

Protected A

2022 CAD 09



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, "F" Division

Conduct Authority

and

Constable Trevor Sowers
Regimental Number 59005

Subject Member

Conduct Board Decision

Kevin Harrison

May 23, 2022

Staff Sergeant Jonathan Hart, Conduct Authority Representative

Protected A

2022 CAD 09

Mr. Brad Mitchell and Mr. Paul Wood, Subject Member Representative

TABLE OF CONTENTS

SUMMARY OF FINDINGS	4
INTRODUCTION.....	4
ALLEGATIONS	5
CREDIBILITY OF WITNESSES	12
The timeline of Ms. J.S.'s complaints to the RCMP	13
My findings on the credibility of the witnesses	17
FACTS UNDERLYING ALL ALLEGATIONS	18
The evidence	18
My findings	20
ANALYSIS	22
Allegation 1 – Assault of Ms. J.S.....	23
<i>The evidence</i>	23
<i>My findings</i>	24
Allegations 2 and 3– Assault of Ms. J.S. and improper transportation and storage of Force-issued service pistol	25
<i>The evidence</i>	25
<i>My findings</i>	28
Allegation 4 – Sexual assault of Ms. J.S.....	32
<i>The evidence</i>	32
<i>My findings</i>	35
Allegation 5 – Fraudulent CERB claim	37
<i>The evidence</i>	37
<i>My findings</i>	40
Allegation 6 – Wrongful and unauthorized disclosure of information obtained while on-duty	41
<i>The evidence</i>	41
<i>My findings</i>	42
Conclusion on the allegations	43

CONDUCT MEASURES	43
Joint proposal on conduct measures	44
Common law on joint proposals.....	44
Decision on conduct measures	45
CONCLUSION	48

SUMMARY OF FINDINGS

The *Notice of Conduct Hearing* contained six alleged contraventions of the Code of Conduct. Four of the allegations are under section 7.1 (discreditable conduct) of the Code of Conduct. The remaining two allegations are under section 4.6 (misuse of government issued property – improper transportation and storage of RCMP-issued service pistol) and section 9.1 (unauthorized use of information). The Conduct Board found five of the six allegations were not established. The allegation under section 9.1 of the Code of Conduct was established. The Conduct Board accepted the parties’ joint submission on conduct measures and imposed a financial penalty of 64 hours (8 days) deducted from the subject member’s pay; a forfeiture of 56 hours (7 days) of annual leave and a reprimand.

INTRODUCTION

[1] On January 12, 2021, the Conduct Authority for “F” Division (the Conduct Authority) signed a *Notice to the Designated Officer*, in which she requested the initiation of a conduct hearing in relation to this matter. On January 19, 2021, the Designated Officer appointed me as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] The Conduct Authority signed the *Notice of Conduct Hearing* on February 2, 2021. The *Notice of Conduct Hearing* contains six allegations. Four of the allegations are under section 7.1 (discreditable conduct) of the Code of Conduct. The remaining two allegations are under section 4.6 (misuse of government issued property – improper transportation and storage of RCMP-issued service pistol) and section 9.1 (unauthorized use of information).

[3] Constable Sowers denied all six allegations.

[4] For the allegations phase of this proceeding, I heard evidence in Saskatoon, Saskatchewan, between October 18 and 20, 2021. The parties delivered their oral submissions on October 22, 2021. I delivered my oral decision on the allegations by videoconference on November 30, 2021. I found that the Conduct Authority did not establish Allegations 1 through 5, but that she did establish Allegation 6 on a balance of probabilities.

[5] The parties presented a joint submission on conduct measures that included a financial penalty of 8 days deducted from Constable Sowers' pay, a forfeiture of 7 days of annual leave and a reprimand. I accepted the joint submission and imposed the requested conduct measures by videoconference on December 21, 2021.

[6] The following is my final written decision on both the allegations and conduct measures.

ALLEGATIONS

[7] The *Notice of Conduct Hearing* contains the following six allegations and particulars:

Particulars common to all Allegations

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "F" Division, Saskatchewan.
2. On October 13, 2013, you were married to Ms. [J.S.]. Both you and Ms. [J.S.] were previously married and each of you have children from your previous partners. You and Ms. [J.S.] separated on or about November 10, 2019.
3. Throughout your marriage, Ms. [J.S.] resided in Saskatoon and you would commute – as necessary – to your workplace. Your first posting was with the Humbolt RCMP Detachment and then on June 22, 2015, you were posted to the North Battleford RCMP Detachment. You and Ms. [J.S.] also owned a vacation property or summer cottage ("cottage") on Murray Lake near the resort village of Cochin, Saskatchewan.
4. Your marriage to Ms. [J.S.] included domestic unrest and emotional abuse directed toward both Ms. [J.S.] and her children from a previous marriage:

[excerpt from interview transcript omitted]

2022 CAD 09

5. You threatened Ms. [J.S.] that if she ever told anyone about the domestic violence that she would be in trouble and you would leave her.

[excerpt from interview transcript omitted]

6. That your investigative file work is recorded in the Police Reporting and Occurrence System (“PROS”) utilized by the RCMP in the province.

7. On January 21, 2020, Staff Sergeant Devin Pugh (“Pugh”) obtained the first statement from Ms. [J.S.].

8. On March 11, 2020 Corporal Brenda Diachuk (“Diachuk”) obtained a KGB statement from Ms. [J.S.].

9. Corporal Ashley St. Germaine (“St. Germaine”) is an investigator with the Prince Albert General Investigation section. Sergeant Chris Hansen (“Hansen”) is also an investigator with the Prince Albert General Investigation section. On May 18, 2020, they obtained the third statement from Ms. [J.S.].

10. Sergeant Lyle Korczak (“Korczak”) is the Professional Responsibility Unit investigator who was assigned to your code of conduct investigation.

Allegation 1

On or between June 1, 2014, and June 30, 2014, at or near Saskatoon, in the Province of Saskatchewan, Constable Trevor Sowers behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. You assaulted Ms. [J.S.] after she accused you [of having] an affair with a paramedic from Humboldt. You grabbed onto her left arm with sufficient force to leave bruising: “Like the one time he grabbed me by the arm so hard he left bruises and I told his brother about it.” Ms. [J.S.] further described the assault you committed upon her as follows:

[excerpt from interview transcript omitted]

2. That Ms. [J.S.] took pictures of the bruising to send to your brother and let him know that: “this is not okay.” The five (5) photographs of the visible bruising taken by Ms. [J.S.] are included in the investigative material.

3. Ms. [J.S.] acknowledges that this incident is the only occasion in which the domestic violence that she experienced left bruising on her person:

[excerpt from interview transcript omitted]

Allegation 2

On or about February 28, 2016, at or near North Battleford and Cochin, in the Province of Saskatchewan, Constable Trevor Sowers behaved in a

manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. You spent the weekend in Alberta to visit with your kids from your first marriage and you asked Ms. [J.S.] to meet you in North Battleford with all of your “police stuff” as you worked on Monday. Ms. [J.S.] agreed to your request and packed up everything that you would need for work: “Like, his duty belt, and his gun, and his police clothes” and placed it all into a “Rubbermaid tote.”

2. Initially Ms. [J.S.] was planning to spend the night with you at the cottage, however, due to a heated argument during dinner she simply drove away from the restaurant. Prior to leaving the restaurant, Ms. [J.S.] inadvertently forgot to provide you with your police equipment. Ms. [J.S.] described how as she was driving home back to Saskatoon she noticed that you appeared to be chasing her in your vehicle: “And all of a sudden I look behind me, and he’s in my rear-view mirror, following me really closely, and phoning me like crazy, and I realize that I have his police stuff.” Ms. [J.S.] agreed to meet you at the cottage to provide you with your police equipment.

3. As Ms. [J.S.] was driving to your cottage around 9:30 p.m she realized that you were still “chasing her” and that your actions were “scaring me”. Ms. [J.S.] missed the highway approach to your cottage and was in the process of turning her vehicle around on the highway near the Village of Cochin when you used your own vehicle to block and effectively stop Ms. [J.S.]’s vehicle on the highway. You then assaulted Ms. [J.S.] as you forcibly opened the door to retrieve the Rubbermaid tote. Your actions also endangered the personal safety of Ms. [J.S.] and ultimately caused her to experience physical pain and discomfort following the assault. Ms. [J.S.] described your endangering actions and assaultive behaviours directed at her as follows:

[excerpt from interview transcript omitted]

4. Ms. [J.S.] described the experience as “horrible” and that she was “terrified” mostly because she was falling out of the moving truck. Ms. [J.S.] further stated the vehicle was a F150 truck so fairly high off the ground and that it rolled a little bit forward and that she was “hanging half out of the truck” as it started to roll.

5. Ms. [J.S.] was physically hurt as a result of your assaultive actions and experienced pain and discomfort the following day:

[excerpt from interview transcript omitted]

Allegation 3

2022 CAD 09

On or about February 28, 2016, at or near North Battleford and Cochin, in the Province of Saskatchewan, Constable Trevor Sowers failed to ensure that government-issued equipment and property was used/transported in a safe and authorized manner, contrary to section 4.6 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. You spent the weekend in Alberta to visit with your kids from your first marriage and you asked Ms. [J.S.] to meet you in North Battleford with all of your “police stuff” as you worked on Monday. Ms. [J.S.] agreed to your request and packed up everything that you would need for work: “Like, his duty belt, and his gun, and his police clothes” and placed it all into a “Rubbermaid tote.”

2. Included in the “police stuff” that Ms. [J.S.] transported from Saskatoon to North Battleford – as per your instructions –was your RCMP issued 9mm Smith and Wesson Semi-Automatic service pistol (“service pistol”). Ms. [J.S.] described how she transported your service pistol and police equipment in a Rubbermaid tote as:

[excerpt from interview transcript omitted]

3. Your service pistol is a prohibited firearm within the meaning of [subsection] 84(1) of the Criminal Code. The Criminal Code has established specific offences that were meant to address the inherently dangerous nature of a prohibited firearm. As a serving RCMP member, you are entrusted with the possession of a prohibited firearm, however, as a condition of your possession you are obligated to ensure that the firearm is handled safely at all times. You failed in your duty to ensure that your service pistol was transported and handled in a safe manner – at all times. You carelessly allowed Ms. [J.S.] to first transport your service pistol in a Rubbermaid tote and then leave your service pistol unattended in her vehicle while you ate supper together at the Portabella restaurant.

