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2024 CAD 15



ROYAL CANADIAN MOUNTED POLICE

in the matter of
a conduct hearing pursuant to the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Between:

Designated Conduct Authority for “B” Division

Conduct Authority

and

Constable Paul Durdle
Regimental Number 56291

Subject Member

Conduct Board Decision

Sara Novell

November 22, 2024

Jonathan Hart, Conduct Authority Representative

Gordon Campbell, Subject Member Representative

TABLE OF CONTENTS

SUMMARY	4
INTRODUCTION	5
ALLEGATIONS	6
EVIDENCE	8
Evidence of V.S.....	9
Evidence of Constable Durdle.....	12
WITNESS CREDIBILITY AND RELIABILITY	14
Credibility and reliability of V.S.....	14
Credibility and reliability of Constable Durdle	16
FINDINGS OF FACT	19
ANALYSIS	22
Findings on Allegation 2	22
Findings on Allegation 3	24
Failure to preserve the peace and prevent offences	25
Serving alcohol	26
Findings on Allegation 5	29
CONCLUSION	30

SUMMARY

The *Notice of Conduct Hearing* originally contained five alleged contraventions of the RCMP Code of Conduct. Following the withdrawal of two allegations by the Conduct Authority, only Allegations 2 (section 8.3 – reporting contraventions by other members), 3 (section 7.1 – discreditable conduct) and 5 (section 8.1 – accurate reporting) remain. The Allegations claim that Constable Durdle failed to take appropriate action to stop or prevent contraventions to the Code of Conduct by another member and failed to report these contraventions, placed the safety of the public at risk as well as provided false or misleading information during the course of an internal investigation.

The matter proceeded to a Conduct Hearing, which was held the week of February 19, 2024, in St. John's, Newfoundland and Labrador. The Conduct Board found all three Allegations established. Prior to the conduct measures phase, Constable Durdle resigned from the RCMP, leaving the Conduct Board with no jurisdiction to impose conduct measures.

INTRODUCTION

[1] On October 14, 2020, the Designated Level III Conduct Authority at the time signed the *Notice to the Designated Officer*, in which he requested the initiation of a Conduct Hearing.

[2] On October 16, 2020, a conduct board was appointed. On February 22, 2023, following administrative changes, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[3] The November 26, 2021, *Notice of Conduct Hearing* contained five alleged contraventions of the RCMP Code of Conduct: three of discreditable conduct, under section 7.1 of the RCMP Code of Conduct [*Code*], one of which, Allegation 1, was withdrawn within the *Notice*; and two allegations of contraventions to sections 8.3 and 8.1 of the Code, respectively. All the Allegations pertain to an alleged incident, and related subsequent investigation, that transpired at Constable Durdle's Bell Island residence on January 23, 2018.

[4] On July 15, 2021, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, Constable Durdle provided his response to the Allegations, denying the remaining four Allegations but admitting certain particulars with explanations.

[5] On February 2, 2024, Allegation 4, an alleged contravention of section 7.1 of the Code of Conduct, was withdrawn at the request of the Conduct Authority.

[6] That same day, following my review of the Record, I issued my *Determination of Established Facts*.

[7] The Conduct Hearing was held in person, in St. John's, Newfoundland and Labrador, from February 19 to 23, 2024. I delivered my oral decision on February 23, 2024. I found Allegations 2, 3 and 5 to be established. This written decision incorporates and expands upon that oral decision.

ALLEGATIONS

[8] The three Allegations at hand, as set out in the *Notice of Conduct Hearing*, read as follows:

Allegation 2:

On or between January 22, 2018 and January 30, 2018, at or near Bell Island in the Province of Newfoundland and Labrador, Constable Paul Durdle engaged in conduct contrary to Section 8.3 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to Bell Island Detachment, in "B" Division. You were residing in government housing located at [address redacted], Bell Island.
2. In the evening of January 22, 2018, while off duty, you and your girlfriend, [V.S.], were at your residence consuming alcohol.
3. At approximately midnight, Constable Michael Wheeler, a member of Bell Island Detachment, attended your residence. [Constable] Wheeler was "on call" until [6 a.m.]; he was driving a marked police vehicle and was wearing his uniform, including his duty belt and service pistol.
4. [Constable] Wheeler consumed alcohol at your residence.
5. In the early hours of January 23, 2018, while returning from your kitchen into your living room, you saw [Constable] Wheeler pointing his service pistol at [V.S.]. You immediately pushed [Constable] Wheeler's arm while yelling "what the fuck are you doing" or words to that effect. [V.S.] ran out of your house and drove away.
6. [V.S.] returned to your residence later that night. She told you that, while you were in the kitchen, she was wrestling in a friendly manner with [Constable] Wheeler; he then suddenly drew his service pistol and pressed it against the side of her head, before standing up and pointing it at her.
7. [Constable] Wheeler's conduct, which included consuming alcohol while in uniform and being "on call"; and, handling his service pistol in an unsafe manner, contravened *Code of Conduct of the RCMP*.

8. You failed to take appropriate action to stop or prevent the contraventions, and failed to report [Constable] Wheeler's conduct as soon as feasible.

