

**Publication ban:** Any information that could identify Ms. B. in the present decision may not be published, broadcast or transmitted in any way.



**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, "H" Division**

(Conduct Authority)

and

**Corporal Gregory Deagle**

Regimental Number 51083

(Subject Member)

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**Conduct Board Decision**

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**Louise Morel**

**March 21, 2023**

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Staff Sergeant Jonathan Hart, Conduct Authority Representative

Mr. Gordon Campbell, Subject Member Representative

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## SUMMARY

The *Notice of Conduct Hearing* contains one allegation under section 7.1 of the RCMP Code of Conduct, detailing sexual misconduct. The incident is alleged to have taken place off-duty, on the

night of December 25, 2019, and involves Corporal Deagle pulling his 16-year-old step- daughter onto a couch next to him and inappropriately touching her for a sexual purpose.

Following a contested hearing, the Conduct Board found the allegation to be established and directed Corporal Deagle to resign within 14 days, failing which he will be dismissed.

## **INTRODUCTION**

[1] The *Notice of Conduct Hearing* contains one allegation of discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct. It was signed by the Conduct Authority on June 23, 2020, and served on Corporal Gregory Deagle on July 20, 2020, along with the investigation package.

[2] The allegation arose out of Corporal Deagle's interaction with Ms. B. on December 25, 2019, while she was staying at his residence in Truro, Nova Scotia, for the holidays. At approximately 10:30 p.m., Ms. B. was preparing to go to bed after watching a television show. Corporal Deagle had fallen asleep on the couch and Ms. B. attempted to wake him up by grabbing his hand. It is alleged that Corporal Deagle proceeded to pull Ms. B. in close proximity to him on the living room couch and engaged her in non-consensual sexual touching.

[3] On May 29, 2020, Mr. Gerry Annetts 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*].

[4] On May 7, 2021, Corporal Deagle provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He denied the allegation.

[5] On June 6, 2022, I was appointed as the new Conduct Board in this matter. In accordance with section 45 of the *RCMP Act*, I must decide whether the allegation is established on a balance of probabilities. In other words, I must determine whether it is more likely than not that Corporal Deagle has contravened the RCMP Code of Conduct. If I find the allegation to be established, then I must impose conduct measures.

[6] As is required in this process, I reviewed a copy of the *Notice of Conduct Hearing*, the investigation package, Corporal Deagle's response pursuant to the allegation, as well as additional documentation admitted over the course of pre-hearing conferences in this matter. These materials shall be referred to collectively as the Record.

[7] The conduct hearing for this matter was held in Halifax, Nova Scotia, from November 2 to 5, 2022. Oral evidence was received from three witnesses, including Corporal Deagle. The oral decision in which I found the sole allegation to be established was delivered November 4, 2022. Having found the allegation established, I heard submissions from the parties on conduct measures on November 5, 2022, and I delivered my oral decision on conduct measures, virtually, on November 9, 2022, directing Corporal Deagle to resign within 14 days or be dismissed. This written decision incorporates and expands upon those oral decisions.

### **Publication ban**

[8] On November 2, 2022, on my own initiative, I ordered that any information that could identify Ms. B., a person under the age of 18 at the time of the alleged incident, could not be published, broadcast or transmitted in any way pursuant to subsection 45.1(7) of the *RCMP Act*.

[9] As a result, the allegation has been amended in this decision to reflect this publication ban.

### **ALLEGATION**

[10] The sole allegation before the Conduct Board reads as follows:

#### **Allegation 1**

On or about December 25, 2019, at or near Truro, in the Province of Nova Scotia, while off duty, Corporal Gregory Deagle behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

#### **Particulars**

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") "H" Division Picto County District, Nova Scotia.
2. You were in a common-law relationship with RCMP Constable [W.] and resided together with her in the town of Truro. Constable [W.] has a sixteen

year old daughter, [Ms. B.] from a previous marriage. Ms. [B.] did not primarily reside with you and Constable [W.], however, did on occasion stay over.

3. On December 25, 2019, Ms. [B.] was staying at your residence for Christmas celebrations. During the evening, you were planning to watch a movie with Ms. [B.] and Constable [W.], however, you fell asleep on the couch and Constable [W.] went to bed. At approximately 10:30 p.m., Ms. [B.] was preparing to go to bed herself and attempted to wake you by grabbing onto your hand to rouse you from sleep. You proceeded to pull Ms. [B.] in close proximity to yourself onto the living room couch and committed a sexual assault upon her.

4. On December 30, 2019, Ms. [B.] provided a statement to Staff Sergeant Ron Legere of the Serious Incident Response Team. In her statement, Ms. [B.] described your non-consensual sexual contact with her in the following manner:

