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2020 CAD 22



**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:

**Assistant Commissioner Jane MacLatchy**  
Commanding Officer, "D" Division

Conduct Authority

and

**Constable Calvin Steinke**  
Regimental Number 51767

Subject Member

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**Conduct Board Decision**

Inspector Colin Miller

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October 29, 2020

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Ms. Shahana Khan, Conduct Authority Representative

Mr. Josh Weinstein, Subject Member Representative

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## SUMMARY

Constable Steinke was served with a *Notice of Conduct Hearing*, which contained three allegations of contraventions of the RCMP Code of Conduct: one under section 4.6; one under section 7.1; and the last one under section 2.1.<sup>1</sup> Allegation 1 alleged that Constable Steinke purchased car washes with the RCMP-issued government credit card and used them on his personal vehicle. Allegation 2 was withdrawn prior to the drafting of the *Notice of Conduct Hearing*. Allegation 3 alleged that Constable Steinke engaged in a verbal altercation, involving the use of profanities, with a member of the public while off-duty.

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<sup>1</sup> While Allegation 2 was included, the *Notice of Conduct Hearing* indicated that it had been withdrawn.

The Conduct Hearing for this matter was scheduled for the week of September 29, 2020. However, on September 24, 2020, the parties submitted a joint proposal on conduct measures in relation to Allegation 1. The Conduct Authority Representative elected not to call further evidence in relation to Allegation 3, as the Conduct Board had previously found that the impugned behaviour did not have a sufficient nexus to Constable Steinke's employment.

An oral hearing was held on September 29, 2020, at which the Conduct Board delivered its decision on the allegations and conduct measures. Allegation 1 was found to be established on a balance of probabilities, while Allegation 3 was dismissed. The Conduct Board accepted the parties' joint submission on conduct measures and imposed: 1) the forfeiture of 40 days' pay; 2) the forfeiture of 20 days' leave; 3) ineligibility for promotion for three years; and, 4) counselling as directed by the Health Services Officer

## INTRODUCTION

[1] On September 12, 2018, the improper use of car washes purchased on the RCMP-issued credit card was brought to the attention of the Unit Commander for Eastman Traffic Services. This information was subsequently reported to the "D" Division Commanding Officer. Consequently, pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], an investigation into Constable Steinke's actions was initiated on September 17, 2018.

[2] On February 28, 2019, the Officer in Charge of "D" Division Traffic Services became aware of the alleged conduct set out in Allegation 3 and subsequently ordered a separate Code of Conduct investigation on March 20, 2019.

[3] On September 11, 2019, the Commanding Officer and Conduct Authority for "D" Division (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.

[4] On September 16, 2019, Mr. John McKinlay was appointed as the Conduct Board pursuant to subsection 43(1) of the *RCMP Act*. On April 15, 2020, I was appointed as the Conduct Board in this matter due to Mr. McKinlay's pending retirement.

[5] The *Notice of Conduct Hearing* was signed by the Conduct Authority on February 26, 2020. It indicated that Allegation 2, a contravention of section 7.1 of the RCMP Code of Conduct, had been withdrawn. On March 4, 2020, the *Notice of Conduct Hearing* containing the remaining two allegations was served on Constable Steinke, along with the investigation package.

[6] On May 28, 2020, Constable Steinke provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. In his response, he denied both allegations.

[7] Constable Steinke admitted to all the particulars of Allegation 1 with the exception of particular 3, which he accepted, but he noted that he did not have first-hand knowledge of the system used to track car washes. In relation to particular 4, which contains the gravamen of the Allegation, although he admitted to the particular, he submitted that his actions do not amount to misconduct and it should be treated as a performance issue.

[8] In regard to Allegation 3, Constable Steinke admitted to particulars 1, 2 and 7, which contained background information. He denied the remaining five particulars, which pertained to an alleged verbal exchange with a member of the public.

### **Nexus to employment**

[9] On June 23, 2020, the first Pre-Hearing Conference (PHC 1) was held, at which time, the parties requested that Mr. M.R. and Ms. M.M., as well as Constable Steinke, testify in relation to Allegation 3. I advised the Conduct Authority Representative that I held serious concerns in relation to this Allegation as I failed to see the nexus between Constable Steinke's alleged misconduct and his employment.

[10] On September 10, 2020, during the second Pre-Hearing Conference (PHC 2), I informed the parties that, after having reviewed counsels' submissions, I was not going to issue summonses for the two civilian witnesses. This decision provides more fulsome reasons.

