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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:

Chief Superintendent Michel Legault

Conduct Authority

and

Corporal Bartholomew Doerr
Regimental Number 48481

Subject Member

Conduct Board Decision

Gerald Annetts

May 4, 2022

Staff Sergeant Jonathan Hart, Conduct Authority Representative

Ms. Allison Tremblay, Subject Member Representative

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SUMMARY

Corporal Doerr was accused of two contraventions of the RCMP Code of Conduct: one under section 2.1 for failing to treat every person with respect and courtesy, and one under section 3.2 for abusing his authority. At issue were alleged excessive and inappropriate communications to his subordinate and the threat of a Code of Conduct investigation against his subordinate's spouse after she told Corporal Doerr to cease and desist.

The matter proceeded to a conduct hearing from February 28, 2022, to March 4, 2022, in Nanaimo, British Columbia. In addition to reviewing the investigative material, the Conduct Board heard oral testimony from three witnesses. Although many of the particulars were not established, enough were for me to find that both allegations were established. Prior to the imposition of conduct measures, Corporal Doerr resigned from the RCMP, leaving the Conduct Board with no jurisdiction to sanction him.

INTRODUCTION

[1] The Conduct Authority initiated the conduct hearing in this matter on March 29, 2021. One allegation of misconduct was made against Corporal Doerr in relation to his communications with his subordinate. A second allegation related to his threatening a Code of

Conduct investigation against his subordinate's spouse when she told him to cease and desist in those communications. The misconduct was alleged to have occurred between March 20, 2019, and March 24, 2020. On April 7, 2021, I was appointed as the Conduct Board.

[2] Pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, Corporal Doerr provided his response to the *Notice of Conduct Hearing*. In his response, Corporal Doerr admitted some of the particulars, but he denied both allegations of misconduct. Given the nature of the allegations, the evidence against Corporal Doerr and his response to the allegations, I deemed it necessary to hear oral evidence. The matter proceeded to a conduct hearing from February 28, 2022, to March 4, 2022, and I heard from three witnesses.

ALLEGATIONS

[3] The allegations in the *Notice of Conduct Hearing* read as follows:

TAKE NOTICE THAT it is alleged that you have committed the following contraventions to the *Code of Conduct of the RCMP*:

Particulars common to both Allegations

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "E" Division, British Columbia.
2. You were a Corporal supervisor for the North Island Integrated Road Safety Unit ("IRSU") located in Courtenay/Comox, British Columbia.
3. Commencing on March 19, 2019, Constable [T.N.] ("[T.N.]") accepted a three month assignment to IRSU from her substantive position at the Sidney/North Saanich RCMP detachment. The assignment concluded at the end of June 2019. On February 17, 2020, Constable [T.N.] formally transferred to IRSU. You were the direct supervisor of Constable [T.N.] and in a position of authority over her while she was both seconded and then later transferred to IRSU. Constable [T.N.]'s career aspiration is to become a Traffic Analyst.
4. You and Constable [T.N.] did not personally know each other until she commenced in IRSU. You each exchanged personal contact information and communicated both on and also off duty. Your communications included exchanging text messages on your respective personal iphones.
5. RCMP Constable [S.F.] ("[S.F.]") is the spouse of Constable [T.N.]. They lived together in Nanaimo, British Columbia.

6. On July 10, 2020, Constable [T.N.] lodged an RCMP Form 3919 complaint of harassment against you. The complaint was investigated by harassment investigators from Henri Investigations Inc., Joanne Callens and Cara McMillan. A second mandate letter with respect to your alleged abuse of authority was again investigated by Henri Investigations Incorporated. On March 18, 2021, your legal counsel, Ms. Allison Tremblay, advised that your statement to harassment investigators could be utilized for the purposes of the code of conduct.

7. Constable Bill Pickering (“Pickering”) was posted to IRSU in July of 2019 and you were his supervisor.

8. Staff Sergeant Kevin Quail (“Quail”) is the [Non-Commissioned Officer in Charge] of North Vancouver Island Traffic Services and North Island Integrated Road Safety Unit and works out of the Campbell River Detachment. Inspector Tim Walton (“Walton”) is the [Officer in Charge].

Allegation 1 On or between March 20, 2019, and March 24, 2020, at or near Courtenay, Campbell River and Nanaimo, in the Province of British Columbia, Corporal Bartholomew Doerr failed to treat every person with respect and courtesy and did engage in harassment, contrary to section 2.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. You engaged in a pattern of repeated improper and offensive conduct including objectionable acts(s), comment(s) or display(s) that demeaned, belittled and caused personal humiliation and embarrassment directed towards Constable [T.N.]. You failed to accept Constable [T.N.]’s repeated requests that you stop seeking more than a strictly professional working relationship with her. You further engaged in acts of intimidation and threats directed towards Constable [T.N.]. Your offensive actions were a direct result of your IRSU supervisory position within the RCMP.

2. Constable [T.N.] informed you that your incessant communications were harassing, causing her offence and severe mental anguish to both her and her family. Your repeated harassment of Constable [T.N.] included the following enumerated and categorized incidents:

#1 – Inappropriate comments about Constable [T.N.]’s appearance

3. On your first shift working together, you and Constable [T.N.] were driving together in a police vehicle. For work purposes, Constable [T.N.] described how she wears her hair in a French braid with a bun at the back. Without prompting you stated to Constable [T.N.] that: “I want you to feel really comfortable with me, um, you know, you can let your hair down.” Constable [T.N.] described that she thought it was “really weird” you would comment on her appearance on the first occasion you had ever met her. Your comment made Constable [T.N.] feel both uncomfortable and

concerned that you were acting creepy. You do not deny commenting on Constable [T.N.]’s hair.

4. Constable [T.N.] further stated that your inappropriate comment concerning her appearance/hair was not an isolated incident and made affectionately. In late February 2020 you were pressuring Constable [T.N.] to remove a ball cap so that you could see her “hair down” an offer she promptly declined.

5. You failed to treat Constable [T.N.] with respect and courtesy within the workplace. Your comments concerning the personal appearance of Constable [T.N.] were unprofessional, sexually suggestive, and harassing.

#2 – Exploiting your supervisory position to further a relationship with Constable [T.N.]

6. Constable [T.N.] acknowledges developing a work friendship with you, however, she always viewed you as her supervisor and sought to maintain a professional relationship. You pressured Constable [T.N.] into expanding your work friendship to her personal time including when she was no longer seconded at IRSU. Your persistent attempts to communicate with Constable [T.N.] caused her discomfort and she informed you of this “multiple times I’d talk to him about that, and I said, look you need to back off” and that “I just wanna be friendly work environment, I don’t want there to be any issues, let’s just be friends at work.”

7. On December 5, 2019, you attended court to observe Constable [T.N.] testify while you were on a day off from work. Following her testimony, you insisted that Constable [T.N.] socialize with you over lunch and coffee. When Constable [T.N.] protested that she needed to return to work as she was on an over-time shift, you informed her that as her supervisor you had complete control over her and that you wrote her “assessments” and that she won’t get into trouble because “I’m the one that makes that decision.” Your reliance upon your supervisory position and authority over Constable [T.N.] to pursue a friendship with her is demonstrative of your harassing behaviours. Your actions caused Constable [T.N.] to feel unwanted pressure and anxiety.

#3 – Repeated unreasonable text and telephone communications with Constable [T.N.]