Allegation 3:

On or between January 22, 2018 and January 30, 2018, at or near Bell Island in the Province of Newfoundland and Labrador, Constable Paul Durdle engaged in conduct contrary to Section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to Bell Island Detachment, in "B" Division. You were residing in government housing located at [address redacted], Bell Island.
2. In the evening of January 22, 2018, while off duty, you and your girlfriend, [V.S.], were at your residence consuming alcohol.
3. At approximately midnight, Constable Michael Wheeler, a member of Bell Island Detachment, attended your residence. [Constable] Wheeler was "on call" until [6 a.m.]; he was driving a marked police vehicle and was wearing his uniform, including his duty belt and service pistol.
4. [Constable] Wheeler consumed alcohol at your residence.
5. In the early hours of January 23, 2018, while returning from your kitchen into your living room, you saw [Constable] Wheeler pointing his service pistol at [V.S.]. You immediately pushed [Constable] Wheeler's arm while yelling, "what the fuck are you doing" or words to that effect. [V.S.] ran out of your house and drove away.
6. [V.S.] returned to your residence later that night. She told you that, while you were in the kitchen, she was wrestling in a friendly manner with [Constable] Wheeler; he then suddenly drew his service pistol and pressed it against the side of her head, before standing up and pointing it at her.
7. That night, you served [Constable] Wheeler alcohol knowing he was "on call".
8. You also knew that [Constable] Wheeler was the only member "on call" that night, and that it would be impossible to have members from neighbouring detachments attend calls for service, as the ferry connecting the island to the mainland does not operate at night.
9. Despite witnessing [Constable] Wheeler pointing his service pistol at [V.S.], you did not take proper actions to preserve critical evidence and you jeopardized a criminal investigation.

10. You failed in your duties as a police officer to preserve the peace and prevent offences against the laws of Canada, in contravention of section 18 of the *RCMP Act*.

11. Your actions placed the safety of the public at risk and were discreditable.

Allegation 5:

On or about February 4, 2020, at or near St. John's, in the Province of Newfoundland and Labrador, Constable Paul Durdle engaged in conduct contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "B" Division headquarters.

2. In the evening of January 22, 2018, while off duty, you and your girlfriend, [V.S.], were at your residence consuming alcohol. Around midnight, Constable Michael Wheeler, a member of Bell Island Detachment who was "on call" until [6 a.m.], attended your residence and consumed alcohol with you.

3. In the early hours of January 23, 2018, you witnessed [Constable] Wheeler pointing his service pistol at [V.S.]. She subsequently told you that, while you were in the kitchen, she was wrestling in a friendly manner with [Constable] Wheeler; he then suddenly drew his service pistol and pressed it against the side of her head, before standing up and pointing it at her.

4. On January 14, 2020, a Code of Conduct investigation was mandated in relation to the incident that took place on January 23, 2018, at your residence. [Constable] Wheeler was the subject member of this investigation.

5. On February 4, 2020, you provided a witness statement to Sergeant Trevor Baldwin in relation to [Constable] Wheeler's Code of Conduct investigation.

6. In your statement, you reported that you never saw [Constable] Wheeler pull his pistol out of his holster on the night of the alleged incident. You also stated that the allegation under investigation was false and mentioned: "*It's a false allegation*"; "*I'm here today for a code of conduct for a false allegation*"; "*She's bringing me into this, this complete false allegation*"; "*It's a completely false, it's a crazy allegation*"; and, "*Once again just that this is just is an outrageous false allegation [sic]*".

7. You provided false or misleading information during the course of an internal investigation.

EVIDENCE

[9] The Record before me includes:

- a. the October 5, 2020, Code of Conduct Investigation Report and appendices;
- b. Constable Durdle's July 15, 2021, response to the Allegations;
- c. supplementary disclosure of Constable Wheeler's criminal trial transcripts and decision,¹ in which Constable Durdle testified;
- d. schematics from Constable Durdle's Bell Island government-owned residence;
- e. the January 11, 2024, supplemental investigation report and appendices as well as
- f. the exhibits from Constable Durdle's Conduct Hearing proceedings.

[10] During the allegation phase of the Conduct Hearing, I heard oral testimony from V.S. and Constable Durdle. As noted by both Representatives in their submissions, the evidence they provided presented diametrically opposed versions of the same events, which I will summarize and assess in turn.

Evidence of V.S.

[11] V.S. testified that her on-and-off relationship with Constable Durdle began in October 2017 and ended in late 2019 or early 2020. She described it as toxic, noting it was based mostly on drinking, jealousy and arguments. She stated that on January 22, 2018, she drove to Constable Durdle's Bell Island residence for a few drinks to celebrate her upcoming birthday. She could not recall what time she arrived but estimated that it was late in the evening. She testified that she and Constable Durdle began drinking and were having a great time: they were laughing and socializing and Constable Durdle was playing guitar in the living room. She could not recall who invited Constable Wheeler to join them once his shift was over but noted that he arrived after his regular shift, at either midnight or 2 a.m., in his police car and wearing his full uniform. This was the first and only time that the three of them had socialized together.

¹ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 7 – *R. v Wheeler*, 2023 NLSC 152, at page 279.

[12] V.S. testified that both she and Constable Durdle were intoxicated, “probably a four or a five. [...] just feeling great.”² She stated that Constable Durdle offered Constable Wheeler a drink when he arrived and continued serving drinks for all of them throughout the night. She noted that Constable Wheeler drank a lot and quickly, as if he was playing “catch-up”³ to reach their level of intoxication.

[13] V.S. testified that Constable Durdle was hosting them, and he was the only one mixing and serving their drinks throughout the night. She stated that this was often the case throughout their relationship. She could not recall what everyone was drinking but testified that she was probably drinking vodka and that Constables Durdle and Wheeler were probably drinking vodka or liquor, which she explained was dark hard alcohol.

[14] V.S. stated that, after a couple of hours of socializing, drinking and having fun in the living room, she and Constable Wheeler started wrestling and play fighting on the couch, while Constable Durdle observed them from his La-Z-Boy chair. She noted that the wrestling did not go on for a long period of time. She described Constable Wheeler putting her in different “police moves” that she attempted to get out of and stated feeling particularly proud when she got out of an arm bar. She noticed Constable Wheeler starting to get frustrated. He proceeded to put her in a headlock, which she had great difficulty getting out of and frustrated her. She described Constable Durdle walking past them to exit the living room to go make more drinks in the kitchen. She felt like he may have been somewhat jealous and confirmed that this was the only time Constable Durdle left during the wrestling.

