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2021 CAD 07



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
Delegated Conduct Authority, "E" Division

Conduct Authority

and

Constable Navjot Singh Sandhu
Regimental Number 56229

Subject Member

Conduct Board Decision

Inspector Colin Miller

February 26, 2021

Staff Sergeant Jonathon Hart, Conduct Authority Representative

Mr. Gordon Campbell and Mr. Gary Chayko, Subject Member Representatives

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SUMMARY

Constable Sandhu was served with a *Notice of Conduct Hearing*, which contained three allegations under section 7.1 of the RCMP Code of Conduct. Allegation 1 alleged that Constable Sandhu committed acts of domestic violence. Allegation 2 alleged that he consumed marihuana prior to its legalization and, in one instance, when confronted by his wife, he became enraged and destroyed property. Allegation 3 alleged that Constable Sandhu sent threatening text messages to a former co-worker.

The Conduct Hearing for this matter proceeded via video conference after a determination was made by the Conduct Board that, due to the COVID-19 pandemic, it was unreasonable to hold an in-person hearing.

On January 20, 2021, the Conduct Board issued an oral decision, in which he found all three Allegations to be established.

On February 10, 2021, following the conduct measures phase of the hearing, the Conduct Board provided his oral decision, in which he directed Constable Sandhu to resign from the Force within 14 days and, if he fails to do so, that he be dismissed.

INTRODUCTION

[1] The alleged incidents in this matter took place between October 2011 and February 18, 2019, while Constable Navjot Sandhu was working as a general duty member in British Columbia. Pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], investigations into Constable Sandhu's actions were initiated on November 29, 2018, and on February 20, 2019.

[2] On August 20, 2019, the Conduct Authority signed a *Notice to the Designated Officer*, in which she requested the initiation of a Conduct Hearing in relation to this matter. On August 23, 2019, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *RCMP Act*.

[3] The *Notice of Conduct Hearing* was signed by the Conduct Authority on December 10, 2019. It was served on Constable Sandhu on January 8, 2020, along with the investigation package.

[4] On March 16, 2020, Constable Sandhu provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He admitted to some of the particulars, but he denied all three Allegations.

[5] On March 25, 2020, following a Pre-Hearing Conference (PHC 1), I issued a summary of the meeting to the parties. Included in the summary was the parties' acknowledgement that, due to the uncertainty surrounding COVID-19, a Conduct Hearing to be held in Richmond, British Columbia, would likely take place in the fall.

[6] On June 8, 2020, PHC 2 was held, at which time, it was agreed that the Conduct Hearing would start on December 8, 2020, in Richmond. However, I advised the parties that should travel restrictions remain in place or be reinstated due to COVID-19, it was my intention to hold the Conduct Hearing via video conference. Subsequent to PHC 2, I realized that I had another matter scheduled for the week of December 8, 2020, so it was agreed that the Conduct Hearing would commence on January 5, 2021.

[7] On November 26, 2020, after considering the parties' preference for an in-person hearing as well as the restrictions and risks associated with travel due to the ongoing COVID-19 pandemic, I advised the parties that the Conduct Hearing would be held via video conference.

[8] On December 23, 2020, I received an addendum to Constable Sandhu's response to the *Notice of Conduct Hearing* from the Subject Member Representative, signed by Constable Sandhu. In the addendum, Constable Sandhu admitted that, solely according to the facts that he set out in his original response, his actions in relation to Allegations 2 and 3 constituted discreditable conduct contrary to section 7.1 of the Code of Conduct.

[9] On January 20, 2021, I delivered an oral decision, in which I found the Allegations established.

[10] On February 10, 2021, I delivered my oral decision on conduct measures. This written decision incorporates and expands upon those oral decisions.

Preliminary issue

[11] On January 4, 2021, the day before the Conduct Hearing, the Subject Member Representative provided documentation on which he intended to rely and that included some medical reports. At the start of the Conduct Hearing, the Conduct Authority Representative raised the issue of the late disclosure of medical information and asserted that some of those documents constituted “expert evidence”. As a result, he argued that the Subject Member Representative was in contravention of the required notice prescribed under subsection 19(2) of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291.

[12] Since these documents were intended to be introduced at the conduct measures phase, I directed that the allegations phase would proceed and that if something arose that concerns the Conduct Authority Representative, he could raise his objections at that time. I also reviewed the documents in question to be satisfied that their content did not contain information that could be relied upon during the allegations phase.

[13] After the parties had provided their submissions on the allegations, it was agreed that they would converse in an effort to resolve this issue informally. On January 20, 2021, after I had delivered my oral decision on the Allegations, the parties advised that this issue had been resolved.

ALLEGATIONS

[14] The *Notice of Conduct Hearing* contains the following allegations:

Allegation 1

Between October 2011 through November 22, 2018, at or near Coquitlam, in the Province of British Columbia, Constable Navjot Singh SANDHU engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, British Columbia.
2. In October 2011, you were married to Ms. [J.M.]. Your marriage was positive until you commenced drinking in 2013. In her statement to police, Ms. [J.M.] described that: “Umm and then in 2013 he started drinking again, I believe it was 2013 and then umm he just when he didn’t drink everyday but when he drank he got drunk and whenever he got drunk he was scary because umm when we would fight umm he would like chase me around the house like if I said ‘I’m walking away you’re crazy’ he would follow me around everywhere like if I go to the bathroom he’d follow me to the bathroom, if I didn’t open the door he would bang on the door”.
3. By 2016, your marriage continued to deteriorate to such a degree that you commenced destroying property within the matrimonial home and also verbally threatened Ms. [J.M.] that if she ever called the police on you that you would: “I’m gonna break everything, if you call the police on me I’m gonna break everything, I will destroy the house.” Ms. [J.M.] also stated that you specifically referenced your position and status a police officer if she contacted the police: “Yeah. And like the reason I didn’t leave earlier is the constant, ‘I’m a police officer, don’t you know that you, if you call in on me like the people that are going to answer on 9-1-1 they’re my friends, you think they’re going to believe you?’ You, you know like or just stuff like that right...” Ms. [J.M.] further acknowledges that she never contacted police during your arguments as she did not want it to impact your job as a police officer. In February 2016, Ms. [J.M.] became pregnant and by the summer of 2016 you started to become physically violent with Ms. [J.M.]

FIRST DOMESTIC ASSAULT INCIDENT – July or August 2016

4. While Ms. [J.M.] was six (6) or seven (7) months pregnant you became involved in a heated argument with her in your matrimonial home. When Ms. [J.M.] was walking up the stairs you came up from behind her, pushed her down and then once in the bedroom grabbed her neck and proceed to choke her causing slight bruising to be visible the next day. Ms. [J.M.] described your assault upon her as: “He didn’t drag me that time, he just choked like grabbed me by my neck and then I walked back upstairs. When I got back upstairs I went inside on the bed and he came up again and was like ‘what are you doing? What are you gonna do? Are you gonna call the cops? Why are you walking away from me? Where are you going?’ and I was like ‘I’m not gonna call the cops, just leave me alone you know’ and then umm he just by how much he held my neck and just by like how much strain it was on my jaw right here, umm I remember getting a slight bruising the next day.”
5. It is acknowledged that Ms. [J.M.] did not report this assault to police. Ms. [J.M.] did inform her family of the incident but when pressed by her mom to call the police, Ms. [J.M.] refused stating that: “Said cause he’s

gonna lose his job and they were just furious at me and I was like you guys don't understand, like if I tell them, his job is gone and then me and him are not gonna work out and our marriage is done. Like do I wanna go down that road, I'm about to have a kid so I just kept my mouth shut.”

SECOND DOMESTIC ASSAULT INCIDENT – October 15, 2016

6. On October 15, 2016, you and Ms. [J.M.] attended her niece's birthday party. While driving home from the party, you became involved in a heated argument with Ms. [J.M.] as you were upset that she had previously informed her parents about the domestic violence in your relationship. Upon arriving at the matrimonial home you continued drinking and Ms. [J.M.] told you to stop drinking and proceeded to grab your cup of alcohol from you and spilled it into the sink. Ms. [J.M.] described your reaction as: "...he just lost his mind and started like, I'm pregnant and chasing me around, chasing me around, I grab my phone and I called my mom [...] and he grabbed the phone from me and he broke it. Like he squashed it and then umm I didn't have a phone so then I went upstairs, I was walk I was going up the first step and he grabbed me again, pushed me down onto the stairs and then I took and then when I turned around like I tried to get back up now I'm on my front, he dragged me up from my back, not my front, my back.”

