequence of events in this case.

[94] Moreover, as indicated in the summary of the established facts of this decision, the arrest warrant issued against Constable Lecours is part of an ongoing series of incidents that occurred between Constable L. and Constable Lecours between November 1, 2017 and August 10, 2018. The information submitted to the Criminal Court in August 2018 requires Constable Lecours to enter into a recognizance under section 810 of the Criminal Code because there are reasonable grounds to fear that he will cause personal injury to Constable L. or damage her property.

[95] These grounds were based on the following facts: Constable Lecours continued to contact Constable L. for personal purposes, despite numerous orders from his superiors not to contact her; he was the subject of a conduct investigation; he was assigned to administrative duties and



transferred to headquarters; he denied having attempted to contact her despite the prohibitions imposed on him; she is concerned about Constable Lecours' next tactics to contact her; and her behaviour is increasingly affected by Constable Lecours' persistent behaviour.

[96] In addition, Allegation 7 of the *Notice of Conduct Hearing* alleges that Constable Lecours behaved in a disgraceful manner, bringing discredit to the RCMP, for having breached the condition of his undertaking. As such, this contravention of the Code of Conduct as drafted in the allegation refers directly to the judicial process outlined above.

[97] Under section 7.1 of the Code of Conduct, "Members behave in a manner that is not likely to discredit the Force." This conduct is assessed using a four-step test developed by the RCMP External Review Committee. In steps 1 and 2, the Conduct Authority must establish, on a balance of probabilities, the acts constituting the alleged conduct and the identity of the member who committed those acts.

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

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

[100] Considering the admissions in Constable Lecours' response and the evidence on record, I conclude that the elements of steps 1 and 2 are established on a balance of probabilities.

[101] As for steps 3 and 4 of the test, the medical expertise on file and the statements of six of Constable Lecours' colleagues all unequivocally demonstrated that there was an irrefutable link between Constable Lecours' psychological state and his misconduct in 2018. This was more than poor judgment. His actions were irrational, involuntary and indicative of a person whose thinking has been altered by mental disorders, preventing him from appreciating the nature and quality of his actions.

[102] As Constable Lecours made clear in his testimony at the hearing, he did not need more orders or directions. Rather, he needed psychological assistance.

[103] Constable Lecours' case is one of those very rare cases that meets the very high evidentiary threshold required by a Conduct Board to take into account the psychological state of the subject member in determining the allegations and not merely as a mitigating factor in imposing conduct measures.

[104] Accordingly, I conclude that a reasonable person in society who is aware of all the relevant circumstances, including the realities of police work in general and the RCMP in particular, would consider the conduct of Constable Lecours described in allegations 6 and 7 of the *Notice of Conduct Hearing* did not bring the Force into disrepute and the Force therefore has no legitimate interest in disciplining the member.

[105] Furthermore, I find that Constable Lecours did not, as alleged in allegations 2, 3, 4 and 5 of the *Notice of Conduct Hearing*, fail or refuse without lawful excuse to comply with orders or directions from his superiors.

[106] Finally, I conclude that the conduct of harassment as described in allegation 1 of the *Notice of Conduct Hearing* is not established because of his rare psychological state.

[107] For these reasons, I find that the seven allegations in the *Notice of Conduct Hearing* are not established on a balance of probabilities. Accordingly, no conduct measures are imposed.

#### **Recidivism and facilitative measures for a return to work**

[108] Since the allegations are not established, I acknowledge that I cannot impose binding recommendations against Constable Lecours. However, as described in the Victim Impact Statement prepared by Constable L., Constable Lecours' conduct has had a major impact on her. For example, she was nervous to work with him, she closed the curtains of her apartment in broad daylight, she installed an alarm system, she moved out and she is still watching to see if she is being followed. She fears that one day Constable Lecours will do it again because he has never followed the orders of his superiors. She no longer trusts his judgment.

[109] In this case, I would also like to emphasize the vigilance of Constable Lecours' supervisors. They made considerable efforts to minimize contact between Constable Lecours and Constable L. and to avoid the continuation of Constable Lecours' behaviour. In addition to orders, he was moved to another team, was assigned to administrative tasks and even had his service weapon removed. Finally, two requests for a special health assessment were submitted by his supervisor in an attempt to explain Constable Lecours' irrational behaviour.

[110] I find it important in this decision that I agree with the conclusions and recommendations made by the two independent expert witnesses at the hearing regarding Constable Lecours' likelihood of recidivism.

[111] According to Dr. S.G., who was mandated by the RCMP in March 2019, Constable Lecours is currently in remission from his psychological disorder. This expert believes that Constable Lecours has no functional limitation, nor any temporary or permanent restriction to perform administrative or police work in a professional and safe manner. He does not perceive any factors or signs of danger towards himself or others.

[112] The two experts agree: there is a one in two chance that Constable Lecours' psychological disorder will return. However, as Dr. L.B. pointed out, if an episode of delirium reoccurs, it is very likely that it will not be to the same extent as the first time because Constable Lecours is now aware of his diagnosis and the associated consequences. His family, friends and trusted people around him will be able to help him minimize the repercussions and avoid, for example, ending up in a legal or even disciplinary process.

[113] Dr. S.G. specified that the risk of relapse is rather low given that Constable Lecours has no increased risk factors. He is currently studying at university, he is healthy and seems happy. In addition, he does not use drugs, drinks very little alcohol, and has no gambling or sexual deviancy issues.

[114] As facilitative measures for the subject member's return to work that could be considered by the Conduct Authority, the two experts are of the view that, as a precautionary measure, Constable Lecours would greatly benefit from regular follow-ups with a health care professional specialized in erotomania-type delusional disorders before and during his return to work. According to them, it is essential that the professional be familiar with Constable Lecours' entire

file so that the parties can develop a trusting relationship that allows them to recognize the warning signs of the disease, should it arise.

[115] Finally, the experts expressed that it is desirable that Constable Lecours no longer work with Constable L. However, as Dr. S.G. pointed out, this is not out of fear that he might relapse, but to avoid discomfort between the two parties.

## **CONCLUSION**

[116] The Conduct Board has concluded that the seven allegations filed against Constable Lecours were not established on a balance of probabilities. Consequently, no conduct measure was imposed.

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

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Josée Thibault

Conduct Board

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November 18, 2020  
Date