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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:

Chief Superintendent Marlene Bzdel

Conduct Authority

and

Constable X
Regimental Number Redacted

Subject Member

Conduct Board Decision

Gerald Annetts

January 12, 2022

Staff Sergeant Julie Beaulieu and Mr. Denys Morel, Conduct Authority Representatives

Ms. Caitlyn Fleck and Mr. David Butcher, Subject Member Representatives

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SUMMARY

Constable X was originally accused of five alleged contraventions of the RCMP Code of Conduct involving sexual and physical abuse of his two young daughters. One allegation was withdrawn by the Conduct Authority prior to the service of the *Notice of Conduct Hearing*. Three additional allegations were withdrawn during the course of resolution discussions between the parties. The parties ultimately tendered a joint proposal that involved Constable X admitting to one amended allegation. The joint proposal was accepted by the Conduct Board, who imposed the conduct measure of a financial penalty of 20 days' pay.

INTRODUCTION

[1] The Conduct Authority initiated the conduct hearing in this matter on June 10, 2020. Five allegations of misconduct were made against Constable X in relation to incidents of physical and sexual abuse involving his two daughters, between December 20, 1999, and June 30, 2011. On June 12, 2020, I was appointed as the Conduct Board. On December 9, 2020, Constable X was served with the *Notice of Conduct Hearing* in which one of the allegations was withdrawn.

[2] Pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, Constable X provided his response to the *Notice of Conduct Hearing*. In his response, Constable X admitted some of the particulars, but denied all four allegations. A hearing was scheduled to start on December 13, 2021. However, prior to the start of the hearing, the parties

reached an agreement to resolve the allegations. They submitted a joint proposal that included Constable X admitting to one amended allegation and the Conduct Authority withdrawing the three remaining allegations.

ALLEGATION

[3] The amended allegation reads as follows:

Allegation 1:

At times between 2001-2011 at or near [redacted text], Constable [X] engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times [Constable X] was a member of the Royal Canadian Mounted Police (“RCMP”) posted to [redacted text]
2. [redacted text].
3. In 1993, [Constable X] and [Ms. Y] married. They had two daughters. [Daughter 1] [redacted text], and [Daughter 2] [redacted text].
4. On one occasion, in June 2001, [Constable X] went out on the second floor sundeck and left the door open. [Daughter 2] followed him and said “daddy” in a louder voice. [Constable X] smacked her on the bottom to bring her back in the house because it was not safe for her to be out there. In response, [Daughter 1] approached and said “daddy be nice”. [Constable X] became angry and then proceeded to smack both of them for pointing their fingers at him. Both girls cried. When confronted by [Ms. Y] about the situation, [Constable X] stated that he could not let them get away with being disrespectful. [Constable X] now accepts that there were better options available to deal with the situation. [Constable X]’s use of force was not reasonable under the circumstances.
5. In the summer of 2002, [Constable X] and [Ms. Y] separated.
6. [Constable X] and [Ms. Y]’s separation was acrimonious, and this put a strain on [Constable X]’s relationship with his daughters. During the first two years of the separation there were ongoing disputes over custody and access to [Daughter 1] and [Daughter 2]. [Constable X] and [Ms. Y] entered into a consent order on June 16, 2004, which granted their divorce and sole custody of [Daughter 1] and [Daughter 2] to [Ms. Y]. By that same order, [Constable X] was given access to [Daughter 1] and [Daughter 2] every second weekend, and for four weeks over the summer holidays.

7. At the beginning of the separation, from approximately 2002-2004, the custody transfers were sometimes very difficult. [Ms. Y] would have a number of people from her family and church present. [Ms. Y]'s second husband has confirmed that [Ms. Y] was antagonistic towards [Constable X]. [Daughter 1] would become very emotional, throw temper tantrums, get physically sick and refuse to leave her mother's house. She would often grab on to various fixtures at the house, to prevent having to leave. Sometimes [Constable X] would decide to leave her and just take [Daughter 2]. On several occasions, [Ms. Y] had to carry [Daughter 1] out of the house as she protested, and pass her to [Constable X] who then physically placed her in the car.

8. On January 31, 2004, [Daughter 1] became very emotional and refused to go with [Constable X]. [Constable X] carried her over his shoulder and forced her into the car. [Daughter 1] was physically struggling to get away. [Constable X] quickly shut the car door and some of [Daughter 1]'s hair got caught in the door. [Daughter 1] immediately freed herself, jumped into the front seat and exited the car. [Constable X] restrained her and used physical force to buckle her in. [Daughter 1] told [Constable X] that he was pinching her and hurting her. After this incident, [Daughter 1] had an abrasion on her leg from the buckle and bruises on her arm; therefore, she was taken to the hospital when she returned from her custody visit. The attending doctor reported the incident to the Ministry of Children and Family Services. [Constable X] now accepts that there were better options available to deal with the situation. [Constable X's] use of force was not reasonable under the circumstances.

