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2018 RCAD 1

ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "D" Division

Conduct Authority

and

Constable Amber Patel, Regimental Number 59787

Subject Member

Conduct Board Decision

John A. McKinlay

January 15, 2018

Mr. Denys Morel, for the Conduct Authority

Staff Sergeant Brigitte Gauvin, for the Subject Member

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SUMMARY

The Subject Member, joined by another member, attended an apartment building on two occasions in response to disturbance complaints from a third party. Attending the first call, the Subject Member spoke with the third party and with a female resident, A.T. On the second call, almost one hour later, the members spoke with not only the caller and A.T., but also a male inside the apartment who provided a name that came back negative when looked up with the Canadian Police Information Centre. On neither occasion did A.T. indicate that intimate partner violence or abuse had taken place. The Subject Member understood that the woman's infant child was asleep in a room with the maternal grandmother.

Back at the Detachment, the other member took further steps to identify the male. The other member located a photograph that appeared to be him as well as an electronic entry to the effect that he was the subject of a Recognizance prohibiting his consumption of alcohol, proximity within 100 feet of A.T.'s residence, and contact or communication with A.T., except through a third party to exercise his child access. The Recognizance could not be located. The Subject Member and the other member actively discussed whether there were grounds to arrest the male individual for a breach of the court order, as the grandmother's presence might be viewed as permitting contact for child access. The Subject Member worked on other court files until the end of her shift, which was her last one before scheduled days off.

The Subject Member gave statements to external out-of-province Serious Incident Response Team investigators as well as to an internal RCMP investigator. The Subject Member faced an allegation concerning her failure to perform her duties with diligence and two allegations of discreditable conduct for making specific "deceptive and untruthful explanations" to each investigation.

The failure to diligently investigate allegation was quashed, as it was initiated beyond the one-year time limitation under subsection 41(2) of the *RCMP Act*. A time extension had only been obtained to extend the time for the completion of a conduct meeting, not a conduct hearing. The two allegations concerning the Subject Member's explanations to investigators were found not to be established.

REASONS FOR DECISION

INTRODUCTION

[1] With the agreement of the parties, this matter was adjudicated on the basis of the record before the Conduct Board, including audio recordings of statements, materials filed by the Subject Member as part of her responses to the allegations under subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], and other materials filed by the Subject Member.

[2] On April 26, 2016, I was appointed as Conduct Board for this matter. The Subject Member's Member Representative (MR) received her copy of the *Notice of Conduct Hearing* and supporting investigation materials by December 2, 2016. Complying with an extension from the Conduct Board, the Subject Member filed her responses under subsection 15(3) and section 18 of the *CSO (Conduct)* on January 9, 2017. Pre-hearing conferences were conducted on February 8, March 6, April 20, June 7 and June 26, 2017. With the agreement of all parties, all pre-hearing conferences after February 8, 2017, also served as pre-hearing conferences for the Subject Member's colleague, Constable V. (the Other Member), whose matter involved a separate *Notice of Conduct Hearing* and investigative package but involving related allegations. A joint hearing date was set for July 25, 2017.

Preliminary motions

[3] At the pre-hearing conference on March 6, 2017, I directed the Conduct Authority Representative (CAR) to identify the specific "untruthful and deceptive explanations" alleged in the Particulars for both Allegations 2 and 3. On April 19, 2017, the CAR specified in writing the impugned explanations, which were considered as formal amendments to the Particulars. It was confirmed with the parties, and decided by the Conduct Board, that the "inconsistencies" identified by the CAR on March 5, 2017, would be excluded from consideration and play no part in the adjudication of Allegations 2 and 3.