7. Ms. [J.M.] ran to your bedroom with you following her. The argument continued and you then instructed Ms. [J.M.] to take a shower in an attempt to conceal your actions from your tenants who lived in the basement of your residence telling her to: "...get into the bathroom, because the police are going to get called, I know the basement people can hear, get into the bathroom, put the shower on, pretend you're taking a shower because when the police come, they're gonna ask what's happened, we're not answering the door, I know the basement people are going to call and you just have to go take a shower.”

8. Following her shower, Ms. [J.M.] left your matrimonial home on foot and telephoned her immediate family to come and pick her up from the 7-eleven closest to your residence.

9. On October 16, 2016, Ms. [J.M.] had to replace her bent and broken "iphone" as a result of your deliberate actions of destroying her cell phone.

THIRD DOMESTIC ASSAULT INCIDENT – May 2017

10. On November 2, 2016, your daughter [name redacted] was born. Your marriage continued to deteriorate following [your daughter]'s birth. On random days, you verbally threatened Ms. [J.M.] if she ever reported your domestic assaults, stating to her that: "I'm gonna destroy your life if you ever screw me over and you call the cops, I will destroy your life, I will ruin you and your family..." It is again acknowledged that Ms. [J.M.] did not report these threats.

11. In May 2017, you and Ms. [J.M.] were involved in a verbal argument over parenting. At the time of the argument Ms. [J.M.] was holding a cup of green tea and you reacted by pushing the tea causing it to spill onto her chest area. Ms. [J.M.] stated that the temperature of the tea was hot at the time you pushed it into her as she had just made it.

12. Ms. [J.M.] indicated that she did not report this incident to police as she was concerned that your position as a police officer meant that she would be reporting the abuse to your work colleagues.

SEPARATION FROM MS. [J.M.] – August 30, 2018

13. On August 30, 2018, you left the matrimonial home with [your daughter]. Ms. [J.M.] contacted Coquitlam RCMP complaining that you had left with [your daughter] without her consent and police attended the scene. Coquitlam RCMP file #2018-27047 was generated with respect to the investigation. Ms. [J.M.] subsequently obtained a Family court order from Master Scarth of the New Westminster Supreme Court for the return of [your daughter]. You returned [your daughter] without incident to Ms. [J.M.] on August 31, 2018. Ms. [J.M.] moved out of the matrimonial home.

HARASSMENT COMPLAINT – November 17, 2018

14. On November 17, 2018, Ms. [J.M.] contacted the Surrey RCMP to report a harassment complaint and RCMP file #2018-171562 was generated. In her statement to police, Ms. [J.M.] referenced the domestic assault allegations. The Coquitlam RCMP were tasked with investigating the historical domestic assault allegations and RCMP file #2018-36076 was generated. On November 22, 2018, Constable Inderjeet SANDHU, of the Coquitlam RCMP obtained a statement from Ms. [J.M.] concerning the domestic assault incidents as described in the above particulars.

Allegation 2

On or between January 1, 2015, and October 17, 2018, at or near Coquitlam, in the Province of British Columbia, Constable Navjot Singh SANDHU engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, British Columbia.
2. While off duty, you would use Cannabis (marihuana) in the garage of your personal residence. Throughout the time period of the allegation, Cannabis (marihuana) was an illicit substance as identified the Controlled Drugs and Substances Act.
3. You attempted to conceal your use of an illicit substance from your spouse, Ms. [J.M.]. Ms. [J.M.] in her November 17, 2018, statement to

police, described how when she confronted you with respect to your marihuana use that you became enraged and destroyed property: “And I tell him that I don’t want that kind of illegal shit going on in my house because I don’t drink, I don’t smoke, I don’t do anything. And then um, I went downstairs after him into the garage to see if he was still doing it like after I got my daughter out of the bath I just like I put her down in the living room to play and I went downstairs and he came running up after me and all the way upstairs and was like, ‘Why did you come down to the garage? I told you not to come down to the garage.’ And then started throwing things around the house-, like in, in our, in our master bedroom like and then went into her room and just started destroying her cri-, throwing her crib and throwing her bookcase just like throwing shit around.” Ms. [J.M.] in her November 22, 2018, statement further described how you reacted by twisting the neck off of the toy giraffe of [your daughter] after she had confronted you with respect to your marihuana use.

Allegation 3

On or about February 18, 2019, at or near Maple Ridge, in the Province of British Columbia, Constable Navjot Singh SANDHU engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, British Columbia.
2. On February 18, 2019, Staff Sergeant [S.G.] attended to the Coquitlam RCMP Detachment to report threatening text messages that he had been receiving from you. Staff Sergeant [S.G.] had previously worked with you. There exists no excuse or justification for you sending any of the text messages and in particular for threatening physical harm to both Staff Sergeant [S.G.] and his children. Additionally, you also threatened RCMP member Staff Sergeant [G.W.] in the text messages.
3. The totality of the threatening text messages can be found at Appendix J and Appendix Z of the disclosed Code of Conduct materials for “E” Division File 2019-33684 (Threatening texts) and are reproduced as follows:

+17788683380 Nav

Where u been? Looking for u in the streets. U steal my resume and give it to [...]?? We need to sort this out. Either call me or I will find u at ur detachment? Let me know how u want to handle this. I really hope u didn’t talk shit about my resume and use it after.....hope ur not a retard, but my gut tells me you are. U know that would be an issue. If u don’t reply, I will find you. Let me know how u want to deal with this?? Very big issue [S.G.]!!! I am very upset considering u used my resume and I

saw it!! I will literally make u suck my dick if that is who u are, u WERE one that supported good cops!! Guess not, ur a dirty cop now [S.G.]!! I'm spreading that shit bitch!!! U send this text to any person, I will know!!! If u talk about me again I will know!! if ur smart u will deal with this personally with me, if not, ur a CORRUPT COP forever!!! Lol Have fun at hockey, and don't ever tell me I had difficulty with a source, ur the fucking loser everyone says sucks dick to get promoted. Not me bro. I help people like u!! No more promos for u [S.G.], thank ding dong. Love u bro!! Lol. U are a corrupt cop that supported dingdong and b watch, pay back coming!!! And fuck ur mom u bitch!!! can't wait to see u!!!! Don't forget to remember that u really are a bitch that does anything the FORCE whats!! That's what everyone says.....hahahahahaha. Ur a company man keep sucking dick. Ur my bitch now.....,lol. Try me [S.G.], I'm looking for u!! Answer me u bitch!!! sorry for long text, we haven't chatted for a while u midget!! Lol make sure u know I will fuck u up literally this time. ONE WORD!!!! Lol good times for the next 15 years [S.G.]. I will destroy u if u say one good or bad word about me. Nav Sandhu is ur daddy, try me!!! FYI I'm still looking for u bitch!!!! Lmao!!! I own u!!! To funny!! U will now be known as goof in the streets of Coquitlam..Corrupt cop!!! Tell [...] I say hi!! I hope u call someone, u will need support!!!! ! Hahahaha CORRUPT cop!!! [...] told me to fuck u up!!!! fyi!! Smartest thing u could do is text me for a "sit down" otherwise I'm destroying your whole career!!!! Lol I can do it too!!!! Can't believe u fucked [...], u dirty fuck!!! I'm ur daddy bro!! Enjoy!! remember the "sit down" bitch!! And the whole RCMP is going to know u support CORRUPT COPS!!!! Dirty cop!!! U fucked up big time [S.G.]!!! Tell ding dong Nav says hi!!! Lol

Status: Read

Read: 2/18/2019 2:39:16 AM (UTC-8) 2/18/2019 2:31:16 AM
(UTC-8)

+17788683380 Nav

ONE WORD BITCH!!! I'm waiting

Status: Read

Read: 2/18/2019 2:39:16 AM (UTC-8) 2/18/2019 2:38:41 AM
(UTC-8)

+17788683380 Nav

Lol ur not scared are u [S.G.]!!

Status: Read

Read: 2/18/2019 9:00:28 AM (UTC-8) 2/18/2019 9:00:04 AM
(UTC-8)

+17788683380 Nav

When u want to chat??

Status: Read

Read: 2/18/2019 9:00:28 AM (UTC-8) 2/18/2019 9:00:14 AM
(UTC-8)

+17788683380 Nav

How about tomorrow, it's family day today!!!! Lol

Status: Read

Read: 2/18/2019 9:20:24 AM (UTC-8) 2/18/2019 9:16:17 AM
(UTC-8)

+17788683380 Nav

Give me the time bitch, or I'm coming to ur house!!

Status: Read

Read: 2/18/2019 9:20:24 AM (UTC-8) 2/18/2019 9:16:34 AM
(UTC-8)

+17788683380 Nav

Looking for u [S.G.], call the cops!!!! Hahahaha hahahah

Status: Read

Read: 2/18/2019 9:20:24 AM (UTC-8) 2/18/2019 9:17:31 AM
(UTC-8)

+17788683380 Nav

U made a phone call bitch!!! I know!!

