



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:

The Designated Level III Conduct Authority

Conduct Authority

and

Constable Vladlen Zenchenko
Regimental Number 65055

Subject Member

Conduct Board Decision

Louise Morel

July 04, 2024

Mr. Jonathan Hart, Conduct Authority Representative

Mr. Gordon Campbell, Subject Member Representative

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SUMMARY

The *Notice of Conduct Hearing* contains one allegation of discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct. It is alleged that Constable Zenchenko, while off duty, sexually assaulted Constable L.S. by compelling her to engage in vaginal intercourse with him, against her will.

The Conduct Board found the allegation not established.

INTRODUCTION

[1] The *Notice of Conduct Hearing* contains one allegation of discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct. It was signed by the Conduct Authority on May 2, 2023, and subsequently served on Constable Vladlen Zenchenko, along with the Code of Conduct investigation package.

[2] On the evening of April 25, 2021, Constable L.S. attended Constable Zenchenko's personal residence. Together, they consumed alcoholic beverages and socialized. Constable L.S. became intoxicated and was unable to drive home at the end of the evening. Therefore, Constable Zenchenko's offered her to sleep over and she accepted.

[3] Constable L.S. agreed to engage in sexual interactions with Constable Zenchenko, with the exception of vaginal penetration. Nevertheless, it is alleged that at some point during their interactions, Constable Zenchenko inserted his penis into Constable L.S.'s vagina, without her consent.

[4] On November 25, 2022, I was appointed as the Conduct Board in this matter, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[5] On May 30, 2023, Constable Zenchenko provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He denied the allegation.

[6] In accordance with section 45 of the *RCMP Act*, I must decide whether the allegation is established on a balance of probabilities. In other words, I must determine whether it is more likely than not that Constable Zenchenko has contravened the RCMP Code of Conduct. If I find the allegation to be established, then I must impose conduct measures.

[7] The Conduct Hearing was held in Toronto, Ontario, the week of January 15, 2024. On January 19, 2024, I delivered the oral decision on the allegation, which I found not established. This written decision incorporates and expands upon that oral decision.

ALLEGATION

[8] The allegation as set out in the *Notice of Conduct Hearing* is as follows:

Allegation 1

On or about, April 25, 2021, at or near Etobicoke, Ontario, Constable Vladlen Zenchenko did commit what can be characterized as a sexual assault against Constable [L.S.]. It is therefore alleged that Constable Vladlen Zenchenko has engaged in discreditable conduct, contrary to section 7.1. of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) and posted at “O” Division Toronto Airport Detachment.
2. Constable [L.S.] is a member of the RCMP and also posted at “O” Division Toronto Airport Detachment. You and Constable [L.S.] became friends who socialized together while off duty.
3. On the evening of April 25, 2021, Constable [L.S.] attended to your personal residence and together you consumed alcoholic beverages while socializing. Constable [L.S.] originally intended to drive home at the end of the evening however, she became intoxicated and was unable to drive. Your residence is a single bedroom condominium unit with only one bed. Constable [L.S.] accepted your offer to sleep in your bed while you slept on the couch. As the night progressed, Constable [L.S.] agreed that you could join her in the bedroom.
4. Initially you remained both fully clothed and simply laying in bed together. Shortly after commencing consensual kissing, Constable [L.S.] agreed to remove her clothing with the exception of her sports bra and you became naked. From the outset, Constable [L.S.] informed you that: “[...] we could do stuff, but, like, I don’t wanna have sex, like, like, actual sex.” Constable [L.S.] was explicit with you that she did not want your penis to either enter into or otherwise make any physical contact with her vagina. You verbally acknowledged your acceptance of the specific parameters of Constable [L.S.]’s consent to sexual activity. You ignored Constable [L.S.]’s instructions and you permitted your penis to make physical contact with the vagina of Constable [L.S.] without her consent.
5. On three separate occasions, when your body was positioned both on top of and between the legs of Constable [L.S.], she had to physically stop you from penetrating her vagina with your penis. Constable [L.S.] observed that you kept trying to push your penis closer to her vagina,

forcing her to verbally repeat that: “And I said I don’t want you to put it in.” Constable [L.S.] successfully prevented your penis from entering her vagina by putting her arm up close to your stomach at the same time as she physically moved away from you. Your repeated attempts to insert your penis in the vagina of Constable [L.S.] without her consent is discreditable conduct.

6. You eventually were able to successfully insert your penis into the vagina of Constable [L.S.]. You reached the point of ejaculation. When Constable [L.S.] asked if you had “put it in” you replied that: “[...] it was in, like, a little bit, just not all the way.” Constable [L.S.] reacted by repeating that she had told you not to do that and became visibly upset. You responded by commenting that it was “cute” that Constable [L.S.] was “freaking out”. Constable [L.S.] concedes that she was “freaking out” and in a state of “shock” as a result of you ignoring her clear instructions to you that she did not want to engage in vaginal sexual intercourse. You did not have the consent of Constable [L.S.] to permit your penis to make any internal physical contact with her vagina.

[*Sic throughout*]

Summary of established facts by Conduct Board

[9] On December 21, 2023, I provided a *Determination of Established Facts*, which was based on several documents: the October 25, 2022, Code of Conduct Investigation Report; the April 3, 2023, May 3, 2023, and October 17, 2023, supplemental Code of Conduct investigation reports; the supporting materials as well as Constable Zenchenko’s May 30, 2023, Response to the allegation. The *Determination of Established Facts* sets out the following undisputed facts to which the parties agree.

