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2021 CAD 15



ROYAL CANADIAN MOUNTED POLICE

in the matter of
a conduct hearing pursuant to the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Between:

Commanding Officer, "O" Division

Conduct Authority

and

Constable Mikhail Ozimko

Regimental Number 55882

Subject Member

Conduct Board Decision

Kevin L. Harrison

May 19, 2021

Ms. Shahana Khan, Conduct Authority Representative

Mr. Gordon Campbell, Counsel, Subject Member Representative

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SUMMARY

The original *Notice of Conduct Hearing*, dated April 15, 2020, contained a single allegation of discreditable conduct contrary to section 7.1 of the Code of Conduct. The allegation stems from a domestic dispute involving Constable Ozimko and his spouse. The dispute extended over a two-day period. A civilian initiated a police investigation after Constable Ozimko entered a residential property owned by him without his permission. Police initially charged Constable Ozimko with six criminal offences. The Crown later withdrew these charges.

The parties submitted a joint proposal on conduct measures for my consideration. Constable Ozimko admitted to an amended *Notice of Conduct Hearing*. With the consent of the parties, the Conduct Board based his decision solely on the Record.

The Conduct Board accepted the joint proposal on conduct measures as reasonable and within the applicable range of conduct measures. The Conduct Board imposed a financial penalty of 25

days (200 hours) to be deducted from Constable Ozimko's pay pursuant to paragraph 5(1)(j) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291.

INTRODUCTION

[1] On November 18, 2019, the Commanding Officer and Conduct Authority for "O" Division signed a *Notice to the Designated Officer*, in which she requested the initiation of a conduct hearing, pursuant to subsection 41(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*]. On November 19, 2019, the Designated Officer appointed me as the Conduct Board, pursuant to subsection 43(1) of the *RCMP Act*.

[2] The Conduct Authority signed the original *Notice of Conduct Hearing* on April 15, 2020. This *Notice of Conduct Hearing* contained a single allegation of discreditable conduct under section 7.1 of the Code of Conduct in relation to Constable Ozimko's involvement in a domestic dispute with his spouse, Ms. B. The dispute extended over the two-day period of November 20 and 21, 2018.

[3] On June 19, 2019, Constable Ozimko delivered his response to the allegation per subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. He denied the allegation and presented a significantly different version of the matter from that of the Conduct Authority, particularly with respect to the events of November 20, 2018.

[4] Following numerous pre-hearing conferences, a Direction for Further Investigation and a motion seeking my recusal, the parties informed me on April 29, 2021, that they had reached a resolution that included Constable Ozimko's admitting to an amended allegation and a joint proposal on conduct measures. The parties preferred that I exercise my authority under subsections 23(1) and 24(1) of the *CSO (Conduct)* to render my final written decision based solely on the Record without hearing any testimony.

[5] The following is my final written decision on both the allegation and the conduct measures.

ALLEGATION

[6] The original *Notice of Conduct Hearing* contained a single allegation. The 20 associated particulars alleged the following:

- During a domestic dispute that occurred on November 20, 2018, at the family home, Constable Ozimko was to have:
 - forcefully removed Ms. B's clothing;
 - destroyed Ms. B's shoes with a pair of pliers;
 - held a knife to his neck and threatened to kill himself;
 - pushed Ms. B to the floor and forcefully administered sleeping pills to her and then covered her mouth so she could not cry out.
- On November 21, 2018, Ms. B planned to leave the relationship and arranged to view an Airbnb she intended to rent. Constable Ozimko is to have:
 - followed Ms. B from her workplace to the Airbnb;
 - entered the Airbnb without the owner's permission and removed a bag containing personal items belonging to Ms. B.

[7] On April 28, 2021, the Conduct Authority signed an amended *Notice of Conduct Hearing*, which contained the following allegation and particulars:

Allegation 1 Between November 20, 2018 and November 21, 2018, at or near [name of town] and Richmond Hill, in the Province of Ontario, Constable Mikhail Ozimko 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 "O" Division, Toronto North Detachment, in the province of Ontario.

