

Publication ban: Any information that could identify the complainant or her children in the present decision may not be published, broadcast or transmitted in any way.



ROYAL CANADIAN MOUNTED POLICE

in the matter of

a conduct hearing pursuant to the

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

Between:

Commanding Officer, "H" Division

(Conduct Authority)

and

Constable Gregory Whalen

Regimental Number 58557

(Subject Member)

Conduct Board Decision

Christine Sakiris

June 22, 2021

Staff Sergeant Jon Hart, Conduct Authority Representative

Mr. Michael Donovan, Q.C., Subject Member Representative

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SUMMARY

The *Notice of Conduct Hearing* contains a total of 10 alleged contraventions of the RCMP Code of Conduct.

Allegations 1 to 4, 6 and 7 are under section 7.1 of the Code of Conduct and involve alleged incidents of domestic violence, uttering threats, making misleading statements to a statutory investigator, obstructing justice and breaches of an undertaking perpetrated by Constable Whalen.

Allegation 5 relates to Constable Whalen's alleged failure to report the misconduct of another member, contrary to section 8.3 of the Code of Conduct.

Allegations 8, 9 and 10 relate to Constable Whalen's alleged involvement in the damage to the pool at the family residence and his statements in the course of the investigation of that damage.

Following a pre-hearing motion by Constable Whalen, Allegation 9 was stricken by the Conduct Board.

The Conduct Board found Allegations 1, 2, 3, 4, 5, 6 and 7 to be established. Allegations 8 and 10 were not established.

Prior to the commencement of the conduct measures phase of the hearing, the parties advanced a joint proposal of a single conduct measure: Constable Whalen must resign within 14 days, failing which he would be dismissed. This measure was accepted and imposed by the Conduct Board.

INTRODUCTION

[1] Constable Whalen is facing 10 alleged contraventions of the RCMP Code of Conduct. The allegations are set out in the *Notice of Conduct Hearing*, dated June 6, 2019.

[2] Constable Whalen is alleged to have perpetrated multiple acts of domestic violence against his former spouse, C.C., over the course of their marriage (Allegation 1). In October 2017, Constable Whalen was arrested for assault and uttering threats against C.C., the latter of which are addressed in Allegation 2. Constable Whalen was released on an undertaking with conditions. Over the course of the next 10 months, Constable Whalen committed several breaches of his undertaking. These are addressed in Allegations 4 and 7. He is further alleged to have made a misleading statement to a statutory investigator (Allegation 3); failed to report the

misconduct of another member (Allegation 5); and to have deleted a text message from his phone, while in custody (Allegation 6).

[3] The pool at the family residence was damaged in July 2018. Constable Whalen is alleged to have caused the damage to the pool (Allegation 8). Allegations 9 and 10 involve the veracity of Constable Whalen's responses during a polygraph examination and subsequent statement to investigators.

[4] I have been appointed as the Conduct Board pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*]. In accordance with section 45 of the *RCMP Act*, I must decide whether each allegation is established on a balance of probabilities. In other words, for each allegation, I must determine whether it is more likely than not that Constable Whalen has contravened the RCMP Code of Conduct. If I find one or more of the allegations to be established, then I must impose conduct measures.

[5] Constable Whalen provided his response to the *Notice of Conduct Hearing*, pursuant to section 15 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. He admitted Allegations 2, 4, 5 and 7; he denied Allegations 1, 3, 6, 8, 9 and 10.

[6] Even though Constable Whalen has admitted to Allegations 2, 4, 5 and 7, there are many facts in dispute. On June 5, 2020, I provided the parties with a *Determination of Established Facts*, which sets out the facts that I found to be established in the Record. This helped to narrow the outstanding issues to be addressed at the conduct hearing.

[7] On January 22, 2021, Constable Whalen filed a motion for summary judgment, which was allowed in part. In accordance with my decision of March 4, 2021, Allegation 9 is stricken from the *Notice of Conduct Hearing*.

[8] For the reasons that follow, I find that Allegations 1, 2, 3, 4, 5, 6 and 7 are established. Allegations 8 and 10 are not established. Allegation 9 was stricken from the *Notice of Conduct Hearing*. Following the delivery of my oral decision on the allegations, the parties jointly proposed the imposition of a single conduct measure: order Constable Whalen to resign within

14 days, failing which he would be dismissed. I agreed and imposed the proposed measure. Constable Whalen resigned from the Force in accordance with my order.

Publication ban

[9] The parties requested a publication ban to prevent the identification of Constable Whalen's former spouse, C.C., and her three children.

[10] In accordance with paragraph 45.1(7)(a) of the *RCMP Act*, I order that any information that could identify the complainant, C.C., or her three children, shall not be published, broadcast or transmitted in any document or in any way.

[11] The children shall be referred to by their initials: L.C., K.W. and N.W. The children's specific ages and genders are not relevant to the allegations. It is sufficient to note that all three children were under the age of 18 at the time of the alleged incidents.

[12] Finally, I note that the allegations have been amended in order to give effect to this publication ban.

ALLEGATIONS

[13] In accordance with the *Notice of Conduct Hearing* and my decision on the pre-hearing motion, the allegations and particulars are as follows:

Allegation 1

On or between June 1, 2010 and October 20th, 2017, at or near [redacted], in the Province of Nova Scotia, Canada as well as in Cuba, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police (Assaults and Verbal Abuse).

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to "H" Division, Nova Scotia.
2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted]

and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.

3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive.

1st incident: Around summer 2010 or 2011 – [location redacted]

4. Around Summer 2010 or 2011, [C.C.] was living in RCMP housing, in [redacted], Nova Scotia, and you were residing in [redacted].

5. You attended [redacted] to visit her.

6. You had been drinking that day to a point where you could not leave the residence of [C.C.].

7. You had an argument with her in the kitchen, and at some point you pushed her down to the ground. [C.C.] landed on her stomach and you stomped on her back.

8. On March 8, 2018, you remembered getting into an argument, that you had drank too much, that you were going to leave but didn't. You said that you used to visit her in [redacted] and you often slept in separate beds because you weren't married and [L.C.] was there. You don't recall pushing [C.C.] on the ground or stomping on her back. You added that you are not the type of person to stomp on the back of a pregnant women for no reason.

2nd incident: Around Fall 2011 – [location redacted]

9. Around Fall 2011, [C.C.] was living in RCMP housing, in [redacted], Nova Scotia, and you were residing in [redacted].

10. You attended [redacted] to visit her.

11. [C.C.] was obviously pregnant at the time and was upset because you had been drinking and watching sports on TV and it was midnight.

12. You had an argument with her and you grabbed and twisted her arm, resulting in her falling on the floor.

13. You verbally abused her by calling her "half breed whore".

14. On March 8, 2018, you did not remember this incident but added that there was a lot of times where you and [C.C.] called each other names. You added that you "used to watch sports 'cause that's what I did."

3rd incident: Around November or December 2012 – [location redacted]

15. Around November or December 2012, [K.W.] was [age redacted] and you were residing with [C.C.] in [redacted], Nova Scotia.

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16. [C.C.] was supposed to attend a friend's place to watch "Magic Mike", a movie about male strippers. You had been drinking and had an argument with her.

17. [C.C.] asked you to leave and started taking your clothes out of the closet. You got angry, told her to stop, grabbed her by the throat, pushed her down to the ground and hit her with the back of your hand.

18. As a result of your actions, [C.C.] had bruises and a black eye.

19. On March 8, 2018, you remembered her going to watch Magic Mike, a male strippers show, but that the timeline of November 2013 or December 2013 suggested by the Code of Conduct Investigator did not make sense. You also remembered that, one time, she fell and she hit something in the kitchen and got a black eye but you did not know the timeline, probably five years. You added that it happened probably because she was drinking. You did not remember giving her a black eye or choking her around the throat.

4th incident: Around April 2017 – Cuba and around July 2017 – [location redacted]

20. Around April 2017, you went to a resort in Cuba with [C.C.] At one point, you told [C.C.] that somebody that was working at the resort made eyes at her. You got angry with [C.C.] and spent the whole night yelling and screaming at her and accusing her of liking the attention from other men.

21. After this behaviour in Cuba, you decided that you were going to talk to somebody and go off work. You went on sick leave around May 11, 2017.

