Protected A

File 2019335266 (C-048)

2021 CAD 25

ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF
an appeal of a decision pursuant to subsection 45.11(1) of the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10, and
Part 2 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291

BETWEEN:

Commanding Officer, "F" Division
Royal Canadian Mounted Police

(Appellant)

and

Constable Taylor Mills
Regimental Number 56608

(Respondent)

(the Parties)

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File 2019335266 (C-048)

CONDUCT APPEAL DECISION

ADJUDICATOR: Steven Dunn

DATE: December 21, 2021

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INTRODUCTION

[1] The Commanding Officer, "F" Division (Appellant), challenges the conduct measures imposed by the Conduct Board (Board) on Constable (Cst.) Taylor Mills, Regimental Number 56608 (Respondent). After finding all five allegations established, the Board imposed a reprimand, a forfeiture of 10 days pay, and ordered the Respondent to continue professional medical counselling. The Appellant wants the Respondent to be ordered to resign, or otherwise be dismissed from the Force. In the alternative, the Appellant seeks the ability to provide fresh submissions on sanctions, before a newly constituted conduct board, in order to have an opportunity to properly respond to certain evidence filed on the eve of the original hearing (Appeal, p 5).

[2] In the statement of appeal, the Appellant maintained that the conduct measures are insufficient, and argued that the decision was reached in a manner that contravened the applicable principles of procedural fairness, was based on an error in law, and is clearly unreasonable (Appeal, p 4).

[3] Pursuant to subsection 45.15(1) of the *RCMP Act*, the appeal was referred to the RCMP External Review Committee (ERC) for review. In a report on June 30, 2021 (ERC C-2019-026 (C-048)) (Report), the Chair of the ERC, Mr. Charles Randall Smith, recommended that the appeal be dismissed.

[4] The Commissioner has the authority, under subsection 45.16(11) of the *RCMP Act*, to delegate her power to make final and binding decisions in conduct appeals and I have received such a delegation.

[5] In rendering this decision, I have considered the material that was before the Board (Material), the impugned decision, the Appeal Record (Appeal), including the submissions of the Parties, and the Report. I note that the Material was not sequentially numbered. I therefore refer to those documents by way of page number of the electronic file.

[6] I also acknowledge that the Board imposed a publication ban limiting the publication of the Respondent's medical conditions to diagnosis and prognosis.

[7] For the reasons that follow, the appeal is dismissed.

BACKGROUND

[8] The ERC succinctly summarized the factual background that led to the conduct hearing (Report, paras 4-5):

> [4] This appeal stems from the Respondent's conduct in which he was alleged to have removed RCMP decals/reflective tape twice from the police vehicle he was driving. It was also alleged that he lied to his supervisor regarding his whereabouts, left his shift early, and removed a supervisor's comments from two files.
>
> [5] The record reveals that at the time of the incidents, the Respondent was suffering from undiagnosed, work-related, Major Depressive Disorder and Post-Traumatic Stress Disorder (PTSD). The Respondent also suffered from paranoid fears, associated with his PTSD, that he was targeted by people looking to kill him and that the Force wanted to fire him. The record further reveals that the Force suspected that he was suffering from mental health issues. This is demonstrated by a note in the record written by Staff Sergeant

> (S/Sgt.) [A] on September 9, 2016, shortly after the incidents in Allegations 1 and 2 (Material, pages 1035-1036). It indicates that [S/Sgt. A] and [S/Sgt. W] met with the Respondent on that day to inform him that they had booked an appointment with the Health Services Officer (HSO) and asked the Respondent to consent to a medical examination. They wanted to ensure he was medically well, given some of his conduct, including operating an unmarked police vehicle after being directed not to do so. The note included the Respondent's explanation that he did so because he was a visible target at night in a marked police vehicle. The Respondent declined to consent to a medical examination.

CONDUCT PROCEEDINGS

[9] On October 27, 2016, the Force initiated conduct proceedings against the Respondent, who went off duty sick (ODS) on November 4, 2016. The Respondent briefly returned to work in late 2017, for two hours a week, until he was suspended in December 2017 (Material, p 1343).

[10] The investigation mandate letter listed five allegations (*sic* throughout):

> **Allegation 1:** On or between August 25, 2016 and August 31, 2016, at or near Saskatoon, Saskatchewan, [Respondent] did wilfully engage in mischief to RCMP property, a police motor vehicle designated [X], by removing the high visibility decals in such a manner as to damage the paint. It is therefore alleged that [Respondent] has contravened Section 7.1 of the Code of Conduct: Discreditable Conduct
>
> **Allegation 2:** on or between September 2, 2016 and September 4, 2016, at or near Saskatoon, Saskatchewan, [Respondent] did wilfully engage in mischief to RCMP property, a police motor vehicle designated [X], by removing the high visibility decals in such a manner as to damage the paint. It is therefore alleged that [Respondent] has contravened Section 7.1 of the Code of Conduct: Discreditable Conduct
>
> **Allegation 3:** on or about October 5, 2016, at or near Saskatoon, Saskatchewan, [Respondent] did knowingly provide false information in a verbal statement to a member superior in rank pertaining to his whereabouts during his shift following a court appearance on October 4, 2016. It is therefore alleged that [Respondent] has contravened Section 8.1 of the Code of Conduct: Reporting - Lying to superior
>
> **Allegation 4:** on or about October 25, 2016, at or near Saskatoon, Saskatchewan, [Respondent] did leave his duty area before the end of watch. It is therefore alleged that [Respondent] has contravened Section 4.1 of the Code of Conduct: Reporting for Duty.

> **Allegation 5:** on or between September 6, 2016, and September 8, 2016, at or near Saskatoon, Saskatchewan, [Respondent] did deliberately remove written direction related to the performance of his duties provided to him by a supervisor, [Sgt. D], from PROS file numbers 20141320711 and 2015731049. It is therefore alleged that [Respondent] has contravened Section 8.1 of the Code of Conduct: Reporting

[11] A criminal investigation was also initiated and eventually completed on February 27, 2017 (Material, pp 780-786). The Respondent declined to provide a statement to investigators (Material, p 787). No criminal charges resulted.

Conduct Investigation

[12] The appeal pertains primarily to the measures imposed. Since all five allegations were found to be established, details of the investigation can be addressed briefly.