Status: Read

Read: 2/18/2019 10:35:59 AM (UTC-8) 2/18/2019 10:24:35 AM
(UTC-8)

+17788683380 Nav

Stop calling people, it will be better for u!! U and me bro

Status: Read

Read: 2/18/2019 10:35:59 AM (UTC-8) 2/18/2019 10:28:10 AM
(UTC-8)

+17788683380 Nav

Just talked to [...], told him ur a bitch. Anytime u want that coffee let me know, this will continue!

Status: Read

Read: 2/18/2019 12:16:42 PM (UTC-8) 2/18/2019 12:16:15 PM (UTC-8)

+17788683380 Nav

Using [...] u bitch!!

Status: Read

Read: 2/18/2019 1:06:12 PM (UTC-8) 2/18/2019 1:05:48 PM (UTC-8)

+17788683380 Nav

Not impressed

Status: Read

Read: 2/18/2019 1:06:12 PM (UTC-8) 2/18/2019 1:05:53 PM (UTC-8)

+17788683380 Nav

Still looking for u

Status: Read

Read: 2/18/2019 1:06:12 PM (UTC-8) 2/18/2019 1:05:58 PM (UTC-8)

+17788683380 Nav

Rumour has it u know ur my bitch now!!!! We can pass the "sit down" if i see u talk to someone I don't like. I'm going to fuck u up real bad u corrupt, dirty, ding dong sucking COP!! U don't deserve the outfit bitch. Let [G.W.] I'm looking for him now!! Take care bro!! ONE WORD going forward bitch, and ur kinds don't grow!! Love u man, take care!!

Status: Read

Read: 2/18/2019 3:14:12 PM (UTC-8) 2/18/2019 3:13:48 PM (UTC-8)

+17788683380 Nav

Call the cops u corrupt cop

Status: Read

Read: 2/18/2019 3:14:52 PM (UTC-8) 2/18/2019 3:14:34 PM

(UTC-8)

APPENDIX Z_Last Text Messages from you [to] Staff Sergeant [S.G.]
(screen shot image)

Got a private call saying it was the wrong number bitch!!! Hope it wasn't u!! Ur the only one I talked today. Lol dirty cop

Now we need a sit down again [S.G.]!!!

I don't like private calls on family day and people telling me that's it's the wrong number. I was mad before, now it's personal. Sorry to say, I had let it go, but now I'm going to fuck u up!!! Ur done bro!!

Looking for u again bitch!! Don't ever call my phone private u corrupt cop!!

It's in bitch!!!

This is going. To be for my daughter!!!

4. Coquitlam RCMP file 2019-5308 was subsequently generated and you were arrested and criminally charged for your actions.

[Sic throughout]

[15] The burden is on the Conduct Authority to establish the Allegations on a balance of probabilities. Practically speaking, this means that for each Allegation, I must find that the Conduct Authority has established that it is more likely than not that Constable Sandhu has contravened section 7.1 of the RCMP Code of Conduct.

Conduct Authority Representative's submission

Allegation 1

[16] The Conduct Authority Representative acknowledged that these events were historical and had not been reported to police. He pointed to Ms. J.M.'s testimony, in which she explained her reasons for not reporting the incidents at the time that they occurred, including her Indian culture and her vulnerability given her stage of pregnancy. He further submitted that Constable Sandhu took advantage of that situation by telling her that, if she called the police, she would have no recourse.

[17] The Conduct Authority Representative submitted that Ms. J.M.'s evidence was clear, convincing, cogent, and that it did not lack an air of reality. He also submitted that Constable Sandhu's admissions that his drinking was an issue, which resulted in a number of heated arguments, but that he never became physical or damaged any property—because he becomes the voice of reason—does not have an air of reality.

First incident

[18] The Conduct Authority Representative stated that Constable Sandhu's suggestion that they were arguing over Ms. J.M.'s father, prior to their daughter being born, should not be believed. Ms. J.M. testified that Constable Sandhu did not raise her father as an issue until February 2018; prior to that, he did not have any issues, as they went on multiple trips, leaving their daughter with her parents. The Conduct Authority Representative submitted that Ms. J.M.'s testimony should be preferred and that I should find Constable Sandhu's choking, bruising and pushing of Ms. J.M. to be discreditable.

Second incident

[19] The Conduct Authority Representative asserted that Constable Sandhu's claim that he and Ms. J.M. were arguing over the issue of her father babysitting, despite the incident taking place two weeks prior to their daughter's birth, is unreasonable. The Conduct Authority Representative suggested that Ms. J.M.'s recollection of their argument in the car being in relation to her telling her parents about Constable Sandhu's previous use of force is more compelling.

[20] The Conduct Authority Representative submitted that Constable Sandhu was so concerned about the volume of the argument that he forced Ms. J.M. to go upstairs by dragging her up several steps. Once upstairs, the argument continued into the bathroom, where he told her to take a shower to mitigate the chance of his actions being discovered.

[21] The Conduct Authority Representative submitted that Constable Sandhu's actions, the application of force to Ms. J.M. and his efforts to prevent the discovery of those actions should lead me to find his conduct discreditable.

Third incident

[22] The Conduct Authority Representative submitted that, although there is second-hand information suggesting that Ms. J.M said that Constable Sandhu “threw” the tea on her, there is also evidence that corroborates her testimony that he pushed the tea on her. He argued that Ms. J.M should be believed and that putting hot tea on someone is discreditable.

Allegation 2

[23] The Conduct Authority Representative submitted that Constable Sandhu provided an unqualified admission to his use of marihuana and acknowledged that its use was illegal and contrary to RCMP policy. He argued that particular 2 is established on that basis.

[24] In relation to particular 3, the Conduct Authority Representative submitted that Constable Sandhu lacked an air of reality when he asserted that Ms. J.M. was not receptive to his use of marihuana; that he would become upset when she caused a scene; that their relationship was replete with heated arguments; that he was the voice of reason, even though he was under the influence of marihuana; and, that none of their arguments escalated beyond verbal confrontations.

Allegation 3

[25] Although Constable Sandhu admitted to the Allegation, the Conduct Authority Representative submitted that, when Constable Sandhu testified, he did not agree that the text messages were threatening. The Conduct Authority Representative stated that, while this should not be a live issue, in the event that it was, case law¹ supports a finding that they were threatening.

¹ *R. c McRae*, 2013 SCC 68, 2013 CarswellQue 11603; *R. v Hainsworth*, 2016 ONCJ 552, 2016 CarswellOnt 14144; *R. v Folkes*, 2018 ONCJ 656, 2018 CarswellOnt 16087.

Subject Member Representative's submission

[26] In referring to *Gill v Canada (Attorney General)*, 2006 FC 1106 (CanLii), the Subject Member Representative emphasized the importance of proving the particulars as alleged, submitting that the Conduct Authority Representative had failed to do so. Although the Subject Member Representative conceded that it was more nuanced in this instance, he argued that the Conduct Authority was seeking to have the Allegations established based on facts that had not been alleged.

[27] The Subject Member Representative stated that Allegation 1 and particular 3 of Allegation 2 turn on questions of credibility and reliability. He argued that a finding that Ms. J.M. is credible, but unreliable, would be sufficient in order for the Allegations to not be established. Although Ms. J.M. may believe she is telling the truth, he noted that she may not be reliable in that belief.²

[28] Additionally, in referring to a previous conduct board decision,³ the Subject Member Representative stressed the importance of focussing on very small discrepancies. He submitted that the totality of the evidence must be examined. If there are fundamental differences, then the finding should be in favour of Constable Sandhu.

Allegation 1

[29] The Subject Member Representative submitted that there was a significant variance between Ms. J.M.'s statements, her testimony and the particulars. He argued that she was "demonizing" Constable Sandhu and that Ms. J.M.'s motive can be found in her statement, which went to not only her credibility, but also her reliability.

[30] The Subject Member Representative submitted that after an assessment of credibility and reliability of the witnesses, the testimony of Constable Sandhu should be preferred, resulting in the Allegation being found not established.

² 2016 HRTO 381.

³ 2017 RCAD 03.

Allegation 2

[31] While Constable Sandhu admitted to his use of cannabis, the Subject Member Representative asserted that the Conduct Authority had failed to establish that it occurred over the entire period alleged in Allegation 2.

[32] Furthermore, he argued that the Conduct Authority only alleged that Constable Sandhu attempted to conceal his use from Ms. J.M. in an effort to aggravate this matter as it is not supported by the evidence. He added that there was no reliable evidence on which to find that Constable Sandhu had exhibited the confrontational and destructive behaviour alleged in particular 3. As such, he submitted that only the particulars to which Constable Sandhu admitted should be found established.

