

Publication ban: Any information that could identify the Complainant in the present decision shall not be published, broadcast or transmitted in any way.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:

**Commanding Officer, "K" Division**

Conduct Authority

and

**Corporal Kire Kondoski**  
Regimental Number 57129

Subject Member

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**Conduct Board Decision**

Colin Miller

November 21, 2024

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Jonathan Hart, Conduct Authority Representative

John Benkendorf, Subject Member Representative

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## **SUMMARY**

Corporal Kondoski was served with a *Notice of Conduct Hearing*, which contains one allegation under section 7.1 of the RCMP Code of Conduct. He was alleged to have sexually assaulted the Complainant, which, if established, amounts to discreditable conduct.

On September 18, 2024, the Conduct Board issued his oral decision, in which the Allegation was found to be established.

On September 23, 2024, the Conduct Board provided his oral decision on conduct measures, in which he ordered the immediate dismissal of Corporal Kondoski.

## INTRODUCTION

[1] On February 20, 2020, the Complainant reported that she was sexually assaulted by Corporal Kire Kondoski during the period of July 30, 2018, to September 3, 2018,<sup>1</sup> at or near Edmonton, Alberta, while they were both posted to the Serious Crimes Branch. Consequently, the Alberta Serious Incident Response Team (ASIRT) carried out a statutory investigation. As a result of the investigation, Corporal Kondoski was initially charged with sexual assault. However, the charge was subsequently withdrawn.

[2] On March 13, 2020, pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], an RCMP Code of Conduct investigation was mandated into Corporal Kondoski's actions.

[3] On August 19, 2021, the Conduct Authority signed a *Notice to the Designated Officer*, requesting the initiation of a Conduct Hearing. On August 20, 2021, Josée Thibault was appointed as the conduct board pursuant to subsection 43(1) of the *RCMP Act*.

[4] The *Notice of Conduct Hearing* was signed by the Conduct Authority on September 28, 2021. An amended *Notice of Conduct Hearing* was signed on October 26, 2021. It was subsequently served on Corporal Kondoski on January 6, 2022, along with the investigation package.

[5] On February 8, 2022, I was appointed as the Conduct Board as Ms. Thibault was no longer available.

[6] On February 25, 2022, Corporal Kondoski provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. He admitted some of the particulars but denied the Allegation.

[7] On December 12, 2022, the Conduct Hearing began in Edmonton, Alberta. At the outset, Corporal Kondoski brought an interlocutory application for a stay of proceedings based on alibi

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<sup>1</sup> At the start of the Conduct Hearing, the parties narrowed the date range of when the incident allegedly occurred during the period of August 24, 2018, to September 3, 2018.

evidence. Consequently, the Conduct Hearing entered a four-day *voir dire*, which was adjourned for the collection and analysis of further evidence.

[8] On April 3, 2023, Constable Cam Blumel, a forensic examiner from “K” Division Digital Forensics Services, was tasked with examining data from Corporal Kondoski’s Samsung cell phone health and fitness application. He prepared a report detailing his findings. On June 13, 2023, the Conduct Authority Representative forwarded the report as well as Constable Blumel’s notes to the Subject Member Representative and the Conduct Board.

[9] On September 15, 2023, after the collection and analysis of the additional evidence, Corporal Kondoski provided his final submission in relation to his interlocutory application. The Conduct Authority provided his response on November 1, 2023.

[10] On December 22, 2023, I provided an oral decision, denying Corporal Kondoski’s application for a stay of proceedings; my written decision followed on February 22, 2024.

[11] On April 29, 2024, the Conduct Hearing reconvened in Edmonton, Alberta. However, due to a medical condition, Corporal Kondoski was unable to attend. The Subject Member Representative requested, and was granted, an adjournment until May 1, 2024, in the event that an improvement in Corporal Kondoski’s condition would permit him to attend.

[12] On May 1, 2024, the Subject Member Representative advised that Corporal Kondoski was still unable to attend the Conduct Hearing and requested another adjournment. After providing arguments with respect to my ability to proceed in the absence of Corporal Kondoski, the parties jointly requested for the Conduct Hearing to be adjourned until June 3, 2024. The request was subsequently granted.

[13] Due to travel complications, the Conduct Hearing resumed on June 4, 2024, and continued through June 7, 2024. Due to being unable to hear all the witnesses in the allotted time, the Conduct Board reconvened in September 2024 in Ottawa, Ontario.

[14] On September 9, 2024, the Conduct Hearing resumed. The Subject Member Representative called two witnesses, one of whom was Corporal Kondoski.

[15] On September 18 and 23, 2024, I delivered my oral decision on the Allegation and then on the conduct measures, respectively. This written decision incorporates and expands upon those oral decisions.

### **Publication ban**

[16] In accordance with paragraph 45.1(7)(a) of the *RCMP Act*, I order that any information that could identify the Complainant, shall not be published, broadcast or transmitted in any document or in any way.

[17] The Allegation and its particulars have been amended to reflect this publication ban.

### ***VOIR DIRE***

[18] As previously mentioned, Corporal Kondoski brought an interlocutory application for a stay of proceedings based on alibi evidence. Consequently, on December 12, 2022, the Conduct Hearing entered a *voir dire*, which was closed to the public.

[19] The Subject Member Representative provided a significant quantity of documentary evidence, including Corporal Kondoski's cell phone health and fitness application tracking data, detailing Corporal Kondoski's movements from August 24, 2018, to September 3, 2018. The Subject Member Representative also called four witnesses: Corporal Kondoski, Ms. K.K. (Corporal Kondoski's wife), Corporal Jason Hoeksma and the Complainant.

[20] The *voir dire* was adjourned to allow for retrieval and analysis of additional digital data contained on Corporal Kondoski's and the Complainant's personal devices. After the completion of the analysis, the parties provided written submissions with respect to their positions concerning the alibi evidence.

[21] On December 22, 2023, the application for a stay of proceedings was denied and the continuation of this matter was scheduled.

### **ALLEGATION**

[22] The amended *Notice of Conduct Hearing* reads as follows:

## **Allegation 1**

On or between July 30, 2018, and September 3, 2018, at or near Edmonton, in the Province of Alberta, Corporal Kire Kondoski, 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*.

