

Protected A

2022 CAD 02



**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, "C" Division**

Conduct Authority

and

**Constable Judith Nolin**  
Regimental Number 53349

Subject Member

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**Conduct Board Decision**

Josée Thibault

January 19, 2022

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Mr. Denys Morel and Staff Sergeant Chantal Le Dû, for the Conduct Authority

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Mr. Philippe Morneau, for the Subject Member

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**SUMMARY**

The *Notice of Conduct Hearing* contained three allegations of discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct. This case involves an interaction that took place between Constable Nolin and two Canada Border Services Agency officers upon her return from a personal three-week trip in Florida. It is alleged that Constable Nolin failed to declare goods of a value exceeding \$800.00 and made false declarations to the two officers in contravention of

section 12 of the *Customs Act*, RSC, 1985, c 1 (2nd Supp.). It is also alleged that Constable Nolin made several inappropriate comments to Officer L.B. and that her misconduct caused the officer to feel intimidated. Finally, it is alleged that Constable Nolin provided misleading information to her supervisor regarding the incident.

Following a contested hearing, the Conduct Board established all three allegations on a balance of probabilities and imposed the following conduct measures:

- a. a financial penalty of 45 days to be deducted from Constable Nolin's pay;
- b. ineligibility for promotion for a period of 3 years, to start from the date of Constable Nolin's reinstatement;
- c. a direction to work under close supervision for a period of 1 year, to start from the date of Constable Nolin's reinstatement; and
- d. a direction that Constable Nolin apologize in writing to Officer L.B. as well as to her supervisor, Corporal Parent.

## INTRODUCTION

[1] The *Notice of Conduct Hearing* contains three allegations of discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct. It was signed by the Conduct Authority on June 10, 2020, and served on Constable Judith Nolin on June 15, 2020, along with the investigation package.

[2] The allegations arose following an interaction between Constable Nolin and two Canada Border Services Agency officers on September 24, 2019, when returning to Canada via Pierre Elliott Trudeau International Airport after a three-week personal trip to Florida. As her NEXUS card did not work, she presented herself at the special services counter where she declared having purchased a value of \$600.00 of goods outside the country. She was then sent for a secondary examination and presented Officer L.B. of the Canada Border Services Agency (CBSA) with four receipts totalling \$1,031.79 and not \$600.00 as initially declared. Moreover,

during a search of Constable Nolin's checked baggage, Officer L.B. found three more receipts totalling an additional \$1,212.58.

[3] Allegation 1 pertains to Constable Nolin's failure to declare goods of a value exceeding \$800.00 and for making false declarations to the two CBSA officers. In Allegation 2, it is alleged that Constable Nolin's overall comments and behaviour during her interaction with Officer L.B., an employee of a partner agency, were inappropriate and caused Officer L.B. to feel that Constable Nolin was trying to intimidate her. Finally, Allegation 3 states that Constable Nolin provided misleading information to her supervisor when she reported the incident upon her return to work the next day.

[4] On June 5, 2020, I was appointed as the Conduct Board in this matter, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[5] The Subject Member Representative who was initially representing Constable Nolin made three requests for additional disclosure (July 13, 2020; September 2, 2020; December 4, 2020). They also presented two motions. The first one was filed on November 4, 2020, to challenge the one-year limitation period to initiate a hearing per subsection 41(2) of the *RCMP Act*. The motion was dismissed. The second motion was filed on March 9, 2021, requesting a stay of proceedings for abuse of process. This motion was withdrawn on March 22, 2021.

[6] On April 9, 2021, Constable Nolin provided her response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], in which she denied all three allegations.

[7] In August 2021, the current Subject Member Representative took responsibility of the file.

[8] The conduct hearing was held by video conference and started on November 30, 2021. Oral evidence was received from three witnesses, including Constable Nolin. The oral decision on the allegations was delivered on December 1, 2021. The three allegations were established

and the oral decision on conduct measures was delivered on December 3, 2021. This written decision incorporates and expands upon those oral decisions.

## **ALLEGATIONS**

[9] The three allegations before the Conduct Board read as follows:

### **Allegation 1**

On or about September 24, 2019, at or near Dorval, in the Province of Québec, Constable Judith Nolin 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 “C” Division, Integrated National Security Enforcement Team, in Montréal, Québec.
2. You were a member of the NEXUS program, which is a voluntary program designed to speed up border crossings for low-risk, pre- approved travellers into Canada and the United States.
3. In the 6 years preceding the alleged incident, you had travelled outside Canada on at least 46 occasions.
4. At the time of the alleged incident, you were returning to Canada via Pierre Elliott Trudeau International Airport after a three-week personal trip to Florida. You had in your possession goods of a value exceeding CAN \$800, which you had purchased in the United States.
5. Upon your arrival at the airport, as you were unable to use the NEXUS kiosk, you presented yourself at the special services counter. You proceeded to this primary checkpoint where an officer of the Canada Border Services Agency (CBSA) asked you standard questions, including what was the value in Canadian dollars of any goods purchased outside the country. You declared \$600.
6. Your declaration card was coded by the CBSA officer for a selective referral. You presented yourself for a secondary examination, where you provided CBSA officer, [L.B.], with [four] receipts for a total value of approximately CAN \$1,031.79. While conducting the examination of your [checked] bag, officer [L.B.] found [three] additional receipts for a total value of approximately CAN \$1212.58, which you had failed to disclose and provide at the primary checkpoint. You falsely declared that the goods were gifts you had received.

7. You failed to declare goods of a value exceeding CAN \$800 and made false declarations to [two] CBSA officers, in contravention of section 12 of the Customs Act. As a result, you were the subject of a level two seizure for the non-reporting of imported goods, you paid a fine and your NEXUS card was seized.

8. Your actions were discreditable.

### **Allegation 2**

On or about September 24, 2019, at or near Dorval, in the Province of Québec, you 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 “C” Division, Integrated National Security Enforcement Team, in Montréal, Québec.

2. You were a member of the NEXUS program, which is a voluntary program designed to speed up border crossings for low-risk, pre-approved travellers into Canada and the United States.

3. In the 6 years preceding the alleged incident, you had travelled outside Canada on at least 46 occasions.

4. At the time of the alleged incident, you were returning to Canada via Pierre Elliott Trudeau International Airport after a three-week personal trip to Florida. You had in your possession goods of a value exceeding CAN \$800, which you had purchased in the United States.

5. Upon your arrival at the airport, as you were unable to use the NEXUS kiosk, you presented yourself at the special services counter. You proceeded to this primary checkpoint where an officer of the Canada Border Services Agency (CBSA) asked you standard questions, including what was the value in Canadian dollars of any goods purchased outside the country. You declared \$600.

6. Your declaration was coded by the CBSA officer for a selective referral.

7. You then presented yourself for a secondary examination and immediately told CBSA officer [L.B.] that you work for the government in national security and knew why you were there. Officer [L.B.] informed you that your occupation was not relevant as any person entering Canada is subject to examination. You continued to bring up your profession during the course of the examination.

