

Protected A

ACMT File Number 201733820

2017 RCAD 6



ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF A CONDUCT PROCEEDING PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

Between:

Commanding Officer "F" Division

("Conduct Authority")

and

Sergeant Terence Wilson

Regimental Number 45633

("Subject Member")

Conduct Board Record of Decision

Assistant Commissioner Craig S. MacMillan

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October 26, 2017

Staff Sergeant Jonathon Hart, Conduct Authority Representative (“CAR”)

Mr. Gordon Campbell, Member Representative (“MR”)

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SUMMARY

The Subject Member admitted to discreditable conduct in relation to an impaired driving conviction. The Conduct Board accepted the joint proposal on measures consisting of a reprimand, a demotion from sergeant to constable, on-duty and off-duty testing for alcohol for two years, and a transfer to another work location.

RECORD OF DECISION

INTRODUCTION

[1] This decision arises from a hearing held in Ottawa, Ontario, on October 25, 2017, attended by the CAR, on behalf of the Conduct Authority, the MR, on behalf of the Subject Member, and the Subject Member. Teleconferencing from Yorkton, Saskatchewan, for interested persons was attempted, but it could not be provided.

ALLEGATION

[2] The Subject Member faces one allegation as outlined in the *Notice of Conduct Hearing* (dated June 26, 2017) (“Notice”):

On or about January 29, 2017, at or near Canora in the Province of Saskatchewan, [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*. [“Allegation”]

BACKGROUND

[3] After spending the evening at the local curling rink, during the early morning hours of January 29, 2017, the Subject Member was observed driving his personal motor vehicle, a pickup truck, in Canora, Saskatchewan, which was heavily damaged on the front end and almost inoperable due to a broken headlight, damaged bumper, flat tire, and one or more broken tie rods, causing the front wheels to point in different directions.

[4] Due to the damage to the vehicle, it could not be properly driven, and the Subject Member was observed to be driving in a very erratic manner for up to 30 minutes by various members of the public, who had been awakened by the noise coming from the vehicle as it bounced off snowbanks.

[5] Based on various complaints, members of the Canora/Sturgis Detachment attended the area and the Subject Member was arrested for impaired operation of a motor vehicle at 4:59 a.m.

[6] The Subject Member subsequently provided two samples of his breath and each one recorded a reading of 160 milligrams of alcohol per 100 milliliters of blood.

[7] The Conduct Authority suspended the Subject Member on January 31, 2017, and an investigation under the Code of Conduct was initiated (“Conduct Investigation”).

[8] On February 8, 2017, the Subject Member, in seeking medical assistance, entered into a Relapse Prevention Agreement (“RPA”) with the Acting Employment and Management Relations Officer of Depot and “F” Divisions (“EMRO”), which included completion of an eight week treatment program at the Edgewood Treatment Centre in British Columbia (“Program”), and other requirements and conditions, including abstinence from alcohol and mood-altering drugs, testing for alcohol and non-prescription mood altering drugs for two years (“Testing”), participation in aftercare treatment, maintenance of an attendance log signed by counselors and Alcoholics Anonymous Sponsors, participation in substance and psychiatric assessments and psychological treatment, among others.

[9] On February 17, 2017, the Subject Member pled guilty in the Provincial Court in Yorkton, Saskatchewan, to one count of operating a motor vehicle over .08, contrary to paragraph 253(1)(b) of the *Criminal Code*, R.S.C. 1985, c C-46 (“Conviction”). The Court sentenced the Subject Member to a one year driving prohibition, a one thousand dollar fine, and a three hundred dollar surcharge based on the Conviction.

[10] On February 20, 2017, the Subject Member was admitted to the Program.

[11] Upon completion of the Conduct Investigation, a report dated March 1, 2017 (“Conduct Report”), was provided to the Conduct Authority.

[12] On April 14, 2017, the Subject Member successfully completed the Program and was discharged, which resulted in the issuance of a detailed Discharge Summary Report, along with a detailed report from the Director of Medical Services at Edgewood (collectively, the “Discharge Report”), which contained recommendations on aftercare, relapse prevention and commitments

of the Subject Member, including his regular attendance at Alcoholics Anonymous meetings and one year of online aftercare.

[13] Upon returning to Saskatchewan, the Subject Member met with the “F” Division Health Services Officer (“HSO”), and requirements of the RPA were put into place, including the initiation of the Testing in the form of bi-weekly post-treatment drug and alcohol urine samples, which was approved by the EMRO on or about May 8, 2017.

[14] On May 25, 2017, the Subject Member’s healthcare provider, who was aware of the RPA, indicated that the Subject Member was fit for administrative duties only, which was approved by the HSO on May 30, 2017.

[15] On June 16, 2017, the Conduct Authority issued a *Notice to Designated Officer*, seeking a conduct hearing and the dismissal of the Subject Member, which, after the appointment of the Conduct Board, resulted in the further issuance of the Notice on June 26, 2017.