### **Particulars**

1. At all material times [Corporal Kondoski was] a member of the Royal Canadian Mounted Police (“RCMP”) “K” Division [Major Crime Unit (MCU) North], Edmonton.
2. [The Complainant] is a public service employee with the RCMP. In 2018, [the Complainant] worked as an administrative resource within the Major Case Management Operational Service Centre for the identical MCU North team as [Corporal Kondoski].
3. [Corporal Kondoski] and [the Complainant] became friends while working together at MCU North section. [Corporal Kondoski was] married at the time of [his] friendship with [the Complainant]. It is acknowledged that [his] friendship with [the Complainant] initially progressed into a consensual sexual relationship. When [the Complainant] decided to end the sexual relationship, [Corporal Kondoski] responded by sexually assaulting her. On February 20, 2020, [the Complainant] reported the sexual misconduct to the RCMP and a mandated statutory investigation by [ASIRT] commenced shortly thereafter. On January 22, 2021, [Corporal Kondoski was] criminally charged with sexual assault.
4. On February 28, 2020, [the Complainant] provided a statement to ASIRT investigator Peter Draganiuk. In her statement, [the Complainant] described how when [Corporal Kondoski] approached her in March 2018, she was emotionally fragile following a relationship break-up. That [their] working relationship progressed into frequent coffees or lunch’s together and consistent daily text messaging communications over the spring and summer months. [The Complainant] further described how [Corporal Kondoski] informed her that [he was] in an unhappy marriage and that [he] had: “...never met anybody like [her], crazy about [her].”
5. [The Complainant] knew [Corporal Kondoski was] married and in her words felt “extremely guilty” for developing romantic feelings for [him]. [Footnote omitted] [The Complainant] agrees that over the summer months cuddling together progressed into consensual sexual relations, however, the guilt of the extra-marital affair compelled her to want to end the relationship. [The Complainant] further described how [Corporal Kondoski] would become frustrated and angry when she informed [him] that she needed more from the relationship and that this couldn’t go on forever. [The Complainant] became determined to end the relationship.
6. In her statement, [the Complainant] outlined a consistent pattern of clandestine late night visits following [Corporal Kondoski’s] attendance

at work related events including on the night when [he] forced her to have sexual relations with [him]:

[...] And he had come over to my apartment, um, after I think it was after he was out on a call, it was pretty late at night, and I had made up in my mind that, like this was the last time he was coming over. And we sat on the couch for a little while and I just told him I couldn't do it anymore. And and that I would like to stay friends and that I really cared about him, and I, I had told him at one point that I was falling in love with him, and I feel like an idiot saying that, and he had said the same thing to me, and then would say, we just sort of reiterated that when we were sitting on the couch together, and that like I messed up already but I just, that I'd, I just couldn't carry on like that. I don't even know how long he was over before, over, he was, he started like making his way to the front door and like he always turned the lights off whenever he came into my apartment as soon as he'd walk in he would, no matter what time of day he'd always turn off the lights and like close the blinds and stuff, so it was really dark in my apartment and, and he was just in the, in the entrance um and he was saying well if that's if that's what you really want and had his head kinda like this, and he knew that, like he, he just knew how to make me feel like I needed to go comfort him and stuff and I was just saying it's, it's, like it's this isn't what I, like I don't want to stop seeing you but I have to, I have to.

7. After [the Complainant] informed [Corporal Kondoski] that she no longer wanted to see [him] romantically, she retreated to her apartment bathroom. [He] then approached [the Complainant] from behind and started kissing her neck and licking her ear. [The Complainant] informed [him] to stop and to leave her apartment, however, [he] ignored her requests and proceeded to pick her up and carry her into the bedroom placing her on the bed. [Footnote omitted] [The Complainant] describes how [he] then immediately began trying to remove her clothing and that when she tried to stand up [he] would prevent her from leaving by pushing her chest downwards onto the bed while saying to her:

[...] one last time, one last time to say good bye, like you can't do this to me, like we can't just leave on these terms, like one last time. And I was just like yeah I was just like I didn't ah want to, like just please go you're making it harder. And then like every time I tried to get out he would push me on my chest and he'd already got my leg, like pajamas, I was in pajama shorts on. And then I tried to get up again and I was getting like so frustrated and then he'd like put his hand on my throat and pushed me back and then I just stopped and...And, and he, he was holding me down on, on my bed. And it was like one of, it was one of the times that I was getting up that he like pulled my top off and I was, I was just like, I was just kinda



laying there like I had just stopped saying anything, and I stopped trying to get up...

8. [Corporal Kondoski] forced [the Complainant] to engage in various sexual acts with [him] against her will. [He] physically overpowered [the Complainant] and assaulted her for [his] own sexual gratification purposes:

[...] And then he started having sex with me when my, like my back was still on the bed and like it was sideways, like I was, and he, like he was standing up, and then he made me flip onto my stomach and he was like holding my hair, like this, against the bed with me face, and he was holding my, he did this all the time too and the hair and the wrists that he had in one hand like this, and his other hand was like holding my wrist, he had like both, one, like his hands were like mitts, anyway he could hold both my wrists like this, and he was holding them on my back, and he was still having sex with me and I was just like laying there, and I was just, I wasn't saying anything. And he just kept repeating you know like a, one last time, one last time, and I want you to be sore, I want you to feel me. He said I want you to think about me tomorrow whenever you try and sit down. And he wo, was like, he let go of, of my wrists and was like slapping my butt. And then he like, he made me go on the floor and like with my hands on the floor, and he was holding my legs. And still I was like (unintelligible). And then he made me go on my knees and give him a blowjob when he was standing there, and he was holding my hair (unintelligible). And I was, was sitting there and I thought I was gonna throw up. And then he said he wanted to come all over my face, and I was just like please don't, please don't, and like, and then he did it on my chest. And then he was just saying like oh that was so good, that was so good, like oh like a good way to say good bye, and like he left shortly after and I just went and threw up.

9. When [Corporal Kondoski] telephoned [the Complainant] a couple of days following the forced sexual relations she informed [him] that:

[...] And like I was crying, you knew I didn't want to, and I said it felt like you were punishing me. Oh I said it felt you were punishing me when you're slapping my butt and telling me you wanted me to be sore. And he said you're just trying to make me feel bad, and you're making me feel awful, you're making me feel awful.