[13] The investigator provided the conduct investigation report to the Appellant on July 26, 2017 (Material, p 748). Although, the conduct investigation had been initiated on October 27, 2016, the Respondent went ODS on November 4, 2016, leading the HSO to delay granting the investigator permission to arrange an interview. The Respondent would eventually provide a written statement on August 31, 2017, the contents of which were included in a supplemental investigation report submitted on September 14, 2017 (Material, pp 924, 939-941). In that interview the Respondent admitted Allegations 1 and 2, acknowledging he had damaged the highly reflective decals on the police vehicle out of a sense of being exposed and unsafe. He also revealed that he suffered from PTSD and felt mentally unable to provide more detail (Material, p 939):

> While driving [X] (marked PC) I felt very exposed and unsafe at work. This was the reason I removed the reflective decals, any damage to the paint was unintentional. Someone in my personal life brought to my attention that I was dealing with an unresolved trauma. For over the past 16 months I have been struggling with PTSD. I was diagnosed and was taken off work by my medical team. I do not wish, nor am I mentally able to go into any further detail on this matter as I am still extremely affected by this today. What I can say is some of the issues have stemmed from being forced to drive a highly reflective police vehicle.

[14] The Respondent denied Allegation 3, claiming that he did not provided false information to a supervisor regarding his whereabouts. He said he did not provide more specific detail about his day as he was uncomfortable in Sgt. D's office (Material, p 939):

> I deny allegation 3. I did not provide false information to a superior officer by verbal statement regarding my whereabouts after a court appearance. On the date in question I had a preliminary inquiry for a case where I was the lead investigator. After I had testified I drove another officer home on his day off. During the hours in question I did patrols east of [X] to show police presence, and checked a number of residences where I needed information for outstanding files. No staff from the office attempted to get a hold of me, by radio or cellphone, at this time. The following day I was brought into [Sgt. D's] office and told they did not know where I was on the day of my preliminary inquiry. [Sgt. D] was visibly upset and I was uncomfortable being in his office with his present disposition. [Sgt. D] was very accusatory and asked if I even went back to court after I was finished. I told him I had; [Sgt. D] then proceeded to tell me if I wanted to stay at court I needed to let someone at the office know. I did not give [Sgt. D] an hourly account of my whereabouts as I was very uncomfortable in his office and only wished to leave once he was done speaking.

[15] The Respondent admitted Allegation 4. He clarified that his shift time had been changed and that the senior member on duty, Cst. C, was fine with him leaving the shift early. She had his contact number in case anything arose (Material, p 940):

> Allegation 4 is true, but there are other circumstances surrounding this allegation. The [C] Detachment had ongoing issues regarding shift changes and not notifying members. During this time, Groupwise was the only form of notification given when shifts were changed. I was awaiting a replacement blackberry as it was damaged the previous winter. I was unable to access Groupwise when away from the office. I requested to be notified of shift changes by phone, and was told by [Sgt. D] that it would take too much time.
>
> On the Monday before the date in question, I had annual qualifications with the Carbine rifle at Meadow Lake. As a result of this training my shifts were switched for the following days. I was supposed to work 8 hour shifts after the training instead of 10 hour shifts. It was my understanding that I was to work 1600 to 0000 hours, not 1800 to 0200 hours. During the night shift in question, I discovered the shift's start time was changed to 1800 hours. I saw the supervisors in the office when I started my shift at 1600 hours and was not spoken too about starting early. At the end of my shift at 0000 hours I spoke with [Cst. C], the senior member on duty, to request to go home. She stated

> she was fine with that and would call if anything came in. [Cst. C] had my contact number.

[16] In a supplemental investigation report, submitted on November 28, 2017, Cst. C indicated that she did not "okay" the Respondent to leave early and that she felt uncomfortable challenging his decision. She did confirm that, if an issue arose, she could call the Respondent at home. No calls came in after he left (Material, p 944).

[17] Finally, the Respondent did not speak to Allegation 5 because he claimed that he had already been reprimanded for that incident by Sgt. D (Material, p 940). Later, on March 13, 2018, the Respondent admitted to Allegation 5 but denied that his conduct was discreditable (Material, pp 1051-1052)

Notice of Conduct Hearing

[18] ln a Notice of Conduct Hearing (Notice), dated January 15, 2018 (Material, pp 1564-1568), the Appellant informed the Respondent that a Board had been appointed to determine whether he had contravened the Code of Conduct. The Notice stated that the Appellant would seek the Respondent's dismissal from the Force if the contraventions were established.

Proceedings before the Conduct Board

[19] ln the lead-up to the hearing, scheduled for October 2, 2018, the Board and the Parties exchanged emails to define the issues. The majority of these emails are not relevant to the appeal.

[20] Section 18 of the *Commissioner's Standing Orders (Conduct)* (*CSO (Conduct)*) requires that the list of witnesses and a summary of the anticipated evidence of each witness (referred to in the evidence and in this report as a Will Say) be submitted to the Board within 30 days after the day on which the Notice of Hearing is served. Meanwhile, section 19 of the *CSO (Conduct)* provides that an expert's report and their curriculum vitae (C.V.) must be submitted to the Board at least 30 days prior to the hearing.

[21] On March 23, 2018, the Respondent confirmed that he planned to file medical evidence pertaining to both the allegations and the conduct measures. On May 11, 2018, over 30 days after

service of the Notice, the Respondent's Member Representative (MR) informed the Board that he may call both the Respondent and his spouse as witnesses.

[22] On August 31, 2018, the Board received an expert report from the Respondent's psychiatrist, Dr. C (Material, pp 1023-1034). On September 12, 2018, less than 30 days from the hearing, the Respondent submitted an amended version of the expert report (Material, pp 1011-1022). The Appellant argued that this document should be deemed as a "second" expert report, not an amended version, due to the revisions made (Appeal, pp 96-98).

[23] On September 27, 2018, the MR submitted the C.V. of the expert witness, Dr. C. Then, the night before the hearing of October 2, 2018, the MR submitted the Will Say for the Respondent's spouse.

Conduct Board Hearing

[24] The Board found all five allegations were established and provided oral reasons on October 4, 2018. A written decision was issued March 6, 2019 (Appeal, pp 9-28). The following findings are relevant to this appeal.

