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ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "E" Division

Conduct Authority

and

Constable Philippe Raymond, Regimental Number 48229

Subject Member

Conduct Board Decision

Josée Thibault

September 17, 2018

Ms. France Saint-Denis, Conduct Authority Representative

Mr. Marc Gaggino, Member Representative

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SUMMARY

The Subject Member faced two allegations of discreditable conduct under section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*. With the exception of the date of June 18, 2012 in Allegation 1 and some details which he denied in the particulars, the Subject

Member admitted Allegation 1 regarding the personal use of cocaine while off duty. He also admitted Allegation 2 regarding misuse of his RCMP-issued BlackBerry. The Subject Member exchanged text messages with friends which alluded to cocaine use. The Conduct Board concluded the two allegations were established on a balance of probabilities and the Subject Member was dismissed.

INTRODUCTION

[1] The Notice of Conduct Hearing was signed by the Commanding Officer of “C” Division on February 6, 2017 and served on the Subject Member on February 27, 2017. It contains two allegations of contravention of the *Code of Conduct of the RCMP*. The conduct hearing was held in May 2018 in Brossard, Quebec. The Conduct Board concluded the two allegations were established. This is the written decision stemming from the hearing.

[2] As orally requested by the Conduct Authority Representative (CAR) on May 22, 2018, without opposition from the Member Representative (MR) and pursuant to subsection 45.1(7) of the *Royal Canadian Mounted Police Act*, R.S.C. (1985), c. R-10, I made the following order.

By order of the Conduct Board, information that could identify civilian witnesses described in this decision shall not be published, broadcast or transmitted in any way.

ALLEGATIONS

[3] Following a *Code of Conduct* investigation, the Subject Member faced two allegations.

Allegation 1

Between June 18, 2012 and January 1, 2015, at or near Montreal, Trois-Rivières and elsewhere in the province of Quebec, [the Subject Member] engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct*. – **Admitted, specifying the date should be the spring of 2013, not June 18, 2012, which is the start date of his new position in “C” Division in Montreal**

Particulars

1. At all material times, you were and still are a member of the RCMP posted to “C” Division, in the province of Quebec. – **Admitted**
2. While off duty, you hung around with people involved in illegal drug use. On several occasions, you were present when these people, members of the public, used illegal drugs, such as cocaine. – **Admitted, specifying he hung around with some people who did drugs – he was present, on a few occasions, when these people did cocaine – these people were not criminalized individuals or part of the criminal underworld**

3. More than once, in the presence of your girlfriend, [A. G.-B.], you used illegal drugs such as cocaine. – **Admitted, specifying he used cocaine only, no other illegal drugs**

4. On one occasion, at an after-party in Trois-Rivières, which you attended with Cst. C, **[admitted]** the latter saw you in the bathroom with two other individuals with a line of white powder on the counter. In the circumstances, [D. D.-G.] believes it was cocaine. – **Denied, specifying the following: He went to an after-party with Cst. C in Trois-Rivières where he knew nobody. They were both drunk that evening. On that occasion, the Subject Member does not remember using cocaine or any other illegal drugs.**

5. You knew that illegal drug use was inappropriate behaviour for a police officer. **[Admitted]** Cst. C talked to you about it more than once, including on January 1, 2015, when he had an animated discussion with you, begging you to stop using illicit drugs. – **Denied, specifying the following: He admits having a discussion with Cst. C on January 1, 2015. They were both drunk and never talked about him using illegal drugs, but rather another person’s drug use. It should be noted this person was not a friend of the Subject Member, but an acquaintance he did not hang around with and with whom he did not hang around afterwards.**

6. Hanging around with people who do illegal drugs is inappropriate behaviour for a police officer. – **Admitted**

7. Your participation in or association with illegal drug use activity is inappropriate behaviour for a police officer. – **Admitted**

8. Your use of illegal drugs is inappropriate behaviour for a police officer. – **Admitted**

Allegation 2

Between August 1, 2013 and September 30, 2013, at or near Montreal, in the province of Quebec, [the Subject Member] engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct*. – **Admitted**

Particulars

1. At all material times, you were and still are a member of the RCMP posted to “C” Division, in the province of Quebec. – **Admitted**

2. On July 11, 2012, the RCMP issued you a BlackBerry device with user number [number blacked out]. This BlackBerry was issued to you for use in the performance of your duties. – **Admitted**

3. For personal matters, on several occasions, you exchanged text messages with others alluding to illegal drug use (quick line, date rape drug, heroin, crack, joint, eeee). – **Admitted, specifying the text messages include**

inappropriate content, but are to be taken figuratively, as a joke, not literally

4. You misused your RCMP-owned BlackBerry. – **Admitted**

[*Verbatim*]

PRELIMINARY MOTION

[4] In a preliminary motion dated May 17, 2018, the CAR asked the Board to exclude from evidence the expert report of Dr. M.-C. C. as it does not contain the 11 elements listed in subsection 19(2) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. The latter states the report must include a description of the expert's qualifications with respect to the issues addressed in the report, along with the expert's curriculum vitae attached as a schedule. The CAR argued that under the wording of subsection 19(2), i.e. "the expert report must contain" in English or *le rapport contient* in French, the Board has no discretion and must exclude the expert report given the missing elements.

