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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, "E" Division

Conduct Authority

and

Constable Greg Ternan
Regimental Number 50572

Subject Member

Conduct Board Decision

Christine Sakiris

September 1, 2021

Staff Sergeant Jon Hart, Conduct Authority Representative

Ms. Allison Tremblay, Subject Member Representative

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SUMMARY

The *Notice of Conduct Hearing* contains a total of six allegations. Two allegations involve Constable Ternan’s alleged failure to provide complete, accurate and timely accounts, in contravention of section 8.1 of the RCMP Code of Conduct. Four allegations involve Constable Ternan’s alleged failure to be diligent in the performance of his duties, in contravention of section 4.2 of the Code of Conduct.

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The parties submitted an *Agreed Statement of Facts* and a *Joint Proposal on Conduct Measures* on July 9, 2021, in which the parties proposed amendments to Allegations 2, 3, 4 and 5. The Conduct Authority Representative withdrew Allegations 1 and 6.

The Conduct Board accepted the Agreed Statement of Facts and the Joint Proposal on Conduct Measures.

The following conduct measures were imposed for Allegation 2: (1) a financial penalty of 11 days' pay to be deducted from Constable Ternan's pay; and (2) a forfeiture of 10 days of annual leave. A financial penalty of 3 days' pay was imposed for each of Allegations 3, 4 and 5. Finally, Constable Ternan is to be transferred to another work location.

INTRODUCTION

[1] Constable Ternan is alleged to have failed to diligently perform his duties and to have failed to provide complete, accurate and timely accounts of his actions while carrying out his duties. The incidents at issue took place between May 17, 2019 and February 19, 2020.

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

[3] The *Notice of Conduct Hearing*, which is dated November 5, 2020, contains six alleged contraventions of the RCMP Code of Conduct. Two allegations involve Constable Ternan's alleged failure to provide complete, accurate and timely accounts of his actions, in contravention of section 8.1 of the Code of Conduct. Four allegations involve Constable Ternan's alleged failure to be diligent in the performance of his duties, in contravention of section 4.2 of the Code of Conduct.

[4] The conduct hearing was scheduled to begin on June 21, 2021. On May 20, 2021, the parties advised that they were close to reaching a resolution of this matter. On June 4, 2021, following a pre-hearing conference, the parties requested that I provide a *Determination of Established Facts* with respect to four areas on which the parties were not able to reach an agreement. On June 14, 2021, I provided the *Determination of Established Facts* to the parties.

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[5] On July 9, 2021, I received from the parties: (1) an *Agreed Statement of Facts*; (2) a *Joint Proposal on Conduct Measures*; and (3) a letter of apology from Constable Ternan. The parties proposed amendments to Allegations 2, 3, 4 and 5 as well as the withdrawal of Allegations 1 and 6 by the Conduct Authority Representative. Constable Ternan admitted to Allegations 2, 3, 4 and 5, as amended.

[6] The following conduct measures were jointly proposed for Allegation 2: (1) a financial penalty of 11 days' pay to be deducted from Constable Ternan's pay; and (2) a forfeiture of 10 days of annual leave. A financial penalty of 3 days' pay was imposed for each of Allegations 3, 4 and 5. Finally, Constable Ternan is to be transferred to another work location.

[7] Even though Constable Ternan admitted to the allegations, as amended, I must make my own determination on whether the allegations are established by assessing whether the acts to which he admits constitute contraventions of the Code of Conduct. If I find one or more of the allegations to be established, then I must determine whether I accept the *Joint Proposal on Conduct Measures*. In order to do so, I must find that its terms are not in the public interest.

[8] For the reasons that follow, I find that all four allegations are established. I also accept and impose the *Joint Proposal on Conduct Measures* as proposed by the parties.