[15] V.S. testified that when she managed to get out of the headlock, she made a mocking comment about her ability to escape. She stated that that was when Constable Wheeler placed his service pistol against her head and said words to the effect of “Not so tough now, are you [V.S.]?”⁴. V.S. physically re-enacted and extensively described the positions they were in, what she was thinking and looking at as well as the state of shock she was feeling. She stated that Constable

² *Transcript of Conduct Hearing*, February 19, 2024, at page 36, at lines 10 and 11.

³ *Transcript of Conduct Hearing*, February 19, 2024, at page 60, at line 22.

⁴ *Transcript of Conduct Hearing*, February 19, 2024, at page 73, at line 6.

Durdle was in the kitchen during this interaction and that Constable Wheeler then stopped and laughed. She described him getting up from the couch while she remained seated, going around the little table, positioning himself diagonally from her, in a police stance, and pointing his firearm at her face.

[16] V.S. described that, after a few seconds, Constable Durdle came around the corner from the kitchen, back into the living room, and saw Constable Wheeler pointing his service pistol at her. She stated that Constable Durdle said “What the fuck are you doing?” and pushed Constable Wheeler’s arms down, to lower the weapon. She testified that Constables Wheeler and Durdle exchanged words but that she does not know what they said, because her immediate instinct was to get up and leave the house. She got in her car and drove to a lot a few minutes down from Constable Durdle’s residence where she smoked a few cigarettes while crying.

[17] V.S. stated that she received a call from Constable Durdle telling her to come back as she had been drinking and should not be out. She returned to the residence and went to bed in Constable Durdle’s master bedroom. She acknowledged that her recollection of exactly what transpired when she returned was poor.

[18] V.S. testified that her next memory is of the following morning. While she was sitting on the couch with Constable Durdle in his chair in the living room, he told her that they needed to talk about what had happened, that he was going to take care of the situation and talk to Constable Wheeler. She recalled that Constable Durdle later told her that he had gone out for lunch with Constable Wheeler and spoke to him about the incident and that Constable Wheeler had advised him that he would apologize to V.S.

[19] On January 30, 2018, V.S. received a Facebook message from Constable Wheeler that she described as a backhand apology, which reads:

Hey Douche – Paul told me I freaked you out the other night!! Sorry!! :). But to ease your mind it was all safe – I guess I’m a little more comfortable around

my gear than I should be. :). Weird shit always happens with me on nights like that as you know [emoji].⁵

[20] V.S. testified that she subsequently discussed the incident several times with Constable Durdle. However, she had decided not to report it at that time.

Evidence of Constable Durdle

[21] In his direct examination, Constable Durdle described his relationship with V.S. as “friends with benefits”, and nothing more. He testified that on January 23, 2018, between 1 a.m. and 2 a.m., he called and invited Constable Wheeler to drop by at the end of his night shift. Constable Durdle recalled that Constable Wheeler arrived at or around 2 a.m. in his marked police car, wearing his uniform pants and shirt. He offered him one glass of Diet Pepsi with ice, which he poured from a can in the kitchen. Constable Durdle was also drinking Diet Pepsi with ice and confirmed he did not consume any alcohol that evening.

[22] Constable Durdle stated that he and Constable Wheeler were both sitting in the living room watching television when V.S. arrived unannounced between 2:20 a.m. and 2:30 a.m. She appeared to have already consumed some alcohol. She entered through the back door, took a bottle of red wine from a wine rack in the corner of his dining room without asking and proceeded to pour herself a glass before coming into the living room to sit on the couch next to Constable Wheeler. Constable Durdle estimated that the three of them spent about an hour or an hour and a half in the living room. He recalled that, during that time, he left the living room to go to the bathroom and to get maybe two more glasses of Diet Pepsi from the kitchen for himself.

[23] Constable Durdle testified that, at one point, V.S. followed him into the kitchen and they had an argument about his ex-girlfriend. V.S. was upset and exited the residence through the back door, for what he estimated to be five to ten minutes.

[24] Out of concern for her safety, Constable Durdle went looking for her and found her sitting in her vehicle, which was parked in his neighbour’s driveway with the engine running. He stated

⁵ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 11 – [V.S.] Disclosed Social Media Messages, at page 427.

that it did not appear as though she had driven anywhere, nor did he observe her driving. He noted that he was aware that she had been drinking his wine, although in that moment, he did not know how much she had consumed, as she had been pouring it herself. He then advised her that she was in the care and control of a motor vehicle and that she had been drinking, so he asked her to come back inside the house.

[25] Later in his testimony, Constable Durdle stated that he had noticed a stagger in her step, an odour of liquor and some slurring of her words as she exited the vehicle to return to the house. He assessed V.S.'s intoxication level as "a seven or eight. She [was] not completely falling, but she [was] intoxicated."⁶ He stated that she agreed to come in, and they went back to their respective couches in the living room, where Constable Wheeler was still sitting.

[26] Constable Durdle testified that he sat with them briefly and then left again to go play electric guitar in his music room, which is located at the back of his residence. He confirmed that from that room, he could neither see nor hear what was occurring in the living room and he estimated that he spent between 20 and 30 minutes playing guitar, while V.S. and Constable Wheeler remained in the living room. Constable Durdle subsequently returned to the living room.

[27] Constable Durdle stated that, approximately 20 minutes later, V.S. went to the master bedroom to sleep while he and Constable Wheeler continued chatting and watching television until approximately 5 a.m. when Constable Wheeler left.

