



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF

a conduct hearing pursuant to the

*Royal Canadian Mounted Police Act*

BETWEEN:

Commanding Officer, "E" Division

Conduct Authority

and

Constable Curtis Rasmussen, Regimental Number 56116

Subject Member

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**Conduct Board Decision**

**Gerald Annetts**

November 16, 2018

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Shahana Khan, for the Conduct Authority

Sabine Georges, for the Subject Member

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## SYNOPSIS

During a provincial gun amnesty program, the Subject Member responded to a call for service from an elderly woman who wanted to be rid of a firearm. Her since deceased husband had brought the firearm home with him after he returned from duty at the end of World War II. Instead of processing the firearm under the provisions of the amnesty program, the Subject Member kept the firearm for himself and provided a misleading police report in order to conceal his actions. In keeping the prohibited weapon for himself, the Subject Member contravened paragraph 91(1)(b) of the *Criminal Code*, RSC 1985, c C-46, possessing a prohibited firearm without a valid registration certificate and he was convicted of that offence in the Provincial Court of British Columbia.

The Subject Member conducted himself in a similar manner when he responded to a similar call for service in relation to the frame of an old revolver one year prior. He also made a false and misleading police report on that occasion. A total of nine allegations were made against the Subject Member, seven of which were found to be established. One of those established allegations was conditionally stayed pursuant to the Kienapple principle.

Following a three-day contested hearing, the Subject Member was ordered to resign within 14 days, in default of which he would be dismissed.

## REASONS FOR DECISION

### BACKGROUND

[1] A *Notice to the Designated Officer* was issued by the Commanding Officer of “E” Division on September 6, 2017, containing nine allegations against the Subject Member. The Subject Member filed a preliminary motion in which he alleged a breach of his rights under the *Canadian Charter of rights and Freedom*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*, and seeking the dismissal of five of those allegations. While a *Charter* breach was established, I find the appropriate remedy to be the exclusion of the evidence obtained as a result of the breach, as opposed to the dismissal of the allegations. The Conduct Hearing convened from June 12 to 14, 2018, and I heard evidence and submissions on all nine allegations. This is the written decision.

### INTRODUCTION

[2] Following a Code of Conduct investigation, the Subject Member faced the following allegations and particulars:

#### **Allegation 1**

**Between October 14, 2016 and October 24, 2016 inclusive, at or near Kimberley, in the province of British Columbia, [the Subject Member] behaved in a manner likely to discredit the force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.
2. On October 12, 2016, [Ms. M.] called the RCMP clerk at Kimberley detachment to turn in a firearm owned by her deceased husband. On October 14, 2016, while on shift and in response to the request, you attended at [Ms. M.]’s residence and took custody of a German Luger P. 08 9mm Pistol (“the firearm”).
3. On October 24, 2016, you had possession of the firearm, and upon being served formal Notice of Code of Conduct and Statutory investigations, and a

written “order to return items”, you produced the firearm, from your residence, and turned it over to [Sergeant M.].

4. You committed theft of the firearm. On February 7, 2017 a charge of theft \$5000 or under, contrary to section 334(b) of the Criminal Code was laid against you in the British Columbia Provincial Court.

5. You therefore engaged in conduct that is discreditable and likely to discredit the force.

### **Allegation 2**

**Between October 14, 2016 and October 24, 2016 inclusive, at or near Kimberley, in the province of British Columbia, [the Subject Member] behaved in a manner likely to discredit the force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.

2. On October 12, 2016, [Ms. M.] called the RCMP clerk at Kimberley detachment to turn in a firearm owned by her deceased husband. On October 14, 2016, while on shift and in response to the request, you attended at [Ms. M.]’s residence and took custody of a German Luger P. 08 9mm Pistol (“the firearm”).

3. [Ms. M.] turned over the firearm to you in your capacity as an RCMP member and in furtherance of a local gun amnesty program. You retained possession of the firearm and never processed it in accordance with the RCMP Operational Manuals:

a) Chapter 22.1 Processing of Exhibits

b) Chapter 22.3 Disposal

c) Chapter 22.4 Firearms, Prohibited Weapons, Munitions, and Explosives

d) Section 4.101 Destruction/Disposal of Firearms, “E” Division Operation Manual

4. You used your position as an RCMP member to obtain the firearm from [Ms. M.].

5. You committed a breach of trust. On February 7, 2017, a charge of breach of trust, under section 122 of the Criminal Code was laid against you in the British Columbia Provincial Court.

6. You therefore engaged in conduct that is discreditable and likely to discredit the force.

**Allegation 3**

**Between October 14, 2016 and October 24, 2016 inclusive, at or near Kimberley, in the province of British Columbia, [the Subject Member] failed to act with integrity and abused his authority, power and position, contrary to section 3.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.**

*Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.
2. On October 12, 2016, [Ms. M.] called the RCMP clerk at Kimberley detachment to turn in a firearm owned by her deceased husband. On October 14, 2016, while on shift and in response to the request, you attended at [Ms. M.]’s residence and took custody of a German Luger P. 08 9mm Pistol (“the firearm”).
3. [Ms. M.] turned over the firearm to you in your capacity as an RCMP member and in furtherance of a local gun amnesty program. You retained possession of the firearm and never processed it in accordance with the RCMP Operational Manuals:
  - a) Chapter 22.1 Processing of Exhibits
  - b) Chapter 22.3 Disposal
  - c) Chapter 22.4 Firearms, Prohibited Weapons, Munitions, and Explosives
  - d) Section 4.101 Destruction/Disposal of Firearms, “E” Division Operation Manual
4. You abused your authority and the powers entrusted to you as an RCMP member to unlawfully gain possession of the firearm from [Ms. M.] for your own personal use.

**Allegation 4**

**Between October 14, 2016 and October 24, 2016 inclusive, at or near Kimberley, in the province of British Columbia, [the Subject Member] behaved in a manner likely to discredit the force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.**

*Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.