ALLEGATIONS

[9] In accordance with the *Agreed Statement of Facts*, the allegations, as amended, are as follows:

Admitted Facts Common to All Allegations

1. Constable Greg Ternan ("Ternan") is a member of the Royal Canadian Mounted Police ("RCMP") posted to "E" Division, Vernon North Okanagan Detachment ("VNOD"), British Columbia.
2. Sergeant Glen Caston ("Caston") is a VNOD "D" Watch Commander whose role is to monitor on-going investigations but also direct members with respect to the next investigative steps that need to occur on a file. Sergeant Caston possessed the authority to provide Constable Ternan with specific directions and instructions on his assigned files.

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3. Corporal Kevin Kwast (“Kwast”) is the road supervisor for “D” Watch. The responsibilities of Corporal Kwast included an obligation and responsibility to review Constable Ternan’s files for quality control and ensuring that his investigations were properly investigated. Corporal Kwast possessed the authority to provide Constable Ternan with specific directions and instructions on his assigned files.

4. Constable Ternan’s investigative file work is recorded in the Police Records Information Management Environment (“PRIME”) British Columbia legislated records management system for policy in the province. Constable Ternan’s individual PRIME records were further routed into a supervisor queue shared by both Sergeant Caston and Corporal Kwast. The supervisor queue enabled Sergeant Caston and Corporal Kwast to provide Constable Ternan with recorded individual investigative “follow-up” directions and instructions prior to the conclusion of a file.

Allegation 1 – Withdrawn by the Conduct Authority Representative

Allegation 2

On or between November 18, 2019, and February 19, 2020, at or near Vernon, in the province of British Columbia, Constable Greg Ternan failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties and the conduct of his investigation, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. on November 18, 2019, you were assigned as lead investigator for PRIME file 2019 – 23780. The file involved in alleged attempt by suspect [R.T.] to cash a stolen check from [L.P.] in the amount of \$200 at the Money Mart. The activity of [R.T.] was captured on the Money Mart closed-circuit television (“CCTV”) utilized by the store.

2. Constable Ternan admits that he documented an inaccurate narrative with respect to the evidence available in support of the investigation on the PRIME file. Constable Ternan agrees that he then in a perfunctory manner, sought authority from the supervisors file.

3. Constable Ternan wrote on PRIME: “Please conclude as check was destroyed, no evidence.” Constable Ternan’s statements that the check was “destroyed” and that there was “no evidence” are both admittedly false. Constable Ternan in fact did not destroy the check, but retained possession of the check and later placed it into a sealed exhibit bag before turning it over to Superintendent Baher. Constable Ternan agrees that the continuity over the safety check as an exhibit was lost as a result of his careless actions.

4. Constable Ternan acknowledges that both Sergeant Caston and Corporal Kwast initially relied upon the accuracy of his PRIME entries with respect to his investigative file work. When Corporal Kwast completed his own investigative steps on the file including obtaining the CCTV video from the Financial Crimes Division of Money Mart and a scanned copy of the check; it became apparent to Corporal Kwast that Constable Ternan had in fact taken the check into his possession.

5. Constable Ternan accepts and agrees that he failed to provide a complete and accurate account with respect to the assigned investigation. Constable Ternan further admits that both Corporal Kwast and Sergeant Caston were misled by his inaccurate account and that his conduct was in contravention of section 8.1 of the Code of Conduct of the RCMP.

Allegation 3

On or between August 14, 2019, and January 4, 2020, at or near Vernon, in the Province of British Columbia, Constable Greg Ternan failed to be diligent in the performance of his duties in the carrying out of his responsibilities, contrary to section 4.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. On August 13, 2019, Constable Ternan was assigned as lead investigator for PRIME file 2019 – 16826 where the complainant, [R.S.], reported that his vehicle had been broken into and several of his personal checks had been stolen and then cashed.

2. On August 14, 2019, Constable Ternan created an initial synopsis report for the file stating that:

“On August 13, 2019 at approximately [8:30 a.m.] [R.S.] called police to advise that his vehicle was broken into (file 19 – 16749) and 2 checks were cashed, value of \$1200. [R.S.] was advised that the names used were [R.B. and A.G.]. [Constable] TERNAN spoke with [R.S.] on August 14 to get more information and learned that there were several more checks cash last night and another name of [J.H.]”