A. Vehicular damage

[25] At the beginning of the hearing, the Board received photographic evidence of the police vehicle and accepted that particular 6 of Allegation 1 was established in that the police vehicle was rendered less safe by the removal of the reflective tape. The Board indicated that particular 6 was "not that important in terms of the overall narrative". The Conduct Authority Representative (CAR), on behalf of the Appellant, disagreed with this characterization of the finding. He maintained that the safety feature of the police vehicle was a significant element of the particulars, but deferred to the Board. The CAR stated that he would not be providing additional material highlighting the severity of diminished safety (Material, pp 1069-1072).

B. Denied adjournment

[26] As a preliminary issue, the CAR requested an adjournment to respond to the late evidence disclosed by the Respondent (Material, pp 1081-1094). The CAR argued that the latest expert evidence was a "second" report not an "amended" report; therefore, the evidence was submitted late. He also maintained that the deletion of the reference to a bombing at the courthouse was sufficient to distinguish the submission from the "first" expert report.

[27] The CAR pointed out that the Will Say of the Respondent's spouse was submitted very late in the evening before the hearing, well after the deadline for such evidence. The CAR emphasized that the Will Say contained information that he was previously unaware of, in particular that the Respondent feared being killed by ISIS or outlaw motorcycle gangs. The CAR argued that these were "national security threats" for which he required an adjournment to be able to investigate their veracity and properly respond (Material, p 1088).

[28] The MR apologized for the late submission and noted that these examples were not presented for the truth of their contents as actual threats, but rather to illustrate the Respondent's irrational paranoia at the time of the allegations.

[29] The Board expressed disapproval of the late filing of evidence, but accepted the MR's apology and admitted the evidence. The Board agreed with the MR that these were not actual threats that needed to be investigated. The Board then indicated that the CAR would be provided the opportunity to cross-examine the Respondent, the Respondent's spouse, and Dr. C with respect to this issue, so no prejudice would be suffered by the Appellant. The Board then stated that it would be open to an adjournment thereafter, if necessary (Material, pp 1092, 1094). The Board also granted the CAR latitude in his cross-examination regarding the issue of "national security threats" (Material, pp 1144-1145).

C. Positions on psychological condition

[30] The Appellant accepted the two mental health diagnoses, but maintained that these diagnoses, and the Respondent's paranoid thoughts, did not excuse his conduct. The CAR argued

that the deceitfulness exhibited was not a symptom of these diagnoses, emphasizing that the expert had testified that the Respondent was aware of his actions.

[31] The MR insisted that the allegations as a whole were not established because the Respondent was suffering from an undiagnosed work-related PTSD and Major Depressive Disorder at the time of the events in question. In Dr. C's expert opinion, these diagnoses reasonably explained the Respondent's actions. The MR suggested that, seized with this knowledge, a reasonable person would not find the Respondent's actions likely to discredit the Force.

Decision of the Board

Allegations

[32] The Board found all five allegations to be established with the certain qualifiers.

[33] The Respondent had admitted to Allegations 1 and 2 with clarifications, which were accepted by the Board. The Board found that the reflective tape was removed in Allegation 1, but not the decals, which were only removed on the second occasion referred to in Allegation 2. The Board also found that the gouge marks were made with a tool during the first occasion in Allegation 1, but not in Allegation 2.

[34] With respect to Allegation 3, providing a false account to a superior, the Respondent admitted, in part, to the particulars. Sgt. D testified that the Respondent stated he went back to the courthouse to watch the rest of court. Sgt. D realized the Respondent had lied upon discovering that the court date was a preliminary hearing, meaning that the Respondent would have been barred from the proceedings in case he later had to testify at trial. The Board preferred the testimony of Sgt. D and found Allegation 3 to be established.

[35] Regarding Allegation 4, failure to remain on duty, the Respondent admitted this allegation, but explained that he had made a mistake regarding the start time of his shift. The Board found the allegation to be established given the Respondent intentionally left work a half hour before the end of his shift, without permission. The Board noted, however, that it did not find particular 4 to be established. That particular alleged that the Respondent had placed Cst. C's safety at risk by

leaving her without immediate backup. The Board found that there was no safety risk because Cst. C was working in the office for the remainder of her shift and had the contact information of the Respondent.

[36] Finally, Allegation 5, deleting a supervisor's comments from two files, was admitted and found by the Board to be established.

Mental illness

[37] The Board noted that the Respondent was consulting with Dr. C on a monthly basis, including seven times at the date the report was written. Dr. C diagnosed the Respondent with PTSD and Major Depressive Disorder. The Board observed that the Respondent suffered from those disorders at the time of the events, and continues to suffer from them, though he is improving.

[38] Dr. C testified that a perceived lack of support can increase the risk of PTSD and symptoms such as hyper-arousal and increased paranoia (Material, pp 1471-1472):

> He indicated that PTSD involved exposure to trauma, intrusive re-experiencing of the memories, avoidance of triggers for such, negative cognitive and emotional effects, and hyper-arousal symptoms. Some of the traumatic events leading to the development of these disorders dated as far back as 2010. The Subject Member felt that his supervisors would not be supportive if he disclosed his difficulties, and this perceived lack of support can increase the risk of PTSD. The hyper-arousal symptoms included hyper-vigilance in the community and increased paranoia that people may be following him, as well as a sense that a supervisor was trying to have him fired.

[39] The Board accepted Dr. C's evidence that paranoia can be a feature of PTSD, which could, in turn, justify lying as a means of self-preservation. The Board also accepted Dr. C's opinion that the Respondent's false statement (Allegation 3) and his removal of supervisory comments (Allegation 5), may have been an attempt to protect himself from the perception that the Force wanted to fire him. The Appellant did not call evidence to rebut the expert evidence on paranoia.

[40] The Board acknowledged the expert's opinion that the Respondent's diagnoses caused or contributed to his actions and accepted that the Respondent's fears impaired his common sense (Material, pp 1476-1477):

> ...[I]t's hard to imagine that he could ever expect not to be found out for removing the decals on the police vehicle that other members of the Detachment knew he was driving, yet he did it anyway. […]
>
> Similarly, it is difficult to believe that he could expect to get away with deleting the supervisory comments on his files when his supervisor would be reviewing the updates he made almost immediately. Yet, he did it anyway. None of these actions are the hallmarks of a criminal mastermind at work, rather they are indicative of someone whose thinking was impaired by mental illness.

[41] The Board agreed with Dr. C that, though self-preservation took priority, the Respondent's free-will was still present and he made the conscious choice with respect to each founded allegation. The Board determined that mental illness was a contributory factor but did not shield the Respondent from culpability.

