ROYAL CANADIAN MOUNTED POLICE

in the matter of
an appeal of a conduct board decision pursuant to subsection 45.11(1) of the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Between:

Corporal Gregory Deagle
HRMIS Number 000099400

(Appellant)

and

Commanding Officer, "H" Division
Royal Canadian Mounted Police

(Respondent)

(the Parties)

CONDUCT APPEAL DECISION

ADJUDICATOR: John Lawrence
DATE: September 26, 2024

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SYNOPSIS

The Appellant faced one allegation under section 7.1 of the RCMP Code of Conduct for engaging in discreditable conduct in a manner that is likely to discredit the Force. The Appellant was accused of initiating non-consensual sexual contact with his step-daughter, Ms. B., who was a vulnerable person given her age and their relationship.

The Appellant contested the allegation. A Conduct Board found that the allegation was established and ordered the Appellant to resign within 14 days or be dismissed from the Force. The Appellant is appealing this decision.

On appeal, the Appellant is arguing that the Conduct Board: demonstrated a reasonable apprehension of bias; erred in coming to different conclusions than the criminal trial judge; erred in preferring Ms. B.'s testimony where this testimony differed from the Appellant's; and violated the principle of proportionality in ordering the Appellant to resign.

The Appeal was referred to the RCMP External Review Committee (ERC) for review. The ERC found that the Conduct Board: did not err with respect to how it handled the criminal court decision or witness testimony; did not breach the relevant principles of procedural fairness; and did not render a clearly unreasonable decision.

The Adjudicator finds that the Conduct Board's decision was supported by the Record; did not contravene the applicable principles of procedural fairness, is not based on an error of law, and is not clearly unreasonable. The Appeal is dismissed.

INTRODUCTION

[1] The Appellant is appealing the decision of an RCMP Conduct Board in finding established the Allegation of engaging in discreditable conduct in a manner likely to discredit the Force, contrary to section 7.1 of the RCMP Code of Conduct, a Schedule to the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281. Based on that finding, the Conduct Board ordered the Appellant to resign within 14 days or be dismissed.

[2] The Appellant contends that the decision contravenes the principles of procedural fairness, is based on an error of law, and is clearly unreasonable. He argues that the Conduct Board: was biased against him by presuming culpability and ignoring or dismissing evidence in his favour; did not properly apply the balance of probabilities standard because it reached a different outcome than his criminal trial concerning the same alleged behaviour; and imposed disproportionate conduct measures.

[3] The Appellant is requesting for the dismissal order to be rescinded and to be reinstated in the RCMP.

[4] In accordance with subsection 45.15(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], the Appeal was referred to the RCMP External Review Committee (ERC) for review. In a report issued on July 24, 2024 (ERC C-2023-007 (C-111)) (the Report), the Chair of the ERC, recommended for the Appeal to be dismissed.

[5] Under subsection 45.16(11) of the *RCMP Act*, the Commissioner has the authority to delegate his power to make final and binding decisions in conduct appeals. I have received such a delegation.

[6] In this matter, the Conduct Board imposed a publication ban on any information that could serve to identify the victim. Accordingly, I will adopt the ERC approach and refer to the victim as Ms. B.

[7] In rendering my decision, I have considered the package of material that was before the Conduct Board, as well as the 432-page Appeal Record (the Appeal) prepared by the Office for the Coordination of Grievances and Appeals, and the Report, collectively referred to as the Record.

I refer to documents in the Record by way of document title and page number of the electronic file.

[8] For the reasons that follow, the Appeal is dismissed.

BACKGROUND FACTS

[9] The ERC summarized the factual background leading to the conduct hearing (Report, at paragraphs 5 to 9):

> [5] The Appellant was in a common-law relationship and resided with Constable (Cst.) W. Cst. W has a 16-year old daughter, Ms. B, from a previous marriage. At the time of the events, Ms. B. did not reside with them, but did on occasion stay over at their residence.
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> [6] On the evening of December 25, 2019, the Appellant, Ms. B and Cst. W were planning on watching a movie. However, the Appellant fell asleep on the couch while Cst. W went to bed [citation omitted]. There is a discrepancy on how the incident began which I will canvass below when summarizing the witnesses' evidence. I think it is sufficient, at this point, to say that Ms. B found herself first being hugged by the Appellant while he was lying on the couch. He was rubbing her back and went, according to Ms. B, too low on her lower back, and touched the crack of her behind under her pants and underwear. When her leg felt numb from sitting in an uncomfortable position, she wanted to get up but the Appellant asked her to lie completely beside him on the couch. While they were in a "spooning" position, he continued to massage her back under her shirt and again felt her buttocks underneath her pants. The Appellant then indicated that he needed to go to the washroom, asked her to stay so that they could watch a movie, but Ms. B left to go to bed. The Appellant then texted Ms. B past midnight regarding some picture he had chosen of her for his contacts.
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> [7] The next day, Ms. B went to her father's house, an RCMP member as well, and explained to him and his wife what had happened with the Appellant. Upon her father's urging, Ms. B called her mother and told her what had happened. On December 28, 2019, Ms. B's father made a complaint to the RCMP [citation omitted]. The provincial Serious Incident Response Team (SIRT) was contacted and they launched a criminal investigation into the Appellant's actions.
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> [8] On January 6, 2020, the Respondent issued a *Code of Conduct* investigation mandate letter which contained the following allegation:
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> > *Allegation 1: On or about December 25, 2019, at or near* [location redacted], *Province of Nova Scotia, while off duty,* [the Appellant] *did sexually assault* [Ms. B]. *It is therefore alleged that* [the Appellant] *has*

> *engaged in Discreditable Conduct contrary to Section 7.1 of the RCMP Code of Conduct.*
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> [9] On the same day, the Respondent issued an order of temporary suspension with pay against the Appellant, who was off duty sick (ODS) at the time. Following the SIRT investigation, the Appellant was issued an Undertaking for Sexual Assault with a court appearance scheduled for March 4th, 2020. The Professional Responsibility Unit Investigator completed his investigative report on March 2, 2020 [citation omitted].

[10] On May 26, 2020, the Conduct Authority Representative filed a *Notice to Designated Officer to Initiate a Hearing*. The Appellant was subsequently served with a *Notice of Conduct Hearing* (NOCH) on July 20, 2020 (Record, Signed Affidavit of Service, at page 1).