4. Your actions meet the threshold of a marked departure from the standard of care of a reasonable police officer in similar circumstances with respect to your careless allowance of Ms. [J.S.] to both possess and transport your service pistol in this manner.

Allegation 4

On or about August 11, 2017, at or near Cochin, in the Province of Saskatchewan, Constable Trevor Sowers behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

2022 CAD 09

1. On the evening of Thursday, August 10, 2017, you and Ms. [J.S.] socialized with friends at their residence before returning back to your own cottage for the night. Both you and Ms. [J.S.] consumed alcohol throughout the evening. Ms. [J.S.] described your level of intoxication and her own level of intoxication as:

[excerpt from interview transcript omitted]

2. Upon your return to the cottage, you and Ms. [J.S.] went to bed. You then attempted to initiate sexual relations with Ms. [J.S.] despite her repeatedly telling you no and to stop. As a child, Ms. [J.S.] was sexually assaulted by two cousins and in her words you “never respected the fact that I was sexually assaulted when I was young.” You were fully aware of this previous sexual molestation that Ms. [J.S.] experienced as a child.

3. Ms. [J.S.] described the sexual assault that you committed upon her as follows:

[excerpt from interview transcript omitted]

4. Your neighbour, Ms. [S.D.], overheard the verbal argument between yourself and called 911:

[excerpt from interview transcript omitted]

5. Two members of the North Battleford RCMP attended your cottage. Sergeant Neil Tremblay (“Tremblay”) and Constable James McMahon (“McMahon”). You blamed Ms. [J.S.] for what happened and kept telling her that it was all her “fault”. Ms. [J.S.] accepted responsibility for what occurred in order to prevent you from getting into trouble with the police. Ms. [J.S.] was admittedly not completely truthful with police at that time, concerning your actions as to what had taken place:

[excerpt from interview transcript omitted]

6. When Sergeant Korczak conducted a search of PROS for the police attendance file, he learned it had already been purged. The file itself was scored as a breach of the peace and so after two years it was purged from the PROS system. The occurrence reports of Sergeant Tremblay and Constable McMahon were both deleted as a result of the purge.

7. Ms. [J.S.] maintains that Sergeant Tremblay informed her at the scene: “[...] not to worry, that he’d make it go away, and he did. Nobody ever checked on me after, or asked any more questions. And he just made it go away.” Ms. [J.S.] further described her interactions with police at the scene as:

[excerpt from interview transcript omitted]

Allegation 5

On or between April 1, 2020 and April 16, 2020, at or near Cochin and Saskatoon, in the Province of Saskatchewan, Constable Trevor Sowers behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. In the opinion of Ms. [J.S.], you were experiencing financial difficulties that impacted your financial decision making. By way of example, Ms. [J.S.] stated that she was aware that you entered into a debt consolidation program in June 2019. Ms. [J.S.] acknowledged that her awareness of your financial situation was limited “except for I keep getting calls from collectors and banks because our s... lots of our stuff is separate. In the months of February and March 2020, Ms. [J.S.] began to inform your creditors to leave her alone as you did not reside with her anymore and she also began returning the mail you received at the Saskatoon residence.

2. Following the start of COVID, one of Ms. [J.S.]’s children was entitled to receive the Canada Emergency Benefit (“CERB”). While opening mail, Ms. [J.S.] opened a CERB cheque that was addressed to yourself as she mistakenly believed it was actually for her child:

[excerpt from interview transcript omitted]

3. Ms. [J.S.] was concerned with the legitimacy of you receiving a CERB cheque and emailed [Staff Sergeant] Pugh informing him that: “I sent this back to the government, I want [no] part of it.”

4. On April 27, 2020, Inspector Tom Beck (“Beck”) met in-person with you. You informed Inspector Beck that you had “inadvertently applied” for CERB. You also informed Inspector Beck that you filed for bankruptcy in February of 2020.

5. You were not entitled to apply for CERB as you never lost your RCMP employment or the payment of your salary. You failed to meet any of the qualifications for CERB. You did by deceit falsehood or other fraudulent means seek to defraud the Government of Canada of CERB financial support.

6. Your fraudulent actions by applying for CERB financial support when you were wholly ineligible, constitutes a breach of trust.

Allegation 6

On or between September 20, 2019 and October 27, 2019, at or near North Battleford, Mosquito First Nation and Moosomin First Nation, all located in the Province of Saskatchewan, Constable Trevor Sowers wrongly disclosed and without authorization, information that he obtained while on-duty in his capacity as a member, contrary to section 9.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. In her statement to [Corporal] St. Germaine, Ms. [J.S.] advised that you would frequently share sensitive police information with her including “pictures” of deceased persons. Ms. [J.S.] did not retain all of the pictures that you sent her, as in her words:

[excerpt from interview transcript omitted]

2. Ms. [J.S.] recognized that you shouldn’t be sharing police information with her and on occasion asked you to stop:

[excerpt from interview transcript omitted]

3. Ms. [J.S.] stated that on occasion it would appear that you were simply “showing off.” Ms. [J.S.] only kept the messages from September 2019 onwards and deleted the remainder. You would send unauthorized police information and pictures to Ms. [J.S.] via both your personal phone and your work phone:

[excerpt from interview transcript omitted]

4. On September 20, 2019, PROS file 2019-144XXXX was generated with respect to a Coroner’s Act sudden death matter. You were on-duty when you attended the scene and assisted Constable Read [HRMIS number] with the investigation. You completed a Supplementary Occurrence Report concerning your involvement with the deceased male. Without excuse or justification, you wrongly disclosed to Ms. [J.S.] a photo of the deceased male along with accompanying text messages.

5. On September 29, 2019, PROS file 2019-148XXXX was generated with respect to a complaint of the theft of a sport utility vehicle. You completed a brief Supervisor Report on the file. Without excuse or justification, you wrongly disclosed to Ms. [J.S.] a photo of the recovered stolen vehicle along with accompanying text messages concerning the investigation.

6. On October 9, 2019, PROS file 2019-154XXXX was generated with respect to a dangerous operation of a motor vehicle complaint. You were the lead investigator on the file and completed a detailed General Occurrence Report for the file. Without excuse or justification, you wrongly disclosed to Ms. [J.S.] several investigative photos including one of the suspect and a gun, along with accompanying text messages concerning the investigation.

7. On October 27, 2019, PROS file 2019-164XXXX was generated with respect to a Coroner’s Act sudden death matter. You attended the scene of the sudden death and assisted Constable Genus [HRMIS number] with the investigation. You completed a Supplementary Occurrence Report concerning your involvement with the investigation including taking photos of the deceased male. Without excuse or justification, you wrongly disclosed to Ms. [J.S.] several investigative photos, including one of the

deceased male, along with accompanying text messages concerning the investigation.

8. On September 9, 2020, Sergeant Korczak reviewed assorted screen shot photos obtained from Ms. [J.S.] that were not subsequently directly associated to a PROS file. Without excuse or justification, you wrongly disclosed to Ms. [J.S.] investigative photos along with accompanying text messages concerning the various investigations.

[Sic throughout]

[8] The Conduct Authority has the onus of establishing the allegations on a balance of probabilities. This means that I must find that it is more likely than not that Constable Sowers contravened a provision of the Code of Conduct. This burden is met with sufficiently clear, convincing and cogent evidence.

CREDIBILITY OF WITNESSES

[9] Five witnesses testified during the allegation phase of this proceeding. The testimony of Ms. J.S. and Constable Sowers comprised the most significant evidence because it concerns almost all of the material facts pertaining to all six allegations. For the most part, their evidence on these material facts is contradictory. Therefore, my decision hinges on my determination of the credibility and reliability of these two witnesses.

[10] The common law has dealt extensively with the assessment of witness credibility. RCMP conduct boards have similarly dealt with this issue in accordance with the common law.¹ I am aware of the general principles that guide me. I do not feel a need to set out an elaborate outline of these principles here. Suffice to say, the totality of the evidence and common sense dictate my findings in this case.

[11] Constable Sowers' general theory of the case is that Ms. J.S.'s allegations are part of a concerted and vindictive plan to destroy his reputation and career. Constable Sowers' counsel suggests that an examination of the timeline of Ms. J.S.'s disclosures and complaints about the conduct of Constable Sowers and others demonstrate that she largely fabricated or exaggerated

¹ See *Commanding Officer, "E" Division v Constable Irvine*, 2019 RCAD 03 at paragraphs 28 - 33.

her evidence. Constable Sowers' position flowing from this is that Ms. J.S. is not a credible witness. The Conduct Authority objected to this evidence on the basis that it was an attempt at the assassination of Ms. J.S.'s character. Constable Sowers' position is that the evidence relates to Ms. J.S.'s credibility. I agree and find the timeline quite instructive as it provides considerable evidence to support Constable Sowers' position.

The timeline of Ms. J.S.'s complaints to the RCMP

[12] The investigation report and supporting materials includes a Sensitive Briefing Note dated February 3, 2020. Staff Sergeant Pugh prepared the document. Superintendent Donovan Fisher, the Central District Commander, reviewed and approved the contents in consultation with Superintendent Maureen Wilkie, the Assistant Criminal Operations Officer for "F" Division. The Sensitive Briefing Note includes an addendum authored by Inspector Beck that contains information pertaining to Ms. J.S. that neither party significantly tested during the conduct hearing unless it specifically related to one of the six allegations.

