

Publication ban: Any information that could identify the Complainant in the present decision shall not be published, broadcast or transmitted in any way.



ROYAL CANADIAN MOUNTED POLICE

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

Between:

Designated Conduct Authority for “H” Division

(Conduct Authority)

and

Constable Terry Garvin
Regimental Number 64132

(Subject Member)

CONDUCT BOARD DECISION

John MacLaughlan and Jonathon Soltys

(Conduct Authority Representatives)

Stanley MacDonald

(Subject Member Representative)

CONDUCT BOARD: Gina Levesque

DATE: October 9, 2025

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SUMMARY

On June 26, 2024, Constable Terry Garvin was served a *Notice of Conduct Hearing*, dated June 11, 2024, which contains three alleged contraventions of the RCMP Code of Conduct. Two allegations are for discreditable conduct, contrary to section 7.1, and one allegation is for having disobeyed a lawful order or direction, contrary to section 3.3.

On February 7, 2025, having heard from 5 witnesses, including Constable Garvin, the Conduct Board found that Allegations 1 and 2 were not established. However, the Conduct Board found that Allegation 3 was established on a balance of probabilities.

On April 25, 2025, after the conduct measures phase, held through videoconference, the Conduct Board imposed a financial penalty consisting of a forfeiture of 12 days' pay to be deducted from Constable Garvin's pay.

INTRODUCTION

[1] On April 5, 2024, the Conduct Authority signed a *Notice to the Designated Officer* to request the initiation of a conduct hearing in this matter. On April 9, 2024, I was appointed as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] On June 26, 2024, Constable Terry Garvin was served a *Notice of Conduct Hearing*, dated June 11, 2024, along with the investigation package. The *Notice of Conduct Hearing* contains two allegations of discreditable conduct, contrary to section 7.1 of the RCMP Code of Conduct, and one allegation of having disobeyed a lawful order or direction, contrary to section 3.3.

[3] On July 25, 2024, Constable Garvin provided his response to the allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. While Constable Garvin admitted certain particulars and provided explanations for others, he denied all three allegations as a whole.

[4] The allegations phase of the Conduct Hearing was held in person in Halifax, Nova Scotia, from February 3 to 7, 2025. I heard evidence from five witnesses, including Constable Garvin. I also heard submissions from the Representatives.

[5] On February 7, 2025, I delivered my oral decision on the Allegations. I found Allegations 1 and 2 not to be established on a balance of probabilities, but I found Allegation 3 established on a balance of probabilities. Specifically, I found that Constable Garvin disobeyed a lawful direction, contained in his *Order of Suspension*, dated April 14, 2023, not to have any contact with the Complainant for the duration of the conduct process.

[6] The conduct measures phase of the Conduct Hearing took place by videoconference on April 16, 2025. I heard evidence from three witnesses, who testified to Constable Garvin's character and employment history. I then heard the Parties' submissions with respect to the appropriate conduct measures to be imposed in this case.

[7] On April 25, 2025, I delivered my oral decision on conduct measures. I imposed a financial penalty consisting of a forfeiture of 12 days' pay to be deducted from Constable Garvin's pay.

[8] This written decision incorporates, clarifies and expands upon both oral decisions.

Publication ban

[9] On February 3, 2025, at the outset of the Conduct Hearing, I made an order restricting the publication of the identity of the Complainant, pursuant to paragraph 45.1(7)(a) of the *RCMP Act*. Consequently, any information that may identify the Complainant shall not be published, broadcast or transmitted in any way.

[10] In this decision, the quoted text from the *Notice of Conduct Hearing* and from my *Determination of Established Facts* have been amended to reflect this publication ban.

ALLEGATIONS

[11] The Allegations, as set out in the *Notice of Conduct Hearing*, read as follows:

Particulars Common to All Allegations:

1. You were appointed as a regular member of the Royal Canadian Mounted Police [“**RCMP**”] on January 16, 2018, and were a regular member of the RCMP at all material times.
2. You were posted to [redacted] Detachment in [redacted], Nova Scotia (“H” Division) on December 30, 2022.
3. At all material times, you held the rank of Constable.

Allegation 1:

On or around February 28, 2023, at or near [redacted], in the Province of Nova Scotia, Constable Terry Garvin did conduct himself in a discreditable manner, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars for Allegation 1:

4. On or around February 28, 2023, you attended the [redacted] brewpub.
5. While there, you met and talked with [the Complainant].
6. At some point while talking with her, you confirmed that you are an RCMP officer and you are married.
7. That evening, you offered to walk her home.
8. She accepted and left with you, because she believed you would be a safe escort because you are an RCMP officer.

9. On the way to her home, you exposed your penis to [the Complainant].
10. You told her to “suck it”, referring to your penis.
11. [The Complainant] said “fuck you”.
12. You said “Come on, Come on” or words to that effect, and you encouraged her to suck or touch your penis.
13. You eventually gave up trying to encourage her, saying “I’m a piece of shit” or words to that effect.
14. [The Complainant] replied “You’re right” or words to that effect.
15. [The Complainant] did not consent to or welcome you exposing your penis or asking or encouraging her to “suck it”.
16. After this incident, [the Complainant] told you that she could get the rest of the way home on her own, or words to that effect, but you insisted on walking her home anyways.
17. Your behaviour towards [the Complainant] constituted discreditable conduct; accordingly, you breached section 7.1 of the *Code of Conduct*.

Allegation 2:

On or around June 9, 2023, at or near [redacted], in the Province of Nova Scotia, Constable Terry Garvin did conduct himself in a discreditable manner, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Allegation 3:

On or around June 9, 2023, at or near [redacted], in the Province of Nova Scotia, Constable Terry Garvin did disobey a lawful order and/or direction, contrary to section 3.3 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars Common to Allegations 2 and 3:

18. On or around Friday June 9, 2023, you attended the [redacted] restaurant and sat at the bar.
19. Around supper time, [the Complainant] and her father Mr. [P.S.] attended the [restaurant] and seated themselves at the bar. Mr. [P.S.] sat at the bar stool next to yours, which you had temporarily vacated to use the restroom before they arrived.
20. You returned to your seat at the bar and sat down directly next to Mr. [P.S.]. [The Complainant] was sitting next to her father.
21. You finished your drink and said you were going to leave.
22. You then changed your mind and said “Fuck it. I’ll have another” or words to that effect.

23. You ordered [the Complainant] and Mr. [P.S.] a round of drinks, which they refused.
24. Verbal bickering followed, in which (in the following or some other order of events):
 - a. You said to [the Complainant] “You are ruining my career,” or words to that effect.
 - b. You called [the Complainant] a “whore” and/or a “slut”.
 - c. You called Mr. [P.S.] a “pussy” and/or a “chickenshit”.

Allegation 2:

25. Your interactions with [the Complainant] and her father on June 9, 2023, at the [redacted] restaurant constituted discreditable conduct; accordingly, you breached section 7.1 of the *Code of Conduct*.

Allegation 3:

26. On April 15, 2023, you were served an Order of Suspension relating to the Code of Conduct Investigation into Allegation 1.
27. The Order of Suspension read, in part, as follows:

For the duration of the conduct process, you are directed not to have any communications or discussions relating to the allegation(s) and surrounding events with any possible affected employees, victims, witnesses or public complainants, unless expressly authorized to do so by me. Additionally, you are not to have any contact with [the Complainant] and not to attend her residence.
28. Your Order of Suspension clearly directed you to not have any communications or discussions relating to Allegation 1 and the surrounding events with any possible victims, witnesses or public complainants and, particularly, to not have any contact with [the Complainant].
29. You disobeyed this direction through your interactions on June 9, 2023, with [the Complainant], a victim/witness, in the [redacted] restaurant.
30. You disobeyed this direction through your interactions on June 9, 2023, with Mr. [P.S.], a possible witness and close family member to a victim/witness, in the [redacted] restaurant.
31. Accordingly, you disobeyed a lawful direction and, thereby, breached section 3.3 of the *Code of Conduct*.

FACTS ESTABLISHED BY CONDUCT BOARD

[12] On January 8, 2025, I issued a *Determination of Established Facts*, based on the Code of Conduct investigation report, the supporting material and on the admissions made by Constable Garvin in his response to the Allegations. Following the allegations phase of the Conduct Hearing, I made additional findings of fact, which I will provide later in this decision.

[13] The *Determination of Established Facts* sets out the following facts, which are undisputed by the Parties:

Facts Related to all Allegations

- a) Constable Garvin was appointed as a regular member of the [RCMP] on January 16, 2018.
- b) Constable Garvin was a regular member of the RCMP at the rank of constable at all material times.
- c) Constable Garvin was posted to [redacted] Detachment in [redacted], Nova Scotia ("H" Division) on December 30, 2022.

Facts Related to Allegation 1

- d) On or around February 28, 2023, Constable Garvin attended the [redacted] brewpub.
- e) While at the brewpub, Constable Garvin met and talked with [the Complainant].
- f) At some point during his conversation with [the Complainant], Constable Garvin told her that he was an RCMP officer and that he was married.
- g) That evening, Constable Garvin offered to walk [the Complainant] home.
- h) [The Complainant] accepted Constable Garvin's offer and left the brewpub with him.

Facts Related to Allegations 2 and 3

- i) On Friday, June 9, 2023, Constable Garvin attended the [redacted] restaurant and sat at the bar.
- j) Around supper time, [the Complainant] and her father Mr. [P.S.] attended the [restaurant] and seated themselves at the bar next to Constable Garvin.
- k) Constable Garvin finished his drink and said he was going to leave.
- l) Constable Garvin then changed his mind and said "Fuck it. I'll have another drink" or words to that effect.

- m) There was a verbal exchange during which Constable Garvin made disparaging remarks about [the Complainant] and her father.

Facts Related to Allegation 3

- n) On April 15, 2023, Constable Garvin was served an Order of Suspension relating to the code of conduct investigation into Allegation 1.
- o) The Order of Suspension read, in part, as follows:

For the duration of the conduct process, you are directed not to have any communications or discussions relating to the allegation(s) and surrounding events with any possible affected employees, victims, witnesses or public complainants, unless expressly authorized to do so by me. Additionally, you are not to have any contact with [the Complainant] and not to attend her residence.

- p) The Order of Suspension clearly directed Constable Garvin not to have any communications or discussions relating to Allegation 1 and the surrounding events with any possible victims, witnesses or public complainants and, particularly, not to have any contact with [the Complainant].

