



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, "J" Division

Conduct Authority

and

Jason Daley
Regimental Number C9307

Subject Member

Conduct Board Decision

Superintendent Colin Miller

November 21, 2022

Staff Sergeant Jonathon Hart, Conduct Authority Representative

Mr. Max Way, Subject Member Representative

TABLE OF CONTENTS

SUMMARY	2
INTRODUCTION	3
ALLEGATION	4
Decision on the allegation	5
a) Are the acts proven?	6
b) Has the identity of the member been established?	7
c) Is CM Daley’s conduct discreditable?.....	7
d) Is CM Daley’s behaviour sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him?	9
Conclusion.....	12
CONDUCT MEASURES	12
RESOLUTION	13

SUMMARY

Civilian Member (CM) Jason Daley was served with a *Notice of Conduct Hearing*, which contained one alleged contravention of section 7.1 of the RCMP Code of Conduct concerning a domestic disturbance.

CM Daley admitted to the allegation. Furthermore, on August 18, 2022, the Conduct Board determined that the allegation was established.

On August 23, 2022, CM Daley testified at the conduct measures phase of this proceeding. Afterwards, but prior to making their oral submissions on conduct measures, the parties advised the Conduct Board that they had reached an agreement to resolve this matter: the Commanding Officer had agreed to accept CM Daley’s resignation.

On August 24, 2022, the Conduct Authority Representative provided the Conduct Board with a duly signed Form 1733 – *Discharge Request*, effective August 23, 2022. Consequently, this matter was concluded prior to the imposition of conduct measures, because the Conduct Board lost jurisdiction over the matter.

INTRODUCTION

[1] The alleged incident took place on or around September 30, 2020, and October 1, 2020, while CM Daley was employed as a Local Area Network Coordinator at the Canadian Firearm Program office, in Miramichi, New Brunswick. Pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], an investigation into CM Daley's actions was initiated on October 1, 2020.

[2] On August 26, 2021, the "J" Division Commanding Officer signed a *Notice to the Designated Officer* in which she requested the initiation of a conduct hearing. On August 31, 2021, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *RCMP Act*.

[3] On September 29, 2021, the *Notice of Conduct Hearing* was signed by the Conduct Authority. On November 4, 2021, it was served on CM Daley, along with the investigation package.

[4] On January 6, 2022, CM Daley provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. Although he admitted to the allegation, he provided explanations with respect to the particulars. Additionally, his response included comments that more directly relate to the conduct measures phase of this proceeding.

[5] On June 27, 2022, the Conduct Authority Representative advised me that the complainant, M.H., was no longer willing to testify. He further advised that he and the Subject Member Representative had agreed on the factual basis for the impugned incident. The Subject Member Representative subsequently confirmed that they had reached an agreement on the facts.

[6] On July 13, 2022, a pre-hearing conference was held, in which the Conduct Authority Representative confirmed that the physical contact initiated by CM Daley was unintentional. In light of this new information, I requested submissions from the parties as to whether CM Daley's conduct was discreditable. Both parties provided submissions agreeing that CM Daley's conduct was discreditable.

[7] On August 17, 2022, another pre-hearing conference was held to hear the parties' oral submissions on the fourth element of the test for discreditable conduct—nexus to employment.

[8] On August 18, 2022, I delivered an interim written decision finding that the allegation was established.

[9] On August 23, 2022, CM Daley testified at the conduct measures phase of the hearing. Afterwards, but prior to making their oral submissions on the conduct measures, the parties advised me that they had reached an agreement to resolve this matter: the Commanding Officer had agreed to accept CM Daley's resignation.

[10] Consequently, I advised the parties that I was prepared to proceed with the hearing and would be in a position to deliver a decision on the conduct measures the following morning. However, adhering to the principles regarding joint proposals, I gave the parties until 10 a.m. the next day to provide me with a duly signed copy of a *Discharge Request*. In the alternative, the matter would proceed.

[11] On August 24, 2022, the Conduct Authority Representative provided me with a duly signed *Discharge Request*, effective August 23, 2022. As a result, I had lost jurisdiction and this matter was concluded without the imposition of conduct measures.

