

Protected A

ACMT File Number: 201633829

Citation: 2018 RCAD 6



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF A CONDUCT HEARING

PURSUANT TO THE

*ROYAL CANADIAN MOUNTED POLICE ACT*

BETWEEN:

Commanding Officer, "C" Division

Conduct Authority

and

Corporal René Gervais, Regimental Number 43620

Subject Member

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**Conduct Board Decision**

Superintendent Bernard Tremblay

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February 28, 2018

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Staff Sergeant Caroline Drolet and Ms. France Saint-Denis, Conduct Authority Representative,  
Staff Sergeant Brigitte Gauvin, Member Representative

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## SUMMARY

The Subject Member denied seven allegations of misconduct with respect to meal expenses claimed by the Subject Member and members under his supervision. The Conduct Board concluded the allegations were established and imposed, as conduct measures, a reprimand and demotion for an indefinite period to the rank of constable.

## **REASONS FOR DECISION**

### **INTRODUCTION**

[1] The Subject Member's conduct hearing was held in Montreal, Quebec, in May and August 2017. These reasons are a more detailed version of my oral decision finding that seven allegations of contravention of the *Code of Conduct of the Royal Canadian Mounted Police* (*Code of Conduct*) are established and imposing conduct measures.

### **ALLEGATIONS**

[2] The Notice of Conduct Hearing dated November 21, 2016 listed seven allegations. The Subject Member denied all seven allegations.

#### **Allegation 1**

Between December 14, 2015 and January 20, 2016 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties and the conduct of investigations, contrary to section 8.1 of the *Code of Conduct*.

#### *Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to "C" Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.
4. On December 14, 2015, while on surveillance, you purchased your lunch and dinner at restaurants located at [address], in the province of Quebec. These restaurants are within the headquarters area, i.e. within a radius of 16 kilometres from your assigned workplace.

5. On December 14, 2015, you ate your lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from your assigned workplace.
6. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.
7. Between December 15, 2015 and December 23, 2015, you received verbal instructions twice from your supervisor, Corporal [P. P.], on how to claim meal expenses while on surveillance in accordance with the *Travel Directive*, more specifically that if you were within the 16-kilometre radius, receipts were necessary.
8. Between December 14, 2015 and January 6, 2016, you submitted a reimbursement claim for these meals at the maximum rate set forth in the *Travel Directive* for meals purchased outside the headquarters area, i.e. outside the radius of 16 kilometres from the assigned workplace.
9. Between December 14, 2015 and January 6, 2016, to support your claim for these meals from December 14, 2015, you entered the following in the TEAM portal: “Lunch while on surveillance (outside 16 km)” and “Dinner on the road (outside 16 km)”.
10. Your notes from January 20, 2016 indicate that while on surveillance, the team searched for the subject outside the 16-kilometre radius and that you ate dinner at that time.
11. You knowingly provided false information in a meal expense claim for undeserved financial gain.

## **Allegation 2**

Between December 14, 2015 and December 21, 2015 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] gave unlawful directives, contrary to section 3.3 of the *Code of Conduct*.

### *Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “C” Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.

4. You were the supervisor of Constables [C.L.], [K.M.] and [F.M.], who were also members of the surveillance team.
5. You knew that on December 14, 2015, while on surveillance, the members of the surveillance team purchased their lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from their assigned workplace.
6. You knew that on December 14, 2015, while on surveillance, the members of the surveillance team ate their lunch and dinner within the headquarters area,  
i.e. within a radius of 16 kilometres from their assigned workplace.
7. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.
8. On or around December 15, 2015, you told all members of the surveillance team from December 14, 2015 under your supervision, i.e. Constables [C.L.], [F.M.], [K.M.], [J.-P.C.], [J.L.], [J.P.] and [É.P.], that their meal claims for surveillance on December 14, 2015 all had to be the same and submitted at the maximum rate set forth in the *Travel Directive* for meals outside the headquarters area, i.e. outside the radius of 16 kilometres from their assigned workplace.
9. In the days following December 14, 2015, you told Constable [F.M.] to claim his meal at the maximum rate because he was outside the 16-kilometre radius and that it was easier to claim the maximum amount while on surveillance.
10. On December 21, 2015, you told Constable [J.-P.C.], who asked you about how to claim his meals while on surveillance on December 14, 2015: “Yes, [P.P.] told us to do it... [P. P.] is backing us.” You were adamant that the meals be claimed at the maximum rate.
11. Your directives were contrary to the provisions set forth in the *Travel Directive* and did not respect the Force’s values of honesty and integrity.