Positions on Conduct Measures

[42] The Appellant sought a direction for the Respondent to resign within 14 days, or be dismissed based on the totality of the founded allegations. While acknowledging that Allegation 4 (leaving work early) did not rise to the level of the other allegations, the CAR argued that the allegations collectively demonstrated a serious breach of trust. He also argued that damaging two vehicles constituted an aggravating factor.

[43] The CAR claimed that the Respondent had demonstrated deceitfulness when he stated he felt threatened by a terrorist organization and outlaw motorcycle gangs, but later admitted that no such threats exist.

[44] While the Appellant accepted the expert's evidence regarding diagnoses, the CAR argued that dishonesty and deceit are not symptoms of PTSD or Major Depressive Disorder, proposing that Dr. C had to "create that" through reference to paranoia, a conclusion made out of advocacy,

not expert testimony. Consequently, the CAR insisted that very little weight should be given to the expert evidence (Material, p 1505).

[45] Meanwhile, the MR reiterated that the Respondent's actions were driven by paranoia, not deceit. He pointed to the Respondent's record and letters of support as mitigating factors, and submitted cases reflecting sanctions in the mitigated range, emphasizing that the Respondent apologized to affected parties, and displayed remorse.

[46] The MR suggested a global sanction of 30 to 35 days pay, a reprimand, a transfer, and continued counselling (Material, p 1550).

Conduct Measures Imposed

[47] The Board framed the decision on sanctions by noting the available range encompasses significant forfeiture of pay to dismissal and acknowledged that the repetitive nature of the damage to police vehicles was an aggravating factor. In terms of mitigating factors, the Board observed "authentic remorse" and "sincere and heart felt" apologies to those affected by the Respondent's actions. The Board reiterated that the Respondent had no prior discipline and provided letters of support from colleagues as well as his family (Report, para 58).

[48] The Board highlighted the most important mitigating factor as the Respondent's diagnoses of PTSD and Major Depressive Disorder. Without these mitigating factors, his actions would warrant dismissal for deceit and dishonesty. However, the work-related mental illnesses and associated paranoia contributed to his actions (Material, pp 1555-1556).

[49] The Board admonished the CAR for not recognizing the significance of mental illness as a mitigating factor. The Force had previously acknowledged the existence of mental health issues and recommended the Respondent seek a mental health examination (Material, p 18):

> Mental illness is not something that people can readily see in someone, even when they're looking for it and even when they know what to look for. [S.Sgt. A] was not looking for it in the Subject Member, but he did suspect that something was wrong; therefore, he requested, two years ago, that he attend a mental health evaluation. He did that because the actions of the Subject

> Member simply didn't make sense for someone who was right-thinking. His suspicions were 100 percent correct.
>
> Nothing in the circumstances of this case has really changed since then. But here we are, two years later, in a conduct hearing where the [Appellant] is still arguing for the Subject Member's dismissal. In my view, this ceased to be a dismissal case the moment the diagnosis of PTSD and Major Depressive Disorder came to light that reasonably explained the Subject Member's actions. This case is not about deceit and dishonesty. It's about the diagnosed mental illness and what comes with it: poor judgment, paranoia, fear of being found out, and of not being able to tell someone about it. Those of us who have not lived through it can only imagine the isolation and loneliness the Subject Member felt every day, believing that he was being targeted by people looking to kill him, and not being able to tell somebody about it.

[50] The Board accepted Dr. C's testimony without reservation and viewed the evidence as a "very substantial" mitigating factor (Material, p 19):

> In assessing the appropriate conduct measure to be levied against him, I accept in its entirety the report of [Dr. C] and the explanation it provides of the Subject Member's actions. While it is not enough to allow him to escape liability for those actions, it is a very substantial mitigating factor.

[51] In light of these findings, the Board refused to accept the sanctions proposed by either Party. Instead, the Board determined the appropriate measures to be a reprimand and continued professional medical counselling until both the HSO and the Respondent, upon the recommendation of his treating professionals, agree counselling is no longer necessary, and the forfeiture of 10 days pay.

[52] Finally, the Board reminded both the Appellant and the CAR that they have a responsibility to continually assess whether the evidence supports the sanction sought. Doing otherwise will unnecessarily "drag out" proceedings and delegate that responsibility to the Board (Material, p 20).

THE APPEAL

[53] On March 29, 2019, the Appellant presented a Statement of Appeal to the Office for the Coordination of Grievances and Appeals (OCGA) (Appeal, pp 4-5). The Appellant argued that the decision on conduct measures imposed by the Board is clearly unreasonable, based on an error of law, and was reached in a manner that contravened the applicable principles of procedural fairness.

[54] As redress, the CAR contends that the appropriate remedy is alternatively dismissal or to allow fresh submissions on sanctions, before a newly constituted conduct board, in order to have an opportunity to properly respond to the late evidentiary disclosure (Appeal, p 5).

[55] In written submissions, the Appellant raised the following grounds in support of his appeal (Appeal, pp 93-102):

i. The decision was clearly unreasonable because the Board provided inadequate reasons;

ii. The Board breached the Appellant's procedural rights by denying the request for an adjournment to respond to the late evidence, i.e. the "second" expert report and the Will Say of the Respondent's spouse; and,

iii. The Board also breached the Appellant's procedural rights by denying the request to call evidence regarding the reduced safety of the police vehicle caused by the removal of reflective decals.

[56] In the event that a new Board is constituted, the CAR wishes to call an expert witness to conduct an assessment of the Respondent, specifically with regard to his fear of being killed by ISIS or an outlaw motorcycle gang, and to challenge the expert evidence of Dr. C with respect to the Respondent's paranoia.

[57] In reply, the Respondent stated that the conduct measures imposed by the Board were within a range of reasonable, possible, and acceptable measures. Accordingly, the Respondent takes the position that the appeal should be dismissed.

Preliminary Matter

Retroactive extension

[58] Upon receiving the materials, the ERC noted that the mandate letter to begin the Code of Conduct investigation was issued on October 27, 2016 (Material, pp 788-789). The Notice to the Designated Officer (NDO), requesting initiation of the conduct hearing, was signed more than one

year later on December 15, 2017 (Material, pp 1562-1563). Just the same, the record had no indication that an extension had been issued, prompting the ERC to request submissions on the issue pursuant to section 8 of the *RCMP External Review Committee Rules of Practice and Procedure* (ERC Rules of Practice and Procedure). Both Parties complied and their submissions addressed subsection 41(2) of the *RCMP Act*, which imposes a one-year time limitation to initiate a conduct hearing after "the contravention became known to the conduct authority that investigated the contravention or caused it to be investigated", and the retroactive extension that had been granted pursuant to subsection 47.4(1).