Allegation 3

[33] The Subject Member Representative submitted that Constable Sandhu has provided an unqualified admission to Allegation 3. However, he added that Constable Sandhu admitted to discreditable conduct, not criminal conduct, noting that criminal proceedings are still pending.

Conduct Authority Representative's rebuttal

[34] In response to the arguments advanced by the Subject Member Representative, the Conduct Authority Representative submitted that it is trite law that he need not prove every particular, noting that some of the particulars were included solely for context. He asserted that these matters date back over four years and any differences are immaterial to the substance of the Allegations.

[35] However, the Conduct Authority Representative conceded that Constable Sandhu's use of cannabis had not been established to have occurred longer than the period to which he testified.

Standards of assessment

Standard of proof

[36] Subsection 45(1) of the *RCMP Act* requires that the “balance of probabilities” standard of proof be applied in adjudicating alleged contraventions of the RCMP Code of Conduct. This requires a determination on whether it is more likely than not that the alleged acts or omissions occurred.

[37] Guidance on the “balance of probabilities” standard of proof can be found in the decision by the Supreme Court of Canada in *F.H. v McDougall*, [2008] 3 SCR 41 [*McDougall*]. At paragraph 46, the Court states:

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. [...]

Assessment of witnesses

[38] In assessing the credibility of Ms. J.M. and Constable Sandhu, I have been guided by often cited authorities. However, I believe that *Faryna v Chorney*, [1952] 2 DLR 354 (BCCA), summarizes the principles effectively, where, at page 357, the Court states:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say “I believe him because I judge him to be telling the truth,” is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind. [...]

[39] When assessing the evidence being adduced on the balance of probabilities, the totality of the evidence must be considered and used to make findings on credibility.

[40] As was observed in *McDougall*, at paragraph 86, “finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party”.

[41] I will detail my assessment of the credibility and reliability of Ms. J.M. and Constable Sandhu’s evidence with respect to each Allegation. However, I would like to make a preliminary observation with respect to their overall credibility. Constable Sandhu’s position is essentially that Ms. J.M. is a volatile person prone to exaggeration, whereas he is a reasonable and calm person. Consequently, when considering their conflicting accounts, I should prefer his evidence.

[42] It should be noted that contained within the investigative materials is a video recorded statement from Constable Sandhu, which was taken subsequent to his arrest on February 18, 2019. This interview is quite revealing in that it provides insight into the way he conducted himself during that time period. Of particular significance is that his behaviour during his statement reflects two sides of his personality: the talkative, more reasonable individual that I had the opportunity to observe during his testimony, and the confrontational, volatile person described by Ms. J.M. This is of particular significance as the Subject Member Representative submitted that Ms. J.M. was combative during the cross-examination, while advocating that Constable Sandhu came across as doing his best.

[43] The issue of whether Constable Sandhu may have been under the influence of a substance at the time he provided his statement was canvassed by the Conduct Authority Representative in his cross-examination. Although Constable Sandhu suggested that he resumed drinking that day, after having “passed out” during the night, he did not raise this as a concern to the investigator. Hence, I cannot simply attribute the difference in his behaviour to the consumption of a particular substance.

[44] During his testimony, Constable Sandhu indicated that he had no issues with Sergeant S.G. and noted that he had been quite helpful and supportive to Constable Sandhu early in his

career, after he was convicted of impaired driving. Yet, Constable Sandhu suggested that something must have “set him off”, which caused him to react and send the “intimidating” messages to him.

[45] Furthermore, the unprovoked anger that Constable Sandhu directed toward Sergeant S.G. and to a lesser extent, Sergeant S.G.’s family and Staff Sergeant G.W., exhibits a side of Constable Sandhu that is consistent with the manner in which he has been characterized by Ms. J.M.

[46] Moreover, in both his aforementioned statement and the text messages sent to Sergeant S.G., he exhibited the contempt and arrogance that was ascribed to him by Ms. J.M.

[47] While this is not determinative in relation to the assessment of credibility, as that must be done based on a preponderance of the totality of the evidence, it does provide some corroboration to the descriptions provided by Ms. J.M.

Decision on the Allegations

[48] The test for “discreditable conduct” under section 7.1 of the Code of Conduct requires that the Conduct Authority prove the following 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. whether the member’s behaviour is likely to discredit the Force; and
- d. that the behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

Allegation 1

[49] Allegation 1 consists of 14 particulars, some of which, the Conduct Authority Representative stated were only provided for contextual purposes and that he was not relying on

them to establish the discreditable conduct. However, within those particulars, there are three separate incidents of alleged domestic violence.

[50] The first incident, alleged to have occurred in July or August 2016, relates to an allegation that Constable Sandhu pushed Ms. J.M. down on the stairs and subsequently choked her (particulars 4 and 5).

[51] The second incident, which occurred on October 15, 2016, alleges that, in the midst of an argument, Constable Sandhu dragged Ms. J.M. up the stairs and broke her cell phone (particulars 6 to 9).

[52] The third incident is in relation to an incident that occurred in May 2017, in which it is alleged that Constable Sandhu pushed tea onto Ms. J.M.'s chest. For ease of reference, I will refer to each incident by its chronological title.

[53] Although there is some agreement in the versions of the events provided by Ms. J.M. and Constable Sandhu, the substantive issues needed to make a finding on the Allegation are contested.

First incident

[54] Ms. J.M. testified that she and Constable Sandhu started dating in May 2010, became engaged in February 2011, and were subsequently married in October 2011. She stated that, while engaged, the relationship was really fun, with the only difficulty being his trial for impaired driving. Once they were married, they travelled a lot and had goals such as continuing their educations and to save money.

[55] She stated that the first couple of years were good, with him only displaying a slight temper on a couple of occasions. He didn't drink when they got married, but around two years in, he started drinking. She testified that he did not drink every day, but that when he drank, he drank to get drunk. She said that he would get really angry and chase her around the house, stating that it was "absolutely terrifying".

[56] Ms. J.M. stated that their marriage continued to deteriorate and that he would throw things around, chase her and threaten to destroy everything if she called the police. She testified that he discouraged her from reporting his actions by saying things such as “do you think they’re going to believe you, I’m a police officer”. She stated that they used to host parties, so she knew some of the police officers who would come to the door and that they lived in the same area where he worked. She stated that she did not want to impact his job, so she did not call the police until the end of their relationship.

[57] Ms. J.M. testified that, in July or August 2016, when she was seven or eight months pregnant, she and Constable Sandhu were fighting in the living room. Ms. J.M. stated that she can’t remember what they were arguing about, but it was heated. She decided to walk away and he was right behind her, asking why she was walking away. She stated that she was halfway up the stairs when he pushed her down. She told him she was pregnant, got back up and went into their bedroom.

[58] She testified that he then grabbed her by the throat and that his grip was getting stronger and tighter. He asked her if she was going to call the cops. She stated that she was terrified and that he had a look in his eyes and saliva coming out of his mouth as he was yelling at her. He eventually let go and left the residence, not returning until after midnight.

[59] Ms. J.M. testified that she just laid there in bed questioning her situation, feeling trapped and depressed. The next day, she had a slight bruise on her cheek. She told her mom what happened, who told her that she needed to call the police. She stated that she was not going to call the police because he was a police officer and their marriage would be over.

[60] Constable Sandhu had trouble recalling this incident. When asked about it by his counsel, he referred to the event related to their niece’s birthday party (which is the second incident that occurred on October 15, 2016). He stated that this incident never happened, but he also stated that it was in relation to her father who babysat their daughter. When pressed on this, he stated that they often had verbal arguments about her father, so it may have been the case. As this incident occurred prior to the birth of their daughter, I find his assertion unreasonable.

[61] Overall, I found that Ms. J.M. provided a credible account of the events; however, there were times in her testimony when she may have sensationalized the events, such as when she was describing how Constable Sandhu had grabbed her throat and that his grip was getting stronger and tighter and that she thought she might die. While the grabbing of her throat was consistent with her previous statements, she clearly indicated in her statement that she did not fear for her life. Whether inadvertent or intentional, this does impact her reliability. However, I do not find this discrepancy to be sufficient to discount the substance of her account. Therefore, I accept Ms. J.M.'s version of events for this incident.

Second incident

[62] Constable Sandhu and Ms. J.M. both recalled attending her niece's birthday party approximately two to three weeks before their daughter was born. They agree that they had an argument after this event, which transpired during the car ride back home and that it continued for an extended period at their residence.