“[...] And then he’s like rubbing my back which is fine because like my dad does it sometimes and it’s fine that’s like, and, it’s just like going on for like 30 minutes but like when he was rubbing my back, like sometimes he’s like rubbing my lower back then I felt like he got too low like I could literally feel like his hands on like my pants but like not like he was like totally grabbing like my whole butt or anything but like I just felt like his fingers like feeling like you know like your like uhm like my butt crack, and then he’d like take them off and stuff and that must’ve like 30 minutes, and then I said cause like I’m sweating I’m really hot my leg is completely numb, like I can’t feel it so I sit up and I was like ok I can like probably leave now like I’m really hot and so I tell him like all of my legs numb, he’s like you can put it back onto the couch so he wanted me to stay longer so I’m trying to like lift my leg on the cause I felt bad for leaving I dunno, so I didn’t and I stayed, and so now I’m like laying completely on the couch, but like my legs are up and fu-stuff it’s fine, and then he’s like on his side and I’m like on my stomach and then he puts his leg over me so we-re kinda like spooning or something, and it was just weird. And then he started rubbing my back again and like once again he’s like going too low and in my head I’m like this is too low, like too low too low, and I didn’t say anything but like in my head I knew that that was too low. And then this time when he was rubbing my back he was like going up my shirt, and like doing like my shoulders and stuff, and like when he got like to my midback I was scared he was gonna undo my bra strap and then he was like um, like also rubbing my side and stuff, but it was like just too touchy after everything just happened, and then uh, he sits up, and he says he has to use the bathroom, and he looks at his phone and says oh my goodness it’s already 11:30. So he gets up and then I maybe get up too, I’m like oh this is like my time I can leave now and he says no no no you stay like maybe we can put a movie on or something, and so he goes to the bathroom but I’m like I am not staying for this any longer [...]”

“Yeah like, my pants they were already like low waisted so they like just go here. [...] And then, but I could feel his hands go in them, so I felt like he was touching my butt, and then like, his hand like started to go like down my butcrack like that’s how low it was.”

“And the he was going like different side to side and all this stuff, but he never like slipped his whole hand in there. [...] It was just his fingers. [...] Like probably his knuckles. [...] So uncomfortable, I was like, like he was I remember he asked me a question and I I really couldn’t answer I just froze I was like, like I was in my head I was like this is too low this is too low. I was, I was so uncomfortable.”

5. Ms. [B.] further stated that you placed your hand underneath both her pants and her underwear and that it happened: “Feel like, five times it had happened more than five.”

6. Ms. [B.] described that she felt trapped by you on the couch, as you wrapped your arm and leg around her and held onto her:

“I’m not in a comfortable position, and then he starts like rubbing my back he’s like hugging me and we’re talking and then he starts to rub my back like my lower back, and then starts like slipping his hands down my pants a little bit, and I’m thinking too low too low, this is too low, and then he’ll come back up and then he’ll go back down, and then that happened for like 30 minutes and I sat up and I was like I cannot feel my leg and we’re kind of laughing about it but I think it’s really heavy, and all this stuff, and so he just tells me to rearrange my body so I’m in a more comfortable position, so I’m like ok I go put my leg up, and he’s like holding me and then he puts his like leg around me so one arm is like under the other one is kind of over top when he’s not rubbing my back or he will be rubbing my back and then his leg is on me, on my legs, and I kinda felt trapped I guess cause I was squished.”

“[...] I tried to stand up so I could leave, and he’s like just like put your leg up like that so that I’m completely laying on the couch beside him, but I still try to leave again, and he’s like just put your leg up so you’re more comfortable, so it was like hard to do cause my leg was really heavy, and like I got it up and I feel like he was like holding my waist. [...] To help keep me on the couch, but [...] Yeah”

“Um, it just made me feel even more uncomfortable so I kinda felt like I was trapped, but uh huh. [...] He was using me as like a teddy bear like he was just like totally curled up like snuggling, and so [...] Yeah well I guess he put some pressure.”

7. Ms. [B.] as a young person and your step-daughter, is a vulnerable person under your care as a step-parent. You took advantage of Ms. [B.] for your own sexual purposes. At no time, did Ms. [B.] consent to your unwanted contact of a sexual nature upon her. You violated the bodily integrity of Ms. [B.] and

caused her further anxiety by sending an unnecessary text message following the sexual assault:

“[...] and then I go to bed, I close my door like I keep my lights on cause I am I am freaked out I am scared and I just I have the shivers I was so, so uncomfortable, and then I didn't go to bed til like three o'clock cause I could not sleep I was [...] I was just, my mind was racing. Oh and then at twelve o'clock though, um this like we went to bed like it was 11:30 [p.m.] when we left the living room so it was maybe 11:45 [p.m.] when we went to bed, and then at 12:16 [a.m.] he texts me because later that day on Christmas he was saying how he like he wanted a new picture for me for his contact because the one he had was from when I was really little. [...] So he wanted like an updated one, but, I didn't wanna give him like a nice one so I went on snapchat and like took all these ones with like silly filters or something like they were just like not [...] Just funny ones, and then at 12:16 [a.m.] that night like I'm freaked out I'm in my bed I get a text from him and he saved one of the pictures and he snet it back to me and he said um I think I'm gonna go with this one and like with the picture, and I was like mm yeah that's my favourite one, and then he texted back and I was like I'm not gonna answer that I'm”.

8. The following day, Ms. [B.] disclosed your actions to both her father and Constable [W.]. When Constable [W.] confronted you about your actions, you reacted by claiming: “[...] I said okay well then you hear that this step-father basically hugs her for an inappropriate amount of time and he's like, okay this is ridiculous like, instantaneous eh, denial and of, of sexual intent, he's like it was a back rub [W.], I gave her a back rub. I don't know, he's like I woke up and we were talking, and she's beside me on the couch, she's like, I just, he's like there's no, he, and basically he just st – he's like just no.”