10. [The Complainant] admits that she did not immediately report the sexual misconduct as she blamed herself and was ashamed for commencing a relationship with a married man. [The Complainant] also kept replaying in her mind [Corporal Kondoski's] statement to her that "regret isn't rape". [The Complainant] did report the non-consensual sex to her friend, Ms. [S.B.], both in-person and by way of text messaging. On

September 14, 2018, [the Complainant] attended a medical clinic to be tested for any sexually transmitted diseases.

11. [The Complainant] further described how she felt a sense of “fear” when [Corporal Kondoski] placed [his] hand around her throat and that she was powerless to resist while [he was] assaulting her:

[Complainant]: It was just sacred and...

Draganiuk: Tell me what, what were ...

[Complainant]: ... (talk over - unintelligible)

Draganiuk: ...you, what were you afraid of? Tell me about that.

[Complainant]: Afraid of him like I kinda knew like whatever I did it wouldn't have mattered. And he is so much bigger than me.

Draganiuk: Okay.

[Complainant]: And I just, just having his giant hand on my throat, I, I (unintelligible) like I just knew how big he was.

Draganiuk: Okay.

[Complainant]: And I was scared of making it worse, I think.

Draganiuk: Okay. What's been the most difficult part of this all for you, of this experience, what was it?

[Complainant]: Felling like it's my fault.

[*Sic throughout*]

### **Conduct Authority Representative's submission**

[23] The Conduct Authority Representative began by noting that the evidence must be assessed on the *McDougall* standard:<sup>2</sup> the evidence must be clear, convincing and cogent.

[24] The Conduct Authority Representative then emphasized the need to take a trauma-informed approach as recognized in the *Ceyssens Report*.<sup>3</sup> Moreover, he highlighted the requirement to avoid falling prey to assumptions with respect to the manner in which a victim of sexual assault should behave, commonly referred to as “rape myths”. In support of this principle,

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<sup>2</sup> *F.H. v McDougall*, 2008 SCC 53 [*McDougall*], at paragraph 46.

<sup>3</sup> 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*, Report to the Royal Canadian Mounted Police (February 24, 2022) [*Ceyssens Report*]; at pages 72 to 75.

the Conduct Authority Representative relied on several court decisions,<sup>4</sup> which noted that no adverse inference may be drawn from a delay in disclosing the assault, from a lack of avoidant behaviour post-assault, as well as there being no normal or typical manner in which an affected person may act following an assault.

[25] The Conduct Authority Representative also referenced a previous conduct board decision,<sup>5</sup> which recognized that corroboration of a complainant's account is not required where the underlying contravention of the Code of Conduct involves an allegation of sexual assault. Furthermore, the conduct board in that matter rejected any adverse inferences to be drawn from "rape myths", which is consistent with recent court findings.

[26] The Conduct Authority Representative submitted that the evidence demonstrated that the Complainant was experiencing trauma, including her reluctance to come forward and the emotion she displayed when disclosing the assault for the first time to the RCMP, specifically to Superintendent Brad Wirachowsky. Superintendent Wirachowsky was in charge of Specialized Operations Support, including for the Major Case Management Operational Service Centre, where Ms. M. was employed.

[27] The Conduct Authority Representative argued that any suggestion that the Complainant's behaviour had to change after the assault is improper as it amounts to victim blaming. He stated that it is immaterial if she wanted to go on road trips and desired to be part of the team.

[28] With respect to the statement that Corporal Kondoski provided to ASIRT in June 2019, although the Subject Member Representative submitted that Corporal Kondoski's statement was provided against his interest and against the advice of legal counsel, the Conduct Authority Representative stated that its content is not significant.

[29] Although the Subject Member Representative has scrutinized the Complainant's post-incident conduct, the Conduct Authority Representative noted that she had previously admitted to

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<sup>4</sup> *R. v D.D.*, 2000 SCC 43, at paragraphs 63 and 64; *R. v A.R.D.*, 2017 ABCA 237 (CanLII), at paragraph 39; *R. v Nyznik*, 2017 ONSC 4392 (CanLII), at paragraphs 192 and 193; *R v ADG*, 2015 ABCA 149 (CanLII), at paragraph 33; *R. v T.B.*, 2018 PESC 3 (CanLII), at paragraphs 82 to 85.

<sup>5</sup> *Commanding officer of "E" Division and Irvine*, 2019 RCAD 3, at paragraphs 133 and 134.

going for lunch with Corporal Kondoski and attending a party in his room during a call-out after the alleged assault.

[30] The Conduct Authority Representative argued that although I may likely find Corporal Kondoski credible, I should not find him reliable. The Conduct Authority Representative then went on to highlight discrepancies in Corporal Kondoski's evidence and submitted that the evidence that Corporal Kondoski produced was self-serving and incomplete.

[31] The Conduct Authority Representative concluded by suggesting that Corporal Kondoski's evidence was not reliable and that there were two specific dates on which the incident could have occurred as described by the Complainant: on August 30, 2018, or on September 2, 2018.

#### **Subject Member Representative's submission**

[32] The Subject Member Representative submitted that I should not presume that the Complainant's evidence is the truth. He then noted a misalignment between what she said she did and what she actually did. In other words, he is suggesting that although she testified that she acted in a certain way, she did the opposite.

[33] In contrast to how he qualified the Complainant's evidence, the Subject Member Representative considered Corporal Kondoski's testimony to be clear, cogent and reliable.

[34] The Subject Member Representative argued that his concerns were not about "rape myths", but the credibility analysis of the Complainant. He noted that, post incident, she testified that she tried to switch teams and that she did not want to go on call-outs with Corporal Kondoski.

[35] However, the testimony of Sergeant Judith Boisvert and Constable Melissa Smits, both of whom had worked with the Complainant and Corporal Kondoski in the MCU, refuted those assertions.

[36] They testified that the Complainant sought out opportunities to go on call-outs with Corporal Kondoski's Team. This was consistent with Constable Stephen Kelly's testimony, who testified with respect to his observations of the amicable interaction between the Complainant and Corporal Kondoski, as well as her requesting to go on call-outs.

[37] The Subject Member Representative then went on to outline several examples he suggested were contrary to what the Complainant claimed she did after the assault, particularly, the amount of communication she had with Corporal Kondoski following the incident and the efforts she made to avoid him.