[4] At the pre-hearing conference on June 26, 2017, after a review of the parties' submissions on the subject members' joint motion to quash Allegation 1, I orally decided that Allegation 1 of the Subject Member's Notice should be quashed. A formal time extension had been obtained from the Commissioner to extend the time for the completion of a conduct meeting, but not to initiate a conduct hearing. In the Minutes for this joint pre-hearing conference, I reduced my oral decision to writing, stating:

> […]
>
> I find that the date for initiation of a conduct board to adjudicate Allegation 1 against each [subject member] was February 1, 2016.
>
> I find that for Allegation 1 as alleged against each [subject member], an extension was only granted to the Conduct Authority to impose conduct measures via a conduct meeting, with the extension date being until May 2, 2016.
>
> Accordingly, when the Conduct Authority initiated the conduct board process against each subject member on April 26, 2016, with respect to Allegation 1 as alleged against each subject member, I find this initiation was made beyond the one year initiation time limit of February 1, 2016.
>
> I find the extension granted for imposition of conduct measures by the appropriate level of conduct authority via a conduct meeting did not constitute an extension to initiate a conduct board process after February 1, 2016. An extension under subsection 47.4(1) of the RCMP Act, to extend the conduct board initiation date from February 1, 2016, to include April 26, 2016, was required in order to exceed the time limit under subsection 41(2) of the Act, and such an extension was never sought by the Conduct Authority concerning Allegation 1 as alleged against each subject member. The extension request filed for each subject member's matter was explicit in seeking an extension to impose conduct measures, and this is not a case where any clerical or typographical error is present.
>
> I acknowledge and can do no better than adopt the CAR's summary of the situation: "[T]he initiation of a hearing for allegation 1 on April, 26, 2016, fell outside the prescribed one year limitation period which expired February 1, 2016. As such, a hearing before the Conduct Board could not be initiated for the purposes of allegation 1."
>
> Therefore, while there may be some redundancy in my choice of terms, I hereby quash, strike and declare of no force and effect:
>
> - Allegation 1 contained in the Notice of Conduct Hearing for [the Subject Member].

[…] [*Sic throughout*]

ALLEGATIONS

[5] Following a Code of Conduct investigation, the amendment of the Particulars to identify the specific alleged "deceptive and untruthful explanations", and my decision to quash Allegation 1, the Subject Member faced the following allegations:

> **Allegation 2**
>
> On or about the 17th day of June, 2015, at or near Thompson, in the Province of Manitoba, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.
>
> ***Particulars of the Contravention:***
>
> 1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) and posted to Thompson RCMP detachment in "D" Division.
>
> 2. On June 17th, 2015, you provided a statement to the Nova Scotia Serious incident Response Team (SIRT) pertaining to your involvement in PROS file 2015-92139 (first disturbance call) and PROS file 2015-92294 (second disturbance call).
>
> 3. In your statement, you provided deceptive and untruthful explanations regarding your determination that [R.S.] was not arrestable and to justify not enforcing the court order made against him on January 8th, 2015, with the following release conditions: that he abstain from consumption and possession of any alcohol; that he not contact or communicate with [A.T.] except through a third party to arrange access to his child; and, that he not attend within 100 meters of [A.T.'s] residence.
>
> The "deceptive and untruthful explanations" were:
>
> > **Page 76**
> >
> > *"That's what that is, that doesn't mean that he is arrestable, in my opinion of that particular night, this one file we're discussing* […]
> >
> > *Because if I had felt that he was arrestable and, yeah, ya know what, we're good to go. Mom's not there, hmm, I didn't hear a baby crying. Yeah, let's go arrest 'im. I believe we have RPG an' this is domestic related, that would be different. But what w', t', those were not the circumstances that* […] *we had."*
> >
> > **Page 42**

"[…] *'Kay? Um, amd it's, uh, does say, uh, no contact or communication with* [A.T.], *except through third party to arrange access to your child. So that, and then there's other ones on here but um, and it also says must not attend within 110 metres of complainants residence,* […] *place of work uh, worship or place of school. So, that's where weh',* [B.] *and I, Constable* [V.] *and I had the discussion of, do we actually have grounds to arrest? Is there actually a breach here, once we had found this information. And I said, I think it's pretty hard to, how do you articulate arresting somebody when there's a third party.* […]*"*

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"That's, and that's where we had a discussion about it and I said I think it's pretty hard, he's, he can have, where are the words here, access, the third party, never mind u', um, to arrange access, you have a third party present and the third party, the third party is there. I didn't feel that it was reasonable to say let him take the three month old, go do his child, have his time with the child, this is a three month old, realistically, usually a three month old is being breast fed, mom is not gonna be very far from three month old. That's just instinct. Given the elements that night, it just wasn't reasonable to expect."

