

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



ROYAL CANADIAN MOUNTED POLICE

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

Between:

Deputy Commissioner Jodie Boudreau
Designated Conduct Authority

(Conduct Authority)

and

Constable John Coley
Regimental Number 59367

(Subject Member)

CONDUCT BOARD DECISION

Dustin Kenall and Jon Soltys

(Conduct Authority Representatives)

Gordon Campbell

(Subject Member Representative)

CONDUCT BOARD: Kevin Harrison
DATE: October 15, 2025

Table of contents

SYNOPSIS.....	3
INTRODUCTION	4
Publication ban.....	4
ALLEGATIONS.....	5
WITNESS CREDIBILITY AND RELIABILITY.....	10
Applicable legal principles	10
Assessment of witness credibility and reliability.....	10
Complainant.....	11
Subject Member	11
Corporal R.J.	11
Constable T.W.	12
Ms. S.C.....	12
ANALYSIS.....	12
Contextual findings of facts.....	12
Subject Member.....	13
Complainant.....	13
Relationship between Subject Member and Complainant	14
Allegation 1.....	14
Stage 1 - Findings on harassment	14
Stage 2 - Findings on sexual harassment	32
Conclusion on Allegation 1	37
Allegation 2.....	37
Actions, comments or conduct attributed to Subject Member.....	38
Reasonable person assessment of actions, comments or conduct.....	45
Conclusion on Allegation 2	45
Allegation 3.....	45
CONDUCT MEASURES	50
DECISION	51

SYNOPSIS

On August 7, 2023, the Subject Member was served a *Notice of Conduct Hearing*, dated June 28, 2023, which contains 2 allegations under section 2.1 of the Code of Conduct and 1 allegation under section 7.1 of the Code of Conduct. Allegation 1 alleged that the Subject Member engaged in harassment, including sexual harassment, towards the Complainant. Allegation 2 alleged that the Subject Member made discourteous comments to the Complainant and other members. Allegation 3 alleged that the Subject Member interfered with the Complainant's operation of a police vehicle while the Complainant was driving on a highway. This caused the Complainant to drive dangerously or recklessly.

On June 5, 2024, having heard from 8 witnesses for the Conduct Authority, including the Complainant, and 4 witnesses for the Subject Member, including the Subject Member, the Conduct Board found all 3 Allegations were established. The conduct measures phase of the Conduct Hearing was scheduled to proceed on July 3 and 4, 2024; however, the Subject Member voluntarily discharged from the RCMP effective June 28, 2024. Consequently, the Conduct Board no longer had jurisdiction to complete the Conduct Hearing.

INTRODUCTION

[1] On May 1, 2023, the Designated Conduct Authority signed a *Notice to the Designated Officer* to request the initiation of a conduct hearing in relation to this matter. On May 9, 2023, the Designated Officer appointed Sandra Weyand as the Conduct Board, per subsection 41(3) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*]. On August 10, 2023, the Designated Officer appointed me to replace Sandra Weyand as the Conduct Board.

[2] The *Notice of Conduct Hearing* contains three Allegations. Allegation 1 alleges that the Subject Member harassed and sexually harassed the Complainant. Allegation 2 alleges that the Subject Member made discourteous comments to the Complainant and other RCMP members. Allegation 3 alleges that the Subject Member interfered with the Complainant's operation of a police vehicle while the Complainant was driving on a highway. This caused the Complainant to drive dangerously or recklessly.

[3] From May 27 to 31, 2024, I heard evidence from 8 witnesses for the Conduct Authority, including the Complainant, 4 witnesses for the Subject Member, including the Subject Member, and the Parties' submissions on the Allegations. On June 5, 2024, I delivered my oral decision on the Allegations. I found that all three Allegations were established.

[4] The conduct measures phase of the Conduct Hearing was scheduled to proceed on July 3, and 4, 2024; however, the Subject Member voluntarily discharged from the RCMP on June 28, 2024. Consequently, I lost jurisdiction to complete the Conduct Hearing.

Publication ban

[5] The Conduct Authority requested I order a publication ban in relation to the Complainant. The Subject Member consented to the request. As a matter of practice, conduct boards anonymize their decisions when referring to affected persons, complainants, 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* provides for a conduct board to order a publication ban on its own initiative or at the request of a party for information that could identify a complainant, a witness or a person under the age of 18. Pursuant to that authority, I ordered at the start of the

Conduct Hearing that any information that could identify the Complainant shall not be recorded, transmitted or broadcast in any way.

ALLEGATIONS

[6] The Designated Conduct Authority signed the *Notice of Conduct Hearing* on June 28, 2023. It contains the following three allegations:

Particulars common to all allegations

1. At all material times, you were a member of the Royal Canadian Mounted Police [RCMP] posted to “M” Division, Watson Lake Detachment, Yukon. You hold the rank of constable.
2. [The Complainant] arrived in Watson Lake on March 23, 2021, and officially began with the Watson Lake Detachment on April 8, 2021.
3. You and [the Complainant] were co-workers at the Watson Lake Detachment between March 23, 2021, and May 11, 2022.

Alleged contraventions of the Code of Conduct

Allegation 1

On or between March 23, 2021, and May 11, 2022, at or near Watson Lake, in the Yukon Territory, [the Subject Member] engaged in workplace harassment, including sexual harassment, contrary to section 2.1 of the RCMP Code of Conduct.

Particulars to Allegation 1

4. You referred to [the Complainant] as a “Pussy Slayer”, or words to that effect.
5. Several other RCMP employees in the detachment heard you referring to [the Complainant] as a “Pussy Slayer” or words to that effect.
6. You encouraged others to call [the Complainant] a “Pussy Slayer” or words to that effect.
7. [The Complainant] told you to stop calling him a “Pussy Slayer”, or words to that effect. You replied that it was too funny and you were not going to stop.
8. You made comments to [the Complainant] say that he was engaging in a sexual relationship with [Constable G.H.].
9. You made comments to [the Complainant] asking if he was engaging in a sexual relationship with [Constable G.H.], such as ‘have you slept with [Constable G.H.] yet’ or “are you fucking [Constable G.H.]” or words to that effect.

10. Other individuals in the detachment heard you make these comments.
11. On or around February 14, 2022, you were talking with [the Complainant] about the gift you got your wife for Valentine's Day. You then asked [the Complainant] what he had gotten [Constable G.H.] for the occasion. You asked [the Complainant] if he had gotten [Constable G.H.] edible underwear for the occasion.
12. [The Complainant] had asked you to stop making these comments about his relationship with [Constable G.H.]. You refused, replying that it was not harassment if it was true.
13. [The Complainant] had a friend named [Ms. V.E.], who would visit his residence.
14. You asked [the Complainant] if he was having a sexual relationship with [Ms. V.E.].
15. During the material times, you resided at [the Subject Member's address]. During all material times, [the Complainant] resided at [the Complainant's address].
16. When you were residing at [the Subject Member's address], the windows of your Master Bedroom faced the windows of [the Complainant]'s living room, first spare bedroom, and second spare bedroom.
17. You would watch [the Complainant]'s house through the windows of your home. You would do this when [Ms. V.E.] was visiting [the Complainant]'s residence.
18. [Sergeant H.R.] spent two months doing relief in the Watson Lake Detachment from on or around mid-July 2021, to mid-September 2021.
19. You made a comment to [the Complainant] inquiring as to whether he was "railing the Sergeant", or words to that effect, referring to [Sergeant H.R.].
20. [Constable A.E.] was staying with [the Complainant] in [the Complainant]'s residence for a duration of time. After you learned of this, you made a comment to [Constable A.E.] that she should be careful, because when women go to [the Complainant]'s place, they never leave, or words to that effect.
21. Other individuals at the detachment heard you make this comment.
22. At some point during the material time, you were appointed to Acting Corporal of the Watson Lake Detachment.
23. While holding the rank of Acting Corporal, you discussed the living arrangements of the other members of the Watson Lake Detachment. During these discussions, you told [the Complainant] that you planned

to move him out of his residence and have him share with other single members. [The Complainant] told you that this would not be happening, and you responded, “wanna bet?”.

24. [Constable C.M.] hosted a party shortly after her wedding to celebrate her marriage. This event was attended by members of Watson Lake Detachment.
25. During [Constable C.M.]’s event, you touched [the Complainant]’s genitals.
26. More specifically, during [Constable C.M.]’s event, you slapped [the Complainant]’s genitals.
27. [The Complainant] did not consent to you touching his genitals.
28. You sexually assaulted [the Complainant].
29. The behaviours described above were unwanted by [the Complainant].
30. The behaviours described above were inappropriate for a workplace.
31. You engaged in harassment of your co-worker [the Complainant].
32. You engaged in sexual harassment of your co-worker [the Complainant].
33. Your behaviours described above breached section 2.1 of the RCMP’s Code of Conduct.

Allegation 2

On or between March 23, 2021, and May 11, 2022, at or near Watson Lake, in the Yukon Territory, [the Subject Member] engaged in discourtesy, contrary to section 2.1 of the RCMP Code of Conduct.

Particulars to Allegation 2

34. When [the Complainant] first arrived at the Watson Lake Detachment and you first met [the Complainant], you said to him that being a Member was “like having the best erection”, or words to that effect.
35. When discussing a case regarding a sexual assault victim, you said that you did not care about the evidence, as the only evidence you needed was “from her pussy”.
36. When the Major Crimes Unit [“MCU”] attended Watson Lake detachment for work-related purposes, you made a comment in front of the detachment of “the only thing getting murdered by anyone is [the Complainant] murdering pussy” or words to that effect.
37. This comment was heard by other members of the Watson Lake Detachment.

38. When [the Complainant] was discussing a trip he was taking with [Constable G.H.] to a cabin that had a hot tub, you inquired as to what was going to happen “to all the cum floating around in the hot tub” or words to that effect.
39. This comment was heard by other members of the Watson Lake Detachment.
40. When you first met [Constable T.R.], [Constable T.R.] was talking about his truck being dirty, or words to that effect. You replied to this “if you think that’s dirty, you should see my wife”, or words to that effect.
41. On a call you were having with [Corporal T.W.] about corporal positions, you asked if [Sergeant B.G.] wanted you or your wife to “suck his dick for the promotion”, or words to that effect. You also said on this call that you would do a better job than your wife performing fellatio, as you “got the junk”, or words to that effect.
42. The behaviours described above were inappropriate and discourteous.
43. Your behaviours described above breached section 2.1 of the RCMP’s Code of Conduct.