[63] Ms. J.M. testified that, some time prior to the party, her father had called Constable Sandhu to address his use of violence on his daughter. She stated that upon Constable Sandhu learning that she had told her parents about the domestic violence, which had occurred during the first incident, he did not want to have contact with them. She managed to get him to attend the party, where he had a lot to drink. She stated that it was awkward and that he was convinced that others were talking about them. On the ride home, he was angry that she had told her family about the domestic violence, which is what precipitated the argument.

[64] Although he admitted to being under the influence at the party, Constable Sandhu stated that he was not intoxicated. He testified that a female family member suggested that he had said that it was okay for Ms. J.M.'s father to babysit their daughter, which he denied ever saying. He stated that the argument ensued with Ms. J.M. in the car over the issue of her father's ability to babysit.

[65] Once home, they both agree that they were engaged in a heated argument, which included both of them yelling and screaming. They agree that they were in the kitchen, which was on the

main floor of the residence, above their basement tenants, both of whom were police officers. Ms. J.M. testified that they were arguing about Constable Sandhu's drinking and it escalated when she took a cup of alcohol from him and poured it in the sink.

[66] She testified that he "literally lost his mind" and began chasing her around the kitchen island, laundry room and living room. She grabbed her phone and called her mother. Just as she started telling her what was happening, he grabbed the phone and broke it by bending it. She testified that she was "so scared" and "felt so helpless", as she was pregnant, she did not have a phone and he was drunk and angry. They agree that he wanted them to go upstairs to not draw the attention of the tenants, but she did not want to.

[67] She stated that she walked toward the stairs, that he was behind her and pushed her on the stairs. She turned to get up, he got behind her and dragged her up 3 or 4 stairs from behind. Although 36 weeks pregnant, she got up and ran into the master bedroom and recalled them talking and yelling in the en-suite bathroom. She testified that he told her to take a shower and that they were going to turn off all the lights, because he believed their tenants would call the police. She stated that she took a shower for a few minutes, then got changed, got in her car and went to the nearest 7-eleven, where she used their phone to call her mother.

[68] She stated that she reached her mother, who told her that she was at Ms. J.M.'s house and all the lights were off. They subsequently met her at the store and she followed them back to her parents' house. She stayed there for the night. The next morning, she got up, went home, got ready and then went to the Apple store to purchase a new phone. While out, she called Constable Sandhu from a payphone, who told her that he had received a text message from their tenants and asked her what happened the night before. She told him what had taken place and he told her that they needed to stick to the same story, that it was a minor incident.

[69] Constable Sandhu testified that the argument escalated all the way home from the party. He did not recall taking a drink home with him that night or Ms. J.M. pouring it out in the sink, but he conceded that it may have happened. He stated that both of them were yelling and swearing.

[70] In an effort to not alert their tenants, he suggested that they go upstairs as the kitchen was right above their tenants. She did not want to go upstairs, so he tried to guide her by the elbow. He stated that they were both yelling and after they got upstairs, she left. He testified that he did not grab her neck, but he indicated that they grabbed each other when he was trying to get them both upstairs. He added that the touching was not criminal in nature, that there was no choking or punching. Constable Sandhu stated that he was fighting with her about her father, while Ms. J.M. was fighting with him about his drinking.

[71] He testified that he received a text from the tenant the next morning enquiring as to whether things were okay.

[72] He stated that he doesn't remember anything about Ms. J.M.'s phone, but he wouldn't be surprised it would break if it fell. He said that he did not squash or bend it. He stated that he thought she might have called him the next morning and told him that she bought a new phone.

[73] Ms. J.M. provided a clear account of the events she alleged occurred in this incident. She provided specific details and I found that her testimony did not omit any material facts, nor did she ever appear to be searching for answers. She was sober at the time and described how she will never forget the feeling as her back bounced off of the stairs.

[74] Her assertions that she called her mother, that the call was dropped, that she left the residence and that members of her family came to her house, are corroborated by the statement provided by her brother, Mr. G.M. Moreover, most of her account was corroborated by Constable Sandhu, with some notable exceptions.

[75] Constable Sandhu admitted to being under the influence of alcohol during this incident, but he argued that he should be believed despite his lack of clarity in relation to the events. I found his account of this incident to be conveniently devoid of certain details, such as any of those which would cross into being discreditable.

[76] He explained how he managed to get Ms. J.M. to go upstairs, by reasoning with her, despite his being "under the influence" and her not wanting to go upstairs. He could not explain why they were still fighting upstairs, when he had just reasoned with her to come upstairs.

[77] His account as to what happened to Ms. J.M.'s phone was inconsistent and his suggestion that they were fighting about two distinctly different things, concurrently, is more than unlikely. Notably, his suggestion that they were fighting about her father's ability to babysit, despite their daughter not yet being born, lacks an air of reality.

[78] Furthermore, he testified that he did not know that she had left the residence. However, he also testified that he was looking out the window for her.

[79] For these reasons, I prefer the account of Ms. J.M.

Third incident

[80] The Subject Member Representative suggested that Ms. J.M. was inconsistent in the verbs she used to express how Constable Sandhu caused the tea to land on her, drawing a distinction between the words "spilled", "threw" and "pushed". Despite being pressed on this issue, Ms. J.M. stated that he indeed "pushed" the tea and, more importantly and despite whichever verb was chosen, she was consistent in her assertion that he applied force to her, which caused the tea to spill unto her and their bed.

[81] Conversely, Constable Sandhu testified that he recalled that they were in bed arguing and that Ms. J.M. was drinking tea. He stated that he was collecting some dishes to take down to the kitchen and when he reached for the cup, which was on the night table, it ended up spilling on the table and onto the ground.

[82] I prefer the version of Ms. J.M. in respect to this incident. Her account is straightforward, logical and consistent. It simply does not make sense that, in the middle of a heated argument, Constable Sandhu would get up to remove the dishes, including the one in use by Ms. J.M., which apparently still had significant contents.

[83] In consideration of the foregoing, I find all the particulars established, with the exception of particular 8, where it indicated that Ms. J.M. left the matrimonial home on foot. There seems to be some uncertainty as to whether she walked or drove to the 7-eleven, as she testified that she drove.

[84] With the particulars established, aside from the one exception, I find that the first two prongs of the test for discreditable conduct to have been met.

[85] Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. In threatening Ms. J.M., using his position as a member of the RCMP to dissuade her from calling the police and, most significantly, committing acts of domestic violence against his former spouse, Constable Sandhu's conduct was a significant departure from the standard expected of a member of the RCMP. 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 his actions as likely to bring discredit to the Force.

[86] Constable Sandhu abused his position as a member of the RCMP and engaged in domestic violence, an offence he could be called to respond to and one of the prevailing issues which plague our society. As such, I find that Constable Sandhu's behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[87] Therefore, I find his conduct to be discreditable. As a result, I find Allegation 1 to be established on a balance of probabilities.

Allegation 2

[88] Constable Sandhu admitted that he used cannabis (marihuana) recreationally in his residence at the end of the night to assist him in sleeping and reducing his anxiety. However, he testified that he only used it for the last six months prior to his separation on August 30, 2018, and not for the duration of the time period set out in the Allegation, which began on January 1, 2015. He admitted that he knew that the use of marihuana for recreational purposes was still illegal and contrary to RCMP policy. The Conduct Authority Representative conceded that he had not established a timeline for the use of cannabis contrary to that provided by Constable Sandhu.

[89] The issue of whether Constable Sandhu concealed his use of cannabis (marihuana) from Ms. J.M. was disputed by the parties. I think that the first step is to determine what is actually meant by the word conceal.

[90] *Black's Free Online Legal Dictionary* defines conceal as:

To hide; secrete; withhold from the knowledge of others. The word "conceal," according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation.

[91] From their testimonies, it is clear that Ms. J.M. was aware that he was consuming marihuana as both she and Constable Sandhu agreed that there were many arguments in relation to it. She described how he stored it in the garage; in fact, she testified that she stopped paying the mortgage due to his usage. Constable Sandhu testified that he was open with Ms. J.M. about his use of marihuana. He stated that he would go to the garage before bed and smoke some marihuana to help him sleep and that he did not want her disturbing him.

[92] Ms. J.M. testified that they had frequent arguments over his use of marihuana. She stated that it was illegal and that she did not want it occurring in their home. Therefore, I find that Constable Sandhu did conceal his use not to prevent Ms. J.M. from being aware of his usage, but to avoid being disturbed.

[93] She stated that, on one occasion, after bathing their daughter, she set her down in the living room and went to the garage. She stated that she had a feeling that he was doing something with marihuana as she was aware that he kept it in a white cabinet in the garage.

[94] She stated that, when she opened the door, he turned around, saw her and said: "What are you doing, I told you not to come down here." She stated that she ran up the stairs with him behind, yelling at her. She ran into the master bedroom, he followed her and threw over a night table. She then ran to their daughter's room with him in pursuit. She stated that he tossed over the crib, threw books—one might have hit her—and twisted the neck of their daughter's toy giraffe before leaving the residence.