2. You met Ms. B in 2017 who was working as a translator, while you were working for the RCMP deployed to Ukraine. The intimate relationship you formed with Ms. B who was a member of the local population while you were deployed to the Ukraine violated RCMP foreign deployment policy.
3. You married Ms. B in December 2017, and she moved to Ontario to live with you in February 2018.
4. On November 20, 2018, at approximately 10:30 p.m., Ms. B arrived at your shared residence located at [street address] in [name of town]. You had been drinking vodka that evening.
5. The two of you became involved in an argument for at least an hour, during which you called Ms. B a “bitch”.
6. Your argument occurred both on the main floor of the residence and in the upstairs master bedroom you share with Ms. B.
7. Ms. B later took steps to leave your shared residence and flee from you the next day.
8. On November 21, 2018, unbeknownst to Ms. B, you followed her from her workplace to an Airbnb located at [street address] in Richmond Hill.
9. When Ms. B arrived at the Airbnb she left a yellow bag unattended at the entrance, while the property owner, showed her the rental room. When you arrived at the Airbnb, you entered the premises without permission and took possession of Ms. B’s yellow bag for the purpose of looking in it, returning it shortly afterwards.
10. Ms. B became aware that her yellow bag was missing, resulting in the property owner confronting you. You identified yourself as Ms. B’s husband.
11. The property owner asked Ms. B if she was safe to leave with you, and she told him that she did not feel safe with you.
12. The property owner called the police, reporting in part, that Ms. B told him that you were an RCMP officer.
13. You were later arrested by York Regional police and charged with six Criminal Code offences: Criminal Harassment, Break and Enter, Theft, Assault, Administer Noxious Substance, and Mischief. All these charges were subsequently withdrawn by the York Regional Crown Attorney.
14. Your actions amount to discreditable conduct.

[8] The parties presented the amended *Notice of Conduct Hearing* to me in conjunction with a joint proposal on conduct measures. The joint proposal included Constable Ozimko’s admission to the amended allegation.

Background facts

[9] Constable Ozimko was deployed to Ukraine as an RCMP member in conjunction with the International Criminal Investigative Training Assistance Program. Prior to departing Canada, Constable Ozimko signed a *Letter of Deployment*. The letter clearly informed Constable Ozimko that sexual or intimate relation with citizens or residents of the host nation within the country of deployment was strictly prohibited. A breach of the prohibition would result in immediate repatriation and could be the subject of conduct proceedings upon return to Canada.

[10] Constable Ozimko met Ms. B in Ukraine while deployed in that country under the agreement of the *Letter of Deployment*. Ms. B is a Ukrainian national. The couple married in Ukraine on December 20, 2017. Ms. B moved to Canada in February 2018. Constable Ozimko correspondingly filed an application with Immigration, Refugees and Citizenship Canada to facilitate Ms. B becoming a permanent resident of Canada.

[11] On the evening of November 20, 2018, Ms. B attended a local fitness facility. Following her return home, an argument between Constable Ozimko and Ms. B ensued. During the hour-long quarrel, Constable Ozimko and Ms. B moved to various rooms in the house. Following the argument, Ms. B took steps to find alternate accommodations with the intent of leaving the marriage.

[12] On November 21, 2018, both Constable Ozimko and Ms. B went to their respective jobs. At some point in the day, Constable Ozimko attended Ms. B's workplace to speak with her, but Ms. B refused to meet with him. After work, Ms. B travelled by Uber to an Airbnb located in Richmond Hill to view the property prior to rental. Constable Ozimko followed her without her knowledge. While Ms. B was viewing the Airbnb with the owner, Constable Ozimko entered the premises without the owner's permission and removed a yellow bag containing Ms. B's personal effects.

[13] The Airbnb owner confronted Constable Ozimko, who returned the bag belonging to Ms. B. The Airbnb owner subsequently called 911 to request police attendance after Ms. B told him

that she did not feel safe leaving with Constable Ozimko. Ms. B also informed the Airbnb owner that Constable Ozimko was a member of the RCMP.

