

Publication ban: Any information that could identify the complainant or the subject member's children in the present decision may not be published, broadcast or transmitted in any way.



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:

Designated Conduct Authority, "E" Division

Conduct Authority

and

Constable Steven Murchie
Regimental Number 56086

Subject Member

Conduct Board Decision

Kevin L. Harrison

September 16, 2024

Janice Calzavara and Sabine Georges, Conduct Authority Representatives

David Butcher, Subject Member Representative

TABLE OF CONTENTS

SUMMARY	4
INTRODUCTION	5
Publication ban.....	6
ALLEGATIONS	7
DECISION ON THE ALLEGATIONS	12
Background facts relevant to Allegations 3 and 4.....	12
Issues relating to Allegations 3 and 4.....	15
Findings on Allegation 3.....	15
Summary of findings on Allegation 3.....	25
Findings on Allegation 4.....	26
Findings on Allegation 1.....	28
Acts that constitute the alleged behaviour.....	29
Was Constable Murchie on duty when he met Ms. D.T.?	30
Was Ms. D.T. a vulnerable person?	32
Was Constable Murchie in a position of authority over Ms. D.T.?	35
Did Constable Murchie pursue a romantic and sexual relationship with Ms. D.T.?.....	36
Likelihood to cause discredit to the Force.....	39
Legitimate interest in disciplining Constable Murchie	41
CONDUCT MEASURES	42
Analysis	43
Accordance with the purposes of Part IV of the RCMP Act.....	44
Public interest.....	45
RCMP's interest	45
Constable Murchie's interest	45
Affected individuals' interest.....	46
Conclusion on the purposes of the RCMP Act	46
Corrective and remedial conduct measures should prevail	46
Presumption of least onerous disposition.....	47
Proportionality	47
Public interest.....	48

Seriousness of the conduct.....	48
Recognition of the seriousness of the misconduct	49
Disability and other relevant personal circumstances	50
Employment history	50
Potential to reform or rehabilitate	51
Effect on the member and the member’s family	51
Parity of sanction.....	52
Specific and general deterrence.....	53
Systemic failure and organizational/institutional context.....	54
Damage to the reputation of the RCMP	54
Balancing of the proportionality factors	55
Higher standards apply to police officers.....	55
Decision on conduct measures	56
CONCLUSION.....	57

SUMMARY

The original *Notice of Conduct Hearing* contained four allegations against Constable Steven Murchie. Allegations 1 and 2 were under section 7.1 of the Code of Conduct (discreditable conduct). Allegations 3 and 4 were under section 4.6 of the Code of Conduct (misuse of government-issued equipment – computers and databases). Allegation 2 was withdrawn prior to the start of the conduct hearing. After hearing evidence and submissions, the Conduct Board found Allegation 1 not to be established. Despite numerous particulars not being established, the Conduct Board found Allegation 3 to be established. Allegation 4 was also established. The Conduct Board administered global conduct measures that included: 1) a reprimand; 2) a direction to work under close supervision for one year; 3) a direction to complete two specified online training courses; 4) a financial penalty of 120 hours deducted from pay; and 5) an ineligibility for promotion for a period of 3 years.

INTRODUCTION

[1] On October 15, 2020, the Designated Conduct Authority signed a *Notice to the Designated Officer*, in which he requested the initiation of a conduct hearing in relation to this matter. On October 16, 2020, the Designated Officer appointed Gerry Annetts as the conduct board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] On December 3, 2020, the Designated Conduct Authority signed the original *Notice of Conduct Hearing*, which contained four allegations: two allegations under section 7.1 of the Code of Conduct (discreditable conduct); two allegations under section 4.6 of the Code of Conduct (misuse of government-issued property).

[3] I was appointed as the Conduct Board on June 2, 2022, to replace Gerry Annetts.

[4] On January 27, 2023, I withdrew Allegation 2 at the Conduct Authority's request.

[5] The conduct hearing began on February 20, 2023. Constable Murchie denied the three remaining allegations. I heard evidence from six witnesses, including Constable Murchie. During the conduct hearing, I withdrew sub-particulars 4.b. and 4.g. of Allegation 3 at the Conduct Authority's request.

[6] On April 24, 2023, I heard oral submissions on the allegations from the parties by videoconference. On June 15, 2023, I delivered my oral decision on the allegations. I found Allegation 1 not to be established. Although a sizable number of the particulars were not established, I found that Allegation 3 was established. I also found Allegation 4 was established.

[7] I heard oral submissions on conduct measures from the parties by videoconference on August 30, 2023, and delivered by oral decision on conduct measures later that same day. I imposed the following conduct measures:

- a) a reprimand pursuant to paragraph 3(1)(i) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*];
- b) a direction to work under close supervision for one year pursuant to paragraph 3(1)(b) of the *CSO (Conduct)*;

- c) a direction to complete the Canadian Police Information Centre (CPIC) *Query Narrative (CPIC) – National* (CN0091) and *Introduction to [Police Records Information Management Environment (PRIME)] – “E” Division* (000839) online training courses in Agora and to provide proof of completion to your Detachment Commander within two weeks of your return to work pursuant to paragraph 3(1)(c) of the *CSO (Conduct)*;
- d) a financial penalty of 120 hours to be deducted from Constable Murchie’s pay pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*; and
- e) an ineligibility for promotion for a period of three years pursuant to paragraph 5(1)(b) of the *CSO (Conduct)*.

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

Publication ban

[9] Both parties have requested that I order a publication ban pursuant to paragraph 45.1(7)(a) of the *RCMP Act*. This provision allows a conduct board to prohibit the publication of information that could identify a complainant, a witness, or a person under the age of 18.

[10] The Conduct Authority requested that I order a publication ban with respect to the identity of the female complainant, her children and her former partner. Constable Murchie requested that I order a publication ban with respect to the identity of his children. Both parties consented to the other’s request.

[11] I ordered the following:

- a) Any information that could identify the female complainant, her children and her former spouse shall not be recorded, published, broadcast or transmitted in any way. This includes, but is not limited to, her or her former partner’s name, her former partner’s medical information and how she and Constable Murchie met.
- b) Any information that could identify Constable Murchie’s children shall not be recorded, published, broadcast or transmitted in any way. This includes, but is not limited to, their names and ages.

ALLEGATIONS

[12] The amended *Notice of Conduct Hearing* read to Constable Murchie during the conduct hearing contained the following allegations:

Allegation 1

On or between September 6, 2018, and November 30, 2018, at or near Trail in the Province of British Columbia, Constable Steven Murchie engaged in discreditable conduct contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars specific to Allegation 1:

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, Trail Detachment.
2. On September 6, 2018, at 4:39 PM, you attended a call for service relating to an impaired driver (Prime file 2018-XXXX). [Constable] Michael Flewelling was the lead investigator on this call, while you and [Constable] Kevin Johnson were the assisting members. During the police intervention, you met and spoke with Ms. [D.T.], the separated spouse of the suspect impaired driver Mr. [B.T.].
3. At 5:36 PM, shortly after departing the scene, you queried Ms. [D.T.] on PRIME.
4. At 6:36 PM and again at 8:54 PM, while on duty, you attended Ms. [D.T.]’s residence and offered to assist her in getting help for her suicidal, alcoholic and PTSD suffering -ex-husband. During one of the visits, you gave Ms. [D.T.] your business card with your written personal cell phone number.
5. On September 7, 2018, at 6:17 PM, while on duty, you attended Ms. [D.T.]’s residence. You offered to assist her retrieve her ex-husband’s firearms from his residence while he was hospitalized. At approximately 10:00 PM, you transported Ms. [D.T.] in your police vehicle and attended Mr. [B.T.]’s residence. You retrieved the firearms and brought them to her residence.
6. You later created a police file (PRIME file 2018-XXXX) to document your actions. You wrote, “[Constable] Murchie met [Ms. D.T.] at the property and retrieved the items with no problem” while in fact you drove her to the location using the police vehicle. You also failed to write that you retrieved firearms and brought them back to her residence. Your report was inaccurate and misleading.
7. From September 7, 2018 to September 20, 2018, while on and off duty, you attended Ms. [D.T.]’s residence almost every day and sometimes

multiple times a day. You also called her on multiple occasions during that period and left flowers on her vehicle windshield in the early hours of September 10, 2018.

8. During these visits, Ms. [D.T.] talked to you about her family struggles with PTSD and the difficulties she encountered to get help for her ex-husband. You knew or ought to have known that she was vulnerable.
9. On September 21, 2018, while off duty, you attended Ms. [D.T.]'s residence and engaged in consensual sexual activities with her.
10. While in a position of trust and authority, you pursued a romantic and sexual relationship with Ms. [D.T.] a vulnerable person you met while on duty.
11. You have been criminally charged with Breach of Trust (section 122 [*Criminal Code*, RSC, 1985, c C-46 (*Criminal Code*)]) for your actions as they relate to Ms. [D.T.].
12. Your actions were discreditable.

Allegation 2

Allegation 2 was withdrawn on January 27, 2023, at the request of the Conduct Authority

Allegation 3

On or between August 15, 2013 and October 24, 2019, at or near Trail in the Province of British Columbia and Fort Smith in the Northwest Territories, Constable Steven Murchie engaged in or conducted himself in a manner contrary to Section 4.6 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”) posted to “G” Division, Fort Smith Detachment and “E” Division, Trail Detachment.
2. Your HRMIS number is [number redacted] and while in Trail, your assigned call sign was [call sign redacted].
3. You were bound by the user agreements you signed when you were given access to the [Police Reporting and Occurrence System (PROS)], CPIC and PRIME databases; you knew that the databases could only be used for RCMP administrative and operational purposes.

PROS Queries

4. On the following dates, you queried yourself on PROS using various search criteria:
 - a. June 27, 2014: “Murchie Steve”;
 - b. June 28, 2014: “Murchie Steve” (Withdrawn)

- c. September 30, 2014: "Murchie ST*" and "Murchie Steve**"
 - d. November 13, 2014: "Murchie Steve**"
 - e. April 16, 2015: "Murchie Steve**"
 - f. August 23, 2015: Murchie Steve**"
 - g. September 18, 2015: "Murchie S" (Withdrawn)
 - h. December 25, 2015: Murchie**"
 - i. August 2, 2016: "Murchie Steve" and "Murchie Steve**".
5. On the following dates, you queried your Facebook friend [Mr. D.P.] on PROS using various search criteria:
- a. September 1, 2014: "[P.,D.]"
 - b. January 24, 2015: "[P.,D.*]".
6. On the following dates, you queried your friend [Mr. B.M.] on PROS [using various search criteria]:
- a. October 1, 2014: "[M.,B.]"
 - b. October 4, 2014: "[M.,B.]"
 - c. December 27, 2015: "[M.,B.]"
 - d. June 13, 2016: "[M.,B.]"
7. On the following dates, you queried Fort Smith bylaw officer [Mr. R.S.] on PROS using various search criteria:
- a. September 3, 2014: "[S.,R.*]"
 - b. September 19, 2014: "[S.,R.*]"
 - c. September 27, 2014: "[S.,R.*]"
 - d. February 6, 2015: "[S.,R.*]"
 - e. March 2, 2015: "[S.R.]", "[S.,R.]" and "[S.R.*]"
 - f. March 23, 2015: "[S.,R.*]"
 - g. August 21, 2015: "[S.,R.*]"
 - h. August 6, 2016: "[S.,R.]" and "[S.,R.*]"
8. On the following dates, you queried your friend [Mr. T.J.] on PROS using various search criteria:
- a. September 4, 2014: "[A.J.]"
 - b. January 25, 2015: "[J.,A.]"
 - c. May 23, 2015: "[J.*,T.*]"
 - d. November 3, 2015: "[J.T.]"
9. On February 10, 2016, you queried your friend [Ms. J.S.] on PROS using the search criteria "[S.,J.]", "[S.,J.]" and "[S.,J.]".
10. On February 13, 2016, you queried your ex-girlfriend [Ms. L.F.] on PROS using the search criteria "[F.,L.*]".
11. On February 13, 2016, you queried your ex-girlfriend [Ms. L.F.]'s father, [Mr. J.F.], on PROS using the search criteria "[L.,J.*]".