- a) At all material times, Constable Zenchenko was a member of the RCMP and posted at “O” Division Toronto Airport Detachment.
- b) Constable L.S. is a member of the RCMP. At all material times, she was also posted at “O” Division Toronto Airport Detachment.
- c) Constable L.S. and Constable Zenchenko were friends who socialized together while off duty.
- d) On the evening of April 25, 2021, Constable L.S. attended Constable Zenchenko’s personal residence and together, consumed alcoholic beverages and socialized.

- e) Constable L.S. became intoxicated and was unable to drive home at the end of the evening.
- f) Constable Zenchenko offered to Constable L.S. to sleep in his bed while he slept on the couch and she accepted. As the night progressed, Constable L.S. agreed that Constable Zenchenko could join her in his bed.

EVIDENCE

[10] The Record before me includes six transcribed statements from Constable L.S. and the transcribed statements from ten interviewed witnesses; the October 25, 2022, Code of Conduct Investigation Report; the April 3, 2023, Supplemental Code of Conduct Investigation Report, including a further audio recorded statement and transcript of Constable L.S.; the May 3, 2023, and October 17, 2023, supplemental Code of Conduct investigation reports; as well as 34 appendices and copies of various text and WhatsApp message exchanges between constables L.S. and Zenchenko.

[11] At the Conduct Hearing, I heard oral evidence from Constable L.S. and Constable Zenchenko.

[12] In arriving at my finding on the allegation, I have considered my December 21, 2023, *Determination of Established Facts*, in conjunction with the oral evidence received at the Conduct Hearing.

[13] The oral evidence included the examinations in chief of both Constables L.S. and Zenchenko and the cross-examination of Constable L.S.. In addition, I also considered the transcribed statement of Constable A.N.

Applicable legal principles to determine credibility and reliability of evidence

[14] In assessing a witness's evidence, I must consider whether they are being truthful and whether their evidence is reliable (i.e., whether the witness is in a position to accurately perceive

and recollect what they observed). I may find a witness's evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness's evidence on a given point.¹

[15] The British Columbia Court of Appeal notes that a witness's evidence cannot be assessed solely on their demeanour, that is, that they appear to be telling the truth.² Rather, a trier of fact must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts.

[16] The determination of whether the witness's account has an air of reality is subjective, but it must be grounded in the totality of the evidence.³

[17] The Supreme Court of Canada notes that a finding that one party is credible may be determinative, because believing one party will mean explicitly or implicitly that the other party was not believed on the important issues of the case. This becomes especially true when the allegation is altogether denied by the defending party, as is the case here.⁴

[18] In assessing the credibility of the two witnesses that testified before me, I have taken into consideration the witnesses' ability to recall all the details of the events given the passage of time (almost three years). I have also considered the totality of the evidence adduced in the proceedings.

Constable L.S.'s evidence

[19] Constable L.S. testified that after completing basic training at Depot Division in 2019, she was posted to Toronto Airport Detachment where she was assigned to the Control Delivery Unit. She stated that after meeting Constable Zenchenko, who also worked at Toronto Airport Detachment, they became "really good friends".

[20] Constable L.S. testified that she relied on Constable Zenchenko and that they helped each other with dating or personal relationship advice. They communicated by phone as well as by text and WhatsApp messages.

¹ *R. v R.E.M.*, 2008 SCC 51, at paragraph 65.

² *Faryna v Chorney*, [1952] 2 DLR 354, at page 357.

³ *F.H. v McDougall*, 2008 SCC 53 [*McDougall*], at paragraph 58.

⁴ *McDougall*, at paragraph 86.

[21] Constable L.S. provided that prior to April 25, 2021, she had gone on a hike with Constable Zenchenko and had attended his residence on a few occasions, but had only gone inside his home to use the bathroom. Constable L.S. stated that on April 25, 2021, she went to Constable Zenchenko's place for drinks and to get assistance in drafting a text message to her boyfriend with whom she was having issues.

[22] Constable L.S. testified that, upon arriving at Constable Zenchenko's residence, he offered her a drink of whiskey and pop, which she accepted. They discussed the situation with her boyfriend and composed a text message for him. They also discussed issues that she was having with her family and with a priest who texted her while she was at Constable Zenchenko's residence.

[23] Constable L.S. testified that she had three or four drinks, is a lightweight when it comes to alcohol consumption and that by the end of the evening she was impaired. Therefore, she could not drive home. According to her, Constable Zenchenko offered her the option of staying over in his bedroom or on the couch. Furthermore, she decided to spend the night in his bedroom.

[24] Constable L.S. testified that she went to the bedroom, took off her track top and got under the comforter while still wearing her gym capris and her sports bra. I note that despite providing six statements since the alleged sexual assault of April 25, 2021, her oral testimony was the first time she mentioned getting under a comforter as opposed to simply getting under the top sheet of the bed.

[25] Constable L.S. recalled lying down on the right side of the bed, closer to the centre. She testified that she and Constable Zenchenko continued to carry on a conversation, through the wall, as he was on the couch in the living room. She could not recall what they were discussing.

[26] Shortly thereafter, according to Constable L.S., Constable Zenchenko walked into the bedroom, uninvited, and stated "[y]ou're not sleeping". He then lay down next to her, on her left, facing her back, and put his left arm over her.