9. You were criminally charged with sexual assault.

*[Sic throughout]*

## **EVIDENCE**

[11] At the core of this case is whether Corporal Deagle touched Ms. B. without her consent, for a sexual purpose.

[12] The Record before me includes statements taken by the Serious Incident Response Team investigator from Ms. B., her parents, Constables B. and W., as well as her stepmother, Mrs. B.



[13] I was provided with the criminal trial transcripts from Corporal Deagle's sexual assault trial, which took place before the Truro Provincial Court on April 14, 2022. Ms. B., Constables B. and W., and Corporal Deagle testified.

[14] On June 29, 2022, the trial judge released his decision, stating that his level of confidence in Ms. B.'s testimony, although not perfect, was comparable to the level of confidence he had in the testimony of the accused. As a result, given that he could not reject the evidence of the accused, applying the caselaw principles,<sup>1</sup> there was reasonable doubt that the touching was for a sexual purpose, and Corporal Deagle was found not guilty.

[15] The decision of the Truro Provincial Court also forms part of the Record.

[16] At the contested conduct hearing into this allegation, I heard oral evidence from three witnesses: Ms. B., her mother Constable W., and Corporal Deagle.

[17] I prepared a *Determination of Established Facts* on October 28, 2022, which has been considered in conjunction with the oral evidence received and is incorporated into my findings of fact.

### **Determination on the credibility of the witnesses**

[18] In assessing a witness's evidence, I must consider whether they are being truthful as well as whether their evidence is reliable (i.e., whether the witness is in a position to accurately perceive and recollect what they observed). I may find a witness's evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness's evidence on a given point.<sup>2</sup>

[19] In *McDougall*,<sup>3</sup> the Supreme Court indicates that the totality of the evidence must be considered; although corroborative evidence is always helpful and does strengthen the evidence of a party, it is not a legal requirement.

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<sup>1</sup> *R. v S.(W.D.)*, [1994] 3 SCR 521.

<sup>2</sup> *R. v R.E.M.*, 2008 SCC 51, at paragraph 65.

<sup>3</sup> *F.H. v McDougall*, 2008 SCC 53, at paragraph 80 [*McDougall*].

[20] The Supreme Court further notes that a finding that one party is credible may be determinative, because believing one party will mean explicitly or implicitly that the other party was not believed on the important issues of the case. This becomes especially true when the allegation is altogether denied by the defending party, as is the case here.<sup>4</sup>

[21] In *Faryna*,<sup>5</sup> the Court notes that a witness's evidence cannot be assessed solely on their demeanour, i.e., that they appear to be telling the truth. Rather, a trier of fact must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts.

[22] The determination of whether the witness's account has an "air of reality" is subjective, but it must be grounded in the totality of the evidence.

*Evidence of Ms. B.*

[23] The outcome of this matter rests heavily on the credibility of the witnesses. In accordance with *R v T.B.*,<sup>6</sup> with respect to the assessment of Ms. B.'s credibility, her testimony is to be assessed in the context of the age of the witness at the time of the events to which the witness is testifying.

[24] Ms. B. was an articulate, frank and forthcoming witness. She was balanced when expressing herself and did not seek to embellish or exaggerate her answers, nor perfect them over time. I did not identify any inconsistencies between her December 30, 2019, statement to the Serious Incident Response Team investigator, her testimony under oath at Corporal Deagle's April 14, 2022, criminal trial, and her testimony before me. I find her testimony credible and reliable.

*Evidence of Constable W.*

[25] Constable W., Corporal Deagle's common-law partner and Ms. B.'s mother, expressed concerns with respect to the necessity of having criminal charges laid against Corporal Deagle.

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<sup>4</sup> See *McDougall*, at paragraph 86.

<sup>5</sup> *Faryna v Chorney*, [1952] 2 DLR 354 [*Faryna*], at page 357.

<sup>6</sup> *R v T.B.*, 2018 PESC 3.

[26] Nevertheless, she was consistent in her testimony with respect to what Ms. B. described to her, over the phone, on December 26, 2019. Her testimony corroborated Ms. B.'s version of how the incident started (i.e., reaching for Corporal Deagle's hand to shake him awake before being pulled in for a hug and back rub).

[27] I find Constable W.'s testimony credible, for the most part, but I note that she was not present during the alleged misconduct.

*Evidence of Corporal Deagle*

[28] Finally, for the most part, I find Corporal Deagle to be credible and his evidence reliable.

[29] However, I note certain variations in his evidence between his testimony of April 14, 2022, at his criminal trial, and his testimony before me. For example, during his cross-examination at his criminal trial, Corporal Deagle testified that, on December 25, 2019, he consumed three or four rum and cokes, which consisted of one ounce of alcohol per drink. He explained that he used a shot glass to measure the alcohol he poured in his glass.<sup>7</sup> During the conduct hearing, Constable W. testified that Corporal Deagle had half of a 750 ml bottle of rum throughout the day on December 25, 2019. Corporal Deagle concurred with this assessment and specified that he was drinking from approximately 3 or 4 p.m. to 8:30 or 9 p.m.<sup>8</sup> I note that this represents 375 ml of alcohol or approximately 12 one-ounce drinks. There is quite a difference between three or four drinks and 12 drinks.