[5] In her motion, the CAR added the MR failed to demonstrate the expertise of Dr. M.-C. C. meets the four criteria for the admission of expert evidence set forth by the Supreme Court of Canada in *R. v. Mohan*, [1994] 2 SCR 9, and that she can therefore not testify at the hearing. The four criteria are relevance, necessity in assisting the trier of fact, the absence of any exclusionary rule and a properly qualified expert.

[6] In response to the motion, the MR argued the request for exclusion of the report of Dr. M.-C. C. at this stage of the proceedings constitutes not only an abuse of process, but also irreparable harm to the Subject Member, causing a breach of procedural fairness.

[7] In terms of expertise, the MR indicated that although the report of Dr. M.-C. C. does not contain an actual description of her qualifications with respect to the issues addressed in the report, the attached curriculum vitae illustrates, *prima facie*, that she is qualified as a forensic expert, more specifically in the field of substance abuse, having worked as a psychiatrist in the Addiction Psychiatry Service of the Department of Psychiatry at the University of Montreal Hospital Centre.

[8] In rendering my decision at the start of the hearing, I explained that the Board is bound by subsection 13(1) of the *CSO (Conduct)* to deal with proceedings as informally and expeditiously as the principles of procedural fairness permit. As set forth in subsection 13(2) of the *CSO (Conduct)*, it may adapt these rules of procedure if the principles of procedural fairness permit.

[9] The evidence on file shows the initial report contains several of the key elements listed in the *CSO (Conduct)*. In addition, the statement of qualifications of the expert, including the professional biography of Dr. M.-C. C., was provided to the Board and CAR in a separate document at the same time as the initial expert report – on November 3, 2017. The expert's curriculum vitae was subsequently provided on November 7, 2017, four days after the initial report was submitted. Lastly, with the Board's approval, a supplement to the expert report was submitted on May 11, 2018.

[10] In light of the circumstances in this matter and the discretion afforded to the Board in the *CSO (Conduct)*, I denied the CAR's motion for the following reasons. Excluding the initial report of Dr. M.-C. C. on a technicality and the supplementary report at this late stage of the proceedings would cause much more harm to the Subject Member than to the Conduct Authority. It would also go against the guiding principle set forth in subsection 46(2) of the *RCMP Act*.

All proceedings before a board shall be dealt with by the board as informally and expeditiously as the circumstances and considerations of fairness permit.

[11] With respect to the expertise of Dr. M.-C. C., the documents provided in support thereof clearly demonstrate she has worked with clients dealing with substance abuse issues and has expertise in psychiatry and addiction. Her expertise meets the four admissibility criteria set forth in *Mohan* and she can testify at the hearing.

SUMMARY OF FACTS

[12] The Subject Member has been with the RCMP since 2001. On June 18, 2012, he was posted to “C” Division, in the province of Quebec, to the Canadian Air Carrier Protective Program.

[13] On July 11, 2012, the RCMP issued him a BlackBerry for use in the performance of his duties.

[14] In the fall of 2012, he broke up with his girlfriend. On his weekends off, he started visiting old friends in Trois-Rivières. He went to local bars and drank heavily, with occasional blackouts and hangovers.

[15] He also started spending time with, romantically or as friends, members of the public who used cocaine, including Ms. X, Ms. Y and Mr. B. These individuals are all professionals or business people. Mr. B and the Subject Member still occasionally get together to celebrate the birthdays of friends they have in common.

[16] In the spring of 2013, the Subject Member was doing cocaine with his friend, Mr. B, and his new partner, Ms. X. He uses cocaine for personal recreational purposes while off duty.

[17] The Subject Member uses cocaine at alcohol-fuelled social gatherings held at his residence in Montreal or when he goes out in Trois-Rivières. When he does cocaine with Ms. X, it is usually the Subject Member who prepares the lines of cocaine.

[18] The Subject Member never buys cocaine. It is generously provided to him by his friend, Mr. B, or the strangers he invites back to his place to keep the party going after the restaurants and bars in Montreal shut down for the night. The Subject Member knows that cocaine is associated to the criminal underworld.

[19] On one occasion in 2012 or 2013, the Subject Member invited his good friend and fellow member, Cst. C, to a party with him in Trois-Rivières. By the end of the night, both men were heavily intoxicated, and Cst. C believes he saw the Subject Member use cocaine in the bathroom.

[20] In August and September 2013, the Subject Member used his work BlackBerry to exchange personal text messages with his friends – Ms. X, Ms. Y, Mr. Z, Mr. A and Mr. B. The texts contained expressions alluding to cocaine use, like *d’la patente* and *le pitit sac cadeau*.

[21] On September 18, 2013, the Subject Member was suspended from duty for contravening the Code of Conduct in a completely separate matter. Other than the information provided in the investigation report, I was not informed of the facts or allegations relating to said suspension.

[22] On January 29 and February 5, 2014, the Subject Member attended two therapy sessions with a psychologist. He also saw his family physician two or three times a year for follow-up. Since May or June 2017, the Subject Member has been attending monthly Alcoholics Anonymous meetings to deal with his excessive drinking.

[23] At the clinical assessment conducted by Dr. L. B. on January 17, 2018, the Subject Member admitted he had not revealed the magnitude of his drug use to his psychologist. Nor did he ever tell his family physician that he did drugs.

[24] The Subject Member said he stopped using cocaine in July 2014.

[25] On January 1, 2015, a cocaine-related incident involving another person celebrating New Year’s Eve at the Subject Member’s residence prompted Cst. C to confront the Subject Member about his drug use. The Subject Member trivialized his misconduct.