8. You told Officer [L.B.] that “they” did not like the RCMP, which was the reason why you were constantly targeted and harassed; and that it was discrimination against white females. Officer [L.B.] queried your “passage

history” and confirmed that it was your first referral for secondary examination.

9. You also made several inappropriate comments to Officer [L.B.], such as: don’t they think they should be spending more time on people who are likely to blow up planes, some groups are just more likely to commit crimes; it’s a known fact that CBSA don’t like RCMP; I arrest people for a living so it’s possible I have traces of drugs; why are you not using your discretion; why it took so long to do paperwork when it takes “them” 10 minutes to arrest a terrorist; this is how this country thanks me after all I’ve done; it’s a fuckin’ gong show.

10. Your overall comments and behaviour were inappropriate towards Officer [L.B.], an employee of a partner agency, and caused her to feel that you were trying to intimidate her.

11. Your actions were discreditable.

### **Allegation 3**

On or about September 25, 2019, at or near Montreal, in the Province of Québec, you 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 “C” Division, Integrated National Security Enforcement Team, in Montréal, Québec.

2. On September 24, 2019, in contravention of section 12 of the *Customs Act*, you failed to declare goods of a value exceeding CAN \$800 and made false declarations to Canada Border Services Agency officers. As a result, you were the subject of a level two seizure for the non-reporting of imported goods, you paid a fine and your NEXUS card was seized.

3. On September 25, 2019, you were returning to work after a vacation.

4. You spoke to your supervisor, Corporal Sébastien Parent, and disclosed that the previous days, upon your return to Canada from your trip, you were sent to a secondary examination by a CBSA officer. You explained to Corporal Parent that you had omitted to declare the items you had purchased and used during your trip, which were of a value of approximately \$600; you also told him that your NEXUS card was seized.

5. You provided misleading information to your supervisor pertaining to your secondary examination and the details of your contravention to section 12 of the *Customs Act*.

6. Your actions were discreditable.

[*Sic throughout*]



**Preliminary issue of the limitation period to initiate a conduct hearing**

[10] On October 15, 2020, the Subject Member Representative sent a letter to the Conduct Authority stating that the delays in the administration of this matter have resulted in their loss of jurisdiction to continue with the conduct hearing proceedings.

[11] This issue had already been raised by the Subject Member Representative in an email addressed to the Conduct Board on June 30, 2020. On July 3, 2020, I found that, in accordance with the information in the record, the hearing had been initiated within the one-year limitation period prescribed in subsection 41(2) of the *RCMP Act*.<sup>1</sup>

[12] The issue of the time limitation was raised again by the Subject Member Representative in the pre-hearing conference of October 27, 2020. I reiterated verbally and in writing that the present hearing was initiated within the one-year limitation period.

[13] Nonetheless, on November 4, 2020, the Subject Member Representative proceeded with a motion. On December 5, 2020, the Conduct Authority Representative provided their response to the motion.

[14] In my decision of February 26, 2021, I agreed with the Conduct Authority Representative's position that the Subject Member Representative's interpretation of the *RCMP Act* and related policies were erroneous. I found that the limitation period had been met. Consequently, the motion was dismissed.

[15] In determining whether the one-year limitation period to initiate a conduct hearing was met, I applied the following three-step process:

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<sup>1</sup> Subsection 41(2) of the *RCMP Act*: "A hearing shall not be initiated by a conduct authority in respect of an alleged contravention of a provision of the Code of Conduct by a member after the expiry of one year from the time the contravention and the identity of that member as the one who is alleged to have committed the contravention became known to the conduct authority to investigate the contravention or caused it to be investigated."

- a. When was the one-year limitation period triggered in accordance with subsection 40(1) of the *RCMP Act*?<sup>2</sup>
- b. Was the conduct hearing initiated within the prescribed timeline?
- c. If not, did the Conduct Authority request an extension of the limitation period pursuant to subsection 47(4) of the *RCMP Act*?

[16] The RCMP conduct board decision in *Commanding Officer "K" Division v Constable Phillips*, 2018 RCAD 20 provides guidance to determine when the one-year limitation period begins to run. Paragraph 180 indicates: "It is the knowledge of the conduct authority that investigated or caused the alleged contravention to be investigated that triggers the one-year limitation period."

[17] Per the record, Inspector S.B. was the conduct authority as set out in subsection 2(1) of the *CSO (Conduct)*. On October 4, 2019, he became aware of Constable Nolin's identity and the alleged Code of Conduct contraventions. On October 11, 2019, Inspector S.B. initiated the Code of Conduct investigation.

[18] As the one-year limitation period was triggered on October 4, 2019, by the knowledge of Inspector S.B., the one-year limitation period to initiate a hearing in this matter expired on October 3, 2020.<sup>3</sup>

[19] To determine if the conduct hearing was initiated within the prescribed timeline, Section 43 of the *RCMP Act* provides that a hearing is initiated when the Designated Officer is notified. Per the *Notice of Conduct Board Appointment*, this occurred on June 4, 2020, which is the date the *Notice to the Designated Officer* was received by the Designated Officer. Consequently, the hearing was initiated approximately seven months after the limitation period began to run.

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<sup>2</sup> Subsection 40(1) of the *RCMP Act*: "If it appears to a conduct authority in respect of a member that the member has contravened a provision of the Code of Conduct, the conduct authority shall make or cause to be made any investigation that the conduct authority considers necessary to enable the conduct authority to determine whether the member has contravened or is contravening the provision."

<sup>3</sup> The year 2020 is a leap year.

[20] Since the hearing was initiated within the prescribed limitation period, the Conduct Authority did not have to request an extension to the limitation period pursuant to subsection 47.4(1) of the *RCMP Act*.

### **Summary of non-contested facts**

[21] Constable Nolin is a member of the RCMP posted in “C” Division.

[22] She was a member of the NEXUS program, which is a voluntary program designed to speed up border crossings for low-risk preapproved travellers into Canada and the United States.

[23] In the six years preceding the allegations, Constable Nolin crossed the Canadian and American border by land or air approximately 46 times.

[24] At the time of the incident on September 24, 2019, Constable Nolin was returning from a three-week personal trip to Florida.

[25] She was in possession of goods valued at approximately \$2,200.00 purchased during her trip, but she only declared a value of \$600.00.

[26] As a result of making false declarations to the two CBSA officers, Constable Nolin was subject to a level 2 seizure for the non-reporting of imported goods. She paid a fine of approximately \$700.00 and her NEXUS card was seized.

[27] On October 11, 2019, an RCMP Code of Conduct investigation was initiated per a *Code of Conduct Mandate Letter*.

[28] In addition, the RCMP Special Investigation Unit launched a statutory investigation regarding Constable Nolin’s contravention of section 12 of the *Customs Act*, RSC, 1985, c 1 (2nd Supp.) [*Customs Act*], for failure to accurately declare the value of goods imported into Canada. As a result, Constable Nolin was charged under paragraph 153(a) of the *Customs Act* for making a false statement. In July 2021, she pleaded guilty to the offence and received an absolute discharge. This offence mirrors Allegation 1 of the *Notice of Conduct Hearing*.

