

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 K.C. in the present decision shall not be published, broadcast or transmitted in any way.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

**Level III Conduct Authority, “K” Division**

Conduct Authority

and

**Constable Sean Avery**  
Regimental Number 49063

Subject Member

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**Conduct Board Decision**

Kevin L. Harrison

November 1, 2024

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Sabine Georges, Conduct Authority Representative

John Benkendorf, Subject Member Representative

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## SUMMARY

The original *Notice of Conduct Hearing* contains four allegations against Constable Sean Avery. Allegation 1 was under section 5.1 of the RCMP Code of Conduct (use only as much force as is reasonably necessary). Allegations 2, 3 and 4 were under section 8.1 of the Code of Conduct, alleging that Constable Avery knowingly provided false, misleading or inaccurate statements on three occasions. On October 6, 2023, the Conduct Authority signed an amended *Notice of Conduct Hearing*, which includes changes to the three allegations under section 8.1, alleging that Constable Avery was negligent, reckless or careless in making false, misleading or inaccurate statements.

The Conduct Board finds that the Conduct Authority has established all four allegations. The Conduct Board imposed a financial penalty of 12 days (96 hours) to be deducted from Constable Avery's pay, a forfeiture of 6 days (48 hours) of annual leave for Allegation 1, and a reprimand for each of the three allegations under section 8.1 of the Code of Conduct.

## INTRODUCTION

[1] Constable Sean Avery is facing four allegations relating to contraventions of sections 5.1 and 8.1 of the RCMP Code of Conduct.

[2] On April 14, 2022, the Conduct Authority signed a *Notice to the Designated Officer* to initiate of a conduct hearing. On April 26, 2022, the Designated Officer appointed me as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[3] On August 11, 2022, the Conduct Authority signed a *Notice of Conduct Hearing* containing four allegations. Allegation 1 was under section 5.1 of the Code of Conduct. It pertains to a duty-related incident that occurred on April 14, 2021, in Fort Saskatchewan, Alberta. Constable Avery and two other RCMP members attended Ms. K.C.'s residence to apprehend her under the *Mental Health Act*, RSA 2000, c M-13 [*Mental Health Act*]. While escorting a handcuffed Ms. K.C. from her residence, Constable Avery placed his hand on the back of her head and aggressively pushed her, face first, into the ground. Ms. K.C. required three stitches for a cut to her head received when she hit the ground. The Conduct Authority alleged that Constable Avery used excessive force.

[4] Allegations 2, 3 and 4 were under section 8.1 of the Code of Conduct. They alleged that, on three occasions, Constable Avery knowingly provided false, misleading or inaccurate statements relating to the use of force against Ms. K.C.

[5] The conduct hearing started on October 3, 2023, in Edmonton, Alberta. However, on October 4, 2023, due to issues that arose prior to the start of the conduct hearing, I adjourned it, without hearing evidence, to November 14, 2023.

[6] On October 6, 2023, the Conduct Authority signed an amended *Notice of Conduct Hearing*. Allegation 1 was not changed, but the wording for Allegations 2, 3 and 4, still under section 8.1. of the Code of Conduct, now allege that Constable Avery was negligent, reckless or careless in making false, misleading or inaccurate statements.

[7] On November 14, 2023, Constable Avery admitted all four allegations from the amended *Notice of Conduct Hearing*. Furthermore, I heard evidence from him and the parties' submissions on the allegations. On November 15, 2023, I rendered my oral decision, finding that all four allegations were established on a balance of probabilities.

[8] On November 16, 2023, I heard the parties' submissions on conduct measures. The following day, I rendered my oral decision. For Allegation 1, I imposed a financial penalty of 12 days (96 hours) to be deducted from Constable Avery's pay and a forfeiture of 6 days (48 hours) of annual leave. For each of the three allegations under section 8.1 of the Code of Conduct, I imposed a reprimand.

### **Publication ban**

[9] As a matter of practice, conduct boards anonymize their written decisions when referring to complainants, witnesses, minors or any other person not acting as an RCMP employee in the ordinary course of their duties. Nevertheless, paragraph 45.1(7)(a) of the *RCMP Act* authorizes a conduct board to prohibit the publication of information that could identify a complainant, a witness or a person under the age of 18 on its own initiative or at the request of any person.

[10] Neither party requested a publication ban. Ms. K.C. does not fit within the three categories of persons for which a publication ban may be ordered. However, information disclosed about her during the conduct hearing is highly personal. Knowing her identity is not critical to understanding this decision.

[11] Subsection 13(4) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], provides for a conduct board to give any direction it considers appropriate if a matter arises in a Code of Conduct proceeding that is not provided for in the *RCMP Act*. At the start of the conduct hearing, pursuant to the authority under paragraph 45.1(7)(a) of the *RCMP Act* and subsection 13(4) of the *CSO (Conduct)*, I ordered that any information that could identify Ms. K.C. shall not be published, broadcast or transmitted in any way.

## ALLEGATIONS

[12] The amended *Notice of Conduct Hearing* contains the following four allegations and corresponding particulars:

### **Allegation 1**

On or about April 14, 2021, at or near Fort Saskatchewan, Alberta, during the course of his duties, Constable Sean Avery did use unnecessary force on Ms. [K.C.] as she was being escorted to a police vehicle. It is therefore alleged that Constable Sean Avery has engaged in excessive use of force conduct contrary to RCMP Code of Conduct. sec. 5.1.

#### Particulars of the contravention

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”), working general duty uniform duties, posted to “K” Division, Fort Saskatchewan Detachment in the province of Alberta.
2. On April 14, 2021, the Fort Saskatchewan Detachment received a Form 1 request from Ms. [K.C.]’s doctor to apprehend her under the *Mental Health Act*. It also revealed that Ms. [K.C.] had a knife in her possession.
3. Corporal Jolee Marianicz (“[Corporal] Marianicz”), Constable Joel Forhart (“[Constable] Forhart”) and yourself attended the residence located at [address redacted], Fort Saskatchewan, Alberta to apprehend Ms. [K.C.].
4. Upon arrival, [Corporal] Marianicz, [Constable] Forhart and yourself all went downstairs to the basement of the residence to apprehend Ms. [K.C.]. Ms. [K.C.] was put in handcuffs behind her back and you escorted her out of the residence.
5. As you were exiting the residence and while holding Ms. [K.C.], you lost your balance and you both fell to the bottom of the stairs. You regained your balance and maintained control of Ms. [K.C.]. You then continued to escort her towards the police vehicles stationed in front of the residence.
6. As you both walked along the driveway, Ms. [K.C.] bumped you with her hip. You reacted by grabbing her by the head and extending your right leg in front of you. You proceeded to slam her into the ground causing her to land face first on the pavement driveway.
7. The takedown was excessive, unreasonable, unnecessary, and inconsistent with RCMP Policy and training standards.
8. As a result of your actions, Ms. [K.C.] suffered an injury to the face, causing bruises and bleeding which required stitches.

### **Allegation 2**

Between April 14<sup>th</sup>, 2021 and April 17<sup>th</sup>, 2021, at or near Fort Saskatchewan, Alberta, during the course of their duties, Constable Sean Avery failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties, and the operation and administration of the Force, contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars 1 to 8 are the same as those from Allegation 1.

9. Following the arrest of Ms. [K.C.], you drafted a Subject Behaviour/Officer Response (“SB/OR”) report with regards to occurrence number 2021-[XXXXXX], which included in part, the following:

*As Subject was getting close to a vehicle on the driveway, they pushed towards member, who was only used to them pulling away most of this time and ran into the side of the vehicle. Member also felt the Subject kick towards member at this time too. With all of members concerns at this stage and the elevating behaviours of the Subject, who was now in an assaultive state, member decided to inconvenience the Subject by taking them to the ground and re-evaluating their behaviour at that time to see if something different needed to happen to complete the transfer to the vehicle. Member used a front leg sweep to the Subject, however, at this time the Subject was still trying to pull away and member lost control of their arms and the Subject fell freely to the ground. As the Subject was handcuffed at this time, they hit the ground face first with some force. This fall to the ground caused a cut to the Subject’s forehead.*

10. You entered false and misleading information into the SB/OR report in a negligent, reckless and careless manner. Specifically, you falsely claimed:

- a. That Ms. [K.C.] kicked towards you.
- b. That Ms. [K.C.] was still trying to pull away after you used a “front leg sweep”.

11. You entered false and misleading information into the SB/OR report in a negligent, reckless or careless manner by omitting to provide significant detail. In particular, you omitted to mention that you pushed Ms. [K.C.]’s head down causing her to fall to the ground.

### **Allegation 3**

On or about April 14<sup>th</sup>, 2021, at or near Fort Saskatchewan, Alberta, during the course of their duties, Constable Sean Avery failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties, and the operation and administration of the Force, contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars 1 to 8 are the same as those from Allegation 1.



9. Following the arrest, [Corporal] Marianicz asked you what had happened and whether Ms. [K.C.] had done anything to cause you to take her down in that manner. You told [Corporal] Marianicz that you lost your grip, and that Ms. [K.C.] kicked at you and pushed you into the car.

