

Protected “A”

File: 20173351282 (C-042)

2021 CAD 05



IN THE MATTER OF

an appeal of a conduct board decision pursuant to subsection 45.11(1) of the

Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10

Between:

**Commanding Officer, “E” Division
Royal Canadian Mounted Police**

(Appellant)

and

**Constable Benjamin Caram
Regimental Number 51805**

(Respondent)

(Parties)

Decision of the Commissioner

Royal Canadian Mounted Police

2021

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SYNOPSIS

The Appellant, the Commanding Officer, “E” Division, as a conduct authority, appeals the decision of a Conduct Board (Board). The Respondent, an RCMP member, was charged with four allegations of contravening the RCMP *Code of Conduct* at an off-duty Christmas party organized by members of his spouse’s Watch, who was also a member. Three allegations concerned discreditable conduct (section 7.1) and one, harassment (section 2.1).

All four of the allegations were established. The Appellant sought dismissal. With regard to the section 2.1 allegation, the Board was not convinced that the Respondent's actions amounted to harassment. Rather, the Board found the conduct to be disrespectful and discourteous. For the four allegations, the Respondent was sanctioned a total of 45 days pay, ordered a transfer/reassignment, and directed to continue psychotherapy and undergo any treatment specified by the Health Services Officer.

On appeal, the Appellant argued that the Board made an error of law by failing to find that the Respondent's conduct amounted to sexual harassment. The Appellant also took issue with the conduct measures insisting that the Board should have considered all the allegations globally, and in doing so, it would have determined that dismissal was the appropriate sanction.

The appeal was referred to the RCMP External Review Committee (ERC) for a review. The ERC found that Respondent's conduct constituted sexual harassment. The ERC determined that the Board's imposed conduct measure for the section 2.1 allegation was clearly unreasonable and recommended that instead of five days, a forfeiture of 20 days pay was more appropriate.

The Commissioner accepted the ERC findings and recommendation and allowed the appeal in part.

INTRODUCTION

[1] The Commanding Officer, "E" Division, as conduct authority (Appellant), appeals the decision and imposed conduct measures of an RCMP Conduct Board (Board). The Board found the four allegations that Constable (Cst.) Benjamin Caram, regimental number 51805 (Respondent), had contravened the RCMP *Code of Conduct* (Code) (set out in the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281) were established. Pursuant to paragraph 45(4)(c) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (Act), the Board imposed a forfeiture of 45 days pay along with additional measures. The Appellant argued

that the Board made an error of law in its findings and that the conduct measures were clearly unreasonable.

[2] The appeal process for this type of decision is governed by subsection 45.11(1) of the Act which allows for the appeal of a decision by a conduct board to the Commissioner. Pursuant to paragraph 45.15(1)(a) of the Act, the appeal was referred to the RCMP External Review Committee (ERC) for review. In Findings and Recommendations C-042, dated October 8, 2020 (Report), the Chair of the ERC, Mr. Charles Randall Smith, recommended that the appeal be allowed in part.

[3] In rendering this decision, I have considered the entire record consisting of the material before the Board (Material) and the appeal materials (Appeal) prepared by the Office for the Coordination of Grievances and Appeals (OCGA). References to the Material and the Appeal relate to the electronic page numbers of the corresponding document. References to the Report and the Board's written decision (Decision) are indicated by paragraph number.

[4] I sincerely apologize to the Parties for any delays attributable to the RCMP in advancing the adjudication of this appeal.

[5] For the reasons that follow, I agree with the ERC recommendation, allow the appeal in part, and confirm the Board's decision for the rest.

BACKGROUND

[6] Like the ERC, I find the Board best described the background facts of the case (Decision, p 3):

The Subject Member faced three allegations of discreditable conduct and one of discourteous and harassing behaviour. He attended a pre-Christmas party with his spouse, organized by members of her Watch. The Subject Member became heavily intoxicated. He slung his arm over the shoulders of Constable A and, without her consent, very briefly played with her nipple over her shirt. This event was laughed off at the time. Later, the Subject

Member hugged Constable A from behind with his hands descending, still over her clothing, from her stomach to her groin. Constable B observed this and told the Subject Member to leave the area. Constable A did not consent to this touching, was startled by it, but she had no recollection of it later due to her alcohol consumption. Later, the Subject Member touched the cheekbones of another attendee, Constable C, with her consent. He then made gestures involving the fingers on one hand, which puzzled Constable C. Asked what the gesture meant, the Subject Member stated using a crude term that he wanted to put his fingers in her vagina. Later, the Subject Member placed his arm around the shoulders of Constable C, who was intoxicated and did not consent, and grazed her nipple with his fingers about three times, over her clothing. This was observed by Constable B, who pushed the Subject Member away. A criminal charge of sexual assault was filed respecting Constable C, which was ultimately subject to resolution via an alternate measures program.

CONDUCT PROCEEDINGS

[7] The ERC thoroughly described the conduct proceedings (Report, paras 7-32):

[7] A *Code of Conduct* investigation regarding the actions of the Respondent was completed. The Respondent was also charged with one count of sexual assault pursuant to the *Criminal Code of Canada*. In my view, it is not necessary to elaborate with respect to key documents such as the Notice of Conduct hearing because they are not disputed.

A. Code of Conduct Allegations and Particulars

[8] The Allegations and Particulars were cited in the Decision under appeal (Appeal, pages 22-24):

Allegation 1

Between the 28th day of November, 2015, and the 29th day of November, 2015, inclusive, at or near Nanaimo, in the Province of British Columbia [the Subject Member] engaged in conduct contrary to section 7.1 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 "E" Division, Nanaimo detachment in British Columbia.

2. Between the 28th day of November, 2015, and the 29th day of November, 2015, while off-duty, you attended a Christmas social

gathering organized for the “D” Watch members of the Nanaimo RCMP Detachment held at a private residence.

3. At one point during the evening, you went downstairs and stood beside Constable [A] who was observing other guests playing a game of billiards. You then put your arm around her shoulder and placed your hand outside her clothing on her left breast.

4. You then touched her left breast and played with her nipple for approximately five seconds.

5. At that time Constable [A] was intoxicated, did not consent and could not have consented to you touching her.

6. Your actions amounted to unwanted sexual touching and were performed in plain view in close proximity to attending guests.

Allegation 2

Between the 28th day of November, 2015, and the 29th day of November, 2015, inclusive, at or near Nanaimo, in the Province of British Columbia, [the Subject Member] engaged in discreditable conduct, contrary to section 7.1 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 “E” Division, Nanaimo detachment in British Columbia.

2. Between the 28th day of November, 2015, and the 29th day of November, 2015, while off-duty, you attended a Christmas social gathering organized for “D” watch members of the Nanaimo RCMP Detachment held at a private residence.

3. At one point during the evening, you approached Constable [A] while she was standing on the balcony, put your arms around the front of her torso and slowly dropped both your hands overtop her clothing in a sensual manner stopping at her groin.

4. At that time Constable [A] was intoxicated, did not consent and could not have consented to your touching her.

5. Constable [A] was startled when your hands reached her groin area.

6. Constable [B] intervened and had to instruct you to leave Constable [A] alone and go back inside the house.

7. Your actions amounted to unwanted sexual touching.

Allegation 3

Between the 28th day of November, 2015, and the 29th day of November, 2015, inclusive, at or near Nanaimo, in the Province of British Columbia [the Subject Member] made offensive remarks and engaged in harassment 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 "E" Division, Nanaimo detachment in British Columbia.*
- 2. Between the 28th day of November, 2015, and the 29th day of November, 2015, while off-duty, you attended a Christmas social gathering organized for "D" Watch members of the Nanaimo RCMP Detachment held at a private residence.*
- 3. You approached Constable [C] downstairs near the bar area and began putting your hands up towards her face, complimenting her cheekbones. You asked to touch her face and she allowed you to do so as she felt it was harmless.*
- 4. You then removed your hands from her face, made a gesture with your hands by holding all your fingers together and told her that you wanted to "fist her" and "wanna put these right up your vagina right now" or words to that effect.*
- 5. Constable [C] stated "no" and immediately walked away from you.*
- 6. Your actions and offensive remarks upset Constable [C].*

Allegation 4

Between the 28th day of November, 2015, and the 29th day of November, 2015, inclusive, at or near Nanaimo, in the Province of British Columbia [the Subject Member] engaged in discreditable conduct, contrary to section 7.1 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 "E" Division Coquitlam detachment in British Columbia,*
- 2. Between the 28th day of November, 2015, and the 29th day of November, 2015, while off-duty, you attended a Christmas social*

gathering organized for “D” Watch members of the Nanaimo RCMP Detachment held at a private residence.

3. At one point in the evening, you followed Constable [C] who was downstairs and then placed your arm around her.

4. You placed your hand down the left side of her body, outside her clothing and rubbed your hand up and down her left breast approximately three times.

5. Your actions upset Constable [C] and she asked you to leave but you remained and continued to touch Constable [C]’s hair.

6. Constable [B] intervened, told you to leave and pushed you away from Constable [C].

7. Your actions amounted to unwanted sexual touching.

B. Decision Under Appeal

[9] The Board issued a Decision which was later corrected. The Decision I am referring to throughout this report is titled “Conduct Board Decision (CORRECTED), John A. McKinlay, November 10, 2017” (Appeal, pages 7- 51).

[10] The undisputed general findings of fact are summarized from the Decision (Appeal, pages 25-31):

a. At the time of the events, the Respondent was posted to “E” Division, in “C” Watch, in B.C.;

b. The Respondent’s regular day schedule consisted of two 12-hour shifts, followed by two 11-hour night shifts. He worked day shifts on November 24 and 25, 2015, and night shifts on November 26 and 27, 2015, arriving home on November 28, 2015, between 6:30 and 7:00 a.m., after his shift ended at 6:00 a.m.;

c. The Respondent only slept three hours on November 28 and did not eat much as he knew he would be attending a Christmas party where lots of food was expected. His wife is a Constable in “D” Watch and they would both be attending;

d. Both the Respondent and his wife attended the party at a private residence and were off-duty at the time;

e. The Respondent did not drink alcohol prior to attending the party. He brought four beers with him;

f. The Respondent began to drink one of his beers on arrival. The Respondent recalls drinking other alcoholic beverages, namely two “Jell-

O shots” and two shooters that he had not brought. The Respondent recalls another member motioning him to try a “shooter” he mixed, which the Respondent recalls drinking;

g. At this point, the Respondent’s memory became hazy at best, he recalled brief flashes and snippets, more drinking and eventually he had no recollection of the events that night;

h. Later the morning of November 29, the Respondent awoke in the spare bedroom of his home, fully dressed and wearing his shoes;

i. The Board found that the Respondent became very intoxicated at the party. The Respondent admitted to all four allegations and most of the particulars in the Notice of Conduct Hearing dated September 30, 2016. The Respondent at some point, went into “black-out” mode and did not remember any of the events that took place that evening;

j. Both Cst. A and C were members of “D” Watch and were at the party with their respective spouses. The Respondent had worked before with Cst. A and the Respondent and his wife were longtime friends with Cst. A and her husband;

k. Cst. A became intoxicated at one point during the party;

l. The Respondent, as reported by other attendees, was either intoxicated or highly intoxicated; and

m. The Respondent only had limited knowledge/passing familiarity of Cst. C at the time. Cst. C noticed that the Respondent was quite intoxicated.

Allegation 1

[11] Regarding Allegation 1, the Board found the following:

a. Cst. A. was intoxicated;

b. According to Cst. B, Cst. A and the Respondent were talking about sex, jokingly at first;

c. The Respondent put his arm around her shoulders, Cst. A laughed, and he then placed his hand over her clothing on her left breast and played with her nipple for approximately 5 seconds;

d. Cst. A joked and laughed about it with the Respondent;

e. Cst. A did not consent to the Respondent’s touching, and because of her degree of intoxication, may have lacked the capacity to consent to the Respondent touching her breast in the manner he did;

f. The Respondent stopped the touching without being asked to;

- g. The Respondent's actions were witnessed by Cst. B; and
- h. The Respondent's actions amounted to unwanted sexual touching and were performed in plain view and in close proximity to attending guests.

Allegation 2

[12] The Board found the following with respect to this allegation:

- a. Later that evening, the Respondent approached Cst. A while she was out on the host's balcony and bent over the railing;
- b. The Respondent put his arms around the front of Cst. A's waist and the interaction started like a hug from behind and he was laughing;
- c. While the Respondent's hands were on Cst. A's waist, he slowly dropped both hands over top of her clothing, in a sensual manner, stopping at her groin area;
- d. Cst. A was heard by others saying "what the fuck?" or words to that effect;
- e. The Respondent stopped what he was doing;
- f. His hands were outside her clothing at all times;
- g. Cst. A did not consent to this;
- h. Cst. B witnessed the incident and intervened by directing the Respondent to leave Cst. A alone and to go back inside the host's house;
- i. The Respondent's actions amounted to unwanted sexual touching;
- j. Cst. A did not recall the incidents when interviewed by the *Code of Conduct* investigator;
- k. In a letter Cst. A wrote dated December 5, 2015, she did remember that the Respondent came out on the balcony, he put his arms around her and that was when Cst. B told him to leave her alone; and
- l. When Cst. B told Cst. A about what happened, Cst. A was not upset, nor did she feel like a victim of assault, but she felt that it was inappropriate behaviour.

Allegation 3

[13] The findings of fact made by the Board are as follows (note that this incident took place subsequent to the events that lead to Allegations 1 and 2):

- a. The Respondent approached Cst. C downstairs, near the bar area, and began putting his hands up towards her face, complimenting her cheekbones;
- b. The Respondent asked Cst. C if it was ok if he touched her cheekbones and she said it was ok;
- c. There is no suggestion that the above constituted discreditable conduct;
- d. The Respondent then removed his hands from Cst. C's face, made a gesture with his hands by holding all of his fingers together, she laughed at him and asked something to the effect of "what does that mean?". The Respondent then told her that he wanted to "fist her", "wanna put these right up your vagina right now" or words to that effect;
- e. Cst. C said "no" and immediately walked away;
- f. The Board added: "I am not satisfied that the Respondent remained and continued to touch Cst. C's hair, as stated in Particular 5, as observations of the Respondent touching the hair of Cst. C are more likely to pertain to the slightly earlier, unobjectionable "cheekbones" interactions, before the Subject Member's objectionable gesture and utterances"; and
- g. The Board then stated: "the Subject Member's actions and offensive remarks upset Cst. C."

Allegation 4

[14] In regards of Allegation 4, the Board made the following findings of fact:

- a. A short time later, the Respondent followed Cst. C, who was downstairs, and then placed his arm around her;
- b. The Respondent placed his hand down the left side of Cst. C's body, over her cotton dress, and rubbed his hand up and down her left breast very fast about three times;
- c. The Board found that these actions upset Cst. C;
- d. Cst. C's recollection was that he rubbed her breast, it was not an actual grab; and
- e. Cst. B again observed the Respondent's actions and intervened, telling him to go upstairs.

C. Decision – on Allegations

[15] The Board found that "sufficient" particulars were proven on a balance of probabilities to establish each allegation (Appeal, page 23). The Board

found that Allegations 1, 2 and 4, alleging contraventions of section 7.1 of the *Code of Conduct*, were established.

[16] As will be further discussed, the Appellant takes issue with both the findings and conduct measures associated with Allegation 3. For this reason, I believe it is crucial to quote the Board's decision pertaining to this allegation (Appeal, pages 30-31):

For Allegation 3, I am satisfied that sufficient particulars are proven on a balance of probabilities to establish a contravention of section 2.1 of the Code of Conduct, which states: Members treat every person with respect and courtesy and do not engage in discrimination or harassment.

I find that the Subject Member made the gestures and offensive remarks identified in Particular 3, and that Cst. C was upset by them. I find that the Subject Member clearly failed to treat Cst. C with respect and courtesy. However, as a matter of law, I do not find that the Subject Member's clearly offensive behaviour constitutes harassment or discrimination. I fully acknowledge that certain inappropriate conduct need not take place in the workplace, or during work hours, or as part of an employer- sponsored or – organized event, to constitute harassment. But here, there are a number of factors that, together, cause me to find the behaviour clearly discourteous and disrespectful, but not harassment. These factors include:

- the off-duty, private residential setting and unofficial nature of the social gathering;*
- the fact that the Subject Member attended the party as the spouse of a Watch "D" member;*
- the lack of any workplace connection between the Subject Member and Cst. C beyond common employment with the RCMP;*
- the single disrespectful and discourteous interaction (not, at that time, a pattern of discourteous behaviours); and*
- the degree to which this interaction upset Cst. C at the time it occurred.*

On this basis, I find that the Subject Member contravened section 2.1 of the Code of Conduct, and that Allegation 3 is established.