[38] The Subject Member Representative referenced Corporal Kondoski's June 2019 statement to ASIRT, prior to the receipt of disclosure, emphasizing the risks he had taken by providing a statement and the content therein, which was contrary to the Complainant's account.

[39] The Subject Member Representative also spoke to a confession that the Complainant indicated alleged she received in a text message from Corporal Kondoski on September 3, 2018. He questioned why she did not keep this evidence, especially considering her appreciation for the importance of preserving evidence given her work as an Information Processor (IP).

[40] The Subject Member Representative submitted that the Complainant was highly suggestible, adopting the opinion of Ms. S.B. or propositions posed by the Conduct Authority Representative. He suggested that the Complainant tailored her evidence in an improvised attempt to rehabilitate her credibility. Hence, he argued that she was not credible or reliable.

#### **Conduct Authority Representative's rebuttal**

[41] The Conduct Authority Representative started by pointing out how when Corporal Kondoski made a mistake during his testimony, the Subject Member Representative suggested those were simply errors; but when the Complainant made a mistake, he claimed she was lying.

[42] The Conduct Authority Representative also argued that the Subject Member Representative should have called other Information Administrators (IA) or IPs to testify, instead of relying on second hand accounts from other witnesses to introduce their evidence.

[43] With respect to Corporal Kondoski's statement to ASIRT, the Conduct Authority Representative submitted that Corporal Kondoski should not get the inferred benefit from providing his statement in advance of the receipt of disclosure since he knew he was under investigation for sexual assault and had reviewed the restraining order application the Complainant had previously made.

## Standards of assessment

### *Standard of proof*

[44] Subsection 45(1) of the *RCMP Act* requires that the “balance of probabilities” standard of proof be applied in adjudicating alleged contraventions of the Code of Conduct. This requires a determination on whether it is more likely than not that the alleged acts or omissions occurred.

[45] Guidance on the “balance of probabilities” standard of proof can be found in *McDougall*, which states:

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. [...] <sup>6</sup>

### *Assessment of witnesses*

[46] I have heard testimony from the Complainant and Corporal Kondoski as well as of what I will refer to as the peripheral witnesses, since they have no direct evidence with respect to the Allegation itself. In assessing their credibility and reliability, although I am guided by often cited authorities, I believe that the British Columbia Court of Appeal summarizes the principles effectively:

[...]

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal 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.** Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say “I believe him

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<sup>6</sup> *McDougall*, at paragraph 46.

because I judge him to be telling the truth”, is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

[...] <sup>7</sup>

[47] When assessing the evidence being adduced on the balance of probabilities, the totality of the evidence must be considered and used to make findings on credibility.

[48] As was also observed in *McDougall*, “finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party”. <sup>8</sup>

[49] I will begin by providing my findings with respect to the peripheral witnesses before turning to the Complainant and Corporal Kondoski.

[50] With respect to Superintendent Wirachowsky, I found his evidence to be credible. However, his evidence did have some reliability issues, since he failed to take notes when initially meeting with the Complainant. Nevertheless, I accept his testimony in relation to the Complainant’s demeanour at the time of her disclosure and the general content of their discussion.

[51] I generally found the testimony of Corporal Sabourin to be credible. However, the reliability of the information he provided was questionable, as it was obtained from Corporal Kondoski. Consequently, it was of little use.

[52] I found the evidence of Staff Sergeant Long, who worked in a supervisory position within the MCU, and Sergeant Boisvert to be credible and reliable. They both provided logical and coherent accounts of the events that they had witnessed; hence, they were accepted.

[53] While I generally found Constable Kelly to be credible, it was clear that his perspective of this matter was clouded by “rape myths” that the courts have been trying to dispel. Thus, his testimony was not reliable. As such, I accept that he heard the Complainant request to be called out, but have not attributed any weight to the remainder of his testimony.

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<sup>7</sup> *Faryna v Chorny*, [1952] 2 DLR 354, at page 357.

<sup>8</sup> *McDougall*, at paragraph 86.

[54] For the most part, I found Constable Smits to be a credible and reliable witness. She provided a logical account of her interactions with various individuals. However, being familiar with the manner in which operational investigations proceed, I am cautious of her assertion that there was no pecking order amongst regular members and public servants in an operational unit. Nevertheless, I do accept her evidence in relation to her observations of the Complainant.

[55] With respect to the Complainant, I found her evidence to be somewhat problematic given the contrast in her accuracy while recounting the events pre-offence with those that occurred post-offence. While I do find her credible and reliable with respect to the events prior to and during the sexual assault, I do not find her credible or reliable in relation to the majority of her post-offence account.

[56] In relation to Corporal Kondoski, I found that he testified in a professional manner, engaging me in the course of responding to the questions posed by counsel. I found that he provided his evidence in an organized and articulate manner. However, his testimony was not without its issues. Accordingly, I generally found him to be both credible and reliable, with the exception of the alleged incident.

[57] The Subject Member Representative submitted that Corporal Kondoski's credibility should be enhanced based on the provision of his statement to ASIRT, suggesting that it was a statement against self-interest.<sup>9</sup> I disagree.

[58] First, I do not find that it was against Corporal Kondoski's self-interest to admit that he had gone to the Complainant's apartment, as this was not refuted and could have been established by other means.

[59] Second, given the amount of information that Corporal Kondoski had about the allegation at the time he provided his statement, it would be more aptly deemed a prior consistent statement, which is not entitled to any inherent presumption with respect to credibility.<sup>10</sup>

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<sup>9</sup> *R v Hart*, 2012 NLCA 61 at paragraph 106.

<sup>10</sup> *R v Ellard*, 2009 SCC 27, at paragraph 31.



[60] I will detail specific issues with respect to the testimony of the Complainant and Corporal Kondoski during my analysis of the Allegation.

### **Decision on the Allegation**

[61] The burden is on the Conduct Authority to establish the Allegation on a balance of probabilities. Practically speaking, this means that I must find that the Conduct Authority has established that it is more likely than not that Corporal Kondoski has contravened section 7.1 of the Code of Conduct.

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

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

*Whether the identity of the member who is alleged to have committed these acts is established*

[63] The identity of Corporal Kondoski as the member alleged to have committed the sexual assault is not contested.

*Whether the acts that constitute the alleged behaviour are established*

[64] The incident, alleged to have occurred during the period of August 24, 2018, and September 3, 2018, relates to an allegation that Corporal Kondoski sexually assaulted the Complainant.