[29] On December 6, 2019, Constable Nolin was suspended from duty.

[30] On December 10, 2019, Constable Nolin provided a cautioned statement to the statutory investigator.

[31] On June 4, 2020, the Conduct Authority signed a *Notice to the Designated Officer*, in which they requested the initiation of a conduct hearing in relation to this matter pursuant to subsection 41(1) of the *RCMP Act*.

### **Credibility of witnesses and reliability of evidence**

[32] I have heard oral evidence from three witnesses: CBSA Officer L.B., Corporal Sébastien Parent and Constable Nolin.

[33] In assessing the credibility of the three witnesses in this matter, I considered whether they were being truthful as well as whether their evidence was reliable (i.e., whether they were in a position to accurately perceive and recollect what they observed). In doing so, I considered the totality of the evidence to assess the impact of the inconsistencies in the evidence and the core issue in the case. <sup>4</sup>This also allowed me to determine whether the witness's account of the event had an air of reality, or the clear ring of truth to it. As indicated by the Federal Court of Canada at paragraph 57 in *MacLeod*:<sup>5</sup>

[...] the consideration of plausibility is largely subjective and requires the decision-maker to refer to relevant evidence which could refute their implausibility conclusions and explain why such evidence does not do so.  
[...]

### **Evidence of Officer L.B.**

[34] With regard to Officer L.B., I find that she was a very articulate and forthcoming witness. Although her interactions with Constable Nolin were tense, she was balanced when providing her account of what transpired. She was frank and consistent; her oral evidence at the hearing

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<sup>4</sup> *F.H. v McDougall*, [2008] 3 SCR 41 [*McDougall*], paragraph 58.

<sup>5</sup> *MacLeod v Canada (Attorney General)*, 2013 FC 770 [*MacLeod*].

reinforced her statements in the record. For example, she admitted that she did not know for certain if Constable Nolin was a member of the RCMP until she was contacted by the Code of Conduct investigator. She did not try to embellish her answers and readily acknowledged where her memory was not clear. I find that her testimony was both credible and reliable.

### **Evidence of Corporal Sébastien Parent**

[35] I do not have concerns about his credibility nor the reliability of his evidence. During his testimony, Corporal Parent explained that he was Constable Nolin's supervisor at the time of the incident. His answers were short, direct and did not expand beyond the scope of the questions posed by counsel.

### **Evidence of Corporal Judith Nolin**

[36] As for Constable Nolin, many significant inconsistencies were raised during her testimony regarding the reasons why she failed to declare the items she had purchased during her trip to Florida, which cast doubt on her credibility and the reliability of her evidence as a whole. She constantly tried to justify why she declared having \$600.00 worth of goods instead of \$2,200.00. The explanations provided throughout the conduct process became implausible and, as a whole, lacked an air of reality.

[37] For example, at the border, she declared that the items were a gift. In her statement to the statutory investigator, she explained that, given the considerable amount of money spent on the purchase of items during the trip, she simply forgot about those listed on the additional three receipts found in her checked luggage. She also mentioned that the value to declare should not have included the taxes. In her response to the allegations, she explained that she had declared the goods in US currency instead of Canadian currency. At the hearing, she mentioned that she did not declare some items because she had left them in Florida or had received a refund (i.e., the Under Armour purchase). However, as established by the Conduct Authority Representative, this last explanation was not supported by the evidence.

[38] Finally, I find that Constable Nolin's answers were sometimes evasive. For example, when she had trouble recognizing that the comments she made to Officer L.B. may have caused her to be intimidated. It is clear from the evidence that Officer L.B. was doing her job properly and that Constable Nolin's inappropriate comments caused the interaction to deteriorate.

### **Test for discreditable conduct**

[39] Section 7.1 of the RCMP Code of Conduct states: "Members behave in a manner that is not likely to discredit the Force." The test for "discreditable conduct" was developed by the RCMP External Review Committee and consist of four steps.

[40] In steps 1 and 2, the conduct authority must establish on a balance of probabilities the acts constituting the alleged conduct and the identity of the member who committed those acts. In order to establish the act or acts constituting the alleged conduct, it must be demonstrated that the particulars that are essential to the allegations have in fact occurred. It is not necessary to establish each particular, just enough that those that are established meet the threshold of discreditable conduct.

[41] In step 3, the conduct board must determine whether the member's conduct likely brings the RCMP into disrepute. This involves determining whether a reasonable person in society who is aware of all the relevant circumstances, including the realities of police work in general and the RCMP in particular, would consider the conduct to be discreditable.

[42] Finally, in step 4, the conduct board must determine whether the conduct is sufficiently related to subject member's duties and functions as to provide the Force with a legitimate interest in disciplining them.

[43] There is no dispute in relation to step 2 concerning the identity of Constable Nolin. The other three steps require further analysis.

**Analysis of the allegations**

[44] In the conduct process, the onus is on the conduct authority to demonstrate to the conduct board that, on a balance of probabilities, the allegations are established. The conduct board is then responsible for determining whether this burden has been met.

[45] As stated by the Supreme Court of Canada in *McDougall*,<sup>6</sup> “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.” However, the Supreme Court recognized that there is “no objective standard to measure sufficiency.”

*Allegation 1 – Making False Declarations to CBSA Officers*

[46] Allegation 1 pertains to declarations made by Constable Nolin to two CBSA officers on September 24, 2019, when arriving to Canada from her trip to Florida.

[47] In her initial response to the allegations, Constable Nolin admitted particulars 1, 2, 3 and 4, which essentially state that she is a member of the RCMP as well as a member of the NEXUS program. She travelled outside of Canada approximately 46 times in the 6 years preceding the allegations. She was in possession of goods valued at more than \$800.00 purchased during the trip.

[48] In her response to the allegations, Constable Nolin denied particulars 5, 6, 7 and 8.

[49] Particular 5 alleges that upon her arrival at the airport, Constable Nolin was unable to use the NEXUS verification kiosk at the Pierre Elliott Trudeau International Airport as it was malfunctioning. Therefore, she presented herself to the primary checkpoint CBSA officer, who filled out her customs declaration card. Constable Nolin declared having purchased goods valued at \$600.00.

[50] In her response to the allegations in the conduct process, Constable Nolin denied this particular. She explained that she was never asked by the CBSA officer to declare the goods in

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<sup>6</sup> *F.H. v McDougall*, [2008] 3 SCR 41.

Canadian dollars. The receipts she had in her hands were in US dollars. Therefore, following a quick mental calculation she based her estimate in US dollars, after taxes. The actual total of goods for the four receipts came to US\$777.00, which is less than the C\$800.00 limit.

[51] However, following a review of the court transcripts in relation to the criminal court proceedings, Constable Nolin admitted to declaring goods valued at C\$600. There was no mention of the fact that her declaration was made in US dollars instead of Canadian dollars. On October 21, 2021, both representatives agreed that given Constable Nolin's admission, the outstanding issue of this particular was resolved and the CBSA officer's testimony at the hearing was no longer necessary. As such, Particular 5 is established.