[28] Constable Durdle confirmed that this was the only time that the three of them had socialized together. He described the night as unremarkable and testified that he did not observe Constable Wheeler drinking alcohol, nor did he serve any to him. Additionally, Constable Durdle did not observe Constable Wheeler wearing his duty belt, nor did he see him handling or pointing his service pistol in an unsafe manner at any point in time that night. As such, Constable Durdle confirmed he never discussed the gun incident with Constable Wheeler or V.S.

⁶ *Transcript of Conduct Hearing*, February 20, 2024, at page 218, at lines 23 to 25.

[29] Constable Durdle was adamant that he did not serve, offer or mix any alcoholic drinks for V.S. that night, as he has never mixed any drinks for her during their entire relationship. Finally, he concluded his direct examination by confirming that out of all the events that occurred on January 23, 2018, none led him to believe that he had anything to report to his superiors.

WITNESS CREDIBILITY AND RELIABILITY

[30] As a trier of fact, I must consider whether the witnesses are being truthful and whether their evidence is reliable. Credibility is not an all or nothing proposition, I may find a witness's evidence to be truthful, but unreliable. I may also accept or reject, some, none or all of the evidence of any witness on a given point.⁷ As submitted by both Representatives, when assessing credibility, I must not look at a witness's evidence in isolation, but at the totality of the evidence. I must also consider the effect of the inconsistencies in that evidence and whether, when taken as a whole in the context of the totality of the evidence, they impact the witness's credibility.⁸

[31] Furthermore, I cannot base my assessment of a witness's evidence solely on their demeanour. Rather, I must determine whether their version of events is consistent with the most probable interpretation of the surrounding facts.⁹ The determination of whether a witness's evidence has an air of reality is subjective, but it must be grounded on the totality of the evidence.

[32] Finally, a finding that one party is credible may be determinative, because "believing one party will mean explicitly or implicitly that the other party was not believed on the important issue on the case".¹⁰

Credibility and reliability of V.S.

[33] Overall, I find V.S.'s evidence to be both credible and reliable. Although the passage of time and her level of intoxication during the night in question may have impacted her reliability when recalling certain peripheral details, such as how many drinks were consumed, who invited

⁷ *R. v R.E.M.*, 2008 SCC 51, at paragraph 65.

⁸ *F.H. v McDougall*, 2008 SCC 53 [*McDougall*], at paragraphs 57 and 58.

⁹ *Faryna v Chorny*, [1952] 2 DLR 354 (BC CA) at page 357.

¹⁰ *McDougall*, at paragraph 86.

Constable Wheeler or his arrival time, I find her oral evidence on the core events to be consistent with the totality of the evidence before me.

[34] I find V.S.'s description and visual demonstration of the different positions in which she found herself when Constable Wheeler was wrestling with her, when he placed his firearm against the side of her face while her neck was pressed against the couch and again when the firearm was pointed at her, to be particularly compelling. Her description is consistent with the layout of the room,¹¹ with the positioning of her and Constable Wheeler on the couch¹² as well as with her previous statements and testimony. She had a clear recollection and convincingly withstood some of the issues raised in cross-examination, such as when Constable Durdle left the room and at which moment he returned.¹³

[35] She did not seek to embellish or exaggerate her answers and acknowledged the gaps in her memory. Her explanations on what she could and could not recall and why are logical. More importantly, I find her evidence is internally consistent and corroborated with other independent established facts, such as the Facebook messages she received from Constable Wheeler.

[36] Both in her statements and in her oral evidence, V.S. answered questions directly and was forthright, even when it had the potential to reflect poorly on her or attract criminal liability. In spite of the deterioration of the relationship she shared with Constable Durdle, V.S. was balanced when expressing herself during her testimony and not only recognized some of Constable Durdle's qualities but also qualified him as being "a little bit of a hero"¹⁴ for the manner in which he intervened during the alleged gun incident.

[37] Overall, V.S. exhibited sincerity and candour. In the end, I find her evidence logical, credible and reliable when considered in the context of the whole of the evidence.

¹¹ Conduct Hearing Exhibits MR-01 – 27 photos of [address redacted]-Bell Island, at photo 90.

¹² Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 16 – Constable Wheeler's May 29, 2020, statement, page 480, paragraph 1; *Transcript of Conduct Hearing*, February 19, 2024, at page 61, at line 16.

¹³ *Transcript of Conduct Hearing*, February 20, 2024, at page 98, at lines 5 to 17.

¹⁴ *Transcript of Conduct Hearing*, February 19, 2024, at page 75, at line 2.

Credibility and reliability of Constable Durdle

[38] I have some difficulty with the credibility and reliability of Constable Durdle's evidence. In several instances, his account is not in harmony with the evidence that is before me as a whole and lacks an air of reality. Moreover, I find problematic some of the inconsistencies between his oral evidence at the Conduct Hearing, his February 4, 2020, statement to Sergeant Baldwin, his sworn testimony in the Constable Wheeler's criminal trial and his response to the Allegations.

[39] Constable Durdle's explanations for the discrepancy in his statements about his alcohol consumption during the evening in question is one such example. In cross-examination, Constable Durdle was adamant that he had not consumed any alcohol that evening. Constable Durdle also repeatedly confirmed there were no open bottles of wine in his residence prior to V.S.'s arrival, when she opened and drank an entire bottle of red wine by herself. When presented with his signed response to the Allegations, in which Constable Durdle stated, "... I consumed a glass of wine prior to the arrival of [V.S.]. I consumed no alcohol when she was present."¹⁵ and asked to explain where the wine had come from, he testified that he recalled there was a small amount of white wine in a bottle in his fridge. I find that Constable Durdle's spontaneous recollection of the amount of wine in his refrigerator, more than five years after what he qualified as an unremarkable evening, detracts from his overall credibility.