DECISION ON THE ALLEGATIONS

Documentary evidence and testimonies

[26] As required by the *RCMP Act* and *CSO (Conduct)*, all relevant material, including the investigation report and Subject Member’s response, was sent to the Board before the hearing. The CAR called six witnesses. The Subject Member also testified at the hearing.

Credibility of witnesses

[27] I recognize that the CAR's six witnesses are friends of the Subject Member and did not want to testify at the hearing. Three of them – Mr. A, Mr. B and Mr. Z – even refused to give a statement to the internal investigator. For her part, Ms. X provided a statement over the phone, about seven minutes long.

[28] I also considered the fact that the events occurred primarily in 2013, i.e. five years ago, and that the recollections of witnesses, as well as those of the Subject Member, were unreliable with respect to some of the evidence.

[29] That being said, there are blatant discrepancies between the testimonies of the Subject Member and Cst. C, Ms. X and Ms. Y. In assessing the credibility of witnesses, I applied the principles set forth in the following three decisions.

[30] In *Wallace v. Davis* [1926] 31 OWN 202, the Court stated the following 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 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.

[31] In *MacDermid v. Rice* [1939] R. de Jur. 208, Archambault, J. stated the following at page 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 [...]

[32] And in *Faryna v. Chorny* [1952] 2 DLR 354, the British Columbia Court of Appeal established the following at page 357.

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

[33] After all of the testimonies, I concluded that Cst. C and Ms. Y were candid and forthright at the hearing and are credible. Cst. C made no attempt to minimize his actions or behaviour when describing the various occasions when he got drunk with the Subject Member. He was firm in stating that he has never done drugs and that he decided to stop going to party with the Subject Member in Trois-Rivières as he was uncomfortable in that sort of environment. He said “[TRANSLATION] I realized, that group of people, they party hard, those are big weekends. When that happens, drugs are usually involved.” The two RCMP members were very good friends in 2012 and 2013. In fact, Cst. C had keys to the Subject Member’s house. Cst. C had nothing to gain by lying. He testified frankly for his colleague and said he told him in January 2015: “[TRANSLATION] You know, it’ll end up costing you your job. You have to stop. Go see someone.” At the hearing, the Subject Member did not deny what Cst. C said. Instead, he thanked him for telling him the hard truth to his face during their animated discussion in January 2015.

[34] For her part, Ms. Y testified she was friends or romantically involved with the Subject Member for about eight months. She made it very clear that she never saw the Subject Member do cocaine and that she never did cocaine in front of him. Ms. Y was straightforward and expressed her ideas clearly. She testified that everyone in her circle, including her mother and the Subject Member, knew she used cocaine when she lived in Trois-Rivières in 2012-2013.

[35] Ms. X was more reserved in her testimony. However, she confirmed that she dated the Subject Member for about one year. During this period, she used cocaine at least five times with him. She admitted to using cocaine before she met the Subject Member.

[36] The three above-noted witnesses clearly indicated they harboured no ill will towards the Subject Member. They no longer hang around with him.

[37] As for the CAR's other three witnesses (Mr. A, Mr. B and Mr. Z), the Subject Member had to rectify part of their testimonies to bring them in line with the truth. For instance, he had to explain that the expressions *le petit sac cadeau* and *de la patente* referred to cocaine. He also confirmed doing cocaine with Mr. B at least 10 times, not three times as stated by the latter. Given these major discrepancies and the friendship or professional relationship between the Subject Member and the three witnesses, I concluded their testimonies were not credible.

[38] Although the Subject Member attempted to enhance his credibility by rectifying the testimony of some witnesses, the following elements were damaging.

1. The discrepancy between his testimony and that of Ms. Y concerning the latter's drug use. At the hearing, the Subject Member said he did not realize Ms. Y used cocaine until November 2016, when she called to talk to him about her statement to the internal investigator in this matter

[TRANSLATION]

I didn't know she did drugs. The day I found out, **I remember it well**, was when the officer, Ms. [F.], ... showed up at her place to get a statement. [...] *And you had no idea before then?* No.

Yet Ms. Y testified that the Subject Member was well aware of her drug use before November 2016.

[TRANSLATION]

Did he know you did drugs? Yes.

And he thought you did drugs or you told him? I was crystal clear, I talked about it. [...] my own mother knows. [...] for me the problem was, it was in 2012 and 2013, because I was still in Trois-Rivières. [...]

On cross-examination, Ms. Y reiterated the Subject Member knew she did drugs before 2016, providing the following response to the MR.

[TRANSLATION]

As for cocaine, I understand you, you did cocaine, but that too, [the Subject Member] wasn't sure, is that right? No, he knew. I'd been very clear.

2. The reliability of the Subject Member's memory as to the names of the people who supplied him with cocaine at his place in Montreal is questionable.

Example 1

Subject Member: [...] I remember this one time – that's why I said I remember people coming back with us – maybe it was, I have no idea, it's someone I'd never met before, and I never saw them again afterwards. **It's the friend of a friend of someone I saw in a bar. I couldn't even tell you whose friend.** That person had some and when we got back I didn't even know, but they'd offered some, well, to me and Ms. [X] too.

[...] **Well, the person – it was a man** – he gave me the bag of cocaine. We went into the bathroom. Because I clearly remember being with Ms. [X] in the bathroom.

