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ACMT File Number: 201533817

Citation: 2016 RCAD 5

Restriction on publication: Medical documents submitted by the Subject Member during the conduct hearing and medical documents contained in the record before the Conduct Board shall not be published in any document, broadcasted or transmitted in any way.



**IN THE MATTER OF A CONDUCT HEARING PURSUANT TO
THE *ROYAL CANADIAN MOUNTED POLICE ACT***

Between:

Commanding Officer of “K” Division

(the “Conduct Authority”)

and

Constable Liam MacNeil, Regimental Number 57688

(the “Subject Member”)

DECISION OF THE CONDUCT BOARD

BEFORE:

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Inspector Bernard Tremblay, Conduct Board

APPEARANCES:

Mr. John Reid for the Conduct Authority

Ms. Nicole Jedlinski and Staff Sergeant Colin Miller for the Subject Member

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Synopsis of the Decision

The Subject Member admitted one allegation of improperly disclosing information contrary to section 9.1 of the *Code of Conduct* and one allegation of providing an inaccurate account of his actions on a police file contrary to section 8.1 of the *Code of Conduct*. The Conduct Board accepted a joint submission and imposed conduct measures consisting of a reprimand, a transfer and financial penalties totalling eleven (11) days' pay.

Reasons of Inspector Bernard Tremblay, Conduct Board

I. Introduction

[1] The Subject Member faced three allegations of breaches to the RCMP *Code of Conduct*. The conduct hearing was held from March 31 to April 1, 2016, and concluded on November 25, 2016. These reasons are a more detailed version of my oral decision, finding that two allegations are established and imposing conduct measures.

[2] At the request of the Member Representative (MR) and pursuant to section 45.1(2)(c) of the *Royal Canadian Mounted Police*, RSC 195, c R-10 (the RCMP Act), it is ordered that medical documents submitted by the Subject Member during the conduct hearing and medical documents contained in the record before the Conduct Board shall not be published in any document, broadcasted or transmitted in any way.

II. Allegations

[3] The Notice of Conduct Hearing, signed by the Conduct Authority on July 10, 2015, listed the three allegations against the Subject Member as follows:

Allegation 1

On or about June 23rd, 2014 at or near Hinton, in the province of Alberta, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “K” Division, in the province of Alberta.
2. On June 23rd, 2014, while on duty, you received a complaint from [SJ] entered as a “Request to locate individual” in PROS file 2014-736111. [SJ] was requesting police assistance in trying to locate her son, [TG-S].
3. On the same date, you contacted [SJ] and provided her with [TG-S’s] personal information.

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4. You unlawfully disclosed personal information contrary to Section D.1 of the *RCMP Information Access policy* ([*Administration Manual* (AM)].111.11) and Section 8 of the *Privacy Act*.

Allegation 2

On or about July 2nd, 2014 at or near Hinton, in the province of Alberta, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “K” Division, in the province of Alberta.
2. On July 2nd, 2014, while on duty, you told [Corporal (Cpl.)] Danny Knight, your supervisor, that you did not provide [TG-S’s] personal information to [SJ] except telling her that her son could possibly be in Red Deer.
3. Your statement to Cpl. Danny Knight contained misleading and/or false information.

Allegation 3

On or about July 3rd, 2014 at or near Hinton, in the province of Alberta, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “K” Division, in the province of Alberta.
2. On July 3rd, 2014, while on duty, you removed the following portion of the occurrence’s summary of PROS file 2014-736111: “Member looked up the SOC’s particulars and most recent contact information places him in Red Deer with a DL suspension entered on the Reported Time. COM spoken to, she was advised to contact SOC at the given information”. You then replaced the removed portion with: “Member looked up SOC’s particulars and most recent information places him in Red Deer with a DL suspension entered on the Reported Time. COM spoken to, she was advised that the SOC may be in the mentioned area but police could not disclose more information”.

3. On the same date, you wrote a general report for PROS file 2014-736111 indicating you told the complainant that her son was an adult and the police could not reveal any more information to her due to privacy issues.

4. Your PROS entries contained misleading and/or false information.

[4] The Subject Member initially denied these allegations.

III. The Record

[5] As required by the *Commissioner's Standing Orders (Conduct)*, the Parties provided me with material from different sources prior to the hearing. The Record before me includes such things as the Conduct Authority's investigation report, the Subject Member's response and witness testimony.

[6] After the first portion of the hearing, the Parties informed me that they had reached an agreement on the allegations and on the conduct measures to be imposed. They provided me with a document outlining their resolution proposal.

IV. Amendment of Allegations

[7] When the hearing reconvened on November 25, 2016, I granted the Parties' joint request to amend Allegations 1 and 3 by replacing these two allegations of discreditable conduct with allegations of contraventions more specific to the circumstances. These allegations now read as follows and their particulars remain unchanged:

Allegation 1

On or about June 23, 2014, at or near Hinton, in the Province of Alberta, [the Subject Member] improperly disclosed information obtained in his capacity as a member, contrary to section 9.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Allegation 3

On or about July 3, 2014, at or near Hinton, in the Province of Alberta, [the Subject Member] provided an inaccurate account of his actions on a police file contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

[8] The Subject Member admitted to Allegations 1 and 3 and the Conduct Authority Representative (CAR) withdrew Allegation 2.