22. Around July 2017, you were at a party with [C.C.] at the residence of [Mr. C.] in [redacted], Nova Scotia.

23. You had parked your tent trailer on [Mr. C.'s] property because you and [C.C.] intended on drinking.

24. You got angry at [C.C.] as a result of a comment she made about a male firefighter. You insulted her, calling her "whore, slut, cunt" and spat at her. You dump her wine on the ground.

25. On March 8, 2018, you remembered this incident in [redacted] but stated that you spat at her after she pushed you.

5th incident: Between October 19, 2017, and October 20th, 2017 – [location redacted]

26. On or between October 19, 2017 and October 20th, 2017, you were with [C.C.] at the family residence located at [address redacted].

27. You had been drinking and got into an argument with [C.C.] about another RCMP member, [Constable T.G.], attending a call for service with her on that day. You were yelling at her and asking her to check her phone which she refused because you were drunk.

28. [C.C.] went to the bedroom downstairs as she did not want to argue with you. You repeatedly went in and out of the bedroom and were verbally abusive to her. You asked to see her phone again and you were getting so loud that she gave it to you hoping you would calm down. You got angrier and when she reached to get her phone back you pushed her causing her to fall on the floor and hurt her lower back.

29. You went upstairs to the kitchen and [C.C.] eventually followed you, asked for her phone again and tried to reach for it. With her phone still in your hand, you made a hard motion with your arm, to bump her away as you did not want to give her the phone, and the phone caught [C.C.] on the right side of her chin. As a result, she had a bruise on the right side of her chin.

30. [C.C.] went to the home phone (land line) and was dialing 9-1-1 when you grabbed the home phone away from [C.C.].

31. On March 8, 2018, you remembered this incident and admitted to physical contact with [C.C.] in the bedroom downstairs when she was trying to grab her phone back.

32. You were subsequently arrested on October 20th, 2017 for domestic assault. On November 24, 2017 you were criminally charged for Assault on [C.C.] and for Uttering Threats to cause death or bodily harm to [C.C.]. You were released on an Undertaking with conditions.

33. Your actions amount to discreditable conduct.

34. On August 13th, 2018, you entered a guilty plea to the charge of Threats and two charges of breach. The assault charge was kept until the day of sentence which was on October 19, 2018. You were then sentenced for the charge of threats and the two charges of breach. As part of the plea bargaining, no evidence was presented for the assault charge and it was dismissed at the Crown's recommendation.

Allegation 2

On or between October 19th, 2017 and October 20th, 2017, at or near [redacted], in the Province of Nova Scotia, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. (Threats).

Particulars:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police ("RCMP") posted to "H" Division, Nova Scotia.

2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.

3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive.
4. On or between October 19th, 2017 and October 20th, 2017, you were with [C.C.] at the family residence located at [address redacted].
5. You had been drinking and got into an argument with [C.C.] about another member, [Constable T.G.], attending a call for service with her on that day.
6. You sent threatening text messages to [C.C.], threatening her and [Constable T.G.], wherein you wrote:

“I will destroy both of you”

[...]

“As far as I’m concerned any person who tries to entice someone who is married into some kind of sexual activity is a parasite, scumbag, douche. If it was someone else trying to do that you would be appalled. But because it involved you & “your” friend it’s to be forgotten about or accepted as “stupid” “irrelevant” & I’m reading more into then what was texted back & forth. Well here is something you two should realize... if I ever come across anything inappropriate between the two of you... I won’t miss & I will serve my time without any remorse for my actions.”
7. On March 8, 2018, you admitted sending these text messages to [C.C.].
8. As a result of your text messages, [C.C.] felt scared and threatened.
9. You further said to [C.C.] something along the lines that “the little lock was not going to keep you away from her gun”. At the time, [C.C.] had her gun secured at home.
10. Your conduct amounts to a criminal conduct of Uttering threats to cause death or bodily harm to [C.C.] and to [Constable T.G.].
11. You were subsequently arrested on October 20th, 2017 for domestic assault. You were criminally charged for Assault on [C.C.] and Uttering threats to cause death or bodily harm to [C.C.] and released on an Undertaking with conditions.
12. On August 13th, 2018, you entered a guilty plea for the Uttering Threats charge. You were convicted and sentenced by the [redacted] Provincial Court on October 19th, 2018 to a conditional discharge and a two year probation order.
13. Your actions amount to discreditable conduct.

Allegation 3

On or about October 20th, 2017, at or near [redacted], in the Province of Nova Scotia, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. (misleading investigations)

Particulars:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police ("RCMP") posted to "H" Division, Nova Scotia.
2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.
3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive.
4. On or between October 19, 2017 and October 20th, 2017, you were with [C.C.] at the family residence located at [address redacted].
5. You had been drinking and got into an argument with [C.C.] about another RCMP member, [Constable T.G.], attending a call for service with her on that day. You were yelling at her and asking her to check her phone which she refused because you were drunk.
6. [C.C.] went to the bedroom downstairs as she did not want to argue with you. You repeatedly went in and out of the bedroom and were verbally abusive to her. You asked to see her phone again and you were getting so loud that she gave it to you hoping you would calm down. You got angrier and when she reached to get her phone back you pushed her causing her to fall on the floor and hurt her lower back.
7. You went upstairs to the kitchen and [C.C.] eventually followed you, asked for her phone again and tried to reach for it. With her phone still in your hand, you made a hard motion with your arm, to bump her away as you did not want to give her the phone, and the phone caught [C.C.] on the right side of her chin. As a result, she had a bruise on the right side of her chin.
8. [C.C.] went to the home phone (land line) and was dialing 9-1-1 when you grabbed the home phone away from [C.C.].
9. On March 8, 2018, you remembered this incident and admitted to physical contact with [C.C.] in the bedroom downstairs when she was trying to grab her phone back.

Misleading and/or inaccurate statement

10. On October 20th, 2017, you provided an audio video statement to the investigator in which you refused to talk about what happen the previous night.

11. Later on the same day, on October 20th, 2017, you provided an audio recorded statement to the investigator in which you claim twice that you never assaulted your wife the previous night. This statement was misleading and/or inaccurate.

12. Your actions amount to discreditable conduct.

Allegation 4

On or between October 20th, 2017 and February 23, 2018, at or near [redacted], in the Province of Nova, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. (Breaches)

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to “H” Division, Nova Scotia.

2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.

3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive.

4. On October 20th, 2017, you were arrested for domestic assault. On November 24, 2017 you were criminally charged for Assault on [C.C.] and for Uttering Threats to cause death or bodily harm to [C.C.]. You were released on an Undertaking with conditions which you signed on October 20th, 2017. On December 21st, 2017, the original Undertaking was replaced by an Undertaking before a Judge, and included the same conditions, including not contacting or communicating with [C.C.].

5. On February 23rd, 2018, [C.C.] attended the [redacted] Police Ball at the Best Western [redacted]. After the event, she observed that she had 31 text messages from you, including comments such as: her hair looked nice curled, you knew she was staying in room 313, who was her date for the evening.

6. A review of the video footage of the Best Western of that evening did show you on the third floor of this hotel.

7. On February 25th, 2018, you were arrested for breaching your Undertaking and subsequently criminally charged. You provided a

statement and admitted breaching your Undertaking since your arrest in October, 2017, including: texting [C.C.] several times, meeting with her on more than five occasions, and having encounters of a sexual nature with her.

8. On August 13th, 2018, you entered a guilty plea for the Breach of Undertaking Charge. You were convicted and sentenced by the [redacted] Provincial court on October 19th, 2018 to a conditional discharge and a two-year probation order.

9. Your actions amount to discreditable conduct.

Allegation 5

On or between November 1, 2017 and December 31, 2017, at or near [redacted], in the Province of Nova Scotia, while off duty, Constable Gregory Whalen engaged in conduct that is contrary to section 8.3 of the Conduct of the RCMP. (Failure to Report)

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to “H” Division, Nova Scotia.

2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.

3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “H” Division, [redacted] RCMP Detachment, Nova Scotia.

4. On two occasions, while under the conditions of an undertaking, you attended [C.C.’s] residence and observed her duty belt with her firearm left unsecured. You took pictures of your observations.

5. On February 25, 2018, you were arrested for breaching your Undertaking and subsequently criminally charged. You provided a statement and disclosed the two firearm incidents. You confirmed that, at the time, you had checked the weapon and it was loaded, however you did not properly clear the firearm and secure it.