[13] On January 5, 2020, Ms. L.S., the spouse of a detachment member, contacted Staff Sergeant Darcy Woolfitt, a supervisor at the detachment, on behalf of Ms. J.S. to pass on Ms. J.S.'s concerns for Constable Sowers' anger issues and his wellbeing. Ms. J.S. had apparently reached out to other female employees at North Battleford Detachment to obtain information on Constable Sowers' office relationships.

[14] On January 7, 2020, Constable N.L., a female member and co-worker of Constable Sowers, informed Inspector Beck, the Officer in Charge, North Battleford Detachment, that between January 5 and 7, 2020, she received 19 calls from a blocked telephone number. Constable N.L. learned through the detachment rumour mill that Ms. J.S. and Ms. A.S., the wife of another member, made these calls. Ms. J.S. apparently suspected that Constable Sowers and Constable N.L. were having an affair. Constable N.L.'s alleged promiscuity was also the topic of conversation on a Facebook page run by Ms. A.S. The detachment opened a criminal harassment file. The RCMP did not charge Ms. J.S. criminally. Instead, it issued her a written warning and deactivated the security pass she held as a Victim Services volunteer.

[15] This same Sensitive Briefing Note also indicates that Constable Sowers told his superiors to expect Ms. J.S. to make a domestic violence complaint against him.

[16] On January 14, 2020, Ms. K.H., an RCMP civilian employee from Ottawa, telephoned Sergeant Major Daryl Milo. Ms. K.H. had been in Facebook contact with Ms. J.S. during which Ms. J.S. raised several concerns that Ms. K.H. felt obliged to pass along. Ms. J.S.'s concerns included the following:

- Constable Sowers lived in a cabin without heat or water for the previous two months.
- Constable Sowers had assaulted her.
- She was concerned for the safety of her children.
- Constable Sowers suffered from post-traumatic stress disorder (PTSD).
- She had reached out to North Battleford Detachment requesting a call, but no one had called her.
- She did not trust anyone at North Battleford Detachment.

[17] On January 15, 2020, Ms. J.S. spoke with Staff Sergeant Pugh and disclosed the following:

- She and Constable Sowers had experienced issues in their marriage for many years.
- Constable Sowers had significant anger issues that she attributed to undiagnosed PTSD.
- Constable Sowers had never assaulted Ms. J.S. or the children.
- Constable Sowers had significant financial issues.
- She had a video of Constable Sowers “freaking out” in a police vehicle while speaking to her or one of the children on the telephone. A member of North Battleford Detachment recorded the video and shared it with several RCMP members.

- She had contacted “F” Division Health Services and was advised that it could do nothing to assist Constable Sowers.

[18] On January 21, 2020, Ms. J.S. provided her first statement to Staff Sergeant Pugh in which she disclosed information relating to Allegations 1 through 4. She had not previously disclosed this information to anyone in authority. She provided her second statement to Corporal Diachuk on March 11, 2020.

[19] On April 16, 2020, Ms. J.S. sent an email to Staff Sergeant Pugh reporting the receipt of the Canada Emergency Response Benefit (CERB) cheque in Constable Sowers’ name. This formed the basis for Allegation 5.

[20] On April 27, 2020, Inspector Beck followed up on Ms. J.S.’s complaint about Constable Sowers’ living conditions by making an impromptu visit to Constable Sowers’ cabin with his consent. He found the cabin to be neat and clean.

[21] Constable Sowers also testified that Ms. J.S. attempted to “set him up” for improperly stored firearms. Despite numerous requests to turn over his sporting firearms, she refused until one day she inexplicably agreed. He went to pick them up. She delivered the firearms wrapped up in a blanket. He realized that he needed to store the firearms legally, so he purchased a suitable storage unit on his way home. Ms. J.S. later called the detachment to report that he had improperly stored firearms. This occurred prior to April 27, 2020, because Inspector Beck commented in his report that Constable Sowers’ firearms were properly stored when he inspected his cabin.

[22] Ms. J.S. also reported Constable Sowers for unauthorized secondary employment and operating an unregistered utility trailer.

[23] On April 29, 2020, Ms. J.S. sent an email to Staff Sergeant Pugh. This became the impetus for Allegation 6.

[24] Also on April 29, 2020, Constable Sowers contacted the North Battleford Detachment to report a break and enter. I do not have much information on this incident, but Constable Sowers

2022 CAD 09

testified that two of his stepchildren broke into his cabin to remove property. Due to his separation from Ms. J.S., the cabin was his permanent residence. According to Constable Sowers, Ms. J.S.'s children thought he had a girlfriend. He quoted his stepdaughter as saying, "That fucking bitch is not getting any of our shit", following which she began to load property into bags. While Constable Sowers was on the telephone reporting the break and enter, Ms. J.S. contacted 911 to report her children were in danger. The police attended the call and conducted an investigation. No criminal charges were laid.

[25] On April 30, 2020, Ms. J.S. sent a lengthy email to Public Safety Minister Blair and RCMP Commissioner Lucki, in which she laid out her version of this entire matter. She presented information as fact when much of it was clearly untrue.

[26] On May 18, 2020, Ms. J.S. provided her third and final statement to Corporal St. Germaine and Sergeant Hansen. In addition to adding new facts about previously reported incidents, she made additional complaints about Constable Sowers. The following complaints were examined and found to be baseless or not worthy of formal investigation:

- Constable Sowers failed to pay off a trailer they had purchased.
- Ms. J.S. was receiving calls from creditors because Constable Sowers was not making payments on the cabin.
- Constable Sowers' personal cellphone had been cut off, so he was "hot spotting" off his work cellphone.
- Constable Sowers was purposely causing insufficient funds (NSF) fees on their joint account.

[27] Ms. J.S. also made complaints about others who appeared to get in her way or failed to cooperate with her.

[28] Mr. T.S., Constable Sowers' twin brother, testified that, after he filed an affidavit in family court in support of Constable Sowers, Ms. J.S. filed three complaints against him with his

employer, the Alberta Sheriff's Department. The Sheriff's Department investigated all three complaints and concluded them as unfounded.

[29] Ms. J.S. complained about Sergeant Tremblay and Constable McMahon. She suggested that they attempted to cover up the complaint set out in Allegation⁴ because a fellow RCMP member was involved and that their investigation was inadequate. She made this complaint several years after the August 2017 incident at their cabin.

[30] She further complained that the members who attended the break and enter complaint at Constable Sowers' residence on April 29, 2020, conducted an inadequate investigation.

[31] In her email to the Public Safety Minister and the RCMP Commissioner, she complained about the following:

- "F" Division Health Services treated her like a "yo-yo".
- A telecoms operator violated her privacy and put her at risk when she called to speak to Inspector Beck.
- North Battleford Detachment office staff defamed her.
- A female RCMP officer falsely accused her of criminal harassment.
- She contacted a Support for Operational Stress Injury employee who, instead of assisting her, empowered and facilitated Constable Sowers' departure from the marriage.
- This employee also berated her, put her family at risk and broke confidentiality rules.

My findings on the credibility of the witnesses

[32] Constable Sowers was a credible witness. He referred to himself as "a beaten dog" several times during the conduct hearing. That is how he presented himself during his testimony. At times, he appeared genuinely bewildered by the allegations. Nevertheless, he was consistent

in his testimony throughout. In all aspects of this proceeding, his testimony better accords with the totality of the evidence.

[33] Ms. J.S.'s evidence has elements of truth; however, I do not find her credible in any of the significant aspects of this matter. I agree with Constable Sowers' position that Ms. J.S.'s allegations are part of a concerted and vindictive plan to destroy his reputation and career. As stated by counsel for Constable Sowers, Ms. J.S. intended her complaints, particularly the email to the Public Safety Minister and the RCMP Commissioner, to inflict the maximum possible damage to Constable Sowers. It is absurd to think that her actions were born out of concern for his wellbeing as Ms. J.S. suggests they were. Given my finding, I find that I must weigh all of Ms. J.S.'s evidence carefully in conjunction with all of the other evidence. As I will show in relation to the allegations, much of her evidence is uncorroborated, contradicted by independent evidence or simply lacks an air of reality.

FACTS UNDERLYING ALL ALLEGATIONS

[34] The *Notice of Conduct Hearing* lists 10 particulars common to all allegations. Particulars 4 and 5 are important aspects to this entire matter. Particular 4 states that the marriage included domestic unrest and that Constable Sowers directed emotional and verbal abuse toward Ms. J.S. and her children from a previous marriage. Particular 5 states that Constable Sowers told Ms. J.S. that if she ever told anyone about the domestic violence she would be in trouble and he would leave her. Constable Sowers and Ms. J.S. have very different perspectives on these two particulars. These differing perspectives are a good starting point.

The evidence

[35] Ms. J.S. provided the following testimony. Constable Sowers was her best friend, love of her life and travel partner. He was loving and kind. Her marriage to Constable Sowers had many different sides and emotions. On one side, she had a sense of pride for what he did for a living. On the other side, she feared for what he might come up against at work or what he would be like when he got home.

[36] At the beginning of the marriage, everything was fantastic; however, in 2014, she began to suspect him of having an affair with a paramedic. This was a pivotal point in their marriage. Constable Sowers began to spiral out of control and the domestic abuse began to escalate. She attributed the change in Constable Sowers' behaviour to his undiagnosed PTSD. All of her efforts, including the complaints about his conduct, were out of concern for his wellbeing and intended to get him the help he needed.

[37] Ms. J.S. suffers from anxiety with corresponding anxiety attacks. She and Constable Sowers attended family counselling for 5 years during their marriage. What other counselling she attended, if any, is not clear.

[38] In cross-examination, Ms. J.S. admitted to checking Constable Sowers' phone and making deletions.

[39] Constable Sowers provided the following testimony. When he was dating Ms. J.S., she came across as a sweet, kind and caring person. They "got pregnant right away". Ms. J.S. was a woman of God, so she wanted to get married soon thereafter.

[40] Immediately after they married, Ms. J.S.'s anxiety emerged and completely changed their relationship. To keep her anxiety in check, she insisted on knowing his whereabouts at all times. At first, he only had to "check in" every couple of hours. As time passed, things grew worse. If he did not respond to her text messages, she repeatedly telephoned him until he answered. He had to send her photographs to prove where he was. Before he left the marriage in November 2019, he received as many as 1500 text messages from her a day.