### **Allegation 3**

On or around January 6 and 12, 2016 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] failed to provide complete, accurate and timely accounts pertaining to the actions of employees under his supervision, contrary to section 8.1 of the Code of Conduct.

### *Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “C” Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.
4. You were the supervisor of Constables [C.L.], [K.M.] and [F.M.], who were also members of the surveillance team.
5. You knew that on December 14, 2015, while on surveillance, the members of the surveillance team purchased their lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from their assigned workplace.
6. You knew that on December 14, 2015, while on surveillance, the members of the surveillance team ate their lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from their assigned workplace.
7. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.
8. Between December 15, 2015 and December 23, 2015, you received verbal instructions twice from your supervisor, Corporal [P. P.], on how to claim meal expenses while on surveillance in accordance with the *Travel Directive*, more specifically that if you were within the 16-kilometre radius, receipts were necessary.
9. You recommended the payment of meal claims for lunch and dinner submitted in the TEAM portal by Constables [C.L.] and [F.M.] at the maximum rate for meals outside the headquarters area, i.e. outside the radius of 16 kilometres from their assigned workplace.
10. You recommended the payment of meal claims containing false information, which misled Sergeant [P.Q.] and did not provide complete, detailed accounts of the actions of these members, who worked under your supervision, for surveillance conducted on December 14, 2015.

#### **Allegation 4**

Between December 14, 2015 and January 6, 2016 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] gave unlawful directives, contrary to section 3.3 of the *Code of Conduct*.

*Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “C” Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.
4. You were the supervisor of Constable [C.L.], who was also a member of the surveillance team.
5. You knew that on December 14, 2015, while on surveillance, [C.L.] purchased her lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from her assigned workplace.
6. You knew that on December 14, 2015, while on surveillance, [C.L.] ate her lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from her assigned workplace.
7. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.
8. Between December 15, 2015 and December 23, 2015, you received verbal instructions twice from your supervisor, Corporal [P. P.], on how to claim meal expenses while on surveillance in accordance with the *Travel Directive*, more specifically that if you were within the 16-kilometre radius, receipts were necessary.
9. You asked Constable [C.L.] to change the claim for meals while on surveillance on December 14, 2015 she submitted with receipts for lunch and dinner within the headquarters area, i.e. within 16 kilometres of her assigned workplace, and to submit instead a meal claim at the maximum rate set forth in the *Travel Directive* for meals outside the radius of 16 kilometres from her workplace.
10. Your directive was contrary to the provisions set forth in the *Travel Directive* and did not respect the Force’s values of honesty and integrity.

**Allegation 5**

On or around January 6, 2016 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the



performance of his duties and the conduct of investigations, contrary to section 8.1 of the *Code of Conduct*.

*Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “C” Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.
4. On December 14, 2015, while on surveillance, you purchased your lunch and dinner at restaurants located at [address], in the province of Quebec. These restaurants are within the headquarters area, i.e. within a radius of 16 kilometres from your assigned workplace.
5. On December 14, 2015, you ate your lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from your assigned workplace.
6. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.
7. Between December 15, 2015 and December 23, 2015, you received verbal instructions twice from your supervisor, Corporal [P. P.], on how to claim meal expenses while on surveillance in accordance with the *Travel Directive*, more specifically that if you were within the 16-kilometre radius, receipts were necessary.
8. Between December 14, 2015 and January 6, 2016, you submitted a reimbursement claim for these meals at the maximum rate set forth in the *Travel Directive* for meals purchased outside the headquarters area, i.e. outside the radius of 16 kilometres from the assigned workplace.
9. You misled Sergeant [P.Q.] by telling him, in support of your meal claim for surveillance on December 14, 2015 at the maximum rate set forth in the *Travel Directive* for meals outside the radius of 16 kilometres from your assigned workplace, that you had tried to find the subject outside this area, when in fact you had returned within this radius to purchase and eat your meals.

**Allegation 6**

On or around January 20, 2016 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties and the conduct of investigations, contrary to section 8.1 of the *Code of Conduct*.

*Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “C” Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.
4. You were the supervisor of Constables [C.L.], [K.M.] and [F.M.], who were also members of the surveillance team.
5. You knew that on December 14, 2015, while on surveillance, the members of the surveillance team purchased their lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from their assigned workplace.
6. You knew that on December 14, 2015, while on surveillance, the members of the surveillance team ate their lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from their assigned workplace.
7. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.
8. On or around December 15, 2015, you told all members of the surveillance team from December 14, 2015 under your supervision, i.e. Constables [C.L.], [F.M.], [K.M.], [J.-P.C.], [J.L.], [J.P.] and [É.P.], that their meal claims for surveillance on December 14, 2015 all had to be the same and submitted at the maximum rate set forth in the *Travel Directive* for meals outside the headquarters area, i.e. outside the radius of 16 kilometres from their assigned workplace.
9. In the days following December 14, 2015, you told Constable [F.M.] to claim his meal at the maximum rate because he was outside the 16-kilometre radius and that it was easier to claim the maximum amount while on surveillance.

10. On December 21, 2015, you told Constable [J.-P.C.], who asked you about how to claim his meals while on surveillance on December 14, 2015: “Yes, [P.P.] told us to do it... [P. P.] is backing us.” You were adamant that the meals be claimed at the maximum rate.

11. On or around January 20, 2016, you told Sergeant [P.Q.] that you had nothing to do with the meal claims submitted by members under your supervision at the maximum rate set forth in the *Travel Directive* for meals outside the radius of 16 kilometres from their assigned workplace, when in fact the members were not outside this radius when they purchased and ate these meals.

### **Allegation 7**

On or around January 20, 2016 inclusively, at or near Dorval, in the province of Quebec, [the Subject Member] failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties and the conduct of investigations, contrary to section 8.1 of the *Code of Conduct*.

#### *Particulars*

1. During this period, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “C” Division, Airport Federal Investigation Section (AFIS), in the province of Quebec.
2. Your assigned workplace was the AFIS office located at [address], in the province of Quebec.
3. On December 14, 2015, you were in charge and a member of a surveillance team in a confidential drug trafficking case. The residence of the surveillance target was located within 16 kilometres of the AFIS.
4. You were the supervisor of Constable [C.L.], who was also a member of the surveillance team.
5. You knew that on December 14, 2015, while on surveillance, [C.L.] purchased her lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from her assigned workplace.
6. You knew that on December 14, 2015, while on surveillance, [C.L.] ate her lunch and dinner within the headquarters area, i.e. within a radius of 16 kilometres from her assigned workplace.
7. You never read the provisions set forth in the *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive (Travel Directive)*.

8. In early January 2016, you told Constable [C.L.] that Corporal [P.P.] had apparently authorized the submission of meal claims for surveillance on December 14, 2015 at the maximum rate.

9. On or around January 20, 2016, you told Corporal [P.P.] that you never told Constable [C.L.] that Corporal [P.P.] had authorized submission of claims at the maximum rate for meals while on surveillance, regardless of whether the meals were eaten inside or outside the radius of 16 kilometres from the assigned workplace.

[*verbatim*]

[3] As set forth in the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 [*RCMP Act*] and the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, all relevant material, including the Subject Member's response, was sent to me before the hearing. Ten (10) RCMP members, including the Subject Member, testified at the hearing.

## ANALYSIS

[4] The *RCMP Financial Management Manual*, Chapter 9.8 – *Travel Directive* states that when a member travels within the headquarters area, i.e. within a radius of 16 kilometres (km) from the workplace, meal expenses, based on receipts, may be reimbursed. When a member travels outside the headquarters area, so more than 16 km from the workplace, meals are reimbursed at a fixed rate and need not be supported by receipts.

[5] For example, if a member working within the 16-km radius spends \$9.00 on dinner, the member must submit a receipt for reimbursement of the \$9.00. However, if the member spends \$9.00 on dinner outside the 16-km radius, the member may claim reimbursement of the meal at the fixed rate of \$47.35.

[6] In December 2015 and January 2016, the Subject Member worked at the AFIS in "C" Division. He was in charge and a member of a surveillance team in an investigation, the target of which lived less than 16 km from the team's workplace.

[7] At the time, the Subject Member had never read the *Travel Directive*, but had several years of surveillance experience. He was used to claiming meals without receipts and getting reimbursed at the maximum rate, even if members left the headquarters area for a short period of time and returned later to purchase and eat their meals within the headquarters area.

[8] On December 14, 2015, while on surveillance with his team, the Subject Member remained within the 16-km radius until lunch, which he ate within the headquarters area. In the late afternoon, he briefly left the 16-km radius, as he searched for the surveillance subject. He then returned within the 16-km radius, where he purchased and ate dinner.

