



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

BETWEEN:

Commanding Officer, "D" Division

Conduct Authority

and

Corporal Jason Prettie, Regimental Number 51216

Subject Member

---

**Conduct Board Decision**

John A. McKinlay

July 31, 2017

---

Mr. Denys Morel, for the Conduct Authority

Mr. Gordon Campbell, for the Subject Member

## TABLE OF CONTENTS

SUMMARY .....	2
INTRODUCTION .....	3
ALLEGATIONS.....	4
Submissions on the allegations .....	5
Findings on the allegations.....	5
CONDUCT MEASURES .....	12
Aggravating circumstances .....	14
Mitigating circumstances .....	17
Determination of conduct measures .....	21
CONCLUSION.....	23

## SUMMARY

The Subject Member committed two acts of misconduct in May and June 2009, which only came to light on March 30, 2015. He took home for personal use two long guns formally identified and secured at his Detachment, and which should have been destroyed. In January 2016, he pleaded guilty to two charges of theft under \$5000 and received a conditional discharge. The misconduct involved dishonesty, self-enrichment, the taking of a seized investigative exhibit slated for destruction and the taking of a firearm surrendered for destruction, two separate acts with the seriousness of the latter theft directly considered before it took place, and the Subject Member's loss of physical control of the two weapons, which were only discovered as missing and not destroyed, almost five years after the thefts took place. Some mitigating factors existed, but the Subject Member was ordered to resign within 14 days or be dismissed, as neither demotion nor any other conduct measures were proportionate to the serious nature of the contraventions and the aggravating circumstances.

## INTRODUCTION

[1] This Conduct Board matter deals with two acts of misconduct committed by the Subject Member in May and June 2009, which only came to light on March 30, 2015. The two acts involve the Subject Member's theft of two long guns formally identified and secured at his Detachment that should have been destroyed, but that he took home for personal use.

[2] A criminal information was laid against the Subject Member on April 4, 2015. On January 18, 2016, that criminal matter was resolved by the Subject Member entering guilty pleas on two charges of theft under \$5000. The charges of breach of trust were stayed and he received a conditional discharge.

[3] On March 30, 2016, I was appointed Conduct Board in this matter. The present *Notice of Conduct Hearing*, alleging two contraventions of section 7.1 of the Code of Conduct, was signed by the Conduct Authority on May 27, 2016. The Notice and the investigative materials were served on the Subject Member on June 16, 2016. I received the Notice and the materials on July 4, 2016. The Conduct Authority's proposed witness list was filed July 6, 2016.

[4] The Subject Member received an extension to file his responses under section 15 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*] to August 19, 2016. The responses were filed on August 18, 2016, and included a transcript from the January 18, 2016, criminal court proceedings.

[5] There were then four pre-hearing conferences. The first pre-hearing conference was on November 4, 2016, and included setting a hearing date for the week of February 20, 2017. Without the full conduct measures phase evidence and case law later filed with the Conduct Board, at this first pre-hearing conference the Member Representative (MR) was encouraged to give serious consideration to demotion in any non-dismissal joint proposal on conduct measures the parties might present. Further pre-hearing conferences took place on December 16, 2016, February 8, 2017, and on the morning of February 22, 2017, before the conduct hearing began.

[6] A *Notice of Place, Date and Time* for this hearing was accepted by the MR on behalf of the Subject Member on February 14, 2017.

## ALLEGATIONS

[7] Following a Code of Conduct investigation, the Subject Member faced two allegations:

### **Allegation 1**

On or Between January 1, 2009 and March 30, 2015, at or near Minnedosa, in the Province of Manitoba, Corporal Jason Prettie 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 “D” Division, in the province of Manitoba.
2. On or about July 20, 2000, Minnedosa Detachment RCMP officers executed a search warrant and seized a number of items, including a Winchester 12 gauge shotgun, model 101, bearing serial number K122654.
3. On June 5, 2009, a Forfeiture Order was signed by a Provincial Court Judge in favour of Her Majesty the Queen for the Winchester 12 gauge shotgun.
4. On or about June 24, 2009, you stole the Winchester 12 gauge shotgun bearing serial number K122654 from the detachment.

### **Allegation 2**

On or Between January 1, 2009 and March 30, 2015, at or near Minnedosa, in the Province of Manitoba, Corporal Jason Prettie 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 “D” Division, in the province of Manitoba.
2. On or about January 9, 2009, the owner of a Remington .22 caliber rifle bearing serial number RW324851 attended the Minnedosa Detachment and turned it over for destruction.
3. You subsequently stole the .22 caliber rifle bearing serial number RW324851 from the detachment.

[*Sic throughout*]

**Submissions on the allegations**

[8] The parties provided me with a *Summary of Facts*, drawn from the investigative materials and materials filed by the Subject Member. This summary also contained the Subject Member's admission of both contraventions. It was understood by the parties that their *Summary of Facts* would not bind or restrict the findings I would make on the allegations. Nevertheless, a significant portion of their summary was used in the Conduct Board's findings after a full review of the information available to me.