3. Constable Ternan completed one note book entry with respect to the file in which he listed the names of suspects and the dollar value of the fraudulent checks along with the applicable financial institution. Constable Ternan was aware that several criminal defences were alleged and required a reasonably competent investigation by him (or a permitted assignee).

4. On August 16, 2019, Sergeant Caston directed Constable Ternan in a follow-up on the file to: “PLS STAY IN TOUCH WITH COM TO GET THE INFO WE NEED TO PURSUE.” Constable Ternan failed to follow

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Sergeant Caston's direction resulting in Corporal Kwast having to become actively involved with the investigation.

5. On October 17, 2019, Corporal Kwast spoke directly with [R.S.] and obtained copies of the stolen and fraudulently written cheques. Corporal Kwast noted in his occurrence report that: "Copies printed and placed on file in the second copies in [Constable] TERNAN's mailbox." Corporal Kwast also then directed Constable Ternan in a follow-up on the file that: "COPIES OF CHEQUES FROM COM" and also "INVESTIGATE MULTIPLE FRAUDS." Constable Ternan neglected to follow the directions of Corporal Kwast. On December 11, 2019, Constable Ternan authored an occurrence report in which he stated:

"Please conclude this file as there was no lose of any funds by [R.S.]. The banks were notified of stolen cheques and eventually froze the account. It is not in the publics interest to proceed with charges."

6. Constable Ternan admits that he failed to be diligent in the performance of his duties and the carrying out of his responsibilities with respect to file 2019 – 16826. Constable Ternan accepts and agrees that this failure was in contravention of his obligations pursuant to section 4.2 of the Code of Conduct of the RCMP.

Allegation 4

On or between October 25, 2019, January 23, 2020, at or near Vernon, in the Province of British Columbia, Constable Greg Ternan failed to be diligent in the performance of his duties in the carrying out of his responsibilities, contrary to section 4.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. On October 25, 2019, the Vernon RCMP received a written request from the Canadian Firearms Registry (CFAR) advising that [A.V.] was in illegal possession of his firearms due to license expiry. The CFAR letter provided clear instructions and options: (1) renew the firearms license (2) transfer/sell the firearms to a licensed individual/business (3) relinquish the firearms for destruction.

2. On October 26, 2019, Constable Ternan was assigned as lead investigator for PRIME file 2019 – 22101 and given the following task and direction by Sergeant Caston: "REVIEW FILE AND PLEASE LOCATE FIREARMS."

3. The investigation revealed that [A.V.] was deceased and the firearms consisted of two Colt Model AR 15 restricted rifles.

4. On November 19, 2019, Constable Ternan believed his investigation was complete and so sought to conclude the file without having actually located the firearms. Constable Ternan wrote the following on PRIME:

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“On November 19, 2019 at approximately [8:50 p.m.] [Constable] TERNAN called [A.V.]’s wife, [P.F.], we advise that the firearms were also after [A.V.] passed away as she was instructed to get rid of them as she did not have a valid Possession license. File concluded.”

5. On December 19, 2019, Corporal Kwast provided Constable Ternan with follow-up direction on the file, noting in the Remarks field: “SEE SUPERVISOR DIRECTION” and also the following narrative in the Occurrence Report:

“[Constable] TERNAN: this file cannot be concluded until the rice is interviewed and provides documented proof of the sale. Receipts would be required in the name and firearms license number included. The location of the firearms/outcome of this investigation goes to the Canadian Firearms Centre. In the event you find out from the interview that you cannot locate the firearm the location they MUST be entered on [Canadian Police Information Centre].”

6. Constable Ternan agrees that he did not follow all of his supervisor’s directions. He admits that he did not locate firearms over the ensuing holiday period before he was removed from active duty on January 6, 2020. The file was subsequently reassigned.