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"The breach package was for that upcoming weekend, because we were anticipating going back [...]

[…] *and we also wanted clarification from Crown on how do you interpret this, before we go arresting.*

I said the last thing I want to do is go, do an arrest, when we actually are, potentially don't have grounds, despite what's written there, there's [...]

(Inaudible)

[...] *that exception for the child care. That he can have access when it's arranged through child care. Given the circumstances of her ankle, it's - 30. Do I like it?"*

Allegation 3

On or about the 16th day of December, 2015, at or near Thompson, in the Province of Manitoba, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars of the Contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) and posted to Thompson RCMP detachment in D" Division.

> 2. On December 16th, 2015, you provided a statement to the Professional Responsibility Unit [PRU], pertaining to your involvement in PROS file 2015-92139 (first disturbance call) and PROS file 2015-92294 (second disturbance call).
>
> 3. In your statement, you provided deceptive and untruthful explanations regarding your determination that [R.S.] was not arrestable and to justify not enforcing the court order made against him on January 8th, 2015, with the following release conditions: that he abstain from consumption and possession of any alcohol; that he not contact or communicate with [A.T.] except through a third party to arrange access to his child; and, that he not attend within 100 meters of [A.T.'s] residence.
>
> The "deceptive and untruthful explanations" were:
>
> **Page 25**
>
> *"*[…] *a discussion. So eventually I put that he, he c', basically kinda refused to open the door. Said, ya know, we're going to bed, we don't need you, everything's fine. Basically, i', it's all good, go away* […]*"*
>
> **Page 24**
>
> *"Then baby should yup and for all I know he was leaving."*
>
> **Page 30**
>
> *"Yup mom had, no she was only staying for a few days and the footwear that was at the door, that it was moms that was, that wasn t there, that wasn't in the apartment."*
>
> [*Sic throughout*]

[6] With the parties' agreement, I went on to adjudicate Allegations 2 and 3 on the basis of the record before me, with neither party requesting to call any witnesses. On July 10, 2017, I advised the parties by email that, upon review of the record, I found that Allegations 2 and 3 were not established. I indicated that my email served to reduce to writing what might otherwise be an oral decision on Allegations 2 and 3, and that the abbreviated decision served only to communicate my allegation-phase decision on the merit, with reasons to follow. Therefore, this email was subject to the caveat that I reserved the right to provide and expand upon, clarify and explain my reasons and findings in greater detail in this final written decision.

Submissions on Allegations 2 and 3

[7] The CAR alleged that in her statements to the SIRT and PRU, the Subject Member provided "deceptive and untruthful explanations" regarding her determination that the male encountered on January 24, 2015, R.S., was not arrestable and to justify the Subject Member not enforcing the court order made against R.S. The making of these explanations was alleged to contravene section 7.1 of the Code of Conduct, which is an appendix to the *Royal Canadian Mounted Police Regulations, 2014,* SOR/2014-281.

[8] The RCMP External Review Committee (ERC) has 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 to section 7.1 of the Code of Conduct.

[9] Paragraphs 92 and 93 of the ERC's commentary provide as follows:

> 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. Ceyssens' 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."

[10] The MR argues that the CAR's reliance on section 7.1 is incorrect and that the Subject Member should have faced allegations under section 8.1 of the Code of Conduct, which provides:

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

[11] The November 2014 *Conduct Measures Guide* (the Guide) does state at page 42 that reliance on section 7.1 of the Code of Conduct is envisaged to encompass a variety of conduct "not otherwise provided for" under the Code of Conduct. But there is no legal basis to find Allegations 2 and 3 not established, or invalid or inoperative, just because the impugned acts and omissions of the Subject Member could, or should, have been alleged under the more specific and applicable section 8.1.

[12] Citing the commentary at page 64 of the Guide, the MR argues that an allegation of misconduct under section 8.1 was indicated, as it was misconduct tantamount to lying to a superior during an internal investigation that the CAR alleged, misconduct that, according to the Guide, requires proof that false information was willfully or intentionally provided. I note that, while the Guide may adopt the requirement of willfulness, the wording of section 8.1 does not. On its face, an account that is incomplete, inaccurate or lacking timeliness may contravene section 8.1, whatever the member's intentions might be.