8. You failed to accept Constable [T.N.]’s desire to maintain a professional work relationship and sent multiple inappropriately affectionate text messages to her. You also made repeated inappropriate verbal comments to Constable [T.N.] in telephone calls with her. The following are examples of your harassing communications:

- a) You required Constable [T.N.] to text you when she got home from work. You ignored Constable [T.N.]’s statements to stop your checking

up on her, that she was fine and that “no news is good news”. You would also chastise Constable [T.N.] that you had “stayed up” worrying about her if she neglected to let you know that she made it home after a shift. You inappropriately made Constable [T.N.] feel guilty if she did not respond back to your texts inquiring on her whereabouts. You further informed Constable [T.N.] that you did not equally check up on Constable Pickering after a shift because: “I don’t worry about him like I worry about you.”

b) You ignored Constable [T.N.]’s statement to you that the communications were “a lot” and that “it’s hard on my relationship.” Constable [T.N.] verbally informed you that her spouse was not necessarily jealous rather that your communications were excessive and that she only wanted a “healthy working environment.” Constable [T.N.] also made it clear to you – despite your continued pressuring of trying to win her over through text communications - that she was “just not into men.” You ignored her requests to stop and continued harassing her.

c) Constable [T.N.] further described how the incessant text messaging commenced after only having worked one month together and that it was “every couple of days”. The messaging continued even after you went on medical leave from work and despite the fact you agreed Constable [T.N.] “made it clear” her personal time with her family was her own. You ignored her requests to stop.

d) Constable [T.N.] recalled that on Halloween you sent her a text message in which you informed her “I just think you’re so wonderful” to which she replied asking you to stop and that you were making her uncomfortable. Constable [T.N.] was fearful that if she was too forceful with you as her supervisor that it would negatively impact her ability to obtain a full-time position in IRSU.

e) You both texted and verbally stated to Constable [T.N.] words to the effect that she gave you “ticky in my tummy.” When Constable [T.N.] informed you that that this statement is uncomfortable to her you replied that you were “just joking” and talk like that to your daughters. Constable [T.N.] is your subordinate and co-worker – not your family.

f) You temporarily respected Constable [T.N.]’s request to stop contacting her, however, in the words of Constable [T.N.] she felt like you were “seeking me out all the time.” Constable [T.N.] was fearful of work-related repercussions if she did not communicate with you and when ignored, you simply sent more messages or called from a different number. In the words of Constable [T.N.]: “I told him many times, I wanted a friendly, professional work environment only” and tried to conclude the telephone calls, however, you would not respect her wishes and simply kept talking causing her to become more uncomfortable.

g) You texted and telephoned Constable [T.N.] under the guise of wanting to discuss work and then in her words: "...it would then segue into hey, so, what are you doing? How's your family life? What are, how are you feeling, I miss you, I just love working with you, um, I can't wait for you to get here, I can't wait until work with you every single day." Constable [T.N.] described how your comments made her feel "uncomfortable" and that she believed you were being flirtatious, overly affectionate and seeking more than just a work relationship.

h) Constable [T.N.] provided copies of your text messages between January 10, 2020, and March 22, 2020, that included the following overtly affectionate statements made by you: "R u staying in Courtenay or CR tonight? Just miss u"; "And our pending work divorce"; "I just want to be a big part of ur life. No more than 10 hours a day excluding work time."; "No sorries LB. I'm strong. I can wait. I'll be anxiously anticipating ur call, but I can handle it!"; "Make sure u make it home safely and text me when u get there. Worried about u."; "I just thought I'd share this with u. Thinking about u!"; "I'd love to talk"; "I am sinking about u! ... No matter what, please reply to me. I care. Or call me cause I care. Or call me cause I really care!"

i) You provided copies of text messages between yourself and Constable [T.N.] between December 21, 2019, and March 24, 2020, that included the following overtly affectionate and highly personalized statements made by you: "Bart Doerr wants to know if ur doing good today! ☺"; "Hey LB. How r u doing?"; "Maybe when ur in Campbell River we can meet cause [K.R.] really wants to meet u. The girls would like to see I as well..."; "Hey LB how do u do!?!..."; "Ur fantastic! ... Have an awesome night and sleep well."; "Hi [T.N.], it's [K.R.]....Once again no pressure, but Bart says "hurry up" ☺"; "Happy 17th Birthday [T.N.]! Check out this video on YouTube"; "It's Bart. Great to visit with u and to finally meet [S.F.]. Too bad she hates me! Off to treat [K.R.] for her birthday. Take care."; "Maybe we can talk soon...Just miss u"; "Just hurry up with OUR lawyers and then get up here and help me dig"; "[T.N.] it's Bart Doerr here. Call me when u have time."; "Schpeak? (to which she replied sorry no) No sorries LB. I'm strong. I can wait. I'll be anxiously anticipating ur call, but I can handle it! ☺"; "U just remember how lucky u r to have me as a friend! Now that definitely has to make u feel better!"; "Okay. R u and I just going to walk past one another without looking at each other or saying a word, and do a handoff of briefcases? As well, [A] is sad ur not staying long."; "Hey! How r u doing today!?! ... Good morning [T.N.]. How r u doing?"; "Okay. Do u feel like talking...So can I call u...Okay what should I call u?"; "Hey I hope that u have had a great, fun and exciting day today! ... Hey [T.N.] it's Bart Doerr here. I'm praying all will go well for u today."; "I'm

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worried about u kiddo. Talking may help”; “It’s definitely u!! (Screen shot images of Elaine Benes)”; “Check out this video on Youtube. (Video of Bonnie Tyler – Total eclipse of the Heart)”; “Can u Schlesigner Schpeak hahahaha”; “Ur the best!! The bestest”; “I only ask how u r really doing because I care for u and ur well being...Ur a fantastic person [T.N.]”; “Have a super awesome day today [T.N.]!”; and “I’m thinking about you because I care. U make me think of pork chops(huh??) imagining you being with your family”. Yep, definitely not pork chops. “Take care Chuckles and maybe we can talk soon”. “Yours truly, Tutu”.”

j) You requested that Constable [T.N.] change the settings on her iphone so that you knew when she opened your text messages as it was “...important for me in a relationship. Thanks.” Constable [T.N.] refused your request and she did not perceive your request as a joke.

k) You informed Constable [T.N.] that movie characters (Chuck in Angry Birds/Little Bird from Game of Thrones, show called “Go away unicorn”) and songs (Whiskey in a Teacup) reminded you of her. Constable [T.N.] found your descriptions “weird” and concerning that you were thinking of her “on your days off” which in turn caused her to feel uncomfortable.

l) You sent text messages expressing your romantic feelings about Constable [T.N.] such as: “I think you’re so wonderful, you’re in my prayers, I said a prayer for you” and “you are the most wonderful person in the whole world.” Constable [T.N.] informed you that these statements were beyond that of a friendly, co-worker/supervisor relationship. Constable [T.N.] further described how your comments of “I love talking to you” or “I just miss you” were spontaneously recieved and that in turn: “I would often ignore calls and text messages, make excuses not to talk or acknowledge his text(s) with minimal or simple responses.”

m) On October 31, 2019, you sent text messages expressing how much you missed Constable [T.N.] and couldn’t wait to work with her all the time. You made affectionate comments such as “you’re such a fantastic person, I think you’re just so great” again causing Constable [T.N.] to feel uncomfortable, insecure and apprehensive.

n) Following her transfer to IRSU in February 2020, Constable [T.N.] again verbally informed you that your repeated text messaging (morning and night) was impacting her relationship and that she asked you to keep it strictly work related professional. When Constable [T.N.] ignored your attempts to contact her you would either chastise her at work for not “having time for him” or by sending an unprofessional message like “I just miss you or I just miss talking to you.”

o) On one occasion you sent a text of a cartoon of a hippopotamus with the caption “I hippopotamissssu” and you further informed Constable [T.N.] that you were “so lonely” and “tired of being home alone all the time.” The content and manner of your communications caused Constable [T.N.] to believe that you were trying to win over her affection and pursue her romantically. You again ignored Constable [T.N.]’s repeated requests to stay professional.