[9] In rendering my oral decisions on the allegations and on the appropriate conduct measures for the two established contraventions, I confirmed that I was offering abbreviated oral decisions subject to the caveat that I reserved the right to expand upon, clarify and explain my reasons and findings in greater detail in this final written decision.

**Findings on the allegations**

[10] Subsection 45(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*], requires the balance of probability standard of proof be applied in adjudicating alleged contraventions. This requires a determination of whether it is more likely than not that the alleged acts or omissions occurred. The parties agreed that no witnesses would be called in the allegation phase of the hearing.

[11] With the benefit of the parties' *Summary of Facts* as contained in Exhibit CAR-2, I find the following facts established.

[12] At all material times, the Subject Member was posted to "D" Division, at the Minnedosa Detachment.

[13] The Subject Member admits the allegations, including the particulars, contained in the *Notice of Conduct Hearing*, dated May 27, 2016.

[14] Throughout his career, the Subject Member has been posted in small rural and remote Manitoba communities, starting with The Pas in 2004. At the relevant time, the Subject Member

was posted in Minnedosa. From 2011 to 2013, he was posted to the very small isolated northern detachment of the Chemawawin Cree Nation and Easterville Reserve (Chemawawin Detachment). He was then posted to Dauphin Detachment, where he remains today albeit under suspension.

[15] When working at the Chemawawin Detachment, his wife and children were unable to join him because of the community situation. The Subject Member is himself Métis. The parties agree and I accept: in all the communities where he was posted, as well as in his own upbringing, long guns were a part of daily life and used for hunting and land management purposes.

[16] On March 30, 2015, the Subject Member's oldest daughter, then aged 20, contacted Constable (Cst.) MV for advice concerning her father. Cst. MV was a close family friend and this daughter shared her concerns over a recent family dispute involving the Subject Member. The daughter advised that she was concerned that the Subject Member was going to have her older brother, then aged 22, charged with possession of stolen property regarding two firearms in his possession. The daughter also informed Cst. MV that she and her older brother, trying to make sense of a text message received by the brother from the Subject Member while arguing, now believed that the Subject Member had stolen the firearms from his work when he was posted at the Minnedosa Detachment.

[17] In light of the information received, Cst. MV notified her supervisor, Staff Sergeant (S/Sgt.) LF at the Dauphin Detachment and subsequently contacted the older brother to arrange for the seizure of the two firearms in his possession. Cst. MV attended his residence on March 30, 2015, and seized a Remington .22 caliber rifle, serial number RW324851 (the rifle) and an over under Winchester 12 gauge shotgun model 101, serial number K122654 (the shotgun). In her police notes and later interview statement, Cst. MV noted combination trigger locks.

[18] The subsequent investigation revealed that the owner of the rifle attended the Minnedosa Detachment on January 9, 2009, and turned it over for destruction. Cst. MH created an electronic PROS property entry for the rifle, indicating "request by owner to have destroyed", and carried out a CPIC query in relation to the rifle. The PROS property entry linked to PROS file

200931757, a firearms investigation, which was concluded. Applying normal file retention practices, the file was purged on January 6, 2012. The Subject Member, in his response under section 15 of the *CSO (Conduct)* and in representations made to the criminal court sentencing judge, has stated that he offered to buy the rifle but that the owner said she did not want any money for it. On May 20, 2009, then Cpl. BH, in his capacity as the exhibit custodian, modified the PROS property entry as the rifle was either being moved or being destroyed.

[19] The usual process in place when firearms were turned into the Minnedosa Detachment involved a member taking possession of the firearm, having the owner sign a relinquishment of claim and confirming their desire to have the firearm destroyed. The member would subsequently open a file, tag the firearm as an exhibit, add it as an exhibit and place the firearm into the temporary exhibit locker. As the exhibit custodian, Cpl. BH would transfer the firearm to the main exhibit locker, until he received a request to transfer the firearm back to the temporary exhibit locker when it was ready to be destroyed. The firearm was held for a certain period, usually 60 days, and subsequently taken to a local business with appropriate shop equipment for destruction. Rather than take the rifle for destruction as required, the Subject Member took it home.

[20] The shotgun was seized on July 20, 2000, along with other firearms, narcotics and property, during the execution of a search warrant by members of the Minnedosa Detachment, at a residence in Basswood, Manitoba. All the exhibits resulting from the search were placed in the main exhibit locker at the Minnedosa Detachment. On June 5, 2009, a court order was obtained forfeiting the seized property, including the shotgun, to the Crown for disposal. On June 24, 2009, then Cpl. BH made a file entry, indicating that all the exhibits had been destroyed. On June 24, 2009, as a constable with almost five years of service, the Subject Member conducted a CPIC query on the shotgun and a Canadian Firearms Registry On-Line (CFRO) query using the surname of the individual from which it had been seized. Rather than take the rifle for destruction as required, the Subject Member took it home.