[30] Another significant variation is with respect to how Ms. B. found herself to be lying on the living room couch in close proximity to him. In his subsection 15(3) response to the *Notice of Conduct Hearing*, Corporal Deagle stated that, when he woke up on the living room couch, Ms. B. was lying on the couch beside him, on her stomach with her face looking away from him.<sup>9</sup> However, during his testimony at the criminal trial, Corporal Deagle testified that, when he woke up, Ms. B.

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<sup>7</sup> See *Criminal Trial Transcript of Corporal Deagle's Cross-examination*, dated April 14, 2022, at pages 11, line 305, to 12, line 319.

<sup>8</sup> See *Conduct Hearing Transcript*, Volume 2, at pages 27, lines 7, to 28, line 20.

<sup>9</sup> See Corporal Deagle's section 15(3) response to the allegation, at paragraph 3.

was on the couch beside him.<sup>10</sup> During his cross-examination at the trial, he adamantly maintained that he woke up to Ms. B. beside him, on the couch, and hugged her.<sup>11</sup> While at the conduct hearing, in cross-examination, Corporal Deagle initially testified that, when he first woke up, Ms. B. was beside him and he gave her a hug and started rubbing her back over her sweater.<sup>12</sup> When pressed by the Conduct Authority Representative during cross-examination, he did not deny that Ms. B. attempted to wake him up by grabbing his hand to rouse him from sleep. Instead, he stated that he simply did not recall and that his memory only started from the point when he woke up with her beside him. He conceded that it was possible that Ms. B. grabbed his hand to wake him up but that he simply did not recall it.<sup>13</sup> His account on this point was inconsistent throughout.

[31] Based on the foregoing, when Corporal Deagle's evidence diverges from Ms. B.'s evidence, I prefer Ms. B.'s evidence.

## ANALYSIS

[32] The burden is on the Conduct Authority Representative to establish the allegation on a balance of probabilities. Practically speaking, this means that I must find that the Conduct Authority Representative has established that it is more likely than not that Corporal Deagle has contravened section 7.1 of the Code of Conduct. The parties properly referenced *McDougall*<sup>14</sup> for the principle that this burden can only be satisfied by sufficiently clear, convincing and cogent evidence.

[33] The Supreme Court of Canada also observes in *McDougall* that there is "no objective standard to measure sufficiency".<sup>15</sup> A trier of fact must make a decision on the totality of the evidence before them. In the RCMP conduct hearing process, the totality of the evidence before me includes the Record as well as the oral evidence received during the conduct hearing.

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<sup>10</sup> See *Criminal Trial Transcript of Corporal Deagle's Testimony in Chief*, dated April 14, 2022, at page 29, line 760.

<sup>11</sup> See *Criminal Trial Transcript of Corporal Deagle's Cross-examination*, dated April 14, 2022, at pages 2, line 44, to 4, line 111.

<sup>12</sup> See *Conduct Hearing Transcript*, Volume 2, at page 97, lines 14 to 16.

<sup>13</sup> See *Conduct Hearing Transcript*, Volume 2, at page 104, lines 1 to 9.

<sup>14</sup> See *McDougall*, at paragraph XX.

<sup>15</sup> See *McDougall*, at paragraph 58.

[34] The test for discreditable conduct under section 7.1 of the Code of Conduct is as follows: the Conduct Authority Representative must prove, on a balance of probabilities, the acts that constitute the alleged behaviour, as well as the identity of the member who is alleged to have committed these acts. If he is successful in doing so, then I must determine if a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Corporal Deagle's behaviour as likely to discredit the Force. Finally, I must determine whether the behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[35] There is no dispute surrounding the identity of Corporal Deagle. The other three steps require further analysis.

### **Analysis of the evidence**

[36] The *Notice of Conduct Hearing* sets out the specific acts that the Conduct Authority alleges are the acts that constitute discreditable conduct.

[37] The particulars of the allegation include the expression "sexual assault". The parties used this term in their submissions. The Subject Member Representative has asked me to apply the criminal test for sexual assault. He emphasized that I was required to find that the touching was of a "sexual" nature in order to find the allegation of discreditable conduct established in view of the fact that the Conduct Authority framed the *Notice of Conduct Hearing* as a "sexual assault".<sup>16</sup>

[38] This is not a criminal proceeding. This is a proceeding under Part IV of the *RCMP Act* and is not exclusively concerned with criminal conduct. It is concerned with alleged contraventions of the RCMP Code of Conduct, in this case, discreditable conduct. Discreditable conduct may include sexual misconduct.<sup>17</sup>

[39] Sexual misconduct is misconduct of a sexual nature that exists on a spectrum that may include a broad range of sexual behaviours considered unwelcome. Sexual misconduct covers an array of

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<sup>16</sup> See Particulars 3, 7 and 9 of the *Notice of Conduct Hearing*, dated June 23, 2020.

<sup>17</sup> See *Conduct Measures Guide*, November 2014, at page 56.

problematic sexual behaviours, including behaviour deemed morally unacceptable, sexual harassment, sexual abuse and/or sexual assault.<sup>18</sup>

[40] The RCMP conduct process is an administrative process that applies the civil standard of proof. Although some legislation governing professional conduct contains definitions of sexual misconduct that include sexual assault, the *RCMP Act*, the RCMP Code of Conduct and RCMP policy contain no definition of the term. Additionally, the courts have not provided a firm definition of sexual misconduct in a civil context.