[59] The ERC set out a timeline of events that culminated in the delay (Report, para 73):

- An investigation was mandated by the initial CA on October 27, 2016;
- On November 4, 2016, the Respondent went ODS;
- As of July 21, 2017, the Health Service Officer (HSO) would not consent to the Professional Responsibility Unit (PRU) contacting the Respondent to request a statement;
- The original prescription date was set to expire on August 25, 2017. Prior to the end of the prescription period, the CA requested a 90-day extension to the one-year limitation period to impose conduct measures under subsection 42(2) of the RCMP Act, arguing that the HSO's restrictions had prevented the Conduct process from moving forward within the prescription period. ln accordance with the HSO's restrictions, the Respondent was not served with this extension request and did not have an opportunity to provide submissions;
- On August 7, 2017, the Acting Director General of the Workplace Responsibility Branch (A/DG) granted the CA a 120-day extension of the subsection 42(2) time limit, to December 23, 2017 (Appeal, pages 371-375);
- On August 8, 2017, the HSO permitted the PRU to contact the Respondent, and the extension decision was served on him on August 10, 2017. The Respondent does not challenge this extension decision;

- The Respondent delivered a prepared statement to the PRU investigator on August 31, 2017 (Material, pages 939-940);

- The Respondent briefly returned to work in late October or early November 2017 on a graduated return to work of two hours per week;

- On October 10, 2017, the initial CA advanced the matter to the second CA because he believed the range of measures available to him were insufficient;

- More than a month later, the second CA requested assistance from the CAR Directorate who informed him on December 5, 2017, that the original extension request had not addressed the one-year time limit to initiate a Conduct Hearing set out in subsection 41(2) of the *RCMP Act*;

- On December 5, 2017, the CA sought a retroactive extension to this time limit until December 23, 2017 so that a Conduct Hearing could be initiated (Appeal, pages 376-379)

- The request was served on the Respondent, but the Respondent did not provide submissions regarding the extension request;

- On December 15, 2017, […] the Director General of the Workplace Responsibility Branch (DG) applied the test for an extension of time set out in *Canada (Attorney General) v. Pentney, 2008 FC 96 (Pentney)* and granted a retroactive extension of the subsection 41(2) time limit until December 23, 2017 (Appeal, pages 380-387). The DG indicated that it was an amended decision as the Appellant had amended his prior request for an extension of the time limit set out in subsection 42(2) of the *RCMP Act* to also include a request for a retroactive extension of the time limit set out in subsection 41(2);

- On December 15, 2017, the CA submitted an NDO to initiate a Conduct Hearing and on December 18, 2017, the Board was appointed; […]

[60] After an exhaustive analysis, the ERC ultimately found that the granting of the retroactive time extension was justified and therefore not clearly unreasonable (Report, paras 74-117).

[61] Whatever the scope of section 8 of the ERC Rules of Practice and Procedure may be, I am not convinced that an ERC request for submissions amounts to an automatic right to perfect a previously non-existent appeal (or cross-appeal):

> 8. In the course of reviewing a matter referred to the Committee by the Commissioner, the Committee Chairman may permit the parties and interested persons to file written submissions for the purpose of clarifying the matter.

[62] For reasons I will briefly explain, I refuse to grant leave to the Respondent to raise the issue of the retroactive extension at this late juncture. The exercise of such discretion requires balancing the interests of justice as they affect the parties and only exceptional cases where an injustice has resulted warrant allowing a new appeal ground to be heard. What's more, such cases are only likely to be permitted where an issue of law is raised that does not require the leading of evidence for the first time on appeal (see, for example, *R v Brown*, [1993] 2 SCR 918, at pp 923-927, and *Mariner Towers Ltd. Partnership v Imani-Raoshanagh*, 2011 BCCA 261, at para 26, both endorsing the principles stated by Lambert JA in *R v Vidulich* (1989), 37 BCLR (2d) 391 (CA), at pp 398-399).

[63] For starters, the Respondent was well aware of the time extension long before the conduct hearing convened and yet chose not to make submissions in reply to the Appellant's retroactive request in the first instance, or to subsequently file a motion to the Board challenging the reasonableness of the extension decision (see *Calandrini v Canada (Attorney General)*, 2018 FC 52, para 61).

[64] Likewise, the Respondent also chose not to present a statement of appeal after the Board issued the written decision. Instead, he finds himself a Party to this appeal as a result of the Appellant's own challenge.

[65] Finally, no injustice occurred here. This is not a situation where there was absolutely no statutory authority for the time extension to be granted, or an RCMP official not delegated the Commissioner's power to do so issued the extension, either of which would leave the conduct hearing *void ab initio*. On the contrary, by all accounts, the statutory processes were followed and, as found by the ERC, reasonably applied. In short, there is no compelling reason to grant leave.

[66] Accordingly, I will say nothing further on this issue.

ANALYSIS

Did the Board uphold procedural fairness?

Standard of review for procedural fairness

[67] While a challenge to a conduct decision lies on any ground of appeal (subsection 45.11(4) of the *RCMP Act*), subsection 33(1) of the *CSO (Grievances and Appeals)* distinguishes the standards of review to be applied:

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

[68] ERC recommendations, Commissioner decisions, and appellate jurisprudence confirm that issues of procedural fairness are to be assessed on the standard of correctness (see *Mission Institution v Khela*, [2014] SCC 24, at para 79; and *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, at paras 36-38). The question is really a binary one. Either the decision maker did or did not follow a principle of procedural fairness (*Kinsey v Canada (Attorney General)*, 2007 FC 543, at para 60). If procedural fairness was breached, the decision under review will be set aside and a new decision must be rendered, except if the result would be nonetheless inevitable (*Mobil Oil Canada v Canada Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, at p 228).