[11] The *Notice of Conduct Hearing* delineated the following Allegation and Particulars (Record, Cpl. Deagle signed NOCH, at pages 1 to 5):

> **Allegation 1**
>
> On or about December 25, 2019, at or near [location redacted], Province of Nova Scotia, while off duty, [the Appellant] behaved in a manner that is likely to discredit the Force, contrary to Section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.
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> Particulars
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> 1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "H" Division, [location redacted], Nova Scotia.
> 2. You were in a common-law relationship with RCMP [Cst. W.] and resided together with her in the town of [name redacted]. [Cst. W.] has a sixteen year old daughter, [Ms. B.] from a previous marriage. [Ms. B.] did not primarily reside with you and [Cst. W.], however, did on occasion stay over.
> 3. On December 25, 2019, [Ms. B.] was staying at your residence for Christmas celebrations. During the evening, you were planning to watch a movie with [Ms. B.] and [Cst. W.], however, you fell asleep on the couch and [Cst. W.] went to bed. At approximately 10:30 p.m., [Ms. B.] was preparing to go to bed herself and attempted to wake you by grabbing onto your hand to rouse you from sleep. You proceeded to pull [Ms. B.] in close proximity to yourself onto the living room couch and committed a sexual assault upon her.
> 4. On December 30, 2019, [Ms. B.] provided a statement to Staff Sergeant [R.L.] of the [SIRT]. In her statement, [Ms. B.] described your non-consensual sexual contact with her in the following manner:

"[…] And then he's like rubbing my back which is fine because like my dad does it sometimes and it's fine that's like, and, it's just like going on for like 30 minutes but like when he was rubbing my back, like sometimes he's like rubbing my lower back then I felt like he got too low like I could literally feel like his hands on like my pants but like not like he was like totally grabbing like my whole butt or anything but like I just felt like his fingers like feeling like you know like your like uhm like my butt crack, and then he'd like take them off and stuff and that must've like 30 minutes, and then I said cause like I'm sweating I'm really hot my leg is completely numb, like I can't feel it so I sit up and I was like ok I can like probably leave now like I'm really hot and so I tell him like all of my legs numb, he's like you can put it back onto the couch so he wanted me to stay longer so I'm trying to like lift my leg on the cause I felt bad for leaving I dunno, so I didn't and I stayed, and so now I'm like laying completely on the couch, but like my legs are up and fu-stuff it's fine, and then he's like on his side and I'm like on my stomach and then he puts his leg over me so we-re kinda like spooning or something, and it was just weird. And then he started rubbing my back again and like once again he's like going too low and in my head I'm like this is too low, like too low too low, and I didn't say anything but like in my head I knew that that was too low. And then this time when he was rubbing my back he was like going up my shirt, and like doing like my shoulders and stuff, and like when he got like to my midback I was scared he was gonna undo my bra strap and then he was like um, like also rubbing my side and stuff, but it was like just too touchy after everything just happened, and then uh, he sits up, and he says he has to use the bathroom, and he looks at his phone and says oh my goodness it's already 11:30. So he gets up and then I maybe get up too, I'm like oh this is like my time I can leave now and he says no no no you stay like maybe we can put a movie on or something, and so he goes to the bathroom but I'm like I am not staying for this any longer […]"

"Yeah like, my pants they were already like low waisted so they like just go here. […] And then, but I could feel his hands go in them, so I felt like he was touching my butt, and then like, his hand like started to go like down my buttcrack like that's how low it was."

"And the he was going like different side to side and all this stuff, but he never like slipped his whole hand in there. […] It was just his fingers. […] Like probably his knuckles. […] So uncomfortable, I was like, like he was I remember he asked me a question and I I really couldn't answer I just froze I was like, like I was in my head I was like this is too low this is too low. I was, I was so uncomfortable." [citation omitted].

5. [Ms. B.] further stated that you placed your hand underneath both her pants and her underwear and that it happened: “Feel like, five times it had happened more than five.”

6. [Ms. B.] described that she felt trapped by you on the couch, as you wrapped your arm and leg around her and held onto her:

> “I’m not in a comfortable position, and then he starts like rubbing my back he’s like hugging me and we’re talking and then he starts to rub my back like my lower back, and then starts like slipping his hands down my pants a little bit, and I’m thinking too low too low, this is too low, and then he’ll come back up and then he’ll go back down, and then that happened for like 30 minutes and I sat up and I was like I cannot feel my leg and we’re kind of laughing about it but I think it’s really heavy, and all this stuff, and so he just tells me to rearrange my body so I’m in a more comfortable position, so I’m like ok I go put my leg up, and he’s like holding me and then he puts his like leg around me so one arm is like under the other one is kind of over top when he’s not rubbing my back or he will be rubbing my back and then his leg is on me, on my legs, and I kinda felt trapped I guess cause I was squished.”
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> “[…] I tried to stand up so I could leave, and he’s like just like put your leg up like that so that I’m completely laying on the couch beside him, but I still try to leave again, and he’s like just put your leg up so you’re more comfortable, so it was like hard to do cause my leg was really heavy, and like I got it up and I feel like he was like holding my waist. […] To help keep me on the couch, but […] Yeah”
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> “Um, it just made me feel even more uncomfortable so I kinda felt like I was trapped, but uh huh. […] He was using me as like a teddy bear like he was just like totally curled up like snuggling, and so […] Yeah well I guess he put some pressure.”

7. [Ms. B.] as a young person and your step-daughter, is a vulnerable person under your care as a step-parent. You took advantage of [Ms. B.] for your own sexual purposes. At no time, did [Ms. B.] consent to your unwanted contact of a sexual nature upon her. You violated the bodily integrity of [Ms. B.] and caused her further anxiety by sending an unnecessary text message following the sexual assault:

> “[…] and then I go to bed, I close my door like I keep my lights on cause I am I am freaked out I am scared and I just I have the shivers I was so, so uncomfortable, and then I didn’t go to bed til like three o’clock cause I could not sleep I was […] I was just, my mind was racing. Oh and then at twelve o’clock though, um this like we went to bed like it was 11:30 [p.m.] when we left the living room so it was maybe 11:45 [p.m.] when we went to bed,

> and then at 12:16 [a.m.] he texts me because later that day on Christmas he was saying how he like he wanted a new picture for me for his contact because the one he had was from when I was really little. […] So he wanted like an updated one, but, I didn't wanna give him like a nice one so I went on snapchat and like took all these ones with like silly filters or something like they were just like not […] Just funny ones, and then at 12:16 [a.m.] that night like I'm freaked out I'm in my bed I get a text from him and he saved one of the pictures and he sent it back to me and he said um I think I'm gonna go with this one and like with the picture, and I was like mm yeah that's my favourite one, and then he texted back and I was like I'm not gonna answer that I'm".
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> 8. The following day, [Ms. B.] disclosed your actions to both her father and [Cst. W.]. When [Cst. W.] confronted you about your actions, you reacted by claiming: "[…] I said okay well then you hear that this step-father basically hugs her for an inappropriate amount of time and he's like, okay this is ridiculous like, instantaneous eh, denial and of, of sexual intent, he's like it was a back rub [W.], I gave her a back rub. I don't know, he's like I woke up and we were talking, and she's beside me on the couch, she's like, I just, he's like there's no, he, and basically he just st – he's like just no."
> 9. You were criminally charged with sexual assault.
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> [*Sic throughout*]

[12] After receiving the *Notice of Conduct Hearing*, the Grievor provided a response pursuant to section 15(3) of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [*CSO (Grievances and Appeals)*]. The ERC summarized the response as follows (Report, at paragraph 12):

> [12] […] In this response, the Appellant indicated that he fell asleep on the couch and when he awoke, Ms. B was lying on the couch beside him on her stomach with her face looking away from him and her legs were not fully on the couch [citation omitted]. He denied pulling Ms. B onto the couch. The Appellant further denied any sexual contact with Ms. B. While he admits rubbing her back with her consent, he denied touching her buttocks or touching inside her pants or underwear. The Appellant admitted that, after a while, Ms. B stood up and he made room for her on the couch. He touched her hand and asked her if she wanted to lie back down on the couch, which she did. The Appellant also admitted to texting Ms. B later that night requesting an updated photo of her for his contacts.