[41] Ms. J.S. accused him of infidelity daily. In 2014, Ms. J.S. suspected he was having an affair with a local paramedic. He categorically denied having anything other than a friendship with the paramedic and her fiancée. This friendship developed through work long before he met Ms. J.S. Ms. J.S. claimed to have proof of the affair in 2015, but she never provided it to him.

[42] Ms. J.S.'s suspicions of his infidelity continued to escalate. She forced him to sever ties with anyone outside her circle of friends. She did not allow him to leave home on his days off or

have a password on his cellular telephone. Ms. J.S. felt she could look at his telephone any time she wanted and did. He would be asleep after a night shift and wake up to find her going through his telephone. She often deleted phone numbers of female colleagues from his contacts. After he transferred to North Battleford, Ms. J.S. accused him of having an affair with a co-worker.

[43] Ms. J.S. said he was violent and controlling. He denied this and said Ms. J.S. was the violent and controlling one in the relationship. She constantly screamed at him. She accused him of being a liar while beating him on the chest with her fists, “like a gorilla”. He was afraid she would report him for assault. To avoid such accusations, he would put his arms up in the air, as if surrendering. He was so fearful of these accusations that he began recording their interaction on his cellphone. In August 2019, she deleted an entire conversation he had recorded.

[44] He left the marriage on four occasions in 2019 with his final departure in November 2019. He said he felt like a beaten dog. He remained in the marriage because he feared he would not see their daughter again if he left. Ms. J.S. filed for sole custody of their daughter shortly after he left. Her accusations against him started shortly after this.

My findings

[45] The following are my findings of fact relevant to all six allegations.

[46] At all material times, Constable Sowers was a member of the Royal Canadian Mounted Police posted to “F” Division. He graduated from Depot Division and became a member of the RCMP. He arrived at his first posting, Humbolt Detachment, on June 21, 2010.

[47] Constable Sowers was previously married. He has two children from that marriage. These children live with their mother in Alberta.

[48] Ms. J.S. was also previously married twice. She has children from the previous marriages. These children lived with her and eventually, Constable Sowers.

[49] Constable Sowers and Ms. J.S. met and began corresponding on a dating website in June 2012. Their first in-person meeting was in July 2012. Their relationship continued from there.

Ms. J.S. became pregnant early in the relationship. Their daughter and only child from their relationship was born in June 2013. Constable Sowers and Ms. J.S. married on October 13, 2013. Their marriage was not one of “wedded bliss”.

[50] Ms. J.S. defined the couple’s relationship in several ways. She suffered from anxiety. She received treatment or counselling for this anxiety and corresponding panic attacks. I accept Constable Sowers’ claim that immediately after their marriage, Ms. J.S.’s anxiety “started to show”. Their relationship changed significantly as a result. She was also obsessed with Constable Sowers’ fidelity in the marriage. In order to keep her anxiety in check, Ms. J.S. needed to know Constable Sowers’ whereabouts at all times.

[51] She rationalized Constable Sowers’ behaviour in the marriage, which she alleged was verbally and emotionally abusive, by insisting that Constable Sowers suffered from PTSD. Two psychologists assessed Constable Sowers at the behest of “F” Division Health Services. Neither diagnosed him with PTSD. Despite this, Ms. J.S. persisted in her belief that Constable Sowers suffered from PTSD.

[52] Ms. J.S. demonstrated her control over the marriage through the couple’s living arrangements. Constable Sowers told her that he needed to maintain a residence “where he was posted”. Nevertheless, Ms. J.S. maintained the family home in Saskatoon throughout their marriage. Although posted to Humbolt Detachment, Constable Sowers disposed of his permanent residence after he and Ms. J.S. married. Following this, he found accommodations where he could when on a block of shifts. He would house-sit for members or simply sleep on the couch at members’ residences. He also kept a pillow and blanket at the detachment where he often slept on the couch in the Victim Services office.

[53] In 2014, Ms. J.S. suspected Constable Sowers was having an affair with a local paramedic. She claimed that she had received confirmation of this affair at some point in 2015. I heard no evidence to confirm he had an affair at any time during their marriage.

[54] In June 2015, Constable Sowers transferred to North Battleford Detachment. Initially, he stayed in a travel trailer purchased by Ms. J.S. and himself. They eventually purchased a cabin

near Cochin, a resort village within the North Battleford Detachment boundary. This became Constable Sowers' temporary residence while on shift in North Battleford and his permanent residence in November 2019.

[55] The temporary living arrangements in both Humbolt and North Battleford caused Constable Sowers' frequent separations from his family. These separations exacerbated Ms. J.S.'s obsession with his fidelity. Ms. J.S.'s suspicions led to arguments; one of which is the subject of Allegation 1.

[56] Constable Sowers and Ms. J.S. formally separated on November 10, 2019. They have since initiated proceedings in family court in Saskatchewan. Ms. J.S. made her initial allegations to the RCMP shortly after she filed for the sole custody of their daughter in family court.

[57] I have no doubt that Constable Sowers was frustrated and stressed by what appeared to be an insufferable marital situation. His frustrations may have manifested themselves in emotional outbursts. I find no evidence that Constable Sowers was emotionally or verbally abusive toward Ms. J.S. or her children nor do I find that he ever told Ms. J.S. that if she told anyone about the domestic violence she would be in trouble and he would leave her.

ANALYSIS

[58] Four of the six allegations are under section 7.1 of the Code of Conduct. In order to establish an allegation under section 7.1 of the Code of Conduct, the Conduct Authority must establish each of the following on a balance of probabilities:

- a. the acts that constitute the alleged behaviour;
- b. the identity of the member;
- c. whether the member's behaviour is likely to discredit the Force; and
- d. whether the member's behaviour is sufficiently related to his duties and functions so as to provide the Force with a legitimate interest in disciplining the member.

[59] With respect to the second and fourth elements of the test, Constable Sowers conceded that the Conduct Authority has established, on a balance of probabilities, his identity and that the behaviours set out in the allegations sufficiently relate to his duties and functions to provide the Force with a legitimate interest in disciplining him for all six allegations.

Allegation 1 – Assault of Ms. J.S.

[60] Allegation 1 is under section 7.1 of the Code of Conduct with a date range of June 1 to June 30, 2014. The particulars allege that on one occasion within the specified dates, Constable Sowers assaulted Ms. J.S. by grabbing her arm.

The evidence

[61] Ms. J.S. provided the following testimony. She and Constable Sowers had an intense argument about her suspicions of his infidelity and his mother. Constable Sowers grabbed her by the arm with such force that he left bruises. She took photographs of the bruises that evening; probably after Constable Sowers went to work. This was the only occasion when he used physical force against her during their relationship. She did not know what to do about the incident so she turned to Mr. T.S., Constable Sowers' twin brother. She had previously spoken to Mr. T.S. about Constable Sowers' escalating emotional and verbal abuse. She sent the photographs of the bruises to him.

[62] Mr. T.S. testified that he recalled receiving photographs from Ms. J.S. The pictures were of an upper arm or thigh. They showed some marks that were not very clear. He did not recall what Ms. J.S. said about the marks. He no longer has access to the photographs and corresponding text messages because the cellphone on which he received them was damaged.

[63] Constable Sowers categorically denied assaulting Ms. J.S. at any time during their marriage. He said that arguments were a frequent occurrence. There was nothing remarkable about this particular one to bring it to his specific recollection. He did, however, restrain Ms. J.S. from hurting herself on the occasions when she had an anxiety attack. In these cases, he would usually grab her by her wrists.

My findings

[64] I have serious concerns with Ms. J.S.'s credibility. Her evidence is uncorroborated.

[65] Ms. J.S. also did not mention the presence of her adult son during this incident until her third statement. When asked to explain this during cross-examination, she said that she was told to give as much detail as she could in this statement. Nothing in the material indicates this was the case. The presence of a third party witness is a significant fact, not easily forgotten or omitted, even by a layperson. Investigators did not interview the adult son. Even though he may not have witnessed the alleged assault, he could have provided information about the context of the argument or what Constable Sowers and Ms. J.S. said during it; if he was in fact present.

[66] The photographs taken by Ms. J.S. provide no evidence of an assault, let alone this alleged assault. They simply depict what appears to be a slight bruising of an arm. The marks could have been caused by anything at any time. Ms. J.S. says that she took the photos the evening of the assault, after Constable Sowers went to work. The bruising is light purple in colour. Although I am no medical expert, the colour of the bruising suggests to me that it is more than a few hours old, perhaps more like a few days old.

[67] She did not report this assault to either the Saskatoon Police Service, the police service of jurisdiction, or the RCMP, as Constable Sowers' employer. She only disclosed the incident to Staff Sergeant Pugh in January 2020, almost six years after she alleged that it occurred. The timing of the report is suspect. I find that the lengthy delay in reporting is not because she was an abused spouse; rather, it is simply part of her plan to ruin Constable Sowers.

[68] Given the foregoing, I find that the Conduct Authority has not established on a balance of probabilities the first element of the test for discreditable conduct, the acts that constitute the alleged behaviour. Consequently, I find that Allegation 1 is not established.

Allegations 2 and 3– Assault of Ms. J.S. and improper transportation and storage of Force-issued service pistol

[69] Allegations 2 and 3 relate to the same incident that occurred on February 28, 2016. Allegation 2 is under section 7.1 of the Code of Conduct. The particulars allege that Constable Sowers' actions endangered Ms. J.S. and that he assaulted her. Allegation 3 is under section 4.6 of the Code of Conduct. The particulars allege that Constable Sowers was careless when he allowed Ms. J.S. to possess and transport his service pistol.