6. You failed to report the misconduct of [C.C.] as soon as feasible.

Allegation 6

On or about February 25, 2018, at or near [redacted] in the Province of Nova, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. (Obstruction of Justice)

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to “H” Division, Nova Scotia.
2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.
3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “H” Division, [redacted] RCMP Detachment, Nova Scotia.
4. On February 25, 2018, around 10:56 a.m., you were arrested for breaching your Undertaking and subsequently criminally charged.
5. While in police custody, you asked [Constable] Shane MacMullin, the arresting officer, if you could retrieve your lawyer’s information from your cellular phone which had been seized incidentally to your arrest.
6. Your cellular phone was handed over to you by [Constable] MacMullin, who observed you deleting text messages from your phone.
7. An analysis of your cellular phone was conducted and indicated that [on] February 25, 2018, one text message that was sent to a number associated to [Constable] [G.N.] was deleted from your phone.
8. You deleted at least one text message from your phone while in police custody, obstructing an ongoing investigation.
9. Your actions amount to discreditable conduct.

Allegation 7

On or between February 25, 2018 and July 4, 2018, at or near [redacted], in the Province of Nova, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. (Breaches)

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to “H” Division, Nova Scotia.
2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.

3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “H” Division, [redacted] RCMP Detachment, Nova Scotia.
4. At the time of the incident, [C.C.] was living in the family residence [address redacted] with [the children], and you were living at a different address.
5. At the time of the incident, you were under conditions of an Undertaking before a Judge, which included the conditions of not contacting or communicating with [C.C.], abstaining from going to [the family residence] (except to pick up or drop off the kids, or making arrangements for the kids) as well as abstaining from consuming alcohol.
6. Late at night on or about July 3rd, 2018, you attended [the family residence] and briefly spoke with [L.C.], who was alone watching TV when [L.C.] saw you open the back patio door and poke your head inside. [L.C.] asked you to leave, which you did.
7. On or about July 4th, 2018, Constables Michael Robinson and Shane Foster attended your residence [redacted] in order to arrest you for breaching your undertaking. They detected an odour of alcohol and as a result, you were arrested for breaching two conditions of your undertaking. You were subsequently criminally charged for these breaches.
8. On August 13, 2018, you entered a guilty plea for failing to comply with your undertaking and you were convicted and sentenced by the [redacted] Provincial Court on October 19, 2018 to a conditional discharge and a two-year probation order.
9. On October 23, 2018, you admitted attending [C.C.’s] residence late on the night of July 3rd, 2018 and consuming alcohol on the morning of July 4th, 2018 after you came back from [C.C.’s] residence.
10. Your actions amount to discreditable conduct.

Allegation 8

On or between July 2nd, 2018 and July 4th, 2018, at or near [redacted], in the Province of Nova, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. (Mischief)

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to “H” Division, Nova Scotia.

2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.
3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “H” Division, [redacted] RCMP Detachment, Nova Scotia.
4. At the time of the incident, [C.C.] was living in the family residence located at [address redacted] with [the children], and you were living at a different address.
5. You were under conditions of an Undertaking before a Judge, which included abstaining from going to [the family residence], except to pick up or drop off the kids, or making arrangements for the kids.
6. You attended the family residence, knowing that [C.C.] and your two children were away camping.
7. On or between July 2, 2018 and July 4, 2018, you intentionally punctured a hole in the bottom of the pool located in the backyard, causing the water to drain from the pool.
8. Your actions amount to discreditable conduct.

Allegation 9 – Stricken in accordance with motion decision of March 4, 2021

Allegation 10

On or about October 23, 2018, at or near [redacted], in the Province of Nova, while off duty, Constable Gregory WHALEN engaged in conduct that is contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police. (Voluntary Subject Member Statement)

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police, posted to “H” Division, Nova Scotia.
2. You were in a relationship with [C.C.] [...] and married her in September 2011. You have two children with [C.C.], [K.W.] [date of birth redacted] and [N.W.] [date of birth redacted]. She has a [child], [L.C.] [date of birth redacted], from a previous relationship.
3. Your relationship with [C.C.] was punctuated with domestic violence incidents. On more than one occasion, you used unwanted and inappropriate force on [C.C.] and you were verbally abusive. At all material times, you

were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “H” Division, [redacted] RCMP Detachment, Nova Scotia.

4. On or between July 2nd, 2018 and July 4th, 2018, you attended the family residence, knowing that [C.C.] and your two children were away camping. You intentionally punctured a hole in the bottom of the pool located in the backyard, causing the water to drain from the pool.

5. At the time of the incident, [C.C.] was living in the family residence [...] with [the children], and you were living at a different address.

6. On July 25th, 2018, you voluntarily participated in a polygraph test that was administered by Staff Sergeant Greg Vardy. When questioned about the damage to the pool you were found to be deceitful.

7. On October 23, 2018, you provided a voluntary Subject Member statement to Sergeant Alain Leblanc, investigator with the Professional Responsibility Unit. You denied any involvement in this incident which is inaccurate.

[*Sic throughout*]

EVIDENCE

[14] The allegations before me arose in the context of domestic violence. I note that domestic or family violence is not limited to acts of physical violence. The *Operational Manual*, Chapter 2.4 “Violence / Abuse in Relationships”, incorporates the following from the Department of Justice website:

[...]

Family violence is when someone uses abusive behaviour to control and/or harm a member of their family, or someone with whom they have an intimate relationship.

[...]

Family violence is not just physical violence. A person can be the victim of one or more forms of violence or abuse including: physical abuse; sexual abuse; emotional abuse; financial abuse; neglect.

[...]

Emotional abuse happens when a person uses words or actions to control, frighten or isolate someone or take away their self-respect. [...]¹

¹ <https://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html>

[15] While it is not in dispute that the relationship of Constable Whalen and C.C. was punctuated by incidents of family violence, there are several aspects of the allegations in which Constable Whalen and C.C. provide differing accounts of the events.

Applicable legal principles to determine credibility and reliability of evidence

[16] Both Constable Whalen and C.C. provided statements in the conduct process and in the parallel criminal investigations. Statements were also provided by Constable T.W., a friend and colleague of C.C., Ms. C.G., a mutual friend of C.C. and Constable Whalen, as well as by L.C., C.C.'s child from a previous relationship. The statements of Constable T.W., Ms. C.G. and L.C. were not challenged on cross-examination. I heard oral evidence from Constable Whalen and C.C.

[17] In assessing each witness's evidence, I must consider whether they are being truthful as well as whether their evidence is reliable (i.e., whether the witness is in a position to accurately perceive and recollect what they observed). I may find a witness's evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness's evidence on a given point.

[18] In assessing credibility, I must not look at a witness's evidence in isolation, but rather look at the totality of the evidence. I must also consider the impact of the inconsistencies in that evidence and whether, when taken as a whole in the context of the totality of the evidence, they impact the witness's credibility.²

[19] In *Faryna*,³ the Court noted that a witness's evidence cannot be assessed solely on their demeanour (i.e., that they appear to be telling the truth). Rather, a trier of fact must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts.

² *F.H. v McDougall*, 2008, 3 SCR 53, at paragraph 58.

³ *Faryna v Chorney*, (1952) 2 DLR 354 [*Faryna*].

[20] The determination of whether the witness's account has an "air of reality" is subjective, but it must be grounded in the totality of the evidence.⁴

[21] As noted by counsel in their submissions, my findings with respect to the credibility and reliability of their evidence will, in some instances, be determinative of an issue.⁵

Evidence of C.C.

[22] On the whole, I found C.C.'s evidence to be both credible and reliable.

[23] The Subject Member Representative identified three areas of inconsistencies between her oral evidence and her statements or the oral evidence of Constable Whalen. He submitted that these inconsistencies were significant and impugned her credibility.

[24] In the first instance, he highlighted that the parties had different views on when they officially began "dating" and, in particular, that C.C. did not consider that they were "dating" after their first sexual encounter. He suggested that C.C. was "shading the facts".⁶ I find that this is an overstatement. Even if I were to accept the Subject Member Representative's characterization of C.C.'s evidence, it is a minor inconsistency on a peripheral matter that is not relevant to the allegations before me.

[25] In the second instance, the Subject Member Representative sought to identify inconsistencies in C.C.'s description of the events of March 30, 2017. Upon my review of the evidence, I do not find that there is any inconsistency.

