

Publication ban: Any information that could identify the complainants in the present decision may not be published, broadcast or transmitted in any way.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

Chief Superintendent Steven Ing
Designated Level III Conduct Authority, "E" Division

(Conduct Authority)

and

Constable Corey Flodell
Regimental Number 53909

(Subject Member)

Conduct Board Decision

Christine Sakiris

May 12, 2023

Ms. Sabine Georges, Conduct Authority Representative
Ms. Cait Fleck, Subject Member Representative

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SUMMARY

The original *Notice of Conduct Hearing*, dated May 9, 2022, contained one alleged contravention of section 7.1 of the RCMP Code of Conduct, and four alleged contraventions of section 2.1 of the RCMP Code of Conduct. Constable Flodell was alleged to have assaulted a regular member, as well as to have made discourteous comments or to have harassed three regular members and one public service employee.

Prior to the conduct hearing, an amended *Notice of Conduct Hearing* was filed. Constable Flodell admitted all five allegations, as amended. The parties submitted a *Joint Proposal on Conduct Measures*, which was accepted by the Conduct Board. All five allegations were found to be established.

The following conduct measures were imposed: (1) a financial penalty of 15 days' pay, to be deducted from Constable Flodell's pay; (2) a forfeiture of 10 days of annual leave; (3) a transfer to another work location; (4) a direction to work under close supervision for a period of one year; (5) a direction to draft written apology letters to the members and employee affected by his misconduct; and (6) a direction to undergo additional training with respect to workplace harassment.

INTRODUCTION

[1] Between August 1, 2019, and May 1, 2021, Constable Corey Flodell alleged to have assaulted a regular member, as well as to have made discourteous comments or to have harassed three regular members and one public service employee.

[2] On March 9, 2022, the Conduct Authority signed a *Notice to the Designated Officer* to request the initiation of a conduct hearing in relation to this matter. On March 10, 2022, I was appointed as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[3] The original *Notice of Conduct Hearing*, dated May 9, 2022, contains one alleged contravention of section 7.1 of the RCMP Code of Conduct, and four alleged contraventions of section 2.1 of the RCMP Code of Conduct.

[4] On July 25, 2022, Constable Flodell provided his response to the allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. While Constable Flodell admitted many particulars, he denied all five allegations. He provided additional explanations with respect to several particulars.

[5] On September 27, 2022, I issued a *Determination of Established Facts*. After consultation with the parties, I issued an amended *Determination of Established Facts* on November 7, 2022. For the purposes of this decision, any reference to the *Determination of Established Facts* should be understood to refer to the latter.

[6] The conduct hearing in this matter was scheduled to begin on January 16, 2023. On December 19, 2022, the Conduct Authority Representative and the Subject Member Representative advised that they had reached a resolution and that they intended to submit a *Joint Proposal on Conduct Measures* (the Joint Proposal). Consequently, the hearing was adjourned to March 20, 2023.

[7] On January 17, 2023, the Conduct Authority signed an *Amended Notice of Conduct Hearing*, which still contains one alleged contravention of section 7.1 of the RCMP Code of Conduct, and four alleged contraventions of section 2.1 of the RCMP Code of Conduct. On

January 24, 2023, Constable Flodell provided his response to the *Amended Notice of Conduct Hearing*, in which he admitted all five allegations.

[8] On January 25, 2023, the parties provided their written submissions in support of the Joint Proposal as well as accompanying documentary evidence. Following a review of the materials, I requested further information, which was provided by the parties. On February 27, 2023, I advised that my request for further information had been satisfied. In accordance with the parties' request, I confirmed that I would proceed by way of a written decision based on the record. Therefore, the conduct hearing in this matter was cancelled.

[9] The following conduct measures were jointly proposed: (1) a financial penalty of 15 days' pay, to be deducted from Constable Flodell's pay; (2) a forfeiture of 10 days of annual leave; (3) a transfer to another work location; (4) a direction to work under close supervision for a period of one year; (5) a direction to draft written apology letters to the members and employee affected by his misconduct; and (6) a direction to undergo additional training with respect to workplace harassment.

[10] For the reasons that follow, I find that Allegations 1, 2, 3, 4 and 5, as set out in the *Amended Notice of Conduct Hearing*, are established, and I accept the Joint Proposal. The conduct measures as proposed, with slight amendments to align with the wording of the *CSO (Conduct)*, are imposed.

Publication ban

[11] In accordance with paragraph 45.1(7)(a) of the *RCMP Act*, I order, on my own initiative, that any information that could identify the complainants shall not be published, broadcast or transmitted in any document or in any way.

[12] The employment status of the complainants is relevant to my determination on the allegations and my assessment of the Joint Proposal. Consequently, the complainants shall be referred to by their rank and initials: Constable E.P., Public Service Employee (PSE) S.M., Constable Z.K. and Constable A.P.