p) On March 15, 2020, Constable [T.N.] commenced personal medical leave. You continued to text and telephone Constable [T.N.] during the month of March 2020, despite the fact that you were clearly informed by her spouse on March 1 to leave her alone. You continued to rely upon false pretences to initiate the communications by suggesting a need to communicate for work purposes then once on the phone asking questions about Constable [T.N.]’s family, how she was feeling and other personal questions.

q) On March 18, 2020, you sent an obsessive text message in which you stated (in part): “Bart’s Check in With list: 1)[T.N.] 2) LB 3) Chuck 4) Ted, and 5) This chick I know from work. Just know that I will run through this list daily and in chronological order...Even if u don’t need me, well ur stuck with me.” The message went on at length and described the intimate and clearly personal affection that you felt towards Constable [T.N.]. Again you ignored the clear requests to simply leave Constable [T.N.] and her family alone.

r) On March 21, 2020, you texted Constable [T.N.] and asked “Can U Talk.” The conversation again was not work related but rather about your family and some personal hardships. You later texted Constable [T.N.] stating “it was great to speak with u tonight!! It was nice to hear auntie [T.N.] with ur nephew. Take care and have a wonderful sleep.” Your unwanted personal contact caused Constable [T.N.] to feel uncomfortable, stressed, anxious and for her to also experience the “onset of insomnia and exacerbation of stress induced dermatitis contributing to some minor hair loss.”

s) You justified your continued unwanted communication with Constable [T.N.] during the month of March 2020 by stating that: “I just wanted to check in with her as a friend and just make sure that she’s doin’ alright.” Your justification completely ignores the repeated requests by Constable [T.N.] and Constable [S.F.] to not contact her unless it was for a clear work purpose. Your continued harassing communications caused Constable [T.N.] noticeable stress and discomfort.

t) On March 24, 2020, at 7:13 a.m., you sent a lengthy affectionate text message to Constable [T.N.] in which you incorporated sign language and also directly referred to a number of nicknames that you had given to

Constable [T.N.]. This text message is demonstrative of your refusal to respect the continued clear directions from Constable [T.N.] to stop your harassing communications and your romantic obsession with her.

u) While Constable [T.N.] was away from work on stress leave, you attempted inappropriate humour by suggesting that you had spoken with Constable [T.N.]’s mother. Constable [T.N.] was of the belief that your reference to her mom was an attempt to create a wedge with her spouse and try and portray yourself as closer to her than you were. You explained that you were: “...pretending “I’m part of the family type thing.” Constable [T.N.] was not amused but rather offended by your mother references.

v) Constable [T.N.] described that it felt like you were stalking her while she was on sick leave and the volume of contact exceeded that of a normal supervisor. Constable [T.N.] purposefully began simply ignoring your text messages and phone calls (while on sick leave) as you contacted her so many times it was “slimy” “creepy” and indicative that you were really trying to pursue her.

#4 – Requests to meet outside of the work setting

9. You often requested to meet in-person with Constable [T.N.] when she was off-duty for non-work-related reasons. Constable [T.N.] described how she felt uncomfortable pressure to meet with you and that you were “persistent in questioning” her about personal things such as her relationship with her spouse. You bragged that your ex-wife was jealously inquiring with your daughters who Constable [T.N.] was after she attended your daughter’s hockey game in Nanaimo. You further joked that Constable [T.N.] should attend your daughter’s Christmas Pageant with you. Your actions caused Constable [T.N.] to believe that you were portraying her as someone that you were romantically involved with.

10. On October 27, 2019, Constable [T.N.] described how you sought to drive to Victoria from Campbell River (6 hours round trip) just to deliver her tea. Constable [T.N.] was off work socializing with a friend, [D.M.], when you made a repeated offer to drive with your daughters to deliver home-made tea. Your offer caused Constable [T.N.] to become upset and uncomfortable as it was far beyond what someone should do for a co-worker. Constable [T.N.] expressed her anger to you on the telephone telling you bluntly no and that “...this is inappropriate”. You agreed that Constable [T.N.] became upset and expressed to you that your attempts to see her were too much, however, this knowledge did not stop you from seeking to meet her outside of the work setting.

11. You failed to respect your boundaries as a supervisor and the fact that Constable [T.N.] verbalized on numerous occasions to you, that she only wanted a work relationship with you. In the words of Constable [T.N.]: “I

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felt obligated and pressured to attend, the meetings were not to discuss work but rather have personal correspondence. I felt uncomfortable and anxious in the meetings. I felt he was trying to pursue me romantically. He would say I didn't have to meet but that he would be sad or that I was ignoring him if I didn't meet."

#5 – Personalized and expensive gifts

12. Constable [T.N.] described that the gifts you gave her "were above and beyond what he would do for everybody." Constable [T.N.] and you had never previously exchanged gifts for each other. You were on sick leave when you texted Constable [T.N.] to inform her that you had left her a Mother's Day gift on her personal vehicle. Your gift of chocolates, a card and a personalized pen from your daughters was excessive for a co-worker. No other women in the office received a Mother's Day gift from you and the male member who you supervised, Constable Pickering, did not receive a Father's Day gift. Constable [T.N.] informed you that your gift was both too extravagant and uncomfortable for her to receive from you as a supervisor. Constable [T.N.] believed that your gift giving was a means to foster more than just a work friendship but instead to help develop a sexual relationship with her.

13. You gave Constable [T.N.] a cooler of cured meats as a Christmas gift. Constable [T.N.] did not purchase anything for you and your gift to her was more extravagant than the gift card(s) you gave to other employees. Your excessive gift caused Constable [T.N.] to feel uncomfortable and singled out as being "special" by you – her supervisor.

14. You and your partner Ms. [K.R.], gave Constable [T.N.] a Starbucks gift card, dresses and chocolates for her birthday. Constable [T.N.] acknowledges that she thanked you for the gifts, however, she was of the opinion that the gifts were "over the top" and that she did not reciprocate - which you agreed. Constable [T.N.] also found it highly unusual that Ms. [K.R.] would want to meet her in-person outside of a group work function and this supports Constable [T.N.]'s belief that you were obsessed with her.

15. Your gift giving went far beyond the norm of a traditional supervisor and subordinate relationship. Your actions caused Constable [T.N.] noticeable discomfort and are demonstrative of a sexually harassing undertone as you sought to win favour with her in your pursuit of an improper sexual relationship with Constable [T.N.].

#6 – Your persistent offering to Constable [T.N.] to sleep at your residence

16. You offered that Constable [T.N.] could stay at your personal residence in Campbell River following her working a scheduled shift in your words "pretty much like every time" she was on secondment and driving home. Your offer included either your daughter's bedroom, your trailer or your

own bedroom. Constable [T.N.] declined your offer each and every time and believed your offer was “inappropriate” as her supervisor, to which you stated that you did not care about the optics or “what people think.” Your refusal to recognize Constable [T.N.]’s opinion demonstrates a clear lack of respect for her.

17. Your statement that you offered sleeping accommodations at your residence to other work mates, Constable Shawn Gau, was not substantiated as accurate.

18. You also offered to Constable [T.N.] that she could sleep over at your residence while on her house hunting trip. Constable [T.N.] again declined and repeated that the optics were terrible. Constable [T.N.] was of the opinion that your offer for her to sleep over was motivated to create a wedge between herself and her spouse as it would make you look like a “hero”.

19. Your offer for Constable [T.N.] to sleep over at your residence went far beyond the norm of a traditional supervisor and subordinate relationship. Your actions caused Constable [T.N.] noticeable discomfort and are demonstrative of a sexually harassing undertone as you sought to win favour with her in your pursuit of an improper sexual relationship with Constable [T.N.].