A. Refusal of evidence regarding police vehicle safety

[69] I agree with the ERC that the Board's refusal to hear further evidence on the safety of the police vehicle was not procedurally unfair. The CAR argues that the following exchange demonstrated he had been "improperly refused" the ability to provide evidence of an aggravating factor, namely damage to the police vehicles (Material, pp 1071-1072):

> [CAR]: But that's essentially what it speaks to. But I perhaps maybe don't necessarily agree with your - I think the safety feature of the vehicle is a significant element of the particulars, but ultimately, I'd defer to the Conduct Board as well in terms of what you feel is a -

> The Chairman: And thankfully from my perspective I get to sit here, and you get to sit there
>
> So –
>
> [CAR]: Yes.
>
> The Chairman: So I've made the determination. I have determined that the vehicle was rendered less safe. I'm not prepared to hear a whole bunch more argument and discussion on the issue because I don't think it's that important in the grand scheme of things for this allegation or for this conduct hearing in general.
>
> [CAR]: ln light of that I probably won't be providing you that additional material, sir.
>
> The Chairman: All right.

[70] The ERC accepted that the Respondent impaired the safety of the vehicles and the allegation was established. As pointed out by the ERC, the Federal Court in *Kamtasingh v Canada (Citizenship and Immigration)*, 2010 FC 45, at para 13, acknowledged that a decision maker "can, of course, limit the scope of evidence by stipulating certain points that are not in dispute". The CAR had already demonstrated his point regarding particular 6 of Allegation 1. Since no further evidence was required, the Appellant's right to be heard was not undermined.

[71] Indeed, the Board's handling of this issue reflects subsection 13(1) of *CSO (Conduct)* which directs conduct boards to manage hearings as "as informally and expeditiously as the principles of procedural fairness permit."

[72] There is no requirement to call every witness or hear every piece of evidence, nor is the Board required to repeat their rationale for every evidentiary decision (see, for example, *Canada (Minister of* Citizenship *and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), at para 128).

B. Refusal to allow an adjournment to respond to late evidence

[73] I agree with the ERC that it was not procedurally unfair for the Board to refuse an adjournment request so the Appellant could respond to the Respondent's late evidence.

[74] The CAR sought additional time to prepare following the late submission of a Will Say from the Respondent's spouse and a "second" expert report from Dr. C that had removed mention of a courthouse bombing.

[75] Specifically, the CAR argued that the following information in the Will Say was "new" and he needed to research the veracity of the claims (Material, pp 1574-1577) [*sic* throughout]:

> In relation to the heightened paranoia
>
> That there are people around their house that drive motorcycles-they live on a cul-de-sac off the bay. Any time he would hear a motorcycle he would look through the slats of the patio to see if he could see a patch or identify them as one of their neighbours.
>
> That when the parking lot at the detachment was revamped, he emailed the woman in charge asking why they didn't have spots as he was afraid that when he was walking to office in uniform ISIS could come take him out.
>
> That she knows this because Taylor told her. That she cannot recall if she saw the email
>
> That on one while still living in Fort Qu'Appelle the car alarm was triggered by the temperature change and Taylor ran outside with the baton.
>
> That when he heard firecrackers go off he ran outside onto the deck
>
> That he grew a beard so that he wouldn't be identified as a police officer- he didn't want ISIS to identify him as a police officer and kill him
>
> That any time they would go out in public he would have to face the door so he could see everyone that was coming and going. [...]
>
> That he is afraid of being targeted and killed unexpectedly
>
> That he would be targeted because he's a police officer

[76] The CAR stresses that this information was crucial to the final decision made by the Board with respect to the conduct measures imposed. The Board selected a measure below what was requested in light of the paranoia demonstrated, in part, by the spouse's Will Say.

[77] The CAR claimed that the statements regarding ISIS and gangs may constitute a national security threat and so he needed time to confirm the veracity of the claims.

[78] In reply, the MR stated that the Will Say was not presented as proof of its contents. The Respondent believed he was under threat as a result of paranoia. The fact that the threats were not

literal is emblematic of the Respondent's mental illness. Furthermore, paranoia and mental illness were referenced throughout the original expert report, and so the Will Say should have come as no surprise.

[79] As for the "amended" nature of the expert report from Dr. C, the MR clarified that the revision was related to an incorrect date and sequence of events, arguing that the change was not sufficient to characterize the document as a "second" report.

[80] The MR apologized for the late submissions. He was chastised by the Board, who then accepted the evidence and provided the CAR latitude in his cross-examination of the witnesses.

[81] I agree with the ERC and the Board that it was unnecessary to provide an adjournment to allow the CAR time to respond to the spouse's Will Say.

[82] There was no need to test the veracity of any threats from ISIS or motorcycle gangs. The expert, the Respondent, and the Respondent's spouse all confirmed that these threats were a product of paranoia. There was no attempt to demonstrate their truth, and so there was no reason for the CAR to confirm whether a national security threat was actually present (Material, pp 1087-1094).

[83] Moreover, the presence of paranoia should not have come as a surprise to the CAR as that diagnosis was presented in the expert report. The CAR had 14 days to notify the Board if he wished to examine Dr. C following service of the report, in accordance with subsection 19(3) of the *CSO (Conduct)*, but he chose not to do so.

[84] Finally, the Board provided the CAR the opportunity to cross-examine Dr. C and the Respondent's spouse. The Board was also open to revisiting an adjournment if cross-examination did not satisfy the CAR. Again, the CAR declined.

C. Characterization of expert report

[85] I accept the ERC's finding that the report submitted on September 12, 2018, was an amendment, not a second report. A single paragraph was changed in the report. The reference to a

bombing at the courthouse was originally provided to explain the Respondent's reluctance to re-enter the courthouse with respect to Allegation 3. The expert amended the report, instead referring to the Respondent's general anxiety as an explanation for his actions (Material, pp 1020, 1032). Allegation 3 was established and the recognition of the Respondent's mental illness did not hinge on this piece of information. In the end, the ERC found the amendment to be of little significance (Report, para 142). I agree.

D. Late evidence

[86] In light of the Board's explanation, I also agree with the ERC that the late admission of evidence did not breach the Appellant's procedural rights.

[87] First, the Board had the power to accept the evidence according to section 13 of the *CSO (Conduct)*:

> 13. (1) Proceedings before a conduct board must be dealt with by the board as informally and expeditiously as the principles of procedural fairness permit.
>
> (2) The conduct board may adapt these rules of procedure if the principles of procedural fairness permit.
>
> (3) The conduct board may remedy any failure to comply with these rules of procedure, including by setting aside a proceeding either wholly or in part, in accordance with the principles of procedural fairness.
>
> (4) If any matter arises in the proceedings that is not otherwise provided for in the Act, the Regulations, or these Standing Orders, the conduct board may give any direction that it considers appropriate.