[52] Particular 6 indicates that, after the CBSA officer located at the primary checkpoint filled out the declaration, Constable Nolin was sent for selective referral. At the secondary checkpoint, she interacted with Officer L. B., where she presented four receipts totalling C\$1,031.79. When Officer L.B. searched her checked luggage, she found three additional receipts totalling C\$1,212.58. It is alleged that Constable Nolin falsely declared that the goods on the three receipts were gifts she had received while on the trip.

[53] During her testimony at the hearing and in her statement provided to the statutory investigator, Constable Nolin acknowledged that she was mistaken when she told Officer L.B. that the shoes bought at Chloe's in the amount of US\$529.65 (or C\$702.84) were a gift. She explained that, although she had bought them herself, at one point during the trip, the shoes were brought to the shoemaker by her partner who paid for the repair. This explains why she at first thought that they were a gift. In their submission, the Subject Member Representative mentioned that Constable Nolin's confusion may also stem from the fact that, on the day of the incident, she was a bit frustrated by all the events that took place at the US border prior to her departure. Since her baggage exceeded the weight allowance, she was forced to quickly repack her bags and, when crossing border security, she was sent for secondary inspection.

[54] Unlike argued by the Subject Member Representative, the evidence does not support that Constable Nolin's mental state at the time of the incident with both CBSA officers contributed to



her confusion on whether the items were a gift or not. In addition, Constable Nolin's evidence on this point is not credible. Although she admitted spending a considerable amount of money shopping and that her partner regularly buys her gifts, the shoes are valued at C\$700.00. I find that it is more probable than not that she would remember if they were a gift or whether she purchased them herself.

[55] Given her own admission at the hearing and in her statement to the statutory investigator that the three items were not gifts as declared to Officer L.B., particular 6 is established.

[56] Particular 7 alleges that Constable Nolin failed to declare goods exceeding \$800.00 and made false declarations to two CBSA officers in contravention of section 12 of the *Customs Act*. As a result, she was the subject of a level 2 seizure for the non-reporting of imported goods, she paid a fine of approximately \$700.00 and her NEXUS card was seized.

[57] When submitting her response to the allegations in April 2021, Constable Nolin denied this particular. However, in July 2021, following the statutory investigation, Constable Nolin pleaded guilty to making a false statement pursuant to paragraph 153(a) of the *Customs Act*. She received an absolute discharge in light of existing mitigating circumstances, including her ties to her partner living in the United States, the RCMP Code of Conduct process, and her need to report daily to RCMP Headquarters.

[58] During cross-examination, Constable Nolin confirmed that she pleaded guilty to the statutory offence and, by doing so, she admitted that she made false declarations to the CBSA officers in question.

[59] At the hearing, I also asked the Subject Member Representative whether Constable Nolin was also now admitting that she failed to declare goods of a value exceeding \$800.00. He confirmed that she was.

[60] Given Constable Nolin's testimony and the confirmation obtained from the Subject Member Representative, Particular 7 is established.

[61] In their submission, the Subject Member Representative argued that, to establish an allegation of discreditable conduct pursuant to section 7.1 of the Code of Conduct, the Conduct Authority Representative had to prove that Constable Nolin had a willful intent to deceive or make a false declaration. They supported their position on the RCMP conduct board decision in *Werbowski*<sup>7</sup> and the Supreme Court of Canada decision in *Sault Ste-Marie*.<sup>8</sup>

[62] In *Werbowski*, the allegations pertained to section 8.1 of the Code of Conduct, which states: “Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigation, the actions of other employees and the operation and administration of the Force.” It is important to note that, in its findings, the conduct board explained: “The allegations are narrowly construed and rely on the requirement that members do not knowingly make false, misleading or inaccurate oral or written statements.”<sup>9</sup> Therefore, in light of the specific wording of the allegations and particulars, which specified that the subject member acted “knowingly”, proof of intent to mislead or deceive was a required element. This is not the case in the present matter.

[63] Since *Werbowski*, three other RCMP conduct board decisions have analyzed whether intent is a requirement of section 8.1 of the Code of Conduct.<sup>10</sup> I will not review these decisions as the test to apply in section 8.1 differs from the test to establish discreditable conduct pursuant to section 7.1 of the Code of Conduct. As such, I disagree with the Subject Member Representative that a parallel can be drawn between section 8.1 of the Code of Conduct and the allegations under section 7.1 in the present matter as the two pertain to making a false statement or a false declaration. I also disagree that intent is a required element to establish an allegation of discreditable conduct.

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<sup>7</sup> *Commanding Officer "K" Division v Constable Werboweski*, 2019 RCAD 06.

<sup>8</sup> *The Queen v Sault Ste-Marie (City)*, [1978] 2 SCR 1299 [*Sault Ste-Marie*].

<sup>9</sup> *McDougall*, paragraph 55.

<sup>10</sup> *Commanding Officer "K" Division v Constable Greenlaw*, 2019 RCAD 22, page 42; *Deputy Commissioner Curtis Zablock and Constable Girard*, 2020 CAD 30; *Commanding Officer "H" Division v Constable MacGillivray*, 2021 CAD 16.

[64] As clearly submitted by the Conduct Authority Representative, intention is not required to be proven when establishing discreditable conduct. The threshold of discreditable conduct is met when the reasonable person would view the actions of Constable Nolin as likely to discredit the Force.

[65] To support their position, the Conduct Authority Representative relied on two older decisions of the RCMP External Review Committee that addressed the issue of intent in the context of subsection 39(1) of the old *Royal Canadian Mounted Police Regulations, 1988*, SOR/88-361 [*RCMP Regulations 1988*], which has been replaced with section 7.1 of the current *Code of Conduct Annotated Version* (2014).<sup>11</sup>

[66] As explained by the Conduct Authority Representative, the *Shauer*<sup>12</sup> and *Robar*<sup>13</sup> decisions addressed the confusion that existed in the 1990s between the old disciplinary regime and the 1988 amended regime. In the old disciplinary regime, proceedings were quasi-criminal as the member could be charged with an offence and could be sanctioned to imprisonment.

[67] In *Shauer*, the RCMP External Review Committee specified that, in the 1988 amended conduct regime, proceedings were now considered administrative in nature; therefore, the imposed conduct measures consisted of demotions, forfeitures of pay or other possible sanctions provided in legislation, which did not amount to a “true penal consequence”. Nonetheless, adjudication boards at the time had a tendency to import criminal concepts such as *actus reus* and *mens rea* when establishing the allegations. In its analysis of subsection 39(1) of the *RCMP Regulations 1988*, the RCMP External Review Committee concluded as follows:

[...] intent should not be considered as being a required element (that is, an element that requires proof in all cases in order to establish an allegation) when allegations are brought under subsection 39(1) of the *RCMP Regulations, 1988*, except in the rare case where, as I will discuss later,

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<sup>11</sup> RCMP External Review Committee recommendation 2016 C-2015-001 (C-008).

<sup>12</sup> RCMP External Review Committee recommendation (1991) 6.A.D. (2d) 1 [*Shauer*].