#7 – You gave Constable [T.N.] multiple affectionate nicknames

20. You gave various nicknames to Constable [T.N.] including Little Bird, LB, Chuck, Ted, Best Friend, BFFFF’s and would refer to her by these nicknames at work, in emails, in text messages and on the phone. Constable [T.N.] neither asked for you to give her nicknames nor informed you that she “liked” any of the nicknames given to her by you. The volume and style of nicknames that you gave Constable [T.N.] is both excessive and unreasonable for an office environment. Your nicknames caused Constable [T.N.] to feel as if she was receiving preferential treatment from you and that you had a “crush” on her.

21. You reference to Constable [T.N.] as your “Best Best Best Friend” is not only inappropriate as a supervisor, but also caused her to fear the negative ramifications at work if she asked you to stop imposing yourself upon her.

22. Your actions exceeded that of a reasonable supervisor and the nicknames were harassing of Constable [T.N.].

#8 – Sexualized comments made by you with respect to Constable [T.N.]

23. You made sexually harassing statements to Constable [T.N.] while on duty, including the following:

- a) On October 24, 2019, while working an IRSU overtime shift together and without any prompting, you stated: “I just think you’re so great... I just think you’re so ggreat, if things were different, I would snatch you

right up.” In Constable [T.N.]’s opinion, this comment clearly demonstrates that you were interested in a romantic relationship with her. Constable [T.N.] further stated that she was fearful of reporting your comment – that caused her to feel sexualized and creeped out - to Inspector Walton because she had previously filed an outstanding grievance against him with respect to a course.

b) Also on October 24, 2019, you and Constable [T.N.] conducted a traffic stop. Constable [T.N.] exited the police vehicle to interact with the driver. Upon returning to the police vehicle you stated to Constable [T.N.]: “I hope this doesn’t make you feel uncomfortable, but I can’t help but um, watch when you’re talking to the driver, you clench your butt cheeks and they go up and down” this was followed by words to the effect of “they’re so tight they could crack a nut.” You further stated that Constable [T.N.]’s butt cheeks were “bouncing up and down” while motioning with your hands. You denied making this statement to Constable [T.N.], however, agree that you did make reference to her flexing her “bum bum” while interacting with the driver.

c) Constable [T.N.] immediately informed you that your comment with respect to her buttocks made her “uncomfortable” and that she was basically in shock and stopped talking to you. In the opinion of Constable [T.N.], your sexualized comment was disgusting and that: “...even if you are looking or you think they’re attractive, in no way would you say that, um, to just somebody, especially a co-worker, especially your subordinate.” Constable [T.N.] further stated: “And uh, I just remember, just feeling so gross um, and like sexualized and just uncomfortable, like I can’t even do my job, um, without like, being treated like that” and “I was appalled by his comments and I felt insecure, preyed upon, disrespected, uncomfortable and objectified.”

#9 – Inappropriate and sexualized videos and photos sent by you to Constable [T.N.]

24. On January 24, 2020, you sent an inappropriate video of a man singing happy birthday in his underwear to Constable [T.N.] that she found “creepy.” You agreed that you sent the video as a joke to Constable [T.N.] and conceded that it contained a “creepy guy.” Constable [T.N.] did not share your sense of blue humour and was made to feel uncomfortable by you given the sexual innuendoes present throughout the video. You further made several requests to meet in-person with Constable [T.N.] on her birthday, which feeling pressured by you, she ultimately agreed to.

25. On March 22, 2020, you sent a picture of an unclothed males legs that appears to expose his erect penis to Constable [T.N.] with the caption: “Ever cut your nails to short.” You followed this sexualized picture with a text message stating “Ohh and salty chips burn.” Constable [T.N.] described

how receiving the photo made her almost “throw up,” “gross,” “sick,” “appalled”, “disgusted” and so upset. Constable [T.N.] ignored your unwanted communications and on March 23, 2020, you sent an overtly affectionate text message in which you requested (in part) “No matter what, please reply to me. I care. Or call me cause I really care!” This text message caused Constable [T.N.] to experience further discomfort and feelings of being pursued romantically by you.

26. When you attempted to contact Constable [T.N.] by phone after sending the sexualized photo, her number rang busy (Constable [T.N.] had blocked your phone number). Undeterred, you called Constable [T.N.] from your office phone at Courtenay RCMP Detachment and when she answered you disguised your voice asking: “Hello, can I speak with [T.N.]” Constable [T.N.] informed you once again that you needed to keep your contact with her strictly to work related items and ended the phone call. Constable [T.N.] states that your unwanted telephone call caused her once again to feel “...uncomfortable and stalked. His behaviour was inappropriate and excessive. Exacerbation of skin dermatitis/hair loss, stress, anxiety, insomnia.”

27. Your sending of sexually suggestive pictures and videos to Constable [T.N.] is not only inappropriate and unprofessional as a non-commissioned officer in the RCMP, but also constitutes sexual harassment.

#10 – Offering Constable [T.N.] that she could sleep while on duty

28. On February 26, 2020, you inappropriately offered that Constable [T.N.] could sleep on duty while you drove her around in the police vehicle. Constable [T.N.] found your offer not only “weird” but believed that if you were truly concerned as a supervisor for her well being and officer safety, then you should have instructed her to take a sick day. Constable [T.N.] was of the opinion that your offer was simply an opportunity for you to coddle her: “...let me put you in my car so that you can sleep right beside me, after you’ve told me you’re lookin’ at my butt....And you would snatch me right up, no thanks.”

29. Your offer to permit an on-duty RCMP member to “sleep” while working is not only unprofessional but is also demonstrative of an inappropriate level of personal affection on your part directed towards Constable [T.N.] – a subordinate.

#11 – Harassing Constable [T.N.] over Constable [S.F.] telephone call with you

30. Constable [T.N.] had inadvertently taken your work issued phone home with her and various arrangements were made for its return. Constable [T.N.] missed an opportunity to return the phone in Nanaimo at your daughter’s hockey game necessitating new arrangements in which you

agreed to obtain your phone at a later date. On March 1, 2020, Constable [T.N.] was travelling to an RCMP sanctioned pipeline course in Victoria and would be away from her spouse and family. You telephoned Constable [T.N.] and posed intimate questions to her including what hotel she was staying at and whether she was going to be good on the course. This conversation was overheard by Constable [S.F.]. At 5:37 pm you sent a text message to the iphone of Constable [T.N.] stating that: "I would like to talk to you tonight." This text message was observed by Constable [S.F.] and she immediately telephoned you concerning your repeated and excessive unwanted communications with Constable [T.N.]. The conversation between you and Constable [S.F.] became very heated and ended with Constable [S.F.] informing you to stop contacting Constable [T.N.] unless it was work related and that there would be overtime charges incurred if you kept contacting her. Constable [S.F.] admitted that she did not speak in a nice tone with you and that she was very mad and upset with your incessant contact with her spouse "...it was a confrontation. It wasn't a professional work call by any means." You also agreed that the conversation was heated, that Constable [S.F.] was noticeably upset and referenced overtime if you persisted in repeatedly contacting her spouse in her off time.

31. Ignoring the specific demand of Constable [S.F.] to leave her family alone, on March 2, 2020, you sent a text message to Constable [T.N.] stating "Hello." On March 3, 2020, you sent Constable [T.N.] a text message stating: "U and I r going to have to talk about [S.F.]'s phone call. When it's appropriate, please call me." When you and Constable [T.N.] later spoke by phone, you threatened that you could give Constable [S.F.] "a code of conduct" for the heated manner in which she spoke to you. Your tone with Constable [T.N.] was both elevated and intimidating. Constable [T.N.] repeated that your actions were uncomfortable, causing her stress in her relationship and that she only wanted "a professional platonic working relationship" with you – her boss. Constable [T.N.] again made it very clear to you that she did not want communication or a friendship outside of work.