10. You provided false and misleading information to a supervisor in a negligent, reckless or careless manner. Specifically you falsely claimed:

- a. That you lost your grip.
- b. That Ms. [K.C.] kicked at you.

#### **Allegation 4**

Between July 29<sup>th</sup>, 2021 and November 2<sup>nd</sup> 2021, at or near Fort Saskatchewan, Alberta, during the course of their duties, Constable Sean Avery failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties, and the operation and administration of the Force, contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars 1 to 8 are the same as those from Allegation 1

9. A statutory investigation was initiated and a charge of common assault contrary to section 266 of the [*Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*]] was laid against you in the Fort Saskatchewan Provincial Court.

10. On July 29, 2021, you provided a written statutory statement to Corporal Frederic [d]e Billy (“[Corporal] [d]e Billy”) via email which, included in part, the following notations:

*As we were walking next to a car in the driveway, [Ms. K.C.] pushed back and used her body to hit me. This caused me to hit my hip and gun belt up against the back driver side of the car. As I hit the back of the car I felt [Ms. K.C.] trying to do something with her feet, I felt that she was trying to kick at me.*

[...]

*My plan was to conduct a leg sweep and control [Ms. K.C.] by the arms as I lead her to the ground. Unfortunately when I started this action, [Ms. K.C.] continued to struggle and pull away from me. I attempted to assist [Ms. K.C.] however I lost control of her. As a result of this [Ms. K.C.] fell and struck her head, receiving a cut on her forehead. I was not able to clearly see the cut as [Ms. K.C.]’s hair was covering her forehead.*

[...]

*My decision to take [Ms. K.C.] to the ground was made after numerous verbal directions had been ineffective in gaining compliance and after she had made two assaultive actions in the driveway. I believed that unless her behaviour was calmed down and descalated that there was a significant*

*risk that she would assault officers or risk harm to herself. Once she was taken to the ground, her behaviour calmed almost immediately.*

11. You provided false and misleading information to an investigator in the course of a statutory investigation in a negligent, reckless or careless manner. Specifically, you falsely claimed:

- a. That you attempted to assist Ms. [K.C.].
- b. That you lost control of Ms. [K.C.].
- c. That Ms. [K.C.] made two assaultive actions in the driveway.

*[Sic throughout]*

## **DECISION ON ALLEGATIONS**

[13] My role as a conduct board, per subsection 45(1) of the *RCMP Act*, is to decide whether each allegation under the Code of Conduct is established. The Conduct Authority has the onus of establishing the allegations on a balance of probabilities. This means that I must find that it is more likely than not that Constable Avery contravened the Code of Conduct. This burden is met with sufficiently clear, convincing and cogent evidence.

[14] The Conduct Authority need not prove every particular set out in the *Notice of Conduct Hearing* as some are included simply to give context to the allegations.

### **Findings of fact for all four allegations**

[15] At all material times, Constable Avery was an RCMP member performing general policing duties at Fort Saskatchewan Detachment, “K” Division.

[16] On April 14, 2021, the Fort Saskatchewan RCMP Detachment received a Form 1 request from Ms. K.C.’s treating psychiatrist, Dr. A.O.,<sup>1</sup> to apprehend her under the *Mental Health Act*. A Form 1 is a doctor’s application for a person to undergo a psychiatric assessment to determine whether the person requires admission to a psychiatric facility for further care, as a voluntary or an involuntary patient.<sup>2</sup>

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<sup>1</sup> Cst. Sean Avery – CARD Disclosure – Investigation Report Binder [IRB], Appendix F “Cpl. Marianicz Supplementary Report”, at page 89.

<sup>2</sup> *Mental Health Act*, at section 2.

[17] Dr. A.O. informed Corporal Marianicz that Ms. K.C. was in possession of a knife.<sup>3</sup> Ms. K.C. was known to Fort Saskatchewan Detachment members as a drug user who was very unpredictable when dealing with police. She had a history of mental illness related to her drug use. She also has a criminal record for violence towards police.<sup>4</sup> Based on these factors, Corporal Marianicz, Constable Forhart and Constable Avery were dispatched to this call for service.

[18] Constables Avery and Forhart arrived at Ms. K.C.'s residence ahead of Corporal Marianicz. Ms. K.C.'s parents directed them to the basement.

[19] Constable Avery observed "a large knife" and some "somewhat fresh" blood droplets on the basement floor outside Ms. K.C.'s bedroom.<sup>5</sup> Ms. K.C. was in a bedroom with the door closed. Despite seeing the knife on the floor, the members remained concerned that Ms. K.C. might still have a weapon. Constables Avery and Forhart entered the bedroom without incident.<sup>6</sup>

[20] Corporal Marianicz went to the basement to assist Constables Avery and Forhart when she arrived at Ms. K.C.'s residence. Constables Avery and Forhart had already handcuffed Ms. K.C. with her hands behind her back. Although Ms. K.C. yelled profanities at Constables Avery and Forhart, she was otherwise cooperative during the handcuffing process.<sup>7</sup> However, Ms. K.C.'s demeanour changed when Corporal Marianicz searched her prior being escorted from the basement. Ms. K.C. accused Corporal Marianicz of sexually assaulting her.<sup>8</sup>

[21] To escort her from the house, Constable Avery took control of Ms. K.C. He had to pull her from the bedroom. Furthermore, she struggled outside the room to the extent that she and Constable Avery hit the wall, causing damage to it.<sup>9</sup>

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<sup>3</sup> IRB, Appendix F "Cpl. Marianicz Supplementary Report", at page 89; IRB, Appendix S "Cpl. Marianicz Statement", at page 280.

<sup>4</sup> IRB, Appendix K "Cst. Avery SBOR", at page 159.

<sup>5</sup> IRB, Appendix K "Cst. Avery SBOR", at page 106.

<sup>6</sup> IRB, Appendix K "Cst. Avery SBOR", at page 103.

<sup>7</sup> IRB, Appendix E "Cst. Forhart General Report", at page 87.

<sup>8</sup> IRB, Appendix F "Cpl. Marianicz Supplementary Report", at page 89.

<sup>9</sup> IRB, Appendix E "Cst. Forhart General Report", at page 87; Appendix P "Photos of wall damage", at page 265.

[22] As they departed the residence, Ms. K.C. stepped out of the house onto a set of steps. Constable Avery followed immediately behind while keeping a hold on her arm. Ms. K.C. lost her balance for no apparent reason. She fell to the bottom of the stairs and took Constable Avery with her. Ms. K.C. landed on the ground, but Constable Avery was able to stay on his feet and maintain control of her. Once Constable Avery regained his balance, he handily picked up Ms. K.C. off the ground and continued to escort her towards the police vehicles parked on the street in front of Ms. K.C.'s residence.<sup>10</sup>

[23] Corporal Marianicz and Constable Forhart followed immediately behind Constable Avery and Ms. K.C. Constable Forhart stopped momentarily to pick something off the ground. Corporal Marianicz overtook him and was immediately behind Constable Avery and Ms. K.C. as they entered the driveway at the front of the house. Constable Forhart followed behind her.<sup>11</sup>

[24] In the driveway, Ms. K.C. was to Constable Avery's right. Constable Avery held her left arm at the elbow with his right hand. As they walked, Ms. K.C. bumped Constable Avery with her hip (the hip check). Constable Avery lost his balance. To steady himself, he placed his left hand on the rear fender of a vehicle parked in the driveway.<sup>12</sup>

[25] After he regained his balance, and once he and Ms. K.C. cleared the back of the parked vehicle, Constable Avery extended his right foot in front of Ms. K.C. He simultaneously switched his grip on Ms. K.C.'s arm, placing his left hand on her arm. Constable Avery grabbed the back of Ms. K.C.'s head with his now free right hand. Using both his right hand and leg, Constable Avery aggressively pushed Ms. K.C.'s head towards the ground. Constable Avery's left hand came free from Ms. K.C.'s arm due to the aggressiveness of the push. Ms. K.C. landed face first on the paved driveway.<sup>13</sup>

[26] Ms. K.C. suffered bruising, bleeding and a cut to her face.<sup>14</sup>

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<sup>10</sup> IRB, Appendix I "Front door camera (video)".

<sup>11</sup> IRB, Appendix I "Front door camera (video)".

<sup>12</sup> IRB, Appendix J "FS205 Watchguard (video)".

<sup>13</sup> IRB, Appendix J "FS205 Watchguard (video)".

<sup>14</sup> IRB, Appendix R "Ms. [K.C.] – Injury", at pages 275 and 276.

[27] Constables Avery and Forhart escorted Ms. K.C. to the Fort Saskatchewan Detachment where she was examined by Emergency Medical Services personnel. Following their advice, Constable Forhart escorted Ms. K.C. to the hospital where she received medical treatment, which included three stitches to close the cut on her head.<sup>15</sup>

[28] Constable Avery was charged with assault under section 266 of the *Criminal Code*. He pleaded guilty to this charge. On December 13, 2022, he received a fine of \$1,200 plus a victim surcharge.<sup>16</sup>

### **Findings on Allegation 1**

[29] Allegation 1 is for using more force than was necessary in contravention of section 5.1 of the Code of Conduct. To establish an allegation under section 5.1, the Conduct Authority must prove each of the following on a balance of probabilities:

- a. the identity of the subject member;
- b. the subject member's actions that constitute the use of force; and
- c. that the use of force was not reasonably necessary in the circumstances.