ALLEGATION

[12] The *Notice of Conduct Hearing* contains the following allegation and particulars:

Allegation 1: On or between September 30 and October 1, 2020, at or near [redacted], in the Province of New Brunswick, Civilian Member Jason Daley engaged in conduct contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a civilian member of the Royal Canadian Mounted Police ("RCMP") working as a [Local Area Network] Coordinator at the Canadian Firearm Program office in Miramichi, New Brunswick.
2. You were having a "on and off" romantic relationship with [M.H.] since 2016.
3. On September 30, 2020, [M.H.] repeatedly told you not to attend her residence; at approximately [2:56 p.m.], she texted you "You're not welcome

in my home or on my property ever again” or words to that effect. In the evening hours of September 30 and the morning hours of October 1, 2020, [M.H.] was socializing with friends in her residence’s garage.

4. At approximately [11:30 p.m.], you arrived at her residence, located at [redacted]; you entered M.H.’s residence without her knowledge and went straight to the basement where her bedroom was located.

5. After approximately [3:30 a.m.], [M.H.] was alone in her kitchen when you initiated an argument with her and began insulting her. She told you to leave her house or go downstairs.

6. You returned to [M.H.]’s bedroom and she eventually joined you in bed. As she got into her bed, you started insulting her again. She yelled at you to leave her residence several times. She started pushing and hitting you, as she wanted you out of her bed. As you were getting up and regaining your balance you ended up on top of her; you pinned her to the bed with one hand on her face. [M.H.] was trying to fight you off and you let go of her after she bit your right hand. This physical altercation lasted approximately one minute and, as a result, [M.H.] had a sore hand and bruising on the left side of her chin.

7. You left the residence after [M.H.] screamed at you to leave and that she was calling the police.

8. You were arrested and charged for Assault contrary to section 266(b) of the Criminal Code in relation to this incident.

9. Your conduct was discreditable.

[Sic throughout]

[13] The burden is on the Conduct Authority to establish the allegation on a balance of probabilities. This means that I must find that the Conduct Authority has established that it is more likely than not that CM Daley has contravened section 7.1 of the Code of Conduct, which states that “Members behave in a manner that is not likely to discredit the Force.”

Decision on the allegation

[14] In his response to the allegation, CM Daley admitted that his conduct was discreditable. Nevertheless, I am still required to conduct an analysis of the facts before me to determine if all the elements of the test for discreditable conduct have been satisfied.

[15] The test for discreditable conduct under section 7.1 of the Code of Conduct requires that the Conduct Authority prove the following on a balance of probabilities:

- a) the acts that constitute the alleged behaviour;

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

a) Are the acts proven?

[16] While he admitted all of the particulars, he offered explanations for particulars 2 to 8.

[17] On June 27, 2022, the Conduct Authority Representative advised that M.H. was no longer willing to testify. He further advised that he and the Subject Member Representative had reached an agreement "that the factual basis for the consideration of the Conduct Board in terms of the one allegation consists of [CM Daley's] section 15 response, up to the bottom of [particular] 9". Accordingly, I find the following to be facts:

1. CM Daley had been engaged in a toxic "on and off" romantic relationship with M.H. since 2016.
2. On September 30, 2020, M.H. repeatedly told CM Daley not to attend her residence and, at approximately 2:56 p.m., she sent him a text stating "You're not welcome in my home or on my property ever again" or words to that effect.
3. Due to previous fidelity issues, CM Daley and M.H. would frequently engage in arguments almost every time he had to go to Miramichi to care for his children. During these arguments, M.H. would often tell him not to come to her residence. However, she would nonetheless leave the door unlocked for him and he would go in and go to bed with her.
4. In the evening of September 30, 2020, and into the morning hours of October 1, 2020, M.H. was socializing with friends in the garage of her residence.
5. At approximately 11:30 p.m., CM Daley arrived at M.H.'s residence, entered without her knowledge and went straight to the basement where her bedroom was located.
6. At approximately 3:30 a.m. or later, M.H. was alone in her kitchen when CM Daley initiated an argument with her and began insulting her.
7. M.H. directed CM Daley to leave her house or to go downstairs.