<sup>13</sup> Commissioner’s decision (1993) 12 A.D. (2nd) 182 [*Robar*].

intent is specifically mentioned in the particulars and is considered an essential particular to the allegation. [...] <sup>14</sup>

[...] intent should not be a required element under subsection 39(1) of the RCMP Regulations, 1988 [because] this would avoid much of the confusion now existing as to the nature of the allegations brought against the member. The [member] is not accused of shoplifting or theft in this case but is alleged to have conducted himself in a “disgraceful or disorderly manner that brings discredit on the Force.” [...] <sup>15</sup>

[68] In the *Robar* decision, the RCMP Commissioner fully endorsed the RCMP External Review Committee analysis that intent is not a required element under subsection 39(1) of the *RCMP Regulations 1988*. It bears repeating that subsection 39(1) mirrors the current section 7.1 of the Conduct of Conduct.

[69] In their submission, the Subject Member Representative also relied on the *Sault Ste-Marie* decision to argue that, when intent is not required to establish the allegation or that the member is not allowed to present a defence for lack of intent, the law has to be clear that using such a defence cannot be presented. Since section 7.1 of the Code of Conduct is silent on this issue, Constable Nolin may present a defence to show that she had no intention to deceive or make a false declaration and the Conduct Authority must prove such intent. I disagree.

[70] As submitted by the Conduct Authority Representative, the RCMP External Review Committee in *Shauer* distinguished the *Sault Ste-Marie* decision from the conduct process. In its analysis of whether subsection 39(1) could be qualified as either an absolute or strict liability provisions, it stated the following:

[...] most importantly, the concepts of absolute and strict liability offences seem very difficult to apply in the context of subsection 39(1) of the RCMP Regulations, 1988. Besides the fact that this provision does not create an “offence”, there is the fact that four issues that need to be determined under this subsection are not compatible with the framework of an absolute or strict liability provision. For example, in the context of strict liability it is difficult to imagine at what point the onus would shift to the member to argue the defence of due diligence. Is it after the RCMP has proven the

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<sup>14</sup> *Shauer*, Supra note 12, page 28.

<sup>15</sup> *Shauer*, Supra note 12, page 33.

conduct, the identity of the member, the disgraceful nature of the conduct, or the fact that the conduct brings discredit on the Force, or is it after all of these element[s] are proven? In addition, we have seen that intention may have some relevance in determining the disgraceful nature of the conduct and the discredit brought on the Force, however, if subsection 39(1) of the RCMP Regulations, 1988 was considered as an absolute or strict liability then intent would be absolutely irrelevant.

Consequently, I do not wish to suggest that subsection 39(1) of the RCMP Regulations, 1988, should be considered as creating either an absolute liability offence or a strict liability offence. The approach suggested herein does not fall within either of these two categories of “offences, and therefore does not fall within any of the categories set out in *Sault Ste-Marie*. Rather, it is a flexible approach, tailored to the specific language and subject matter of this provision, taking into account the issues that need determining. While the categorization set out in *Sault Ste-Marie* may be exhaustive in the context of penal law (where criminal, quasi-criminal and regulatory offences are concerned), I do not think it should be interpreted as precluding such flexible approaches in a totally different context, such as disciplinary law. [...]

[71] To establish steps 3 and 4 of the test of discreditable conduct pursuant to section 7.1 of the Code of Conduct, I must determine whether Constable Nolin’s discreditable conduct is likely to bring discredit on the Force and is sufficiently related to the employment situation to warrant discipline.

[72] I find that a reasonable person who is aware that Constable Nolin, as a police officer, failed to declare goods purchased on her trip in the amount of \$1,600.00 (\$2,220.00 the value she had, minus the \$600.00 amount she declared) and also made false declarations to two CBSA officers, when reporting through customs, would be appalled by the misconduct. I am satisfied that her actions would negatively affect the public’s confidence and the reputation of the RCMP.

[73] As for the tie to the employment relationship, Constable Nolin not only has a responsibility as an RCMP member pursuant to subsection 2(1) of the *Customs Act*, but she is also bound by all the responsibilities listed at section 37 of the *RCMP Act*, which states that she must maintain the integrity of the law, law enforcement and the administration of justice.

[74] These responsibilities extend whether she is on- or off-duty. By making a false statement, she contravened a federal statute. Her actions are sufficiently related to her duties and functions to provide the Force with a legitimate interest in disciplining her.

[75] In light of the aforementioned, I conclude that the Conduct Authority has established on a balance of probabilities the acts that constitute the behaviour described in Allegation 1.

*Allegation 2 – Inappropriate comments and behaviour*

[76] Allegation 2 contains 11 particulars. Particulars 1 to 6 were either admitted by Constable Nolin or established in Allegation 1. Therefore, I will not address them any further.

[77] Particular 7 alleges that, when she presented herself for the secondary examination, Constable Nolin immediately told Officer L.B. that she worked for the government in national security and knew why she was there. Although Officer L.B. informed Constable Nolin that her occupation was irrelevant, she continued to bring up her profession during the course of the examination.

[78] It is Constable Nolin's position that it was Officer L.B. who asked about her profession. In response, she explained that she worked for the government in national security. She maintains that she never mentioned working for the RCMP.

[79] The evidence in the Record indicates that Officer L.B. did not know specifically that Constable Nolin was a member of the RCMP until she was informed of it by the Code of Conduct investigator. From the testimonies at the hearing, it remains unclear whether Constable Nolin ever said that she was a member of the RCMP or that it was inferred by Officer L.B. following comments made by Constable Nolin. As indicated by the Conduct Authority Representative, Constable Nolin was "dropping hints about National Security, how she arrests people for a living, CBSA don't like RCMP which, "indirectly put her status out there."

[80] In her statement to the statutory investigator, Constable Nolin admitted that, when she used to cross the land border between British Columbia and the State of Washington, CBSA officers would ask her who she worked for. After replying RCMP, she would clear customs

without further questions. She admitted to the statutory investigator that she mentioned working for the government in national security to calm the situation as she found Officer L.B. aggressive, arrogant and “fucking edgy”.<sup>16</sup>

[81] As previously indicated, Officer L.B. was balanced in her testimony and I prefer her evidence to that of Constable Nolin on this point. Consequently, I find that it is more probable than not that Constable Nolin immediately told Officer L.B. that she worked in national security when she presented herself for a secondary examination and kept bringing it up during examination. Hence, particular 7 is established.

[82] Particular 8 alleges that Constable Nolin told Officer L.B. that “they”, meaning CBSA, did not like the RCMP, which was the reason why she was constantly targeted and harassed, and that it was discrimination against white females. As a result, Officer L.B. queried Constable Nolin’s “passage history” and confirmed that it was her first referral for secondary examination. This particular was admitted by Constable Nolin in her response to the allegations; therefore, I will not elaborate further.

[83] Particular 9 alleges that Constable Nolin made several inappropriate comments to Officer L.B., some of which were admitted and others were denied. Constable Nolin admitted making the following comments:

- a. “Some groups are just more likely to commit crimes”
- b. “It’s a known fact that CBSA don’t like RCMP”
- c. “I arrest people for a living so [it’s] possible I have traces of drugs”
- d. “Why are you not using your discretion?”