[13] However, given that specific "deceptive and untruthful explanations" are said by the CAR to have brought discredit on the RCMP under section 7.1, the use of the words "deceptive" and "untruthful" necessarily requires the CAR to prove not only deficient explanations, but explanations that are deliberately or intentionally so. I do not believe that it is open to me, given

how the Subject Member's acts and omissions are particularized, to ignore the element of intention that is implicit in the wording used.

[14] The CAR argues that, notwithstanding the Subject Member's submissions describing the basis on which she offered genuine explanations, some explanations were so unreasonable that they should be considered deceptive and untruthful and, therefore, bring discredit on the Force.

SIRT statement

[15] In the early morning hours of January 31, 2015, A.T. was found at her apartment bleeding badly from knife wounds that proved fatal. R.S., the male encountered on the second attendance at the apartment on January 24, 2015, was charged with her murder. (He was acquitted in April 2017, the trial judge finding A.T.'s fatal wounds were likely self-inflicted.)

[16] After completion of a Memorandum of Understanding, the Province of Manitoba engaged the Nova Scotia SIRT to conduct an independent, external review of all domestic violence-related investigations related to A.T. and R.S., and to identify any potential criminal culpability, as well as any gaps in policy, operational response and training. Arguably, these terms of reference permitted observations and recommendations of a disciplinary nature.

[17] The SIRT did not constitute a "court in Canada", any findings in its report neither engaged subsection 23(2) of the *CSO (Conduct)*, nor constrained this Conduct Board's role in adjudicating the Subject Member's matter. It remained necessary for me to apply the balance of probabilities standard of proof when assessing the information in the record. The findings and opinions expressed in the resulting SIRT report did not operate to shift any burden to the Conduct Board to explain why it did not agree with SIRT's findings and opinions.

[18] Unlike the circumstances of the SIRT investigation, in this conduct process, the Conduct Board was able to assess the Subject Member's explanations to a SIRT investigator after consideration of her responses, under subsection 15(3) of the *CSO (Conduct)*, as well as further written submissions and materials submitted by her MR. In addition, the forensic medical

evidence adduced at the criminal trial of R.S. establishing A.T.'s self-inflicted fatal wounds was not available to the SIRT when it issued its report on November 13, 2015.

[19] As it was first issued, the *Notice of Conduct Hearing* for the Subject Member's matter contained Allegation 1, which alleged a contravention of section 4.2 of the Code of Conduct for failure to diligently investigate a further incident of domestic violence and to enforce R.S.'s breach of his Recognizance on January 24, 2015. For the reasons provided above, this allegation was struck, as it was not initiated within the statutory time limitation. Therefore, except as is necessary to adjudicate the remaining Allegations 2 and 3, it is not appropriate for me to comment on the investigative diligence of the Subject Member on January 24, 2015. What remains at issue is whether the specific explanations she provided to the SIRT and, later, to the PRU investigations were deceptive and untruthful.

[20] The CAR provided written submissions on why specific portions of the Subject Member's statement to the SIRT investigator, identified by page number, should be found "deceptive and untruthful explanations".

Recognizance (CPIC conditions) / R.S. arrestable

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[21] The alleged deficiency of this excerpt seems to start with the Subject Member stating that she believed that A.T.'s infant child and mother were together in a room in the residence during the two interactions with A.T. The CAR's specific submissions question the Subject Member's placing of importance on shoes observed inside the residence, and point out that: 1) neither maternal grandmother nor baby were actually observed in the residence; 2) A.T. had a noticeable ankle injury; and 3) there was a past history of domestic violence.

[22] I do not find anything deceptive or untruthful in this excerpt. Right or wrong, the Subject Member stated her opinion: "[…] [T]hat doesn't mean that he is arrestable, in my opinion of that particular night, this one file we're discussing." She then goes on to explain that if grandmother and baby were not present, then a different set of circumstances would exist, just as a different

set of circumstances would exist if she had reasonable and probable grounds to believe a domestic assault had taken place. There were no signs of crying or emotional upset when the Subject Member observed A.T. While the cause of her injured ankle was not determined in her conversation with A.T., the Subject Member indicated that, in her opinion, the colour of the bruising was not consistent with a recent injury.

