

Protected A

2021 CAD 01

Publication ban: Any information that could identify the individuals referred to as Ms. Y, Child A, Child B or Child C in the present decision may not be published, broadcast or transmitted in any way.



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, “National” Division

(Conduct Authority)

and

Constable X

(Subject Member)

Conduct Board Decision

Christine Sakiris

January 11, 2021

Mr. Denys Morel and Staff Sergeant Chantal Le Dû, Conduct Authority Representatives

Ms. Michele Meleras and Ms. Isabel Schurman, Ad. E., Subject Member Representatives

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SUMMARY

The original *Notice of Conduct Hearing*, dated July 23, 2019, contained six allegations of contraventions of the RCMP Code of Conduct. The first five allegations arose out of incidents of domestic violence, three of which involved Child A. The sixth allegation involved Constable X's display of his police identification badge while attending court for non-duty-related reasons.

Prior to the conduct hearing, the parties submitted an *Agreed Statement of Facts* and a *Joint Proposal on Conduct Measures*. These were accepted by the Conduct Board. Allegations 1, 4 and 6 were

accordingly withdrawn by the Conduct Authority Representative. Allegations 2, 3 and 5 were established, as amended.

A publication ban on the identity of the children and their mother was jointly requested and granted by the Conduct Board. The names of Constable X, the children's mother, and the children have been anonymized in order to protect the identity of the children.

The following conduct measures were imposed: (1) a financial penalty of 30 days' pay, to be deducted from Constable X's pay; (2) a direction to undergo medical treatment as specified by the Health Services Officer; and (3) a transfer to another position within National Division.

INTRODUCTION

[1] Constable X is alleged to have committed acts of domestic violence between June 2016 and March 2018. On or about March 18, 2018, an officer at a municipal police force called Inspector M. to advise that Constable X had been arrested. A Code of Conduct investigation was initiated on that same day.

[2] Pursuant to subsection 47.4(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], a retroactive extension of the four-month time limitation was granted on April 25, 2019. Consequently, the limitation period to initiate a conduct hearing was extended to July 18, 2019.¹

[3] On July 5, 2019, the Designated Conduct Authority signed a *Notice to the Designated Officer* to request the initiation of a conduct hearing in relation to this matter. On July 15, 2019, a conduct board was appointed. Subsequently, the need to have a bilingual adjudicator assigned to the file was

¹ See *Decision Rendered in Respect of a Request for the Extension of Time Limitations Pursuant to s.47.4(1) RCMP Act (Request #1)* issued by Chief Superintendent Stephane Drouin, Director General, Workplace Responsibility Branch, on April 25, 2019.

identified. On September 19, 2019, a change of conduct board appointment was made and I was appointed as the Conduct Board pursuant to subsection 43(1) of the *RCMP Act*.

[4] The original *Notice of Conduct Hearing*, dated July 23, 2019, contained six allegations of contraventions of section 7.1 of the RCMP Code of Conduct. Allegations 1 and 4 involved alleged acts of domestic violence toward the children's mother. Allegations 2, 3 and 5 involved alleged acts of domestic violence against Child A. Allegation 6 alleged that Constable X improperly displayed his police identification badge while attending court for non-duty-related reasons.

[5] On October 15, 2019, Constable X submitted his response pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. He admitted to Allegations 2 and 3. He denied Allegations 1, 4, 5 and 6, but he admitted to certain particulars set out therein.

[6] The hearing in this matter was scheduled to begin on October 19, 2020. On October 14, 2020, the Conduct Authority Representatives and the Subject Member Representatives advised the Conduct Board that they had reached a resolution. The hearing was adjourned in order to allow the parties some time to prepare the materials in support of a joint submission.

[7] The parties' joint written submission was received on October 28, 2020, and was supported by documentary evidence. The parties proposed the amendment of Allegations 2, 3 and 5, to which Constable X admits, and the withdrawal of Allegations 1, 4 and 6 by the Conduct Authority Representatives. The following conduct measures were jointly proposed: (1) a financial penalty of 30 days' pay, to be deducted from Constable X's pay; (2) a direction to undergo medical treatment as specified by the Health Services Officer; and (3) a transfer to another position within National Division. The parties also requested a publication ban to prevent the identification of the children, which I have granted.