[27] Constable L.S. testified that after Constable Zenchenko lay down and said "you're not sleeping", she said something to the effect of, "I'm okay to do other things but I don't want to have

sex” or “I’m good with kissing and touching, but no sex”. According to her, Constable Zenchenko did not respond and they started kissing. She then raised her bra to expose her breasts and took off her pants. According to her, Constable Zenchenko was fully naked. However, she could not recall how he got that way.

[28] Constable L.S. testified that, for a minute or more, Constable Zenchenko was on top of her, trying to get his penis in her vagina. She stated that she had to put her right arm up, palm open, and push on his stomach as well as jolt upward with her body to move up to the headboard to get away from him all while saying “no”.⁵ At that point, the sheets were at the lower part of the bed and she was fully exposed.⁶

[29] Constable L.S.’s then recalled being on her right side, with her back to Constable Zenchenko, and feeling pressure in her vagina.⁷ She described their position as being like a “V”, with his upper body away from her and his lower body close to her.

[30] Additionally, Constable L.S. testified that she could not recall Constable Zenchenko saying anything throughout the interaction, she remembered being the only one talking.

[31] Constable L.S. went on to state that she felt pressure, saw Constable Zenchenko jolt or jerk towards her and that it looked as if he had ejaculated. She noted that the pressure “felt good” so she asked “what was it”, to which Constable Zenchenko responded, “I put it in a little bit”.⁸

[32] Constable L.S. testified that the whole interaction lasted two to three minutes. She added that after Constable Zenchenko stated that he put it in “a little bit”, she freaked out. Constable L.S. then said to him, “I told you not to put it in”, “why did you do it”, “I told you not to put it in”, to which he responded, “[i]t’s cute that you are freaking out”.⁹

⁵ Conduct Hearing Transcript, dated January 15, 2024, at page 71, at lines 3 to 14.

⁶ Conduct Hearing Transcript, dated January 15, 2024, at page 73, at lines 1 to 7.

⁷ Conduct Hearing Transcript, dated January 15, 2024, at page 80, at lines 16 to 21.

⁸ Conduct Hearing Transcript, dated January 15, 2024, at page 84, at lines 6 to 11.

⁹ Conduct Hearing Transcript, dated January 15, 2024, at page 84, at lines 11 to 15.

[33] According to Constable L.S., at that point, she “blacked out” or “disassociated”—that her body was there but that she was emotionally gone. She explained that this was a sexual abuse trauma response.¹⁰

[34] Constable L.S. testified that her next memory was of the following morning when she was in her car, driving home and looking at her text messages on her phone.

[35] Constable L.S. testified that the next morning, Constable Zenchenko had to work at 6 a.m., whereas she had to work at 12 p.m. She assumed that they both left the condominium early in the morning but she could not remember leaving the bed, putting clothes on or leaving the apartment. She nonetheless confirmed that she left Constable Zenchenko’s condominium at the same time as him and did not recall having any discussion with him.¹¹

[36] Constable L.S. testified that she went to work on April 26, 2021, for her noon to 10 p.m. shift but booked off duty sick for the rest of the week as she was in shock.

[37] Constable L.S. stated that when she was at work, she spoke to her friend, Constable A.N., about what happened the previous evening. She testified that Constable A.N. reacted by saying, “what you are describing is a rape”.

[38] I note that Constable L.S. and Constable Zenchenko continued to exchange messages following the alleged sexual assault of April 25, 2021. The first text message between the parties following the incident was on April 26, 2021, at 5:50 a.m. Furthermore, Constable Zenchenko texted “Get home ok?” to which she responded at 6:01 a.m., “Yes, I just got home”.

[39] Constable L.S. then discussed a text exchange between her and Constable Zenchenko where, at 9:34 a.m., she stated that she was shocked, to which Constable Zenchenko responded “shocked that he [referring to Constable L.S.’s boyfriend] didn’t respond”, to which she said, “No Vladamir, well that too but maybe he’s not awake yet”. Constable Zenchenko’s next message read, “Nothing happened. I dunno what you’re shocked about”.

¹⁰ Conduct Hearing Transcript, dated January 15, 2024, at page 94, at lines 6 to 11.

¹¹ Conduct Hearing Transcript, dated January 15, 2024, at page 95, lines 16 to 25.

[40] Constable L.S. then testified to the continued text exchanges of April 26, 2021. The Conduct Authority Representative noted that throughout the April 26, 2021, messages, there was nothing about what allegedly happened the night before. Constable L.S. explained that she wanted to pretend that it did not happen.

[41] Constable L.S. testified both in chief and during her cross-examination that apart from this “shocked” text message, she never discussed the incident with Constable Zenchenko.¹²

[42] Constable L.S. explained that she drafted a five-page, typed statement dated December 7, 2021, for a harassment complaint that she filed with the Independent Centre for Harassment Resolution. She confirmed that this document (hereinafter “Appendix A”) describes what Constable L.S. believed to be eight occurrences of her being victimized by Constable Zenchenko, including the alleged sexual assault of April 25, 2021.¹³

[43] In Appendix A, Constable L.S. wrote:

[...]