[13] Finally, I note that the allegations have been amended in order to give effect to this publication ban.

ALLEGATIONS

[14] The allegations, as set out in the *Amended Notice of Conduct Hearing*, are as follows:

Allegation 1

On or about March 22, 2021, at or near [location redacted], in the Province of British Columbia, Constable Corey Flodell did discredit the Force by touching inappropriately another member of the RCMP without her consent contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 1:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, General Duties Section, in [location redacted], British Columbia.
2. In the afternoon of March 21, 2021, Constable [E.P.], Corporal [B.T.], and yourself were in the pit in the [location redacted] Detachment. You were seated at your desk in a rolling chair.
3. Constable [E.P.] punched Corporal [B.T.] twice in the arm, in a joking manner. You intervened by stating to Corporal [B.T.], “you gotta hit them in the chest”, or words to that effect.
4. While seated on your chair, you proceeded by rolling over towards Constable [E.P.] with your hand going upward in an attempt to demonstrate to Corporal [B.T.] what you meant.
5. Constable [E.P.] told you not to hit her by stating, “no, no, no don’t do that”.
6. You continued to roll towards Constable [E.P.] and as you reached her, you lowered your hand. Your hand made light contact with her body, above her clothes, at or below her belt. You then said “right in the cooter” or words to that effect.
7. The word “cooter” is commonly understood to refer to a woman’s genital area.
8. Your actions were unwanted and inappropriate.

Allegation 2

On or between August 1, 2019 and March 22, 2021, at or near [location redacted], in the Province of British Columbia, Constable Corey Flodell did make rude and/or inappropriate comments to another member of the RCMP contrary to section 2.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 2:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, General Duties Section, in [location redacted], British Columbia.
2. After six to eight months of being posted in [location redacted] Detachment, Constable [E.P.] had unusually worn makeup to work during a night shift.
3. As she walked into the bull pen of the office, you turned around to her direction and stated, “wow, you look like a whore tonight” or words to that effect.
4. Your comments towards Constable [E.P.] were rude, inappropriate, and had sexist overtones.

Allegation 3

On or between September 1, 2019 and September 30th, 2019, at or near [location redacted], in the Province of British Columbia, Constable Corey Flodell did make rude and/or inappropriate comments to another member of the RCMP contrary to section 2.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 3:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, General Duties Section, in [location redacted], British Columbia.
2. [PSE S.M.] has been employed at the [location redacted] Detachment since June 2019.
3. One day during the month of September 2019, PSE [S.M.] and yourself were having a discussion related to your then ten-year-old daughter wanting to wear makeup.
4. PSE [S.M.] told you that there is nothing wrong with girls wanting to wear makeup and that she wore makeup herself. You responded by stating, “only sluts wore makeup” or words to that effect.
5. Your comments towards PSE [S.M.] were rude, inappropriate, and had sexist overtones.

Allegation 4

On or between February 1, 2021 and May 1, 2021, at or near [location redacted], in the Province of British Columbia, Constable Corey Flodell did make rude and/or inappropriate comments to another member of the RCMP contrary to section 2.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 4:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, General Duties Section, in [location redacted], British Columbia.
2. Constable [Z.K.] was a new recruit at the [location redacted] Detachment with whom you interacted with.
3. Between February 1, 2021 and March 22, 2021, you asked Constable [A.P.], referring to Constable [Z.K.], “how soon is too soon to start calling her a whore” or words to that effect.
4. Constable [Z.K.] was not present when these comments were made. Nor was she aware of them prior to giving her statement on March 8, 2021.
5. Your comments about Constable [Z.K.] were rude, inappropriate, and had sexist overtones.

Allegation 5

On or between December 1, 2019 and February 28th, 2020, at or near [location redacted], in the Province of British Columbia, Constable Corey Flodell has engaged in harassment and/or made rude and inappropriate comments to another member of the RCMP contrary to section 2.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 5:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, General Duties Section, in [location redacted], British Columbia.
2. In June 2019, Constable [A.P.] started her first posting in [location redacted]. You became her field coach trainer for some time during her six-month training while her trainer was on vacation. Once her training was completed, you frequently worked alongside each other.
3. You started to make comments on her gender, marital and family status being a single female, in her 30s and with no children. You made comments such as “Do you hear that? It’s your ovaries ticking” on more than one occasion and ongoing for a year.
4. When Constable [A.P.] went out running, you made comments about her running attire, including her shorts and sports bra to Constable [C.T.].
5. Because of your rude and inappropriate comments and harassing behaviour, Constable [A.P.] felt depressed and worthless.