[84] In her response to the allegation, Constable Nolin denied making the following statements:

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<sup>16</sup> Investigation material, page 161.

- a. “Don’t they think they should be spending more time on people who are more likely to blow up planes”
- b. “Why it took so long to do paperwork when it takes ‘them’ 10 minutes to arrest a terrorist”
- c. “This is how this country thanks me after all I’ve done”
- d. “It’s a fucking gong show”

[85] During her testimony at the hearing, Constable Nolin admitted that her language was not polished when speaking with Officer L.B. and was inappropriate in the circumstances. Furthermore, in cross-examination, Constable Nolin admitted to saying that the incident was a “fucking gong show” when leaving the customs area.

[86] As mentioned in Allegation 1, I cannot accept the Subject Member Representative’s argument that Constable Nolin acted this way with Officer L.B. because of her mental state at the time of the incident. Again, there is no evidence in the record to show a causal link between the incident and her behaviour. In fact, the record shows that Constable Nolin expressed herself this way more often than not. A co-worker described her as someone who: “[TRANSLATION] says out loud what she thinks; well sometimes it is not correct; she’s quick-tempered”.<sup>17</sup>

[87] When reviewing her cautioned statement made to the statutory investigator, who is an RCMP member, I noted that Constable Nolin said the word “fuck” at least 47 times. She also mentioned that women in uniform have an attitude. I can appreciate that Constable Nolin may have tried to downplay the situation when speaking with one of her peers, but ultimately her comments and language were totally unacceptable, unprofessional and reflected badly on her credibility. Moreover, I find that she was utterly disrespectful to women in law enforcement who, just like her, wear a uniform. Particular 9 is established.

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<sup>17</sup> Investigation material, page 134, lines 635 to 638.



[88] Particular 10 alleges that Constable Nolin's overall comments and behaviour were inappropriate and caused Officer L.B. to feel like she was trying to intimidate her. For example, when Constable Nolin told Officer L.B. that CBSA should spend more time on people who are likely to blow up planes and that some groups are just more likely to commit crimes, the latter was offended by the comment. In her testimony at the hearing, Officer L.B. explained that "she is a Muslim Arab woman living in post 9/11 era. [...] I knew at this point maybe it became a bit personal and that [the] attack was definitely not random."<sup>18</sup> Consequently, particular 10 is also established.

[89] Pursuant to section 37 of the *RCMP Act*, Constable Nolin has a duty to act at all times in a courteous, respectful and honourable manner. This applies whether she is on- or off-duty. I find that a reasonable person aware of all the relevant circumstances would view the overall comments and behaviour of Constable Nolin as likely to discredit the Force. The link to employment has been made and Allegation 2 is established.

*Allegation 3 – Misleading information provided to her supervisor*

[90] Allegation 3 alleges that Constable Nolin provided misleading information to her supervisor, Corporal Sébastien Parent, about the incident at the Canadian border on September 24, 2019.

[91] The allegation contains six particulars. Constable Nolin admitted particulars 1 and 3, which indicated that she is a member of the RCMP and that she disclosed the incident to Corporal Parent the next day upon her return to work.

[92] Particular 2 is the same as particular 7 of Allegation 1. It alleges that Constable Nolin failed to declare goods of a value exceeding \$800.00 and made a false declaration to two CBSA officers. As this particular is already established, I will not analyze it any further.

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<sup>18</sup> Transcripts, Word version, dated November 29, 2021, page 40.

[93] Particulars 4 and 5 allege that Constable Nolin told Corporal Parent that she omitted to declare items she had purchased on her trip valued at approximately \$600.00 and that her NEXUS card was seized. Consequently, she provided misleading information to her supervisor pertaining to the secondary examination with Officer L.B. and the details of her contravention to section 12 of the *Customs Act*.

[94] As explained in Allegation 1, it is not necessary for the Conduct Authority to prove on a balance of probabilities that Constable Nolin intentionally made a false statement to her supervisor. Hence, the Subject Member Representative's argument on this issue must fail.

[95] While I acknowledge that Constable Nolin informed Corporal Parent of the incident immediately upon her return to work, she did admit on cross-examination that she did not provide him with a full explanation of the overall severity of the incident. In fact, my review of the evidence confirms that Corporal Parent's statement had similarities to the one provided by Ms. A.B., a colleague of Constable Nolin. Both knew that her NEXUS card had been seized and that she was upset about it. Although they could not confirm the undeclared value of the goods imported by Constable Nolin, they knew it involved shoes, air pods and a bracelet, which were worn during the trip. They both thought that she simply forgot to declare the goods.

[96] This would explain why Corporal Parent could not confirm to the Code of Conduct investigator the amount of the goods Constable Nolin declared nor understand why she had to pay a fine. Also, as stated by Constable Nolin, Corporal Parent was not overly concerned about the situation and told her: "It's not a big deal. Don't worry about it."<sup>19</sup>

[97] It is clear from the record that Corporal Parent may have perceived the incident differently if he had been aware of all the details. For example, during his statement to the Code of Conduct investigator, Corporal Parent was adamant that Constable Nolin simply forgot to declare the items she had used during her trip and that she had no intentions of avoiding paying the taxes. However, when asked by the investigator if it would be the same view if someone had

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<sup>19</sup> Transcripts, Word version, dated November 29, 2021, page 114.

purchased goods totalling \$1,600.00, but only declared \$600.00, Corporal Parent replied: “[TRANSLATION] Well that is not the same.” When asked if he was informed of something similar by Constable Nolin, he replied no.<sup>20</sup>

[98] For these reasons, I find that particulars 4 and 5 are established. I also find that a reasonable person would conclude that Constable Nolin’s lack of transparency with her supervisor would likely discredit the Force. Her conduct is sufficiently related to her duties and functions as a member of the RCMP to justify disciplinary action.

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

## **CONDUCT MEASURES**

[100] 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.”

[101] The RCMP External Review Committee has established a three-step process for the imposition of conduct measures. First, a conduct board must consider the appropriate range of conduct measures applicable to the misconduct at issue. Second, it must consider the aggravating and mitigating factors. Third and final step, the conduct board must impose conduct measures that accurately and fairly reflect the gravity of the misconduct at issue, keeping in mind the parity principle.

### **Range of conduct measures**

[102] As for the appropriate range of conduct measures applicable, the Conduct Authority requested that I direct Constable Nolin to resign from the Force within 14 days of this decision. Should I determine that dismissal is not the proper measure in the circumstances, then the

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<sup>20</sup> Investigation material, page 116.

Conduct Authority Representative recommended that I impose a high financial penalty, given the serious nature of the allegations.

[103] The Subject Member Representative recognized that serious conduct measures are required in this matter and suggested that I impose the following:

- a. a forfeiture of 15 days' pay for each allegation established; as all three allegations were established, this amounts to a total 45 days to be deducted from Constable Nolin's pay;
- b. a reprimand; and
- c. a direction for Constable Nolin to apologize in writing to Officer L.B. as well as to Corporal Sébastien Parent.