32. You informed Constable [T.N.] that you would have to speak to the newly arrived Staff [Sergeant] Quail concerning the telephone call. You were later informed by Staff [Sergeant] Quail that you should "keep work at work" which you agreed.

33. You continued contacting Constable [T.N.] for non-work-related purposes throughout the remainder of the month of March 2020. Your outright refusal to leave Constable [T.N.] and her family alone despite their repeated reasonable requests to cease all unnecessary non-work-related communications constitutes harassment.

#12 – Belittling IRSU co-worker Constable Pickering

34. You sent an unprofessional text message to Constable [T.N.] on March 22, 2020, in which you asked her to return to work and “beat [Constable Pickering] up for me...” and/or teach him file work. Constable [T.N.] described how she had been ignoring your telephone calls and text messages when she received this text message regarding Constable Pickering. Constable [T.N.] believes that your message was simply a ruse to try and re-engage in conversation with her.

35. Your outright refusal to leave Constable [T.N.] and her family alone despite their repeated reasonable requests to cease all unnecessary non-work-related communications constitutes harassment.

Allegation 2 On or between March 1, 2020, and March 5, 2020, at or near Courtenay, Campbell River and Nanaimo, in the Province of British Columbia, Corporal Bartholomew Doerr failed to act with integrity, fairness and impartiality, and did compromise or abuse his authority, power or position, contrary to section 3.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. On March 1, 2020, at 5:37 pm you sent a text message to the personal phone of Constable [T.N.] stating that: “I would like to talk to you tonight.” This text message was observed by Constable [S.F.] and she immediately telephoned you concerning your repeated and excessive unwanted communications with Constable [T.N.]. The conversation between you and Constable [S.F.] became very heated and ended with Constable [S.F.] clearly informing you to stop contacting Constable [T.N.] unless it was work related and that there would be overtime charges incurred if you kept contacting her. Constable [S.F.] admitted that she did not speak in a nice tone with you and that she was very mad and upset with your incessant contact with her spouse “...it was a confrontation. It wasn’t a professional work call by any means.” You also agreed that the conversation was heated, that Constable [S.F.] was noticeably upset and referenced overtime if you persisted in repeatedly contacting her spouse in her off time.

2. On March 3, 2020, you sent Constable [T.N.] a text message stating: “U and I r going to have to talk about [S.F.]’s phone call. When it’s appropriate, please call me.” When you and Constable [T.N.] later spoke by phone, you threatened that you could give Constable [S.F.] “a code of conduct” for the heated manner in which she spoke to you. After Constable [T.N.] repeated that your non-work-related communications were unwanted, you became in her words “elevated in the conversation.” Constable [T.N.] became concerned that she too was now in trouble and caught in the “middle” between you and Constable [S.F.]. You informed Constable [T.N.] that you would be speaking to Staff Sergeant Quail about the conversation.

Constable [S.F.] confirmed that you caused her spouse to become upset over the threatened code of conduct.

3. You attempted to justify your threat of a code of conduct because Constable [S.F.] was in your words “dragging work into it” or “bringing work into it.” Your position completely ignores the fact that you had been repeatedly informed by Constable [T.N.] that your non-work-related communications with her were excessive and unwanted.

4. You compromised your fairness and impartiality by threatening Constable [S.F.] with a code of conduct as a consequence of her expressing legitimate concerns to you regarding your unwanted interactions with her spouse. Your threat of a code of conduct was an abuse of your position, power and authority over Constable [T.N.].

[Sic throughout; footnotes removed]

Decision on Allegation 1

[4] Section 2.1 of the RCMP Code of Conduct states:

Members treat every person with respect and courtesy and do not engage in discrimination or harassment.

[5] The parties agree that in order to establish a contravention under section 2.1 of the Code of Conduct, the Conduct Authority must prove three elements on a balance of probabilities. The first is the identity of the member involved. That is not in dispute. The second is that the acts occurred as alleged. The third is to prove that the acts are indicative of a lack of respect and courtesy, amounting to harassment, sexual or otherwise. The test in this regard is: Would a reasonable person, with knowledge of all of the facts of the case, and knowledge of not only policing in general, but policing in the RCMP in particular, have known or ought to have known that their words or acts were belittling, degrading or humiliating, or would give offence or cause harm?¹

[6] The Conduct Authority took a two-pronged approach to establish Allegation 1. First, he argues that, in general, Corporal Doerr’s text and telephone communications with Constable T.N. were continuous, excessive and unwelcome, and, as such, they constitute harassment. Second, he

¹ 2018 RCAD 10

argues that there were several specific communications that were overtly sexual and inappropriate enough that, on their own and in combination with each other, amount to sexual harassment. For the purposes of my decision, I will deal with each of those categories of communications separately.

Continuous, excessive and unwelcome communications

[7] There is no dispute that the communications between Corporal Doerr and Constable T.N. occurred. What is in dispute is the nature and context of those communications. From the outset, the determination to be made then is whether those communications were in fact excessive and unwelcome and whether Corporal Doerr knew or ought to have known that they were unwelcome.

[8] Let's begin with some facts in relation to the communications, none of which are in dispute. Corporal Doerr was the team leader in charge of the North Island IRSU. Constable T.N. was a member at the time with approximately 11 years of service and an interest in becoming a Traffic Collision Analyst. In order to work towards that goal, she sought a transfer into a traffic unit. Such a transfer would allow her to gain necessary experience and be eligible for related courses. She was granted a three-month secondment to the North Island IRSU from March 19, 2019, through June 2019, where she worked under Corporal Doerr as the only other member of IRSU at that time. She only worked a few blocks with Corporal Doerr in March and April 2019 before he went off-duty sick and she then worked on her own. At the conclusion of that secondment, she returned to her home unit in Sidney. She then transferred into a full-time position in the North Island IRSU, beginning on February 26, 2020.

[9] There is no documentary evidence available of the communications between the two of them until December 21, 2019. That is due to the fact that Constable T.N. obtained a new cell phone in early January 2020, while Corporal Doerr did so in December 2019. The investigators were able to obtain the text messages obtained on Constable T.N.'s new phone beginning on January 10, 2020, but Corporal Doerr provided additional text messages dating back to December 21, 2019. Either way, what the evidence shows is a substantial number of text

messages and telephone calls between the two of them over that period of time. It also shows that the number of text messages and telephone calls initiated by each of them are almost exactly equal.

[10] As previously indicated, this prong of the Conduct Authority's case alleges that Corporal Doerr's communications with Constable T.N. were excessive and unwelcome. Corporal Doerr's defence to Allegation 1 relies on context. His position is that they were friends as well as supervisor/subordinate and that his communications to her were appropriate in the context of that friendship and that he could not have known of their being unwelcome. As evidence of that friendship, he points to the balance in the communications and the nature of the messaging, which in addition to everyday work messages, involve expressions of humour, support, empathy, concern, friendship, and fondness on both their parts.

[11] The main issue in dispute is whether Constable T.N., as alleged by the Conduct Authority, advised Corporal Doerr that she was only interested in a friendly working relationship and requested that he not contact her when she was off-duty unless it had to do with work. That would, of course, remove any suggestion that those communications were welcomed by her as a friend. However, no such request by Constable T.N. appears in the text messages. The Conduct Authority alleges that she did so numerous times in telephone conversations and in person. Corporal Doerr's position is that she only did so on March 24, 2020, a request he honoured and after which he did not contact her again.

[12] There is a substantial amount of evidence relevant to this issue. The first instance in my view is what occurred on or around October 27, 2019, when Constable T.N. was in Victoria, shopping with a friend, but she was not feeling well. As a result of her expressing to him that she was not feeling well, Corporal Doerr offered her in a text some of his homemade tea and further offered to drive it to her in Victoria, a six-hour round-trip drive from his home. Both Constable T.N. and Corporal Doerr agree that Constable T.N. called Corporal Doerr after he made this offer and she told him that "this was too much". They also agree that she was upset when they spoke. However, Corporal Doerr did not understand there to be any statement by her that such

offers by him were unwelcome in general or that he should stop his communications with her when she was off-duty. Nor did she go so far as to say that in her testimony.