EXHIBITS BEFORE THE BOARD – CONDUCT MEASURES HEARING

[17] At this stage, I believe it would be helpful to list and describe and sometimes copy verbatim the vast amount of information that was put before the Board for consideration. These documents include: i) Letters of

Reference and Support; ii) RCMP annual evaluations and similar documents relating to the Respondent; iii) medical evaluations and reports: one by a psychologist (Dr. W.) and the other by a psychiatrist (Dr. O.); and iv) Victim Impact Statements, one by Cst. A, and two from Cst. C. In addition, in my view, it is very important to set out verbatim both Letters of Apology from the Respondent to Cst. A and to Cst. C.

1. Letters of Reference and Support

[18] As a general comment, there are several letters in support of the Respondent that speak very highly of his character. As important, are the number of statements concerning how “out-of-character” the behaviours were for the Respondent on the evening of November 28 and 29, 2015.

[19] In my opinion, because of the potential consequences that could occur here for the Respondent, it is important for the Commissioner to have a thorough appreciation of the Respondent’s character:

A. S/Sgt. J.V. B., NCO i/c “C” Watch (Material, Volume 4, page 1513)

I find the alleged allegations against Cst. Caram to be very much out of character for the person I have come to know.

I have had the pleasure of supervising Cst. Ben Caram for the previous 3 ½ years, all of that time being on a General Duty watch in the City of [x]. Cst. Caram has always been dependable and a solid member of our watch and the RCMP. Regardless of the circumstance Cst. Caram has held the standard of the force in the forefront of his duties. Though all the pressures of everyday existence in the General Duty world, he has never failed to serve the general public and his fellow members in the manner expected of him. Cst. Caram has a reserved personality and is never in pursuit of admiration from his peers or the public. He is articulate and expresses investigations in an effective and direct manner. I have never heard or seen Cst. Caram be disrespectful or use inappropriate behaviour towards any female RCMP member or any female in the general public. I have always found Cst. Caram to be honest and forthcoming even when it may not place him in a positive light. Once such incident was when Cst. Caram was called to attend a group home where a young male of 11 years was out of control, brandishing a meat cleaver and threatening the occupants. When Cst. Caram arrived he attempted to talk the boy down and needed to use a chair, much like a Lion Trainer to keep a safe distance. In the end Cst Caram was able to knock the boy down and the boy dropped the weapon, but when the boy refused to stay down and started reaching for the weapon, Cst. Caram had to strike the boy (with his hand) which ended the situation. Cst. Caram alert me as to what has transpired, explaining

he was not happy it had come to him hitting the child, but little else could be done. Cst. Caram completed the appropriate documentation of the incident and although it may have made him uncomfortable he was praised for handling this difficult situation.

Simply put Ben is one of those guys who doesn't complain, he just strives to do his job the best that he can regardless of his surrounding environment. Whether we are short staffed or under pressure to garner results, Ben is as steady as they come. I have stated in the past, that if a supervisor had twenty members like Ben on the watch, the watch would be a very effective and solid watch. Not to mention very easy to supervise. If given the opportunity I would welcome the chance to supervise Cst Caram again;

B. Sgt. J. (Material, Volume 4, pages 1514-1515)

In nineteen years with the Force, I have worked with numerous hard working, dedicated members, however I have also worked with several "entitled" members, including almost two years as a GD partner of [x], poor performers who are released from units ahead of those who are assets to the unit, at least one member who used "harassment" as a tool to transfer to a location that they may not otherwise be considered for, and a member claiming "harassment" and racism against an OIC following a failed promotional attempt. Ben has repeatedly demonstrated that he is one of the hard working, dedicated members, without any sense of entitlement. Ben demonstrated this when following the recent allegations against him, he respected management's interim request to work out of another Detachment. Considering management had been promoting that Ben will be fighting for his job since the onset, Ben continued to show up and be the member he signed up to be. When completing his 2015 annual performance report, I liaised with NCO's at both locations Ben had been temporarily assigned, and received reports continuing to support his value as a member, with both locations saying they wanted him at the end of his current proceedings as ALL the staff loved him.

C. Cpl. K. C. (Material, Volume 4, page 1516)

To Whom It May Concern:

I am presently a corporal on C Watch at [x] Detachment, and the road supervisor for up to 15 members on any given shift. I am responsible for the members on the road, for reviewing their files and conduct, as well as conducting annual assessments, among other duties. I have been doing these supervisory duties for over a dozen years, and have directly

supervised over 200 members. Over a thirty year career I have worked with thousands of members in various capacities.

Cst Ben CARAM is a member on C Watch that I have supervised directly since 2012. I have reviewed his work, witnessed his demeanor, with both victims and suspects, assorted other clients, and co-workers. I have found him to be respectful and patient with all his interactions. He is well versed in his knowledge of the Criminal Code and use of force responsibilities. His calm demeanor at stressful incidents is a huge asset, it allows him to evaluate a given situation and take appropriate action. He knows how to analyze a problem and come up with the best option. He also quickly anticipates problems and knows when immediate action is required either to arrest a suspect, or lessen the danger to a potential client or co-worker. He is easily able to articulate and justify any action he has taken at any incident or on any file.

Cst Ben CARAM has been a top performer while on the Watch, steady and dependable in all he does. I have also had opportunity to witness Ben CARAM at Watch functions, which have included events with and without alcohol consumption. Over a thirty year career I have attended many “social events”, including RCMP dinners and balls. I have personally witnessed any assortment of behavior, including at RCMP sanctioned events. At any event I have attended with Cst Ben CARAM present, I have not seen his demeanor change, nor in fact seen Ben CARAM consume more than one or two alcoholic beverages.

I am fully aware of the allegations of contraventions regarding this matter and that a hearing has been set, but I have no personal knowledge of the events that occurred, but can only comment that the behaviour alluded to does not match anything I have seen or heard about Cst Ben CARAM. I have total confidence in his abilities and demeanor, and would not hesitate to supervise him again and have him work on the Watch.

D. Cpl. K. G. (Material, Volume 4, page 1517)

It is an absolute pleasure to write a letter of reference for Constable Ben CARAM. Ben was transferred to work at the [x] Detachment on February 28th, 2016, and was assigned to “B” Watch under my supervision, until his departure on May 26th, 2016.

I thoroughly enjoyed my time working and supervising Ben, and came to know him as a truly valuable asset to the [x] Detachment and to that of the Royal Canadian Mounted Police. In that short time that Ben was assigned to the [x] Detachment, he came across as being honest, dependable and very hard-working.

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Ben came to work with a positive attitude for each and every shift and did not let the misfortunes of his Code of Conduct or Criminal Code allegations get in the way of his policing responsibilities. Ben has proven to be strong throughout this ordeal and has taken his suspension in stride.

I would not hesitate to work with and/or supervise Ben in the future.

Please feel free to contact me at [XXX-XXX-XXXX], should you like to discuss anything further regarding Ben.

E. Cst. I. S. (Material, Volume 4, page 1518) in part

Ben takes his share of the work load and often more. At work, it wouldn't be long before I heard Ben on the radio calling for the next file. On larger file that required more members on scene, Ben was always one of the first to take a leading role to assist with whatever was needed to do.

Ben has the best qualities you could find in a police officer. He is fair, intelligent, patient, empathetic and hard working. As well as those qualities, Ben has demonstrated himself to be sensitive to cultural differences and struggles faced by minorities.

On a personal level, Ben is the officer and friend that I go to for advice. As an officer Ben gives thoughtful, sound advice to difficult, or more involved police occurrences. His level headedness and confidence has been very welcomed in tense and dangerous moments on the job.

As a friend, Ben has been there to help me through some tough times whether work related or in personal life.

F. Cst. K. B. (Material, Volume 4, page 1519)

To whom it may concern,

My name is K. B. and I have been employed by the RCMP since March 1999, initially as a telecommunications operator and then as a regular member as of March 2014,

I started working with Ben CARAM in March 2014 as a recruit from depot. Ben was not my trainer but I rode in his car several times and he assisted and mentored me on many files. When I was in training, Ben was always very patient and took the time to explain things to me as I was learning and developing. He was always professional and understanding, as well as supportive in providing tips and tools on how to improve and develop. I have now been with the watch for over two years and Ben is one of the members everyone looks to for his knowledge, ability to look at the entire situation, and professionalism. He is one of the few members

that can go on a call and no matter how stressful or amped up a client is, he was always able to handle the situation in a very calm and confident manner which more often deescalated the situation and prevented anyone from getting hurt. Often when handling a call and I had no back up on site, Ben would just show up and be there to back me up and offer support as needed. He has always been kind and treated me with nothing but respect.

I have also known Ben and his family outside of work. We have camped together, been to social gatherings with our watch mates and families and at no time have I ever seen Ben act in a way that would be perceived as offensive or rude in any way. I have always found Ben to be honest, trustworthy and a great person overall, both on the job and off.

Although I have not been a regular member for a long time, I have worked with them for years. I have seen many personalities come and go through the years and I can confidently say Ben is one of the best, most skilled and professional officers I have worked with. The RCMP should be proud to have an officer of his caliber working on the streets and in the front lines, I only wish there were more officers like him that are as hard working as dedicated to the RCMP as a whole. I would work with Ben again anytime and know I would be learning and developing as a better officer because of the person he is and the quality of work he has always put forward.

I am aware of Cst. Caram's code of Conduct hearing and the alleged allegations against him. I can say with confidence these actions are completely out of character for him and know he would never intentionally hurt or cause anyone discomfort in any way.

G. Cst. M. W. (Material, Volume 4, page 1520)

This is to serve as a reference for Cst Benjamin CARAM. I have known Ben since 2009 and was first introduced when I started working with the RCMP at [x] Detachment in [x], BC. Ben was assigned as my preceptor to provide guidance in helping me become acquainted with RCMP policy and procedure as I was hired from another service. Previously, I spent seven years in the Canadian Military where I was a member of the Military Police and had also spent time as an infantry soldier. I quickly came to the opinion that Ben was a well-versed and an above average Police Constable. Numerous traits resonated with me in forming my opinion which included things such as professional appearance, field experience, an above average level of physical fitness and above all else, his personality. In watching other peers interact with Ben it was clear

that he was well respected by the unit and supervisors and that they had confidence in him.

In my time working with Ben, I have seen that he always carries himself with a certain time that neither exhibits aggression, provocation nor anything else that would otherwise be considered unprofessional. There have been many times where agitated and increasingly hostile clientele have attempted to instigate Ben only to be disappointed that he would not resort to conducting himself that would be deemed unprofessional. This extended to instances there Ben was dealing with clientele indirectly, ie: telephone complaints. In my experience both in the police and the military I consider Ben to possess certain qualities that would make him an excellent supervisor to lead others and that he is very qualified to do so. Given the opportunity, I feel that Ben should be placed in a leadership role immediately.

I have associated with Ben socially both through organized events through the office and in general outside of any work-related or office nexus. I have never seen nor heard of Ben engaging in conduct that would reflect poorly on the RCMP or as a husband and father. In June of 2015 I left the RCMP to pursue an opportunity with the Ontario Provincial Police (OPP). Although disappointed to see me leave, Ben supported my decision to transfer to the OPP. Since my departure, I have kept in contact with Ben via telephone/Email and both of our spouses kept in contact with one another.

In early 2016 I learned from Ben that he was the subject of a complaint that led to both RCMP Code of Conduct and Criminal allegations for sexual misconduct and as a result, he was temporarily relieved from duty. I consider the allegations completely out of character for Ben. I have never heard of Ben ever being spoken about in even the slightest form of negative context. With the allegations he faces, I still view Ben as a formidable member of the RCMP and an is exactly the type of person that the police should be seeking as applicants. I recently returned to the RCMP and am assigned to [x] Detachment in general duty and I am looking forward to working with Ben again very soon.

[20] There are too many letters of support here to describe each and every one. However, I am going to list them (Material, Volume 4):

- a. Josef Landrum, page 1522;
- b. Cst. Steve Trevor, page 1524;
- c. Cst. Jen Morgan, pages 1526-1527;
- d. Cst. Jaclyn Rochette, page 1528;

- e. Cst. Andrea Poitras, page 1530;
- f. Cst Craig Schnablegger, page 1536; and
- g. Ewan Bentley-Williams, page 1538

[21] Again, all the above letters provide strong and compelling support, often corroborated by incidents and events, as to the Respondent's strength of character, both in his professional life and in his personal life; and how out-of- character the events of November 28 and 29, 2015 were.

[22] I think it is very important to mention that one other person filed a letter in support of the Respondent, one of the victims, Cst. A (Material, Volume 4, pages 1532-1533):

December 5, 2016

My name is [...] and I am a member of the Royal Canadian Mounted Police. I have been a member of this organization since October 2003 and have been posted in both [x], as well as [y]. In 2005, Ben and Samantha Caram arrived at the [x] RCMP Detachment and we became instant friends. I spent time with both Ben and Samantha at work, as well as outside of work. As time passed, we all had children around the same time and continued to spend time with one another, whether it be for play dates, birthday parties or watch/detachment parties.

I have always thought highly of Ben as he is kind, generous, sincere, honest, compassionate, respectful, and has high values, morals and ethics. All these qualities I have seen in Ben both while conducting his duties as a police officer and as a father/friend/husband. Ben is normally quite introverted (doesn't act pretentiously), yet he is always ready to help anyone who is in need.

When I worked with Ben in the [x], I found it a pleasure to work with him. Ben was always quick to take files, be back up for other members and deal with situations in a calm, respectful demeanour. I recall a motor vehicle incident that Ben and I attended together. An elderly woman had cut in front of a semi on the highway and ended up being hit and instantly killed. Ben and I dealt with witnesses, Fire, EHS, the deceased driver, the coroner and body removal from [the] Funeral home. Ben showed compassion, professionalism, respect and integrity when dealing with the situation, as well as all of the partners during the call. I can recall Ben checking in with me to make sure I was "okay", as any file dealing with death can be difficult. Ben was well liked by all members at the [x] Detachment and I have never heard anyone speak negatively about Ben while posted in [x] or [y].

I have seen Ben in the role of a father/husband. Ben is gentle and loving and I have never seen him raise his voice. Ben has always been involved with his girls and is a positive role model for them.

Ben and Samantha transferred to [y] in November 2011. I was sad to see them leave as they were such an integral part of our RCMP “family” in [x].

In 2012, my ex-partner and I were transferred to [y] on a compassionate transfer (my son had been born with cancer and we needed to be closer to the farriers to go back and forth to BC Children’s Hospital). Although it was a trying time for our family, I was excited to go to [y] as I knew Ben and Samantha were there. It is always comforting to go into a new situation knowing you have friendly faces to greet you. Although I was on a different watch than Ben, I often heard other members speaking about Ben. Members would speak about how kind, level headed and well-rounded he was both as a police officer and friend.

Samantha and I ended up working on the same watch (D Watch) and on November 28, 2015, our watch had a Christmas party at a member’s residence. I took three bottles of Blue Buck beer to the party, as well as some appetizers. I remember having one beer and then another member started to make shooters called “Burt Reynolds”. which I had two. I had no intentions of getting intoxicated that night, that being said, we (my ex-partner and I) didn’t have many adult nights together without kids so it was nice to be able to just have some fun. I had a few appetizers and then a couple of jello shooters. I recall going downstairs where there was an entertainment centre and a pool table. A bunch of us were standing around the pool table and I recall Ben being there and putting his arm around me. I was feeling quite intoxicated at this time (not a common feeling for me) and could tell that Ben had been drinking also (Ben is not one to come up to someone and just put his arm around you). A conversation ensued and I remember Ben pinching my left nipple. We joked about it, laughed and I never thought anything of it afterwards. I have been sexually assaulted when I was younger and if this would have bothered me, I would have told him to stop or would have pushed him away. This behaviour from Ben was out of character for him and I knew it was the “alcohol” that made him more extroverted. I went upstairs and went out onto the deck and he put his arms around me and then [...] told him to leave me alone as I was not feeling well. Shortly after, my ex-partner drove me home.

In the morning, I received a text from [...] asking if I was doing okay. [...] asked me if I remember Ben being inappropriate with me downstairs

and on the deck. I told her that I remembered the incident downstairs but not the deck. [...] told me that Ben had come up behind me, put his arms around me and then put his hands between my legs. [...] told Ben to get away from me as I wasn't feeling good, he complied and left the deck. When [...] told me about what happened on the deck, I wasn't upset, nor did I feel like a victim of assault.

