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ROYAL CANADIAN MOUNTED POLICE

in the matter of a conduct hearing pursuant to the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10

BETWEEN:

Commanding Officer, "E" Division

(Conduct Authority)

and

Sergeant Sukhjit Dhillon, Regimental Number 47909

(Subject Member)

Conduct Board – Record of Decision

Kevin Harrison

September 3, 2019

Mr. Denys Morel and Staff Sergeant Chantal Le Dû, for the Conduct Authority

Ms. Sabines Georges and Ms. Sara Novell, for the Member

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SUMMARY

The *Notice of Conduct Hearing* contained two allegations against the Subject Member. The first allegation, under section 7.1 of the Code of Conduct, set out three incidents in which the Subject Member is alleged to have applied unwanted physical force on a sexual partner. One of the incidents involved choking. The other two incidents involved non-consensual sex acts, which occurred during what were otherwise consensual acts of sexual intercourse. The second allegation, also under section 7.1 of the Code of Conduct, alleged that the Subject Member uttered threats to kill and/or cause serious bodily harm to his wife. Following a contested hearing, the Conduct Board found both allegations to be established. The aggravating factors of the case included a significant prior history of related misconduct and/or performance issues and the complete lack of remorse shown by the Subject Member. These factors significantly outweighed the mitigating factors. The Board dismissed the Subject Member from the RCMP pursuant to paragraph 45(4)(a) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10.

INTRODUCTION

[1] On March 21, 2018, the Commanding Officer and Conduct Authority for “E” Division (the Conduct Authority) signed a *Notice to the Designated Officer* requesting a conduct hearing be initiated. The Conduct Board was appointed by the Designated Officer on March 23, 2018.

[2] A *Notice of Conduct Hearing*, pursuant to Part IV of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], was issued by the Conduct Authority on June 6, 2018. The *Notice of Conduct Hearing* was served on the Subject Member, Sergeant Sukhjit Dhillon, on July 25, 2018.

[3] A *Notice of Place, Date and Time of Conduct Hearing* was issued on February 28, 2019. The conduct hearing was held in Surrey, British Columbia, from April 9 to 11, 2019, inclusively. Of note, the testimony of witnesses was heard in the allegations phase of the hearing.

[4] The conduct hearing was adjourned to May 9, 2019, for the oral submissions of the parties on the allegations. The submissions were delivered by videoconference.

[5] My oral decision on the allegations was delivered by videoconference on May 23, 2019. I found that both allegations were established.

[6] The conduct measures phase of the conduct hearing was conducted by videoconference on May 30 and 31, 2019. Sergeant Dhillon did not testify during this phase of the proceedings. Following the oral submissions of the parties, I delivered oral reasons for my decision on conduct measures. I directed that Sergeant Dhillon be dismissed from the RCMP.

[7] The following is my written decision prepared in accordance with subsection 45(3) of the *RCMP Act*.

ALLEGATIONS

[8] Following a Code of Conduct investigation, Sergeant Dhillon faced the following allegations:

Allegation 1

Between on or about May 1st, 2009 and on or about April 30th, 2016, at or near Coquitlam, British Columbia, Sergeant Sukhjit Dhillon behaved 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:

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "E" Division, British Columbia.
2. You were engaged in a personal relationship with [the Complainant] involving consensual and non-consensual sexual activities at her residence.
3. [The Complainant] provided statements about her relationship with you and your conduct towards her on December 7, 2016; March 27, 2017; and April 17, 2017.
4. The relationship ended in 2013, but continued in February 2016 after you initiated contact via emails with [the Complainant].
5. Those sexual encounters were rough in nature and on one or more occasions you applied unwanted physical force on [the Complainant].
6. One evening, between November 1st, 2009 and February 28th, 2010, after attending a party where you had consumed alcohol, you attended [the Complainant]'s residence. She was sitting on the steps inside her residence. You told her that you could take her right there, implying that you could have sex with her. You grabbed her by the throat squeezing hard. She asked you to stop and you kept squeezing for approximately another five seconds. You left her in shock and wondering if she should call the police.
7. In November or December 2012, during sexual intercourse, you kept forcing [the Complainant]'s legs apart despite her complaints that you were hurting her.
8. [The Complainant] had her mouth by your ear asking you to stop, however, you ignored her request and positioned your arm forcing her head sideways.