12. On February 13, 2016, you queried a friend of yours on PROS using the search criteria “[C.*]”, “[C.,R.*]” and “[C.,L.*]”.
13. On February 13, 2016, you queried your friend [Ms. M.J.] on PROS using the search criteria “[J.M.]”, “[J.M.*]” and “[J.M.*]”.
14. On the following dates, you queried your ex-common law partner [Ms. A.G.] on PROS using various search criteria:
 - a. April, 21, 2016: “[G.A.*]” and “[G.,A.*]”
 - b. April 29, 2016: “[G.,A.*]”

CPIC Queries

15. On September 10, 2019, you queried [Mr. R.G.] on CPIC using the search criteria “[G.R.A.]”.
16. On September 12, 2019, you queried your ex-common law partner [Ms. A.G.] on CPIC using the search criteria “[G.A.]”.
17. On November 28, 2018, you queried your ex-spouse [Ms. J.M.] on CPIC using the search criteria “[J.A.H.]”

PRIME Queries

18. On August 20, 2016, you queried yourself on PRIME using the search criteria “Murchie Steve”.
19. On August 23, 2016, you queried your friend [Mr. J.K.] on PRIME using the search criteria “[K.J.]”.
20. On August 23, 2016, you queried your sister [Ms. K.M.] on PRIME using the search criteria “[M.K.]”.
21. On September 2, 2016 and July 15, 2018, you queried your ex-common law partner [Ms. A.G.] on PRIME using the search criteria “[G.A.]”.
22. On October 2, 2017, you queried [Mr. M.S.] on PRIME using the search criteria “[S.M.]”, “[S.M.]” and “[S.M.]”.
23. On October 2, 2017, you queried the mother of your ex-common law partner [Ms. A.G.], [Ms. L.G.], on PRIME using the search criteria “[G.L.]” and “[G.L.]”.
24. On October 2, 2017, you queried the brother of your ex-common law partner [Ms. A.G.], [Mr. J.G.], on PRIME using the search criteria “[J.G.]”.
25. On October 2, 2017, you queried your friend [Mr. B.K.] on PRIME using the search criteria “[K.B.]” and “[K.B.]”.
26. On August 21, 2018, you queried your high school friend [Ms. D.C.] on PRIME using the search criteria “[W.D.]” and “[W.D.]”.
27. On the following dates, you queried [Ms. D.T.], a person you [met] on duty, on PRIME using various search criteria.

- a. September 6, 2018: “[T.D.]”
 - b. September 8, 2018: “[T.D.]”
 - c. September 22, 2018: “[T.D.]”
 - d. November 14, 2018: “[T.D.]”
 - e. December 5, 2018: “[T.D.]”
28. On September 8, 2018, you queried [Mr. B.T.] on PRIME using the search criteria “[T.B.]”. [Mr. B.T.] is the ex-husband of [Ms. D.T.], a person you [met] on duty.
29. There [were] no operational or administrative purposes for you to conduct the [d]atabase queries referenced in particulars 4 to 28. You used these police databases for personal reason[s].
30. These queries were conducted in contravention of RCMP policy [*Informatics Manual*] App. III-1-2 and the user agreement you signed.

Allegation 4

On October 24, 2019, at or near Trail in the Province of British Columbia, Constable Steven Murchie engaged in or conducted himself in a manner contrary to section 4.6 of the *Code of Conduct of the Royal Canadian Mounted Police*.

- 1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “E” Division, Trail Detachment.
- 2. Your assigned call sign was [call sign redacted] and HRMIS number was [number redacted].
- 3. You were bound by the user agreement you signed when you were given access to CPIC and PRIME databases; you knew the database could only be used for RCMP administrative and operational purposes.
- 4. In December 2017, you engaged in a romantic relationship with [Ms. A.G.] (Ms. [A.G.]) a person you befriended while posted in Fort Smith, [Northwest Territories]. In May 2018, Ms. [A.G.] ended the relationship but agreed to remain friends with you. You did not respect Ms. [A.G.]’s wishes and persistently tried to convince her to give the relationship another chance.
- 5. On October 24, 2019, while on duty, you located PRIME file 2019-XXYZ, which was a call for service made by Ms. [A.G.] on October 22, 2019. You reviewed the PRIME information and learned that Ms. [A.G.] received a phone call from an RCMP member, Simon Scott ([Sergeant] Scott), wanting to set up a meeting with her in a nearby hotel for questioning.
- 6. At 6:24 [p.m.], you changed your duty status to “busy – investigation follow up – 2019-XXYZ” and attempted to retrieve the reports attached to file 2019-XXYZ. You were not involved in this file and there was no operational reason for you to access the information.

7. At 6:37 [p.m.], you queried Simon Scott on CPIC using the search criteria “Simon Scott, age 45”.
8. There was no administrative or operational purpose for you to conduct these queries on PRIME. You used this police database for personal reasons.
9. These queries were conducted in contravention of RCMP policy *[Informatics Manual]* App. III-1-2 and the user agreement you signed.

[Sic throughout]

[13] The Conduct Authority has the onus of establishing the allegations on a balance of probabilities. This means that I must find that it is more likely than not that the conduct attributed to Constable Murchie by the Conduct Authority happened. This burden is met with sufficiently clear, convincing and cogent evidence.

[14] Although the particulars are set out in the amended *Notice of Conduct Hearing*, the Conduct Authority is not obliged to prove each specific particular. Some are in place simply to give context to the allegations.

DECISION ON THE ALLEGATIONS

[15] I begin my analysis with Allegations 3 and 4. Some background facts are required to provide context to the allegations. I derived the facts from various sources in the Record and the evidence I heard during the conduct hearing.

Background facts relevant to Allegations 3 and 4

[16] Constable Murchie began his RCMP basic training on December 31, 2007. He graduated from the RCMP training academy at Depot Division on June 16, 2008.

[17] Constable Murchie’s first posting was Sooke Detachment in “E” Division. From Sooke, he transferred to Fort Smith Detachment, in “G” Division, on August 15, 2013. He then returned to “E” Division at Trail Detachment on August 5, 2016. Constable Murchie was a member of the RCMP posted to either Fort Smith Detachment, “G” Division, or Trail Detachment, “E” Division, during the relevant time.

[18] Constable Murchie had health concerns that were mostly duty related. These are relevant to Allegation 3 because they resulted in several extended periods of medical leave. His Employee Information Profile shows several graduated return to work periods in Sooke and Trail, which indicate a return to duty from extended periods of medical leave.

[19] A report in the Record also indicates that he had paternity absences throughout his service.

[20] On February 16, 2019, an incident involving Constable Murchie and another Trail Detachment member gave rise to concerns about Constable Murchie's conduct. On March 1, 2019, the Detachment Commander for the Trail and Greater Area Detachment prepared and submitted a Sensitive Briefing Note in relation to this incident. Most of the briefing note is redacted. Nevertheless, the briefing note found its way to the "E" Division Anti-Corruption Unit. On March 19, 2019, the "E" Division Anti-Corruption Unit began an investigation to determine whether Constable Murchie's past behaviour posed a threat to the RCMP, specifically his use of RCMP databases. Sergeant Simon Scott was assigned the investigation.

[21] Sergeant Scott requested offline searches for CPIC, PROS and PRIME (the databases) queries conducted by Constable Murchie as part of his investigation.

[22] The Canadian Police Information Centre (CPIC) is the only national information sharing system that links law enforcement and other public safety partners across Canada.

[23] The Police Reporting and Occurrence System (PROS) is the Operational Records Management System used in every RCMP division, except "E" Division, for recording occurrences that involve statutory and regulatory offences as well as the related intelligence.

[24] The Police Records Information Management Environment (PRIME) is a complete occurrence and records management system that allows users to electronically access other indexed repository systems of law enforcement information such as CPIC and British Columbia vehicle registration and drivers' licensing. It is an operational records management system legislated for use by all police services in British Columbia. It connects information from municipal police services and the RCMP.

[25] All three databases can be accessed by authorized personnel in the office through desktop applications or by police officers on Mobile Data Terminals (MDTs) in police vehicles where available.

[26] The databases are restricted to authorized users who must enter a valid password to access the system. Activity in all three databases leaves electronic footprints linked to the user. It is these electronic footprints that are reflected in the offline database searches.

[27] Constable Murchie had access to CPIC from August 15, 2013, to April 15, 2020, while posted to both Fort Smith and Trail Detachments.

[28] Constable Murchie had access to PROS from August 15, 2013, to August 5, 2016, while posted at Fort Smith Detachment.

[29] Constable Murchie had access to PRIME from August 6, 2016, to April 15, 2020, while posted at Trail Detachment. His assigned call sign in Trail was [call sign redacted]. He had access to PRIME at Sooke Detachment, but his tenure there is outside the date range of the allegations.

[30] On June 5, 2019, Sergeant Scott prepared a list of 52 names he found in non-private posts in Constable Murchie's Facebook account. An RCMP analyst reviewed the results of the offline database searches together with the list of 52 names. Allegations 3 and 4 relate to this line of investigation.

[31] In June 2019, Sergeant Scott applied for and was granted a Production Order for Constable Murchie's telephone records for the period from August 19, 2016, to June 19, 2019. An RCMP analyst reviewed the results of the Production Order and determined that Ms. D.T. and Ms. A.G. were identified as frequent contacts. Sergeant Scott interviewed both women as part of his investigation. Allegation 1 relates to Ms. D.T. She also appears in Allegation 3. Allegation 2 related to Ms. A.G. She also appears in Allegations 3 and 4.

[32] On January 24, 2020, the Designated Conduct Authority initiated a Code of Conduct investigation into three allegations.

Issues relating to Allegations 3 and 4

[33] Allegation 3 is under section 4.6 of the Code of Conduct, which is commonly referred to as misuse of government-issued property. To establish an allegation under this section, the Conduct Authority must establish each of the following on a balance of probabilities:

- a) the identity of the subject member;
- b) whether the subject member used government-issued equipment or property;
- c) whether the activity for which the subject member used the equipment or property was authorized and/or was used for operational purposes; and
- d) whether the subject member used the equipment or property for personal gain.

[34] As was suggested by the Subject Member Representative, this test does not create a strict liability offence.

[35] Constable Murchie's identity is not at issue in Allegations 3 and 4.

[36] The government-issued equipment or property related to both allegations is computers and the databases. In his response to the allegations, Constable Murchie conditionally admitted to making the queries set out in Allegations 3 and 4. During his testimony at the conduct hearing, he unconditionally admitted to making the queries.

[37] The remaining issues in both Allegations 3 and 4 relate to the last two elements of the test. The onus is on the Conduct Authority to prove these elements of the test on a balance of probabilities. It is not for Constable Murchie to demonstrate that there was a legitimate purpose for the queries.

Findings on Allegation 3

[38] In the 30 particulars, Allegation 3 details that, from August 15, 2013, to October 24, 2019, while posted at Fort Smith Detachment or Trail Detachment, Constable Murchie used CPIC, PROS or PRIME to query himself and 21 other people. Seven of the particulars include sub-particulars which set out the dates when Constable Murchie queried an individual more than once. Constable Murchie had no operational or administrative purpose to conduct the queries. Allegation 3 concludes that the queries were for personal reasons.

[39] The databases are restricted to authorized users. RCMP policy sets out the user restrictions for database use. At the conduct hearing, I heard from three witnesses who specialize in the various databases, who provided various permutations of those policy restrictions.

[40] Mr. Jean Devost testified that searches in PROS must be conducted in accordance with policy. Searches cannot be conducted for personal gain. A query on PROS with no associated investigation would be an improper search.

[41] Sergeant Alan Ling testified that there must be an operational purpose for a query in CPIC. A member cannot simply conduct a query out of curiosity. The accepted use of CPIC is that there must be an operational need related to police work.

[42] Ms. Trish Epplett testified that there are three elements to the restrictions relating to PRIME: there must be a right to know; there must be a need to know; and there must be a law enforcement purpose to each query. If one of these three elements are not present, then the query is deemed to be a non-operational query. I suggest that this rule applies to all three databases.

[43] I will now examine what Constable Murchie knew or ought to have known about these restrictions.