2. On October 12, 2016, [Ms. M.] called the RCMP clerk at Kimberley detachment to turn in a firearm owned by her deceased husband. On October 14, 2016, while on shift and in response to the request, you attended at [Ms. M.]’s residence and took custody of a German Luger P. 08 9mm Pistol (“the firearm”).
3. On October 24, 2016, you had possession of the firearm, and upon being served formal Notice of Code of Conduct and Statutory investigations, and a written “order to return items”, you produced the firearm, from your residence, and turned it over to [Sergeant M.].
4. The Canadian Firearms centre confirmed that the firearm is classified as a prohibited weapon; that at the material time you were not licensed to possess or acquire prohibited firearms; and that the firearm was never registered to you.
5. You transported the firearm from [Ms. M.]’s residence to your residence, without lawful authority and without obtaining an Authorization to Transport the firearm.
6. You committed offences of possessing a firearm without a registration certificate and possessing a firearm or prohibited weapon obtained by the commission of an offence. On February 7, 2017, charges of possession of a firearm without a registration certificate and possession of a firearm or prohibited weapon obtained by the commission of an offence under sections 91(1)(b) and 96(1), respectively, of the Criminal Code were laid against you in the British Columbia Provincial Court.
7. You therefore engaged in conduct that is discreditable and likely to discredit the force.

### **Allegation 5**

**Between October 14, 2016 and October 24, 2016 inclusive, at or near Kimberley, in the Province of British Columbia, [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 of the Royal Canadian Mounted Police*.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.
2. On October 12, 2016, [Ms. M.] called the RCMP clerk at Kimberley detachment to turn in a firearm owned by her deceased husband. On October 14, 2016, while on shift and in response to the request, you attended



at [Ms. M.]’s residence and took custody of a German Luger P. 08 9mm Pistol (“the firearm”).

3. Following your attendance at [Ms. M.]’s residence, you accessed the related Kimberley RCMP PRIME file 2016-8108 and authored a synopsis, which included in part, the following notations:

*[Ms. M.] chose to turn over the firearm to someone with a PAL so that it “would have a good home.” as her husband would have wanted that. No firearm seized. File concluded.*

4. You knowingly entered false and misleading information into the synopsis of PRIME file 2016-8108. Specifically, you falsely claimed:

- a) That [Ms. M.] retained the firearm
- b) That you did not seize the firearm

5. You failed to accurately document your actions with respect to the seizure of the firearm into PRIME file 2016-8108.

#### **Allegation 6**

**Between October 14, 2016 and October 24, 2016 inclusive, at or near Kimberley, in the Province of British Columbia, [the Subject Member] concealed and failed to properly account for property coming into his possession in the performance of his duties, contrary to section 4.4 of the Code of Conduct of the Royal Canadian Mounted Police.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.

2. On October 12, 2016, [Ms. M.] called the RCMP clerk at Kimberley detachment to turn in a firearm owned by her deceased husband. On October 14, 2016, while on shift and in response to the request, you attended at [Ms. M.]’s residence and took custody of a German Luger P. 08 9mm Pistol (“the firearm”).

3. You did not document the seizure of the firearm by having [Ms. M.] sign a relinquishment of claim or providing her with a receipt or any documentation.

4. Following your attendance at [Ms. M.]’s residence, you accessed the related Kimberley RCMP PRIME file 2016-8108 and authored a false and misleading synopsis.

5. You retained possession of the firearm and never processed it in accordance with the RCMP Operational Manuals:

- a) Chapter 22.1 Processing of Exhibits

b) Chapter 22.3 Disposal

c) Chapter 22.4 Firearms, Prohibited Weapons, Munitions, and Explosives

d) Section 4.101 Destruction/Disposal of Firearms, “E” Division Operation Manual

### **Allegation 7**

**On or about August 26, 2015, at or near Cranbrook, in the Province of British Columbia, [the Subject Member] behaved in a manner likely to discredit the force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.
2. On August 26, 2015, you were dispatched to an address in response to a request by [Ms. J.], to dispose of a handgun, which belonged to her deceased father. You attended the address and examined the handgun. You took possession of the handgun and failed to have [Ms. J.] sign a relinquishment of claim.
3. You took possession of the handgun, without colour of right, committing a theft.
4. You therefore engaged in conduct that is discreditable and likely to discredit the force.

### **Allegation 8**

**On or about August 26, 2015, at or near Cranbrook, in the Province of British Columbia, [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 contrary of the *Code of Conduct of the Royal Canadian Mounted Police*.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, Kimberley detachment in British Columbia.
2. On August 26, 2015, you were dispatched to an address in response to a request by [Ms. J.], to dispose of a handgun, which belonged to her deceased father. You attended the address and examined the handgun. You

took possession of the handgun and failed to have [Ms. J.] sign a relinquishment of claim.

3. Following your meeting with [Ms. J.], you accessed the related Kimberley RCMP PRIME file 2015-6842 and authored a synopsis, including the following entry:

*[The Subject Member] attended and [Ms J.] handed him the rusty frame of an old revolver, possibly even an old toy from the early 20<sup>th</sup> century, of some sort. There were no serial numbers on the frame. [The Subject Member] advised [Ms. J.] that the item she had did not constitute a handgun and could be discarded per her discretion. No further attendance or action. File concluded.*

4. You knowingly entered false and misleading information into the synopsis of PRIME file 2015-6842. Specifically, you falsely claimed:

- a) That you only met with [Ms. J.], and her sister [name redacted] was not present
- b) That the handgun was a toy
- c) That you did not seize the handgun
- d) That you left the destruction/disposal of the handgun to [Ms. J.]

5. You failed to accurately document your actions with respect to the seizure of the handgun into PRIME file 2015-6275.

#### **Allegation 9**

**Between August 10, 2015 and February 4, 2016, inclusive at or near Kimberley, in the Province of British Columbia, [the Subject Member] without lawful excuse failed to properly account for property coming into his possession in the performance of his duties, contrary to section 4.4 of the Code of Conduct of the Royal Canadian Mounted Police.**

#### *Particulars of the contravention*

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to "E" Division, Kimberley detachment in British Columbia.
2. On August 10, 2015, you were dispatched to a report of a break-in at a local car dealership in Kimberley, British Columbia.
3. You attended at the car dealership and spoke to [Mr. H.], who directed you to a gas jerry can, bolt cutters, and a socket driver with attachments.
4. You contacted [Corporal M.], Cranbrook Forensic Identification Service to attend and process the scene.

5. [Corporal M.] photographed and identified the scene with placards numbered 1-15. At Placard #1, he identified:

*“one plastic fuel container, one pair of black rubber and blue metal Mastercraft 12”/300 mm bolt cutters, one chrome Mastercraft 7/8” socket with a drill/driver attachment and one chrome Mastercraft 10 mm socket attached to a chrome Mastercraft 3” socket extension bar attached to a green metal drill/driver adapter on the round on the east side of 316 Avenue adjacent to the dealership...”*

6. [Corporal M.] reported the tools at Placard #1 were seized for further processing and the plastic fuel container [jerry can] was turned over to [you,] [the Subject Member].