Following the event, I took a week off work and Vlad told me not to talk about it with anyone. Vlad had invited me to go over to watch movies and I said no and brought up what happened more than once and every time following Vlad denied it and said that he didn’t put it in and that it never went in.¹⁴

[...] [*Sic throughout*]

[44] Constable L.S. then testified that in the months following the incident, she and Constable Zenchenko remained friends, saw each other at work and continued talking, messaging and helping each other with dating. In August 2021, they began a short physical relationship with each other. Constable L.S. testified that at that time she was dependent on Constable Zenchenko for friendship

¹² See Conduct Hearing Transcript, dated January 15, 2024, at page 95, lines 24 to 25; page 96, line 1; and page 110, lines 15 to 18.

¹³ Conduct Authority Representative Exhibit 1 (CAR Exhibit 1), *Conduct Authority’s Book of Documents*, Tab 4, “Appendix A”, dated December 7, 2021.

¹⁴ CAR Exhibit 1, *Conduct Authority’s Book of Documents*, Tab 2, Transcription of Constable A.N.’s statement to the Toronto Police Service, dated December 17, 2021, at page 3, at lines 154 to 161.

and emotional support. She stated that “[he] was helping me with a lot of different things that was [sic] happening to me in my life at the time”.¹⁵

[45] When asked to clarify what she was referencing exactly, the witness testified that she was subjected to family abuse and “the priest incidents”, which she had reported to the Peel Regional Police in June 2021.¹⁶

[46] Constable L.S. testified that in November 2021, there was a firearm incident with Constable Zenchenko where she became concerned for her safety and that of her coworkers and others. She stated:

[...]

The carbine. He walked into the - - into our office and he pointed the carbine at me and he looked right at me for about five to seven seconds, and then two of my co-workers reacted to it, and so did I. [...]¹⁷

[47] Additionally, Constable L.S. testified that, also in November 2021, she became aware that Constable Zenchenko was planning a vacation with another woman, which is why she decided to report the alleged April 25, 2021, sexual assault.

[48] Constable L.S. testified that after reporting Constable Zenchenko in November 2021 for various incidents, including the alleged April 25, 2021, sexual assault, he was suspended. She added that she continued to go to work until January 4, 2022, when she was told to take a medical leave. Constable L.S. continues to be on medical leave to this date.

Constable Zenchenko’s evidence

[49] Constable Zenchenko was an articulate, direct and forthright witness. He answered questions directly and clearly during both his examination in chief and cross-examination. I agree with the Subject Member Representative’s submission that Constable Zenchenko was not shaken

¹⁵ Conduct Hearing Transcript, dated January 15, 2024, at page 117, at lines 8 to 10.

¹⁶ Conduct Hearing Transcript, dated January 15, 2024, at page 117, at lines 14 to 22.

¹⁷ Conduct Hearing Transcript, dated January 15, 2024, at page 126, lines 3 to 7.

during cross-examination. Furthermore, he did not default to “I don’t remember” when it came to difficult questions and his evidence did not waiver.

[50] Constable Zenchenko testified that on April 25, 2021, Constable L.S. arrived at his residence at approximately 8:30 p.m. Upon her arrival, she sat at the kitchen table and he offered her a drink of Jack Daniel’s whiskey mixed with Sprite.

[51] Constable Zenchenko explained that he and Constable L.S. sat at the kitchen table and consumed two to three drinks while talking for approximately four hours. They talked about Constable L.S.’s issues with men. He recalled her stating that based on her failed relationships, all men are dogs. They also talked about her family issues, particularly with her father; her dog, which was allegedly possessed by a demon; and past incidents with a priest. Constable Zenchenko noted that Constable L.S. was overwhelmed so he recommended that she go on sick leave to address her mental health.

[52] Constable Zenchenko testified that when it was past midnight, he wanted to go to bed since he had to work at 6 a.m. the next day. Therefore, he gave Constable L.S. the option of either staying over in his bedroom or taking an Uber home. She elected to stay over. Then, Constable L.S. went to his bedroom, he turned off the lights and he went to the couch to lie down.

[53] Constable Zenchenko testified that Constable L.S. began to repeatedly call out his name and that when he asked her what she wanted, she responded that she could not sleep. He then told her to go to sleep. However, this went on for 15 to 30 minutes.

[54] Constable Zenchenko, recalled that at one-point Constable L.S. stated, “Vlad, Vlad – I can’t sleep...can you come?” He stated, “Go to sleep”. She responded, “I’m scared to sleep alone”, to which he stated, “[y]ou’re a police officer, go to sleep”.

[55] Eventually, as this was not stopping, Constable Zenchenko entered the bedroom. He testified that he noted that Constable L.S. was lying on the left side of the bed on top of the top sheet, in her underwear and a sleeveless top. She was lying on her right side, facing the balcony.

[56] Constable Zenchenko explained that he lay on the right side of the bed, on his right side, facing her back. He stated that she moved back putting her buttocks on his pelvic area. She

removed her top and reached back to touch his penis on top of his pants. He began touching her breasts and Constable L.S. then put her hand in his pants touching his penis. At that point, he reached under her underwear to put his hand on her vagina.

[57] Constable Zenchenko continued and stated that at that point, Constable L.S. went on her back and removed her underwear. He also took off his pants and underwear but kept his shirt on.

[58] Constable L.S. remained on her back, took his penis in her left hand and he reached over with his left hand to touch her vagina. Shortly after, he heard her make a sound that he described as “exhale and an S sound”. He stopped moving his hand and asked, “Stop?” to which Constable L.S. responded, “I don’t know”. Constable Zenchenko then asked, “Did you say stop?” and Constable L.S. responded, “No sex”. He asked, “Why?” and she responded, “I don’t know”.