7. Constable Ternan admits that he failed to be diligent in the performance of his duties in the carrying out of his responsibilities with respect to his investigative steps on file 2019 – 22101. Constable Ternan accepts and agrees that this failure was in contravention of his obligations pursuant to section 4.2 of the Code of Conduct of the RCMP.

Allegation 5

On or between May 17, 2019, and September 2, 2019, at or near Vernon in the Province of British Columbia, Constable Greg Ternan failed to be diligent in the performance of his duties in the carrying out of his responsibilities, contrary to section 4.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. On May 17, 2019, the Vernon RCMP received via Canada Post a Subpoena for service for [D.F.] of no fixed address in Vernon. The Subpoena was sent to D Watch for urgent service. The request to serve was to assist the Vancouver Provincial Crown Counsel the trial date was set for July 15, 2019.

2. On May 18, 2019, Constable Ternan was assigned as the lead investigator for PRIME file 2019 – 9959, and tasked by Corporal Kwast with locating [D.F.] concerning the Subpoena. A PRIME Document Service Template was added to the file for the purposes of permitting Constable Ternan to

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record his investigative steps with respect to serving the Subpoena. Constable Ternan was issued a follow-up with a diary date of May 30, 2019, that included in the Remarks field: “DOC FOR SERVICE IN WATCH CLERK FOLDER.”

3. Constable Ternan neglected to take all reasonable investigative actions to locate [D.F.]. Constable Ternan also failed to document the investigative steps that he did take to locate and serve the Subpoena on [D.F.]. On July 31, 2019, Constable Ternan modified the General Occurrence report by adding the following: “Trial date has passed. Please conclude.”

4. On September 2, 2019, Sergeant Caston added an [Non-Commissioned Officer] comment to the file as follows: “File reviewed this date and found to have absolutely nothing detailed on the file as to efforts made to locate the subject. This is an unfortunate situation and steps have been taken to ensure that this does not continue to happen.”

5. Constable Ternan admits that he failed to be diligent in the performance of his duties and the carrying out his responsibilities with respect to file 2019 – 9959. Constable Ternan accepts and agrees that this failure was in contravention of his obligations pursuant to section 4.2 of the Code of Conduct of the RCMP.

Allegation 6 – Withdrawn by the Conduct Authority Representative

[Sic throughout]

Decision on the allegations

[10] Constable Ternan has admitted to the particulars of each allegation. However, I must still determine whether his actions constitute contraventions of the Code of Conduct. In making this determination, I have considered the *Agreed Statement of Facts*, the *Determination of Established Facts* and the other materials in the Record.

Allegation 2 – incomplete, inaccurate or untimely account

[11] Section 8.1 of the RCMP Code of Conduct states:

Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigations, the actions of other employees and the operation and administration of the Force.

[12] Constable Ternan is alleged to have provided an incomplete and inaccurate account of his investigative actions. When a member is alleged to have made a false, misleading or inaccurate

report, the allegation will be made out if the member acted with knowledge that the report was false, misleading or inaccurate, or was negligent or reckless as to the validity of the report. If the member made an honest but mistaken statement that ultimately turns out to be false, misleading or inaccurate, their actions will not attract liability.¹

[13] The facts are not in dispute. Constable Ternan was the lead investigator on an investigation involving an alleged attempt to cash a stolen cheque at a local Money Mart. Constable Ternan attended the Money Mart and took possession of the stolen cheque. In making his entries in PRIME, he stated that the cheque had been destroyed and that there was “no evidence” available. Constable Ternan admits that both of these statements were false.

[14] It is also admitted that Sergeant Caston and Corporal Kwast initially relied on the accuracy of Constable Ternan’s PRIME entries in conducting their review of the file. It was only after Constable Kwast undertook further investigative steps that it was discovered that Constable Ternan had taken possession of the stolen cheque.

[15] Constable Ternan knowingly made a false entry in PRIME. As a result of his actions, his supervisors were misled, and the continuity of the seized cheque as evidence was lost. His conduct was clearly in contravention of section 8.1 of the Code of Conduct. Consequently, Allegation 2 is established.