[41] Given this, the approach in RCMP Code of Conduct proceedings should be on the specific conduct alleged by the Conduct Authority. In this case, Corporal Deagle is alleged to have engaged in discreditable conduct. Discreditable conduct, in my opinion, includes sexual assault, but on a civil standard of proof, as referenced in *McDougall*.

[42] Therefore, at the core of this case is whether Corporal Deagle touched Ms. B. without her consent, in a sexual manner or for a sexual purpose.

[43] As in the approach of the conduct board in *Brown*,<sup>19</sup> any reference to sexual misconduct or sexual assault within this decision should be understood as a reference to an allegation of sexual misconduct within the civil context.

*What are the acts that constitute the alleged behaviour?*

[44] At the time of the incident, Corporal Deagle was in a common-law relationship with Constable W. and they resided together in the town of Truro. Constable W. has a 16-year-old daughter, Ms. B., from a previous marriage. Ms. B. did not primarily reside with them; however, she did on occasion stay over.<sup>20</sup>

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<sup>18</sup> Wikipedia, "Sexual Misconduct", online: <en.wikipedia.org/wiki/Sexual\_misconduct>

<sup>19</sup> *Commanding Officer, "K" Division and Constable Kelly Brown*, 2019 RCAD 15, at paragraph 14.

<sup>20</sup> See *Determination of Established Facts*, dated October 28, 2022, at paragraph 2.

[45] On December 25, 2019, Ms. B. was staying at Corporal Deagle and Constable W.'s residence for the holidays. During the evening, Corporal Deagle was planning to watch a movie with Ms. B. and Constable W.; however, he fell asleep on the couch.<sup>21</sup>

[46] All three witnesses conceded that the relationship between Corporal Deagle and Ms. B. was a strained one. They had not shown any physical affection toward each other prior to December 25, 2019. They did not exchange hugs nor did they have long reciprocal discussions.

[47] Corporal Deagle stated that he found it "odd" that Ms. B. would attempt to wake him prior to going to bed because she really did not care about him. He stated that they did not demonstrate any type of emotional or physical affection toward each other and that he had never given Ms. B. a back massage in the past.<sup>22</sup>

[48] In addition, Corporal Deagle maintained that when he woke up, Ms. B. was already on the couch next to him. However, during cross-examination, he conceded it was possible that he pulled her down but that he simply did not recall.

[49] As noted in paragraph 31 of this decision, I prefer Ms. B.'s evidence and find that Corporal Deagle did, in fact, pull down her down onto the couch next to him and proceeded to give her a hug.

[50] Corporal Deagle testified that the initial rubbing of Ms. B.'s back was more of a "general affection", like as part of the hug, but then it evolved into rubbing her back to find knots.<sup>23</sup>

[51] In his submission, Corporal Deagle stated that at no time was any of his contact "sexual" in nature and that Ms. B. herself never referred to the contact as "sexual".

[52] Corporal Deagle denies that his fingers ever went underneath Ms. B.'s waistband or underwear, down to her butt crack. He was categorical as "this would have crossed the line".<sup>24</sup> On the other hand, Ms. B. has maintained this assertion since December 26, 2019; she has never wavered

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<sup>21</sup> See *Determination of Established Facts*, dated October 28, 2022, at paragraph 3.

<sup>22</sup> See *Conduct Hearing Transcript*, Volume 2, page 99, line 2 to page 100, line 16.

<sup>23</sup> See *Conduct Hearing Transcript*, Volume 2, page 106, lines 17 to 20.

<sup>24</sup> See *Conduct Hearing Transcript*, Volume 2, at page 119, lines 2 to 12.

about this. That is what made her feel “weird”. She may not have labelled this sexual, but she knew something was wrong.

[53] I accept Ms. B.’s testimony on this point. I find that Corporal Deagle did, in fact, place his hand underneath both the waistband of her pants and her underwear and that his middle finger did touch her butt crack approximately five times.

[54] With respect to Particular 6 of the *Notice of Conduct Hearing*, Ms. B. testified that she felt trapped on the couch. She explained that, after approximately 30 minutes, her leg was numb and she stood up hoping to leave. Corporal Deagle then held up his hand and invited her to lay back down in a more comfortable position.<sup>25</sup> She did lay back down as she was scared and did not want to be rude. Upon lying down with her legs on the couch, chest down and looking away, Corporal Deagle put his left leg over her two legs.

[55] Corporal Deagle concurred with this sequence of events, but he explained that he placed his leg over hers to make himself more comfortable after having backed up into the couch.<sup>26</sup> He further explained that if Ms. B. had wiggled or moved he would have been aware that she was uncomfortable.

[56] He disputed that they were spooning as described by Ms. B., or that he was “cuddling” her, but he conceded that, while lying on his side, the length of his body was touching Ms. B.’s body. Corporal Deagle conceded that the width of the couch could not be more than 2 or 2.5 feet.

[57] Particular 7 specifically states that Ms. B. did not consent to Corporal Deagle’s unwanted contact and that he violated her bodily integrity.