Example 2

Subject Member: [...] The second time, it was the exact same thing. But **the person who had some, if I remember, was a female friend, maybe not a friend, but an acquaintance of Ms. [X].**

MR: *Do you remember her name?*

Subject Member: **I wanna say Marie, Mary, but I...** Yes, I wanna say [Mary], but it seems, I say [Mary] but it seems like such a common name. I could be wrong, but I remember it being [Mary].

Example 3

Subject Member: [...] I definitely never bought any, so I couldn't have gotten any. The other times, I know it happened, **but I can't remember who exactly would've gotten it for me, or who gave it to me.**

3. His answers on cross-examination about the extent of his drug use were cautious and evasive. For instance, when the CAR asked him how many times he had done cocaine with his partner, Ms. X, who had just testified they had done cocaine together five times, the Subject Member replied as follows.

Subject Member: **From memory, yes, I remember two times only. But it was... it's quite possible we used together morethan that.**

CAR: [...] Could it possibly be more than five times, with Ms. [X]?

Subject Member: **I can't give you an exact number, but... no more than five times.**

CAR: You're absolutely sure of that?

Subject Member: **I'm saying I know it's possible that... I just said I**

wasn't sure how many times. So I can tell you how many times I think it happened, I'd say less than five times.

CAR: But it's just that if you don't remember, how can you say you're absolutely sure it wasn't more than five times?

Subject Member: Because if it was all the time, I'd remember it happened often. **And I remember it hardly ever happened, not often. I don't remember how many times,** but I can say approximately, it was less than five times.

[39] In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada ruled on the credibility and reliability of witnesses, stating that “the evidence must always be clear, convincing and cogent in order to satisfy the balance of probabilities test.”

[40] I carefully gauged each testimony in view of the evidence and discrepancies. The Subject Member's version of the facts was vague and raised significant doubts as to the extent of his drug use and how he obtained the cocaine. As such, I preferred the version of the facts provided by Ms. X, Ms. Y and Cst. C, which was clearer, more specific and more convincing.

Discreditable conduct – section 7.1 of the *Code of Conduct*

[41] Discreditable conduct, under section 7.1 of the *Code of Conduct*, is based on a test that considers how the 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.

[42] To determine whether the allegations are established on a balance of probabilities, I applied a test similar to that set forth by the RCMP External Review Committee in its recommendation found at (1991) 4 A.D. (2d) 103 for disgraceful conduct under subsection 39(1) of the *RCMP Regulations, 1988, SOR/88-361*, in effect prior to the November 2014 legislative

reform. First, the CAR must prove the identity of the member and the acts constituting the alleged misconduct. The Board must then conclude the member's conduct is likely to discredit the RCMP and is sufficiently related to the member's duties and functions to provide the RCMP with a legitimate interest in disciplining the member.

[43] Taking into account the Subject Member's admission and the facts presented to me, I am satisfied that the member's identity and the acts constituting the alleged misconduct have been established on a balance of probabilities by the CAR for both allegations.

[44] I also find that the reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that the Subject Member's discreditable conduct in both allegations brings discredit on the RCMP. Lastly, the conduct is related to his duties and functions as a member of the RCMP, justifying disciplinary action.

Analysis of Allegation 1 – Cocaine use

[45] I wish to state that no evidence on file showed the Subject Member ever purchased cocaine from traffickers, that he kept a stash of cocaine or that he trafficked cocaine during the period in question. In fact, these elements were not part of the allegations against the Subject Member and I did not take them into account in reaching my decision.

[46] Allegation 1 contains eight particulars. The CAR established on a balance of probabilities all but one of these particulars, namely particular 4, in which Cst. C claims that while they were in Trois-Rivières, he saw the Subject Member with two other individuals doing cocaine on the counter in the bathroom. As I indicated in my oral decision at the hearing, Cst. C, who was a credible witness, could no longer say with certainty how many people were in the bathroom with the Subject Member. Nor could he confirm if there was a line of white powder on the counter and if he still believed it was cocaine. Given his uncertainty about the events that evening, particular 4 has not been established.

[47] As alleged, the evidence showed the Subject Member contravened section 7.1 of the *Code of Conduct* by spending time while off duty with, as friends or romantically, people who used cocaine – Ms. X, Ms. Y, Mr. A and Mr. B. He was also present when Ms. X and Mr. B used cocaine and did cocaine with them.

[48] Lastly, the Subject Member admitted to knowing that illegal drug use was inappropriate behaviour for a police officer. He also admitted that his choice of friends, his participation in or association with drug use activity and his own drug use constituted inappropriate behaviour for a police officer.

[49] As for length of drug use, the CAR alleged at the hearing that the Subject Member used cocaine over an extended period of 22 months, from March 2013 to January 1, 2015. For his part, the MR said it was over a more limited, 15-month period, from March 2013 to July 2014.

[50] The CAR failed to establish on a balance of probabilities that the Subject Member was still using drugs in January 2015, when Cst. C confronted him at the New Year's Eve party about his cocaine use. I therefore conclude that the Subject Member used cocaine for at least 15 months, from March 2013 to July 2014. Contrary to the representations made by the MR, I consider 15 months to be an extended, not limited, period of time.

[51] As for frequency of drug use, relying on the testimonies of Ms. X and the Subject Member, I believe the Subject Member used cocaine at least 15 times in 15 months. More specifically, he did cocaine at least five times with Ms. X and 10 times with Mr. B. Contrary to the representations made by the MR, I do not see the Subject Member's drug use as an isolated incident or one-time lapse in judgment. He used drugs repeatedly over an extended period of time.

