



**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

**Constable Filip Kedzierski**

Royal Number 63131

(Subject Member)

---

**Conduct Board Decision**

Louise Morel

January 09, 2024

---

Ms. Janice Calzavara, Conduct Authority Representative

Mr. Gordon Campbell, Subject Member Representative

**TABLE OF CONTENTS**

SUMMARY ..... 4  
INTRODUCTION ..... 5  
ALLEGATIONS..... 7  
    Agreed Statement of Facts ..... 9  
    Decision on the allegation ..... 9  
CONDUCT MEASURES ..... 10  
    Applicable legal principles ..... 11  
        Assessing conduct measures ..... 11  
        Joint Proposal ..... 12  
    Range of conduct measures ..... 13  
    Finding on conduct measures ..... 14  
    Conclusion on conduct measures ..... 15

## SUMMARY

The *Notice of Conduct Hearing*, dated December 22, 2022, contained three alleged contraventions of the RCMP Code of Conduct, each under a different section: 7.1, 4.1 and 8.1.

On July 10, 2023, the Conduct Authority withdrew the alleged contravention of section 7.1 and, on August 9, 2023, he withdrew the alleged contravention of section 8.1.

On August 9, 2023, prior to the date of the conduct hearing and based upon an *Agreed Statement of Facts*, Constable Kedzierski admitted the remaining allegation, having failed to report for duty, contrary to section 4.1 of the RCMP Code of Conduct. The parties submitted a *Joint Proposal on Conduct Measures*, which was accepted by the Conduct Board.

The Conduct Board found the sole remaining allegation to be established on a balance of probabilities. The following conduct measure was imposed: a financial penalty of 1 day's pay, to be deducted from Constable Kedzierski's pay.

## INTRODUCTION

[1] On October 2, 2001, Constable Filip Kedzierski attended a wedding in Ontario.

[2] On November 3, 2021, Constable Kedzierski learned that the Greater Sudbury Police Service was charging him for sexually assaulting a female guest of the wedding he attended in October.

[3] On November 4, 2021, Constable Kedzierski is alleged to have failed to report for duty without authorization in order to deal with the aforementioned criminal charge.

[4] On October 20, 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 October 24, 2022, Ms. Christine Sakiris 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*].

[5] The *Notice of Conduct Hearing*, dated December 22, 2022, contains three allegations:

- a. discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct;
- b. failure to report for duty in contravention to section 4.1 of the RCMP Code of Conduct;
- c. failure to provide complete, accurate and timely accounts pertaining to the carrying out of the performance of his duties, in contravention of section 8.1 of the RCMP Code of Conduct.

[6] This *Notice of Conduct Hearing* was served on Constable Kedzierski on January 27, 2023, along with the investigation package.

[7] On March 17, 2023, a first pre-hearing conference was held with the Parties' representatives. The primary purpose of that conference was to review the Subject Member Representative's request for further investigation and disclosure. The Subject Member Representative asserted that the information requested was essential to the preparation of Constable Kedzierski's response to the allegations. The Conduct Board concurred with some of

the requested further disclosure and investigation; accordingly, the Professional Responsibility Unit received various directions.

[8] On April 14 and 27, 2023, a second and third pre-hearing conferences were held during which the Conduct Board directed the Conduct Authority Representative to provide the Subject Member Representative with the contact information of various witnesses in order for these to be reinterviewed.

[9] On May 4, 2023, 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 allegations are established on a balance of probabilities. In other words, I must determine whether it is more likely than not that Constable Kedzierski has contravened the RCMP Code of Conduct. If I find one or more of the allegations to be established, then I must impose conduct measures.

[10] On June 15, 2023, Constable Kedzierski provided his partial 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 allegations.

[11] On July 10, 2023, I held a fourth pre-hearing conference during which the Conduct Authority Representative advised that the Conduct Authority was requesting the withdrawal of Allegation 1 (section 7.1 of the RCMP Code of Conduct) as the Complainant did not wish to participate in the process. I accepted this request and withdrew the allegation. The Conduct Authority Representative further advised that the Conduct Authority was no longer seeking Constable Kedzierski's dismissal and that the parties were working on a resolution.

[12] On July 14, 2023, the fifth and final pre-hearing conference in this matter was held. The parties advised that they had reached a resolution and that they intended to submit an *Agreed Statement of Facts* and a *Joint Proposal on Conduct Measures*. The Conduct Hearing was scheduled to be held virtually on August 21, 2023.