[16] The Particulars (which form part of the Notice), in addition to referencing the circumstances outlined above in relation to the Allegation, note that the Subject Member previously received informal discipline on July 15, 2013, for operating a motor vehicle while impaired by alcohol and/or drugs, which was imposed under the “old” discipline system (“Informal Discipline”).

[17] The CAR has also provided the Conduct Board with the decision of an Adjudication Board (dated October 3, 2016), under the “old” system, in which the Subject Member, based on a joint proposal, received a reprimand and forfeiture of six days’ pay for disgraceful conduct in relation to an incident involving excessive consumption of alcohol and a physical confrontation with his spouse in February 2014 (17 A.D. (4th) 31) (“Formal Discipline”).

ADMISSION

[18] The Subject Member has admitted to the Allegation and that it constitutes discreditable conduct.

DECISION

Merit

[19] The Conduct Board reviewed the Conduct Report, as well as the transcript pertaining to the Subject Member's appearance in Provincial Court, the Conviction, and the Certificate of Conviction.

[20] In order to determine whether conduct is discreditable and contrary to the Code of Conduct, the evidence must establish on a balance of probabilities: first, the identity of the member; second, the act or acts constituting the alleged conduct; and third that the conduct brings discredit on the RCMP (noting that after November 28, 2014, "discreditable" supplanted "disgraceful", but the analysis is fundamentally the same), which requires some nexus to employment.

[21] Whether or not conduct is discreditable is a matter of law, which must be determined in the specific context, and in view of all the circumstances of the case. Furthermore, the term "discreditable" must be given its natural and popular meaning applied in relation to the special obligations and duties of a profession (see *Hughes v. Architects Registration Council of the United Kingdom*, [1957] 2 All E.R. 436 (Q.B.) at 442 for an understanding of "disgraceful" in this regard).

[22] It is commonly understood that members of the RCMP, by the terms of their engagement, have voluntarily agreed to abide by a higher standard of conduct than that of the ordinary citizen, although this standard does not call for perfection (*The Queen v. White*, [1956] S.C.R. 154 at

158). Furthermore, this agreement to abide by a higher standard of conduct covers both off, as well as on- duty behaviour.

[23] The RCMP External Review Committee summarized the test in relation to discreditable conduct in the following manner: Would a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, be of the opinion that the conduct was discreditable? (ERC C-2015-001 (C-008), February 22, 2016, at paras. 92-93).

[24] It is not in question that the circumstances relating to the operation of a motor vehicle while impaired and/or the Conviction amount to a contravention of the Code of Conduct, given the role and position of the Subject Member as a police officer.

[25] The MR has advised that the Subject Member does not have a clear recollection of the events relating to his operation of the motor vehicle, but he accepts that the circumstances and Conviction amount to discreditable conduct, which, as noted, he admitted at the hearing.

[26] The Conduct Board finds that the Subject Member's conduct was discreditable and a contravention of section 7 of the Code of Conduct and, essentially, this case is primarily about determining the appropriate conduct measure(s) to be imposed.

Measures

[27] Prior to the hearing, the Conduct Board met briefly with both the CAR and the MR on two occasions, during which a number of procedural issues were addressed. Ultimately, it was indicated to the Conduct Board that the Subject Member would admit to the Allegation and that there would be a joint submission on measures, which would not include seeking dismissal.

[28] The CAR and the MR jointly proposed that the Subject Member receive: (1) a reprimand; (2) a demotion from the rank of sergeant to constable; (3) on- and off-duty testing for alcohol for a period of two years; and (4) a transfer.

[29] In support of the proposed measures, the MR provided the Conduct Board with a package containing medical information pertaining to the Subject Member, which included the Discharge Report, along with a *Performance and Evaluation and Learning Plan* (2015-2016) (“Evaluation”), and the CAR provided the Formal Discipline Case.

[30] As stated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 (“*Cook*”) (involving a unanimous majority of seven justices), when considering a joint submission on sanction, the public interest test must be applied, which is: whether the proposed sanction would bring the administration of justice into disrepute, or is otherwise contrary to the public interest (para. 32).

[31] In determining whether the public interest requires that a joint submission be rejected, the Supreme Court in *Cook* adopted a high threshold, stating (para. 34):

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 *Cook* dealt with a joint submission in the criminal context, the public interest test has previously been asserted and adopted in the professional discipline context (see *Rault v. Law Society (Saskatchewan)*, 2009 SKCA 81), including the former RCMP discipline system (see, 17 A.D. (4th) 88).

[33] Drinking and driving has been a highly publicized issue across Canada for many years, and it is responsible for the death and injury of thousands of Canadians every year; facts well known to police officers, which makes the Conviction so serious.

[34] Although the Subject Member did not kill or injure anyone (and there was only property damage), it does not lessen the fact that a very different outcome could have occurred and that the Subject Member made a gross error in both his professional and personal thinking in choosing to drive drunk, and it is not the first time.