Shortly after texting with [...], Sam texted me and was apologizing for Ben's "sloppy" behaviour. Sam stated that Ben had fallen asleep with his socks and shoes on and when he woke up in the morning he wasn't feeling well. I never thought anything of it and told her to let Ben know that it was fine.

I had heard on our next day shift from S. L. that Ben had done or said something inappropriate to [...]. I was at breakfast with the NCO's of my watch and we started to discuss the Christmas party. I mentioned that I had obviously drank more than normal as I was dizzy and not feeling well. We spoke about other peoples' level of intoxication and I told my NOC's about how Ben was inappropriate (sexually), that he had apologized the day after and that if found that it wasn't really a big deal: Sgt. C. told me that he felt it was inappropriate behaviour and because he was an NCO he had to report it. I didn't think anything of it as I felt it was harmless, happened at a party where everyone was drinking and I knew Ben to be a different individual when sober. Later that day, I was approached by my Sgt. C. who stated that there had been a complaint from someone else about Ben's behaviour at the party and that I would be spoken to by our internal investigator. I was approached by the internal investigator and explained what happened. I told the internal investigator that I didn't want charges against Ben and would not provide a statement for criminal code charges. I was asked to provide a statement about the night's events for the code of conduct part and told if I didn't that I could be investigated for a code of conduct. I felt obligated to provide a statement and did so, although I didn't feel comfortable doing so.

The stress I have felt during this situation is overwhelming. I have known Ben for so long in so many different capacities and feel that, yes, he made a poor choice that night and feels awful for it, has gone to counseling, hasn't touched a drop of alcohol since (to my knowledge) and has written me an apology letter (a copy has been included). Ben was relocated to [x] RCMP where he worked a short time until [...] saw him in a local coffee shop and complained (although Ben didn't even speak to her). Ben did nothing wrong and was again, relocated to [y] RCMP. I recall the day that I was spoken to regarding the arrest of Ben.

I was mortified that Ben was arrested at work. Since when do we treat our own like that? I am positive that if Ben would have received a phone call from our OIC, he would have come in on his own accord. To top it all off, he was fingerprinted by members of his own watch. I am proud to be an RCMP Member, however, the way that Ben has been treated has left a sour taste in my mouth. I have seen other members do and say worse things at watch parties/outings and have not been reprimanded the way Ben has. I know from speaking to Ben and Sam that Ben has learned a valuable lesson and would love to be able to continue to be a member in this organization.

To this day, Ben and I remain friends. I would work with Ben in a heartbeat and would be honoured to have him on my watch/unit due to his work ethic, moral, personality, compassion, etc. Sam and I currently are working together on the Youth Unit. There are no hard feelings toward either one of them and if anything, I try to be as supportive as I can. I feel if Ben is let go of his duties as a police officer, the organization would be losing a valuable member.

2. Performance Evaluation Reports

[23] The Respondent's Performance Evaluation Reports including his report from Depot are found in Material, Volume 3, pages 1394-1478.

[24] All of the evaluations speak very highly of the Respondent, both in his professional and personal life. He is described as a very dedicated, hard-working, enthusiastic and quiet individual.

3 Expert Evidence

[25] Two expert opinions by Dr. W. dated January 10, 2017, and April 11, 2017, were filed as Exhibits. Dr. W. was the Respondent's treating psychologist. Dr. W. was not cross-examined by the Conduct Authority Representative (CAR). Dr. O., a psychiatrist wrote a report dated February 9, 2017, an email dated May 2, 2017 and was cross-examined by telephone by the CAR. The evidence provided by both experts can be summarized as follows:

A. Evidence of Dr. W.

Report Dated January 10, 2017 (Material, Volume 3, pages 1487-1499; Volume 4, page 1501)

[26] The following, in my view, are the highlights of this report:

- a. He saw the Respondent for 12 1-hour sessions before preparing his report;

- b. The Respondent suffers from post-traumatic stress disorder (PTSD) due to his RCMP duties;
- c. The chance of recidivism, meaning that the Respondent would drink to excess again or engage in similar behaviour, is extremely low, if not non-existent;
- d. There is little doubt, having reviewed a number of documents included in the record, that his behaviour was a result of extreme intoxication and that he drank to that extent because of his PTSD;
- e. The Respondent is seeking treatment and it is unlikely that he would allow such a condition to reach that state again without seeking treatment;
- f. The Respondent's PTSD began in 2006 when he attended an Motor Vehicle Accident in [x], B.C. He has been exposed to a number of traumatic events, which increased his level of PTSD, which contributed to the allegations that are before the Commissioner today; and
- g. The Respondent's PTSD is chronic.

Report Dated April 11, 2017, Material, Volume 4, pages 1633-1637

[27] This report was written as a result of questions posed by the Respondent's representative. Dr. W. made the following comments:

- a. That he did a much more thorough examination than Dr. O. and stands by his diagnosis that the Respondent is suffering from PTSD and secondary depression and anxiety;
- b. When the Respondent is about to be in a situation that he is unfamiliar with, he develops anxiety in anticipation of not knowing what to expect. He addressed this by use of alcohol, became less inhibited socially, decreased his PTSD symptoms, resulting in him behaving in ways that he would not normally do if he were not under the influence of excessive alcohol;
- c. By the Respondent's admission, he has abused alcohol periodically, particularly in social situations where he feels uncomfortable;
- d. While others think highly of him, the Respondent had very real issues with self-esteem and self-confidence, which in social situations often translated into anxiety;
- e. The Respondent attended the "D" Watch Christmas party the following year and did not drink;
- f. The Respondent is working hard to resolve his issues; and

g. It is unlikely that the Respondent will engage in excessive alcohol use in the future.

B. Evidence of Dr. O., Psychiatrist in a Letter Dated February 9, 2017 (Material, Volume 3, pages 1042-1063)

[28] Again, the highlights of this report are as follows:

- a. He met with the Respondent on February 2, 2017, for a psychiatric interview which lasted slightly less than three hours;
- b. While in his view, the Respondent does not have PTSD, he does have a number of symptoms commonly seen in PTSD, all due to work-related incidents;
- c. The Respondent has adjustment disorder and in general the prognosis is better than those with PTSD;
- d. The basis for his misbehaviour in November 2015 was due to extreme alcohol intoxication;
- e. The Respondent scores low in terms of potential future repetitive behaviour, but "... it would be prudent to avoid subsequent episodes of intoxication." (page 1048); and
- f. The Respondent is a good candidate for psychotherapy.

4. Letters of Apology

[29] The Respondent wrote separate letters of apology to both Cst. A and to Cst. C. I note that, because of circumstances out of the control of the Respondent, the letter to Cst. C remained to be delivered at the time of the hearing. I am of the view that it is important, for the purpose of this appeal, to incorporate them into my report:

A. To Cst. A (Material, Volume 3, pages 1386-1387)

Hi [Cst. A] ... never thought I'd ever have to write a letter like this, but here I go...

I'm so sorry for what happened that night, I was not myself. More than half the night is a black hole in my memory, and the rest of the night is a jumbled mess of blurry images. Goes without saying that I far, far too much to drink. But, I don't believe in excuses, and I'm not giving myself an 'out'. Alcohol is not an excuse, but it is the reason I was so ridiculous that night. I don't tend to grope people when sober!

When I was later told of the allegations against me it came as a complete shock. Frankly it still shocks me. I feel like I've let my family down and,

depending on how this goes, I may be getting pay cheques from a different source! The effect this is having on my family is surreal.

I feel like I'm living two lives now, one is the memory of what I had before, and the other is the reality of what I have now.

Ok, enough self pity. Sam told me how hard this whole thing has been on you. I just want you to know that it's ok that you gave a statement. Sucks that they were heavy handed about it, but I don't have any negative thoughts about you or the whole statement thing.

Even if you reported this incident yourself and willingly gave a statement I would not feel any different, because I know you, and I would know that I did something to hurt a friend.

Sam and I went to a counsellor after we got back from holidays. It was good to talk to someone outside the RCMP about this. It made me reassess my relationship with alcohol, and also my family history. My dad is an alcoholic, and his dad before him... and his dad before him too. So at times it feels like I'm basically fucked because of my genes, but at the same time I don't ever 'desire' alcohol and I am not the typical drunk that we deal with on the job.

I'm a quiet and shy kind of guy and I get very anxious and uncomfortable in social settings, especially with people I don't really know. In the past I've foolishly relied on booze to help me feel calm in these situations, and I think it's then that my poor choices and my family history combine. Sam told me that I don't seem to know my limit in these cases, and I quickly go from 'happy drunk' to embarrassingly shit faced and should be put in a drunk tank.

Bottom line is, you did nothing wrong at all, but now you're caught in this mess because of me.

Whatever happens to me I don't want you to have feelings of guilt or anger or frustration. I'll have more than enough of those feelings for the both of us.

It's my hope that this situation will wrap up sooner than later and we can all get back to normal life. It would be nice to meet up at Transfer Beach or wherever and let our kids play and enjoy the day.

-Ben

B. To Cst. C (Material, Volume 3, page 1390):

Hello [Cst. C],

I wanted to start by saying you did the right thing by coming forward and reporting what happened on November 28th 2015. Despite the stress that my actions have caused both your family and mine, in my mind this was not an incident to deal with 'off the record'. My behaviour that night was inexcusable, and is something I'll regret till my last day.

Gross intoxication is not at all an excuse for what I did. It was not my plan to get drunk, but the next day I woke up in the spare bedroom, fully dressed and with my shoes on. I had no memory of how I got home.

I'm embarrassed to say that I had a black out. I don't recall much of anything that occurred during the first hour or so, and the rest of the night simply doesn't exist for me.

It was a huge shock to learn two days later what had transpired. I'm humiliated and ashamed of myself.

It's not normal for a 39 year old to go to a watch party with no intention of getting drunk, and then doing so in such a ridiculous fashion.

I had to seek help because of how abnormal my behaviour was. Plus, my father is an alcoholic and it scared me to feel myself slipping down that path.

In the time that passed, over a year now already, I've gone a long way toward becoming a better person, though I still attend counselling for the issues that have been identified. I only bring this up to reiterate the first point. If this was allowed to simply be swept under the carpet then I don't think I would have sought help. I may have been tempted to chalk it up to drunken stupidity.

I'm a weird [sic] way I think this has been good for me. A forced intervention maybe. The RCMP may decide to fire me anyway, but so be it, I'll still be in better shape mentally.

In an awkward round about way I'm trying to say thank you for being strong. Thank you for having the integrity to take the higher road on this. I'm so sorry that you have suffered because of my actions, and that your husband and children had to go through this too.

I believe that the health and happiness of the family is paramount. It's my hope that this long and stressful process will end soon so we can all get back to our families.

5. Victim Impact Statements

[30] As part of the evidence filed before the Board, the CAR filed two victim impact statements from Cst. C:

A. Cst. C Victim Impact Statement I Dated June 1, 2016 (Material, Volume 1, pages 33-34)

From the moment this happened I instantly felt disgusted, shocked, belittled, devalued, sexualized, invaded and robbed of my professionalism. Feelings of nausea, anger, and frustration also instantly set in with what I now had been forced to deal with along with the shock of the instant break of professionalism.

On the way home from the social event the impact continued to evolve. I felt my stomach burn, my throat tighten. And my heart race with anger when I informed my husband that the trust he and I had in my workmates had been broken but mostly, that there was an invasion of his own wife. As I told him, I could see he was instantly impacted, I watched his jaw clench, his torso straighten and his breath deepen, the pain and anger was evident. It broke my heart, bringing me to tears, to see him impacted like this. I felt separated from my husband, emotionally being pulled back and forth between wanting to take away his pain and wanting him to take away mine. This has invaded my intimacy, and my connection with my husband, causing both of us to be left with the impact.

My first day back to work was riddled with humiliation, disgust and [sic] nauseousness to have to share such a personal invasion with my supervisors. As I told them, I watched in gut wrenching pain, as their shock turned to disappointment as they had to now report it to their superiors. The reality of what was happening set in, I could hardly eat and every time I wasn't around my coworkers I started shaking, trying desperately to hide the impact this was having on me. Fear of what my coworkers were thinking set in and my foundation I had in my workplace began crumbling, I was forced into the middle of an investigation that I had no control over and I never wanted. I tried desperately to stay at work, to be able to separate the personal impact and the work impact I now had. I started shaking profusely, uncontrollably and not able to stop. I would break out in tears randomly and had difficulty maintaining focus. At this point my body and mind were in conflict, I tried to move past this, but I was constantly brought back to the reality of it. I felt my coworkers were looking at me, never knowing truly what they were thinking. The fear that they hated me for reporting one of our own, for something I had no control over, crippled me. I knew I had to report it, it was my duty, I was to have the integrity to do such and I couldn't wear the RCMP uniform again without standing for the same law I serve others with. I was torn apart, my mind going over and over my choices but each time ending the same, that I had to report and I had to live with the impact.

My physical responses started being more evident, and as a result, I had to leave work, not able to come back for 3 months.

During this time I sought help from my psychologist. My thoughts were scattered, I couldn't concentrate, I cried spontaneously, I had nightmares and difficulty sleeping. I would break out in fits of anger, then cry, close up and be lost in moments of no thought. A simple task of deciding what to wear would find me just staring at my clothes. I was wrought with disgust of the mere thought of wearing anything considered to be "attractive". I lived in fear that if I took care of myself someone would notice me, approach me, and worse, do something. I tried to do normal things like, curl my hair, or put on make-up but would become overwhelmed with [sic] nausea, ending up in tears as I wiped off my make-up and destroyed my hair as the fear and panic choked me. The fear I was feeling dictated my activities, I did not want to leave or go out and I hated myself. I wished I could shrivel up and disappear.

For the first couple of months leaving the house would cause me to feel physically sick, fearful also that I would come across him and a confrontation would result, as I had heard he was now working in the small community I lived in. Going to the local little grocery store, I feared that he would be there performing his duties and be caught in a confrontation or going to the pharmacy on the main street, I feared he would be patrolling by, see me and choose to confront me. When I saw a marked police car drive down the cul- de-sack [sic] in front of my home, the realization set in that he could just come to my home to confront me and it jolted panic in me that it was him. I felt so exposed and vulnerable. A second time while driving home, a marked police car turned in front of me, as I followed I was gripped and of the realization of being so exposed and vulnerable. The fear of what he may do because of the report I had to make was making me fearful to do daily tasks in my community and I didn't want to do anything to cause a confrontation. Then questions started haunting me like; what would I do if I needed to call the police for help? What would happen then if he was the one dispatched as there are only a couple of members working at a time?

My children watched as I went through some of these spontaneous behaviours, where they were shocked and puzzled to my random abnormal behaviours, not knowing the cause but even had to help me out of some of them. As this was visibly affecting me it forced me to inform my children that I was impacted by an event involving work but seeking help. My own children were now being affected by this, adding to my frustration. I should be providing strength to them and helping them not them helping me.

When I came back to work I had to come back in segments and slowly increase[d] my hours as some days just driving to work was hard, I would feel panic setting in, the fear of seeing my coworkers again, struggling with how to trust and face their glances torment me. Some days got the better of me, one where I couldn't shake the panic attack and I had to leave. I realized then that I had to accept that my trust was broken, that I will never know what others think and needed to find a way to function at work even with a job that requires trust with my coworkers.

I've realized that there will be some things that I will always have to face now. The security I once had is gone and the trust in socializing with workmates has been broken, nothing can take that back. Waves of sadness of the loss of relationships and the loss of trust I once had with my workmates now spontaneously wash over me. Along with the grip of haunting anger when I'm reminded of what I've been forced into and the impact this has had. I have to make the choice to move forward and only hope that something like this will never happen again because I know now more than ever that I can't control nor always predict other persons' actions no matter who they are.

B. Cst. C Victim Impact Statement II Dated May 10, 2017 (Material, Volume 3, pages 1064-1066)

May, 10th, 2017

I am appreciative for the opportunity to share further impact and I'd like to thank you for taking the time to read what I have written. Throughout this past year, I have tried to move forward, stay positive, move past the conflict of working at the detachment, as well as maintain work and work relations. There have been additional events, which are outlined below, that have compounded the stresses of the continual, unresolved court dates as well as the escalation of my involvement with the impending code of conduct hearing. This has been a long and stressful process that has not moved forward leaving me in a constant state of limbo, vulnerable, with no resolve.