[40] Furthermore, Constable Durdle maintained quite emphatically that he had consumed **one** glass of wine with his supper during the evening. However, in his February 4, 2020, statement to Sergeant Baldwin, he stated that he had "a couple"¹⁶ and "a few"¹⁷ glasses of wine that night. I find that Constable Durdle's explanations of the meaning of those words in his testimony before me, where he advanced that Newfoundlanders often use plurality when referring to a single thing, significantly affected his credibility.

¹⁵ *Transcript of Conduct Hearing*, February 21, 2024, at pages 73 and 74, at lines 23 to 2.

¹⁶ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 8 – Constable Durdle's February 4, 2020 statement, at page 376, at line 6.

¹⁷ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 8 – Constable Durdle's February 4, 2020 statement, at page 391, at line 13.

[41] I agree with the Conduct Authority Representative's submission that Constable Durdle's absolute denials or quick explanations pertaining to many innocuous facts seem to have been moulded to support his narrative. Such examples include the status of his relationship with V.S. at the time, his denial that they were celebrating her birthday on the night in question, his adamant statement that he never mixed any drinks for V.S. during their entire relationship, his denial that V.S. was at his residence before Constable Wheeler's arrival, and even his detailed description of Constable Wheeler's attire, highlighting that he had not observed Constable Wheeler wearing his duty belt. I find that Constable Durdle's unwillingness to accept any contradictory evidence, however immaterial to the Allegations, unfavourably impacts his credibility and reliability.

[42] Moreover, at times, Constable Durdle's narrative appears to be tailored to either limit contradictions to Constable Wheeler's version of events or to curtail potential further jeopardy. For example, Constable Durdle has maintained that he did not serve alcohol or observe Constable Wheeler drink alcohol on the night in question, despite Constable Wheeler's allusions to drinking in the Facebook messages¹⁸ he exchanged with V.S. and repeated admissions in his written statement¹⁹ and in his testimony at his trial that he did consume at least three drinks.

[43] Another demonstration of Constable Durdle's carefully framed evidence is where he testified that he did not observe V.S. driving her vehicle while intoxicated. Instead, he stated that he found her sitting, in her parked car, in the neighbour's driveway. Constable Durdle went so far as to correct the Conduct Authority Representative when asked why he did not address V.S.'s level of impairment while in the care and control of a vehicle. Constable Durdle offered:

[...]

Well, in actual fact, she wouldn't have, technically, care and control, because she's in a private driveway of a residence [...] inside a fence. So would we arrest her? Legally? No, we wouldn't. So at that point, when I made those observations and I spoke with her outside, because I was concerned that she would drive away after she had the argument with me [...] I was able to get

¹⁸ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 11 – [V.S.] Disclosed Social Media Messages, at page 436 and 441.

¹⁹ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 16 – Constable Wheeler May 29, 2020, statement, at page 479, at paragraph 10.

her outside the vehicle and asked her to come in and she could go to bed or she could come in and socialize again.

[...]²⁰

[44] Additionally, I find it unlikely that V.S. would admit to driving under the influence of alcohol if that was not the case.

[45] Another concern I have with Constable Durdle's evidence relates to the increase in time he appears to have spent in his music room. Although he was not specifically asked how much time he spent there, Constable Durdle testified the following during Constable Wheeler's trial:

[...]

At times I would leave and go to the kitchen and get a snack or go into the music—into my back room, which was my music room, and **brought the guitar out** and strum some music and things like that.

[...] [Emphasis added]²¹

[46] Constable Wheeler and V.S.'s evidence is that Constable Durdle played the acoustic guitar in the living room/dining room area during the night in question. Neither one of them mentioned an electric guitar or a 30-minute absence during the few hours they spent together. In his testimony before me, Constable Durdle noted that he could not recall playing the acoustic guitar in the living room. However, he stated that he vividly remembers exclusively playing the electric guitar for a period of 20 to 30 minutes in the music room. He further explained:

[...]

As both [V.S.] and [Constable Wheeler] were lovers of the 90s music, early 2000, and rock music, I would go in my music room and plug in the electric guitar and play from there. **You can't take my gear anywhere from the music room**, and that's where I would play.

[...] [Emphasis added]²²

[47] I find that Constable Durdle's lack of recollection that he played the acoustic guitar in his living room negatively affects his reliability. However, more concerning is that once again his

²⁰ *Transcript of Conduct Hearing*, February 21, 2024, at pages 58 and 59, at lines 23 to 11.

²¹ Conduct Hearing Exhibits CAR-02– CAR Book of Documents, TAB 4 –HMK – WHEELER Michael June 29, 2023, [V.S.] and Durdle, at page 165, page 134 of the transcript, at lines 21 to 24.

²² *Transcript of Conduct Hearing*, February 21, 2024, at page 32, at lines 3 to 8.

evidence appears to be tailored to his narrative that he did not observe Constable Wheeler point his service pistol at V.S., as the timing of that event may coincide with the half hour during which he could have been out of the room playing the electric guitar, by himself, while his guests conveniently remained out of sight in the living room.

[48] In conclusion, I find that the issues with Constable Durdle's evidence are such that they cumulatively detract from the overall believability of his testimony.

FINDINGS OF FACT

[49] Following a review of my February 2, 2024, *Determination of Established Facts* and the evidence heard at the Conduct Hearing, I find the following facts established:

- a. At all material times, Constable Durdle was a member of the RCMP posted to Bell Island Detachment, in "B" Division.
- b. Constable Durdle was residing in government housing located at [address redacted], Bell Island.
- c. During the evening of January 22, 2018, while off duty, Constable Durdle and V.S., who were in an intimate relationship, were at his residence, consuming alcohol.
- d. V.S. is a member of the public.
- e. Later that night after his regular shift, between midnight and 2 a.m. on January 23, 2018, Constable Wheeler, a member of Bell Island Detachment, attended Constable Durdle's residence. Constable Wheeler was on call until 6 a.m.; he arrived driving a marked police vehicle and was wearing his RCMP uniform, including his duty belt, which holds his RCMP-issued service pistol.
- f. There is no safety mechanism on 9mm, RCMP-issued service pistols.