CONDUCT PROCEEDINGS

[13] Given that the Appellant was also charged criminally for his alleged behaviour, the Conduct Board delayed the hearing until resolution of his criminal trial in April 2022.

[14] The ERC summarized the criminal trial decision as follows (Report, at paragraph 14):

> [14] The Appellant was acquitted of all charges. The parties provided the provincial court's decision contained in a trial transcript in their joint book of documents. [citation omitted]. The Appellant admitted during his trial that he did not have Ms. B's consent to touch her, but denied that there was any sexual purpose. Having found all witnesses credible and reliable, including Ms. B and the Appellant, and applying the legal principles of *W.D.*, the provincial court judge could not reject the Appellant's evidence. As a result, there was a reasonable doubt regarding the nature of the touching; i.e. that the Appellant's touching was for a sexual purpose. Therefore, the Crown had not proven beyond a reasonable doubt the essential elements of a sexual assault pursuant to section 265(1) of the *Criminal Code*, *Ewanchuk* and *Chase* [citations omitted].

[15] The conduct hearing proceeded from November 2 to 4, 2022. The conduct measure decision was issued on November 9, 2022. The Conduct Board heard three witnesses: Ms. B., her mother Cst. W. and the Appellant.

Evidence on Allegation

[16] The ERC summarized the evidence provided by each of the Parties that is relevant to this Appeal (Report, at paragraphs 16 to 25):

> *a) Ms. B*
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> [16] Ms. B is the complainant and was the first to testify at the hearing. Ms. B first testified about the nature of the relationship she had with the Appellant. She indicated that she never was a "big fan" of his because she has a bubbly personality and he is very strict and "just bland". They were not close. Ms. B then related that she had quit competitive gymnastics when she was 15 years old because of a back injury for which she received acupuncture and saw a chiropractor. She also testified that she is no longer close with her mother and does not talk to her much.
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> [17] Regarding December 25, 2019, Ms. B testified that by 5pm, there was only herself, her mother and the Appellant at their house. The plan was for them to watch a movie at 9pm in the living room. Ms. B's mother went to

take a shower and did not come back to the living room and they ended up watching a television show instead. After the show, she went to the Appellant, who was sleeping on the couch, to wake him up since she was also going to bed. She grabbed his hand to shake him awake and the Appellant pulled her in for a hug. Ms. B testified that they usually don't hug very much because they weren't close, she wouldn't even have sat down on the couch normally. According to her testimony, the Appellant then started rubbing her back all over, feeling for knots. That's when she felt his fingers from the knuckles slip into the waistband of her pants and she felt his middle finger at the top of the crack of her behind. She was thinking "this is too low". She stated that it made her feel uncomfortable. Ms. B stated that this happened about five or more times for about 30 minutes. At this point, she was still sitting on the couch in an uncomfortable position.

[18] Ms. B then testified that she counted to three and stood up and felt relieved that she could go to bed. The Appellant then told her to get in a more comfortable position and put her legs on the couch, and she obeyed. She did not express to the Appellant that she was uncomfortable. The Appellant was laying on his side while she was laying on her stomach, looking away from him. She stated that the Appellant put his leg over hers and was inappropriately cuddling her. Again, Ms. B didn't say anything to the Appellant because she didn't understand what exactly was happening. The Appellant started rubbing her back again, this time under her shirt and going again too low into her waistband and the crease of her behind. Ms. B testified that she was stiff and couldn't focus on the conversation they were having. When the Appellant got up to go to the bathroom, Ms. B felt a huge relief because she was going to "get out of there". The Appellant invited her to stay and maybe watch a movie, but she left to get ready for bed. He met her in the hallway bathroom and hugged her again and told her to let him know if she ever wanted another massage. The Appellant later texted her regarding some photos with silly filters she had sent him earlier at his request and indicating which one he had chosen to replace an older picture of her.

[19] The next morning, Ms. B said that she was avoiding the Appellant, who was acting like nothing had happened. Her mother then drove her to her father's house where she told her father, his wife (stepmother) and her daughter (stepsister). Her father urged her to call her mother and tell her what had happened. Ms. B testified that she was diagnosed with depression, started therapy and was prescribed antidepressants and stress relievers because of this incident. She also stated that her relationship with her mother is not going well since her mother is still in a relationship with the Appellant and Ms. B further has a restraining order against the Appellant.

b) [Cst. W.]

[20] [Cst. W.] is Ms. B's mother and common law partner of the Appellant. She testified that she met the Appellant a few years after having been separated from Ms. B's father. She met the Appellant while he was still married which caused some issues with their daughters. In her view, the

relationship between Ms. B and the Appellant seemed to have improved over the last year.

[21] [Cst. W.] confirmed that Ms. B injured her back and had to quit gymnastics. Ms. B was following some treatments to aid in her recovery which ended in early 2019. The Appellant was well aware of Ms. B's injured back and treatments. Regarding December 25, 2019, [Cst. W.] stated that it was the best Christmas they have had as a blended family. After 45 minutes of dropping her off at her father's house, Ms. B called her and told her something weird had happened with the Appellant the night before. Ms. B told her mother that the Appellant hugged her longer than normal and that she ended up laying beside him and he was rubbing her back. [Cst. W.] then confronted the Appellant by asking him if there was something he needed to tell her about the night before. The Appellant told her that nothing unusual happened, but [Cst. W.] refused to hear him out and broke up with him. Within the next few days, the SIRT became involved and statements were taken. [Cst. W.] did not discuss the incident with Ms. B.