[65] The Allegation consists of 11 Particulars. Although there is some agreement in the versions of the events provided by the Complainant and Corporal Kondoski, the substantive issues needed to make a finding on the Allegation are contested.

***Particular 1***

[66] Corporal Kondoski admitted to the location of his posting at the time of the alleged assault.

***Particular 2***

[67] The Complainant testified that she was working as an IP in the MCU before taking an acting opportunity with the Sex Offender Registry Centre of Alberta. When that opportunity ended, she returned to the MCU as an IP before eventually being promoted to an IA on Team X.

[68] Corporal Kondoski agreed that the Complainant was a public service employee with the RCMP; however, he provided additional details with respect to her specific assignments at various times in their relationship.

***Particular 3***

[69] The Complainant described how, in early 2018, she had several personal difficulties, including the termination of a long-term relationship. She stated that, on one occasion, Corporal Kondoski noticed that she was upset, so he asked her if she was okay. Furthermore, they spoke, exchanged numbers and started texting each other. She stated that the texts became more frequent as Corporal Kondoski regularly checked in on her, which made her feel good.

[70] The Complainant stated that, shortly after moving into a new apartment, Corporal Kondoski said he would love to see it. Furthermore, since they had previously gone for coffee a couple of times, he brought coffee or tea to her apartment when visiting.

[71] The Complainant testified as to how their relationship continued to evolve: they began speaking about more personal issues, including the state of Corporal Kondoski's marriage. Corporal Kondoski started attending the Complainant's apartment regularly, and eventually their relationship became intimate. The Complainant testified that they had sexual intercourse on two occasions prior to the alleged incident.

[72] The Complainant described the conflicting emotions she experienced due to the strong feelings she had for Corporal Kondoski as well as the shame and guilt she experienced from being in a relationship with a married man.

[73] The Complainant described how Corporal Kondoski accessed her building on the first occasion that he visited, as well as the practice that he adopted on every subsequent occasion: coming over after work, parking in the visitor parking lot, texting her and being let in through the side door. She also spoke about how Corporal Kondoski would turn off the lights and close the blinds when he entered her apartment.

[74] Although the Complainant could not precisely identify the day on which the assault occurred, she testified that, a day or a couple days prior to September 3, 2018, Corporal Kondoski attended her apartment and that she intended to end their relationship because she was not getting what she needed from it and was feeling guilty about it.

[75] On the day of the sexual assault, the Complainant stated that Corporal Kondoski accessed her apartment in the usual manner. While they were seated on her couch, she explained to him that she was not getting what she needed from their relationship, so they could not see each other anymore. The Complainant said that Corporal Kondoski then got up and walked to the door, looking sad. Crying and thinking he was going to leave, she went to the bathroom where she continued to cry.

[76] The Complainant described Corporal Kondoski coming into the bathroom behind her, kissing and licking her neck and ear. She told him to stop, telling him that he was only making it harder. She testified that he picked her up and brought her into the bedroom. She stated that she clearly said “no I don’t want to do this, like stop”, and that he said “come on, come on, one last time to say goodbye, one more time to say goodbye”.

[77] The Complainant described how Corporal Kondoski pushed her down repeatedly and placed his hand on her throat. Eventually, she just laid there.

[78] The Complainant testified that Corporal Kondoski had removed her pajamas and taken off his pants and began to have sex with her. She stated that he changed positions, slapped her buttocks really hard and, while penetrating her, said “I want you to be sore tomorrow”. She said that he then made her perform oral sex on him before he ejaculated onto her chest.

[79] The Complainant testified that he said that “it was a great way to say goodbye”, got dressed, picked up his things and departed. She stated that she washed herself off, got sick and went to bed, disbelieving what just happened.

[80] The Complainant testified that she met with her friend, Ms. S.B., on September 3, 2018, and disclosed the sexual assault to her. Subsequently, they exchanged text messages about the incident.

[81] The Complainant had previously indicated that she had limited interactions with Corporal Kondoski after the alleged assault, trying her best to avoid him and even attempting to change teams at work. However, when phone and text records were put to her in cross-examination, she conceded that she continued to have regular contact with him, although she steadfastly maintained that, after the alleged incident, he never returned to her apartment.

[82] The Complainant testified that she began a relationship with another member in MCU around December 2018, that ended in June or July of 2021. In the course of that relationship, she disclosed to him that she had been sexually assaulted by Corporal Kondoski. Given his obligations as a member of the RCMP, he advised her that if she did not report it, that he would.

[83] Consequently, the Complainant reported the alleged sexual assault to Superintendent Wirachowsky on February 20, 2020.

[84] Her complaint precipitated a statutory investigation by the ASIRT, which resulted in Corporal Kondoski being criminally charged with sexual assault.

[85] Corporal Kondoski acknowledged that he had engaged in an extramarital relationship with the complainant. He described the same evolution to their relationship, including the manner in which he gained access to her apartment building and the actions he usually took once inside her apartment.

[86] Corporal Kondoski agreed that he and the Complainant had sexual intercourse on three separate occasions, but he adamantly denied that the event described by the Complainant had taken place. Consistent with the alibi evidence heard during the *voir dire*, he denied even having the opportunity to commit the alleged sexual assault in the specified time period.

[87] Corporal Kondoski testified that his relationship with the Complainant did not cease on September 3, 2018, as the Complainant testified. Rather, he stated that they continued to communicate regularly and that he attended her apartment several times after that date.

[88] He agreed that the Complainant made a complaint of sexual assault which prompted an investigation by ASIRT.

***Particular 4***

[89] As previously described above, save few exceptions, such as whether Corporal Kondoski told the Complainant that “he had never met someone like her before” or “felt that way about anyone”, the accounts of their behaviours prior to the night in question are consistent.

***Particular 5***

[90] The Complainant testified that she had strong feelings for Corporal Kondoski. However, she was not getting what she needed from the relationship and had decided to end it. She stated that she wanted a full relationship and did not want to be someone’s secret.

[91] Corporal Kondoski testified that he was aware of the Complainant’s feelings, including that she thought that she was falling in love with him. However, he stated that he was always clear with her that their relationship could never be more than it was, because he was never going to leave his wife. He testified that he did not get angry with the Complainant, nor did she end the relationship.