Allegation 3

On or between March 1, 2022, and March 31, 2022, at or near Watson Lake, in the Yukon Territory, [the Subject Member] behaved in a manner likely to discredit the Force, contrary to section 7.1 of the RCMP Code of Conduct.

Particulars to Allegation 3

44. The 4A4 Watson Lake Detachment vehicle is an automatic transmission 2020 Ford F150 RCMP-marked police truck bearing the Yukon licence plate number [number redacted] [(4A4 Truck)].
45. During March, 2022, [the Complainant] had planned to attend a witness interview in relation to an RCMP file. He had arranged the interview with the witness during the witness’s school hours. You said you would accompany [the Complainant] on this task.
46. [The Complainant] was driving the 4A4 Truck to the meeting. When [the Complainant] was driving the 4A4 Truck out of the Watson Lake Detachment parking lot, you told [the Complainant] that you needed to go back and get your duty bag out of the [4A3] Watson Lake Detachment vehicle. [The Complainant] said that he would not be returning to the Detachment and that you could get your bag when they return after the interview.
47. When [the Complainant] began driving on the Alaska Highway, the vehicle driving behind him was a Superior Propane truck.

48. As [the Complainant] was driving the 4A4 Truck out onto the Alaska Highway, you reached over and put the 4A4 Truck's transmission in neutral while [the Complainant] was operating the vehicle. In response, [the Complainant] put the vehicle's transmission back into drive. [The Complainant] did not ask you to do this, nor did he consent to you doing this.
49. While driving on the Alaska Highway, you reached over and put the 4A4 Truck's transmission in neutral again. [The Complainant] removed your hand from the gearshift in response.
50. You then reached over and turned the ignition of the 4A4 Truck to the off position, thereby turning off the 4A4 truck [the Complainant] was driving.
51. You also placed your hand on the steering wheel during this time. [The Complainant] removed your hands from the steering wheel.
52. In response to the 4A4 Truck's ignition being turned off, [the Complainant] pulled the vehicle over to the side of the Alaska Highway and put the vehicle's transmission in the park position. [The Complainant] then started the 4A4 Truck and drove back to the Detachment.
53. When [the Complainant] arrived at the Detachment, you exited the 4A4 Truck. You also opened all the doors and lowered the tailgate of the 4A4 Truck. You got your bag from the [4A3] truck and re-entered the 4A4 Truck.
54. Putting the 4A4 Truck in neutral while [the Complainant] had care and control of the vehicle and was driving was dangerous and/or reckless.
55. Grabbing the steering wheel of the 4A4 Truck while [the Complainant] had care and control of the vehicle and was driving was dangerous and/or reckless.
56. Turning off the 4A4 Truck while [the Complainant] had care and control of the vehicle was dangerous and/or reckless.
57. Your behaviours described above breached section 7.1 of the RCMP's Code of Conduct.

[*Sic throughout*; footnotes removed]

[7] Per subsection 45(1) of the *RCMP Act*, my role as the Conduct Board 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 probable than not that the Subject Member contravened the Code of Conduct. This burden is met when sufficiently clear, convincing and cogent evidence is presented.

[8] The Conduct Authority need not prove every Particular in the *Notice of Conduct Hearing* as some are included simply to give context to the Allegations.

WITNESS CREDIBILITY AND RELIABILITY

Applicable legal principles

[9] The following is my summary of the legal principles applicable to the assessment of witness credibility and the reliability of their evidence drawn from numerous court and conduct board decisions.

[10] I must consider whether the witnesses are credible and whether their evidence is reliable. I may find a witness credible, but unreliable. It is open to me to accept some, none or all of a witness's evidence on a given point. In assessing credibility, I must consider the totality of the evidence. I cannot base my assessment of a witness solely on their demeanour. Rather, I must determine whether the witness's evidence is consistent with the most probable interpretation of the surrounding facts. The determination of whether a witness's evidence has an air of reality is subjective, but it must be grounded on the totality of the evidence. Finding that one party is credible may be a conclusive result on important issues, because believing one party will mean explicitly or implicitly that I do not believe the other party.

Assessment of witness credibility and reliability

[11] During the allegations phase of the Conduct Hearing, I heard from 8 witnesses for the Conduct Authority and 4 witnesses for the Subject Member. In reaching the following assessment of the credibility of these witnesses and the reliability of their evidence, I have also considered the Representatives' submissions.

[12] The Parties raised no concerns with the credibility and reliability of the majority of the witnesses. I also found them to be credible and reliable; therefore, I will only address the two main witnesses and those witnesses where concerns were identified.

Complainant

[13] I found the Complainant to be a credible and reliable witness. He was forthright and matter of fact in his evidence. He had no difficulty recalling the core aspects of the events and readily admitted when he could not. He made reasonable concessions during his cross-examination. His evidence was consistent throughout his testimony. His evidence was corroborated by other witnesses in many aspects, but not all.

Subject Member

[14] I had concerns with the Subject Member's credibility and reliability. Like any other member facing dismissal, he had a vested interest in the outcome of the Conduct Hearing. He was highly credible on operational matters; however, I found he downplayed his actions to the extent that he appeared at times to be trying to shift the blame onto the Complainant.

[15] He added evidence during his testimony, like the Complainant's zombie-like behaviour in Allegation 3, which did not appear in either his statement in the conduct investigation or his response to the allegations.

[16] He was obstructive at times as evidenced by his lengthy exchange with the Conduct Authority Representatives over the difference between "do not recall" and "did not happen". He also failed to make reasonable concessions during cross-examination. For example, he refused to agree that it would be difficult for a cadet to speak up to a more senior officer. This should have been reasonably easy to concede, particularly in an organization like the RCMP that is built on rank and seniority.

[17] He was also less than complimentary to several of the Conduct Authority's witnesses, particularly Constable T.R.

Corporal R.J.

[18] Corporal R.J. testified on the Subject Member's behalf. He occupied the supervisory Corporal's position at Watson Lake Detachment during the relevant time. Despite the Conduct Authority Representatives' unfavourable assessment of Corporal R.J., I found him to be a credible

and reliable witness. He was defensive at times about his handling of this matter. This is understandable considering that he became the subject of a Code of Conduct investigation because of it.

Constable T.W.¹

[19] Constable T.W.'s evidence raised concerns for me as well. She was clearly friends with the Subject Member and his spouse. Unlike the evidence of the Conduct Authority's witnesses who were also the Subject Member's friends, she slanted her evidence in the Subject Member's favour. She had limited contact with the Complainant. Despite these concerns, I found her to be a credible and reliable witness.

Ms. S.C.

[20] I found Ms. S.C. to be a credible and reliable witness. As the Subject Member's spouse, she had a vested interest in the outcome of the Conduct Hearing. She was aware that her husband could lose his employment. Despite this, she testified to several things that were not favourable to the Subject Member. She was forthright and consistent in her evidence. Her evidence was balanced with respect to the Complainant.

ANALYSIS

[21] I have considered the Code of Conduct investigation report and supporting material, the Subject Member's response to the allegations, the evidence I heard during the Conduct Hearing and the Parties' submissions on the allegations to reach my decision.

Contextual findings of facts

[22] I will begin by setting out some contextual findings of fact before addressing the Allegations.

¹ Constable T.W. was referred to as Corporal T.W. in the *Notice of Conduct Hearing*. She was a constable during the period relevant to the allegations.

Subject Member

[23] At all material times, the Subject Member was a member of the Royal Canadian Mounted Police posted to Watson Lake Detachment, in “M” Division, beginning in August 2020.

[24] The witnesses generally agree, with the exception of Constable T.W., that the Subject Member had a particular sense of humour. They described it as “toilet” humour; inappropriate at times; no boundaries; “locker room” humour; “cringe” humour; shock value and crude.

[25] In his response to the allegations, the Subject Member categorized his humour as “raunchy”. In evidence, he described his humour as “dark humour”. He suggested that this type of humour was used by all police officers. He used humour to connect with people.

[26] Constable B.A. provided the Subject Member a “Dundie award” for the “Most aggressively inappropriate employee”. The “Dundie award” was derived from the television show “The Office”. Constable B.A. knew of the Subject Member’s inappropriate comments and recognized them in a joking way. He came up with the wording as an “extrapolation of [the Subject Member] to the nth degree”.

Complainant

[27] The Complainant arrived in Watson Lake from Depot Division on March 23, 2021. He began his duties at the Detachment on April 8, 2021. Constable T.R. was his field coach for the Field Coaching Program. With the exception of the first few weeks, Constable T.R. and the Complainant worked together exclusively for the first two months. The Complainant had no issues during his Field Coaching Program. Constable T.R.’s only concern was that he was too polite. After the Complainant successfully completed his two-month review, he was slotted into the regular shift schedule. After the schedule change, he worked more frequently with the Subject Member.

[28] The witnesses generally described the Complainant as polite, friendly, super easy going, shy, humble, quieter and a “nice guy”. They also generally agreed that he did not use profane language except for the occasional exasperated use of “fuck”.

Relationship between Subject Member and Complainant

[29] The Subject Member and the Complainant were co-workers at Watson Lake Detachment from March 23, 2021, until May 11, 2022.

[30] The Complainant enjoyed a social relationship with the Subject Member and Ms. S.C. The Subject Member and the Complainant had similar interests, which included a number of outdoor activities. The witnesses unanimously agreed that they were good friends. The Subject Member described the Complainant as his closest friend during the relevant time.

Allegation 1

[31] Allegation 1 is an allegation of harassment and sexual harassment under section 2.1 of the Code of Conduct. On January 1, 2021, amendments to the *Canada Labour Code*, RSC, 1985, c L-2 [*Canada Labour Code*], relating to harassment and violence in the workplace came into effect. RCMP policy was also amended at that time. The date range of the allegations is March 23, 2021, to May 11, 2022; therefore, the new legislation and policy govern this harassment allegation.

[32] The analysis for harassment and sexual harassment is a two-stage process. In the first stage I must determine if the Subject Member's behaviour is harassment. If so, then I must determine whether it is sexual harassment in the second stage.

