

Protected A

2020 CAD 08



ROYAL CANADIAN MOUNTED POLICE

in the matter of

a conduct hearing pursuant to the

Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Between:

Chief Superintendent Marlene Bzdel

Designated Conduct Authority of Headquarters Division

Conduct Authority

and

Civilian Member Gerald Rumsey

Regimental Number C8039

Subject Member

Conduct Board Decision

Josée Thibault

April 29, 2020

Mr. Jordan Levis-Leduc, Conduct Authority Representative

Ms. Sara Novell, for the Subject Member

Table of Contents

SUMMARY	3
INTRODUCTION	4
ALLEGATIONS.....	5
Decision on the allegations	8
CONDUCT MEASURES.....	10
Range of conduct measures.....	10
Aggravating factors	13
Mitigating factors	13
Parity of sanction.....	15
Decision on conduct measures	16
CONCLUSION.....	16

SUMMARY

The *Amended Notice of Conduct Hearing* contained two allegations of discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct. At issue was Civilian Member Rumsey's use of physical force as well as disrespectful and aggressive language with co-workers and security employees of a public establishment while deployed to the G7 Summit, in Québec, in June 2018. In addition, Civilian Member Rumsey expressed repeatedly to fellow RCMP members his willingness to offer a financial incentive to the security employee of the public establishment he injured the night of the incident.

Civilian Member Rumsey admitted to both allegations and the Conduct Board found them to be established on a balance of probabilities. The Conduct Board also accepted the parties' joint submission on conduct measures and imposed the forfeiture of 40 days' pay.

INTRODUCTION

[1] On May 24, 2019, the Conduct Authority signed a *Notice to the Designated Officer*, in which she requested the initiation of a conduct hearing in relation to this matter.

[2] The original *Notice of Conduct Hearing* (the Notice) contained two allegations of discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct. The Notice was signed by the Conduct Authority on July 11, 2019. It was served on Civilian Member (CM) Rumsey, together with the investigation package, on July 15, 2019.

[3] The allegations arose out of CM Rumsey's verbal and physical confrontations with his co-workers and security employees of a public establishment on June 9 and 10, 2018. One of the security employees was injured and criminal charges were laid against CM Rumsey. On June 11, 2018, CM Rumsey is alleged to have stated repeatedly to fellow RCMP members his willingness to offer the employee a financial incentive in order to avoid the criminal charges. CM Rumsey's misconduct occurred while he was representing the RCMP during the G7 Summit, in Québec, an international event involving world leaders from around the globe.

[4] On May 30, 2019, a conduct board was appointed to adjudicate this matter. However, due to a conflict of interest, I was appointed as the Conduct Board on September 17, 2019, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[5] On October 31, 2019, the parties informed me that they were engaged in discussions to resolve this matter informally. Following the instructions I provided during the pre-hearing conference held on November 7, 2019, an amended Notice of Conduct Hearing was signed by the Conduct Authority on November 21, 2019, and served on CM Rumsey the same day.

[6] On December 20, 2019, CM Rumsey provided his response to the amended Notice of Conduct Hearing, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He admitted to the two allegations as well as to the revised particulars.

[7] On January 23, 2020, the parties provided me with a joint submission on conduct measures.

[8] On February 20, 2020, I rendered an oral decision in which the two allegations were established on a balance of probabilities. I also accepted the parties' joint submissions on conduct measures and imposed the forfeiture of 40 days' pay. This written decision incorporates and expands upon the oral decision.