In my first statement I didn't go into detail regarding a couple of instances that had happened at work but wish to expand on them. The very day that I had disclosed what had happened I had been pulled into another meeting regarding the need for me to complete a Duty to Accommodate form due to the permanent restrictions I was placed on. I was emotionally overwhelmed at this point with disclosing the assault, along with my daily workload and now the need to complete this form. I informed [them] in the meeting that I can not [sic] complete the form within the short diary date with all that is going on and I was told that I

would not be given more time. I ended up going off on medical leave that week and even when I went off on medical I continued to meet with my superiors to complete the DTA contract as directed. I felt bullied, not validated in the impact of what was going on, and this started for me the feelings and thoughts that I didn't matter. Coincidentally, when I was back to work, the DTA form was not upheld, and I was never allowed to do what that contract agreed to resulting in feelings of anger, frustration and being dismissed.

I spoke briefly of the impact of him being placed in my small town after I reported the occurrence in my first statement. I didn't mention the impact of when I presented the question to my Inspectors as to why he was moved there. It was approximately a month and a half after I had left work on medical leave when I had requested a meeting to ask this question to understand their perspective. After I asked the question I ended up being told that it was my responsibility to inform that I was uncomfortable with it, that I was 1 out of 150 other members with their problems. I was left with the feeling that it was my problem, not my employers and I wasn't even provided with a reason as to why. I sat there thinking, this is exactly what I was fearful of, the fear of not being heard or valued and somehow having something that impacts me be fired back at me, insulting me to the core. I was told later that it was wrong of them to place him in my town and it shouldn't have happened but the insult was already complete, I already was feeling like I don't matter.

When I did come back to work, I came back to the same watch, and it helped because these were the people that were aware of what happened, making it a little easier to approach my superiors should some conflicts arise. It did mean that I would be on the same watch as his wife still but I worked in the office and she worked in the north district. I worked early shift, she worked the late shift and I never really ran into her much so there was a level of separation that I felt comfortable with having. A few months into being back at work I had an occurrence while in the change room that brought me a lot of sudden anxiety and fear. I had been standing at my locker putting away my gun and kit for the day, when she entered, went to her locker, my back was to her and then I heard her unholster her firearm. I've never had such a sudden rush of fear and adrenalin pour down from my head to my toes. Fear had suddenly struck me that I have no idea what she's thinking, she could be so disgusted with me, and shoot me right there. My legs felt like they were jelly, I was frozen, my stomach was in my mouth and after she left I broke down, crying, and started shaking. This fear was real and I needed to share what had happened with my NCO the next shift. When I did share I was

asked, “do you really think she would shoot you?”. I stated that I don’t know what’s going through her mind or how much stress she’s under with all of this. My NCO then reminded that she is also a victim in this situation. I then shut down, as my concern was obviously not validated and I felt like a fool for having such fears. I did ask to leave a couple of minutes earlier to avoid running into her again, as I just didn’t want to be in any potential confrontation, which my NCO supported. A month later or so, I felt sick to find her in early briefing, where there is only 6 of us and now everyday I was forced to be near her. I was angry, hurt and felt entirely dismissed that even after sharing that I need to have some space from her, I wasn’t even given the heads up that she was going to be on the early watch. I chose not to speak with my NCO again because I just couldn’t share another issue and be left feeling like I was the fool for even feeling it. I started hating myself, ridiculing myself and angry with all of what I was being forced to deal with. I felt I had no say, no respect, no safe place, and no one to turn to.

[...]

Only after I had been away from the detachment did I realize how much stress I was subjecting myself to and bringing home with me. Being so alone at work, without strong support, or even one person to monitor the situation and impact caused a downward spiral or disrespect and minimization by myself and perhaps my superiors as well. I am the only one that can recognize how this has, and is, impacting me because I am the only one experiencing it. Unfortunately it had taken some time to finally accept this and see how powering through had effected my mental health (mentally and physically), as well as my family and personal life. Trying to power though only ended with me not valuing and respecting the impact, along with bringing my feelings of loneliness, dismissal and frustration home with me, every day. I have not felt free to be myself, feeling guilty when I’m happy that I shouldn’t be allowed to be happy even though I have done nothing and have had no say in any of this. I’ve had continuous help from my psychologist to help me work through this, as there has been no resolve yet and I struggle as I’m forced to dangle in limbo.

DECISION ON CONDUCT MEASURES

[31] The remainder of the Decision (Appeal, pages 25-51) contains the Board’s analysis and reasoning relating to the imposed conduct sanctions. I find that the Board accurately reflected the evidence that was presented before it and therefore, I will not enter into a summary of what transpired.

[32] As this is an appeal for the most part relating to conduct measures, I believe it is necessary to copy this part of the Decision into my report:

CONDUCT MEASURES

Subsection 24(1) of the CSO (Conduct) states:

In determining the appropriate conduct measures to impose, the Conduct Board may examine any materials submitted by the parties and hear their oral submissions and any witness, including those referred to in subsection 18(1).

No witnesses testified in the allegation phase of this hearing, which is encompassed by subsection 18(1) of the CSO (Conduct). The Subject Member testified in the conduct measures phase. Dr. O was subject to teleconference cross-examination by the CAR on the written expert opinions filed by the MR.

[...]

Evidence Submitted by the CAR

The CAR identified the Cst. C's first victim impact statement, dated June 1, 2016, previously filed. The CAR then filed a second statement, dated May 10, 2017, which was marked as Exhibit CAR- 2.

While only provided to the MR on the morning of July 12, 2017, and subject to objection by the MR, the Conduct Board accepted an excerpt from a Crown counsel policy manual, which apparently set out criteria for the alternative measures program in British Columbia. This information has been copied by the CAR from the web and was marked as Exhibit CAR-3.

Evidence submitted by the MR

For the conduct measures phase, reports dated January 10, 2017, and April 11, 2017, from the Subject Member's treating psychologist, Dr. W, were considered (Exhibits MR-7 and MR-9). Also, the report dated February 9, 2017, and the email dated May 2, 2017, from an independent psychiatrist retained for the purposes of this conduct process, Dr. O, were considered (Exhibits CAR-4 or MR-8, and MR-10).

These expert opinion materials were deemed by the Conduct Board to take the place of testimony-in-chief by Dr. W and Dr. O, on behalf of the Subject Member. The CAR did not request cross- examination of Dr. W. By agreement of the parties, Dr. O was cross-examined by telephone in the conduct measures phase. The parties agreed with the Conduct Board's qualifications of Dr. W as [sic] an expert in psychology,

including assessment, diagnosis, treatment and prognosis, and of Dr. O as an expert in psychiatry, including assessment, diagnosis, treatment and prognosis.

In addition, the MR filed a diagram created by the Subject Member during his direct examination concerning a traumatic accident experience (Exhibit MR-1), his letters of apology to Cst. A and Cst. C (Exhibits MR-2 and MR-3, the later not yet delivered), a letter confirming the Subject Member's volunteer work at the Nanaimo Community Hospice (Exhibit MR-4), performance evaluations and career-related documents (Exhibit MR-5) and performance logs, a letter and certificate (Exhibit MR-6).

To formally confirm that the Crown had agreed that the Subject Member's criminal matter would be referred to an alternative measures program, the MR filed the confirmatory email received by the Subject Member's criminal defense counsel from the Crown, dated July 7, 2017 (Exhibit MR-12). The Conduct Board did not consider this communication to be protected by any form of privilege and found consideration of the email necessary for reasons of hearing fairness. The MR also filed the affidavit of criminal defense counsel, which established that the Subject Member was prepared to accept responsibility under an alternative measures program soon after he was charged, and the adjournments and elapse of time before the Crown's decision on referral to alternative measures could not be attributed to the Subject Member (Exhibit MR-13).

Testimony of the Subject Member

Consistent with the observations I expressed in my abbreviated oral decision, I find the Subject Member's testimony, scrutinized over an extended period, during both his direct and cross-examinations, to be extraordinary. The Subject Member exhibited unstinting frankness. He exhibited innate courtesy in not only his demeanor while testifying, but in his thoughtful, never self-aggrandizing choice of words. I consider the Subject Member's testimony to have been among the most impressive I have observed in over 15 years of work involving RCMP disciplinary matters. The Subject Member did not shade the truth. He did not seek to distort anything to benefit his case. He made admissions that were heartfelt and commendable. His testimony only enhanced his credibility as a dedicated member; it resonated with the observations of good character contained in the reference letters of supportive RCMP members.

The MR took the Subject Member through a detailed review of aspects of his life before the misconduct perpetrated at the November 28, 2015, party, including:

- His family and upbringing;*
- Childhood experiences with bullying;*
- Feelings of low self-esteem, engagement in solitary sporting activities;*
- Two-year honours diploma in Law and Security Administration, followed by temporary private security employment;*
- Four-year B.A. degree in Psychology, followed by private loss prevention employment, and then brief rehabilitation specialist employment with brain injury clients;*
- Graduation from the RCMP Training Academy at “Depot” Division, on January 25, 2005;*
- Marriage to his spouse, a troop-mate, on September 9, 2006;*
- Birth of daughters, now aged seven and five years old, with the elder daughter encountering initial sleep issues and development of an anxiety condition;*
- Feelings of sleep deprivation and fatigue;*
- Guilt whether their elder daughter’s anxiety was inherited from him;*
- Feeling never really at ease and at home in his own skin, viewing social gatherings as nightmares requiring rehearsal of conversations before group social events;*
- Exhaustion after social events;*
- Father and paternal grandfather suffering from alcoholism;*
- Mother treated for ovarian cancer from 2006 until her death in 2012;*
- Feelings of detachment experienced during personal life experiences.*

The Subject Member was first posted to {an isolated post}, British Columbia, located in excess of 700 km north of Vancouver. This was a limited duration posting that ran until the end of 2006; it also involved policing on four First Nations territories. Very early in his service, the Subject Member was exposed to two fatal alcohol-overdose scenes and he often worked in a community atmosphere he perceived as adversarial toward the police. I am satisfied that the Subject Member was directly exposed to a victim of an axe attack, with an almost severed leg requiring

transport in a police vehicle. He was directly involved in an overwhelming fatal motor-vehicle-related event in June 2006, involving multiple victims with grotesque injuries and screams for assistance, and which required his 10-hour attendance securing the scene. I find that subsequent calls respecting motor-vehicle accidents triggered flashbacks in the Subject Member, involving a grotesque victim image and screams. I accept that the Subject Member developed a sense of emotional detachment in order to get through subsequent work traumas and stressors.

At the end of 2006, the Subject Member was transferred to [another detachment] on Vancouver Island. He was required to control hysterical family members after the discovery of a 17-year-old victim of suicide by hanging. He was involved in an extreme physical struggle with a drug-intoxicated person seeking to access a knife to use on himself or the Subject Member. He was directly exposed to a suicide victim involving a gruesome skull gunshot. He attended a call involving a wrist-slashed suicide victim, creating an extensive blood trail and permeating post-mortem smells. He recalls a close-call involving wrestling over a loaded shotgun with a suspected suicidal person. He recalls a close-call where an impaired, suicidal person was swinging a length of lumber stating, "Kill me, kill me".

The Subject Member was then transferred to [his present] Detachment. It was at this posting that the Subject Member was involved in a violent struggle with an individual with self-inflicted wrist cuts on November 3, 2015. The Subject Member's actions caused the individual's arm to break at the location of an earlier healed break. This injury resulted in a stressful investigation by the Independent Investigation Office for British Columbia. The investigation made the Subject Member reluctant to apply the required level of force in two arrests later in November 2015. The Subject Member admitted to deliberate avoidance of suicide and fatal motor-vehicle accident scenes in [his detachment area], where he knew other members were responding.

I accept the Subject Member's testimony concerning his mental state upon his arrival at the party on November 28, 2015. He felt "marked anxiety", began to sweat and sensed a rising heart rate. He wanted to leave right away. Given that other members were party guests, he felt that they were looking at him and judging him, causing nervousness about his appearance. He testified that he was feeling heightened anxiety, which is not a comfortable feeling. To deal with these feelings, he decided he would "have a beer, maybe two, and then those weird anxiety feelings would just start to dissipate".

The party continued into the early hours of November 29, 2015, which was a scheduled day-off for both the Subject Member and his spouse. On November 30, 2017, the Subject Member was contacted by Superintendent M.F., who came over to the house and advised him that there had been complaints about the Subject Member's behaviour at the party. It had been decided that the Subject Member would be immediately transferred to X Detachment. After taking a pre-approved family vacation from December 2 until December 15, 2015, the Subject Member began work out of X Detachment on December 17, 2015. At that time, he was served with notices of temporary transfer and a Code of Conduct investigation. Cst. C lived in X and complained after observing the Subject Member as he left a coffee shop one morning. Cst. C's place of residence had simply been overlooked administratively, and the Subject Member was therefore temporarily transferred to Oceanside Detachment, effective February 23, 2016. The Subject Member continued to perform front-line, uniformed general duties out of Oceanside Detachment until his suspension with pay on May 26, 2016. The suspension coincided with the filing of a criminal charge for sexual assault upon Cst. C.

While on vacation in Ontario, the Subject Member used the Force's "1-800" self-referral service and, together with his spouse, he met with a counsellor, J.C., on January 16, 2016, in Nanaimo, "about the stress and what was going on". He met the counsellor again on February 24, 2016, and found talking with someone other than his spouse helpful. I accept that clinical documentation was sought from this counsellor concerning the two sessions, but apparently given the nature of the self-referral and counselling system, none was provided. This issue was never raised by the MR in any pre-hearing conference; therefore, it was never addressed by way of a production order from the Conduct Board.

Considerations when imposing conduct measures

Subsection 24(2) of the CSO (Conduct) states: "A Conduct Board must impose conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct." The RCMP Administration Manual, Chapter XII.I "Conduct", section 11.15 indicates:

Subsection 24(2) of the CSO (Conduct) states: "A Conduct Board must impose conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct." The RCMP

Aggravating and mitigating circumstances must be considered in determining the appropriate conduct measures in relation to the subject member's contravention of the Code of Conduct (See Appendix XII 1.20)

The Appendix provides a fairly exhaustive list of potential aggravating and mitigating factors or circumstances.

Aggravating Factors

The CAR submitted a number of aggravating factors for consideration by the Conduct Board; the following are found to be applicable:

-The serious nature of the allegations, involving acts of uninvited sexual touching, and in the case of Cst. C, however transient, the Subject Member's admitted non-consensual touching of Cst. C's nipple over her clothing. While the Crown supports referral to an alternative measures process, the misconduct under Allegation 4 is particularly serious as it initially attracted a criminal charge. In addition, the vulgar gesture, which prompted the Subject Member's even more vulgar and upsetting utterances to Cst. C, both touched on the bodily integrity of Cst. C.

-With respect to Cst. C the Subject Member's actions under Allegation 4 took place despite Cst. C clearly finding the Subject Member's earlier gesture and utterance under Allegation 3 objectionable and her indicating this to him by saying "no" and immediately curtailing her interaction with him. I accept that, in this specific sense, there was therefore an element of persistence.

-While not constituting formal workplace harassment, the Subject Member's gesture and utterances under Allegation 3, and misconduct under Allegation 4, were directed to a "co-worker", although the Subject Member and Cst. C had never worked together, or otherwise interacted in the workplace.

-Cst. C came to experience negative personal and professional impacts as a result of the Subject Member's misconduct, which impacts may have exacerbated existing challenges she was experiencing. It must be noted that, notwithstanding the content of the two impact statements received from Cst. C, she was noted, on January 11, 2016, as being satisfied with strictly internal processes being followed. It must also be noted that a significant portion of Cst. C's second document (dated May 10, 2017

Exh. CAR-2) does not concern the effect of the Subject Member's misconduct, but appears to relate to other unsatisfactory

administrative circumstances she had encountered or continued to encounter.

-The Subject Member was an experienced member, who exhibited discreditable behaviour in a purely off-duty setting, but nevertheless one involving other members. I expressly do not find that this constituted any sort of breach of trust.

-There was not a single or isolated act of misconduct, but four contraventions.

-With respect particularly to Allegation 2, the object of the Subject Member's uninvited touching was somewhat vulnerable, as Cst. A was feeling unwell when the Subject Member's hands were applied to her stomach, stopping at her groin area. I expressly do not find that the Subject Member sought out either Cst. A or Cst. C because either was vulnerable due to their alcohol intoxication, but their level of intoxication may have vitiated their consent, had consent been expressed.