[23] The materials filed with the Subject Member's response, under subsection 15(3) of the *CSO (Conduct)*, included proof of the Subject Member's professional qualifications obtained before she joined the RCMP. These qualifications were not challenged by the CAR. I accept that the Subject Member worked as a Registered Nurse with certifications in Emergency and Critical Care Nursing, and that, when she observed bruising on A.T.'s ankle, she was able to determine that the ankle injury had occurred between 24 and 48 hours prior and reasonably concluded that it was not related to the complaint the Subject Member was responding to.

[24] Moreover, the difficulty A.T. exhibited in walking made it quite reasonable for the Subject Member to accept that A.T.'s mother was present to provide assistance with the baby.

[25] When impugning this excerpt from page 76, the CAR comes close to implying that the Subject Member's statements on her belief that grandmother and baby were present were wholesale lies – an assertion that would fail to consider the detailed description provided by the Subject Member of her discussions with A.T., and which would also appear to suggest that the Other Member's audio recorded account, in which he too stated that it was his belief that grandmother and child were present in the apartment, contained deliberate and blatant lies. To the contrary, it is clearly established on a balance of probabilities that the Subject Member and the Other Member, once the apparent conditions placed on R.S. were noted in the electronic record, discussed back at the Detachment office how the presence of A.T.'s mother and child might complicate an effort to arrest R.S. for breach of the Recognizance by being in contact with A.T. inside a prohibited address.

[26] It is also apparent that, given the Subject Member's perspective on the evening in question, she was not willing to pursue an immediate arrest of R.S. that evening for breach of

conditions because the presence of the grandmother and child gave rise, in her mind, to a possible legal justification that R.S. might assert, and which might give rise to an unlawful arrest scenario.

[27] Generally, the CAR asserts that the Subject Member's explanations were so unreasonable and self-serving on this point that they are deceptive and untruthful. Whether or not it is correct in law, or reflects a correct application of RCMP policy with respect to domestic assault investigations, I do not find what the Subject Member stated in this excerpt to be so unreasonable or self-serving that, on a balance of probabilities, it should be found deceptive and untruthful. After a review of the totality of the record, I am not convinced that this excerpt constitutes even an unreasonable statement, in particular where it is clearly the expression of an opinion or degree of doubt that she held at the time, not a recollection of facts or characterization of behaviour that is clearly unsupportable.

Pages 42 and 44

[28] The first portion of this excerpt involves the Subject Member, apparently with the written conditions before her during the questioning, paraphrasing them, including the prohibition on R.S. from contacting or communicating with A.T. "except through a third party" to arrange access to his child, and on his attending within 100 metres of A.T.'s residence. The Subject Member then indicates that she and the Other Member discussed whether they actually had grounds to arrest given the child access terms. "How do you articulate arresting somebody when there's a third party" appears to be the issue that the Subject Member recalls being considered. The CAR argues that the terms of the two specific conditions (concerning no communication and no attendance) were so clear that any doubt expressed by the Subject Member about their operation or application, or reasons for being reluctant to arrest R.S. for breach of the conditions, could only constitute deceptive, untruthful explanations. I do not accept this argument.

[29] I have had the opportunity to carefully review the audio recording of the Subject Member's statement to the SIRT investigators, and to compare it to the transcription made of that statement. I have carefully considered, when assessing its reliability and credibility, the limited

use to which findings concerning demeanour should be put, as well as the need to examine the internal and external consistency of an account and its harmony with the preponderance of the evidence. That said, I do not find that there is any portion of her statement, as captured in the audio recording, from the Subject Member's form of speech, deliberateness, hesitation, intonation or any other possible aspect of her demeanour that indicate evasiveness or strategies to deceive. Moreover, as stated earlier, I find that the Subject Member and the Other Member discussed how the exception for child access might complicate any laying of a breach of conditions charge against R.S.; this perceived complication, together with the absence of the actual court order containing the conditions, contributed to their not returning to the apartment that night to arrest R.S. for a breach of conditions.