[8] For the reasons that follow, I accept the parties' joint proposal. Allegations 2, 3 and 5 are established, as amended. Allegations 1, 4 and 6 are withdrawn. The conduct measures, as proposed, are imposed.

Publication ban

[9] The parties' joint proposal included the following request with respect to a publication ban in this matter:

[...] The parties request a direction from the conduct board ("CB") pursuant to para. 45.1(7)(a) of the *RCMP Act* prohibiting any information that could identify [the children's mother], [Child A], [Child B] and [Child C] from being published in any document or broadcast or transmitted in any way. Given that [Constable X] is identified as the father of the children in the proceedings, the parties ask that his name be also omitted as part of the direction to prevent their identification. [...] [*Sic throughout*]

[10] Of particular concern in this case is the parties' position that it is necessary to fully anonymize Constable X's identity, in order to protect the children's identity. Therefore, I sought additional submissions from the parties on this issue. Constable X provided his submission on November 23, 2020. On November 24, 2020, the Conduct Authority Representatives confirmed that they had nothing to add to his submission.

[11] In his submission, and in the correspondence that followed between the Conduct Board and counsel, Constable X argued for a highly restrictive publication ban that would extend beyond the usual scope sought to protect the identity of a complainant or a person under the age of 18. Therefore, I have undertaken a detailed analysis of the need for and scope of the publication ban in this instance.

[12] The need for court proceedings to be open and accessible to the public is well established in jurisprudence and has been described as a "hallmark of a democratic society".² The open court principle is reflected in subsection 45.1(2) of the *RCMP Act*, which provides that a conduct hearing shall be held in public.

² *A.B. v Bragg*, [2012] 2 SCR 567 [*Bragg*], at paragraph 11, citing *Vancouver Sun (Re)*, [2004] 2 SCR 334, at paragraph 23.

[13] There are limited circumstances in which the open court principle may be constrained. Paragraph 45.1(7)(a) of the *RCMP Act* provides a conduct board with the discretion to issue a publication ban with respect to “information that could identify a complainant, a witness or a person under the age of 18”.

[14] In exercising this discretion, it is not enough that the parties consent to the imposition of a publication ban.³ Rather, I must be satisfied that the test for the imposition of a publication ban, as articulated by the Supreme Court of Canada, is met. This test can be paraphrased as follows:

- a. Is the publication ban necessary to prevent a serious risk to an important public interest (which must be real, substantial and well grounded in evidence) because reasonable alternative measures would not alleviate the risk? If so,
- b. Do the beneficial effects of the publication ban outweigh the harmful effects thereof?⁴

[15] As noted, the *RCMP Act* provides me with the discretion to impose a publication ban in order to protect the identity of a complainant, witness or person under the age of 18. In this case, the primary complainant is Child A, a person under the age of 18. The particulars to the allegations also reference Constable X’s behaviour toward Child B and Child C, also under the age of 18.

[16] By virtue of the Conduct Authority Representatives’ withdrawal of Allegations 1 and 4, the children’s mother is no longer a complainant in this matter. That said the Record contains the initial allegations and her statements, as a complainant, with respect to those allegations. I find that it is still

³ *S.M. v C.T.*, 2020 ONSC 4819 [*S.M.*] at paragraph 16.

⁴ Cst. X’s submissions on the parties’ request for a publication ban, at paragraph 10, citing: *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835, at page 878; *R. v. Mentuck*, 2011 SCC 76, at pages 457 – 458 and 462 – 464; *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at paragraphs 45 – 48; and *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, paragraphs 7 and 26 [hereinafter the *Dagenais/Mentuck* test]

appropriate to order a publication ban on her identity. Moreover, her identity would still need to be protected in order to give effect to a publication ban on the children's identity.