[44] First, upon start-up, a warning appears on every RCMP-issued computer that accesses a network. The warning is in a bright blue box. It is in both official languages. The user must acknowledge the warning to move past this screen. The English version of the warning reads:

WARNING/ATTENTION

You are accessing a system RESTRICTED to users expressly authorized by the Royal Canadian Mounted Police (RCMP). Transactions, including electronic mail, may be monitored by the RCMP. Unauthorized users shall cease immediately, or be subject to prosecution under Section 342.1 of the Criminal Code of Canada. By continuing on, you are agreeing to follow the RCMP Acceptable User Policy (Informatics Manual III.1, Appendix III-1-2).

[45] The warning does two things: 1) it alerts the user to the existence of policies related to the use of the systems and where those policies can be found; 2) it alerts the user that unauthorized use of the system is a criminal offence. This speaks to the seriousness of a breach of the policies.

[46] Mr. Devost testified that upon login to PROS, a warning appears that requires the user to agree to follow established practices. Sergeant Ling testified that CPIC also has a warning upon start-up. If CPIC is accessed through PRIME, that database has a warning in relation to acceptable use. Ms. Epplett did not mention any warning in relation to PRIME itself.

[47] Second, Constable Murchie signed the following documents during the relevant time period:

- Appendix 1-2-A – *Acknowledgement of Restrictions Regarding CPIC Access*, possibly signed in August 2015 and possibly again in January 2017; and
- *Acceptable User Practises for RCMP Information Technology*, signed on August 19, 2016, and again on January 30, 2017.

[48] These signed documents provided Constable Murchie with the acceptable use and practices associated to the respective databases.

[49] Constable Murchie also received training on the databases. This is where his posting and medical or parental leave are relevant.

[50] Mr. Devost testified that all RCMP members are provided PROS training at Depot. After 3.5 days, the user will know how to operate the system. The course ends with a written examination. There is a PROS refresher training available, but that is dependent on the Operational Records Management System Coordinator for the division. An instructional database also exists for retraining.

[51] Sergeant Ling testified that, since 1999, RCMP members receive an afternoon of CPIC training at Depot in which members are informed that they could “lose their job” for misuse of CPIC. A query narrative course in AGORA, an RCMP online training system, is also available.

[52] Ms. Epplett testified that a PRIME training course is offered to operational police officers.

[53] Constable Murchie’s Employee Information Profile printout shows that he had the following training in relation to the databases:

- PROS for End Users in June 2008;

- PRIME for Operational Police Officers in July 2008;
- Introduction to PRIME – online in August 2016.

[54] The policies for each of the databases are also readily available online to all RCMP members.

[55] Constable Murchie testified that he is not computer savvy. He acknowledged that he had PROS training, but he did not receive a refresher course when he went to Fort Smith. He was off duty a lot and forgot how to use PROS. He asked for help, but he was told by his supervisor in Fort Smith to “just use it”. He received assistance by telephone from a support person in Yellowknife.

[56] Members in “E” Division receive annual skills upgrading at the Pacific Region Training Centre. He received this once in Sooke and once in Trail. His supervisors’ advice in relation to PRIME when he got to Trail was simply, “Do the best you can and come and see us if you need help.” His supervisors had no expertise in the use of PRIME.

[57] In cross-examination, Constable Murchie could not recall if he searched AGORA for courses on any of the databases. He also said that he did not think it was “a big deal” to query people on these databases.

[58] Based on the foregoing, I find that, at all material times, Constable Murchie was bound by the RCMP user agreements, including restrictions regarding CPIC access and use of RCMP information management and information technology systems, including PROS and PRIME. Constable Murchie was provided instruction and numerous warnings in various forms about the proper use of the three databases. Despite the apparent lack of assistance from his immediate supervisors, he had ample and readily available opportunities to find information related to the proper use of the databases, both online and through the Division coordinators. He knew or ought reasonably to have known that using the databases for non-operational reasons was not acceptable and could have grave consequences.

[59] With respect to the queries themselves, the Conduct Authority submits that he does not have to prove the exact reason for the query. He need only prove that the query was non-operational. I agree with this position.

[60] In his response to the allegations and during his testimony, Constable Murchie admitted to querying eight people with no valid operational or administrative purpose. These include:

- Ms. L.F., a former girlfriend, queried on PROS on February 13, 2016;
- Mr. J.F., Ms. L.F.'s father, queried on PROS on February 13, 2016;
- Ms. L.C., a former girlfriend, queried on PROS on February 13, 2016;
- Ms. M.J., a former girlfriend, queried on PROS on February 13, 2016;
- Ms. L.G., Ms. A.G.'s mother, queried on PRIME on October 2, 2017;
- Mr. J.G., Ms. A.G.'s brother, queried on PRIME on October 2, 2017;
- Mr. B.K., a childhood friend, queried on PRIME on October 2, 2017; and
- Ms. D.C., a high school friend, queried on PRIME on August 21, 2018.

[61] Based on these admissions, the Conduct Authority has established on a balance of probabilities that Constable Murchie used government-issued equipment, namely computers and the databases, to query eight of the twenty-two named people. The queries contravened Force policy as well as the user agreements signed by Constable Murchie. The queries were not authorized and they had no operational or administrative purpose. Constable Murchie made the queries out of personal interest, which includes an element of personal gain. I find Particulars 10, 11, 12, 13, 23, 24, 25 and 26 are established on a balance of probabilities.

[62] Particulars 4 and 18 relate to Constable Murchie's queries of himself. The Conduct Authority tendered no evidence in relation to these queries other than the fact they were made, which Constable Murchie admitted.

[63] Particular 4 states that, during the period from June 14, 2014, to August 2, 2016, Constable Murchie queried himself seven times on PROS. Constable Murchie testified that, while in Fort Smith, he was off duty a lot and forgot how to use PROS. He may also have been trying to add himself to a file, which I find is an operational purpose. In the absence of any evidence to

demonstrate that Constable Murchie's queries of himself were not operational or for personal gain, I find this particular not established.

[64] Particular 18 states that, on August 20, 2016, Constable Murchie queried himself on PRIME. Constable Murchie testified that, when he got to Trail, he could not remember how to use PRIME. He did not receive any refresher training and received no assistance from his supervisors. He was simply trying to familiarize himself with the system. I note that Constable Murchie completed the Introduction to PRIME course online on August 30, 2016. In cross-examination, he testified that the purpose of the query may also have been a Veteran Affairs claim. Constable Murchie testified that, after hearing the expert witnesses on the databases, he realized that a query to familiarize himself with PRIME is not a proper use of the system. Based on his previous training on PRIME and the other databases, I do not accept that he did not know prior to hearing the evidence of the expert witnesses that this was an improper use of the system. I appreciate that Constable Murchie was trying to familiarize himself with PRIME after returning to "E" Division with little direct assistance from his supervisors. I also appreciate that querying himself was minimal risk in terms of a privacy breach. Nevertheless, I find Particular 18 is established based on the evidence.

[65] Particulars 5, 6, 7, 8, 9 and 14 relate to Constable Murchie's time in Fort Smith.

[66] I begin by noting that Constable Murchie's ability to explain these queries was hampered by the fact that he did not have his notebooks from Fort Smith. He testified that, at the time of his arrest on criminal charges and his suspension from duty on July 3, 2020, his notebooks were in his personal locker at Trail Detachment. He asked the Detachment Commander for them and was told they could not be located.

[67] I also note that these queries were made during the period from September 1, 2014, to August 6, 2016, which is between seven and nine years from when Constable Murchie testified at the conduct hearing. In a two-year span, an RCMP member in a small detachment in "G" Division would have occasion to conduct numerous queries on PROS and CPIC. The Record contains 1219 pages of offline query searches. Most of these pages are greyed out because the Conduct Authority determined them to be legitimate and not relevant to the allegations. In this context, an

RCMP member would be hard pressed to provide a specific reason for conducting a query without resort to their notebook or PROS.

[68] Finally, I will add that simply because a member queries someone they know does not mean that the query has no legitimate operational purpose or that it was for personal gain.

[69] Particulars 5, 6, 7 and 8 relate to PROS queries of Mr. D.P., Mr. B.M., Mr. R.S. and Mr. T.J. These four gentlemen were Constable Murchie's friends, but they all had a connection to the local RCMP Detachment. It is common for members in small detachments to be friends with community members who provide services linked with the RCMP.

[70] Constable Murchie queried Mr. D.P. on September 1, 2014, and on January 24, 2015. According to Constable Murchie, Mr. D.P. was a local computer technician. He performed work on the RCMP's surveillance equipment. He was also a source of general information and made reports of traffic offences. Constable Murchie could provide no specific reason as to why he queried Mr. D.P. In the absence of any evidence to demonstrate that the queries of Mr. D.P. were not operational or for personal gain, I find Particular 5 not established.

[71] Constable Murchie queried Mr. B.M. four times during the period from October 1, 2014, to June 13, 2016. According to Constable Murchie, Mr. B.M.'s father had dementia, which resulted in interactions with the local detachment. Mr. B.M. was a mechanic who performed work on RCMP vehicles. The possible reasons for the queries provided by Constable Murchie are reasonable. In the absence of evidence to demonstrate that these queries were not for operational reasons or for personal gain, I find Particular 6 not established.

[72] Constable Murchie queried Mr. R.S. eight times during the period from September 3, 2014, to August 6, 2016. Mr. R.S. was a local by-law enforcement officer. He had frequent interactions with Fort Smith Detachment. I note that Constable Murchie could not have queried Mr. R.S. on August 6, 2016. According to his Employee Information Profile, Constable Murchie arrived in Trail Detachment on August 5, 2016. I suspect some "E" Division personnel may have access to PROS, but "E" Division members generally would not. "E" Division uses PRIME as its record keeping database. PROS use requires a token. According to Constable Murchie, "G" Division would have taken his PROS token since he no longer needed it. I have no evidence to the contrary.

The possible reasons for the queries provided by Constable Murchie are reasonable. In the absence of any evidence to demonstrate that the queries of Mr. R.S. were not operational or for personal gain, I find Particular 7 not established.

[73] Constable Murchie queried Mr. T.J. four times on PROS during the period from September 4, 2014, to November 3, 2015. Mr. T.J. was a paramedic, a jail guard and the local coroner. He frequently did prisoner escorts. These present legitimate reasons for querying him on a police database. In the absence of any evidence to demonstrate that the queries of Mr. T.J. were not operational or for personal gain, I find Particular 8 not established.

[74] Particular 9 relates to a PROS query of Ms. J.S. on February 10, 2016. Ms. J.S. was Constable Murchie's friend. Constable Murchie testified that Ms. J.S.'s brother had died of a possible overdose in another division. She was trying to find out what had happened, so she reached out to Constable Murchie. He conducted an internet search of the brother, but the internet was slow. He decided to query her name in PROS because Ms. J.S. had spoken with someone in the RCMP about the death. He provided Ms. J.S. the name of the lead investigator and some information for victim services. In cross-examination, Constable Murchie could not explain why he queried Ms. J.S. and not her brother. Nevertheless, the reason for the query provided by Constable Murchie is reasonable, and despite Ms. J.S. being a friend, had an operational purpose. The information Constable Murchie said he provided her from the query was also reasonable. In the absence of any evidence to demonstrate that the query of Ms. J.S. was not operational or for personal gain, I find Particular 9 not established.

[75] Particular 14 states that, on April 21, 2016, and on April 29, 2016, Constable Murchie queried Ms. A.G. on PROS. Ms. A.G. was a nurse in Fort Smith. Constable Murchie befriended her. Constable Murchie testified that he performed traffic stops on Ms. A.G. She was also a complainant on some files. In the absence of any evidence to demonstrate that the queries of Ms. A.G. were not operational or for personal gain, I find Particular 14 not established.

[76] Particulars 15, 16, 17, 19, 20, 21, 22, 27 and 28 relate to Constable Murchie's time in Trail.

