



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

*ROYAL CANADIAN MOUNTED POLICE ACT*

BETWEEN:

**Commanding Officer, “National” Division**

(Conduct Authority / Respondent)

and

**Sergeant Regan Douglas**  
Regimental Number 47743

(Subject Member / Applicant)

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**Decision on Motion for Abuse of Process – Unreasonable Delay**

Section 17 of the *Commissioner’s Standing Orders (Conduct)*

Inspector Al Ramey, Conduct Board

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February 21, 2018

Staff Sergeant Jonathon Hart, Conduct Authority Representative

Mr. David Jewitt, Jewitt McLuckie & Associates LLP, Member Representative

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## INTRODUCTION

[1] The Applicant is facing an allegation of a contravention of the RCMP Code of Conduct. The Applicant asks that the Code of Conduct allegation against her be stayed on a preliminary basis as it was filed in contravention of the one-year time limitation set out in subsection 41(2) of the *Royal Canadian Mounted Police, 2014*, SOR/2014-281 [*RCMP Act*].

[2] These written reasons confirm my oral decision rendered before the parties at the motion hearing on February 9, 2018.

## FACTUAL AND PROCEDURAL BACKGROUND

[3] On March 29, 2016, Assistant Commissioner (A/Commr.) X ordered an investigation into a possible contravention of the RCMP Code of Conduct by the Applicant. On September 24, 2016, the materials package, which includes the *Notice of Conduct Hearing* and the Investigation Report, was signed by A/Commr. X and, on September 30, 2016, a copy was served on the Applicant. The Applicant states that the Conduct Authority (CA) began his investigation into the matter on or about November 26, 2014; since the one-year limitation period set out in subsection 41(2) of the *RCMP Act* had lapsed, the CA is out of time.

[4] A hearing of this motion occurred from February 5 to 9, 2018, where several witnesses were heard:

- a. Staff Sergeant (S/Sgt.) Y, Non-Commissioned Officer (NCO) in Charge (i/c) Explosive Training Unit (ETU) and acting Officer in Charge (OIC) of Training at the Canadian Police College (CPC), retired
- b. Chief Superintendent (C/Supt.) Z, former Employee Management Relations Officer of 'National' Division
- c. Superintendent (Supt.) A, Director of Learning at the CPC, retired
- d. C/Supt. B, former Director General of the CPC

e. C/Supt. C, former Commanding Officer of 'National' Division

[5] Subsection 41(2) of the *RCMP Act* reads:

A hearing shall not be initiated by a conduct authority in respect of an alleged contravention of a provision of the Code of Conduct by a member after the expiry of one year from the time the contravention and the identity of that member as the one who is alleged to have committed the contravention became known to the conduct authority that investigated the contravention or caused it to be investigated.

[6] Commenting on the similar subsection of the previous *RCMP Act*, Letourneau J.A. said in *Thériault v RCMP*, 2006 FCA 61 [*Thériault*], at paragraph 63: “[...] the subsection 43(8) limitation serves the twofold purpose of protecting the public and the credibility of the institution and providing fair treatment for the members of that institution.” This comment holds true for the present subsection 41(2) of the *RCMP Act*.

[7] The Applicant was posted as an instructor at the CPC within the ETU, in Ottawa, Ontario. The ETU provides highly specialized training to all explosives disposal units across Canada. The training is high risk because the job of a bomb tech is high risk. The ETU had several layers of management, but the member closest to the ground was the S/Sgt. i/c. There were human resource challenges at the CPC generally, and at the ETU, in particular. The NCO i/c of the ETU, S/Sgt. D, was removed from his position for Code of Conduct allegations, along with a civilian member (CM) instructor, CM E. Another instructor went off duty sick, never to return. To further exacerbate matters, the ETU Line Officer and OIC of Training, Inspector F, retired.

[8] This left a leadership vacuum in the ETU as well as leaving the remaining group of instructors severely under resourced. The mandate of the ETU remained unchanged and there were courses to deliver. Supt. A called upon S/Sgt. Y to step up and take on the dual role of NCO i/c of the ETU and the Acting OIC Training (in charge of four units at the CPC).

[9] S/Sgt. Y came to this role well prepared. He had an impressive background in training. He had recently been involved in the Legislative Reform Initiative and the roll-out of the Legislative Reform Initiative / Conduct Authority training under the new *RCMP Act*, which

came into force on November 28, 2014. Specifically, his role was the training of RCMP Conduct Authorities across the country. S/Sgt. Y had a good appreciation of the role and responsibilities of a conduct authority and took this duty seriously. S/Sgt. Y spent many hours of his long workdays at the ETU, getting to know the personnel. He let it be known that he was in charge and that he was available to listen to any concerns. He gained a good appreciation of the unit dynamics at the ETU.