[13] The Conduct Authority also alleges that there were numerous texts from Corporal Doerr to Constable T.N. on October 31, 2019. Constable T.N. testified that while she, her spouse, Constable S.F., and a friend were out trick-or-treating with their children, she was showing them Corporal Doerr's messages as she received them. She indicated that she then called Corporal Doerr and told him again that his communications were too much and needed to stop. Corporal Doerr's evidence was that he worked an afternoon/evening shift that day, that he was busy for the duration of his shift, including dealing with an impaired driver, and that he did not get home until well after midnight. He indicates that he did not communicate with Constable T.N. at all on that day.

[14] Corporal Doerr's evidence is supported in part by Constable S.F. who testified quite clearly that although her spouse, Constable T.N., told her that she had told Corporal Doerr on several occasions that his communications were too much, Constable S.F. had never been witness to such a statement by her to him, either over the telephone or in person. Given that the two of them were out together on Halloween evening with their children, it would be difficult for such a conversation to take place without her being aware of it.

[15] As part of this prong of the Conduct Authority's case, he also alleges that those excessive communications included such things as giving her gifts. It is undisputed that Corporal Doerr gave Constable T.N. gifts on special occasions. The first instance was a Mother's day gift in 2019 during her initial secondment in IRSU, which consisted of a small box of chocolates, a card and a decorated pen made by his daughter. The second instance was a gift of cured meats at Christmas time in 2019. The third instance was a Starbucks gift card from Corporal Doerr on her birthday, while Corporal Doerr's girlfriend also gave her some dresses she had brought from Thailand and a box of chocolates. The Conduct Authority argues that the gifts went far beyond the norm of a traditional supervisor and subordinate relationship and were an attempt "to win favor with her in his pursuit of an improper sexual relationship with Constable T.N."

[16] That Corporal Doerr was attempting to pursue an improper sexual relationship with Constable T.N. was an underlying theme in this proceeding. As I will discuss further, it does not hold up to scrutiny when the evidence is considered as a whole. However, in relation to the gifts themselves, there is nothing in the evidence to support that theory. There is also no evidence that Corporal Doerr knew or ought to have known that they were unwelcome. The clear objective evidence is to the contrary. While the gift giving seems to have been primarily one-directional, Constable T.N. did give Corporal Doerr some venison or elk sausage at Christmas time. She also acknowledged that she thanked him each time he gave her a gift. On her birthday on January 24, 2020, the one gift-giving occasion for which we have documentary evidence, she texted him to say:

It was so nice to meet [K.R.] [Corporal Doerr's girlfriend]!! She is wonderful. I'm happy that got to happen. And thank you both for spoiling me, wow! You guys so did not have to do anything like that, I was just happy to get together.

[17] To an objective outside observer, the message seems to be a thank you for a gift and happiness that they were able to get together.

[18] Constable T.N.'s responses to other communications from Corporal Doerr were similar in nature and there is little support in the evidence for the Conduct Authority's theory that his communications were in pursuit of an "improper sexual relationship" with Constable T.N. There are numerous examples within the text messages to illustrate this. Indeed, the Conduct Authority indicates that Corporal Doerr frequently and inappropriately requested to meet with Constable T.N. both on- and off-duty. Corporal Doerr acknowledges that the two of them occasionally did meet for coffee, lunch and special occasions, something that is normal for work colleagues and friends. In addition to Constable T.N.'s birthday already mentioned, they met for coffee or lunch on several occasions. One such occasion was February 26, 2020, for Constable T.N.'s first day of work after her permanent transfer to IRSU. At the end of her shift, they exchanged the following text messages:

Corporal Doerr: "U travel safely. Let me know when u arrive home and call me if ur bored".

Constable T.N.: “Ok I will. Thank you again for everything”

Corporal Doerr: “U r welcome but I did nothing. I instead should thank u for lunch. It was sooo good!”

Constable T.N.: “It was delicious! I’m thankful you joined me! The company was better than the food”

[19] Again, despite the message Constable T.N. may have thought she was providing to Corporal Doerr, he took it at face value and thought she was expressing gratitude for his company. Given the absence of any other objective explanation to the contrary, his interpretation seems reasonable.

[20] This exchange of text messages is also a good objective example of what was expressed to Corporal Doerr in response to his request to let him know when she got home safely, because of her long commute after work and his concern for her safety. In no way does Constable T.N. express to him that she is uncomfortable with his expression of concern, which the Conduct Authority indicates was another way in which he was seeking an inappropriate sexual relationship with her.

[21] I’m not going to go into each and every example provided by the Conduct Authority in the particulars of Allegation 1 to support his position that Corporal Doerr’s communications in general to Constable T.N. were excessive and unwelcome. Suffice it to say that my finding in relation to those other examples is the same and for identical reasons. Corporal Doerr’s communications with her were substantial, but when looked at in context and when Constable T.N.’s communications with him in response are taken into account, it appears to me that these were the communications of someone he saw as a friend, in addition to a colleague and subordinate. Not everyone speaks the same way and not everyone is comfortable expressing their feelings to the extent that Corporal Doerr does. However, that communication style in and of itself is not inappropriate or excessive.

[22] I base my finding in that regard not only on the examples noted above. I also rely on the evidence of Constable T.N. herself. She testified in cross-examination that her communication style in person and over the telephone was the same as it was in text messaging. It is common ground that nowhere in her text messages does she advise Corporal Doerr that his

communications are excessive or unwelcome. How then can I have any confidence that she made any such statements to him in person or over the telephone. Constable S.F. testified that she was not witness to any. And the evidence shows that when Constable T.N. did tell him on October 27, 2019, for example that he should not drive down to Victoria to bring her tea, he respected her wishes and that was the end of it. The evidence is also that when she did so on March 24, 2020, that he ceased any and all communication with her.

[23] I will pause here to comment on the case of *Ms. K. v Deep Creek Store*.² The Conduct Authority refers to this case and argues that it was decided as a result of the human rights discrimination cases leading up to and following the Supreme Court of Canada decision in *R. v Barton*, 2019 SCC 33 (CanLii). *Barton* deals with the defence of honest but mistaken belief in communicated consent in criminal sexual assault cases. The Conduct Authority relies on *Ms. K. v Deep Creek Store* for the proposition that there is no longer a requirement for an adjudicator to find the conduct in question was unwelcome in sexual harassment cases. He argues that if the conduct in question impacts the complainant in a negative matter, then that meets the ought-to-have-known-knowledge requirement.

[24] However, that interpretation does not hold up to scrutiny upon a careful reading of the case. Rather, what the British Columbia Human Rights Tribunal says is that, in the context of human rights harassment cases, the “unwelcome criterion” is better addressed as part of a respondent’s defence or justification for their conduct, after a complainant has met their case to establish discrimination. This allows a respondent to raise a justification for their conduct where they had a reasonable basis to believe their conduct was welcomed. That can be found starting at paragraph 87 of *Ms. K. v Deep Creek Store*.

[25] In the context of this case, Corporal Doerr clearly raises that justification in his subsection 15(3) response and throughout the conduct hearing. Therefore, determining that Corporal Doerr’s comments were unwelcome is still a conclusion that I must reach in order to find that his general communications constituted harassment as alleged, because his position is

² *Ms. K. v Deep Creek Store*, 2021 BCHRT 158 [*Ms. K. v Deep Creek Store*].

that he had a reasonable basis to believe that his conduct was welcomed by Constable T.N. In relation to the vast majority of his general communications to Constable T.N., I cannot conclude that he ought to have known that his communications were unwelcome.