[88] Moreover, in my view, it was appropriate in the circumstances to admonish the MR for late submission and still admit the evidence, all the while providing flexibility to the CAR on cross-examination and a commitment to revisit the question of an adjournment.

Was the decision clearly unreasonable for insufficiency of reasons?

[89] Finally, the Appellant contends that the impugned decision was clearly unreasonable in light of the insufficiency of reasons provided by the Board for various procedural and corollary decisions.

Standard of review for insufficiency of reasons

[90] Subsection 11.16.2 of the RCMP conduct policy in AM Part XII (Conduct Policy) states that conduct boards must provide a written decision that includes reasons.

[91] As noted by the Supreme Court of Canada (SCC) in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] SCC 62, at para 22 (*Newfoundland Nurses)*, in circumstances where reasons are provided by the decision maker, but their sufficiency is questioned on appeal, the reasons are to be assessed on their reasonableness:

> It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there are reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis.

[92] In *Kalkat v Canada (Attorney General)*, 2017 FC 794, at para 62, the Federal Court considered the term "clearly unreasonable" as set out in subsection 33(1) of the *CSO (Grievances and Appeals)*:

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

[93] In *Smith v Canada (Attorney General)*, 2019 FC 770, at para 38, a similar finding was considered and adopted:

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

[94] More recently, the Federal Court of Appeal reached the same conclusion in the ensuing *Smith* appeal, 2021 FCA 73.

[95] In *Canada (Director of Investigation and Research) v Southam Inc,* [1997] 1 SCR 748 (*Southam*), at para 57, the SCC explained that a decision is considered patently unreasonable if the "defect is apparent on the face of the tribunal's reasons", in other words, it is "openly, evidently, clearly" wrong. The SCC also expanded on the distinction between "unreasonable" and "patently unreasonable" (*Southam,* para 57):

> The difference lies in the immediacy or obviousness of the defect. lf the defect is apparent on the face of the tribunal's reasons, then the tribunal's decision is patently unreasonable. [...] This is not to say, of course, that judges reviewing a decision on the standard of patent unreasonableness may not examine the record. lf the decision under review is sufficiently difficult, then perhaps a great deal of reading and thinking will be required before the judge will be able to grasp the dimensions of the problem. [...] But once the lines of the problem have come into focus, if the decision is patently unreasonable then the unreasonableness will be evident.

[96] Later, in *Law Society of New Brunswick v Ryan*, 2003 SCC 20, at para 52, the SCC stated that a patently unreasonable decision is one that is "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand."

[97] The SCC renewed an examination of the standard of review in *Vavilov*. For present purposes, I note that the SCC confirmed that legislated standards of review should be respected (*Vavilov,* paras 34-35).

[98] An adjudicator is not required to provide reasoning for each element of every decision point. The ERC referred to *Service Employee' International Union, Local No. 333 v Nipawin District Staff Nurses Assn.,* [1975] 1 SCR 382, at page 391, to illustrate the standard for adequately documenting reasons, "[a] tribunal is not required to make an explicit written finding on each constituent element, however subordinate, leading to its final conclusion."

[99] With that in mind, I will now turn to the question of whether the Board made any manifest and determinative errors.

A. Did the Board err by failing to mention mischief, breach of trust, and repair cost when assessing measures?

[100] The CAR took issue with the fact that the Board's decision did not mention that: the damage to the police vehicle constituted mischief in the criminal sense; the Respondent breached the trust of the public by impairing the safety of the vehicles; or, the cost of repairs. The CAR questions whether these factors were even considered.

[101] In my view, the Board was not required to elaborate on these points. Allegations 1 and 2 listed mischief as a particular. The cost of damage was also listed in the particulars. The Respondent admitted to these allegations. As for the breach of trust argument, the Board acknowledged and discounted it in the hearing as a mischaracterization of mental illness (Material, pp 1488-1489).

B. Did the Board err by failing to explain the refusal to allow the CAR to call evidence and to grant an adjournment?

[102] Like the ERC, I find that the Board did not err in refusing to grant an adjournment. After all, there was no need to call evidence on the amount of damage to the police cruisers since those amounts were not in dispute. The transcripts demonstrate that the Board explained as much at the hearing (Material, pp 1070-1072). The Board also explained why it was unnecessary to adjourn to determine whether there was a national security risk. The CAR seems to have been oblivious to the fact that the information was not presented for the veracity of the threats. Even when this reality was explained by the Board, the CAR persisted. Here again, there was no need for the Board to replicate these exchanges in the decision.

C. Did the Board err by failing to adequately explain the rationale for accepting the expert evidence?

[103] The CAR's objections concerning the expert report are essentially three-fold:

- The amended report was actually a second report;

- Dr. C was acting as advocate, not expert; and,

- The expert report did not address the existence of perceived threats from ISIS or motorcycle gangs, making it unclear whether their existence were material facts.

[104] I find these issues were sufficiently addressed in both the Board's written reasons and at the hearing.

[105] To begin, I am satisfied that there was one report, and the change regarding the reasoning for not re-entering the courthouse was immaterial. I do not find it inappropriate that Dr. C revised the report after the MR asked him to confirm whether the events occurred in the chronological order as described in the report (Material, p 1246). In any event, the allegation concerning the events at the courthouse was established regardless.

[106] The Board also addressed arguments concerning the credibility of Dr. C's testimony at the hearing. When the CAR suggested that the witness crossed the line into advocacy the Board stated that he did not believe that to be the case (Material, p 1501). It is not lost on me that the CAR also chose not to provide any expert evidence to contradict Dr. C's findings.

[107] Finally, there is no question as to how the Board considered the paranoia surrounding ISIS and motorcycle gangs. The Board accepted that they were unfounded fears demonstrating the irrationality of the Respondent's beliefs. There was no need to consider a national security threat. The Board emphasized that the evidence was being accepted as evidence of paranoia not for the veracity of the perceived threats (Material, p 1091). In short, the explanations provided by the Board were entirely reasonable.

Conduct Measures

Standard of Review

[108] The Appellant argues that the conduct measures imposed are insufficient in light of the allegations. The Board imposed a reprimand, continued medical counselling, and forfeiture of 10

days pay. Instead, the Appellant is seeking a direction for the Respondent to resign within 14 days, or otherwise be dismissed from the Force.