[22] On cross-examination, [Cst. W.] indicated that Ms. B told her that when she went to wake the Appellant from the couch, she shook his shoulder. [Cst. W.] further confirmed that Ms. B and the Appellant were not close and did not give hugs to each other. She never saw the Appellant give a massage to Ms. B, but to his own daughter yes. [Cst. W.] was also against moving this incident forward, so was Ms. B according to her, as it could be damaging to the Appellant since Ms. B was only feeling weird. However, the following day, [Cst. W.] and Ms. B's father agreed to report the incident. She further opined that it was a "bombshell" that one of her children would feel uncomfortable around her partner of many years. But she did not perceive the incident as sexual in nature nor inappropriate that the Appellant texted Ms. B past midnight. On a question by the [Conduct] Board, [Cst. W.] indicated that the Appellant had half of 750ml bottle of rhum [*sic*] on the day in question.

c) The Appellant

[23] The Appellant was last to testify. He first gave a brief summary of his career in the RCMP and his aspirations. Regarding December 25, 2019, he recollected that he was drinking rhum [*sic*] that day but was not drunk. After falling asleep on the couch, the Appellant testified that he woke up with Ms. B partially sitting next to him on the couch with her face away from him. He was surprised to see her there. Then with his left hand, he gave her a hug, rubbed her back and started chatting. He does not recall Ms. B shaking his hand to wake him. In regard to how long it lasted, the Appellant indicated that it was more like 15-20 minutes, not an hour as testified to by Ms. B. He first rubbed her back over her sweater on her lower back to find knots. When Ms. B got up because she was in an uncomfortable position, he asked her if she wanted to lay back down by reaching out his hand. She laid back down and he continued rubbing her back, but underneath her sweater to her waistband for the sole purpose of causing her some relief if she had back issues. The Appellant stated that he was cognizant of where her bra was and

> he simply skipped over it. He was adamant that he did not massage Ms. B below her waistband nor her underwear. He did acknowledge putting his leg over hers, but was not holding her down. When he came out of the washroom, Ms. B was in the bathroom and he said that if she ever needed a back rub again, to let him know. The Appellant testified that at no point did Ms. B indicate or appeared to be uncomfortable with the situation.
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> [24] Regarding the late night text, the Appellant acknowledged that he texted Ms. B after they went to bed with his choice of a picture she had sent him earlier to change her profile picture. In his view, there was no specific significance; they had had a nice day and it was a kind of goodnight. He testified that, usually, they would mostly just text each other to arrange rides.
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> [25] On cross-examination, the Appellant acknowledged that Ms. B wouldn't usually wake him up to go to bed and would simply leave him there. That's why he was surprised and found it odd to find her laying beside him. He also acknowledged that Ms. B and himself didn't really give each other hugs. He later admitted that it was possible that Ms. B did grab his arm to wake him, but he did not recall saying "come here" to her. The Appellant indicated that, in his view, it was appropriate to touch Ms. B's back without her consent as long as he didn't touch her bra strap or go inside her waistband.
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> [Citations omitted]

[17] The Appellant's representative then called one witness, Staff Sergeant A.M., the Appellant's District Commander, to testify to appropriate conduct measures. The ERC summarized his testimony as follows (Report, at paragraph 26):

> [26] […] He gave a few examples of the Appellant's good work and stated that he was a very highly functioning police officer. Since the Appellant was preparing to take the exam for a promotion to a sergeant position, [Staff Sergeant A.M.] indicated that he would have no hesitance in providing his support to the Appellant should he remain an [Operations] Non-Commissioned Officer (NCO) or supervisor at a higher level [citation omitted].

[18] The Appellant's representative also filed three performance evaluations and learning plans alongside three letters of reference.

Conduct Board decision

[19] The Conduct Board began by noting that, since the Appellant admitted he did not have consent to touch Ms. B., the crux of the Allegation was whether the Appellant touched Ms. B. for a sexual purpose (Appeal, at page 46). The Conduct Board acknowledged that the criminal trial

judge determined that there was a reasonable doubt that the touching was in fact for a sexual purpose.

[20] The ERC summarized the Conduct Board's consideration of the evidence as follows (Report, at paragraphs 29 to 32):

> [29] The Board then addressed the credibility of witnesses pursuant to *R.E.M.*, *Faryna* and *McDougall*. Regarding Ms. B, the [Conduct] Board found that she was balanced and did not seek to embellish or exaggerate her answers. Nor did the [Conduct] Board identify any inconsistencies between her statement to SIRT, her testimony at the criminal trial and her testimony at the hearing. As for the Appellant, the [Conduct] Board found him, for the most part, credible and his evidence reliable. However, it noted certain variations in his evidence between his testimony at his criminal trial and his testimony at the conduct hearing. Namely in regard to the amount of alcohol he drank on December 25 (3-4 drinks versus 12 drinks) and how Ms. B found herself to be lying on the living room couch (at trial being adamant that when he woke up Ms. B was lying next to him versus he did not recall and his memory started from the point when he woke up with her beside him). The Appellant conceded that it was possible that Ms. B grabbed his hand to wake him up, but simply did not recall. Therefore, the [Conduct] Board found that when the Appellant's evidence diverged from Ms. B's, the [Conduct] Board preferred Ms. B's evidence.
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> [30] The [Conduct] Board started with its analysis of the evidence by stating that the approach in RCMP *Code of Conduct* proceedings should be on the specific conduct alleged by the Conduct Authority. In this case, the Appellant was alleged to have engaged in discreditable conduct which included sexual assault as alleged, but on a civil standard of proof.
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> [31] On the Allegation, based on its analysis of the credibility of witnesses, the [Conduct] Board accepted Ms. B's evidence that the Appellant placed his hand underneath both the waistband of her pants and her underwear and that his middle finger touched her butt crack approximately five times. The [Conduct] Board acknowledged that both Ms. B and the Appellant stated that his leg was over Ms. B's legs when she was lying on the couch. Consent was not at issue since the Appellant admitted that Ms. B never consented to him touching her. The [Conduct] Board found that, when all the circumstances were considered, the only possible inference was that the Appellant's behaviour was sexual in nature:
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> > *[60] In this case,* [the Appellant], *who had a strained relationship with Ms. B., which did not include physical affection, pulled her down onto the couch, hugged her and proceeded to give her a back rub. When this 16-year-old got up after 30 to 45 minutes, he invited her back onto the*

> *couch, put his left leg over hers, and continued to rub her back, with his hand underneath her sweater and his eyes closed.*
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> *[61] I have already found that* [the Appellant]*'s middle finger did, in fact, reach down to Ms. B.'s butt crack approximately five times. This, in conjunction with the aforementioned surrounding circumstances, leads me to find that the only possible inference I can draw is that* [the Appellant]*'s behaviour was sexual in nature.*
>
> *[62] Therefore, I find that* [the Appellant]*'s actions does, applying the civil standard, constitute a sexual assault. He touched Ms. B., his step-daughter who was a minor and a vulnerable person under his care, without her consent and for a sexual purpose. He violated Ms. B.'s bodily integrity.*
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> [32] Applying the legal test for discreditable conduct, the [Conduct] Board further found that the Appellant's conduct was discreditable or likely to discredit the Force. It found that a reasonable person in society would find that it was "totally" unacceptable for a 45 to 50 year old male to pull a 16-year old young woman, let alone his step-daughter, onto a couch next to him, and proceed to rub her back over and under her sweater and insert his middle finger within her underwear and probe down to her butt crack. Moreover, when viewed from the lens of policing, the conduct was done by a sworn police officer whose duty is to protect the vulnerable and demonstrate exemplary behaviour on and off-duty. Lastly, the [Conduct] Board found that the Appellant's conduct was sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him. It found the Allegation established.
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> [Citations omitted]