#### *a) Identity of the subject member*

[30] Constable Avery's identity is not at issue in this case.

#### *b) Subject member's actions that constitute use of force*

[31] Constables Avery used force on Ms. K.C. during her apprehension. Most of the force applied is not at issue. Particular 6 sets out the actions that the Conduct Authority alleges constitute the impugned use of force. These actions occurred immediately following the hip check. They

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<sup>15</sup> IRB, Appendix Q "Cst. Forhart Statement", at page 270.

<sup>16</sup> Transcript of *His Majesty the King v Sean R Avery*, Action No: 220013882P1, December 13, 2022.

include grabbing Ms. K.C. by her head and slamming her into the ground, which caused her to land face first on the driveway.

[32] Constable Avery pleaded guilty to a criminal charge of assault. Assault is defined at paragraph 265(1)(a) of the *Criminal Code* as the intentional application of force, directly or indirectly, to another person without the consent of that person. Constable Avery's grabbing the back of Ms. K.C.'s head and then forcefully pushing her head to the ground is an application of force directly to Ms. K.C. She did not consent to Constable Avery's actions, which constituted the alleged use of force. Constable Avery admitted these actions before me at the conduct hearing.

[33] Based on my review of the evidence as well as on Constable Avery's admissions in the criminal proceedings and before me, I find that the Conduct Authority has established the second element of the test for section 5.1 of the Code of Conduct on a balance of probabilities.

*c) Use of force not reasonably necessary in the circumstances*

[34] The following three conditions must be met for the use of force to be reasonably necessary:

- i. the subject member was not acting within the scope of their lawful duties;
- ii. the subject member did not have reasonable grounds for using force; and
- iii. the amount of force used was unnecessary.<sup>17</sup>

*i. Acting within the scope of lawful duties*

[35] I find that the first condition is met. Constable Avery was acting within the scope of his duties. He and the other attending officers were lawfully apprehending Ms. K.C. under the *Mental Health Act* after receiving a Form 1 request from her doctor.

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<sup>17</sup> *Commanding Officer of "H" Division and MacGillivray*, 2021 CAD 16 [*MacGillivray*], at paragraph 69.

*ii. Reasonable grounds for using force*

[36] The question to be asked in relation to this second condition is: Was the member's belief that it was necessary to apply force at all objectively reasonable?<sup>18</sup> The member's subjective belief to use force and the amount of force required must be objectively reasonable based on the totality of the circumstances as they existed at the time the force was used.

[37] Constable Avery provided several reasons why he believed he needed to apply the impugned force to Ms. K.C.

[38] In his SB/OR report, Constable Avery wrote that he used the impugned force on Ms. K.C. because she was "in an assaultive state". He decided to "inconvenience [her] by taking [her] to the ground" and "re-evaluating [her] behaviour to see if something different needed to happen to complete the transfer to the police vehicle".<sup>19</sup>

[39] In his statement to Corporal Marianicz, Constable Avery simply said that he lost his grip on Ms. K.C., that she kicked at him and pushed him into a car.<sup>20</sup>

[40] In the statement provided to Corporal de Billy, Constable Avery wrote that his decision to take Ms. K.C. to the ground was made after numerous verbal directions had been ineffective in gaining compliance and after she made two assaultive actions in the driveway. Furthermore, he believed that unless her behaviour was calmed down and de-escalated, there was a significant risk that she would assault officers or risk harm to herself.<sup>21</sup>

[41] The evidence with respect to the verbal commands given to Ms. K.C. prior to Constable Avery pushing her to the ground is not extensive. Constable Avery's SB/OR report simply indicates that she was "told to stop what she was doing and listen to commands".<sup>22</sup> Neither Corporal Marianicz nor Constable Forhart mention verbal commands in their statements.

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<sup>18</sup> *MacGillivray*, at paragraph 69.b.

<sup>19</sup> IRB, Appendix K "Cst. Avery SBOR", at page 106.

<sup>20</sup> IRB, Appendix S "Cpl. Marianicz Statement", at page 284.

<sup>21</sup> IRB, Appendix T "Cst. Avery statement and email consent", at page 297.

<sup>22</sup> IRB, Appendix K "Cst. Avery SBOR", at page 106.

[42] In her statement, Ms. M.A.K., Ms. K.C.'s mother, described Ms. K.C. as struggling like "a little wild cat" while she and the members were still in the house.<sup>23</sup> However, her resistance after the fall off the step was not excessive.

[43] Constable Avery testified during the conduct hearing that despite Ms. K.C.'s resistance, he maintained good control of her.

[44] Both Corporal Marianicz<sup>24</sup> and Constable Forhart<sup>25</sup> said in their statements that they did not observe any assaultive action on Ms. K.C.'s part. Constable Avery did not challenge these statements in his response to the allegations or during the conduct hearing.

[45] The video from the camera situated at the front door of Ms. K.C.'s residence shows Ms. K.C. pulling away from Constable Avery from when he picked her up after the fall off the stairs. Constable Avery's slight loss of balance after the hip check was because Ms. K.C.'s actions caught him off guard. The hip check was not overly forceful. Ms. K.C.'s sudden move towards Constable Avery relieved the resistance of her pulling away.<sup>26</sup> Although Constable Avery said he believed he felt a kick, I saw no evidence in the in-car digital video system (ICDVS) video that Ms. K.C. kicked at Constable Avery. Ms. K.C.'s actions immediately following the hip check were to take steps towards the police vehicle parked at the end of the driveway. Constable Avery had not yet fully recovered his balance following the hip check.<sup>27</sup> Although Ms. K.C.'s feet left the ground as she walked forward after the hip check, Constable Avery had no reasonable basis to believe that Ms. K.C. was attempting to kick him.

[46] Based on the foregoing, I find that Constable Avery's belief that it was necessary to apply the force set out in Particular 6 was not objectively reasonable. Therefore, I find Constable Avery did not have reasonable grounds for using the force he used in the circumstances.

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<sup>23</sup> IRB, Appendix N "Ms. [M.A.K.] Statement", at page 250.

<sup>24</sup> IRB, Appendix S "Cpl. Marianicz Statement", at pages 289 and 290.

<sup>25</sup> IRB, Appendix Q "Cst. Forhart Statement", at page 274.

<sup>26</sup> IRB, Appendix K "Cst. Avery SBOR", at page 106.

<sup>27</sup> IRB, Appendix J "FS205 Watchguard (video)".



*iii. Use unnecessary force*

[47] The third condition is whether the force Constable Avery used was unnecessary. The focus of this element is on the amount of force used.<sup>28</sup> I find that the force Constable Avery used was unnecessary for the following reasons:

- a. Ms. K.C.'s ability to cause the attending members or herself harm was limited by her being properly restrained with her hands handcuffed behind her back.
- b. Constable Avery maintained control of Ms. K.C., including during the fall from the stairs, until his aggressive push caused him to lose his grip on her arm.
- c. A significant size difference exists between Constable Avery and Ms. K.C. Constable Avery's ability to handle Ms. K.C. based on this size differential is clearly demonstrated by the ease at which Constable Avery picked up Ms. K.C. off the ground after their fall off the steps.
- d. Ms. K.C.'s physical resistance was limited to trying to pull away, albeit aggressive at times. I characterize her actions as being at the low end of "active resistant" according to subject behaviour categorized in the Incident Management Intervention Model.<sup>29</sup> The appropriate response to low-end active resistance according to the Incident Management Intervention Model is soft physical control with hard physical control and the possible use of intermediate intervention options reserved for increased levels of "active resistance".
- e. Constable Avery and Ms. K.C. were near the police vehicles. Constable Avery had two members readily available to assist him in placing Ms. K.C. in the police vehicle. The members attending Ms. K.C.'s residence knew of her previous interactions with police, which included spitting or assaulting other members, before they left the office to attend

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<sup>28</sup> *MacGillivray*, paragraph 69.c.

<sup>29</sup> "Active resistant" is defined in the *Incident Management Intervention Model* as "The subject uses non-assaultive physical actions to resist control by the officer. Examples include pulling away to prevent or escape control, or overt movements like walking away, running away, or grabbing onto an object to prevent the officer's lawful attempts to control the subject."

the call. Ms. K.C. gave no indication on April 14, 2021, that she intended to do either. If she resisted being placed in the rear of the police vehicle, then the three members present could have dealt with that situation. All this to say, there is no evidence that Constable Avery sought or needed the assistance of the other members prior to pushing Ms. K.C. to the ground.

[48] Based on my finding that the force Constable Avery used was unnecessary, I also find that the Conduct Authority has established the third element of the test for section 5.1 of the Code of Conduct on a balance of probabilities.

[49] In conclusion, the Conduct Authority has demonstrated all three elements of the test for section 5.1 of the Code of Conduct on a balance of probabilities. Consequently, I find that the Conduct Authority has established Allegation 1.

#### **Findings related to Allegations 2, 3 and 4**

[50] Allegations 2, 3 and 4 are under section 8.1 of the Code of Conduct, which is, in general terms, providing a false, misleading or inaccurate statement. There are three categories of cases related to incorrect information in police accounts of their actions and responsibilities. They include:

[25] [...]