V. Determination of Established Facts

[9] Based on the Record, I find that the following facts have been established.

At all material times the Subject Member was a member of the RCMP posted to “K” Division in the province of Alberta.

Allegation 1

- a) On June 23, 2014, the Subject Member was on duty at the Hinton RCMP Detachment when a municipal employee gave him a complaint to work on.
- b) It was the Subject Member’s understanding that the complainant, SJ, was looking to locate her adult son, TG-S, who had mental health problems.
- c) The Subject Member did not meet SJ in person at any time.
- d) Through police information systems, the Subject Member found that the last reported information connected to TG-S was a previous employer in the Red Deer area and a phone number associated to the business.
- e) The Subject Member phoned the number listed for the business and spoke to a person who informed him that TG-S no longer worked there. The person was not aware of TG-S’s current location and had no forwarding contact information.
- f) The Subject Member disclosed this information to SJ on the same day. He did not disclose any personal phone number or address for TG-S. The only information the Subject Member had was relating to TG-S’s possible past location, not his current location.
- g) The Subject Member admits that he improperly provided SJ with information about TG-S.
- h) The Subject Member did not deliberately intend to breach any RCMP policy.
- i) There is no evidence that the information provided to SJ by the Subject Member assisted her in locating her son. She did not use the phone number associated to the business.
- j) The information provided to SJ was minimal and had no impact on RCMP operations.

Allegation 3

- a) On or about July 2, 2014, the Subject Member's supervisor, Cpl. Danny Knight, called the Subject Member into his office.
- b) Cpl. Knight asked something to the effect of whether the Subject Member had used confidential police databases to disclose a person's location.
- c) The Subject Member told Cpl. Knight that he did not tell SJ where her son was currently located because that was not known, there was only speculation as to where he may have been.
- d) The Subject Member could not have disclosed TG-S's location, as he did not have that information.
- e) During the meeting, Cpl. Knight expressed concern about the way the file entry was written, and asked for clarification. The Subject Member subsequently amended the file entry.
- f) On July 3, 2014, the Subject Member amended the PROS Occurrence Summary for file 2014-736111 from:

"Member looked up SOC's particulars and most recent contact information places him in Red Deer with a DL suspension entered on the reported time. COM spoken to, she was advised to contact SOC at the given information. Nothing to indicate SOC was missing/injured/MHA detention"

to:

"Member looked up SOC's particulars and most recent contact information places him in Red Deer with a DL suspension entered on the reported time. COM spoken to, she was advised that the SOC may be in the mentioned area but police could not disclose more information. Nothing to indicate SOC was missing/injured/ MHA detention."
- g) The Subject Member did not intend to mislead his supervisor, but admits that amending the Occurrence Summary, particularly deleting the words "she was advised to contact SOC at the given information" and adding "police could not disclose more information" changed the substance of the summary and omitted some important clarifying details.
- h) On July 3, 2014, the Subject Member wrote a general report for the file indicating he told the complainant that her son was an adult and the police could not reveal any more information to her due to privacy issues.
- i) The Subject Member did not intend to mislead his supervisor, but he knew part of his Occurrence Summary and his general report were inaccurate.

VI. Analysis

Allegation 1

[10] Section 9.1 of the RCMP *Code of Conduct* states:

Members access, use, and disclose information obtained in their capacity as members only in the proper course of their duties and abide by all oaths by which they are bound as members.

[11] The specific allegation here is that the Subject Member improperly disclosed information obtained in his capacity as a member. For the allegation to be established, the Conduct Authority must prove the following on a balance of probabilities:

1. the identity of the member;
2. the member obtained information in his capacity as a member; and
3. the member improperly disclosed that information.

[12] Based on the Subject Member's admission and my findings, I am satisfied that Allegation 1 is established.

[13] The circumstances of this case are particular. The Subject Member believed SJ when she explained she was a worried mother looking for her mentally ill son. He assisted her in trying to locate her son by querying RCMP systems and providing her with the name, city and telephone number of a previous employer. The Subject Member's only motivation was to help SJ and there was no reason to suspect that SJ wanted to obtain that information for an improper purpose. However, it is easy to imagine a situation where a person could provide the police with a false story about a missing relative in order to locate a person they were intending to harm.

[14] The RCMP is expected to guard the information it collects and the Subject Member was not authorized to give SJ personal information held by the RCMP about her son. Our policy, the *Access to Information Act* and the *Privacy Act* put strict limits on the disclosure of information.

The public's trust in the RCMP can be affected if personal information from our systems is improperly disclosed.

[15] Since the incident occurred while the Subject Member was on duty and responding to a complaint, the link between the misconduct and the Subject Member's employment with the RCMP is clear.

[16] I conclude that Allegation 1 is established.

Allegation 3

[17] Section 8.1 of the RCMP *Code of Conduct* states:

Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigations, the actions of other employees and the operation and administration of the Force.