8. CM Daley returned to M.H.'s bedroom, and she eventually joined him in bed. As she got into her bed, he began insulting her again. M.H. started pushing and hitting him in response to his comments. After he started to get up to leave, she yelled at him several times to leave her residence.
9. As CM Daley was getting up from the bed, he lost his balance and ended up on top of M.H., unintentionally pinning her to the bed with one hand on her face. M.H. tried to fight him off, and he let go of her after she bit his right hand. This entire altercation lasted approximately one minute. As a result, M.H. sustained a sore hand and bruising on the left side of her chin.
10. While CM Daley was proceeding to his vehicle in order to leave M.H.'s property, she was on the deck screaming for him to leave and said that she was calling the police.
11. In relation to this incident, CM Daley was arrested and charged for assault contrary to paragraph 266(b) of the *Criminal Code*, RSC, 1985, c C-46. The charge was withdrawn by the Crown on November 9, 2021.

b) Has the identity of the member been established?

[18] By virtue of CM Daley's admission to the allegation and of my review of the materials contained in the Record, I find that his identity as the member who committed the contravention is established.

c) Is CM Daley's conduct discreditable?

[19] Although the Conduct Authority Representative acknowledged that the force applied by CM Daley was unintentional, he argued that this element is not required for a finding of discreditable conduct. Moreover, he argued that physical force in a domestic incident is not required and that family violence can include verbal comments. The Conduct Authority Representative added that CM Daley instigated the incident with his use of insults. He also noted that CM Daley had been told not to attend M.H.'s residence, had been asked to leave M.H.'s residence, and that children were in the house.

[20] The Subject Member Representative agreed that the force applied by CM Daley was not intentional. However, he conceded that, based on CM Daley's admission to particular 5 of the allegation, CM Daley had engaged in discreditable conduct. Specifically, he noted:

- The incident was the escalation of a toxic relationship
- CM Daley should not have attended her residence
- There was a clear verbal altercation
- Things should not have escalated
- CM Daley should have departed M.H.'s residence earlier
- CM Daley remained and went back downstairs

[21] I agree with the parties that CM Daley's behaviour with respect to the confrontation was problematic and that the intentional application of physical force in a domestic dispute is not required for a member's conduct to be deemed discreditable.

[22] However, it is not the confrontation itself that I find to be the most alarming, it is what preceded it. Knowing that M.H. had instructed him not to attend her residence, CM Daley still went to her home and entered it without her knowledge. He then waited inside for several hours, and after all of her guests departed, he confronted her. Moreover, as she was preparing lunch for her children, who were asleep at that time, he approached her in the kitchen and began insulting her.

[23] By his own admission, CM Daley was involved in a toxic relationship with M.H. since 2016. Given their history and knowing that M.H. was intoxicated to some extent, the resulting dispute between them should have been foreseeable to CM Daley. Upon his initiating an argument, M.H. directed him to leave or return to the basement. Of these two options, he chose to return downstairs to her bedroom, as opposed to leaving the residence. When M.H. retired to her bedroom, she got into her bed, where CM Daley was located, and he again insulted her, before eventually ceding to her request and leaving her residence.

[24] Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. In attending M.H.'s home despite her direction not to, entering her residence in a surreptitious manner and remaining in her residence unbeknownst to her for several hours, before initiating not only one, but two confrontations with her, CM Daley's conduct was a significant departure from the

standard expected of a member of the RCMP. I find that a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view CM Daley's actions as likely to bring discredit to the Force.

d) Is CM Daley's behaviour sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him?

[25] At my invitation, the parties provided oral submissions as to whether the nexus to employment had been established.