7. On October 30<sup>th</sup>, 2015, you authored an occurrence report as follows: *“Seven evidentiary items were returned by Cranbrook FIS with no positive results. All items were put in a cardboard box and placed in KTEL 6 for disposal.”* The related property report, you authored, listed all seven items as one exhibit: *“Glass shards, padlocks and tools”*. On February 4, 2016, the items were marked by [Ms. I.], the exhibit custodian, as “destroyed locally”. The property report is signed by both you and [Ms. I.].

8. The property reference for the car dealership, [Mr. D.], never had any property returned to him following the investigation.

9. [Ms. I.] reports that containers with flammable liquids, such as the jerry can, recovered as exhibits are not stored in temporary exhibit lockers and tools, such as those described at Placard #1, would not be destroyed.

10. You failed to itemize and properly account for the tools when they were entered as exhibits in accordance with Chapter 22.1 Processing of Exhibits, RCMP Operational Manual.

11. You did not account for the jerry can, for which there is no documentation since being turned over to you from [Corporal M.].

*[Sic throughout]*

[3] At the beginning of the hearing, particular 6 of Allegation 4 was amended by consent to read as follows:

6. You committed the offence of possessing a prohibited firearm without a registration certificate contrary to section 91(1)(b) of the Criminal Code.

**Preliminary motion**

[4] A preliminary motion was brought by the Subject Member seeking the exclusion of the prohibited firearm from evidence in these proceedings as well as a stay of proceedings in relation to Allegations 1 through 6.

[5] These are the undisputed facts as they relate to the motion. On October 12, 2016, Ms. M. called the Kimberly RCMP Detachment to turn in a firearm through the RCMP Firearms Amnesty Program. She wanted to be rid of the prohibited firearm after her husband's death. On October 14, 2016, the Subject Member attended Ms. M.'s residence and took possession of the prohibited handgun.

[6] On October 17, 2016, Sergeant N., as the Subject Member's supervisor, reviewed the Subject Member's PRIME file related to Ms. M. (2016-8108) and became concerned that a firearm was left in the possession of someone without a valid Purchase and Acquisition Licence. He determined that the Subject Member attended Ms. M.'s residence on October 14, 2016, and left with the firearm. Because that fact was not documented by the Subject Member in his file, Sergeant N. contacted Professional Standards and Sergeant M. was assigned to investigate the matter.

[7] On October 24, 2016, three members, including Sergeant M. and Sergeant N., attended the Subject Member's residence and served him with a Notice of a Code of Conduct investigation and an "Order to Return Items" (being the prohibited firearm). In compliance with that order, the Subject Member retrieved the firearm from his residence and turned it over to Sergeant M. The Subject Member argues that this interaction, on October 24, 2016, was an unlawful search contrary to section 8 of the *Charter*.

*Decision on the motion*

[8] After receiving written submissions from the parties, I find that the Subject Member's section 7 (right to remain silent) and section 8 (right to be secure against unreasonable search or seizure) *Charter* rights were breached by the order served upon him on October 24, 2016, to

“return” the firearm. By October 24, 2016, a Code of Conduct investigation (as well as a criminal investigation) had been initiated against him by the Conduct Authority. He was under investigation and that fact was known to the investigator who was present when the order was served. The Subject Member had no choice but to comply with the order or he would be in further contravention of the Code of Conduct. He was also not cautioned at the time that his production of the firearm would be used as evidence against him.

[9] In addition, I find that the Conduct Authority failed to abide by the provisions of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], in relation to that search and seizure. The provisions of section 40.2 of the *RCMP Act* were available to the Conduct Authority, which allowed for the issuance of a search warrant, a course of investigation perfectly suited to this situation. The Subject Member should have been provided with the necessary caution in order to obtain his informed consent in obtaining the firearm. Alternatively, the search warrant provisions contained in section 40.2 of the *RCMP Act* should have been used in order to obtain admissible evidence in accordance with the principles of fundamental justice, including the duty of fairness owed to the Subject Member.

#### *Remedy*

[10] The Subject Member argues that the appropriate remedy for this breach of his *Charter* rights was to exclude the evidence obtained as a result of the breach and to stay Allegations 1 through 6, which relate to the firearm seized from the Subject Member. He did not provide any submissions in terms of why a stay was appropriate in the circumstances.

[11] Recognizing that these are administrative and not criminal proceedings, given the fact that there were parallel criminal and Code of Conduct investigations underway at the time of the *Charter* breaches, I nonetheless find it appropriate to use the test set out in *R. v Grant*, 2009 SCC 32 [*Grant*], as a basis to determine the fate of the evidence collected as a result of the breaches of the Subject Member’s rights.

[12] In *Grant*, the Supreme Court set out the test at paragraph 71:

Under s. 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to: (1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct), (2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), and (3) society's interest in the adjudication of the case on its merits. The court's role on a s. 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute.

[13] In this case, the breach of the Subject Member's rights was serious. Three senior members of the Force attended his residence with an official order and left him with no choice but to comply (or face additional allegations of misconduct). Pursuant to the order, he was forced to provide evidence that implicated himself in both criminal and Code of Conduct contraventions. The actions of the members involved breached both his sections 7 and 8 *Charter* rights, as well as the duty of fairness owed to him in the administrative investigation. That argues for the exclusion of the evidence.

[14] Significant amendments to the *RCMP Act* were introduced on November 28, 2014, including the introduction of specific search and seizure provisions. Those provisions, although obviously perfectly applicable in this situation, were completely ignored by those conducting the parallel investigations. Even more concerning is that the manner in which this part of the investigation was conducted had the potential to jeopardize the criminal prosecution against the Subject Member, and may very well have affected the outcome. This also argues for the exclusion of the evidence.

[15] The allegations against the Subject Member are serious. However, given the seriousness of the investigative misconduct and the significant breaches to the *Charter* rights of the Subject member and to the duty of fairness owed to him, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute. I find that the appropriate remedy in this case is the exclusion of the evidence obtained as a result of the Subject Member's breached rights. For those reasons, the Subject Member's preliminary motion is granted and no

evidence obtained as a result of the “Order to Return Items” will be considered by me in the course of the Conduct Hearing.