[59] Constable Zenchenko testified that he then stated “OK”, put his underwear and pants back on and turned onto his left side, away from Constable L.S., to go to sleep. At that point, Constable L.S. moved close to him and put her arm over him. He said “no – you said no sex” and moved further right, to the edge of the bed, and went to sleep.

[60] Constable Zenchenko recalled that the next morning Constable L.S. seemed upset. She stated, “I can’t believe we went that far last night; I like you, but I’m not that type of girl”. He told her that he liked her but he was not interested in a relationship. Then they left his place together.

[61] Constable Zenchenko testified that he was never on top of Constable L.S. and that she never had to push him away or move away from him towards the headboard. He stated that the entire interaction lasted approximately five minutes.

[62] Constable Zenchenko denied having been in the “V” position described by Constable L.S. and testified that they were parallel to each other the whole time. Furthermore, he denied that his penis ever touched Constable L.S.’s vagina; that he jerked forward and ejaculated; that he stated his penis was “a little bit in” or that Constable L.S. “freaked out”.

[63] Finally, when asked if he and Constable L.S. ever later discussed what occurred on the night of April 25, 2021, he stated that they had not. Furthermore, he only became aware of Constable L.S.’s allegation of sexual assault when he was suspended on November 29, 2021.

Cross-examination of Constable L.S.

[64] During her cross-examination, Constable L.S. confirmed that she had given a total of six statements to either the Toronto Police Service or to the Professional Responsibility Unit investigator. She also confirmed that she had reviewed all of them prior to her testimony. She opined that the statements did not contain any inconsistencies.

[65] Constable L.S. reiterated that she never discussed the alleged sexual assault with Constable Zenchenko. This assertion is contradicted by Appendix A, wherein she stated, “[...] I said no and brought up what happened more than once and every time following Vlad denied it and said that he didn’t put it in and that it never went in”.¹⁸

[66] Constable L.S. denied inviting Constable Zenchenko to the bedroom or stating that she was scared to sleep alone. She also denied that they discussed her taking an Uber. However, I note that in Appendix A she stated, “As the night progressed, I was intoxicated and I said I will have to sober up before I leave or get an Uber”.¹⁹

[67] The Subject Member Representative questioned Constable L.S. with respect to Appendix A and the eight occurrences she described therein. He turned her attention to “Occurrence Number 2”, the gym incident, which states:

[...] Vlad then made a comment saying am I just wearing fancy pants or am I here to work out. I then, from a distance, went to play kick him and made no contact with him while saying stop it in playful manner. Vlad had then turned around and kicked me with his left foot on the back of my right leg. I then tripped over but did not fall. [...] ²⁰

[68] The Subject Member Representative questioned Constable L.S. about the details of this incident, which were provided to Corporal Ramos on November 29, 2021, when she reported the

¹⁸ CAR Exhibit 1, *Conduct Authority’s Book of Documents*, Tab 4, “Appendix A”, dated December 7, 2021, at page 1.

¹⁹ CAR Exhibit 1, *Conduct Authority’s Book of Documents*, Tab 4, “Appendix A”, dated December 7, 2021, at page 1.

²⁰ CAR Exhibit 1, *Conduct Authority’s Book of Documents*, Tab 4, “Appendix A”, dated December 7, 2021, at page 2.

alleged harassment occurrences to him. In his notes, with respect to the gym incident, Corporal Ramos indicated that she told him that she had “lightly kicked Constable Zenchenko”.²¹

[69] Constable L.S. denied that she made contact with Constable Zenchenko and maintained that she swung her leg towards him, but did not kick him.²² Constable L.S. was adamant that she did not tell Corporal Ramos that she had kicked Constable Zenchenko.

[70] The Subject Member Representative then pointed to Sergeant Stuart Hunter’s notes of the November 29, 2021, meeting. In his notes, Sergeant Hunter also indicated that Constable L.S. told him that she “made a light kicking motion towards Zenchenko and struck him lightly on the rear of the leg in a playful motion”.²³

[71] Constable L.S. again denied ever stating that she made contact with Constable Zenchenko and could not explain why Sergeant Hunter would have indicated that she did.

[72] The Subject Member Representative then turned his attention to Constable Marques’s statement as he was present, at the gym, when Constable Zenchenko allegedly kicked Constable L.S. In his statement to the Toronto Police Service on December 16, 2021, Constable Marques stated:

[...]

She went up to him and she tried to kick him. It wasn’t a hard kick. It was a soft kick. I believe the first kick, he blocked, and so she went in for a second kick.²⁴

[...]

Her first one was no contact because he blocked it. [...]²⁵

²¹ Subject Member Representative Exhibit 1 (SMR Exhibit 1), *Subject Member’s Book of Documents & Authorities*, Volume 1, Tab 6.

²² Conduct Hearing Transcript, dated January 15, 2024, at page 153, at lines 9 to 11.

²³ SMR Exhibit 1, *Subject Member’s Book of Documents & Authorities*, Volume 1, Tab 5, Sergeant Stu Hunter’s Can Say Statement, dated December 16, 2021, at page 2.

²⁴ SMR Exhibit 1, *Subject Member’s Book of Documents & Authorities*, Volume 1, Tab 3, Constable Kevin Marques’ Recorded Statement, dated December 16, 2021, at lines 150 and 151.