EVIDENCE

[14] The Record before me contains the Code of Conduct Investigation Report, dated February 13, 2024, and its 34 appendices. These appendices include:

- a) four transcribed statements from the Complainant:
 - i. one to the local police service, dated April 4, 2023;
 - ii. two to the Nova Scotia Serious Incident Response Team (SIRT), dated April 17, 2023, and September 1, 2023; and
 - iii. one given during the Code of Conduct investigation, dated January 23, 2024);
- b) the transcribed statements from seven interviewed witnesses;
- c) a copy of Constable Garvin's written statement, dated December 10, 2023, provided in the context of the Code of Conduct investigation, along with his responses to follow-up questions from the investigator;
- d) copies of text messages sent by the Complainant to various individuals at the time of the allegations, as well as the SIRT's investigation summary and disclosure package.

[15] During the allegations phase of the proceedings, I heard oral evidence from the Complainant and her father in support of the Conduct Authority's case; and from Mr. Patrick Burchill, Mr. Ricky Jess and Constable Garvin in support of his own case.

[16] In arriving at my findings on the Allegations, I have considered my *Determination of Established Facts* in conjunction with the evidence found in the Record and the oral evidence presented at the Conduct Hearing.

CREDIBILITY AND RELIABILITY OF THE WITNESSES

Applicable legal principles to determine credibility and reliability of evidence

[17] In assessing the credibility of witnesses, I must consider whether they are being truthful and whether their evidence is reliable; that is, whether the witness is in a position to accurately perceive and recollect what they observed, given the passage of time. I may find a witness's evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness's evidence on a given point.¹

[18] Witnesses are not presumed to tell the truth. I must not look at a witness's evidence in isolation but rather at the totality of the evidence adduced in the proceeding, unaided by any presumptions in order to assess the witness's credibility. I must also consider the impact of the inconsistencies in that evidence and whether they impact the witness's credibility when taken as a whole in the context of the totality of the evidence.²

[19] Furthermore, a witness's evidence cannot be assessed solely on their demeanour, that is, that they appear to be telling the truth.³ Rather, a trier of fact must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts. One must rely on reason, common sense and rationality. The determination of whether the witness's account has an air of reality is subjective, but it must be grounded in the totality of the evidence.⁴

¹ *R. v R.E.M.*, 2008 SCC 51, at paragraph 65.

² *F.H. v McDougall*, 2008 SCC 53 [*McDougall*], at paragraph 58.

³ *Faryna v Chorny*, 1951 CanLII 252 (BC CA), at page 357.

⁴ *McDougall*, at paragraph 58.

[20] When the parties involved in the incidents that led to the allegations have contradictory versions, a determination must be made as to which version is preferred over the other. The Supreme Court of Canada notes that a finding that one party is credible may be a conclusive result, because “believing one party will mean explicitly or implicitly that the other party was not believed on the important issues of the case”.⁵ This becomes especially true when the allegations are altogether denied by the defending party.

[21] In assessing each witness’s credibility, I have considered several factors as outlined in jurisprudence, including:

- a) the capacity and opportunity of the witness to observe the events at issue;
- b) the witness’s ability to remember those events;
- c) the ability of the witness to resist being influenced by their interest in recalling those events;
- d) internal and external inconsistency in the witness’s evidence, in other words, whether their testimony changed over time;
- e) whether the witness’s evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence;
- f) whether the witness’s evidence seems unreasonable, improbable or unlikely; and
- g) the witness’s demeanour while testifying (which should be approached with caution).

Applicable legal principles limiting use of prior consistent statements

[22] A prior consistent statement is a declaration made by a witness prior to, in this case, a conduct hearing, which is consistent with their testimony at the Conduct Hearing. In this case, the Complainant sent text messages to various individuals on February 28, 2023, immediately following the alleged incident described in Allegation 1, and to the SIRT investigator on June 9 and 11, 2023, which is in real time or a few days after the alleged incident described in Allegations 2 and 3.

[23] In his response to the Allegations, Constable Garvin submitted that the text messages constituted prior consistent statements and were inadmissible for the purpose of “oath helping” or

⁵ *McDougall*, at paragraph 86.

bolstering the credibility of the Complainant's evidence.⁶ At the Conduct Hearing, the Subject Member Representative referenced the text messages in question to reveal inconsistencies in the Complainant's version of events.

[24] As for the Conduct Authority Representatives, they acknowledged that the text messages sent by the Complainant to her friends on February 28, 2023, are prior consistent statements, but they submitted that they are part of the narrative and are circumstantial evidence that can be used to situate the events.⁷ However, they made a distinction between the text messages from February 28, 2023, and the text messages sent by the Complainant to the SIRT investigator on June 9, 2023. They claimed that the latter messages represent a contemporaneous account of what transpired that night and the best evidence of what the Complainant heard from Constable Garvin⁸ and, as such, they appear to be a past recollection recorded.⁹ I do not agree.

[25] As pointed out by the Subject Member Representative, one of the pre-conditions of the past recollection recorded doctrine is that, at the time of the testimony, the witness does not have a memory of the recorded events. During her testimony, the Complainant had a present recollection of the events of June 9, 2023, and did not need to reference the text messages sent to the SIRT investigator to refresh her memory. Therefore, I find that, similar to the text messages exchanged with her friends on February 28, 2023, the text messages sent to the SIRT investigator on June 9, 2023, are also prior consistent statements.

[26] At the onset, it is important to note that while the strict rules of evidence do not apply to administrative tribunals, the rules relating to prior consistent statements have been applied in past RCMP disciplinary proceedings.¹⁰ These rules hold that prior consistent statements are generally inadmissible when advanced by the party who has called the witness as it is generally considered

⁶ Constable Terry Garvin's response to the Allegations, dated July 25, 2024, at paragraph 20.

⁷ Conduct Hearing Transcript, dated February 5, 2025, at page 50, at lines 16 to 23.

⁸ Conduct Hearing Transcript, dated February 5, 2025, at page 51, at lines 21 to 25.

⁹ Conduct Hearing Transcript, dated February 5, 2025, at page 52, at lines 5 to 17.

¹⁰ *Commanding Officer of "E" Division and Irvine*, 2019 RCAD 3, and *Designated Conduct Authority for "E" Division and McDonald*, 2023 CAD 10.

self-serving and of little probative value.¹¹ Moreover, prior consistent statements are considered hearsay; they cannot be relied on as proof of the truth of their content.¹²

[27] A prior consistent statement may still be admissible under certain exceptions, and it may assist a conduct board in assessing the credibility of a witness. These exceptions include, but are not limited to, its use as circumstantial evidence, to rebut an allegation of recent fabrication, or as narrative (contextual) evidence.

[28] However, when prior consistent statements are admitted as a result of an exception, there are two rules governing their use. First, it is impermissible to assume that because a witness has made the same statement in the past that they are more likely to be telling the truth. Second, a prior consistent statement cannot be used to corroborate the in-court testimony and cannot be used for the truth of its content.¹³

[29] It is with these principles in mind that I have considered the aforementioned text messages referenced as part of the narrative and circumstantial evidence in this case, but not for the truth of their content nor to corroborate the Complainant's testimony heard during the Conduct Hearing.

[30] I will now outline my assessment of the credibility and reliability of each witness heard during the allegations phase, before engaging in my analysis of the allegations.

Credibility and reliability assessment

The Complainant

[31] The Complainant was calm and composed during her testimony. She was forthright in her answers to the questions posed to her. She did not express any ill feelings towards Constable Garvin and did not make any negative comments about him during her testimony.

[32] The Complainant was candid in her responses, even when it had the potential to reflect poorly on her. For example, she testified in cross-examination that, at the time of the events

¹¹ *R. v. Stirling*, 2008 SCC 10, at paragraph 5.

¹² *R. v. Dinardo*, 2008 SCC 24, at paragraph 36.

¹³ David M. Paciocco, Palma Paciocco and Lee Stuesser, *The law of evidence*, 8th edition, Irwin Law, Toronto, August 28, 2020, at page 631.

described in Allegation 1, she was intoxicated, having consumed close to 100 ounces of beer, with a percentage of alcohol of approximately 6%. She agreed that alcohol can have a negative impact on memory. The Complainant also confirmed that, on two occasions, she had indicated to the SIRT investigator that she did not trust her memory.

[33] The Complainant often resorted to “I do not remember” in her answers to the questions put to her, particularly in relation to Allegation 1. I acknowledge that the Complainant’s level of intoxication on the night of February 28, 2023, and the passage of time since the incidents may have impacted her ability to recall many details. The Conduct Authority Representatives submitted that the Complainant’s unreliability on peripheral matters should not preclude the acceptance of her evidence on the gravamen of the Allegations.¹⁴ I agree. However, I noted inconsistencies in the Complainant’s testimony on central elements of Allegation 1 that make me question the reliability of her evidence. I will delve into those inconsistencies in my analysis.

[34] The Conduct Authority Representatives submitted that I should accept the Complainant’s evidence because she has no demonstrable motive to lie.¹⁵ Neither party provided evidence in relation to the presence or absence of a motive to lie. Constable Garvin was certainly not required to prove that the Complainant had a motive to lie. The onus rests with the Conduct Authority to prove its case. While I accept the Conduct Authority Representatives’ submission that an absence of evidence of a motive to lie can be a positive factor in assessing a complainant’s credibility, it is only one factor. I agree with the Subject Member Representative that this factor carries minimal weight in my assessment of the Complainant’s credibility.

[35] I find that while the Complainant testified to what she believes occurred on February 28, 2023, her lack of recollection on many aspects of what transpired that day, the discrepancies in her testimony and the fact that her evidence evolved over time affected the reliability of her evidence. I find that the Complainant’s evidence is not reliable when it comes to the events described in Allegation 1.

¹⁴ Conduct Hearing Transcript, dated February 5, 2025, at page 52, at lines 5 to 17.

¹⁵ Conduct Hearing Transcript, dated February 5, 2025, at page 74, at lines 14 to 18.

[36] As for the incident described in Allegations 2 and 3, I find the Complainant's evidence to be reliable when corroborated by other evidence before me.

Mr. P.S.

[37] Mr. P.S. is the Complainant's 80-year-old father, who was also present at the restaurant on June 9, 2023.

[38] Mr. P.S. was an articulate and forthcoming witness when he testified about the events covered in Allegations 2 and 3. Although Mr. P.S.'s testimony was consistent with his January 25, 2024, statement to the Professional Responsibility Unit (PRU) investigator for the most part, I find that Mr. P.S. was shaken on cross-examination on certain elements of his evidence.

[39] Nonetheless, despite the fact that Mr. P.S. was protective of his daughter, I do not have major concerns about his credibility, nor the reliability of his evidence.

Mr. Burchill

[40] Mr. Burchill testified via videoconference. At the relevant time, he was the manager at the brewpub and was working as the bartender on February 28, 2023. At the onset of his testimony, he offered that he was friends with the Complainant at the relevant time since she was a regular customer of the brewpub and that he knew Constable Garvin also as a customer of the brewpub.