[21] The shotgun and rifle were not taken from an exhibit locker nor did they represent evidence in support of particular charges. The "D" Division policy on destruction of weapons

calls for their destruction before the Detachment Commander, or the Commander's delegate, and one other member, a practice which was not observed consistently at the Minnedosa Detachment during the relevant time period.

[22] The shotgun and rifle were kept in the family home, in a closet, and secured using combination trigger locks. It appears that the Subject Member's two sons, who in June 2009 were ages 16 and 13, initially had access to the shotgun and rifle only with the Subject Member present. Then, they occasionally used them unsupervised to shoot on the rural property. The firearms were never used for formal hunting. There is no evidence that they were ever discharged off the family property. When he was asked where the firearms came from, the Subject Member advised not to worry about it and not to tell anyone. During his KGB statement to investigators on the criminal investigation, the oldest son recalls being told by the Subject Member "not to get caught with them", which at the time the son understood related to his lacking a "PAL", a possession and acquisition licence.

[23] Sometime in 2013, the Subject Member separated from his wife and moved out of the family home in Minnedosa to live in Easterville, Manitoba, leaving the shotgun and rifle behind. When the oldest son subsequently moved out of the house, he took the firearms to his residence due to concerns about them being left in the family residence with his mother and younger sister.

[24] On March 30, 2015, in the context of a family dispute, the following text message exchange occurred between the Subject Member and his oldest son:

Subject Member: You in possession of it also.

Son: Possession of what? Why are you pulling stupid stunts that are going to get you fired is what I don't get?

Subject Member: I don't care. If I get fired UR mom loses --That will make me happy.

Subject Member: I'm not doing stupid shit. YT mom involves u ken and rich. I don't involve u. She makes it hard on you not me.

Son: Thanks for the text evidence.

*[Sic throughout]*



[25] As a result of the text message exchange and phone contact with the Subject Member, the oldest son became concerned that the shotgun and rifle were stolen property. He contacted his then 20-year-old sister to discuss the situation. This sister subsequently contacted Cst. MV to discuss the family dispute.

[26] Only as a result of the breakup of the Subject Member's marriage in 2015 did it come to light that the Subject Member, by the month of June 2009, had previously taken the rifle and shotgun from the Detachment to the family residence. From the time the two firearms came to the family residence in 2009, until they were provided by the oldest son to Cst. MV on March 30, 2015, no Prettie family member held the requisite legal authorization to possess them.

[27] On April 4, 2015, the Subject Member attended the RCMP Dauphin Detachment of his own accord and, in relation to each firearm, was charged with Criminal Breach of Trust, Theft Under \$5000, and Possession of a Weapon Obtained by Crime. The Subject Member was cooperative, but he declined to provide an explanation for the firearms and was subsequently released on a Promise to Appear.

[28] The Subject Member's response, under section 15 of the *CSO (Conduct)*, included the filing of the 77-page transcript from the Provincial Court plea and sentencing hearing from January 18, 2016. The parties accept this transcript as an accurate reproduction of the remarks made in court that day. The Subject Member pleaded guilty to two charges of theft under \$5000, pursuant to subsection 334(b) of the *Criminal Code*, RSC, 1985, c C-46. Based on the submissions of his defence lawyer, I accept that the Subject Member was prepared to enter guilty pleas before even receiving the initial disclosure from the Crown, but he deferred to his counsel to review this disclosure first. The sentencing judge imposed a sentence of a conditional discharge, and other terms under an 18-month probation order, notwithstanding the Crown seeking imprisonment and a firearm prohibition order. The parties reference a copy of the Disposition and Probation Order, dated January 18, 2016, and filed with the Conduct Board.

[29] The sentencing judge recognized that the Subject Member was Métis and stated:

I have to make a side comment with regards to this. I have judged in Northern Manitoba out of The Pas for 10 years and certainly was part of the judiciary that dealt with Chemawawin for all those 10 years. And I know that what a damaged community that was. I also know how difficult it is for a Royal Canadian Mounted Police constable or corporal to in fact serve that area. It's a ... detachment that in fact was aboriginal based. And I do recognize that there's no way in which the corporal's family or wife could in fact live there, because it was so violent and dysfunctional that in fact that may well be an underlying factor as to why ultimately his, his marriage would break up. That happens with northern policing; it's all part and parcel of, of the difficulties of that type of job...So the fact that he receives from that community the sort of recommendation that I've seen here today reflects a corporal who in fact very seriously was a key authority figure of a very difficult community that needs all the help it can get from justice ... That talks about the standard of the man. [See pages 70-71 of the criminal sentencing transcript; *sic throughout*]