[104] As submitted by the Conduct Authority Representative, the established allegations do not fall within a specific category listed in the 2014 *National Conduct Measures Guide*. That said, the Guide provides guidance on considerations around the imposition of conduct measures, it is not binding or determinative.

[105] In support of their position on conduct measures, the parties also relied on case law as well as RCMP conduct board decisions. In the case of *Nesbeth and Windsor Police Service*<sup>21</sup> rendered by the Ontario Civilian Police Commission, the police officer was dismissed after providing a false declaration at the Canadian land border security following a shopping trip with her mother in Detroit, Michigan. She lied about having purchased alcohol, which was later discovered in the trunk of her vehicle. She told border officers that she was a police officer and when she left the border inspection area, she stated that "what goes around, comes around." Upon her return at the office, she asked co-workers to look into infractions committed by the CBSA officers. This action was described by the hearing officer as an "apparent desire to exact some sort of revenge".

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<sup>21</sup> *Nesbeth and Windsor Police Service*, 2015 ONCPC 23.

[106] On appeal, the *Commission* determined that the evidence did not offer a basis to find the police officer had demonstrated remorse or accepted responsibility, which severely limited the effectiveness of the evidence of her good work history and character. The most significant aggravating factor that tipped the balance to dismissal was the comment made to the CBSA officers during the course of the execution of their duties coupled with the evidence that she took steps to gather information about infractions committed by them in order to act on her desire for revenge.

[107] The Conduct Authority Representative submitted that, although some aggravating factors are not present in this instance, the *Nesbett* case is relevant because it involves a police officer making a false declaration when crossing the Canadian border. Although Constable Nolin did not show her badge or expressly say she was a member of the RCMP, she provided enough hints that she was. Not only did she refuse to accept responsibility and the seriousness of the misconduct, she had opportunities to rectify her actions and did not do so in a timely fashion.

[108] The second case submitted by the Conduct Authority Representative is the RCMP adjudication decision in *Robichaud*<sup>22</sup> where the member intentionally submitted a counterfeit document and made a false and untrue statement to a CBSA officer in order to avoid paying the required duty charges. He provided a receipt in the amount of \$25,000.00 instead of \$33,000.00, the actual amount paid for the boat.

[109] As indicated, this decision stems from the former discipline system and is a joint submission made by the parties. The member received a sanction of 10 days' pay, which is akin to the 30 to 45 days imposed in the current conduct process. This decision was submitted by the Conduct Authority Representative to show that, in that instance, the member admitted the allegation and took action to expedite the matter. He apologized and expressed sincere remorse for his actions; whereas Constable Nolin only apologized once the allegations were established by the Conduct Board. This could have happened much earlier in the process and would have been indicative of her rehabilitation potential.

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<sup>22</sup> *The Appropriate Officer "J" Division and Staff Sergeant Robichaud*, 2011 6 A.D. (4th) 233.

[110] In response to those two cases, the Subject Member Representative argued that the worst aggravating factor in *Nesbett*, which led to the police officer's dismissal, was her desire for revenge. This egregious conduct is not present in the case of Constable Nolin.

[111] As for *Robichaud*, the member was not dismissed although he presented the partner agency a counterfeit receipt with a discrepancy of US\$8,000.00. The Subject Member Representative stated that Constable Nolin's misconduct is far less egregious than in *Robichaud* as she did not forge a document, which is a criminal offence. As such, they indicated that dismissal is not inappropriate in the circumstances.

[112] Finally, the Subject Member Representative relied on the RCMP conduct board decision in *Xanthopoulos*.<sup>23</sup> They submitted that, although the allegations are not the same, cases involving lying, deception and dishonesty often attract sanctions at the higher end of the scale up to dismissal. Distinguishable elements include the fact that Constable Xanthopoulos had five years of service in comparison to 15 years by Constable Nolin. In *Xanthopoulos*, the act of deceit was against a member of the public and took place over a period of six months. As for Constable Nolin, it was an isolated incident. Finally, the conduct board in *Xanthopoulos* was not convinced that the member had learned anything from his mistakes and did not provide any reassurance that this type of misconduct would not be repeated in the future. This is a glaring contrast to Constable Nolin who showed that she has learned from her mistakes, recognized that her behaviour was unacceptable, unprofessional, and is now extremely diligent when crossing the border by declaring any goods she brings back into the country.

[113] Even if I am not bound by those decisions, they are still very helpful in establishing the range of conduct measures applicable to misconducts that are similar in nature while ensuring consistency and fairness to conduct matters.

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<sup>23</sup> *Commanding Officer "E" Division and Constable Xanthopoulos*, 2019 RCAD 05.

[114] I am satisfied that dismissal falls within the range of possible measures for Constable Nolin's contraventions of the RCMP Code of Conduct. However, to determine if dismissal is the proportionate measure to impose, I must now consider the aggravating and mitigating factors.

### **Aggravating factors**

[115] I consider the following to be aggravating factors:

- a. The incident involved two officers from the CBSA, a partner agency working closely with the RCMP. Not only did the two CBSA officers provide statements in the Code of Conduct process, Officer L.B. testified at the conduct hearing against Constable Nolin.
- b. Officer L.B. was negatively impacted by her interaction with Constable Nolin. She described the incident as remarkable in her eight-year career. It was significant enough that, following the incident, she sought the advice from her supervisor to determine whether Constable Nolin's behaviour and comments should be reported to her employer.
- c. Constable Nolin contravened the *Customs Act*, which is a federal statute.
- d. The misconduct involves a lack of honesty, integrity and professionalism on the part of Constable Nolin, which are fundamental breaches of her obligations as a police officer and of the RCMP core values.
- e. Under the implication of the *McNeil*<sup>24</sup> decision, Constable Nolin will now have a legal requirement to disclose her misconduct with Crown counsel in all matters where she will be called to give evidence as a witness. This could affect her ability to testify in criminal proceedings or to be assigned to another position in the context of transfers, deployments and promotions, creating a significant, but not unsustainable, administrative burden to the RCMP.

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<sup>24</sup> *R. v McNeil*, [2009] 1 SCR 66, 2009 SCC 3 (CanLII) [*McNeil*].

[116] Although Constable Nolin waited after the establishment of the allegations to acknowledge her misconduct and fully apologize, I did not consider this to be an aggravating factor for the following reasons. In May 2021, Constable Nolin submitted in the criminal court proceedings a letter of apology where she admitted that she forgot to declare several items purchased during her trip to Florida. She states that doing so was completely unintentional. In the end, the incident has been very distressing to her both mentally and physically and she endeavours to take every measure to ensure that something like this will never happen again. This letter led to a joint submission where Constable Nolin pleaded guilty to making false declarations to CBSA officers in contravention of section 12 of the *Customs Act*. As a result, Constable Nolin received an absolute discharge.

[117] As indicated by the Conduct Authority Representative, it is unfortunate that this letter was only admitted into evidence by Constable Nolin following the establishment of the three allegations. Admitting the misconduct at the earliest opportunity could have at a minimum shortened the length of this conduct proceeding.