[41] Notwithstanding his friendship with the Complainant, I find that Mr. Burchill presented his evidence in a neutral and forthright manner and he did not tailor his evidence to favour the Complainant. I find that he was an articulate witness, making his best efforts to recall the incident and to answer questions given the passage of time. He acknowledged during cross-examination where he was making assumptions in his evidence.

[42] His testimony was consistent with his June 13, 2023, statement to the SIRT investigator. I find that Mr. Burchill was a credible witness and that his evidence is reliable. However, I note that he was not present during any of the misconduct described in the Allegations and only testified to what he observed before the Complainant and Constable Garvin left the brewpub on February 28, 2023.

Mr. Jess

[43] Mr. Jess testified in relation to Allegations 2 and 3 as he was the bartender working on the night in question at the restaurant. He acknowledged during his testimony that his relationship with the Complainant was fraught with personal differences at the time. He admitted that because of these issues with the Complainant, he was biased in the statement he gave to the PRU investigator on January 30, 2024. This raises concerns with the reliability of his evidence.

[44] I also question Mr. Jess' opportunity to observe the events of June 9, 2023. While he testified that he witnessed an exchange between Constable Garvin and Mr. P.S. and remembered Constable Garvin paying for a drink for the Complainant, he was not able to provide evidence on many aspects of the incident described in Allegations 2 and 3. He testified that it was a busy night at the restaurant, it was loud and he was often turning his back to the customers sitting at the bar while he was preparing drinks. As a result, he testified that he could not hear the words that were actually exchanged between Constable Garvin and Mr. P.S. that night.

[45] Therefore, while I find Mr. Jess to be a credible witness, I do not find his evidence to be reliable unless corroborated by other evidence before me.

Constable Garvin

[46] The Conduct Authority Representatives submitted that I should not find Constable Garvin to be a credible witness because he would not agree with basic points put to him during cross-examination. For example, they referenced Constable Garvin not agreeing that the "ass man" comment he made while walking the Complainant home was sexual in nature.¹⁶ The Conduct Authority Representatives also contended that I should reject Constable Garvin's evidence about what transpired at the restaurant on June 9, 2023, because, in their view, Constable Garvin's evidence is internally inconsistent.¹⁷ They referenced the fact that Constable Garvin initially denied that he was not happy to see the Complainant when she walked into the restaurant and then a few questions later, conceded that he was not happy to see her. The Conduct Authority

¹⁶ Conduct Hearing Transcript, dated February 5, 2025, at page 70, at lines 10 to 15.

¹⁷ Conduct Hearing Transcript, dated February 5, 2025, at page 34, at lines 22 and 23.

Representatives submitted that Constable Garvin was not willing to answer in a forthright manner, from the outset, a simple question that called for a simple answer and a simple admission.¹⁸

[47] For the most part, I find that Constable Garvin was an articulate, direct and forthright witness, despite the Conduct Authority Representatives' submissions on the issue. He was not shaken during cross-examination, nor did he default to "I don't remember" when it came to difficult questions. While Constable Garvin did not immediately agree with some of the propositions put to him by the Conduct Authority Representatives, I do not find that he was particularly argumentative or evasive during his testimony. He appeared engaged, listened to questions and answered completely.

[48] The Conduct Authority Representatives asserted that Constable Garvin's version evolved during his testimony as some of the elements he testified to during his oral evidence were not included in his response to the Allegations. For example, the fact that it was the Complainant's idea to walk along the railroad tracks, that the Complainant grabbed his hand and that his wife picked him up after he left the Complainant's house.¹⁹

[49] On these points, I note that Constable Garvin did not testify that the Complainant grabbed his hand but rather that she grabbed his arm around the bicep area twice during the walk. While I agree that this information was not included in his response to the Allegations, I note that Constable Garvin did mention this fact in his December 10, 2023, written statement provided to the PRU investigator. I also note that what occurred after Constable Garvin left the Complainant at her house is not detailed in the *Notice of Conduct Hearing*. As such Constable Garvin was not required to provide any information in that regard in his subsection 15(3) response to the Allegations. In a nutshell, I agree with the Subject Member Representative that it was not necessary for Constable Garvin to include all the elements of his anticipated testimony in his response to the Allegations, even more so elements that were not particularized in the *Notice of Conduct Hearing*.

[50] The Conduct Authority Representatives also took issue with the fact that Constable Garvin did not produce his phone records from February 28, 2023, when he was asked to do so during his

¹⁸ Conduct Hearing Transcript, dated February 5, 2025, at page 35, at lines 15 to 18.

¹⁹ Conduct Hearing Transcript, dated February 5, 2025, at page 67, at lines 19 to 25.

testimony at the Conduct Hearing. They argued that I should draw an adverse inference from Constable Garvin's refusal and find that it impacts his credibility.

[51] The fact that Constable Garvin called the Complainant on February 28, 2023, after dropping her off at her house, is not particularized in the *Notice of Conduct Hearing* and was not part of Constable Garvin's written statement or response to the Allegations either. I find that under these circumstances, there was no obligation for Constable Garvin to address this call in his response to the Allegations or to provide supporting evidence in that regard. I cannot agree with the Conduct Authority Representatives that Constable Garvin had an evidentiary burden regarding his phone records. Additionally, I do not find that the fact that Constable Garvin chose not to produce his phone records when this issue was brought up for the first time at the Conduct Hearing during Constable Garvin's cross-examination affects my assessment of his credibility. I refuse to draw an adverse inference in that regard.

[52] I find that Constable Garvin provided a plausible description of the incidents as described in the Allegations. He was balanced when expressing himself and did not seek to embellish or exaggerate his answers. He did not express opinions or comments that attacked the Complainant.

[53] I find Constable Garvin's evidence to be both credible and reliable.

ANALYSIS

[54] Pursuant to subsection 45(1) of the *RCMP Act*, my role is to decide whether each allegation contained in the *Notice of Conduct Hearing* is established on a balance of probabilities. In other words, I must determine whether it is more likely than not that Constable Garvin has contravened sections 7.1. and 3.3. of the Code of Conduct. Per subsection 45(4) of the *RCMP Act*, if I find any of the allegations to be established, then I must impose appropriate conduct measures.

[55] The onus is on the Conduct Authority to demonstrate that the allegations are established on a balance of probabilities. That demonstration must be made with evidence that is "sufficiently clear, convincing and cogent to satisfy the balance of probabilities test."²⁰ The Supreme Court of

²⁰ *McDougall*, at paragraph 46.

Canada also specifies that there is “no objective standard to measure sufficiency”.²¹ As the Conduct Board in this matter, it is my responsibility to determine whether this burden has been met by the Conduct Authority.

Applicable test for discreditable conduct

[56] Section 7.1 of the Code of Conduct states that members behave in a manner that is not likely to discredit the Force. To establish an allegation under this section of the Code of Conduct, the Conduct Authority must establish each of the following on a balance of probabilities:

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

[57] In order to establish the acts constituting the alleged misconduct, the Conduct Authority must demonstrate that the particulars contained in the *Notice of Conduct Hearing* that are essential to the allegation have, in fact, occurred. Not every particular or element of a particular needs to be proven. Only those that meet the threshold of discreditable conduct.

Allegation 1

Identity of member

[58] Constable Garvin’s identity is not at issue in this proceeding. Hence, I will proceed to the next steps of the discreditable conduct test.

Acts constituting alleged behaviour

[59] It is undisputed that, on or around February 28, 2023, Constable Garvin attended the brewpub where he met and talked with the Complainant. It is also admitted by Constable Garvin

²¹ *McDougall*, at paragraph 46.

that, at some point during his conversation with the Complainant, he told her he was an RCMP officer and was married; he offered to walk the Complainant home that evening, which she accepted, and they left the brewpub together. Therefore, I find that Particulars 4, 5, 6, 7 and part of Particular 8 are established on a balance of probabilities.

[60] The specific acts that the Conduct Authority asserts constitute discreditable conduct are set out in particulars 9 to 16 of the *Notice of Conduct Hearing*. More specifically, it is alleged that while they were walking towards the Complainant's residence, Constable Garvin exposed his penis to her and told her to "suck it", to which she replied "fuck you"; Constable Garvin then said "Come on, Come on"; Constable Garvin then said "I'm a piece of shit", to which the Complainant replied "You're right", or words to that effect.

[61] Constable Garvin and the Complainant have a different version of what happened after they left the brewpub together.

[62] The Complainant testified that, at the relevant time, she was working as a massage therapist and a yoga teacher. She recounted that, on February 28, 2023, she went to the brewpub around 2 p.m. after finishing work. The Complainant testified that, when she arrived at the brewpub, Constable Garvin was sitting by himself at a table in the middle of the bar with his dog by his side. the Complainant sat at the bar, ordered a beer and chatted with the bartender, Mr. Burchill, a friend of hers. The Complainant estimated that she probably stayed at the brewpub until 7 p.m. and consumed 6 beers during that 5-hour period.

[63] The Complainant testified that she had never met Constable Garvin before but decided to approach him as she wanted to pet his dog. Her first impression of Constable Garvin was that he seemed like a "nice enough guy".²² The Complainant testified that, at some point, Constable Garvin joined her at the bar and bought her a beer. She remembered that Constable Garvin was also drinking beer but indicated that he did not appear intoxicated.

[64] While she did not have a clear recollection of their conversation, the Complainant testified that she engaged in a general conversation with Constable Garvin about "life stuff".²³ She

²² Conduct Hearing Transcript, dated February 3, 2025, at page 28, at lines 18 to 19.

²³ Conduct Hearing Transcript, dated February 3, 2025, at page 30, at lines 3 to 4, and at page 32, at lines 17 to 18.

remembered learning that Constable Garvin was 38 years old at the time, married, was from Nova Scotia and was a police officer. The Complainant testified that she was not seeking a romantic relationship with Constable Garvin as she considered him off limits because he was married. She explained that she would not go after a married person.

[65] The Complainant testified that, at some point in the evening, she decided that she would eventually walk home. She remembered telling Constable Garvin that “It looks like it’s time for me to go. I have had six beers. I’m going to walk home.”²⁴ The Complainant testified that Constable Garvin then offered to walk her home and she accepted his offer. The Complainant thought she would be safe considering that Constable Garvin was a married police officer who had this big dog.

[66] The Complainant could not describe her state of intoxication at that time but admitted that she could have been slurring or stumbling considering she had consumed six beers and had nothing to eat. She explained that it is not typical for her to give her address to people she meets in a bar, but conceded that she must have conveyed her address to Constable Garvin as he walked her home.

[67] The Complainant testified that, at some point during the walk, Constable Garvin grabbed her hand and guided her on a gravel path located along the railroad tracks, where they continued to walk side by side. The Complainant explained that Constable Garvin did not grab her hand in a romantic way but rather just to guide her. When asked by the Conduct Authority Representatives, the Complainant denied engaging in any kind of yoga stretches or kissing Constable Garvin while they were walking along the railroad tracks.