- a. where the police officer knew the statements made were false, misleading or inaccurate;
- b. where the police officer was negligent, reckless or careless as to the validity of the statement being purveyed; and
- c. where the police officer makes an honest but mistaken statement that ultimately turns out to be false, misleading or inaccurate.<sup>30</sup>

[51] The first two categories attract liability, whereas the third does not.

[52] The original *Notice of Conduct Hearing* alleged that Constable Avery knowingly provided the specified false and misleading information. This is the first category that attracts liability.

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<sup>30</sup> *Commanding Officer of "K" Division and Girard*, 2020 CAD 30, at paragraph 25.

However, the amended *Notice of Conduct Hearing* instead alleges that Constable Avery provided the false and misleading information negligently, recklessly or carelessly. This is the second category that attracts liability.

[53] To establish an allegation under section 8.1 of the Code of Conduct, the Conduct Authority must demonstrate each of the following on a balance of probabilities:

- a. the identity of the subject member;
- b. the statement or account of actions on a file in question;
- c. that the statement or account provided was inaccurate; and
- d. that the member
  - i. knew the statement or account provided was inaccurate, or
  - ii. was negligent, reckless or careless in making the statement or providing the account.

[54] Constable Avery's identity is not at issue in Allegations 2, 3 or 4.

[55] The statements Constable Avery provided were in relation to two files: the apprehension of Ms. K.C. as a result of Form 1 (Allegations 2 and 3) and the statutory investigation into Constable Avery's conduct during the apprehension (Allegation 4).

[56] Constable Avery admitted that the statements specified in each of the three allegations are inaccurate. Based on my review of the evidence, I agree that the statements set out in Allegations 2, 3 and 4 are inaccurate.

[57] Consequently, the Conduct Authority has established the first three elements of the test under section 8.1 of the Code of Conduct. The Conduct Authority is not alleging that Constable Avery knowingly made the inaccurate statements. Therefore, the issue I need to specifically address in my findings on Allegations 2, 3 and 4 is whether Constable Avery was negligent, reckless or careless in making the inaccurate statements.

[58] Recklessness is more than mere negligence. It is a gross deviation from what a reasonable person would do. Recklessness is distinguished from negligence in that recklessness has an element of advertence or intent. Recklessness is understood to require a conscious effort to be indifferent to the consequences of one's actions, even if these consequences are unintended.<sup>31</sup>

[59] In general terms, negligence is the failure to exercise the standard of care a reasonable and prudent person would have exercised in a similar situation.<sup>32</sup> In *Edmonton (City) and ATU Local 569*,<sup>33</sup> the arbitrator accepted that negligence encompasses a spectrum from careless to mere inadvertence. I accept this as well. Therefore, the terms negligence and carelessness are synonymous. Moreover, carelessness often implies unintentional negligence.

#### *Findings on Allegation 2*

[60] Particular 9 in the amended *Notice of Conduct Hearing* notes that following Ms. K.C.'s arrest, Constable Avery completed an SB/OR report. Particulars 10 and 11 set out the statements the Conduct Authority says are the false or inaccurate statements in the SB/OR report as well as the information that was missing:

- a. Ms. K.C. kicked towards Constable Avery;
- b. Ms. K.C. was still trying to pull away after Constable Avery used a "front leg sweep"; and
- c. Constable Avery omitted to mention that he pushed Ms. K.C.'s head down causing her to fall to the ground.

[61] Constable Avery acknowledged in his amended response to the allegations that he did not discuss the April 14, 2021, incident with Corporal Marianicz or Constable Forhart before completing the SB/OR report nor did he review the ICDVS video recording of the incident but he specified that he did not know his statements were inaccurate or realize the omission when he

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<sup>31</sup> *Calgary (City) v Canadian Union of Public Employees, Local 37 (Irvine Grievance)*, 2015 CarswellAlta 535, at paragraph 84.

<sup>32</sup> *Black's Law Dictionary*, 7th ed, s.v. "negligence".

<sup>33</sup> *Edmonton (City) and A.T.U., Loc. 569 (Employee X) (Re)*, 1998 CanLII 30159 (AB GAA) [*Edmonton (City) and ATU Local 569*], at page 14.

wrote his report. Constable Avery also admitted to completing the SB/OR the day after the incident. Additionally, he acknowledged that, had he spoken with Corporal Marianicz and Constable Forhart as well as completed the SB/OR report immediately following the incident, his recollection of the incident may have been better.

[62] Policy at *Operational Manual*, Chapter 17.8 “[SB/OR] Reporting” (April 1, 2021, version throughout), section 3.1.5 states, “Complete and attach the SB/OR report to the Records Management System (RMS) and/or operational file within 48 hours of an incident.” Constable Avery’s evidence indicates that he was aware of this policy and that he believed he complied with it. I find that Constable Avery complied with the policy. He initialized the SB/OR report prior to the end of his shift and completed the report and attached it to the operational file during his next shift the following day. He followed RCMP policy, therefore, he was not reckless, negligent or careless in this respect.

[63] The comments under *Operational Manual* 17.8.2.1 are also very important. The purpose of the SB/OR report is to “explain the intervention strategies that an officer chose to manage an incident.” Furthermore, an explanatory note corresponding to section 17.8.2.1. states:

NOTE: It is important to remember that this explanation is based on each officer’s individual perceptions at the time of the event, and what those perceptions meant to the officer. SB/OR reporting enhances police accountability and promotes relevant training.

[64] The concepts of the officer’s perceptions and assessment of the situational factors place the focus on what was in the member’s mind at the time of the incident. As pointed out by the Subject Member Representative, events can move quite rapidly during an incident. Arresting an uncooperative person can be high risk and stressful, particularly when the person has a known history of violence towards police. An officer’s perception of a situation and assessment of situational factors is not infallible. Care needs to be taken when assessing the accuracy of an officer’s statement in an SB/OR report. The totality of the situation and what is written by the officer in a report must be considered together. Statements in an SB/OR report cannot be taken in isolation. Constable Avery wrote what he perceived happened and provided his situational assessment. He wrote what he believed at the time.

[65] Constable Avery's performance evaluations were provided to me for the conduct measures phase of this hearing and I will address these further in my analysis of conduct measures. For the purposes of my analysis on Allegation 2, I note that his report writing and attention to detail in his reports were qualified as an area in need of improvement for several years. He acknowledged that he could have used more care in the preparation of the SB/OR report. I agree.

[66] The Conduct Authority asserted that Constable Avery was reckless in the completion of the SB/OR report. This claim is based on the fact that Constable Avery did not speak with the other attending officers or review the ICDVS video to confirm the accuracy of his statements. On this issue, I find nothing wrong with members speaking to other members for the purpose of minor "fact checking" (for example, the time of arrival on the scene), but I agree with Constable Avery that anything beyond this has the potential of putting a member's credibility at issue should the matter go to trial. Therefore, I find that Constable Avery's failure to speak with the other members or review the ICDVS video to make his notes or complete the SB/OR report are not signs of negligence or recklessness on his part.

[67] Finally, Corporal Marianicz reviewed Constable Avery's SB/OR report and approved it as it was written. She was present at the scene and was aware of what took place. If she felt the SB/OR report was inaccurate, then she had the opportunity to return the report to Constable Avery to ensure that his report contained the appropriate details. I have no evidence she did so.

[68] I find that Constable Avery complied with Force policy when completing his SB/OR report. Albeit inaccurate in the specified areas, he wrote what he perceived occurred and his assessment of the situation on that basis. Furthermore, this does not amount to recklessness; he was simply careless when completing the report.

[69] Based on the foregoing, the Conduct Authority has established all four elements of the test for section 8.1 of the Code of Conduct on a balance of probabilities. Therefore, Allegation 2 is established.

*Findings on Allegation 3*

[70] Particular 9 in the amended *Notice of Conduct Hearing* states that following Ms. K.C.'s arrest, Corporal Marianicz asked Constable Avery what happened and if Ms. K.C. had done anything to cause him to "take her down" in the way he did. Constable Avery told Corporal Marianicz that he lost his grip and that Ms. K.C. had kicked him and pushed him into a car.

[71] Particular 10 alleges that Constable Avery's claims that he lost his grip and that Ms. K.C. kicked at him were false or misleading and that he was negligent, reckless or careless in making these statements to Corporal Marianicz.

[72] Constable Avery admitted that the statements are inaccurate, but he specified that he did not knowingly provide a false statement to Corporal Marianicz. Constable Avery also admitted that if he had taken the time to discuss the incident with his co-workers and/or watched the ICDVS video before he spoke with his supervisor, his statements would have been accurate. I have already found that his reason for not doing so was legitimate under the circumstances.

[73] Corporal Marianicz was scheduled as a witness. However, since Constable Avery admitted the allegations, her testimony was no longer necessary. In fairness to her, she did not have an opportunity to explain her actions.

[74] Corporal Marianicz was immediately behind Constable Avery and Ms. K.C. when the incident occurred. She was Constable Avery's backup. She should have been paying close attention to what was going on in front of her. In these circumstances, she should have seen what occurred and should not have had to ask Constable Avery what happened.