[26] Having said all that, the situation changed on March 1, 2020, and my findings are different in terms of what occurred after that date. On March 1, 2020, Corporal Doerr and Constable T.N. were texting, attempting to make arrangements for Constable T.N. to return Corporal Doerr's work cell phone, which she had accidentally taken with her when she left the office in a hurry two days earlier on February 28, 2020.

[27] A meeting was agreed to on March 1, 2020, but Constable T.N. missed it and the phone was not returned to Corporal Doerr that day. That resulted in further texts and a telephone conversation between the two of them, a conversation that was overheard by Constable S.F., who was then under the impression that arrangements were in place to return the phone, even though final plans were not actually yet in place. Therefore, when Corporal Doerr later texted Constable T.N. to say he would like to speak to her again that night, Constable S.F. became upset.

[28] Constable S.F. immediately called Corporal Doerr and expressed her unhappiness with him contacting her spouse when she was off-duty and arrangements had already been made to return the telephone. Constable S.F. told him in no uncertain terms that he was not to contact her outside of work unless it was work related, and if it was work related, then he should be prepared to pay her overtime. Both parties to the conversation acknowledge that it was heated and that it ended with Corporal Doerr indicating that he was not continuing that conversation with her. He was out with his daughters for dinner at the time.

[29] Within a day or two of March 1, 2020, Corporal Doerr reported this conversation to his supervisor, Staff Sergeant Quail. He indicated that Staff Sergeant Quail advised him to "keep work to work" and that he interpreted this as meaning that he should keep his communications with Constable T.N. to work-related matters only. Corporal Doerr also indicated that he spoke with Constable T.N. on March 3, 2020, and in that telephone conversation, Constable T.N. made that same request. As a result, he received the same message from three different people within

three days. He complied with their direction/advice/request for a number of days, limiting his communication to work-related issues. However, after Constable T.N. invited him to attend a real estate open house with her on March 14, 2020, those non-work-related communications began again in earnest.

[30] Constable T.N. went on medical leave on March 15, 2020, and travelled back to Oliver, British Columbia, in order to deal with some personal and family health issues. Constable T.N. shared that information with Corporal Doerr and he began sending numerous lengthy texts in an attempt to lift her spirits. Constable T.N.'s responses to those messages indicate that she initially welcomed his efforts; however, it is clearly evident that this changed when he sent her an image via text of someone's thumb over top of their naked legs, an image which appears at first glance to be an erect penis, along with the caption "Ever cut your nails too short?" Constable T.N. was offended by this image and, as a result, she blocked his number. Corporal Doerr was unaware she took that action and over the next two days he sent her several lengthy texts, which were intended to be funny in order to lift her spirits. He then attempted to call her twice on his personal cell phone, but because he had been blocked, the calls did not go through. Undeterred, he attempted to call her again from his office desk phone. When Constable T.N. answered he asked for T.N. in a disguised voice and when she identified herself as T.N., he went back to his normal voice and identified himself.

[31] Corporal Doerr denies that he disguised his voice or that he called from a different phone number in order to get through to Constable T.N. However, I find that this occurred as indicated by Constable T.N. for a number of reasons. I prefer the evidence of Constable T.N. on this issue to that of Corporal Doerr. Corporal Doerr acknowledges that he attempted to call Constable T.N. from his usual cell phone at least a few times and that she failed to answer. He also acknowledges that he then called from a different number, that being his office phone, and that she answered that call. Finally, he acknowledges that, when she did answer, he asked for Constable T.N., which is unusual behaviour given the amount of contact they had and their familiarity with each other's voices. The reasonable inference that arises is that he did so initially in a voice that she would not recognize in order to ensure that she took his call. For him to claim

that he did all of this not knowing that she didn't want contact from him is in my view unbelievable.

[32] Constable T.N. was upset at his extraordinary efforts to contact her. When she realized it was Corporal Doerr on the phone, she told him clearly and plainly that he had sent her some inappropriate messages and that he was not to contact her again unless it was work related. Corporal Doerr realized at this point in time that she was upset and he did not attempt to contact her again. That was the last time they spoke. Within a week's time, Constable T.N. met with Staff Sergeant Quail to discuss her concerns and subsequently filed a harassment complaint against Corporal Doerr.

[33] Having found that Corporal Doerr's communications to Constable T.N. after March 1, 2020, were excessive and unwelcome as alleged, the final determination to be made is whether this amounts to harassment. As indicated above, the test in this regard is: Would a reasonable person, with knowledge of all of the facts of the case, and knowledge of not only policing in general, but policing in the RCMP in particular, have known or ought to have known that their words or acts were belittling, degrading or humiliating, or would give offence or cause harm?

[34] There can be little doubt, and Corporal Doerr acknowledges as much in his closing arguments, that the thumb/penis image he sent via text to Constable T.N. caused her offence and amounts to sexual harassment. This is consistent with the Supreme Court of Canada's definition:³

[...] Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as **unwelcome conduct of a sexual nature that detrimentally affects the work environment** or leads to adverse job-related consequences for the victims of the harassment. [...] [Emphasis added]

[35] In my view, his continuous messaging to her starting again on March 15, 2020, subsequent to being advised or directed otherwise by Constable T.N., Constable T.N.'s spouse and his own supervisor also amounts to harassment. Corporal Doerr cannot rely on any defence

³ *Janzen v Platy Enterprises Ltd.*, [1989] 1 SCR 1252.

of lack of awareness that his personal communications with her subsequent to those warnings were unwelcome. I reject his claim that Constable T.N. informed him in a telephone conversation on March 4, 2020, that she wished to resume communicating with him on a personal level. The overwhelming circumstantial evidence to the contrary makes that unlikely.

Individual incidents of harassment

[36] The evidence reveals other individual incidents that stand out as different than the general communications. They are different in that there is an overly sexual or affectionate undertone to them that has no place in an RCMP supervisor/subordinate work relationship, regardless of friendship. The first incident relates to comments made by Corporal Doerr after he and Constable T.N. conducted a traffic stop on October 24, 2019. I will preface this traffic stop with a conversation that the two of them had in their police vehicle earlier that day in which it is common ground that Corporal Doerr told her something to the effect of “you’re great and if things were different, I would snatch you right up”. There is no dispute that this statement was made, what led up to Corporal Doerr making that statement is contested. Corporal Doerr indicates that Constable T.N. had just talked to him about difficulties she was having in her relationship with her spouse and children and he made the comment in order to lift her spirits. Constable T.N. did not recall any such conversation taking place that day. However, it is immaterial because the only relevance of this preceding comment is how it affected Constable T.N.’s interpretation of what followed.

[37] Sometime later that shift, Constable T.N. pulled over a vehicle for a traffic stop and then dealt with the driver while Corporal Doerr remained sitting in the passenger seat of the police vehicle. Once Constable T.N. was finished dealing with the driver and returned to the police vehicle, Corporal Doerr made a comment that made her uncomfortable. Constable T.N.’s evidence is that Corporal Doerr told her “I hope this doesn’t make you feel uncomfortable, but I couldn’t help but watch your butt while you were talking to the driver, your butt cheeks were bouncing up and down”. He added something to the effect of “they were so tight, they could crack a nut”.

[38] Corporal Doerr agrees that he made a comment in relation to her buttocks, but he explains that he did so because he was concerned that something was wrong in the traffic stop. He says that it appeared to him that Constable T.N. was readying a kung fu stance during her interaction with the driver. He told Constable T.N. that he saw her back pocket flap move in his peripheral vision which drew his attention to her flexing her “bum bum” and asked if everything was okay. She replied that everything was fine and he responded by apologizing for talking about her “bum bum”. He explains that he used the term “bum bum” because it’s one he uses with his daughters.