-While the CAR admitted that the Subject Member's established contraventions would not affect his ability to testify as an investigator (otherwise a potential concern as a result of the McNeil decision), his disciplinary record might create some administrative burden on the Force. I do not accept that the established contraventions preclude the Subject Member from performing the full-range of investigations expected of a general duty investigator.

-There was a negative effect on the Force's image resulting from the media coverage that followed the RCMP's own press release concerning the Subject Member's suspension and investigation.

The CAR accepted as a mitigating factor the Subject Member's admission of responsibility, which could have been absolute had he provided an immediate statement to investigators, and had his MR not disputed discrete aspects of the particulars in written submissions, etc. I note that the Subject Member's limited recall of his discreditable actions and utterances at the party, which I accept as genuine, would have reduced the value of any statement he provided to investigators[.]

The MR submitted a number of mitigating factors for consideration by the Conduct Board; the following are found to be applicable.

The Subject Member took full responsibility and recognized his actions were not appropriate, as demonstrated by:

-his formal admission of all allegations in his initial CSO (Conduct) response;

-his support of publication bans protecting the identity of not only Cst. C, but also Cst. A;

-his criminal defense counsel consistently expressing the Subject Member's willingness to take responsibility by participating in an alternative measures program concerning the criminal charge respecting Cst. C filed on May 26, 2016; and

-his admissions in the conduct process and agreeing to adjudication based on the evidentiary record alone, saving expenditure of resources and avoiding potential testimony.

The Subject Member's genuine apology and remorsefulness, as demonstrated by:

-the specific apologies made during his testimony;

-his apology to Cst. A through his wife on the day after the party, when he had yet to understand that his behaviour was more than that of being a "sloppy drunk";

-his written apology to Cst. A in January, 2016;

-his preparation of a written apology to Cst. C that, for sound reasons, was never delivered to Cst. C after discussions with senior officers on February 23, 2016, nor after a prohibition of contact was issued on May 26, 2016;

-his willingness to participate in the victim-offender reconciliation component of the alternative measures program;

-deep remorse and shame exhibited by the Subject Member, confirmed in the letter submitted by the MR from his wife, and in the clinical observations of the expert witnesses.

The Subject Member's medical status, including:

-his untreated social anxiety disorder since childhood;

-the alcoholism the Subject Member believes exists for his father and paternal grandfather;

-that he was, according to the email re-statement of independent psychiatric expert Dr. O, undiminished by cross-examination, to be suffering from recognized mental disorders at the party - social anxiety, adjustment disorder and extreme alcohol intoxication - and

symptoms consistent with post- traumatic stress disorder (PTSD) from occupational exposure to stressful events;

-that while he had the ability not to drink alcohol at the party, he started to drink in order to control or suppress his social anxiety, to “self-medicate”, and simply “lost control and got drunk”;

-while not diagnosed with alcoholism, the Subject Member has nevertheless been abstinent since January 2017; and since February 2017, he attends regular Alcoholics Anonymous meetings;

-according to the Subject Member’s treating psychologist, Dr. W, the Subject Member’s consumption of alcohol at the party served to decrease his symptoms of PTSD, which Dr. W diagnosed and treated instead of an adjustment disorder;

-the Subject Member has been recognized as suffering from PTSD by the federal disability claims system administered by Veterans Affairs Canada.

The Subject Member’s willingness to participate in mental health treatment, as demonstrated by:

- his past outreach to a counsellor found through the Force’s self-referral process in December 2015, and his regular voluntary psychotherapy with Dr. W since June 2016 (and, upon Dr. W’s retirement, voluntary Cognitive-Behavioural Therapy with his identified successor); and, of his own initiative, weekly attendance to Alcoholics Anonymous meetings since February 2017. The Subject Member admitted to what he described as “excessive drinking” on average once or twice per year over his service in the RCMP, with one recent event involving his loss of memory after drinking heavily while out one night with his visiting brother. Before November 28, 2015, there was no episode where the Subject Member’s consumption of alcohol resulted in any behaviours that might be considered misconduct. [...] I do find that, when intoxicated by alcohol, the Subject Member grew more extroverted and flirtatious. After all, Cst. B heard the Subject Member and Cst. A discussing something sex-related before he touched Cst. A’s breast. But there is no evidence to establish the Subject Member should have known that his excessive consumption of alcohol would result in such a level of disinhibition that he would commit unwanted sexual touching or make clearly discourteous gestures and utterances. He had no history of misconduct while grossly intoxicated. I accept that it took the Subject Member approximately six months from the party to begin seeing Dr. W for formal psychotherapy; but, from the Subject Member’s

testimony, it was clear that the extent of his misconduct was only made plain upon his receipt of the investigative materials. His earlier efforts to obtain assistance and his initial characterization of his behaviour necessarily reflected his lack of knowledge. On November 28, 2015, he was aware that, when he previously was intoxicated with his brother, he suffered a partial loss of memory concerning his actions the night before. But his actions with his visiting brother involved successfully arm wrestling [sic] a number of opponents, and not the one opponent that the Subject Member recalled the next morning. This experience of memory loss would not suggest to the Subject Member that his excessive consumption of alcohol risked inappropriate behaviour, only memory loss.

The Subject Member's formal clinical assessment by Dr. O indicated an extremely low or very unlikely risk of repetitive behaviour, and the absence of any underlying personality disorder or dysfunction. The assessment by Dr. W indicates that he is presenting an extremely low, if not non-existent, chance of drinking to excess or engaging in similar inappropriate behaviour.

While the established misconduct included four separate occurrences, all misconduct occurred at a single social event while the Subject Member was extremely intoxicated.

The support for the Subject Member expressed in letters prepared by other members, including immediate supervisors, familiar senior non-commissioned officers, female members with whom the Subject Member has worked, and Cst. A herself, who felt obliged as a member to confirm the Subject Member's actions but never sought any internal or criminal allegations against him as she viewed his level of intoxication as such a central factor.

While limited to Allegation 1, Cst. A did not find the misconduct serious at the time; in fact, she immediately "laughed it off" with the Subject Member.

The Subject Member's track record shows his exemplary performance of his duties as a police officer, and his status as a "quiet leader", as confirmed in his RCMP performance assessments, relevant letters of support, and Performance Logs (Form 1004). In addition, he received recognition by the provincial Minister of Justice for the courageous rescue of a drowning boater.

All this points to the behaviour of the Subject Member in these allegations as being completely out of character.

The Subject Member maintained a strong commitment to the performance of his duties, demonstrated by his continued exemplary work, notwithstanding his status as a member under investigation, administratively relocated to a different Watch at a different Detachment.

Submissions by the CAR

The CAR submitted the following cases in support of an order for the Subject Member's loss of employment:

[...]

Some cases filed by the CAR were not directly relevant to a determination of proportionate conduct measures, but concerned issues arising in human rights discrimination analysis [(Janzen)], or the retention of an employee who steals while alcohol dependent (Stewart). Workplace sexual harassment may constitute prohibited sex discrimination, and termination is defensible, not for an employee's addiction, but for their breach of policy. In another case, one arbitrator determined that where the employee's workplace theft was not compulsive and she did not own up to the full extent of her misconduct, her never-before-raised addiction was disqualified as a mitigating factor (Cambridge Memorial Hospital). The CAR submitted that, as the Subject Member initially had the ability to control his consumption of alcohol at the party, consideration of his "disability" was not available as a mitigating factor. The CAR argued that, whatever the Subject Member's health issues at the outset of the party, he had an obligation to seek treatment and that the Force provided opportunities to seek that treatment.

The CAR argued that the Subject Member had failed to establish that, "but for" a psychological condition present at the party, he would not have misconducted himself (Pizarro, Cst. [F.V.]); therefore, a strong mitigating factor was absent. In addition, the CAR argued that consideration should be given to a case where the arbitrator denied reinstatement, as he was not convinced that the grievor's further theft was compulsive and the clinical cause of the theft was compulsive and the clinical cause of the theft was an episode of anxiety and major depressive disorder (Cadbury Adams). The CAR argued that this Conduct Board should make the same determination described in the Cst. [F.V.] case, where it was decided that the member's psychological state, on two distinct occasions, did not cause his lapses of judgement when he made a false statement to another member and submitted a false sworn report.

The CAR argued that, despite the existence of a number of mitigating factors, an RCMP adjudication board had imposed loss of employment in an “extreme case” despite strong past performance, the support of fellow members, and the member’s self-reporting of his misconduct. However, it must be noted that the circumstances there involved a clear breach of trust that included on-duty sexual misconduct with an intoxicated person in an isolated area, use of a police car, threats to the intoxicated person if the misconduct were reported, and use of a false name (Cst. [GBC]). Moreover, the case of Cst. [GBC] appears not to involve a recognized intervening psychological disorder, but cumulative stress.

In essence, the CAR submitted that the principle of parity of sanction should only be applied in keeping with the Federal Court’s decision in Rendell, where it was confirmed that, while relevant, parity should not be applied in a manner that fetters discretion. The CAR argued that many of the cases submitted by the MR failed to adequately reference the victim of misconduct, were the result of non-dismissal joint submissions that required deference and, therefore, adjudication board acceptance, and that they did not reflect sufficient deterrence of workplace harassment. In addition, the CAR relied on Rendell for the proposition that, as the Subject Member’s misconduct was related to sexual misconduct, this type of misconduct in particular required “a message to be sent” to further general deterrence, and an order for the Subject Member’s loss of employment was required.

The CAR referenced the RCMP Conduct Measures Guide (November 2014), indicating that while the Guide indicates a range from 2 to 10 days’ forfeiture of pay for discourteous behaviour under section 2.1 of the Code of Conduct, the sexual nature and “level of violence” of the Subject Member’s gesture and utterances warranted a conduct measure range from 20 days’ forfeiture up to dismissal.

With respect to the contraventions under section 7.1 of the Code of Conduct, the CAR relied on the Guide, to the effect that the misconduct, involving sexual assault, called for dismissal. To adequately maintain public confidence and reinforce the Force’s high standards, no measures short of dismissal could be justified.

Submissions by the MR

The MR filed the following cases, in support of her submissions, identifying a number of non-dismissal conduct measures, including forfeiture of pay, to address the contraventions individually and collectively:

[...]

Relying primarily in the MR's authorities, the MR submitted that the following forfeitures of pay should be applied as part of the conduct measures imposed:

-Allegation 1: 10 days

-Allegation 2: 4 to 7 days

-Allegation 3: 1 to 3 days

-Allegation 4: 10 days

In answer to questions by the Conduct Board, the MR confirmed that the Subject Member was agreeable to a transfer and that a direction for continued counselling by a health professional or completion of a rehabilitative program was reasonable.

The MR objected to the CAR's use of the RCMP Conduct Measures Guide (November 2014), arguing as follows: it had not been filed; there is no indication of who wrote it; there was no evidence concerning any amendments to it since it came into force; and it was an informational guide that did not legally bind the Conduct Board. Moreover, if anything in the Guide suggests that certain types of misconduct result in automatic dismissal, this principle is contrary to past RCMP case law.

Citing the commentary contained in the Cst. [F.V.] decision, the MR argued that, while a conduct board is not bound by the decision of other boards, previously decided cases help to identify the range of applicable sanctions. The principle of parity seeks to achieve fairness by having similar forms of misconduct treated in a similar fashion. Furthermore, the MR argued that a case that would have attracted a non-dismissal outcome under the old system does not become a dismissal case simply because greater higher financial penalties exist under the new system. To conclude her arguments on parity of sanction, the MR pointed out that her submitted cases include adjudication board decisions rendered under the old system after the new system took effect on November 28, 2014.

Analysis

The range of sanction for matters involving off-duty, inappropriate and sexual touching, based on decisions rendered by past RCMP adjudication boards (constrained by a legal maximum of 10 days' forfeiture of pay), spans from moderate to maximum forfeitures of pay. The range of sanctions for inappropriate, vulgar off-duty utterances ranges from ordinarily low to moderate forfeitures of pay (with guidance available in the RCMP Conduct Measures Guide (November 2014)

concerning features warranting more severe measures short of loss of employment).

It is apparent from the RCMP case law submitted by the parties that the kind of sexual misconduct established against the Subject Member under section 7.1 of the Code of Conduct has often attracted sanctions from RCMP adjudication boards short of ordered resignation or dismissal, but the range of sanctions has included loss of employment where, for example, violence, a criminal conviction or a record of prior discipline exists. The Conduct Measures Guide certainly supports a range which includes loss of employment.

As mentioned when I denied the MR's request for the ordered production related to a "Record of Decision", in Gill v Canada (A.G.), 2007 FCA 305, at paragraph 14, the Federal Court of Appeal has confirmed: "[F]indings on the sanctions to be imposed are primarily fact-driven and discretionary determinations." Accordingly, my determination of proportionate conduct measures has necessarily involved an assessment of the record, including established aggravating and mitigating factors, the disciplinary jurisprudence to be drawn from the RCMP adjudication board decisions and other cases, the relevant commentaries in the Conduct Measures Guide, and the nature and circumstances of the contraventions, including relevant aspects of the Subject Member's psychological condition.

One of the CAR's overarching submissions is that the Subject Member had no compulsion or physical addiction that caused him to drink alcohol, and that there was no causal connection established between his social anxiety disorder and his excess consumption of alcohol, nor between his disorder and the misconduct committed when he was heavily intoxicated. I disagree that this is a situation where a member seeks to avoid severe employment consequences by relying on nothing more than carelessness and imprudence as an excuse for his misconduct.

The Subject Member's testimony, and the expert opinion evidence of Dr. W and Dr. O, establish on a balance of probabilities that the Subject Member's untreated social anxiety disorder (together with either PTSD or the ongoing effects of an adjustment disorder) directly and meaningfully contributed to his eventual over-consumption of alcohol at the party. Having reviewed the observations made of the Subject Member's degree of intoxication within the investigation materials, it is my finding that an extreme level of intoxication existed. The existence of such an extreme level was clearly required for a normally measured and

courteous man to not only drop his beer while negotiating the basement stairs, but to be indifferent to the need to clean up his spilled drink.

It is my further finding that, while the Force had a legitimate interest in disciplining the Subject Member for his utterly inappropriate conduct, the Subject Member's extreme degree of intoxication caused his ugly, offensive and assaultive actions because of the level of disinhibition that resulted. These acts of misconduct were completely contrary to his established good character on- and off-duty. The letters of reference filed by the MR, including a number by female RCMP members including Cst. A, place the Subject Member's out of character misconduct in an important context. I am satisfied that the members who expressed unqualified support for the Subject Member's retention, and held no reservations about working with the Subject Member again, did so with a working knowledge of the Subject Member's acts of misconduct. As a result, this support, by members themselves dependent on strong public support for the Force, is viewed as a not insignificant mitigating factor.

There is some disagreement between the two experts relied upon by the MR concerning a diagnosis of PTSD or adjustment disorder for the Subject Member at the time of his misconduct. Having heard the Subject Member's testimony, which included the stress he was experiencing as a result of the ultimately unfounded use of excessive force investigation that arose earlier in November 2015, I believe the Subject Member's over-consumption of alcohol was not only rooted in his social anxiety disorder but was directly influenced by the level of stress he was then experiencing, stress in part resulting from recurrent crime scene images. I am satisfied that this level of stress, whether or not it was a symptom of a disorder that can be formally diagnosed as PTSD or adjustment disorder, also played a significant role in the Subject Member's over-consumption of alcohol. While the Subject Member, to a point, retained the ability to stop drinking alcoholic drinks, I find his descent into extreme intoxication was clearly related to his psychological condition at the time.

I am not persuaded that, in order for the Subject Member's psychological condition at the outset of the party to constitute a legitimate mitigating factor, he was required to have sought prior psychological treatment, nor do I find that the Subject Member's admitted instances of prior significant drinking episodes over his lifetime, and very infrequent loss of memory after over-consumption of alcohol, denies consideration of this mitigating factor. The Subject Member's prior experiences with significant drinking episodes did not suggest that he would act inappropriately when intoxicated. His experience dealing with

intoxicated clients, his undergraduate study of psychology, and his training as a Datamaster operator conducting impaired driving investigations do not serve to deny him this mitigating factor.

Conclusion

I understand that, on the night in question, the person who was perpetrating these acts of serious misconduct was not the person whom the Subject Member ordinarily is. However, unless entirely lacking an appreciation of their actions, members must be accountable for their actions. And while I have identified and given significant weight to a number of mitigating factors, I must emphasize to the Subject Member just how unacceptable his behaviour was on that night.

[...]