[11] Due to the travel restrictions (the requirement to self-isolate) currently in effect in Manitoba and given the uncertainty as to when these restrictions may be lifted as a result of the COVID-19 pandemic, I informed the parties that I was not prepared to adjourn this matter indefinitely. Hence, I directed that the Conduct Hearing proceed as scheduled on September 29, 2020, via video conference.

### **Joint proposal**

[12] Subsequent to the Subject Member Representative advising that the parties had agreed to a joint proposal in relation to Allegation 1 on September 18, 2020, a third Pre-Hearing Conference (PHC 3) was held to discuss this development. The parties advised that Constable Steinke would be admitting to Allegation 1 as it is presently articulated. The Conduct Authority Representative advised that she would not be withdrawing Allegation 3, assuming that I would dismiss or stay that Allegation as appropriate, given my previous decision in relation to its nexus to the RCMP.

[13] On September 24, 2020, I received a joint proposal from the parties, which included an admission to Allegation 1 by Constable Steinke. The parties jointly proposed the following measures: the forfeiture of 40 days' pay and 20 days' leave; no eligibility for promotion for three years; and counselling as directed by the Health Services Office.

[14] On September 29, 2020, the Conduct Hearing was held, at which time, Constable Steinke entered an admission to Allegation 1. I delivered an oral decision in which I found Allegation 1 established and dismissed Allegation 3. I subsequently delivered my oral decision on conduct measures, imposing those that were jointly proposed by the parties. This written decision incorporates and expands upon those oral decisions.

## ALLEGATIONS

[15] The *Notice of Conduct Hearing* contains the following allegations:

### **Allegation 1:**

Between April 1, 2018 and September 14, 2018, at or near Selkirk, Manitoba, Constable Calvin Steinke used government-issued equipment and property for unauthorized purposes and activities, contrary to section 4.6 of the Code of Conduct of the Royal Canadian Mounted Police.

#### *Particulars:*

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “D” Division, Selkirk Traffic Services, in the province of Manitoba.
2. During September 27, 2017 and March 2, 2019, you were the registered owner of a black Jeep, license plate [number redacted].
3. After purchasing a car wash from the Red River Co-op, 275 Main Street, Selkirk, Manitoba, a customer is provided a six-digit car wash code. The Red River Co-op is “Pass Info” from an individual car wash code indicates the date, time and location where the pass was purchased, with a notation (“1 remaining”). When the car wash is redeemed the “Pass Info” identifies it as “Washed (O remaining)” with the date, time and location when the pass was redeemed. For the purposes of the particulars in this allegation, all times referring to the time a car wash was purchased or redeemed are taken from the applicable Pass Info printout.
4. The RCMP Transportation Management Manual (TMM) ch. 27 Information Management and Fleet Cards policy states:
  3. 2. Fleet-Specific Cards
    3. 2. 1. The designated fleet service provider will assign a fleet card to each fleet asset. The card will be used exclusively for charging and tracking routine O and M costs for that specific asset.
5. On thirteen occasions, while on duty, you used an Automotive Resources International (“ARI”) card, to purchase car washes from the Red River Co-op located at 275 Main Street, in Selkirk. In contravention of the above policy, you failed to ensure the car washes you purchased with an assigned ARI fleet card were redeemed for the specific fleet vehicle for which they were purchased, or any fleet vehicle.
  - a. Code# 238136
    - i. On April 20, 2018, you were scheduled to work [5 p.m. to 3 a.m.].

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- ii. Between [5:30 p.m.] on April 20, 2018 and [2:46 a.m.] on April 21, 2018, you were signed into police vehicle 5B7.
- iii. At [7:32 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83, with ARI card 6080 0005 8538 3730.
- iv. Car wash code# 238136 was redeemed on April 28, 2018 at [12:48 p.m.].
- v. No members were on shift at [12:48 p.m.] on April 28, 2018. You and two other members were not scheduled to work until [5 p.m.] that day.
- vi. You failed to ensure the car wash you purchased, code # 238136, was redeemed for police vehicle 5B7.

b. Code# 480951

- i. On April 28, 2018, you were scheduled to work [5 p.m. to 3 a.m.].
- ii. Between [6:06 p.m.] on April 28, 2018 and [2:37 a.m.] on April 29, 2018, you were signed into police vehicle 5B7.
- iii. At [9:27 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83, with ARI card 6080 0005 8538 3730.
- iv. Car wash code# 480951 was redeemed on May 1, 2018 at [4:58 p.m.].
- v. The two members on duty on May 1, 2018, [Constable (Cst.)] [K.S.] and Cst. [R.F.], did not sign into police vehicle 5[B]7, and you were on Regular Time Off (“RTO”).
- vi. You failed to ensure the car wash you purchased, code # 480951, was redeemed for police vehicle 5B7.

c. Code # 583332

- i. On May 4, 2018, you were scheduled to work [6 a.m. to 4 p.m.].
- ii. Between [7:14 a.m. and 3:36 p.m.], you were signed into police vehicle 5[B]7.
- iii. At [7:27 a.m.] you purchased one “extreme” car wash for \$14.99, less a \$2.00 discount, final cost: \$13.98, with ARI card 6080 0005 8538 3730.
- iv. Car wash code# 583332 was redeemed on May 5, 2018 at [6:41 p.m.].
- v. On May 5, 2018, you were scheduled to work from [7 a.m.] to [5 p.m.] and no members were on shift after [5 p.m.].