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[30] The Subject Member offers her opinion that, given the cold weather and the very young age of the child (whom the Subject Member reasonably assumes would still be nursing with A.T.), it would not be reasonable to expect the child to be taken from the apartment to another place for R.S. to exercise access. The offering of this opinion is neither deceptive nor untruthful. Given the evening hour when the Subject Member and the Other Member attended A.T.'s apartment the second time, R.S.'s intoxicated state (noted only by the Other Member) and state of undress (boxer shorts), his utterance that they were going to sleep, I find that it is unlikely that R.S. was leaving the apartment that night, but this is never suggested by the Subject Member as being her expectation at the time when she and the Other Member left the apartment the second time.

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[31] This excerpt contains the Subject Member's statement that the "breach package was for that upcoming weekend, because we were anticipating going back […] and we also wanted clarification from Crown on how do you interpret this, before we go arresting." I do not find the absence of any electronic file entry or hand-written police note by the Subject Member (specifically concerning her desire to consult with the Crown on the "child access through a third

party" issue she felt might complicate R.S.'s arrest) precludes her genuine intention to go back to the apartment and arrest R.S. if he was present and the third-party grandmother was no longer present, or if she had satisfied herself that the presence of the grandmother and child did not give rise to a child access excuse for R.S. that would undermine his lawful arrest for breach of conditions.

[32] The Detachment rule, to the effect that all requests for advice from the Crown were to be conveyed through a supervisor and not by the individual investigator, was a fairly recent development and appears related to advice from a Crown attorney primarily on decisions to seek remand upon arrest. While it would certainly have corroborated the Subject Member's desire for legal clarification if she had made a file or police note entry about the issue she was considering, the absence of such an entry does not make her explanation deceptive or untruthful. In the same way, the fact that she had not formally requested Crown advice through a supervisor does not make deceptive or untruthful her explanation that there was, in her mind, a potential complication in how R.S.'s no contact and child access conditions should be applied.

[33] I accept as reasonable the Subject Member's explanation that the entry she did make in her police notebook ("checks at office show breaches to F/U – arrest") was not inconsistent with her statement that, on the night in question, she genuinely did not believe she had reasonable and probably grounds to arrest R.S. The Subject Member provides a reasonable explanation for this entry – it was not meant to indicate there existed grounds to arrest R.S. for breach of conditions, it was meant to indicate that further *follow-up* was required before any such arrest.

[34] The fact that work on a "breach package" might be started before any subsequent arrest of R.S. does not establish that the Subject Member formed grounds for the immediate arrest of R.S. back at the Detachment after conversation with the Other Member and his finding of the CPIC record containing conditions placed on R.S. Of course, the fact that R.S.'s apparent conditions could only be found in a CPIC entry, and that the actual formal court document imposing the terms of his Recognizance could not be located also meant that the Subject Member and Other Member lacked an essential element to arrest R.S. for breach of conditions. A copy of the actual Recognizance was required to comply with RCMP policy. The Subject

Member could have requested that a supervisor or colleague locate any court document containing R.S.'s conditions at the court itself, while she was on scheduled days off or in training, but the absence of such a request does not render her explanations deceptive or untruthful.

[35] In her interview, the Subject Member makes the frank admission that, on her next set of shifts, which began with typically busy day shifts handled by a single Watch of frontline members, she did not make a top priority a return to A.T.'s apartment for the purpose of catching R.S. clearly in breach of his conditions. This admission is not self-serving and it does not render her impugned explanations deceptive or untruthful.

PRU statement

[36] The CAR identified specific portions of the Subject Member's PRU statement. He provided written submissions on why these portions should be considered "deceptive and untruthful explanations".

Page 24

[37] The excerpt taken from page 24 of the Subject Member's statement to an RCMP internal investigator must be placed in a fair context, which demands that the Subject Member's broader exchange with the investigator at page 24 be considered:

[…]

[INVESTIGATOR]:	Yeah but they re going to question why you didn tspeak to the mother twice uh did you see the baby?
[SUBJECT MEMBER]:	Nope baby was in bedroom, baby was bedroom with mom.
[INVESTIGATOR]:	Yup.
[SUBJECT MEMBER]:	We had no reason to believe otherwise and that makes sense

[INVESTIGATOR]: But then they re going to ask if the baby s sleeping why is [R.S.] there. [R.S.] doesn t have a defence like your defence you re saying...