[17] In this case, there is little debate that a publication ban on the identity of the children is appropriate. The allegations involve acts of abuse against Child A. He has undoubtedly suffered emotional harm as a result of the abuse itself. There is a real risk of further emotional harm if his identity as the victim of domestic violence is disclosed. Moreover, Child A's privacy interests are heightened due to his age. The Supreme Court of Canada has recognized that children have an inherent vulnerability as a result of their age. Their emotional wellbeing is at risk where their privacy interests are not protected.⁵ A child may not take steps to protect themselves, or to seek therapeutic or legal remedies, if they fear further disclosure of their identity.⁶

[18] While Child B and Child C are not complainants in this matter, all three children are at risk of emotional harm if information that may identify them is accessible to the public. They have no ability to remove themselves from the conduct process. As the Ontario Superior Court has explicitly recognized, children "are deeply connected to their parents and to their parent's behaviour. The children may feel worry, shame, embarrassment or humiliation as a result of the conduct at issue here, even if it is not their own."⁷

[19] On the facts of this case, a serious risk of harm to the children exists. This harm can be mitigated by a carefully tailored publication ban that protects their privacy interests. The beneficial effects of a publication ban on information that may identify the children outweigh the harmful effects of such a ban. The salient facts at issue in this case, the nature of the allegations, and the resolution of this matter can be meaningfully accessible by the public without disclosing the identities of the children.

⁵ *Bragg, supra* note 2, at paragraphs 16 to 18.

⁶ *Ibid*, at paragraphs 23 to 25.

⁷ *Bragg, supra* note 2, at paragraphs 21 and 24.

[20] In accordance with paragraph 45.1(7)(a) of the *RCMP Act*, I order that any information that could identify any of Constable X's three children or their mother shall not be published in any document or broadcast or transmitted in any way. I will now turn to the scope of the publication ban that is imposed.

[21] Where a publication ban is imposed on the identity of a child, courts will commonly identify the child and their parent(s) by their initials, particularly where the child bears the same last name as one of the parents.⁸ Here, Constable X is asking me to go further, and fully anonymize his identity.

[22] Constable X submits that his children share his last name. Their peers are aware of his status as a member of the RCMP, as he has attended their school in uniform for Remembrance Day ceremonies, and gave a presentation to one of their classes. He argues that all three children are at an age when their peers could search his name on the internet and find the decision in this matter, resulting in emotional harm to the children.

[23] I do not find that these arguments, in and of themselves, are sufficient to warrant the full anonymization of Constable X's name. Constable X is not living in an isolated or particularly small region. The fact that his profession may be known to the children's peers or members of their community is not information that is likely to identify the children.

[24] However, in this case, Child A is named after Constable X, sharing both his first and last name. I am not satisfied that referring to Constable X or the children by their initials would be sufficient, on the facts of this case, to protect the children's and, in particular, Child A's identity.

[25] In light of the foregoing, the children shall be referred to, from eldest to youngest, as Child A, Child B and Child C. The Subject Member is referred to as Constable X. I agree with the parties that it is necessary to anonymize the identity of the children's mother, in order to protect that of the children. Therefore, the children's mother shall be referred to as Ms. Y.

⁸ *Bragg*, *supra* note 2; *S.M.*, *supra* note 3; *G.T.G.D. v M.D.*, 2016 ONSC 4190.

[26] The children's ages, in particular Child A's, are relevant to the allegations. Knowledge of their ages provides important contextual information that allows a full appreciation of the potential impact of Constable X's alleged actions on the children. However, it is not necessary to indicate their specific ages in order to do so. It is sufficient to note that all three children were under the age of 13 at the time of the alleged incidents.

[27] The gender of Child A is relevant to the allegations themselves, as it serves to contextualize Constable X's comments and actions toward him. The genders of Child B and Child C are not relevant to the allegations.

[28] The allegations took place in what was, at the time, the family residence. The children still reside and/or visit with Constable X at this location. Moreover, the address would be known to staff at their schools and members of their community, including the children's peers. As such, it may serve to identify the children. Therefore, the address of Constable X's residence will not be disclosed.