[16] The Subject Member also sought a stay of proceedings in relation to Allegations 1 through 6. However, in his submissions, he did not address how this was one of the “the clearest of cases” that would warrant such a stay, *R. v Regan*, 2002 SCC 12 (CanLII):

Charges that are stayed may never be prosecuted; an alleged victim will never get his or her day in-Court; society will never have the matter resolved by a trier of fact. For these reasons, a stay is reserved for only those cases of abuse where a very high threshold is met: “the threshold for obtaining a stay of proceedings remains, under the Charter as under the common law doctrine of abuse of process, the ‘clearest of cases’” (*O’Connor, supra*, at para. 68).

[17] Nor do I believe that this is one of those cases. While the Subject Member has been successful in his motion in terms of excluding the evidence obtained as a result of the order to return the firearm, other independent evidence is available to support the majority of the particulars in each of these Allegations. I am bound, for example, by the findings of Judge Sinclair in the criminal proceedings against the Subject Member with respect to how he came into the possession of the firearm and the fact that it was a prohibited firearm.

## **EVIDENCE ON THE ALLEGATIONS**

[18] Allegations 1 through 6 deal with the same incident that occurred on or between October 14, 2016, and October 24, 2016. The facts are for the most part undisputed. In the month of October 2016, the Province of British Columbia conducted a firearms amnesty program. Under the terms of the program, members of the public could surrender unwanted, unlawfully possessed and illegal firearms to the police without fear of prosecution. All police agencies, including the RCMP, participated in the amnesty program.

[19] Ms. M. was in her early 90s in October 2016. Her husband was a World War II veteran. When he returned from overseas after the war ended, he brought a German Luger handgun. He died some years prior to October 2016. Ms. M. wanted to be rid of the handgun. When she heard about the amnesty program on October 12, 2016, she called her local RCMP Detachment in



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Kimberly to have someone take the handgun from her. The Subject Member eventually responded to that call for service on October 14, 2016. He was working that day and, while on duty and in uniform, he attended Ms. M.'s residence in a senior's assisted living complex in Kimberly. He spoke with her and, when he left a few minutes later, he took the firearm with him. Ms. M. was happy to see the firearm gone and would have been happy for the Subject Member to be able to keep it for himself.

[20] The Subject Member retained possession of the firearm for his personal benefit and did not turn it into the Detachment to be processed as per the provisions of the amnesty program. He returned to the Detachment and submitted his police report, which reads as follows:

[October 14, 2016] [The Subject Member] attended [Ms. M.]'s residence and observed that she did indeed have an old firearm. [The Subject Member] had a conversation with [Ms. M.] and when he explained to her that the firearm would be destroyed after police seized it she enquired as to any other options. [The Subject Member] explained to her that rather than turn the firearm over to police [Ms. M.] could either turn them over to a local Rod and Gun Club as a donation to the club, find someone with a proper PAL who can lawfully take the firearm, donating to a museum, or have it deactivated by a gunsmith so as to render it permanently useless/inoperable and keep it as a family heirloom. [Ms. M.] chose to turn the firearm over to someone with a PAL so that it "would have a good home." as her husband would have wanted that. No firearm seized. File concluded.

*[Sic throughout]*

[21] Sergeant N., the Detachment Commander, was not working on October 14, 2016. When he returned to work on October 17, 2016, he reviewed the Subject Member's police report and understood that the firearm had been left with Ms. M. to give to someone with a valid Purchase and Acquisition Licence (PAL). Therefore, he was concerned that it had not been seized and questioned whether she was licenced to possess it and whether it was able to be safely stored at her residence until she was able to turn it over to that someone with a PAL. Because the Subject Member was off duty for the next 10 days, he called Ms. M. to address his concerns and he was told that the Subject Member had actually taken the firearm with him when he left on October 14, 2016. Sergeant N. then attended her residence to clarify that with her in the form of a witness statement.

[22] Sergeant N. was of the view that the Subject Member may have contravened the RCMP Code of Conduct; thus, steps were taken to initiate an investigation. The results of that investigation are these proceedings as well as criminal charges against the Subject Member. The criminal proceedings were concluded on December 4, 2017, when the Subject Member entered a guilty plea to one count of possessing a prohibited firearm without a registration certificate contrary to paragraph 91(1)(b) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*]. The other criminal charges against him were stayed.

[23] While the facts are for the most part undisputed, the interpretation of those facts in some instances is the basis for the Subject Member's denial of all six of these allegations. Given the nature of some of the allegations and the manner in which the Subject Member argues the facts should be interpreted, I felt it might be helpful to hear *viva voce* evidence in order to determine which version of events was more likely. In the end, I found that the testimony of each of the Conduct Authority's witnesses I heard from only served to reinforce his or her statement contained within the investigative materials. Nor was their evidence impugned on cross-examination. For that reason, I will not go into the fine details of the testimonies in my analysis unless it is necessary to explain a specific finding.

[24] There was contradictory evidence in this case. The statements provided by Ms. M. were entirely at odds with the testimony of the Subject Member. In such cases, it is necessary to assess that evidence according to the Supreme Court of Canada's decision in *F.H. v McDougall*, [2008] 3 SCR 41 [*McDougall*], in which the Court said:

[86] However, in civil cases in which there is conflicting testimony, the trial judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case. W.(D.) is not an appropriate tool for evaluating evidence on the balance of probabilities in civil cases.

[25] The Ontario Court of Appeal followed up on those statements in *Law Society of Upper Canada v Neinstein*, 2010 ONCA 193:

[21] The appellant's argument that the three-step approach in *W.(D.)*, or its purposive equivalent, must be used in assessing conflicting evidence in non-criminal cases was put to rest in *McDougall*, a decision rendered after the Divisional Court released its reasons in this case. [...] In the Supreme Court of Canada, the court unanimously concluded that a *W.(D.)* type analysis was inappropriate in a civil case. [...]

[22] *McDougall* has direct application to this case. The Hearing Panel was required to determine whether the allegations were made out on the balance of probabilities. In doing so, the Hearing Panel was required to consider the totality of the evidence and to make credibility assessments in the context of the totality of the evidence. As in *McDougall*, a finding by the Hearing Panel that the complainants were credible could be determinative of the outcome. In light of *McDougall*, the Hearing Panel's application of a modified *W.(D.)* analysis was inappropriate to the inquiry it was required to make. [...]

[26] I make the following credibility findings using the test presented in *McDougall*. The statements provided by Ms. M. were close in time to her interactions with the Subject Member and her clear memory of what occurred is evident and understandable. She wasn't even aware when she provided the statements that any form of misconduct was alleged against the Subject Member, so it would be difficult for her to harbour any sort of bias against him. She did not lodge a complaint against him and she did not have any grievance with him. She provided frank, matter of fact, statements that were both internally consistent and consistent with the other undisputed facts.