[77] Particular 15 states that, on September 10, 2019, Constable Murchie queried Mr. R.G. on CPIC. Based on her reading of the offline PRIME search, Ms. Epplett testified that the query was

of Mr. R.G.'s license plate. Constable Murchie testified that someone had told him that Mr. R.G. was a chronic impaired driver. He ran Mr. R.G.'s license plate to obtain vehicle information and to see if Mr. R.G. had a driver's license. I agree the query of a possible impaired driver is an operational purpose. Had Constable Murchie included reasons for the query, which are mandatory for all CPIC queries, we would know the reason for the query.

[78] Ms. D.T. testified that Constable Murchie became romantically involved with Mr. R.G.'s former girlfriend in the spring of 2019. Constable Murchie queried Mr. R.G. in the late summer of 2019. The timing of the query suggests the query was personal reasons.

[79] I also note that Constable Murchie exchanged 1,896 text messages with Mr. R.G. during the period from August 19, 2016, to June 13, 2019, which is the time frame of the Production Order for Constable Murchie's telephone records obtained by Sergeant Scott. It appears Constable Murchie was well acquainted with Mr. R.G.; therefore, he should have known whether Mr. R.G. was a chronic impaired driver and would likely have known what type of vehicle Mr. R.G. drove. I have difficulty believing Constable Murchie's explanation for his query of Mr. R.G. Nevertheless, in the absence of any evidence to demonstrate that the query of Mr. R.G. was not operational or was for personal gain, I find Particular 15 not established.

[80] Particular 16 states that Constable Murchie queried Ms. A.G. on CPIC on September 21, 2019. Particular 21 states that Constable Murchie queried Ms. A.G. on PRIME on September 2, 2016, and on July 15, 2018. Following Constable Murchie's transfer to Trail, Ms. A.G. fortuitously moved to Trail. Constable Murchie and Ms. A.G. entered into a relationship after this.

[81] Constable Murchie testified that the CPIC query was in relation to a possible traffic offence. While on patrol, he observed a speeding vehicle coming toward him. He pulled the vehicle over. Ms. A.G. was the driver. He did not issue her a traffic ticket. The CPIC query was a "persons" query of Ms. A.G. with only an approximate age. This does not coincide with Constable Murchie's explanation of the query. Again, had Constable Murchie included the mandatory reasons for the query, we would have been enlightened as to its purpose.

[82] Constable Murchie could provide no reason for the PRIME queries without looking at the files. The queries themselves provide no insight as to why Constable Murchie made the queries.

[83] In the absence of any evidence to demonstrate that Constable Murchie's queries of Ms. A.G. were not for an operational purpose or for personal gain, I find Particulars 16 and 21 not established.

[84] Particular 17 states that, on November 28, 2018, Constable Murchie queried his former spouse, Ms. J.M., on CPIC. Constable Murchie testified that the reason for his query was that he observed Ms. J.M. commit a traffic offence. He did not issue a ticket. Constable Murchie failed to provide the mandatory reason for making the query. In the absence of any evidence to demonstrate that Constable Murchie's query of Ms. J.M. was not operational or for personal gain, I find Particular 17 not established.

[85] Particular 19 states that, on August 23, 2016, Constable Murchie queried Mr. J.K. on PRIME. Mr. J.K. is the father of Constable Murchie's nephew. Particular 20 states that Constable Murchie queried Ms. K.M. on PRIME on August 23, 2016. Ms. K.M. is Constable Murchie's sister. Constable Murchie testified that he made these queries as part of his efforts to reacquaint himself with PRIME. I appreciate why Constable Murchie made the queries, I nevertheless find that Particulars 19 and 20 are established.

[86] Particular 22 states that Constable Murchie queried Mr. M.S. on PRIME on October 2, 2017. Constable Murchie testified that he queried Mr. M.S. because Ms. A.G. was concerned about him. She went to school with him. He was the builder of Ms. A.G.'s brother's house and there were some problems. She wanted to know if her brother was in danger. She did not ask Constable Murchie to make the query. He conducted the query because he was curious and felt that if Mr. M.S. was who Ms. A.G. said he was, then there was a possibility that he might be able to assist an ongoing investigation if there was one. He admitted that he was not working on an operational file when he queried Mr. M.S.

[87] I do not accept Constable Murchie's explanation. I find that, although he believed he had a law enforcement purpose, he did not have the right to know and did not have a need to know anything about Mr. M.S. Mr. M.S. did not reside in Trail Detachment's area nor was Constable Murchie investigating him for anything specific. It is highly improper to run a search of someone simply because a friend has concerns. I have no evidence that Constable Murchie followed up on

the query by notifying the detachment where Mr. M.S. lived about Ms. A.G.'s concerns. On this basis, I find that Particular 22 is established.

[88] Particular 27 states that, during the period from September 6, 2018, to December 5, 2018, Constable Murchie queried Ms. D.T. on PRIME five times. Constable Murchie became involved in a relationship with Ms. D.T. after meeting her at the scene of a criminal investigation on September 6, 2018. Ms. D.T.'s ex-husband was the subject of that investigation. Constable Murchie subsequently assisted Ms. D.T. in retrieving her ex-husband's property from his residence on September 7, 2018. Constable Murchie opened a file in PRIME for this assistance. It was completed on September 8, 2018. Two of the five queries of Ms. D.T. were on September 6 and 8, 2018. This provides Constable Murchie with a legitimate operational purpose for querying Ms. D.T. on these two dates; therefore, I find that sub-particulars 27 a. and b. are not established.

[89] The remaining three sub-particulars have a date range from September 22, 2018, to December 5, 2018. Constable Murchie testified that Ms. D.T. would report speeders in her neighbourhood. He performed traffic enforcement duties in the area based on these reports with radar there. Constable Murchie's explanation was unconvincing. Nevertheless, in the absence of any evidence to demonstrate that the queries of Ms. D.T. were not operational or for personal gain, I find Particular 27 not established.

[90] Particular 28 states that, on September 8, 2018, Constable Murchie queried Mr. B.T. on PRIME. The explanation provided by Constable Murchie in relation to the query of Ms. D.T. also applies to this query. Constable Murchie had a legitimate operational reason for the query. On this basis, I find that Particular 28 is not established.

Summary of findings on Allegation 3

[91] In summary, I have found that the Conduct Authority has not demonstrated on a balance of probabilities that Constable Murchie's queries of the persons named in Particulars 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 21, 27 and 28 were not authorized or were for personal gain. Therefore, these particulars are not established.

[92] I have found that the Conduct Authority has demonstrated on a balance of probabilities that Constable Murchie's queries of the persons named in Particulars 10, 11, 12, 13, 18, 19, 20, 22, 23, 24, 25 and 26 were not authorized and were for personal gain. Therefore, these particulars are established.

[93] The Conduct Authority has not established a significant number of particulars. However, each of the twelve established particulars constitute an established act of discreditable conduct. I find Allegation 3 is established on this basis.

Findings on Allegation 4

[94] Allegation 4 is also under section 4.6 of the Code of Conduct. I set the test out for this section in paragraph 33. I also noted at paragraphs 35 to 37 that all that remains to be decided in this allegation is whether the queries Constable Murchie made were for operational purposes and for personal gain.

[95] The Conduct Authority alleges that, on October 24, 2019, while on duty, Constable Murchie located and reviewed PRIME file 2019-XXYZ. Constable Murchie was not involved in the file; therefore, he had no operational or administrative purpose to access the file and he used the database for personal reasons.

[96] File 2019-XXYZ relates to a call for service made by Ms. A.G. on October 22, 2019. She received a telephone call from a Simon Scott, who had identified himself as an RCMP officer. He wished to interview Ms. A.G. at a local hotel for an undisclosed purpose. Ms. A.G. was seeking to confirm that Simon Scott was indeed an RCMP member. The file was assigned to Constable Ben Smith, who actioned the file and concluded it that same day.

[97] Constable Murchie testified that he was querying a different file that had a similar number to 2019-XXYX, but queried file 2019-XXYZ by accident. The other file was generated on October 23, 2019. The Trail Detachment shift schedule shows that Constable Murchie was scheduled for an "A3" shift that day. The file was an assistance to locate an individual believed to be living in Trail. Constable Murchie was assigned the file. The general occurrence report

submitted by Constable Murchie is dated October 24, 2019; at 2:06 a.m., Constable Murchie concluded the file prior to the end of his shift.

[98] Although possible, I do not believe that Constable Murchie queried file 2019-XXYZ by accident. There is a significant difference between the digits on a computer keyboard, even if the user is in a hurry or not computer savvy.

[99] Regardless of how he became aware of the file, the offline searches show Constable Murchie accessed file 2019-XXYZ on October 24, 2019, at 6:24 p.m. The Trail Detachment shift schedule shows Constable Murchie was scheduled for a night shift beginning at 8:30 p.m. As noted, Constable Murchie concluded the other file prior to the end of his previous shift. He had no cause to go back into that file the following shift.

[100] Constable Murchie retrieved reports on file 2019-XXYZ beginning at 6:34 p.m. on October 24, 2019. He queried Simon Scott at 6:37 p.m. He testified that he did not know who Simon Scott was at that time, but later found out when he received the disclosure package for the criminal matters. This was possibly on July 3, 2020. Sergeant Scott interviewed Constable Murchie on April 4, 2020, which was prior to the disclosure in the criminal matter. Therefore, Constable Murchie clearly knew who Sergeant Scott was before he received the criminal disclosure.

[101] Furthermore, Constable Murchie admitted in cross-examination to opening file 2019-XXYZ several times. Even if his initial access to the file was by accident, his subsequent access to the file was not.

[102] Constable Murchie met Ms. A.G. in Fort Smith while he was stationed there. She fortuitously moved to Trail for employment purposes after Constable Murchie transferred there. They became involved in a relationship after she moved to Trail. This relationship ended in May 2018. Constable Murchie testified that Ms. A.G. had previously been targeted by a stalker. He thought he might be able to assist the investigator of file 2019-XXYZ; so, he reviewed the file. He further testified that he spoke to Corporal Splinter, a supervisor at Trail Detachment, about the file, who told Constable Murchie not to worry about it. He also spoke to Constable Ben Smith, who

told him that he could not talk about the file. Constable Murchie provided no indication that he mentioned the prior stalking of Ms. A.G. to either of these members when he spoke with them.

[103] Constable Murchie testified that, when he accessed the file, he thought he had an operational reason, but he now knows his actions were not proper.

[104] I heard no evidence that Constable Murchie ever spoke to Ms. A.G. about the file. In cross-examination, he testified that Ms. A.G. did not ask him to query the file. If Ms. A.G. felt that Sergeant Scott was a stalker, then it was up to her to tell Constable Ben Smith. It was not for Constable Murchie to perform that task for her.

[105] Based on his previous training on PRIME, I do not accept that he did not know prior to hearing the evidence of the expert witnesses that this was an improper use of the system.

[106] The line between an operational purpose and a non-operational query for personal gain is not always clear. Although Constable Murchie believed he had a law enforcement purpose for making the query of file 2019-XXYZ and Sergeant Scott, I find that he did not have the right to know and he did not have the need to know anything about Ms. A.G.'s file. Constable Murchie had no legitimate administrative or operational purpose for accessing the file. He contravened RCMP policy. The Conduct Authority has demonstrated on a balance of probabilities that Constable Murchie's query of file 2019-XXYZ was not authorized or was for personal gain. Therefore, Allegation 4 is established.

Findings on Allegation 1

[107] Allegation 1 is an allegation of discreditable conduct under section 7.1 of the Code of Conduct. To establish an allegation under this section, the conduct authority must establish each of the following on a balance of probabilities:

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

[108] I can deal with the second element of the test summarily here in that Constable Murchie's identity is not in question. The remaining three elements will take further analysis.

Acts that constitute the alleged behaviour

[109] Particular 10 summarizes the acts the Conduct Authority says constitute the alleged behaviour as follows: "While in a position of trust and authority, [Constable Murchie] pursued a romantic and sexual relationship with Ms. [D.T.], a vulnerable person [he] met while on duty."

[110] The issues flowing from this particular are:

- a) Was Constable Murchie on duty when he met Ms. D.T.?
- b) Was Ms. D.T. a vulnerable person?
- c) Was Constable Murchie in a position of trust and authority over Ms. D.T.?
- d) Did Constable Murchie pursue a romantic and sexual relationship with Ms. D.T.?