The evidence

[70] Ms. J.S. provided the following testimony. Constable Sowers went to Alberta for the weekend to visit his family. He had to work on Monday morning. Constable Sowers asked her to bring his uniform and other equipment to North Battleford. He required these items for his upcoming shift. She often transported his uniform and equipment for him under these circumstances. In cross-examination, she said the original plan was for Constable Sowers to go back to Saskatoon to pick up his uniform and kit.

[71] Constable Sowers stored his uniform and duty belt on a "blanket rack" in their bedroom closet. The duty belt held his service pistol, handcuffs, pepper spray and extra bullet clips. He usually removed the bullet clip from his service pistol. Constable Sowers brought a Taser home occasionally, but not on this occasion.

[72] They agreed to meet for supper in North Battleford. She was going to spend the night at their cabin. Ms. J.S. loaded the equipment into a large Rubbermaid tote and put it in the front seat of her pickup truck, a Ford F150 crew cab. She drove to the restaurant in North Battleford.

[73] During dinner, Constable Sowers accused her of preventing him from going to Alberta to see his family and party with his cousin. The argument escalated, but not to the point that people were staring at them. She decided that she was not going to stay the night and left the restaurant. She got into her vehicle and started to drive back to Saskatoon. She realized that she still had Constable Sowers' uniform and equipment with her.

[74] Constable Sowers drove erratically while following closely behind her. He also repeatedly called her on the phone. When she answered, he screamed at her and called her names. He wanted his uniform and equipment. She suggested they go to the cabin to talk about it and she would spend the night. She drove toward the cabin.

[75] The drive from North Battleford to the cabin is approximately 30 kilometres and takes between 15 and 20 minutes. Constable Sowers continued to drive erratically and recklessly. On one occasion, he pulled up beside her. He also continued to call her on the phone. Again, she did not always answer, but when she did, he screamed. He was out of control. She was afraid.

[76] She missed the turn to the cabin. She did this quite often. She decided to continue a short distance past the entrance to turn around. She made a U-turn at a slow speed. Constable Sowers met her head on and positioned his vehicle at an angle to block her in what she described as a police move. She had to stop her vehicle quickly to avoid a collision.

[77] Constable Sowers left his vehicle and approached the driver's side of her truck. He was there so quickly that she did not have an opportunity to put her vehicle in park. He opened the truck door and tried to pull her out of the way to reach the Rubbermaid tote. She fell out of the truck, but held on to the steering wheel. She attempted to put her foot on the brake because the truck started to roll. Constable Sowers was screaming at her. He called her names and told her she was crazy. She repeatedly told him to stop because things were out of control. She told him that he was hurting her. Constable Sowers took the Rubbermaid tote, returned to his vehicle and drove off. She put the vehicle in park. She was crying. This was the scariest thing that happened to her in her life. It was so scary she continues to have nightmares about it.

[78] She called Mr. T.S. to tell him what happened. After she spoke to him, she drove to the cabin because she thought Constable Sowers had gone there. He was not there, so she waited. She thought he was cooling off and might come back. He did not. She knew he would not go back to Saskatoon, so she decided to look for him in North Battleford.

[79] She found Constable Sowers' vehicle parked behind a motel. He was in one of the rooms. He was crying and did not want to talk about the incident. She spent the night. He told her to

keep her mouth shut. She knew that if she told anyone, he would get into trouble. She was afraid she would lose her husband.

[80] Constable Sowers testified that he did not go to Alberta for the weekend. Rather, he was at home in Saskatoon. He and Ms. J.S. decided they would go to the cabin together. This was something they did regularly. Ms. J.S. did not allow Constable Sowers to go there alone, because of her suspicions about his infidelity.

[81] Instead of leaving his uniform and equipment in North Battleford, he brought it home to ensure that it was clean and ready for his next set of shifts. He left his issue service pistol at the office as required by the Officer in Charge of the Detachment. He brought his service pistol home when he had work-related duties in Saskatoon, such as going to the remand centre or conducting an interview. He had a gun locker for his hunting rifles. It was in the bedroom. When he brought his duty belt home, he locked up “anything that could hurt someone”. This included his intervention options. His handcuffs and flashlight remained in his duty belt, which he hung on the “blanket rack”. Ms. J.S. did not have a key to the gun locker. He hid the keys because she had threatened to harm herself before and he felt that she was capable of hurting him. He also locked his service pistol up because of his young daughter, but he was more concerned with the teenagers in the house. He never brought a Taser home. They were not personally issued. He had to sign one out at the start of a shift and return it at the end of the shift.

[82] He packed his uniform and other kit into a plastic basket. He and Ms. J.S. travelled to North Battleford in separate vehicles. She was to return to Saskatoon early in the morning because she had to work, as did he. His shift started at either 6 or 7 a.m.

[83] They went to a restaurant in North Battleford. They argued. He could not recall what the argument was about because they always argued. He decided to leave and go to the cabin, which he did. Ms. J.S. followed him. The argument continued outside the cabin. He had the basket with his uniform and equipment in his hands. Ms. J.S. poked him in the chest and relentlessly “grilled him”. He just wanted to get away from her. Ms. J.S. grabbed the basket and put it in her vehicle behind the driver’s seat. He did not try to stop her from taking the basket to avoid a

confrontation. She drove to the highway. He followed in his vehicle. The speed limit on the 500-metre gravel road drive to the highway was 20 kilometres per hour. He called Ms. J.S. repeatedly and implored her to stop. He was upset and frustrated because he did not want to go all the way back to Saskatoon.

[84] Ms. J.S. turned onto the highway and pulled over to the side of the road. He pulled in behind her. He went to the truck and opened the driver's door. The door was unlocked because the vehicle was in park. Ms. J.S. had her seatbelt on. He needed to open the driver's door to access the door handle for the rear door. It was a suicide door, which opened toward the rear of the truck. He said nothing while he retrieved his uniform and equipment. He returned to his vehicle and drove to North Battleford. He did not want to fight any more. He just wanted to get away and hide. He rented a room at the back of a motel. He was sitting on the bed after he checked in when Ms. J.S. knocked on the door. She also called him on the phone. He let her in to avoid causing a scene. He laid on the bed and said nothing. She laid down as well. They laid there until morning.

My findings

[85] The accounts of both Constable Sowers and Ms. J.S. are quite fantastic and stretch the imagination in terms of plausibility. Neither story is without blemish. I found no evidence to support either of their claims. However, I have several and significant issues with Ms. J.S.'s version of events.

[86] First, neither arrangement Ms. J.S. proposed makes sense to me if Constable Sowers went to Alberta as she said he did. It was the end of February on the Prairies. Anything could happen with the weather. Although I do not know where Constable Sowers would have gone in Alberta, I am sure it was not to the south. North Battleford is an hour and a half drive from Saskatoon on the Yellowhead Highway, which continues on to Edmonton. Returning to Saskatoon to pick up his uniform and equipment would have added three hours to his trip. It was also a three-hour round trip for Ms. J.S. The most logical option would have been for Constable Sowers' to take his uniform with him and drop it off on his way through North Battleford. Although spending the

night with her husband was reasonable, making a three-hour round trip simply to take him his uniform does not under the circumstances.

[87] Second, Ms. J.S. said that, when she left the restaurant and headed back to Saskatoon, she inadvertently left with Constable Sowers' uniform and equipment in the large Rubbermaid tote. She said that the container was sitting beside her in the vehicle. Therefore, she could not have missed it when she got into the vehicle.

[88] Third, Constable Sowers called her on the telephone numerous times while following close behind her and driving erratically. She finally answered the telephone. She was terrified because this was the scariest event of her life. Constable Sowers wanted his uniform and equipment. Why not simply pull over and give it to him, then the "nightmare" ends. Instead, she offers to drive to the cabin, a 30-kilometre drive out of her way, to "talk this over". Furthermore, if she agreed to give Constable Sowers his uniform and equipment at the cabin and she headed in that direction, why would he continue to pursue her dangerously, all the while yelling and screaming at her on the telephone?

[89] Fourth, when she got to the cabin, she missed a turn that she has probably made hundreds of times. Constable Sowers then cut her off with "a police stop", risking a collision and damaging both of their vehicles in the middle of nowhere.

[90] Fifth, when Constable Sowers stopped Ms. J.S., he got to her vehicle and opened the driver's door so fast she did not have the opportunity to put the vehicle in park. During cross-examination, counsel for Constable Sowers confronted her about the unlocked door when the vehicle was still in gear. She responded by saying that Constable Sowers unlocked the door by entering a punch code.

[91] Constable Sowers testified that he did not know the punch code off by heart because it was Ms. J.S.'s vehicle. Even if he did know it, he would have had to put his vehicle in park, take his seatbelt off and get out of the vehicle. Based on the way he allegedly stopped her, the driver's door of his vehicle would have been opposite the driver's door on her vehicle, so he either had to run between the two vehicles or behind one of them to get to the driver's door of her vehicle.

Entering the punch code would have added time to this process, so Constable Sowers could not have opened the driver's door to Ms. J.S.'s vehicle too quickly, with or without having to enter the key code. This leads me to the next issue.

[92] Why did Constable Sowers go to the driver's door of Ms. J.S.'s vehicle? The Rubbermaid tote was not going to be in the driver's seat; Ms. J.S. was there. It had to be on the passenger side of the front seat or in the rear compartment. Why not go to the passenger side; the closest side to him when he left his vehicle? If he went to the passenger side of the vehicle, he would have avoided reaching across Ms. J.S. to retrieve the tote.

[93] Constable Sowers also testified that Ms. J.S. usually sat with her seat pulled very close to the steering wheel. This makes sense because of the size of the vehicle. Given this, was it possible for Constable Sowers to reach past her, even after pulling her out of the way; or was the tote in the back seat as Constable Sowers said it was? Since the back door was a suicide door, Constable Sowers would have needed to open the driver's door to access the back seat.

[94] Ms. J.S. agreed in cross-examination that if she had her seatbelt on, it would have been impossible for her to fall out of the vehicle as she said she did. This makes sense.

[95] Ms. J.S. said that she telephoned Mr. T.S. after Constable Sowers left. Mr. T.S. confirmed that he received a telephone call from her; however, this does not favour one version of events over the other because it fits into either of them.