[68] The Complainant testified that, at some point, she turned around as Constable Garvin was no longer by her side. She then observed Constable Garvin exposing himself with “his penis out of his pants”.²⁵ The Complainant testified that Constable Garvin had his dog by his side. While she indicated that Constable Garvin was holding the leash with one of his hands, she could not remember which one.

²⁴ Conduct Hearing Transcript, dated February 3, 2025, at page 38, at lines 18 to 20.

²⁵ Conduct Hearing Transcript, dated February 3, 2025, at page 45, at lines 10 and 11.

[69] The Conduct Authority Representatives asked the Complainant to reflect on what she observed when Constable Garvin was exposing himself. The Complainant offered that Constable Garvin then told her to “suck it”, to which she replied “fuck off” and that he picked the “wrong girl”. The Complainant testified that Constable Garvin kept repeating “suck it”. Later in her testimony, she characterized Constable Garvin as “pushy” as he kept repeating: “Come on. Suck it. Come on. Come on. Come on.”²⁶ The Complainant testified that Constable Garvin then started apologizing and saying that he was a “piece of shit” over and over again.²⁷

[70] When asked if she could recall the degree to which Constable Garvin’s jeans were undone while he was exposing himself, the Complainant indicated she could not recall and that she could not even recall if Constable Garvin’s pants had a zipper or buttons. She just remembered his pants being “open all the way, not pants down, just open”.²⁸ The Conduct Authority Representatives then took the Complainant to her April 17, 2023, statement to SIRT to refresh her memory on that point, where she had indicated to the investigator that Constable Garvin’s jeans had “a zipper and button kind of deal”.²⁹ The Complainant confirmed that was her evidence.

[71] The Complainant testified that, after the exposure incident, she told Constable Garvin that she would find her way home but that Constable Garvin insisted on walking her home. She indicated that he “kept on apologizing, saying he was sorry and he was a piece of shit”.³⁰ When they arrived at her house, the Complainant testified that she did not invite Constable Garvin inside and that he left. The Complainant testified that she was shocked and, once inside her home, she texted a couple of her friends about the incident with Constable Garvin and called her mother. The Complainant testified that she wanted the night and the experience to be over, so she went to bed.

[72] The Complainant further testified that she ran into Constable Garvin twice between February 28, 2023 and June 9, 2023. One of these encounters occurred on March 24, 2023, when

²⁶ Conduct Hearing Transcript, dated February 3, 2025, at page 56, at lines 20 to 23.

²⁷ Conduct Hearing Transcript, dated February 3, 2025, at page 45, at line 23.

²⁸ Conduct Hearing Transcript, dated February 3, 2025, at page 48, at lines 1 to 4.

²⁹ *CAR – Book of Documents Re Allegations in Dispute*, Tab 2, Transcription of the Complainant’s statement to SIRT, dated April 17, 2023, at page 33, at lines 9 to 11.

³⁰ Conduct Hearing Transcript, dated February 3, 2025, at page 51, at lines 19 to 21.

the Complainant was at the brewpub with a couple of her friends. When asked what Constable Garvin did on that occasion, the Complainant replied: “Nothing. He didn’t acknowledge me.”³¹

[73] Constable Garvin was adamant that he never exposed his penis or asked the Complainant to “suck it”. He puts forth a completely different narrative of what transpired on February 28, 2025, after he left the brewpub with the Complainant. He testified that he was off duty that day and took one of his dogs for a walk. At the end of the walk, he stopped by the brewpub. He testified that he probably arrived at the brewpub around 3 p.m. While he was sitting at a table with his dog, facing the bar area, the Complainant entered and sat at the bar. She later came over to his table and started talking with him briefly, asking if she could pet his dog. Constable Garvin testified that the Complainant then returned to the bar area.

[74] Constable Garvin testified that Mr. Burchill was the bartender that day. As the bar was not far away from where he was sitting, Constable Garvin testified that he engaged in a conversation with the Complainant and Mr. Burchill. At some point, Constable Garvin moved to the bar area to continue the conversation. Constable Garvin described the conversation as “normal” and “friendly”.³² Constable Garvin recalled that his age, the fact that he is married and that the Complainant is divorced came up during the conversation. Constable Garvin testified that when he was asked about his occupation, he initially told the Complainant he was a plumber as he feels uncomfortable telling people that he is a police officer since the Portapique mass shooting.³³ He eventually told the Complainant that he was an RCMP officer and recalled the Complainant telling him that she had received a speeding ticket a few months prior.

[75] Constable Garvin testified that, at some point in the conversation, the Complainant indicated that she was not sure if she wanted to stop drinking to be able to drive home or continue drinking and walk home later. Constable Garvin testified that he then offered to walk the Complainant home if she wanted to stay. Constable Garvin testified that the Complainant accepted his offer.

³¹ Conduct Hearing Transcript, dated February 4, 2025, at page 85, at lines 24 to 25.

³² Conduct Hearing Transcript, dated February 4, 2025, at page 133, at line 14, and at page 141, at line 2.

³³ Conduct Hearing Transcript, dated February 4, 2025, at page 134, at lines 18 to 23.

[76] Constable Garvin testified that he probably consumed four or five beers while at the brewpub, which he characterized as “regular” and “not a big amount that I can’t handle”.³⁴ He indicated that, by the time he left the brewpub, while he could feel he had consumed some alcohol, he was in control.

[77] Constable Garvin eventually left the brewpub and walked the Complainant home. He believes they left at approximately “6:30ish”.³⁵ Constable Garvin testified that, not long after they left the brewpub, the Complainant grabbed his left arm around the bicep area and thanked him for walking her home. He explained that the Complainant was leading the way as he did not know her exact address. He explained that they walked down a gravel service road, with the railroad tracks to their left.

[78] Constable Garvin testified that he had his dog on his right side with the leash wrapped around his waist while holding it with his hand. He remembered that the Complainant was wearing a long coat. Constable Garvin testified that, as they were walking, they talked about yoga because the Complainant is a yoga teacher. Constable Garvin testified that this conversation triggered some memory of images he frequently sees on social media of fit women in yoga pants engaging in yoga stretches. At that point, he then made a comment that he was “kind of an ass man”.³⁶ Constable Garvin testified that the Complainant then walked in front of him and bent over twice in a yoga stretch, where she had “her hands close or touching the ground”.³⁷

[79] Constable Garvin indicated that, as they continued walking, the Complainant grabbed his left arm again near the bicep area. At some point, they stopped walking and Constable Garvin testified that the Complainant kissed him on the lips briefly while she grabbed his penis over top of his pants. Constable Garvin indicated that the whole interaction probably lasted a couple of seconds. Constable Garvin testified that nothing was said between them and they continued walking. He explained:

It was one of those things that happened quick and you kind of question yourself, was I coming across as inviting of that? So I didn’t really talk about

³⁴ Conduct Hearing Transcript, dated February 4, 2025, at page 137, at lines 8 to 9.

³⁵ Conduct Hearing Transcript, dated February 4, 2025, at page 139, at lines 3 to 4.

³⁶ Conduct Hearing Transcript, dated February 4, 2025, at page 146, at lines 9 to 11.

³⁷ Conduct Hearing Transcript, dated February 4, 2025, at page 147, at lines 4 to 5.

it. I though [*sic*], all right, it happened, that could be on me. If it happens again, I will address it then.

[...]

Well, if it happened again then I would say, no, like I'm not looking for that. I don't want any of that.³⁸

[80] Constable Garvin testified that, while they continued walking to the Complainant's house, he told the Complainant that he had fun and asked if he could get her number so they could do that again some time. Constable Garvin explained that he had put the Complainant's name in the contacts in his cell phone and handed his phone to the Complainant who entered her phone number. Constable Garvin explained that he had the Complainant's phone number in his contacts until he got suspended from duty, at which point he deleted her number to avoid any accidental dials. He testified that he then wrote her number down, in the eventuality that he would need it for the conduct process or SIRT investigation.

[81] I have carefully analyzed the Complainant's and Constable Garvin's testimonies. In view of the contradictory versions they provided, my findings with respect to their credibility, the reliability of their evidence and my assessment of whether the evidence met the standard of proof required, that is a balance of probabilities, are determinative of whether Allegation 1 has been established by the Conduct Authority. I have considered the following elements from the Complainant's testimony in evaluating the weight and plausibility I should grant to her version of the events.

[82] The Complainant was unable to provide details about many aspects of the Allegation during her testimony at the Conduct Hearing. When the Subject Member Representative made suggestions to her, her answers were often "I don't recall". For example, when it was suggested that she took Constable Garvin's arm and thanked him for the walk home, the Complainant's initial answer was "I don't recall that".³⁹ The Subject Member Representative then asked whether that answer meant that the suggestion did not occur, and the Complainant again replied, "I don't recall that".⁴⁰ I note that the Complainant also answered "I do not recall" to the following suggestions:

³⁸ Conduct Hearing Transcript, dated February 4, 2025, at page 150, at lines 24 to 25, and at page 151, at lines 1 to 10.

³⁹ Conduct Hearing Transcript, dated February 3, 2025, at page 115, at line 1.

⁴⁰ Conduct Hearing Transcript, dated February 3, 2025, at page 115, at line 4.

- that Constable Garvin told her he was a plumber;
- that, at some point while they were walking on the gravel service path, she stopped and bent forward two times;
- that Constable Garvin told her he was an ass man;
- that she kissed Constable Garvin and touched his penis over his clothing;

[83] Similarly, the Complainant often indicated in response to the suggestions put to her by the Subject Member Representative that it was “possible” or that she could not “rule that out”. For example, while the Complainant could not recall many topics of discussion she had with Constable Garvin that day, she confirmed that it was possible that they talked about yoga and that it was very possible that she told Constable Garvin that she received a speeding ticket not long before February 28, 2023.

[84] The Complainant testified that she had absolutely no doubt about the exposure incident and about what she observed on the railroad tracks.⁴¹ When asked “Can you describe that?”, she replied “It was small”. The Conduct Authority Representatives then asked the Complainant to what extent, if any, Constable Garvin’s penis was erect, she indicated “I don’t recall”. She was then asked “Can you reflect on that for a moment and recall any other details?”, and her answer was “He told me to suck it”.⁴²

[85] I find her testimony on this particular point to be inconsistent with the evidence in the Record. In her April 4, 2023, statement to the local police service, the Complainant had indicated that Constable Garvin had an erection when he exposed himself.⁴³ She confirmed the same thing in a text message sent to Mr. Burchill on the night in question. She wrote “it was hard”.⁴⁴ I find that whether Constable Garvin’s penis was erect when he allegedly exposed himself to the Complainant is a significant detail. While I acknowledge that a witness’s recollection of a certain incident can fade over time, I find it difficult to accept that the Complainant would not remember

⁴¹ Conduct Hearing Transcript, dated February 3, 2025, at pages 46 and 47.