ALLEGATIONS

[9] As noted, there are two allegations before the Conduct Board and they read as follows:

Allegation 1

On or about June 10, 2018, at or near Sainte-Foy, in the Province of Québec, [CM] Gerald Patrick Rumsey behaved in a manner that is likely to discredit the Force, contrary to Section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention

1. At all material times, [CM] Gerald Patrick Rumsey ("CM Rumsey") was a member of the Royal Canadian Mounted Police ("RCMP") and posted to [National Headquarters] Division.
2. Between the evening of June 9th and June 10th, while deployed to the G7 Summit in Quebec City and while off-duty, CM Rumsey attended the Restaurant-Bar Archibald ("the establishment") and became intoxicated.
3. On June 10, 2018, at approximately [1 a.m.], CM Rumsey became frustrated and aggressive with CM Labelle and stated words to the effect of: "are you with me or not?" Let's have a fight here and now. Let's settle it with the bouncers".
4. At approximately [2:10 a.m.], after being asked to leave the establishment by the establishment's security personnel, CM Rumsey began sending disrespectful and vulgar text messages to CM Labelle:

"Where r U u see

Asshole

U screw us

Ur a prick

Get out here u cunt

Come here I wanna talk to u

Get the Fuck out here.”

5. CM Labelle did not respond to CM Rumsey’s messages.
6. At approximately [2:15 a.m.], CM Labelle exited the establishment. He was met by CM Rumsey. CM Rumsey became confrontational and began yelling insulting and aggressive words at CM Labelle.
7. CM Rumsey then used force upon CM Labelle by pushing him on the shoulder in an effort to provoke him. CM Labelle did not consent to being pushed.
8. CM Labelle did not respond to CM Rumsey’s provocation. CM Labelle kept his head down and attempted to walk away from the area. CM Rumsey followed CM Labelle while continuing to yell at him.
9. CM Régimbald attempted to stop the confrontation between CM Rumsey and CM Labelle as he felt CM Rumsey was going to use force upon CM Labelle. CM Rumsey used force upon CM Régimbald and attempted to project/throw CM Régimbald over his shoulder towards the ground. CM Régimbald did not consent to being projected/thrown. A physical struggle ensued and both CM Rumsey and CM Régimbald fell to the ground. The establishment’s security personnel intervened and gained control of the situation.
10. At approximately [2:42 a.m.], CM Rumsey and CM Bamford returned to the establishment and attempted to gain entry to the bar section. The security personnel denied their request and were required to use physical force to remove both individuals from the establishment. CM Rumsey then used force upon the security personnel by pushing them in an effort to remain inside the establishment. The security personnel did not consent to being pushed. CM Rumsey and CM Bamford were eventually forced into the establishment’s exterior parking lot.
11. A physical altercation ensued between CM Rumsey and Mr. E.T., a member of the establishment’s security personnel. CM Rumsey then assaulted Mr. E.T. by punching him in the face and/or head area multiple times.
12. The Service de Police de la Ville de Québec was called and CM Rumsey was placed under arrest and charged with assault. During his arrest, CM Rumsey identified himself as a member of the RCMP.
13. As Mr. E.T. was feeling “nauseous and slow”, he attended a nearby hospital via ambulance and was informed by the medical personnel that he suffered “mild head trauma”. Mr. E.T.’s injuries were a direct result of CM Rumsey’s action.

14. CM Rumsey's use of physical force upon individuals without their consent and his use of disrespectful/aggressive language amount to CM Rumsey engaging in conduct that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the RCMP.

Allegation 2

On or about June 10, 2018, at or near Sainte-Foy, in the Province of Québec, [CM] Gerald Patrick Rumsey behaved in a manner that is likely to discredit the Force, contrary to Section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention

1. At all material times, [CM] Gerald Patrick Rumsey ("CM Rumsey") was a member of the Royal Canadian Mounted Police and posted to [National Headquarters] Division, in the province of Ontario.
2. Between the evening of June 9th and June 10th, while deployed to the G7 Summit in Quebec City and while off-duty, CM Rumsey attended the Restaurant-Bar Archibald (known as the "the establishment") and became intoxicated.
3. CM Rumsey was involved in a number of physical confrontations during that evening, the last of which resulted in CM Rumsey assaulting Mr. E.T., a bouncer working at the establishment. CM Rumsey was placed under arrest by the Service de Police de la Ville de Québec and charged with assault.
4. On June 11th, 2018, CM Rumsey sent text messages to CM Labelle that said: "*Can you talk [...] I need to talk to the bouncer.*" CM Labelle had blocked CM Rumsey's contact information from his telephone.
5. It is acknowledged that CM Labelle knew the establishment's bouncers personally.
6. As CM Rumsey was unable to reach CM Labelle, CM Rumsey engaged in conversation with CM Bamford about contacting CM Labelle and said words to the effect: "I'd pay the bouncer to make the charges disappear."
7. On June 11th, 2018, during a conversation between CM Rumsey and his manager Ms. J.B., CM Rumsey said words to the effect of "*Is there anything I could do to get the charges dropped?*" and "*I'd pay anything.*"
8. On June 11th, 2018, during a conversation between CM Rumsey and CM Carrière, CM Rumsey said words to the effect of "*I'm freaking out... I'd pay off this guy just to make this all go away.*"
9. CM Rumsey's indication to the effect that he was ready to pay to avoid criminal charges amount to CM Rumsey engaging in conduct that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

[Sic throughout]

Decision on the allegations

[10] Section 7.1 of the Code of Conduct states that RCMP Members, which include a civilian member such as CM Rumsey, must behave in a manner that is not likely to discredit the Force.

[11] The four-part test for “discreditable conduct” under section 7.1 of the Code of Conduct is as follows. In the first two steps, the Conduct Authority must prove on a balance of probabilities the acts that constitute the alleged behaviour as well as the identity of the member who is alleged to have committed these acts. By virtue of CM Rumsey’s admission to the allegation and particulars, I find that these first two elements of the test have been met.

[12] With regard to the third and fourth elements of the test, I must determine whether CM Rumsey’s behaviour is likely to discredit the Force and whether his actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[13] In accordance with the evidence before me, I find that CM Rumsey’s behaviour, as set out in allegation 1, was completely inappropriate. He used vulgar, insulting and aggressive words in his text messages to CM Labelle and during their outside confrontation. He also provoked CM Labelle to engage with him in a physical confrontation outside the restaurant-bar.

[14] In addition to CM Labelle, CM Rumsey also used force upon CM Régimbald, which resulted in a physical struggle between the two of them outside the restaurant-bar.

[15] This disrespectful and disorderly conduct towards CM Labelle and CM Régimbald, who were his co-workers was akin to workplace violence. This type of behaviour is unacceptable given the clear direction of the RCMP commissioners in recent years, as well as, national initiatives designed to support and promote a respectful and inclusive workplace.

[16] Furthermore, CM Rumsey was verbally and physically aggressive towards the security personnel of the restaurant-bar he attended. He admitted to assaulting Mr. E.T., a member of the

security personnel, which caused bodily injuries. CM Rumsey was arrested, criminally charged and conditionally discharged for assaulting Mr. E.T.

[17] Finally, the Service de police de la Ville de Québec placed CM Rumsey under arrest and charged him with assault, at which time he identified himself as a member of the RCMP.

[18] As for allegation 2, CM Rumsey texted CM Labelle the day after the incident not to apologize for his inappropriate behaviour, but to request his help in reaching out to Mr. E.T. CM Labelle had blocked CM Rumsey's cell phone number. As CM Rumsey could not reach CM Labelle, he asked CM Bamford to contact CM Labelle on his behalf. CM Rumsey's main objective was to offer Mr. E.T. a financial incentive to withdraw the criminal charge of assault laid against him: "I'd pay the bouncer to make the charges disappear."

[19] Members of the RCMP, including civilian members, must adhere to the Code of Conduct both on- and off-duty. CM Rumsey's actions as described in the Notice of Conduct Hearing were self-serving and demonstrate a total lack of the six RCMP core values: accountability, respect, professionalism, honesty, compassion and integrity.

[20] I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view CM Rumsey's actions as likely to bring discredit to the Force.