9. In April 2016, while engaging in sexual activity with [the Complainant], you were sucking and biting one of her nipples, while grabbing onto her other breast.

10. [The Complainant] asked you to stop a few times, however, you ignored her request. Your actions caused unwanted bruising and pain to [the Complainant].

11. Your actions amount to discreditable conduct.

Allegation 2

Between on or about November 1st, 2009 and on or about February 28th, 2010, at or near Coquitlam, British Columbia, Sergeant Sukhjit Dhillon behaved 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:

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

2. You were engaged in a personal relationship with [the Complainant] involving consensual and non-consensual sexual activity at her residence.

3. One evening, after attending a party where you had consumed alcohol, you drove to [the Complainant]’s residence and had a conversation with her in the lobby of her residence.

4. During your conversation, you said something along the lines of “one bullet would solve all your problems”. [The Complainant] believed it sounded like you wanted to end your own life, but you told her “no [...], I mean one bullet will solve my problems in (sic) [D.]”, who was your wife at the time.

5. Your comments were inappropriate and amount to discreditable conduct.

Issues with the allegations as written

[9] I identified some concerns with the way the *Notice of Conduct Hearing* was drafted. The allegations contain a total of four incidents of alleged misconduct on the part of Sergeant Dhillon. All of these incidents are to have occurred within the context of a personal relationship between Sergeant Dhillon and the Complainant. All of these incidents are to have occurred at the Complainant’s residence in Coquitlam, British Columbia. These portions of the *Notice of*

Conduct Hearing are straightforward and raise no concerns. The concerns relate to the remaining particulars.

[10] The first allegation includes three separate incidents of alleged misconduct. Each of these incidents, if proven, would constitute a serious contravention of the Code of Conduct. All three of these incidents are distinguishable by the nature of the event and the time frame in which they are to have occurred. Furthermore, one of the incidents, set out in Particular 6 of Allegation 1, is to have occurred at the same time as the lone incident set out in Allegation 2. Although it is not necessarily desirable or proper to present numerous allegations against a member, in this case, each of these incidents should have been the subject of their own allegation. At the very least, there should have been three allegations. The two allegations of non-consensual sexual acts should have been set out as separate allegations, whereas the incidents relating to the choking of the Complainant and the threats to Sergeant Dhillon's wife could have been contained in a single allegation. This makes sense from an evidentiary point of view and it would have made my decision-making much cleaner. Nevertheless, the allegations can be dealt with as they were set out.

[11] Each of the incidents will be described in further detail below. For ease of reference, they will be referred to as follows throughout this decision:

- The “**chocking incident**” is set out in Particular 6 of Allegation 1. It is alleged that Sergeant Dhillon grabbed the Complainant by the throat and continued to squeeze it despite being asked by the Complainant to stop.
- The “**uttering of threats incident**” is set out in Allegation 2. It is alleged that Sergeant Dhillon uttered threats to kill or cause harm to his wife. This incident is to have occurred during the same encounter as the “choking incident”.
- The “**leg spreading incident**” is set out in Particulars 7 and 8 of Allegation 1. It is alleged that, while Sergeant Dhillon and the Complainant were engaged in consensual

sex, Sergeant Dhillon spread the Complainant's legs apart causing her significant pain. Despite being asked to stop, he continued, purportedly committing a non-consensual sexual act.

- The “**breast grabbing incident**” is set out in Particulars 9 and 10 of Allegation 1. It is alleged that, while Sergeant Dhillon and the Complainant were engaged in consensual sex, Sergeant Dhillon grabbed and/or sucked on the Complainant's breast, causing her significant pain. Despite being asked to stop, he continued, purportedly committing a non-consensual sexual act. The grabbing of the breast was such that significant bruising occurred. The bruises lasted for an extended period of time.

[12] Some preliminary matters need to be addressed prior to moving on to my decision on the allegations and conduct measures.