9. While staying with [Constable X], [Daughter 1] and [Daughter 2] would often get into physical and verbal fights with one another. Occasionally, [Constable X] became angry, raised his voice, and sometimes resorted to physical force to separate them. [Constable X] now accepts that there were better options available to deal with the situation. [Constable X]'s use of force was not reasonable under the circumstances.

10. Although it was not his intention to harm [Daughter 1] or [Daughter 2], [Constable X] recognizes that his actions contributed to [Daughter 1] and [Daughter 2]'s emotional distress and fear, which contributed to their reluctance to see him and the eventual breakdown of their relationship.

11. [Daughter 1] and [Daughter 2] both entered puberty early, [Daughter 1] developed breasts and had her period by the age of 10 and [Daughter 2] had her period by the age of 11. As the girls matured, [Constable X] failed to respect their wishes for privacy and autonomy. These failures included:

- a) When [Daughter 1] and [Daughter 2] were young, [Constable X] first assisted and then supervised them while they were in the bathroom, taking their baths. [Daughter 1] and [Daughter 2] took their baths together. By

the age of 10, [Daughter 1] who had started to develop breasts, expressed a concern that she was too old to take a bath in front of him and asked him to give her privacy. He disregarded her request and continued to oversee bathing until he was satisfied that they were old enough to bathe safely on their own.

b) [Constable X] did not allow [Daughter 1] and [Daughter 2] to lock their bedroom door even once they were into their teenage years. On occasion, [Constable X] walked in on [Daughter 2] without knocking while she was partially clothed. This made her uncomfortable.

c) When [Daughter 1] and [Daughter 2] played videogames, [Constable X] often placed himself behind them and massaged their shoulders. They had already entered puberty and were wearing bras. This made them uncomfortable. These incidents continued even when [Constable X] was living in Prince George.

d) When [Daughter 2] was 10 or 11 years old, [Constable X] occasionally referred to her by her nickname “bubble-butt”, despite her asking him not to. [Daughter 2] suffered from low self-esteem and these comments contributed to this.

e) On one occasion, [Constable X] asked [Daughter 1] and [Daughter 2] to try on new clothing that they had bought that day. He asked them to spin around and show off their new clothing in front of his friends, two of which were male. This made them embarrassed and uncomfortable.

f) [Constable X] occasionally swatted or patted [Daughter 1] or [Daughter 2] on the buttocks in a friendly or playful manner. This continued after they entered puberty, and despite them asking him not to do this.

g) These actions contributed to [Daughter 1] and [Daughter 2] feeling uncomfortable, embarrassed, violated and fearful of their father.

12. [Constable X] did not intend to make [Daughter 1] and [Daughter 2] uncomfortable. His actions were not done for a sexual purpose. However, in hindsight he acknowledges that these actions were inappropriate given their ages, physical development and expressed wishes. He violated their personal privacy and autonomy.

13. In June 2011, both [Daughter 1] and [Daughter 2] made the decision not to see their father anymore. [Constable X] chose not to force them and has not seen either daughter since.

14. [Daughter 1] has been diagnosed with severe depression, anxiety and [post-traumatic stress disorder] and she attributes this to the trauma of her childhood, particularly due to [Constable X]’s actions in relation to her.

15. [Constable X] admits that his actions, as described in the particulars set out above, bring discredit upon the Force, contrary to s. 7.1 of the RCMP Code of Conduct.

[Sic throughout]

Decision on the allegation

[4] The one allegation now before me alleges a contravention of section 7.1 of the Code of Conduct. The Conduct Authority must establish on a balance of probabilities the four-stage test for discreditable conduct.

[5] The first stage is to prove that it was Constable X who committed the acts in question. Given his admission to the allegation, identity is not in issue in this case.

[6] The second stage of the test for discreditable conduct involves a determination of whether the actions alleged actually took place. Again, given the joint proposal submitted by the parties, I find that the actions contained within the aforementioned particulars were committed by Constable X.

[7] The third stage of the test requires a determination on how a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the behaviour. That threshold of discreditable conduct is met when that reasonable person would view the actions of Constable X as likely to discredit the Force. While Constable X's admission to discreditable conduct is helpful, it does not end the inquiry. The onus is still on the Conduct Authority to establish the discreditable nature of the misconduct.

[8] Constable X's misconduct in this matter, as documented in the particulars, involves several different kinds of inappropriate behaviour. It includes using an unreasonable level of force in disciplining his children, where discipline may not have been necessary in the first place. It also includes using an unreasonable level of force in taking physical custody of Daughter 1 in the course of custody transfers. Finally, it includes failing to respect his daughters' privacy and personal autonomy as they matured from children to adolescents.

[9] There are many different parenting styles and levels of parenting ability. It is not an exact science, nor is it always easy. There are hundreds, if not thousands, of books on the topic. There are coaches and therapists and support groups and discussion forums available to those who require assistance. All that to say that parenting can be challenging and stressful, especially in the midst of an acrimonious separation and divorce.

[10] However, even in these challenging circumstances, parents are still required to deal with their children in a reasonable and respectful manner. Using excessive force against a child is never appropriate. Nor is failing to respect the privacy and physical autonomy of an adolescent child.