Stage 1 - Findings on harassment

[33] Subsection 122(1) of the *Canada Labour Code* defines harassment and violence as:

[...]

harassment and violence mean any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed actions, conduct or comment; [...]

[34] In addition to this definition, RCMP policy at *Administration Manual* 2.1.3.6 (March 11, 2022, version) states the following:

3.1.6. Harassment generally involves a series of behaviours that persist over time. However, a serious one-time incident can also be considered harassment. Harassment can be direct or indirect, obvious or subtle, physical or psychological. It can occur in many ways, such as through spoken words, text, gestures, and images. Whether an individual intended to harass someone is not relevant to determining whether there has been harassment. Rather, the only issue is whether a reasonable person would have known that the behaviour in question was unwelcome.

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

- a) The identity of the subject member;
- b) The action(s), comment(s) or conduct that the subject member is alleged to have engaged in;
- c) That the action(s), comment(s) or conduct events are related to the workplace or linked with employment;
- d) That a reasonable person, placed in the same circumstances as the affected employee, would be offended, humiliated or suffer injury or illness as a result of the action(s), comment(s) or conduct.

[36] I must consider the totality of the circumstances when applying this test.

[37] I can address the first element of the test summarily in that the Subject Member's identity is not in question. The remaining three elements of the harassment test will require me to make findings of fact and will take further explanation.

Actions, comments or conduct attributed to Subject Member

[38] The second element of the test for harassment is the actions, comments or conduct attributed to the Subject Member. The *Notice of Conduct Hearing* is laid out in such a way that a block of particulars addresses specific actions, comments or conduct that the Conduct Authority attributes to the Subject Member. I will review the evidence and make findings within these blocks of particulars.

Particulars 4 to 7 – “Pussy slayer” nickname

[39] Particular 4 states that the Subject Member referred to the Complainant as a “pussy slayer” or words to that effect. Particular 5 states this was said in front of other detachment members. Particular 6 states that the Subject Member encouraged other members to call the Complainant “pussy slayer”. Particular 7 states that the Complainant told the Subject Member to stop calling him this.

[40] The Complainant testified that the Detachment members were trying to find a nickname for him. The Subject Member came up with “BB”. However, one day, the Subject Member said to other members that “This is not ‘BB’, this is the ‘pussy slayer’”. After this, the Subject Member frequently called him “pussy slayer”. This made the Complainant very uncomfortable and embarrassed. He hoped it would stop, but it did not. Instead, it got worse. On one occasion, Constable B.A. told the Subject Member, “That’s not cool.” Everyone else at the Detachment said nothing.

[41] Although the Complainant did not specifically testify that he told the Subject Member to stop calling him “pussy slayer”, he did say several times that he told the Subject Member to stop asking him about his relationships with women.

[42] Constable T.R. testified that the Subject Member called the Complainant “pussy slayer”, but he could not specify how many times. The Subject Member said this in the office in front of “pretty much everyone”. It appeared to him that the Complainant did not like the comments, but he believed the Complainant shook them off. The Complainant did nothing to encourage the Subject Member to call him this name.

[43] Constable B.A. testified that he did not recall the Subject Member using the term. He said he was “more in touch with harassment” because of his experience with a previous harassment issue at the Detachment. He spoke to the Complainant to see if he was “O.K.”. He spoke to the Subject Member once. He told him that he did not think the Complainant found his comments funny, but he did not specify which comments he was speaking about. He told the Subject Member that he was “going to make his own bed”.

[44] Constable C.M. testified that the Subject Member called the Complainant “pussy slayer” at times. The only specific occasion she could recall was at her residence. The Complainant was not present.

[45] Constable A.E. performed relief duties at Watson Lake Detachment during the relevant time beginning in February 2022. She testified that she first met the Subject Member and the Complainant in the office. On this occasion, the Subject Member called the Complainant a “pussy slayer”. The Complainant told the Subject Member to shut up. She did not know how to take the comment, but she was taken aback by it. She felt uncomfortable, so she left the office to avoid further interaction.

[46] She also testified that the Subject Member repeatedly called the Complainant “pussy slayer” during a party held at Constable C.M.’s. The comment was made in front of everyone at the party. She felt uncomfortable and could see the Complainant was bothered by it. Several people, including Ms. S.C., told the Subject Member to stop. His response was that it was too funny so he would not.

[47] Corporal R.J. testified that he heard the Subject Member call the Complainant “pussy slayer” once. Public Service Employee (PSE) E.B. was present. She rolled her eyes, but he was not sure if she was offended. He told the Subject Member the comment was inappropriate, but not for the fact that it was said. His concern was that the Subject Member made the comment in front of PSE E.B., who might not appreciate it. While acting in a supervisory position, Constable B.A. told him he was concerned about the Subject Member calling the Complainant “pussy slayer”.

[48] Ms. S.C. testified that she never heard the Subject Member use this term in reference to the Complainant; however, she said later that during a party at Constable C.M.’s, the Subject Member told her to call the Complainant “pussy slayer”. She did not because she would not use that language.

[49] The Subject Member admitted to calling the Complainant “pussy slayer” in both his response to the allegations and in evidence. He made the comment in jest to break the tension in a safe space, like the Detachment, amongst other police officers. He could not recall the origin of the name, but perceived the Complainant had “a way with women”. The Subject Member claimed

that the Complainant boasted about women, that a lot of women came to his house and that he was “getting lots of pussy”.

[50] The Subject Member denied encouraging other members to call the Complainant by this name. He could not recall the conversation with Constable B.A. mentioned by the Complainant. Although he had no recollection of telling his wife to call the Complainant “pussy slayer”, he said he would not have asked her to say that because she would not. He conceded that it was possible he did.

[51] The Subject Member also denied that the Complainant ever told him to stop calling him “pussy slayer”. The Complainant’s usual reaction was to roll his eyes or say, “Oh Coley”. He thought they had developed a level of respect and that if the comment bothered the Complainant, he would have told him to stop. If the Complainant had done so, he would have stopped.

[52] The Subject Member had no recollection of the conversation with Corporal R.J.

[53] In cross-examination, the Subject Member agreed that calling the Complainant “pussy slayer” did not break the tension. He also admitted that he never asked the Complainant if being called “pussy slayer” bothered him.

[54] I find the Subject Member called the Complainant “pussy slayer” on numerous occasions, sometimes in front of other Detachment members. I accept the Complainant’s evidence that, on one occasion, the Subject Member encouraged other members to call him “pussy slayer”. Although the Subject Member encouraged Ms. S.C. to call the Complainant a “pussy slayer”, she is not a Detachment member. I also accept Constable A.E.’s evidence that the Subject Member was told to stop calling the Complainant “pussy slayer” at the party at Constable C.M.’s residence and that his response was that he would not because it was too funny. Finally, I accept Corporal R.J.’s evidence that he told the Subject Member that the comment was inappropriate.

[55] Based on the foregoing, I find that Particulars 4 through 7 are established.

Particulars 8 and 9 – Comments relating to Constable G.H.

[56] Particular 8 states that the Subject Member commented to the Complainant about the Complainant engaging in a sexual relationship with Constable G.H. Particular 9 states that when asking the Complainant this, the Subject Member asked, “Have you slept with her yet?” or “Are you fucking her?” or words to that effect. Other persons at the Detachment heard these comments.

[57] Constable G.H. was a member of Watson Lake Detachment. She arrived in October 2021 around the time the Complainant finished his Field Coaching Program. The Complainant was in contact with her before she arrived at Watson Lake.

[58] The Complainant testified that, during Constable T.W.’s going away party, the Subject Member asked him if he was going to sleep with the “new girl”, referring to Constable G.H. who had not arrived yet. Everyone that heard the comment seemed to ignore it. After Constable G.H. arrived, the Complainant and Constable G.H. spent a lot of time together. The Subject Member continuously commented about him sleeping with Constable G.H. The Subject Member’s comments were all about him having sex with women, including asking him if he was sleeping with them or “fucking” them.

[59] Constable T.R. testified that the Subject Member asked the Complainant if he was “fucking” Constable G.H. and wanted to know when the Complainant was going to tell “us” that he was “fucking” or sleeping with her. This occurred at shift change every time the Subject Member, the Complainant and Constable T.R. were present. The Subject Member also made the comments with others present. The Detachment Commander, Sergeant A.B., was present once. His response was to back his chair into his office and leave. The Subject Member’s comments about the Complainant having sex with Constable G.H. were more frequent than when he called the Complainant “pussy slayer”. He asked the Subject Member why he cared. The Subject Member responded that he had to know. The Subject Member expressed no interest in the sex lives of other Detachment members.

[60] In cross-examination, Constable T.R. testified that he could not recall anyone else talking about a sexual relationship between the Complainant and Constable G.H. unless the Subject Member brought the topic up.

[61] Constable N.A., a Watson Lake Detachment member, testified that the Subject Member commented about the Complainant's romantic life with girlfriends. He never saw an emotional reaction from the Complainant. He did not want to interject himself into the situation because the Subject Member and the Complainant were friends outside the office. Everyone who heard the comments reacted in the same way. He did not know why the Subject Member made these comments but suspected that it was because the Subject Member envied the Complainant. He could not recall the Subject Member making sexual jokes to anyone else in the Detachment. In cross-examination, he recalled a verbal bet with Constable C.B., a Watson Lake Detachment member, as to whether the Complainant and Constable G.H. were in an intimate relationship. This started because the Complainant and Constable G.H. communicated prior to her arrival and that they had become good friends.

[62] The Subject Member denied that he asked the Complainant if he was in a sexual relationship with Constable G.H., but he believed he was. He based this belief on the Complainant's behaviour, which included things he said in-person and in text messages and things he observed. He testified that the Complainant asked him if he should sleep with Constable G.H. He advised against it because relationships like that do not work in a small detachment. His wife had seen Constable G.H. going to the Complainant's "all dolled up". The theme of the party at Constable C.M.'s was "come dressed as your spouse". He asked the Complainant why he did not come to the party dressed as Constable G.H. This was a "dick" thing to say. Any comments he made about the relationship between the Complainant and Constable G.H. were in jest. He did not know if the Complainant and Constable G.H. were in a relationship, but a lot of people suspected they were.

