



**ROYAL CANADIAN MOUNTED POLICE**

in the matter of

a conduct hearing pursuant to the

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

Between:

**Chief Superintendent Michel Legault**

Designated Conduct Authority, "E" Division

(Conduct Authority)

and

**Constable Christopher Norlund**

Regimental Number 54382

(Subject Member)

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**Conduct Board Decision**

Christine Sakiris

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January 28, 2021

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Mr. Jordan Levis-Leduc, Conduct Authority Representative

Ms. Allison Tremblay, Subject Member Representative

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**SUMMARY**

The original *Notice of Conduct Hearing*, dated February 3, 2020, contained one allegation of a contravention of section 7.1 of the RCMP Code of Conduct. Constable Norlund was alleged to have acquired, possessed and consumed a controlled substance and, in so doing, to have acted in a manner that is likely to discredit the RCMP.

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. Allegation 1, as amended, was found to be established.

The following conduct measures were imposed: (1) a financial penalty of 20 days' pay, to be deducted from Constable Norlund's pay; (2) a forfeiture of 20 days of annual leave; (3) a direction to undergo medical treatment as specified by the "E" Division Health Services Officer; and (4) a direction to complete the drug/alcohol monitoring programs currently in place through Health Services.

## INTRODUCTION

[1] On or between February 17, 2019, and March 23, 2019, Constable Norlund is alleged to have acquired, possessed and consumed cocaine, a controlled substance, whose possession is prohibited by the *Controlled Drugs and Substances Act*, SC 1996, c 19.

[2] On January 1, 2020, 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 January 16, 2020, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[3] The original *Notice of Conduct Hearing*, dated February 3, 2020, contained one allegation of a contravention of section 7.1 of the RCMP Code of Conduct.

[4] Constable Norlund did not initially respond to the *Notice of Conduct Hearing*. He did ultimately secure counsel and his response, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], was received on May 11, 2020. Constable Norlund denied Allegation 1, but he admitted to many of its particulars.

[5] Constable Norlund filed a preliminary motion to exclude evidence, which was allowed in part. My written decision on the motion was provided to the parties on August 27, 2020.

[6] On or about November 3, 2020, Constable Norlund provided the Conduct Board and the Conduct Authority Representative with a medical expert report in support of his argument that his actions were non-culpable.

[7] The conduct hearing in this matter was scheduled to begin on January 18, 2021. On January 11, 2021, the Conduct Authority Representative and the Subject Member Representative provided the Conduct Board with an *Agreed Statement of Facts* and a *Joint Proposal on Conduct Measures* (the Joint Proposal) as well as accompanying documentary evidence. The parties requested, and the Conduct Board agreed, to proceed by way of a written decision based on the record. Therefore, the conduct hearing in this matter was adjourned.

[8] The parties proposed the amendment of Allegation 1 along with the following conduct measures: (1) a financial penalty of 20 days' pay, to be deducted from Constable Norlund's pay; (2) a forfeiture of 20 days of annual leave; (3) a direction to undergo medical treatment as specified by the "E" Division Health Services Officer; and (4) a direction to complete the drug/alcohol monitoring programs currently in place through Health Services.

[9] For the reasons that follow, I accept the parties' Joint Proposal. Allegation 1 is established, as amended. The conduct measures, as proposed, are imposed.

## **ALLEGATION**

[10] The Joint Proposal provides the amended wording for Allegation 1, as follows:

### **Allegation 1**

On or between February 17, 2019 and March 23, 2019, at or near North Vancouver, in the Province of British Columbia, Constable Christopher Norlund behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

### **Particulars of Allegation 1:**

1. At all material times, Constable Christopher Norlund ("Cst. Norlund") was a regular member of the Royal Canadian Mounted Police ("RCMP") posted in at the North Vancouver RCMP Detachment in "E" Division.
2. At all material times, Cst. Norlund was suffering from post-traumatic stress disorder and a substance used disorder.

3. On March 9<sup>th</sup>, March 13<sup>th</sup>, March 14<sup>th</sup>, March 16<sup>th</sup> and March 20<sup>th</sup> of 2019, Cst. Norlund communicated with three civilians via text messaging regarding the purchase and consumption of cocaine.