[30] The judge further stated:

[...] I take him at saying that it was a mistake of judgment, error of judgment, that in fact this wasn't considered, certainly at the time in which these, these guns were taken, as being a criminal act. Whether or not this is a standard practice in the past for, with other members is not really relevant other than perhaps it desensitized the corporal from realizing the mistake that was made. [See page 72 of the criminal sentencing transcript; *sic throughout*]

[31] The judge continued by stating the following:

Yes, it was criminal in nature, but it affected, it wasn't a theft from any particular victim. It wasn't an affect in which it dealt with any case whatsoever. And it was a situation where he basically made a error in judgment as it relates to, to the maintaining and keeping of the, the guns. These guns were not being used in any matter whatsoever that would be looked upon as criminal from what has been said. They were, they were stored properly and only as a result of a dispute that occurs as a result of the break up of his marriage that his comes to the attention of the authorities. That's not an excuse but it is a situation where it reflects the fact that this is at the lowest end of, of involvement. [See page 73 of transcript; *sic throughout*]

[32] As was reflected before the court in the sentencing hearing, the parties agree that the shotgun and rifle had a modest value of a few hundred dollars. There is some information in the record to suggest that the shotgun, which was still in good condition, was manufactured around

1980, and that the rifle, which was in much poorer condition and rusted, may date back to around 1920.

[33] Both of the allegations faced by the Subject Member are for “conduct likely to discredit the Force” under section 7.1 of the Code of Conduct, which is an appendix to the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[34] The RCMP External Review Committee (ERC) offered its analysis on the nature of conduct “not likely to discredit the Force” [ERC C-2015-001 (C-008), February 22, 2016], and I accept and adopt this approach.

[35] Paragraphs 92 and 93 of the ERC’s commentary provide:

Section 7 of the Code of Conduct requires that members behave in a manner that is not likely to discredit the Force. Section 7 differs from its predecessor provision found in subsection 39(1) of the prior Code of Conduct. Section 39(1) required that members not engage in any disgraceful or disorderly act or conduct that could bring discredit on the Force. The ERC and the Commissioner have stated that the test under section 39(1) asked whether 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 the conduct was (a) disgraceful and (b) sufficiently related to the employment situation so as to warrant discipline against the member. [...]

Section 7 of the Code of Conduct does not import the requirement of disgraceful or disorderly conduct in order to discredit the Force. However, the Force’s Code of Conduct Annotated Version (2014) largely adopts the test under the prior Code of Conduct for discreditable conduct under the new section 7, noting that “Discreditable behaviour is based on a test that considers how the reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the behaviour.” The language used in the Code of Conduct Annotated Version (2014) is consistent with the tests established in other police jurisdictions to establish that misconduct is “likely to discredit a police force”. As pointed out in P. Ceysens’ *Legal Aspects of Policing*, Volume 2, 2002 [...] “...where statutory language governing discreditable conduct addresses acting in a manner “likely to discredit the reputation of a police force”, actual discredit need not be established. Rather, the extent of the potential damage to the reputation and image of the service should the action become public knowledge is the

measure used to assess the misconduct. In conducting this assessment, the conduct must be considered against the reasonable expectations of the community.”

[36] In addition, the *CSO (Conduct)* at subsection 23(2) provides:

The Conduct Board may rely on a finding by a court in Canada that a member is guilty of an offence under an act of Parliament or of the legislature of a province to decide that the member has contravened the Code of Conduct.

As of January 18, 2016, the member had been found guilty of two charges of theft under \$5000.

[37] In the Subject Member’s written responses under subsection 15(3) of the *CSO (Conduct)*, he admits to both allegations. I find that the Subject Member’s theft of the two weapons as identified in the established facts, and which resulted in findings of guilt under the *Criminal Code*, RSC, 1985, c C-46, constitute discreditable conduct in contravention of section 7.1 of the Code of Conduct. Accordingly, I find that Allegations 1 and 2 are established.

## CONDUCT MEASURES

[38] In coming to my decision on proportionate conduct measures, I have specifically considered three provisions. Subsection 24(1) of the *CSO (Conduct)* states:

In determining the appropriate conduct measures to impose, the Conduct Board may examine any materials submitted by the parties and hear their oral submissions and any witness, including those referred to in subsection 18(1).

No witnesses testified in the allegation phase of this hearing, the phase encompassed by subsection 18(1). The Subject Member did testify under direct and cross-examination in the conduct measures phase.

[39] In addition, subsection 24(2) of the *CSO (Conduct)* states: “A Conduct Board must impose conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct.”

[40] Finally, section 11.15 of Chapter XII.I “Conduct”, from the RCMP *Administration Manual*, indicates:

Aggravating and mitigating circumstances must be considered in determining the appropriate conduct measures in relation to the subject member’s contravention of the Code of Conduct (See Appendix XII 1.20).