[27] On the other hand, I found a great deal of the Subject Member's evidence to be self-serving and stretching the boundaries of belief. For example, the statements provided by Ms. M. explaining her wish to be rid of the firearm were straight forward and entirely devoid of emotion. She made it clear that she simply wanted to be rid of the firearm, that she "didn't know beans about it" and that she didn't care what happened to it. She had a very good recollection of her interaction with the Subject Member, explaining that he told her about some of the details of his personal life, some of the same details that he shared during his testimony. She also stated that he

seemed to be thrilled with the handgun and that he took it apart in front of her and explained how it worked.

[28] Yet the Subject Member testified that Ms. M. didn't want to see the firearm destroyed because it was so important to her and that his heart went out to her such that he succumbed to her desire for him to keep it for himself in order to give it a good home. I find Ms. M.'s account to be far more likely and I disbelieve the Subject Member's version of that conversation where the two differ.

[29] The Subject Member also testified that he didn't think it was relevant to mention in his police report that "the someone" with a PAL that Ms. M. chose to turn the firearm over to was in fact him. In addition, he testified that he didn't come into the possession of the firearm as a result of his position as an RCMP officer, because it was just a "citizen to citizen" transaction. I find it incredible that a rookie police officer could hold those beliefs, let alone a police officer with 10 years' service.

[30] It is clear from the evidence that Ms. M. called the RCMP Detachment in response to the provincial firearms amnesty program in order to rid herself of the unwanted firearm. It is equally clear that, when the Subject Member attended her residence on October 14, 2016, he did so in response to her call for service and not as part of a "citizen to citizen transaction" like that which might arise from a Kijiji advertisement. The Subject Member was in uniform, on duty, representing the RCMP, and in the exercise of his duties when he arrived at her residence, while he was at her residence, and when he left her residence. Ms. M. turned the firearm over to him because he was the member of the RCMP who responded to her call for service; but for that fact, she would not have turned the firearm over to him.

[31] With those facts established, I will focus on each of the allegations individually.

### **Allegation 1**

[32] The essence of Allegation 1 is that the Subject Member committed theft in relation to the firearm that Ms. M. called the RCMP Detachment to come and pick up from her residence

pursuant the provincial firearms amnesty program in effect at the time. At the time that these proceedings were initiated by the Conduct Authority on September 6, 2017, the Subject Member was facing a charge of theft under the *Criminal Code* in relation to taking this firearm from Ms. M. and retaining it for himself. Particular 4 of that allegation specifically alleges theft pursuant to paragraph 334(b) of the *Criminal Code*. Given the very specific nature of the Allegation, it is my view that, in order to establish the allegation, all of the elements of theft must be established. However, subsequent to the initiation of these proceedings, that theft charge was stayed. Therefore, there is no criminal conviction upon which to rely.

[33] Section 322 of the *Criminal Code* defines the offence of theft. One of the elements of the offence is that the owner of the property is taken fraudulently and without colour of right. In this case, Ms. M. stated clearly in her statements to investigators that if the Subject Member wanted the firearm, then he could have it; she would be happy for him to have it and she willingly allowed him to walk out the door with the firearm with her blessing. The circumstances more accurately support a finding of false pretences, but that is not what was alleged.

[34] I acknowledge the Conduct Authority Representative's submissions with respect to the Subject Member stealing the firearm from the RCMP, given that he took possession of it in the course of his duties and in his capacity as an RCMP officer. However, given the very fair statements of Ms. M. and her willingness for the Subject Member to keep the firearm, ownership of the firearm never transferred to the RCMP. Therefore, the RCMP could not be deprived of it. Similarly, the reference to theft and fraud in the *Conduct Measures Guide* is not meant to be a definition of what constitutes theft or fraud, it is an indication of what is included in that category of cases for the purposes of determining the appropriate conduct measure.

[35] I find that the Conduct Authority has not proven that the Subject Member committed theft on a balance of probabilities. Given that particular 4 is the only particular that could substantiate a finding of discreditable conduct, I find Allegation 1 not to be established.

**Allegation 2**

[36] The second allegation is also one of discreditable conduct. In order to make such a finding, I must first find that it was the Subject Member who committed the acts in question. That is admitted. The second stage involves a determination of whether the facts alleged actually took place on a balance of probabilities as per *McDougall*. The Subject Member denies four of the six particulars, relying on a different interpretation of the evidence and the facts as I have found them to be. However, for the previously noted reasons, I find each of the particulars to be established with the exception of particular 5. I cannot find that the Conduct Authority has proven a criminal breach of trust as alleged in particular 5. Again, we have a situation where that charge was dropped as a result of the plea negotiations, so there is no criminal conviction to rely upon.

[37] Therefore, I must look at the elements of breach of trust under section 122 of the *Criminal Code* to determine if the Conduct Authority has proven them. That offence requires a finding that the Subject Member acted with the intention to use his public office for a purpose other than for the public good, for example for a dishonest, partial, corrupt or oppressive purpose. I am reluctant to make that finding in the absence of evidence of his intention at the start of his interaction with Ms. M. It seems more likely to me that the Subject Member's retaining of the firearm for his own purposes was the eventual result as the situation evolved.

[38] However, that finding in relation to particular 5 does not allow the Subject Member to escape liability for this allegation, because the remaining particulars are enough to establish the allegation of discreditable conduct. The Conduct Authority needs not establish each of the particulars, just enough such that those that are established meet the threshold. Discreditable behaviour is based on a test that considers how the reasonable person in society, with knowledge of all the relevant circumstances including the realities of policing in general, and the RCMP in particular, would view the behaviour. The threshold is met when that reasonable person would see the actions of the Subject Member as likely to discredit the Force. In my view, they are. A reasonable person would see the Subject Member using his position as an RCMP member to

obtain the firearm from Ms. M. as likely to discredit the Force. Therefore, I find Allegation 2 to be established.

### **Allegation 3**

[39] Allegation 3 is one of abuse of authority contrary to section 3.2 of the Code of Conduct. The allegation is that the Subject Member abused his authority and the powers entrusted to him as an RCMP member to unlawfully gain possession of the firearm from Ms. M. for his own personal use.