[21] CM Rumsey was deployed to the G7 Summit in Québec, an international event, as a representative of the RCMP. Although he was off-duty when the incident occurred, his disrespectful behaviour involved other RCMP members. Moreover, he identified himself as a member. Therefore, I find that his actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[22] For the aforementioned reasons, allegations 1 and 2 are established on a balance of probabilities.

CONDUCT MEASURES

[23] The RCMP External Review Committee has established a three-step test for the imposition of conduct measures. First, the conduct board must consider the appropriate range of conduct measures applicable to the misconduct at issue. Then, it must consider the aggravating and mitigating factors. Finally, the conduct board must impose conduct measures, which accurately and fairly reflect the gravity of the misconduct at issue, keeping in mind the principle of parity of sanction.

Range of conduct measures

[24] The parties have provided in their joint submission to the Conduct Board a detailed analysis of the appropriate range of conduct measures applicable to the various elements found in CM Rumsey's misconduct. The analysis takes into consideration the seriousness of the misconduct in allegation 1, which contains multiple instances of misconduct of a similar nature. It also addresses the novelty of the misconduct in allegation 2 regarding CM Rumsey's intention to offer a financial incentive to the individual he injured.

[25] Instead of dismissal, the parties proposed a global sanction of the forfeiture of 40 days' pay.

[26] In support of their position, the parties explained that CM Rumsey's misconduct in allegation 1 generally reflects three types of discreditable conduct found in the *Conduct Measures Guide* (2014) (the *Guide*). For particulars 3, 4, 6 and 8, the parties indicated that CM Rumsey's attempt to provoke a physical confrontation could be considered lewd behaviour that was in full public view. This type of misconduct falls in the aggravated range of section 25 (public intoxication/disorderly conduct) of the *Guide*. A sanction ranging from a forfeiture of 11 to 15 days of pay is recommended.

[27] Additionally, CM Rumsey's misconduct, described in particulars 7 and 9 of allegation 1, could be considered within section 21 of the *Guide* (assault/domestic violence) as it involves multiple RCMP employees and amounts to workplace violence. In those particulars, CM

Rumsey pushed and attempted to provoke CM Labelle to use force. He also used force upon CM Régimbald and attempted to project/throw him over his shoulder towards the ground without his consent. The parties submitted that CM Rumsey's misconduct consisted mostly of minor pushing and shoving and should be considered as falling within the lower spectrum of the normal range, which recommends a forfeiture of three days of pay. Given the evidence before me, I find that CM Rumsey's behaviour in these particulars falls within the higher spectrum of the range, which is a forfeiture of 10 days of pay, and not the lower range as indicated by the parties. However, this finding does not change the end result of this decision.

[28] With regard to particular 10 of allegation 1, the parties submitted that similarly to particulars 7 and 9, the misconduct could be considered under section 21 of the *Guide*. In this case, CM Rumsey pushed the security personnel in an effort to gain entry to the establishment after being denied entry. This misconduct falls within the lower spectrum of the normal range for which a sanction of a forfeiture of three days of pay is recommended.

[29] Finally, the parties submitted that in particulars 11, 12 and 13 of allegation 1, CM Rumsey's multiple closed fist strikes, which targeted Mr. E.T.'s face and ultimately caused injury, should be considered as falling within the aggravated range of section 21, which recommends a range of sanction from a forfeiture of 15 days all the way to dismissal. Moreover, this led to CM Rumsey's arrest, which was in full public view.

[30] As for allegation 2, the parties submitted that the misconduct is not specifically addressed in the *Guide* or by RCMP case law. They referred to the decision in *Appropriate Officer "C" Division and Inspector Brian Redmond*,¹ in which the member addressed a potential witness in an intimidating manner to prevent the witness from testifying against him. The adjudication board had imposed a sanction of 10 days' pay.