The appendix provides a fairly exhaustive list of potential aggravating and mitigating factors or circumstances.

[41] Therefore, in coming to my conduct measures decision, I have turned my mind to any aggravating and mitigating factors, even where they were not identified as such in the submissions made by counsel.

[42] The two RCMP Adjudication Board decisions provided by the Conduct Authority Representative (CAR), *Appropriate Officer for “O” Division and Cst. D.L.* (1998), 2 A.D. (3<sup>rd</sup>) 158 (*Cst. D.L.*), and *Appropriate Officer for “O” Division and Cst. J.P.L.*, (1998) 2 A.D. (3<sup>rd</sup>) 69 (*Cst. J.P.L.*) when appealed, were not sustained for time limitation reasons. Nevertheless, they emphasize the importance of proper exhibit handling and provide an overview of the great importance placed on exhibit handling within the RCMP. These cases provide telling and instructive language concerning the high priority given to the appropriate handling of exhibits within the RCMP.

[43] These cases also offer a list of factors that may be considered when an adjudication board must impose sanctions for misconduct. In no particular order, the list includes aggravating and mitigating factors, the consistency of discipline to be imposed, the seriousness of the misconduct, the length of the member’s service, any disciplinary record, what was then termed “correction, rehabilitation and deterrence”, the state of mind of the Subject Member, admissions of misconduct, and the Subject Member’s personal circumstances.

[44] It is clear from my review of the other cases brought to my attention by counsel (including cases of demotion, and in the recent conduct board decisions in *Commanding Officer for “K” Division and Cst. C.C.*, 2016 RCAD 3 (*Cst. C.C.*), and *Commanding Officer for “J” Division and Cst. J.C.*, 2016 RCAD 3 Corrected (*Cst. J.C.*), the imposition of significant

forfeitures of pay) that conduct measures decisions rise and fall on their individual facts. For serious contraventions, they depend primarily on whether or not there are sufficient mitigating factors for a non-dismissal outcome to be imposed.

[45] While the Subject Member's contraventions can be differentiated in the sense that each involves some unique facts, the two allegations are exactly the same type of serious discreditable conduct involving dishonesty.

[46] Counsel for both parties correctly indicate that the range of conduct measures for misconduct involving dishonesty spans from forfeiture of pay up to dismissal, with demotion in rank being a measure short of dismissal, which must be considered as part of the range.

[47] The Subject Member's two acts of dishonesty involve theft. A global forfeiture of pay on the lower end of the former 10-day scale would not appear proportionate where the dishonesty brings the Subject Member's integrity into disrepute.

### **Aggravating circumstances**

[48] The influence of the decision in *R. v McNeil*, 2009 SCC 3, on the Subject Member's ability to perform meaningful work in the future, and the limitations faced by the Force in his future postings and operational responsibilities, constitutes an aggravating factor. It is unclear from the Subject Member's testimony how disclosure to defence counsel of his admissions of guilt and conditional discharge affected his evidence as a Crown witness in a recent prosecution, but the Crown did call him to testify.

[49] The Subject Member's actions resulted in two criminal court findings of guilt. It is noteworthy that in a number of the dishonesty-related cases reviewed in the authorities presented to me, there was no criminal process or outcome as an aggravating factor. Nevertheless, loss of employment resulted in some cases even where criminal guilt was absent.

[50] It is important to remember that the thefts were for personal benefit, unlike the recent *Cst. C.C.* and *Cst. J.C.* cases, where the conduct board was prepared to differentiate between dishonesty which was to seek or to accrue benefit and those cases in which the dishonesty was

motivated by some sort of misdirected but genuine altruistic act. While neither stolen gun was new, they had more than a token monetary value.

[51] In answer to one of my questions during his main testimony, the Subject Member indicated that the rifle was stolen first, sometime in May of 2009. Based on the discussion the Subject Member described in his testimony, I find that the shotgun was stolen around June 24, 2009. Therefore, another aggravating aspect is that while there are two allegations of the same form of discreditable conduct, the Subject Member's dishonesty was not a singular act or an isolated episode.

[52] With respect to the removal of the shotgun from the Detachment on June 24, 2009, it may be too much to describe what took place as involving premeditation, but at the very least, the Subject Member made a very deliberate decision after he had confirmed or assessed, or had become fully aware, of the severity of the misconduct which he was about to perpetrate. This aggravating factor became apparent after hearing the testimony of the Subject Member in the conduct measures phase, where he stated:

Okay. It was the evening shift, and I was on patrol. I got to the office at [4 p.m.], I believe, or started at, and was in the office for about half an hour and then I went out on the road, and then I came back at about [7 or 8 p.m.], roughly and there were four or five guns on the table that were directly related to the 2000 file that the search warrant recovered the 12-gauge in and several others. I was talking with my corporal, which was his file.