[*Sic throughout*]

DECISION ON THE ALLEGATIONS

[15] The particulars set out in the *Amended Notice of Conduct Hearing* reflect my findings in the *Determination of Established Facts*. In his January 24, 2023, response, Constable Flodell

admits each allegation and particulars. His admissions are consistent with the material before me. Consequently, the particulars in the *Amended Notice of Conduct Hearing* constitute my findings of fact.

[16] As I advised the parties, who had no objection, I have relied on the complainants' statements with respect to the impact Constable Flodell's actions have had on them.¹ I have provided additional findings of fact, in accordance with this limited use of the statements, as appropriate.

[17] I acknowledge that Constable Flodell also provided some explanations or "additional facts" in his January 24, 2023, response. I do not accept these as findings of fact as they are primarily expressions of his perspective of the events that took place, or attempts to rationalize his behaviour. However, I have considered them in my assessment of the Joint Proposal.

Allegation 1

[18] Section 7.1 of the RCMP Code of Conduct states: "Members behave in a manner that is not likely to discredit the Force."

[19] The test for "discreditable conduct" under section 7.1 of the Code of Conduct requires that the Conduct Authority establish the following four elements on a balance of probabilities:

- a) the acts that constitute the alleged behaviour;
- b) the identity of the member who is alleged to have committed these acts;
- c) that the member's behaviour is likely to discredit the Force; and
- d) that the member's actions are sufficiently related to their duties and functions as to provide the Force with a legitimate interest in disciplining them.

[20] By virtue of Constable Flodell's admissions, I find that the first two elements of the test are satisfied. Therefore, I can turn my attention to determining whether the third and fourth elements of the test are established.

¹ Conduct Board email, dated February 8, 2023; and Letter dated February 21, 2023, signed by both counsels, at page 2.

[21] Constable Flodell admits making unwanted and inappropriate contact with Constable E.P.'s body while stating "right in the cooter", or words to that effect. The word "cooter" is commonly understood to refer to a woman's genital area. Constable Flodell denies any sexual intent, and this is consistent with Constable E.P.'s assessment of the incident.²

[22] It is well established that police officers are held to a higher standard than the general public. Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. In this instance, the acts in question took place in the workplace, while Constable Flodell was on-duty.

[23] His actions and the accompanying crude and sexualized comment, even if meant in jest, demonstrated a serious lack of judgment and are incompatible with the duties and responsibilities of a member of the RCMP, as set out in section 37 of the *RCMP Act* as well as clear direction from the Commissioner with respect to acceptable workplace conduct.³ Upon reflection, Constable Flodell recognizes that his actions fell outside the realm of acceptable workplace humour.⁴

[24] I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Constable Flodell's actions as likely to bring discredit to the Force. Behaviour of this nature has no place in any workplace. As a result of his lack of judgment in engaging in such behaviour, I further find that his actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. As such, I find that Constable Flodell's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[25] Accordingly, Allegation 1 is established on a balance of probabilities.

² Statement of Constable E.P., Investigation Report File 336149, at page 58, line 451.

³ Lucki, Brenda, then RCMP Commissioner, "Commissioner's Statement regarding the Final Report on the Implementation of the Merlo Davidson Settlement Agreement" (November 19, 2020), online: <https://www.rcmp-grc.gc.ca/en/news/2020/commissioners-statement-the-final-report-the-implementation-the-merlo-davidson> and *Commanding Officer "E" Division v Constable Benjamin Caram*, 2021 CAD 05 (Commissioner's decision), at paragraphs 66 and 67.

⁴ Response to the *Amended Notice of Conduct Hearing*, dated January 24, 2023, at page 3.

Allegation 2

[26] Section 2.1 of the RCMP Code of Conduct provides that members “treat every person with respect and courtesy and do not engage in discrimination or harassment”.

[27] While Constable Flodell asserts that his comment was made in jest, there is no context in which telling a female colleague that they “look like a whore” is acceptable humour in the workplace. The sexist overtones of this comment only further compound its inappropriateness.

[28] In accordance with the applicable policy in effect at the time of the incident:⁵

[...]

2.8. Harassment means any improper conduct by an individual that is directed at, and is offensive to, another individual in the workplace, including at any event or any location related to work, and that the individual knew, or out reasonably to have known, would cause offence or harm. It comprises an objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act, i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction.

2.8.1. Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

2.8.2. Harassment includes sexual harassment.

[...]

[29] There is no question that Constable Flodell’s comment was objectionable and that he reasonably ought to have known it would cause offence. Constable Flodell has admitted making this comment on one occasion. Constable Flodell acknowledges that the comment was inappropriate in his response to the *Amended Notice of Conduct Hearing*.⁶

[30] I have considered Constable E.P.’s statement in assessing the impact that this comment, as set out in the particulars, had on her at the time that it was made.⁷ I find that the single comment

⁵ *Administration Manual*, Chapter XII.8 “Investigation and Resolution of Harassment Complaints” (May 8, 2018, version).