[29] Constable X submits that the specific unit to which he was posted at the time the incidents took place is small, with few married couples, and that he would be readily identified if this information is provided. He further submits that indicating the Division to which he was posted would provide information that may tend to identify the children.

[30] Given that I have determined that Constable X shall be referred to as Constable X and his former spouse as Ms. Y, I do not find Constable X's position to be compelling. It is necessary to find a balance between protecting the children's identity and ensuring that there is sufficient public access to the salient facts and issues raised in this matter.

[31] Constable X argues that members posted to National Division live in the National Capital Region, and that this information may tend to identify him. I disagree. The National Capital Region includes approximately 1.4 million residents, who may live in either Ontario or Québec.⁹ This

⁹ Harris, Julie, *National Capital Region*, The Canadian Encyclopedia, September 30, 2019: <https://www.thecanadianencyclopedia.ca/en/article/national-capital-region>.

information, in the context of the scope of the publication ban as a whole, is not likely to provide information that may serve to identify the children.

[32] Finally, I find that the fact that Constable X was, at the times of these incidents, posted to a position of particular trust, is relevant to an appreciation of the gravity of the alleged incidents and the extent to which Constable X's actions are likely to bring discredit to the Force. That said I do not find that it is necessary to identify the specific unit to which Constable X was posted. It is sufficient to indicate that Constable X was posted to Protective Operations. I note that Protective Operations is comprised of five broad sections, each of which includes multiple sectors or units. The reference to Protective Operations is at a high enough level that it does not constitute information that may tend to identify the children.

ALLEGATIONS

[33] The joint proposal provides the amended wording for Allegations 2, 3 and 5, as follows:

Allegation 2

On or about December 30, 2017, at or near [location redacted], Constable [X] engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 2:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police posted in [Protective Operations] in "National" Division [...].
2. You married [Ms. Y] in 1999 and had three [children] with her: [Child A, Child B and Child C].

NOTE: [The children are referenced from eldest to youngest. All three children were under the age of 13 at the time the alleged incidents took place.]

3. At the time of the incident you were off-duty and on long term sick leave.

4. You were at your residence located at [...]
5. You used physical exercises as a form of discipline with [your children].
6. You were with [Child A] telling him he would have to learn to listen to his parents and behave. While [Child A] was doing push-ups, you threatened to give him a “smack” if his knees touched the floor. When his knees touched the floor you told him “*Get off your knees, are you a woman? Up [...] Are you a baby? Babies goes on their knees.*” [Child A] was crying asking you to stop and pleading for you not to hurt him.
7. You told [Child A] to straighten his feet while doing military-style exercises and asked him “*Would you like me to straighten them*”. [Child A] answered while crying “*No, but you’re just gonna break them*” to which you responded “*Then you better straighten them down.*”
8. You further told [Child A] while he was crying “[...] so it’s my job to make you practice and make you learn and if you want to do it the hard way then that’s pretty fun for me so we’ll do it.[...]”.
9. Your conduct towards [Child A] was discreditable.

Allegation 3

On or about September 6, 2017, at or near [...], Constable [X] engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 3:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police posted in [Protective Operations] in “National” Division [...].
2. You married [Ms. Y] in 1999 and had three [children] with her: [Child A, Child B, and Child C].

NOTE: [The children are referenced from eldest to youngest. All three children were under the age of 13 at the time the alleged incidents took place.]

3. At the time of the incident you were off-duty and on long term sick leave.
4. You were at your residence located at [...]
5. You used physical exercises and the threat of being hit with a spatula or wooden spoon as a form of discipline with [your children].
6. You were with [Child A] who was sitting on the floor and apparently naked, in the corner of the living room crying. You were holding a wooden spoon and demanding that [Child A] do some push-ups threatening him by saying “*Do your 10 push-ups [...] I don’t give a crap what you say, I get to 3, you’re getting another one.*”
7. [Child A] was begging you not to hit him. You hit [Child A] with the wooden spoon.
8. Your conduct towards [Child A] was discreditable.