²⁵ SMR Exhibit 1, *Subject Member’s Book of Documents & Authorities*, Volume 1, Tab 3, Constable Kevin Marques’ Recorded Statement, dated December 16, 2021, at lines 223 and 224.

[73] Constable L.S. acknowledged that Constable Marques was present, in the gym, during her interaction with Constable Zenchenko, only a few metres away and in a position to clearly see what was happening. However, she denied ever attempting to kick Constable Zenchenko twice or that he blocked the first kick, but not the second.

[74] The Subject Member Representative questioned Constable L.S. about the “firearm incident” wherein she advised Corporal Ramos and Sergeant Hunter that Constable Zenchenko had pointed a carbine at her, in the office, for five to seven seconds, in the presence of other members, and that he had locked eyes with her in so doing.

[75] The Subject Member Representative took Constable L.S. to her Toronto Police Service statement and read the following passage:

[...]

Um, and then the carbine incident happened on the 2nd of November or the 3rd, like, one of those two days, because we had a takedown planned. We had a briefing and he was assigned a carbine. And he –like, where my desk is, say I’m sitting here, the door is, like, right there, he walked in pointing it at me for, like, a good five to seven seconds, but enough for me to notice. Then the guy sitting, like, on my right to notice, and he stood up, and he was like, ‘That’s not proper muzzle direction.’ And, like, he pointed it and, like, he put it in the air, but he looked at me, and we made eye contact, and he was like, ‘That’s not proper muzzle direction.’ Then I was, like, because the guy behind me stood up too at that point, and I said, ‘Guys, like, he’s crazy.’ And then the guy behind me is like, ‘The mag is still in the gun.’ He’s like, ‘Okay, guys. Okay.’ And then he walked towards, like, the front to this guy, and, like, another desk, and he cleared the mag. And, um, that was that. [...] [*Sic throughout*]²⁶

[76] Constable L.S. confirmed that the narrative described what had occurred. She testified that it was Constable Robert Parenté who stood up and said, “Hey, man, that’s not proper muzzle direction”. She also stated that, at that point, Constable Zenchenko pointed the muzzle up towards the ceiling.

²⁶ CAR Exhibit 1, *Conduct Authority’s Book of Documents*, Tab 1, Toronto Police Service Statement transcript of Constable L.S., dated November 30, 2021, at page 9, at lines 500 to 514.

[77] Furthermore, Constable L.S. conceded that her statement to the Toronto Police Service, to the effect that “we just saw that it was, like, in there, and then I remembered he clicked it”,²⁷ referring to the magazine, was inaccurate since she never saw a round in the chamber nor a magazine in the carbine.

[78] Constable L.S. testified that she did not know whether there was a magazine in the carbine, nor whether there was a round in the chamber. Therefore, she could not confirm if Constable Zenchenko had to “clear” the magazine. She assumed he did because she heard a noise but could not verify that there was a magazine.²⁸

[79] After ensuring that Constable L.S. had an opportunity to review the witness statements of the members who were present during the alleged carbine incident, namely Constables Parenté, Sandeep Kandola and Clifford Grobb, the Subject Member Representative put their versions of the incident to Constable L.S. In a nutshell, the three members contradicted Constable L.S.’s recollection of the event. Specifically, they all recalled that the muzzle of the carbine was either pointing to the ceiling or the floor, never directly at Constable L.S., and that there was no round in the chamber which was open and empty.

[80] Constable L.S. maintained that the carbine was pointed directly at her, for five to seven seconds, and that Constable Zenchenko made eye contact with her.

[81] The Subject Member Representative then questioned Constable L.S. on the “priest incidents”, which were raised in her testimony in chief. These incidents were reported to Peel Regional Police in June 2021²⁹ and related to three incidents of alleged sexual assault, of which she was a victim, in January, March and April 2021, by a priest she was consulting for allegedly being possessed by spirits.³⁰ Constable L.S. testified that the last incident would have occurred on or around April 4, 2021, and that Constable Zenchenko was helping her cope with these incidents.

²⁷ CAR Exhibit 1, *Conduct Authority’s Book of Documents*, Tab 1, Toronto Police Service Statement transcript of Constable L.S., dated November 30, 2021, at page 21, at lines 1216 to 1231.

²⁸ Conduct Hearing Transcript, dated January 15, 2024, at page 197, at lines 1 to 10.

²⁹ Appendix 37 of the Supplementary Investigative Report, dated October 17, 2023.

³⁰ SMR Exhibit 1, *Subject Member’s Book of Documents & Authorities*, Volume 1, Tab 7, at pages 5 to 9.

[82] In addition to these alleged sexual assaults, Constable L.S. testified that during the same period her family and the priest told her that her dog, a black lab, was possessed by a demon and that she had to give him away, which she did.³¹ She testified that she was under tremendous emotional and psychological stress in April 2021 and “the dog was the hardest thing for me to go through”.³²

[83] The Subject Member Representative highlighted that these incidents occurred shortly before the alleged sexual assault by Constable Zenchenko on April 25, 2021. Constable L.S. agreed and confirmed that between April 4, 2021, and April 24, 2021, she was receiving weekly support from her a psychologist who works with trauma.³³

[84] The Subject Member Representative then turned specifically to the events of April 25, 2021. With respect to her level of impairment, Constable L.S. testified that she is not a drinker, recalled having three to four drinks that night as well as being “pretty drunk”, slurring her words and being unsteady on her feet.³⁴

[85] However, it was put to her that Constable Zenchenko would testify that he never saw her slurring her words or being unsteady on her feet, she conceded that it was possible.