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vi. You failed to ensure the car wash you purchased, code # 583332, was redeemed for police vehicle 5B7.

d. Code# 156936

i. On May 7, 2018, you were scheduled to work [6 a.m. to 4 p.m.].

ii. Between [6:43 a.m. and 3:20 p.m.], you were signed into police vehicle 5B7.

iii. At [2:54 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83, with ARI card 6080 0005 8538 3730.

iv. Car wash code# 156936 was redeemed on May 13, 2018 at [7:55 p.m.].

v. On May 13, 2018, four members were on shift between [3 p.m. and 1 a.m.], but there is no record of any members signing into 5B7, and you were on RTO.

vi. You failed to ensure the car wash you purchased, code # 156936, was redeemed for police vehicle 5B7.

e. Code# 217148

i. On May 19, 2018, you were scheduled to work a special event.

ii. Between [6:28 p.m. and 11:45 p.m.], you were signed into police vehicle 5B7.

iii. At [6:41 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, code# 217148, final cost: \$11.83, with ARI card 6080 0005 8538 3730.

iv. Car wash code# 217148 was redeemed on May 20, 2018 at [5:58 p.m.]

v. On May 20, 2018, four members were on shift between [7 a.m. and 5 p.m.], but there is no record of any members signing into 5B7, and you were on RTO.

vi. You failed to ensure the car wash you purchased, code# 217148, was redeemed for police vehicle 5B7.

f. Code # 243422

i. On May 23, 2018, you were scheduled to work [6 a.m. to 4 p.m.].

ii. Between [6:43 a.m. and 3:56 p.m.], you were signed into police vehicle 5B7.

iii. At [6:55 a.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83, with ARI card 6080 0005 8538 3730.

iv. Car wash code# 243422 was redeemed on May 26, 2018 at [12:38 p.m.]

v. On May 26, 2018, at [12:38 p.m.] no member was signed into police vehicle 5B7, and you were Away on Leave.

vi. You failed to ensure the car wash you purchased, code # 243422, was redeemed for police vehicle 5B7.

g. Code# 011986

i. On June 5, 2018, you were scheduled to work [6 a.m. to 4 p.m.].

ii. Between [6:48 a.m. and 3:31 p.m.], you were signed into police vehicle 5B7.

iii. At [3:22 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83, with ARI card 6080 0005 8538 3730.

iv. Car wash code# 011986 was redeemed on June 6, 2018 at [5:58 p.m.]

v. On June 6, 2018, at [5:58 p.m.] no member was signed into police vehicle 5B7, and, you were on RTO.

vi. You failed to ensure the car wash you purchased, code # 011986, was redeemed for police vehicle 5B7.

h. Code# 983254

i. On June 13, 2018, you were scheduled to work [3 p.m. to 1 a.m.].

ii. Between [4:29 p.m.] on June 13, 2018 and [12:20 a.m.] on June 14, 2018, you were signed into police vehicle 5B12.

iii. At [5 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83, with ARI card 6080 0005 8995 3017.

iv. On June 14, 2018, you were scheduled to work [3 p.m. to 1 a.m.] and between [4:17 p.m.] on June 14, 2018 and [12:45 a.m.] on June 15, 2018, you were signed into 5B12.

v. Car wash code# 983254 was redeemed on June 15, 2018 at [1:58 p.m.].

vi. On June 15, 2018, at [1:58 p.m.] no member was signed into police vehicle 5B12.

vii. On June 15, 2018, you were scheduled to work [5 p.m. to 3 a.m.] and between [5:35 p.m.] on June 15, 2018 and [2:51 a.m.] on June 16, 2018, you were signed into 5B12.

viii. You failed to ensure the car wash you purchased, code # 983254, was redeemed for police vehicle 5[B]12.