[21] Next, the ERC summarized the Conduct Board's determination on the conduct measures, including the available range of conduct measures; the mitigating and aggravating factors; and the conduct measure that was ultimately imposed (Report, at paragraphs 33 to 35):

> [33] On conduct measures, since both parties had referred to the Ceyssens/Childs Report, the [Conduct] Board listed the five guiding principles set out in this report as a starting point. Those five guiding principles are:
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> 1) A conduct measure must fully accord with the purposes of the police complaint and discipline process;
> 2) The determination of an appropriate sanction involves, at its core, a balancing of four purposes or interests: the public interest, the RCMP's interest as an employer; the subject-member's interest to be treated fairly and, finally, the interests of those affected by the misconduct at issue;

3) There's a presumption that one should impose the least onerous disposition; however this presumption will be displaced if the public interest or other specified considerations should prevail;

4) The [Conduct] Board is required to identify the relevant proportionality considerations (mitigating, aggravating or neutral); and

5) A higher standard of conduct is expected of police officers.

[34] The [Conduct] Board then determined that the appropriate range of conduct measures was a forfeiture of pay of 45 days or more, in combination with other conduct measures, including demotion, and up to dismissal. The [Conduct] Board then listed the mitigating and aggravating factors as follows:

Mitigating factors

- The Appellant had no prior discipline nor any negative comments or logs;
- The Appellant was an above-average, dedicated member;
- The letters of support all described him as accountable, professional, community oriented and respectful;
- Although an isolated incident, considering the nature of the Allegation, the [Conduct] Board did not attribute much weight to this factor; and
- There was a minimal likelihood of reoccurrence.

Aggravating factors

- This was serious misconduct;
- The incident had a lasting adverse psychological and emotional impact on Ms. B;
- The Appellant was in a position of authority on multiple levels; and
- The Appellant is a non-commissioned officer, a supervisor, a role model and has 15 years of service, he is to be held to a higher standard than a constable.

[35] The [Conduct] Board held that, although some mitigating factors were accepted, they were not strong enough to counter the seriousness of the misconduct. Given the sacred value of Canadian society of protecting our children, the [Conduct] Board acknowledged the sexual nature of the misconduct and the vulnerable status of Ms. B given her young age. […]

[Citations omitted]

[22] Based on these findings, the Conduct Board could not justify retaining the Appellant as a member of the RCMP and directed the Appellant to resign from the Force within 14 days, or otherwise be dismissed.

APPEAL

[23] The Appellant filed his *Statement of Appeal* on November 21, 2022, raising the following grounds of appeal (Report, at paragraph 37):

> […]
>
> 1) The [Conduct] Board demonstrated a reasonable apprehension of bias against the Appellant;
> 2) The [Conduct] Board erred in law and contravened principles of procedural fairness in coming to different conclusions than the criminal trial judge;
> 3) The [Conduct] Board erred in law and contravened principles of procedural fairness in preferring Ms. B's testimony where this testimony differed from the Appellant's;
> 4) The [Conduct] Board violated the principle of proportionality in ordering the Appellant to resign.

[24] For the reasons I will discuss, I do not agree with the Appellant's characterization of the correct ground of appeal for each submission. I will address the appropriate characterization alongside the relevant standard of review for each of the Appellant's arguments.

Preliminary issues

[25] I am satisfied that there are no issues with respect to standing or timeliness of this Appeal.

Considerations on appeal

[26] The appeals process in conduct matters does not afford an appellant the opportunity to have their case reassessed from scratch (*de novo*) before a new decision maker. It is an opportunity to challenge a decision already made. In considering the appeal of a conduct board decision, the adjudicator's role is governed by subsection 33(1) of the *CSO (Grievances and Appeals)*:

> 33 (1) The Commissioner, when rendering a decision as to the disposition of the appeal, must consider whether the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.

[27] Moreover, when it comes to an appeal of conduct measures, subsection 45.16(3) of the *RCMP Act* provides the potential outcomes:

> (3) The Commissioner may dispose of an appeal in respect of a conduct measure imposed by a conduct board or a conduct authority by
>
> (a) dismissing the appeal and confirming the conduct measure; or
>
> (b) allowing the appeal and either rescinding the conduct measure or, subject to subsection (4) or (5), imposing another conduct measure.

[28] The *Administration Manual*, Chapter II.3 "Grievances and Appeals" (July 9, 2015, version) section 5.6.2, states that the adjudicator must consider the following documents in their decision-making process:

> 5. 6. 2. The adjudicator will consider the appeal form, the written decision being appealed, material relied upon and provided by the decision maker, submissions or other information submitted by the parties, and in those instances where an appeal was referred to the [ERC], the [ERC]'s report regarding the appeal.

[29] The Appellant indicated in his *Statement of Appeal* that the Conduct Board's decision contravenes applicable principles of procedural fairness, was based an error of law, and is clearly unreasonable.

Did the Conduct Board demonstrate a reasonable apprehension of bias against the Appellant?

Submissions

[30] The Appellant argues that the Conduct Board demonstrated a reasonable apprehension of bias by presuming his culpability in communications with counsel; inviting counsel to examine relevant aspects of the criminal hearing; classifying him as Ms. B.'s stepfather and dismissing the testimony of his two witnesses. Moreover, he submits that the Conduct Board was influenced by

the nature of the Allegation to the point where it declined to consider all other possible explanations for what occurred (Appeal, at page 124).

[31] The Respondent submits that the Appellant has not raised specific instances of bias. They argue that the Conduct Board did not demonstrate bias by asking the Parties to address the criminal hearing in their submissions. They further submit that the Conduct Board did not discount the Appellant's witnesses; rather, the Conduct Board observed that, while Ms. B.'s mother was credible, she was not present during the incident itself (Appeal, at page 136).

Standard of review

[32] Essentially, the Appellant claims he was deprived of the right to a decision from an unbiased decision maker, which would represent a contravention of the principles of procedural fairness, if established.

[33] When an appellant claims that a respondent's decision does not respect the applicable principles of procedural fairness, the appellant must demonstrate that the respondent did not follow adequate procedure in reaching their decision. The appellant must establish that one of the following rights have been breached:

a) the right to know what matter will be decided and the right to be given a fair opportunity to state their case on this matter;
b) the right to a decision from an unbiased decision maker;
c) the right to a decision from the person who hears the case;
d) the right to reasons for the decision.