[75] Constable Avery testified that Corporal Marianicz asked the question while he was sitting at his desk about an hour after the incident occurred. This was not a formal interview. Corporal Marianicz simply asked Constable Avery the question so that she could complete her situational report. If Corporal Marianicz had concerns with what Constable Avery told her, then she should have addressed her concerns with him at that time. She was his immediate supervisor. She had a responsibility to ensure that her situational report was accurate.

[76] Much like in his SB/OR report, Constable Avery's statements to Corporal Marianicz were based on his perception of what took place in a dynamic, stressful situation. He believed that what he told Corporal Marianicz was true.

[77] I find that Constable Avery was not reckless. However, he should have taken more care in his response to Corporal Marianicz's question. Based on this finding, the Conduct Authority has demonstrated the fourth element of the test for section 8.1 of the Code of Conduct.

[78] As a result, the Conduct Authority has demonstrated all four elements of the test for section 8.1 of the Code of Conduct on a balance of probabilities. Therefore, I find that Allegation 3 is established.

*Findings on Allegation 4*

[79] Particular 10 in the amended *Notice of Conduct Hearing* states that on July 29, 2021, Constable Avery provided a written statement to Corporal de Billy, the investigator assigned to the statutory investigation.

[80] Particular 11 in the amended *Notice of Conduct Hearing* states that Constable Avery provided false and misleading information to Corporal de Billy in the course of a statutory investigation. Constable Avery specifically claimed the following:

- a. that he attempted to assist Ms. K.C;
- b. that he lost control of Ms. K.C; and
- c. that Ms. K.C. made two assaultive actions in the driveway.

[81] In his response to the allegations, Constable Avery said that he believed his statement to Corporal de Billy was true to the best of his recollection. He admitted that he could have provided more accurate information to Corporal de Billy if he had discussed the incident afterwards with the two other members in attendance or watched the ICDVS video. He did not do this.



[82] I note that Constable Avery prepared the statement provided to Corporal de Billy with the assistance of legal counsel.

[83] I accept that Constable Avery believed what he wrote in his statement to Corporal de Billy was true and was based on his perception of what took place. He should have been aware of the importance of the statement and that other evidence existed that could contradict what he wrote. Nevertheless, what he wrote was inaccurate. I do not find that he was reckless, but he could have used more care in the preparation of the statement in terms of its content.

[84] I have mentioned in other cases that if a conduct authority intends to allege an inaccurate account in a member's statement provided in a Code of Conduct investigation is a breach of section 8.1 of the Code of Conduct, then the member should be provided an opportunity to explain the statements. Corporal de Billy met with Constable Avery after he received his statement, but Corporal de Billy did not address any inaccuracy concerns with him. Had he done so, this allegation may not now be before me.

[85] The Conduct Authority has demonstrated the fourth element of the test for section 8.1 of the Code of Conduct on a balance of probabilities.

[86] Thus, the Conduct Authority has established all four elements of the test for section 8.1 of the Code of Conduct on a balance of probabilities. Therefore, I find Allegation 4 is established.

## **CONDUCT MEASURES**

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

[88] The Conduct Authority asked me to direct Constable Avery to resign from the Force as a global conduct measure. Constable Avery asked me to impose a financial penalty. For Allegation 1, he did not specify an amount, but he suggested that the forfeiture of 1 day's pay for each of the

three Allegations under section 8.1 of the Code of Conduct is appropriate in light of my findings on the Allegations.

[89] My role is to find the appropriate conduct measures for the circumstances of this case. To do so, I have to take into consideration the material that is before me, the evidence I heard during the conduct hearing as well as the parties' submissions in both the allegations and conduct measures phases of the conduct hearing.

### Analysis

[90] The current process used by conduct boards to determine appropriate conduct measures has five general principles at its foundation. These are clearly laid out in two separate reports prepared for the RCMP.<sup>34</sup>

[91] The *Phase 1 Final Report* summarizes the five foundational principles, at paragraph 8.2, as follows:

#### 8.2 [...]

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

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<sup>34</sup> Ceyssens, Paul and Childs, W. Scott, "Phase 1" *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) [*Phase 1 Final Report*]; Ceyssens, Paul and Childs, W. Scott, "Phase 2" *Final Report Concerning Conduct Measures and Related Issues under Part IV of the Royal Canadian Mounted Police Act*, Report to the Royal Canadian Mounted Police (January 31, 2023) [*Phase 2 Final Report*].

3. A presumption that the least onerous disposition applies, which presumption would be displaced if the public interest or other specified considerations should prevail.

4. Proportionality.

5. A higher standard applies to police officers' conduct, compared to employees generally, principally because police hold a position of trust.

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

*Accordance with purposes of Part IV of RCMP Act*

[93] Part IV of the *RCMP Act* deals with the complaint and conduct process of the RCMP. Section 36.2 of the *RCMP Act* sets out the purposes of Part IV, which, generally speaking, seeks to address four specific interests:

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

[94] My role is to balance these competing interests to arrive at the appropriate conduct measures in conjunction with the four foundational principles.

*a) Public interest*

[95] Paragraphs 36.2(b) and (c) of the *RCMP Act* provide the purposes of Part IV as they relate to the public interest:

[...]

(b) to provide for the establishment of a Code of Conduct that emphasizes the importance of maintaining public trust and reinforces the high standard of conduct expected of [RCMP] members;

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

[...]

[96] The name George Floyd arose several times during the conduct hearing. On May 25, 2020, Constable Derek Chauvin murdered Mr. Floyd in Minneapolis, Minnesota, while Mr. Floyd was in his custody. Constable Chauvin received a 22.5-year term of incarceration. Worldwide protests against police brutality, racism and lack of police accountability followed this incident. The tragedy of Mr. Floyd's death did not and should not change the rules for police in Canada with respect to the use of force. The application of section 25 of the *Criminal Code* to police use of force remains the same. However, the public interest in police use of force has made a significant shift towards increased accountability for police officers who use excessive force.

[97] The Provincial Court of British Columbia aptly addresses the importance of the proper exercise of police use of force from a public interest perspective in the matter of an RCMP officer accused of assaulting a suspect during an arrest. Of note, the member was acquitted in that case. The Court states:

[3] Police perform a vital role in our society. We look to our police to keep us safe. Police are granted special authority and powers to perform that function. When police act beyond the scope of their authority or powers, the population loses confidence in the police and the justice system. Such loss of confidence can undermine the safety of everyone, police included. We have seen tragedies involving police abuse of power and the converse, police targeted because of their uniform. Lawful use of force by the police is an important tool in the maintenance of a just, peaceful, and safe society. Unlawful use of force threatens such a society. Accordingly, it is critically important to properly assess the evidence in this case and apply the law in a fair, transparent, and ultimately correct manner.<sup>35</sup>

[98] From an RCMP perspective, the public interest demands that matters of police misuse of force be dealt with consistently, transparently and, most importantly, seriously by the RCMP through its conduct process.

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<sup>35</sup> *R. v Pietrzak*, 2022 BCPC 290 (CanLII), at paragraph 3.

[99] The public also has an interest in deterring the excessive use of force by police officers as there is usually an associated cost to the public purse. The City of Minneapolis paid \$27 million to settle a wrongful death suit in relation to Mr. Floyd. I have been told that Ms. K.C. has filed a civil action against the RCMP and Constable Avery in this case.

***b) RCMP interests***

[100] The RCMP has a dual interest in dealing with the conduct of its members. As an employer, it has the responsibility to maintain integrity and discipline in the workplace. Maintenance of the RCMP conduct regime is essential to maintaining public confidence in the Force, which is crucial to its proper functioning and, I would suggest, to its very existence as we know it today. As a public body, the RCMP's primary purpose is the security of the public. Public demands for increased transparency for police services and greater accountability for managers dealing with excessive use of force cases has shifted significantly.

[101] It is incumbent upon the RCMP to ensure the RCMP conduct process fosters a culture where its members are not afraid to exercise the authority they have been granted to use force in the performance of their duties in a decisive but lawful manner, with the understanding that if they fail to do so, their misconduct will be dealt with consistently, fairly and firmly.

***c) Constable Avery's interest***

[102] Constable Avery's interest is essentially to be treated fairly. Constable Avery has been afforded all of the opportunities of procedural fairness provided for in the RCMP conduct process up to this point. His admission to the allegations limited the scope of the conduct hearing. Nevertheless, he was afforded the opportunity to present his case before me. Additionally, he has the ability to appeal my decision if he wishes to do so.

***d) Ms. K.C.'s interest as an affected person***

[103] I understand that Ms. K.C. and her family refused to take part in this conduct process. Consequently, her personal interest is not directly before me. However, I will still consider her interest in coming to a decision on conduct measures.

[104] Ms. K.C. was in the midst of a mental health crisis. She was a vulnerable person who needed the assistance of the public healthcare system. The Form 1 request from Ms. K.C.'s doctor was a means to get her that help through the RCMP's responsibilities under the *Mental Health Act*. The role of the officers attending her residence to apprehend her was to protect her and the public from harm through the lawful execution of their duties. Ms. K.C. had every right to expect that the members who attended her residence on April 14, 2021, would treat her in accordance with the law, as well as with RCMP policies, procedures and core values. Constable Avery did not live up to Ms. K.C.'s reasonable expectations. Consequently, she now has a reasonable expectation that the RCMP will treat Constable Avery's misconduct seriously through this conduct process, including the administration of appropriate conduct measures.