Allegation 5

On or between March 10 and March 18, 2018 at or near [...], Constable [X] engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 5:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police posted in [Protective Operations] in “National” Division [...].
2. You married [Ms. Y] in 1999 and had three [children] with her: [Child A, Child B, and Child C].

NOTE: [The children are referenced from eldest to youngest. All three children were under the age of 13 at the time the alleged incidents took place.]

3. At the time of the incident you were off-duty and on long term sick leave.

4. You were at your residence located at [...].

5. [Child A] states that: He was doing chores around the house; At some point, you threw a shoe at him, so he ran upstairs and called you a “butt hole”; You chased him and hit him repeatedly with a shoe and this, he says, caused him to have a bruise and a skin abrasion on his right arm on his triceps above the elbow.¹⁰

6. Your conduct towards [Child A] was discreditable.

[Sic throughout]

Decision on the Allegations

[34] Section 7.1 of the RCMP Code of Conduct states: “Members behave in a manner that is not likely to discredit the Force.”

[35] The test for “discreditable conduct” under section 7.1 of the Code of Conduct requires that the Conduct Authority establish the following four elements on a balance of probabilities:

- a. the acts that constitute the alleged behaviour;
- b. the identity of the member who is alleged to have committed these acts;
- c. that the member’s behaviour is likely to discredit the Force; and

¹⁰ See the Appendix 8, at pages 325-352, and Appendix 14 of the investigation report dated June 5, 2019.

- d. that the member's actions are sufficiently related to their duties and functions as to provide the Force with a legitimate interest in disciplining them.

[36] By virtue of Constable X's admission to Allegations 2, 3 and 5, as amended, I find that the first two elements of the test are satisfied for all three allegations. I must now determine whether the third and fourth elements of the test are established.

[37] Constable X's actions, as set out in Allegation 2, involve the humiliation and intimidation of a young child, with threats of violence. A young child who is pleading with his father, Constable X, not to hurt him.

[38] Constable X's actions, as set out in Allegation 3, as amended, are even more egregious. Here, there is physical violence. There is video evidence of profound humiliation and intimidation, in which Constable X demands that Child A, who is naked, crying and cowering in a corner, do push-ups as a form of "discipline", lest he be subject to further physical violence. In addition, the particulars reflect Constable X's practice of threatening his children with violence in order to gain compliance.

[39] Constable X's actions, as set out in Allegation 5, as amended, reflect, once again, an incident of physical violence toward Child A. In particular, Constable X repeatedly hit Child A with a shoe, causing an injury to his arm.

[40] Domestic violence has significant long-term impacts on victims and their families. Child A was, at the time of the Allegations, a young child under the age of 13. His personal dignity and physical autonomy were violated by Constable X's actions. Constable X's actions demonstrate poor judgment and constitute a breach of the most fundamental relationship of trust, namely that between a parent and child.

[41] Like many police forces, the RCMP has recognized the profound societal impact and risks associated with domestic violence. Former Commissioner Zaccardelli clearly articulated the position of the RCMP, as one of the organizations responsible for effective responses to domestic violence, as follows:

We must send a message that this kind of behaviour will not be tolerated, particularly when perpetrated by members of the RCMP. I have previously articulated my expectations with respect to the organization in this regard. Domestic violence is a scourge in our society.¹¹

[42] Members of the RCMP are called upon to investigate incidents of domestic violence. Constable X's actions call into question his ability to impartially investigate these offences. The public's confidence in a member's ability to enforce laws is compromised when that member does not conduct themselves in a manner consistent with those same laws.

[43] It is well established that police officers are held to a higher standard than the general public. Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Constable X's actions as likely to bring discredit to the Force.

[44] Noting that Constable X's actions fall squarely within behaviour that the Force has prioritized in its enforcement activities,¹² I find that his actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. As such, I find that Constable X's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[45] Allegations 2, 3 and 5, as amended, are accordingly established on a balance of probabilities.

¹¹ *Rendell v Canada (Attorney General)*, 2001 FCT 710, at paragraph 5, citing the Commissioner's decision of June 21, 2001, at paragraphs 23 and 24.