*In this case, notwithstanding the severity of the misconduct, I do not believe that it is proportionate to impose a conduct measure which would result in the Subject Member's loss of employment. However, I do not want to leave the Subject Member, and members of the Force in general, with the slightest impression that this type of behaviour will ordinarily escape the most severe conduct measures available. This is particularly true if, **for any reason**, this type of misconduct is repeated. While there are earlier disciplinary cases where members were fortunate to receive a second or even third chance, that is simply not the RCMP of 2017.*

Based on the foregoing, I hereby impose the following conduct measures:

- Globally, I impose a formal reprimand for all contraventions, which is expressed by this final written decision;*
- Globally, I impose an order for transfer, or simply reassignment, in the Conduct Authority's discretion;*
- Globally, I direct the Subject Member to undergo any treatment specified by the Health Services Officer for "E" Division; in the interim, I direct that the Subject Member continue the psychotherapy he shall receive from the clinical successor to Dr. W, who is now retired;*
- For Allegation 1, I impose a forfeiture of 10 days' pay (80 hours);*
- For Allegation 2, I impose a forfeiture of 10 days' pay (80 hours);*
- For Allegation 3, I impose a forfeiture of 5 days' pay (40 hours); and*
- For Allegation 4, I impose a forfeiture of 20 days' pay (160 hours);*

[...]

As articulated above, I find that it is not proportionate to the nature and circumstances of the contraventions to order the Subject Member's loss of employment. I have carefully considered the Guide's suggestion, at page 7, that where a 45-day forfeiture of pay's insufficient, dismissal cannot be too harsh. In this instance, loss of employment is too harsh, but given the clear need for greater general deterrence and protection of the public trust in the Force, it is not unreasonable that the Subject Member's total loss of pay reached 45 days.

APPEAL PROCEEDINGS

[8] On November 21, 2017, the Appellant filed a Statement of Appeal arguing that the Board's decision was reached in a manner that contravened the principles of procedural fairness, was based on an error of law, and was clearly unreasonable. The Appellant seeks a direction ordering the Respondent to resign within 14 days or be dismissed (Appeal, pp 5-6).

Appellant's Appeal Submission

[9] On March 5, 2018, the Appellant filed her appeal submission. She maintains that the Board made an error of law in its application of the test for sexual harassment outlined in *Janzen v Platy Enterprises Ltd.*, [1989] 1 SCR 1252 (*Janzen*). She argues that the Board incorrectly concluded that workplace harassment had not occurred as it pertains to Allegation 3. Despite not occurring in the workplace, the Appellant explains that the victim's workplace was negatively affected as a result of the Respondent's actions. Consequently, the Appellant maintains that the Board's imposed conduct measures were unreasonable and given the totality of the circumstances, an order for the Respondent to resign within 14 days or be dismissed is warranted (Appeal, p 112-114).

[10] The Appellant provides the following arguments in support of her position that the Board's imposed conduct measures were clearly unreasonable (Appeal, pp 114-117):

- The Board erred in considering the evidence;

- The Board erred in not considering the allegations globally as sexual harassment in the workplace;
- The Board erred in not giving appropriate consideration and weight to the victim impact statement of Cst. C;
- The Board erred by not considering the trust of RCMP members;
- The Board erred in not concluding that dismissal was the appropriate conduct measures in the circumstances.

Respondent's Appeal Submission

[11] On April 11, 2018, the Respondent filed his written submission. The Respondent argues that the Appellant does not provide the test for sexual harassment nor does she explain how the Board erred in its application of the test (Appeal, pp 139-141). He submits that the Board's finding and decision with respect to Allegation 3 should be shown deference.

[12] In response to the Appellant's submission on the Board's measures being clearly unreasonable, the Respondent makes the following arguments (Appeal, pp 142-145):

- The Board did not err in considering the evidence and it imposed conduct measures that it was permitted to under the RCMP Regulations;
- The Board committed no error in failing to considering the elements of the allegations as aggravating factors in the imposition of conduct measures. An aggravating factor must go above and beyond the essential constituents of the allegation itself;
- The Board appropriately considered all relevant material when imposing conduct measures, including Cst. C's victim impact statement;

- There was no evidence that the Respondent or his actions had any effect on the trust of RCMP members in a “general sense”;
- The Board’s decision on conduct measures fell within the range of possible outcomes and it provided comprehensive reasons for the sanctions imposed.

[13] Accordingly, the Respondent requests that the appeal be dismissed.

Appellant’s Rebuttal Submission

[14] On April 26, 2018, the Appellant provided her rebuttal to the Respondent’s submission. She specifies the test for sexual harassment in the workplace set out in *Janzen* adds that even if the Board considered the definition of harassment outlined in the Code, it should have determined that sexual harassment in the workplace had occurred. By failing to find that sexual harassment in the workplace occurred, the Appellant argues that Cst. C’s impact statement was not considered through the appropriate lens. She maintains that the Board’s conduct measures were clearly unreasonable and that it should have considered all of the Respondent’s allegations globally, the breach of trust the Respondent’s conduct had on RCMP members, and it should have evaluated the impact on the victims when deciding on sanction (Appeal, pp 214-216).

[15] As I address the issues below, I will expand on each Party’s position on appeal.

EXTERNAL REVIEW COMMITTEE

[16] The ERC found no issues pertaining to the timeliness of the appeal or the submissions (Report, para 37).

[17] On the merits, the ERC found that the Board committed an error of law in its finding pertaining to the Respondent’s conduct in Allegation 3. The ERC explained that the Respondent’s misconduct had a sufficient nexus within the employment context as the event was an RCMP Watch Christmas party and that it negatively affected Cst. C’s work environment. The ERC was of the opinion that the Respondent’s conduct went “above and beyond simple

discourteous behavior” and that it constituted sexual harassment in the workplace (Report, paras 61-70).

[18] The ERC also found that the Board’s failure to find sexual harassment in the workplace for Allegation 3, resulted in it considering inappropriate conduct measures. Pursuant to the RCMP *Conduct Measures Guide* (November 2014) (Guide), the ERC held the appropriate conduct measure to range from 20 days’ forfeiture of pay to dismissal. In recommending the appropriate conduct measure, the ERC highlighted the importance of considering aggravating and mitigating factors. Given the many mitigating factors in favour of the Respondent, the ERC was not convinced that dismissal was the appropriate sanction. Rather, the ERC suggested that the Respondent lose 20 days pay for Allegation 3 instead of five days. The ERC took no issue with the Board’s imposed conduct measures for Allegations 1, 2, and 4 (Report, paras 91-107).

COMMISSIONER’S DECISION

Preliminary Issues

Timeliness

[19] Pursuant to section 22 of the *Commissioner’s Standing Orders (Grievances and Appeals)*, SOR/2014-289 (CSO (Grievances and Appeals)), an appeal to the Commissioner “must be made by filing a statement of appeal with the OCGA within 14 days after the day on which copy of the decision giving rise to the appeal is served on the member who is the subject of the decision”. The Record indicates that the Appellant was served with the Board’s written decision on November 10, 2017 (Material, p 3703; Appeal, p 5). The Appellant subsequently filed the appeal on November 21, 2017 (Appeal, p 3). I am satisfied that the Appellant’s appeal was timely.

Legislative Framework and Standard of Review

[20] This appeal is governed by Part IV of the Act. Subsection 45.11(1) states:

A member who is the subject of a conduct board's decision or the conduct authority who initiated the hearing by the conduct board that made the decision may, within the time provided for in the rules, appeal the decision to the Commissioner in respect of

- (a) any finding that an allegation of a contravention of a provision of the Code of Conduct by the member is established or not established; or
- (b) any conduct measure imposed in consequence of a finding referred to in paragraph (a).

[21] The CSO (Grievances and Appeals) sets out the considerations when rendering a decision:

33 (1) The Commissioner, when rendering a decision as to the disposition of the appeal, must consider whether the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.

[22] The Appellant's position on appeal pertains to whether the Board made an error of law in its findings on Allegation 3, and whether the imposed conduct measures were clearly unreasonable. Although the Appellant indicates that the Board's decision was reached in a manner that contravened the principles of procedural fairness in the Statement of Appeal, no further details have been presented in support of this argument (Appeal, p 5). Accordingly, I will not consider this issue further.

[23] An error of law is generally described as the application of an incorrect legal requirement or a failure to consider a requisite element of a legal test, subject to the correctness standard (see, for example, *Housen v Nikolaisen*, 2002 SCC 33, at para 36 (*Housen*)). Stated another way, "[a] question which seeks to determine the proper interpretation of a legal requirement [or statutory provision] rather than the manner in which the requirement is applied to the particular facts is a question of law" (Robert Macaulay & James Sprague, *Practice and Procedure before Administrative Tribunals*, looseleaf (Toronto: Thompson Reuters, 2017), vol 3, at 28-336, n 236). If an incorrect legal test was applied, the appellate body does not owe the initial decision maker deference (see *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 34).

[24] The term clearly unreasonable describes the standard to be applied in a review of questions of fact and of mixed fact and law. In *Kalkat v Canada (Attorney General)*, 2017 FC 794, the Federal Court considered the term “clearly unreasonable” as it is set out in subsection 33(1) of the CSO (Grievances and Appeals):

[62] Therefore, given the express language that the decision must be “clearly unreasonable” and the French translation of the term [*manifestement déraisonnable*], I conclude that the Delegate did not err. Interpreting the “clearly unreasonable” standard as being equivalent to the “patently unreasonable” standard is reasonable in the context of the legislative and policy scheme. This means that the Delegate must defer to a finding of the Conduct Authority where he finds the evidence merely to be insufficient to support the finding (*British Columbia Workers’ Compensation Appeal Tribunal v Fraser Health Authority*, 2016 SCC 25).

[25] In *Smith v Canada (Attorney General)*, 2019 FC 770, a similar finding was considered and adopted:

[38] The Adjudicator undertook an extensive analysis in order to arrive at the conclusion that the standard of patent unreasonableness applies to the Conduct Authority Decision. This analysis included a review of relevant case law, the meaning of the word “clearly”, and the French text of subsection 33(1). The Adjudicator’s conclusion that the applicable standard of review was patent unreasonableness is justifiable, transparent, and intelligible. The Court agrees that this was a reasonable conclusion.

[26] In *Canada (Director of Investigation and Research) v Southam Inc.*, [1997] 1 SCR 748, at para 57, the Supreme Court of Canada (Court) explained that a decision is patently unreasonable if the “defect is apparent on the face of the tribunal’s reasons”, in other words, it is “openly, evidently, clearly” wrong. Later, the Court stated in *Law Society of New Brunswick v Ryan*, 2003 SCC 20, at para 52, that a patently unreasonable decision is one that is “clearly irrational”, “evidently not in accordance with reason”, or “so flawed that no amount of curial deference can justify letting it stand.”

[27] In *R v Lacasse*, 2015 SCC 64, the Court expanded on the deference owed with regard to a review of sanction measures (paras 43-44):

I agree that an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor can justify the intervention of an appellate court and permit that court to inquire into the fitness of the sentence and replace it with the sentence it considers appropriate. However, in my opinion, every such error will not necessarily justify appellate intervention regardless of its impact on the trial judge's reasoning. If the rule were that strict, its application could undermine the discretion conferred on sentencing judges.

[...]

In my view, an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention only where it appears from the trial judge's decision that such an error had an impact on the sentence.

[28] As a result, questions of fact or mixed fact and law in this appeal are entitled to significant deference and only the presence of a manifest or determinative error would lead to a conclusion that the decision made by the Board is clearly unreasonable.

[29] The Court re-examined the standard of review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), and confirmed that legislated standards of review should be respected (paras 34-35). The majority also distinguished the approaches to be taken between statutory appeals and judicial reviews of administrative decisions (paras 36-45).

Merits

a) Did the Board commit an error of law by failing to find that the Respondent's conduct in Allegation 3 amounted to sexual harassment?

[30] The Appellant argues that the Board made an error of law by failing to apply the appropriate test for sexual harassment in the workplace. Specifically, the Appellant references the following definition (*Janzen* at p 1284):

[...] sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.

She also references the elements of workplace harassment as detailed in the Civilian Review and Complaints Commission's Report into Workplace Harassment in the RCMP (Ottawa: April 2017) (CRCC Report) (Appeal, p 113):

1. the individual knew or ought reasonably to have known that the words or conduct would be unwelcome; and
2. there is a nexus with the workplace.

[31] Consequently, the Appellant maintains that the Board made an error of law by failing to find that the Respondent's conduct in Allegation 3 was sexual harassment in the workplace. She contends that the incident of misconduct need not occur at the workplace to constitute workplace harassment and explains that there was a clear nexus between the party and the workplace since the members that attended the party not only shared a common employer but also shared a workplace ("D" Watch).

[32] The Appellant also submits that the Board incorrectly referred to the degree to which the interaction upset Cst. C "at the time it occurred" as a determinative factor in finding that the Respondent's conduct was discourteous. The Appellant draws reference to Cst. C's impact statement to evidence the negative effect the occurrence had on her in the workplace. She argues that the Board did not place enough focus on the repercussions for the victim of the Respondent's behaviour. Lastly, the Appellant submits that the Respondent's conduct with respect to Cst. C was not a single interaction, and that both Allegations 3 and 4 should have been considered holistically to make a finding of sexual harassment (Appeal, pp 113-114).

[33] The Respondent argues that the issue is a question of mixed fact and law as opposed to an error of law, and therefore the Board's decision is owed significant deference. He clarifies that he is not seeking a different determination on the allegations, but is requesting different conduct measures than the ones imposed (Appeal, pp 139).

[34] The Respondent maintains that the Board did not make an error of law with respect to its finding for Allegation 3 as Cst. C was not required to contend with unwelcome sexual actions or explicit sexual demands in the workplace, and that he and Cst. C never worked together. He explains that the incident occurred at a party, was raised with RCMP management within the next 2 days, and that he was transferred almost immediately. The Respondent also submits that the CRCC Report is not binding on the Board and that it rendered a decision pursuant to the Act and the Code, appropriately finding that his actions amounted to discourteous and disrespectful conduct. Furthermore, the Respondent highlights that the Appellant had the opportunity to request the Board to consider Allegation 3 and 4 together but failed to do so and cannot raise the issue on appeal (Appeal, pp 139-142).

[35] In rebuttal, the Appellant highlights that the Federal Court in *Canada (Human Rights Commission) v Canada (Armed Forces)*, [1999] 3 FC 653, confirms the test set out in *Janzen* to determine whether sexual harassment in the workplace took place. The Appellant notes that whether the Board applied the common law test for sexual harassment or applied the definition for harassment set out in the Code, it would have determined that sexual harassment in the workplace had occurred. She also contends that the Board's "responsibility to correctly apply the law is not dependent on the arguments of the parties" and that the leading case on sexual harassment was in the record for the Board's benefit but was not followed (Appeal, pp 214-215).

[36] Like the ERC, I find that the Board's findings pertaining to Allegation 3 were flawed and amounted to an error of law. Allegation 3 referred to the Respondent making offensive remarks and engaging in harassment contrary to section 2.1 of the Code. Specifically, section 2.1 of the Code requires members to "treat every person with respect and courtesy and do not engage in in discrimination or harassment". The particulars of this Allegation detail that the Respondent approached Cst. C at a Christmas party at a private residence organized for "D" Watch members of the Detachment, placed his hands towards her face complimenting her cheekbones, touched her face after she allowed him to do so as she thought it was harmless, and then made a gesture

with his hands and fingers telling her something to the effect of him wanting to “fist her” and putting “these [fingers] right up [her][...] vagina right now” (Material, p 24).

[37] The Board found that the particulars of Allegation 3 were established on a balance of probabilities to support a finding of a contravention of section 2.1 of the Code. Although the Board found that the Respondent’s gestures and offensive remarks identified in the particulars were disrespectful and discourteous, it was not satisfied that his actions constituted harassment or discrimination. It acknowledged that certain inappropriate conduct need not take place in the workplace or during work hours to constitute harassment, but detailed the following factors to support its decision that the behaviour was “clearly discourteous and disrespectful, but not harassment” (Decision, paras 45-46):

- the off-duty, private residential setting and unofficial nature of the social gathering;
- the fact that the Subject Member attended the party as the spouse of a Watch “D” member;
- the lack of any workplace connection between the Subject Member and Cst. C beyond common employment with the RCMP;
- the single disrespectful and discourteous interaction (not, at that time, a pattern of discourteous behaviours); and
- the degree to which this interaction upset Cst. C at the time it occurred.