[10] At one point, the unit clerk, public servant (PS) G, wished to speak about three employees in the ETU: S/Sgt. D, CM E and the Applicant. Accompanied by his union representative, PS G attended C/Supt. B's office. C/Supt. B directed PS G to follow the chain of command and bring his concerns to his immediate supervisor, S/Sgt. Y.

[11] On November 26, 2014, PS G met with S/Sgt. Y, who immediately recognized the seriousness of the allegations brought forward. He took his digital recorder and taped PS G's statement. Shortly thereafter, PS G followed up his taped statement with a typed, 8-page memo, which was delivered to S/Sgt. Y and added more detail and further amplified his complaint. It is not clear when the 8-page memo was delivered, but it was sometime between November 25, 2014, and December 18, 2014.

[12] S/Sgt. Y recognized that two of the three employees PS G complained about were facing conduct sanctions beyond what he was able to give; so he consulted his Line Officer, Supt. A. He had a fulsome discussion with Supt. A and, as a result, he continued the investigation into S/Sgt. D and CM E.

[13] One of the things that flowed from the events at the ETU was a Federal Court action. In *Caladrini v AG of Canada*, 2018 FC 52, at paragraph 9, Judge Mosely found that the limitation period in the CM E conduct matter began on November 25, 2014. That is to say that Judge Mosely felt that when faced with PS G's complaint, S/Sgt. Y was seized with sufficient knowledge of the allegations against CM E, so as to start the one-year limitation period as per subsection 41(2) of the *RCMP Act*.

[14] I have an extensive record before me. Of particular import were three items:

- a. an 8-page memo prepared by PS G between November 25, 2014, and December 18, 2014;
- b. a taped statement of PS G taken by S/Sgt. Y on November 26, 2014; and
- c. a document entitled “Summary of statement of PS [G]”.

The last two documents were only provided to me by the Member Representative (MR) at a late stage in this process.

[15] S/Sgt. Y and Supt. A decided that, based on his investigation to date, S/Sgt. Y would deal with the concerns raised about the Applicant by means of formal training, mentoring and closer supervision. The Applicant stated that she didn’t know she was being mentored, but mentoring need not be formalized, it can simply occur. To assist with the Applicant and others in the Unit, S/Sgt. Y brought in a well-respected industrial psychologist with experience at the CPC. S/Sgt. Y’s decision and his actions seemed to have sporadically borne fruit because the Applicant’s interpersonal behaviour improved over time, although occasionally she backslid into old patterns of behaviour.

[16] On February 9, 2016, CM H emailed the Commissioner of the RCMP with concerns about ETU personnel. The media began asking questions. Subsequent to this, there were several reviews and discipline matters reopened. On March 29, 2016, A/Commr. X caused an investigation into an allegation of a possible Code of Conduct contravention by the Applicant. The Conduct Authority Representative (CAR) has admitted that A/Commr. X knew of the allegation and the identity of the Applicant some time prior to the March 29, 2016, mandate. According to witness C/Supt. C, the CO of ‘National’ Division at the time, there began a flurry of activity at the ETU.

## **THE LAW AND RCMP POLICY**

[17] The CAR and the MR both referred me to several cases, but particularly to *Thériault*, which took place under the old *RCMP Act*. There, the limitation period began when the Appropriate Officer was seized with knowledge of the contravention and the identity of the

member. Under the old *RCMP Act*, the limitation period would certainly have been triggered by PS G's statement or his 8-page memo. The new *RCMP Act* has added the requirement that the CA investigate the alleged contravention or cause the alleged contravention to be investigated.

[18] I have set out a simple test to determine when the limitation period, pursuant to subsection 41(2) of the *RCMP Act*, was triggered:

- a. Who was the CA in respect of the Applicant?
- b. Did an alleged contravention of a provision of the Code of Conduct by a member become known to the CA?
- c. Did the identity of the member as the one who is alleged to have committed the contravention become known to the CA?
- d. Did the CA investigate the allegation or cause it to be investigated?
- e. If prerequisites A through D were satisfied, when did the limitation period end?