⁴² Conduct Hearing Transcript, dated February 3, 2025, at page 47, at lines 19 to 21.

⁴³ NOCH Binder, Appendix H, Statement to [redacted] Police Services, at page 93, at line 24, and at page 94, at line 1.

⁴⁴ NOCH Binder, Appendix M, Text Messages [the Complainant] to Burchill, at page 176.

such a central element of the Allegation, even more so when she testified that she had absolutely “no doubt” about the exposure incident.⁴⁵

[86] I also find that the Complainant’s evidence evolved from her previous statements to her testimony at the Conduct Hearing. In her direct examination on Allegation 1, the Complainant testified that she was walking side by side with Constable Garvin on the gravel service road beside the railroad tracks and that, at some point, she could no longer hear the sound of the gravel under Constable Garvin’s feet. She explained that this was what prompted her to turn around. She testified that it is at that point that she saw Constable Garvin exposing himself.⁴⁶

[87] I note that this explanation is not consistent with her previous statements to the local police service and SIRT investigator. In her April 4, 2023, statement, the Complainant had indicated that she could not “really” remember the reason that made her turn around to look for Constable Garvin⁴⁷ but only that he was no longer by her side. She had provided a similar version in her April 17, 2023, statement to the SIRT investigator.⁴⁸ I find it difficult to accept that the Complainant would have a better recollection of the reason that made her turn around and remember new vivid details more than two years after the incident. In fact, the Complainant confirmed during her testimony that her memory was better at the time of the incident⁴⁹ and that, prior to her testimony before me, she had reviewed her prior statements to investigators.⁵⁰

[88] Similarly, when the Subject Member Representative suggested to the Complainant that Constable Garvin was probably at a good distance behind her on the gravel service road when she turned around, the Complainant replied “Maybe like an arm’s length. It wasn’t that far”.⁵¹ The Subject Member Representative then questioned that estimation and the following exchange occurred:

Subject Member Representative: An arm’s length?

⁴⁵ Conduct Hearing Transcript, dated February 3, 2025, at page 45, at lines 4 to 23, and at page 46, at lines 14 to 18.

⁴⁶ Conduct Hearing Transcript, dated February 3, 2025, at page 45, at lines 4 to 7.

⁴⁷ NOCH Binder, Appendix H, Statement to [redacted] Police Services, dated April 4, 2023, at page 93, at lines 6 to 8.

⁴⁸ NOCH Binder, Appendix J, Statement to SIRT, dated April 17, 2023, at page 117, at lines 17 to 20.

⁴⁹ Conduct Hearing Transcript, dated February 3, 2025, at page 47, at lines 15 to 18, and at page 76, at lines 14 to 17.

⁵⁰ Conduct Hearing Transcript, dated February 3, 2025, at page 123, at lines 4 to 9.

⁵¹ Conduct Hearing Transcript, dated February 3, 2025, at page 124, at lines 16 and 17.

The Complainant: I don't know the distance. It wasn't far.

Subject Member Representative: When you said an arm's length, that's just something that popped into your head right now; right?

The Complainant: Yeah, because it didn't feel that far.

Subject Member Representative: You'd agree with me that you have no idea how far back you claim he was?

The Complainant: I didn't have a tape measure.

Subject Member Representative: I'm not asking you the tape measure. I'm asking you knew what the distance was?

The Complainant: I don't know what the distance was.

[89] I note that the "arm's length" estimation was not information that she provided in her statements to the local police service and SIRT investigator. It is clear from the aforementioned exchange that the Complainant did not know the distance between herself and Constable Garvin and yet when asked about it she answered the first thing that came to her mind in that moment. I find that this demonstrates carelessness in the accuracy of her answer.

[90] As a result of these discrepancies in the Complainant's evidence, I find that I was not presented with sufficiently clear, cogent and convincing evidence establishing the facts contained in particulars 9 to 16 of the *Notice of Conduct Hearing* on a balance of probabilities. Therefore, based on the totality of the evidence before me, I accept Constable Garvin's testimony with respect to the events described in Allegation 1. As stated in *McDougall*, there are times when the finding on a witness's credibility will be determinative of the outcome. This is such a case.

[91] The Conduct Authority has failed to establish on a balance of probabilities the acts constituting the alleged misconduct described in Allegation 1. As a result, I do not need to examine the third and fourth elements of the test for discreditable conduct.

[92] Consequently, Allegation 1 is not established.

Allegation 2

Identity of member

[93] Again, Constable Garvin's identity is not in dispute in relation to Allegation 2.

Acts constituting alleged behaviour

[94] As previously set out in my *Determination of Established Facts*, on June 9, 2023, Constable Garvin attended a local restaurant and sat at the bar. Around supper time, the Complainant and her father, Mr. P.S., arrived at the restaurant and seated themselves at the bar next to Constable Garvin. Constable Garvin finished his drink and said out loud that he was going to leave. He then changed his mind and said “Fuck it. I’ll have another drink” or words to that effect. There was a verbal exchange during which Constable Garvin made disparaging remarks about the Complainant and her father.

[95] Constable Garvin, the Complainant, Mr. P.S. and Mr. Jess all testified to the fact that Mr. P.S. sat at the bar between Constable Garvin and the Complainant. On the one hand, Constable Garvin testified that he was sitting at the bar when the Complainant and her father arrived at the restaurant. On the other hand, both the Complainant and Mr. P.S. explained that, not long after their arrival, Constable Garvin came out of the bathroom and sat at the bar on the stool beside Mr. P.S. Mr. P.S. noted that there was “a bottle of beer sitting on the bar” in front of one of the bar stools when they arrived. Mr. Jess did not recall who arrived first that evening. I accept the Complainant’s and Mr. P.S.’s testimonies on this point and I find that Constable Garvin was not sitting at the bar when the Complainant and Mr. P.S. arrived at the restaurant. Shortly after their arrival, Constable Garvin returned to his seat at the bar and sat beside Mr. P.S.

[96] Therefore, I find that Particulars 18, 19, 20, 21 and 22 of the *Notice of Conduct Hearing* are established on a balance of probabilities.

[97] The specific nature of the interactions alleged to constitute discreditable conduct are set out in Particulars 23 and 24 of the *Notice of Conduct Hearing*.

[98] Particular 23 outlines that Constable Garvin ordered the Complainant and her father a round of drinks, which they refused.

[99] Constable Garvin testified that the Complainant and Mr. P.S. had just ordered drinks and he decided to ask the bartender to put their drinks on his tab. The Complainant testified that, at some point, the bartender came over and said that Constable Garvin had bought drinks for her and

Mr. P.S. She testified that her father returned his drink and asked the bartender to “pour it out”. Mr. P.S. testified that when he and the Complainant were going to order a second round of drinks, the bartender put another drink in front of them and told them that Constable Garvin had bought those drinks for them. Mr. P.S. indicated that he asked the bartender to pour the drink Constable Garvin had bought for him down the drain and ordered another beer for himself. While Mr. Jess thought that Constable Garvin had bought the Complainant a drink that day and that she did not seem too happy about it, he indicated that he was not certain of that evidence. While I am satisfied that Constable Garvin bought Mr. P.S. and the Complainant a round of drinks, I do not find that the evidence supports the fact that both Mr. P.S. and the Complainant returned their drinks as the Complainant testified that she had kept hers. As a result, Particular 23 is not established.

[100] Particular 24 a) outlines that there was verbal bickering in which Constable Garvin said to the Complainant “You are ruining my career” or words to that effect.

[101] Constable Garvin denies having made the alleged statement. The Complainant did not testify to this comment in her initial testimony at the Conduct Hearing. Only after being specifically asked by the Conduct Authority Representatives whether she had any recollection of a comment being made by Constable Garvin about his career, did she testify that he said that she was ruining his career. Mr. P.S. did not reference this comment in his statement to the Code of Conduct investigator or in his testimony before me. Mr. Jess admitted that it was very loud on the night in question and that he did not hear any conversation between Constable Garvin, the Complainant and Mr. P.S.

[102] Consequently, I find that I have not been presented with sufficiently clear, cogent and convincing evidence to establish on a balance of probabilities that Constable Garvin said to the Complainant “you are ruining my career” or words to that effect. As a result, Particular 24 a) is not established.

[103] Particular 24 b) and 24 c) provide that Constable Garvin called the Complainant a “whore” and/or a “slut” and called Mr. P.S. a “pussy” and/or a “chickenshit”. While Constable Garvin testified that he did not speak to the Complainant directly that evening, he indicated that, at some point, he got into a rather unpleasant exchange of words with Mr. P.S. He admitted that he told

Mr. P.S. that his daughter was “a lying slut”. Constable Garvin also admitted that it was possible that he had called Mr. P.S. a “pussy”. Based on these admissions, I find that Particulars 24 b) and 24 c) are established.

[104] As a result, I am satisfied that the Conduct Authority has demonstrated some of the acts constituting the alleged behaviour in relation to Allegation 2 and, consequently, has discharged their burden of proof with respect to the second element of the test for discreditable conduct.

[105] I must now examine whether the third and fourth elements of the test for discreditable conduct have been established.

Likelihood of behaviour discrediting the RCMP

[106] To determine the likelihood of Constable Garvin’s behaviour discrediting the RCMP, I must determine whether a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that Constable Garvin’s actions are likely to bring discredit to the RCMP, having due regard for reasonable expectations of the community (i.e., reasonable person) regarding police behaviour.⁵²

[107] Constable Garvin testified that when he saw the Complainant arrive at the restaurant, his initial intention was to leave. He asked the bartender for his bill, paid for it and finished his beer. Constable Garvin testified that he could not believe the Complainant was sitting there, a few seats beside him. At some point, he decided not to have the situation get to him and ordered another beer.

[108] Constable Garvin testified that he eventually made eye contact with Mr. P.S. and said “nice day out, isn’t it?”⁵³ Constable Garvin testified that Mr. P.S. then leaned in and said, “fuck off you little asshole” or something to that effect.⁵⁴ Constable Garvin then asked Mr. P.S. what he said and Mr. P.S. repeated the same thing. Constable Garvin testified that he did not say anything and was

⁵² *Conduct Measures Guide* (November 14, 2024, version), at page 159.

⁵³ Conduct Hearing Transcript, dated February 4, 2025, at page 174, at lines 20 to 23.

⁵⁴ Conduct Hearing Transcript, dated February 4, 2025, at page 175, at lines 1 to 3.

“kind of stewing with that”⁵⁵ for about 10 minutes. Constable Garvin testified that while the Complainant was gone to the bathroom, he asked Mr. P.S. if he had something to say to him. It is at that point that he engaged in a verbal exchange with Mr. P.S.