[SUBJECT MEMBER]: Um-hmm.

[INVESTIGATOR]: he s there to visit his baby but if the baby's sleeping then he should be gone.

[SUBJECT MEMBER]: Then baby should yup and for all I know he was leaving.

[INVESTIGATOR]: Ok.

[SUBJECT MEMBER]: **I, I can t, I can t articulate what his actions were going to be once we left.**

[INVESTIGATOR]: Yup.

[SUBJECT MEMBER]: What I do know is for our reasons for being there from what we saw it certainly didn't match a description even remotely close to a domestic incident with an action movie on the TV. That just didn't make sense. Where you can hear people screaming and yelling and that's what...

[INVESTIGATOR]: But they watch TV all the time so it s not the first time probably watch an action movie with the TV loud right and, and

[SUBJECT MEMBER]: But we re at the door and that s all we re hearing.

[*Sic throughout*; emphasis added]

[38] Placed in the appropriate context, the Subject Member's statement that for all she knew R.S. was leaving the apartment is neither intentionally deceptive nor untruthful. She clearly goes on to provide an important qualifier: that she cannot articulate what his actions were going to be

when she and the Other Member left the apartment. It is true that on the second attendance at the apartment with the Other Member, the Subject Member told the SIRT investigator that R.S. said through the still-closed apartment door that they were going to bed, they were fine, and "it's all good, go away kinda thing". With the apartment door open, and R.S. lowering the loud volume of the movie or program playing on the television, it is true that the Subject Member recalled to the SIRT investigator that A.T. also indicated that they were going to bed.

[39] But the Subject Member's recollections of R.S. and A.T. stating their intention to go to bed does not make the impugned statement at page 24 deceptive or untruthful.

[40] The CAR argues that the impugned statement at page 24 is deceptive or untruthful because the Subject Member made an inconsistent statement to the earlier SIRT investigator and in her subsection 15(3) response under the *CSO (Conduct)*. But this position fails to take into account the clear qualifier that the Subject Member used at page 24. It also fails to account for the degree of investigative scepticism that all police officers have when they are told something to make them go away when attending a call.

[41] It is certainly a reasonable interpretation of the phrase "and for all I know he was leaving" that it was nothing more than the Subject Member trying to communicate to the RCMP investigator how she had no reliable insight into what R.S. actually did when she and the Other Member departed the apartment the second time. The fact that the Subject Member would later indicate in her subsection 15(3) response that R.S. was observed wearing only boxer shorts, and that she did not observe the tattoo mentioned in an electronic file record located back at the Detachment by the Other Member, do not make the impugned excerpt deceptive or untruthful. The phrase "for all I know he was leaving" may appear inconsistent with R.S.'s state of dress and the mentions of an intention to go to sleep, but even if inconsistent, it certainly does not amount to discreditable conduct, particularly when the Subject Member followed the impugned excerpt with an important qualifier.

[42] Importantly, when the true context is understood, this impugned utterance clearly does not constitute a deceptive or untruthful justification offered by the Subject Member to support

her belief that R.S. was not immediately arrestable for breach of conditions. It was a passing, spontaneous comment that came with an important qualifier after an exchange with the internal investigator that pertained to how R.S. could make a possible legitimate claim to be exercising his child access rights if the baby was sleeping.

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[43] The CAR submits that the Subject Member's "conclusion that the mother of [A.T.] was only staying for a few days has no foundation and is only an assumption on her part in an attempt to justify her actions on January 24th, 2015." At the time the Subject Member spoke with the internal investigator, she had already been interviewed as part of the SIRT investigation. In that earlier statement to SIRT, the Subject Member and the investigator had the following exchange, which explains and puts the Subject Member's impugned later statement in context:

[SUBJECT MEMBER]:	Once we'd had interpreted that, ...
[INVESTIGATOR]:	Yeah.
[SUBJECT MEMBER]:	... given what we had found, I s', on that, I'm the one that said to ...
[INVESTIGATOR]:	Yeah.
[SUBJECT MEMBER]:	... Constable [V.], I said, mom isn't going to be ...
[INVESTIGATOR:]	(Makes a noise)
[SUBJECT MEMBER]:	there ...
[INVESTIGATOR]:	Yeah.
[SUBJECT MEMBER]:	... come the weekend.
[INVESTIGATOR]:	Yeah.