[105] After considering all four interests related to the purposes of Part IV of the *RCMP Act*, I find that they favour the imposition of significant conduct measures in this case.

*Corrective and remedial conduct measures*

[106] This principle is articulated at paragraph 36.2I of the *RCMP Act*. It requires conduct measures to be proportionate to the nature and circumstances of the individual case and, where appropriate, to be educative and remedial rather than punitive.

[107] In another RCMP conduct decision, *Potts*, that conduct board noted that financial penalties are both punitive and corrective conduct measures intended to deter conduct; whereas dismissal or a direction to resign are purely punitive conduct measures.<sup>36</sup> The conduct board in *Potts* also noted that financial penalties should be understood to be a sharp condemnation of serious misconduct. Therefore, financial penalties also have a general deterrent effect. I concur.

[108] The seriousness of Constable Avery's actions relative to Allegation 1 overrides the ordinary prevalence of corrective and remedial conduct measures. It does not for the remaining three Allegations.

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<sup>36</sup> *Commanding Officer of "K" Division and Potts*, 2018 RCAD 11 [*Potts*], at paragraph 210.

*Presumption of least onerous disposition*

[109] Although there is a presumption that the least onerous disposition should apply, this presumption can be supplanted if the public interest or other considerations prevail.

[110] Based on my previous comments on the public interest, I agree with the Conduct Authority's assertion that the presumption is supplanted by the public interest in this case.

[111] In my view, all cases under sections 5.1 and 8.1 of the Code of Conduct, which is an integrity matter, should be examined closely with respect to this presumption, having regard for the circumstances of the specific case.

*Proportionality*

[112] This is the most technical and complex portion of the analysis of the five foundational principles. Both paragraph 36.2I of the *RCMP Act* and subsection 24(2) of the *CSO (Conduct)* state that conduct measures are to be proportionate to the nature and circumstances of the contravention of the Code of Conduct.

[113] Under the modernized approach set out in the *Phase 1 Final Report*, conduct boards must identify the relevant proportionality factors, then assess whether each identified factor is mitigating, aggravating or neutral. Finally, the conduct board must balance or weigh these considerations to arrive at appropriate conduct measures.

[114] The *Phase 1 Final Report* includes a non-exhaustive list of 15 proportionality factors. I will only examine proportionality factors that I find relevant to this matter.

*Public interest*

[115] I already addressed the public interest component in relation to the first foundational principle as it relates to Allegation 1.

[116] The public interest demands that matters of excessive use of force and integrity offences like false reporting be dealt with seriously. Excessive use of force impacts public confidence in

the police organization, the profession as a whole and the administration of the justice system. Integrity goes to the core of a police officer's function. This is an aggravating factor.

*Seriousness of conduct*

[117] The seriousness of the misconduct is a fundamental consideration in almost every conduct proceeding. Many factors come into play when assessing this proportionality factor.

[118] Justice Shaigec, the judge presiding over Constable Avery's criminal matter, found Constable Avery's conduct to be serious, because it constituted a breach of trust.<sup>37</sup> He also found that Ms. K.C. was vulnerable and defenceless. She was vulnerable because she was in the throes of a mental health crisis. She was defenceless primarily because she was handcuffed behind her back and because of the power imbalance she faced.<sup>38</sup>

[119] Constable Avery was convicted of assaulting Ms. K.C. in criminal court. As pointed out by the Conduct Authority Representative, citing paragraph 3.1 of the *Phase 2 Final Report*, a criminal conviction brings into question the moral authority and integrity required by a police officer to discharge their responsibility to uphold the law and to protect the public. It undermines the public's confidence and trust in the ability of a police officer to carry out their duties faithfully.

[120] Justice Shaigec also looked at the violent nature of Constable Avery's actions and the impact on Ms. K.C., in particular the fact that Constable Avery's actions caused her physical injury. Justice Shaigec aptly sums up the situation with the following:

[...]

Constable Avery was there to apprehend a mentally ill person who was in the throes of a mental health crisis so that she could be transported to a hospital for treatment. Ms. [K.C.] was a vulnerable person. She was in Constable Avery's care because she was in need of protection, and it was Constable Avery's duty to protect her. Instead, he assaulted her. Again, the crime committed is serious.

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<sup>37</sup> *His Majesty the King v Sean R. Avery*, Action No. 220013882P1 in the Provincial Court of Alberta Judicial Centre of Edmonton [Avery] (unreported), at pages 3 and 4.

<sup>38</sup> *Avery*, at pages 4 and 5.



[...] <sup>39</sup>

[121] The seriousness of the breach of section 5.1 of the Code of Conduct is a significant aggravating factor.

[122] With respect to the three Allegations under section 8.1 of the Code of Conduct, the Conduct Authority paid rather short shrift to these three Allegations. Nevertheless, the same analysis I just mentioned with respect to a criminal conviction can also apply to non-criminal allegations of a member providing a false account of their duties. These are integrity offences that go to the core of a police officer's function. Clearly, a finding that a member knowingly made a false statement or was reckless in making the false statement that requires an element of advertence will result in more severe conduct measures than a finding that a member was simply negligent or careless in making the false statements as I have found Constable Avery was in this case. In fact, I believe that the inaccurate statements alleged in all three Allegations neared the third category of false statements, that is, the police officer makes an honest but mistaken statement that ultimately turns out to be false. This category of false statement attracts no liability.

[123] Based on this finding, this is a mitigating factor for the three Allegations under section 8.1 of the Code of Conduct.

***Recognition of seriousness of misconduct***

[124] This proportionality factor, the member's recognition of the seriousness of the conduct, is often referred to as remorse.

[125] Justice Shaigec recognized the sincerity of Constable Avery's apology before him.<sup>40</sup> Constable Avery also apologized before me. Additionally, I find that his apology was sincere. What stood out for me was that he recognized the broad impact of his misconduct. Although his emphasis was on the impact on Ms. K.C., he also recognized that his conduct impacted his co-

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<sup>39</sup> Avery, at page 5.

<sup>40</sup> Avery, at page 2.

workers, his Detachment, the RCMP as a whole, the community of Fort Saskatchewan, the public generally and Ms. K.C.'s family as well as his own family.

[126] I find his demonstrated sincere remorse is a significant mitigating factor.

***Disability or other relevant personal circumstances***

[127] I have been presented with no evidence of any disability factors that would impact on my decision. However, Constable Avery testified to some very significant personal issues that he was experiencing when this matter occurred. Specifically, he mentioned serious mental health challenges being faced by his spouse, who is also a member of the RCMP. He also mentioned that he has a young child diagnosed with autism. I accept that both of these circumstances would be difficult, but I have no evidence that either of these had an impact on this matter. In the absence of concrete evidence applicable to this proportionality factor, I find it to be a neutral factor.

***Provocation***

[128] Unprovoked or gratuitous assault is shown in the November 2014 *Conduct Measures Guide* (Conduct Measures Guide), at page 41, to be an aggravating proportionality factor.

[129] I have found that, on the day of her apprehension under the *Mental Health Act*, Ms. K.C. was uncooperative with the attending members. She was verbally abusive. She was constantly trying to pull away from Constable Avery while she was in his control, sometimes aggressively. Although her hip check is technically an assault on Constable Avery, I have found that it was not a significant act of resistance or provocation on her part. Justice Shaigec noted that Ms. K.C.'s lack of cooperation was predictable.<sup>41</sup> That finding is supported by the evidence before me. All three attending members knew of Ms. K.C.'s previous violent encounters with police. By all accounts, her response to the attending officers on this day was quite subdued compared to previous encounters. I have characterized her April 14, 2021, actions as being at the low end of "active resistance". A slight element of provocation in her actions existed. Constable Avery has

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<sup>41</sup> Avery, at page 4.

not blamed Ms. K.C. for what occurred. He accepted full responsibility for his actions. I find the relative lack of provocation to be an aggravating factor.

***Employment history***

[130] The member's employment history is another proportionality factor.

[131] Constable Avery presented me with his performance evaluations for the 2014-2015 fiscal year to the 2020-2021 fiscal year. Each of the evaluations was balanced in terms of acknowledging good performance and identifying areas of improvement. Generally, Constable Avery is reported on as being an excellent member. He consistently goes beyond what is expected of him. Constable Avery's flexibility in adjusting shifts to meet the operational scheduling needs of the Detachment, even on short notice, was mentioned several times. This is commendable, especially considering his family situation. He is a strong experienced investigator. Although his preference appears to be for immediate short-term response calls, he consistently carries an above-average response to calls for service, which translates into an above-average file load. He leads by example and is a role model for junior members.

[132] Constable Avery also presented me with 14 letters of support from a wide range of supporters including RCMP subordinates, peers and supervisors as well as public service employees. A common theme in the letters is that Constable Avery is a dedicated RCMP member who consistently goes beyond what is expected of him to support his co-workers and further the goals of the RCMP in the community. He embodies the RCMP core values, particularly compassion towards vulnerable people like Ms. K.C. He is well respected by everyone who provided their support. Most of the supporters state that Constable Avery's actions on April 14, 2021, were out of character for him. Each is confident that he will not reoffend.