[96] Finally, Ms. J.S. testified that when she missed the turn to the cabin, she went a short distance up the road to turn around. She completed the turn and drove a distance back toward the cabin when Constable Sowers allegedly stopped her. She could not have been that far from the turn to the cabin; yet she said she thought Constable Sowers went to the cabin so she went there as well only to find he was not there. I must ask, "How did she not see that Constable Sowers did not turn to go to the cabin, but continued down the road in front of her?"

[97] As with the other allegations, Ms. J.S. did not report this incident to anyone in authority until she provided her statement to Staff Sergeant Pugh in January 2020. The reason for the

delayed reporting was because she did not want to lose her husband. I do not accept this explanation. The timing of the disclosure aligns with her efforts to ruin Constable Sowers.

[98] In every respect, Constable Sowers' version makes abundantly more sense to me. The only concern I had was how or why he allowed Ms. J.S. to take the tote or plastic basket from him. I accept that he simply wanted to avoid a physical confrontation. I gleaned from his testimony that he was prepared to drive all the way back to Saskatoon to retrieve it, if that is what it took to avoid an accusation of assault.

[99] Based on the foregoing, I find that the Conduct Authority has not established on a balance of probabilities that Constable Sowers endangered Ms. J.S. or assaulted her. The first element of the test for discreditable conduct, the acts that constitute the alleged behaviour, was not met. Consequently, I find that Allegation 2 is not established.

[100] With respect to Allegation 3, Particular 3 clearly sets out Constable Sowers' obligations with respect to his service pistol. The obligation is a continuing one, yet the allegation does not relate to the entire weekend where Constable Sowers allegedly left the service pistol unsecured while Ms. J.S. and the five children had exclusive access to the house. The allegation simply relates to Ms. J.S.'s possession and transportation of the service pistol on Sunday, February 28, 2016.

[101] Leaving the service pistol unsecured in the way Ms. J.S. claimed also does not make sense for several reasons. First, the Officer in Charge of North Battleford Detachment prohibited detachment members from bringing their service pistol home. Notwithstanding this directive, Constable Sowers had no reason to bring his service pistol home if he was going away for the weekend. I strongly doubt he took the service pistol home, but if he did, he had a gun locker in the closet right beside where Ms. J.S. said he had hung the unsecured duty belt including the pistol. It makes no sense that he did not lock it up.

[102] Constable Sowers testified that Ms. J.S. did not have a key to the gun locker. In cross-examination, she insisted that she had a key despite having told investigators on May 18, 2020, that she did not have a key. Again, her story does not coincide with the evidence.

[103] Based on the foregoing, I also find that the Conduct Authority has not established on a balance of probabilities that Constable Sowers allowed Ms. J.S. to possess and transport his service pistol. Consequently, I find that Allegation 3 is not established.

Allegation 4 – Sexual assault of Ms. J.S.

[104] Allegation 4 is under section 7.1 of the Code of Conduct and relates to an incident that occurred at the Sowers' cabin in the early morning hours of August 11, 2017. The Conduct Authority alleges that Constable Sowers sexually assaulted Ms. J.S.

The evidence

[105] Ms. J.S. provided the following testimony. Constable Sowers was intoxicated when they returned to their cabin from visiting friends in the area. She drank considerably less than he did that night. When they got back to the cabin, they engaged in foreplay and decided to go to bed. Constable Sowers had no clothes on. She still had her panties on.

[106] A relative sexually assaulted her as a child. She had told Constable Sowers that, as a result, she did not like it when he put his hand under her panties and inserted his fingers in her vagina. Nevertheless, he did this repeatedly during their marriage. He did so on this night. She became upset and began to break down, so she got out of bed. Constable Sowers became enraged and began yelling at her. His yelling caused her to have an anxiety attack. He was so upset that he punched a hole in the back of the bedroom door. She eventually calmed down and they went back to bed. Shortly thereafter, their daughter came into the bedroom and told them the police were at the door. Constable Sowers went to speak with them. She remained in bed with only her panties on.

[107] Constable McMahon, whom she knew from the detachment, came into the bedroom to speak with her. He left the bedroom briefly while she put on her housecoat. When he returned, she told him that Constable Sowers sexually touched her in a way that triggered her anxiety. She did not provide specific details. Although she did not use the words "sexual assault", she told him that Constable Sowers touched her in a way that she did not want. Constable McMahon

insisted that she tell him how she came by a mark on her face and that, if she did not, he would have to arrest Constable Sowers. She told him that she hurt herself during the anxiety attack.

[108] Sergeant Tremblay came into the room. He assured her that the incident would not be common knowledge at the detachment. He would seal the file. She was not to worry because he would make the file go away.

[109] Neither Sergeant Tremblay nor Constable McMahon told her who had called the police, but it was not difficult to figure out that it was their neighbour, Ms. S.D. The next day, she sent Ms. S.D. a text message in which she tried to cover up or downplay the incident.

[110] No one from the RCMP followed up with her after that night. She did not realize that she was sexually assaulted until she provided her statement to Staff Sergeant Pugh in January 2020. She included more detail in subsequent statements because her interview with Staff Sergeant Pugh caught her off guard. She thought she was going to speak to him about Constable Sowers' PTSD.

[111] In cross-examination, Ms. J.S. agreed that Constable Sowers had indicated in an affidavit filed with family court that her uncle sexually assaulted her as a child. She confirmed that it was not her uncle but another family member who had sexually assaulted her.

[112] Constable Sowers provided the following testimony. He consumed alcohol that night, but he was not intoxicated. When he and Ms. J.S. returned to the cabin, the children were asleep. They engaged in consensual sexual intercourse when Ms. J.S. had a sudden anxiety attack. She was "freaking out". She grabbed a lamp and threw it. He replaced the lamp prior to the arrival of the police. She curled in a ball and started to pull her hair and punch herself in the face. She would routinely have anxiety/panic attacks. Her actions on this night were typical of these attacks.

[113] He yelled at her to stop. After she calmed down, he heard a knock at the door. He answered it. He admitted Sergeant Tremblay and Constable McMahon to the cabin and directed

Constable McMahon to the bedroom to speak with Ms. J.S. He stayed in the main area with Sergeant Tremblay.

[114] He was aware that a relative(s) sexually assaulted Ms. J.S. when she was a child. He thought it was an uncle. She never told him that a finger inserted into her vagina triggered an anxiety attack. She also never told him that she did not consent to him doing this, either before or on the night of this incident.

[115] Constable McMahon provided the following testimony. He attended the call to the Sowers' cabin. When he arrived at approximately 4:43 a.m., Constable Sowers met him at the door and allowed him into the cabin. He had a passing familiarity with Constable Sowers from the detachment.

[116] Since the call was of a domestic dispute, he was specifically looking for related evidence. He saw nothing that alerted him to a domestic dispute having taken place. He saw several children sleeping in the main area of the cabin. Constable Sowers directed him to the bedroom where he spoke with Ms. J.S., who looked upset. Her eyes were puffy. Her face was red around the eyes. She had obviously been crying. He made inquiries about this. Ms. J.S. was not initially forthcoming, but she eventually opened up. She told him that Constable Sowers tried to initiate sex with her. She had a bad reaction to this due to some past trauma. She suffered from anxiety and depression. She "balled up her hands" and was hitting herself in the face. She cried and curled up in a ball to protect herself. She demonstrated these things for him. Constable Sowers was trying to restrain her from hitting herself. He was yelling at her to stop.

[117] She satisfied him that nothing of a criminal nature had happened. He continued to calm her down. He explained the process of locking down a file. He told her that no one in the office, other than the Inspector, would know about the call. He spoke with Sergeant Tremblay, who provided him no further information that led him to believe a criminal offence had taken place.

[118] Constable McMahon's impression of both Constable Sowers and Ms. J.S. was that neither showed any sign of intoxication. He did not observe any damage to the bedroom door. He did not go to Ms. S.D.'s to obtain a statement, although he may have telephoned her as they were

leaving the area. Based on what he learned during the investigation, he categorized the call as a noise complaint. He prepared his incident report in Word rather than PROS because of the file lock down. He did not follow up with Ms. J.S. in the capacity of a police officer. He may have done so in a personal text message to both Constable Sowers and Ms. J.S.

[119] Ms. S.D., the neighbour who initiated the complaint by calling 911, did not testify. Her statement is in the investigation report. Neither party challenged the contents of the statement. I glean the following from it.

[120] At about 3:30 a.m., she heard loud screaming coming from the Sowers' cabin. This prompted her to call 911. In particular, she heard the following:

- Constable Sowers yelling. Some of the things she heard him say were, "Stop hitting your fuckin' head" and "stop hitting your face" or words to that effect.
- Ms. J.S. crying.
- A young girl, possibly the Sowers' daughter crying and yelling, "Stop fighting".

[121] Following the incident, she received a text message from Ms. J.S. The primary purpose of the text message was to inform her that Ms. J.S. was displeased because she called the police. The text message is in the investigation report. It contains essentially the same information Ms. J.S. told Constable McMahon.

My findings

[122] The evidence does not support Ms. J.S.'s version of events. Generally, the evidence indicates that anything could trigger Ms. J.S.'s anxiety attacks. According to Ms. J.S., it was Constable Sowers' yelling at her that triggered the anxiety attack on this occasion; not the alleged non-consensual sexual act. Ms. S.D.'s evidence supports Constable Sowers' version of events in terms of what she heard him yelling.

[123] Although Ms. J.S. told Constable McMahon that Constable Sowers did something sexual that triggered her panic attack, she did not tell either Sergeant Tremblay or Constable McMahon that what he did was non-consensual. Ms. J.S. repeated the same information in her text message to Ms. S.D. She did not disclose the non-consensual portion of her evidence until her statement to Staff Sergeant Pugh in January 2020, almost two and a half years after the incident. I do not accept her reason for the delayed reporting, which was that she did not realize until January 2020 that she had been sexually assaulted.