[118] In response, the Subject Member Representative explained that it was their understanding that, in order for the Conduct Board to establish the allegations of misconduct in contravention of section 7.1 of the *RCMP Act*, the Conduct Authority had to prove that Constable Nolin had the intent to deceive and to provide a false declaration. Due to the lack of intent on her part, Constable Nolin “took an approach, based on various consultation with her prior attorneys, that led to this decision to contest the allegations.”<sup>25</sup>

[119] As clearly indicated in section 1.3.1 of the *Conduct Board Guidebook* (version 2, June 2020), the reform of the conduct process in 2014 was based on the principle that “conduct proceedings, including hearings before the Conduct Board, are meant to be timely, and not overly formalistic, legalistic or adversarial.” Furthermore, as indicated in section 2.4.1, “The Conduct Board will deal with matters as informally and expeditiously as the circumstances and

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<sup>25</sup> Transcripts, Word version, dated December 1, 2021, page 60.



consideration of fairness permits.” These principles are clearly outlined in subsection 46(2) of the *RCMP Act* and section 13 of the *CSO (Conduct)*.

[120] Simply said, there is a responsibility on both parties to continually assess the evidence in an attempt to narrow the outstanding issues, to promptly inform the conduct board, to avoid using legalistic practices and procedures akin to a formal court-like process, which unnecessarily prolong conduct proceedings.

[121] I agree with the Conduct Authority Representative that obtaining a copy of Constable Nolin’s apology letter earlier in the process would have been in the interest of both parties. Nonetheless, I find that the Subject Member Representative provided a plausible explanation as to why Constable Nolin fully contested the allegations at the hearing. In these specific circumstances, I do not consider this to be an aggravating factor.

### **Mitigating factors**

[122] I consider the following to be mitigating factors:

- a. At the hearing, Constable Nolin apologized and showed appreciation for the seriousness of her actions. She also apologized to Officer L.B. and supervisor for her inappropriate behaviour, which was not her “finest moment”, and for the unnecessary burden inflicted on the Force.
- b. Constable Nolin has 15 years of productive service with the RCMP. Her performance evaluations are very positive and describe her as a member who is dedicated, always willing to assist and provides advice to others when called upon. She has a positive working attitude, she is enthusiastic and self-motivated.
- c. Constable Nolin has no record of prior discipline and no criminal record.
- d. The letters of character reference provided from co-workers and supervisors confirm that Constable Nolin has their ongoing support. She is a dedicated worker who did not let the injuries sustained during the on-duty motor vehicle incident stop her from maintaining a

positive attitude and working diligently. They also stated that they had no concerns to working with her again and would welcome such an opportunity.

- i. As indicated by the Conduct Authority Representative, the letters do not indicate whether the writer was aware of the exact allegations against Constable Nolin. At the hearing, Constable Nolin and the Subject Member Representative both confirmed that everyone who wrote a letter was informed of the conduct process pending against her. Consequently, I have considered them as a mitigating factor.

[123] Constable Nolin has submitted documents showing that she receives medical treatments on a regular basis for pain related to her on-duty motor vehicle accident. The treatments and medication may impair her concentration and increase her irritability. As there is no evidence produced at the hearing showing a causal link between the treatment received by Constable Nolin and the incident in this matter, I cannot consider this to be a mitigating factor. Although I have admitted the medical evidence in the record in the allegation phase of this hearing, I have attributed minimal weight to it.

### **Decision on conduct measures**

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

[125] It is commonly understood that members of the RCMP are held to a higher standard of behaviour than the general public, both on- and off-duty. Although this duty does not call for perfection, I am of the view that police officers are presumed to know the law, and, if in doubt, to take all reasonable measures to ensure that they are in compliance.

[126] When reviewing the ability of Constable Nolin to reform and rehabilitate, I recognize that her false declarations undermined the efforts of another law enforcement agency to conduct its mandate. However, Officer L.B. confirmed that Constable Nolin did not discard any of the receipts corresponding to the undeclared goods. The receipts were also not hidden in her

luggage, but placed on top of its contents. Officer L.B. also admitted that her interaction with Constable Nolin was not entirely unpleasant.

[127] As for her lack of transparency when informing her supervisor about the incident, there is nothing in the record to show similar contraventions at any point in her career. The issue involves a non-operational, personal matter. As indicated in my decision on the allegations, Constable Nolin did inform her supervisor of the incident immediately upon her return to work the next day at 7 a.m., which is about 12 hours after the incident. Her performance assessments as well as her letters of reference provide some insight into her character, which allow me to conclude that I have no reason to suspect that she will again act in a similar fashion.

[128] In her letter of apology of May 2021 provided in the criminal court proceedings, Constable Nolin “endeavoured to take every measure to ensure that something like this will never happen again.” At the conduct hearing, she testified that, since the incident, she still travels to Florida to visit her partner, but she is now extremely diligent in keeping every receipt of every item purchased, even small toiletry items.

[129] Although Constable Nolin initially had a cavalier attitude towards her failure to properly declare the value of the goods purchased during her trip when returning to Canada, I am convinced that she now fully understands the severity of her actions. She is not simply an ordinary citizen, but a police officer who must abide by the law for which she has a duty to enforce. This includes border security crossing that “depends on voluntary compliance for its effective enforcement.”<sup>26</sup>

[130] In the end, Constable Nolin has 15 years of good solid performance. Her actions demonstrate a one-time serious error in judgment rather than behaviour indicative of an irredeemable character flaw. I am satisfied that she has learned positive lessons from this

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<sup>26</sup> *Trites v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1365, paragraph 23 (decision submitted by the Subject Member Representative with Constable Nolin’s response to the Conduct Board in April 2021).

difficult situation, which will continue to have a lasting negative effect on her personal and professional life.

[131] The weighing of mitigating factors in favour of Constable Nolin against the aggravating factors of the established allegations is a delicate balancing act. Having considered the record before me, the nature and seriousness of the misconduct, the cases submitted as well as the mitigating and aggravating factors, I conclude that dismissal is not warranted in this matter. The mitigating factors demonstrate a minimal likelihood of recidivism and I am confident that Constable Nolin has the potential to reform and to rehabilitate herself.

[132] Given the specific circumstances of this case, I find that serious conduct measures, short of dismissal, are required to serve not only as a deterrent to Constable Nolin, but also as a warning to other members in order to ensure that this inappropriate behaviour is not repeated.

## CONCLUSION

[133] Given the nature of the three allegations established, pursuant to subsection 45(4) of the *RCMP Act*, I impose the following global conduct measures:

- a. a financial penalty of 45 days to be deducted from Constable Nolin's pay;
- b. ineligibility for promotion for a period of 3 years, to start from the date of Constable Nolin's reinstatement;
- c. a direction to work under close supervision for a period of 1 year, to start from the date of Constable Nolin's reinstatement; and
- d. a direction for Constable Nolin to apologize in writing to Officer L.B. as well as to Corporal Sébastien Parent – counsels are to work collaboratively in making this happen as soon as feasible.

[134] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on Constable Nolin as set out in

section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

January 19, 2022

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Josée Thibault

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Date

RCMP Conduct Board