[...]

And he told me that they're up for destruction. He was just getting the file ready to do that. I got up and they were just on the desk just like this, and I started looking at them, and I took the 12-gauge, said "That's a nice gun." We kind of started talking about taking it home or me being able to take it home and he says, "Ah, you know," and we talked about that wouldn't be right; it would be wrong to do that, you know, the trouble we'd get into and stuff like that. He came over to the desk from his office and he grabbed -- I believe it was a .303 or a 30-06, one or the other. I can't remember which it was. He picked it up and he looked at it, and I says, "That would be a good deer gun for shooting deer," because I know he's a hunter and he would go every year to shoot moose and hunting up in northern Manitoba. He says,

“Well, we’ll both go down in flames, I guess.” And I says, “Okay.” So we never we kind of talked about it and I went home with the shotgun and he left with the .303, I believe it was, and that was it. We never talked about it again. He never brought it up. [...]

[Transcript, September 22, 2016, pages 60-61; *sic throughout*]

[53] A further aggravating factor flows from my initial observation about how the *Cst. D.L.* and *Cst. J.P.L.* cases emphasize the importance of exhibit systems within the RCMP. The two cases confirm the long-standing, important institutional interest in proper exhibit handling. The misconduct was in breach of important policies and RCMP expectations aimed at protecting the primacy or fundamental importance of transparent, accurate and lawful handling of exhibits and items surrendered for destruction. Both allegations are under section 7.1 “Discreditable Conduct”, but the circumstances of the two acts of theft are aggravating given that they flouted the important interest in proper exhibit handling. I accept the CAR’s point that five years after completion of what is intensive procedural training at Depot, the importance of appropriate exhibit handling should still have been apparent to the Subject Member.

[54] Given how the weapons came to be under the RCMP’s control, how the Subject Member came in contact with the weapons while performing policing duties, and the secure policing workplace where the thefts took place, I consider the thefts to constitute, collectively, an abuse of public trust. This is a significant aggravating factor.

[55] In addition, upon the weapons being brought to the Subject Member’s home, there was what amounted to efforts at concealment after the fact. This was not the Subject Member concealing the existence of the stolen guns from his neighbours, or public officials, but the Subject Member making comments, at least to his oldest son, in aid of concealing where the weapons had come from.

[56] It was part of my findings of fact in the allegation phase that, for each weapon, there was a combination trigger lock, but I also consider it aggravating that the Subject Member did not maintain control over the two firearms once they were stowed at the family residence. What might have begun as an activity that was supervised by the Subject Member did not remain supervised. Clearly the weapons could not have been secured against all others if the oldest son



was later able to take them to his personal residence. This is the case whether or not combination trigger locks might prevent an accidental discharge by an untrained person accessing the two guns. Combination trigger locks alone were not sufficient to protect those weapons against theft.

[57] It was suggested as a mitigating factor that the guns were not used improperly, in the sense that they were not improperly pointed or improperly discharged. I do not consider this to be a mitigating factor, so much as a close call where, absent appropriate adult supervision, injury was quite possible.

### **Mitigating circumstances**

[58] There are certainly mitigating factors. The Subject Member has been an employee of the RCMP since 2004. He has no other discipline. In the parlance of many RCMP adjudication boards, service without prior discipline may serve as mitigating, in the sense that this period of service may serve as a “bank account” upon which a member can sometimes draw when misconduct occurs.

[59] However, and this is one of the complications in this matter, these two thefts occurred when the Subject Member had five years of service and was an experienced constable. Had the misconduct come to light soon after the misconduct took place, the bank of service would have been considerably less. Had the misconduct come to light soon after it took place, it is very unlikely that the Subject Member would have received his promotion to the rank of corporal.

[60] In terms of another mitigating factor, the potential for the member’s rehabilitation, these two thefts in 2009 appear isolated. From the letters of support, these thefts certainly appear to have been out of character. These letters were originally created for the purpose of consideration by the Provincial Court at sentencing.

[61] I have closely scrutinized the support letters written by:

- Mr. C, postmaster;
- Cst. D, who was mentored by the Subject Member in 2008 during the field training;

- Ms. B, who has known Cpl. Prettie since he was 10 years old;
- Ms. P, a lifelong family friend since 1976 who provided in the last paragraph of her letter particularly poignant comments concerning the Subject Member;
- Mr. P, a friend from early childhood;
- Mr. V, the Subject Member's brother-in-law,
- Ms. C, who met the Subject Member when he came to Easterville Detachment as a new corporal in July of 2012;
- Ms. H, a registered nurse who has known the Subject Member for 35 years; and,
- the Subject Member's mother.

[62] To the extent that these letters speak to the Subject Member's character, I have absolutely no issue with how they were received by the criminal trial judge, and I would echo his comments concerning the Subject Member's apparent good character. This is a mitigating factor.