⁶ Response to the *Amended Notice of Conduct Hearing*, dated January 24, 2023, at page 3.

⁷ Statement of Constable E.P., Investigation Report File 336149, at page 56, lines 360 to 378.

to which Constable Flodell admits does not, in and of itself, constitute a “severe incident” that would meet the definition of harassment.

[31] That said, Constable Flodell’s comment was unquestionably rude, sexist and discourteous. Consequently, I find that Allegation 2 is established on a balance of probabilities.

Allegation 3

[32] Allegation 3 is also advanced under section 2.1 of the Code of Conduct.

[33] Constable Flodell made a sexist and rude comment to a colleague, while on-duty and in the workplace. There is no context in which telling a female colleague that “only sluts wore makeup” or words to that effect is acceptable. The comment was objectionable, and there is no question that Constable Flodell ought to have known that it would cause offence. However, when I factor in the impact that this singular comment had on PSE S.M., as set out in her statement,⁸ I agree with the parties that it does not meet the definition of harassment.

[34] That said, Constable Flodell’s comment was unquestionably rude, sexist and discourteous. Consequently, I find that Allegation 3 is established on a balance of probabilities.

Allegation 4

[35] Allegation 4 is likewise advanced under section 2.1 of the Code of Conduct.

[36] Once again, Constable Flodell made a sexist and rude comment, while on-duty and in the workplace, querying “when is too soon to start calling [Constable Z.K.] a whore,” or words to the effect. Once again, his comment related to a female member’s makeup.

[37] Given that Constable Z.K. was not present when the comment was made, and was unaware of the comment prior to providing her statement, I cannot find that Constable Flodell’s actions meet the definition of harassment under the policy that was in force at the time of the incident. However, his comment was unquestionably rude, sexist and discourteous. Consequently, I find that Allegation 4 is established on a balance of probabilities.

⁸ Statement of PSE S.M., Investigation Report File 336149, at page 176.

Allegation 5

[38] Allegation 5 is advanced under section 2.1 of the Code of Conduct and alleges that Constable Flodell harassed Constable A.P. by making comments about her gender, marital and family status, as well as about her physical appearance.

Comments about Constable A.P.'s gender, marital and family status

[39] Constable Flodell admits making comments about Constable A.P.'s gender, marital and family status as a single female in her 30s with no children. He made comments such as "Do you hear that? It's your ovaries ticking?" He made these types of comments while on-duty and repeatedly over the course of a year.

[40] Constable A.P. found these comments to be "degrading and harassing".⁹ The repeated and prolonged nature of these comments resulted in harm to Constable A.P. She stated that she felt she "had no choice but to endure the comments" and that she felt "depressed and worthless". She further stated that Constable Flodell's comments made her question whether she "wanted to continue in this career as a female."¹⁰

Comments about Constable A.P.'s physical appearance and running attire

[41] Constable Flodell also admits making comments about Constable A.P.'s physical appearance and running attire to Constable C.T., while on-duty.

[42] After reviewing the parties' initial submissions in support of the Joint Proposal, I requested clarification of their position as to whether Constable Flodell's comments about Constable A.P.'s physical appearance and running attire constitute sexual harassment.¹¹ In their joint response¹² to my question, the parties agreed that the definition of harassment includes sexual harassment. However, they argued that Constable Flodell's actions do not meet the definition of sexual harassment as it existed at that time.

⁹ Constable A.P.'s written statement of April 8, 2021, Investigation Report File 336173, at page 12.

¹⁰ Constable A.P.'s written statement of April 8, 2021, Investigation Report File 336173, at page 12.

¹¹ Conduct Board email dated February 8, 2023.

¹² Letter dated February 21, 2023, signed by both counsels, at page 2.

[43] Policy applicable at the time provides the following definition of sexual harassment:¹³

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any employee, or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion and is included under the definition of harassment above.

[44] The parties submit that Constable Flodell's comments about Constable A.P.'s physical appearance and running attire were not made to Constable A.P., are not "automatically" of a sexual nature or likely to cause offence or humiliation. They further argue that there is no evidence that Constable A.P. perceived the conduct as placing "a condition of a sexual nature on employment or on any opportunity for training or promotion".

[45] Finally, the parties note that, for the purposes of the Joint Proposal, the Conduct Authority has accepted Constable Flodell's admission to harassment, not sexual harassment. I can give no weight to this argument. Once a conduct hearing is initiated, the determination as to whether an allegation is or is not established falls solely within the authority of a conduct board.¹⁴ If the facts, as admitted, support a finding on a balance of probabilities that Constable Flodell's actions constitute sexual harassment, then that is the finding that I must make.