## ANALYSIS

### **a. Who was the CA in respect of the Applicant?**

[19] The Applicant was posted to the ETU. When S/Sgt. D was suspended, S/Sgt. Y took on the role of the NCO i/c of the ETU. Section 2 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, designates him as the CA. S/Sgt. Y acted as a CA when he began the second Code of Conduct investigation into CM E. The organizational chart indicated that S/Sgt. Y was the CA. The Director of Learning of the CPC, Supt. A, recognized him as the CA. The Director General of the CPC, C/Supt. B, said so; C/Supt. C, Commanding Officer of 'National' Division, also said so. Clearly, S/Sgt. Y was the CA.

**b. Did an alleged contravention of a provision of the Code of Conduct by a member become known to the CA?**

[20] For the purposes of clarity, particular 9 of the *Notice of Conduct Hearing* follows:

9. You repeatedly engaged in behaviours and actions designed to actively defeat, pervert or obstruct the Part IV RCMP Act code of conduct investigation into the conduct of S/Sgt. [D] and CM [E]. You further engaged in repeated bullying and harassing behaviours directed towards either the complainants, witnesses, or both in the Part IV RCMP Act code of conduct process. Your repeated attempts to obstruct and intimidate either witnesses or complainants included the following:

a. Seeking to actively dissuade your fellow ETU members from giving statements to the Part IV RCMP Act code of conduct investigators;

b. You informed Sgt. [I] that as a non-RCMP member he was not obligated to give a statement to the code of conduct investigators;

c. You informed CM [H] that he was not obligated to give a statement to the code of conduct investigators;

d. You referred to CM [J] as a “rat” for having complained about his fellow RCMP members and for providing a statement to the code of conduct investigators;

e. You stated to both Sgt. [I] and CM [H] that: “Rats in the RCMP don’t survive in the RCMP”. You further described to both men what constitutes a “rat” and that anyone who gives a statement to code of conduct investigators will never work for the RCMP again;

f. You stated to PS [G] that he was wrong to tell the truth in his code of conduct interview and also referred to him as a “rat”;

g. You emphasized to both Sgt. [I] and CM [H] that you knew high ranking RCMP personnel including [A], [C] and [name redacted] and that you were going to seek out who the “rat” is and then seek to have the entire code of conduct complaints against S/Sgt. [D] and CM [E] quashed or thrown out;

h. You purposefully ostracized your fellow ETU co-workers Sgt. [I], CM [H] and PS [G];

i. You openly criticized the work ethic of Sgt. [I] and CM [H] to both other RCMP members and also members of other police agencies;

j. Following the suspension of S/Sgt. [D] and CM [E] you approached PS [G] in his office and proceeded to inform him that the allegations against both of them were a “crock of shit” and that any co-worker who gave statements against them are “liars”. You further attempted to intimidate PS

[G] by informing him words to the effect that: “If anybody comes and does any allegations against me, I’ll use the fact that I am a woman and a lesbian to end their careers”;

k. You informed PS [G] that CM [H] was an “old fuck” and that: “he should just retire”;

l. You sought to intimidate and harass PS [G] by repeatedly informing him that you had just spoken to S/Sgt. [D] and CM [E] and that they would soon be returning to the office. You further displayed an open dislike for PS [G] and repeatedly criticized his work ethic and work quality to management and others;

m. You sought to intimidate and harass both Sgt. [I] and CM [H] by stating that S/Sgt. [D] and CM [E] were returning to work, that their charges were being quashed or that they would only receive a minor financial penalty;

n. You openly criticized CM [J] following his complaint as just: “The rantings of a crazy old man”;

o. As a form of intimidation you stated that the “tenure” or contract renewal of Sgt. [I] within the ETU unit was being openly discussed amongst management;

p. You stated to Sgt. [I]: “Why are you being so emotional over this, I am the one with the vagina.”

*[Sic throughout]*

[21] PS G laid out his complaint in a taped statement taken by S/Sgt. Y and in a follow-up, 8-page memo. To determine if some part of the above particulars became known to S/Sgt. Y on November 26, 2014, I will highlight the salient sections of the transcript of PS G’s statement and indicate which particular they relate to:

- a. Page 5, line 14: “when [the Applicant] came, it was status quo”; “[D]’s side was already stronger because he had the power on his side, the... the guys, we cowered in our corner and kept ou[r] mouths shut, we didn’t say a word.” This is generally part of particular 9 and could form part of particular 9 l.
- b. Page 5, line 20, the Applicant came into PS G’s office and said: “If those assholes do something against me, I’ll use the fact that I’m a woman and a lesbian against them and ruin their career.” This is almost word for word part of particular 9 j.
- c. Page 15, line 12: “the atmosphere that we knew nothing was gonna be done continued”; “[the Applicant], who was buddy-buddy with them, did what she wanted”; “if we deviated from what we... we

were supposed to do, we'd pay the price." This is generally described in particular 9 and could form part of particular 9 l.