i. Code# 528144

- i. On July 6, 2018, you worked an overtime shift [7 a.m. to 3 p.m.].
- ii. Between [7:19 a.m. and 2:48 p.m.] you were signed into police vehicle 5B12.
- iii. At [7:14 a.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83 with ARI card 6080 0005 8995 3017.
- iv. Car wash code# 528144 was redeemed on July 6, 2018 at [4:55 p.m.]
- v. On July 6, 2018, at [4:55 p.m.] Cst. [P.L.] was signed into police vehicle 5B12. Cst. [P.L.] has never redeemed a car wash purchased by a member on an earlier date, and does not recall redeeming a car wash on this date.
- vi. You failed to ensure the car wash you purchased, code # 528144, was redeemed for police vehicle 5[B]12.

j. Code# 576951

- i. On July 27, 2018, you were scheduled to work from [5 p.m. to 3 a.m.].
- ii. Between [5:28 p.m.] on July 27, 2018 and [2:20 a.m.] on July 28, 2018, you were signed into police vehicle 5B12.
- iii. At [10:09 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83 with ARI card 6080 0005 8995 3017.
- iv. Car wash code# 576951 was redeemed on August 3, 2018 at [3:50 p.m.]
- v. On August 3, 2018, at [3:50 p.m.] no member was signed into police vehicle 5[B]12, and you were on RTO.
- vi. You failed to ensure the car wash you purchased, code# 576951, was redeemed for police vehicle 5B12.

k. Code# 479032

- i. On August 10, 2018, you were scheduled to work [5 p.m. to 3 a.m.].
- ii. Between [6:14 p.m.] on August 10, 2018 and [2:31 a.m.] on August 11, 2018, you were signed into police vehicle 5B5.

iii. At [6:35 p.m.] you purchased one “premium” car wash for \$12.99, final cost: \$14.68, with ARI card 6080 0005 8002 0055.

iv. Car wash code# 479032 was redeemed on August 13, 2018 at [1:54 p.m.].

v. On August 13, 2018, at [1:54 p.m.] Cst. [J.Z.] was signed into police vehicle 5B5. Cst. [J.Z.] has never redeemed a car wash purchased by a member on an earlier date, and does not recall redeeming a car wash on this date.

vi. On August 13, 2018, you were on RTO.

vii. You failed to ensure the car wash you purchased, code# 479032, was redeemed for police vehicle 5B5

l. Code# 137116

i. On August 17, 2018, you were scheduled to work [5 p.m. to 3 a.m.].

ii. Between [5:57 p.m.] on August 17, 2018 and [2:37 a.m.] on August 18, 2018, you were signed into police vehicle 5B12.

iii. At [6:10 p.m.] you purchased one “premium” car wash for \$12.99, final cost: \$13.98 with ARI card 6080 0005 8995 3017.

iv. Car wash code# 137116 was redeemed on August 21, 2018 at [2:40 p.m.].

v. On August 21, 2018, at [2:40 p.m.] no member was signed into police vehicle 5B12, and you were on RTO.

vi. Closed-Circuit Television Video (“CCTV”) obtained from the Red River Co-op, shows a dark coloured vehicle, similar to your black Jeep entering into the car wash on August 21, 2018 at [2:46 p.m.]. This vehicle does not match the description of 5B12, a light blue Ford Taurus.

vii. You failed to ensure the car wash you purchased, code # 137116, was redeemed for police vehicle 5B12 and instead redeemed car wash code# 137116 for your personal use.

m. Code# 004472

i. On August 19, 2018, you were scheduled to work from [3 p.m. to 1 a.m.].

ii. Between [4:31 p.m.] on August 19, 2018 and [12:17 a.m.] on August 20, 2018, you were signed into police vehicle 5B12.

iii. At [4:51 p.m.] you purchased one “premium” car wash for \$12.99, less a \$2.00 discount, final cost: \$11.83 with ARI card 6080 0005 8995 3017.

iv. Car wash code# 004472 was redeemed on September 4, 2018 at 11:47 [a.m.].

v. September 4, 2018, at 11:47 [a.m.] no member was signed into police vehicle 5B12, and you were scheduled to work [12 p.m. to 10 p.m.].

vi. CCTV obtained from the Red River Co-op shows you parking your personal vehicle, a black Jeep, at the Co-op at 11:48 [a.m.]. You are later captured on CCTV making a purchase at the Co-op cash register at 11:51 [a.m.]. A dark coloured vehicle, similar to your black Jeep is seen in the car wash on September 4, 2018, between 11:53 [a.m.] and 12 [p.m.]. This vehicle does not match the description of 5B12, a light blue Ford Taurus.

vii. You failed to ensure the car wash you purchased, code# 004472, was redeemed for police vehicle 5[B]12 and instead redeemed car wash code # 004472 for your personal use.