[18] The specific allegation here is that the Subject Member provided an inaccurate account of his actions on a police file. For the allegation to be established, the Conduct Authority must prove the following on a balance of probabilities:

1. the identity of the member;
2. the member provided an account of his actions on a police file;
3. the account provided was inaccurate; and
4. the member knew it was inaccurate.

[19] Based on the Subject Member's admission and my findings, I am satisfied that Allegation 3 is also established.

VII. Conduct Measures

[20] The CAR and the MR made a joint proposal for conduct measures consisting of a reprimand and an order to transfer to a different district. They also proposed a financial penalty of one (1) day's pay for Allegation 1 and ten (10) days' of either financial penalty or forfeiture of annual leave for Allegation 3.

[21] The CAR submitted that, since the Subject Member was given a reprimand and a forfeiture of five (5) days' pay as a sanction for two incidents of neglect of duty in 2013, a financial penalty for Allegation 3 would be more appropriate as a deterrent.

[22] The MR submitted that the *Conduct Measures Guide* and the *Commissioner's Standing Orders (Conduct)* now offer a wide range of measures, which were not available under the old system. She argued that the mitigating factors, which I will address later, support a forfeiture of leave rather than a financial penalty for Allegation 3.

[23] The Subject Member apologized for his actions. He said he was a proud Mountie and was looking forward to returning to active duty.

Range of Conduct Measures

[24] The misconduct in Allegations 1 and 3 falls in the "mitigated" category of the *Conduct Measures Guide*, which proposes the following range of conduct measures:

- for Allegation 1, any measure up to a financial penalty of one (1) day's pay;
- for Allegation 3, any measure up to a financial penalty of twenty-nine (29) days' pay.

Aggravating Factors and Mitigating Factors

[25] The only aggravating factor is that the Subject Member was given a formal disciplinary sanction of a forfeiture of a total of five (5) days' pay in 2013 for having neglected his duties.

[26] On the other hand, the mitigating factors are:

- The Subject Member accepted responsibility for his actions.
- A medical condition was diagnosed, for which the Subject Member continues to take medication.
- According to seven (7) letters of reference, the Subject Member is friendly and hard-working, he has a positive attitude and he is respectful to his clients.
- The Subject Member is eager to return to work and has taken college courses in order to self-improve.
- For a lengthy period of time during the investigation (August 2014 to July 2015), the Subject Member was sent home, although not suspended, and told not to return to the detachment unless under escort.
- He apologized for his misconduct.

[27] With respect to Allegation 1, the information was requested by a concerned parent and there was nothing inappropriate about the reason why she wanted to locate her son. The Subject Member gave her the very limited information he was able to find. The only reason why he gave her that information was to help her find her son for reasons he believed were valid. Although there is nothing to suggest that any harm resulted from his actions, the problem is that he was not careful enough and that he failed to consider the risks associated to his actions. The person, for a variety of reasons, may not have wanted to be located by other people. As members of the RCMP, we have access to a lot of personal information and we must ensure to treat it in a manner that respects the privacy of individuals.

[28] In Allegation 3, the Subject Member inaccurately accounted for his actions in a police file. The release of personal information in Allegation 1 was not very serious in the

circumstances and the Subject Member actually wrote an accurate report of his actions in his initial Occurrence Summary. It is after his supervisor read the Occurrence Summary and expressed concerns about information being inappropriately released that the Subject Member modified his Occurrence Summary and added an inaccurate General Report. He wrote these reports in a way that explained what should have been done rather than what he actually did.

[29] Since the Subject Member did this knowing that his supervisor was already aware of the situation, I accept that he was not trying to mislead him. However, I am concerned that he modified his official version of the somewhat minor event in a manner that avoided showing he had done something wrong. Making notes and completing reports are very important parts of police work, we must ensure that information can be trusted. A police officer cannot be seen as trying to cover up mistakes by altering reports or writing inaccurate reports. That type of conduct, in different circumstances, could have been fatal to the Subject Member's career with the RCMP.

[30] Since joining the RCMP in 2009, the Subject Member has only been posted to the small neighbouring detachments of Edson and Hinton, Alberta. His entire career so far has been marked by performance and disciplinary issues. The MR requested a transfer to a different area in order to give him an opportunity to make a fresh start and to have his medical condition properly considered. The AOR supported this request.

Decision on Conduct Measures

[31] In *R. v Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada stated unanimously that, in paragraphs 32 to 34, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to public interest. It added that a joint submission should not be rejected lightly, since rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the

relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

[32] Although *R. v Anthony-Cook* was decided in the criminal law context, it should also be applied here as most of the considerations discussed in paragraphs 35 to 45 are also present in the RCMP Conduct Process.

[33] Having considered the Record before me and the submissions of the representatives, I accept the joint submission and I impose the following conduct measures:

- a reprimand;
- a financial penalty of a total of eleven (11) days' pay (1 day for Allegation 1, 10 days for Allegation 3);
- a transfer to a different District or Division, to be determined by "K" Division Career Development and Resourcing.

[34] Either party may appeal this decision by filing a statement of appeal with the Commissioner, pursuant to section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*.



Inspector Bernard Tremblay, Conduct Board

Signed on January 25, 2017, in Ottawa,
Ontario