[95] In cross-examination, it was suggested to Ms. J.M. that the events did not take place as she described them. She stated that she had taken pictures of the damage to show her parents, to which it was suggested that she had taken pictures to set up Constable Sandhu, which she denied. However, as noted by the Subject Member Representative in his submissions, these pictures were never introduced.

[96] While being cross-examined, Ms. J.M. often became animated and argumentative. When challenged on her reactions by the Subject Member Representative, she stated that she was escalated because he was questioning her integrity.

[97] Constable Sandhu testified that his use of cannabis (marihuana) was often a source of conflict. He stated that he would be using it in the garage and that Ms. J.M. would come down and make a scene. He admitted that he would get upset if she caused a scene, but he stated that he would just tell her to go away and indicated that he did not like being “harassed”.

[98] He refuted the allegation that when Ms. J.M. came down to the garage when he was using marihuana that he became enraged and destroyed property. He denied throwing things around the house or twisting the neck of the toy giraffe. He stated that he would never destroy anything belonging to their daughter. In fact, he saw the giraffe during a FaceTime call with their daughter a couple of weeks ago and that it was in good shape. The Subject Member Representative suggested that the incident involving the giraffe is not found anywhere in the materials. However, it can be found on pages 7 and 28 of Ms. J.M.’s statement dated December 10, 2018.

[99] In cross-examination, Constable Sandhu stated that Ms. J.M. would cause a “very big scene” in which there was yelling and screaming in relation to his use of an illegal substance in their home. He conceded that her challenging him about his marihuana use bothered him, stating that it was his alone time and that she was interfering with his ability to relax. He stated that she would harass him about his use, that he would tell her to leave him alone, but she wouldn’t, so he would get upset, yelling and screaming. He added that he is not the same person now.

[100] He also conceded having anger issues and that he had taken training for anger management. He stated that he was angry but not to the point of a physical altercation. He stated

that the phrases “Why did you come down to the garage? I told you not to come down to the garage” are the types of things he would say. He maintained that he would tell her to give him his space and to go back upstairs; even though he got upset, he stated that he did not chase her or throw things.

[101] His suggestion that he would simply tell her to go back upstairs, despite his use of marihuana being a consistent source of conflict, is unreasonable. Constable Sandhu testified that he didn’t like being disturbed, that he would get upset and used the term harassment to describe Ms. J.M.’s intervention. I find his reaction to be inconsistent with a “calm” response.

[102] When comparing the accounts of Constable Sandhu and Ms. J.M., I find her account to be more credible. Ms. J.M. was consistent in her testimony and she did not back away from her representations. Furthermore, his reaction as she described is congruent with my earlier findings and observations in relation to his volatile nature. Hence, I do find it more likely than not that Constable Sandhu chased Ms. J.M. and subsequently threw things around the house as alleged in particular 3.

[103] Therefore, I find all the particulars to be established. However, it should be noted that I have only found that Constable Sandhu consumed cannabis for a period of six months prior to their separation, as he testified.

[104] Again, with the particulars established, I find that the first two prongs of the test for discreditable conduct have been met.

[105] In knowingly using cannabis (marihuana) prior to it being legalized and in contravention of RCMP policy, in chasing Ms. J.M. and throwing items around their home, I find that Constable Sandhu’s conduct was a significant departure from the standard expected of a member of the RCMP. 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 his actions as likely to bring discredit to the Force.

[106] As I have previously mentioned, the RCMP Code of Conduct applies to members of the RCMP when they are both on- and off-duty. Constable Sandhu’s contravention of the *Controlled*

Drugs and Substances Act, SC 1996, c 19, and acts akin to domestic violence are activities in conflict with his duty and may compromise the public's confidence in his ability to impartially enforce the laws he is sworn to uphold. As such, I find that Constable Sandhu's behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[107] Therefore, I find his conduct to be discreditable. As a result, I find Allegation 2 and all its particulars to be established on a balance of probabilities.

Allegation 3

[108] By virtue of Constable Sandhu's admission and my review of the materials, I find the first two elements of the test to be established.

[109] Although Constable Sandhu and his representative both clearly indicated his full admission to this Allegation, the Conduct Authority Representative questioned him as to whether he admitted that the impugned text messages were in fact threatening. Constable Sandhu admitted that his conduct was unprofessional and expressed his regret for having sent them, but he stopped short of admitting that they were in fact threatening. Instead, Constable Sandhu reiterated that he did not intend to threaten anyone.

[110] It has been previously noted during the Conduct Hearing that the criminal charges that had been laid in relation to the sending of the texts are still before the courts. I believe for obvious reasons that this may have been an impediment to the Conduct Authority Representative gaining agreement from Constable Sandhu.

[111] Nevertheless, it is incumbent upon me to decide whether his actions were discreditable. To do so, I must examine the text messages to determine what, if anything, makes them discreditable.

[112] Within the string of repetitive texts that Constable Sandhu sent to Staff Sergeant S.G., which was replete with profanity, were comments such as:

If u don't reply, I will find you.

I will literally make u suck my dick if that is who u are...
ur the fucking loser everyone says sucks dick to get promoted.
Lol make sure u know I will fuck u up literally this time.
I will destroy u if u say one good or bad word about me.
Smartest thing u could do is text me for a "sit down" otherwise I'm
destroying your whole career!!!!
Give me the time bitch, or I'm coming to ur house!!
if i see u talk to someone I don't like. I'm going to fuck u up real bad u
corrupt, dirty, ding dong sucking COP!!
Let [G.W.] I'm looking for him now!! Take care bro!! ONE WORD going
forward bitch, and ur kinds don't grow!!
I was mad before, now it's personal. Sorry to say, I had let it go, but now
I'm going to fuck u up!!! Ur done bro!!
[*Sic throughout*]

[113] While I am not and cannot make a determination in relation to the offence of uttering threats or any other criminal offence, I do find the repetitive nature of the text messages to be both threatening and harassing on a balance of probabilities. It is this that makes Constable Sandhu's conduct discreditable.

[114] In transmitting texts messages to Sergeant S.G., which were clearly intended to cause him concern, and did cause concern as he reported this incident to the police, Constable Sandhu's conduct was a significant departure from the standard expected of a member of the RCMP. 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 his actions as likely to bring discredit to the Force.

[115] Given the nature of the texts, as previously described, directed to his former supervisor, in which he mentioned issues pertaining to his employment, and the fact that he was arrested and charged with the offence of uttering threats, I find that Constable Sandhu's behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[116] Therefore, I find his conduct to be discreditable. As a result, I find that Allegation 3 and all its particulars are established on a balance of probabilities.

CONDUCT MEASURES

[117] By virtue of the very fact that this matter is before me, the Conduct Authority is seeking to terminate Constable Sandhu's employment with the RCMP. In his submissions at the conduct measures phase of the hearing, the Conduct Authority Representative specified that the Conduct Authority requested that I order Constable Sandhu to resign from the Force.

[118] Conversely, the Subject Member Representative suggested that this is a borderline case and that the forfeiture of 60 days' pay would satisfy the objectives of the discipline process.

Conduct Authority Representative's submission

[119] In respect of Allegation 1, the Conduct Authority Representative submitted that Constable Sandhu has been found to have exerted force of a repetitive and vicious nature with the intention of belittling and demeaning Ms. J.M. when she was in her most vulnerable state.

[120] During the second incident, Constable Sandhu broke Ms. J.M.'s phone to prevent her from getting assistance and compelled her to take a shower, which showed that his concern was for him alone. All of which, the Conduct Authority Representative argued, should be considered aggravating. Moreover, Constable Sandhu repeatedly used his position as a member of the RCMP and his threats to destroy her life to discourage her from obtaining assistance from the police.

[121] The Conduct Authority Representative asserted that the criminal cases⁴ that he furnished speak to the societal need for incidents of domestic violence to be addressed and should be denounced in the clearest of terms.

⁴ *R. v Lavallee*, 1990 CarswellMan 198; *R. v Brown*, 1992 ABCA 132, 1992 CarswellAlta 273; *R. v Dunlop*, 2014 ONCJ 44, 2014 CarswellOnt 1227.

[122] He referenced the 2014 *Conduct Measures Guide (Guide)* and stated that the present circumstances, including a pattern of gratuitous, unprovoked violence, justifies Constable Sandhu's misconduct falling into the aggravated range, which suggests measures from the forfeiture of 15 days' pay to dismissal.