Allegations 3 and 4 – failure to be diligent in the performance of one’s duties

[16] Section 4.2 of the Code of Conduct provides:

Members are diligent in the performance of their duties and the carrying out of their responsibilities, including taking appropriate action to aid any person who is exposed to potential, imminent or actual danger.

¹ *Deputy Commissioner Curtis Zablocki and Constable Jason Girard*, 2020 CAD 30; *Conduct Measures Guide*, at page 62; Ceyssens, Paul, *Legal Aspects of Policing*, Earls Court Legal Press, Volume II, Chapter 6, revised March 2012, page 6-108 as cited in *Commanding Officer “H” Division and Constable Aaron MacGillivray*, 2021 CAD 16, at paragraphs 83 – 86.

[17] In order for Allegations 3 and 4 to be established, the Conduct Authority must prove on a balance of probabilities that Constable Ternan knew he had a duty to discharge, or a responsibility to carry out, and that he willingly or neglectfully failed to discharge that duty. Allegations 3 and 4, as amended, allege that by neglecting to follow the directions of his supervisors, Constable Ternan contravened section 4.2 of the Code of Conduct.

[18] By virtue of Constable Ternan's admissions, the following facts are established. Sergeant Caston and Corporal Kwast possessed the authority to provide Constable Ternan with specific directions and instructions on his assigned files. In the case of Allegation 3, they both provided specific directions to Constable Ternan on the investigative file in question. In Allegation 4, Corporal Kwast provided Constable Ternan with clear directions with respect to the investigative steps to be conducted. As the lead investigator assigned to the files, Constable Ternan knew that he had a duty to follow the investigative directions issued by his supervisors. Notwithstanding this knowledge, Constable Ternan did not follow these directions. Constable Ternan did not raise, nor have I found, any lawful reason for his failure to do so. Consequently, Allegations 3 and 4 are established.

Allegation 5 – failure to be diligent in the performance of one's duties

[19] Allegation 5 also involves an alleged contravention of section 4.2 of the Code of Conduct.

[20] By virtue of Constable Ternan's admissions, it is established that he was tasked with completing the urgent service of a subpoena on D.F., in advance of a criminal trial in which D.F. was to serve as a witness.

[21] As the lead investigator assigned to the file, Constable Ternan knew that he had a duty to execute the service of the subpoena. Constable Ternan did not document any efforts to locate D.F. and to execute service. Rather, after the trial date had passed, he modified the General Occurrence report by adding: "Trial date has passed. Please conclude."

[22] Constable Ternan knew he had a duty to execute the service of the subpoena on D.F. Not only did he fail to serve the subpoena, but it does not appear that he made any effort to carry out his responsibility in this regard. Constable Ternan did not raise, nor have I found, any lawful reason for his failure to effect the service of the subpoena on D.F. Consequently, I find that Constable Ternan did not act diligently in the performance of his duties and the carrying out of his responsibilities. Allegation 5 is established.

[23] In light of the foregoing, Allegations 2, 3, 4 and 5, as amended, are established on a balance of probabilities.

CONDUCT MEASURES

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

[25] The Conduct Authority Representative and the Subject Member Representative provided a written joint submission on conduct measures. In support of their submission, they provided a letter of apology prepared by Constable Ternan.

[26] The following conduct measures were jointly proposed for Allegation 2: (1) a financial penalty of 11 days’ pay to be deducted from Constable Ternan’s pay; and (2) a forfeiture of 10 days of annual leave. A financial penalty of 3 days’ pay was proposed for each of Allegations 3, 4 and 5. Finally, they suggested the transfer of Constable Ternan to another work location.

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

[28] The Supreme Court of Canada has recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.² Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless doing so would not be in the public interest.

[29] Therefore, I must determine whether accepting the *Joint Proposal on Conduct Measures* is not in the public interest. This is not a question of whether the conduct measures proposed are the same as what I would have imposed. Rather, the public interest test sets a much higher threshold.