[14] Following their attendance and investigation, members of York Regional Police Service arrested Constable Ozimko and charged him with six criminal offences, including assault, mischief, administering a noxious substance, criminal harassment, break and enter, and theft. Constable Ozimko initially pleaded guilty to the assault and administering a noxious substance charges.

[15] On November 19, 2019, Constable Ozimko filed an application with the Court to withdraw his guilty plea. Prior to the hearing of the application, the Crown Attorney withdrew all criminal charges after being presented with additional information by Constable Ozimko's criminal defence counsel. In the Crown Attorney's opinion, this additional information presented "very insurmountable obstacles to the Crown with respect to [Ms. B's] credibility and reliability".

[16] On May 11, 2020, York Regional Police Service criminally charged Ms. B with mischief. This charge stems from another domestic incident that purportedly occurred on April 24, 2020. The Crown alleged that Ms. B destroyed Constable Ozimko's personal property. The Crown entered a stay of proceedings on this charge on July 2, 2020.

Decision on the allegation

[17] The test for "discreditable conduct" under section 7.1 of the Code of Conduct contains the following four elements that the Conduct Authority must establish 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.

[18] The particulars set out in the amended *Notice of Conduct Hearing* represent the evidence contained in the Record. By virtue of Constable Ozimko's admission to the allegation, I find that the first two elements of the test are satisfied.

[19] With respect to the third element of the test, the RCMP External Review Committee (ERC) offers its analysis on the nature of conduct "likely to discredit the Force" in ERC recommendation C-2015-001 (C008), dated February 22, 2016. Simply put, the test is that any reasonable person with the knowledge of the facts, including the realities of policing in general, and the RCMP in particular, would find the conduct discreditable or likely to discredit the Force.

[20] Constable Ozimko admits to breaching provisions of the *Letter of Deployment* by engaging in an intimate relationship with Ms. B, a Ukrainian national, while deployed in that country. He also admits to entering a private dwelling without the civilian owner's permission and removing personal property belonging to Ms. B without her permission. He was identified to the civilian owner of the property as a member of the RCMP. His actions resulted in another police service attending and investigating the matter, which resulted in his appearance in criminal court for six criminal charges. I find that a reasonable person with the knowledge of the facts, including the realities of policing in general, and the RCMP in particular, would find Constable Ozimko's conduct discreditable or likely to discredit the RCMP.

[21] With respect to the fourth and final element of the test, I note that the incidents during the two-day period in November 2018 occurred while Constable Ozimko was off-duty. The *2014 Annotated Version of the RCMP Code of Conduct*, at page 7, provides insight as to how off-duty conduct can be sufficiently related to a member's duties and reads as follows:

[...]

As a member of the RCMP, you have chosen to enter a unique profession that has expectations of a higher standard of behaviour, a responsibility that is not intermittent, but constant. The relationship between a member and the Force is not the same as between a citizen and the government. Your

conduct, whether on or off duty, will be scrutinized based on your status as a police officer.

Any conduct which places in doubt your integrity, honesty or moral character may weaken your effectiveness to perform your duties and cause the public to lose confidence in the Force. The responsibilities contained within the Code of Conduct are meant to promote sound ethical decision-making that goes beyond the boundary of the work environment. By fulfilling these responsibilities you will meet the professional expectations of the Force and Canadians.

[...]

[22] Certainly, the entry into a private residence and the removal of another person's property without permission places Constable Ozimko's integrity and moral character in doubt. The involvement of civilians and another police service in these matters may cause the loss of confidence in the Force.

[23] Based on the foregoing analysis, I find that the allegation contained in the amended *Notice of Conduct Hearing* is established.

CONDUCT MEASURES

[24] Having found the allegation established, I am obliged, by virtue of subsection 45(4) of the *RCMP Act*, to impose at least one of the conduct measures set out under that subsection. These conduct measures include dismissal, a direction to resign or "one or more of the conduct measures provided for in the rules". The conduct measures "provided for in the rules" are found in sections 3 (remedial conduct measures), 4 (corrective conduct measures) and 5 (serious conduct measures) of the *CSO (Conduct)*.