[46] In this instance, I find that making comments about a colleague's physical appearance or running attire may reasonably cause offence or humiliation. However, the facts as admitted by Constable Flodell do not refer to the exact comments made. Therefore, I cannot find that they were sexual in nature.

[47] The parties concede, and I find, that Constable Flodell's comments to and about Constable A.P., in their totality, constitute harassment. He reasonably ought to have known that his repeated and unwanted comments would cause harm to Constable A.P. They did, in fact, cause her harm. Consequently, I find on a balance of probabilities that Constable Flodell harassed Constable A.P. and that Allegation 5 is established.

¹³ *Administration Manual* XII.8.2.8.2.23 (May 8, 2018, version).

¹⁴ *RCMP Act*, at subsection 45(1).

CONDUCT MEASURES

[48] Having found Allegations 1, 2, 3, 4 and 5 to be established and in accordance with subsection 45(4) of the *RCMP Act*, as well as with the *RCMP Conduct Measures Guide*, I am required to impose “a fair and just measure that is commensurate to the gravity of the contravention, the degree of blameworthiness of the member, and the presence of mitigating and aggravating factors.”¹⁵

[49] The Conduct Authority Representative and the Subject Member Representative provided a joint submission with respect to the Joint Proposal, with supporting documentation and jurisprudence. They proposed the following global conduct measures:

- a) a financial penalty of 15 days (120 hours) to be deducted from Constable Flodell’s pay;
- b) a forfeiture of 10 days (80 hours) of annual leave;
- c) a transfer to another work location;
- d) a direction to work under close supervision for a period of one year, in which the supervision is focused on Constable Flodell’s overall behaviour and attitude towards women in the workplace;
- e) a direction to draft letters of apology to Constables E.P., Z.K, A.P. and PSE S.M.;
- f) a direction to undergo additional training with respect to workplace harassment.

Applicable legal principles

Assessing conduct measures

[50] There are five principles that guide the assessment of a fit conduct measure. First, conduct measures must accord with the purposes of the police complaint and discipline process. The determination of an appropriate sanction involves, at its core, a balancing of four purposes or interests: the public interest, the interest of the RCMP as an employer; the subject member’s interest to be treated fairly; and, finally, the interests of those affected by the misconduct at issue.¹⁶ The Supreme Court of Canada has placed emphasis on the public interest by stating that “[t]he

¹⁵ *Conduct Measures Guide*, at page 3.

¹⁶ *Commanding Officer, “K” Division and Constable Ryan Deroche*, 2022 CAD 13, at paragraph 82.

purposes of disciplinary bodies are to protect the public, to regulate the profession and to preserve public confidence in the profession [...]”¹⁷

[51] Second, remedial and corrective measures should prevail, where appropriate.¹⁸

[52] Third, there is a presumption that the least onerous disposition should be imposed.

[53] However, both the second and third principles will be displaced if the public interest or other considerations, such as the seriousness of the misconduct, prevail.

[54] Fourth, police officers are expected to adhere to a higher standard of conduct.¹⁹

[55] Fifth, the conduct measure(s) imposed must be proportionate to the nature and circumstances of the contravention.²⁰ The relevant proportionality considerations must be weighed and, depending on the circumstances, may be either mitigating, aggravating or neutral.

[56] The *Conduct Measures Guide* is a useful reference, as it provides a starting point for the analysis. However, it is important to note that the *Conduct Measures Guide* is just that, a guide. It is not meant to be prescriptive. It must be considered in the context of evolving social standards and current jurisprudence.

Joint proposals

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

[58] The Supreme Court of Canada has recognized the value of settlement discussions as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement

¹⁷ *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, at paragraph 53.

¹⁸ *RCMP Act*, at paragraph 36.2(e).

¹⁹ *Montréal (City) v Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48, at paragraphs 33 and 86.

²⁰ *RCMP Act*, at paragraph 36.2(e).

is reached.²¹ Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless it is against the public interest.

[59] Therefore, I must determine whether accepting the Joint Proposal would be against the public interest. This is not a question of whether the conduct measures proposed are the same as those I would have imposed. Rather, the public interest test sets a much higher threshold.

[60] On this point, the Supreme Court of Canada provides the following guidance, which is applicable to administrative tribunals:²²

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

[61] Recent cases have endorsed the *Anthony-Cook* test and provided further guidance on how the public interest test is to be applied.²³ Public confidence will only be lost “where something egregious has occurred in the justice system that society at large finds unacceptable and simply will not tolerate.”²⁴

[62] While the ultimate issue in *Nahanee* is not directly on point, the Supreme Court of Canada examines the principles underlying the public interest test in its analysis and states: “[...] Where a joint submission is put forward, it will be in the rarest of cases that a judge applying the public interest test deviates from the specific sentence proposed. [...]”²⁵

[63] In applying the public interest test, a conduct board will need to consider whether the proposed conduct measures reflect the five guiding principles cited above. This is a necessary, but not determinative step. A conduct board must ultimately weigh whether, when the proposed

²¹ See for example *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19; and *R v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*].