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

[...] a joint submission should not be rejected lightly [...] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of [, in this case, the conduct process] had broken down.³

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

Range of possible conduct measures

[32] The parties have proposed conduct measures for each allegation as well as the imposition of a transfer to another work location. For ease of reference, I will follow the same structure for my analysis.

² See for example *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19; and *R. v Anthony-Cook*, 2016 SCC 43 [*Cook*].

³ *Cook*, *supra* note 2, at paragraph 34.

Allegation 2

[33] I agree with the parties that in making PRIME entries he knew to be false, Constable Ternan's breach of section 8.1 of the Code of Conduct is best characterized as lying to a superior following an operational incident, as set out at pages 64 and 65 of the *Conduct Measures Guide*. I also agree that Constable Ternan's misconduct does not fall within the mitigated range. His actions cannot be described as a panicked reaction. Rather, he demonstrated a significant lack of judgment, which would bring his misconduct, at a minimum, within the normal range. The question is whether the circumstances are serious enough to bring his misconduct within the aggravated range.

[34] Constable Ternan's misconduct did not severely impact the rights of a third party. Nor did he personally benefit from his actions. While he did admit his misconduct when confronted, the parties jointly emphasize Constable Ternan's failure to correct the record for a prolonged period of time in proposing that his misconduct falls within the low end of the aggravated range. I agree that the delay of approximately 4 months, from the time Constable Ternan made the impugned entries in PRIME, to the date on which he surrendered the stolen cheque as an exhibit, constitutes a "prolonged lie", as set out at page 65 of the *Conduct Measures Guide*. Consequently, the appropriate range is in the low-end of the aggravated range, which constitutes a financial penalty of 21 to 25 days of pay, alone or in combination with other measures.

Allegation 3

[35] I agree with the parties that in failing to follow his supervisors' investigative directions, Constable Ternan's misconduct is best characterized as a failure to properly investigate a complaint, as set out at pages 22 and 23 of the *Conduct Measures Guide*.

[36] I further agree that Constable Ternan's misconduct falls squarely within the normal range. In particular, he repeatedly failed to follow directions from both Corporal Kwast and Sergeant Caston. Constable Ternan's misconduct falls short of the aggravated range, as there is no evidence that his actions compromised the criminal investigation in question. Consequently,

the appropriate range is in the normal range of a reprimand to a financial penalty of 5 days of pay, alone or in combination with other measures.

Allegation 4

[37] As with Allegation 3, Constable Ternan's misconduct in this instance is best characterized as a failure to properly investigate a complaint.

[38] Constable Ternan failed to complete all investigative steps, as directed by Corporal Kwast. However, his misconduct falls short of the aggravated range as, once again, his actions did not ultimately compromise the criminal investigation. Consequently, the appropriate range is in the normal range of a reprimand to a financial penalty of 5 days of pay, alone or in combination with other measures.

Allegation 5

[39] Once again, Constable Ternan's misconduct in this instance is best characterized as a failure to properly investigate a complaint. Constable Ternan did not make any effort to serve the subpoena on D.F., a witness in a criminal trial. Those proceedings could have been jeopardized as a result. However, there is no evidence before me to demonstrate that they were, in fact, negatively impacted. Consequently, the appropriate range is in the normal range of a reprimand to a financial penalty of 5 days of pay, alone or in combination with other measures.

Transfer

[40] The parties have jointly proposed that Constable Ternan be transferred to another work location, at the Conduct Authority's direction and in accordance with the delegated authorities stipulated in the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, the *Commissioner's Standing Orders* and policy. Constable Ternan's actions could reasonably be found to have damaged his relationship with his supervisors, who were negatively impacted by his misconduct. As such, his continued employment within the same detachment may not be

feasible.⁴ Consequently, when the totality of the circumstances is considered, a transfer is within the appropriate range of measures.

Mitigating factors

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

[42] First, Constable Ternan did accept responsibility for and admitted to Allegation 2 early in the conduct process.

[43] Second, Constable Ternan has expressed remorse and has submitted a letter of apology to the Conduct Board.