[124] The error in Constable Sowers' family court affidavit may seem insignificant, but it adds credence to his claim that he knew very little of Ms. J.S.'s childhood sexual assault. It also adds credence to his claim that Ms. J.S. never told him that inserting a finger into her vagina triggered her anxiety attacks and that she had told him not to do it to her.

[125] Ms. J.S. severed all ties with Ms. S.D. in her text message after the incident when she told Ms. S.D. that she could not ever be around her again. Interestingly, Ms. J.S. proactively reached out to Ms. S.D. in January 2020, just prior to providing her statement to Staff Sergeant Pugh. Although Ms. J.S. said the primary purpose of the renewed contact was to mend the relationship for her daughter's sake, she began by telling Ms. S.D. that she and Constable Sowers had separated because he was abusing her.

[126] Finally, Ms. J.S. did not complain about the attempt by Sergeant Tremblay and Constable McMahon to cover up the incident and make it go away or the adequacy of their investigation until January 2020. She suggested that if the members had conducted a proper follow-up and interviewed her without Constable Sowers being present, she would have disclosed the non-consensual aspect of the incident. This contradicts her claim of not realizing until January 2020 that Constable Sowers had sexually assaulted her.

[127] Again, the timing of the complaint is dubious. I find that Sergeant Tremblay and Constable McMahon's actions were reasonable under the circumstances. Based on the information provided to them that night by Ms. J.S. and the other evidence they gathered, the call was, as Constable McMahon categorized it, essentially a noise complaint. The "scoring" of the

file as a Breach of the Peace and the corresponding purging of the file within two years of the incident was reasonable. Their handling of the “paper work” was also reasonable. The complaint involved a member of the detachment and his family. The whole office did not need to know about it. Ms. J.S. was happy at the time that they would not. Access Control Listing (ACL)² the file was an appropriate means of handling it. The members handled the file in accordance with policy and not to make it go away, as Ms. J.S. suggested they told her.

[128] Based on the foregoing, I find that the Conduct Authority has not established on a balance of probabilities that Constable Sowers sexually assaulted Ms. J.S. and, as a result, has not met the first element of the test for discreditable conduct, the acts that constitute the alleged behaviour. Consequently, I find that Allegation 4 is not established.

Allegation 5 – Fraudulent CERB claim

[129] Allegation 5 is under section 7.1 of the Code of Conduct. The particulars allege that Constable Sowers fraudulently applied for a CERB financial support when he was ineligible. The Conduct Authority contends that this constitutes a breach of trust.

The evidence

[130] Ms. J.S. testified to the following. Despite their separation, she continued to receive mail for Constable Sowers at the family home in Saskatoon. Around Christmas 2019, she began to return Constable Sowers’ mail to the sender. In April 2020, her daughter was expecting a CERB cheque. It was also GST time, so the family was receiving a lot of mail from the government. She picked up the mail with one of her daughters. They sat in the parking lot of the grocery store where Ms. J.S. had her daughter open the mail. She found a government cheque addressed to Constable Sowers. She was upset. Before resealing the envelope, she photographed the cheque and sent the photograph to Staff Sergeant Pugh. She returned the cheque to the government.

² RCMP policy at *Operational Manual* 47.5.2.1 reads, “An Access Control List (ACL) is a tool that restricts access to information. It allows access only to select groups, units, individuals, or combinations of these.”

[131] Constable Sowers testified to the following. A fellow member at North Battleford Detachment suggested that he inquire about eligibility for CERB benefits. He followed the member's advice and called the toll-free number to speak to a government representative to determine if he was eligible for any financial assistance through CERB. Instead of speaking to a person, he listened to an automated voice message.

[132] On April 27, 2020, he met with Inspector Beck. During the meeting, he told Inspector Beck that he had inadvertently applied for CERB. He tried to stop future payments, but he was unable to do so because he could not reach anyone in person.

[133] In April 2020, he had bank accounts separate from Ms. J.S. or other family accounts. He also had his own mailing address in North Battleford because that was his permanent address at the time.

[134] In cross-examination, he testified that he had filed his 2018 tax return with his Saskatoon address. He did not file his 2019 income tax return personally. BDO Dunwoody filed his tax return in conjunction with his bankruptcy. He did not know the address they provided for him.

[135] At my request, the Conduct Authority obtained five iterations of the script for the automated voice message used by the Canada Revenue Agency to provide callers information about CERB eligibility and the application process. These are the only version of the script. Although it is not possible to determine which one Constable Sowers heard, all five versions have common elements that are relevant to this allegation. These include the following:

- A requirement to enter the caller's social insurance number.
- A statement that payment could be made by direct deposit if eligible.
- To receive payment by direct deposit, the caller had to confirm their identity by entering their date of birth.
- A statement that payment could be made by cheque if eligible.

2022 CAD 09

- To receive payment by cheque, the caller had to confirm the ending of their postal code.
- A requirement to confirm the following to receive a payment:
 - The caller resided in Canada.
 - The caller stopped working for reasons related to COVID for at least 14 consecutive days within the 4-week period for which the application is being made.
 - The caller had not quit their job voluntarily.
 - The caller had not applied for CERB or received CERB or Employment Insurance benefits for the same eligibility period.
 - The caller earned a minimum of \$5,000.00 within the 12 months prior to the application period.
- A requirement to certify the information provided was correct and an acknowledgement that making a false declaration is a criminal offence.

[136] The following things are clear from the common factors of the scripts:

- a. The caller was aware of the eligibility requirements for CERB.
- b. The caller was informed that it is a criminal offence to make a false declaration.
- c. To receive a CERB cheque, the caller needed to provide their Social Insurance Number and confirmation of their postal code.

[137] Constable Sowers was cross-examined about all five scripts. He could not say which script he heard. He did not recall much of the content of the message he heard.

My findings

[138] In early 2020, Constable Sowers experienced financial difficulties. He filed for bankruptcy in February 2020.

[139] In March or April 2020, the Canadian government announced the CERB program. Regardless of the version, the eligibility requirements for CERB are clearly set out in the automated voice message. Constable Sowers listened to the message and should have reasonably understood the eligibility requirements.

[140] On April 15, 2020, the Government of Canada issued a CERB cheque for \$2,000.00 in the name of Trevor Sowers. The address on the cheque is that of the Sowers family home in Saskatoon.

[141] Although suspended with pay, Constable Sowers was a member of the RCMP on April 15, 2020. He was not eligible for CERB at that time. The fact the government issued a CERB cheque in his name is not proof under the circumstances that he applied for CERB, inadvertently or otherwise.

[142] The five voice message scripts demonstrate that anyone that knew a person's Social Insurance Number and could confirm their postal code could apply for CERB on the person's behalf. Based on his income tax filing, his address with the Canada Revenue Agency was the family home in Saskatoon. Common sense tells me that if Constable Sowers intended to receive the CERB benefit, he would either have the payment directly deposited into his personal bank account or have a cheque sent to his North Battleford address. He was aware that Ms. J.S. had been returning his mail for over four months. Having the cheque issued to the Saskatoon address makes no sense because he was unlikely to receive it.

[143] Furthermore, Ms. J.S. had already made numerous complaints to the RCMP about his conduct. She knew he was still employed by the RCMP and, consequently, not eligible for CERB. If she received the cheque and realized that it was a CERB payment, he risked another complaint.

[144] Even if I accept that he made the application, the only evidence before me is that he might have inadvertently applied. He received no further CERB cheques.

[145] Based on the foregoing, I find that the Conduct Authority has not established on a balance of probabilities that Constable Sowers applied for CERB, let alone that he did so fraudulently; therefore, the Conduct Authority has not met the first element of the test for discreditable conduct, the acts that constitute the alleged behaviour. Consequently, I find that Allegation 5 is not established.

Allegation 6 – Wrongful and unauthorized disclosure of information obtained while on-duty

[146] Allegation 6 is under section 9.1 of the Code of Conduct. The particulars allege that within the date range of September 20, 2019, and October 27, 2019, Constable Sowers wrongfully and without authorization, shared information with Ms. J.S. that he obtained while he was on-duty.

The evidence

[147] Ms. J.S. testified to the following. Throughout their marriage, Constable Sowers sent her text messages and photographs “about what was going on at work, or even his hunting, or wherever he was”. They exchanged multiple text messages daily. These exchanges worsened near the end of their marriage. At times, Constable Sowers would be saying, “Hey look where I am” and “kind of bragging about what he was doing”. Other times, the material would be more graphic. She could tell that he was “definitely upset about what was going on”. On occasion, Constable Sowers sent photographs because of her anxiety and her infidelity concerns. She often solicited the photographs, but told Constable Sowers to stop sending the gory ones.

[148] Constable Sowers testified to the following. He frequently shared work-related photographs with Ms. J.S. as he had to demonstrate his whereabouts to her all times because of her suspicions of his infidelity. He did not recall the circumstances behind every photograph.

Text exchanges accompanied every photograph. He believed Ms. J.S. had a valid security clearance because of her volunteer work with Victim Services.

[149] Mr. T.S. testified that he too received countless text messages and telephone calls from Ms. J.S. daily. These messages were about Constable Sowers' spiralling abusive behaviour. Ms. J.S. informed him that she demanded to know Constable Sowers' whereabouts and that he would send her text messages in response. When Constable Sowers was visiting him in Alberta, he provided Ms. J.S. "minute by minute" updates on what he was doing. These updates often included photographs to show what he was doing. Constable Sowers appeared frustrated by this requirement.

[150] The material Ms. J.S. provided to Staff Sergeant Pugh does not include the entire text exchange relating to the specific photographs. Some include only the photograph, while others include a portion of the text messaging surrounding the sending of the photographs.

My findings

[151] Section 9.1 of the Code of Conduct reads:

Members access, use and disclosure of information obtained in their capacity as members only in the proper course of their duties and abide by all oaths by which they are bound by as members.