[109] Mr. P.S. testified that Constable Garvin finished his beer, banged the glass on the bar and said he was going to leave. He then changed his mind and ordered another beer. Mr. P.S. testified that Constable Garvin was sitting at the bar beside him and that, all of a sudden, he started insulting him and the Complainant. In direct examination, Mr. P.S. admitted that he probably told Constable Garvin to “fuck off” in response to the insults. However, when it was suggested to Mr. P.S. in cross-examination that the unpleasant exchange between him and Constable Garvin occurred when Constable Garvin was trying to make small talk with him, at which point Mr. P.S. then turned to Constable Garvin and told him to “fuck off”, Mr. P.S. conceded that “It might have happened at that time”.⁵⁶

[110] In their submissions, the Conduct Authority Representatives referenced *Scheepers*,⁵⁷ where the conduct board found that vulgar, rude and offensive language used by the subject member in text message communications surpassed discourtesy and amounted to discreditable conduct. In that case, the subject member had sent an ex-spouse and members of her family over 100 text messages that were insulting, threatening and harassing in nature and that caused the recipients to fear for their own safety and that of their respective families. The member in that case was charged with a criminal harassment offence. I find that *Scheepers* does not assist my analysis as it is factually distinct from the circumstances presently before me.

[111] Constable Garvin used rude, vulgar and insulting words in his interactions with Mr. P.S. Constable Garvin himself acknowledged that the verbal exchange with Mr. P.S. was rude, discourteous and disrespectful, and that he should never have said those words. Constable Garvin was suspended from duties at the relevant time and was ordered not to have any contact with the Complainant. I find that Constable Garvin’s behaviour was inappropriate in the circumstances. However, I agree with the Subject Member Representative’s submission that “just because you

⁵⁵ Conduct Hearing Transcript, dated February 4, 2025, at page 175, at lines 16 and 17.

⁵⁶ Conduct Hearing Transcript, dated February 3, 2025, at page 205, at lines 12 to 23.

⁵⁷ *Commanding Officer of “E” Division and Scheepers*, 2021 CAD 06 [*Scheepers*].

and I would have done things differently, does not amount to discreditable conduct that justifies a disciplinary response.”⁵⁸

[112] Referencing page 159 of the *Conduct Measures Guide* (November 14, 2024, version), the Conduct Authority Representatives provided the following to assist in determining whether a conduct is discreditable:

[...] The Conduct Authority objectively steps into the shoes of the reasonable person and excludes subjective considerations, such as perceptions of a complainant or the opinions of a police supervisor. For example, the conduct may be discreditable even if a witness does not find the conduct discreditable.
[...]⁵⁹

[113] It is established that police officers are held to a higher standard. However, the standard of conduct expected from members of the RCMP does not call for perfection. Even more so when the conduct occurs when the member is off duty and when it appears that the use of vulgar language may have been initiated by Mr. P.S.

[114] It is not uncommon for people to engage in arguments or to use profanity. Constable Garvin engaging in a brief disagreement with another individual, while off duty, even if that exchange may have included profanity, is not likely to bring the RCMP into disrepute. While it may not be proper, I cannot conclude that a reasonable person would be shocked by this occurrence.

[115] I cannot find that Constable Garvin’s actions, as specifically described in Particulars 23 and 24 of the *Notice of Conduct Hearing*, breached the public’s confidence and affected the reputation and image of the RCMP. I find that the Conduct Authority has failed to establish on a balance of probabilities that a reasonable person, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that Constable Garvin’s conduct, that is, deciding to stay in close proximity to Mr. P.S. and the Complainant after they arrived at the restaurant, buying them drinks and calling the Complainant “a lying slut” and calling Mr. P.S. a “pussy”, is likely to discredit the RCMP.

⁵⁸ *Chief Superintendent Bzdel and Stevenson*, 2020 CAD 12, at paragraph 48.

⁵⁹ Conduct Hearing Transcript, dated February 5, 2025, at page 131, at lines 1 to 12.

[116] Consequently, Allegation 2 is not established on a balance of probabilities. The Conduct Authority having failed to establish the third element of the test for discreditable conduct, I need not to examine the last element.

Applicable legal test for disobeying lawful orders and/or directions

[117] Section 3.3. of the Code of Conduct states that members give and carry out lawful orders and directions. To establish an allegation under this section, the Conduct Authority must establish each of the following on a balance of probabilities:

- a) the identity of the subject member;
- b) that a lawful order or direction was provided in a clear and precise manner by a person superior in rank or with the authority to do so; and
- c) that the subject member failed to carry out or comply with the order or direction, without lawful excuse.

Allegation 3

Identity of member

[118] Constable Garvin's identity is not in dispute. Therefore, the first element of the test to establish this Allegation is met.

Lawful order/direction provided in a clear and precise manner by a person superior in rank or with the authority to do so

[119] It is established that, on April 15, 2023, Constable Garvin was served an *Order of Suspension* in relation to the Code of Conduct investigation into Allegation 1. Therefore, I am satisfied that an order was provided to Constable Garvin.

[120] RCMP policy at *Administration Manual* XII.1 "Conduct" (October 31, 2022, version), section 5.4.1.1, provides that only members referred to in paragraphs 2(1)(b) and (c) of the *CSO (Conduct)* can suspend a member from duty. Paragraph 2(1)(c) of the *CSO (Conduct)* specifically references the officer in command of a division.

[121] The *Order of Suspension* issued to Constable Garvin was signed by Assistant Commissioner Dennis Daley, Commanding Officer of “H” Division, who was acting in his capacity of conduct authority in relation to the Code of Conduct investigation into the misconduct described in Allegation 1. Therefore, I am satisfied that Assistant Commissioner Dennis Daley was a person superior in rank to Constable Garvin and that he had the authority to issue the *Order of Suspension*.

[122] Furthermore, *Administration Manual* XII.1.5.4.2.1.2 stipulates that an *Order of Suspension* is required to include directions not to have any communications relating to the allegations with potential or known affected employees, affected persons, witnesses or public complainants. In addition, when there is an affected person, it must also include a specific direction not to have any contact with that individual. The *Order of Suspension* served upon Constable Garvin included the following direction:

[...]

For the duration of the conduct process, you are directed not to have any communications or discussions relating to the allegation(s) and surrounding events with any possible affected employees, victims, witnesses or public complainants, unless expressly authorized to do so by me.

Additionally, you are not to have any contact with [the Complainant] and not to attend her residence.

[...]

[123] Therefore, I am satisfied that the *Order of Suspension* contained a lawful direction that was issued in a clear and precise manner.

Member failed to carry out or comply with the order/direction, without lawful excuse

[124] As indicated within my analysis of Allegation 2, it has been established that, on June 9, 2023, while at a local restaurant, Constable Garvin was in close proximity with the Complainant and Mr. P.S. He bought them drinks and had a verbal exchange with Mr. P.S. during which he called the Complainant a “lying slut” and called Mr. P.S. a “pussy”.

[125] Particular 30 of the *Notice of Conduct Hearing* states that Constable Garvin disobeyed the *Order of Suspension* through his interactions on June 9, 2023, with the Complainant's father, Mr. P.S., a possible witness and close family member to a witness.

[126] I note that the *Order of Suspension* was issued in relation to the behaviour described in Allegation 1. Mr. P.S. was not a witness to the incident described in Allegation 1 and I fail to see how he could have become a potential witness to Allegation 1. Furthermore, while I agree that Mr. P.S. is a close family member of the Complainant, the direction contained in the *Order of Suspension* did not apply to close family members of the Complainant. Rather, the *Order of Suspension* restricted any communications to those affected employees, victims, witnesses or public complainants. Therefore, as Mr. P.S. does not fall under any of those categories, I do not find that Constable Garvin failed to comply with the *Order of Suspension* through his interactions with Mr. P.S. on June 9, 2023.

[127] Particular 29 of the *Notice of Conduct Hearing* states that Constable Garvin disobeyed the *Order of Suspension* through his interactions with the Complainant on June 9, 2023.

[128] Constable Garvin claims that he did not have any direct contact with the Complainant, as the verbal exchange on June 9, 2023, was between him and Mr. P.S. The Complainant was not involved in the conversation.

[129] While I accept that Constable Garvin may not have engaged in any direct conversations with the Complainant on June 9, 2023, I note that, contrary to Constable Garvin's position, the direction contained in the *Order of Suspension* did not specify that the contact had to be direct to constitute a breach of the *Order of Suspension*. Rather, the direction prohibited Constable Garvin from having any communications or discussions relating to Allegation 1 with the Complainant and from having any contact with her.

[130] I find that "contact" does not require direct verbal communications or gestures. the Complainant is the alleged victim of the misconduct described in Allegation 1. Constable Garvin decided to remain at the restaurant after he realized that the Complainant and her father were sitting directly beside him and he maintained that proximity with her for some time. He physically put himself in a position where he could observe the Complainant and be observed by her.

[131] It is established that Constable Garvin engaged in a verbal exchange with Mr. P.S. during which he called the Complainant a “lying slut”. During his testimony at the Conduct Hearing, Constable Garvin admitted that he bought a round of drinks to the Complainant and Mr. P.S. that night. He also admitted during his testimony at the Conduct Hearing that he took two selfies during his time at the restaurant, one with Mr. P.S. in the background and another one with Mr. P.S. and the Complainant in the background.

[132] The initial encounter with the Complainant on June 9, 2023, may have been accidental. However, Constable Garvin knew that the Complainant was involved as an affected person in the Code of Conduct investigation related to Allegation 1 and yet he chose not to immediately end the encounter. Instead, he decided to voluntarily remain in close proximity with her. He admitted during his testimony that it was a bad decision and that he should have left the restaurant at that point.

[133] Constable Garvin was issued a lawful direction by a person superior in rank and having authority over him. I find that he failed to comply with that direction without lawful excuse. Accordingly, Allegation 3 is established.

CONDUCT MEASURES

[134] Having found Allegation 3 to be established, I am required, in accordance with subsection 45(4) of the *RCMP Act* as well as with the *Conduct Measures Guide* at page 19, to impose “fair, balanced and consistent conduct measures”. Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be “proportionate to the nature and circumstances of the contravention and, where appropriate, [...] educative and remedial rather than punitive”.

[135] In preparation for the conduct measures phase of the Conduct Hearing, the Subject Member Representative presented 4 reference letters, Constable Garvin’s performance evaluations for the years 2018 to 2022, as well as a life-saving award presented to Constable Garvin in August 2022. The Representatives also presented case law and prior RCMP conduct board decisions in support

of their respective positions on the conduct measures appropriate in the circumstances of this case.⁶⁰

[136] At the onset of the conduct measures phase, I heard from three witnesses: Staff Sergeant Mike Balmaceda, Constable Patrick Doyle and Constable Justin Hall. They all testified to Constable Garvin's good character and employment history.