[58] The Subject Member Representative concedes that consent is not an issue, there was no consent. However, he submitted that none was required as the contact was not of a sexual nature.

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<sup>25</sup> See *Determination of Established Facts*, dated October 28, 2022, at paragraph 5.

<sup>26</sup> See *Conduct Hearing Transcript*, Volume 2, at pages 114, line 23, to 115, line 11.



[59] I note that, in *R. v Menjivar* provided by the Conduct Authority Representative, the Alberta Provincial Court held:

[...] the “sexual purpose” may be proven either by direct evidence, or be inferred from circumstantial evidence or from the nature of the touching itself (ie, the only reasonable inference to be drawn from the circumstantial evidence or from the nature of touching itself is that the accused committed the touching for a sexual purpose).<sup>27</sup>

[60] In this case, Corporal Deagle, who had a strained relationship with Ms. B., which did not include physical affection, pulled her down onto the couch, hugged her and proceeded to give her a back rub. When this 16-year-old got up after 30 to 45 minutes, he invited her back onto the couch, put his left leg over hers, and continued to rub her back, with his hand underneath her sweater<sup>28</sup> and his eyes closed.<sup>29</sup>

[61] I have already found that Corporal Deagle’s middle finger did, in fact, reach down to Ms. B.’s butt crack approximately five times. This, in conjunction with the aforementioned surrounding circumstances, leads me to find that the only possible inference I can draw is that Corporal Deagle’s behaviour was sexual in nature.

[62] Therefore, I find that Corporal Deagle’s actions does, applying the civil standard, constitute a sexual assault. He touched Ms. B., his step-daughter who was a minor and a vulnerable person under his care, without her consent and for a sexual purpose. He violated Ms. B.’s bodily integrity.

[63] The Conduct Authority Representative has accordingly established, on a balance of probabilities, the acts that constitute the alleged behaviour, as well as the identity of the member who is alleged to have committed these acts.

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<sup>27</sup> *R. v Menjivar*, 2010 ABPC 164, at paragraph 24.

<sup>28</sup> See *Determination of Established Facts*, dated October 28, 2022, at paragraphs 5 and 6.

<sup>29</sup> See *Conduct Hearing Transcript*, Volume 2, at pages 120, line 21, to 121, line 3.

*Is Corporal Deagle's behaviour likely to discredit the Force?*

[64] Conduct boards have consistently found that sexual misconduct by a member of the Force, whether on- or off-duty, is conduct that is discreditable or likely to discredit the Force. It is behaviour that has the potential of damaging the reputation of the Force in the public forum and calls into question a member's ability to preserve their credibility and the public trust in this ability to discharge their duties.

[65] I find that a reasonable person in society would find that it is totally unacceptable for a 45- to 50-year-old male to pull a 16-year-old young woman, let alone his step-daughter, onto a couch next to him, and proceed to rub her back over and under her sweater, for approximately an hour and a half. To exacerbate matters, he then inserts his middle finger within her underwear and probes down to her butt crack on approximately five occasions.

[66] One then needs to view this behaviour from the lens of policing. This was not a member of the general public who engaged in this misconduct, it was a sworn police officer whose duty is to protect the vulnerable and demonstrate exemplary behaviour on- and off-duty.

[67] In my mind, there is no doubt that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Corporal Deagle's actions on the evening of December 25, 2019, as likely to bring discredit on the Force.

[68] Therefore, I find that this element of the test has been established on a balance of probabilities.

*Is Corporal Deagle's behaviour sufficiently related to his duties and functions so as to provide the Force with a legitimate interest in disciplining him?*

[69] The law is clear: a higher standard applies to police officers' conduct compared to employees generally because police hold a position of trust. The Supreme Court of Canada has held that

“exemplary probity is an essential qualification for employment as a police officer”<sup>30</sup> and “police work requires individuals not only to exercise a significant degree of judgment and integrity, it is also a position that requires the utmost public trust”.<sup>31</sup>

[70] As a member of the RCMP, Corporal Deagle chose to enter a unique profession that has expectations of a higher standard of behaviour, a responsibility that is not intermittent, but constant. His conduct, whether on- or off-duty, must be scrutinized based on his status as a police officer.

[71] The RCMP has issued several communications that sexual misconduct, if founded, has serious consequences.

[72] In both a criminal and civil context, non-consensual sexual touching is sexual assault, which falls within the realm of behaviours that members of the RCMP respond to in their enforcement activities on a daily basis.

[73] I find that Corporal Deagle’s actions may impair his ability or the public’s confidence in his ability to perform impartially the duties of an RCMP member.

[74] Therefore, I find that Corporal Deagle’s actions are sufficiently related to his duties and functions as to provide the RCMP with a legitimate interest in disciplining him. Therefore, the allegation is established on a balance of probabilities.

## CONDUCT MEASURES

[75] Having found that the allegation is established, I am required, in accordance with subsection 45(4) of the *RCMP Act* and the *Conduct Measures Guide*, 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.<sup>32</sup>

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<sup>30</sup> *Montreal (City) v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48, at paragraph 33.

<sup>31</sup> *Montreal (City) v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48, at paragraph 84.

<sup>32</sup> *Conduct Measures Guide*, dated November 2014, at page 3.

[76] In their submissions, the parties have referenced the *Ceyssens Report*,<sup>33</sup> which identifies five principles that serve as a foundation for the process of crafting a fit conduct measure.