²² *Anthony-Cook*, at paragraph 34.

²³ *R. v Naslund*, 2022 ABCA 6 [*Naslund*]; *R. v Nahanee*, 2022 SCC 37 [*Nahanee*]; and *R v Albert*, 2022 QCCS 3934 [*Albert*].

²⁴ *Albert*, at paragraph 60, citing *R. v Chouhan*, 2021 SCC 26, at paragraph 73.

²⁵ *Nahanee*, at paragraph 37.

measures are viewed in the context of the benefits articulated by the parties in support of a joint proposal, the public interest test is met.²⁶

Analysis

[64] On my initial review of the Joint Proposal, I did not feel that I had sufficient information to assess whether it met the public interest test. As recognized in *Naslund*, in applying the public interest test, I must reach “an independent conclusion, based on an adequate record.”²⁷ Counsel are required to fully explain how they arrived at the proposed conduct measures.²⁸

[65] On my initial assessment of the Joint Proposal, I had serious concerns as to whether the proposed conduct measures reflected the five guiding principles for assessing a fit conduct measure. In particular, the quantum of financial penalties appeared to be significantly below the possible range for the allegations at issue. I also required additional information in order to fully assess the proportionality factors noted by the parties and whether the proposed measures accorded with the four purposes of the conduct process. Therefore, I requested further information from the parties with respect to:

- a) The quantum and structure of the proposed financial penalties;
- b) Constable Flodell’s work performance;
- c) Whether the persons affected by Constable Flodell’s misconduct had been consulted on the Joint Proposal, and if so, whether they had expressed an opinion about the proposed measures;
- d) The proposed transfer: to confirm the impact on those affected by Constable Flodell’s misconduct.

[66] I have considered and incorporated the parties’ response, and additional information submitted in support, in my analysis, with one caveat: The parties were emphatic that, in assessing whether Constable Flodell’s actions in Allegation 5 met the definition of sexual harassment, I

²⁶ *Naslund*, at paragraph 94.

²⁷ *Naslund*, at paragraph 89, citing the *Report of the Attorney General’s Advisory Committee on Charge Screening, disclosure and Resolution Discussions* (Toronto: Ontario Ministry of the Attorney General, 1993) [*Martin Report*], at page 329.

²⁸ *Naslund*, at paragraph 92.

could give little weight to untested evidence in the Record. I agree, and I have applied this same principle in considering their submissions in support of the Joint Proposal.

[67] In response to my concern that the proposed financial penalty falls below the cumulative range for each of the five allegations that have been established, the parties submit that their intention was to propose a global sanction, and that the range of financial penalty proposed falls within the acceptable range, as set out in the *Conduct Measures Guide*, when viewed in conjunction with other conduct board decisions. They provided an analysis of recent conduct board decisions, involving discourteous and harassing behaviour. Most of these cases involved sexual harassment and/or sexual assault, and were therefore of limited assistance. For the reasons I have expressed in a previous conduct board decision,²⁹ I have given little weight to decisions resolved by way of joint proposals.

[68] The parties submit that Allegation 1 involves a very minor assault, and falls within the mitigated range of a financial penalty of 1-2 days.

[69] With respect to Allegation 2, the parties recognize that Constable Flodell was senior to Constable E.P., a much junior member. They submit that Constable Flodell's comment must be viewed in the context of accepted office banter, and rely on this context in assessing that the behaviour falls in the normal to low end of the aggravated range. However, I do not have established proof of the extent to which Constable E.P. engaged in banter with Constable Flodell. Moreover, there is no context in which telling a colleague she looks like a "whore" can reasonably be considered appropriate office banter.

[70] With respect to Allegation 3, the parties submit that Constable Flodell's comment was "a momentary loss of composure in the context of a specific conversation". Again, with respect, I do not have established proof of this fact. The fact that Constable Flodell has admitted to three allegations in which he refers to women as "whores" or "sluts" for wearing makeup suggests otherwise.

[71] With respect to Allegations 2, 3 and 4, the parties submit that the fact that Constable Flodell's comments, while made on-duty, were not made in the course of carrying out police duties,

²⁹ *Commanding Officer, "K" Division and Constable Ryan Deroche*, 2022 CAD 13, at paragraphs 100 to 103.

or in interacting with the public, is indicative of behaviour that falls at the lower end of the aggravated range of behaviour. I disagree. One cannot ignore that Constable Flodell made these comments to or about female colleagues in the workplace.