[13] At the start of the hearing, based on the *Agreed Statement of Facts*, Constable Kedzierski admitted the remaining allegation of having failed to report to duty on November 4, 2021,

[14] I delivered the oral decision on the allegation on August 21, 2023, in which I accepted Constable Kedzierski's admission and found the allegation established on a balance of probabilities.

[15] The parties jointly proposed a forfeiture of one day's pay. I accepted the Joint Proposal, finding that it was not against the public interest to do so. My oral decision on conduct measures was delivered on August 21, 2023. This written decision incorporates and expands upon those oral decisions.

## **ALLEGATIONS**

[16] The allegations as set out in the *Notice of Conduct Hearing* read as follows:

### **Allegation 1**

[Allegation 1 was withdrawn on July 10, 2023.]

### **Allegation 2**

On or about November 4, 2021, at or near Halifax, in the Province of Nova Scotia, Constable Filip Kedzierski failed to report for duty, contrary to section 4.1 of the RCMP *Code of Conduct*.

### **Allegation 3**

[Allegation 3 was withdrawn on August 9, 2023.]

### **Particulars Common to All Allegations:**

1. At all material times you were a member of the Royal Canadian Mounted Police posted to "H" Division, Nova Scotia.
2. You were arrested and criminally charged with contravening section 271 of the *Criminal Code*, Sexual Assault, in relation to your behaviour on or around October 2, 2021.
3. The criminal charge resulted in a section 810 *Criminal Code* 12-month Peace Bond, entered into on August 5, 2022. Your conditions include not having contact with [O.L.] or [K.D.]. The criminal charges against you were withdrawn in response to you entering in to the Peace Bond.

### **Particulars Common to Allegations 2 and 3:**

18. On November 3, 2021, you messaged [Sergeant] Robert Kellock ("Sgt. Kellock") at [6:54 p.m.], asking him if he was home. You also messaged [Sergeant] Kellock that evening at [6:59 p.m.] that you "really need to talk to

[him]”, and at [7:02 p.m.] that “it’s serious”. You were trying to arrange an in-person meeting for a reason that you “can’t say over the phone”.

19. At or around [8:55 p.m.] that evening, you met with [Sergeant] Kellock in the Sobey’s Gas Bar in Fall River. [Sergeant] Kellock invited you into the passenger side of his SUV to talk.

20. While in his vehicle, you told [Sergeant] Kellock that you were under investigation for sexual assault by the Sudbury Police Service.

21. You attended the Sudbury Police Department, in person, at 190 Barty Street in Sudbury Ontario, on November 4, 2021, at between 11:36 [a.m.] and 12:36 [p.m.] EST. Your attendance was for the purpose of being arrested for sexual assault.

22. You remained in the Sudbury Police station until at least 12:39 [p.m.] EST.

23. You texted [Sergeant] Kellock that you were in Ontario on November 4, 2021, at approximately [1:39 p.m.].

**Particulars for Allegation 2:**

24. On November 3, 2021, Detective Sargent Jeff Lock [(D/Sgt. Lock)] of the Sudbury Police Service called you to inform you that you were going to be charged with sexual assault and a warrant for your arrest was going to be issued.

25. In response to this information, you asked if you could “just come deal with this”. D/Sgt. Lock said you could come and deal with it. You said you would “take the next available flight”. D/Sgt. Lock responded with “Ok. Uh tch tch, I’m in until uh si- well six tomorrow. And then I’m on uh all weekend, from one until midnight. So I think [ ] Midnight on the Sunday”. D/Sgt. Lock clarified that he would “give you a call tomorrow when [he] come back in to see what arrangements have you made”.

26. Later on November 3, 2021, while you were in [Sergeant] Kellock’s vehicle speaking to him about the charges [Sergeant] Kellock asked you if you would be travelling to Ontario to “deal with the matter”. You replied that you would be going there as soon as possible. You did not mention to [Sergeant] Kellock that you planned to go to Ontario the next day (November 4, 2021).

27. On November 4<sup>th</sup>, 2021, you were scheduled to work a day shift at Musquodoboit Harbour Office within the Halifax District Detachment. You were scheduled to work on November 4, 2021, from [7 a.m.] to [5 p.m.].

28. You were scheduled to be in court in Antigonish on November 4, 2021, at [9:30 a.m.], for the [J.] matter. You were aware that you were scheduled to be in court for this matter as early as October 26, 2021.



29. Your attendance at court for the [J.] matter was deemed not necessary the evening of November 3, 2021. However, this means you were to report to your normal workplace on November 4, 2021, at your regular shift time.