[9] The Subject Member knew the members of the surveillance team had purchased and eaten both lunch and dinner within the 16-km radius.

[10] The next day, at a team meeting about surveillance on December 14, team members wanted to know if they should claim the actual cost of their meals or claim them at the maximum rate. The Subject Member told them they all had to do submit identical claims, since in his experience, it is often difficult during surveillance to know who is and who is not within the 16-km radius, making things difficult to manage. He said team members were to claim their meals at the maximum rate, outside the 16-km radius, as soon as they leave the airport parking lot.

[11] The Subject Member assumed all members of the surveillance team had left the 16-km radius on December 14, so he told them to claim their meals at the maximum rate.

[12] Noticing that some of the members seemed to question his interpretation of the *Travel Directive*, the Subject Member asked Corporal P.P., the Acting NCO i/c AFIS, to explain in general terms how the 16-km radius rule applies to surveillance. The Subject Member was adamant a member can claim meals at the maximum rate while on surveillance, whether or not he/she leaves the 16-km radius. Corporal P.P. explained that meal expenses incurred within the 16-km radius must be supported by receipts, whereas no receipts are required for meals outside

the 16-km radius. The Subject Member said it is difficult to manage things this way and that it was done differently in a previous investigation.

[13] Corporal P.P. raised the matter with Sergeant P.Q., who had been in charge of the previous investigation. He then told the Subject Member that according to Sergeant P.Q., meals within the 16-km radius during surveillance had not been reimbursed at the maximum rate in the previous investigation.

[14] After this conversation, the Subject Member told his team all their claims were to be the same and submitted at the maximum rate.

[15] Constable C.L. had prepared her claim based on the actual cost of her meals and attached her receipts. The Subject Member told her to remove the receipts and to prepare the claim at the maximum rate, so all claims for the team would be the same. He told her he had spoke to Corporal P.P. and that he was in agreement. Constable C.L. was skeptical, but filled out a new claim at the maximum rate, with no receipts.

[16] Constable É.P. heard the Subject Member tell Constables C. L. and F.M. that he had spoken to Corporal P.P. and that if a member is not physically at the airport, he/she can claim meals at the maximum rate, without receipts. As the Subject Member was leaving the office, Constable É.P. asked him to confirm what he had just said. The Subject Member repeated the same thing. Constable É.P. did not understand why Corporal P.P. would have told the Subject Member to disregard policy. Despite the Subject Member's instructions, Constable É.P. claimed the actual cost of his meals from December 14, because he knew he had not left the 16-km radius.

[17] On December 14, 2015, Constable J.-P.C. had dinner within the 16-km radius and kept his receipt. Based on his understanding of the *Travel Directive*, he was to claim the actual cost of his meal. On December 21, 2015, Constable J.-P.C. was uncomfortable because he did not want to go against what the Subject's Member had said to do. He went to talk to him about it. The

Subject Member told him to claim his meal at the maximum rate, because all the team's claims had to be the same. Constable J.-P.C. asked him if he was sure he should be claiming at the maximum rate, and the Subject Member said yes, it was fine, he had discussed the matter with Corporal P.P., who was backing them. Constable J.-P.C. did as he was told and claimed at the maximum rate.

[18] On December 29, 2015, the Subject Member prepared his own claim for lunch and dinner on December 14. He claimed the maximum rate, without receipts, indicating he had eaten while on the road, during surveillance outside the 16-km radius. According to the Subject Member, his claim for lunch at the fixed rate was a simple cut-and-paste mistake. This is not credible, since he had been adamant with Corporal P.P. that meals were always to be reimbursed at the maximum rate while on surveillance and he had told Constables J.-P.C., C.L. and É. P. that meals are reimbursed at the maximum rate as soon as a member leaves the airport.

[19] When the Subject Member, as supervisor, received the members' claims at the maximum rate, he recommended the meal expenses be reimbursed. The electronic system then sent the claims to Sergeant P.Q., who had the authority to either approve or deny reimbursement.

[20] On January 4, 2016, while reviewing meal expense claims for surveillance on December 14, Sergeant P.Q. noticed a major discrepancy between the claims of two members who rode in the same car: one claimed the actual expense of meals with receipts within the 16-km radius and the other claimed the meals at the maximum rate without receipts, outside the 16-km radius.