### **Allegation 3:**

On or about February 27, 2019, at or near Selkirk, Manitoba, Constable Calvin Steinke failed to treat every person with respect and courtesy, contrary to section 2.1 of the Code of Conduct of the Royal Canadian Mounted Police.

#### *Particulars:*

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “D” Division, Selkirk Traffic Services, in the province of Manitoba.
2. On September 17, 2018, in relation to ACMT 2018-336589, you were suspended from duty with pay.
3. On February 27, 2019, at approximately [4:06 p.m.], [Mr. M.R.] and his girlfriend [Ms. M.M.] exited “Little Caesar’s” located at 55 Main Street in Selkirk, Manitoba. At the same time, you parked your personal vehicle, license plate [number redacted], in front of “Little Caesar’s”. While parking your vehicle, Mr. [M.R.] was walking past the parking spot, and your vehicle almost made contact with Mr. [M.R.].
4. Mr. [M.R.] expected you to say “sorry” when you exited your vehicle. Instead, you yelled at Mr. [M.R.], words to the effect, “What the fuck’s your problem”, and “Keep your fucking hands off my car”.

5. Mr. [M.R.] reacted by saying to you words to the effect of “You’re driving like a tart”, and “You almost hit me” or, “You could have hit me”. You responded by yelling at Mr. [M.R.] words to the effect, “Use the fucking side walk”.

6. Mr. [M.R.] felt threatened and felt you were trying to intimidate him by staring him down after the confrontation.

7. Mr. [M.R.] reported the incident to the police. The complaint was of a dangerous driver; that Mr. [M.R.] was almost hit by the vehicle; and, was then confronted by the driver. The vehicle in question was identified with your license plate [number redacted]. PROS file 2019- 265305 was created and investigated, although no charges were laid.

8. By using profanities and intimidating behaviour, you engaged in discourteous conduct towards a member of the public, Mr. [M.R.], which resulted in a statutory investigation.

[*Sic throughout*]

[16] The burden is on the Conduct Authority to establish the allegations on a balance of probabilities. Practically speaking, this means that I must find that the Conduct Authority has established that it is more likely than not that Constable Steinke has contravened the RCMP Code of Conduct as denoted in the allegations.

### **Decision on the allegations**

#### *Allegation 1*

[17] Section 4.6 of the Code of Conduct of the RCMP reads as follows:

Members use government-issued equipment and property only for authorized purposes and activities.

[18] Furthermore, the *Annotated Code of Conduct* provides the following commentary:

[...]

Members are entrusted to utilize a wide range of equipment and property in the daily performance of their duties. Accordingly, there is a corresponding responsibility of [the Member] to use this equipment and property for work purposes and not for personal use or gain.

[...]

[19] Constable Steinke's admission to the Allegation and its particulars as well as an examination of the materials provided in the Record clearly demonstrate that he used the government-issued ARI card to purchase car wash passes. By his own admission, he has agreed that he not only purchased the car wash passes, he also received a personal benefit by using those passes to wash his personal vehicle.

[20] As a result, I find Allegation 1 to be established on a balance of probabilities.

*Allegation 3*

[21] On June 23, 2020, PHC 1 was held to narrow the issues, identify witnesses and set the date for the Conduct Hearing.

[22] The parties requested that Mr. M.R. and Ms. M.M., as well as Constable Steinke, testify in relation to Allegation 3. However, I advised the Conduct Authority Representative that I held serious concerns in relation to this allegation, specifically;

- a. based on the Record, Mr. M.R. and Ms. M.M. appeared to be uncooperative;
- b. Constable Steinke had denied the Allegation; and,
- c. most significantly, I had difficulty seeing how the alleged misconduct was sufficiently related to Constable Steinke's duties and functions as to provide the RCMP with a legitimate interest in disciplining him.

[23] The Conduct Authority Representative acknowledged my concerns, but she noted that the RCMP Code of Conduct applies to members both on- and off-duty. I reiterated my concerns and left this matter to be discussed among the parties.

[24] On August 24, 2020, I sent an email to the Conduct Authority Representative and the Subject Member Representative to obtain an update on this matter and to enquire as to whether a determination had been made in relation to the witnesses being sought in relation to Allegation 3, given the concerns I had raised at PHC 1.

[25] Shortly thereafter, I received a response from the Conduct Authority Representative, in which she stated that, while she had noted my concerns in relation to Allegation 3, she would be requesting summonses for Mr. M.R. and Ms. M.M. She anticipated their attendance and cooperation at the hearing.