[111] I will address these issues separately, but I need to put some context to them with some preliminary background on both Constable Murchie and Ms. D.T.

[112] When I delivered my oral decision on the allegations, Constable Murchie was 43 years old. He married Ms. J.M. in August 2009. He has five children with her. Constable Murchie and Ms. J.M. separated in May 2016. Despite their legal separation, Ms. J.M. moved with the family from Fort Smith to Trail.

[113] In September 2018, Constable Murchie and Ms. J.M. shared custody of their children. However, as time passed, Constable Murchie had custody of the children more frequently. This was due to Ms. J.M.'s health concerns. Ms. J.M. left Trail to return to Ontario in October 2019, leaving Constable Murchie with custody of the five children.

[114] Ms. D.T. moved to Trail from Alberta in the spring of 2010. She married Mr. B.T., in 2007 or 2008. Mr. B.T. is a military veteran. He suffers from PTSD and chronic alcoholism.

[115] Mr. B.T. and Ms. D.T. have two children. They legally separated on April 1, 2017. Mr. B.T. moved out of the family home after the separation but remained in Trail. Mr. B.T. and

Ms. D.T. remained in sporadic contact following their separation. Ms. D.T. divorced Mr. B.T. in March 2020.

[116] I will not delve too deeply into an assessment of credibility of Constable Murchie and Ms. D.T. They both had their story to tell and did so clearly and confidently. Their perspectives on the relationship differ. This is understandable. Their testimony in relation to certain events differs, in some cases significantly; however, the differences are not material to my findings. Where I prefer one version over the other, I will say so and will explain why the difference is not material. They agree on most of the material facts of this case.

Was Constable Murchie on duty when he met Ms. D.T.?

[117] Constable Murchie first met Ms. D.T. at a Girl Guide event in the fall of 2017 or the spring of 2018. Both Constable Murchie and Ms. D.T. had a child attending the overnight event. Ms. D.T. was a volunteer. Constable Murchie attended the event in uniform to deal with an issue relating to his daughter. The interaction between Constable Murchie and Ms. D.T. was brief.

[118] Constable Murchie and Ms. D.T. met again on September 6, 2018. On that date, Constable Michael Flewelling initiated an impaired driving investigation. The stop of the impaired driver occurred at a local gas station. The impaired driver was Mr. B.T., Ms. D.T.'s estranged husband. Constable Kevin Johnson and Constable Murchie responded to a call for backup from Constable Flewelling and assisted him with the investigation upon their arrival at the scene.

[119] Ms. D.T. happened to be going to the gas station when she observed her husband's truck and several police vehicles. She could not see her husband, so she decided to find out if he was alright. She was concerned because Mr. B.T. was suicidal and had on several occasions since 2009, spoken about committing "suicide by cop". This was not Mr. B.T.'s first interaction with the police.

[120] When she got out of her vehicle, Constable Murchie approached her and told her she had to leave. Ms. D.T. emphatically refused. Constable Murchie testified that he did not recognize Ms. D.T. from their previous meeting at the Girl Guide event. The interaction between Constable

Murchie and Ms. D.T. was confrontational and brief. Ms. D.T. was aggressive and emotional to the point of crying.

[121] Constable Johnson intervened to calm the situation. Constable Johnson allowed Ms. D.T. to speak to her husband, who was in custody sitting in the back of a police vehicle. In cross-examination, Constable Murchie testified that he asked Constable Johnson who his friend was because Constable Johnson was being exceptionally nice to her. This was unusual for him because he was usually very stern when performing his duties. Constable Johnson told Constable Murchie that Ms. D.T. is or was a client. Constable Murchie could not recall if Constable Johnson used the past or present tense.

[122] Mr. B.T. was arrested for impaired operation of a motor vehicle. All three members cleared the scene. Constable Murchie returned to the office. Mr. B.T. was taken to the Detachment by other members where he was logged in cells at 5:27 p.m. The prisoner log indicates that Constable Murchie spoke with Mr. B.T. at that time.

[123] GPS data shows that Constable Murchie attended Ms. D.T.'s residence on September 6, 2018, at 6:36 p.m. He left at 7 p.m. to attend a call of a vehicle fire. Constable Murchie returned to Ms. D.T.'s residence at 8:54 p.m. and left again at 10:32 p.m.

[124] On September 7, 2018, Constable Murchie attended Mr. B.T.'s residence with Ms. D.T. to pick up property. Constable Murchie opened a file for the assistance. The file indicates that Ms. D.T. requested assistance in picking up the property. She was afraid of the other residents of the house. They were all military veterans who suffered from PTSD. Ms. D.T. testified that she intended to go to the residence with a civilian friend, but he had to come from out of town, so she contacted the police instead.

[125] Constable Murchie testified that Ms. D.T.'s request was to Trail Detachment generally and that no on-duty members took the file, so he decided to take it. Ms. D.T. said Constable Murchie volunteered, but Ms. D.T. did not say how that came about.

[126] Constable Murchie testified that he and Ms. D.T. attended the residence in separate vehicles for the purpose of picking up medication and clothing for Mr. B.T. He had been admitted

to a treatment facility in Trail. Constable Murchie's report states that he met Ms. D.T. at Mr. B.T.'s residence. Ms. D.T. testified that she went in the police vehicle with Constable Murchie to pick up Mr. B.T.'s firearms. Both stories are believable and make sense. Constable Murchie had more at stake. It would have been advantageous for him to alter his testimony to put a less serious spin on what took place. However, Constable Murchie made one statement that makes me favour his version of this event. He said that if the purpose was to remove firearms from a residence where military veterans lived, he would have taken back up. This is a convincing statement from an operational policing perspective. Regardless, the main point is that Constable Murchie was on duty assisting Ms. D.T. the day after Mr. B.T.'s arrest.

[127] Both Ms. D.T. and Constable Murchie testified that, over the following weeks, Constable Murchie attended Ms. D.T.'s residence while on duty. Constable Murchie testified that these visits were during his breaks to have a coffee, a cigarette, and a chat. GPS data confirms Constable Murchie made as many as 16 visits to Ms. D.T.'s residence while on duty in the two weeks following Mr. B.T.'s arrest.

[128] As a result, I find that Constable Murchie was on duty when he met Ms. D.T. at the Girl Guide event and again on September 6, 2018. He continued to have on-duty contact with Ms. D.T. following the subsequent meetings.

Was Ms. D.T. a vulnerable person?

[129] The Conduct Authority cited several RCMP conduct cases in which conduct boards have accepted various definitions of vulnerable person. Constable Murchie suggested the appropriate definition of victim is the one found in section 722 of the *Criminal Code*, which defines a victim as a person who has suffered physical or emotional harm because of the commission of an offence.

[130] I accept the definition of victim. However, Constable Murchie's submission is not helpful since the question is whether Ms. D.T. was a vulnerable person, not whether she was a victim. People can be victims and not be vulnerable.

[131] I prefer the definition of vulnerable person found in the definitions of the *Security Manual* (October 8, 2014, version). The conduct board in *Hederson*¹ referred to this definition in his decision. According to this definition, a vulnerable person means a person who, because of their age, a disability, or other circumstances, whether temporary or permanent, are in a position of dependence on others, or otherwise at greater risk than the general population of being harmed by persons in a position of authority or trust relative to them. This definition better aligns with the circumstances of this case than others presented to me by the Conduct Authority.

[132] The Conduct Authority's insistence that Ms. D.T. was a vulnerable person is based on two letters from Ms. D.T.'s family physician, dated July 30, 2018, and September 5, 2018. The first letter states that Ms. D.T. suffered from depression and anxiety that affected her sleep, mood, concentration, capacity to deal with the public and provision of self-care. The second letter, which I could not find in the Record, apparently states that Ms. D.T. was unable to get out of bed at times while her children were away, but that she felt better once they returned and she was back into a routine. This second letter also said she was emotionally unstable. The evidence of Ms. C.H., a friend of Ms. D.T. who testified during the conduct hearing, supports these two letters.

[133] Ms. D.T. testified that the weeks prior to September 6, 2018, were the worst of her life. She accidentally found out that Mr. B.T. had been hospitalized. She also broke up with her boyfriend of 10 months. Her family lives in Alberta, so she was without a local support system.

[134] Following his release from police custody, Mr. B.T. was admitted to a local rehabilitation facility. He remained there for a week. Upon his release, Ms. D.T. focused on getting things together for him to attend a rehabilitation facility outside of Trail. She said she cried daily and was pleading for help. Ms. D.T. described herself as a “fucking wreck” for the entire month of September. She got things done because she was “on complete survival mode”. The Conduct Authority submits that Ms. D.T.’s appearance of being functional is not an indicator that she was not a vulnerable person.

¹ *Commanding Officer, “E” Division v Constable Hederson*, 2018 RCAD 19 [*Hederson*], at paragraph 93.

[135] Constable Murchie insists that Ms. D.T. was not a vulnerable person. During their relationship, she was strong, organized and maternal. She was “on top of her game” and “got things done”.

[136] I find that, at the time of their meeting on September 6, 2018 and for a brief time that followed, Ms. D.T. was a vulnerable person. However, her vulnerability subsided over time. As my adopted definition indicates, vulnerability can be temporary. At the scene of the impaired driving incident, she was concerned about her husband’s wellbeing. The police controlled what happened to him. Mr. B.T. remained in RCMP custody until the next morning. She depended on the police, including Constable Murchie, to ensure his safety until he was released. The police also had the ability to further detain Mr. B.T. for mental health concerns. Following Mr. B.T.’s arrest, Ms. D.T.’s concern was getting him the help he needed. She immediately contacted Mr. B.T.’s parents and Veterans Affairs Canada (VAC) for assistance. Ms. D.T. was clear in her evidence that, despite their separation and her husband’s problems, she continued to deeply care for him. She said the breakup with her boyfriend was because she was too deeply invested in her husband. Mr. B.T.’s wellbeing meant a lot to her. Mr. B.T. entered a rehabilitation centre outside of Trail approximately two weeks after his arrest. Once he was there, Ms. D.T.’s dependence on others, including Constable Murchie, diminished significantly.

[137] Ms. D.T. was a vulnerable person up to the point when Mr. B.T. entered the treatment facility outside of Trail. Although she continued to have mental health concerns, I agree with Constable Murchie that the doctor’s letters do not speak to the state of her mental health and her ability to cope or make decisions past September 5, 2018. Ms. D.T. said nothing about mental health issues or her ability to cope after September 2018. There is no evidence she returned to her family doctor to follow up on the mental health issues identified in the doctor’s letters. Ms. D.T. certainly knows her own mind. She demonstrated this by repeatedly and aggressively attempting to assert her position during her testimony at the conduct hearing. She also demonstrated her ability to cope after she began her relationship with Constable Murchie. She lived a normal family life, but not one without challenges. She took care of her two children and other domestic issues to the extent that Constable Murchie admired how she got things done. She also contributed more than

her share to the relationship with Constable Murchie as it related to the care of his children. Ms. D.T. was not a vulnerable person for most of the relationship with Constable Murchie.

Was Constable Murchie in a position of authority over Ms. D.T.?

[138] The Conduct Authority says that Constable Murchie was in a position of authority over Ms. D.T. Constable Murchie conceded he was in a position of authority and trust with respect to Ms. D.T. However, he submits that this ended when Mr. B.T. entered the rehabilitation facility outside Trail. I agree.

[139] Constable Murchie was in a position of authority and trust at the scene of Mr. B.T.'s impaired driving arrest. As the Conduct Authority pointed out, citing *Snelgrove*,² the relationship of an on-duty police officer to a member of the public is traditionally one of trust and authority. That relationship is presumed and does not require evidence.

[140] Constable Murchie attended Ms. D.T.'s residence twice, while still on duty, the same day of Mr. B.T.'s arrest to follow up. In his capacity as a police officer, he offered to assist Ms. D.T. in dealing with her husband's situation. However, I am not clear what assistance he rendered in this respect. Mr. B.T.'s admission to the rehabilitation facilities was all Ms. D.T.'s doing with the assistance of healthcare professionals and, I assume, VAC. Constable Murchie told Ms. D.T. he would speak to staff at the local rehabilitation facility, but there is no evidence that he did or, if he did, that he had any influence over Mr. B.T.'s admission to either facility.