[86] In describing Constable Zenchenko’s bed, Constable L.S. recalled a grey sheet, as well as a comforter that she raised over her shoulders. The Subject Member Representative suggested to the witness that there was no comforter on the bed on April 25, 2021, only a sheet, and that her recollection of a comforter came from viewing photos taken by the Toronto Police Service in November 2021, after her complaint. Constable L.S. insisted that there was a comforter on the bed despite being advised that Constable Zenchenko would testify to the contrary. In response, she testified:

[...]

I felt like there was a comforter. Like, there was definitely something thicker than a normal sheet, because I usually slept with a comforter. [...] To me, a

³¹ Conduct Hearing Transcript, dated January 16, 2024, at page 4, at lines 8 to 24.

³² Conduct Hearing Transcript, dated January 16, 2024, at page 7, at lines 2 to 3.

³³ Conduct Hearing Transcript, dated January 15, 2024, at page 263, at lines 1 to 4.

³⁴ Conduct Hearing Transcript, dated January 16, 2024, at page 12, at lines 5 to 19.

comforter is not, like, those big fluffy things, it's like almost like a duvet.
Like, I don't know how to explain it. [...]³⁵

[87] The Subject Member Representative then asked Constable L.S. to review the Toronto Police Service photos of Constable Zenchenko's bedroom³⁶ taken in November 2021, which contain a grey comforter on the bed. Constable L.S. insisted that that was the comforter she recalled on the bed on April 25, 2021.

[88] Furthermore, the Subject Member Representative pointed out that prior to her testimony before the Conduct Board, Constable L.S. provided six statements of the alleged assault, always referencing "sheets" and not a "comforter", yet before the Conduct Board she was insistent that there was a grey comforter on the bed. In her response, Constable L.S. stated that she "could have referred to sheets as comforter too, like, it's like when you say what's on the bed, oh, it's the sheets that are on the bed".³⁷

[89] The Subject Member Representative pointed out to Constable L.S. that despite her assertion throughout her testimony that her memory of the April 25, 2021, events would have been better in 2021, the only time she mentioned Constable Zenchenko ejaculating and sperm was during her last statement in 2023. Constable L.S. explained that this was because it was only during that Professional Responsible Unit statement that the investigator focussed on the sexual assault.³⁸

[90] Constable L.S. maintained that some details (such as the presence of the comforter and Constable Zenchenko ejaculating) only came to her in 2023, when she was asked detailed questions by the investigator.³⁹

[91] The Conduct Authority Representative submitted that the Subject Member Representative attempted to put Constable L.S.'s character in question by pointing out the various discrepancies between her recollection of the eight occurrences she reported and the statements of the various witnesses which were interviewed. I disagree. I do not find that the Subject Member

³⁵ Conduct Hearing Transcript, dated January 16, 2024, at page 27, at lines 1 to 10.

³⁶ CAR Exhibit 1, *Conduct Authority's Book of Documents*, Tab 10, Toronto Police Service photos taken during search warrant execution of Constable Zenchenko's residence, at pages 201 and 202.

³⁷ Conduct Hearing Transcript, dated January 16, 2024, at page 57, at lines 23 to 25 and page 58, at line 1.

³⁸ Conduct Hearing Transcript, dated January 16, 2024, at page 53, at lines 17 to 21.

³⁹ Conduct Hearing Transcript, dated January 16, 2024, at page 71, at lines 1 to 13.

Representative was attempting to put Constable L.S.'s character in question. Rather, I find that he was demonstrating that her recollections and perceptions of the eight occurrences, including the alleged sexual assault, were flawed.

[92] I find that Constable L.S. testified to what she believes occurred. However, as a result of the numerous discrepancies between her six statements; Appendix A; her testimony during the Conduct Hearing and the statements of the numerous independent witnesses that contradict her version of what occurred during the various occurrences she reported, I find that Constable L.S.'s evidence is not reliable.

Constable A.N.'s statement

[93] On April 26, 2021, Constable L.S. went to work at the Toronto Airport and spoke to her close friend, Constable A.N..

[94] Constable A.N. provided a statement to the Toronto Police Service on December 17, 2021, which was included in the investigational material. Constable A.N. stated that Constable L.S. divulged the following:

[...] I guess at the beginning of the night he slept on the couch and then she slept in his bed. So then as some point, he went, uh, in the bedroom with her, in the bed. So they were cuddling or I'm not sure what exactly what they were doing. And then, I'm not sure if he tried to, to have inter-course with her but then she didn't want to, that, that, again that part is not really clear to me from what she told me because she was, she wasn't really clear to me anyways when she was talking about that part. So I'm not-, I don't want to say something that I don't know right. I wasn't there.

[...]

[...] They did something and then she was upset about it. Um, but they stayed in bed together the whole night, like, the, it, it's not clear what happened, to be honest. Yeah and I'm, and I'm totally confused about (indiscernible) even too so, I'm, I, I don't feel comfortable, you know, saying that he did something wrong or she wasn't clear.