¹² See *Operational Manual*, Chapter 2.4 "Violence/Abuse in Relationships".

CONDUCT MEASURES

[46] Having found that Allegations 2, 3 and 5, as amended, established and in accordance with subsection 45(4) of the *RCMP Act* and the *RCMP Conduct Measures Guide*, I am required to impose “a fair and just measure that is commensurate to the gravity of the contravention, the degree of blameworthiness of the member, and the presence of mitigating and aggravating factors”. Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be “proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, [...] are educative and remedial rather than punitive”.

[47] The Conduct Authority Representatives and the Subject Member Representatives provided a written joint submission on conduct measures, with supporting documentation and jurisprudence. They proposed the following global conduct measures:

- a. a financial penalty of 30 days (240 hours) to be deducted from Constable X’s pay;
- b. a direction to undergo medical treatment as specified by the Health Services Officer, and
- c. a transfer to another position within National Division.

[48] When presented with a joint submission on conduct measures, there are very narrow circumstances in which a conduct board may refuse to accept the proposed conduct measures.

[49] The Supreme Court of Canada has recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.¹³ Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless doing so would be against the public interest.

¹³ See for example *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19; and *R. v Anthony-Cook*, 2016 SCC 43 [Cook].

[50] Therefore, I must determine whether accepting the joint proposal on conduct measures would be against the public interest. This is not a question of whether the conduct measures proposed are the same as what I would impose. Rather, the public interest test sets a much higher threshold.

[51] In *Cook*, the Supreme Court of Canada provided the following guidance, which is applicable to administrative tribunals:

[...] a joint submission should not be rejected lightly [...] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of [, in this case, the conduct process] had broken down.¹⁴

[52] In order to determine whether the proposed conduct measures are against the public interest, it is helpful to have some sense of what the possible measures may be. The *Conduct Measures Guide* is a useful reference in this regard. However, it is important to note that the *Conduct Measures Guide* is just that, a guide. It is not meant to be prescriptive.

[53] As a starting point, I find that global measures are appropriate in this case. All three Allegations reflect instances of domestic violence, primarily directed toward Child A. They are proximate in time, occurring within a period of approximately seven months.

Range of possible conduct measures

[54] All three Allegations involve contraventions of section 7.1 of the Code of Conduct. The *Conduct Measures Guide*, at pages 46 to 48, specifically identifies the range of conduct measures to be imposed for domestic violence.

¹⁴ *Cook*, *supra* note 13, at paragraph 34.

[55] I agree with the parties that Constable X's actions fall within the aggravated range identified by the *Conduct Measures Guide*. His misconduct involves acts of domestic violence against a child. As the parties note: "Assaults involving a member's spouse or children should be considered an aggravating factor, considering the vulnerability of the victims [...]"¹⁵ Prior conduct board decisions cited by the parties confirm that serious conduct measures are appropriate in cases of domestic violence.¹⁶

[56] I find that the applicable range in this case is from a forfeiture of 15 days of pay, alone or in conjunction with other conduct measures, to dismissal. I must now consider the mitigating and aggravating factors.

Mitigating factors

[57] Of the numerous mitigating factors proposed by the parties, I have retained the following.

[58] First, Constable X's admissions have avoided the need for a contested hearing and the testimony of vulnerable witnesses.

[59] Second, Constable X has expressed remorse and accepted responsibility for his actions. In his letter of apology, addressed to the Conduct Board, Constable X states:

[...]

At the time, I was under immense personal stress and did not conduct myself in an appropriate manner when dealing with my son. I certainly did not conduct myself in a manner fitting an RCMP officer. Furthermore, I did not behave like the father my children deserve, nor did I act like the father I should be and want to be. I am currently on the long journey of making it up to them.

¹⁵ *Joint Proposal*, at page 5, citing the *Conduct Measures Guide*, at page 46.

¹⁶ *Commanding Officer "D" Division v Cst. Fahd El Aste*, 2018 RCAD 18, and *Commanding Officer "C" Division v Cst. Dany Noël*, 2019 RCAD 11.