[26] The Conduct Authority Representative argued that the nexus to employment had been established due to the potential damage to the reputation of the RCMP as a result of CM Daley's actions. He asserted that actual damage to the reputation of the RCMP was not required. Furthermore, the Conduct Authority Representative, citing *Mulligan*¹ and *Sunwing*,² submitted that the mere possibility that reputational harm may occur is sufficient to grant an employer an interest in disciplining an employee. He also indicated that the test to consider is "what would a fair-minded well-informed person think".³

[27] The Conduct Authority Representative noted CM Daley's position in the RCMP as a civilian member. He added that, while CM Daley is not a police officer, he has taken oaths and is in a position of trust. He further highlighted that CM Daley's conduct is not out of character, since he had been previously disciplined for similar behaviour, which CM Daley himself acknowledged in his response to the allegation.

[28] Additionally, the Conduct Authority Representative referenced CM Daley's response to the allegation. He noted that CM Daley recognized that his actions should not be excused, and that they had an impact on the RCMP as well as M.H. and her children.

¹*Mulligan v Ontario Civilian Police Commission*, 2020 ONSC 2030 [*Mulligan*], at paragraph 48.

² *Sunwing Airlines Inc. and Unifor, Local 7378 (C.S.)*, Re, 2021 CarswellNat 517, 148 C.L.A.S. 46 [*Sunwing*], at paragraph 78.

³ *Sunwing*, at paragraph 82

[29] Finally, the Conduct Authority Representative pointed out that although CM Daley had entered into a peace bond, he exploited his knowledge of the police process to be present outside the Detachment when M.H. arrived to provide her statement.

[30] While conceding that CM Daley's conduct was discreditable, the Subject Member Representative rejected the Conduct Authority Representative's assertion that the nexus to employment had been established due to the impact of CM Daley's conduct on the reputation of the RCMP.

[31] The Subject Member Representative argued that although the Conduct Authority does not have to demonstrate that the RCMP suffered actual damage to its reputation, the Conduct Authority must show that it is likely that CM Daley's conduct would discredit the RCMP.

[32] The Subject Member Representative noted that although CM Daley is employed by the RCMP, he is not a police officer or peace officer. Consequently, he does not possess the same authority or have the same responsibilities. Hence, the Subject Member Representative argued that CM Daley's behaviour would not have the same impact on the reputation of the RCMP as if it were committed by a regular member.

[33] Citing the test in *Millhaven*,⁴ the Subject Member Representative argued that it is only the third factor of that test that creates a nexus to employment: "[...] the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him [...]", I disagree. The Subject Member Representative took this position based on the Conduct Authority seeking CM Daley's dismissal. However, if that satisfied the test, then every case brought before a conduct board would have the required nexus. In setting out that element of the test, the court is placing an onus on the employer to demonstrate that an employee's co-workers refuse to work with them, not simply that the employer is seeking to fire them.

[34] As cited by both parties in reference to my decision in *Steinke*,⁵ I do not believe that the RCMP should insert itself into every aspect of a member's personal life. However, I must consider

⁴ *Millhaven Fibres Ltd v Oil, Chemical & Atomic Workers Int'l Union, Local 9-670* (Mattis Grievance), [1967] OLAA No 4

⁵ *Commanding Officer "D" Division and Constable Steinke*, 2020 CAD 22, at paragraph 44.

the totality of CM Daley's behaviour in determining whether it is sufficiently related to his employment. In this instance, I do find that CM Daley's behaviour is sufficiently related to his duties and functions as to provide the RCMP with a legitimate interest in disciplining him.

[35] The RCMP has taken a very strong stance with respect to domestic violence, implementing a zero-tolerance policy. Moreover, CM Daley should have been well aware of this stance.

[36] Family violence is not limited to acts of physical violence, as rightly recognized by my learned colleague in *Whalen*.⁶

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

[...]

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

[...]

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

[...]

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

[37] Not only did CM Daley engage in verbal altercations with M.H., he preceded that by surreptitiously entering her dwelling and lying in wait. Clearly, the totality of his behaviour in this situation constitutes family violence. As such, I find that a "fair-minded and well-informed member of the public"⁷ would take a very dim view of CM Daley's behaviour, which would likely have a negative impact on the reputation of the RCMP.

[38] Hence, I find that CM Daley's behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

⁶ *Commanding Officer "H" Division and Constable Gregory Whalen*, 2021 CAD 17, at paragraph 14.