[26] I find that C.C.'s evidence is consistent both internally and with the externally established facts. In all of her statements and oral evidence, C.C. was forthright, even when it had the potential to reflect poorly on her. In her oral evidence, C.C. answered questions directly. She did not speculate or exaggerate.

⁴ *Supra* note 2.

⁵ *Supra* note 2, at paragraph 86.

⁶ Conduct Hearing Transcript, April 14, 2021, at page 60.

Evidence of Constable Whalen

[27] By contrast, I had difficulty with the credibility and reliability of Constable Whalen's evidence. There were several inconsistencies within his oral evidence as a whole; as well as between his oral evidence, his prior statements and his section 15 response. For example, after initially testifying that C.C. was not a heavy drinker, with the exception of a six-month period following Depot, he insisted that, in every incident, she was drinking heavily.

[28] In the course of his oral evidence, Constable Whalen was often evasive or otherwise unresponsive. For example, he answered questions with another question or deflected from the question posed by talking about another issue without actually providing a meaningful response. In several cases, his account is not in harmony with the evidence as a whole.

[29] Constable Whalen was unable to recall any significant details about several incidents set out in Allegation 1. However, he found a renewed memory of these events over the course of his oral evidence. I found this difficult to reconcile.

[30] In addition, during his oral evidence, Constable Whalen made new accusations about C.C.'s behaviour, including a particularly cruel term he alleged she had called him, as well as new information about his alleged actions. This new information was not put to C.C. in cross-examination. In accordance with the rule in *Browne*,⁷ I cannot ascribe any significant weight to it.

[31] Consequently, I have preferred the evidence of C.C. over that of Constable Whalen. In several instances, that preference is determinative of my findings of fact.

ANALYSIS**Facts common to several allegations:**

[32] The following are my findings of fact relevant to several allegations.

⁷ *Browne v Dunn*, (1893) 6 R 67 (H.L.).

[33] At all material times, Constable Whalen was a member of the RCMP, posted to “H” Division, Nova Scotia. Constable Whalen and C.C. met at Depot in 2009. Their relationship became more serious after graduation. They were married in September 2011. They have two children. C.C. has another child from a previous relationship.

[34] Constable Whalen’s relationship with C.C. was punctuated with incidents of domestic violence. On several occasions, Constable Whalen used inappropriate force on C.C. and was also verbally abusive. It is not in dispute that, at 6’3” and approximately 250 lb., Constable Whalen is considerably larger than C.C.

[35] Over the course of their relationship, Constable Whalen displayed controlling behaviours, including but not limited to monitoring C.C.’s financial transactions to assess her activities, monitoring her social media accounts and phone activities, texting or questioning her to ascertain her whereabouts, whom she met with or communicated with and her activities. The evidence of C.C. and Constable T.W. on these points is not contested. It is also supported by the audio evidence in the Record.

[36] C.C. admitted that, during some arguments, she cursed and called Constable Whalen derogatory names. She acknowledged that it was possible that she may have initiated physical contact with Constable Whalen at some points over the course of their relationship. At some point during their arguments, C.C. threw a coffee cup and a picture frame to the ground.

[37] In the course of an argument on March 30, 2017, C.C. did throw a glass at or near Constable Whalen. The glass struck Constable Whalen at or near his elbow, causing a cut. C.C. was immediately apologetic and encouraged Constable Whalen to report the incident.

[38] Constable Whalen reported the incident on February 25, 2018. On May 2, 2018, C.C. admitted to and was found to have contravened section 7.1 of the Code of Conduct.

[39] Constable Whalen was arrested on October 20, 2017, for domestic assault. He was released on a promise to appear and signed an undertaking with conditions.

[40] The undertaking signed by Constable Whalen in October 2017 included the following conditions:

- a. To notify the [redacted] RCMP Detachment of any change in his address or employment;
- b. To abstain from any communication, directly or indirectly, with C.C. (no exceptions) or from going to the family residence except to have contact with his children after third-party arrangements have been made by Constable [G.N.].
- c. To abstain from possessing a firearm and to surrender to [redacted] RCMP any firearm in his possession and any authorization, licence or registration certificate or other document enabling the acquisition or possession of a firearm; and
- d. To abstain from the consumption of alcohol, other intoxicating substances or drugs except in accordance with a medical prescription.

[41] On November 24, 2017, Constable Whalen was criminally charged for assault against C.C. and for uttering threats to cause death or bodily harm to C.C.

[42] On December 21, 2017, the original undertaking of October 20, 2017, was replaced by an undertaking before a judge with the same conditions. However, Constable Whalen was permitted to be at the family residence for a four-hour period on December 25, 2017.

[43] On February 25, 2018, Constable Whalen was arrested for breaching his undertaking and was subsequently criminally charged. On July 4, 2018, Constable Whalen was again arrested for breaching his undertaking and was criminally charged. On August 13, 2018, Constable Whalen entered a guilty plea to the charge of uttering threats and two charges of breach. The assault charge was kept until the day of sentence.

[44] On August 16, 2018, C.C. admitted and was found to have contravened section 7.1 of the Code of Conduct. She was found to have enabled Constable Whalen to breach his undertaking by communicating with and/or seeing him over the period of October 20, 2017, to February 25, 2018.

[45] Also on August 16, 2018, C.C. admitted and was found to have contravened section 4.3 of the Code of Conduct, as a result of the unsafe storage of her firearm on or between November 1, 2017, and December 31, 2017.

[46] On October 19, 2018, Constable Whalen was sentenced for the charge of uttering threats and the two charges of breach. As part of the plea bargain, no evidence was presented for the assault charge and it was dismissed at the Crown's recommendation. Constable Whalen was sentenced to a conditional discharge with 24 months of probation. The terms and conditions imposed were jointly submitted.

[47] I will now turn to my findings of fact and analysis for each allegation.

Allegation 1: Discreditable conduct – Acts of domestic violence

[48] Allegation 1 is that Constable Whalen perpetrated several acts of domestic violence against C.C., thereby engaging in discreditable conduct, contrary to section 7.1 of the Code of Conduct.

[49] Constable Whalen admitted to incidents of domestic violence during his relationship with C.C. However, he insisted in his response to the allegations that these were “mutual” and that he was also a victim of C.C.'s “physical and verbal abuse”. He stated that when he “applied force on [C.C.], it was in a restraining context.”⁸ He denied each of the five incidents set out in Allegation 1.

[50] Both parties provided audio evidence in support of their account of events. C.C. provided an audio recording of interactions with Constable Whalen in the early hours of October 20, 2017. This was a spontaneous recording that, she testified, she had initiated out of fear. Given my findings of fact with respect to the events of that evening, I find her rationale for initiating the recording to be credible.

⁸ Constable Whalen's response pursuant to section 15 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, at pages 1 and 2.

[51] While it was not relied upon during the hearing, Constable Whalen also provided a recording of an argument between himself and C.C. to investigators, which is found in the Record. This recording does not appear to be spontaneous. Rather, it appears that Constable Whalen provoked an argument, in which he goads C.C. on, while maintaining his composure. Consequently, I do not accord it much weight.

[52] I will provide my findings of fact with respect to each incident set out in Allegation 1. I will then provide my findings with respect to each element of the test under section 7.1 of the Code of Conduct.

[53] There are five incidents at issue

Findings of fact

Incident 1: Around summer 2010 or 2011 – [location redacted]

[54] The first incident took place in the summer of 2010, before they were married. C.C. was living in Nova Scotia. Constable Whalen was living in in a different town, in Nova Scotia. They would travel back and forth to visit one another on their days off.

[55] On one such visit, Constable Whalen travelled to visit C.C. On the evening in question, he drank to the point that he could not leave her residence.

[56] Constable Whalen and C.C. argued. Neither can recall the substance of their argument. They both recalled being in the kitchen at some point during the argument and that C.C. did fall to the floor. They disagreed as to what caused her to fall.

[57] I find that C.C.'s account is more credible and reliable than that of Constable Whalen. This is one of the instances in which Constable Whalen claimed, in his statements and in his response to the allegations, to have very little recollection of the event, but he regained specific and clear memories during his oral evidence. C.C.'s evidence, by contrast, has been consistent throughout.

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[58] I find that Constable Whalen pushed C.C. to the ground, where she landed on her stomach. I further find that, while C.C. lay on the floor, Constable Whalen applied force to her back with his foot. He then stepped over her and walked out of the kitchen. C.C. was not injured as a result of this incident.

