



ROYAL CANADIAN MOUNTED POLICE

CONDUCT HEARING

IN THE MATTER OF THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, National Division

Conduct Authority

and

Constable Steve Morrison, Regimental No. 59150

Subject Member

Conduct Board Decision (corrected)

Ms. Josée Thibault, Chairperson

Inspector James Knopp, Board Member

Inspector Al Ramey, Board Member

May 31, 2018

Staff Sergeant Jonathon Hart and Mr. Spiro Hadjis, for the Conduct Authority

Ms. Sabine Georges, for the Subject Member

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SUMMARY OF DECISION

The Subject Member denied an allegation of discreditable conduct for having made a sexually suggestive comment and acted inappropriately towards a member of the Royal Canadian Mounted Police. He also denied an allegation of failing to show respect and courtesy by engaging in discrimination and harassment in the workplace. The Conduct Board concluded that the two allegations were not established on a balance of probabilities and, consequently, no conduct measure was imposed.

REASONS FOR DECISION

INTRODUCTION

[1] The conduct hearing convened in March 2018, in Ottawa, Ontario. The Board concluded that the two allegations of contravention of the *Code of Conduct of the Royal Canadian Mounted Police* (Code of Conduct) were not established. These reasons set out, in greater detail, the decision rendered orally at the hearing.

ALLEGATIONS

[2] The Notice of Conduct Hearing dated June 21, 2017, contains the following two allegations, both denied by the Subject Member.

[Translation]

Allegation 1

On or about August 6, 2016, and August 7, 2016, at Ottawa, in the province of Ontario, or vicinity, [Subject Member] behaved in a manner likely to discredit the Force, thereby contravening section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars of the allegation:

1. At the material time, you were a member of the Royal Canadian Mounted Police assigned to the Parliamentary Protective Service (PPS), in the National Division.
2. You were on duty and assigned to work the night shift from Saturday at 7:00 p.m. to Sunday at 6:00 a.m. with Cst. [X], who was also assigned to the PPS. Cst. [X] and you were assigned to work together in an unmarked police vehicle.
3. At some point during the shift, Cst. [X] placed her hand on the in-vehicle computer, following which you placed your hand on hers. You knowingly left your hand on Cst. [X]'s long enough for her to feel uncomfortable.
4. After a workout, Cst. [X] and you were alone again in the police vehicle and Cst. [X] was seated in the passenger seat. You made a sexually suggestive comment when you said to Cst. [X] that you thought you would be able to slide your hand under her bulletproof vest. You then attempted to slide your hand under Cst. [X]'s bulletproof vest and uniform shirt for the purpose of touching her physically. Cst. [X] asked you verbally to stop your

unwanted action, but she persisted and continued moving your hand up towards her chest. Cst. [X] was forced to push your hand away physically, again telling you to stop.

5. Later on, Cst. [X] and you switched places (from the driver's seat to the passenger seat and vice versa). You tried to pull Cst. [X]'s hand towards your genitals, between your legs. You continued pulling Cst. [X]'s hand toward your crotch, even after she resisted physically. It is admitted that Cst. [X] may have touched you between your legs while you were pulling her hand. Consequently, you once again tried to touch Cst. [X]'s crotch, but were prevented from doing so by Cst. [X], who told you to stop. It is admitted that you did not make any other touching attempt after this last incident.

Allegation 2

On or about August 6, 2016, and August 7, 2016, at Ottawa, in the province of Ontario, or vicinity, [Subject Member] breached his duty to treat others with respect and courtesy and engaged in discrimination or harassment, contrary to section 2.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the allegation:

1. At the material time, you were a member of the Royal Canadian Mounted Police assigned to the Parliamentary Protective Service (PPS), in the National Division.
2. You were on duty and assigned to work the night shift from Saturday at 7:00 p.m. to Sunday at 6:00 a.m. with Cst. [X], who was also assigned to the PPS. Cst. [X] and you were assigned to work together in an unmarked police vehicle.
3. You made a number of sexually suggestive jokes and comments to Cst. [X] that were both unwanted and inappropriate. You blamed Cst. [X] for the unwanted sexual contact that had previously taken place in the police vehicle and refused to apologize for your inappropriate actions. You went to Cst. [X]'s personal residence without her permission and informed her via text message that you were outside her home.
4. You sent Cst. [X] numerous inappropriate and unprofessional text messages, including the following:
 - a) You asserted that [X] and you would be a couple if you did not have a girlfriend;
 - b) At 3:04 a.m. on Sunday, you sent [X] a text message saying: [translation] "Ohhh baby, i wanna do you from every direction," to which [X] replied: "Moron";

- c) At 6:31 on Sunday, you sent [X] a text message that said: [translation] “im in front of yr place wr r u?”;
- d) Via text message, [X] confronted you about what had happened and informed you that you had made her uncomfortable;
- e) At 4:58 p.m. on Sunday, you sent [X] a text message saying: [translation] “Hahaha, ur the one who started (3 smileys), but i promise you i’ll stop!”, followed, at 5:17 p.m., by [translation] “yer worse you touched me, tied me up, massaged me lol”;
- f) At 5:14 p.m. on Sunday, you sent [X] a text message saying: [translation] “Pardon me?? You want me to apologize??? Wow, i think we’re gonna have problems for sure”;
- g) At 5:15 p.m. on Sunday, you sent [X] a text message saying: [translation] “For crissakes you were inappropriate too massaging me kissing my arm grabbing my hand so pls end this convo right now i’m not apologizing and i promise u i’ll never touch u again...”;
- h) At 5:19 p.m. on Sunday, you sent [X] a text message saying: [translation] Dont touch me anymore! Goes both ways and thx alot”;
- i) At 5:31 p.m. on Sunday, you sent [X] a text message saying: [translation] Its too bad yr taking it this way... i was really starting to like r relationship after what happened b4... Whatever!”.

5. You breached your duty to treat Cst. [X] with the respect and courtesy she deserves and knowingly committed acts and engaged in behaviour towards her that constitute sexual harassment.

[original French text quoted verbatim]

[3] Pursuant to the *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10 [RCMP Act] and the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291, all material relevant to this matter, including the Subject Member’s response, was provided to the Board prior to the commencement of the hearing. The Conduct Authority representatives had one witness, while the Subject Member’s representative called three RCMP members, including the Subject Member, to testify.

ANALYSIS

[4] The evidence on the record shows that the Subject Member and Cst. X were, in August 2016, RCMP members assigned to the Parliamentary Protective Service (PPS) of the National Division. They were working together in unmarked police car number 279 on the night shift,

which started at 7:00 p.m., Saturday, August 6, 2016, and ended at 6:00 a.m., on Sunday, August 7, 2016. Neither the Subject Member nor Cst. X had influence or power over the other in terms of career advancement, performance review or or assignment of duties.

[5] The two members met in December 2015, when Cst. X joined the PPS. She testified that she considered the Subject Member to be a coworker with whom she had a purely professional relationship. For his part, the Subject Member thought of her as a friend with whom he could joke and make sexually suggestive comments without offending her.

[6] The evidence in the investigation file and in testimony at the hearing demonstrated that Cst. X and the Subject Member never had a romantic relationship. They would see each other occasionally at social activities organized outside the office with other coworkers, for example, the housewarming party at Cst. X's home in February or March 2016, her birthday party in a local bar in March 2016, and a barbecue organized by a coworker on August 5, the day before the events in question.

[7] The two parties were used to working together, and during their 12-hour shifts they would joke together and work out at the gym. Beyond that, they would freely discuss anything and everything, including private matters, such as the Subject Member's love life. During group discussions with colleagues at work, the two members sometimes made sexually suggestive comments that did not seem to offend anyone.

[8] In her testimony at the hearing, Cst. X admitted that the two parties were comfortable physically touching each other, amicably, for example when she testified as follows: [translation] "At one point I touched his shoulder in a friendly way, not under his clothing." Therefore, based on all of the evidence presented at the hearing, the Board has concluded that the parties had more than a professional relationship as indicated by the Conduct Authority. In fact, they had something more along the lines of a friendly relationship in which a certain level of familiarity had been established, allowing them to share jokes and touch each other in a friendly manner during workouts at the gym, for example.