30. You had not requested, nor received, from your supervisor or someone in an authority position, leave or permission to not attend work on November 4, 2021.

31. You did not have, nor provide, a lawful excuse or justification for not attending your shift on November 4, 2021.

32. You did not attend your shift on November 4, 2021.

33. Therefore, you failed to report for duty and were absent for duty on November 4, 2021. Your actions contravened section 4.1 of the RCMP *Code of Conduct*.

[*Sic throughout*]

### **Agreed Statement of Facts**

[17] On August 9, 2023, the parties provided me with an *Agreed Statement of Facts*, signed by Constable Kedzierski. It was marked as the Subject Member's Exhibit 1 during the Conduct Hearing and read on the record by the Subject Member Representative. Constable Kedzierski admitted Allegation 2 based upon this *Agreed Statement of Facts*. His admission is consistent with the material before me. Consequently, the particulars in the *Notice of Conduct Hearing* constitute my findings of fact.

### **Decision on the allegation**

[18] Section 4.1 of the Code of Conduct provides that “[m]embers report for and remain on duty unless otherwise authorized”.

[19] The test for “failing to remain on duty” under section 4.1 of the Code of Conduct requires for the Conduct Authority to establish the following five elements on a balance of probabilities:

- a. the identity of the member;
- b. that the subject member was scheduled for duty;
- c. the subject member's scheduled hours;

- d. that the subject member did not remain on-duty for their scheduled shift; and
- e. that the subject member was not authorized not to report for their scheduled shift.

[20] By virtue of Constable Kedzierski's admission, I find that the first four elements of the test are satisfied. He was scheduled to work a day shift (7 a.m. to 5 p.m.) at Musquodoboit Harbour Office, within the Halifax District Detachment, on November 4, 2021, and he did not attend his shift. Therefore, I can turn my attention to determining whether he was authorized not to report for his shift.

[21] Constable Kedzierski admits that, instead of attending his shift on November 4, 2021, he attended the Sudbury Police Department in person. He explained that, on November 3, 2021, he met with Sergeant Kellock and advised him that he was under investigation and would be going to Ontario to deal with the matter "as soon as possible".

[22] Constable Kedzierski concedes in the *Agreed Statement of Facts* that he should have explicitly confirmed with Sergeant Kellock that he would not attend his shift on November 4, 2021.

[23] Constable Kedzierski did not advise Sergeant Kellock of the arrangements he had made to attend Sudbury, Ontario, on November 4, 2021; consequently, he was not authorized not to report for his scheduled shift.

[24] Accordingly, I find that Allegation 2 is established on a balance of probabilities.

## **CONDUCT MEASURES**

[25] Having found Allegation 2 established and in accordance with subsection 45(4) of the *RCMP Act*, 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.”<sup>1</sup>

[26] I acknowledge that, in light of the withdrawal of Allegations 1 and 3 by the Conduct Authority, the Conduct Authority Representative has indicated that dismissal is no longer a proportionate measure. I agree.

[27] The parties submitted a Joint Proposal, with supporting documentation and jurisprudence. They proposed a financial penalty of one day to be deducted from Constable Kedzierski’s pay.

### **Applicable legal principles**

#### *Assessing conduct measures*

[28] There are five principles that guide the assessment of an appropriate 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 the employer; the subject member’s interest to be treated fairly; and, finally, the interests of those affected by the misconduct at issue.<sup>2</sup> 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>3</sup>

[29] Second, remedial and corrective measures should prevail, where appropriate.<sup>4</sup>

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

---

<sup>1</sup> *Conduct Measures Guide*, November 2014, at page 3.

<sup>2</sup> RCMP Conduct Board decision 2022 CAD 13 [*Deroche*], at paragraph 82.

<sup>3</sup> *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, at paragraph 53.

<sup>4</sup> *RCMP Act*, at paragraph 36.2(e).

[31] Fourth, police officers are expected to adhere to a higher standard of conduct.<sup>5</sup>

[32] Fifth, the conduct measure(s) imposed must be proportionate to the nature and circumstances of the contravention.<sup>6</sup> The relevant proportionality considerations must be weighed and, depending on the circumstances, may be either mitigating, aggravating or neutral.

[33] 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 Proposal*

[34] The parties submit that the jointly proposed conduct measure falls within the range of outcomes as outlined in the *Conduct Measures Guide* and that its acceptance is not contrary to the public interest.