***Particular 6***

[92] As noted at Particular 3, the Complainant detailed the history and general practice leading up to their sexual encounters and described the events of the evening in question.

[93] Corporal Kondoski generally agreed to the Complainant’s description prior to the night of the alleged assault. However, he was adamant that the alleged incident had not occurred, nor had he ever sexually assaulted her.

***Particular 7***

[94] The Complainant described Corporal Kondoski coming into the bathroom behind her, kissing and licking her neck and ear. She told him to stop, telling him that he was only making it harder. She testified that he picked her up and brought her into the bedroom. She stated that she clearly said “no I don’t want to do this, like stop”, and that he said “come on, come on, one last time to say goodbye, one more time to say goodbye”.

[95] The Complainant described how Corporal Kondoski pushed her down repeatedly and placed his hand on her throat. Eventually, she just laid there.

[96] In his testimony, Corporal Kondoski denied that this incident had ever occurred.

***Particular 8***

[97] The Complainant testified that Corporal Kondoski had removed her pajamas and taken off his pants and began to have sex with her. She stated that he changed positions, slapped her buttocks really hard and, while penetrating her, said “I want you to be sore tomorrow”. She said that he then made her perform oral sex on him before he ejaculated onto her chest.

[98] The Complainant testified that he said that “it was a great way to say goodbye”, got dressed, picked up his things and departed. She stated that she washed herself off, got sick and went to bed, disbelieving what just happened.

[99] Again, Corporal Kondoski maintained his position that the entire incident as described by the complainant did not occur at any time.

***Particular 9***

[100] The Complainant testified that, in the days following the sexual assault, she had a telephone conversation with Corporal Kondoski. In that conversation, she told him that it felt like he was punishing her for breaking up with him, and that he was shocked to hear that. She testified that he stated that he thought it was the most passionate sex he’d ever had, that he never felt that passion with anyone.

[101] Corporal Kondoski denied that this conversation had taken place.

***Particular 10***

[102] The Complainant testified that she did not immediately report the sexual assault for multiple reasons, including: she wanted to maintain a sense of normalcy; she did not want to believe that it had actually happened; and she was afraid that she would not be believed. She testified that Corporal Kondoski had previously told her that “regret isn’t rape” when discussing previous sexual assault complaints that he had investigated.

[103] Despite denying that he had sexually assaulted the Complainant, Corporal Kondoski did acknowledge that he had previously spoken this phrase to her.

[104] The Complainant testified that she disclosed the assault to Ms. S.B., discussing it with her both in-person and via text message. The Complainant’s account is consistent with Ms. S.B.’s account, which was captured in the statement she provided to ASIRT on February 29, 2020.<sup>11</sup> It is also corroborated by the text messages exchanged between the Complainant and Ms. S.B., which were also submitted as part of the record.

[105] With respect to attending a medical clinic to be tested for sexually transmitted infections, the Complainant testified that she had done so after it had been suggested to her by Ms. S.B.

[106] Corporal Kondoski testified that he requested for the Complainant to get tested because she had started sleeping with another man and he was worried about bringing something home to his wife.

***Particular 11***

[107] The Complainant testified that, during the sexual assault, Corporal Kondoski placed his hand around her throat. Due to the size and strength difference between them, she was fearful and unable to resist him.

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<sup>11</sup> *Investigation Binder*, at page 431.

[108] Consistent with his previous denials to have sexually assaulted the Complainant, Corporal Kondoski again denied that the event described by the Complainant ever occurred.

### *Analysis*

[109] With respect to the sexual assault, the Complainant provided a clear account of what took place on the night in question. She testified in a direct and forthright manner. Her testimony is strengthened by Ms. S.B.'s statement, who, in meeting with the Complainant on September 3, 2018, described her as being visibly upset and crying throughout their interaction as the Complainant disclosed details of the assault.<sup>12</sup>

[110] Furthermore, messages were subsequently exchanged between the Complainant and Ms. S.B. later that same day, which undoubtedly discuss that the alleged sexual assault had taken place. A sexual assault that Ms. S.B. stated that, according to the Complainant, had been committed by Corporal Kondoski a day or a couple of days before it was disclosed to her on September 3, 2018.<sup>13</sup> Inexplicably, Ms. S.B. was not called to testify by either party.

[111] Similarly, Superintendent Wirachowsky described the Complainant as being very upset when discussing the Allegation with him, being reluctant to provide details and even wanting to speak with her therapist before confirming that she would proceed with a complaint.

[112] The Subject Member's defence was predicated heavily on the inconsistencies between what the Complainant said she did and what she actually did post-incident.

[113] The Subject Member Representative called multiple witnesses to speak to the Complainant's post-incident behaviour with Corporal Kondoski. The Subject Member Representative explained that this evidence was called to establish that the Complainant is not credible, not to criticize her behaviour on the basis of "rape myths". However, he walked very close to that line, stepping over it on a few occasions.

[114] That being said, based on the evidence provided by these witnesses, it is clear that the Complainant continued to communicate regularly with Corporal Kondoski, whether by text, phone

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<sup>12</sup> *Investigation Binder*, at pages 431 to 433.

<sup>13</sup> *Investigation Binder*, at pages 431 and 432.



or in-person while at work. In both her statement and examination-in-chief, the Complainant stated that she tried to avoid contact with Corporal Kondoski after he assaulted her.

[115] Although when confronted with these discrepancies in cross-examination, she acknowledged contact with him and suggested that she was now correcting herself. This divergence negatively impacted her credibility.

[116] However, I want to make myself explicitly clear, no matter what the Complainant did or did not do after being allegedly sexually assaulted, whether it was to cease all contact with Corporal Kondoski immediately or to continue to have sexual relations with him, has no bearing on the legitimacy of her complaint.

[117] As noted in the cases referenced by the Conduct Authority Representative, the antiquated assumptions as to what a victim of sexual assault should do or how they should react are simply myths that have been adopted over the years and are now being dispelled.

[118] Much like in the *voir dire*, Corporal Kondoski relied heavily on circumstantial evidence to corroborate his version of events, such as phone records, call logs, fitness tracking and receipts. While these may be somewhat persuasive, there were also issues with respect to Corporal Kondoski's credibility.