[9] Apart from the Subject Member and Cst. X, there were no witnesses present at the time of the incidents during the work shift of August 6 and 7, 2016. The Board noted that there were significant discrepancies between the two parties' versions of the facts. In fact, it was difficult for the Board to clearly reconstruct, from the investigation file and testimony at the hearing, the logical sequence of events that occurred before, during and after the shift.

Credibility

[10] Since the credibility of witnesses was at the heart of the hearing, the Board applied the principles that emerge from three case law decisions used regularly to assist it in determining whether there has been a breach of the Code of Conduct. Although the decisions are dated, they continue to be cited by the courts.

[11] In *Wallace v. Davis*, (1926) 31 OWN 202, the Court states at page 203 :

... the credibility of a witness in the proper sense does not depend solely upon his honesty in expressing his views. It depends also upon his opportunity for exact observation, his capacity to observe accurately, the firmness of his memory to carry in his mind the facts as observed, his ability to resist the influence, frequently unconscious, of interest to modify his recollection, his ability to reproduce in the witness-box the facts observed, the capacity to express clearly what is in his mind - all these are to be considered in determining what effect to give to the evidence of any witness..

[12] In *MacDermid v. Rice*, (1939) R. de Jur. 208, Archambault J. writes at p. 210 :

... when the evidence of an important fact is contradictory... the Court must weigh the motives of the witnesses, their relationship or friendship with the parties, their attitude and demeanour in the witness box, the way in which they gave evidence, the probability of the facts sworn to, and come to a conclusion regarding the version which should be taken as the true one.

[13] Finally, in *Faryna v. Chorny*, [1952] 2 DLR 354, the British Columbia Court of Appeal opines as follows at p. 357:

The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried the conviction of truth. The test

must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

DECISION ON THE ALLEGATIONS

Allegation 1 – Sexually suggestive comment and inappropriate acts

[14] Under section 7.1 of the Code of Conduct, discreditable behaviour is defined on the basis of a test that considers how a reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the behaviour.

[15] More specifically, the test to be applied under this section is similar to the one developed by the Royal Canadian Mounted Police External Review Committee in recommendation (1991), 4 A.D. (2d) 103, regarding disgraceful conduct pursuant to subsection 39(1) of the *Royal Canadian Mounted Police Regulations, 1988*, SOR/88-361, in force prior to the legislative reform of November 2014.

[16] For a contravention of section 7.1 to be established on a balance of probabilities, the Conduct Authority must first prove the acts constituting the alleged behaviour, as well as the identity of the member who is alleged to have committed these acts. Then, the Conduct Board must conclude that the member's behaviour is likely to discredit the Force and that it is sufficiently related to the member's duties and functions to provide the Force with a legitimate interest in disciplining the member.

[17] Based on the Subject Member's admissions and the accepted facts of the case, the Board concluded that the identity of the member was established. As for proving the acts constituting the alleged misconduct, the Board carefully assessed all the evidence adduced, including all the testimony at the hearing and the written statements. Finally, the Committee concluded that the Subject Member did not conduct himself in a manner likely to discredit the Force. Therefore, allegation 1 was not established on a balance of probabilities.

[18] Specifically, Cst. X's testimony raised significant doubts as to the Subject Member's intent when he placed his hand for a few seconds on her hand, which was placed on the notebook computer located between the two front seats of vehicle 279. Moreover, during her testimony at the hearing, Cst. X did not know whether vehicle 279 was equipped with a computer, which contradicted her statement to the investigator on August 25, 2016, some 20 days after the incident in question. As well, she could not confirm at what point in the shift the incident had occurred. In fact, she could not recall whether both parties were in vehicle 279 or in another vehicle used to travel to Parliament Hill at the beginning of the shift. Finally, she stated that she removed her hand simply thinking that the action was strange or that it was another one of the Subject Member's jokes.