[35] I acknowledge that the Supreme Court of Canada and various courts of appeal have recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.<sup>7</sup> Generally speaking, an administrative tribunal will not override a settlement reached by the parties unless it is against the public interest.

[36] 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.

---

<sup>5</sup> *Montreal (City) v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48, at paragraphs 33 and 86.

<sup>6</sup> *RCMP Act*, at paragraph 36.2(e).

<sup>7</sup> *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19.

[37] On this point, the Supreme Court of Canada provides the following guidance, which is applicable to administrative tribunals:<sup>8</sup>

[...] 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.

[38] Recent cases have endorsed the *Anthony-Cook* test and provided further guidance on how the public interest test is to be applied.<sup>9</sup> 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.”<sup>10</sup>

[39] In applying the public interest test, a conduct board needs to consider whether the proposed conduct measures reflect the aforementioned five guiding principles. A conduct board must ultimately weigh whether the public interest test is met when the proposed measures are viewed in the context of the benefits articulated by the parties in support of a joint proposal.<sup>11</sup>

### **Range of conduct measures**

[40] In order to make this determination, it is helpful to have some sense of what the possible measures may be. The *Conduct Measures Guide* is a useful reference in this regard.

[41] The *Conduct Measures Guide*, at pages 19 and 20, specifically identifies the range of conduct measures imposed for leave violations—that is, members must report for and remain on-duty unless otherwise authorized. The normal range is a reprimand to 1 day’s forfeiture of pay whereas the aggravated range of measures is a forfeiture of pay ranging from 1 to 10 days.

---

<sup>8</sup> *R. v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*], at paragraph 34.

<sup>9</sup> *R. v Naslund*, 2022 ABCA 6 (CanLII) [*Naslund*]; *R. v Nahanee*, 2022 SCC 37; and *R. c Albert*, 2022 QCCS 3934 (CanLII) [*Albert*].

<sup>10</sup> *Albert*, at paragraph 60, citing *R. v Chouhan*, 2021 SCC 26, at paragraph 73.

<sup>11</sup> *Naslund*, at paragraph 94.

[42] Constable Kedzierski admits that he was absent from duty without authorization. As submitted by the parties, this admission avoided a contested hearing.

[43] The Conduct Authority Representative has submitted that an “aggravating factor” was that Constable Kedzierski missed work in order to be “arrested by another police department for a serious offence” and that he is a police officer. With respect, I do not agree that this constitutes an “aggravating” factor. The fact is, he was not convicted of a serious criminal offence, or any offence for that matter. At best, the circumstances which led to Constable Kedzierski’s missing work are a “neutral” factor.

[44] This was an isolated incident and Constable Kedzierski does not have any prior record of discipline. The materials before me establishes that, at the time of the contravention, Constable Kedzierski was under significant stress and that he had no malicious intent. In fact, a miscommunication or misunderstanding between himself and Sergeant Kellock, on November 3, 2021, appears to have been an underlying factor in this incident.

[45] That said, missing a shift as a law enforcement officer does impair the operational effectiveness of one’s unit or detachment.

[46] I find that the appropriate range is in the normal range, which constitutes a reprimand to a financial penalty of 1 day’s pay, alone or in combination.

### **Finding on conduct measures**

[47] The proposed conduct measure of one day’s forfeiture of pay accords with three of four purposes of the discipline process: the public interest; the RCMP’s interest in maintaining discipline; and the interest of Constable Kedzierski in having this matter concluded.

[48] In addition, the proposed conduct measure is both remedial and corrective. It recognizes that, in crafting an appropriate conduct measure, there is a presumption that one should impose the least onerous disposition, unless displaced by public interest. In the present case, the presumption is not displaced.

[49] I agree with the submission of the parties: the proposed conduct measure appropriately addresses public interest, the seriousness of the misconduct and parity.

[50] Finally, the proposed conduct measure serves as an acknowledgement that police officers should be held to a higher standard of behaviour. It will serve as a deterrent to Constable Kedzierski as well as a warning to other members.

### **Conclusion on conduct measures**

[51] Based on the foregoing, I conclude that the proposed conduct measure is not against the public interest. Therefore, I accept the Joint Proposal and hereby impose:

- A financial penalty consisting of a forfeiture of 1 day's pay, to be deducted from Constable Kedzierski's pay, pursuant to paragraph 5(1)(j) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291;

[52] Any interim measures in place should be resolved, in a timely fashion, in accordance with paragraph 23(1)(b) of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[53] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on Constable Kedzierski as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

---

Louise Morel  
Conduct Board

---

January 09, 2024  
Ottawa, Ontario