[63] I accept the evidence of the Complainant, Constable T.R. and Constable N.A. I find that the Subject Member made comments about the Complainant engaging in a sexual relationship with Constable G.H. and made the comments set out in the Particulars. Therefore, I find Particulars 8 and 9 are established.

Particular 11 – Valentine’s Gift

[64] Particular 11 states that, around February 14, 2022, the Subject Member and the Complainant were discussing the gift the Subject Member had bought his wife for Valentine’s Day. During the conversation, the Subject Member asked the Complainant what he had gotten Constable G.H. He specifically asked the Complainant if he had gotten her edible underwear.

[65] The Complainant testified that the conversation occurred a few days prior to Valentine’s Day. The Subject Member told him that he had bought his wife a .410 shotgun as a present. The Subject Member asked him if he had got Constable G.H. edible underwear. He responded by asking why he would get her a gift.

[66] The Subject Member admitted to making the comment.

[67] Based on the Complainant’s evidence and the Subject Member’s admission, I find Particular 11 is established.

Particular 12 – Request to stop making comments

[68] Particular 12 states that the Complainant asked the Subject Member to stop making comments about his relationship with Constable G.H. The Subject Member allegedly refused and responded by saying that it is not harassment if it is true.

[69] The Complainant testified that he told the Subject Member to stop and that his response was that it was not harassment if it was true. In cross-examination, he testified that the first time he asked the Subject Member to stop was shortly after Constable T.W. left the Detachment. The Subject Member took her desk, and the Complainant took the Subject Member’s desk. Once, when the Subject Member asked him if he was sleeping with Constable G.H., he told him to stop because his relationship with her was none of his business. The Subject Member responded, “That means yes.” The Complainant agreed with Constable T.R. that every reference to a relationship with Constable G.H. was initiated by the Subject Member.

[70] The Subject Member denied that the Complainant asked him to stop making comments about his relationship with Constable G.H. In cross-examination, he said that he was not interested in the Complainant's relationships with women.

[71] I accept the Complainant's evidence that he asked the Subject Member to stop making comments about his relationship with Constable G.H. and that the Subject Member responded by saying that it is not harassment if it is true. Therefore, I find that Particular 12 is established.

Particulars 13, 14, 16 and 17 – Ms. V.E.

[72] Ms. V.E. lived in Watson Lake. She was a teacher who worked for the First Nations Band.

[73] Particular 13 states that Ms. V.E. would visit the Complainant's residence. Particular 14 indicates that the Subject Member asked the Complainant if he was having a sexual relationship with Ms. V.E. Particular 16 states that the windows of the Subject Member's master bedroom faced the windows of the Complainant's living room and two spare bedrooms. Particular 17 indicates that the Subject Member watched the Complainant's house through the windows of his home when Ms. V.E. was visiting.

[74] The Complainant testified that Ms. V.E. was frequently at his residence. She had no kitchen where she lived, so she came to his house to cook. The Subject Member commented about them living together. The Complainant stated that he was not in a sexual relationship with her. Ms. V.E. stopped coming to his house because she felt the Subject Member was watching her. He never saw the Subject Member watching Ms. V.E. approach his house but he did see him out in his yard. He also saw him looking out of his living room window. He was concerned, so he purchased blinds for his windows. He acknowledged that the Subject Member put up window treatments during the summer. But he highlighted that the Subject Member left an approximately 8" x 11" square cut out of the window treatment. In cross-examination, the Complainant testified that the purpose of the cut-out was to allow the Subject Member to spy on him but agreed that the window treatment could have had another purpose such as keeping out the constant daylight in the summer. Still in cross-examination, he agreed that his relationship with Ms. V.E. could have been misinterpreted.

[75] The Subject Member denied that he asked the Complainant if he was having a sexual relationship with Ms. V.E. or that he watched the Complainant while Ms. V.E. was at his house. The RCMP installed shades on the window, but they let light in, so Ms. S.C. applied blackout tape to the window. He denied the cut-out because it would defeat the purpose of the black out tape.

[76] Constable C.B. testified that privacy issues were common with the members in the compound.² This was primarily due to a harassment issue involving a member previously stationed in Watson Lake. These privacy issues existed between his residence and the Subject Member's.

[77] I find Particular 13 is established, but Particular 14 is not established because the Conduct Authority failed to elicit any evidence in relation to it. The evidence and the Subject Member's admission established Particular 16.

[78] I find Particular 17 was not established. The Parties described living in the compound as "living in a fishbowl". Constable C.B. supported this categorization. Neither the Complainant nor Ms. V.E. were used to this kind of lifestyle and may have been overly sensitive to perceived intrusions on their privacy. I also agree with the Subject Member that cutting a large hole in the blackout tape would defeat its purpose. It is possible that the Complainant mistook an open window or the way the light shone on the window as a cut-out.

Particulars 18 and 19 – Comments related to Sergeant H.R.

[79] Particular 18 states that Sergeant H.R. performed relief duties in Watson Lake from about mid-July to mid-September 2021. She did not testify at the Conduct Hearing, but she confirmed these dates in her statement in the Code of Conduct investigation.

[80] Particular 19 indicates that the Subject Member made enquiries with the Complainant as to whether he was "railing the Sergeant", referring to Sergeant H.R., or words to that effect. I understand "railing" to mean engaging in sexual intercourse.

² The members of Watson Lake Detachment lived in government housing. The houses were in close proximity to each other in what the members referred to as "the compound".

[81] The Complainant testified that he and Sergeant H.R. worked similar lines on the shift. They “hung out together”, went for dinner and went grocery shopping in Whitehorse. They were not in a sexual relationship. When the Subject Member asked him if he was “railing” Sergeant H.R., he simply responded, “No”. He told Sergeant H.R. about the comment.

[82] Constable T.R. testified that, on one occasion when the Complainant and Sergeant H.R. were shopping in Whitehorse, the Subject Member asked him how many hotel rooms the Complainant and Sergeant H.R. were getting to have sex.

[83] The Subject Member testified that he sent the Complainant a text message asking him if he was having a relationship with Sergeant H.R. In cross-examination, the Subject Member said he did not recall using the word “railing”.

[84] I accept the Complainant’s evidence that the Subject Member asked him if he was “railing” Sergeant H.R. The term “railing” was not in the Complainant’s vernacular. The Complainant’s evidence is supported by the Subject Member’s admission that he asked the Complainant if he was having a relationship with Sergeant H.R. and the Subject Member’s comment to Constable T.R. On this basis, I find Particulars 18 and 19 are established.

Particulars 20 and 21 – Comment to Constable A.E.

[85] Particular 20 states that the Subject Member, after learning that Constable A.E. was staying at the Complainant’s, commented to her that she should be careful because when women go to the Complainant’s residence, they never leave, or words to that effect. Particular 21 states that other members of the Detachment heard this comment.

[86] Constable A.E. was a member of the Division Relief Unit. She performed relief duties in Watson Lake. The temporary quarters for relief members were substandard, so the Complainant offered her the use of a spare bedroom in his residence.

[87] The Subject Member admitted that he made the comment. However, he stated that the comment was based on a prior conversation in which the Complainant told him that he could not get Ms. V.E. to leave his residence.

[88] The Complainant testified that the Subject Member told Constable A.E. to be careful because when women went to his house, they would not leave or words to that effect. In cross-examination, he said that it was possible that he made the comment about Ms. V.E. to the Subject Member.

[89] Constable A.E. agreed that the Subject Member made the comment set out in Particular 20. She said this was the same conversation in which the Subject Member called the Complainant a “pussy slayer”.

[90] Based on the foregoing, I find Particular 20 is established. I have no evidence that any other member of Watson Lake Detachment was present during the conversation. Although not a permanent member of Watson Lake Detachment, Constable A.E. was there temporarily. On this basis, I find that Particular 21 is established.

Particular 23 – Moving the Complainant from his residence

[91] Particular 23 states that the Subject Member, while acting in a supervisory position, told the Complainant that he was planning on moving him out of his residence and have him share with other single members. The Complainant replied that it was not going to happen. The Subject Member responded, “Wanna bet?”

[92] Neither party asked the Complainant about this Particular.

[93] The Subject Member testified that the RCMP conducted a study, which determined Watson Lake Detachment required an increase in establishment. During a visit to the Detachment, Inspector Nason told them the Territory agreed to add one member, but he did not say when. This resulted in discussions about government housing, which the Complainant participated in. He never told the Complainant that he was going to move him out of his residence. He did not have the authority to do so.

[94] The Subject Member’s explanation made sense to me. There were nine members at Watson Lake Detachment and nine government houses. No one needed to move. The Subject Member knew he did not have the authority to move the Complainant even if someone needed to move.

I find that the Complainant may have misconstrued the Subject Member's comments. I find Particular 23 is not established.

Particulars 24 to 28 – Slapping the Complainant's genitals

[95] Particular 24 states that Constable C.M. hosted a party at her residence to celebrate her marriage. Detachment members attended the party. This Particular was not disputed and is therefore established.

[96] Particular 25 states that, during the party, the Subject Member touched the Complainant's genitals. Particular 26 specifies that the Subject Member slapped the Complainant's genitals without his consent.

[97] The Complainant testified that he had to leave for a course the next morning, so he went to the party intending to leave early and not drink too much. He had a few drinks early in the evening. He was sitting in a chair beside Ms. S.C. The Subject Member approached him and slapped his genitals which caused him pain. He responded by saying, "You fucker!", as the Subject Member walked away. The Subject Member turned around and said, "You liked it." After the incident, he consumed more alcohol than he had planned because it "threw [him] into a bad headspace". Following the incident, the Subject Member gave him a hug and said, "I love you". He responded by saying, "I don't love you back".

[98] In cross-examination, the Complainant admitted to "shot gunning" alcohol, but was not sure when. He did not see anyone observe the Subject Member slap his genitals. He was not sure how loud he said, "You fucker!", but Ms. S.C. would have heard him say it.

[99] Ms. S.C. testified that she did not see the Subject Member hit the Complainant in the genitals, nor did she hear the Complainant say, "You fucker" or the Subject Member say, "You liked it." She commented that, at some point in the evening, she said, "The tiger is out of the cage", referring to the Complainant. In cross-examination, she said she was not watching the Complainant and the Subject Member all night, so she may have missed the alleged incident. She also did not see the Subject Member hug the Complainant at the end of the night. After the party, the Complainant avoided them but not immediately.