[77] The first principle articulated in the *Ceyssens Report* is “a conduct measure must fully accord with the purposes of the police complaint and discipline process”.<sup>34</sup>

[78] Furthermore, “The determination of an appropriate sanction involves, at its core, a balancing of four purposes or interests: the public interest, the RCMP’s interest as an employer; the subject-member’s interest to be treated fairly and, finally, the interests of those affected by the misconduct at issue”<sup>35</sup> (in this case, the victim). The Supreme Court of Canada has placed emphasis on the public interest by stating that “[t]he purposes of disciplinary bodies are to protect the public, to regulate the profession and to preserve public confidence in the profession.”<sup>36</sup>

[79] Paragraph 36.1(e) of the *RCMP Act* also refers to the second foundational principle articulated in the *Ceyssens Report*: corrective and remedial dispositions should prevail, where appropriate.

[80] The third foundational principle is the presumption that one should impose the least onerous disposition; however, this presumption will be displaced if the public interest or other specified considerations should prevail.

[81] The *Ceyssens Report* articulates that the fourth conduct measure foundational principle is proportionality.<sup>37</sup> This requires the conduct board to identify the “relevant proportionality considerations”; determine whether these proportionality considerations are mitigating, aggravating or neutral; and, finally, appropriately balance or weigh the identified relevant proportionality considerations.

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<sup>33</sup> Ceyssens, Paul and Childs, Scott, *Phase 1 – Final Report Concerning Conduct Measures and the Application of Conduct Measures to Sex-Related Misconduct under Part IV of the RCMP*, date February 24, 2022 [*Ceyssens Report*].

<sup>34</sup> See *Ceyssens Report*, at page 17, paragraph 4.1.

<sup>35</sup> *Commanding Officer, “K” Division and Constable Ryan Deroche*, 2022 CAD 13, at paragraph 82.

<sup>36</sup> *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, at paragraph 53.

<sup>37</sup> See *Ceyssens Report*, at page 21, paragraph 7.1.

[82] The fifth foundational principle, as articulated by the Supreme Court of Canada and courts of appeal, is that a higher conduct expectation applies to police officers.<sup>38</sup>

### **Position of the parties**

[83] The Subject Member Representative canvassed six prior conduct decisions and a 2022 Commissioner's decision,<sup>39</sup> in which the Commissioner agreed that the conduct board had correctly identified the appropriate range of measures, considered proportionality and the need for specific and general deterrence, correctly characterized and enumerated a vast array of mitigating and aggravating factors, and chose to retain the subject member. This was also a case where sexual misconduct was at issue.

[84] However, in every conduct decision involving sexual misconduct and presented by the Subject Member Representative, none involved sexual misconduct toward a minor, a 16-year-old, vulnerable child.

[85] The Subject Member Representative argued that a sanction less than dismissal is appropriate on the facts of this case. He argued that the weight of authority in serious sexual assault cases establishes that the subject member is not to be dismissed if it is an isolated incident and the subject member is a strong performer. According to the Subject Member Representative, the weight of authority holds that to dismiss the subject member would be disproportionate.

[86] He went on to note that the sexual touching of Ms. B., despite being serious, represented a single, isolated incident. Furthermore, he argued that there was no evidence that this type of behaviour would ever occur again. In fact, during his testimony, Corporal Deagle acknowledged that, looking back, he should have gotten up and left when he awoke to find Ms. B. on the couch.

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<sup>38</sup> *Montreal (City) v Quebec (Commission des droits de la personne et des droits de la jeunesse*, 2008 SCC 48, at paragraph 80.

<sup>39</sup> *Commanding Officer, "H" Division and Constable Devin Pulsifer*, 2022 CAD 06.

[87] The Subject Member Representative emphasized that Corporal Deagle had an outstanding performance record; that he continues to have the support of his District Commander; and was in the process of trying to obtain a promotion to the rank of sergeant.

[88] The Subject Member Representative entered three performance evaluations as Exhibit 1 and three letters of reference as Exhibit 2.

[89] He submitted that a global sanction of 45 to 60 days of forfeiture of pay would be appropriate to ensure specific and general deterrence in conjunction with a transfer to another location.

[90] As a possible alternative to dismissal, the Subject Member Representative urged me to consider a demotion to the rank of constable and argued that this would send a strong message of denunciation to the public and other members of the Force.

[91] The Conduct Authority Representative, on the other hand, confirmed that the Conduct Authority is seeking a direction to resign within 14 days. He provided four cases in support of dismissal, distinguished the sexual misconduct decisions put forth by the Subject Member Representative, and focused on a few passages of the *Ceyssens Report*.

[92] The Conduct Authority Representative drew my attention to a passage of the *Ceyssens Report*,<sup>40</sup> wherein the authors state:

10.6 Our review of the sample decisions [of the RCMP] revealed a chronic omission to specifically and properly assess the public interest as a proportionality consideration, which consistently led to the imposition of conduct measures that did not align with the jurisprudence of superior courts of justice. [...]

[93] The public interest, the Conduct Authority Representative submitted, includes confidence in the Force and that conduct boards must look at the impact of the subject member's misconduct on the reputation of the RCMP.