4. On March 9<sup>th</sup>, March 13<sup>th</sup>, March 14<sup>th</sup>, March 16<sup>th</sup> and March 20<sup>th</sup> of 2019, Cst. Norlund acquired cocaine from two civilians.

5. On March 9<sup>th</sup>, March 13<sup>th</sup>, March 14<sup>th</sup>, March 16<sup>th</sup> and March 20<sup>th</sup> of 2019, Cst. Norlund consumed cocaine.

6. By becoming a member of the RCMP, Cst. Norlund accepted to be held at a higher standard of ethical behaviour than most other types of employees and citizens in general.

7. Cst. Norlund accepts that his purchase, possession and consumption of cocaine was improper, contrary to his duties as a police officer and amounts to conduct that is likely to discredit the force.

*[Sic throughout]*

### **Decision on the Allegation**

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

[12] 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
- 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.

[13] By virtue of Constable Norlund's admission to Allegation 1, as amended, I find that the first two elements of the test are satisfied. Therefore, I can turn my attention to determining whether the third and fourth elements of the test are established.

[14] Constable Norlund admits to the purchase, possession and consumption of cocaine over a period of approximately two weeks. While Constable Norlund was suffering from serious medical issues at the time of the Allegation, I agree with the parties that they do not exonerate him from disciplinary action. He knew what he was doing was wrong. His actions are incompatible with the duties and responsibilities of a member of the RCMP, as set out in section 37 of the *RCMP Act*.

[15] 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. While Constable Norlund's actions took place off-duty, he associated with individuals involved in criminal activities. In so doing, he placed himself in a compromised position that may have called his integrity into question and prejudiced the proper performance of his duties.

[16] 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 Norlund's actions as likely to bring discredit to the Force. I further 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 Norlund's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[17] Allegation 1, as amended, is accordingly established on a balance of probabilities.

## **CONDUCT MEASURES**

[18] Having found Allegation 1, as amended, established and in accordance with subsection 45(4) of the *RCMP Act* as well as with 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”.

[19] The Conduct Authority Representative and the Subject Member Representative provided the Joint Proposal, with supporting documentation and jurisprudence. They proposed the following global conduct measures:

- a. a financial penalty of 20 days (160 hours) to be deducted from Constable Norlund’s pay;
- b. a forfeiture of 20 days of annual leave (160 hours);
- c. a direction to undergo medical treatment as specified by the “E” Division Health Services Officer; and
- d. a direction to complete the drug/alcohol monitoring programs currently in place through Health Services.

[20] 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.

[21] 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.<sup>1</sup> Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless it is against the public interest.

[22] Therefore, I must determine whether accepting the Joint Proposal would be against the public interest. This is not a question of whether the conduct measures proposed are the same as those I would have imposed. Rather, the public interest test sets a much higher threshold.

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<sup>1</sup> 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*].



[23] 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.<sup>2</sup>

[24] 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.

### **Range of possible conduct measures**

[25] The *Conduct Measures Guide*, at pages 50 to 53, specifically identifies the range of conduct measures to be imposed for the use or possession of a controlled substance. The *Conduct Measures Guide* outlines a number of factors that should be considered in determining the appropriate range of conduct measures. These factors include: the type of drug; the quantity of drugs at issue; the method of acquisition; as well as the presence of a disability (i.e., addiction) and related treatment.

[26] I agree with the parties that Constable Norlund's actions fall within the normal range identified by the *Conduct Measures Guide*. His misconduct involves the purchase of controlled substances for his personal use. He was not engaged in the trafficking of these substances, nor in the misappropriation of evidence related to an investigation. Constable Norlund did not purchase, possess or consume cocaine while on-duty. Nor was he under the influence of cocaine while on-duty.

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<sup>2</sup> *Cook*, *supra* note 1, at paragraph 34.

[27] The medical reports clearly establish that Constable Norland was on leave for medical reasons at the time of the Allegation. His medical conditions are both physical and psychological in nature. In particular, Constable Norlund has been recovering from physical injuries incurred in the performance of his duties. He had previously been diagnosed with depression and a substance use disorder for which he had been treated in 2017. Following the initiation of the Code of Conduct investigation, Constable Norlund sought further treatment for his substance use disorder. In the course of that treatment, he was diagnosed with and treated for post-traumatic stress disorder.