Joint proposal on conduct measures

[25] As previously noted, the parties presented me with a joint proposal, which included the single conduct measure of a financial penalty of 25 days to be deducted from Constable Ozimko's pay, pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*.

[26] The joint proposal also presents the analysis undertaken by the parties in terms of the appropriate range of conduct measures as well as the aggravating and mitigating factors they

considered in reaching their proposal. I will expand on this aspect of the joint submission after I have reviewed the common law relating to the treatment I must accord the joint proposal.

Common law on joint proposals

[27] The courts have extensively examined joint submissions in the criminal context. In *R v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*], the Supreme Court stated that judges are not obliged to accept joint submissions, but that they should only reject them in rare circumstances after applying the “public interest” test. Under this test, the question is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. Moldaver J. provided further guidance on behalf of the Court, at paragraph 34, when he wrote:

[...] a joint submission should not be rejected lightly, a conclusion with which I agree. 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 of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold – and for good reasons, as I shall explain.

[28] In *Rault v Law Society (Saskatchewan)*, 2009 SKCA 81 [*Rault*], the Saskatchewan Court of Appeal noted that there are good policy reasons for the principle of deference to joint submissions in the context of professional discipline cases. The overriding and paramount objective of decision-making in relation to such submissions is to maintain the public’s confidence in the integrity of the profession and the profession’s ability to govern its own members effectively.

[29] RCMP adjudicators and conduct boards, including myself, have consistently applied the principles set out in *Anthony-Cook* and *Rault* to RCMP conduct proceedings.

[30] In applying the direction from the courts to this decision, I must consider whether the joint proposal on conduct measures will bring the administration of justice into disrepute or whether it is contrary to the public interest. In doing so, I must consider whether the proposal is so markedly out of line with the expectations of a reasonable person aware of the circumstances

of the case that they would view it as a breakdown in the proper functioning of the RCMP conduct system.

Decision on conduct measures

[31] An analysis framework in relation to conduct measures established by the ERC under the old RCMP discipline system remains relevant to conduct proceedings under the current *RCMP Act*. Under this framework, I must ascertain the appropriate range of conduct measures and then examine the aggravating as well as mitigating factors in order to determine the appropriate conduct measures for the specific case. This approach is consistent with the provisions of *Administration Manual XII.1.11.15*.

[32] The starting point for the determination of the appropriate conduct measures is the *Conduct Measures Guide*. It sets out a range of recommended conduct measures for all sections of the Code of Conduct, including discreditable conduct under section 7.1. Prior adjudication and conduct board decisions may also assist in this determination.

Appropriate range of conduct measures

[33] In their joint proposal, the parties focused on Constable Ozimko's breach of the *Letter of Deployment* in relation to his relationship with Ms. B, which is Particular 2 of the amended *Notice of Conduct Hearing*. As such, the parties suggest that the appropriate category from the *Conduct Measures Guide* is "improper relationship", which calls for a financial penalty of between 20 and 30 days in the mitigated range.

[34] The breach of the *Letter of Deployment* was not the part of the mandated investigation of this matter, but an "add-on" in the amended *Notice of Conduct Hearing*. Nevertheless, I need to consider this serious violation of the RCMP foreign deployment policy.

[35] The more significant and reprehensible aspects of the original and amended *Notice of Conduct Hearing* relate to his actions on November 21, 2018, which include the surreptitious surveillance of Ms. B, entering a civilian's residence without permission, and removing Ms. B's property without permission. These actions culminated in a "confrontation" with a civilian,

which prompted a 911 call that resulted in a police response and the laying of six criminal charges, including criminal harassment, break and enter and theft.

[36] The *Conduct Measures Guide* speaks to both domestic violence (harassment) and the criminal property offence of theft.

[37] With respect to domestic violence, the mitigated range involves instances of relatively minor use of force, which does not lead to a criminal conviction or injury to the person. The recommended conduct measure is a financial penalty of 1 to 2 days. The recommended normal range is a financial penalty of 3 to 10 days.