[19] For his part, the Subject Member explained that, during the shift, he wanted to put his right hand on the armrest, which was the notebook computer. So he put his hand down without knowing that Cst. X's hand was there too. The Subject Member therefore accidentally touched his coworker's hand for a few seconds.

[20] Taking into account the explanations offered by both parties and the uncertainty of Cst. X, the Board concluded that, although the Subject Member's actions were inappropriate in the context of the RCMP workplace, his explanation was plausible, and they did not, in the circumstances described, constitute inappropriate conduct that would bring discredit upon the Force.

[21] This allegation also pertains to a sexually suggestive comment made by the Subject Member and three inappropriate actions he committed in relation to Cst. X during the shift. First, he is alleged to have attempted to slide his hand underneath her bulletproof vest and short-sleeved shirt in an effort to touch her physically in her chest area. Second, he is alleged to have attempted to pull the Cst.'s hand between his legs in his genital area. Third, he is alleged to have attempted to touch Cst. X's crotch. In the absence of witnesses, the Board had to consider the credibility of the witnesses to determine whether the acts complained of had been committed.

[22] In *F.H. v. McDougall*, 2008 CSC 53 (*McDougall*), the Supreme Court of Canada had occasion to examine issues of witness credibility and reliability that were highly relevant to these proceedings. At paragraph 100, the Court states as follows:

An unsuccessful party may well be dissatisfied with the reasons of a trial judge, especially where he or she was not believed. Where findings of credibility must be made, it must be recognized that it may be very difficult for the trial judge to put into words the process by which the decision is arrived at...

... [A]ssessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization.

[23] During her testimony to the investigator and at the hearing, the Board noted that Cst. X was sincere, but that she often gave vague explanations and was guarded and evasive with her words. In its oral decision, the Board indicated that the Constable did not appear to have any personal notes of the incidents, which might have assisted her in recalling the observed facts more precisely. For example, she had forgotten whether the two parties had worked out together at the gym during the health break and whether she had massaged the Subject Member's arm in the vehicle to relieve the pain he was experiencing after their workout session. As well, she could not recall the discussions she had had with the member after the incidents and at the end of the shift.

[24] The Board recognized that it was difficult for Cst. X to report her colleague and testify at the hearing because she would have preferred to resolve the situation through an informal resolution process. However, the Board found no evidence that the allegations against the Subject Member were vexatious or made in bad faith.

[25] Parts of Cst. X's testimony were in contradiction with the testimony given by two other members of the Force. Even though they were friends of the Subject Member, they also knew Cst. X very well. They credibly corroborated the fact that the two parties were friends, that they talked openly about sex and that they felt at ease making sexually suggestive comments in front of their coworkers.

[26] Cst. X also stated at the hearing that the investigator [translation] “sometimes put words in my mouth over the course of the interview...” [original English] “... I wanted to be an open book, tell the truth, but may be [sic] sometimes it was a little too much speculation.” For example, the investigator appears to suggest the use of the words [translation] “genitals” when she asks [original English] “was he ... reaching for your ... genital area.” In fact, according to Cst. X’s testimony, the Subject Member tried to touch the inside of her legs, not her genitals. Finally, Cst. X also testified that the Subject Member had touched her by sliding his hand inside her short-sleeved shirt just up to her shoulder—not under her bulletproof vest towards her chest as indicated in the Notice of Conduct Hearing. Following these statements, the Board doubted the accuracy of the investigation report.

[27] The Subject Member’s testimony was more precise than that of Cst. X. Indeed, the facts described by the member followed a logical sequence, were well explained and contained greater explicit details about the incidents that had taken place before, during and after the shift. For example, the Subject Member gave a detailed description of how the evening unfolded, the location of the vehicle and the workout session at the gym. The Subject Member was also able to provide details of his interactions with Cst. X during off-duty group social outings, which helped the Board gain a better understanding of the relationship between the two parties.