[133] Constable Avery has no prior discipline record.

[134] Constable Avery's excellent work record is a significant mitigating factor.

***Potential to reform or rehabilitate***

[135] The potential for reform or rehabilitation speaks to the likelihood of reoccurrence of the offending behaviour. It is closely connected to remorse and employment history.<sup>42</sup> This proportionality factor should be considered as a dispositional factor in all conduct proceedings.

[136] Constable Avery accepted responsibility for his actions in both the criminal and the Code of Conduct proceedings regarding the excessive use of force. I believe that but for the inclusion of the component of knowingly providing inaccurate information in the original *Notice of Conduct Hearing*, rather than including the second category of recklessness, negligence or carelessness in the amended *Notice of Conduct Hearing*, in the three Allegations under section 8.1 of the Code of Conduct, this matter would have been resolved some time ago. From the outset, Constable Avery denied that he knowingly provided the inaccurate information, which is significantly more serious than being reckless, negligent or careless. As I have found, the evidence better accords with a finding of carelessness.

[137] Constable Avery has sincerely expressed remorse for his actions.

[138] Constable Avery's employment record and letters of support indicate that this incident is an isolated one in an otherwise admirable career. I have every reason to believe that his conduct going forward will be in keeping with the high expectations of his position as a member of the RCMP.

[139] This is a significant mitigating proportionality factor.

***Parity of sanction***

[140] Parity of sanction is an important proportionality consideration for me in this matter. I will focus on the excessive use of force because it is the most serious of the four established Allegations.

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<sup>42</sup> *Phase 1 Final Report*, at paragraph 17.1.

[141] Both parties have provided me with numerous cases to consider. These cases include RCMP conduct board decisions; RCMP *Records of Decision*, which flow from conduct meetings; decisions from the courts as well as from other tribunals, like the Federal Public Sector Labour Relations and Employment Board decisions made in the context of correctional services. The internal RCMP cases raised two main concerns for me.

[142] My first concern was addressed by the Subject Member Representative in that there is an absence of precedence in the RCMP for dismissal as a conduct measure, even in serious cases of excessive use of force. All of the RCMP cases, both conduct board decisions and *Records of Decision*, resulted in the imposition of conduct measures short of dismissal. The Conduct Authority was unable to produce an internal RCMP decision in which a subject member was dismissed from the RCMP, even when several aggravating factors listed in the *Conduct Measures Guide* were present. Instead, the Conduct Authority relied on dismissal cases decided by the courts and other tribunals with a focus on correctional services. This is vexing when considered in light of Justice Shaigec's recognition that a police officer's conviction for assaulting a person in their custody will likely end a career.<sup>43</sup>

[143] My second concern is the inconsistent treatment of excessive use of force cases within the RCMP. The decisions provided to me, although distinguishable from this case in some areas, all relate to circumstances similar to those in this case. However, despite the similarities, the results are dissimilar. This is concerning considering the subheading for this proportionality factor is "consistency of disposition". Consistency is an important aspect of fairness.

[144] Constable Avery presented three *Records of Decision* relating to allegations under section 5.1 of the Code of Conduct for my consideration. All three decisions were made by various level II or III conduct authorities in "K" Division. I expressed reluctance to consider them for three reasons.

[145] First, conduct boards are not bound by the precedents of *Records of Decision*. Even if they were, *Records of Decision* have little precedential value to a conduct board for several reasons.

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<sup>43</sup> Avery, at page 3.

Decisions recorded in *Records of Decision* are made by various levels of conduct authority throughout the country. They relate to a wide range of circumstances that are not necessarily related to the matter before a conduct board. Local or divisional nuances not recorded in the *Record of Decision* may have influenced the decision. These usually relate to conduct measures. Finally, they are made with the decision maker having heard no evidence aside from the subject member's submissions. The subject member is often not represented by legal counsel when making their submissions to the conduct authority during the conduct meeting.

[146] Second, *Records of Decision* are not published and are purported to be confidential. The Subject Member Representative assured me that the subject members in each of the three cases provided to me had given their consent to the use of the *Record of Decision* pertaining to their matter in this Code of Conduct proceeding. However, the subject members' consent was not in writing. I took the Subject Member Representative at his word. Additionally, I cannot be certain that the subject members' consent was an informed consent.

[147] Third, decisions made by conduct authorities may be reviewed by a review authority designated by the Commissioner under section 9 of the *CSO (Conduct)* to determine if a finding is clearly unreasonable or a conduct measure is clearly disproportionate to the nature and circumstances of the contravention. Like *Records of Decision*, the review authority's decisions are not published. Consequently, a *Record of Decision* may not be the final disposition of a Code of Conduct proceeding. The parties and conduct board may not be aware of this.

[148] Nevertheless, I chose to consider the *Record of Decision* in the matter relating to Corporal K.M. because the circumstances of the case are very similar to those in this case. The Conduct Authority who initiated this conduct hearing was also the conduct authority in Corporal K.M.'s matter and the author of the *Record of Decision* in that case. Furthermore, the *Record of Decision* was issued on April 9, 2021, which is just over a year before the decision to initiate this conduct hearing.

[149] When I reviewed the *Record of Decision* for Corporal K.M., I found many similarities to this matter and, in many instances, I found some proportionality factors to be more aggravating

and others to be less mitigating than the factors in this case. The following is my comparative analysis of the facts presented in the *Record of Decision* for the Corporal K.M. matter and the facts before me in this matter:

- The prisoner assaulted by Corporal K.M. (the victim) was a vulnerable person just like Ms. K.C. He was extremely intoxicated to the point where he had difficulty performing basic tasks like removing his shoes. Like the handcuffs on Ms. K.C., the victim's state of intoxication precluded him from making any reasonable response to protect himself from Corporal K.M.'s actions. He was essentially defenceless.
- The victim had been assaulted earlier by unknown persons. He was randomly hugging members of the public and running into vehicles. He was arrested for public intoxication. Thus, like Ms. K.C., he was arrested for his own protection and the protection of the public.
- The size difference between the officers and the victims is comparable. At the time of the incident, Constable Avery weighed more than twice Ms. K.C.'s weight. Corporal K.M. is 198 centimetres tall and weighs 109 kilograms. The victim in that case weighed 72 kilograms, so still significantly less than Corporal K.M.
- The assault in the Corporal K.M. matter occurred in the cellblock area of the detachment while the victim was in police custody. In this case, Ms. K.C. was not yet in a secure place where she could not flee.
- The interaction in the cellblock area between Corporal K.M. and the victim occurred over a 20-minute period. The conduct authority found that Corporal K.M. had ample opportunity to "change the circumstances and de-escalate the situation well in advance of any force being used." Constable Avery's interaction with Ms. K.C. occurred during a significantly shorter period than Corporal K.M.'s interaction with the victim. I found that Constable Avery did not need to take any actions to de-escalate the situation. He was managing Ms. K.C. She was not cooperating, but she was only mildly actively resisting.

- Corporal K.M. punched the victim causing him to fall to the floor unconscious. The video recording of the incident in the cellblock shows the victim was unconscious, or at the very least, lay motionless, for 5 minutes. I find that although the cut to Ms. K.C.'s head was serious, she did not lose consciousness.
- Other RCMP members were present in the cellblock area at the time Corporal K.M.'s incident occurred as they were in Constable Avery's case. Corporal K.M. not only did not ask for the assistance of the other members present in the cellblock, but he declined the assistance offered by a member. Neither member with Constable Avery asked if they could assist him nor did he ask for their assistance.
- Corporal M.K. was the senior ranking member involved in his incident. Constable Avery was simply the senior constable. A non-commissioned officer, Constable Avery's immediate supervisor, was present.
- Following the incident, Corporal K.M. contacted one of the members involved in the incident and provided him with direction as to what should be included in his report. Constable Avery had contact with one of the members involved in the incident and refused to speak to him about it. Instead of telling the member what he should include in his report, Constable Avery instructed the member to tell the truth about what happened and to not do anything that would get that member into trouble because Constable Avery was taking ownership for his actions.<sup>44</sup>
- Corporal K.M. joked about his "one punch knockout" of the victim with Emergency Medical Services personnel. Constable Avery was appalled by his actions once he realized their true nature.
- The conduct authority found that not only was Corporal K.M.'s assault on the victim unprovoked, he found that Corporal K.M.'s actions provoked the victim's action that led

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<sup>44</sup> Conduct hearing transcript, November 14, 2023, page 38, lines 9 to 21.



to Corporal K.M.'s excessive use of force. Although minimal and not justifying Constable Avery's response, I have found that Ms. K.C.'s actions were provocative.