[26] On August 27, 2020, I wrote to the Conduct Authority Representative and the Subject Member Representative to advise that, in order for me to consider allowing the summoning of witnesses, I would have to be satisfied that Constable Steinke's alleged conduct had a nexus to his employment and gives the RCMP an interest in disciplining him. In order for that to be accomplished, I sought submissions on this issue and proposed a schedule for submissions, to which both counsels subsequently agreed.

[27] On September 10, 2020, PHC 2 was held. I advised the Conduct Authority Representative and the Subject Member Representative that, after reviewing their submissions, I would not be issuing summonses for the two civilian witnesses, as the Conduct Authority had not demonstrated that Constable Steinke's alleged conduct was sufficiently related to his employment to give the RCMP a legitimate interest in disciplining him.

***Conduct Authority Representative's submission on the nexus to employment***

[28] On August 28, 2020, the Conduct Authority Representative provided her submission.

[29] The Conduct Authority Representative submitted that Allegation 3 could be summarized as an off-duty interaction between Constable Steinke and two members of the public, Mr. M.R. and Ms. M.M., in the parking lot of a restaurant. Mr. M.R. alleged that Constable Steinke used profanities and intimidating behaviour during this interaction. The Conduct Authority Representative noted that Constable Steinke's conduct was sufficiently impactful on Mr. M.R. to cause him to call police, which led to a statutory investigation.

[30] The Conduct Authority Representative asserted that, pursuant to subsection 37(g) of the *RCMP Act*, it is the responsibility of every member to act at all times in a courteous, respectful and honourable manner.



[31] The Conduct Authority Representative submitted that Constable Steinke's conduct fell short of the Code of Conduct, as well as, and perhaps more significantly, his responsibilities as prescribed in the *RCMP Act*. As such, she submitted that Constable Steinke's conduct as alleged in Allegation 3 had a nexus to his employment, which provides the RCMP with an interest in disciplining him.

***Subject Member Representative's response to the nexus to employment***

[32] On September 4, 2020, the Subject Member Representative provided his response to the Conduct Authority Representative's submission.

[33] The Subject Member Representative submitted that, while the *RCMP Act* states that members must be respectful at all times, it does not displace the long-standing employment principle that employees are entitled to a private life and discipline is only permitted where a nexus to employment can be established. He submitted that even if Constable Steinke's behaviour towards Mr. M.R. was disrespectful, which he denied, there was no nexus to the RCMP.

[34] The Subject Member Representative, in citing *Braiden v Ratcliff*, 2008 CanLII 91558 (Alberta Law Enforcement Review Board), argued that absent the nexus, discipline cannot be imposed. In order to establish a nexus, the Subject Member Representative cited the test as set out in *Lingl and Calgary Police Service*, (1993) 2 Alberta Law Enforcement Review Board 128:

[...]

- (1) Where the conduct of the officer harms the reputation or credibility of the Police Service.
- (2) Where the officer's behaviour renders him or her unable to perform his or her duties in a satisfactory manner.
- (3) Where the officer's behaviour leads to refusal, reluctance, or inability of other officers or employees to work with the officer.
- (4) Where the officer has contravened the law in a manner that renders his or her conduct injurious to the reputation of the service and its members.

(5) Where the officer's conduct places difficulty in the way of the service to properly carry out its functions and effectively manage its work or effectively direct its work force.

[...]

[35] The Subject Member Representative summarized his argument by stating that Constable Steinke was off-duty, not in uniform, driving his personal vehicle and was acting in the course of his personal life. He never revealed that he was an RCMP officer, which either eliminated or drastically reduced the risk of reputational harm to the RCMP.

[36] The Subject Member Representative submitted that a nexus between misconduct and employment has historically been drawn when the "victim" of the disrespectful behaviour either knows or comes to know that the person is an officer. He argued that although the alleged interaction was not pleasant, officers are entitled to their personal lives and privacy unless a nexus can be established to their employment. He submitted this nexus did not exist in relation to this Allegation.

***Conduct Authority Representative's rebuttal to the nexus to employment***

[37] On September 9, 2020, the Conduct Authority Representative submitted her rebuttal to the Subject Member Representative's response.

[38] The Conduct Authority Representative submitted that the nexus to employment in Allegation 3 is established due to the fact that Constable Steinke's conduct caused Mr. M.R. to call police and a statutory investigation was initiated. She argued that, whether on- or off-duty, a member becoming the subject of a statutory investigation affects the reputation of the Force.

[39] Furthermore, she asserted that, while Constable Steinke did not reveal his status as an RCMP officer, it did not preclude the Force from having an interest in disciplining him. She submitted that abuse of a member's status as a police officer is an aggravating factor and not an element required for the Force to have an interest in disciplining off-duty misconduct, suggesting that, whether at or away from work, Constable Steinke's conduct reflected on the Force.