[59] With the exception of the description of Constable Whalen “stomping” on C.C.’s back and that neither party recalled L.C. being present that evening, Particulars 4 to 8 are established.

Incident 2: Fall 2011 – [location redacted]

[60] The second incident took place in the fall of 2011. C.C. was living in Nova Scotia and was pregnant. Constable Whalen was still living in a different town in Nova Scotia. On this occasion, he travelled to visit her. C.C. became upset because Constable Whalen was drinking, watching sports and it was midnight. An argument ensued.

[61] Constable Whalen was verbally abusive towards C.C., calling her a “half-breed whore”. This comment was particularly offensive to C.C., as it is linked to her multi-ethnic heritage.

[62] Both C.C. and Constable Whalen’s evidence is consistent that Constable Whalen grabbed and twisted C.C.’s arm, which caused her to go down to her knees and then to the floor.

[63] Particulars 9 to 14 are established.

Incident 3: November or December 2012 – [location redacted]

[64] The third incident took place in the fall of 2012. Constable Whalen and C.C. were married and living together with the children.

[65] On the evening in question, C.C. was supposed to attend a friend’s house to watch “Magic Mike”, a movie about male strippers. Constable Whalen had been drinking. He was upset about C.C. watching this movie and they argued.

[66] C.C. asked Constable Whalen to leave. She went to their bedroom and began taking his clothes out of the closet. Constable Whalen told her to stop, but she continued to take his clothes out of the closet.

[67] Constable Whalen then applied physical force to C.C. in order to stop her from removing his clothing. Constable Whalen did not deny applying force to C.C.'s arms and chest area. In fact, he seemed to suggest that he was justified in doing so to stop her from removing his clothes as he had directed. However, he denied hitting her in the face or grabbing her neck.

[68] I prefer C.C.'s evidence as to the nature of force used by Constable Whalen. I find that Constable Whalen grabbed C.C.'s throat, pushed her to the floor and hit her in the face. As a result of his actions, C.C. had bruises to her upper body and a black eye.

[69] The black eye was observed by C.C.'s friend, Ms. C.G. While Ms. C.G. was uncertain as to whether she observed the black eye in the summer or fall, I find C.C.'s recollection of the timing of the incident to be reliable, in part as it is anchored in time to securing K.W.'s first passport, which was issued on November 1, 2012. C.C. and Constable Whalen would, accordingly, have attended the passport office earlier that fall to submit the application. This accords with C.C.'s account of the events.

[70] Particulars 15 to 19 are established.

Incident 4: April 2017 – Cuba and July 2017 – [location redacted]

[71] The 4th set of incidents involve a trip to Cuba in April 2017 and a local trip in July 2017.

[72] In April 2017, Constable Whalen and C.C. travelled to Cuba. While at the resort, a staff member "made eyes" at C.C. Constable Whalen became angry, and accused C.C. of enjoying the attention. They returned to their room, where they had a verbal argument. I acknowledge that this argument, in and of itself, does not constitute discreditable conduct. However, it does form part of my factual findings and is relevant to the dynamics of their relationship.

[73] In July 2017, C.C. and Constable Whalen attended a party at a friend's home in a nearby town. They had planned to stay the night there with the two younger children as they intended to consume alcohol at the party. In advance of the party, Constable Whalen set their tent trailer up at the front of their friend's property, near the road. The party was held at the back of the property, behind the house.

[74] Constable Whalen was drinking. C.C. was primarily watching the children and was not drinking prior to putting the children to bed. She then poured herself a glass of wine and joined the rest of the adults.

[75] She was engaged in a conversation with a friend, approximately 10 feet away from Constable Whalen. In the course of her conversation, her friend mentioned that she may have to provide home care for a firefighter who was a mutual acquaintance. C.C. made a lighthearted comment to the effect of "that's not a bad gig". Constable Whalen immediately made it known that he did not appreciate her comment. He left and attempted to draw her over to the trailer. When C.C. did not leave her friend, Constable Whalen came over and told her that they needed to speak at the trailer.

[76] C.C. did not want to make a scene and complied. She went to the trailer to speak to Constable Whalen, who was very angry. Constable Whalen knocked C.C.'s glass of wine, causing it to spill and poured out the bottle of wine. He was also verbally abusive, calling C.C. a whore, slut and cunt.

[77] Constable Whalen also spat at C.C. His spit made contact with her body, in or around the chest area. C.C. then went into the trailer and changed into her bed clothes.

[78] Constable Whalen acknowledged that he spat at C.C. However, he stated that this was only after she had pushed him. I do not find his account of the events to be credible or reliable. At the time of the incident, he had been drinking for several hours. C.C. was relatively sober. Additionally, Constable Whalen provided contradictory accounts of the timing of the alleged "push" by C.C., including within his oral evidence. At one point, he said she had pushed him before he spat on her. Later, he testified that it was as she went into the trailer to change.

[79] Following a noise complaint, members attended the property. The members were known to both C.C. and Constable Whalen, and spoke with them outside the trailer. Neither of them reported having been assaulted.

[80] Constable Whalen and C.C. re-entered the trailer after the members left. At some point later that night, they had sex. While she never explicitly told Constable Whalen so, C.C. testified that she would often use sex to calm him down when he was angry.

[81] Particulars 15 to 25 are established with the following caveat: I do not find that C.C. pushed Constable Whalen at any point during the incident at their trailer.

Incident 5: Between October 19, 2017, and October 20, 2017 – [location redacted]

[82] The fifth incident took place on October 19, 2017, and into the early hours of October 20, 2017. Constable Whalen and C.C. were at the family residence.

[83] C.C. and Constable T.G. had previously exchanged flirtatious texts. Constable Whalen had accessed C.C.'s phone and had reviewed the text messages. Constable Whalen felt that these text messages were evidence of an affair between C.C. and Constable T.G., and he confronted her. She denied having an affair with Constable T.G.

[84] Constable Whalen testified that he discovered the flirtatious texts approximately six weeks prior to October 19, 2017. C.C. testified that it was in fact approximately two weeks prior. I have preferred C.C.'s evidence on this point as it is consistent with the preponderance of the evidence, including the audio recording made in the early hours of October 20, 2017.

[85] On October 19, 2017, C.C. returned home from work in the late afternoon. They argued about Constable T.G. attending a call for service with C.C. earlier that day.

[86] C.C. testified that Constable Whalen was drinking rum and cola. She then left to go for a walk. She returned to the home after 9 p.m. The two younger children were already in bed.

Constable Whalen demanded to see C.C.'s phone. C.C. refused because she felt Constable Whalen was drunk.

[87] Constable Whalen testified that he had started drinking spiced rum and diet pepsi sometime between 5 p.m. and 7 p.m. He testified that he had started drinking beer while C.C. was out. He estimated that he had consumed three beers while she was out, and another after she returned.

[88] C.C. went upstairs to try to defuse the situation. While she was upstairs, Constable Whalen sent her the threatening texts that are the subject of Allegation 2.

[89] C.C. went to take a shower in the en-suite to their bedroom. The wall to the shower is shared with the back of the closet. While in the shower, she heard Constable Whalen rummaging around in her closet, where she kept the lockbox containing her gun.

[90] Upon exiting the shower, she checked to see if her lockbox was still there. It was there, but it had been moved.

[91] I do not find Constable Whalen's explanation for how the lockbox came to be moved to be credible. He testified that K.W. woke up while C.C. was in the shower, went into their closet in search of toys and in so doing moved the lockbox before returning to bed, prior to C.C. coming out of the shower. It is reasonable to expect that C.C. would have heard some conversation between Constable Whalen and K.W. if that had been the case. In addition, this "new" explanation was only raised during his oral evidence. It was not put to C.C. during her oral evidence; therefore, I can give it little weight. Consequently, I find that it is more likely than not that Constable Whalen was handling the lockbox while C.C. was in the shower.

[92] After her shower, C.C. went to sleep in the downstairs bedroom in order to avoid Constable Whalen. She took the lockbox with her and hid it in the drawer of the bed in the downstairs bedroom.

[93] Constable Whalen came downstairs and demanded to see her phone. At some point, C.C. allowed Constable Whalen to take her phone. She then changed her mind and tried to get it back. Constable Whalen refused to return her phone.