[39] I expect the truth is somewhere in between the two versions of the events; however, I have less confidence in Corporal Doerr’s version. Had he actually thought there was a confrontation about to take place or an officer safety issue as he termed it, I doubt he, as an experienced junior Non-Commissioned Officer, would have continued to sit in the car and watch as the interaction unfolded instead of exiting the vehicle to assist Constable T.N. His remaining in the vehicle and waiting to comment on it when she returned to the police car defies reason and common sense.

[40] The second incident relates to a “happy birthday video” he sent to Constable T.N. on her birthday on January 24, 2020. The parties agree that the video involves a “nerdy” and “creepy” man dressed primarily in shorts or swim trunks singing happy birthday in various skits, including in the shower, laying on the couch with his legs wide open, coming out of a swimming pool, telling the viewer “God, you’re sexy”, sticking out his tongue while singing, and imitating Marilyn Monroe in her rendition of “Happy Birthday, Mr. President”. While Corporal Doerr indicates that he sent the video to Constable T.N. because he thought she would find it funny, he denies that it contained sexually suggestive content. Constable T.N. testifies that she did not find it funny and was made uncomfortable by the sexual innuendos present throughout the video. I find that the video did indeed contain a sexual theme and was clearly inappropriate for a supervisor in the RCMP to send to his subordinate, regardless of whether a friendship existed or not. This is but one example of a situation where sending such material to another is done at your own risk, because if the recipient finds the material offensive, the friendship is immaterial.

Corporal Doerr should have known that from the abundance of training he acknowledges that he received on harassment in the workplace.

[41] The third incident took place on February 26, 2020, which was Constable T.N.'s first shift with IRSU after her transfer into a permanent position. She and her spouse were again experiencing some difficulties in their relationship and, as a result, she had not gotten much sleep the night before. Constable T.N. arrived for her shift and expressed to Corporal Doerr that she was tired, but that she was going to go to work. It is common ground that Corporal Doerr then made the offer for Constable T.N. to ride with him that shift so she could sleep while he drove. Constable T.N. thought his offer was weird, inappropriate and unprofessional and that he was using the opportunity to coddle her. Corporal Doerr's position is that he made the offer simply because he was concerned about her safety and there was no other ulterior motive.

[42] The offer to have another member of the RCMP, in full uniform and in a marked police car, sleep in the passenger seat while they drive around conducting traffic stops is highly unprofessional and is acknowledged as such by Corporal Doerr in his statement to the harassment investigators. Had he been truly concerned about Constable T.N.'s safety in her state of exhaustion, then he should have sent her home to sleep. In addition to being unprofessional, I find this was an overt attempt by Corporal Doerr to demonstrate an inappropriate level of personal affection for Constable T.N., his subordinate, in her words, to coddle her. She testifies that she found it weird and uncomfortable and, in the circumstances, that is understandable.

[43] Were these incidents indicative of a lack of respect and courtesy, amounting to harassment, sexual or otherwise? I believe that a reasonable person in the position of Corporal Doerr, with knowledge of all of the facts of the case, and knowledge of not only policing in general, but policing in the RCMP in particular, ought to have known that their words or acts were belittling, degrading or humiliating, or would give offence or cause harm.⁴ I believe each of these acts individually and in combination amount to harassment on the part of Corporal Doerr towards his subordinate, Constable T.N.

⁴ 2018 RCAD 10

[44] The Conduct Authority need not prove each and every particular contained in an allegation, only enough that a finding of a contravention of section 2.1 can be established. Given my finding in relation to these individual incidents and to the communications in general after March 1, 2020, I find that Corporal Doerr failed to treat Constable T.N. with respect and courtesy and did engage in harassment as alleged. Therefore, I find Allegation 1 to be established.

Decision on Allegation 2

[45] Section 3.2 of the RCMP Code of Conduct states:

Members act with integrity, fairness and impartiality, and do not compromise or abuse their authority, power or position.

[46] The Conduct Authority is alleging that Corporal Doerr abused his authority as Constable T.N.'s supervisor by threatening a Code of Conduct investigation against her spouse, Constable S.F. It is alleged that he did this because, on March 1, 2020, Constable S.F. called him on the telephone and confronted him about his continuous text messages and calls to Constable T.N. During this call, she told him that his communications were inappropriate and had to stop unless they were work related and that he paid Constable T.N. overtime for her time spent talking to him. Two days after that call, it is alleged that he spoke with Constable T.N. and threatened a Code of Conduct investigation against Constable S.F. for the heated manner in which she spoke to him.

[47] There are four particulars involved in Allegation 2, some of which are repetitive. Corporal Doerr's position is that Constable S.F. "had no professional, personal, or legal authority to tell [him] to stop contacting Constable T.N. and [that he] had no obligation to comply". I accept his denial that Constable T.N. had prior to this incident advised him of her not wanting him to contact her for non-work-related reasons. However, he also denies that he threatened a Code of Conduct against Constable S.F.

[48] In assessing this allegation, the overall context is important. Corporal Doerr was well aware that Constable S.F. was not appreciative of his communications with her spouse,

Constable T.N., regardless of whether Constable T.N. welcomed them or not. He testified that Constable T.N. had explained to him before that Constable S.F. was jealous of their friendship. He had also advised Constable T.N. on her birthday when he met Constable S.F. for the first time, of his perception that she hated him. In addition, he was aware that Constable T.N. did not want to speak with him when Constable S.F. was present. Given all of that, while the call from Constable S.F. to him on March 1, 2020, may have been unexpected, the message she delivered should not have come as a surprise. In essence, he was told that he was to stop contacting her spouse in her off-duty hours unless it was work related, and if it was, then that he should be prepared to pay her overtime. This was an emotionally charged conversation and Constable S.F. acknowledges that she became heated and raised her voice. However, she did not swear at him or threaten him or do anything else inappropriate.

[49] Corporal Doerr's justification for raising the potential for a Code of Conduct investigation with Constable T.N. and the reason he raised the conversation with Staff Sergeant Quail was because Constable S.F. "brought work into it". In other words, he didn't like the idea of being restricted to work-related communications with Constable T.N. However, Staff Sergeant Quail's advice or direction to him was exactly that "leave work to work", which he acknowledges that he interpreted as meaning he was only to contact Constable T.N. for work-related purposes. Nor did Staff Sergeant Quail share his view that Constable S.F.'s behaviour amounted to any sort of a Code of Conduct contravention. Neither he nor Corporal Doerr felt it necessary to pass along the information on Constable S.F.'s call to him to his supervisor, as would need to be done in order to initiate a Code of Conduct investigation against her.

[50] What then was the purpose of Corporal Doerr's statement to Constable T.N. on March 3, 2020? In my view, it was his striking back against Constable T.N. for what Constable S.F. said to him. It does amount to a threat under the circumstances and I consider it to be an inappropriate reprisal on his part. That amounts to abuse of authority as alleged and I find Allegation 2 to be established.

[51] Having found the allegations to be established, pursuant to subsection 45(4) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, I would normally be compelled to impose

conduct measures. However, prior to the conduct hearing being reconvened to enter into the conduct measures phase, Corporal Doerr submitted a Form 1733, thus tendering his voluntary resignation from the Force. When that resignation was accepted by his Commanding Officer, I lost jurisdiction to impose conduct measures.

DECISION

[52] The allegations against Corporal Doerr are established. However, I am unable to impose conduct measures due to a lack of jurisdiction resulting from Corporal Doerr's voluntary resignation prior to the conduct measures phase of the conduct hearing.

[53] 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 Corporal Doerr, as set out in section 45.11 of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

Gerald Annetts

May 4, 2022

Edmonton, Alberta

Conduct Board