[34] On appeal, procedural fairness is considered on the strict standard of review of correctness, as illustrated by the Federal Court of Canada:

> [48] On issues of procedural fairness, the standard of review is correctness. More precisely, whether described as a correctness standard of review or as this Court's obligation to ensure that the process was procedurally fair, judicial review of procedural fairness involves no margin of appreciation or deference by a reviewing court. The ultimate question is whether the party affected knew the case to meet and had a full and fair, or meaningful, opportunity to respond: see [citations omitted]. In *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020

> FCA 196, de Montigny JA said "[w]hat matters, at the end of the day, is whether or not procedural fairness has been met" (at para 35).[1]

Finding

[35] I agree with the ERC that this ground of appeal is without merit (Report, at paragraph 68).

[36] There is a presumption that conduct boards operate without bias and significant evidence is required to rebut that presumption. The burden for demonstrating a perception of bias rests with the party asserting it and they must do so on an objective basis. The threshold to do so is significant (Report, at paragraphs 68 to 69):

> [68] […] In *Yukon Francophone School Board*, the [Supreme Court of Canada] confirmed the test as follows:
>
> *The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:*
>
> *... what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted; Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. (dissenting)].*
>
> [69] Jurisprudence also established that there is a significant threshold to meet for someone who asserts bias. When considering the evidence in support of an argument of bias, a "real likelihood" is required rather than a "mere suspicion". In other words, a probability of bias must be demonstrated. The objective of the test is to ensure not only the reality, but the appearance of a fair adjudicative process. […]
>
> [Citations omitted]

[37] I find that the Appellant has not discharged his burden to demonstrate a reasonable apprehension of bias. The Conduct Board was permitted to seek submissions concerning the criminal trial as it was directly relevant to the matter at hand. In doing so, I am not persuaded that the Conduct Board conveyed any determination of culpability. Moreover, the Conduct Board's findings made with respect to Ms. B.'s mother were entirely reasonable considering that she was not present during the events of the Allegation. The same can be said for the findings made

[1] *Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321, at paragraph 48.

concerning the Appellant's Commanding Officer because they were reflected in the identified mitigating circumstances. Nor can any bias be discerned by the Conduct Board's willingness to classify the Appellant as the stepfather of the Ms. B. given the relationship he had with Ms. B.'s mother.

[38] Finally, the Appellant's submission that the Conduct Board was biased by the Allegation itself is a self-serving argument that amounts to an assertion that the Conduct Board's ultimate finding was clearly unreasonable. The Appellant cannot simply point to the conclusion of the conduct hearing and label the determination on the Allegation biased without substantive evidence. The Appellant's premise is insufficient to discharge the burden of persuasion.

[39] Accordingly, I dismiss this ground of appeal and I find no contravention of the principles of procedural fairness.

Did the Conduct Board err in law by coming to a different conclusion than the criminal trial judge?

Submissions

[40] The Appellant submits that the Conduct Board should be precluded from making a different finding than the criminal trial judge since both hearings relied on the same evidence (Appeal, at page 6). He further objects to the Conduct Board's decision to await the conclusion of the criminal trial and then discount the acquittal in the rendering of its own findings (Appeal, at page 136).

[41] Meanwhile, the Respondent states that the criminal trial acquittal was not determinative because the Conduct Board operates on a balance of probabilities while a criminal trial requires proof beyond a reasonable doubt, a much higher standard (Appeal, at page 136). They further note that the Appellant Representative acknowledged this distinction multiple times throughout the conduct hearing (Appeal, at page 136). Finally, the Respondent submits that the decision to hold the conduct hearing in abeyance until the conclusion of the criminal trial is irrelevant.

Standard of review

[42] I find that this argument amounts to a submission that the Conduct Board's decision relied on an error of law. An error of law concerns a failure to properly apply, interpret, or consider the

correct legal test. The standard of review for a question of law is correctness. In other words, a decision maker will receive no deference if they made an error of law.[2]

Finding

[43] I agree with the ERC that the Appellant's argument on this point is incorrect. The Conduct Board is not bound by the criminal trial acquittal and was permitted to arrive at a different conclusion given the different burdens of proof (Report, at paragraph 55).

[44] The *Administration Manual*, Chapter II.3 "Conduct", specifically states that statutory and conduct proceedings operate under distinct legal requirements:

> […]
>
> 4. 2. 1. 2. 1. The existence of statutory proceedings does not prevent you from initiating a conduct process, making a finding of misconduct on the balance of probabilities, or imposing conduct measures.
>
> 4. 2. 1. 2. 2. Statutory proceedings and conduct proceedings are separate and distinct systems that base findings on different criteria and operate under legal requirements specific to each system. The decision as to whether a conduct process should be placed on hold awaiting the outcome of statutory proceedings will be determined on a case-by-case basis, in consultation with the divisional and national conduct advisors.
>
> […]

[45] I adopt the ERC analysis as to why the Conduct Board was permitted to proceed as it did (Report, at paragraph 57):

> [57] In *College of Physicians and Surgeons of Saskatchewan* v. *Leontowicz*, the Saskatchewan Court of Appeal found that there was nothing wrong in law with an administrative tribunal concluding that "the elements of a criminal offence had been proven to have occurred based on the evidence before it and then relying on those proven facts as amounting to professional misconduct". Although the [Conduct] Board could not make a finding of criminal liability, which requires proof beyond a reasonable doubt, it did not purport to make a finding of criminal liability, but of discreditable conduct. Therefore, the Chair could find that, although the criminal trial judge could not find the Appellant

[2] *Housen v Nikolaisen*, [2002] 2 SCR 235, at paragraphs 8 and 27.

> guilty of sexual assault, it was open to the [Conduct] Board to do so based on the balance of probabilities of the evidence that was before it.
>
> [Citations omitted]

[46] The ERC further notes that while an adjudicator is permitted to find an allegation established on the civil standard following a criminal acquittal, the reverse is not true. After all, concluding that an allegation is well founded beyond a reasonable doubt but is not established on a balance of probabilities would serve to undermine the credibility of the judicial process (Report, at paragraph 58).[3]

[47] Therefore, I find that the Appellant has failed to establish an error of law with this argument.

Did the Conduct Board err in preferring Ms. B.'s testimony where this testimony differed from the Appellant's?

Submissions

[48] The Appellant submits that the Conduct Board erred in preferring Ms. B.'s testimony over his own in all instances where those testimonies materially differed, and that this impaired the outcome of the conduct hearing.

[49] The Respondent did not address this argument in their own submissions.

Standard of review

[50] A dispute over the Conduct Board's interpretation of factual evidence is reviewed under the standard of clearly unreasonable.