[94] C.C. reached for her phone. In order to maintain control of the phone, Constable Whalen pushed C.C., which caused her to fall. She landed on her behind on the floor, rolling backwards onto her back.

[95] Constable Whalen went upstairs with C.C.'s phone. C.C. followed him to the kitchen, near the patio door, and again reached for her phone. Constable Whalen swung his arm backwards and struck C.C. on the right side of her chin with the phone. As result of this physical contact, C.C. suffered a bruise to the right side of her chin.

[96] C.C. attempted to dial 9-1-1 on the home phone. Constable Whalen grabbed the phone from C.C. and the call was not completed. At that time, L.C. came into the room and asked C.C. if she was ok. Constable Whalen, still angry, told L.C., in very vulgar terms, that their mother was having an affair and sleeping with other men.

[97] C.C. reported the incident to Corporal Rose on October 20, 2017. Corporal Rose took photographs of the bruising on C.C.'s chin; these are found in the Record.

[98] Particulars 26 to 32 and 34 are established. Particular 33 is a statement that the actions amount to discreditable conduct. This is the issue that I must determine.

Did Constable Whalen engage in discreditable conduct?

[99] Section 7.1 of the RCMP Code of Conduct states: "Members behave in a manner that is not likely to discredit the Force."

[100] The test for "discreditable conduct" under section 7.1 of the Code of Conduct requires that the Conduct Authority establish the following four elements on a balance of probabilities:

- a. the acts that constitute the alleged behaviour;

- b. the identity of the member who is alleged to have committed these acts;
- c. that the member's behaviour is likely to discredit the Force; and
- d. that the member's actions are sufficiently related to their duties and functions as to provide the Force with a legitimate interest in disciplining them.

[101] As a result of Constable Whalen's admissions and my findings of fact, I find that the first two elements of the test are satisfied. Therefore, I will turn my attention to determining whether the third and fourth elements of the test are established.

[102] The particulars, as established, describe acts of domestic violence. They are not isolated incidents. C.C. acknowledges that she did act improperly and that, over the years, she may also have been physical with Constable Whalen. However, when viewed in the context of the evidence as a whole, a pattern of domestic violence in which Constable Whalen was the dominant aggressor becomes clear.

[103] It is well established that members must adhere to the Code of Conduct both on- and off-duty. As a member, Constable Whalen is called upon to enforce the law as well as to respond to calls and conduct investigations into allegations of domestic violence.

[104] I find that a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Constable Whalen's actions as likely to bring discredit to the RCMP. I further find that his actions may impair his ability, or the public's confidence in his ability, to impartially perform the duties of a member of the RCMP. In particular, the public would lose confidence in his ability to impartially investigate acts of domestic violence. As such, I find that Constable Whalen's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[105] Consequently, I find that Allegation 1 is established.

Allegation 2: Discreditable conduct – Uttering threats

[106] I make the following additional findings of fact with respect to Allegation 2, which also involves a contravention under section 7.1 of the Code of Conduct:

[107] Constable Whalen admits that, on the evening of October 19, 2017, he sent the following threatening text messages to C.C.:

[...]

I will destroy both of you.

[...]

As far as I'm concerned any person who tries to entice someone who is married into some kind of sexual activity is a parasite, scumbag, douche. If it was someone else trying to do that you would be appalled. But because it involved you & 'your' friend it's to be forgotten about or accepted as 'stupid' 'irrelevant' & I'm reading more into then what was texted back & forth. Well here is something you two should realize... if I ever come across anything inappropriate between the two of you... I won't miss & I will serve my time without any remorse for my actions.

[...]

[108] The friend referenced in the noted text was Constable T.G. Constable T.G. had previously been involved in a serious operational incident in which he fired at the suspect but missed.

[109] After the events of October 19, 2017, to October 20, 2017, took place, as described in Allegation 1, C.C. returned to the downstairs bedroom. She attempted to sleep. However, Constable Whalen repeatedly entered the bedroom, demanding to see her phone. Constable Whalen described this as a repetitive, but benign request. However, the audio recording of October 20, 2017, establishes that Constable Whalen was aggressive and unrelenting in his demands to see her phone. He yelled insults at her, made vulgar accusations and repeatedly threatened to prevent her from having access to the children.

[110] Particulars 1 to 7 and 9 to 12 are established. With respect to the comment Constable Whalen made about C.C.'s firearm, as set out in Particular 9, I find that, in the course of making

his demands for the phone, the audio recording establishes that Constable Whalen made the following statement:

[...]

Constable Whalen: “[...] my wife is hiding. My wife is denying. Playing me as a fool. FYI if you don’t think I have a lock for your gun locker, ha!”

C.C.: “What does that mean?”

Constable Whalen: “Just what I said”

[...]

[111] With respect to Particular 8, I find that C.C. felt scared and threatened. Her actions, namely by taking her firearm with her to the basement, demonstrate her state of mind. Moreover, in the context in which she was living, namely in a relationship in which she had experienced domestic violence and where her spouse had, that evening, threatened her life, her expression of fear is reasonable. Her fear was also evident in the audio recording of the cited passage.

[112] Once again, the identity of Constable Whalen and his acts that constitute the misconduct are established.

[113] Constable Whalen asserts that he did not intend to carry out the threat. I cannot state whether he did or did not intend to do so. However, given the presence of a firearm in the home to which Constable Whalen suggested he could gain access, his training in the use of a firearm and his intense jealousy as evidenced by my findings of fact with respect to Allegation 1, an objective person would find the text was a credible threat that would cause a concern for their safety.⁹ Moreover, Constable Whalen admitted to and pleaded guilty to a criminal charge of uttering threats.

[114] There is little question that a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Constable Whalen’s actions as likely to bring discredit to the Force. I further find that his actions may impair his ability or the public’s confidence in his ability to impartially

⁹ *R. v McRae*, 2013 SCC 68.

perform the duties of a member of the RCMP. The public would reasonably question his ability to enforce laws that he himself does not respect. As such, I find that Constable Whalen's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[115] Accordingly, Allegation 2 is established.

Allegation 3: Discreditable conduct – Misleading investigators

[116] Allegation 3 is of a contravention of section 7.1 of the Code of Conduct. The Subject Member Representative, relying on *Verhaeghe*,¹⁰ did not take issue with the fact that this allegation was framed as a contravention of section 7.1 as opposed to section 8.1 of the Code of Conduct.

[117] Relying on my findings of fact for Allegations 1 and 2, I find that Particulars 1 to 9 are established.

[118] On October 20, 2017, Constable Whalen declined to give a statement to the Serious Incident Response Team investigator. Instead, he indicated that he wished to report an assault committed by C.C. against him.

[119] In the course of providing a witness statement to the same investigator later that day, Constable Whalen twice asserted that he had not assaulted his wife the previous night.

[120] Constable Whalen did not deny making the statements. However, he did attempt to justify them by stating that he did not feel that his actions, in seeking to retain control of C.C.'s phone, constituted assault.

[121] I note that the investigator did not ask Constable Whalen to explain his actions. He had already declined to provide a statement in relation to the assault investigation. Rather he

¹⁰ *Commanding Officer "D" Division and Constable Bruce Verhaeghe*, 2018 RCAD 2 [Verhaeghe].

volunteered these statements while providing a witness statement in relation to an unrelated incident.

[122] I agree with the Conduct Authority Representative that, in this context, his subjective interpretation of his actions is irrelevant. He did not need to speak to the assault. He chose to do so. His statements are, at worst, an outright lie. At best, they are misleading.

[123] Particulars 10 and 11 are established. I find that a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Constable Whalen's actions, in providing a false or misleading statement to an investigator, as likely to bring discredit to the Force. His actions go to the heart of the value of integrity that is expected of all RCMP members. As such, I find that Constable Whalen's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[124] For these reasons, Allegation 3 is established.

Allegation 4: Discreditable conduct – Breach of undertaking

[125] Allegation 4 is another contravention of section 7.1 of the Code of Conduct, as a result of Constable Whalen's breach of the undertaking as issued on December 21, 2017.

[126] Constable Whalen has admitted all of the particulars of this allegation.

[127] Additionally, I find that, between October 20, 2017, and the end of February 2018, C.C. exchanged texts with Constable Whalen for reasons unrelated to the children. They exchanged sexually explicit pictures or videos and engaged in consensual sexual acts on five occasions over this same period of time.