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<sup>40</sup> See *Ceyssens Report*, at page 27, paragraph 10.6.

[94] The *Ceyssens Report*<sup>41</sup> notes that the Supreme Court of Canada has reaffirmed the principle that a higher standard applies to police officers' conduct, compared to employees generally, principally because police hold a position of trust.

[95] The Conduct Authority Representative concurred with the Subject Member Representative, stating that prior decisions for serious misconduct, contain a range of conduct measures of 45 to 60 days forfeiture of pay and demotion.

[96] However, he correctly noted that these decisions predate the *Bastarache Report*<sup>42</sup> and *Ceyssens Report*, both of which criticized the approach of the Force on sexual harassment and sexual misconduct.

### **Decision on conduct measures**

[97] I will begin by setting out the appropriate range of measures, then go through the mitigating and aggravating and neutral relevant considerations. Finally, I will briefly set out how I have weighed those factors and balanced the interests of the public, the RCMP, the subject member and the victim, in arriving at my decision.

#### *Range of conduct measures*

[98] With respect to the appropriate range, I have considered counsels' submissions as well as the cases they presented. I find that the appropriate range for a sanction in this case is a forfeiture of pay of 45 days or more, in combination with other conduct measures, including demotion, and up to dismissal.

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<sup>41</sup> See *Ceyssens Report*, at page 26, paragraph 10.2.

<sup>42</sup> Bastarache, Michel, C.C., Q.C., *Final Report on the Implementation of the Merlo Davidson Settlement Agreement*, dated November 11, 2020 [*Bastarache Report*].

*Mitigating factors*

[99] I note that these do not constitute a justification or an excuse for the misconduct, but in fairness to the subject member, these may be taken in consideration to reduce the severity of the sanction imposed, in order to appropriately deal with the misconduct.

[100] From the outset, Corporal Deagle has no prior discipline, nor negative performance logs or negative comments on any of the performance evaluations submitted to me. To the contrary, and as evidenced by the reference letters and testimony of his District Commander, he is reported on as being an above-average, dedicated member who is professional and proud to be a member of the Force and to serve and protect the community in which he is posted.

[101] I accept the Subject Member Representative's submission that the letters of support and performance evaluations are from experienced police officers who supervised Corporal Deagle, over the years, as well as a partner from the Department of Fisheries, all of whom describe him as accountable, professional, community oriented and respectful.

[102] It was suggested that this was an isolated incident and, consequently, a mitigating factor. However, considering the nature of the sexual misconduct, I did not attribute significant this factor.

[103] Finally, there is minimal likelihood of this incident reoccurring as evidenced by Corporal Deagle's acknowledgement that, in hindsight, he should have gotten up and left the room. I find that this consideration to have little weight when considering the nature of the misconduct.

*Aggravating factors*

[104] I note that these are any circumstance attending to the commission of the misconduct that increases its guilt or enormity or adds to its injurious consequences.

[105] To begin is the seriousness of this misconduct. Corporal Deagle was in his late 40s at the time of the incident and knew that Ms. B. was a 16-year-old, vulnerable, young person dependent upon him, regardless of whether he considered himself a step-parent.



[106] This incident has had a lasting adverse psychological and emotional impact on Ms. B. She testified that, for a long time, she blamed herself for what happened, has required ongoing therapy, antidepressants and has lost trust in individuals. Ms. B. also explained that she no longer has a relationship with her mother, Constable W., as a result of this incident.

[107] Corporal Deagle was in a position of authority on multiple levels. He is a police officer responsible for upholding the law and the common-law partner of Ms. B.'s mother, Constable W. There was a clear power imbalance and a breach of trust when he touched Ms. B. in a sexual manner.

[108] Corporal Deagle is a non-commissioned officer, a supervisor, a role model, and had approximately 15 years of service at the time of the incident. He is to be held to a higher standard than a constable.

#### *Conclusion*

[109] Deterrence is of particular importance in this case, not only as a warning to other members, but also as insurance that this inappropriate and unacceptable behaviour is not repeated. The need for specific deterrence becomes even more acute when the perpetrator of the contravention is someone in a position of trust and authority, as I have found Corporal Deagle to be.

[110] A sacred value of Canadian society is the need to protect our children.

[111] Although some mitigating factors were accepted, I find that they are not strong enough to counter the seriousness of the misconduct such as to reduce the ultimate sanction that I feel necessary, considering the sexual nature of the misconduct and the vulnerable status of Ms. B., given her young age.

[112] Corporal Deagle's misconduct is serious and goes to the heart of the employer-employee relationship and the public's expectation of police officers in their dealings with vulnerable children and teenagers.

[113] I find that, through his misconduct, Corporal Deagle has repudiated several of the essential core values of the Force. His actions constitute a fundamental breach of the public trust and a repudiation of his obligations as a member of the RCMP.

[114] Given the nature of the established allegation, I simply cannot justify retaining Corporal Deagle as a member of the RCMP.

[115] Having found the allegation to be established and in accordance with paragraph 45(4)(b) of the *RCMP Act*, I direct Corporal Deagle to resign from the Force within 14 days, in default of which he is to be dismissed.

[116] Either party may appeal this decision by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.11 of the *RCMP Act*, and in accordance with the rules contained in the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

March 21, 2023

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Louise Morel

RCMP Conduct Board

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Date