[44] Third, Constable Ternan acted without any malicious intent.

[45] Fourth, the parties submit, in the *Joint Proposal on Conduct Measures*, that Constable Ternan has a good work history with the RCMP. However, in the absence of any direct evidence to that effect, I can give little weight to this factor.

[46] Finally, while not a mitigating factor *per se*, I recognize that, by virtue of the *Joint Proposal on Conduct Measures*, Constable Ternan has his Commanding Officer's support to return to work.

Aggravating factors

[47] Of the aggravating factors proposed by the parties, I have retained the following:

[48] First, the misconduct in question involves Constable Ternan's actions on operational files.

⁴ *Conduct Measures Guide (Supplement)*, at page 19.

[49] Second, with respect to Allegation 2, Constable Ternan allowed the inaccuracy of the entry in PRIME to remain uncorrected for a lengthy period of time. A reasonable person's assessment of his honesty and integrity would be negatively impacted as a result.

Decision on conduct measures

[50] The parties have proposed that conduct measures be imposed for each allegation. It is within my discretion to implement the proposed conduct measures on a global or individual basis. The imposition of global measures would also be appropriate, given that all four allegations arose within a nine-month period and that three involve similar misconduct. However, on the facts before me, I do not find that there is a compelling reason to adopt a different approach than that proposed by the parties.

[51] I find that the proposed conduct measures of a financial penalty of 11 days of pay and the forfeiture of 10 days of leave for Allegation 2 are reasonable. The total penalty of 21 days falls within the appropriate range. While the allocation of 10 of those days as a forfeiture of leave reduces the severity of the conduct measure, I do not find that it is inappropriate to do so in this case, particularly when considered in the context of the total proposed sanctions with respect to pay, and the imposition of a transfer.

[52] I find that the proposed measures of a forfeiture of 3 days of pay for each of Allegations 3, 4 and 5 to be reasonable. They fall within the appropriate range. In fact, they fall at the higher end of the normal range, which reflects the circumstances of each contravention.

[53] I find that the imposition of a transfer is advisable in this case. Constable Ternan repeatedly disregarded his supervisors' directions. He knowingly made a false entry in PRIME, which misled his supervisors. The relationship between Constable Ternan, Corporal Kwast and Sergeant Caston has undoubtedly been negatively affected. A transfer is in the interest of not only the Watch, but also of Constable Ternan himself, in order to enable him to make a fresh start. The parties have emphasized that the location of the transfer has been discussed in the context of resolution negotiations. These discussions will likely inform the Conduct Authority's ultimate determination of an appropriate transfer location.

[54] Collectively, the proposed conduct measures are comprised of corrective and serious measures. They reflect the seriousness of the misconduct, as well as the mitigating and aggravating factors in this case. They will serve as a deterrent to Constable Ternan, as well as a warning to other members. Therefore, on a balance of all of the factors before me, I cannot conclude that the proposed conduct measures are not in the public interest.

CONCLUSION

[55] Allegations 1 and 6 are withdrawn. Allegations 2, 3, 4 and 5, as amended, are established.

[56] Having found the allegations to be established and in accordance with the joint submission presented by the Conduct Authority Representative and the Subject Member Representative, the following conduct measures are imposed:

- a. With respect to Allegation 2: pursuant to paragraph 5(1)(j) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], a financial penalty of 11 days (88 hours) of pay to be deducted from Constable Ternan's pay; and pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*, the forfeiture of 10 days of annual leave
- b. With respect to Allegation 3: pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 3 days (24 hours) of pay, to be deducted from Constable Ternan's pay
- c. With respect to Allegation 4: pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 3 days (24 hours) of pay, to be deducted from Constable Ternan's pay
- d. With respect to Allegation 5: pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 3 days (24 hours) of pay, to be deducted from Constable Ternan's pay
- e. Pursuant to paragraph 5(1)(g) of the *CSO (Conduct)*, a transfer to another work location.

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

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

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

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Christine Sakiris	September 1, 2021
	Date
Conduct Board	