[21] On January 6, 2016, Sergeant P.Q. asked the Subject Member to explain. The Subject Member said the team has lost sight of the surveillance subject at around 17:20 HRS and had tried to locate him outside the 16-km radius. This was corroborated by Constable K.M., who believes he left the 16-km radius in search of the subject. Sergeant P.Q., skeptical, approved the claim but continued to look into the matter.

[22] On January 19, 2016, at a meeting, Sergeant P.Q. told members of the surveillance team he had some doubts about the meal claims from December 14. He reminded them they have to provide receipts for meals within the 16-km radius and that they have to follow the rules.

[23] On January 20, 2016, Constable C.L. met with Corporal P.P. She told him the Subject Member had said all meal claims for surveillance on December 14 had to be the same and submitted at the maximum rate. She added the Subject Member had said Corporal P.P. had approved it.

[24] Corporal P.P. then met with the Subject Member and asked him to explain. During this discussion, the Subject Member said he never said any such thing to Constable C.L. He added that he remembered his discussion with Corporal P.P. in December and that meals within the 16-km radius required receipts, and that meals outside the 16-km radius did not.

[25] Later on January 20, 2016, the Subject Member and Sergeant P.Q. discussed the team's meal claims. The Subject Member said he had nothing to do with changes by some members to their claims. He said he knew the policy by heart – receipts are required within the 16-km and not required outside the 16-km radius – then stormed out.

[26] The Subject Member is not very credible. He said he never would have gone against Corporal P.P. and denied telling the members under his supervision that meals on surveillance are to be claimed at the maximum rate as soon as they leave the airport. He said the inaccuracies in his meal claim and his recommendation of lunch claims at the maximum rate were honest mistakes.

[27] If he believed he was indeed applying the rule as it had been explained to him by Corporal P.P., he would have admitted telling Constable C.L. to change her claim and would have told Corporal P.P. why he had asked her to do so. The Subject Member deliberately submitted a false claim and recommended the reimbursement of inaccurate claims by members under his supervision. I do not believe him when he says it was an honest mistake. He was



adamant with Corporal P.P., on December 15, that claims were always to be submitted at the maximum rate. When Corporal P.P. told him claims were to be in accordance with policy, the Subject Member told Corporal P.P. he understood, but did as he pleased anyways. Then when he got caught, he lied to avoid reprisals. To investigators and at the hearing, he said he did not remember saying he had nothing to do with some members changing their claims to submit them at the fixed rate.

[28] Based on the testimony of the other members, including Constables C.L., J.-P.C. and É.P., Corporal P.P. and Sergeant P.Q., I consider the evidence provided by the Subject Member to be of little value.

## **DECISION ON THE ALLEGATIONS**

[29] Taking into account the Subject Member's admission and the facts presented to me, I am satisfied that the member's identity and the acts constituting the alleged misconduct have been established on a balance of probabilities for the seven allegations.

### **Allegation 1 – Submitting an inaccurate meal claim**

[30] The Conduct Authority proved the particulars of Allegation 1, except for paragraph 11, i.e. that the Subject Member was seeking undeserved financial gain.

[31] As alleged, the evidence showed the Subject Member contravened s. 8.1 of the *Code of Conduct*. He knew he was supposed to claim the actual cost of his meals, as Corporal P.P. had told him the old way of doing things was not permitted. Yet the Subject Member falsely indicated in his claim that he had eaten outside the 16-km radius and claimed the fixed rate.

[32] Allegation 1 is established.

### **Allegation 2 – Giving unlawful directives to his team**

[33] The Conduct Authority proved the particulars of Allegation 2.

[34] As alleged, the evidence showed the Subject Member contravened s. 3.3 of the *Code of Conduct*. He knew the members were supposed to claim actual meal expenses incurred within the 16-km radius, as Corporal P.P. had told him the old way of doing things was not permitted. Yet the Subject Member told the members of his team they all had to claim their meals at the fixed rate, without receipts.

[35] Allegation 2 is established.

**Allegation 3 – Recommending the reimbursement of his team’s meal claims**

[36] The Conduct Authority proved the particulars of Allegation 3.

[37] As alleged, the evidence showed the Subject Member contravened s. 8.1 of the *Code of Conduct*. He knew the members were supposed to claim actual meal expenses incurred within the 16-km radius. Yet the Subject Member recommended his superior approve the reimbursement of meals claimed at the fixed rate, misleading him.