[52] Taking into account all relevant circumstances, I find on a balance of probabilities that the Subject Member's conduct brings discredit on the RCMP. His discreditable conduct is related to his duties and functions and is therefore in violation of section 7.1 of the *Code of Conduct*.

Analysis of Allegation 2 – Misuse of BlackBerry

[53] The CAR proved the four particulars of Allegation 2.

[54] As alleged, the evidence showed the Subject Member contravened section 7.1 of the *Code of Conduct* by misusing his BlackBerry, which belongs to the RCMP. The Subject Member admitted the text messages he exchanged with his friends for personal matters included inappropriate content as they alluded to illegal drug use. As I indicated in my oral decision on the allegations, the Subject Member also admitted that the expressions *d'la patente* and *le petit sac cadeau*, used in his texts with Mr. A and Mr. Z, referred to cocaine.

[55] Taking into account all relevant circumstances, I find on a balance of probabilities that the Subject Member's misconduct brings discredit on the RCMP. His discreditable conduct is related to his duties and functions and is therefore in violation of section 7.1 of the *Code of Conduct*.

[56] Allegation 2 is established on a balance of probabilities.

DECISION ON THE CONDUCT MEASURES**Documentary evidence and expert testimonies**

[57] The CAR submitted the expert report of Dr. L. B. For his part, the MR submitted the expert report of Dr. M.-C. C., letters of support and the Subject Member's performance evaluations.

[58] In their reports and testimonies at the hearing, the two witnesses confirmed the Subject Member's use of both drugs and alcohol were in no way related to an addiction. However, they disagreed about the prognosis for rehabilitation.

[59] Dr. M.-C. C. explained the Subject Member was fully rehabilitated.

[TRANSLATION]

[...] The risk of relapse is very low, even non-existent, for cocaine use. [...] The time factor also indicates a good prognosis, as the patient has not used cocaine since the middle of 2014, nor has he consumed alcohol on a regular basis, as was the case during that same time period.

[60] Unfortunately, Dr. L. B. is not as optimistic as Dr. M.-C. C. when it comes to the Subject Member's full rehabilitation, given his persistent use of alcohol and lack of professional follow-up. He states the following in his report.

[TRANSLATION]

The patient is clearly in remission from a drinking problem, but his current consumption pattern is risky. In fact, downing an entire bottle by himself, if only one night a week, is neither healthy nor responsible, and recognizing blackouts the next day as a warning sign is not setting the bar very high. So despite there being no real diagnosis at this time, there is still a fairly recent history of excessive drinking and illegal use of cocaine and a prognosis which, although not dark, remains reserved given the persistent use of alcohol and lack of professional follow-up. [*verbatim*]

[61] In both cases, the prognosis for rehabilitation is based primarily on information provided to the experts by the Subject Member himself in clinical assessments. Dr. L. B. indicated in his expert report that in addition to a clinical interview, forensically, it is imperative that the patient's allegations be corroborated by individuals who are reasonably neutral or at least reliable.

[62] At the hearing, Dr. L. B. explained that he asked the Subject Member if he could contact individuals of his choosing for information to support his prognosis. The Subject Member refused twice, preventing Dr. L. B. from corroborating the information provided to him by the Subject Member about his drug use. Nor were there lab tests from the Subject Member's family physician pinpointing potential anomalies which, over time, would have stabilized with reduced drug use.

Submissions on the sanction

[63] The CAR was seeking dismissal as a global sanction for both allegations. She argued the Subject Member's misconduct is serious because while he used cocaine, he became vulnerable to

blackmail and corruption. The extended period of drug use also demonstrates a lack of judgment incompatible with police work.

[64] The MR indicated the Subject Member is prepared to accept all necessary alternative measures to reassure the RCMP there is no risk of him ever using cocaine or other illegal drugs again. He was seeking the following conduct measures for Allegation 1 (cocaine use):

1. a financial penalty of 45 days of the member's pay;
2. a forfeiture of annual leave for a period of at least 10 days and up to 20 days;
3. a direction to undergo appropriate follow-up treatment, for instance relapse prevention therapy with a coach, for a period to be specified by the Board; and
4. a direction to submit to testing for alcohol and drugs during and outside working hours, for a period to be specified by the Board.

[65] For Allegation 2 (misuse of his BlackBerry), the MR was seeking a reprimand and a financial penalty of 10 days of the member's pay.

Authorities

[66] In support of the Subject Member's dismissal, the CAR cited various conduct board decisions from the RCMP and policing community.

1. 27 A.D. (3d) 228 (2005), *Melano* – The member wrote himself two prescriptions for steroids. He was ordered to resign from the Force within 14 days, in default of which he would be dismissed. The decision sets forth the principles of dismissal.
2. 2017 RCAD 5, *Greene* – The member uttered threats of death or bodily harm. He was directed to resign. The decision addresses the essential elements of an RCMP contract of employment.