- g. Constable Durdle knew that Constable Wheeler was the only member on call that night and that it would be impossible to have members from neighbouring detachments attend calls for service, as the ferry connecting the island to the mainland does not operate at night.
- h. That night was the only time Constable Wheeler, Constable Durdle and V.S. socialized together at Constable Durdle's residence.
- i. For most of the night, V.S. and Constable Wheeler sat next to each other on a couch in the living room while Constable Durdle sat in his La-Z-Boy chair.
- j. V.S. and Constable Wheeler were drinking alcohol, and V.S. was intoxicated.
- k. At one point during the night, V.S. and Constable Wheeler engaged in consensual playful wrestling with one another, where V.S. would attempt to get out of the police holds in which Constable Wheeler was placing her.
- l. Constable Durdle observed the play wrestling but left the living room at one point during these interactions.
- m. Following V.S. getting out of a headlock in which Constable Wheeler had placed her, Constable Wheeler unholstered his firearm and placed it against the side of V.S.'s head. Constable Durdle did not observe this, as he was in the kitchen.
- n. Constable Wheeler then stood up and pointed the firearm at V.S.
- o. Constable Durdle returned to the living room and intervened by uttering words to the effect of "What the fuck are you doing?" and pushing Constable Wheeler's forearms down.
- p. V.S. subsequently left the residence and drove a short distance down the road.
- q. She returned to the residence shortly after and went to bed.
- r. V.S. and Constable Durdle discussed the gun incident the following morning.

- s. Between January 23 and 30, 2018, Constable Durdle and Constable Wheeler discussed the gun incident.
- t. On January 30, 2018, V.S. received a Facebook message from Constable Wheeler that reads:

Hey Douche – Paul told me I freaked you out the other night!! Sorry!!:). But to ease your mind it was all safe – I guess I’m a little more comfortable around my gear than I should be. :). Weird shit always happens with me on nights like that as you know [emoji].

- u. On January 14, 2020, a Code of Conduct investigation was mandated in relation to the incident that took place on January 23, 2018, at Constable Durdle’s residence. Constable Wheeler was the subject of this investigation.
- v. On February 4, 2020, as part of the Code of Conduct investigation of Constable Wheeler, Constable Durdle provided a witness member statement to Sergeant Baldwin.
- w. In his statement, Constable Durdle reported that he never saw Constable Wheeler pull his pistol out of his holster on the night of the alleged incident. Constable Durdle also stated that the allegation under investigation was false and mentioned: “It’s a false allegation”; “I’m here today for a code of conduct for a false allegation”; “She’s bringing me into this, this complete false allegation”; “It’s a completely false, it’s a crazy allegation”; and, “Once again just that this is just is an outrageous false allegation [sic]”.
- x. On December 1, 2023, Constable Wheeler was found guilty of breaching subsections 86(1) and 87(1) of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*], for using a firearm in a careless manner by holding it against V.S.’s head and for pointing a firearm at her.

ANALYSIS

[50] As stated by the Supreme Court of Canada, “[...] evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test [...]”²³

Findings on Allegation 2

[51] Allegation 2 alleges that Constable Durdle failed to report contraventions by other members, which is contrary to section 8.3 of the Code of Conduct.

[52] To establish an allegation under this section, the Conduct Authority must establish each of the following on a balance of probabilities:

- a. the identity of the member;
- b. that the member had personal knowledge of, or was advised of the misconduct at issue; and
- c. that the member failed to report it.

[53] The first and third elements of this test are not contested. Constable Durdle’s identity is not at issue in this proceeding and Constable Durdle has admitted that he did not report any contravention to the Code of Conduct as he submits that no contraventions occurred. He has conceded that if the alleged contraventions occurred, then he would have a duty to report them.

[54] Therefore, the only contested element of the test is whether Constable Durdle had personal knowledge of or was advised of Constable Wheeler’s misconduct, which is captured in particulars 3 to 8 and includes Constable Wheeler’s consumption of alcohol while in uniform and on call, as well as handling his service pistol in an unsafe manner.

[55] Constable Durdle’s position throughout his response to the Allegations, statement to Sergeant Baldwin, testimony at Constable Wheeler’s trial and during his testimony before me has

²³ *McDougall*, at paragraph 46

been consistent. His evidence is that at no time did he observe Constable Wheeler handle his service pistol in an unsafe manner, or in any manner, as he contends that he did not observe Constable Wheeler wearing his duty belt on the night in question.

[56] Constable Durdle is also unequivocal in that he did not observe Constable Wheeler consume alcohol; rather, he only observed him consume one glass of Diet Pepsi that he himself offered Constable Wheeler early in the night.

[57] V.S.'s evidence has also been consistent throughout: Constable Wheeler did place his firearm against the side of her face and pointed it at her, and Constable Durdle intervened by lowering Constable Wheeler's arms after saying "What the fuck are you doing?".

[58] V.S. testified that Constable Wheeler was consuming alcohol during the night. This is corroborated by Constable Wheeler's admissions in the prepared written statement he provided on May 29, 2020, in his testimony at his criminal trial and in Facebook messages²⁴ he exchanged with her.