[51] The Federal Court of Appeal confirms that the term "clearly unreasonable" is equivalent to the common law standard of "patent unreasonableness".[4] Essentially, a decision is clearly, or patently, unreasonable if the "defect is apparent on the face of the tribunal's reasons", in other words, if it is "openly, evidently, clearly" wrong.[5] However, "if it takes some significant searching

[3] *Toronto (City) v CUPE, Local 79*, 2003 SCC 63, at paragraph 51.
[4] *Smith v Canada (Attorney General)*, 2021 FCA 73, at paragraph 56.
[5] *Canada (Director of Investigation and Research) v Southam Inc*., [1997] 1 SCR 748 [*Southam*], at paragraph 57.

or testing to find the defect, then the decision is unreasonable, but not patently unreasonable".[6] The decision must be "clearly irrational", "evidently not in accordance with reason" or "so flawed that no amount of curial deference can justify letting it stand".[7] Merely demonstrating that the reasons provided are **insufficient** is not enough.[8] Such is the standard imposed by the *CSO (Grievances and Appeals)* at subsection 33(1).

Finding

[52] I agree with the ERC that this ground of appeal is without merit (Report, at paragraph 47). As observed by the ERC, the Appellant did not specify at what points his testimony diverged from Ms. B.'s. The only aspects identified by both myself and the ERC are with respect to how Ms. B. came to be on the couch and whether the Appellant touched her butt crack. The Appellant did not specify how or why the Conduct Board's decision to accept Ms. B.'s testimony over his was erroneous.

[53] I further agree with the ERC that the Conduct Board appropriately addressed the conflicting evidence and, in doing so, made findings that were not clearly unreasonable (Report, at paragraphs 48 to 51):

> [48] In its decision, the [Conduct] Board applied the correct principles emanating from *McDougall* and *Faryna*. It further explained that it preferred Ms. B's testimony on differing counts because there were some variations in the Appellant's testimonies at his criminal trial and before the [Conduct] Board while Ms. B remained consistent.
>
> [49] There is no definitive test for the assessment of witness credibility. Assessing the credibility of a witness is as much of an art as it can be science. It has been held that "[t]he issue of credibility is one of fact and cannot be determined by following a set of rules . . .". The credibility of a witness's evidence must be assessed in the context of all the evidence before the decision maker and not in a vacuum. The assessment of the credibility of interested witnesses has been discussed as follows by the British Columbia Court of Appeal in *Faryna*:
>
> > *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal*

[6] *Southam*, at paragraph 57.
[7] *Law Society of New Brunswick v Ryan*, 2003 SCC 20, at paragraph 52.
[8] *British Columbia (Workers' Compensation Appeal Tribunal) v Fraser Health Authority*, 2016 SCC 25, at paragraph 30.

> *demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*
>
> [50] Generally, evidence is reliable when it is given by a witness who observed facts and whose ability to observe and recall can be tested through cross-examination. When determining whether evidence is credible and reliable, adjudicators often apply the test in *Faryna* when assessing disputed testimony. Adjudicators examine whether the information provided by a witness makes sense in the context of the circumstances. As mentioned by the [Conduct] Board, in *McDougall*, Mr. Justice Rothstein for the Court stated:
>
> > *However, in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the results because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case.*
>
> [51] The Supreme Court of Canada (SCC) indicated that "[r]arely will the deficiencies in the trial judge's credibility analysis, as expressed in the reasons for judgment, merit intervention on appeal". The SCC, in another case, stated that it is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events. That is why the Court decided that in the absence of a palpable and overriding error by the trial judge, his or her perceptions should be respected.
>
> [Citations omitted]

[54] I therefore dismiss this ground of appeal.

Did the Conduct Board violate the principle of proportionality by ordering the Appellant to resign?

Submissions

[55] The Appellant argues that the conduct measure imposed is clearly unreasonable because it is disproportionate to the impugned behaviour. He submits that demotion, alongside a financial penalty, would have been more consistent with relevant precedents.

[56] The Respondent states that the Conduct Board should not be expected to impose measures that are in perfect parity with past decisions. They argue that the Conduct Board appropriately considered the mitigating and aggravating factors and recognized the evolving societal expectations of police officers before arriving at the justifiable conduct measure of dismissal (Appeal, at page 140).

Standard of review

[57] Here, pursuant to paragraph 45.11(3)(b) of the *RCMP Act*, the Appellant also appeals the global conduct measure imposed by the Conduct Board.

[58] From the outset, where reasons are provided, significant deference is owed to the conduct authority who imposes conduct measures. The Supreme Court expands on the deference owed in a review of sanctions:

> [43] […] I agree that an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor can justify the intervention of an appellate court and permit that court to inquire into the fitness of the sentence and replace it with the sentence it considers appropriate. However, in my opinion, every such error will not necessarily justify appellate intervention regardless of its impact on the trial judge's reasoning. If the rule were that strict, its application could undermine the discretion conferred on sentencing judges. […]
>
> [44] In my view, an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention only where it appears from the trial judge's decision that such an error had an impact on the sentence.[9]

[59] Although the Supreme Court was speaking in the criminal context, the same principles apply here.

[60] In general, a conduct appeal adjudicator should only intervene where the conduct measure "is unreasonable, fails to consider all relevant matters (including important mitigating factors), considers irrelevant aggravating factors, demonstrates a manifest error in principle, is clearly

[9] *R v Lacasse*, 2015 SCC 64, at paragraphs 43 and 44.

disproportionate with the conduct and the sanction in other previous similar cases, or would amount to an injustice".[10]

[61] In other words, conduct measures should only be overturned on appeal in rare circumstances.

Methodology for determination of appropriate sanctions

[62] The RCMP and the ERC have long adopted a three-part process to arrive at appropriate conduct sanctions:

a) determine the appropriate range of sanction, given the seriousness of the conduct;
b) determine any mitigating and/or aggravating factors; and
c) select a penalty that best reflects the severity of the misconduct, and the nexus of the misconduct and the requirements of the policing profession.

[63] A conduct authority or conduct board is not required to specifically reference these three steps as a *de facto* test; rather, they must demonstrate that they have turned their mind to each of these elements.

[64] In this instance, the ERC notes that this is one of the first cases they've considered where both parties relied on the *Ceyssens & Childs Phase 1 Report* on conduct measures.[11] Consequently, the ERC summarized the Parties' submissions accordingly (Report, at paragraph 80):

> [80] […] Although the Respondent concurred with the Appellant's cited prior decisions for serious misconduct involving 45 to 60 days' forfeiture of pay, he pointed out that these cases were rendered prior to the Bastarache and [*Ceyssens & Childs Phase 1*] Reports. The Respondent referred to the [*Ceyssens & Childs Phase 1 Report*] to support his position that the Force's approach to sexual harassment and sexual misconduct was criticized for not assessing the public interest as a proportionality component and was not aligned with the jurisprudence of superior courts. He further submitted that the [*Ceyssens & Childs Phase 1 Report*] noted that the [Supreme Court of Canada] had reaffirmed the principle that a higher standard applies to police officers' conduct. In its decision, the [Conduct] Board referred to the

[10] Commissioner's decision D-115, at paragraph 44.
[11] Ceyssens, Paul and Childs, Scott, *Phase 1 – Final Report Concerning Conduct Measures and the Application of Conduct Measures to Sex-Related Misconduct under Part IV of the RCMP*, dated February 24, 2022 [*Ceyssens & Childs Phase 1 Report*].