[109] Where reasons are provided, significant deference is owed to the conduct board that imposes conduct measures. In *R v Lacasse*, 2015 SCC 64, at paras 43-44, while expressed in the criminal context, the same principles are applicable here, the SCC expanded on the deference owed in a review of sanctions:

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

[110] In general, a conduct appeal adjudicator should only intervene where the conduct measure "is unreasonable, fails to consider all relevant matters (including important mitigating factors), considers irrelevant aggravating factors, demonstrates a manifest error in principle, is clearly disproportionate with the conduct and the sanction in other previous similar cases, or would amount to an injustice" (see D-115, Commissioner's decision, at para 44).

[111] In other words, conduct measures should only be overturned on appeal in rare circumstances.

Methodology for determination of appropriate sanctions

[112] The RCMP and ERC have long adopted a three-part process to arrive at appropriate conduct sanctions:

i. determine the appropriate range of sanction, given the seriousness of the conduct;

ii. determine any mitigating and/or aggravating factors; and

iii. select a penalty that best reflects the severity of the misconduct, and the nexus of the misconduct and the requirements of the policing profession.

[113] A conduct authority or conduct board is not required to specifically reference these three steps as a *de facto* test, rather, they must demonstrate that they have turned their mind to each of these elements.

Summary of conduct measures determination

[114] The Board referred to each step of the conduct measures assessment. With respect to the appropriate range of sanctions, the Board noted (Appeal, p 24):

> In making my decision, I'm first required to establish the range of conduct measures appropriate for the misconduct involved. In cases involving the misconduct established against the Subject Member, that range normally runs from a significant forfeiture of pay to dismissal.

[115] Next, the Board identified the mitigating and aggravating factors. In terms of aggravating factors, the Board observed (Appeal, p 24):

> [T]he only [aggravating factor] suggested by the [CAR] in this case is the fact that the damage to the police vehicle was repetitive, in that it happened for the second time shortly after the vehicle was initially repaired.

[116] Meanwhile, the Board stressed the importance of the relevant mitigating factors (Appeal, pp 25-26):

> With respect to almost all of the conduct contained within the allegations, the Subject Member immediately admitted responsibility when questioned or confronted. He also admitted to his actions before me, though challenging the finding of discreditable conduct in relation to three of the allegations based on the existence of mental illness. Because that defence had an air of reality to it, I find that this challenge doesn't diminish his acknowledgment of responsibility.
>
> The Subject Member demonstrated authentic remorse on the witness stand and issued what I saw as a sincere and heartfelt apology to everyone affected by his actions. He also demonstrated an awareness, not always apparent to

> members in his position, in terms of the scope of those who may have been affected by what he did and these proceedings.
>
> The Subject Member has no prior discipline and he was able to provide letters of support from members who have worked with him in the past and who characterize this misconduct as out of character for him.
>
> He also has the support of his wife and family in dealing with his mental illness, which brings me to the last, and by far most important, mitigating factor. The Subject Member was diagnosed as suffering from PTSD and Major Depressive Disorder before, during, and after these events occurred. The symptoms of his illness trace as far back as 2010, but were at their most acute in 2016, at the time this misconduct occurred.
>
> The Subject Member testified that this was the lowest point of his life, a time when he was consumed with paranoid thoughts about him being targeted by people looking to kill him, among other things. His overriding concern every day was to keep himself from being shot and killed, and he saw potential threats everywhere.
>
> […]
>
> The actions he took were not for any nefarious purpose, but due to unreasonable paranoid beliefs he held at the time and directly attributable to his mental illness. In assessing the appropriate conduct measure to be levied against him, I accept in its entirety the report of [Dr. C] and the explanation it provides of the Subject Member's actions. While it is not enough to allow him to escape liability for those actions, it is a very substantial mitigating factor.

[117] The Board then imposed a sanction after describing the mitigating impact of the Respondent's mental illness. I am satisfied that the Board provided sufficient justification for the conduct measures imposed and agree with the rehabilitation observations (Appeal, p 26):

> I also acknowledge that the first goal of discipline is rehabilitation. In this case, the rehabilitation required is more medical than conduct related. In light of all those factors, I'm not inclined to accept the submission put forward by either of the parties. In my view, the appropriate conduct measures, taking into account all of the circumstances of this case, are a reprimand, continued professional medical counselling until both the Health Services Officer and the Subject Member, upon the recommendation of his treating professionals, agree it is no longer necessary, and the forfeiture of 10 days' pay.

Findings

[118] I agree with the ERC finding that "the Appellant did not establish that the [Board] rendered a clearly unreasonable decision because of inadequate reasons" (Report, para 2).

[119] The Board satisfied all requirements in determining the appropriate sanctions to be imposed by: delineating the range of sanctions available; stating the mitigating and aggravating factors; and, providing a rational explanation for imposing conduct measures outside of the usual range.

[120] In sum, the Board's decision must stand.

COMMENTS ON MENTAL HEALTH

[121] Finally, I agree with the ERC that additional commentary on the way the Respondent's mental health issues have been addressed throughout this process is required.

[122] The record clearly demonstrates that the Force suspected mental illness years earlier. S/Sgt. A and S/Sgt. W met with the Respondent on September 9, 2016, to request that he voluntarily attend a medical examination but he refused. Unfortunately, steps were not taken to order a medical assessment through the HSO (Material, pp 1035-1036).

[123] There is some degree of tragic irony that this series of events was, in part, precipitated by the Respondent's fear that his mental health issues may cost him his job. While many of his fears have been characterized as paranoia, this one evidently was not. The CAR has attempted to reframe the Respondent's paranoia with respect to the perceived threats on his life as a factor demonstrating the need for termination. In reality, it is demonstrative of the need for compassion and good faith attempts at supporting treatment and accommodation up to the point of undue hardship. Discipline was surely warranted, but not dismissal.

[124] Put bluntly, the Appellant has the right to appeal the conduct measures deemed inappropriate; however, the characterization by the CAR of the Respondent's symptoms of mental illness as deceitfulness is downright callous.

[125] Taking into consideration the ERC suggestion (Report, para 191), I urge the new CO of "F" Division to personally contact the Respondent and acknowledge the situation including the Force's obligations moving forward.

DISPOSITION

[126] The Appellant has not persuaded me that the Board made any reviewable errors during the hearing or in imposing conduct measures.

[127] Pursuant to section 45.16 of the *RCMP Act*, the appeal is dismissed and the conduct measures imposed by the Board are confirmed.

Steven Dunn, Adjudicator Date