PRELIMINARY MOTIONS

Abuse of process

[13] During a Pre-Hearing Conference held on October 23, 2018, the Member Representative indicated that she wished to bring a motion, pursuant to section 17 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], seeking a stay of proceedings for abuse of process due to an alleged unreasonable delay in initiating a conduct hearing, pursuant to subsection 41(2) of the *RCMP Act*. The Member Representative indicated that she required further information in order to bring the motion. The parties requested that I issue a *Direction for Further Information* pursuant to subsection 15(5) of the *CSO (Conduct)*.

[14] On November 2, 2018, I issued the requested *Direction for Further Information*. The further information was delivered on November 29, 2018.

[15] On December 5, 2018, the Member Representative raised concerns about the sufficiency of the information provided in response to my *Direction for Further Information*. A Pre-Hearing

Conference was held on December 6, 2018, to discuss these concerns. Following this Pre-Hearing Conference, I issued further direction to address the informational needs of the Member Representative and the Board in relation to Sergeant Dhillon's proposed motion.

[16] On December 18, 2018, another Pre-Hearing Conference was held. I provided a preliminary assessment on the proposed motion, indicating that it appeared that the conduct hearing had been initiated within the one-year limitation period. The information indicated that the Conduct Authority became aware of Sergeant Dhillon's identity and the alleged contravention of the Code of Conduct on March 23, 2017. The *Notice to the Designated Officer*, initiating the conduct hearing, was signed on March 21, 2018. Nevertheless, the Member Representative wished to present a motion on the basis that Staff Sergeant Derek Schneider, a Professional Standards Unit investigator, was a conduct authority who was aware of the matter before March 23, 2017. Submissions were submitted by the parties on this motion.

[17] On April 1, 2019, I denied the motion for the following reasons. On December 7, 2016, Staff Sergeant Schneider obtained a statement from the Complainant. The statement pertained to a separate Code of Conduct investigation involving Sergeant Dhillon. However, the Complainant provided information relating to the matters currently before me. Subsection 40(1) of the *RCMP Act* states that a conduct authority in respect of a member may initiate a Code of Conduct investigation. Staff Sergeant Schneider was a conduct authority in respect of members under his command, but he was not a conduct authority in respect of Sergeant Dhillon. The Conduct Authority in respect of Sergeant Dhillon was Superintendent Mark Landry. He was informed by Staff Sergeant Schneider of the allegations made by the Complainant against Sergeant Dhillon on March 27, 2017. He initiated a Code of Conduct investigation shortly thereafter. The Supreme Court of Canada, in *Théreau v RCMP*, 2006 FCA 61, declared that it is the knowledge of the **applicable** conduct authority that causes the limitation period to run. It is not the knowledge of "persons responsible for investigating and reporting on allegations of misconduct" that triggers the limitation period. Therefore, the conduct hearing was initiated within the one-year limitation period.

Publication ban

[18] At the request of the Conduct Authority Representative and with the consent of the Member Representative, a publication ban, pursuant to paragraph 45.1(7)(a) of the *RCMP Act*, was made directing that information which could identify the Complainant shall not be published in any way in a document or broadcast or transmission.

REASONS FOR DECISION

[19] The role of a conduct board, as set out in subsection 45(1) of the *RCMP Act*, is to decide whether or not each allegation of a contravention of a provision of the Code of Conduct contained in the *Notice of Conduct Hearing*, served under subsection 43(2) of the *RCMP Act*, is established. The onus of proving the allegations rests with the conduct authority.

[20] The standard of proof required is a balance of probabilities. This standard of proof was clearly established by the Supreme Court of Canada in the case of *F.H. v McDougall*, 2008 SCC 53 [*McDougall*], as the only standard of proof in civil cases. In addition to reaffirming that the standard of proof is a balance of probabilities, the Court in *McDougall* provided further guidance, at paragraphs 44 and 49, when it stated that the trier of fact must consider all of the evidence to determine if it is more likely than not that the event occurred. In conjunction with this standard of proof there must be sufficiently clear, convincing and cogent evidence to satisfy this balance of probabilities.¹

[21] Although the particulars are set out with respect to each alleged contravention of the Code of Conduct, the Conduct Authority is not obliged to prove each one. Some particulars are in place simply to give context to the allegation. The Conduct Authority is only obliged to prove that Sergeant Dhillon's conduct with respect to each allegation was discreditable or likely to

¹ See *McDougall*, paragraph 46.

bring discredit to the Force. The applicable test for discreditable conduct will be set out further below.