[40] Section 3.2 of the Code of Conduct requires that “Members act with integrity, fairness and impartiality, and do not compromise or abuse their authority, power or position”. As indicated in my findings of fact, I find that the Subject Member abused his authority by taking possession of the firearm for his own personal purposes while on duty and responding to a call for service under the Provincial Firearms Amnesty Program. This allegation relies upon essentially the same facts as Allegation 2 and for the same reasons previously explained, I find that it has been established. It was not proven that the Subject Member “unlawfully” gained possession of the firearm because he was not convicted of either the theft or criminal breach of trust. However, unlawfully obtaining possession of the firearm is not necessary in my view to establish a finding that he abused his authority regardless in taking the firearm for his own personal purposes.

### **Allegation 4**

[41] Allegation 4, as amended, relates to the Subject Member’s conviction for possessing a prohibited weapon without a registration certificate contrary to paragraph 91(1)(b) of the *Criminal Code*. The conviction has been admitted to and the only question is whether that conviction amounts to behaviour likely to discredit the Force contrary to section 7.1 of the Code of Conduct. The test to be applied is the same as the one outlined in Allegation 2 and I have no hesitation in finding that a reasonable person would find that the Subject Member’s conviction for possessing a prohibited firearm without a valid registration certificate is conduct likely to discredit the Force. Therefore, the allegation is established.

**Allegation 5**

[42] Allegation 5 is that 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. The relevant particulars denied by the Subject Member are that he knowingly entered false and misleading information into the synopsis of the PRIME file, specifically that he claimed that Ms. M. retained the firearm and that he did not seize the firearm.

[43] The natural and reasonable interpretation of the Subject Member's PRIME synopsis is that he did not take the firearm from Ms. M., rather that he left it with her to give to someone else who possessed a valid PAL. That is how Sergeant N. read the report when he reviewed the file on October 17, 2016. Despite the Subject Member's protestations, that is the conclusion any reasonable police officer would reach upon reading the report. His account in the report is not only incomplete as he acknowledged in his testimony, it is misleading, inaccurate and intended to cover up the fact that he took the firearm from Ms. M. and kept it. I find each of the particulars in Allegation 5 to be established and the allegation itself is established.

**Allegation 6**

[44] The particulars of Allegation 6 are essentially the same as Allegation 5 with the additional detail that the Subject Member failed to document the seizure of the firearm by having Ms. M. sign a relinquishment of claim or provide her with a receipt or any other documentation. The alleged contravention is of section 4.4 of the Code of Conduct in that he concealed and failed to properly account for property coming into his possession in the performance of his duties. The Subject Member denies only particular 4, which alleges that he authored a false and misleading synopsis in his police report. I have already found that the synopsis in his police report was inaccurate and misleading. I have no hesitation in finding that it was also false and misleading. Therefore, I find that particular and the Allegation as a whole to be established.



**Allegations 7 and 8**

[45] Allegations 7 and 8 relate to a similar incident that occurred on August 26, 2015, in Cranbrook, British Columbia. On that date, Ms. J. called the Cranbrook Detachment in order to dispose of what the Conduct Authority alleges to be a handgun which had belonged to her deceased father. The Subject Member was working that day and he was dispatched to the call. He attended Ms. J.'s residence and examined the handgun. The Conduct Authority alleges that, when he left the residence, he took the handgun with him, retained possession of it, and thereby committed a theft, amounting to disgraceful conduct. The Subject Member acknowledges attending that call for service and examining the item, but he argues that it was just the old rusty frame of what may have been a handgun at one time. He also insists that he left the item with Ms. J. and he did not take it with him when he left.

[46] After examining the statements and hearing testimony from both Ms. J. and her sister, as well as the Subject Member, I find that the item was indeed the rusty frame of what used to be a handgun and that it could not have been considered an operational handgun or firearm on August 26, 2015.

[47] However, I do find that the Subject Member took the item with him when he left Ms. J.'s residence. Both women were clear in their statements and clear in their testimony that the Subject Member left the residence with the item in his hands. Using the same test for assessing credibility that I outlined earlier, I prefer the clear and convincing evidence of the sisters to that of the Subject Member. Neither of them had anything to gain and neither of them was shaken on cross-examination. Their recollections were clear and unwavering on the witness stand. Given that the Subject Member has something at stake and my hesitation in accepting much of his testimony as factual, the evidence of the sisters is preferred and it leads me to the finding that the Subject Member took the item with him when he left the residence.

[48] Still, that finding does not resolve the allegations. The manner in which the particulars are drafted leave me with some concern that the allegations could be established without me finding that the item was in fact a handgun. Nonetheless, the more serious issue with these

allegations is that once again the Subject Member took the item with the knowledge and consent of Ms. J. She wanted to be rid of the item; she called the police to come and get it. She willingly turned the item over to the Subject Member. In addition, there was a lack of evidence in terms of what exactly it was that he was to do with the item once he took possession of it and what in fact he did do with it. For all those reasons, I cannot find that the Subject Member committed theft in relation to the handgun. Given that the Conduct Authority has failed to establish the basis for the allegations of discreditable conduct, there is no need to go any further in this analysis.

[49] Allegation 8 deals with the Subject Member's reporting of what occurred on August 26, 2015. It alleges that the Subject Member failed to provide complete, accurate and timely accounts pertaining to the carrying out of his responsibilities, contrary to section 8.1 of the Code of Conduct. It is undisputed that, following his attendance at Ms. J.'s residence on that date, he authored a synopsis in his police report as follows:

[The Subject Member] attended and [Ms. J.] handed him the rusty frame of an old revolver, possibly even an old toy from the early 20<sup>th</sup> century, of some sort. There were no serial numbers on the frame. [The Subject Member] advised [Ms. J.] that the item she had did not constitute a hand gun and could be discarded as per her discretion. No further attendance or action. File concluded.

*[Sic throughout]*

[50] Aside from the correct description of the item that was taken by the Subject Member, the dispute in Allegation 8 arises in particular 4. It alleges that the Subject Member knowingly entered false and misleading information into the synopsis and it itemizes that information as follows:

- a. That you only met with Ms. J., and her sister was not present.
- b. That the handgun was a toy.
- c. That you did not seize the handgun.
- d. That you left the destruction/disposal of the handgun to Ms. J.

[51] Therefore, particular 5 alleges that the Subject Member failed to accurately document his actions with respect to the seizure of the handgun into the file. The Subject Member denies that the item was a handgun and that he seized the item. He also denies that there is anything false or misleading about not mentioning that Ms. J.'s sister was present when he dealt with Ms. J.

[52] I will deal with the issues in the order in which they are raised in the particular. First, I don't interpret his synopsis to say that he only met with Ms. J. and that her sister was not present. Ms. J. made the call for service and requested that the item be picked up. It seems reasonable that the Subject Member would include her name in the synopsis as whom he dealt with. There is nothing in the report that says no one else was there. Nor is it particularly relevant if there was.