[128] I find the fact that Constable Whalen sent 31 text messages to C.C. on the evening of February 23, 2018, to be particularly troubling, particularly when viewed in the context of his full actions, namely attending the hotel and tracking C.C.'s activities while at the ball. He asked employees at the hotel for her room number and is seen on video on the floor of her room. In his

texts, he commented on her appearance, asked her who her date was, and made a point of telling her that he knew which room she was in. I do not find Constable Whalen's explanation, in cross-examination, of the purpose of the texts to be credible. For example, he suggested that the text about C.C.'s hair was in relation to a photo she sent one week prior and not of her hair on the evening in question.

[129] I find Constable Whalen's actions are demonstrative of his possessive and controlling behaviour towards C.C. throughout their relationship and as a part of a pattern of domestic violence.

[130] In that context, for the same reasons expressed in Allegation 1, I find that Constable Whalen's actions are likely to discredit the RCMP and that his actions are sufficiently related to his duties and functions as to provide the RCMP with a legitimate interest in discipline them. Consequently, Allegation 4 is established.

Allegation 5: Failure to report

[131] Allegation 5 is of a contravention of section 8.3 of the Code of Conduct. It involves Constable Whalen's failure to report C.C.'s misconduct with respect to the unsafe storage of her firearm.

[132] Constable Whalen admitted all of the particulars to this allegation. These admissions, together with the findings set out in the *Determination of Established Facts* establish that Constable Whalen knew that he had a duty to report the misconduct of another member. He directly observed the unsafe storage of C.C.'s firearm in the family residence on two or three occasions in late December 2017.

[133] Constable Whalen did not clear or secure the firearm on either occasion. He admitted that he took the firearm out of the holster and took a picture, with C.C.'s ID, in order to provide a record for use in family law proceedings.

[134] Constable Whalen sent C.C. an email on January 4, 2018, in which he admonished her for the unsafe storage of her firearm.

[135] Ultimately, Constable Whalen knew that he had a duty to report C.C.'s misconduct. He failed to do so until February 25, 2018, when he was arrested for the breach of his undertaking. As such, Allegation 5 is established.

Allegation 6: Discreditable conduct – Deleting text message while in custody

[136] Allegation 6 is of a contravention of section 7.1 of the Code of Conduct, resulting from Constable Whalen's deletion of a text message while in police custody.

[137] Constable Whalen's admissions in his section 15 response, my findings in the *Determination of Established Facts*, together with the results of the analysis of Constable Whalen's phone establish that, while in police custody, Constable Whalen deliberately deleted a text message he had received from Constable G.N. The content of that message was: "nope. Didn't say anything."

[138] I find that Constable MacMullin provided Constable Whalen's phone to him for the purpose of finding his lawyer's contact information. Constable Whalen had to power up the phone and, as he did so, the message from Constable G.N. appeared on his screen. He deleted the message.

[139] The question is whether doing so constituted discreditable conduct.

[140] The Conduct Authority Representative argues that Constable Whalen's actions are akin to obstruction of justice. The Subject Member Representative argues in part that Constable Whalen's actions could not reasonably be considered to have the potential to obstruct justice.

[141] Obstruction of justice entails at its core the interference with the proper administration of justice. In this case, Constable Whalen's phone was seized incidentally to his arrest. Its contents and, in particular, his text messages were directly relevant to the reported breach of his undertaking. Constable Whalen knew this. Moreover, the undertaking provided that arrangements for the children were to be made through Constable G.N.

[142] As such, texts between Constable Whalen and Constable G.N. were relevant to the investigation. By deleting that message, Constable Whalen destroyed evidence that can reasonably be considered relevant to the investigation. In so doing, he interfered with the investigation of the reported breach of his undertaking. It does not matter whether the message was ultimately determined to be significant.

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

[144] In light of a member's duty to maintain the administration of justice, as set out in paragraph 37(b) of the *RCMP Act*, I further find that his actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. As such, I find that Constable Whalen's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[145] Allegation 6 is established.

Allegation 7: Discreditable conduct – Breach of undertaking

[146] Allegation 7 is of a contravention of section 7.1 arising out of a breach of Constable Whalen's undertaking.

[147] Constable Whalen has admitted all of the particulars, with the exception of Particular 7, in which he clarified that there were three officers who attended his residence.

[148] The circumstances of Constable Whalen's unauthorized attendance at the family residence are set out in the *Determination of Established Facts*. I have found that C.C. advised Constable Whalen that she would be taking the children camping from July 2, 2018, to July 4, 2018. She was to meet Constable Whalen on July 4, 2018, at which point he was going to take K.W. and N.W. for a few days before going to Alberta.

[149] C.C. did not tell Constable Whalen that L.C. was not going with them and that L.C. would be staying back at the house. Constable Whalen had not had any contact with L.C. since March 20, 2018.

[150] Early in the morning of July 4, 2018, L.C. had finished watching a movie and was sitting on the couch on the main floor of the residence. L.C. observed the back patio sliding door open. Constable Whalen poked his head inside the house. He asked L.C. why they weren't camping with their mother. After a very brief exchange, L.C. asked Constable Whalen to leave, which he did. L.C. locked the back door behind him, and then checked the other two doors. One was locked, the other unlocked. L.C. locked that door and then went to a window at the front of the house. From that window, L.C. observed Constable Whalen walk to his car, which was parked on the street just beside the driveway, and drive away.

[151] L.C. called C.C. to ask whether she had asked Constable Whalen to check in on them. C.C. had not done so. After the call with C.C., L.C. got the following text from Constable Whalen: "Thought maybe you and I could chat about some things". L.C. was not receptive to Constable Whalen's message and blocked his number.

[152] In or around that same time, C.C. sent Constable Whalen a text asking him what he was doing. Constable Whalen saw members driving by his residence at that time.

[153] I make the following additional findings of fact, following consideration of the oral evidence received at the hearing.

[154] Constable Whalen and L.C. maintained contact between October 2017 and March 2018. They had a falling out in March 2018, close to Saint Patrick's Day.

[155] Following the separation, Constable Whalen and C.C. each maintained possession of one of the two family vehicles. The vehicle driven by C.C. broke down and they could not afford the repairs. C.C. wanted to transfer the registration of the vehicle to the dealer, but Constable Whalen refused. This effectively prohibited C.C. from securing another vehicle. L.C. was very upset with Constable Whalen and made it clear that they wanted no further contact with him.

Constable Whalen did not have any contact with L.C. after approximately March 20, 2018, until the events of July 3 and 4, 2018.

[156] I do not find Constable Whalen's testimony that he knew L.C. was home alone to be credible. He makes no mention of this knowledge in his section 15 response. This was one of two instances in which Constable Whalen testified that one of his young children had disclosed information to him. Without prior disclosure of this information, as is required under section 15 of the *CSO (Conduct)*, the reliability of this evidence could not be verified. Consequently, I have accorded little to no weight to it.

[157] Moreover, Constable Whalen's account is in direct contradiction to L.C.'s statement. The Subject Member Representative suggests that Constable Whalen did not have the opportunity to challenge L.C.'s recollection prior to the hearing. However, Constable Whalen received a copy of L.C.'s statement as part of the investigation materials, prior to completing his section 15 response to the allegations. He did not provide his account of events in his response. In addition, Constable Whalen could have sought to cross-examine L.C.'s evidence on this point. Having elected not to do so, he cannot now seek to impugn the reliability of that evidence.

[158] Constable Whalen admitted in his oral evidence that, on July 3, 2018, he drank half a pint of hard liquor at supper time (approximately 6 p.m.). He drove to the family residence after midnight on July 4, 2018. He maintains that he was not intoxicated.

[159] I find that Constable Whalen did not knock, ring the doorbell or seek entry through the front, side or garage door prior to moving to the back of the house. I do not find that Constable Whalen's assertion that the side door and garage door, which were the primary doors used by the family, were locked to be credible or reliable. Again, it is in contradiction to L.C.'s statement. One of those doors was unlocked.

[160] I find that Constable Whalen went to the back patio door and opened the door. He did not knock or otherwise announce his entry.

[161] After returning to his residence, Constable Whalen consumed alcohol. Members attended his residence in the early morning hours of July 4, 2018. They detected the odour of alcohol on his breath.

[162] In light of Constable Whalen pleading guilty to the breach of his undertaking, I find that the first two elements of the test under section 7.1 of the Code of Conduct are established.