[31] As indicated in my decision in *Commandant de la Division C c. Gendarme Kramer*, 2020 DAD 04 (in French only), the new range of conduct measures found in the *Guide* has changed

¹ Appropriate Officer, "C" Division and Inspector Brian Redmond, 24 A.D. (3rd) 146.

considerably and is no longer compatible with the legacy RCMP disciplinary process. Although the legacy process limited the maximum financial penalty to 10 days, the new *RCMP Act* does not have any such limitation. The *Guide* recognizes that the imposition of a financial penalty without any limitation has almost no benefit in correcting a member's conduct and in maintaining public trust. Therefore, a practical maximum forfeiture of 45 days of pay is the recommended maximum. Thus, the use of legacy decisions to establish the range of conduct measures applicable for similar misconduct should be extremely limited. However, I consider legacy decisions useful when the principles articulated within them allow the support or the distinction between cases for which dismissal is requested by the conduct authority. This is not the case in the present matter.

[32] For allegation 2, the parties also referred to the *Clarke*² and *Cormier*³ decisions which were rendered under the new RCMP conduct process. They submitted that CM Rumsey's misconduct is less egregious than that of the subject members in those decisions.

[33] In allegation 5 of the *Clarke* decision, the subject member instructed a witness to provide false information pertaining to the disposal of seized beer. For that specific allegation, the conduct board imposed a reprimand plus the forfeiture of 13 days' pay.

[34] In allegation 3 of the *Cormier* decision, which mildly compares to the current circumstances, the subject member forged an email, placed a hardcopy of the forged email on the investigative file and sent a facsimile to the New Brunswick Motor Vehicle Branch containing the forged email. For this specific allegation, the conduct board imposed the forfeiture of 30 days' pay, an ineligibility for promotion for 2 years and a transfer to another work location.

[35] Following my review, I am satisfied that the range for CM Rumsey's misconduct runs from a significant forfeiture of pay to dismissal. Now that the range has been determined, I am required to assess the aggravating and mitigating factors to determine the proportionate measure in this case.

² *Commanding Officer "K" Division v Constable Clarke*, 2016 RCAD 3.

³ *Commanding Officer "J" Division v Constable Cormier*, 2016 RCAD 2.

Aggravating factors

[36] I accept the following aggravating factors presented jointly by the parties:

- a. The misconduct occurred while CM Rumsey was deployed at the G7 Summit, an international event involving world leaders from around the globe.
- b. The misconduct is akin to workplace violence as it involved multiple RCMP employees.
- c. The deliberate nature of CM Rumsey's actions in allegation 2 regarding his stated intent to offer a financial incentive to the security personnel he assaulted in order to have the criminal charge of assault laid against him withdrawn. CM Rumsey was of operating mind and no longer impaired when he deliberately chose to act this way and repeated similar messages to various co-workers throughout the day. Although he may have been in a panicked state, as conceded by the parties, members remain at all times responsible for their own personal conduct.
- d. CM Rumsey identified himself as a member of the RCMP and, as such, tarnished the reputation of the Force.
- e. CM Rumsey was criminally charged with assault and received a conditional discharge.
- f. The significant impact of CM Rumsey's actions on CM Labelle as indicated in the victim impact statement.

Mitigating factors

[37] I accept the following mitigating factors presented jointly by the parties:

- a. CM Rumsey's admission of the amended allegations and particulars have avoided a contested public hearing.
- b. CM Rumsey has no record of prior discipline.

- c. CM Rumsey is showing remorse and an appreciation for the seriousness of his actions. He has apologized to his supervisor for his embarrassing behaviour and the unnecessary burden he has inflicted on the Force. He also apologized to Mr. E.T. during the criminal proceedings. Finally, CM Rumsey has apologized to me and asked my permission to apologize to CM Labelle and CM Régimbald. As indicated in my oral decision, I highly recommended that the letters be sent to CM Labelle and CM Régimbald and directed counsels to work collaboratively in making this happen as soon as feasible.
- d. CM Rumsey has 12 years of productive service with the RCMP. His performance evaluations are very positive and describe him as a professional and dedicated member who is always willing to help others. This is also supported by many emails of appreciation received from information technology clients he has served.
- e. The letters of reference provided from co-workers and supervisors confirm that CM Rumsey has their ongoing support.