- Corporal K.M.'s SB/OR report included inconsistencies with the video footage in the cellblock area and the accounts of other members present. Although I do not have Corporal K.M.'s SB/OR report, some of the inconsistencies identified by the conduct authority in his *Record of Decision* are significant. Some of the inconsistencies are, in my opinion, more significant than those in Constable Avery's SB/OR report. Despite the significant inconsistencies between Corporal K.M.'s SB/OR report and the video evidence, no section 8.1 Code of Conduct allegation was brought against him. In fact, the conduct authority accepted that Corporal K.M.'s perceptions and presence at the incident offered a varying perspective not available to someone watching the video after the fact.
- The conduct authority's decision preceded Corporal K.M.'s criminal conviction. Corporal K.M. contested his criminal charge. Constable Avery's criminal conviction followed the service of the *Notice of Conduct Hearing*, but it preceded the conduct hearing primarily because Constable Avery pleaded guilty to his criminal charge shortly after the *Notice of Conduct Hearing* was served on him.
- Constable Avery was fined \$1,200 plus a victim surcharge in criminal court. Corporal K.M. received a 120-day conditional sentence, which is a custodial sentence served in the community. This sentence speaks volumes to the fact that the criminal courts found Corporal K.M.'s actions significantly more serious than Constable Avery's.

[150] In Corporal K.M.'s case, the conduct authority directed a financial penalty of 18 days (144 hours) to be taken as the forfeiture of 12 days' pay and the forfeiture of 6 days of annual leave. The rate of reduction of Corporal K.M.'s pay was taken at a lesser approved rate of 10%.

[151] The absence of any precedent in the RCMP for dismissal and the disparity in the treatment of excessive use of force cases within the RCMP is a significant mitigating factor.

***Specific and general deterrence***

[152] Specific and general deterrence are both legitimate objectives of the RCMP conduct process.

[153] Constable Avery has expressed his sincere remorse and has accepted responsibility for his actions both before me and in the criminal courts. I have already found that he is unlikely to engage in this or any other form of misconduct following his experience in this process. Therefore, I do not find it necessary to administer conduct measures aimed at specific deterrence. This is a mitigating proportionality factor.

[154] For all of the reasons I have stated on the need for accountability and transparency in dealing with excessive use of force cases, the seriousness of the misconduct and the potential damage to the reputation of the RCMP and policing in general, I find that there is a need to administer conduct measures that further the goal of general deterrence. This is an aggravating proportionality factor.

***Systemic failure and organizational/institutional context***

[155] The *Phase 1 Final Report*, at paragraph 21.1, states the following about the proportionality factor of systemic failure and organizational/institutional context:

21.1 This proportionality consideration is perhaps best articulated as the degree to which the employer's "policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct", [footnote omitted] or the "organizational/institutional context". [footnote omitted]

[156] The term "organizational/institutional context" is not fully explained in the *Phase 1 Final Report*. However, I feel that my comments related to the disparate treatment of excessive use of force cases within the RCMP fall into this category. A subject member who has engaged in misconduct similar to that of another member should expect to be treated the same as the other member. This applies to the outcome and the level of the decision maker. The internal RCMP decisions provided to me, both conduct board and level II or III, demonstrate that this is not the case. This is a significant mitigating proportionality factor.

***Damage to RCMP's reputation***

[157] The proportionality factor of damage to the RCMP's reputation and the effect of publicity are considered separately in the *Phase 1 Final Report*. However, I consider them together because they operate hand in hand. Adverse publicity regarding member misconduct has the effect of damaging the reputation of the RCMP.

[158] The Conduct Authority provided me with two media accounts relating to this incident. Both simply present basic facts about the case.

[159] It is difficult for the Conduct Authority to provide concrete evidence of the damage to the reputation of the RCMP by a member's misconduct or the effect of the publicity in most conduct cases. I have taken the position in other conduct matters that RCMP members' misconduct is frequently reported in the media. It is reasonable for me to infer that, with each media account about member misconduct, the reputation of the RCMP and the corresponding public trust is eroded to some degree. I maintain that position in this case. The Conduct Authority Representative barely touched on this factor in her submissions. Consequently, I will treat this as a neutral proportionality factor.

***Balancing of proportionality factors***

[160] I have found the proportionality factors of the public interest, the seriousness of the misconduct, provocation and general deterrence to be aggravating proportionality factors. I have found Constable Avery's recognition of the seriousness of his misconduct, his employment history, his potential for rehabilitation, parity of sanction, specific deterrence and systemic failure/organizational context to be mitigating factors. I categorized disability or other relevant personal circumstances as well as damage to the reputation of the RCMP as neutral proportionality factors. The remaining proportionality factors in the list of 15 proportionality factors, at paragraph 9.5 of the *Phase 1 Final Report*, are not relevant to this proceeding. On balance, I find that Constable Avery's conduct in relation to the Allegations falls within the high end of the mitigated range to the low end of the aggravated range.

*Higher standards apply to police officers*

[161] The fifth foundational principle is that a higher standard applies to police officers' conduct compared to employees in general because police officers hold a position of trust. Paragraph 36.2(b) of the *RCMP Act* states that one of the purposes of the RCMP conduct regime is to establish a Code of Conduct that emphasizes the importance of maintaining the public trust and reinforces the high standard of conduct expected of members.

[162] This principle is raised in every case I hear. However, I believe that this concept has significantly more importance when it comes to the use of force by RCMP members. Section 25 of the *Criminal Code* provides protection for law enforcement officers who, on reasonable grounds, use as much force as is necessary to carry out their law enforcement duties, including the use of deadly force. This is a significant protection that separates the police from most other types of employment. The protection afforded to law enforcement officials to use force to carry out their duties carries high public expectations with it. Abuse of force can seriously erode the public trust, as was witnessed following the death of Mr. Floyd.

[163] Constable Avery has put forward that his actions were a result of a split-second spontaneous decision. Some might say that it is unfair to have someone lose their employment for such a decision. My response is that that is the nature of police work—making split-second life and death decisions in highly stressful situations is what police officers train for and are paid to do. These are the types of decisions that the public expects law enforcement officers to make in a lawful manner. This is a weighty responsibility that RCMP members accept when they choose to join the Force.

[164] This is a role that Constable Avery has accepted before me. He also indicated his willingness to accept the consequences of his actions, whatever they might be. I credit him for doing so.

### **Conclusion on conduct measures**

[165] My decision on conduct measures in this case has been a most difficult one. The Conduct Authority asked me to take a strong stance in this case and direct Constable Avery to resign from the RCMP. The Subject Member Representative suggested that this was no longer a case for dismissal once I found that the false or inaccurate statements were due to carelessness. I do not agree. Coming into this hearing, I was prepared to direct Constable Avery to resign from the RCMP based solely on Allegation 1, despite the absence of an RCMP precedent for dismissing a member for excessive use of force.

[166] Constable Avery's assault on Ms. K.C. was disturbing. Constable Avery not only assaulted Ms. K.C., he also caused her significant injury. I believe he was lucky that her injuries were limited to three stitches. In the circumstances of this case, a direction to resign from the RCMP is within the range of acceptable outcomes. The aggravating factors are significant.

[167] Having said that, the mitigating factors are also significant. Constable Avery demonstrated remorse, he accepted full responsibility for his actions in both the criminal and the Code of Conduct proceedings, and he expressed a willingness to accept the consequences of his actions. These factors weigh heavily in his favour. Taking responsibility is one of the RCMP core values. His acceptance of responsibility demonstrates that he is truly remorseful for his actions and that there is a strong likelihood that he will not reoffend. These factors, along with his strong employment history and future potential, tipped the balance in his favour. Constable Avery has demonstrated that he is worthy of retention as a member of the RCMP. Consequently, I am imposing conduct measures short of dismissal.

[168] The proportionality factors that solidified my decision to retain Constable Avery are parity of sanction and systemic failure and organizational/institutional context. When I read the *Record of Decision* relating to Corporal K.M., I asked myself how, in all good conscience, can I direct Constable Avery to resign from the RCMP when the conduct authority who initiated this Code of Conduct hearing rendered a decision that allowed another member to retain his employment with

the RCMP in similar circumstances with more aggravating factors than in this case. My answer was I could not direct him to resign.

[169] Taking any form of RCMP conduct matter seriously should not start with the conduct board. A strong stance needs to start with senior management and must be displayed consistently in both words and deeds so that senior management's position is clearly understood and permeates throughout the RCMP. I have not experienced this generally in my dealings with excessive use of force matters in the RCMP and did not experience this in this case.

### **Decision on conduct measures**

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

#### **Allegation 1**

- a) A financial penalty of 12 days' pay (96 hours) to be deducted from Constable Avery's pay pursuant to paragraph 5(1)(j) of the *CSO Conduct*.
  - i. The rate of reduction of Constable Avery's pay is to be taken at a lesser approved rate of 10%.

- b) A forfeiture of 6 days (48 hours) of annual leave pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*.

#### **Allegations 2**

- c) A reprimand pursuant to paragraph 3(1)(i) of the *CSO (Conduct)*.

#### **Allegations 3**

- d) A reprimand pursuant to paragraph 3(1)(i) of the *CSO (Conduct)*.

#### **Allegations 4**

- e) A reprimand pursuant to paragraph 3(1)(i) of the *CSO (Conduct)*.

[171] This final decision constitutes the reprimand for Allegations 2, 3 and 4.

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

## CONCLUSION

[173] This decision constitutes my written decision required by subsection 45(3) of the *RCMP Act*. Any interim measures in place should be resolved, in a timely fashion, in accordance with paragraph 25(1)(b) of the *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281.

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

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| Kevin L. Harrison | November 1, 2024<br>Ottawa, Ontario |

Conduct Board