[38] In my view the Respondent’s actions far exceeded disrespectful and discourteous conduct and amounted to sexual harassment. Harassment is defined in section 2.8 of the *RCMP Administration Manual (AM)*, Part XII “Conduct”, Chapter 8 “Investigation and Resolution of Harassment Complaints” as:

any improper conduct by an individual that is directed at, and is offensive to, another individual in the workplace, including at any event or any

location related to work, and that the individual knew, or ought reasonably to have known, would cause offence or harm. It comprises an objectionable act, comment, or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat.

Harassment is further described as “normally a series of incidents but can be one severe incident which has a lasting impact on the individual” which also includes sexual harassment. Section 2.23 of AM XII.8 describes sexual harassment as:

any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any employee, or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion, and is included under the definition of harassment above.

[39] In *British Columbia Human Rights Tribunal v Schrenk*, 2017 SCC 62 (*Schrenk*), the Court acknowledged the definition of sexual harassment in the workplace as set out in *Janzen*. Specifically, affirming that sexual harassment includes “unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment” and noted that the “key is whether that harassment has a detrimental effect on the complainant’s work environment” (internal quotations removed) (*Schrenk* at para 89). In examining paragraph 13(1)(b) of the *British Columbia Human Rights Code*, the Court highlighted that harassment or discrimination in the workplace occurs when there is “sufficient nexus with the employment context”. The Court listed the following non-exhaustive factors to consider when determining whether the conduct has sufficient nexus (*Schrenk*, at para 67):

1. whether the respondent was integral to the complainant’s workplace;
2. whether the impugned conduct occurred in the complainant’s workplace; and
3. whether the complainant’s work performance or work environment was negatively affected.

[40] Based on these factors and the definition of sexual harassment, I am satisfied that the Respondent’s conduct amounted to sexual harassment in the workplace. There can be no doubt

that the Respondent's comments and gesture were of a "sexual nature" and caused offence and humiliation to Cst. C. In her victim impact statement, Cst. C described that she "instantly felt disgusted, shocked, belittled, devalued, sexualized, invaded and robbed of my professionalism" (Material, p 33).

[41] Further, there is sufficient nexus between the Respondent's conduct and the detrimental effect it had on Cst. C's work environment. The definition of harassment in AM XII.8 indicates that the conduct in question can occur at "**any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm**" (emphasis added). The event in question was an RCMP Watch Christmas party at a private residence where attendees work at the same Detachment. But for the members' employment with the RCMP, there would be no party.

[42] Although the Respondent attended the party as a guest of his wife who was a member of the Detachment, he knew or ought reasonably to have known that the event was related to work and that the conduct would cause offence or harm. As both the Respondent and Cst. C were employed by the RCMP, and the Respondent's wife was a member of the same Detachment as Cst. C, it is without a doubt that the Respondent was integral to the workplace.

[43] Moreover, it is evident from Cst. C's victim impact statement that her work environment was negatively affected by the Respondent's misconduct. I highlight some of the comments Cst. C detailed in her first victim impact statement (Material, p 33):

-My first day back to work was riddled with humiliation, disgust and nauseousness to have to share such a personal invasion to my supervisors. As I told them, I watched in gut wrenching pain, as their shock turned into disappointment as they had to know report it to their superiors.

-Fear of what my coworkers were thinking set in and my foundation I had in my workplace began crumbling. I was forced into the middle of an investigation that I had no control over and I never wanted. I tried desperately to stay at work, to be able to separate the personal impact and the work impact I now had. I started shaking profusely, uncontrollably and

not able to stop. I would break out in tears randomly and had difficulty maintaining focus.

-I felt my coworkers were looking at me, never knowing truly what they were thinking.

[44] The negative impact the Respondent's misconduct had on Cst. C's work environment is clear. If the Respondent was not employed by the RCMP, Cst. C would not have to deal with sharing details of the misconduct with her supervisors, or worry about the reaction of her coworkers. As a result, although the misconduct occurred at an off-duty, private residential setting, it nevertheless had sufficient nexus with the workplace. I emphasize that the Code applies to every member of the Force and outlines the standard of conduct, "**on and off duty, in and outside Canada**" (section 1.1). The annotated Code explains:

As a member of the RCMP, you have chosen to enter a unique profession that has expectations of a higher standard of behaviour, a responsibility that is not intermittent, but constant. The relationship between a member and the Force is not the same as between a citizen and the government. Your conduct, whether on or off duty, will be scrutinized based on your status as a police officer (*Code of Conduct of the Royal Canadian Mounted Police* (Annotated Version 2014, pp 7-8).

[45] I strongly disagree with the Board's reasoning that the Respondent's misconduct was a "single disrespectful and discourteous interaction" and its diminishing of "the degree to which the interaction upset Cst. C. at the time it occurred." I highlight that the definition of harassment in AM XII.8 describes harassment as *either* a series of incidents *or* **one severe incident which has a lasting impact on the individual**. Given the fact that the Respondent's misconduct amounted to sexual harassment as set out by the Court and policy, I find the Board's findings with respect to Allegation 3 constitute an error of law. In its decision, the Board did not refer to the definitions or legal tests pertaining to sexual harassment in the workplace. I agree with the ERC that the Board's reasons were "flawed as to why the behaviour in Allegation 3 was of a discourteous nature" (Report, para 62). Although the Board was correct in finding that the particulars of Allegation 3 were established on a balance of probabilities to support a finding of a contravention of section 2.1 of the Code, it erred in its determination that the Respondent's behaviour was solely disrespectful and discourteous conduct. As the Court explained in *Housen*,

an error of law is characterized as “the application of an incorrect standard, a failure to consider a required element of a legal test, or a similar error in principle” (para 36).

[46] An error of law is examined on a standard of correctness where no deference is shown to the original decision maker. Accordingly, I find that the particulars of Allegation 3 were established to support a finding that the Respondent’s conduct amounted to sexual harassment, contrary to section 2.1 of the Code.

b) Were the conduct measures imposed by the Board clearly unreasonable?

[47] Given my finding for Allegation 3, the resulting conduct measures imposed by the Board require review. The Appellant submits that the conduct measures imposed by the Board were clearly unreasonable. I expand on the Appellant’s arguments below (Appeal, pp 114-117).

The Board erred in considering the evidence

[48] The Appellant submits that the Board erred in considering the evidence and imposed clearly unreasonable conduct measures as a result, but does not expand on this ground of appeal (Appeal, p 115).

The Board erred in not considering the allegations globally as sexual harassment in the workplace

[49] The Appellant maintains that the Board should have considered “all allegations and the conduct matter globally”. She notes that “all of the conduct admitted by the subject member fits the definition of sexual harassment” and had a nexus to the workplace. The Appellant refers to 16 documents the Board had it before it which highlighted the problem of sexual misconduct and workplace harassment in the RCMP. The Appellant acknowledges that the Board can only rule on allegations before it, but argues the Board should have reasonably considered, as an aggravating factor, that all the allegations constituted sexual harassment in the workplace (Appeal, p 115).

The Board erred in not giving appropriate consideration and weight to the victim impact statement of Constable C

[50] The Appellant insists that by failing to find that sexual harassment in the workplace had occurred, the Board undermined Cst. C's two victim impact statements. The Appellant highlights the Board's comments that the Respondent's misconduct impacts "may have exacerbated existing challenges she was experiencing" and that "a significant portion of Cst. C's second document (dated May 10, 2017, Exh. CAR-2) does not concern the effect of the Subject Member's misconduct but appears to relate to other unsatisfactory administrative circumstances she had encountered or continued to encounter". In the result, these comments diminish Cst. C's impact statements and that had it not been for the Respondent's behaviour at the party, Cst. C would not be in a "position to experience the negative impact on her health and career". (Appeal, pp 115-116).

The Board erred by not considering the trust of RCMP members

[51] The Appellant states that the Conduct Authority Representative (CAR) submitted 16 documents into the record for the Board to take judicial notice of which the Board refused to do. This included the CRCC Report which highlights that years of failed policy have "eroded the confidence of RCMP members and employees". The Appellant challenges the Board's finding that the Respondent's conduct did not constitute any sort of breach of trust as it occurred in a "purely off- duty social setting". She contends that the Board had an obligation to consider the trust that RCMP members and employees have in the organization and amongst each other to maintain a safe work environment emphasizing that this trust applies both in the workplace and in social settings (Appeal, pp 116).

The Board erred in not concluding that dismissal was the appropriate conduct measures in the circumstances

[52] The Appellant insists that the Board's failure to properly consider the evidence and aggravating and mitigating factors resulted in clearly unreasonable conduct measures. The Appellant states that "even if the allegations were considered separately, i.e., a minimum of 15 days forfeiture of pay for each allegation, the conduct measures should have added up to more than a forfeiture of 60 days' pay" which should have lead the Board to conclude that dismissal was the appropriate measure. The Appellant maintains that the Respondent should be directed to resign within 14 days or be dismissed (Appeal, p 117).

[53] The Respondent addressed each of the Appellant's arguments (Appeal, pp 142-145).

The Board erred in considering the evidence

[54] The Respondent submits that the Appellant failed to provide specifics in support of this argument insisting that the Board did not err in considering the evidence and imposed conduct measures it was permitted to under the "regulations" (Appeal, p 142).

The Board erred in not considering the allegations globally as sexual harassment in the workplace.

[55] The Respondent contends that the CAR did not request the Board to consider the allegations globally at either the pre-hearing or the hearing. Therefore, the Respondent is precluded from doing so on appeal (Appeal, pp 142-143).

The Board erred in not giving appropriate consideration and weight to the victim impact statement of Constable C

[56] The Respondent submits that the Board properly considered all relevant material at the conduct measures phase, including Cst. C's victim impact statements. He states that the Appellant's contention that his behaviour was entirely attributable to the negative impact on Cst.

C's health and career is a broad and speculative statement that is unsupported by evidence (Appeal, pp 143-144).

The Board erred by not considering the trust of RCMP members

[57] The Respondent contends that the Appellant did not ask the Board to take judicial notice of the trust of RCMP members and that there was no evidence that his actions had any effect on the trust of RCMP members "in a general sense". He refers to Cst. A's letter of support indicating that she would work him again in a heartbeat (Appeal, p 144).

The Board erred in not concluding that dismissal was the appropriate conduct measures in the circumstances

[58] The Respondent details the rules set out in subsections 45(1) to (4) of the Act as well as the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291(CSO (Conduct)) and maintains that the Board's decision fell within the range of possible outcomes and that the Board provided comprehensive reasons for its decision showing "sufficient justification, transparency, and intelligibility". He argues that deference is owed to the Board's decision, that the appeal process is not "de novo" and that it should be dismissed (Appeal, p, 145).

[59] In rebuttal, the Appellant reiterates that regardless of whether submissions were made on the issue of considering the allegations globally, the Board had a duty to consider this on sanction. She also emphasizes that Cst. C is a victim of sexual harassment in the workplace and the negative impact on her should have been given more weight when the Board made a decision on sanction. Lastly, the Appellant maintains that the breach of trust caused by the Respondent's conduct should be "obvious" and does not require submissions for consideration (Appeal, pp 215-216).

Analysis

[60] Given that the Board erred in failing to find that the Respondent sexually harassed Cst. C, I accept that the resulting conduct measures imposed by the Board pertaining to Allegation 3 were clearly unreasonable. As the ERC explains, “[i]n not finding that the Respondent’s conduct met the definition of sexual harassment, the Board erred in not relying on the appropriate conduct measures range as recommended by the *Conduct Measures Guide*” (Report, para 93). Because the Board found that the Respondent’s actions were simply disrespectful and discourteous, the range of sanctions considered were based on those for vulgar and offensive utterances which range from 2-10 days’ loss of pay in the aggravated range (Guide, p 12). In doing so, the Board made a manifest and determinative error. Accordingly, I will make a determination on the appropriate conduct measures.

[61] Subsection 45(4) of the Act details that if a conduct board decides that an allegation of a contravention of a provision of a Code is established, the conduct board shall impose one or more of the following conduct measures on the member:

- a. recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner,
- b. direction to resign from the Force and, in default of resigning within 14 days after being directed to do so, recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner, or
- c. one or more of the conduct measures provided for in the rules.

Paragraph 36.2(e) of the Act requires “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”.

[62] Paragraph 39.1(a) of the Act gives the Commissioner the authority to make rules “establishing the conduct measures, other than dismissal or recommendation for dismissal, that may be taken in respect of contraventions of provisions of the Code of Conduct and specifying which of those conduct measures may be imposed by any class of conduct authorities”. Subsection 5(3) of the CSO (Conduct) allows a conduct board to impose any of the measures referred to in subsection 5(1) against a subject member. Subsection 5(1) lists the following “serious conduct measures against a subject member”:

- a. a removal, restriction or modification of duties as specified by the conduct authority for a period of not more than three years;
- b. an ineligibility for promotion for a period of not more than three years;
- c. a deferment of pay increment for a period of not more than two years;
- d. a reduction to the next lower rate of pay for a period of not more than two years;
- e. a demotion for a period of not more than three years;
- f. a demotion for an indefinite period;
- g. a transfer to another work location;
- h. a suspension from duty without pay;
- i. a forfeiture of annual leave for a period of not more than 160 hours;
- j. a financial penalty deducted from the member’s pay.

[63] Subsection 24(2) of the CSO (Conduct) requires a conduct board to impose conduct measures “that are proportionate to the nature of the contravention of the Code of Conduct”. Section 9.2.1.7 of AM XII.1 describes that “[a]ggravating and mitigating circumstances must be

considered in determining the appropriate conduct measures in relation to the subject member's contravention of the Code of Conduct".

[64] An aggravating factor is any circumstance "attending the commission of a crime or tort which increases its guilt or enormity or adds its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself" (internal quotations removed) (Guide, p 10). Aggravating factors include the seriousness of the misconduct, lack of honesty and integrity, potential to put both the public and members at risk, prior discipline, a *Criminal Code* conviction, lost trust of the community/breach of public trust, lack of remorse, media attention, impact on the victim, and potential to compromise the investigation (Guide, pp 10-11).

[65] A mitigating factor is "not a justification or excuse that would absolve the member from all responsibility" but rather, "it is a factor that can help explain or less the gravity of a given contravention". Mitigating factors include acceptance of responsibility of actions/admitted allegations/acknowledged misconduct at first available opportunity, apologies/remorse, no prior discipline, good work record, support of Commanding Officer, medical condition, isolated/out of character incident, stressors in personal life, sought and received treatment/undergone counselling/ sought medical help, team player, momentary lapse of judgement, letters of references and support, involvement in the community, and minimal likelihood of recidivism (Guide, pp 8-9).

[66] With respect to section 2.1 of the Code, the Guide emphasizes the importance of "prevention, effective investigation, and successful resolution of behaviours that could be construed as harassment" (Guide, p 13). The Guide also urges that sexual harassment "be treated as a particularly serious form of harassment that will not be tolerated in the RCMP workplace. Any employee found to have engaged in sexual harassment should expect to face harsh conduct measures. Unless significant mitigation can be found in the fact pattern of the case, any instance of sexual harassment would justify measures in the aggravated range". The mitigated range for workplace harassment is 10 days of pay, the normal range is 11-20 days pay, and the aggravated range is 20 days pay to dismissal (Guide, pp 14-15).

[67] I would like to start by saying how extremely appalled and disappointed I was reading the allegations and details about what transpired at the Christmas party. As the RCMP approaches its 150th anniversary, Vision150 was developed to ensure a modern, trusted and inclusive RCMP. One of the initiatives of Vision150 is to shift the norms associated with the RCMP's culture. This includes improving our harassment resolution process, establishing a transparent and accountable governance, ensuring employees and members are protected from bullying, harassment, and sexual violence, and addressing underlying issues as identified in the CRCC Report. Sexual harassment has no place in the RCMP. Members are held to the highest possible standards which are fundamental to maintaining the trust of Canadians. I strongly condemn the Respondent's conduct. His actions were deplorable and inconsistent with the expectations placed on RCMP members.

[68] In considering the appropriate sanction, I look first to the aggravating factors in the case. The Respondent's actions had a substantial impact on his victim. A criminal charge of sexual assault was initiated against him based on his conduct with Cst. C. His actions also garnered media attention and were capable of bringing the Force into disrepute, damaging the relationship of trust and confidence between the police and the public. These are all significant aggravating factors.

[69] It is crucial to consider the impact the Respondent's conduct had on Cst. C. In addition to the comments listed above, I highlight the following excerpts from Cst. C's victim impact statement that detail the negative effect the Respondent's conduct had on her in the workplace and in her personal life:

-I felt my stomach burn, my throat tighten and my heart race with anger when I had informed my husband that the trust he and I had in my workmates had been broken but mostly, that there was an invasion of his own wife (Material, p 33).