[59] I find that V.S.'s account is more credible and reliable to that of Constable Durdle as it accords with the totality of the evidence before me. I find that Constable Durdle observed and had knowledge that Constable Wheeler consumed alcohol as well as observed and intervened when Constable Wheeler pointed his firearm at V.S. Therefore, I find particulars 1 through 8 established on a balance of probabilities.

[60] Consequently, since the Conduct Authority has demonstrated that Constable Durdle had personal knowledge of Constable Wheeler's misconduct, the second element of the test for a contravention of section 8.3 of the Code of Conduct is met.

[61] As Constable Durdle did not report Constable Wheeler's contraventions of the Code of Conduct when he had an obligation to do so, it follows that the third element of the test is also met.

²⁴ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 11 – [V.S.] Disclosed Social Media Messages, at pages 428-429.

[62] As a result, I find Allegation 2 established.

Findings on Allegation 3

[63] Allegation 3 alleges that Constable Durdle failed to preserve the peace and prevent offences against the laws of Canada as well as placed the safety of the public at risk, thus engaging in discreditable conduct contrary to section 7.1 of the Code of Conduct.

[64] To establish an allegation under this section, the Conduct Authority must establish each of the following on a balance of probabilities:

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

[65] Constable Durdle's identity is not at issue. I will therefore focus my analysis on the remaining three elements of the test.

[66] To establish the act or acts constituting the alleged conduct, it must be demonstrated that the particulars essential to the allegation have in fact occurred. In other words, it is not necessary to establish every particular. However, those that are established must meet the threshold of discreditable conduct.

[67] Particulars 3 through 6 under Allegation 3 are the same as for Allegation 2. I have already found these particulars to be established and will not revisit them here.

[68] The remaining particulars under Allegation 3 can be separated into two different behaviours that may constitute discreditable conduct. The first behaviour at particulars 7 and 11 refers to Constable Durdle serving alcohol to Constable Wheeler while knowing he was on call;

therefore, placing the safety of the public at risk. The second behaviour at particulars 9 and 10 relates to Constable Durdle's alleged failure to preserve the peace and prevent offences, and I will examine it first.

Failure to preserve the peace and prevent offences

[69] Particulars 10 and 11 summarize the second alleged discreditable behaviour under section 7.1 where it is alleged that Constable Durdle failed in his duties as a police officer to preserve the peace and prevent offences against the laws of Canada, in contravention of section 18 of the *RCMP Act*. It is alleged that his actions placed the safety of the public at risk and were discreditable.

[70] Particulars 5, 6 and 9 tie into this behaviour. Particulars 5 and 6 have already been established as they relate to the gun pointing incident and particular 9, provides the following:

9. Despite witnessing Constable Wheeler pointing his service pistol at [V.S.], [Constable Durdle] did not take proper actions to preserve critical evidence and he jeopardized a criminal investigation.

[71] As part of his submission, the Conduct Authority Representative has advanced that Constable Durdle had the power to arrest Constable Wheeler at the time the firearm was pointed. In the alternative, he had the duty to report the incident as soon as feasible, so that the firearm and duty belt could be seized, and the matter could be investigated in a timely fashion. The Conduct Authority Representative submits that Constable Durdle's failure to act jeopardized a criminal investigation and that he did fail in his duties as a police officer.

[72] Although I agree that Constable Durdle should have reported the incident at the time it occurred, I was not provided with clear, cogent and convincing evidence regarding which critical evidence should have been preserved, nor did I receive evidence that a criminal investigation was jeopardized. To the contrary, Constable Wheeler was found guilty of two *Criminal Code* offences on December 1, 2023.

[73] The Conduct Authority Representative further submits that Constable Durdle's actions placed the safety of the public at risk, as V.S. is a member of the public.

[74] It is an established fact that Constable Durdle intervened as soon as he observed Constable Wheeler pointing a firearm at V.S. by stating words to the effect of “What the fuck are you doing?” and lowering Constable Wheeler’s forearms. V.S. subsequently left the residence and, when she returned, she went to bed. The Conduct Authority has not provided me with clear, cogent and convincing evidence that V.S.’s safety was placed at risk by Constable Durdle’s actions. Consequently, particulars 9 and 10 are not established. Moreover, I cannot find particular 11 established in the context of this alleged behaviour. However, I will analyze particular 11 again in the context of the first alleged behaviour: serving alcohol.

Serving alcohol

[75] Particular 8 provides additional context and reads as follows:

8. [Constable Durdle] also knew that Constable Wheeler was the only member “on call” that night, and that it would be impossible to have members from neighbouring detachments attend calls for service, as the ferry connecting the island to the mainland does not operate at night.

[76] Particular 8 is established, following Constable Durdle’s admission and my findings of facts.

[77] During his testimony at the Conduct Hearing, Constable Durdle acknowledged that members who are on call are not permitted to drink. He also stated that at no time did he observe Constable Wheeler consume alcohol nor did he serve him anything other than one glass of Diet Pepsi. Constable Durdle was unwavering in the evidence he provided in his statement, his response to the Allegations, his criminal trial testimony and his oral evidence before me.

[78] V.S.’s evidence is that Constable Wheeler did consume alcohol. In fact, after arriving, he was playing “catch-up” and drinking quickly to reach a similar level of intoxication as her and Constable Durdle. She testified that Constable Durdle was a gracious host and was mixing drinks and serving them throughout the night. In cross-examination, she testified that Constable Durdle was the only one serving drinks that night and she could not recall anything about a Diet Pepsi. This is consistent with the evidence she provided in her criminal trial testimony and in her statements.

[79] Although Constable Wheeler was not called as a witness in this Conduct Hearing by either party, the written statement he provided and the transcripts of his testimony at the criminal trial are before me. I have already found that Constable Wheeler consumed alcohol at Constable Durdle's residence on the night in question. During his criminal trial, he testified that he had consumed alcohol but that Constable Durdle had not mixed the drinks. His recollection was that Constable Durdle had offered him a glass of Pepsi and that V.S. had poured him a drink afterwards. When asked about his alcohol consumption that night, he stated that he had consumed about three drinks.