- d. Bottom of page 15: "Except when [the Applicant] threatened me, that was after January 2014." Page 16, line 4: "She threatened me, well I told you about it." This is similar to particular 9 in general and could form part of particular 9 l.
- e. Page 25, line 37: "if [the Applicant] comes into my office"; "And starts saying stuff that alludes to this"; "I won't even answer her. I'll leave the office and come sit here and wait for you." This would be part of particular 9 in general and could form part of particular 9 l.
- f. Page 26, line 15: "if she comes into my office to blast me, my intention is to leave." This alludes to the Applicant's dislike for PS G and could form part of particular 9 l.
- g. Page 26, line 19: "If I feel threatened or if she's in the doorway and I feel I can't leave". This alludes to the Applicant obstructing or intimidating a witness, which is part of particular 9 in general and could form part of particular 9 l.
- h. Page 27, line 6: "I'm not gonna confront her. If she confronts me, I'm not gonna engage"; "I'll take whatever she throws at me". This alludes to the Applicant obstructing or intimidating a witness, which is part of particular 9 in general and could form part of particular 9 l.

[22] At this juncture, it is important to point out that PS G's taped statement was reviewed by a Professional Standards Unit (PSU) Investigator, Sgt. K. She summarized as follows:

- a. "[The Applicant] would come into his office and tell him if they were do something against her she would use the fact she is a women and a lesbian and would destroy their careers"
- b. "[The Applicant] is not shy; it doesn't bother her to talk about sex"
- c. "[The Applicant] who was good friends with them did what she wanted and the others, including him, would do what they had to because if they went off course they were going to be called on it"
- d. "He has told Supt [A] and S/Sgt [Y] about the incidents with [the Applicant]"

[23] To further determine if some part of the allegation against the Applicant became known to S/Sgt. Y, I will highlight the relevant sections of PS G's 8-page follow-up memo and indicate which particular they relate to. The memo came to S/Sgt. Y sometime between November 25, 2014, and December 18, 2014:

- a. Page 4, line 23: “During that time, [the Applicant] wasn’t talking (or as little as possible) to Sgt. [I], [CM H] or myself.” This is basically particular 9 h.
- b. On page 4, line 39: “[CM E] has been in constant contact with [the Applicant] since the suspension. She has been relaying messages from him since day one. And if not, she said she did and that she’d had been in contact with [CM E].” This is particular 9 l.
- c. On page 5, line 34: “[The Applicant] came into my office and told me that if anyone said anything about her, made any allegations about her or did something that attacked her, she’d use her status as a woman and a lesbian to make her own allegations against them and destroy their career. ...I was shocked at hearing that... I’m not sure if I even responded...”. This forms part of particular 9 j.
- d. Page 6, line 4: “[Sgt. I], [CM H] and I have been called rat, among other things...” This forms part of particulars 9 e, f, g and k.
- e. Page 6, line 13: “[Sgt. I], [CM H] and myself were constantly reminded that [D] and [E] were coming back soon by [the Applicant]”; “To make it even worst, she kept doing that while [Sgt. I] was receiving cancer treatments, which evidentially to me, added to his stress level.” This is basically the intimidation in particulars 9 l and m.

[24] Were all of the particulars in the 2016 *Notice of Conduct Hearing* laid out by PS G in his initial statement and 8-page memo to S/Sgt. Y? No, of course, they couldn’t be. Did they exactly mirror the particulars in the *Notice of Conduct Hearing*? No, but they didn’t need to. S/Sgt. Y had sufficient information in the complaint brought forward by PS G to recognize that there was an alleged contravention of the Code of Conduct. Clearly, S/Sgt. Y was seized with sufficient information to warrant action.

[25] PS G’s taped statement, the PSU summary of the statement and his 8-page memo formed part of the record in the second Code of Conduct matter against CM E and were reviewed by S/Sgt. Y, Supt. A, C/Supt. C and by the PSU investigators.

**c. Did the identity of the member as the one who is alleged to have committed the contravention become known to the CA?**

[26] PS G clearly named the Applicant, along with two others, in his pre-statement conversation with S/Sgt. Y, in his taped statement and in his follow-up 8-page memo. There is no question that S/Sgt. Y knew that the actor in this allegation was the Applicant.