[152] RCMP members take three oaths when sworn into the RCMP. One of these oaths is the Oath of Secrecy³. The Oath of Secrecy reads as follows:

I, {member's name}, do swear (or solemnly affirm) that I will not, without due authority, disclose or make known to any person not legally entitled to it any knowledge or information obtained by me in the course of my duties under the *Royal Canadian Mounted Police Act*.⁴

[153] The portions of the text messages in evidence demonstrate that Ms. J.S. was a full participant in the text exchanges surrounding the photographs relating to the four identified files.

³ See paragraph 45.45(1)(a) of the *RCMP Act*.

⁴ See section 1 of the *Regulations Prescribing an Oath of Secrecy*, SOR/2014-280.

Some of the photographs depict deceased persons. These photographs may be classified as gory, yet I do not see that Ms. J.S. told Constable Sowers not to send them or others like them.

[154] Ms. J.S. controlled what she provided the RCMP. What she provided is convenient because it does not demonstrate whether she initiated the conversations. I find no indication that RCMP managers or investigators asked her to provide more, despite glaringly obvious gaps or omissions in the material. The result is that I do not have a complete understanding of what took place. This is unfortunate.

[155] Constable Sowers obtained the knowledge or information sent to Ms. J.S. in the course of his duties. Ms. J.S. was not legally entitled to any of the information provided to her. He had no operational purpose or authority for sending the information to Ms. J.S. Although I understand Constable Sowers' reason for sending the work-related photographs and text messages to Ms. J.S., he could have found another means of providing her evidence of his whereabouts without disclosing information related to his duties.

[156] Given the foregoing, I find that the Conduct Authority has established Allegation 6 on a balance of probabilities.

Conclusion on the allegations

[157] Based on the foregoing analysis, the Conduct Authority has established Allegation 6 on a balance of probabilities. The Conduct Authority has not established Allegations 1 through 5.

CONDUCT MEASURES

[158] Having found an allegation established, I am obliged, by virtue of subsection 45(4) of the *RCMP Act*, to impose at least one of the conduct measures set out under that subsection. These conduct measures include dismissal, a direction to resign or "one or more of the conduct measures provided for in the rules". The conduct measures "provided for in the rules" are found in sections 3 (remedial conduct measures), 4 (corrective conduct measures) and 5 (serious conduct measures) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*].

Joint proposal on conduct measures

[159] As previously noted, the parties presented me with a joint proposal for global conduct measures. The joint proposal included the following conduct measures:

- a. a financial penalty of 8 days deducted from Constable Sowers' pay;
- b. a forfeiture of 7 days of annual leave; and
- c. a reprimand.

Common law on joint proposals

[160] The Supreme Court of Canada in *Anthony-Cook*,⁵ at paragraph 25, recognizes that joint submissions on criminal sanctions are not only an accepted and desirable practice, but they are “vitally important to the well-being of our criminal justice system, as well as our justice system at large”. The Court further notes that the majority of such agreements are “unexceptional” and readily approved by judges. However, judges are not obliged to follow these joint proposals for various reasons. These notions are equally applicable to conduct adjudicators in the RCMP conduct regime.⁶

[161] In *Anthony-Cook*, at paragraph 31, the Supreme Court declares that the test to be applied when considering a joint submission is the “public interest” test. The question is whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

[162] In determining whether a joint submission will bring the administration of justice into disrepute or is contrary to the public interest, the Supreme Court identifies statements made by the Newfoundland and Labrador Court of Appeal as capturing the essence of the “public interest” test. The statements are as follows:

⁵ *R v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*].

⁶ See *Rault v Law Society of Saskatchewan*, 2009 SKCA 81, at paragraph 28.

[...] despite the public interest considerations that support imposing it, it is so **‘markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a [breakdown] in the proper functioning of the criminal justice system’**. [...] ⁷ [Emphasis added]

And:

[...] trial judges should **‘avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts’**. [...] ⁸ [Emphasis added]

[163] In applying the Supreme Court’s direction to this decision, I must consider whether the joint proposal on conduct measures will bring the administration of justice or the RCMP conduct system into disrepute or whether it is contrary to the public interest. In doing so, I must consider whether the proposed conduct measures are so markedly out of line with the expectations of a reasonable person aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the RCMP conduct system.

Decision on conduct measures

[164] In conducting my review, I must also follow the analysis framework established by the RCMP External Review Committee under the old RCMP discipline system. This framework remains relevant to conduct proceedings under the amended *RCMP Act*. Under this framework, I must ascertain the appropriate range of conduct measures and then examine the aggravating and mitigating factors in order to determine the appropriate conduct measures for the specific case. This approach is consistent with the provisions of *Administration Manual* XII.1.11.15.

[165] My starting point for the determination of the appropriate conduct measures is the *Conduct Measures Guide*. It sets out a range of recommended conduct measures for all sections of the Code of Conduct. Prior adjudication and conduct board decisions may also assist in this determination.

⁷ *R v Druken*, 2006 NLCA 67, 261 Nfld & PEIR 271, at paragraph 29.

⁸ *R v B.O.2*, 2010 NLCA 19 (CanLII), at paragraph 56.

[166] The *Conduct Measure Guide* specifically deals with section 9.1 of the Code of Conduct, which characterizes a breach of this section as a contravention of the Oath of Secrecy. The mitigated range calls for remedial measures up to a financial penalty of one day's pay. The factors considered in this range include accidental disclosure, minimal impact on operations and less sensitive information. The normal range calls for a financial penalty of between 2 and 10 days of pay. The aggravated range includes instances where the information is highly classified; persons are at risk; the disclosure compromised investigations; the information is given to the criminal element or is provided for monetary gain. The recommendation in the aggravated range is between a financial penalty of 11 days and dismissal.

[167] The *Conduct Measures Guidebook* states that the spectrum of measures for a breach of section 9.1 of the Code of Conduct is wider than most because the gravity of the contravention is contingent on a variety of factors including:

- The type of information disclosed;
- The member's intent in making the disclosure;
- The person receiving the information; and
- The actual impact on operations and/or public safety.

[168] Particulars 4, 5, 6 and 7 of Allegation 6 identify four specific instances where Constable Sowers shared with Ms. J.S. information he obtained while on-duty. The 18 "screenshots" in the material support these particulars. Particular 8 states that a review of the 18 screenshots determined that some could not be associated with a specific PROS file.

[169] Ms. J.S. testified that, although she received photographs from Constable Sowers throughout their marriage, she only started to save them in September 2019. Constable Sowers had no specific recollection of sending the photographs presented to him during the hearing, but he admitted to sending the photographs and exchanging text messages with Ms. J.S. in relation to them.

[170] All of the information contained in PROS is at the Protected B level, which is in the mid-range of security classification.

[171] In most of the photographs that include people, it appears that Constable Sowers attempted to hide their identity. One photograph is of a deceased person. Nevertheless, the photographs are of persons in a vulnerable state and are highly personal in nature. Constable Sowers shared the photographs without the consent of the individuals in them. In the text messages, Constable Sowers attempted to minimize the intrusion by providing Ms. J.S. with sketchy details of what he was doing at work and does not name the persons in the photographs. His actions constitute a significant breach of the privacy of the individuals in the photographs, which I consider a significant aggravating factor.

[172] I accept Constable Sowers' motive for providing the photographs and text messages. Both Constable Sowers and Mr. T.S. testified that Constable Sowers sent photographs to Ms. J.S. to prove his whereabouts to allay her suspicions of his infidelity. Constable Sowers testified that, by the end of their marriage, he was receiving as many as 1500 text messages a day from Ms. J.S. If he did not respond to the text messages, she telephoned him repeatedly until he answered. This had to have been highly stressful and disruptive to his workday.

[173] Constable Sowers' intent in sending the photographs was for personal reasons and not for financial gain.

[174] Constable Sowers testified that he believed Ms. J.S. had a valid security clearance because of her work with Victim Services. I do not know what type of security clearance she had, but I do know she had access to the North Battleford RCMP Detachment building until the RCMP revoked it in March 2020. Given this, she had some form of security clearance, even if it was only Enhanced Reliability Status. Regardless, Ms. J.S. was definitely not part of the criminal element, which would be a significant aggravating factor.

[175] The information shared by Constable Sowers did not compromise any investigations.

[176] The primary aggravating factor presented by the Conduct Authority was the duration and frequency of Constable Sowers' conduct.

[177] In light of the joint proposal on conduct measures and by agreement, Constable Sowers did not provide me with any letters of support.

[178] The combination of conduct measures places the proposed sanctions at the low end of the aggravated range. My only concern with the proposal was the pay deduction of eight days. Constable Sowers declared bankruptcy in February 2020. Given his financial position, I was concerned that the significant pay deduction might be excessively onerous and potentially counterproductive to the educative and rehabilitative objectives of conduct measures. I raised the concern during a pre-hearing conference. His counsel assured me he had addressed the issue with Constable Sowers and that Constable Sowers was confident he could manage the financial penalty.

[179] Given the totality of this case, I find that the conduct measures included in the joint proposal are not markedly out of line with the expectations of the reasonable person aware of the circumstances to the extent that they would bring the administration of justice or the RCMP conduct process into disrepute or that the public interest would be offended. Therefore, I find no reason to deviate from the joint submission presented to me.

CONCLUSION

[180] In respect of Allegation 6, the lone established allegation, I impose the following conduct measures:

- a. a financial penalty of 64 hours (8 days) deducted from Constable Sowers' pay pursuant to paragraph 4(d) of the *CSO (Conduct)*;
- b. a forfeiture of 56 hours (7 days) of annual leave pursuant to paragraph 4(e) of the *CSO (Conduct)*; and

2022 CAD 09

- c. a reprimand pursuant to paragraph 3(1)(i) of the *CSO Conduct*. This decision will constitute the reprimand.

[181] This decision constitutes the written decision required to be served on the parties under subsection 25(3) of the *CSO (Conduct)*. Either party may appeal to the Commissioner by filing a statement of appeal within 14 days of the service of the decision per section 45.11 of the *RCMP Act*.



May 23, 2022

Kevin Harrison

Conduct Board