[141] Constable Murchie attended by Ms. D.T.'s residence in uniform for a time after Mr. B.T. went to the rehabilitation facility. These were personal visits during his on-duty breaks. The relationship between Constable Murchie and Ms. D.T. transformed into a purely personal one that revolved around their children. In his judgment in Constable Murchie's criminal trial for breach of trust,³ Justice Sicotte found that Constable Murchie's professional relationship with Ms. D.T. ended quite quickly and that he continued what was clearly a personal relationship with her for

² *R v Snelgrove*, 2018 NLCA 59 [*Snelgrove*], at paragraph 16.

³ *R v Murchie*, British Columbia Provincial Court (Rossland Registry) File No. 22787-1 (unpublished) [*Murchie*], at paragraph 19.

several months. Although his off-duty conduct might be subject to the Code of Conduct, his position of authority and trust in relation to Ms. D.T. ceased to exist. I agree. I established that point at Mr. B.T.'s entrance into the rehabilitation facility outside of Trail. Although the relationship began while Constable Murchie was in a position of authority and trust, most of the relationship occurred while that position of authority and trust no longer existed.

Did Constable Murchie pursue a romantic and sexual relationship with Ms. D.T.?

[142] While at the scene of the impaired driving investigation, Constable Murchie expressed an interest in Ms. D.T. as evidenced by his question to Constable Johnson. They did not start off on the right foot. Their meeting on September 6, 2018 was an argument. Constable Murchie later attended Ms. D.T.'s residence after speaking to Mr. B.T. in cells. Constable Murchie testified that, during this conversation, Mr. B.T. asked him to speak to Ms. D.T. Constable Murchie was not tasked to do so by Constable Flewelling, the lead investigator of the impaired driving file, or anyone else. He was not invited to do so by Ms. D.T. In fact, Ms. D.T. testified that when Constable Murchie arrived at her door, she was not going to let him into the house.

[143] During his initial visit to Ms. D.T.'s house, Constable Murchie apologized for his actions during their earlier meeting. Ms. D.T. was on the telephone with her father-in-law and VAC looking for assistance for her husband. According to Ms. D.T., Constable Murchie informed her that the police were going to keep Mr. B.T. in cells for the night. Constable Murchie stayed for approximately 25 minutes. He had to respond to a call for service. Ms. D.T. testified that she did not ask Constable Murchie to come back. Constable Murchie says Ms. D.T. invited him to come back.

[144] After cleaning up the call for service, Constable Murchie returned to Ms. D.T.'s residence. Ms. D.T. testified that during this second visit Constable Murchie was much nicer. He knew a lot about her but asked a lot of questions about her personal life. She also found out about his personal life. Ms. D.T. testified that, during the second visit, she felt sorry for Constable Murchie after learning his story, but he also gave her hope that a person can struggle through an operational

stress injury. By the end of the evening, she believed he was a nice guy. She felt she owed him something because she believes we all owe people in uniform something because of their service.

[145] Constable Murchie formed the opinion that Ms. D.T. was accomplished and got things done. Ms. D.T. said Constable Murchie left a business card with his personal cellphone number handwritten on it. Constable Murchie agreed with Ms. D.T. for the most part. He denied knowing about violence in her domestic situation. He also said he left two business cards with Ms. D.T. The first one only had his work number on it. He provided her the second card with his personal cellphone number on it only after they got to know each other better.

[146] Constable Murchie attended Ms. D.T.'s residence daily after September 6, 2018. Ms. D.T. testified that, over the weekend, Constable Murchie showered her with compliments and even called her cute. Constable Murchie acknowledged in his evidence that he did indeed call Ms. D.T. cute.

[147] On September 10, 2018, Constable Murchie stopped by a local park while on duty to pick some flowers. At approximately 5:03 a.m., Constable Murchie attended Ms. D.T.'s residence and put the flowers on the windshield of a vehicle in the driveway. Constable Murchie denied that this was a romantic gesture. He said it was an impulsive act intended to give Ms. D.T. and her family some happiness.

[148] Constable Murchie continued to attend Ms. D.T.'s residence daily for the two-week period after September 6, 2018. Most of these visits occurred while he was on duty. The relationship between Constable Murchie and Ms. D.T. evolved into a personal relationship focused on their children. Some of their children knew each other from school and extracurricular activities, like Girl Guides. Many of the family-focused activities included meals.

[149] Constable Murchie and Ms. D.T. engaged in consensual sexual intercourse once. I could not firmly establish the date this occurred. It most likely happened following the birthday party for one of Ms. D.T.'s daughters. The evidence accords with this party being on September 21, 2018. Ms. D.T. said this encounter was initiated by Constable Murchie. Constable Murchie said the encounter was initiated by Ms. D.T. Regardless of who initiated it or when it occurred, this encounter was very brief and not enjoyed by either Constable Murchie or Ms. D.T. Constable

Murchie testified that he requires medication for erectile dysfunction. He had not brought that medication with him. This intimate encounter was not planned by either of them. It was spontaneous and regretted immediately by both Constable Murchie and Ms. D.T. There is no evidence that Constable Murchie pursued a sexual relationship with Ms. D.T. prior to this incident.

[150] Following the sexual encounter, the relationship between Constable Murchie and Ms. D.T. changed significantly. Ms. D.T. testified that it became more like a brother/sister relationship. They continued to engage in family activities, including meals and a child's birthday party at a motel in Castlegar. Both Constable Murchie and Ms. D.T. agreed that they slept in the same bed without any romantic gestures. Constable Murchie characterized the relationship as one of mutual respect and comfort.

[151] Ms. C.H. testified that the relationship was mutual and that both Constable Murchie and Ms. D.T. contributed equally. Ms. D.T. testified that she contributed more to the relationship than Constable Murchie.

[152] Telephone records during the relationship show that Ms. D.T. initiated telephone contact more frequently than Constable Murchie.

[153] Constable Murchie went on holidays in October 2018. He said one telephone call during this holiday brought him to realize that he no longer wished to continue his relationship with Ms. D.T. The relationship began to deteriorate after this. Both Constable Murchie and Ms. D.T. were dating other people. The relationship between Constable Murchie and Ms. D.T. ended on May 10, 2019, following an argument about someone Constable Murchie was dating.

[154] In his judgment in Constable Murchie's criminal trial, Justice Sicotte found⁴ that Constable Murchie was personally attracted to Ms. D.T. and that he pursued a personal relationship with her. I agree with that conclusion. The only evidence I have that Constable Murchie pursued a romantic and sexual relationship with Ms. D.T. is the bouquet of flowers left on a vehicle in Ms. D.T.'s driveway, some flirtatious behaviour including calling Ms. D.T. cute on one occasion and a single

⁴ *Murchie*, at paragraph 19.

act of spontaneous consensual sexual intercourse. This is not enough to establish that he pursued a romantic and sexual relationship with Ms. D.T.

[155] This finding is not determinative on this allegation. Constable Murchie's conduct in pursuing a personal relationship under the circumstances may still be discreditable conduct. Thus, further analysis of the third element of the test for discreditable conduct is required.

Likelihood to cause discredit to the Force

[156] The test for discreditable conduct is well established. It is whether any reasonable person with the knowledge of the facts, including the realities of policing in general, and the RCMP in particular, would find the conduct discreditable or likely to discredit the Force.

[157] The Conduct Authority Representatives rightly identified that the Code of Conduct applies to RCMP members both on and off duty. They also correctly stated that police are held to a higher standard than the general public.

[158] In finding that Constable Murchie was personally attracted to Ms. D.T. and that he pursued a personal relationship with her, Justice Sicotte also found that he could not say beyond a reasonable doubt that Constable Murchie's conduct represented a serious and marked departure from the standard expected of an RCMP officer in such a situation.⁵

[159] A finding of a Provincial Court Judge is persuasive, but I do not feel bound by Justice Sicotte's decision as it relates to the question of discreditable conduct for several reasons. First, the standard of proof in a criminal trial is beyond a reasonable doubt versus the lower standard of proof on a balance of probabilities in this conduct matter. Second, Justice Sicotte was considering a criminal breach of trust, which has a different test than discreditable conduct. Finally, Justice Sicotte heard different evidence than I did. I did not hear from Constable Johnson as he did. He did not hear from Constable Murchie as I did. I need to make my own determination on the

⁵ *Murchie*, at paragraph 20.

question of whether Constable Murchie's conduct is discreditable or likely to discredit the Force based on the test that I must apply at the standard of proof that I must apply it.

[160] I will start by saying that RCMP members are not absolutely prohibited from pursuing relationships with persons they meet while on duty. As pointed out by the Subject Member Representative, the RCMP has no specific policy about this. I am not aware of one. Nevertheless, RCMP members need to be cautious to ensure that they do not create a conflict of interest or otherwise run afoul of the Code of Conduct. The circumstances of each case must be considered.

[161] The Conduct Authority's position on discreditable conduct is predicated on me finding that Constable Murchie used his position as a police officer to obtain information about Ms. D.T. and subsequently groomed her to enter a romantic and sexual relationship. The grooming aspect of this claim is the discreditable conduct.

[162] Constable Murchie acknowledges the relationship with Ms. D.T., but he denies any abuse of his position as a police officer and that Ms. D.T. was a vulnerable person. His relationship with Ms. D.T., although beginning while he was on duty, evolved into a family focused personal relationship with no connection to his work as a police officer. His "over involvement" with Ms. D.T. does not equate to discreditable conduct.

[163] Ms. D.T.'s personal circumstances should have raised a number of concerns for Constable Murchie and given him pause to enter into a relationship with her. Mr. B.T. was suicidal and had, on several occasions since 2009, spoken about committing "suicide by cop". As such, Constable Murchie potentially put himself, other police officers and Mr. B.T. at risk had Mr. B.T. become upset at his relationship with his former spouse and wished to act on his thoughts. He would not remain in the rehabilitation facility indefinitely. He had prior dealings with the Trail Detachment members. The possibility of an on-duty encounter with Mr. B.T. was great. He risked being in a conflict of interest should that eventuality arise. Luckily for him, none of these things happened.

[164] Ms. D.T. also had prior involvement with the police. In 2012, she was criminally charged when she lied to the police about an intimate partner violence incident in which Mr. B.T. severely injured her. As I heard repeatedly, Trail is a small town where everyone knows everyone else's business. Many of Ms. D.T.'s friends, including Ms. C.H., were aware of the relationship with

Constable Murchie, and they did not feel it was appropriate, particularly how the relationship began. Ms. C.H. was extremely upset with Constable Murchie placing the flowers on the vehicle Ms. D.T. had borrowed from her.

[165] Having said this, despite the relationship beginning while Constable Murchie was on duty, the bulk of the relationship occurred in his personal capacity. Although Constable Murchie pursued a personal relationship with Ms. D.T., I do not find that he groomed her in a way that is discreditable or likely to cause discredit to the Force. The Record is devoid of evidence that Constable Murchie groomed Ms. D.T. for a romantic or sexual relationship. At most, Constable Murchie displayed exceptionally poor decision-making. Although poor decision-making usually underlies cases of misconduct, like in Allegations 3 and 4, not all poor decisions amount to discreditable conduct. No conflict of interest arose with Mr. B.T. Constable Murchie committed no criminal offences during the relationship with Ms. D.T. The lone sexual act, although regretted by both, was consensual and unplanned. Ms. D.T. deeply regrets having the relationship with Constable Murchie, but not because he was a police officer or anything he did in that capacity. She still thinks he is a good father, a good police officer and a good person. He was simply not the right person for her. The dynamics of their relationship was not for her. Consequently, I find that a reasonable person with knowledge of the facts, including the realities of policing in general, and the RCMP in particular, would not find Constable Murchie's conduct discreditable.

[166] I find the Conduct Authority has not established this element of the test for discreditable conduct. Having made this finding, I do not have to address the fourth element of the test but will do so briefly.

Legitimate interest in disciplining Constable Murchie

[167] The fourth element of the test for discreditable conduct requires the conduct authority to demonstrate that the member's behaviour is sufficiently related to their duties and functions to provide the Force with a legitimate interest in disciplining the member.