[SUBJECT MEMBER]: She isn't going to stay forever.

[INVESTIGATOR]: Yeah.

[…]

[SUBJECT MEMBER]: The mom is there. I'm not happy with it, but I think it's the best we have right now. You wait, give that 'til the weekend, wait 'til we come back ...

[INVESTIGATOR]: Yeah.

[SUBJECT MEMBER]: ... we'll be able to breach him.

[INVESTIGATOR]: Okay.

[SUBJECT MEMBER]: They will make a mistake and they will be ...

[INVESTIGATOR]: (Makes a noise)

[SUBJECT MEMBER]: ... breachable. An' it will be clear 't ...

[INVESTIGATOR]: Yeah.

[SUBJECT MEMBER]: ... that time.

[*Sic throughout*]

[44] In its full context, the Subject Member never held out in the impugned PRU excerpt that her "conclusion" that A.T.'s mother would only be staying a few days was anything more than what the Subject Member genuinely believed when the grandmother's presence with the baby in the apartment was initially viewed as a potential issue affecting the lawful arrest of R.S. for breach of conditions. Just because this belief supports a strategy to hold off on a return to the apartment until the Subject Member's next set of shifts does not make it deceptive or untruthful. It is simply not possible, on a review of all of the information in the record, for me to conclude

that the belief held by the Subject Member was unreasonable, never mind that recounting this belief to SIRT, and relying on this belief in her PRU statement, was deceptive or untruthful.

FINDINGS ON THE ALLEGATIONS

[45] The Subject Member attended A.T.'s apartment on two occasions on the night of January 24, 2015. Both calls were dispatched as "disturbance" type calls and were the result of telephone complaints received from a single resident located in an apartment below the apartment of A.T. Without reciting all of the information received by the Subject Member in those two attendances and the observations she made and the beliefs she genuinely formed, it is my finding that the Subject Member reasonably did not believe any form of partner assault or abuse had been perpetrated at that apartment on that night. Another member attending those calls may well have conducted further investigative inquiries on scene, but legal authority for a police officer to enter a private dwelling must always exist.

[46] The source of the shouting, crying and request for someone to call the police described by the complainant was, in good faith, determined by the Subject Member not to have involved A.T. and R.S. given, at a minimum, the loud dialogue coming from the television inside A.T.'s apartment on both calls, as well as A.T.'s physical appearance and demeanour, and her lack of any complaint or expressed safety concern in her two interactions with the Subject Member and the Other Member.

[47] The focus of Allegations 2 and 3 instead relates to certain explanations provided by the Subject Member in her statements with investigators from SIRT and, later, the PRU. For each of these allegations, statement excerpts are alleged to be "deceptive and untruthful explanations" regarding the Subject Member's determination that R.S. was not arrestable and to justify not enforcing the court order issued on January 8, 2015, that placed conditions on R.S. The CAR has alleged that the provision of these explanations constitutes discreditable conduct, in contravention of section 7.1 of the Code of Conduct.

[48] Above, I have provided my analysis for each of the impugned statements made by the Subject Member. I confirm my finding that no impugned statement constitutes a deceptive or

untruthful explanation; collectively, there is no deceptive or untruthful intention exhibited. I do not find any impugned statement to be so unreasonable that it must be found deceptive or untruthful More generally, after reviewing the entire record, including an assessment of the terms of R.S.'s Recognizance and the circumstances encountered by the Subject Member, on a balance of probabilities, I do not find her explanations for her investigative actions or lack of action to be deceptive or untruthful.

CONCLUSION

[49] With respect to Allegation 2, I find that the allegation is not established.

[50] With respect to Allegation 3, I find that the allegation is not established.

January 15, 2018

John A. McKinlay

Conduct Board