[38] With respect to theft, the *Conduct Measures Guide* states at page 49:

[...] the sanction for theft in general should be high. For a typical case involving a low value, isolated incident that did not result in a criminal conviction, the proposed mitigated and normal range of sanction would consist of 30 days to dismissal. [...]

However, Constable Ozimko's intent in removing the item without permission was not to deprive Ms. B of the property, but rather to examine the bag's content. This coincides with his admission.

[39] Although the category of "improper relationship" may not be the most appropriate category to ascertain the appropriate range of conduct measures in this case, I appreciate why the parties may have selected it. The other potential categories of domestic violence and theft do not specifically address the misconduct of this case. Since there is no direct corresponding category in the *Conduct Measures Guide*, I will accept the appropriate range of conduct measures for the amended *Notice of Conduct Hearing* as a financial penalty of between 20 and 30 days of pay considering the multiple facets of the misconduct.

[40] The parties also provided me with two previous conduct board decisions for my consideration. They are *Commanding Officer, "F" Division v Corporal Jenkins*, 2018 RCAD 4 [Jenkins] and *Commanding Officer, "D" Division v Constable El Aste*, 2018 RCAD 18 [El Aste].

[41] *Jenkins* is somewhat instructive because it dealt with an inappropriate relationship between an instructor at Depot Division and a cadet in breach of a “Letter of Expectation – Staff-Cadet Relationships”, which prohibited relationships between cadets and staff members. The subject member’s failure to report his involvement with the cadet accurately compounded the breach of the directive. The conduct board imposed the conduct measures of an indeterminate demotion, ineligibility for promotion of 1 year, a transfer and a financial penalty of 30 days of pay at the constable pay grade.

[42] In *El Aste*, two allegations of discreditable conduct for separate domestic incidents were established. Police laid criminal charges against the subject member, but the Crown entered a stay of proceedings after the subject member agreed to enter into a recognizance under section 810 of the *Criminal Code*, RSC, 1985, c C-46. The conduct board accepted a joint submission on conduct measures and imposed a reduction of 15 days (125 hours) in the subject member’s leave bank.

Aggravating and mitigating factors

[43] The parties provided me with the following aggravating factors in the joint proposal on conduct measures:

- a. There was a criminal investigation conducted by York Regional Police Service, which compromises the RCMP’s reputation.
- b. The misconduct that led to the criminal charges involved Constable Ozimko’s spouse and was reported as domestic assault.
- c. There was a significant emotional impact on Ms. B, who provided statements in the criminal investigation.

[44] I accept the first two factors; however, since the parties provided me with no evidence of the impact on Ms. B, I cannot consider the last proposed factor. I will add, as my own aggravating factor, that members of the public were directly involved in the events that occurred at the Airbnb and were aware that Constable Ozimko was an RCMP member.

[45] The only mitigating factor presented by the parties is that Constable Ozimko has no prior record of formal discipline. I will add that the unauthorized entry into the Airbnb and the removal of Ms. B's property appears to be a momentary, but significant, lapse of judgment on Constable Ozimko's part.

[46] The parties did not provide me with anything relating to Constable Ozimko's overall performance nor did Constable Ozimko provide me with letters of support or other character references.

Conclusion on conduct measures

[47] Having considered the evidence before me, the nature of the misconduct, the aggravating and mitigating factors and the joint submission from the parties, I do not find that the jointly proposed conduct measure of a financial penalty of 25 days of pay would bring the administration of justice into disrepute or that it is contrary to the public interest. Therefore, I accept the parties' joint proposal on conduct measures.

CONCLUSION

[48] Having found the allegation established and in accordance with the joint proposal on conduct measures presented by the parties, the only conduct measure I will impose is a financial penalty of 25 days to be deducted from Constable Ozimko's pay pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*.

[49] 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.

[50] This decision constitutes my final written decision. Subsection 25(3) of the *CSO (Conduct)* requires that it be served on the parties. The decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of the decision [section 45.11 of the *RCMP Act*; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289].



May 19, 2021

Kevin L. Harrison

Conduct Board