[168] As I have stated several times, although the relationship between Constable Murchie and Ms. D.T. began while he was on duty, it quickly moved into a purely personal relationship.

Nothing flowed from that relationship that is sufficiently related to Constable Murchie's duties and functions that would provide the Force with a legitimate interest in disciplining him.

[169] Given the foregoing, I find that the Conduct Authority has not demonstrated all four elements of the test for discreditable conduct on a balance of probabilities. Therefore, Allegation 1 is not established.

CONDUCT MEASURES

[170] Having found Allegations 3 and 4 established, per subsection 45(4) of the *RCMP Act*, I am obliged to impose at least one conduct measure. Conduct measures available to me include dismissal, a direction to resign and “one or more of the conduct measures provided for in the rules”. The conduct measures “provided for in the rules” are found in sections 3, 4 and 5 of the *CSO (Conduct)*.

[171] The Conduct Authority Representatives advised me in their submissions that the Conduct Authority was no longer seeking Constable Murchie’s dismissal. Instead, the Conduct Authority proposed the following conduct measures:

- a 30-day forfeiture of pay for Allegation 3;
- an additional 3- to 5-day forfeiture of pay for Allegation 4;
- a demotion to the next level of pay for one year;
- close supervision for a period of one year;
- ineligibility for promotion for a period of one year; and
- a direction for mandatory training in the databases.

[172] The conduct measures proposed by Constable Murchie are less onerous than those proposed by the Conduct Authority. He proposed the following:

- a forfeiture of pay between 6 to 15 days;
- close supervision for a period of one year; and
- the training recommended by the Conduct Authority.

[173] My role is to find the appropriate and proportionate conduct measures for the circumstances of this case, taking into consideration the material that is before me, the evidence I heard during the conduct hearing, and the submissions of the parties in both phases of the conduct hearing.

Analysis

[174] To modernize how the RCMP deals with members' conduct, RCMP senior management adopted the recommendations found in two separate reports authored by Paul Ceyssens and Scott Childs. When the first report⁶ was released, RCMP conduct boards, including myself, moved away from the outdated test for determining conduct measures established by the RCMP External Review Committee prior to the amended provisions of the *RCMP Act*, which came into force on November 28, 2014.

[175] The current process used to determine appropriate conduct measures employs five general principles at its foundation. The *Phase 1 Final Report* summarized the five foundational principles as follows:

[...]

- a) A conduct measure must fully accord with the four purposes of the police complaint and conduct process:
 - i. the public interest: ensuring a high standard of conduct in the RCMP, and public confidence in the RCMP;
 - ii. the RCMP's interests in its 'dual capacity' as an employer seeking to maintain integrity and discipline in the workplace, and as 'a public body responsible for the security of the public':
 - iii. the interests of the Subject Member in being treated fairly; and
 - iv. in cases where others are affected, to ensure that the interests of those individuals (such as public complainants or other RCMP employees) are addressed.
- b) Corrective and remedial dispositions should prevail, where appropriate.

⁶ Ceyssens, Paul and Childs, W. Scott, *Phase I Final Report Concerning Conduct Measures, and the Application of Conduct Measures to Sex-Related Misconduct under Part IV of the Royal Canadian Mounted Police Act*, February 24, 2022 (Phase I Final Report).

- c) A presumption that the least onerous disposition applies, which presumption would be displaced if the public interest or other specified considerations should prevail.
 - d) Proportionality.
 - e) A higher standard applies to police officers' conduct, compared to employees generally, principally because police hold a position of trust.
- [...]⁷

[176] I will apply these principles to the circumstances of this case and the parties' submissions.

Accordance with the purposes of Part IV of the RCMP Act

[177] The first foundational principle states that conduct measures must be in accordance with the purposes of Part IV of the *RCMP Act*. This Part deals with the complaint and conduct processes of the RCMP. Section 36.2 of the *RCMP Act* sets out the purposes of Part IV. Part IV seeks to address four specific interests:

- a) the public interest;
- b) the RCMP's interests as both an employer and a public institution;
- c) the member's interest in being treated fairly; and
- d) the interests of affected individuals.

[178] The purposes of Part IV relating to the public interest are found in paragraphs 36.2(b) and (c) of the *RCMP Act*:

- [...]
- (b) to provide for the establishment of a Code of Conduct that emphasizes the importance of maintaining public trust and reinforces the high standard of conduct expected of [RCMP] members;
 - (c) to ensure that members are responsible and accountable for the promotion and maintenance of good conduct in the Force.

[...]

⁷ *Phase I Final Report*, at page 22.

Public interest

[179] In *Eden*,⁸ the Commissioner's delegate noted that RCMP members are expected to keep their communities safe and conduct themselves in a manner that upholds the RCMP core values. The public needs to have confidence that confidential information entrusted to police services is used only for the purposes for which it is provided; that is a law enforcement purpose.

[180] In this case, Constable Murchie exploited his role as a member of the Force to query databases to obtain personal information about 11 individuals for his personal use. In doing so, he failed to adhere to the RCMP's core values and caused a loss of community confidence in the RCMP.

RCMP's interest

[181] The RCMP's interest relates to its dual role as employer and public institution.

[182] As an employer, the RCMP must maintain integrity and discipline in the workplace. RCMP management has signalled its intention to treat conduct measures involving the misuse of police databases by its members more seriously. These signalled intentions apply to both of the RCMP's roles.

[183] As a public institution, the RCMP is responsible for the security of the public. As such, the RCMP has a responsibility to ensure its members adhere to the public's expectations as it pertains to the vast amounts of confidential information about our citizenry that Canadian police services collect and retain for law enforcement purposes. This becomes significantly more important when society is concerned with the privacy of the information held in the hands of government institutions.

Constable Murchie's interest

[184] Constable Murchie's interest is to be treated fairly. Constable Murchie has been afforded all the opportunities of procedural fairness provided for in the RCMP conduct process. He

⁸ *Constable Eden v Commanding Officer, "E" Division*, 2021 CAD 19 [*Eden*], at paragraph 87.

continues to have the ability to appeal both my findings on the allegations and the conduct measures I impose once he has been served with this decision.

Affected individuals' interest

[185] Constable Murchie's actions invaded the privacy of at least 11 people who had a reasonable expectation that their personal information contained in the databases would not be used by an RCMP member for anything other than a law enforcement purpose. I am not aware that these 11 people know that Constable Murchie made these queries. The fact that some of the people are family or friends does not excuse Constable Murchie's actions.

[186] Constable Murchie's invasion of the privacy of these 11 individuals cannot be undone. However, should the affected individuals become aware of Constable Murchie's actions, then they can gain some comfort in knowing that the RCMP has treated this matter seriously and has taken steps to hold Constable Murchie accountable for his actions.

Conclusion on the purposes of the RCMP Act

[187] All four of the interests in accordance with the purposes of Part IV of the *RCMP Act* favour the imposition of serious conduct measures in this case.

Corrective and remedial conduct measures should prevail

[188] The second foundational principle is that corrective and remedial conduct measures should prevail. Paragraph 36.2(e) of the *RCMP Act* states that one of the purposes of Part IV of the *RCMP Act* is for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct and, where appropriate, that are educative and remedial rather than punitive.

[189] The seriousness of Constable Murchie's actions override the ordinary prevalence of corrective and remedial conduct measures in this case.

Presumption of least onerous disposition

[190] The third principle is that there is a presumption that the least onerous disposition should apply. The presumption can be displaced if the public interest or other considerations prevail. I find that it is in this case. Constable Murchie's misuse of the databases is serious and undermines the role of the police.

Proportionality

[191] The proportionality analysis is the most technical and complex aspect to the application of the five foundational principles.

[192] Paragraph 36.2(e) of the *RCMP Act* and subsection 24(2) of the *CSO (Conduct)* state that conduct measures are to be proportionate to the nature and circumstances of the contravention of the Code of Conduct.

[193] The application of this fourth principle is similar to the framework established by the RCMP External Review Committee under the former RCMP discipline system. Under the former framework, conduct boards were required to ascertain the appropriate range of conduct measures and then examine the mitigating and aggravating factors to determine the appropriate conduct measures for the specific case. Until recently, conduct boards applied this test to arrive at appropriate conduct measures.

[194] Under the modernized approach set out in the *Phase I Final Report*, conduct boards must first identify the relevant proportionality factors, then assess whether each identified factor is mitigating, aggravating or neutral. Finally, the conduct board must balance or weigh these considerations to arrive at appropriate conduct measures.

[195] The *Phase I Final Report* lists 15 proportionality factors. This is not an exhaustive list. I will assess each one in some fashion.

Public interest

[196] I already addressed the public interest component to a degree, but I will add that, given the nature of Constable Murchie's conduct and the direct relationship between his actions and his law enforcement duties, the public interest militates in favour of significant conduct measures. This is an aggravating factor.

Seriousness of the conduct

[197] The seriousness of the conduct is a fundamental consideration in every conduct proceeding. I find several aspects to this proportionality factor in this case.

[198] First, Constable Murchie's conduct is serious because he violated the public trust when he accessed the personal information of the 11 affected individuals. Law enforcement collects a wide range of information about people. The information collected and stored in the various government databases that police officers can access is essential to law enforcement. Any misuse of these databases, even on a casual basis, erodes the public trust in the police and fuels discussions to curtail the powers of the police to acquire and retain this information.

[199] Constable Murchie also violated the trust of the RCMP's law enforcement partners. PRIME and CPIC are databases shared by numerous police services. A breach of the policies associated with these databases by a member of one police service impacts on all police services sharing the databases.

[200] I have no evidence that Constable Murchie shared the information he obtained from his unauthorized searches or that he did anything with it. This is not a mitigating factor. It is at best a neutral factor.⁹

⁹ *Fraternité des policiers et policières de Saint-Jean-sur-Richelieu inc. c St-Jean-sur-Richelieu (Ville de)*, 2016 QCCA 1086 [Fraternité des policiers], at paragraphs 78 and 79.

[201] Constable Murchie accessed information with no law enforcement purpose, with no right to know and no need to know. This is serious. Constable Murchie has violated the trust of his employer. This is a trust that once lost is hard to regain.

[202] A second aspect to the seriousness of Constable Murchie's conduct is that his misuse of the databases spanned six years. During that time, Constable Murchie had reminders in various forms that what he was doing was not authorized.

[203] A third aspect is that although I am only considering two allegations, each established particular in Allegation 3 could have been presented as an allegation unto itself. I am considering many separate acts of misconduct and with many separate acts of misconduct come many individuals affected by his misconduct.

[204] Given the foregoing, I find the seriousness of Constable Murchie's conduct to be a significant aggravating factor.

Recognition of the seriousness of the misconduct

[205] Constable Murchie accepted responsibility for his actions in admitting numerous particulars. The particulars established in Allegation 3 would not be established but for Constable Murchie's admissions because the Conduct Authority presented no evidence to support his claim that Constable Murchie's queries were not authorized, apart from Particular 22.

[206] Several of his supporters mention in their letters that Constable Murchie expressed remorse for his action to them.

[207] He also expressed remorse to Esa Porter during his counselling sessions with her. I accept this statement in her report as fact rather than a medical opinion.

[208] In his statement to me during the conduct hearing, Constable Murchie acknowledged the seriousness of his actions. I believe he was sincere in his statements.

[209] Constable Murchie was somewhat cavalier about accessing the databases at times during the investigation and in his testimony. However, he understood the seriousness of his actions

during the conduct hearing once he heard from the various expert witnesses. I am confident that he will not re-engage in this type of behaviour in the future. Consequently, this proportionality factor is mitigating.

Disability and other relevant personal circumstances

[210] Constable Murchie presented several medical reports, which indicate that he has been diagnosed with and received treatment for an operational stress injury. Neither Constable Murchie nor any of the submitted reports provide a causal link between his operational stress injury and his conduct.

[211] Constable Murchie has also experienced personal setbacks in his personal life. I have no evidence that his personal circumstances have any connection to the established allegations.

[212] I find this to be a neutral proportionality factor.

Employment history

[213] I have already set out Constable Murchie's employment history. I note that he has 16 years of service. In that time, Constable Murchie has experienced several periods of extended medical leave, parental leave and a 3.5-year suspension with pay relating to this conduct proceeding. Most of the medical leave appears to be duty related, while he is entitled to parental leave.