[72] Finally, with respect to Allegation 5, the parties submit that Constable Flodell did not know that his comments were having a negative impact on Constable A.P. Again, that may be his perspective, but it is not a fact that is established in the record before me. In particular, it must be viewed in the context of evidence that suggests he was repeatedly asked to stop making comments about her status as a single woman without children.

[73] In short, I do not agree with the parties' assessment of the appropriate range of financial penalty that is applicable in this case. However, this is only one factor in my analysis.

[74] The parties emphasized that the proposed financial penalty, in the form of a forfeiture of pay and of leave, must be viewed in the context of the additional conduct measures proposed. In particular, they argued that in light of Constable Flodell's personal circumstances, a transfer to another location is a particularly onerous and significant measure. Here, they noted that Constable Flodell has been at this Detachment for 11 years. Constable Flodell will lose the strong ties he has to the community, through his volunteer work.

[75] In support of their argument that a transfer is particularly onerous in this case, the parties note that Constable Flodell has four school-aged children, one with special health needs, who have grown up in the community. They will, by virtue of a transfer, be uprooted. I do not dispute that a transfer will necessarily have an impact on a member's family and that it may be a very difficult adjustment, particularly for children. However, the root cause for this disruption is Constable Flodell's misconduct, and that misconduct must be appropriately addressed, in accordance with the established legal principles. Consequently, it is a consideration to which I can give limited weight.

[76] The parties also note that a transfer is proposed in order to ensure that Constable Flodell will be placed in a different detachment than of those affected by his misconduct. Constable Flodell is to be under close supervision for a period of one year, with particular attention to his behaviour and attitude towards women in the workplace.

[77] The parties have identified eight proportionality factors that may have a mitigating effect on sanction. First, they submit that Constable Flodell's admissions have avoided a contested hearing. Second, he has accepted responsibility for his actions, and acknowledges his misconduct. Third, he is remorseful. For the most part, I agree. However, I am troubled by Constable Flodell's persistence, even in his amended response, in minimizing facts that I had found established in the *Determination of Established Facts*. This is not consistent with a full acceptance of responsibility.

[78] Fourth, and I acknowledge, that Constable Flodell does not have any prior discipline.

[79] Fifth, the parties submit that Constable Flodell has a positive work record, and initially included a limited number of his performance assessments. In response to my request for more fulsome information, I received additional performance assessments, from 2010 to date, including two negative Performance Logs for unrelated behaviour. Upon review of this documentation, I find that while Constable Flodell has been recognized for his community engagement, his work record is at best satisfactory.

[80] Sixth, and I acknowledge, that Constable Flodell is engaged in the community, and does extensive volunteer work.

[81] Seventh, the parties submit that there is a minimal likelihood of recidivism and demonstrated reform. They note that he has, of his own accord, sought out online training and counselling through which he has engaged in significant self-reflection. A letter from his counsellor confirms his efforts in this regard. The parties also provided proof of completion for a two-hour online course entitled "Workplace Sexual Harassment Awareness". They also provided a copy of an essay written by Constable Flodell, as evidence of his self-reflection.

[82] Finally, I note that Constable Flodell has provided eight letters of reference and support. While I accept these as general character references, their impact is tempered as only two indicate an awareness of the fact that Constable Flodell is facing a Code of Conduct. Even then, they do not indicate an awareness of the nature or specifics of the allegations.

[83] The parties have also identified four proportionality factors that are aggravating in the circumstances. First, Constable Flodell's misconduct was not an isolated incident. It lasted over two years, and targeted different women in the workplace. There is also an element of persistence.

[84] Second, Constable Flodell's behaviour was directed at junior female members new to the Detachment. I note that it was a first posting for both Constables Z.K. and A.P. I further note that Constable Flodell was, when filling in for her trainer, in a position of authority over Constable A.P. I consider these first two factors to be highly aggravating.

[85] Third, as noted at paragraph 40 of this decision, Constable Flodell's behaviour had a significant negative impact on Constable A.P.

[86] Finally, Constable Flodell was aware of, and failed to abide by, the long-standing stance of the RCMP against harassment in the workplace, and directions with respect to appropriate and inappropriate workplace conduct. The parties specifically acknowledge the repeated messages that the RCMP has given to all employees that harassment is unacceptable in the workplace, and has offered training to all employees.³⁰

[87] I have not accepted Constable Flodell's stated lack of malice as a mitigating factor. The parties indicate that Constable Flodell believed, at the time that the allegations occurred in 2021, "that he was engaging in accepted workplace banter and jokes". They describe a workplace dynamic that is not established in the record. They go on to note: "While not an excuse, it is worth noting that if the recipient of a joke or comment 'laughs it off' or smiles and rolls their eyes, it is sometimes not readily apparent that the joke or comment is not well received."³¹

[88] Regardless of the dynamic that may or may not have existed, the days of excusing comments, such as those made by Constable Flodell, as "workplace banter" are long over. Each individual is responsible for their own behaviour. It is inconceivable to me that Constable Flodell was oblivious to the repeated and contemporaneous directions with respect to harassment and inappropriate workplace conduct. I note, in particular, that the Final Report on the Implementation of the Merlo Davidson Settlement Agreement was released on November 19, 2020. That same day, the Commissioner issued a statement in which she said, in part:³²

³⁰ *Joint Proposal on Conduct Measures*, dated January 25, 2023, at page 8.