**d. Did the CA investigate the allegation or cause it to be investigated?**

[27] Police officers know how and when to investigate. The *Black's Law Dictionary*, 9<sup>th</sup> edition, defines the verb to “investigate” as “To inquire into (a matter) systematically”. The *National Guidebook – Conduct* provides good information on how and when to conduct an investigation, if one is even needed. Every commissioned officer and many NCOs received conduct authority training which included that the mere raising of an allegation is sometimes sufficient to move to a conduct meeting. For more serious matters, a wider-reaching investigation is warranted.

[28] When PS G came to see S/Sgt. Y, how did S/Sgt. Y react? S/Sgt. Y said that PS G came into his office unannounced and that they had an exchange. As a result, S/Sgt. Y took out his digital recorder and began recording. He took a taped, verbal, pure-version statement from PS G. He then obtained a follow-up, typed, 8-page memo from PS G. Obtaining follow-up information is a normal investigative step. At the end of a statement, an investigator will often ask the witness to either contact them, or send them something, if the witness thinks of anything else. It is unclear what motivated PS G to prepare the 8-page memo, but it was prepared and forwarded. It was graphic and fleshed out the details of the complaints he had raised against the three employees. These systematic inquiries are clear earmarks of an investigation.

[29] Subsection 41(2) of the *RCMP Act* does not specify the magnitude, depth or success of the investigation undertaken, but the investigation must be reasonable in the circumstances. The *RCMP Act* simply refers to the ‘conduct authority who investigated’. Subsection 41(2) doesn’t state that the investigation must result in one thing or another. It could result in a conduct

meeting, a conduct hearing, or nothing. Subsection 41(2) does not require that a “Mandate to enter a code of conduct investigation” be signed to trigger the start of the limitation period.

[30] S/Sgt. Y reviewed this information with his Line Officer; it was subsequently reviewed and summarized by the PSU investigator, Sgt. K. S/Sgt. Y ensured that Code of Conduct investigations continued regarding the more serious actors: S/Sgt. D and CM E. Clearly, S/Sgt. Y was capable of recognizing a contravention of the Code of Conduct and seeing it through. Subsequent to his investigation, S/Sgt Y took action to address the Applicant’s behaviour. The success or failure of his efforts with regard to the Applicant had little bearing on my consideration of this motion.

[31] The PSU investigators who reviewed PS G’s statement and memo are the subject-matter experts with respect to contraventions of the Code of Conduct. Conduct Authorities are guided by advice from the PSU. Despite the close examination of PS G’s statement and memo by the PSU, no further investigation of the Applicant’s conduct was undertaken; either by S/Sgt. Y or by the PSU. Therefore, I have no reason to fault either S/Sgt. Y or Supt. A with failing to continue the investigation into the Applicant.

[32] Starting on November 26, 2014, the CA had a year to continue the investigation; longer if he had asked for an extension under section 47.4 of the *RCMP Act*. I find that S/Sgt. Y started an investigation into the matter and dealt with it as he saw fit.

[33] The CAR suggested that only after the CA’s knowledge was perfected by an investigation would the limitation period begin. I find that subsection 41(2) of the *RCMP Act* states that the CA has one year to complete his or her investigation and initiate a conduct hearing. If more time was required to complete the investigation, an extension could be sought under section 47.4 of the *RCMP Act*.

**e. If prerequisites A through D were satisfied, when did the limitation period end?**

[34] Since prerequisites A through D have been satisfied and that S/Sgt. Y started his investigation into an alleged contravention of the Code of Conduct by the Applicant on

November 26, 2014, the limitation period expired on November 26, 2015. The *Notice of Conduct Hearing* was signed September 24, 2016, well after the expiration of the limitation period.

## DECISION

[35] The CAR suggested that I excise the affected particulars of the allegation and leave the rest for adjudication. To acquiesce to the CAR's suggestion would open the risk of a future investigation if witnesses recalled similar "harsh words" related to that toxic environment at the ETU in the time period of this allegation.

[36] Although I am aware that a stay of proceedings will not allow the adjudication of the merit of this allegation, I conclude that the integrity of the RCMP conduct process will be better protected by a stay of proceedings than by condoning an unacceptable delay and allowing this matter to proceed to a conduct hearing.

[37] The Applicant's motion is granted. The proceeding with respect to the *Notice of Conduct Hearing* dated September 24, 2016, is stayed.

<hr/>	February 21, 2018
Inspector A.O. Rameyp	<hr/> Date

Conduct Board