[214] He has no prior history of misconduct.

[215] The parties provided no information with respect to Constable Murchie's performance in the RCMP. All the support letters focus on him as a single parent of five children. This tells me nothing about him as a member of the RCMP. Several letters indicate that he approaches his job with compassion and caring for others.

[216] In the absence of evidence relative to his employment history, I consider this a neutral proportionality factor.

Potential to reform or rehabilitate

[217] In his testimony, Constable Murchie indicated that, after hearing from the three expert witnesses, he now has a more solid appreciation of the inappropriateness of his actions. Several of the support letters mention that he has told others that he has learned from his involvement in this conduct process. I find it is unlikely that Constable Murchie will use RCMP databases for his personal use in the future. Therefore, I find this to be a mitigating proportionality factor.

Effect on the member and the member's family

[218] The *Phase I Final Report* states: “Some uncertainty surrounds the effect of the conduct measure on the respondent police officer (and, perhaps, the respondent’s family).”¹⁰

[219] Constable Murchie testified that he declared bankruptcy, possibly in 2018. I am not aware if he has been discharged from this bankruptcy. I have only the Subject Member Representative’s submissions on the current general state of his financial affairs. He is the single parent of five children. The cost of living today is high. Many two-income families struggle to make ends meet. Constable Murchie’s employment with the RCMP is a source of income for him. He also receives a significant VAC pension.

[220] The parties have asked me to impose varying degrees of financial penalty directly forfeited from Constable Murchie’s pay.¹¹ The direct forfeiture of pay has some educative and remedial value. However, I find the direct forfeiture of pay to be unimaginative and mostly punitive. It results in “short term pain” or “a brief inconvenience”,¹² when the deductions occur and has the potential to create unintended consequences for both the member and the RCMP if the forfeiture is beyond the member’s financial means. This is especially so when the member is already having financial difficulties. In this case, I believe that any forfeiture of pay must be tempered to avoid serious ramifications to Constable Murchie’s ability to care for his family and meet his financial

¹⁰ *Phase I Final Report*, at page 42.

¹¹ Paragraphs 3(1)(j), 4(d) and 5(j) of the *CSO (Conduct)* provide for a direct forfeiture of pay as a conduct measure.

¹² *Fraternité des policiers*, at paragraph 97.

obligations. This is not to say that I will not assign conduct measures that have a monetary consequence.

[221] I find this to be a mitigating factor for conduct measures that result in the direct forfeiture of pay. It is a neutral factor for all other conduct measures.

Parity of sanction

[222] The *Phase 2 Final Report*¹³ discusses the potential for the misuse of databases to be a criminal offence under section 342.1 of the *Criminal Code*. I specifically asked the parties to address this in their submissions.

[223] I accept that Constable Murchie's actions may constitute a criminal offence, as suggested in the *Phase 2 Final Report*; however, I will not deal with it as such in this case. The *Phase 2 Final Report* was not published until January 2023. In a Force-wide communication, dated July 5, 2023, three senior officers of the RCMP clearly identified the seriousness of the misuse of RCMP databases and that discipline measures up to and including dismissal are possible. From a procedural fairness perspective, the allegations are not of a criminal offence. They are allegations of misuse of computers and databases. Constable Murchie needed to know from the outset of this proceeding that the criminal test could be applied to the allegations so that he could craft his entire response to the allegations accordingly. I find it procedurally unfair to apply management's current stance on the misuse of databases to this case.

[224] Although the RCMP has always treated the misuse of RCMP databases seriously, the July 5, 2023, Force-wide communication signals a significant shift in the consequences for such misuse. Not only is the RCMP's stronger stance within management's purview, I suggest it is their obligation to ensure that the confidential information the RCMP has been entrusted with is protected. A page has been turned by management's communication of stronger conduct measures for the misuse of RCMP databases. However, I must consider previous cases relative to

¹³ Ceyssens, Paul and Childs, W. Scott, Report to Royal Canadian Mounted Police, *Phase 2 Final Report Concerning Conduct Measures, and Related Issues under Part IV of the Royal Canadian Mounted Police Act*, January 31, 2023 (*Phase 2 Final Report*), beginning at page 40.

contraventions of section 4.6 of the Code of Conduct decided before the noted directive. These cases exclusively use forfeiture of pay as the appropriate conduct measure(s).

[225] I find this to be a neutral proportionality factor.

Specific and general deterrence

[226] My discussion on parity of sanction is also relevant to this proportionality factor. The Court of Appeal of Quebec notes¹⁴ that the likely reason for the frequency of police discipline cases in Quebec involving illegal or unauthorized use of police databases might be the relative leniency in sanction that such cases have historically received despite the objectively serious nature of this type of breach. The Court then writes that “In short, the time has come to emphasize deterrence when sanctioning such behaviour, instead of imposing sanctions that represent nothing more than brief inconvenience.”¹⁵ The Court’s comment resonates here.

[227] Those comments were made seven years ago. The RCMP cases provided by the Conduct Authority decided after the *Fraternité des policiers* decision show that not much has changed in the RCMP relative to cases of the misuse of RCMP databases. The conduct measures imposed are small pay forfeitures.

[228] I find the need to address general deterrence in this case as an aggravating factor. Following my comment in the previous section, conduct measures in future cases may require increased sanctions to address general deterrence to ensure that management’s stronger stance is clearly understood by all RCMP employees.

[229] In terms of specific deterrence, I have been told that this conduct process has been a sufficient deterrent for Constable Murchie. This is a mitigating proportionality factor.

¹⁴ *Fraternité des policiers*, at paragraph 96.

¹⁵ *Fraternité des policiers*, at paragraph 97.

Systemic failure and organizational/institutional context

[230] I have found that Constable Murchie had sufficient training and knowledge to clearly understand that using RCMP databases for his personal use was unacceptable. I also indicated that he had online training options available to him through AGORA. Constable Murchie testified that he received little to no support from his supervisors in both Fort Smith and Trail in terms of operational guidance, direction or training. I have no evidence to the contrary.

[231] For the queries where Constable Murchie said he made to reacquaint himself with the particular database, I find that the failure of the RCMP as an organization to ensure that Constable Murchie received adequate refresher training when he moved between divisions using different primary record keeping databases and for the failure of his supervisors to provide him with adequate operational guidance contributed to his actions. Had he been provided adequate training and operational guidance from his supervisors Constable Murchie would not have had to make inappropriate queries to reacquaint himself with the databases. Consequently, I find this to be a minor mitigating proportionality factor. This does not pertain to nine of the individuals he queried for personal reasons.

[232] I found that through the training he received, the ready accessibility of Force policy regarding the use of the databases and the several reminders in the user agreements that he signed, Constable Murchie was aware of the proper use of the databases. He was also aware of the consequences of misuse. For the queries that were made for purely personal reasons, I find this to be an aggravating factor.¹⁶

Damage to the reputation of the RCMP

[233] The Quebec Court of Appeal in *Fraternité des policiers*¹⁷ and the Commissioner's delegate in *Eden*¹⁸ both determined that a police officer's misuse of a police database contributed to a loss

¹⁶ In my oral decision on conduct measures, I found the latter portion of my discussion in this section to be a neutral proportionality factor; however, upon further reflection, I find this to be an aggravating factor. The fact that Constable Murchie had knowledge that the use of the databases for personal reasons was improper, yet he proceeded with the queries anyway is clearly aggravating. This finding does not alter the conduct measures I imposed.

¹⁷ *Fraternité des policiers*, at paragraph 86.

¹⁸ *Eden*, at paragraph 116.

in public confidence. Although I have no evidence as to the extent of the damage caused to the RCMP's reputation, I am confident in finding that his actions contributed to a loss in public confidence should the public become aware of his actions. This is an aggravating proportionality factor.

Balancing of the proportionality factors

[234] Four proportionality factors that appear in the *Phase 1 Final Report* are not relevant to this proceeding. These include: the effect of publicity; provocation; procedural fairness considerations; loss resulting from unpaid interim administrative suspension.

[235] I found the proportionality factors of the public interest, the seriousness of Constable Murchie's conduct, general deterrence and damage to the reputation of the RCMP are aggravating. Constable Murchie's recognition of the seriousness of his conduct, his potential for reform, specific deterrence and the impact on Constable Murchie and his family as it pertains to a financial penalty are mitigating proportionality factors. Four proportionality factors including disability, employment history, the effect on Constable Murchie and his family for non-financial conduct measures and parity of sanction are neutral factors.

[236] The aggravating factors outweigh the mitigating factors. Each of the aggravating factors is significant and favour significant conduct measures. Three of the mitigating factors are somewhat related. The remaining mitigating factor only relates to a financial penalty which I have considered.

Higher standards apply to police officers

[237] Paragraph 36.2(b) of the *RCMP Act* states that one of the purposes of the RCMP conduct regime is to provide for the establishment of a Code of Conduct that emphasizes the importance of maintaining the public trust and reinforces the high standard of conduct expected of members.

[238] The courts and RCMP conduct boards have long recognized that police officers are held to a higher standard of conduct than the general public. The public has a right to expect that RCMP members, whom they trust to uphold and enforce the law, will demonstrate courtesy and respect for others at all times and to remain on duty to perform their assigned responsibilities during their

scheduled shift, unless properly authorized otherwise. Constable Murchie's behaviour breached that trust in significant ways.

Decision on conduct measures

[239] Having found Allegations 3 and 4 established and having applied the five foundational principles to the circumstances of this case, I impose the following conduct measures:

- a) a reprimand pursuant to paragraph 3(1)(i) of the *CSO (Conduct)* with this decision constituting the reprimand;
- b) a direction to work under close supervision for a period of one year to start upon Constable Murchie's return to work pursuant to paragraph 3(1)(b) of the *CSO (Conduct)*;
- c) a direction to complete the CPIC *Query Narrative (CPIC) – National* (CN0091) and *Introduction to PRIME – “E” Division* (000839) online training courses in Agora and to provide proof of completion to your Detachment Commander within two weeks of Constable Murchie's return to work pursuant to paragraph 3(1)(c) of the *CSO (Conduct)*;
- d) a financial penalty of 120 hours to be deducted from Constable Murchie's pay pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*; and
- e) an ineligibility for promotion for a period of three years pursuant to paragraph 5(1)(b) of the *CSO (Conduct)*, starting immediately.

[240] I did not include PROS training in my direction to complete online training because Constable Murchie no longer has access to PROS, so training on a database he cannot access is not practical and has no remedial value.

[241] The conduct measures I imposed are a mix of corrective and remedial measures as required by the second foundational principle. They also include punitive measures that I feel do not offend the presumption that the least onerous conduct measure will be imposed because of the public interest aspects I addressed.

[242] Constable Murchie is at a time in his career where most members are anxious for a promotion to the next level. Promotion to the next rank in the RCMP is a significant consideration

for most members. That is why demotion is a significant conduct measure; however, as Constable Murchie is a constable at the top pay level, the only demotion I could impose would be a reduction to the next lower rate of pay pursuant to paragraph 5(1)(e) of the *CSO (Conduct)*. The ineligibility for promotion has monetary implications. He has exhibited extremely poor decision-making in this case. The deferral of promotion will allow him to work on his decision-making skills as they relate to his responsibilities as a member of the Force and how his decisions impact the public confidence and trust in the RCMP.

[243] Constable Murchie's conduct runs contrary to the exemplary image and integrity required to perform the duties of a police officer. He abused his power and privilege as a police officer. His actions seriously tarnished the RCMP's image and contributed to the loss of public confidence and respect for the RCMP and police in general.

[244] Constable Murchie has been provided an opportunity to continue his career in the RCMP. His supervisors and any appropriate conduct authority will seriously review any future contraventions of the Code of Conduct, which could lead to his dismissal from the Force.

CONCLUSION

[245] This decision constitutes my written decision required by subsection 45(3) of the *RCMP Act*. Subsection 25(3) of the *CSO (Conduct)* requires that it be served on the parties. The decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of the decision (section 45.11 of the *RCMP Act*; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289).

September 16, 2024

Kevin L. Harrison
Conduct Board