[123] In relation to Allegation 2, the Conduct Authority Representative noted that Constable Sandhu's use of cannabis was not a one-time occurrence, but a prolonged use of a period of approximately six months. He suggested that, at the time of Constable Sandhu's misconduct, cannabis was still an illicit substance, which must have required its purchase from individuals engaged in criminal activity.

[124] The Conduct Authority Representative also argued that Constable Sandhu's use of cannabis, knowing that it was illegal and contrary to RCMP policy, demonstrates his belief that the rules did not apply to him.

[125] The Conduct Authority Representative submitted that these factors elevated Constable Sandhu's misconduct into the aggravated range, as such he suggested that measures, including the forfeiture of 20 to 45 days' pay to dismissal, are warranted.

[126] In regard to Allegation 3, the Conduct Authority Representative submitted that the text messages sent by Constable Sandhu were, by all accounts, unprovoked. Furthermore, despite Constable Sandhu's reluctance to acknowledge it, they were in fact threatening and used as a tool of intimidation, for which he has never accepted full responsibility. He noted that upon Staff Sergeant S.G. taking the appropriate steps to address this issue, Constable Sandhu became more upset.

[127] The Conduct Authority Representative emphasized the ominous tone of the texts and highlighted the impact that they had on not only Staff Sergeant S.G., but his family as well.

[128] Given these aggravating circumstances, the Conduct Authority Representative asserted that the appropriate conduct measures should be elevated to the aggravated range, including dismissal.

[129] In support of the measures being sought, the Conduct Authority Representative referred to two previous conduct board decisions pertaining to similar allegations, which resulted in dismissal or a direction to resign.⁵

[130] As for the Subject Member Representative's five RCMP decisions,⁶ none of which resulted in dismissal, but with the forfeiture of pay and/or leave being imposed instead, the Conduct Authority Representative submitted that they could be distinguished from the present matter. In each of these cases,⁷ the subject member took responsibility and admitted to their misconduct, which resulted in their resolution via joint submission on measures.

[131] The Conduct Authority Representative submitted that the medical evidence adduced on behalf of Constable Sandhu may have some relevance to Allegations 2 and 3, but has little, if any, relevance to Allegation 1. However, he asserted that even the medical reports upon which Constable Sandhu intended to rely, shows that he was not completely forthright with Dr. M. or that he accepted responsibility.

[132] Furthermore, the Conduct Authority Representative submitted that the medical evidence is devoid of any causal link to the circumstances. Therefore, any weight to be given to the medical evidence provided by Constable Sandhu should be significantly reduced.

[133] In referring to Constable Sandhu's personnel file and his performance assessments in particular, the Conduct Authority Representative submitted that whether he was liked or performed his duties well is irrelevant as his misconduct stands independently of his previous work.

[134] The Conduct Authority Representative argued that the totality of the circumstances warrants a global sanction of a direction for Constable Sandhu to resign from the Force.

⁵ 2019 RCAD 13; 2020 CAD 14.

⁶ 25 A.D. (3rd) 194; 1 A.D. (4th) 1; 2016 RCAD 4; 2018 DARD 18; 2019 DARD 11. The latter two decisions I reviewed in English, cited as 2018 RCAD 18 and 2019 RCAD 11.

⁷ The Conduct Authority Representative indicated that he had limited ability in French, so he did not comment on the two most recent decisions; however, upon my review, I noted that they were also resolved via joint submission.

Subject Member Representative's submission

[135] The Subject Member Representative highlighted the principle of correction, noting that unlike the criminal realm, the primary focus of the conduct process is to be educative and corrective. He added that context is important and that the aggravating and mitigating factors are part of the context, suggesting that the facts do not support all of the allegations falling into the aggravated range.

[136] In relation to Allegation 1, the Subject Member Representative noted that there were no injuries and that Constable Sandhu was not charged as a result of those incidents. He asserted that the seriousness of this Allegation rests on whether I found that Constable Sandhu engaged in a “prolonged pattern” of domestic violence, suggesting that the three incidents detailed in the Allegation could be considered “isolated”.

[137] The Subject Member Representative stressed that the fact that criminal charges were not laid speaks to the spectrum of the domestic violence in that it did not meet the threshold for criminal conduct. He suggested that no true distinction is drawn in the *Guide* between an assault and domestic violence, hence Constable Sandhu's conduct should fall within the normal range of the forfeiture of 3 to 10 days of pay.

[138] As it relates to Allegation 2, the Subject Member Representative submitted that although not reflected in the *Guide*, this is the least serious Allegation against Constable Sandhu. He noted that the use of marihuana is now legal, although he noted that its use by operational members is still contrary to policy. Additionally, he noted that, despite him having the opportunity, the Conduct Authority Representative did not ask Constable Sandhu how he obtained the marihuana.

[139] The Subject Member Representative argued that drug use only falls into the aggravated range when it falls into Schedule 1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19, the theft of exhibits or the trafficking and/or importing of controlled substances. Given the lack thereof in this matter, it should fall at the low end of the normal range, which spans the forfeiture of 20 to 30 days of pay.

[140] In respect of Allegation 3, the Subject Member Representative submitted that, since Constable Sandhu's texts did not include the threat or use of weapons, it does not fall within the aggravated range for uttering threats. He submitted that although Staff Sergeant S.G. took them seriously and they had a lasting impact on him, the *Guide* suggests that they should fall in the normal range of the forfeiture of 3-10 days of pay.

[141] The Subject Member Representative suggested that if I were to attribute the forfeiture of 10 days of pay to the three separate incidents included in Allegation 1, as well as for Allegation 3, and added 20 days for Allegation 2, I would arrive at the forfeiture of 60 days of pay, as he proposed. He added that, while the *Guide* refers to 45 days as the upward limit, in practice, 60 days seems to be the upper limit absent dismissal.⁸

[142] The Subject Member Representative cited several RCMP conduct decisions involving domestic violence that have resulted in sanctions short of dismissal. Three of which have been decided in the current conduct process.⁹

[143] The Subject Member Representative also cited a Canada Court Martial decision,¹⁰ which spoke to the relevance of joint submissions on conduct matters. Paragraph 31 states:

[...] Indeed, as recognized by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 (S.C.C.), prosecution and defence counsel are well placed to arrive at joint submissions that are fair and consistent with the public interest. These resolutions are entirely relevant to assess a range of acceptable sentences for a given offence or set of offences.

[144] In relation to the two conduct board decisions referenced by the Conduct Authority Representative, 2019 RCAD 13 and 2020 CAD 14, the Subject Member Representative noted that the former matter also contained an issue of honesty and integrity, which is not at issue in the present matter. While in the latter, the subject member did not seek medical treatment to address his issues, which is not the situation for Constable Sandhu.

⁸ C-042

⁹ 2016 RCAD 4; 2018 RCAD 18; 2019 RCAD 11.

¹⁰ 2019 CM 4010.

[145] With regard to the medical evidence adduced on behalf of Constable Sandhu, the Subject Member Representative stated that, while it is not exculpatory, it does speak to him being diagnosed with Post-Traumatic Stress Disorder and Alcohol Use Disorder.

[146] The Subject Member Representative noted that Constable Sandhu has again sought and obtained treatment for his issue with alcohol; he highlighted the efforts that Constable Sandhu has made to address both disorders as well as the documented progress that he has made. He submitted that Constable Sandhu's medical issues are more applicable to Allegations 2 and 3, with it applying directly to the latter.

[147] The Subject Member Representative submitted that, as evidenced by Constable Sandhu's performance assessments and the letters of reference that he provided, he was a reliable, hard-working member who possessed a strong work ethic and was well regarded by his peers.

[148] The Subject Member Representative conceded that this is a borderline case, but he suggested that Constable Sandhu's actions were influenced by his medical conditions and that none of the Allegations fell into the aggravated range. He submitted that given Constable Sandhu's strong performance and medical issues, the forfeiture of 60 days' pay would satisfy the educative and remedial intention of the conduct process, while also providing a punitive aspect. In the alternative, if I was considering dismissal, then the Subject Member Representative requested that Constable Sandhu be afforded the opportunity to resign.

Decision on conduct measures

[149] In accordance with paragraph 36.2(e) of the *RCMP Act*, I am required to impose conduct measures that are "proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, which are educative and remedial rather than punitive."

[150] In rendering my oral decision on the Allegations, I stated that I had found all the particulars of the three Allegations established, with the exception of particular 8 of Allegation 1, where it indicated that Ms. J.M. left the matrimonial home on foot and the duration of the use of cannabis in Allegation 2.

[151] Dismissal is the most serious punishment that can be imposed in a disciplinary process such as this one. Before imposing the appropriate conduct measures, I must first consider the appropriate range of measures and take into account the aggravating and mitigating factors.