-I felt separated from my husband, emotionally being pulled back and forth between wanting to take away his pain and wanting him to take away mine. This has invaded my intimacy, and my connection with my husband, causing us both to be left with the impact (Material, p 33).

-I had to leave work, not able to come back for 3 months. During this time I sought help from my psychologist. My thoughts were scattered, I couldn't concentrate, I cried spontaneously, I had nightmares and difficulty sleeping.

-As this was visibly affecting me it forced me to inform my children that I was impacted by an event involving work but seeking help (Material, p 34).

-When I came back to work I had to come back in segments and slowly increase my hours as some days just driving to work was hard, I would feel panic setting in, the fear of seeing my coworkers again, struggling with how to trust and to face their glances torment me (Material, p 34).

[70] I also acknowledge comments made in Cst. C's second victim impact statement:

-The very day that I had disclosed what had happened I had been pulled into another meeting regarding the need for me to complete a Duty to Accommodate form due to the permanent restrictions I was placed on. I was emotionally overwhelmed at this point with disclosing the assault, along with my daily workload and now the need to complete this form. [...] Coincidentally, when I was back to work, that DTA form was not upheld, and I was never allowed to do what that contract agreed to resulting in feelings of anger, frustration and being dismissed (Material, p 1064).

-I spoke briefly of the impact of him being placed in my small town after I reported the occurrence in my first statement. I didn't mention the impact of when I presented the question to my Inspectors as to why he was moved there. It was approximately a month and a half after I had left work on medical leave when I had requested a meeting to ask this question to understand their perspective. After I asked the question I ended up being told that it was my responsibility to inform that I was uncomfortable with it, that I was 1 out of 150 other members with their problems. [...] I was told later that it was wrong of them to place him in my town and it shouldn't have happened but the insult was already complete, I already was feeling like I don't matter (Material, p 1064).

-A few months into being back at work I had an occurrence while in the change room that brought me a lot of sudden anxiety and fear. I had been standing at my locker putting away my gun and kit for the day, when [the Respondent's wife] entered, went to her locker, my back was to her and then I heard her unholster her firearm. I've never had such a sudden rush of fear and adrenalin pour down from my head to my toes. Fear had suddenly struck me that I have no idea what she's thinking, she could be so disgusted with me, and shoot me right there (Material, p 1064).

-I was excited to apply [for the School Liaison Position], feeling a little positivity heading my way, and felt supported with the encouragement from NCO's. I completed the application, submitted it and then was told after the boards sat that I didn't get the position because I wasn't on General Duty but I could apply for the one position that wasn't filled when it's advertised again. I later found that his wife got one of the positions and I felt completely deflated (Material, p 1065).

-When I went once to inform my NCO that I was having anxiety issues due to yet another court date coming up, he simply stated, "I don't get why you're so anxious, you didn't do anything wrong so why should you be anxious?" I stated that I can't explain why I'm impacted but I just am and I'm trying to do my best to break it but I couldn't while being at work (Material, p 1065).

-[...] in the fall, I had gotten and completed a child interview again. When I returned to my office my NCO came into my office to speak with me and shut the door behind him. He stated that he had no idea that I had a child interview and wondered how I was doing given my restrictions. I was dumfounded, shocked that such a thing was being asked as I had no limitations in dealing with clients and I had informed him of this (Material, p 1065).

-I didn't know who I should direct concerns or questions to [regarding the Criminal Code and Code of Conduct investigations] and to top it off the SRR's were dismantled just as I was coming back to work and had questions to be answered. I was at the mercy of my NCO's and their ability and willingness to support and try and understand but as I've written, this was short lived or not present at all. [...] Being so alone at work, without strong support, or even one person to monitor the situation and impact caused a downward spiral of disrespect and minimization by myself and perhaps my superiors as well (Material, pp 1065-1066).

[71] I empathize with Cst. C and the pain and struggles she dealt with following the Respondent's misconduct. In my view, the RCMP management team should have done more to support her. No member should have to go through this whether at work or in their personal life. Members should feel safe and supported in the workplace and I am deeply sorry to hear about the negative experiences Cst. C faced in the aftermath of the Respondent's actions at the party. As an organization, we can and must do better in these situations.

[72] Without taking away from the events detailed in Cst. C's second victim impact statement, I find it would be unfitting to attribute them all to the Respondent. For example, the Board noted (Material, p 3564):

[...] the reference to the member's spouse [...] I just don't consider that to be – it's not relevant with respect to -- I don't diminish the feelings or apprehensions expressed by [Cst. C] in the May 11, 2017 CAR-2 email. However, that doesn't mean that I'm not allowed to assess the extent to which Cst. Caram's -- Cst. Benjamin Caram's misconduct plays any part in those feelings however many months after the fact. [...] it's quite obvious to me that there are parts of the second one that are really not relevant or that can't be really linked to Cst. Caram's misconduct.

The Board explained that elements of Cst. C's statement "are not attributable to the subject member and are not connected to his misconduct, something that the CAR conceded, but also replied that the subject member's action did impact and worsen aspects of [Cst. C's] condition" (Material, p 3641). I agree. There is no doubt that the Respondent's misconduct had a negative impact on Cst C. However, many of Cst. C's experiences, such as those pertaining to the duty to accommodate, employment opportunities, and the way in which she felt her superiors handled the situation, are not attributable to the Respondent as they were not in his control.

[73] I acknowledge the CRCC report's concerns of a high level of distrust and lack of confidence RCMP members have in senior management (CRCC Report, p 13). I recognize that the Force should do everything in its power to foster a safe and trusting environment between employees who rely on each other, and members relying on senior management to address their concerns. It is clear that the Respondent's conduct affected Cst. C's trust in him and inadvertently resulted in concerns she had with management. That said, while the Respondent's negative impact on Cst. C serves as a significant aggravating factor in determining the appropriate conduct measure, it should only be examined within the context of what was directly attributable to his misconduct.

[74] In addition to aggravating factors, mitigating factors must also be considered. I highlight the following:

-The Respondent's formal admission of all four allegations of contraventions of the Code, his support of publication bans protecting the identify of Cst. C and Cst. A, providing admissions in the summary of facts, and agreeing to adjudication based on the evidentiary record alone, saving expenditure of resources and avoiding potential testimony (Material, pp 3491, 3496, 3636, 3686).

-The Respondent's willingness to take responsibility by participating in the Alternative Measures Program concerning the criminal charge respecting Cst. C. He was also willing to participate in a meeting with Cst. C as part of the Victim Offender Reconciliation component of the program. Cst. C is also willing to participate in that meeting (Material, pp 3493-3500, 3636). I note that admission in the Alternative Measures Program is decided by the Crown and is determined on a case-by-case basis. The Crown makes this determination if the program would be more suitable and ultimately more beneficial for the victim, community, and offender. Also known as diversion, as part of the program, candidates are required to write a letter of apology, go for counselling, and complete community service (*Alternative Measures – An Overview*, online: Government of British Columbia <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/understanding-criminal-justice/alternative-measures>>).

-The Respondent made a prompt apology to Cst. A, and would have done the same for Cst. C but was unable to given the circumstances. In his apology letters to Cst. A and Cst. C, the Respondent expressed his deepest apologies, accepted accountability, did not try to excuse his actions and seemed genuinely remorseful (Material, pp 1386-1390, 3637).

-The Respondent has been abstinent from alcohol since January 2017, and since February 2017 he joined Alcoholics Anonymous attending meetings once a week (Material, p 3311- 3312).

-In a psychological report dated January 10, 2017, Dr. W described the Respondent as having developed PTSD as a result of the cumulative effect of attending numerous highly traumatic events and that the Respondent's excessive drinking on the night of the party was as a result of his PTSD and to "self medicate". This has been recognized by a Veterans Affairs Canada disability award. Based on his progress, Dr. W was of the opinion that the chances of the Respondent "ever drinking to excess or engaging in similar inappropriate behavior is extremely low, if not nonexistent. Ben has made several statements in therapy to that effect and I believe they are genuine". He was also of the belief that there was "little to no chance" of likelihood of reoccurrence of the misconduct (Material, pp 1487-1508, 3637- 3639).

-In a psychiatric assessment dated February 9, 2017, Dr. O was of the opinion that the conduct that occurred on the night of the party was out of character for the Respondent and that there was “nothing to suggest that he has ever engaged in any other inappropriate sexual behaviour either verbally or behaviourally”. Dr. O noted that the Respondent had a history of social anxiety throughout his childhood years that he never discussed with others, has as a history of substance abuse in his family as his grandfather and father were both alcoholics, and has been exposed to difficult and traumatic situations throughout the course of his career as an RCMP officer. Dr. O considered the Respondent to “be a very low risk of repetitive behavior although clearly, given that it occurred in the context of extreme intoxication where he had behavioural disinhibition, it would be prudent to avoid subsequent episodes of intoxication”. Given that there is no underlying personality disorder or dysfunction, Dr. O noted that he was fully capable of changing his behaviour and had appropriate levels of remorse, guilt, and embarrassment about what he did. (Material, pp 1586-1600, 3637-3639).

-The Respondent attended counselling sessions with a registered clinical counsellor when he came back from vacation after the event on December 16, 2015. He saw her again in 2016. He saw a psychologist, Dr. W, from June 2, 2016 to June 2017, and plans to continue seeing another psychologist as Dr. W recently retired. He is committed to participate in treatment for his mental health as suggested by Dr. W and Dr. O (Material, pp 3515-3518).

-The overwhelming amount of support for the Respondent through letters of references written by other members including immediate supervisors, senior non-commissioned officers, female members the Respondent worked with, and Cst. A herself (Material, pp 1513-1543). I will not reproduce all these letters as most have already been outlined above, but I will highlight some remarks that were consistent through all the letters:

-The incident was “very much out of character” and a “stark contrast to the person that [the Respondent] is and what he stands for”. A supervisor and friend of over 10 years who attended social events with the Respondent (where alcohol was involved) detailed that he had “NEVER seen or heard of Ben acting inappropriately toward a woman; whether it be his wife, family, female coworkers, civilians, clients, etc.”.

-The Respondent has a strong overall work ethic and he is a “dependable and a solid member of our watch and the RCMP”, “an integral part of the Watch [who] has contributed to an environment which has made

members want to come to work, even when injured”. He is “honest, dependable and very hard- working” as well as “asset” to the RCMP.

-The Respondent is accountable and someone who “holds the RCMP’s six values in the highest regard”. He is “respectful and patient with all his interactions” with co-workers, clients, victims, and suspects. He “would never intentionally hurt or cause anyone discomfort in any way”.

-Cst. A, the victim in Allegation 1 and 2, wrote that she always thought “highly” of the Respondent and described him as someone who is “kind, generous, sincere, honest, compassionate, respectful, and has high values, morals and ethics”. She noted these qualities were present both while conducting his duties as an officer and as a father/friend/husband. She explained that the Respondent’s conduct was “out of character for him” and knew it was the “alcohol” that caused these actions. In her view, “he made a poor choice that night and feels awful for it, has gone to counseling, hasn’t touched a drop of alcohol since (to [her] knowledge) and has written [her] an apology letter”. She indicated that she and the Respondent remain friends, that she would work with him “in a heartbeat and would be honoured to have him on [her] watch/unit due to his work ethic, morals, personality, compassion, etc.”

-The Respondent’s wife explained that after learning of the allegations against him “he took it upon himself to immediately seek out counselling, which he has been attending ever since” the incident. She detailed that since the allegations, he has not consumed alcohol at any social gatherings despite pressure from his friends. She described the event as an isolated incident and doesn’t expect it to happen again.

[75] Like the ERC, I find that the mitigating factors in this case are strong and compelling. From the Respondent’s accountability and cooperation throughout the investigation process to the numerous letters of support (including from one of the victims) speaking to the Respondent’s otherwise good character, the mitigating factors before me are considerable. With regard to these letters, the members writing them were aware of the incidents that occurred at the party. As the Board noted, it is not an “insignificant mitigating factor” that members who themselves are “dependent on strong public support for the Force” expressed “unqualified support for the Subject Member’s retention, and held no reservations about working with the Subject Member again, did so with a working knowledge of the Subject Member’s acts of misconduct” (Decision, para 99).

[76] In addition, expert medical evidence gave insight into the Respondent's untreated social anxiety and PTSD disorder and how they may have contributed towards his over-consumption of alcohol at the party. Like the Board, I am not convinced that the Respondent's psychological condition at the outset of the party constitutes a legitimate mitigating factor, but I do find mitigating that the Respondent has since sought help for these issues (therapy, Alcoholics Anonymous, counselling) and that the same experts have found that his likelihood of recidivism was "low to nonexistent". Additionally, the Respondent has an otherwise clean conduct record and his performance reports speak highly of his capabilities as an RCMP member. I note that considering these mitigating factors is not meant to diminish or condone in any way the sexual harassment that took place, nor is it meant to excuse or minimize the accountability of the Respondent's actions as it pertains to the Allegations.

[77] Adjudicating this case has been extremely difficult for me given the unacceptable and disgraceful behaviour of the Respondent. I am committed to ensuring that any type of harassment, whether it occurs on or off duty, is addressed with the greatest vigilance. I am also dedicated to ensuring that the RCMP, as an organization, prioritizes and protects the health and safety of its members and employees and that it maintain accountability, trust, and public confidence.

[78] Turning to Allegation 1, 2, and 4, I accept the ERC recommendation that the Board's imposed conduct measures totalling 40 days pay, as well as other global sanctions and directions should stand (Report, para 107). The Board's findings pertaining to these allegations were unchallenged and nothing in my review of the conduct measures imposed for these allegations justify interference. The Board followed the recommendations set out in the Guide and there is no indication of a manifest and determinative error.

[79] As I review the Guide's direction on appropriate conduct measures for Allegation 3, I have carefully considered both aggravating and mitigating factors. The Respondent's conduct justifies the aggravated measures set out in the Guide ranging from 20 days pay to dismissal. Given the compelling amount of mitigating factors described above, I agree with the ERC

recommendation that the Respondent's dismissal is not the appropriate sanction in this case. In my view, the appropriate sanction for Allegation 3 is 20 days pay.

[80] In imposing this conduct measure, I have considered the Guide's direction on maximum financial penalties. Although there is no statutory maximum financial penalty under the Act, the Guide suggests that a 45-day financial penalty should be the maximum measure to be imposed upon a member. Such a penalty should be considered where dismissal is a possibility but consideration of aggravating and mitigating factors provide for the continued employment of the member. The Guide also cautions that it is difficult "to conceive of a situation where a 45-day forfeiture of pay is insufficient, yet dismissal as too harsh" (Guide, pp 5-7).

[81] I recognize that the total financial penalty for the four allegations will now amount to 60 days pay. While remaining mindful of the Guide's suggestions and giving consideration to the substantial amount of mitigating factors, I find that loss of employment is too harsh in this case. This does not, however, discount the gravity of the Respondent's misconduct and need for an appropriate financial penalty. Given the particulars of this case, I am satisfied that a total of 60 days pay is appropriate in the circumstances and I am hopeful that this measure will serve as general deterrence, rehabilitate the Respondent, and preserve the public trust in the RCMP. I take sexual harassment very seriously and although I have decided not to dismiss the Respondent, there will be no opportunity for another chance. As the Guide states, where a penalty amounts to at least 45 days, the member should be thankful to still have a job.

DISPOSITION

[82] Pursuant to paragraphs 45.16(1)(b) and 45.16(3)(b) of the Act, I allow the appeal in part. With respect to Allegation 3, I find that the Respondent contravened section 2.1 of the Code by engaging in sexual harassment in the workplace and impose a forfeiture of 20 days pay, recognizing that five of those days have already been forfeited.

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[83] The Appeal is dismissed, in part, pursuant to paragraph 45.16(3)(a) of the Act. I confirm the conduct measures imposed by the Board with respect to Allegations 1, 2, and 4. I also confirm the global sanctions and directions given by the Board.

[84] Lastly, I have concerns with how the ensuing *Code of Conduct* investigation was carried out, and the subsequent lack of support and seeming indifference the victims were shown by RCMP management. I therefore direct the Professional Responsibility Officer and the Chief Human Resources Officer to examine existing relevant RCMP practices and procedures in order to identify and bring forward appropriate and meaningful proposed changes for consideration within four months of this decision.

Brenda Lucki, Commissioner

Date