[40] The Conduct Authority Representative submitted that Constable Steinke's conduct as alleged in Allegation 3 had a nexus to his employment; thus, she requested the opportunity for the Allegation to be heard on its merit.

### *Analysis*

[41] Constable Steinke was off-duty, wearing civilian attire and driving his personal vehicle. From a review of the video found in the Record, which was obtained from the restaurant in question, it is obvious that there was a verbal exchange between Constable Steinke and, presumably, Mr. M.R., as he had exited the frame prior to the interaction. Based on Constable Steinke's posturing, this exchange may be described as "heated" or, at the very least, "unpleasant". However, it has been well established that there must be some nexus to an individual's employment to allow the employer to discipline an employee for off-duty misconduct.

[42] There is no evidence to suggest that Constable Steinke identified himself as a police officer or a member of the RCMP. In fact, according to Mr. M.R.'s statement, he did not know that Constable Steinke was a member until he was made aware by the investigator during his interview. While a member's identity as a police officer is not always required for off-duty conduct to be found to breach the Code of Conduct, as the contravention of a statute may in and of itself warrant discipline, this is not the situation at hand.

[43] As recognized by the court, members of the RCMP, by the terms of their engagement, have voluntarily agreed to abide by a higher standard of conduct than that of the ordinary citizen (*The Queen and Archer v White*, [1956] SCR 154, at page 158). However, this standard does not call for perfection.

[44] For the RCMP to insert itself into every aspect of a member's personal life would be an extraordinary and unnecessary intrusion into that member's liberty. Constable Steinke interacted with Mr. M.R. for less than 20 seconds. Although it is alleged that he used profanity when addressing Mr. M.R., which he denied, this is merely an exchange between two individuals.

While it may not be preferable, I cannot conclude that a reasonable person would be shocked by this occurrence.

[45] Surely, it cannot be expected that every interaction a member has when off-duty will be subject to scrutiny by the RCMP. It is not uncommon for people to engage in arguments or to use profanity. Hence, I find that Constable Steinke engaging in a brief disagreement with another individual, even if that exchange may have included profanity, does not provide the RCMP with a legitimate interest in disciplining him in relation to Allegation 3.

[46] For this reason, I find that Allegation 3 has not been established on a balance of probabilities.

## **CONDUCT MEASURES**

[47] With my finding that Allegation 1 has been established, I am now required, in accordance with paragraph 36.2(e) of the *RCMP Act*, to impose conduct measures that are “proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, which are educative and remedial rather than punitive.”

[48] The Subject Member Representative and the Conduct Authority Representative jointly submitted a set of proposed conduct measures, consisting of (1) the forfeiture of 40 days’ pay; (2) the forfeiture of 20 days’ leave; (3) ineligibility for promotion for three years; and, (4) counselling as directed by the Health Services Officer.

### **Conduct Authority Representative’s submission**

[49] In addition to the joint submissions tendered in writing, the Conduct Authority Representative noted the following:

- a. The *Conduct Measures Guide* (2014) describes the use of ARI cards as egregious behaviour, as they are automatically repaid by the government.
- b. The appreciation by the Conduct Authority of the seriousness of Constable Steinke’s misconduct and her expectation that any future misconduct will be heavily scrutinized.

- c. The Conduct Authority does not condone the misconduct and, absent the mitigating factors, she would not have agreed to a joint proposal.

**Subject Member Representative's submission**

[50] On behalf of Constable Steinke, the Subject Member Representative expressed the following:

- a. Constable Steinke endorses the joint proposal.
- b. Constable Steinke has taken this process very seriously and recognizes that he will be “under the microscope”.
- c. Things for Constable Steinke were very different at that time. He was extremely disorganized and depressed, which led to the co-mingling of receipts.
- d. Constable Steinke is in a better place now and recognizes that he has to better track items, especially property of the RCMP.
- e. In relation to Constable Steinke's background:
  - i. He graduated from Depot in December 2004 and was posted to Manitou, Manitoba.
  - ii. He was married, but they divorced in 2012.
  - iii. He has two adult children (a son, 24, and a daughter, 26).
  - iv. He is currently living common law and has two step-daughters, aged 9 and 14.
  - v. Although he could not locate a record of it, he received a commendation in 2004 in relation to a suicidal male, whom he and others rescued from the ice.

**Decision on conduct measures**

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

[52] Generally speaking, courts or administrative tribunals, such as this one, will not override a settlement reached by the parties unless doing so would be against the public interest. The public interest test has a very high threshold. In the 2016 decision *R. v Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada recognized the value of settlement discussions and indicated that a joint submission should not be rejected lightly.