[152] I have referenced the *Guide* to assist me in determining the appropriate range for Constable Sandhu's conduct measures. However, it should be noted that the *Guide* is simply that, a guide, and it is not prescriptive.

[153] With respect to Allegation 1, the *Guide* addresses, on pages 46 and 47, the establishment of discreditable conduct in relation to domestic violence. It states that violence directed to a member's spouse or children should be considered an aggravating factor, considering the vulnerability of the victims. In the present matter, I note that the first two incidents of violence directed at Ms. J.M. occurred while she was late in her pregnancy.

[154] The *Guide* also suggests that I consider Constable Sandhu's efforts toward rehabilitation when determining the appropriate measure. However, later on page 47, the *Guide* states:

[...] In situations where the member employs unprovoked gratuitous violence, assault causing serious bodily harm or injury, assault involving the use or threats of weapons, prolonged episodes of domestic violence, or violence towards a vulnerable person, an aggravated range of 15 days to dismissal is recommended. [...]

[155] Given the nature of the relationship between Constable Sandhu and Ms. J.M. as well as the stage of her pregnancy, I find that she was particularly vulnerable. As a result, I find the aggravated range to be appropriate.

[156] In relation to Allegation 2, the use of cannabis (marihuana), it states at page 50 of the *Guide* that “[w]hile drug use amongst law enforcement officers is widely condemned in general, there is a societal tolerance towards recreational use of cannabis [marihuana]”. This does not provide justification for its use, but it suggests that it may be viewed through a different lens than “harder” drugs, such as heroin or cocaine.

[157] That being said, this was not a one-time occurrence for Constable Sandhu. He routinely used marihuana for approximately six months prior to it being legalized, knowing that its use

was illegal and, even after legalization, remained contrary to RCMP policy. As such, I find that it falls within the normal range of sanction, which the *Guide* suggests is the forfeiture of 20 to 45 days' of pay.

[158] In respect to Allegation 3, the *Guide* also provides guidance in relation to an appropriate range. On page 48, it suggests that the normal proposed range of sanction for a member who utters a threat of death or grievous bodily harm is the forfeiture of 3 to 10 days' pay. The normal range would be applicable in circumstances where the threat was uttered with the intention to be taken seriously, uttered in conjunction with domestic violence, or causes prolonged fear from the victim.

[159] Given the obvious intent of the text messages to intimidate or scare Staff Sergeant S.G. as well as the lasting impact they have had not only on Staff Sergeant S.G., but also on his family, I find the normal range to be appropriate.

[160] In assessing all of the events that occurred in relation to the three Allegations, the cases proffered by the parties and the suggestions provided in the *Guide*, I find the appropriate range to be between the forfeiture of 40 days' pay and dismissal.

[161] With the range being established, I must now review the relevant aggravating and mitigating factors to determine the appropriate conduct measure(s) to be imposed.

Aggravating factors

[162] I have considered the submissions by both parties and I have retained the following aggravating factors:

- The seriousness of the misconduct
- The violence was directed toward his spouse
- During the first two instances in relation to Allegation 1, Ms. J.M. was late in her pregnancy and particularly vulnerable

- The force inflicted upon Ms. J.M. being choked and being dragged up the stairs
- Constable Sandhu used his position as a member of the RCMP to discourage Ms. J.M. from calling the police to get assistance
- During the second incident in Allegation 1, Constable Sandhu grabbed and broke her cell phone when Ms. J.M. attempted to get assistance from her family
- Possessing and consuming cannabis while being fully aware that it was both illegal and contrary to RCMP policy
- Constable Sandhu was arrested and is facing criminal charges for sending threatening text messages to Staff Sergeant S.G.
- Constable Sandhu has prior discipline for disgraceful conduct for impaired driving in 2009, which resulted in the imposition of the forfeiture of 10 days' pay and a reprimand
- All three Allegations denote Constable Sandhu's repetitive misconduct
- Although Constable Sandhu has admitted his behaviour in respect of Allegations 2 and 3 and has expressed regret, I am not convinced that he has displayed genuine remorse
- Constable Sandhu has not demonstrated any remorse for the incidents in relation to Ms. J.M.; instead, he attempted to portray himself as the victim
- The impact on the victims:
 - a. Ms. J.M. expressed the effect that Constable Sandhu's misconduct had on her: the loss of confidence and self-esteem, the anxiety. It is worth noting the sense of freedom that she expressed, now that she is no longer in a relationship with Constable Sandhu.
 - b. Staff Sergeant S.G. testified in relation to the devastating effect that the text messages sent by Constable Sandhu have had on him and his family. It is quite obvious that they perceived the messages to be a threat and took extensive steps to

counter that threat. I can certainly appreciate Sergeant S.G.'s heightened trepidation given the source of the threat. As police officers, we anticipate threats being launched from those we police, but not from those with whom we police.

Mitigating factors

[163] I have retained the following mitigating factors:

- Constable Sandhu admitted to Allegations 2 and 3. However, the mitigation is limited by Constable Sandhu's denial of particular 3 of Allegation 2 and, in respect of Allegation 3, his failure to acknowledge the threatening nature of the text messages.
- Constable Sandhu has a strong work record that speaks to his ability to positively engage the public and other members of his team; it describes him as an asset to the RCMP.
- Similarly, the letters of reference provided speak to the dedication he had to his job, his high level of teamwork, his commitment to mentoring others and his efforts to go above and beyond to help those in need.
- Constable Sandhu has been diagnosed with medical conditions—Post-Traumatic Stress Disorder and Alcohol Use Disorder—for which he has sought and is receiving treatment.

Conclusion

[164] Constable Sandhu engaged in a pattern of controlling behaviour, which was evidenced in all three Allegations. As I noted in my decision on the Allegations, having the opportunity to observe him when he provided a cautioned statement after being arrested for uttering threats was quite insightful. It afforded me with the opportunity to see two sides of Constable Sandhu's personality, which appear to be consistent with that described by Ms. J.M. as being present during their relationship.

[165] I acknowledge that Constable Sandhu has sought and is receiving treatment in an effort to put his life back in order. I commend him for doing so. I recognize that his prior discipline from

2009 related to the use of alcohol, for which he was treated and managed to maintain a period of abstinence.

[166] This issue had obviously resurfaced. To his credit, he once again sought treatment to address it. I appreciate the seriousness of this type of disorder, its potential impact and Constable Sandhu's efforts in recovery.

[167] However, I note that there is no evidence to suggest that the first and third incidents in Allegation 1, nor Allegation 2, involved the use of alcohol. Allegation 2 relates to the use of cannabis, with which, there is no evidence Constable Sandhu has been diagnosed as having an issue.

[168] While I accept the diagnosis of Post-Traumatic Stress Disorder and Alcohol Use Disorder, no causal connection has been provided to his misconduct.

[169] The Allegations in this matter are very serious. In one instance, two weeks prior to Ms. J.M. giving birth to their daughter, Constable Sandhu pushed his wife down on the stairs and then went behind her and proceeded to drag her up several stairs. I find such behaviour to be utterly appalling.

[170] Additionally, the use of marihuana knowing that it was both illegal and contrary to RCMP policy is troubling.

[171] Furthermore, the impact that the text messages had on not only Staff Sergeant S.G., but also his family, as evidenced in his *Victim Impact Statement* and his testimony is quite significant, still to this day.

[172] In weighing the aggravating and mitigating factors, it is clear that the aggravating factors substantially outweigh the mitigating. While the purpose of the conduct process is meant to be rehabilitative, where possible, it must also provide an element of deterrence, both specifically and generally.

[173] Domestic violence continues to plague our society, destroying the safety and security of our homes and undermining the sanctity of one of our most cherished relationships. As police

officers, we are often called to incidents of domestic violence. We are acutely aware of the impact such events have on families and communities. As such, its occurrence by members of the RCMP must be denounced in no uncertain terms.

[174] Conduct of a harassing or threatening nature directed at a co-worker has been the source of significant attention from the public and the RCMP over recent years. The RCMP has invested resources and mandated training with the goal of eliminating such conduct within this organization. Similarly, it must be emphasized that this type of behaviour is not acceptable and will not be tolerated by the RCMP.

[175] Having considered the record before me, the nature of the misconduct, the mitigating and aggravating factors as well as the cases referenced by the parties, I find that Constable Sandhu has severed the employment relationship between himself and the RCMP. His retention would erode the public trust in this organization. Accordingly, I find the conduct measure being sought by the Conduct Authority to be proportionate to the gravity of Constable Sandhu's misconduct. Therefore, I direct Constable Sandhu to resign from the Force. If he fails to do so within 14 days, then I direct his dismissal.

[176] 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 Subject Member, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

Inspector Colin Miller

February 26, 2021

Ottawa, Ontario

Conduct Board