3. 31 A.D. (2d) 84 (1997), RCMP External Review Committee – In this case of domestic violence, the member was ordered to resign from the Force within 14 days, in default of which he would be dismissed. The decision states that the member’s rehabilitation was not sufficient to overcome the employer’s right to terminate the employment relationship.
4. *Dionne v. Canada (Treasury Board - Solicitor General - Correctional Service)*, 2003 CarswellNat 6144, 2003 CarswellNat 6460, 2003 PSSRB 69, 2003 CRTFP 69, 121 LAC (4th) 268, 75 CLAS 46 – In this decision, the complainant, a corrections officer with Correctional Services Canada, was arrested when a police officer found 0.2 grams of cocaine in his vehicle. Criminal charges were laid against him for simple possession. The sanction was dismissal. The decision indicates that although the misconduct was an isolated incident, the actions went against the organization’s law enforcement mandate.
5. (2013), Cst. Jeremy Bordas, 1076, Waterloo Regional Police Service – Over a five-year period, the constable used cannabis four times, procured cannabis to other members on three occasions, asked a colleague to procure cannabis for him once, etc. The sanction was dismissal. The decision stresses the importance of the oath taken by police officers the public’s expectation that its police service hold its members to the highest standard of responsibility.

[67] The MR cited the following RCMP conduct board decisions for Allegation 1.

1. 1 A.D. (3d) 168 (1998), *Rodgers* – The member experimented with hashish, ceased his misconduct of his own volition four years before the board’s decision and was fully rehabilitated. The sanction was a reprimand and the forfeiture of 10 days’ pay. The conduct authority was not seeking dismissal, but rather the forfeiture of eight days’ pay.
2. 7 A.D. (4th) 242 (2005), *Veillette* – The member bought and used cocaine on several occasions while off duty. Following a joint submission on sanction, the board imposed the forfeiture of eight days’ pay for illegally obtaining/using cocaine, a reprimand and a recommendation to continue seeking professional counselling.

3. 2016 RCAD 4, *Wyant* – The member bought and imported steroids. Following a joint submission on sanction, the board imposed the forfeiture of 25 days of the member's pay, the forfeiture of 20 days of annual leave, a reprimand and a direction to undergo treatment.
4. 2017 RCAD 6, *Wilson* – The member repeatedly drove while impaired. Following a joint submission on sanction, the board imposed a reprimand, a demotion of two ranks, a direction to submit to drug/alcohol testing while on and off duty, and a transfer to another work location.

[68] The MR submitted the following decisions for Allegation 2.

1. 3 A.D. (4th) 249, using an RCMP computer to access pornography during work hours – Following a joint proposal on sanction, the board imposed a reprimand and the forfeiture of five days' pay.
2. 9 A.D. (4th) 384, using an RCMP computer to download, view and store pornographic material and to capture then send explicit photos/videos of himself to his girlfriend – Following a joint proposal on sanction, the board imposed a reprimand and the forfeiture of 10 days' pay.
3. 16 A.D. (4th) 57, using a computer to view pornography – Following a joint submission on sanction, the board imposed a reprimand and the forfeiture of six days' pay.
4. 11 A.D. (4th) 327, inappropriately using RCMP equipment (BlackBerry) to send personal messages to another member with whom the member was having an extramarital affair – Following a joint submission on sanction, the board imposed a reprimand, the forfeiture of 10 days' pay a recommendation for continued counselling.

Analysis of conduct measures

[69] Paragraph 36.2(e) of the *RCMP Act* provides for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

[70] The Board must therefore determine if convincing mitigating factors exist to prove the Subject Member is rehabilitated and can be trusted again. Dismissal is to be imposed in only the most serious cases, a last resort in a system of positive and progressive discipline.

[71] I would like to indicate that the *RCMP Conduct Measures Guide* is a tool that helps the Board determine the range of appropriate conduct measures in the circumstances of a given case. As an administrative decision-maker, the Board is not strictly bound by the framework proposed in the *Guide*. Rather, it must make a decision considering the totality of the circumstances surrounding the allegation and the list of aggravating and mitigating factors set forth in the *Guide*.

[72] The RCMP External Review Committee established a three-step approach for the analysis of conduct measures by a conduct board.

1. Establish the range of appropriate conduct measures
2. Consider the aggravating and mitigating circumstances in order to evaluate the gravity of the misconduct
3. Impose a fair and just measure that is commensurate with the gravity of the misconduct with due regard to the principles of sanction parity and deterrence

Range of conduct measures

[73] Precedents on drug use in the RCMP are scarce. I noted that some of the decisions submitted by the MR are from the old disciplinary system, when the maximum financial penalty was 10 days' pay, then dismissal. The Board accepts these decisions with reservations, given that the range of sanctions prior to the November 2014 legislative reform was more limited. In fact,

the majority of cases heard by adjudication boards under the previous system did not involve dismissal.

[74] In three of the decisions cited by the MR, the board did not order dismissal because the parties had submitted a joint proposal on sanction, which is not the case in the matter at hand. In fact, when a joint submission on sanction is made, the conduct board must generally accept it, even if it does not deem it to be the most appropriate sanction in the circumstances. As reiterated in 2017 RCAD 6, the Supreme Court of Canada held the following in *R. v. Anthony-Cook*, 2016 SCC 43, at paragraph 32

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

The following is set forth at paragraph 32 in 2017 RCAD 6.

Although *Cook* dealt with a joint submission in the criminal context, the public interest test has previously been asserted and adopted in the professional discipline context (see *Rault v. Law Society (Saskatchewan)*, 2009 SKCA 81), including the former RCMP discipline system (see 17 A.D. (4th) 88).