[38] The parties have submitted that CM Rumsey has sought and received medical treatment on a regular basis and continues to have access to his healthcare professionals. However, the documents provided do not outline the diagnosis or his prognosis, nor do they include any recommendations regarding his treatment. As there is no evidence of the causal link between the treatment received by CM Rumsey and the incident in this matter, I cannot consider this to be a mitigating factor.

[39] The parties have also submitted that CM Rumsey has a minimal likelihood of recidivism. I find that there is insufficient evidence to allow me to conclude with confidence that CM Rumsey would not commit any further contraventions of a similar nature in the future. Therefore, I do not consider this to be a mitigating factor.

[40] In fact, I have some concerns regarding CM Rumsey's response to the allegations in which he indicated that he had little to no recollection of certain particulars surrounding the allegations due to his level of intoxication the night in question. As he expressed in his letter to me, I can appreciate that he was going through a difficult time in his personal life at the time;

however, I find that it does not excuse his misconduct. Not only did it have a significant emotional impact on the life of CM Labelle, it also involved several employees of the RCMP.

[41] Finally, it is important to note in this matter that the Conduct Authority is no longer seeking CM Rumsey's dismissal.

Parity of sanction

[42] Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be proportionate to the nature and circumstances of the contravention of the Code of Conduct and, where appropriate, they must be educative and remedial rather than punitive.

[43] Although I may have imposed in this matter a more severe sanction than that proposed by the parties, my discretion is limited when a joint proposal on disciplinary measures is submitted to the Conduct Board by the parties, as it was in the present case. As a general rule, in order to reject the proposal, the conduct board must demonstrate that the proposal is contrary to the public interest.

[44] The public interest test has a very high threshold. In 2016, the Supreme Court of Canada in *R. v Anthony-Cooke*, 2016 SCC 43, provided guidance in paragraph 34, which is also applicable to administrative tribunals. More specifically, it indicated that a joint submission should not be rejected lightly as:

[...] 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 the justice system [in this case the conduct process] has broken down. [...]

[45] The public interest test was applied in the context of professional discipline in *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 [*Rault*], and in the Commissioner's decision *Constable Coleman and Appropriate Officer, "F" Division*, (2018) 18 A.D. (4th) 270. According to *Rault*, a conduct board has an obligation to give serious consideration to a joint submission unless it is unfit, unreasonable or contrary to the public interest. In addition, when

departing from a joint submission, a conduct board must also give good or cogent reasons as to why it is inappropriate.

Decision on conduct measures

[46] Following a thorough review of the evidence before me, the nature of the misconduct, the mitigating and aggravating factors, as well as the cases submitted by the parties, I cannot find that the proposed global measure of a forfeiture of 40 days' pay submitted by the parties is unfit, unreasonable or contrary to the public interest. In fact, the proposed measure respects the range of sanction imposed for a misconduct of similar nature. In addition, the proposed sanction reflects the seriousness of the misconduct. It not only serves as a deterrent to CM Rumsey, it promotes general and specific deterrence to other members.

[47] For these reasons, I accept the parties' joint submission on conduct measures.

CONCLUSION

[48] Allegations 1 and 2 are established on a balance of probabilities. In accordance with the joint submission presented by the parties, I impose in accordance with paragraph 5(1)(j) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, a financial penalty of 40 days to be deducted from CM Rumsey's pay.

[49] As submitted by the Conduct Authority in the joint submission and as I indicated in my oral decision on conduct measures, it is expected in the future that CM Rumsey will demonstrate exemplary conduct. The joint proposal represents an opportunity for CM Rumsey to pursue his career while upholding the standards set forth by the Code of Conduct as well as the RCMP core values.

[50] 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 CM Rumsey, 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.

April 29, 2020

Josée Thibault

Date

RCMP Conduct Board