[28] Constable Norlund has submitted medical reports from his treating practitioners. These demonstrate that his psychological health conditions may have contributed to his actions, which were, in part, an attempt to self-medicate in the face of an as-yet undiagnosed condition of post-traumatic stress disorder.

[29] Having reviewed all of these factors, I find that a forfeiture of between 20 to 45 days of pay to dismissal, alone or in conjunction with other conduct measures, is an appropriate range of measures for this case. I must now consider the mitigating and aggravating factors.

### **Mitigating factors**

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

[31] First, Constable Norlund admitted to his substance use upon his arrest and made significant admissions in his statement. His admissions have avoided the need for a contested hearing.

[32] Second, Constable Norland has provided several letters of support that speak to his competence as an investigator and as a valued member of the RCMP. In 2012, Constable Norlund received the Officer in Charge Valour Award related to an off-duty arrest. He also received a provincial award for valour in November 2017, the highest award for a police officer in British Columbia.

[33] Third, Constable Norlund has had a lengthy series of serious and terrible life circumstances that precipitated his descent into substance use and addiction. Those circumstances included several

work-related physical injuries, the break-up of his relationship, significant work-related traumas leading to post-traumatic stress disorder, and the death of his eldest son in 2017.

[34] Fourth, while Constable Norlund had previously sought treatment for his alcohol use, this treatment did not address his post-traumatic stress disorder.

[35] Fifth, the medical evidence submitted discloses that Constable Norlund used substances to self-medicate in order to deal with the pain from his post-traumatic stress disorder and depression.

[36] Sixth, Constable Norlund successfully completed specialized inpatient treatment in 2019 and has complied with RCMP aftercare requirements. This includes significant monitoring with the Soberlink device, regular attendance at meetings, check-ins with a monitor and ongoing specialized medical care. He has remained abstinent from all substances since beginning inpatient treatment in May 2019. He has done so despite ongoing pain from his physical injuries, for which he is awaiting surgery.

[37] I am particularly struck by the commitment and dedication that Constable Norlund's treating practitioners report he has demonstrated in seeking and participating in recommended treatment. He has used the time of his suspension to focus on his health and well-being with the goal of returning to work. He is focused on his son, whom he describes as his "shining light". He has endeavoured to continue to contribute to his community by being a regular blood donor.

[38] Constable Norlund's recovery has been sustained for over a year. The documentation submitted indicates that he has the necessary supports in place to maintain his health. The available medical evidence suggests his risk of recidivism is low.

[39] Seventh, Constable Norlund has expressed remorse and accepted responsibility for his actions. In his letter of apology, addressed to the Conduct Board, Constable Norlund expresses his deep regret for his actions. He demonstrates an awareness of, and an acceptance of, his responsibility for the negative effect his actions have had on his colleagues, the RCMP and the communities it serves. He appears to have gained significant insights into the circumstances that led to his substance use disorder. He appears to be committed to a life of sobriety and ensuring that he maintains the

supports required to do so. He hopes to use his experience to assist other members and this objective is supported by his treating practitioners.

[40] Finally, while not a mitigating factor *per se*, I recognize that by virtue of the Joint Proposal, Constable Norlund has the Delegated Conduct Authority's support to return to work.

### **Aggravating factors**

[41] The parties jointly proposed the following aggravating factors, which I have retained.

[42] First, Constable Norlund's use of a controlled substance listed in Schedule 1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19, constitutes serious misconduct. This behaviour is incompatible with police work.

[43] Second, Constable Norlund admitted to sporadic use of cocaine in the two years prior to his arrest. While not consistent in nature, his use of cocaine was not limited in time to the two-week period highlighted in the Allegation.

[44] Third, Constable Norlund's purchase and consumption of cocaine led him to associate with individuals involved in criminal activities and whom Constable Norlund knew to be committing criminal acts.

[45] Fourth, in the course of his misconduct, Constable Norlund involved a member of the public, who knew that he was a member of the RCMP. Constable Norlund and this individual discussed the purchase and consumption of cocaine via text messaging. Constable Norlund also offered to facilitate the individual's substance use by offering to purchase cocaine on his behalf.

[46] Finally, Constable Norlund has a disciplinary record. In 2016, Constable Norlund struck an unoccupied parked vehicle while attempting to parallel park. It was determined that Constable Norlund's use of sleep aid medication combined with his dependency on alcohol led to the accident. This prior misconduct is recent and related to the current Allegation.