[75] I would also like to point out that the decisions cited by the MR contained significant mitigating factors which are not present here. In *Veillette*, the member used over a three-month period, he had an addiction problem and he attended a rehabilitation program. In *Wyant*, the member also completed a rehabilitation program, he was suffering from post-traumatic stress disorder, he was seeing a psychologist and he had been on sick leave for 10 years. In *Rodgers*, the member experimented with hashish five times, members of the public were not involved, he still had the support of the appropriate officer and the conduct authority was not seeking dismissal. And in *Wilson*, the member quickly sought assistance for his excessive drinking, he was abstinent, he submitted to alcohol testing and the conduct authority felt the member deserved another chance.

[76] After carefully reviewing the decisions cited by the parties, I believe the appropriate global conduct measure for both allegations ranges from a financial penalty of a number of days of the member's pay at the middle of the scale and dismissal.

Allegation 1 – Aggravating factors

[77] Allegation 1 involves discreditable conduct while off duty related to the use of cocaine. I accepted the following aggravating factors.

[78] The Subject Member used cocaine, a substance listed in Schedule 1 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, which constitutes a serious criminal breach of the *Code of Conduct*. The misconduct associates the Subject Member to an activity which is incompatible with police work and for which society has little tolerance.

[79] The Subject Member used cocaine for personal recreational purposes over a period of at least 15 months, from March 2013 to July 2014, i.e. an extended period of time.

[80] This drug use occurred at the Subject Member's residence in Montreal or in Trois-Rivières with members of the public who provided him with an illicit drug free of charge, when it was his job to enforce the law. Also, it was usually the Subject Member who prepared the lines of cocaine he did with his partner, in contradiction with his role as a police officer.

[81] Contrary to the submissions of the MR, the Subject Member's drug use was not an isolated incident or a one-time lapse in judgment, as set forth in the *Conduct Measures Guide*. In fact, the Subject Member used cocaine at least 15 times in 15 months, demonstrating frequent and extended use.

[82] Although the Subject Member used cocaine in private places, he engaged in this misconduct in the presence of members of the public. He knew cocaine was associated to the criminal underworld. His lack of integrity had a negative impact on the public's perception of and confidence in the RCMP, as well as the administration of justice.

[83] Although the allegations did not include the use of alcohol, the evidence on file shows the Subject Member's cocaine use was connected to his excessive drinking. As such, I consider this to be an aggravating factor in the circumstances.

[84] On September 18, 2013, the Subject Member was suspended from the RCMP for a contravention of the *Code of Conduct* in a separate matter. Based on his statements to the two expert witnesses, the Subject Member did not stop using. In fact, he used cocaine for at least 10 months, from September 2013 to July 2014, and he drank a lot more, knowing his employer was accusing him of misconduct. As indicated in my oral decision at the hearing, I understand that being suspended from duty can be a very difficult time for a member of the RCMP. Yet the Subject Member continued to engage in unlawful conduct over an extended period of time, without consideration for the damaging effects on his career. In my opinion, this shows a flagrant lack of judgment and failure to accept responsibility.

[85] This case deals with honesty, integrity and frequent drug use over an extended period of time. As per the Supreme Court of Canada ruling in *R. v. McNeil*, [2009] 1 SCR 66, 2009 SCC 3 (CanLII), the Subject Member's misconduct can now be disclosed if he is involved in an investigation and the RCMP is required to disclose evidence to the Crown. Although the Subject Member is not currently a drug investigator, as specified by the MR, it remains to be seen whether or not *McNeil* considerations will affect the ability of "C" Division to transfer the member to an operational position in the future. This conduct file in itself is a burden for the RCMP and as such, I consider it to be an aggravating factor.

Allegation 1 – Mitigating factors

[86] The Subject Member admitted Allegation 1 and the main facts thereof.

[87] The Subject Member acknowledged his misconduct and expressed remorse for his actions in his testimony. However, his testimony leaves uncertainties as to the real extent of his drug use and the people who gifted him with cocaine, which considerably reduces the weight of this factor.

[88] The Subject Member apologized and acknowledged in his testimony that his illegal actions were inappropriate for a police officer and went against his personal values.

[89] The Subject Member has no prior discipline.

[90] The Subject Member's performance evaluations are positive, including an award of distinction for exemplary service. The letters of recommendation submitted into evidence also praise his professionalism, teamwork, dedication and diligent work. Unfortunately, the weight of this factor is reduced given that the Subject Member was using when he signed his performance evaluation in March 2013, and the xxx *Code of Conduct and Conflict of Interest Statement*. This document states that alcohol/drug use often indicates the employee is unable to cope with the work and external stress. These problems have to be identified and resolved before they get worse. I believe the Subject Member demonstrated a lack of honesty and transparency towards his employer. He also could have asked for help, but did not do so.

[91] In the fall of 2012, the Subject Member experienced emotional stressors following a breakup. I realize this difficult time in his life might provide a valid explanation for his actions, but it is not a reasonable justification or excuse for repeatedly breaking the law over an extended period of time, as he did. In (1990) 3 A.D. (2d) 62, cited in *Melano*, former Commissioner Inkster commented on the need for police officers to be of good character in order to handle everyday stress. This decision dates back almost two decades, but I believe the former commissioner's comments still apply today, especially to the case at hand.

The stress-inducing events do not sufficiently dispel the pall of inadequate character. After all, it is the ability to withstand the difficulties that life presents that is the essence of what we call good character and integrity.

For these reasons, I find the weight of this mitigating factor to be significantly reduced.