[100] The Subject Member denied the incident. He was certain that he did not touch the Complainant's genitals, even accidentally. He probably consumed five of the drinks he brought to the party plus some beer during a beer pong game. Constable N.A. came to the party later in the evening with an Approved Screening Device. He tested everyone at the party. Because he was a breathalyzer technician, Constable N.A. was able to put the Approved Screening Device into "accuracy mode". He was the only one at the party that blew under the legal limit to operate a motor vehicle.

[101] Two videos were presented in evidence. Both videos depict the Complainant and others at the party "shot gunning" drinks. I could not determine the Complainant's level of intoxication from the videos. Both were shown to the Complainant during his testimony.

[102] The Conduct Authority Representatives implored me to find that the Subject Member slapped the Complainant in the genitals. They claimed the Complainant's evidence had an air of plausibility, highlighting that a slap to the genitals is significant to a man and is not easily mistaken. They noted that there were numerous distractions in the room that could explain why no one else observed the incident. They submitted that the Subject Member intended to do this as something playful, but it had the opposite effect. They explained that the Subject Member misunderstood his relationship with the Complainant. They emphasized that the Complainant did not ask to be struck in the genitals, nor did he consent to the Subject Member doing this. They stressed that I do not have to find that the slap in the genitals was malicious. They concluded that the incident had a significant impact on the Complainant.

[103] The Subject Member Representative said that this incident was unresolvable in terms of the evidence presented to me. He highlighted that I am faced with contradictions as to whether the incident occurred. However, he stressed that I do not have to find that the Complainant lied in order to find that the particulars relating to the incident are not established. The video evidence shows the Complainant apparently enjoying himself during the party. He acknowledged that this contradicts his evidence relative to the Complainant's state of mind.

[104] I find that the Subject Member struck the Complainant in the genitals as the Complainant described. I agree that the evidence was contradictory; however, I have generally found the

Complainant more credible than the Subject Member throughout. The Complainant had no reason to lie about the incident. My finding in relation to this incident is significant in terms of the severity of the Subject Member's conduct. He had reason to deny it occurred. I also agree that a significant strike to the Complainant's genitals is something not easily forgotten and that the room was full of distractions. The incident occurred quickly. Therefore, it is not unreasonable that no one saw the incident or heard what either the Complainant or the Subject Member said. The video evidence provides little assistance. I cannot say if they were taken before or after the incident. I also do not find the fact that the videos depicting the Complainant enjoying himself are irreconcilable with his evidence. He said the incident put him in a bad head space. He chose to drink heavily following the incident, presumably to get out of that bad head space.

[105] Particular 27 states that the Complainant did not consent to the Subject Member touching his genitals. Particular 28 states that the Subject Member sexually assaulted the Complainant. Neither party specifically addressed this in their submissions. Hence, I must now examine this question.

[106] In *Re Calgary (City) and ATU, Local 583 (Sebua)*³, the arbitration board, when addressing the expected conduct of sexual assault victims, noted that principles relating to sexual assault established in the criminal context should be applied equally by a labour arbitrator adjudicating sexual assault grievances.

[107] The generally accepted test for sexual assault was established by the Supreme Court of Canada in *Ewanchuk*⁴ and further discussed in *Barton*.⁵ To prove a case of sexual assault in a criminal matter, the Crown must prove beyond a reasonable doubt that the accused committed the *actus reus* and that they had the necessary *mens rea*.⁶ The standard of proof in administrative proceedings is a balance of probabilities, so that is the standard of proof I will apply.

³ *Re Calgary (City) and ATU, Local 583 (Sebua)*, 2019 Carswell 2714, at paragraph 93.

⁴ *R. v Ewanchuk*, [1999] 1 SCR 330 [*Ewanchuk*].

⁵ *R. v Barton*, 2019 SCC 33 [*Barton*].

⁶ *Ewanchuk*, at paragraph 23.

[108] The *actus reus* of sexual assault requires proof of three elements:

- a) touching;
- b) the sexual nature of the touching; and
- c) the absence of consent.⁷

[109] The sexual nature of the touching is determined objectively. The Supreme Court sets out the factors to consider when determining whether touching is sexual in nature to a reasonable observer. These include:

- a) the part of the body that was touched;
- b) the nature of the contact;
- c) the situation in which it occurred;
- d) the words and gestures that accompanied the act;
- e) all other circumstances surrounding the conduct, including threats that may have been accompanied by force.⁸

[110] However, the third element, the absence of consent, is subjective in nature. It is determined by reference to the victim's state of mind towards the touching at the time it occurred.⁹

[111] In the case at hand, I have found that the Subject Member slapped the Complainant in the genitals. That is a touch. A man's genitals are associated with male sexuality. Consequently, I find that the touch was of a sexual nature as it invaded the Complainant's sexual integrity. I find that, by his actions and words, the Complainant did not consent to the Subject Member slapping his genitals. He was unable to express this prior to the incident because it occurred without warning. I find that the Conduct Authority has demonstrated the *actus reus* for sexual assault.

[112] The *mens rea* consists of an intention to touch and knowing of or being reckless or willfully blind to a lack of consent on the part of the person being touched.¹⁰

⁷ *Ewanchuk*, at paragraph 25; *Barton*, at paragraph 87.

⁸ *R. v Chase*, [1987] 2 SCR 293, at paragraph 11.

⁹ *Ewanchuk*, at paragraphs 25 and 26.

¹⁰ *Ewanchuk*, at paragraph 23.

[113] I find that the Subject Member deliberately hit the Complainant in the genitals. The contact was more than incidental. The Subject Member made no effort to confirm the Complainant's consent to the strike prior to carrying it out. The Complainant made it clear by both his words and actions that he did not consent to having his genital slapped by the Subject Member. The incident is in line, although an escalation, with his other actions towards the Complainant that night. I find that the *mens rea* component of sexual assault is met.

[114] Since both elements of the test for sexual assault have been met, I find that the Subject Member sexually assaulted the Complainant when he slapped his genitals. Therefore, Particulars 27 and 28 are established.

Summary of the actions, comments or conduct attributed to the Subject Member

[115] I have found that the Conduct Authority has established the following actions, comments or conduct attributable to the Subject Member as set out in Allegation 1:

- a) He referred to the Complainant as a "pussy slayer" on numerous occasions.
- b) He asked the Complainant, "Have you slept with Constable [G.H.]".
- c) He asked the Complainant, "Are you fucking Constable [G.H.]".
- d) He asked the Complainant if he had gotten Constable G.H. edible underwear for Valentine's Day.
- e) He asked the Complainant if he was "railing" Sergeant H.R.
- f) He commented to Constable A.E. that she should be careful because when women went to the Complainant's house, they would never leave.
- g) During the party at Constable C.M.'s, he sexually assaulted the Complainant when he slapped the Complainant's genitals.

Link between established actions, comments or conduct and workplace or employment

[116] The third element of the test for harassment is that the actions, comments or conduct are related to the workplace or linked with employment.

[117] Subsection 122(1) of the *Canada Labour Code* defines “workplace” as any place where an employee is engaged in work for the employee’s employer. All of the established actions, comments or conduct, with the exception of the slapping of the genitals and calling the Complainant “pussy slayer” at Constable C.M.’s party, occurred in the Detachment building during work hours. Therefore, I find that the Conduct Authority has established the third element of the harassment test in relation to them.

[118] With respect to the genital slapping and calling the Complainant “pussy slayer” at Constable C.M.’s party, *Administration Manual* 2.1.1.9.1 states:

1.9.1. An employer’s work place can include public spaces, third-party premises, or the employee’s residence if they are permitted to work from home. It also extends to harassment and violence situations that occur away from the work place, if the incidents that arise are linked with employment, for example, while on travel status or after-work functions organized by the employer.

[119] The party to celebrate Constable C.M.’s marriage was held at her residence. It was not a work function “sponsored by the employer”. However, all the attendees at the party, including the acting Detachment Commander, were exclusively linked to the Detachment. Consequently, I find that the party was linked with employment. Therefore, the slap to the Complainant’s genitals and calling the Complainant “pussy slayer” are also linked with employment.

Reasonable person assessment of actions, comments or conduct

[120] The fourth element of the harassment test is that a reasonable person, placed in the same circumstances as the affected employee, would be offended, humiliated or suffer injury or illness as a result of the actions, comments or conduct.

[121] The Subject Member’s actions, comments or conduct all related to the Complainant’s personal life and were based on the Subject Member’s belief that the Complainant had “prowess with the ladies”. The Complainant never expressly told the Subject Member he was involved in anything other than a friendship with the women named in the Particulars. Even if he was, it was not the Subject Member’s business. It was the Complainant’s private affair. The Complainant’s relationship with the women was not related to the workplace, yet the Subject Member chose to

speak about it in front of his co-workers, who also found the actions, comments or conduct to be inappropriate. The behaviour was unrelenting and occurred over an extended period. The Complainant was the Subject Member's sole target. The slap in the genitals violated the Complainant's physical and sexual integrity. The Complainant felt offended and embarrassed. The Complainant suffered an illness, which I will address in detail in stage 2 of my analysis, that he attributed to the Subject Member's actions, comments or conduct. I find that a reasonable person would have been offended, humiliated, or suffer injury or illness as a result of the Subject Member's actions, comments or conduct.

[122] Based on the foregoing, the Conduct Authority has established the fourth element of the harassment test on a balance of probabilities.

Stage 2 - Findings on sexual harassment

[123] The Supreme Court of Canada established a three-part test for sexual harassment that has been widely accepted by the courts and tribunals. The three parts include:

- a) the conduct must be of a sexual nature;
- b) the conduct must be unwelcome; and
- c) the conduct must result in adverse consequences for the victim, which are defined broadly as endangering continued employment, negatively affecting work performance or undermining personal dignity.¹¹

[124] I can deal with the slap to the Complainant's genitals summarily considering my finding of sexual assault. The Alberta Court of Appeal¹² states that sexual assault is sexual harassment in its most serious form. I have found that the Subject Member sexually assaulted the Complainant; therefore, I find that it is sexual harassment. I must apply the three-part test to the remainder of the established actions, comments or conduct.