[28] In *McDougall, supra*, the Supreme Court of Canada noted that the evidence must always be clear, convincing and cogent in order to satisfy the balance of probabilities test. Though the Committee did not readily accept all of the Subject Member’s explanations for his actions and his comments in the text messages exchanged with Cst. X, his testimony was consistent and precise; it corroborated important elements of the evidence presented. Accordingly, the Board found the Subject Member’s testimony to be more credible than Cst. X’s.

Allegation 2 – Discrimination or harassment

[29] Section 4 of the RCMP policy in the *Administration Manual*, in chapter XII.8, “Investigation and Resolution of Harassment Complaints” (in force on November 28, 2014), indicates that “sexual harassment represents a particularly serious form of harassment that will

not be tolerated in the RCMP workplace.” Furthermore, section 2.8.5 of the policy defines sexual harassment as follows:

... 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...

[30] The allegation indicated that the Subject Member made several jokes and sexually suggestive comments, blamed Cst. X for the unwanted sexual contact and refused to apologize for his inappropriate actions. After the shift, he went to Cst. X’s home without her permission. In addition, he sent Cst. X several inappropriate and unprofessional text messages. Finally, it is alleged that he failed to treat Cst. X with respect and courtesy by knowingly taking actions and engaging in behaviour that constituted sexual harassment. Based on the evidence presented in this case, the Board concluded that this allegation was not established on a balance of probabilities.

[31] Regarding the sexually suggestive comments, the Board concluded, as indicated in allegation 1, that the two parties maintained a friendly and familiar relationship at the time of the alleged incidents in which they would joke with each other and sometimes touch each other in a friendly way during workouts at the gym for the purpose of encouraging each other. Furthermore, in front of their coworkers, they would make sexually suggestive comments to each other without being offended. Accordingly, in the circumstances of this case, the Board concluded that the Subject Member did not engage in discrimination or harassment towards Cst. X.

[32] In its oral decision at the hearing, the Board also underscored how deplorable it was to learn that some members of the RCMP working on Parliament Hill at the time routinely indulged in inappropriate sexual comments without regard for the high level of professionalism required of them under the RCMP Code of Conduct.

[33] In the absence of sufficient evidence on the record, the Board concluded that the Subject Member did not go to Cst. X's home after the shift was over, as alleged in the Notice of Conduct Hearing.

[34] As for the allegation that the Subject Member told Cst. X at the gym that they would be a couple if he did not have a partner, the Board found that this statement was consistent with the type of friendship the parties maintained at the time and with the kind of joking they would engage in with each other. Regarding the message: [translation] "Ohhh baby, i wanna do you from every direction", the Board found it likely that, as explained by the Subject Member, this message was actually intended for his partner, not Cst. X, who was seated in the vehicle with him at the time it was sent. In response to the message, Cst. X replied "Moron". At the hearing, she said she did not remember anymore whether she was seated in the vehicle when she received the message or even whether the two parties had talked about it.

[35] Regarding the text messages included in the allegation, the Board found that they were not sent by the Subject Member for the purpose of offending or humiliating Cst. X. In fact, as indicated in the oral decision rendered at the hearing, the parties had mutually chosen this method of communication to try to resolve their disagreement about what had happened during their shift a few hours earlier. Following the explanations provided by the Subject Member, Cst. X worked with him again on the next 12 hour shift, which began at 7:00 p.m. on Sunday, August 7, 2016, a few hours after the incidents in question. In light of the particular circumstances of this case, the Board concluded that the text messages sent by the Subject Member did not amount to discrimination or harassment.

CONCLUSION

[36] The Conduct Board has concluded that the two allegations filed against the Subject Member were not established on a balance of probabilities. Consequently, no conduct measure has been imposed.

[37] This decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of this decision on the Subject Member (section 45.11 of the *RCMP*

Act; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289).

May 31, 2018

Josée Thibault, Chairperson

Date

Conduct Board

I have read the reasons and decision of Ms. Josée Thibault and concur with them.

Inspector James Knopp, Board Member

Signed at Ottawa, Ontario

May 31, 2018.

I have read the reasons and decision of Ms. Josée Thibault and concur with them.

Inspector Al Ramey, Board Member

Signed at Nanaimo, British Columbia

May 31, 2018.