[38] Allegation 3 is established.

**Allegation 4 – Directing Constable C.L. to change her claim**

[39] The Conduct Authority proved the particulars of Allegation 4.

[40] As alleged, the evidence showed the Subject Member contravened s. 3.3 of the *Code of Conduct*. He knew the members were supposed to claim actual meal expenses incurred within the 16-km radius. When he noticed that Constable C.L. had claimed her actual meal expenses, with receipts, he told her to remove the receipts and resubmit her claim at the fixed rate.

[41] Allegation 4 is established.

**Allegation 5 – Making a false statement to Sergeant P.Q. about his claim**

[42] The Conduct Authority proved the particulars of Allegation 5.

[43] As alleged, the evidence showed the Subject Member contravened s. 8.1 of the *Code of Conduct*. He knew he was supposed to claim actual meal expenses incurred within the 16-km radius. Yet he claimed the maximum rate, without receipts, indicating he had eaten lunch and dinner on the road, during surveillance outside the 16-km radius. When Sergeant P.Q. questioned him about the claim, the Subject Member told him he claimed the fixed rate because he was outside the 16-km radius.

[44] The Subject Member later said his lunch claim was a simple cut-and-paste mistake. But given that he had told Constable É.P. that members are always to claim the maximum rate when they leave the airport, his explanation is not credible.

[45] Allegation 5 is established.

**Allegation 6 – Making a false statement to Sergeant P.Q. about his team’s claims**

[46] The Conduct Authority proved the particulars of Allegation 6.

[47] As alleged, the evidence showed the Subject Member contravened s. 8.1 of the *Code of Conduct*. He told members of his team to claim their meals at the fixed rate, regardless of the 16-km radius rule. When Sergeant P.Q. asked him about these claims, the Subject Member said he had nothing to do with the fact that some members had claimed their meals at the fixed rate, even though they had not left the 16-km radius. For the same reasons as set forth above, I do not believe the Subject Member’s explanation.

[48] Allegation 6 is established.

**Allegation 7 – Making a false statement to Corporal P.P. about what he said to Constable C.L.**

[49] The Conduct Authority proved the particulars of Allegation 7.

[50] As alleged, the evidence showed the Subject Member contravened s. 8.1 of the *Code of Conduct*. He knew the members were supposed to claim actual meal expenses incurred within the 16-km radius, as Corporal P.P. had told him the old way of doing things was not permitted. Yet the Subject Member told Constable C.L. that Corporal P.P. had authorized the claims at the fixed rate, even for expenses incurred within the 16-km radius. When Corporal P.P. confronted the Subject Member, the latter denied having said anything of the sort to Constable C.L. Here again, I do not believe the explanation provided by the Subject Member.

[51] Allegation 7 is established.

[52] The Subject Member's conduct was so closely related to his duties and functions as a member of the RCMP that it justifies disciplinary action.

## **CONDUCT MEASURES**

[53] The Conduct Authority Representative (CAR) was seeking dismissal or direction to resign from the Force within 14 days. For her part, the Member Representative (MR) was seeking a reprimand and a financial penalty of 25 days of the member's pay.

[54] The MR submitted letters of support, letters from a psychologist and the Subject Member's performance assessments.

[55] At issue here are the honesty and integrity of a police officer. Considering the circumstances, jurisprudence, the many RCMP Adjudication Board decisions submitted by the parties and the *Conduct Measures Guide*, the range of appropriate conduct measures extends to dismissal.

[56] Various aggravating factors support the imposition of harsh measures.

- The Subject Member's dishonest acts were deliberate. He did not agree with the directives he had been given by Corporal P.P., so took it upon himself to simply ignore them and do as he pleased.
- The Subject Member is a supervisor at the rank of corporal. He was in charge of the surveillance team.
- The Subject Member lied to surveillance team members. The integrity of some team members was later called into question because they had done as they were told.
- The Subject Member has recent prior discipline. At his previous posting, he engaged in harassing behaviour towards a constable and openly criticized his colleagues and superiors. He was directed to attend special training and it was recommended that he be transferred to another position. The decision to impose these measures was served on him only nine months before the incidents now under review.
- As a result of the Supreme Court's decision in *R. v. McNeil*, [2009] 1 SCR 66, 2009 SCC 3 (CanLII), the Subject Member's dishonest behaviour may now be disclosed if he is involved in an investigation, significantly limiting the positions to which "C" Division may wish to transfer him in the future.