Applicable principles for imposition of fit conduct measure

[137] The *Conduct Measures Guide* emphasizes that there are five principles that serve as a foundation for the crafting of a fit conduct measure. The first foundational principle states at pages 20 to 24 of the *Conduct Measures Guide* that conduct measures "must fully accord with the purposes of the police complaint and discipline process", which requires the balancing of four interests: 1) the public; 2) the RCMP in its dual role as an employer and as a government body to ensure the security of the public; 3) the subject member in being treated fairly; and 4) those affected by the misconduct at issue, where applicable.

[138] I wish to highlight more specifically the first purpose, which is **public interest**. That is, ensuring a high standard of conduct in the police service and public confidence in the service. I note that the powers granted to a police officer are considerable; the public justifiably expects members of the RCMP to observe the highest ethical and professional standards. The public interest is reflected in paragraphs 36.2(b) and (c) of the *RCMP Act*, which provide for the establishment of a Code of Conduct that emphasizes the importance of maintaining public trust and reinforcing the high standard of conduct expected of RCMP members. Similarly, the Supreme Court of Canada has placed emphasis on the public interest by stating that "The purposes of disciplinary bodies are to protect the public, to regulate the profession and to preserve public confidence in the profession".⁶¹

[139] The second and third principles for crafting a fit conduct measure provide at pages 24 and 25 of the *Conduct Measures Guide* that educative and remedial measures should prevail, where

⁶⁰ See the complete list at Appendix A of this decision.

⁶¹ *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, at paragraph 53.

appropriate, and that the least onerous disposition should be imposed. However, both presumptions will be displaced if the public confidence or organizational effectiveness is undermined.

[140] At pages 25 to 29 of the *Conduct Measures Guide*, the fourth principle states that the conduct measure imposed must be proportionate to the nature and circumstances of the contravention. This requires the conduct board to identify the relevant proportionality considerations and assess whether they may be mitigating, aggravating or neutral. Then, the conduct board must appropriately balance and weigh these considerations with the circumstances of the case and the four purposes of the police complaint and discipline process.

[141] The fifth and final principle for crafting a fit conduct measure is found at pages 29 and 30 of the *Conduct Measures Guide* and indicates that police officers are expected to adhere to a higher standard of conduct, primarily due to the fact that they hold a position of trust in society and, consequently, are held to a higher moral standard.

[142] The *Conduct Measures Guide*, while not prescriptive, is a useful reference when determining the appropriate range of measures for a particular type of behaviour, along with ensuring parity of conduct measures. Similarly, while I am not bound by prior conduct decisions, they can provide some guidance with respect to the appropriate range of measures for a particular type of behaviour.

Position of the Parties

[143] The Conduct Authority Representatives confirmed that, in light of the fact that only Allegation 3 was established in this case, dismissal was no longer the appropriate conduct measure. However, they noted that serious measures are required to address Constable Garvin's misconduct and suggested that I impose a financial penalty between 20 and 25 days to be deducted from Constable Garvin's pay.

[144] After reviewing the circumstances of the established allegation, the Conduct Authority Representatives outlined the five foundational principles in arriving at a fit conduct measure found in the *Conduct Measure Guide*. They specifically highlighted the second principle and submitted that educative and remedial conduct measures should not prevail in this case considering the

seriousness of Constable Garvin's misconduct and the public interest engaged by the compounding effect of breaching the Code of Conduct when there was already an outstanding Code of Conduct allegation against Constable Garvin.

[145] As for the Subject Member Representative, he considered Constable Garvin's behaviour to be at the lower end of the spectrum of conduct measures for a contravention of section 3.3 of the Code of Conduct and proposed a reprimand and a financial penalty of 4 days to be deducted from Constable Garvin's pay as the appropriate measures in this case.

[146] In keeping with the analytical framework outlined in the *Conduct Measures Guide*, the Subject Member Representative first addressed the proportionality principle and whether the relevant factors in this case should be considered mitigating, aggravating or neutral.

[147] Both Parties relied on a number of case law and past conduct board decisions to support their respective positions on the appropriate conduct measures to be imposed in this case.⁶²

[148] I have carefully reviewed and considered the Parties' submissions. The portions, which I find to be relevant, will be incorporated in my analysis below.

Analysis on conduct measures

[149] I will begin my analysis by setting out the appropriate range of conduct measures and then going through the mitigating, aggravating and neutral factors relevant in this case. Finally, I will set out how I have weighed those factors and balanced the interests of the public, the RCMP, Constable Garvin and the affected persons in arriving at the appropriate measure to be imposed in this case.

Range of conduct measures

[150] The *Conduct Measures Guide* at page 96 provides a spectrum of conduct measures for a failure to carry out lawful orders and directions. At the lower end of that spectrum, the *Conduct Measures Guide* provides for a reprimand to a financial penalty of 3 to 5 days; at the mid range of

⁶² See the complete list at Appendix A of the present decision.

the spectrum, it provides for an ineligibility for a promotion and a financial penalty of 8 to 10 days; and, at the higher end of the spectrum, the measures range from a financial penalty of 10 to 20 days up to dismissal.

[151] To determine the appropriate conduct measures in this case, it is necessary to apply the five foundational principles that guide the assessment of a fit conduct measure. I will begin by examining proportionality.

Proportionality

[152] The *Conduct Measures Guide* at pages 25 and 26 identifies 13 proportionality factors that may constitute mitigating, aggravating or neutral considerations depending on the evidence of each case. Of note, mitigating circumstances do not constitute a justification or an excuse for the offence, but in fairness to the subject member, these may be taken into consideration to reduce the severity of the measure imposed, in order to appropriately deal with the misconduct. However, aggravating circumstances are any circumstance related to the commission of the misconduct that increases its guilt or enormity or adds to its injurious consequences. With that in mind, I will assess the proportionality factors that I find relevant to the circumstances before me and provide my findings as to whether each factor should be considered mitigating, aggravating or neutral.

Public interest

[153] The Subject Member Representative acknowledged that disregarding an order does have a public interest component. However, he submitted that the importance of this consideration is not high in this case, given that Constable Garvin's behaviour is not sufficiently linked to his employment and that it was determined during the allegations phase that Constable Garvin's interaction with the Complainant and Mr. P.S. at the local restaurant did not bring the RCMP into disrepute or breach public confidence.

[154] With respect, I disagree. These findings were not made in relation to Constable Garvin disobeying the *Order of Suspension* as established under Allegation 3. Rather, these conclusions were reached during the analysis of Allegation 2 after examining the elements of the test for

establishing whether Constable Garvin's interaction with the Complainant and her father was discreditable conduct, contrary to section 7.1 of the Code of Conduct.

[155] There is no question that the public expects police officers to conduct themselves in a manner that upholds the RCMP core values and to obey all lawful orders and directions given to them by their superiors. Constable Garvin's conduct did not meet this standard when he failed to respect the conditions contained in the *Order of Suspension* issued at the outset of the conduct process. The public has a vested interest in ensuring that police officers found to have disobeyed a lawful order or direction be disciplined for their behaviour. Consequently, I find that the public interest is an aggravating consideration in this case.

Seriousness of misconduct

[156] The Subject Member Representative advanced that since there was no direct contact with the Complainant, Constable Garvin's behaviour was not as serious. Again, I disagree. At the relevant time, Constable Garvin was suspended as a result of an allegation of sexual misconduct involving the Complainant and was subject to a Code of Conduct investigation and a parallel criminal investigation. The *Order of Suspension* directed Constable Garvin not to have any contact with the Complainant for the duration of the conduct process. Under these circumstances, Constable Garvin should have been especially mindful of his behaviour.

[157] It was established that Constable Garvin disobeyed the *Order of Suspension* through his interaction with the Complainant at the local restaurant when he bought the Complainant and Mr. P.S. a round of drinks; engaged in a verbal exchange with Mr. P.S. where he made disparaging remarks about Mr. P.S. and the Complainant; remained in close proximity with the Complainant for some time; and took pictures of the Complainant with his cell phone. The fact that Constable Garvin did not engage in a direct conversation with the Complainant does not change the fact that he disobeyed a lawful direction. While all orders should be taken seriously, the intentional breach of the directions contained in an *Order of Suspension* issued in the context of a Code of Conduct investigation is very serious.

[158] While I agree with the Subject Member Representative that the impugned behaviour involved a single incident and that the initial encounter with the Complainant and her father was

accidental, Constable Garvin deliberately and intentionally chose to stay at the restaurant after their arrival and engaged with the Complainant and Mr. P.S. as outlined.

[159] Referring to the *Conduct Measures Guide*, the Conduct Authority Representatives submit that Constable Garvin's failure to obey a lawful direction in the circumstances of this case falls on the higher end of the spectrum of conduct measures for this type of behaviour, as it had the potential of compromising the investigation and of creating a security risk. While I was not provided with any evidence that Constable Garvin's behaviour compromised the Code of Conduct investigation, I concur with the Conduct Authority Representatives' argument that Constable Garvin's behaviour had the potential to create a risk to the security of the Complainant. This also increases the seriousness of the misconduct.

[160] Consequently, I find that the seriousness of the misconduct is an aggravating consideration in this case.

Recognition of seriousness of misconduct

[161] The Subject Member Representative, in his submissions, advanced that Constable Garvin is remorseful and has acknowledged, during his testimony in the allegations phase, that his behaviour was wrong and demonstrated a lack of judgment.

[162] I acknowledge that Constable Garvin testified that the decision to stay at the restaurant after the Complainant's and Mr. P.S.'s arrival was not a good decision and that, in hindsight, he should have left the restaurant. In addition, after the conclusion of the oral submissions on conduct measures, I note that Constable Garvin asked to address the Conduct Board and offered an apology to Mr. P.S. indicating that he was truly sorry for his behaviour and that he should never have spoken to him the way he did.

[163] Based on the aforementioned, I am convinced that Constable Garvin regrets his decision to stay at the restaurant on the night in question and that he is remorseful for his behaviour towards Mr. P.S. However, I was not provided with any evidence that Constable Garvin acknowledged the seriousness of disobeying an order issued by a senior RCMP officer to have no contact with the

Complainant. Consequently, I find that this tempers the weight to be attributed to this mitigating proportionality consideration.

Employment history

[164] Constable Garvin has approximately seven years of service and has no prior discipline. He has provided four letters of reference: one from a current line officer, Inspector Mike Ingles; one from a former supervisor, Staff Sergeant Balmaceda; one from Constable Justin Hall, a troopmate and a friend; and another from Constable Patrick Doyle, a former co-worker and a friend. The letters are positive and consistently refer to Constable Garvin as professional, reliable and respectful, and as someone who is well-liked and upholds the RCMP core values. I have also heard evidence from Staff Sergeant Balmaceda, Constable Hall and Constable Doyle, who all testified to Constable Garvin's willingness to follow orders.