**Decision on conduct measures**

[47] As seen in *Raymond*,<sup>3</sup> the use of cocaine by a member of the RCMP can reasonably result in dismissal. I agree with the parties that there are a number of facts on which *Raymond* and the present case may be distinguished. In particular, Constable Norlund was not regularly using cocaine for personal recreational purposes. Rather, his use was more limited and related, at least in part, to his disability. Constable Norlund has also fully acknowledged and sought medical care for his conditions. The available medical evidence establishes that he has fully committed to his rehabilitation, thus reducing his risk of recidivism. This was not the case in *Raymond*.

[48] The parties cite *Kelly*<sup>4</sup> for the principle that when a member's misconduct is caused at least in part by a disability, it is appropriate for a conduct board to consider that disability in determining the appropriate conduct measures. I agree. It is an accepted principle:

[...]

Tribunals have consistently concluded illness does not ordinarily constitute a lawful excuse, although it may in appropriate cases explain particular behaviour and therefore serve as a mitigating consideration for penalty purposes.<sup>5</sup>

[...]

[49] Consequently, I am required to consider the RCMP's duty to accommodate in determining the appropriate conduct measures.

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<sup>3</sup> *The Commanding Officer, "C" Division and Constable Philippe Raymond*, 2018 RCAD 12 [*Raymond*].

<sup>4</sup> *Toronto Police Service v Kelly*, 2006 CarswellOnt 2743 [*Kelly*].

<sup>5</sup> Ceysens, Paul, *Legal Aspects of Policing*, vol. 2, Saltspring Island, British Columbia: Earls court Legal Press, 1994 (loose-leaf updated June 2019, release 35), at page 6-188.

[50] On the facts of this case, Constable Norlund's disability is a highly mitigating factor. The terms of the Joint Proposal demonstrate that the parties have taken the duty to accommodate into account, and that the RCMP can accommodate Constable Norlund's disability.

[51] There may be instances in which accommodation would result in undue hardship to the RCMP, or when a member's misconduct is so serious that the circumstances surrounding their disability are not sufficiently mitigating to preclude their dismissal. This is not so on the facts of this case.

[52] Collectively, the proposed conduct measures are comprised of remedial and serious measures. They reflect the mitigating and aggravating factors of this case. They will serve as a deterrent to Constable Norlund as well as a warning to other members. In addition, they facilitate Constable Norlund's continued health, which will be important to ensure that his misconduct is not repeated.

[53] On a balance of these factors, I cannot conclude that the proposed conduct measures are against the public interest. To the contrary, I find that the public interest is served by the proposed measures. It is well accepted that the public interest is served by the good governance of the operations of the RCMP. The proper administration of the conduct process is one way in which the public is assured of this governance.

[54] The proper administration of the conduct process in turn requires a conduct board to consider the impact of a member's disability on their misconduct as well as the ability of the RCMP to accommodate that disability when assessing the appropriate conduct measures. This is consistent with the guiding principles of the conduct process, as set out in section 36.2 of the *RCMP Act*. The failure to do so is contrary to the public interest as it may deprive the public of members who may safely return to make meaningful contributions to the RCMP and the communities it serves. It may also serve to drive members who are facing mental health challenges to hide their conditions and not secure the supports they need to maintain their health.

[55] Therefore, I accept the proposed conduct measures.

## CONCLUSION

[56] Having found Allegation 1 established, as amended, and in accordance with the Joint Proposal presented by the Conduct Authority Representative and the Subject Member Representative, the following conduct measures are imposed:

- a. pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 20 days (160 hours) of pay to be deducted from Constable Norlund's pay;
- b. pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*, the forfeiture of 20 days' (160 hours) annual leave;
- c. pursuant to paragraph 3(1)(d) of the *CSO (Conduct)*, a direction to undergo medical treatment as specified by the "E" Division Health Services Officer; and
- d. pursuant to subsection 3(2) of the *CSO (Conduct)*, a direction to complete the drug/alcohol monitoring programs<sup>6</sup> currently in place through Health Services.

[57] Constable Norlund 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.

[58] 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.

[59] 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*.

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<sup>6</sup> The programs are set out in the *Aftercare Treatment Agreement* of July 9, 2019; Joint Proposal, Appendix 2.

January 28, 2021

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Christine Sakiris

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Date

Conduct Board