[80] I also reviewed the Facebook messages²⁵ exchanged between Constable Wheeler and V.S., dated January 23 to 30, 2018, which allude to Constable Wheeler's intoxication level. I note that there is no specific mention of who was mixing or serving drinks. While there is conflicting evidence before me, and despite the concordance between Constable Durdle and Constable Wheeler's accounts regarding who was mixing and serving drinks that night, I find the contradiction between Constables Wheeler and Durdle's evidence with respect to Constable Wheeler's alcohol consumption to be crafted to avoid casting aspersions on either of them. Thus, I prefer V.S.'s testimony on this point as it has a greater air of reality. I find that Constable Durdle served alcohol to Constable Wheeler on the night in question. Consequently, I find that particular 7 is established.

[81] Since the Conduct Authority has discharged its onus in the first and second elements of the test with respect to particular 7, I must now determine if the fact that Constable Durdle served alcohol to Constable Wheeler while knowing he was the only member on call on Bell Island that night is likely to discredit the Force. This involves determining whether a reasonable person in society, who is aware of all the relevant circumstances, including the realities of police work in general and the RCMP in particular, would consider the conduct to be discreditable.

²⁵ Conduct Hearing Exhibits CAR-02 – CAR Book of Documents, TAB 11 – [V.S.] Disclosed Social Media Messages, at page 436 and 441.

[82] Constable Wheeler was the member responsible for attending and responding to any emergency calls that may have arisen in the early hours of January 23, 2018, on Bell Island.

[83] Although I have made no determination with respect to Constable Wheeler's level of intoxication that night, he consumed at least three drinks by his own admission. I recognize that the ultimate responsibility of being fit for duty is incumbent on Constable Wheeler; however, Constable Durdle facilitated Constable Wheeler's consumption of alcohol in spite of his knowledge that members from neighbouring detachments could not attend calls for service if Constable Wheeler was impaired. In doing so, Constable Durdle's actions placed the safety of Bell Island community members at risk. I find that a reasonable person in society, who is aware of all the relevant circumstances, including the realities of police work in general and the RCMP in particular, would consider the conduct to be discreditable.

[84] The last element of the test is whether the member's behaviour is sufficiently related to his duties and functions so as to provide the Force with a legitimate interest in disciplining the member.

[85] It is well established that the Code of Conduct applies to RCMP members' conduct both on and off duty and that police officers are held to a higher standard than the general public.

[86] Furthermore, section 3.2 of the RCMP *Occupational Safety Manual*, Chapter 17 "Substance Use" (October 18, 2018, version), provides that employees must report fit for duty and remain fit for duty while on call. It further prohibits employees from consuming alcohol while on duty or at work and sets out other employees' roles and responsibilities when a co-worker exhibits signs of possible impairment at section 4.1.5. I find that the nexus between Constable Durdle's actions, in serving alcohol to Constable Wheeler while knowing he was on call, and his duties as an RCMP officer is sufficient so as to provide the RCMP with a legitimate interest in disciplining him. Thus, I find that particular 11 is established in the context of the first behaviour under this allegation.

[87] Given the foregoing, Allegation 3 is established on a balance of probabilities.

Findings on Allegation 5

[88] Allegation 5 alleges that Constable Durdle provided false or misleading information during the course of an investigation, which is contrary to section 8.1 of the Code of Conduct.

[89] To establish an allegation under this section, the Conduct Authority must establish each of the following on a balance of probabilities:

- a. the identity of the member;
- b. the statement or account of actions in question;
- c. that the statement or account provided was false, misleading or inaccurate; and
- d. that the member:
 - i. knew the statements were false, misleading or inaccurate; or
 - ii. was reckless or careless as to the validity of the statements.

[90] Once again, Constable Durdle's identity is not at issue in this proceeding.

[91] Particulars 4 and 5 provide context and form part of my established facts as they have been admitted by Constable Durdle. Therefore, they are established.

[92] Particular 6, sets out the statement or account of actions in question. Moreover, Constable Durdle has admitted this particular. Consequently, it is established.

[93] Particular 7 relates to providing false or misleading information in an internal investigation.

[94] In his submissions, the Conduct Authority Representative states that Allegation 5 is dependent upon my findings in relation to Allegation 2 or 3. I agree. As I have found both of those Allegations established, I find that Constable Durdle's statement to Sergeant Baldwin during the Code of Conduct investigation is false and misleading. Constable Durdle was providing a witness statement, not a statement as the subject of a Code of Conduct investigation. While I acknowledge

that Constable Durdle may not have wanted to incriminate himself, as is his right, he did have an obligation to be honest. Thus, I find that his statements went beyond a denial of any knowledge of the events in question and are false and misleading. Consequently, particular 7 is established.

[95] I find Allegation 5 established on a balance of probabilities.

CONCLUSION

[96] Having found Allegations 2, 3 and 5 established, I would normally be required, by virtue of subsection 45(4) of the *RCMP Act*, to impose at least one of the conduct measures set out under that subsection.

[97] The conduct measures phase was to be held virtually the week of February 26, 2024. However, on February 26, 2024, the Conduct Authority Representative provided me with a duly signed Form 1733 – *Discharge Request*, effective that same day. Consequently, this conduct proceeding was concluded prior to the imposition of conduct measures, as I lost jurisdiction over the matter before any could be imposed.

[98] This decision constitutes my written decision, as required by subsection 45(3) of the *RCMP Act*. 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 Durdle, 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.

November 22, 2024

Sara Novell

Date

Conduct Board