³¹ Joint Proposal, at page 6.

³² Lucki, Brenda, then RCMP Commissioner, "Commissioner's Statement regarding the Final Report on the Implementation of the Merlo Davidson Settlement Agreement" (November 19, 2020), online: <<https://www.rcmp-grc.gc.ca/en/news/2020/commissioners-statement-the-final-report-the-implementation-the-merlo-davidson>>

[...]

Harassment of any kind is unacceptable and it is against our Code of Conduct. I know we mean it when we say it. But the facts are, despite all the reports, recommendations, and changes over the last three decades, this behaviour continues to surface.

It must be stopped. It will not be tolerated.

There is absolutely no room for sexual assault, harassment, discrimination, bullying, sexism, racism, homophobia or transphobia in the RCMP. Let me say it again, let me be clear.... There is absolutely no room for sexual assault, harassment, discrimination, bullying, sexism, racism, homophobia or transphobia in the RCMP. It will not be tolerated and employees will be held to account.

[...]

[89] I find that to the extent the evidence supports an absence of malice, it is contradicted by Constable Flodell's ignorance of or blatant disregard for acceptable standards of workplace behaviour.

[90] I do not feel that the proposed financial penalty reflects the seriousness of the misconduct, particularly when viewed in the context of the proportionality factors. However, I recognize that a transfer is a serious measure, and that there are additional measures in place, namely through close supervision, to ensure that those at his new detachment are not subject to the same type of behaviour. There are also further remedial measures that directly support Constable Flodell's education and rehabilitation.

[91] The parties submit that the Joint Proposal meets the objectives of the discipline process by striking an appropriate balance between the competing interests. They note that it allows for a definite resolution to this matter, and avoids the need for a hearing. This in turn prevents "a potential re-victimization" of the persons affected "by subjecting them to cross-examination".³³ These are well established and important benefits of joint proposals, with which I agree.

[92] While not what I would have imposed, the parties have articulated rationales for the proposed conduct measures that reflect the five principles that guide the assessment of a fit conduct measure. When considered in their totality, and in the context of the benefits articulated by the

³³ Letter dated February 21, 2023, signed by both counsels, at page 1.

parties in support of the Joint Proposal, I do not find that their acceptance would be considered egregious or intolerable, resulting in the loss of public confidence in the conduct process.³⁴ Consequently, I cannot find that the Joint Proposal is contrary to the public interest, and I accept the proposed conduct measures.

CONCLUSION

[93] Having found Allegations 1, 2, 3, 4 and 5 to be established, and in accordance with the Joint Proposal presented by the Conduct Authority Representative and the Subject Member Representative, the following conduct measures are imposed:

- a) pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 15 days (120 hours) of pay to be deducted from Constable Flodell's pay;
- b) pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*, the forfeiture of 10 days (80 hours) of annual leave;
- c) pursuant to paragraph 5(1)(g) of the *CSO (Conduct)*, a transfer to another work location;
- d) pursuant to paragraph 3(1)(b) of the *CSO (Conduct)*, a direction to work under close supervision, and in particular with respect to Constable Flodell's overall behaviour and attitude towards women in the workplace, for a period of one year from the date of this written decision;
- e) pursuant to paragraph 3(1)(c) of the *CSO (Conduct)*, a direction to complete the following training: Canada School of Public Service *Preventing Harassment and Violence in the Workplace for Employees (WMT101)*. Confirmation that the training has been completed is to be provided to the Conduct Authority within 30 days of the date of this written decision; and
- f) pursuant to subsection 3(2) of the *CSO (Conduct)*, a direction to write letters of apology to Constables E.P., Z.K. and A.P., as well as to PSE S.M. The letters are to be provided to the Conduct Authority within 90 days of the date of this written decision. The Conduct Authority will, in turn, provide the letters to the individuals who consent to receive them.

³⁴ *Albert*, at paragraph 60, citing *R. v Chouhan*, 2021 SCC 26, at paragraph 73.

[94] Constable Flodell is being permitted to continue his career with the RCMP. It is expected that he will uphold the standards set by the Code of Conduct and the RCMP core values. Any future contravention of the Code of Conduct will be seriously reviewed by the appropriate conduct authority and could lead to his dismissal from the Force.

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

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

Christine Sakiris
Conduct Board

May 12, 2023
Date