¹¹ *Janzen v Platy Enterprises Ltd.*, [1989] 1 SCR 1252 [*Janzen*], at page 33.

¹² *Calgary (City) v Canadian Union of Public Service Employees Local 37*, 2019 ABCA 388 (CanLII), at paragraph 32.

Was the conduct sexual in nature?

[125] I find that all of the established actions, comments or conduct in this Allegations are sexual in nature.

[126] The name “pussy slayer” was derived from the Subject Member’s mistaken perception of the Complainant’s “prowess with women”. “Pussy” is a vulgar slang term used to reference female genitalia.

[127] Asking the Complainant if he was sleeping with, “fucking” or “railing” Constable G.H., Ms. V.E. and Sergeant H.R. as well as asking the Complainant if he had purchased edible underwear for Constable G.H. are comments of a sexual nature.

[128] I also find that the Subject Member’s comment to Constable A.E. about being careful when going to the Complainant’s because women never leave had a veiled sexual component to it.

Was the conduct unwelcome?

[129] The Conduct Authority contends that all of the actions, comments and conduct were unwanted by the Complainant. The Subject Member Representative suggested that the Complainant’s failure to tell the Subject Member to stop is a key issue in this case. He pointed to the fact that Corporal R.J. approached the Complainant three times to see if there was a problem. The Complainant told him each time that he was fine. Constable B.A. approached the Complainant twice for a similar reason and received the same response.

[130] In my oral decision, I referred to the situation as “The Tale of Two Coleys” because the Subject Member’s treatment of the Complainant while off and on duty differed significantly. The Subject Member rarely called the Complainant “pussy slayer” or asked him about his relationships with women outside the workplace. The Complainant likely continued to associate with the Subject Member outside the workplace because it was a safe place for him with the Subject Member. The Complainant testified that he tried to make the Subject Member like him in hopes that the harassment at work would stop. Conversely, the Subject Member testified repeatedly that he made the impugned comments to the Complainant in the office because it was a safe place. His comments were out of the public’s earshot. He made the comments because the Complainant was

his friend. The “pussy slayer” nickname was intended to be a compliment. He felt things were fine because the Complainant did not tell him that he was offended. He believed the onus was on the Complainant to tell him he did not appreciate his comments and if he had, he would have stopped. He only made the comments in front of other members because they were the Complainant’s friends too.

[131] I reject the Subject Member’s arguments. He attempted to shift the blame for his inappropriate behaviour to the Complainant because he failed to tell him that he was bothered by the comments. I am astonished that an RCMP member who has received harassment and violence in the workplace training and been provided the strong messages of zero tolerance for harassment from at least three RCMP Commissioners, would have the misconceptions about harassment that the Subject Member purportedly held.

[132] The evidence demonstrates that the Complainant was the sole target of the Subject Member’s behaviour. The Complainant repeatedly told the Subject Member that his comments were unwelcome. He was also told by other members, including a supervisor, that his comments were inappropriate. Constable B.A. gave the Subject Member a significant caution when he told him that he was “making his own bed” with his inappropriate treatment of the Complainant.

[133] The Subject Member attempted to justify his behaviour by saying he employed dark humour as a coping mechanism. Others called it “locker room” humour. RCMP detachments are not locker rooms. They are a place of work where everyone working there should feel safe. The days of such humour being acceptable in the workplace, if it ever was, are long gone. The Subject Member should have been fully aware of this.

[134] Based on the foregoing, I find the Subject Member’s conduct was unwelcome and that the Subject Member was or ought to have been aware that it was.

Did the conduct result in adverse consequences for the Complainant?

[135] The third element of the test for sexual harassment is that the conduct must result in adverse consequences for the complainant, which are defined broadly as endangering continued employment, negatively affecting work performance or undermining personal dignity.¹³

[136] The Complainant testified that he saw a psychologist at Depot Division before being posted north. He had no mental health diagnosis prior to going to Watson Lake. He weighed 194 pounds when he left Depot Division. His Periodic Health Assessment came due. It included an appointment with a psychologist during which he “unloaded”. He was not eating. His weight had dropped to 150 pounds. He was only sleeping about an hour per night. Although it never became an issue at work, his alcohol consumption concerned him near the end of his tenure in Watson Lake. He began to think it would be easier to kill himself than make a complaint. He tried to avoid the Subject Member. He arrived at work early and left in a vehicle by himself. If he was called back to the office to pick up the Subject Member, he would have a panic attack.

[137] The Complainant filed his complaint with Staff Sergeant Jonathan Saxby in May 2022. He went on medical leave immediately thereafter. He was diagnosed with several mental health disorders and prescribed numerous medications to deal with them.

[138] In April 2022, the Complainant was choked unconscious by an individual during a call for service. After the incident, he suffered an aneurism during a hike with Constable T.R. His medical practitioners told him that it may have been caused by the choking incident or chronic stress.

[139] The Complainant regularly visits a psychologist. He also continues to attend a group program at an Operational Stress Injury Clinic. The Health Services Officer determined that he will never work in the north or an isolated post again, which was permanently added on his medical record.

¹³ Janzen, at page 33.

[140] The Conduct Authority tendered no medical evidence to support the Complainant's evidence. I do not believe that he was obliged to or that it was required for me to find that the Complainant suffered adverse consequences from the Subject Member's behaviour.

[141] The Subject Member contends that his actions only contributed minimally to the Complainant's health decline.

[142] I find that the Subject Member's behaviour caused many of the issues the Complainant described. The Complainant had medical and psychological clearance for his northern transfer. He was fine when he got to Watson Lake. Several witnesses commented on this, including the Subject Member and the Complainant. I can find no other reasonable cause in the evidence. Although the Field Coaching Program can be stressful, the Complainant handled it well. Neither Corporal R.J., his supervisor, nor Constable T.R., his field coach, had any issues with his performance. The Complainant asked to be posted to the north. He testified that there was some animosity towards him because he received a much sought-after northern posting out of Depot Division. This appeared to have a minimal impact on him. By all accounts, he adjusted to the northern lifestyle. "Living in the fishbowl" atmosphere of the compound caused him some anguish as demonstrated by Particulars 13 to 17, which was cured by a set of blinds on his living room window. He was involved in a significant violent incident when he was choked to unconsciousness. He was treated and released from hospital. He returned to work to complete the rest of his shift that evening and the following day. The Complainant testified that he was dissatisfied with the Detachment's managers because of their perceived lack of supervision and leadership. He also did not appreciate some of their decisions relating specifically to him. For example, he was forced to attend a dentist appointment to have his wisdom teeth removed in a police vehicle while on duty. He felt that since he would receive strong pain medication, it was not appropriate to drive a police vehicle on duty after that. Nevertheless, he was not consumed by his dissatisfaction.

[143] Based on the foregoing, I find that the Subject Member's conduct resulted in adverse consequences for the Complainant demonstrated by his health decline after he arrived in Watson Lake. He is no longer able to work in the north or an isolated post as an RCMP member.

Conclusion on sexual harassment

[144] I have found that all of the Subject Member's actions, comments or conduct are sexual in nature. The Subject Member knew or ought to have known his actions, comments or conduct were unwelcome. The Subject Member's actions resulted in adverse consequences for the Complainant in that they endangered his continued employment and were an affront to his personal dignity. Consequently, I find that all of the established actions, comments or conduct fall within the definition of sexual harassment.

Conclusion on Allegation 1

[145] Based on the foregoing, I find that the Conduct Authority has established all of the elements of harassment and sexual harassment. Therefore, Allegation 1 is established on a balance of probabilities.

Allegation 2

[146] Allegation 2 is an allegation of discourteous conduct under section 2.1 of the Code of Conduct. Members are expected to act in a professional and respectful manner towards the public and their colleagues at all times. Discourteous behaviour covers a broad range of conduct from obscene language to insulting inappropriate behaviour.

[147] To establish Allegation 2, the Conduct Authority must demonstrate each of the following on a balance of probabilities:

- a) the identity of the subject member;
- b) the action(s), comment(s) or conduct that the subject member is to have engaged in;
and
- c) that a reasonable person would view this behaviour as discourteous or disrespectful.

[148] The Subject Member's identity is not at issue in this Allegation.

Actions, comments or conduct attributed to Subject Member

[149] Much like Allegation 1, the *Notice of Conduct Hearing* is laid out in such a way that a particular or block of particulars address each of the actions, comments or conduct that the Conduct Authority attributes to the Subject Member. I will review the evidence and make findings within these blocks of particulars.

Particular 34 – “Being a member is like the best erection” comment

[150] Particular 34 states that when the Subject Member first met the Complainant after he arrived at Watson Lake Detachment, he told the Complainant that “being a member was like having the best erection” or words to that effect.

[151] The Complainant testified that he first met the Subject Member in the bullpen of the Detachment during a shift overlap. The Subject Member told him that “being a member was like having the best erection”. In cross-examination, he testified that these were the exact words the Subject Member used. The comment stuck in his mind because this was their first meeting. He felt the comment was strange. Constable B.A. was present and told the Subject Member the comment could be inappropriate.

[152] Neither the Subject Member nor Constable B.A. recalled this incident.

[153] I accept the Complainant’s evidence and find that the Subject Member made the comment attributed to him. A comment like this made by a senior constable to a cadet on their first meeting would have been memorable. It would be more memorable to the cadet than Constable B.A., who was used to the Subject Member’s “locker room” sense of humour. I find Particular 34 is established.

Particular 35 – “... the only evidence I need is from the pussy” comment

[154] Particular 35 states that, when discussing a sexual assault case, the Subject Member said that he did not care about the evidence except the evidence “from the pussy”.

[155] The Complainant testified that everyone except Constable T.R. was called in to assist Constable C.M. execute a search warrant on a sexual assault file. Someone decided to obtain a penal swab from the suspect. A game of “rock, paper, Regimental Number” was suggested to decide who would take the penal swab. The Complainant told Corporal R.J. that he would not participate in the game. It was harassment and he was going to report it. At one point, the Subject Member said that they did not need to seize the blankets, they needed the evidence “from the victim’s pussy”. In cross-examination, the Complainant said that the “rock, paper, Regimental Number” was initiated by the Subject Member. No one else encouraged it. Corporal R.J. said it was not harassment.