> [*Ceyssens & Childs Phase 1 Report*] in discussing its five foundational principles for crafting a fit conduct measure. The [*Ceyssens & Childs Phase 1 Report*] further opines that proportionality is the most complex of the five fundamental principles that govern the process of imposing a conduct measure. It requires three decisions [citation omitted]:
>
> – First, a decision maker must identify the relevant proportionality considerations in the circumstances;
>
> – Then he must assess each relevant proportionality factor as mitigating, aggravating or neutral; and
>
> – Third, the decision maker must weigh those various considerations in accordance with the factual background of the matter and the four purposes of the police discipline process.

Summary of conduct measures determination

[65] The Conduct Board referred to each step of the conduct measures assessment. With respect to the appropriate range of sanctions, the Conduct Board noted (Record, Conduct Board Decision, at page 53):

> […]
>
> [98] […] I have considered counsels' submissions as well as the cases they presented. I find that the appropriate range for a sanction in this case is a forfeiture of pay of 45 days or more, in combination with other conduct measures, including demotion, and up to dismissal.
>
> […]

[66] Next, the Conduct Board identified the mitigating and aggravating factors. In terms of mitigating factors, the Conduct Board observed (Appeal, at pages 53 to 54):

> […]
>
> [100] From the outset, [the Appellant] has no prior discipline, nor negative performance logs or negative comments on any of the performance evaluations submitted to me. To the contrary, and as evidenced by the reference letters and testimony of his District Commander, he is reported on as being an above-average, dedicated member who is professional and proud to be a member of the Force and to serve and protect the community in which he is posted.
>
> [101] I accept the Subject Member Representative's submission that the letters of support and performance evaluations are from experienced police officers who supervised [the Appellant], over the years, as well as a partner

> from the Department of Fisheries, all of whom describe him as accountable, professional, community oriented and respectful.
>
> [102] It was suggested that this was an isolated incident and, consequently, a mitigating factor. However, considering the nature of the sexual misconduct, I did not attribute significant [weight to] this factor.
>
> [103] Finally, there is minimal likelihood of this incident reoccurring as evidenced by [the Appellant]'s acknowledgement that, in hindsight, he should have gotten up and left the room. I find that this consideration to have little weight when considering the nature of the misconduct.
>
> […]

[67] Meanwhile, the Conduct Board stressed the importance of the relevant aggravating factors (Appeal, at page 54):

> […]
>
> [104] I note that these are any circumstance attending to the commission of the misconduct that increases its guilt or enormity or adds to its injurious consequences.
>
> [105] To begin is the seriousness of this misconduct. [The Appellant] was in his late 40s at the time of the incident and knew that Ms. B. was a 16-year-old, vulnerable, young person dependent upon him, regardless of whether he considered himself a step-parent.
>
> [106] This incident has had a lasting adverse psychological and emotional impact on Ms. B. She testified that, for a long time, she blamed herself for what happened, has required ongoing therapy, antidepressants and has lost trust in individuals. Ms. B. also explained that she no longer has a relationship with her mother, Constable W., as a result of this incident.
>
> [107] [The Appellant] was in a position of authority on multiple levels. He is a police officer responsible for upholding the law and the common-law partner of Ms. B.'s mother, Constable W. There was a clear power imbalance and a breach of trust when he touched Ms. B. in a sexual manner.
>
> [108] [The Appellant] is a non-commissioned officer, a supervisor, a role model, and had approximately 15 years of service at the time of the incident. He is to be held to a higher standard than a constable.
>
> […]

[68] The Conduct Board then imposed a sanction after assessing the noted factors (Appeal, at pages 54 to 55):

> […]
>
> [109] Deterrence is of particular importance in this case, not only as a warning to other members, but also as insurance that this inappropriate and unacceptable behaviour is not repeated. The need for specific deterrence becomes even more acute when the perpetrator of the contravention is someone in a position of trust and authority, as I have found [the Appellant] to be.
>
> [110] A sacred value of Canadian society is the need to protect our children.
>
> [111] Although some mitigating factors were accepted, I find that they are not strong enough to counter the seriousness of the misconduct such as to reduce the ultimate sanction that I feel necessary, considering the sexual nature of the misconduct and the vulnerable status of Ms. B., given her young age.
>
> [112] [The Appellant]'s misconduct is serious and goes to the hear[t] of the employer-employee relationship and the public's expectation of police officers in their dealings with vulnerable children and teenagers.
>
> [113] I find that, through his misconduct, [the Appellant] has repudiated several of the essential core values of [t]he Force. His actions constitute a fundamental breach of the public trust and a repudiation of his obligations as a member of the RCMP.
>
> [114] Given the nature of the established allegation, I simply cannot justify retaining [the Appellant] as a member of the RCMP.
>
> […]

Finding

[69] I agree with the ERC that ordering the Appellant to resign was not disproportionate or clearly unreasonable (Report, at paragraph 84).

[70] The ERC accurately characterizes the Appellant's behaviour as most synonymous with sexual harassment under the *Conduct Measures Guide*, which calls for conduct measures between 20 days' forfeiture of pay up to dismissal, when the allegation falls within the aggravated range.[12] The Conduct Board's assessment of the Appellant's behaviour as well as the relevant mitigating and aggravating factors justifies the serious conduct measure imposed and this finding is not contradicted by the cases shared by the Appellant's Representative given that those cases are

[12] *Conduct Measures Guide*, November 2014, at pages 14 and 15.

distinguishable from this one based on the youth and vulnerability of Ms. B. (Report, at paragraph 83).

[71] Accordingly, I find that the Conduct Board's decision on the conduct measure is well supported and proportionate to the established particulars of the Allegation. The Conduct Board satisfied all the requirements in determining the appropriate sanctions to be imposed by: delineating the range of sanctions available; stating the mitigating and aggravating factors; and providing a rational explanation for why the Appeal must be dismissed.

[72] In sum, the Conduct Board's decision on conduct measure stands.

DECISION

[73] Pursuant to section 45.16 of the *RCMP Act*, the Appeal is dismissed and the conduct measure imposed by the Conduct Board is confirmed.

[74] Should the Appellant disagree with my decision, he may seek recourse to the Federal Court pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7.

	September 26, 2024
John Lawrence Adjudicator	Date