[57] There were also some mitigating factors.

- This was an isolated incident in over 23 years of service (in 2015) with the RCMP.
- The Subject Member's performance assessments are very positive. In 2015-16,
- Corporal P.P. described him as an upright member who can be trusted. In 2014-15, Sergeant P.Q. said he had a positive attitude, he was reliable, he was well regarded by his colleagues and he was an asset to the AFIS. His assessments from 2005 to 2008 praise his perseverance and integrity.

- In several letters of recommendation, supervisors and colleagues describe the Subject Members in a very positive light.
- The initial report from his psychologist, which is undated, states he was experiencing high levels of stress and seemed to be in extreme psychological distress due to allegations of harassment made against him in 2013. According to the second report, dated December 18, 2016, he was also facing disciplinary action and the stress of his professional situation continued to threaten his mental health. These reports are of limited value, as they provide no diagnosis and make no connection between the stress he was experiencing and the conduct-related incidents. In addition, the psychologist's curriculum vitae was not submitted.
- The Subject Member addressed the Conduct Board. He acknowledged his misconduct and apologized for bringing discredit on the RCMP. He said he was proud to be a member of the Force and was looking forward to returning to work. He said he was still passionate and dedicated, and asked the Conduct Board to give him the chance to finish his career with honour and integrity.
- There is also the manner in which meal claims were done in the past, which I will get to later.

[58] Paragraph 36.2(e) of the *RCMP Act* provides for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

[59] RCMP members must be able to rely on their superiors, and superiors must be able to rely on the word of members under their command. The Subject Member failed on both levels. On the one hand, he failed the members of his surveillance team by telling them that his superior had authorized them to claim meal expenses to which they were not entitled. And on the other hand, he failed his superiors by submitting an inaccurate meal claim of his own, by

recommending the approval of the other members' inaccurate meal claims and by lying to them when he said he never told members to change their claims and submit them at a higher rate.

[60] I took note of the past practice described by Constable K.M. and Staff Sergeants R.G. and C.K. In previous investigations, since members who did surveillance were regularly outside the 16-km radius, their managers had decided that meal claims would always be authorized at the fixed rate. However, the Subject Member had been informed that this practice was not permitted at his new posting. Yet he chose to ignore the directive of his superiors. And he lied to them when they questioned him about meal claims submitted by members of his team.

[61] The Subject Member demonstrated a lack of honesty and integrity. The MR referred to a number of RCMP Adjudication Board decisions in which members were able to keep their jobs despite their lack of honesty and integrity. As stated by the RCMP External Review Committee in *Cormier* (ERC, C-2016-005, paragraph 157), dismissal is justified when a police officer's misconduct is such that rehabilitation is not an option and the officer is no longer fit to perform his/her duties.

[62] In the case at hand, the letters of recommendation and Subject Member's performance evaluations are key factors. Also, despite the obvious monetary benefit, I do not believe this is what motivated him to tell his members that all of their meal claims had to be the same, at the maximum rate. It was because claims are easier to manage when he does not have to submit receipts for his own meal expenses, or check other members' receipts before recommending that their claims be approved. There is no evidence that he told anyone they all had to claim the same thing to get more money. This is not a case of collusion for unjust financial enrichment. I also noted that his misconduct pertains to the administrative, internal affairs of the RCMP.

[63] The Subject Member's many years of good service and the particular context of how meal claims were submitted in the past tip the scales in his favour and will avoid him being directed to resign from the Force.

[64] The fact remains that his misconduct is serious. His cavalier management of public funds and lack of accountability in denying having ever told members of his team to change their claims significantly hinder his ability to be a supervisor. Demotion, within the range of possible conduct measures, reflects the seriousness of the misconduct yet allows the Subject Member to continue his career in the RCMP. It will have a deterrent effect on the Subject Member and any member who may be tempted to behave in a similar manner.

## CONCLUSION

[65] Having considered the nature of the misconduct, the mitigating and aggravating factors, the cases submitted and the *Conduct Measures Guide*, I impose globally against the Subject Member, for all seven allegations, conduct measures consisting of:

- a reprimand;
- the immediate demotion for an indefinite period to the rank of constable.

[66] This decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of this decision on the Subject Member (s. 45.11 of the *RCMP Act*; s. 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289).

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Bernard Tremblay, Supt.	February 28, 2018
	Date

Conduct Committee