[165] Constable Garvin's positive employment history is further supported by his performance evaluations covering the period from 2018 to 2022. These set out that he is an experienced member with a strong work ethic and passion for policing. I also considered the life-saving award that was presented to Constable Garvin in 2022.

[166] As a result, I find that Constable Garvin's employment history with the RCMP and supporting character references are mitigating considerations to which I attribute significant weight.

Potential for rehabilitation

[167] The *Conduct Measures Guide* indicates at pages 27 and 28 that this factor involves an assessment of the likelihood of recurrence and is closely related to remorse and employment history.

[168] As previously mentioned, I have been presented with positive reference letters and performance evaluations for Constable Garvin that support his good character, which is an important factor when assessing a member's potential to rehabilitate. In addition, Constable Garvin expressed remorse and apologized for his behaviour towards Mr. P.S.

[169] However, I was not provided with any evidence demonstrating that Constable Garvin has a solid appreciation that in buying drinks for the Complainant and Mr. P.S., in engaging in a disrespectful exchange with Mr. P.S., in the presence of the Complainant, and in staying in close proximity to the Complainant for some time, while he was directed not to have any contact with her, he was disobeying a lawful direction and that this is wholly inappropriate for a police officer mandated to enforce laws and respect lawful orders and directions.

[170] Nonetheless, I find that the risk of Constable Garvin disobeying orders in the future is very low because this behaviour, although established, is an isolated incident that appears to be out of character for Constable Garvin. Therefore, I find that the potential for rehabilitation is a mitigating consideration in this case.

Parity of sanction

[171] While the Representatives have provided a number of cases in support of their respective positions, they also noted that it has been difficult to find cases where an allegation of having disobeyed a lawful direction was established in circumstances similar to those presently before me. I find that the precedents provided to me by the Parties were of limited value in light of the circumstances surrounding the established misconduct. Consequently, I find parity to be a neutral proportionality consideration.

Specific and general deterrence

[172] The Conduct Authority Representatives submitted that these considerations are paramount in this case, with a strong emphasis on general deterrence, as orders given to members under investigation due to allegations of misconduct must be followed to maintain the integrity of the conduct process. While acknowledging that there is a general deterrence aspect at play in this case, the Subject Member Representative stated that the circumstances before me are at the lower end of the scale for this type of misconduct and that general deterrence should be a relatively minor consideration.

[173] With respect, I disagree. I find that general deterrence in this case is an important consideration given the need to maintain the integrity of the conduct process so that other members

of the RCMP give serious consideration before disobeying orders and directions, both on and off duty. I find general deterrence to be an aggravating consideration.

[174] The Subject Member Representative also submitted that given Constable Garvin's excellent performance evaluations, his respect for authority, and the testimonies heard during the conduct measures phase, there is no need for specific deterrence in this case. I acknowledge that Constable Garvin has a good employment history and rehabilitation potential. As previously mentioned, I consider the risk of Constable Garvin disobeying orders in the future to be low. Therefore, I find that specific deterrence is a neutral consideration.

Public confidence in the RCMP

[175] Referring to the evidence offered by the Complainant and Mr. P.S. during the allegations phase of the Conduct Hearing, the Conduct Authority Representatives argued that the reputation of the RCMP has been affected by Constable Garvin's misconduct. They advanced that the public, informed of Constable Garvin's misconduct, might think twice before going to the RCMP and interacting with Constable Garvin, in particular for allegations of sexual or domestic violence.

[176] Firstly, the allegation of sexual misconduct against Constable Garvin was not established by the Conduct Authority. What has been established is that Constable Garvin disobeyed the direction contained in the *Order of Suspension* not to have any contact with the Complainant during the conduct process. Secondly, I am not persuaded that the evidence provided by the Complainant and Mr. P.S. during the allegations phase demonstrates that the reputation of the RCMP has been affected by Constable Garvin's behaviour. While they both expressed some reluctance in going to the RCMP if they knew Constable Garvin would be involved, they also indicated that they were able to draw a distinction between one officer's behaviour and the RCMP as a whole.

[177] It goes without saying that Constable Garvin showed a serious lack of judgment when he decided to remain at the restaurant on June 9, 2023. He was ordered not to have any contact with the Complainant, and thereby breached the directions contained in the *Order of Suspension*. However, I was not provided with any evidence demonstrating that the behaviour exhibited by

Constable Garvin on that day, in the particular circumstances in which it arose would, carries over into his professional life.

[178] The evidence supports that Constable Garvin has an excellent work record over his years of employment and there is no basis to suspect that he lacks the necessary judgment to properly carry out his professional duties or that he would disobey directions in the future. I am not convinced that a reasonable person, having knowledge of the circumstances that gave rise to this misconduct, would consider that Constable Garvin's behaviour has affected the credibility and reputation of the RCMP as a whole or that the public would have a loss of confidence or unforgiving attitude towards the RCMP if Constable Garvin was to remain a member. I consider the damage to the reputation of the RCMP to be a neutral proportionality factor in this case.

Conclusion

[179] In summary, I find the public interest, the seriousness of Constable Garvin's conduct and general deterrence to be aggravating considerations. Constable Garvin's recognition of the seriousness of his misconduct, his employment history and his potential for rehabilitation are mitigating proportionality factors. Finally, I consider specific deterrence, parity of sanctions and damage to the reputation of the RCMP to be neutral factors.

Decision

[180] Here is how I have weighed the proportionality factors in arriving at the conduct measures I deem appropriate in this case, while considering the interests of the public, the RCMP, Constable Garvin, those affected by his misconduct, as well as keeping in mind that a higher standard of conduct applies to police officers than to other employees.

[181] As a public institution, the RCMP is responsible for the security of the public. As such, the RCMP has an interest in ensuring that its members adhere to the public's expectations as it pertains to following orders and directions.

[182] Constable Garvin's interests requires that he be afforded the rights dictated by procedural fairness. I am satisfied that Constable Garvin's interests have been protected throughout this

process, culminating in a full Conduct Hearing, where he has had the chance to be heard and has been afforded the opportunity to test the Conduct Authority's case.

[183] The Complainant and Mr. P.S. expect that the RCMP will treat this matter seriously and will take measures to ensure that Constable Garvin is held accountable for his actions.

[184] Constable Garvin's misconduct is serious. As stated by the Supreme Court of Canada:

77 [...] The breach of an undertaking by a police officer is especially serious, given the role that police officers play in the administration of justice. It suggests a lack of respect for the judicial system of which he forms an integral part. [...] ⁶³

[185] I find these principles to be equally applicable to undertakings issued in the context of the conduct process. I agree with the Conduct Authority Representatives that public confidence in the conduct process is undermined when an officer subject to a Code of Conduct investigation defies the orders associated with their suspension regarding the non-communication with alleged victims. The public rightly expects police officers to obey orders and directions and that the RCMP will act appropriately in cases of misconduct of this nature by its members. Police officers are given special status within our society and are granted considerable powers. Therefore, police work requires RCMP members to exercise a high degree of judgment and integrity in order to foster public trust, not only in their professional life, but in their personal life as well.

[186] The public interest also requires that I impose measures that send a clear and unequivocal message when it comes to general deterrence as a warning to other members that disobeying directions from senior officers is not acceptable.

[187] In terms of past conduct board decisions put forward by the Parties, I note that none are directly on point, as is often the case. Additionally, I find that decisions based on joint proposals, such as *Dongriah*⁶⁴ and *Rumsey*,⁶⁵ are of little assistance in my determination of the appropriate

⁶³ *Lévis (City) v Fraternité des policiers de Lévis Inc.*, 2007 SCC 14 [*Lévis*], at paragraph 77.

⁶⁴ *Designated Conduct Authority for "E" Division and Dongriah*, 2020 CAD 24 [*Dongriah*].

⁶⁵ *Chief Superintendent Bzdel and Rumsey*, 2020 CAD 08 [*Rumsey*].

conduct measures. Similarly, I take little from the decisions in *Goodyer*⁶⁶ in terms of appropriate measures as the facts underlying the misconduct were far more serious than in the present case. As for *Greenlaw*,⁶⁷ I agree with the Conduct Authority Representatives' submission that it is of little assistance as it dealt with a member disobeying a direction issued in relation to the performance of his policing duties.

[188] When weighing the seriousness of Constable Garvin's misconduct, the public interest and the need for general deterrence with the mitigating elements outlined, particularly, Constable Garvin's recognition of the seriousness of his behaviour, his employment history and his potential for rehabilitation, along with the circumstances of this case and the four purposes of the conduct process, I find that serious conduct measures are required to address Constable Garvin's misconduct.

[189] Constable Garvin's deliberate failure to respect the conditions contained in the *Order of Suspension* issued in relation to a Code of Conduct investigation undermines the public confidence in the administration of the RCMP conduct process. His behaviour suggests a lack of respect for orders given by superiors and a complete disregard for the conduct process. Thus, I find that the presumption of imposing the least onerous disposition and the principle that educative and remedial conduct measures should prevail to be displaced.

[190] As such, in accordance with paragraph 45(4)(c) of the *RCMP Act*, and seeing that I find Constable Garvin's insubordination to be especially incompatible with the conduct expected of a police officer, but bearing in mind the spectrum suggested by the *Conduct Measures Guide*, I impose the following conduct measure in accordance with paragraph 5(1)(j) of the *CSO (Conduct)*:

A financial penalty consisting of a forfeiture of 12 days' pay to be deducted from Constable Garvin's pay.

⁶⁶ *Commanding Officer of "E" Division and Goodyer*, 2018 RCAD 13 and *Commanding Officer of "E" Division and Goodyer*, 2022 CAD 08 (Commissioner's decision)

⁶⁷ *Commanding Officer of "K" Division and Greenlaw*, 2019 RCAD 22 [*Greenlaw*].

CONCLUSION

[191] I find that Allegation 3 is established. Furthermore, in accordance with paragraph 5(1)(j) of the *CSO (Conduct)*, I impose a financial penalty consisting of a forfeiture of 12 days' pay to be deducted from Constable Garvin's pay.

[192] Any interim measures in place should be resolved, in a timely fashion, in accordance with paragraph 23(1)(b) of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[193] 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 Constable Garvin 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.

Gina Lévesque
Conduct Board

October 9, 2025
Ottawa, Ontario

APPENDIX A – JURISPRUDENCE SUBMITTED BY THE PARTIES

From Conduct Authority Representatives

Commanding Officer of “E” Division and Goodyer, 2018 RCAD 13

Commanding Officer of “E” Division and Goodyer, 2022 CAD 08 (Commissioner’s decision)

Designated Conduct Authority for “E” Division and Dongriah, 2020 CAD 24

Chief Superintendent Bzdel and Rumsey, 2020 CAD 08

Lévis (City) v Fraternité des policiers de Lévis Inc., 2007 SCC 14

From Subject Member Representative

Commanding Officer of “K” Division and Greenlaw, 2019 RCAD 22