[119] While he testified in a clear and confident manner, as one would expect from an experienced member of an MCU, some of those responses lacked an air of reality.<sup>14</sup>

[120] With respect to the Complainant attending a medical clinic, I find that Corporal Kondoski's suggestion that he requested for the Complainant to get tested strains credulity. Despite his alleged concerns, he did not testify to getting himself tested or to stopping the unprotected sex with the Complainant.

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<sup>14</sup> *R c Cinous*, 2002 SCC 29, at paragraph 2.

[121] I much prefer the Complainant's account in which she indicated that, after being sexually assaulted, Ms. S.B. recommended for her to get tested. In her statement, Ms. S.B. also indicated that she provided that advice to the Complainant.<sup>15</sup>

[122] In his closing, the Subject Member Representative noted that the Complainant provided an account of her post-incident conduct in a manner in which it would be assumed that a victim of a sexual assault would likely behave. He suggested that the Complainant is relying on the very "rape myths" that we must discount to bolster the evidence that she provided.

[123] I do not necessarily disagree with the Subject Member Representative's characterization of the version of the post-incident conduct provided by the Complainant. However, I do not draw the same conclusion from it. The Subject Member Representative suggested that the Complainant falsely detailed the much-maligned expected behaviour so that her untrue account would be believed. Conversely, I find that she falsely adhered to these "myths" in order to be believed.

[124] The distinction I draw in this instance is not merely nuanced; it strikes at the very core of the Complainant's intention. As opposed to using these myths to legitimize a false claim, I believe the Complainant tried to use them to substantiate a genuine complaint.

[125] The Complainant testified of the power imbalance she experienced within the MCU between members and public servants. She relayed her reluctance to come forward to anyone, much less senior ranking members, as she did not think she would be believed over Corporal Kondoski, an experienced and respected police officer.

[126] Moreover, perhaps the Complainant realized that her post-incident conduct did not align with the "expected behaviours", so she stated that she took actions that would reflect the steps she may have been expected to take or possibly the steps that she wished she had taken.

[127] As I noted earlier, leading up to the assault, the Complainant's and Corporal Kondoski's accounts are very similar. Including Corporal Kondoski's admission that he used the phrase "regret isn't rape" in previous conversations with her.

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<sup>15</sup> *Investigation binder*, at page 436.

[128] It is trite law that I am entitled to accept all, part or none of the testimony provided by a witness. Despite credibility issues with respect to her post-incident behaviour, for the aforementioned reasons, I find that the Complainant provided a credible account of the alleged sexual assault and of the events that led up to it.

[129] It is also widely accepted that I need not find all of the particulars established in order to make a positive finding on an allegation. It is only necessary that I find enough of the particulars established to substantiate that the contravention, as alleged, occurred.

[130] Consequently, I find that the particulars as alleged, with the exception of some contextual details previously noted, have been established.

*Whether Corporal Kondoski's behaviour is likely to discredit the Force*

[131] Members of the RCMP must adhere to the Code of Conduct both on and off duty. In forcing the Complainant to engage in sexual relations with him, which constitutes a sexual assault, Corporal Kondoski's conduct was a serious departure from the standard expected of a member of the RCMP. Consequently, I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view his actions as likely to bring discredit to the Force. Thus, the third element of the test is established.

*Whether the behaviour is sufficiently related to Corporal Kondoski's duties and functions as to provide the Force with a legitimate interest in disciplining him*

[132] Although Corporal Kondoski was off duty at the time of the sexual assault, as I have just mentioned, the Code of Conduct applies to members of the RCMP when they are both on and off duty. Corporal Kondoski engaged in sexual violence, an offence he could be called to respond to, an issue that plagues our society and one that the RCMP is making serious efforts to eliminate from its midst. As such, I find that Corporal Kondoski's behaviour is sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[133] Therefore, I find his conduct to be discreditable and, as a result, I find the Allegation to be established on a balance of probabilities.

## CONDUCT MEASURES

### Assessing fit conduct measures

[134] In accordance with paragraph 36.2(e) of the *RCMP Act*, I am required to impose conduct measures that are “proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.”

[135] In determining whether to adopt the proposed conduct measure submitted by the Conduct Authority Representative or to impose another, I will begin by applying the five foundational principles that guide the assessment of a fit conduct measure, as set out in the *Ceyssens Report*.<sup>16</sup>

[136] The first foundational principle states that conduct measures “must fully accord with the purposes of the police complaint and discipline process”, which requires the balancing of four interests: 1) the public; 2) the RCMP as an employer; 3) the subject member in being treated fairly; and 4) those affected by the misconduct at issue, where applicable.<sup>17</sup>

[137] Paragraphs 36.2(b) and (c) of the *RCMP Act* highlight this principle:

36.2 The purposes of this Part are

[...]

(b) 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;

(c) to ensure that members are responsible and accountable for the promotion and maintenance of good conduct in the Force;

[...]

[138] The Supreme Court of Canada has also highlighted the importance of the public interest by stating that “The purposes of disciplinary bodies are to protect the public, to regulate the profession and to preserve the public confidence in the profession”.

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<sup>16</sup> *Ceyssens Report*, at pages 17 to 22.

<sup>17</sup> *Ceyssens Report*, at page 17.

[139] The second and third principles provide that remedial and corrective measures should prevail, where appropriate, and that the presumption of the least onerous disposition should be imposed. However, both of these principles will be displaced if the public interest or other considerations, such as the seriousness of the misconduct, triumph.

[140] The fourth principle is that the conduct measures imposed must be proportionate to the nature and circumstances of the contravention. This requires the conduct board to identify the relevant proportionality considerations, assess whether they may be mitigating, aggravating or neutral. Finally, the conduct board must appropriately balance and weigh these in consideration of the circumstances of the case and of the four purposes of the police complaint and discipline process.

[141] The fifth principle is that police officers are expected to adhere to a higher standard of conduct.

[142] The Conduct Authority Representative referenced the *Ceyssens Report*,<sup>18</sup> in which it speaks to the seriousness of sexual misconduct and how it should be a “never-event”. In other words, it should never take place in the RCMP ethos.

[143] The Conduct Authority Representative expressed society’s expectations and the public interest in seeing misconduct such as this taken seriously. Furthermore, he emphasized the RCMP’s obligation to ensure the safety of its employees.