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

[164] In light of a member's duty to maintain the administration of justice, as set out in paragraph 37(b) of the *RCMP Act*, I further find that his actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. As such, I find that Constable Whalen's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[165] Accordingly, Allegation 7 is established.

Allegations 8 and 10: Damage to the pool at the family residence

[166] Constable Whalen is alleged to have damaged the pool at the family residence, in contravention of section 7.1 of the Code of Conduct (Allegation 8). It is further alleged that by denying his involvement in the damage to the pool, Constable Whalen made a false or misleading statement in contravention of section 8.1 of the Code of Conduct (Allegation 10). In his submissions, the Conduct Authority Representative conceded that if Allegation 8 is not established, Allegation 10 cannot be substantiated.

[167] I find that the pool at the family residence was damaged sometime between July 2, 2018, and July 3, 2018. However, there is no direct evidence of Constable Whalen's involvement in the damage to the pool.

[168] C.C. testified to what she described as Constable Whalen's "obsession" with the pool, noting that he would always ask the younger children if they were using the pool, whether C.C. was using the pool, if anyone else had been in it, etc. He then abruptly stopped asking the younger children about the pool after July 3, 2018.

[169] Constable Whalen asserted that he used to bring up the pool as a way to initiate a conversation with his young children. He then testified that he stopped asking about it as his youngest child had advised him that it was damaged. Once again, I have serious concerns about the reliability of his evidence on this last point. It was "new" information raised for the first time at the hearing, thereby frustrating any opportunity to test its validity.

[170] The investigator did speak with a neighbour, who reported that she may have seen Constable Whalen at the residence on the night of July 2, 2018. However, she did not wish to provide a statement. Consequently, that evidence is not very reliable.

[171] Notwithstanding my concerns with respect to the reliability of Constable Whalen's evidence, I do not find that the circumstantial evidence that exists is sufficient to meet the burden of proof. Consequently, I find that Allegation 8 is not established.

[172] In the absence of a finding that Allegation 8 is established, Allegation 10 cannot be established.

CONDUCT MEASURES

[173] Allegations 1, 2, 3, 4, 5, 6 and 7 have been established. After I delivered my oral decision on the allegations, counsel requested a short recess. They returned with a joint submission on conduct measures. A single conduct measure was proposed: to direct that Constable Whalen resign within 14 days, failing which he will be dismissed from the Force, in accordance with paragraph 45(4)(a) of the *RCMP Act*.

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

[175] The Supreme Court of Canada has recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.¹¹ Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless it is against the public interest.

[176] Therefore, I must determine whether accepting the joint proposal would be against the public interest. This is not a question of whether the conduct measures proposed are the same as those I would have imposed. Rather, the public interest test sets a much higher threshold.

[177] In *Cook*, the Supreme Court of Canada provided the following guidance, which is applicable to administrative tribunals:

[...] a joint submission should not be rejected lightly [...] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of [in this case, the conduct process] had broken down.¹²

[178] In order to determine whether the proposed conduct measures are against the public interest, it is helpful to consider the range of possible sanctions. The *Conduct Measures Guide* is a useful reference in this regard. However, it is important to note that the *Conduct Measures Guide* is just that, a guide. It is not meant to be prescriptive.

Range of conduct measures

[179] I find that global measures are appropriate in this case. Most of the allegations or incidents described herein took place within a 10-month period, between October 2017 and July 2018. Six allegations involve contraventions of section 7.1 of the Code of Conduct and are reflective of a pattern of behaviour.

¹¹ See for example *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19; and *R v Anthony-Cook*, 2016 SCC 43 [*Cook*].

¹² *Cook*, *supra* note 11, at paragraph 34.

[180] Constable Whalen's actions, as set out in Allegations 1, 2, 3, 4 and 7, fall within the high end of the aggravated range of 15 days to dismissal.¹³ He perpetrated multiple incidents of physical and psychological abuse as well as highly controlling behaviour which, when the totality of the evidence is considered, establishes a prolonged pattern of domestic violence. On at least two occasions, C.C. suffered injuries as a direct result of Constable Whalen's actions. As noted by the Conduct Authority Representative, formal medical evidence is not required to substantiate those injuries.¹⁴ Constable Whalen's threats, as set out in Allegation 2, involved the threatened use of weapons. Each of these allegations, on their own merit, would be placed at the high end of the aggravated range.

[181] With respect to Allegation 5, Constable Whalen testified that he did not report C.C.'s unsafe storage of her firearm as he was worried about being found to be in breach of his undertaking. He placed particular emphasis on the requirement that he not be in possession of a firearm. Yet, this did not stop him on two occasions from removing the firearm from the holster, placing C.C.'s identification beside it and taking a picture.

[182] The Subject Member Representative suggests that C.C.'s unsafe storage of her firearm could constitute a risk to the children's safety and that, consequently, it was not unreasonable for Constable Whalen to document the incidents. Nor was it unreasonable for him to do so with the intention of relying on the photos, if necessary, in the family law proceedings. I cannot reconcile this argument with the fact that Constable Whalen took absolutely no steps in either instance to clear or secure the firearm. His failure to do so suggests that he was more concerned about gaining leverage over C.C. than he was with the risk to his children.

[183] Constable Whalen's actions, as set out in Allegation 6, involve disregard for the administration of justice. He testified that he deleted the text in question in order to avoid causing Constable G.N. any difficulties. Yet, he could not explain how the text in question could have done so.

¹³ *Conduct Measures Guide*, at pages 46 to 48.

¹⁴ *R. v McKenna*, 2017 ABPC 167.

[184] Constable Whalen has engaged in very serious misconduct. Consequently, I find that the range of possible measures in this case is of a very high financial penalty, alone or in combination with other measures, to dismissal. I note that a financial penalty, alone or in combination with other measures, would only be appropriate in the presence of highly mitigating factors.

Mitigating and aggravating factors

[185] Given the unusual manner in which the joint proposal on conduct measures arose, I did not hear formal submissions on mitigating and aggravating factors. That said, Constable Whalen did provide oral evidence relevant to the conduct measures phase and submit some documentation in anticipation of the conduct measures phase, which I will address here.

[186] In terms of mitigating factors, I acknowledge that Constable Whalen did have a substance use disorder. However, there is no medical evidence to suggest that this disorder caused him to engage in a prolonged pattern of domestic violence.

[187] In terms of aggravating factors, I am not convinced of Constable Whalen's rehabilitative potential. Most troubling is his lack of insight into his own actions. In his oral evidence, he repeatedly sought to justify his use of physical force on C.C. or to blame her for his "need" to use force. At one point, he suggested that if C.C. were a "true victim", she would have left.

Decision on conduct measures

[188] Domestic violence has significant long-term impacts on victims and their families. Like many police forces, the RCMP has recognized the profound societal impact and risks associated with domestic violence.

[189] It is well established that police officers are held to a higher standard than the general public. Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. Where they fail to live up to that standard, they must be held accountable. This is essential in maintaining public confidence in the RCMP. The conduct process serves as a check and balance on the vast powers conferred on police officers.

[190] While I am very mindful that rehabilitation is a primary objective in the discipline process, as noted in *Vellani*,¹⁵ the rehabilitative objectives of the conduct process cannot override dismissal where the employment relationship is fundamentally breached.

[191] Constable Whalen has perpetrated a long-term pattern of family violence. This conduct is incompatible with a member's responsibilities under section 37 of the *RCMP Act*. The proposed conduct measure, namely a direction to resign, reflects the severity as well as the impact of his misconduct. Furthermore, it is consistent with the public interest.

CONCLUSION

[192] Allegations 1, 2, 3, 4, 5, 6 and 7 are established. Allegations 8 and 10 are not established. Allegation 9 has been stricken from the *Notice of Conduct Hearing*.

[193] The joint proposal on conduct measures is accepted. Therefore, in accordance with paragraph 45(4)(a) of the *RCMP Act*, I direct Constable Whalen to resign from the Force within 14 days. If he fails to do so, I direct his dismissal.

[194] Finally, either party may appeal this decision by filing a statement of appeal with the Commissioner in accordance with subsection 45.11 of the *RCMP Act*.

June 22, 2021

Christine Sakiris

Date

Conduct Board

¹⁵ *Commanding Officer "E" Division v Constable Fareez Vellani*, 2017 RCAD 03 [*Vellani*].