⁷ *Lethbridge (City) v A.T.U., Local 987*, 2000 CarswellAlta 1725, 65 CLAS 99, 98 LAC (4th) 264, at paragraph 72.

Conclusion

[39] I find that CM Daley attended M.H.'s residence despite her direction not to, entered her residence without her knowledge, and, after waiting several hours for her friends to depart, initiated two verbal altercations with her. Therefore, I find his conduct to be discreditable and, as a result, I find the allegation against him to be established on a balance of probabilities.

CONDUCT MEASURES

[40] With my finding that the allegation has been established, I am required, in accordance with paragraph 36.2(e) of the *RCMP Act*, to impose conduct measures that are "proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, are educative and remedial rather than punitive".

[41] At the onset of the conduct measures phase, CM Daley testified. In direct examination, CM Daley acknowledged that he should not have gone to M.H.'s residence and that, once there, he should have departed as opposed to wait for her. CM Daley also recognized that his behaviour impacted the RCMP and his co-workers.

[42] CM Daley testified that he had taken measures to rehabilitate by attending counselling. Furthermore, he stated that he now had the ability to identify his triggers and the tools to avoid a recurrence of the previous incidents.

[43] CM Daley acknowledged that he had previously been disciplined for similar behaviour. However, he testified that the incidents related to the allegation arose due to issues of fidelity, which he stated is no longer an issue, because he and M.H. are not in a relationship. Although, he also noted that they still see each other occasionally and engage in sexual relations.

[44] In concluding the direct examination, CM Daley acknowledged that he had let the RCMP down. However, he added that he was committed to his job and that he is a good worker. He also stated that he had sacrificed his family for work and would like to have the opportunity to prove everyone wrong.

[45] In cross-examination, CM Daley discussed his role as a Local Area Network Coordinator, noting that his duties ranged from changing a computer mouse to getting crime scene photos off

computer drives. He agreed that it was a vital role that placed him in a position of trust and authority.

[46] CM Daley stated that he should not have gone to M.H.'s residence. However, he explained that this kind of interaction between him and M.H. was typical, and that if he had not gone to her home despite her telling him not to, then she would have gotten upset.

[47] CM Daley indicated that his children and M.H.'s children were his priority. Furthermore, he spoke of some of the actions he took to provide and/or care for them, including helping M.H. purchase her residence. However, he acknowledged that his relationship with M.H., and his behaviour within that relationship, would have had a negative impact on the children.

[48] CM Daley expressed confidence in his ability to move forward. He suggested that his time away from work had shown him what true priorities were and had shown him that he had previously been putting effort into the wrong places. He asserted that he would no longer handle things like he did before. He stated that problems only arose between him and M.H. when there were fidelity issues between them. Therefore, now that they are no longer boyfriend and girlfriend, despite still sleeping together, the fidelity issues were no longer relevant.

[49] The Conduct Authority Representative then led CM Daley through his prior discipline, drawing his attention to the similarities of his previous behaviour to the present matter and gained agreement that his behaviour had escalated, including his spitting on M.H. and threatening her. CM Daley acknowledged that M.H. had previously made efforts to prevent him from contacting her, which he had also ignored. CM Daley reiterated that he previously did not have the tools to deal with these issues. However, as a result of his counselling, he does now.

[50] In redirect, CM Daley clarified that, in his position, he does not actually possess any supervisory or law enforcement authority.

RESOLUTION

[51] Prior to making their submissions in relation to the appropriate conduct measures to be imposed, the parties advised that they had reached an agreement to resolve this matter. The

Conduct Authority Representative informed me that his client had agreed to accept CM Daley's resignation.

[52] At the request of the parties, this matter was adjourned for the completion of the applicable paperwork for CM Daley's discharge. The request for an adjournment was granted until the next morning, at which time, the Conduct Authority Representative provided me with a copy of the duly signed *Discharge Request*. Due to his resignation, I no longer have jurisdiction to impose conduct measures on CM Daley. Consequently, this matter was concluded without the imposition of conduct measures.

Superintendent Colin Miller
Conduct Board

November 21, 2022
Date