[156] The Subject Member denied making the comment. He testified that he was called in on overtime to execute a search warrant in a sexual assault investigation. The victim of the sexual assault agreed to submit to a sexual assault examination; however, the on-call doctor refused to administer the sexual assault kit. The sexual assault kit was deferred to the next morning. He was upset when he heard about this because the same doctor had done a similar thing to him on one of his sexual assault investigations. The search warrant was for bedding from the bed in which the sexual assault was alleged to have occurred. The sexual assault victim was located and declined the sexual assault kit. He commented that they could still conduct the search for the bedding, but if they had nothing to compare evidence from the bedding with, the seizure of the bedding was of little value. The search warrant was executed. The suspect was arrested. This is when the penal swab came up. He believed they had no grounds to obtain it.

[157] Corporal R.J. testified that he was not familiar with the policy on obtaining penal swabs, so he was busy checking policy. The members discussed who was going to take the swab. The Subject Member mentioned the Complainant could take it. Corporal R.J. did not hear the Subject Member say anything offensive. He vaguely recalled the Complainant say he was going to the union as he was on his way out of the office to return to the search site to retrieve the battering ram he had left behind. The Complainant was not present when he made the decision to take the penal swab.

[158] Constable C.M. could not recall the comment attributed to the Subject Member. Her only recollection was that the Complainant refused to obtain the penal swab and stormed out of the

office. She was quite upset by this. She said “rock, paper, Regimental Number” is the same as “junior member prove”, which is derived from drill class at Depot.

[159] I find the evidence does not support the Complainant’s version of events. The Subject Member denied making the comment and provided a reasonable explanation from an operational perspective as to why he thought the search warrant for the bedding was not a valuable investigative step. Two other members present at the time had no recollection of the Subject Member making any objectionable comments. The Complainant was distracted by the forgotten battering ram. He may have misunderstood what the Subject Member said. The comments attributable to the Subject Member were not established; therefore, I find that Particular 35 is not established.

Particulars 36 and 37 – Complainant "murdering pussy"

[160] Particular 36 states that while members of MCU were in Watson Lake Detachment on work-related matters, the Subject Member said, “The only thing getting murdered by anyone is [the Complainant] murdering pussy”, or words to that effect. Particular 37 states that this comment was heard by other Detachment members.

[161] Constable C.B. was the MCU member referred to in these Particulars. He testified that he was stationed in Watson Lake between 2018 and 2021. He transferred to the MCU in April 2021. He recalled the incident but could not specify a date. He was in Watson Lake for two trials. He was in the office preparing for them. At shift change, the Subject Member came into the office. He popped his head out of the office. The Subject Member asked what MCU was doing there and asked if it was because the Complainant was “murdering all that pussy”. The Complainant and PSE E.B. were present at the time. Although he was not sure if PSE E.B. was offended, he asked her to excuse his friend because what he said was inappropriate. He was not surprised to hear the comment.

[162] The Complainant’s evidence coincided with Constable C.B.’s. He recalled the comment as being, “The only thing getting murdered in Watson Lake was [the Complainant] murdering pussy”. Constable N.A. was also present. Constable C.B. said to him that he must be getting used to it, referring to the Subject Member’s comments.

[163] Constable N.A. provided a similar account of what took place to that of the Complainant and Constable C.B. He added that the Complainant shook his head and seemed to shrug it off. He characterized the comments as a “shock comment”. He said his response was simply, “OH.”

[164] The Subject Member could not recall making the comment but agreed that it was in line with him calling the Complainant “pussy slayer”.

[165] I accept the evidence of the Complainant, Constable C.B. and Constable N.A. and find that the Subject Member made the comment attributable to him. Therefore, I find that Particulars 36 and 37 are established.

***Particular 38 – “What is going to happen to all that cum floating in the hot tub?”
comment***

[166] Particular 38 states that when the Complainant was discussing a trip he was taking with Constable G.H. to a cabin that had a hot tub. The Subject Member asked what was going to happen “to all the cum floating around in the hot tub”, or words to that effect. The comment was apparently heard by other Detachment members.

[167] The Complainant testified that he and Constable G.H. planned a trip together to a cabin at Little Atlin Lake. The cabin had a wood burning hot tub. The Subject Member asked him what was “going to happen to all of the cum in the hot tub”. Corporal R.J. and Constable N.A. were present. Corporal R.J. shook his head and laughed. Constable N.A.’s response was simply, “Wow.” The Complainant directly told the Subject Member that the Complainant’s relationship with Constable G.H. was his personal life and was none of the Subject Member’s business.

[168] Corporal R.J. testified that he was in the office. He did not hear the entire conversation but heard the tail end. In cross-examination, he said that the Subject Member made some “off” comments. He needed to refer to his statement to say exactly what they were. This incident prompted him to speak to the Complainant because it was the second time that the Subject Member said something offensive to the Complainant in his presence. He believed that the Subject Member was acting in a supervisory position at the time.

[169] Constable B.A. was present in the office when this interaction occurred. He recalled that the Subject Member said it was “difficult to get cum out of the filters”.

[170] The Subject Member testified that he had a friendly conversation with the Complainant about his planned trip. He made a joke that the Complainant did not take issue with. Although his type of humour may seem dark or raunchy, he made the joke between friends in a safe space where “we” would often joke around.

[171] I accept the Complainant’s evidence as it is corroborated by Corporal R.J., Constable B.A. and the Subject Member himself. I find that the Subject Member made the comment attributed to him. Therefore, I find that Particular 38 is established.

Particular 40 – “If you think that is dirty, you should see my wife.” comment

[172] Particular 40 states that when the Subject Member first met Constable T.R., who mentioned that his truck was dirty. The Subject Member replied, “If you think that’s dirty, you should see my wife.”, or words to that effect.

[173] Constable T.R. provided this as the only specific incident of the Subject Member’s “toilet humour” that he could recall. He said the incident occurred in January or February 2022. The Subject Member had just returned from the avalanche course. Constable T.R. was leaving work for the day. The Subject Member was in the parking lot washing the snowmobiles. The Subject Member’s wife was present. Constable T.R. commented on how dirty the snowmobiles were, to which the Subject Member replied that they were not as dirty as his wife. Constable T.R. felt the comment was embarrassing and felt bad for Ms. S.C. Constable T.R. did not know what to say, so he left. Constable T.R. spoke to Constable N.A. about the comment when he got in the car with him. Constable T.R. recalled telling the Complainant about the incident as well.

[174] Constable N.A. had no recollection of being told about the incident by Constable T.R.

[175] The Subject Member testified that he could not speak to the Particular because the evidence he heard did not coincide with the Particular nor could he recall a similar incident.

[176] It is the Complainant's version of the incident provided in his statement that appears in the Particular. He was not present when this incident is alleged to have occurred nor did he testify about it.

[177] Although I do not doubt Constable T.R.'s evidence, I agree with the Subject Member that it does not coincide with the Particular or the evidence. The Subject Member arrived in Watson Lake in August 2020. Constable T.R. arrived in Watson Lake in September 2020. The Subject Member's Employee Profile Information form shows he attended the avalanche course in March 2021. The incident Constable T.R. testified to did not occur when they first met. The Particular also states that Constable T.R. was washing his truck. Constable T.R. testified that the Subject Member was washing snowmobiles. These discrepancies raise doubt about the incident. Therefore, I find that Particular 40 is not established.

Particular 41 – “suck his dick for the promotion” comment

[178] Particular 41 states that during a telephone call with Constable T.W. about corporal promotions, the Subject Member asked if Sergeant B.G. wanted the Subject Member or his wife to “suck his dick for the promotion” or words to that effect. The Subject Member allegedly also said that he would do a better job performing fellatio than his wife because he “got the junk” or words to that effect.

[179] Constable T.W. testified during the Conduct Hearing. She was not asked about this incident. I am not sure why because she could have provided the best evidence since it was her talking directly to the Subject Member on the telephone.

[180] The Complainant testified that he was in the office one day when the Subject Member telephoned Constable T.W. The Subject Member had applied for a promotion to Beaver Creek. The Subject Member told Constable T.W. to ask Sergeant B.G. if he wanted him or his wife to suck his dick and that he would do a better job than his wife because he “got the junk”.

[181] Sergeant B.G. testified that he was in the office at Carcross Detachment. He was a corporal at the time and was the Detachment Commander there. Constable T.W. was speaking to the Subject Member on the telephone. He could hear a lot of laughter. Constable T.W. yelled out to

him that the Subject Member wanted to know if he or his wife could suck his dick to get the promotion or words to that effect. In cross-examination, he said that he thought it was a joke. He chuckled to himself. He did not dignify the comment or respond.

[182] In cross-examination, the Subject Member testified that he had a number of conversations with Constable T.W. about promotions, so he could not pinpoint this specific conversation. He denied he said, “suck dick”. He did not agree that if he had said these words that they were discourteous. He also said that he had no reason to doubt Sergeant B.G.

[183] I accept the evidence of the Complainant and Sergeant B.G. and find that the Subject Member said the words attributable to him. Therefore, Particular 41 is established.

Conclusion on the actions, comments or conduct attributed to the Subject Member

[184] I have found that the Conduct Authority has established the following actions, comments or conduct attributable to the Subject Member as set out in Allegation 2:

- a) He told the Complainant that being a member of the RCMP is “like having the best erection” or words to that effect.
- b) He commented to several members of Watson Lake Detachment and a member of MCU that “the only thing getting murdered by anyone is [the Complainant] murdering pussy” or words to that effect.
- c) During a conversation with the Complainant about the Complainant’s planned trip to a cabin with a hot tub, he enquired as to what was going to happen “to all that cum floating around in the hot tub” or words to that effect.
- d) During a telephone conversation with Constable T.W. about corporal promotions, he asked if Sergeant B.G. wanted him or his wife to “suck his dick for the promotion” or words to that effect.

[185] Based on these findings, the Conduct Authority has established the second element of the test for discourteous behaviour on a balance of probabilities.

Reasonable person assessment of actions, comments or conduct

[186] The third element of the test for discourteous or disrespectful behaviour is whether a reasonable person would view the established behaviour as discourteous or disrespectful.