[63] In terms of a further mitigating factor, the Subject Member did plead guilty in the criminal process in a timely manner; therefore, he accepted responsibility.

[64] In this venue, the conduct management system, the Subject Member has admitted to the two allegations. It is noted, however, that the Subject Member did not immediately cooperate with the investigation of these matters. He has instructed his MR to conduct this proceeding in a manner that minimized institutional resources. He has expressed remorse before the criminal sentencing judge and he has expressed genuine remorse to this Conduct Board.

[65] I must note that under the terms of his probation, letters of apology were ordered by the criminal trial judge. These were not tendered in this Conduct Board proceeding. While the Subject Member exhibited genuine remorse before the Conduct Board, I am obliged to observe that he may have taken greater care to direct his apology during his testimony to those RCMP

members and other individuals most affected by his misconduct. I would have included in that group those members of his family who were drawn into this matter.

[66] In terms of notable performance of his duties, I accept from the Subject Member's sworn testimony that he received some form of award of distinction from senior officers in "D" Division for his community policing initiative. Documentation for this award was not filed with the Conduct Board, and its exact nature is unclear.

[67] I note that the only RCMP employees providing positive information concerning the Subject Member's performance of his duties were a constable trained by the Subject Member, and a Detachment employee at the Subject Member's first posting as Detachment Non-Commissioned Officer (NCO). The absence of any performance assessments from the Subject Member's supervisors does not take away from the good character evidence established by the reference letters, but it leaves me unable to clearly determine how the Subject Member's performance of his day-to-day duties might constitute a significant mitigating factor. The Subject Member's willingness to perform Dive Team duties, demanding completion of specialized training and call-outs that were in addition to his duties as a General Duty constable, and later as a Detachment NCO, reflects a laudable commitment to the RCMP's policing services.

[68] The MR raised the Subject Member's Métis status as a mitigating factor, but did not offer any case law or argument in support of this point. In the circumstances of this case, I do not see criminal sentencing principles from *R. v. Gladue*, [1999] 1 SCR 688, as having a meaningful role in this matter. The fact that the Subject Member grew up and later served in communities where long guns were a part of daily life and used for hunting and land management purposes does not, in my view, require greater consideration of non-dismissal measures in my determination of proportionate conduct measures.

[69] However, while financial and other challenges predate the Subject Member's employment as a member of the RCMP, I wish to genuinely note his achievements despite an upbringing that was marked by a number of family challenges and tragedies. His achievement in

rising above these circumstances must be recognized, accounted for and considered greatly to his personal credit. As recounted in the support letters, the Subject Member has, through persistence and with humility, made a successful life for himself, and with his former wife, he has raised children who, based on the interview transcripts I could review in detail, value honesty even in emotional circumstances.

[70] I do not find that the breakdown in the Subject Member's marriage and the attendant stress and family discord that existed in 2015 extended back to the misconduct events of 2009. Therefore, the breakdown of the Subject Member's marriage is not a mitigating factor with respect to his misconduct. However, the Subject Member's willingness to serve in locations which prevented his family from living with him should be taken into account in terms of his clear commitment to the community.

[71] There was no testimony nor documentation filed with the Conduct Board indicating a medical or health-based cause or contributor for the Subject Member's actions with respect to the two guns in 2009. I find that there was no compromise of the Subject Member's judgment from any medical or health-based cause when the thefts occurred. The absence of such a mitigating factor is significant as it cannot be said that his behaviour was affected by an influence beyond his control.

[72] I find no issue of a lack of familiarity with required procedures for the destruction of weapons. This matter does not in any way involve any form of training issue.

[73] The trial judge, in his comments, used the term "desensitized". I do not accept any degree of desensitization with respect to proper exhibit handling as a mitigating factor. An RCMP member has, particularly with respect to weapons, extremely important personal and professional obligations to act at all times with honesty, integrity and in an accountable manner. Moreover, the fact that the Detachment at times fell into the practice of not using two members to witness and document the destruction of weapons does not mitigate the Subject Member's thefts.

[74] I do give credit to the Subject Member for providing his account of his discussion with Cpl. H. Providing this account, under oath, demonstrates, perhaps at a late hour in the

proceedings, his willingness to be accountable and to some degree his potential for rehabilitation. However, from his testimony, I must also conclude that there was consideration of his course of conduct being wrong and that course of conduct was taken anyway. To the extent that a mitigating factor may be seen when a member provides a fulsome and early account of his actions, in this case, the testimony of the Subject Member at the hearing only underlines that this information was relevant to a full appreciation of the circumstances much earlier in the process.