[35] Historically, under the “old” discipline system, a finding of a contravention for impaired driving generally attracted a financial penalty of 7 to 10 days, in part because there was a maximum 10-day financial penalty before it became a matter of dismissal (see the *Conduct Measures Guide* (November 2014) at pp. 44-47 (“Guide”)).

[36] The Guide is explicit that a second conviction for impaired driving is cause for dismissal (p. 44). Indeed, the time may have arrived when an initial conviction for impaired driving will attract dismissal, given the seriousness of such misconduct in the current community and professional context, but that is something for consideration at another time.

[37] In my view, this is a dismissal case, particularly given that the Subject Member recently received Informal Discipline for impaired driving, and that he received Formal Discipline for a separate alcohol-fuelled incident just five months before the present Allegation.

[38] The aggravating factors here are many, including: (1) extreme impairment and driving at twice the legal limit; (2) driving in a very erratic fashion; (3) driving impaired when the Subject Member lived only 2.5 blocks from the curling rink; (4) drawing the attention of the public, several of whom knew it was the Subject Member driving and/or his vehicle; (5) putting other members in the position of having to investigate another member, a non-commissioned officer no less; (6) previous Informal Discipline for impaired driving (in 2013); (7) Formal Discipline (in 2016) for an alcohol-related incident; and (8) the Subject Member is a supervisor and senior member of the RCMP.

[39] In terms of mitigating factors, it is noted that the Subject Member: (1) apologized to the members who dealt with him; (2) promptly sought medical attention and treatment; (3) pled guilty promptly; (4) completed the Program; (5) has abstained, to date, from alcohol and has been subject to the Testing; (6) has admitted to the Allegation and sought an early resolution; (7) has taken responsibility for his actions; and (8) is a strong performer, well regarded by his superiors, colleagues and subordinates (as noted in the Evaluation).

[40] In normal circumstances, the aggravated ledger would still outweigh the mitigating ledger, as some would say too little too late, particularly given the previous Informal Discipline and Formal Discipline. However, it is clear that the Subject Member has now recognized that he has a problem and he has made a serious and extended commitment to rehabilitation.

[41] While dismissal is certainly within the expected range for the Allegation, this is in fact the very type of case that the changes to the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c R-10 (“*RCMP Act*”), pursuant to the Legislative Reform Initiative, were designed to grapple with, in terms of providing the flexibility to fashion significant measures, short of dismissal, where it is warranted.

[42] In this case, a demotion from Sergeant to Constable constitutes a loss in annual pay of \$16,665.00, which is a significant amount, not to mention the public and professional implications for the Subject Member of being demoted from a senior supervisory position.

[43] One reason the Subject Member’s dismissal is likely no longer being sought is that he has agreed to the imposition of the Testing as a measure, which will ensure that if the Subject Member begins using alcohol and/or tests positive, then there will be a basis for the Conduct Authority to initiate the conduct process for failing to comply with the direction of the Conduct Board and seek dismissal. This is a novel measure, being employed for the first time. The Conduct Authority has clearly considered that the Subject Member should be given one more chance, but under a very strict condition, as well as the severe measure of demotion of two ranks.

[44] This decision should not be understood as setting a precedent that dismissal will not attend an impaired driving conviction or contravention. The Conduct Authority has clearly considered that the Subject Member is deserving of one more opportunity in the specific circumstances of this case, as in most instances, a second impaired conviction will attract dismissal.

[45] Thus, the joint submission on measures is accepted, given that, in accordance with *Cook*, it would not lead a reasonable person, aware of all the circumstances, to believe that the proper functioning of the RCMP conduct system has broken down.

[46] The Conduct Board imposes:

1. A reprimand;
2. An indefinite demotion from the rank of Sergeant to Constable (at the highest pay increment of that level);
3. By agreement, submission to on-duty testing pursuant to the requirements stated in paragraph 3 of the RPA, wherein the Subject Member stated:

I agree to submit to testing for alcohol and non-prescription mood altering drugs until such time a minimum of two years of continuous abstinence has been attained. I understand that said testing will be conducted at the discretion of the Employment and Management Relations Officer (EMRO), and/or his/her delegate, during regular scheduled shifts with advance notice of at least one hour prior to testing.

4. By agreement, submission to off-duty testing, wherein the Subject Member has stated:

I agree to submit to reasonable testing for alcohol and non-prescription mood altering drugs up to and including February 8, 2019. I understand that said testing will be conducted at the discretion of the Employee Management Relations Officer (EMRO), and/or his/her delegate, between the hours of 9:00 a.m. and 6:00 p.m. while I am scheduled to be off-duty from my position as a regular member of the RCMP. The EMRO and I further agree that prior to any testing taking place, I will be provided with advance notice by telephone of at least one hour.

5. Transfer to another work location.

CONCLUSION

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



Craig S. MacMillan, Assistant Commissioner

October 26, 2017

Date

Conduct Board