[11] In the circumstances, and assisted by Constable X's admission, I conclude that a reasonable person, aware of the facts as well as the realities of policing and of the RCMP, would find his actions likely to bring discredit on the RCMP.

[12] The fourth and final stage of the test is to determine whether the discreditable conduct is sufficiently related to the duties and responsibilities of Constable X so as to provide the RCMP with a legitimate interest in imposing conduct measures against him. It is commonly understood that members of the RCMP are held to a higher standard of behaviour than the general public, both on- and off-duty. It is summarized this way in the *Conduct Measures Guide* (2014), which accords with the common law:

[...] Off-duty conduct that would not normally constitute a breach of criminal law may nevertheless be considered discreditable, provided the circumstances surrounding the behaviour can be reasonably expected to affect the Force's reputation or the member's ability to discharge his or her duties as a police officer. [...]

[13] Given that members of the Force are routinely required to investigate allegations of abuse and assault, whether sexual or otherwise, it can reasonably be expected that Constable X's conduct will negatively affect both the reputation of the Force and his ability to discharge his duties as a police officer. In that way, I am satisfied that his discreditable conduct is sufficiently related to his duties and responsibilities as a member of the RCMP to provide the Force with the necessary legitimate interest in imposing conduct measures in order to condemn and deter similar future misconduct.

[14] Consequently, I find that discreditable conduct has been established.

CONDUCT MEASURE

[15] Having found that the allegation is established, subsection 45(4) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], and the *Conduct Measures Guide* require that I impose “a fair and just measure that is commensurate to the gravity of the contravention, the degree of blameworthiness of the member, and the presence of mitigating and aggravating factors”. Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be “proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, educative and remedial rather than punitive”.

[16] In making my determination on the appropriate sanction, I must begin by considering the appropriate range of conduct measures and then take into account the aggravating and mitigating factors present in this case. I am not bound by the decisions of other conduct boards, but previously decided cases of a similar nature do help to establish the applicable range of sanctions. The parity of sanctions principle seeks to ensure fairness so that similar forms of misconduct are treated in a similar fashion. This lends predictability to conduct matters. The parties tendered the following cases in support of their joint proposal:

- Commanding Officer “D” Division and Constable Fahd El Aste, 2018 RCAD 18
- Commanding Officer “C” Division and Constable Dany Noel, 2019 RCAD 11
- Commanding Officer “National” Division and Constable X, 2021 CAD 1

[17] In addition, the *Conduct Measures Guide* is available for guidance around the imposition of conduct measures. However, it is not binding or determinative as it is just that, a guide.

[18] When presented with a joint submission on conduct measures, I am bound to accept it unless it is clearly unreasonable or not in the public interest. That obligation was explained this way by the Supreme Court of Canada in *R. v Anthony-Cook*, 2016 SCC 43, at paragraph 32:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[19] The parties submitted a joint proposal on conduct measures consisting of a financial penalty of 20 days pay. In order to determine whether the proposed sanction is unreasonable or would bring the administration of justice into disrepute, I must consider the aggravating and mitigating factors. In terms of aggravating factors, I note the following:

- a. Constable X's misconduct was repeated on more than one occasion and was not an isolated one-time occurrence.
- b. Constable X has prior related discipline on his record. In 2003, he was disciplined for the excessive use of force toward a member of his immediate family. Informal discipline was administered and professional counselling was recommended. In 2015, he was disciplined again for misconduct; however, the event and circumstances are unrelated to this matter.

[20] I acknowledge the following mitigating factors:

- a. Constable X accepted responsibility for the misconduct. When he learned of Daughter 1's allegations on her Facebook account, he self-reported them to his supervisor. He also admitted to the amended allegation and participated in the joint proposal presented by the parties. This avoided both the need for a conduct hearing and the need for his children to testify at same.
- b. Constable X has an exemplary work record and the support of his superiors, who speak to his integrity, commitment to and love for his job, as well as his kind and personable disposition.
- c. Constable X's misconduct occurred during a difficult and tumultuous period in his life, in which he was going through an extremely acrimonious divorce and custody dispute. Ms. Y was often antagonistic toward him with regard to the custody dispute and exchanges.

However, the parties did not provide any indication as to the steps Constable X may have taken to cope with these stressors.

[21] I find that the aggravating and mitigating factors balance each other out in the circumstances of this case. I find that the joint submission on conduct measures presented by the parties is appropriate to the misconduct committed. In my view, it will send the necessary message of denunciation and deterrence, while acknowledging that Constable X is a valuable employee who deserves another chance. Its acceptance would not bring the administration of justice into disrepute, nor is it otherwise contrary to the public interest. Consequently, I accept the joint submission.

DECISION

[22] The allegation against Constable X is established. I impose the following conduct measure:

- pursuant to paragraph 5(1)(j) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, a financial penalty of 20 days to be deducted from his pay.

[23] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on Constable X, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

Gerald Annetts

Conduct Board

January 12, 2022

Edmonton, Alberta