[53] The public interest test was also applied in the context of professional discipline in the case of *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (Canlii) [*Rault*], and by the Commissioner of the RCMP in decision (2018) 18 AD (4th) 270.

[54] 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.

[55] In order to determine whether the proposed conduct measures submitted by the parties are against the public interest, I must first determine what the possible measures may be. Of note, dismissal is the most serious punishment that can be imposed in a disciplinary process such as this one.

[56] In their joint submission, the parties have provided a detailed analysis of the appropriate range applicable to the various elements found in Constable Steinke's misconduct. In support of their position, the parties referenced three previous conduct board decisions: *Commanding Officer "K" Division v Constable Tyler Cull*, 2018 RCAD 7; *Commanding Officer "K" Division v Constable Charles Clarke*, 2016 RCAD 3; and *Commanding Officer "D" Division v Constable Trevor Ens*, 2019 RCAD 01.

[57] While none of these decisions bore the same facts as are present in this matter, the parties have suggested that they provide support for the imposition of a significant forfeiture of pay. Hence, they propose that the appropriate range for conduct measures is the forfeiture of 30 days' pay, which is in the low end of the mitigated range, to dismissal, which is the recommended measure for both the normal and aggravated range, as set out in the *Conduct Measures Guide*.

[58] As the parties themselves have recognized, Constable Steinke's misconduct falls within the normal range; which stipulates dismissal. However, in this instance, they are arguing that he has taken steps to rehabilitate himself by obtaining psychological treatment, which brings the sanction into the mitigated range. To determine if it is a proportionate measure in this case, I must consider the aggravating and mitigating factors.

*Aggravating factors*

[59] I have considered the factors presented by the parties and I find the following to be aggravating factors:

- a. The misconduct involved a lack of honesty and integrity.
- b. Constable Steinke obtained a personal benefit in the form of 13 car washes (a value of \$160.94).
- c. The misconduct was repeated 13 times; it was not a one-time incident. It is hard to imagine that all 13 incidents occurred by accident.
- d. Constable Steinke has an unrelated history of previous discipline from 2016 involving what may be described as "road rage" and a dated, unrelated instance of disgraceful conduct from 2007.

*Mitigating factors*

[60] I find the following to be mitigating factors:

- a. Constable Steinke's admission has avoided the need for a contested hearing.

- b. Constable Steinke has expressed remorse and accepted responsibility for his actions.
- c. Constable Steinke cooperated with the internal investigation and provided a statement to the Professional Standards Investigators.
- d. At the time of the misconduct, Constable Steinke was facing personal stressors and suffering from medical conditions. Since the time of his misconduct, he has sought, received and continues to receive treatment for his conditions.

[61] Notably, as evidenced by the joint proposal on measures, the Conduct Authority is no longer seeking Constable Steinke's dismissal and has expressed confidence that, in the future, he will demonstrate "exemplary conduct".

## **CONCLUSION**

[62] I want to stress the seriousness of Constable Steinke's misconduct. His actions were not a one-time occurrence. He repeated his misconduct on 13 separate occasions, leaving some doubt as to how it may have occurred inadvertently. While the dollar value is not of great significance, this type of misconduct relates directly to his honesty and integrity; absent the circumstances set out by counsel, most notably, the Conduct Authority's support for the joint proposal, he would likely have faced dismissal.

[63] However, having considered the Record before me, the nature of the misconduct, the mitigating and aggravating factors, as well as the cases referred to by the parties, I cannot find that the proposed measures are contrary to the public interest. These measures impose a very serious sanction on Constable Steinke, which clearly communicates that he is being held accountable for his behaviour and that this type of misconduct will not be tolerated by the RCMP.

[64] Furthermore, I believe that these measures will act as a strong deterrent to Constable Steinke, specifically, as well as serve as a general deterrent to others.



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[65] Consequently, I accept the parties' joint submission and impose the following conduct measures:

- a. the forfeiture of 40 days' pay (320 hours)
- b. the forfeiture of 20 days' leave (160 hours)
- c. ineligibility for promotion for a period of 3 years
- d. undergo counselling as directed by the Health Services Office.

[66] Constable Steinke has been given an opportunity to continue his career with the RCMP. However, any future contravention of the Code of Conduct will be seriously reviewed by the appropriate conduct authority and could lead to his dismissal from the Force.

[67] I trust that he will not repeat the same mistakes in the future, and that he will hold himself, to the high standards required of a member of the RCMP.

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

[69] 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 the Subject Member, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

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Inspector Colin Miller

Conduct Board

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October 29, 2020

Ottawa, Ontario