[53] Second, the synopsis does not say that the handgun was a toy. It says that the item was the rusty frame of an old revolver, possibly even a toy. Read in context, I don't see that description as false and misleading. There was no evidence tendered to say that the rusty old frame was ever a functioning firearm and the description provided by the Subject Member seems reasonable in the absence of such evidence.

[54] The accuracy of his third and fourth statements are where I part ways with the arguments of the Subject Member. Given the clear evidence of the sisters and my findings that he left with the item in his hands, this aspect of the synopsis is clearly false and misleading. Whether the item was a handgun or not is immaterial in the context of his reporting what he did with it. The Subject Member had an obligation to provide an accurate report of what happened when he responded to this call for service. He took the item with him when he left and that fact is completely at odds with what is contained in his PRIME report. The report he entered into PRIME was clearly inaccurate and the contravention under section 8.1 of the Code of Conduct is established.

### **Allegation 9**

[55] Allegation 9 relates to activities that took place between August 10, 2015, and February 4, 2016, arising from the Subject Member's involvement in a break and enter complaint. The

Conduct Authority alleges that the Subject Member failed to properly account for property coming into his possession, contrary to section 4.4 of the Code of Conduct.

[56] The allegation and its particulars are somewhat confusing, but they deal essentially with two different circumstances. The first is the Subject Member's failure to account for a jerry can that was discovered at the scene of the break and enter or to document what was done with it once it was turned over to him by Corporal M., the forensic identification member who attended the scene. The Subject Member's explanation is that there was nothing to account for because he turned the jerry can over to one of the employees of the dealership where the break and enter occurred. He did that because one of those employees told him that it belonged in the C-Can container in which the landscaping tools and machinery were kept. The only evidence provided by the Conduct Authority on the issue was a statement from the owner/manager of the dealership which stated that none of his employees received the jerry can. I acknowledge that RCMP disciplinary hearings are not criminal proceedings and that the same strict rules of evidence do not apply. However, I am hesitant to put much weight on what amounts to third-hand hearsay. I will say that if the Subject Member turned the jerry can over to one of the dealership employees, then that notation should have been made in his report and it was not.

[57] The second element to this allegation is that the Subject Member failed to properly account for tools that were returned to him by Corporal M. after he completed his forensic examination of them. More specifically, the theory appeared to be that the Subject Member listed the tools along with other items that were returned by Corporal M. as one exhibit as opposed to individually listing the items. While that may be a valid criticism, Corporal M.'s complete and itemized list of those exhibits was available to be referenced. In my view, these two shortcomings in documenting the file certainly amount to performance issues; however, I don't believe they reach the threshold of misconduct required to amount to a contravention of section 4.4 of the Code of Conduct. Therefore, I find the allegation not to be established.

## CONDUCT MEASURES

[58] The *Notice of Conduct Hearing* in this case contained nine allegations. After considering the investigative report, oral testimony before me, and the submissions from counsel, I found Allegations 2, 3, 4, 5, 6, and 8 to be established. With the agreement of the parties, I conditionally stayed Allegation 3 in accordance with the Kienapple principle. Therefore, in the conduct measures portion of the hearing, I will deal with five findings of misconduct. Allegations 2 and 4 (for discreditable conduct), Allegation 5 (for failing to provide a complete and accurate account pertaining to the performance of his duties) and 6 (for concealing and failing to account for property coming into his possession in the performance of his duties) all relate to events that took place on October 14, 2016. Allegation 8 (for failing to provide a complete and accurate account pertaining to carrying out his responsibilities) relates to similar events that took place more than a year earlier on August 26, 2015, in Cranbrook.

[59] Having established contraventions of the Code of Conduct, I am statutorily obliged to impose conduct measures that are proportionate to the nature and circumstances of the contraventions. The Conduct Authority seeks the Subject Member's forced resignation while the Subject Member argues that any penalty that would allow him to keep his job is acceptable.

[60] In making my determination of the appropriate penalty, I must first consider the appropriate range of measures and then take into account the aggravating and mitigating factors present in this case. I'm not bound by the decisions of other conduct boards, but previously decided cases of a similar nature do help to establish the range of sanctions applicable. The principle of parity of sanction seeks to ensure fairness, so that similar forms of misconduct are treated in similar fashion. This lends predictability to conduct matters. In addition, the *Conduct Measures Guide* is available for guidance on considerations around the imposition of conduct measures. However, it is not binding or determinative.

[61] Given the nature of the allegations and the similarity of the two different incidents captured by these allegations, I find it appropriate to impose conduct measures that are global in nature.

[62] The established contraventions of the Code of Conduct are very serious and, in my view, can be characterized as involving dishonesty and deception. Having reviewed the cases presented by both parties, when it comes to misconduct involving those factors, the range of sanction is fairly narrow, extending from a substantial forfeiture of pay to dismissal. The principle of parity of sanction brings dismissal into play as a potential sanction when there has been some personal gain sought or obtained, absent significant mitigating factors. That was reflected in the cases of *Cormier*, a level II decision adjudicator in *Commanding Officer "J" Division v Constable Cormier* (November 20, 2017), and *Vellani, Commanding Officer "E" Division and Constable Vellani*, 2017 RCAD 3.

[63] In terms of mitigating factors, I accept that the Subject Member has no prior discipline and that he has 10 years of good service with the Force. I acknowledge that the Subject Member has support among his family and friends and from some fellow RCMP members for continued employment as a police officer. However, I am unable to say how much of that support is from people who are fully aware of the nature of his misconduct. In addition, some of that support was from people who disbelieved that the Subject Member could have committed the alleged misconduct. Of course, I have now determined that most of what was alleged has been established, which may or may not affect the support from those people.

[64] I acknowledge that the Subject Member's *Charter* rights were breached at one point in the investigation. However, I believe that the appropriate remedy was granted for that breach and, given the relatively minor end effects of the breach, I am disinclined to consider that to be a factor that mitigates towards a lower conduct measure.

[65] The Subject Member took the stand and quite emotionally apologized to me as the Conduct Board and to others, thereby showing remorse for his actions. I consider that to be a valid mitigating factor. However, in the course his apology, I saw a lack of awareness on his part in terms of exactly what it was that he was apologizing for. He sees his false and misleading or incomplete and inaccurate reports as being a product of laziness as opposed to what I see as deceit. For that reason, I can't give him full credit for his apology or his demonstration of remorse.