[92] The Subject Member received medical care for his drug/alcohol abuse. But the evidence does not show that he ever fully committed to his rehabilitation. In fact, he never disclosed to his psychologist or family physician the full extent of his drug and alcohol abuse. As stated by Dr. L. B., the Subject Member ought to have at least told his psychologist he was going to parties.

[93] Since May or June 2017, the Subject Member attended a few monthly Alcoholics Anonymous meetings for help with his drinking, except he feels “a bit dishonest” because he opted for controlled drinking as opposed to abstinence, as indicated in the expert report of Dr. L. B. This lack of transparency and integrity with health specialists significantly lessens the weight of this factor. Instead, it shows a pattern of behaviour which raises questions about him actually accepting responsibility for his actions and acknowledging his misconduct.

[94] The MR submitted the Subject Member’s misconduct was a momentary lapse of judgment. I disagree. As I mentioned above, the evidence on file shows the Subject Member used cocaine at least 15 times in 15 months with members of the public whom he invited to his residence in Montreal or with whom he partied in Trois-Rivières. Furthermore, over an extended period of about two years, from the fall of 2012 to January 2015, he made a conscious decision to spend time with people involved in illegal drug use, either as friends or romantically. In my opinion, the Subject Member demonstrated an ongoing lack of honesty and integrity towards his employer by adapting his behaviour to fit his interests, playing the dutiful cop while on duty, then recklessly using cocaine with members of the public while off duty. The users with whom he hung around did not necessarily know he was a police officer, but he knew. In my opinion, such behaviour increases the severity of the misconduct and demonstrates a character flaw unacceptable in a police officer, which is detrimental to the public trust and hinders his ability to properly perform his duties as a member of the RCMP.

[95] It is possible that the Subject Member stopped using cocaine in July 2014, about 18 months before being notified in January 2016 of this *Code of Conduct* investigation. However, other than the Subject Member’s claim to this effect, there is no evidence on file showing he did indeed stop using in July 2014, significantly reducing the weight of this factor.

Allegation 2 – Aggravating and mitigating factors

[96] Allegation 2 involves inappropriate use of an RCMP BlackBerry.

[97] In terms of aggravating factors, the Subject Member used RCMP equipment for personal matters, outside the performance of his duties as a police officer. Said use constituted improper

conduct which would displease the public, who expect a member of the RCMP to act in an exemplary fashion, both on and off duty.

[98] In terms of mitigating factors, the Subject Member admitted the personal texts messages he exchanged with friends included inappropriate content. The MR submitted the text messages were to be taken figuratively, as a joke, not literally. I agree the messages had a humorous tone to them, between friends. But the Subject Member admitted the expressions *le ptit sac cadeau* and *d'la patente* meant cocaine. So the text messages were meant to refer to illegal drug use, which is inappropriate for a police officer, regardless of the reasons.

Conduct measures imposed

[99] The third and final step is to determine the appropriate sanction in the case at hand.

[100] In *Ennis v. Canadian Imperial Bank of Commerce*, 1986 CanLii 1208 (BCSC), Justice Finch stated the following regarding employee dismissal.

The exact standard of misbehaviour required to be shown varies with the nature of the business engaged in by the employer, and with the position of responsibility and trust held by the employee. Real misconduct or incompetence must be demonstrated. The employee's conduct, and the character it reveals, must be such as to undermine, or seriously impair, the essential trust and confidence the employer is entitled to place in the employee in the circumstances of their particular relationship. The employee's behaviour must show that he is repudiating the contract of employment or one of its essential conditions.

[101] In *Greene* (2017 RCAD 5), the conduct board indicated the following.

The "essential ingredients" of an RCMP member's contract of employment are reflected in the RCMP's core values of honesty, integrity, professionalism, compassion, accountability and respect.

Based on the available evidence, I find the Subject Member continuously violated these core values.

[102] It was the Subject Member's duty, whether on or off duty, to at all times consider the impact of his actions and behaviour so as to maintain his credibility and the public trust. These

two elements are necessary for a member of the RCMP to effectively perform law enforcement duties. The Subject Member failed miserably over an extended period of time.

[103] After considering the range of possible conduct measures, the principle of general deterrence and the principle of sanction parity, it is my opinion that many aggravating factors argue in favour of the Subject Member's dismissal. Unfortunately, I fail to see any significant mitigating factors that warrant a lesser sanction for both allegations.

[104] The expert witnesses had opposing views regarding the prognosis for rehabilitation. In the absence of evidence to corroborate the Subject Member's statements, I am not persuaded he is fully rehabilitated or as trustworthy as he claims. The risk for the employer in maintaining the employment relationship is high.

[105] The Subject Member's errors in judgment are serious and were repeated over an extended period of time. His misconduct is a blatant violation of the law and a dereliction of duty, which calls into question his integrity and society's confidence in him. He renounced the employment contract and the relationship of trust with his employer.

[106] Accordingly, I find that a reasonable person, with knowledge of all relevant circumstances in this matter, would be of the opinion that retaining the Subject Member would undermine public confidence and RCMP values.

CONCLUSION

[107] The Board concluded the two allegations are established on a balance of probabilities. The Subject Member is dismissed.

[108] The parties may appeal this decision to the Commissioner by filing a statement of appeal within 14 days of the service of this written decision on the Subject Member (s. 45.11 of the *RCMP Act*; s. 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289).

September 17, 2018

Josée Thibault

Date

Conduct Adjudicator