[...] [*Sic throughout*]⁴⁰

⁴⁰ CAR Exhibit 1, *Conduct Authority's Book of Documents*, Tab 2, Transcription of Constable A.N.'s statement to the Toronto Police Service, dated December 17, 2021, at page 3, at lines 154 to 161 and 167 to 175.

[95] I note that Constable A.N.'s statement does not corroborate Constable L.S.'s recollection that on April 26, 2021, upon being told about what transpired the night before between her and Constable Zenchenko, Constable A.N. reacted by stating, "what you are describing is a rape".

[96] To the contrary, Constable A.N.'s statement is consistent with Constable Zenchenko's description of the chronology of events the night of April 25, 2021.

[97] I accept Constable A.N.'s statement that, in her view, "it's not clear what happened" and she did not recall Constable L.S. describing a sexual assault or rape.

DECISION ON ALLEGATION

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

Applicable test for Discreditable Conduct

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

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

[101] In step 3, a conduct board must determine whether the subject member's conduct likely brings the RCMP into disrepute. This involves determining whether a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and of the RCMP in particular, would consider the conduct to be discreditable.

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

Analysis

[103] The Supreme Court of Canada states that "[...] evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. [...]"⁴¹ However, it recognizes that there is "[...] no objective standard to measure sufficiency [...]"⁴²

[104] There is no dispute surrounding step 2 concerning the identity of Constable Zenchenko. Therefore, I will move on to step 1 for further analysis.

[105] As previously outlined, it is undisputed that Constable L.S. attended Constable Zenchenko's apartment on the evening of April 25, 2021, and spent the night.

[106] Constable L.S. did not "feel" Constable Zenchenko's penis penetrate her; she states that she was only aware of this because Constable Zenchenko admitted to doing so that night and that, as a result, she "freaked" out. She testified that she assumed he ejaculated as she did not see any sperm.⁴³

[107] Constable Zenchenko denies that he ever stated that "it was in a little bit" or that he penetrated Constable L.S. with his penis on April 25, 2021.

[108] The Conduct Authority Representative noted that there is clear evidence that Constable L.S. was off duty sick the week following the alleged sexual assault. I agree. However, I do not find that this automatically leads to an inference that the reason for her absence from work was necessarily that a sexual assault occurred April 25, 2021.

[109] During her cross-examination, Constable L.S. testified that in April 2021 she was under a lot of emotional stress as a result of her family issues, her dog and the "priest incidents" and was

⁴¹ *McDougall*, at paragraph 46.

⁴² *McDougall*, at paragraph 46.

⁴³ Conduct Hearing Transcript, dated January 16, 2024, at page 77, lines 15 to 25, and page 78, lines 1 to 5.

seeking weekly psychological assistance. She confirmed that on April 25, 2021, she discussed the “priest incidents” with Constable Zenchenko. She also agreed that it was possible that Constable Zenchenko recommended that she go on medical leave for mental health reasons.

[110] One could realistically infer that Constable L.S. was off duty sick after April 25, 2021, as a result of the aforementioned emotional stress she was attempting to deal with during this period of time.

[111] I agree with the Conduct Authority Representative that throughout her six statements, Constable L.S. has been somewhat consistent in setting out what she believes occurred. However, that does not mean that it is true.

[112] During her cross-examination, Constable L.S. confirmed and acknowledged many of the details provided by Constable Zenchenko about their interactions on April 25, 2021.

[113] I also note that Constable L.S. did not deny any of the following; she simply stated that “she could not recall”, but that it was possible:

- a) That she called men “dogs”;
- b) That she backed up and placed her buttocks on Constable Zenchenko’s pelvis;
- c) That she reached over and touched his penis over his pants and then inside his pants;
- d) That the following morning she stated, “I can’t believe we went that far, I like you, but I’m not that type of girl”;
- e) That she sent a text on March 15, 2021, to ask Constable Zenchenko if she was his type; and
- f) That on September 22, 2021, while in a police vehicle with Constable Zenchenko, she told him that she loved him.

[114] With respect to the verbal exchange Constable Zenchenko testified occurred in bed (see paragraph 58), Constable L.S. did not deny that it took place. She testified that she could only recall uttering the words, “No sex”.

[115] I disagree with the Conduct Authority Representative’s submission that Constable Zenchenko’s testimony lacked an “air of reality”. Constable L.S. herself confirmed many details.

[116] As stated by the Subject Member Representative, Constable L.S. herself has acknowledged that since April 2021, she has experienced memory loss, feeling unsafe and a lack of concentration as well as has had difficulty retaining information.

[117] Consequently, I accept Constable Zenchenko's testimony with respect to the events of the night of April 25, 2021. As stated in *McDougall*, there are times when the finding on a witness's credibility will be determinative of the outcome. This is such a case.

Finding on allegation

[118] The Conduct Authority Representative has failed to establish, on a balance of probabilities, the act constituting the alleged misconduct, that is, that Constable Zenchenko penetrated Constable L.S. without her consent.

[119] As the Conduct Authority Representative has failed to establish step 2 of the test for discreditable conduct, I am not required to examine steps 3 and 4.

[120] Consequently, I find that the allegation is not established.

CONCLUSION

[121] Allegation 1 is not established.

[122] Any interim measures in place should be resolved, in a timely fashion, in accordance with section 23 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[123] 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 Zenchenko as set out in section 45.11

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

Louise Morel
Conduct Board

July 04, 2024
Ottawa, Ontario