[187] The established behaviours involve obscene language and insulting inappropriate behaviour which a reasonable person would view the conduct as discourteous or disrespectful. The Conduct Authority has established the third element of the test for discourteous conduct on a balance of probabilities.

Conclusion on Allegation 2

[188] The Conduct Authority has established all three elements of discourteous or disrespectful behaviour on a balance of probabilities. Therefore, I find that Allegation 2 is established.

Allegation 3

[189] Allegation 3 is an allegation of discreditable conduct under section 7.1 of the Code of Conduct. To establish Allegation 3, the Conduct Authority must establish each of the following on a balance of probabilities:

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

[190] Again, the Subject Member's identity is not at issue in this Allegation.

The acts constituting alleged behaviour

[191] The Particulars that constitute the alleged behaviour that the Conduct Authority attributes to the Subject Member are alleged to have occurred while the Complainant was operating police motor vehicle 4A4 on a highway. These acts include:

- a) He placed the vehicle in neutral more than once.
- b) He turned the ignition of the vehicle off; and
- c) He placed his hands on the vehicle's steering wheel.

[192] Although the Parties generally agreed that the acts occurred, I need to identify the discrepancies in the evidence.

[193] The Complainant testified that he needed a statement on a file from a witness who was at school. The Subject Member volunteered to go with him. The Complainant drove the police vehicle. As he approached the highway, the Subject Member said he needed to go back to get his duty bag. The Complainant told the Subject Member that he could get it after they were done. The Subject Member demanded, as his supervisor, for the Complainant to take him back to the office. The Complainant told him to "stuff his demands". At that point, the Subject Member reached over and put the vehicle in neutral. The Complainant put the vehicle back in gear and drove on. The Complainant turned onto the Alaska Highway ahead of a propane truck. At that point, the Subject Member reached over with one hand and grabbed the steering wheel. The Complainant grabbed the Subject Member's hand firmly and removed it. Then the Subject Member turned the ignition off. The steering wheel locked. They crossed the lane dividing line and were heading for a snowbank before the Complainant was able to manoeuvre the vehicle to the side of the road and bring it to a stop. The propane truck passed them. The Complainant feared for his safety because he thought the propane truck might crash into them. When the Complainant got the vehicle started again, he drove back to the office. At the office, the Subject Member got out of the vehicle and opened all of the vehicle doors and dropped the tailgate. The Subject Member retrieved his duty bag. They attended the school to find that the witness had left. The school was only a 3- to 5-minute drive from the office. There was already tension between the Complainant and the Subject Member. The Complainant was furious with the Subject Member. The Complainant agreed that he should have just stopped the vehicle when the Subject Member asked.

[194] The Subject Member testified that he checked the shift schedule, which showed the incident occurred on a Saturday. The shift started at 5 p.m. The Complainant was going to Upper Liard, which is 14 kilometres from Watson Lake. He checked a weather service for that day and learned that the temperature was -20 degrees Celsius. The Complainant was driving. After they

left the office, the Subject Member realized he forgot his duty bag, his jacket and his winter gear. He wanted to retrieve them because of the distance away from the office they were going and the weather conditions. He is “OCD” about having this equipment with him and provided several reasons for it. The Subject Member did not recall ordering the Complainant to stop. The Subject Member believed something was going on with the Complainant. He qualified that the Complainant was like a zombie from lack of sleep. The Subject Member initially put the vehicle in neutral. The Complainant put it back in drive. The Subject Member turned the ignition off, but nothing happened. The Complainant turned into a service road, then returned to the office. The incident took between 20 and 30 seconds. The Subject Member retrieved his gear, and they proceeded to go to Upper Liard. The Subject Member was a passenger in the vehicle, so he could not say what other vehicles were on the road. The Subject Member believed placing the vehicle in neutral was necessary because the Complainant was not allowing him to exit the vehicle. The Subject Member could not recall putting the vehicle in neutral a second time. The road was straight. The Subject Member claimed the steering wheel did not lock when he turned the ignition off. He could not say anything about the brakes. The Subject Member states that he did not place his hand on the steering wheel. He did not turn the vehicle. He wished he did not do this because it did not accomplish what he wanted. He acknowledged his actions sound bad, but he would have done nothing that was reckless, dangerous or would affect their safety. The Subject Member could not recall dropping the tailgate of the truck and denied opening the driver’s door of the vehicle. The Subject Member indicated that he did not do this to stop the Complainant from leaving. The Subject Member claimed that he would have allowed the Complainant to go on his own if that was what he wanted.

[195] In cross-examination, the Subject Member agreed that when the vehicle went in neutral, it lost power but he did not see how the propane truck could have hit them. He trusted the driver of the truck was travelling at a speed and distance that would have allowed him to stop. He agreed the entire incident should not have occurred.

[196] There are inconsistencies in the evidence. For example, the occurrence report on the Complainant’s complaint shows the incident occurred on May 5, 2022. The shift schedule shows that this was a Saturday and that the Subject Member and Complainant started their shift at 5 p.m.,

so they could not have gone to the school near the office to take a statement as the Complainant said. Although these are significant, the Subject Member admitted to two of the three acts set out in the Particulars. He simply does not agree with the Complainant that he put the vehicle in neutral twice, that he grabbed the steering wheel or that the steering wheel locked when he turned the ignition off.

[197] Based on the Complainant's evidence and the Subject Member's admissions, I find that the Subject Member put the vehicle in neutral at least once and turned the vehicle's ignition off while the Complainant was operating the vehicle. I accept that the Complainant's evidence that the Subject Member grabbed the vehicle's steering wheel. He was emphatic about that, but I also accept that when the Subject Member did so, he may not have turned the vehicle because the Complainant removed his hand quickly.

[198] Particular 56 alleges that the Subject Member's actions caused the Complainant to drive dangerously or recklessly. The Conduct Authority Representatives provide cases and made submissions on those cases to support the following in relation to this Particular:

- a) If a passenger takes control of a vehicle by grabbing the steering wheel, the passenger can be deemed the driver of the vehicle.¹⁴
- b) Five seconds of inattention can constitute gross negligence in the operation of a motor vehicle.¹⁵

[199] The Subject Member's actions impeded the Complainant's normal operation of the police vehicle and took the Complainant's attention away from the proper operation of the police vehicle. There was other traffic on the highway. I accept that the propane truck passed the police vehicle when the Complainant pulled over to the side of the road because the Subject Member was unable to say whether there were other vehicles on the highway at the time. I also accept that the Complainant feared for his safety when the Subject Member tampered with the police vehicle. I find the combination of these factors caused the Complainant to drive recklessly. I do not find that the Subject Member's actions rose to the level of causing the Complainant to drive dangerously.

¹⁴ *R v Scott*, 2007 NBPC 18 (CanLII), at paragraph 20.

¹⁵ *Amalgamated Transit Union. Local 279 v Ottawa (OC Transpo)*, 2007 CanLII 41425 (ON SCDC), at paragraph 9.

[200] Given my findings, I find that the Conduct Authority has demonstrated the acts that constitute the behaviour on a balance of probabilities.

Behaviour likely to discredit the Force

[201] The well-established test for behaviour likely to discredit the Force is how a reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the behaviour.

[202] The Subject Member Representative suggested that this matter could have been dealt with as a performance issue. I do not agree. The RCMP investigated the Complainant's complaint. When the investigation was complete, they decided the matter was sufficiently serious to refer it to a prosecutor to determine whether a charge should be laid. Conduct Authorities have the discretion to initiate a conduct investigation when they feel the conduct warrants conduct measures. This is so even if the conduct is significantly based on a member's performance. When considered in the totality of the circumstances of this proceeding, I find that Allegation 3 is properly before me, even if it is not likely to result in the Subject Member's dismissal on its own.

[203] As the Conduct Authority Representatives pointed out, police officers are held to a higher standard of driving than the general public when on duty. They are responsible for enforcing traffic laws. Although members of Watson Lake Detachment did not perform much traffic work in the area, members of the Division's traffic unit did. The propane truck driver likely observed the irregular movements of the police. It is also important to note that the Subject Member was acting in a supervisory position when this incident occurred.

[204] As a result, I find that a reasonable person with the knowledge of all the relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the Subject Member's actions as being likely to discredit the Force. Therefore, the Conduct Authority has demonstrated the third element of the test for discreditable conduct on a balance of probabilities.

Link to duties and functions to provide legitimate interest in disciplining subject member

[205] The fourth element of the test for discourteous or disrespectful behaviour is whether the Subject Member's behaviour is sufficiently related to their duties and responsibilities to provide the RCMP with a legitimate interest in disciplining the member.

[206] My previous comments with respect to the RCMP's traffic enforcement responsibility are sufficient to provide the RCMP with a legitimate interest in disciplining the Subject Member. He created a dangerous situation when he interfered with the Complainant's operation of the police vehicle.

[207] As a supervisor, the Subject Member had a responsibility to ensure the Complainant operated the police vehicle safely while he was on a highway. Instead, he distracted the Complainant from the proper operation of the police vehicle while on duty and in the public's view. I found that this distraction caused the Complainant to drive recklessly. I also found that the Complainant feared for his safety. The Complainant's reckless driving endangered both the Complainant and the Subject Member.

[208] Based on the foregoing, I find that the Conduct Authority has established the fourth element of the test for discreditable conduct on a balance of probabilities.

Conclusion on Allegation 3

[209] The Conduct Authority has established all four elements for the test for discreditable conduct. Therefore, the Conduct Authority has established Allegation 3 on a balance of probabilities.

CONDUCT MEASURES

[210] Subsection 45(4) of the *RCMP Act* states that if a conduct board decides that an allegation under the Code of Conduct is established, the conduct board shall impose one or more of the three listed sanctions.

[211] The conduct measures phase of the Conduct Hearing was scheduled to proceed on July 3 and 4, 2024; however, the Subject Member voluntarily discharged from the RCMP on June 28, 2024. Consequently, I no longer had jurisdiction to complete the conduct process.

DECISION

[212] I find that all three Allegations contained in the *Notice of Conduct Hearing* are established. Conduct measures were not administered due to my loss of jurisdiction over the matter following the Subject Member's discharge from the RCMP.

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

Kevin Harrison
Conduct Board

October 15, 2025
Date