[...]

[60] Third, Constable X appears to have taken concrete steps to improve his parenting skills. He has participated or was, as of November 2020, participating in several coaching sessions to address parenting and co-parenting issues.

[61] Third, expert medical evidence confirms that Constable X has been struggling with mental health issues since 2016. He has been off work for medical reasons since 2016.

[62] Fourth, Constable X has agreed to follow up and abide by the medical treatment that may be directed by the Health Services Officer.

[63] Fifth, Constable X meets monthly with a registered psychologist.

[64] Sixth, Constable X has demonstrated consistently positive performance evaluations.

[65] Seventh, Constable X has provided positive reference letters, including from a volunteer association within which Constable X has taken a leadership role. I note that the authors of these letters did not appear to have any knowledge of the fact that Constable X was facing discipline, nor of the nature of the allegations he was facing. They are accordingly of limited value.

[66] I do not accept as a mitigating factor that Ms. Y and Constable X have reached a custody agreement in which Constable X was granted joint custody of Child B and Child C. Nor do I accept as a mitigating factor that Child A decided, in June 2020, to have his primary residence with Constable X. While these may be positive steps for Constable X's relationship with his children, they do not explain or lessen the gravity of Constable X's misconduct.

[67] Finally, while not a mitigating factor *per se*, I recognize that by virtue of the joint proposal, Constable X has the Conduct Authority's support to return to work.

Aggravating factors

[68] The parties jointly proposed three aggravating factors, which I have retained.

[69] First, the allegations reveal misconduct that involves domestic violence toward a vulnerable victim, on more than one occasion.

[70] Second, Constable X's misconduct is inconsistent with the RCMP operational objectives as set out in the *Operational Manual*, Chapter 2.4 "Violence/Abuse in Relationships". Among other things, the *Operational Manual* provides that "violence/abuse in relationships investigations are a high priority and will be thoroughly investigated and handled expeditiously, maintaining the safety of those involved."

[71] Third, Constable X has prior discipline. I have not ascribed significant weight to this factor as the prior discipline is more than 10 years old and is unrelated to the Allegations at issue in this matter.

[72] To these factors, I would add that at the time these incidents took place, Constable X was a senior constable who held a position of considerable trust within Protective Operations.

Decision on conduct measures

[73] The *Conduct Measures Guide*, at pages 5 and 6, provides that where a financial penalty of 30 to 45 days is insufficient to correct improper behaviour, to rehabilitate the member and to preserve the public trust in the RCMP, dismissal is appropriate. The proposed conduct measures accordingly fall within the higher end of the acceptable range.

[74] Collectively, the proposed conduct measures are comprised of remedial and serious measures. They reflect the mitigating and aggravating factors in this case. They will serve as a deterrent to Constable X, as well as a warning to other members. In addition, they facilitate Constable X's continued health, which will be important to ensuring that his misconduct is not repeated. Therefore, on a balance of all of the factors before me, I cannot conclude that the proposed conduct measures are against the public interest.

CONCLUSION

[75] Having found Allegations 2, 3 and 5 established, as amended, and in accordance with the joint submission presented by the Conduct Authority Representatives and the Subject Member Representatives, the following conduct measures are imposed:

- a. pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 30 days (240 hours) of pay to be deducted from Constable X's pay;
- b. pursuant to paragraph 3(1)(d) of the *CSO (Conduct)*, a direction to undergo medical treatment as specified by the Health Services Officer; and
- c. pursuant to paragraph 5(1)(g) of the *CSO (Conduct)*, a transfer to another position within National Division.

[76] Constable X is being permitted to continue his career with the RCMP. However, any future contravention of the Code of Conduct will be seriously reviewed by the appropriate conduct authority and could lead to his dismissal from the Force.

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

[78] Either party may appeal this decision by filing a statement of appeal with the Commissioner in accordance with subsection 45.11 of the *RCMP Act*.

January 11, 2021

Christine Sakiris

Date

Conduct Board