[66] I also give limited weight to the natural consequences of his misconduct as a mitigating factor. Much of the Subject Member's time on the stand during the conduct measures phase of the hearing was spent detailing the financial hardship on him and his family, and the emotional turmoil he suffered as a result of these and the criminal proceedings having been initiated. Those are sometimes the unfortunate result of one's actions and I would have preferred to see some sort of appreciation or understanding of how his actions sullied the reputation of the Force. Also glaringly absent in his testimony was any indication that he had learned from his mistakes and any reassurance that this type of misconduct would not be repeated in the future. In short, I was left with the distinct impression that the Subject Member considers himself to be the victim as opposed to the perpetrator of this misconduct.

[67] Significantly absent from the list of mitigating factors is any sort of medical explanation for the Subject Member's actions, an explanation that is present in many cases where similar behaviour has not resulted in dismissal.

[68] Thus, these mitigating factors must be balanced against what is very serious misconduct. The Subject Member used his position as an RCMP officer to obtain a personal benefit for himself and he attempted to conceal that fact from his supervisors by authoring false and misleading police reports. Complete and accurate accounting of a police officer's actions on a continual basis is fundamentally important for a police detachment to operate. If one police officer cannot rely on the accuracy of another's reports in carrying out his duties, a detachment cannot operate efficiently or effectively. Nothing can compromise the effectiveness of a police service as seriously as the loss of confidence in an officer's propensity to tell the truth.

[69] There are also some significant aggravating factors present that must be considered in this case. First of all, the misconduct involved the Subject Member's interaction with members of the public, which has the potential to seriously lessen the reputation of the RCMP in the eyes of the community.

[70] Second, his misconduct cannot be seen as isolated. He used his position as a member of the RCMP in order to take for himself the Luger handgun from Ms. M. and authored the false

and misleading report in relation to his actions. One instance of misconduct of that type is serious. However, he also previously took the frame of an old revolver from Ms. J. and authored an incomplete and inaccurate report that also failed to account for what actually happened on that occasion. Therefore, it cannot be said that this was a one time lapse in judgment that is out of character for him, rather it constitutes a pattern of behaviour.

[71] Third, to be perfectly clear since it was not specifically alleged in the allegations against him, I find that, in authoring the inaccurate and misleading police reports, the Subject Member was attempting to conceal his misconduct on both occasions. In my view, that is a significant aggravating factor in that not only was he willing to commit the act necessary to obtain possession of these items for his own personal use, he undertook efforts to cover his tracks. It was only the diligence of Sergeant N. in carrying out his duties as the Detachment Commander that brought this matter to light.

[72] Fourth, the incident involving the Luger pistol resulted in a criminal conviction and that conviction helps to underscore the irony of what occurred here. The Subject Member was the police officer who responded to a call for service in order to assist an old woman to dispose of a firearm. All this occurred in the context of a provincial firearms amnesty program intended to reduce the number of firearms in circulation and the number of offences committed involving those firearms. Instead of doing his job and following the very simple and straightforward procedures outlined in the Criminal Operations Branch bulletin, and in direct contravention of that bulletin, he took one of these firearms for his own benefit. Not only did he not submit the firearm for destruction, as per the intention of the amnesty program, he was subsequently convicted of unlawfully possessing it, resulting in an obvious blow to the reputation of the RCMP with the Courts, the Crown, and the public.

[73] Finally, as a result of the criminal conviction and the contraventions which have been established against him in these proceedings, the Subject Member will have a *McNeil* record that must be proactively disclosed to the accused in any criminal case in which he is involved as an investigator. The burden of that record is borne not only by him, but by the Force and by the Crown. Given the nature of his misconduct, his credibility as a witness has the potential to be a



live issue in every case from this point forward. That reality necessarily results in a potential administrative burden on the Force in considering any future deployments. The Subject Member was hired to be a police officer and his experience to date with the service has been as a general duty investigator. That is what he wants to continue to do. Despite the letters of support from some of the members who indicated their willingness to work with him in the future, the Force should not be put in the position of having to attempt to accommodate someone whose testimony in any future court proceedings is going to be potentially compromised by this display of dishonesty and deceit.

[74] It is a well-established principle that dismissal is only to be considered in the most extreme cases and that rehabilitation is the primary purpose of the imposition of conduct measures. That principle is reflected in the case of *Ennis v the Canadian Imperial Bank of Commerce*, (1986) BCJ 1742, in which the Court said in relation to dismissing an employee:

Real misconduct or incompetence must be demonstrated. The employee's conduct and the character it reveals must be such as to undermine or seriously impair the essential trust and confidence the employer is entitled to place in an employee in the circumstances of their particular relationship. The employer's behaviour must show that he is repudiating the contract of employment or one of its essential ingredients.

[75] I acknowledge that, in some cases involving dishonesty and deception, the sanction imposed is rightfully something less than dismissal. However, the decisions on which the Subject Member relies in support of his argument for a lesser sanction make it entirely clear that one of the possible sanctions against members, whose actions demonstrate these characteristics, is dismissal from the RCMP. I believe that dismissal was not imposed in those cases because the respective conduct boards found that there were sufficient mitigating circumstances to warrant a less severe sanction or the joint submission on sanction called for a less severe penalty. Nonetheless, it is clear that each case must be assessed on its own circumstances.

[76] As the conduct board noted in *Vellani* (starting at paragraph 55), although rehabilitative potential is an important consideration, it does not overcome the right to terminate employment when the breach goes to the heart of the employer-employee relationship. In my view, the Subject Member's conduct is inconsistent with the terms of his service and incompatible with the

due and faithful discharge of his duties. Not only did he use his position as an RCMP officer to obtain possession of items for his own personal use, but he intentionally submitted inaccurate police reports to conceal his actions. His conduct reveals a character flaw of dishonesty. In this circumstance, I have no confidence that his character has been rehabilitated. He took the stand and testified for several hours in the conduct measures portion of the hearing. Unfortunately, he failed to acknowledge the true extent of his misconduct. Not surprisingly then, he failed to persuade me that he has undertaken any steps towards rehabilitation.

[77] Under these circumstances and given the position of responsibility and trust held by the Subject Member, as a police officer sworn to enforce the law, I simply cannot justify retaining him as a member of the Force. That would not be in the public interest. As a result, I direct the Subject Member to resign. If he fails to do so within 14 days, then I direct that he be dismissed.

November 16, 2018

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Gerald Annetts

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Date

Conduct Board