[75] More generally, the MR has suggested an obligation on me to adopt or respect the trial judge's findings or to provide reasons why I do not accept the trial judge's views. I prefer the contrary perspective offered by the CAR: the criminal and conduct processes are different processes, are for different purposes, and serve different interests. I should also emphasize that there were very different amounts of information available to the trial judge and to me. I do accept that the trial judge felt comfortable finding, in a manner similar to applying judicial notice, that there were enormous challenges that the Subject Member would have faced in the communities that he was policing and that it was an achievement in terms of him establishing himself as a successful authority figure in those communities. But the fact that the criminal trial judge considered the thefts to fall on the "low end of seriousness" does not significantly affect the seriousness I assign to the Subject Member's dishonesty as an employee. As is indicated throughout many RCMP disciplinary cases, members of the RCMP are held to a higher standard of ethical behaviour than most other types of employees, and of citizens in general.

[76] While the MR correctly points out that the value of the two guns was not great, no citizen was deprived of their property as ownership was abandoned (rifle) or resided in the Crown by forfeiture order (shotgun), no investigation or trial exhibit was stolen and thus no prosecution compromised, these mitigating factors do not outweigh the aggravating on-duty, on-site, deliberate nature of the theft of exhibits.

### **Determination of conduct measures**

[77] This matter involves the Subject Member's self-enrichment through his flagrant breach of important RCMP expectations surrounding the handling of exhibits and other items to be

destroyed by RCMP members. While the monetary value of the two guns may not have been great, and no private individual, investigation or prosecution was deprived of the property, the Subject Member enriched himself by stealing property that was not his to acquire.

[78] I find that the thefts represent a repudiation of a central element of the Subject Member's employment contract, and that they strike at the heart of public confidence in the Force. That the Subject Member could commit these acts of misconduct is a strong indication that he is unfit to continue the performance of policing duties. Nevertheless, in all of the circumstances the Subject Member's retention as an employee (even including his demotion to the rank of constable on a time- limited or unlimited basis) could still be a proportionate response if sufficiently mitigating factors existed.

[79] I do not find that sufficiently mitigating factors exist to support the Subject Member's retention as a member of the Force. I find that neither demotion nor any other combination of non- dismissal conduct measures is proportionate to the serious nature and circumstances of the contraventions given the aggravating circumstances identified.

[80] I carefully considered whether demotion was a proportionate conduct measure given the nature and circumstances of the two contraventions. I examined the RCMP adjudication board demotion cases submitted by the MR, *Appropriate Officer for "V" Division and Cpl. J.A.F.* (1999) 6 A.D. (3<sup>rd</sup>) 177 (*Cpl. J.A.F.*), *Appropriate Officer for "E" Division and Sgt. K.C.*, (2015) 15 A.D. (4<sup>th</sup>) 444 (*Sgt. K.C.*), and *Appropriate Officer for "E" Division and Cpl. A.G.*, (2016) A.D. (4<sup>th</sup>) 382 (*Cpl. A.G.*).

[81] The most recent of these cases, *Cpl. A.G.*, provides an excerpt from the decision of RCMP Commissioner Zaccardelli in (2001), 12 A.D. (3d) 184, indicating demotion should be considered to address egregious forms of behaviour which indicate lack of judgement, inability to act as an example and unprofessionalism that calls into question a member's suitability to maintain their level of responsibility. But the *Cpl. A.G.* case was not one where loss of employment was within the potential range of sanctions. Similarly, in the cases of *Sgt. K.C.* and

*Cpl. J.A.F.*, the Appropriate Officer only sought demotion, a sanction that implicitly operated as an important mitigating factor for *Cpl. J.A.F.* supporting a non-dismissal outcome.

[82] I view the Subject Member's misconduct, even if it was only revealed after five years of exemplary post event conduct, as going to the central question of his fitness to continue as a member of the RCMP. Stripping him of his present rank (while no doubt punitive financially) is not a proportionate response after assessing the mitigating and aggravating factors in this case. The need to forcefully deter acts of self-enriching dishonesty (particularly deliberate acts of workplace theft) is obvious. In the circumstances of the Subject Member's case, demotion represents an insufficient form of denunciation, lacking the severity needed for meaningful general deterrence. Members of the RCMP frequently perform important duties while working alone, and they must repeatedly do the right thing in the absence of supervision or the risk of imminent detection. Here, protecting the high ethical standards necessary for the RCMP to carry out its core policing functions, and protecting the vital public trust in the RCMP, justify the most severe conduct measure, and not simply a demotion of unlimited duration.

## CONCLUSION

[83] I hereby impose upon the Subject Member the following conduct measure: pursuant to paragraph 45(4)(b) of the *RCMP Act*, I direct the Subject Member to resign within 14 days of February 23, 2017; in default of resigning within 14 days of that date, the Subject Member is to be dismissed from the Force.

[84] These written reasons constitute the final decision of this Conduct Board. The Subject Member may appeal this decision as provided for in the *RCMP Act*.

_____ John A. McKinlay	July 31, 2017 _____ Date
---------------------------	--------------------------------

Conduct Board