[144] The Conduct Authority Representative referenced two previous conduct board decisions as well as a corresponding RCMP External Review Committee (ERC) recommendation. In *Deagle*,<sup>19</sup> he noted that the conduct board found that the commission of a sexual assault amounted to a breach of trust, which resulted in the dismissal of the member.

[145] The Conduct Authority Representative also referenced ERC recommendation C-106,<sup>20</sup> noting that the ERC found that the commission of a sexual assault on the affected person in her own home, a place where one is supposed to feel safe, added to the severity and seriousness of the

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<sup>18</sup> *Ceyssens Report*, at page 79.

<sup>19</sup> *Commanding Officer of “H” Division and Deagle*, 2023 CAD 04 [*Deagle*], at paragraph 107.

<sup>20</sup> *ERC C-2020-008 (C-106)*, at paragraph 183.

subject member's misconduct. Additionally, he pointed to the appeal decision for the same matter, where the adjudicator remarked on the impact that conduct of this nature has on the membership as a whole.<sup>21</sup>

[146] Finally, the Conduct Authority Representative emphasized that even the Subject Member Representative recognized the traumatic effects of sexual assault, referring to it as “one of the most serious criminal offences anyone can commit in this country”.<sup>22</sup>

[147] In light of the foregoing, the Conduct Authority Representative submitted that dismissal was the appropriate sanction.

### **Analysis**

[148] The November 2014 *Conduct Measures Guide* (the Guide) is not prescriptive and is intended to promote parity of sanction. It is a useful reference when determining the appropriate range of sanctions for a particular category of behaviour. Although there are several categories of behaviour set out in the Guide with respect to section 7.1 of the Code of Conduct, including sexual misconduct, sexual assault is not explicitly identified.

[149] However, in taking a closer examination of the rationale provided on pages 59 and 60 of the Guide, in situations where there is an element of power imbalance or, more specifically, there is no consent, which is the case in the present matter, the Guide suggests that “dismissal is the only possible outcome if the member does not resign beforehand”.

[150] Upon delivery of my decision on the Allegation, the Subject Member Representative recognized that such a finding effectively nullified the employment contract. I agree with that conclusion, leaving me only to consider whether Corporal Kondoski's conduct warrants immediate dismissal or if he should be afforded 14 days to resign.

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<sup>21</sup> *Deputy Commissioner Hill and Brown*, 2024 CAD 09 [Brown], at paragraph 114.

<sup>22</sup> Conduct Hearing Transcript – RCMP-Kondoski-[June 6, 2024], Volume 10, at paragraph 153.

*Accordance with the purposes of the police complaint and discipline process*

[151] RCMP members have been granted exceptional powers to enforce the laws in our society. The public has an expectation that they will uphold and abide by the law in not only their professional life, but their personal life as well. Accordingly, the public has a vested interest in ensuring that individuals who commit an act, such as was established in this matter, do not remain in positions of authority.

[152] Similarly, the RCMP, as an employer, has a responsibility to provide a safe environment to its employees. Consequently, it must take the necessary actions to protect its employees from possible threats. Given the nature of Corporal Kondoski's misconduct and the fact that the affected person was a co-worker, the RCMP would be rightly concerned if Corporal Kondoski was not removed from the workplace.

[153] Furthermore, over the past several decades, the RCMP has been embattled by reports of sexual harassment and assaults. This has garnered significant media attention and created a lack of trust both inside the RCMP and in society in general. Consequently, the reputation of the RCMP has been tarnished. To rebuild this trust, the RCMP must demonstrate that it is holding its members accountable when they contravene the Code of Conduct.

[154] It goes without saying that Corporal Kondoski has an interest in being treated fairly. He must be afforded the rights dictated by procedural fairness, including the right to be heard. Additionally, given that the result of an administrative process, such as the RCMP conduct process, will likely have significant ramifications on his personal life as well as on his career, I must be mindful of the corrective and rehabilitative objectives of this process.

[155] Finally, I must consider the interests of the Complainant. In her testimony, she described the impact that the sexual assault has had on her. She described the scrutiny that she expected if she came forward with her complaint, the anxiety that she continues to experience, as well as the toll that this process has taken on her physical and mental health.

*Proportionality considerations*

[156] The presence of mitigating, aggravating or neutral considerations play a factor in my decision-making. Thus, I must appropriately weigh these in contemplation of the context of the case and of the four purposes of the police complaint and discipline process, as enumerated under the first foundational principle of the *Ceyssens Report*.

*Aggravating factors*

[157] I have considered the submissions by the Conduct Authority Representative and I have retained the following aggravating factors:

- a) the seriousness of the misconduct and its potential to put other members at risk;
- b) the violence perpetrated against someone with whom Corporal Kondoski was in a relationship, that is, domestic violence;
- c) the impact on the Complainant.

[158] Before the courts and other tribunals, there has been some debate as to whether no remorse is an aggravating factor or amounts to the lack of a mitigating factor. Therefore, I wish to make it clear that even if Corporal Kondoski showed remorse, it would not impact my decision with respect to final conduct measures.

*Mitigating and neutral factors*

[159] The Subject Member Representative made no submissions with respect to conduct measures. Consequently, no mitigating factors have been advanced for my consideration, and I have not identified any mitigating or neutral factors independently.

**Conclusion**

[160] The Allegation in this matter is very serious. Corporal Kondoski engaged in conduct that is one of the most grievous acts that can be committed, as acknowledged by both him and the Subject Member Representative. As I noted in my decision on the Allegation, sexual violence is an issue that plagues our society and one that the RCMP is making serious efforts to eliminate



from its midst. As such, its occurrence by RCMP members must be denounced in no uncertain terms.

[161] I have considered the principle to prefer the imposition of remedial and corrective measures, where appropriate, and the principle to impose the least onerous disposition. However, when I consider the interests of the parties represented in this matter and in view of the seriousness of the misconduct, I have concluded that these principles should be displaced.

[162] Accordingly, I find that Corporal Kondoski has severed the employment relationship between himself and the RCMP. His retention would erode the public trust in this organization. Consequently, I find that the conduct measure being sought by the Conduct Authority is proportionate to the gravity of Corporal Kondoski's misconduct. Therefore, I direct for Corporal Kondoski to be dismissed immediately.

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

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Colin Miller  
Conduct Board

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November 21, 2024  
Ottawa, Ontario