[22] Some of the particulars can be dealt with summarily at this point, beginning with the first particular in both allegations. These state that Sergeant Dhillon was at all times a member of the RCMP, posted to “E” Division, in British Columbia. In his subsection 15(3) of the *CSO (Conduct)* response to the allegations, Sergeant Dhillon admitted to these particulars. Therefore, they are established as written.

[23] None of the remaining particulars were admitted to by Sergeant Dhillon. However, Particular 3 of Allegation 1 states that the Complainant gave three statements in relation to Sergeant Dhillon’s conduct. These statements were provided on December 7, 2016, March 27, 2017, and April 17, 2017.

[24] The statement of December 7, 2016, was obtained by Staff Sergeant Schneider as part of a Code of Conduct investigation mandated in relation to a domestic incident involving Sergeant Dhillon and his wife, which occurred on August 7, 2016. This incident is referred to later in this decision.

[25] The March 27, 2017, statement was provided to Sergeant Carrie Blades, Surrey Detachment Special Victims Unit, in relation to the complaints made by the Complainant that are the subject of these proceedings.

[26] The April 17, 2017, statement was provided to Detective Chris Brown-John of the Abbotsford Police Service as part of the statutory investigation into the Complainant’s complaints.

[27] All of these statements are in the Record. In his subsection 15(3) of the *CSO (Conduct)* response to the allegations, Sergeant Dhillon indicated that he was aware of the statements. He added that he was also aware of two other statements relating to this matter. These statements were prepared by the Complainant and provided to Corporal Sabrina Mills, Surrey Detachment

Professional Standards Unit. Both statements are dated August 18, 2016. These two statements play a role in these proceedings. Nevertheless, this particular is established as written.

[28] Moving on to a more fulsome analysis of the allegations, both parties stated in their submissions that the relationship between Sergeant Dhillon and the Complainant is crucial to the understanding of this case. I agree. Both parties also spoke of the importance of the credibility of the witnesses to these proceedings. I also agree. The nature of the relationship between Sergeant Dhillon and the Complainant informs some of the issues raised by the parties in relation to the credibility of the witnesses, particularly that of the Complainant; therefore, this relationship will be examined first.

Relationship between Sergeant Dhillon and the Complainant

Duration of the relationship

[29] The duration of the relationship between Sergeant Dhillon and the Complainant is one of the most contentious issues in these proceedings. It is important because Sergeant Dhillon denied some of the incidents stipulated in the particulars. His denial is based solely on his claim that he and the Complainant were no longer in a relationship at the time the incidents are to have occurred. Only the evidence relating to the duration of the relationship will be set out here. The analysis of the time frames relating to the allegations will be provided as each incident is examined.

[30] The particulars do not state when the relationship between the Complainant and Sergeant Dhillon began. In his subsection 15(3) of the *CSO (Conduct)* response to the allegations, Sergeant Dhillon states that the relationship began and ended in 2008.

[31] Sergeant Dhillon testified that he arrived in Coquitlam in April 2008 by way of a promotional transfer. He claims that when he arrived at the Detachment, the Complainant worked in a clerical position with which the Detachment members interacted on a frequent basis. This is how he met the Complainant.

[32] The Complainant testified that Sergeant Dhillon came to Coquitlam in 2008. He was a corporal assigned to “C” Watch. She worked in a clerical position at the Detachment. She spent numerous shifts working with Sergeant Dhillon’s Watch. This is how she came to know Sergeant Dhillon.

[33] Sergeant Dhillon’s Employee Profile Information document, which is in the Record, shows that he was transferred to Coquitlam Detachment from Langley on April 29, 2008.

[34] The Complainant testified that their first social encounter occurred within a few months after Sergeant Dhillon’s arrival in Coquitlam. He had invited her out for dinner. Their second encounter occurred about a week after the “dinner date”. This was a “lunch date”. It was also their first intimate encounter.

[35] In the early stages of their relationship, the Complainant did not expect to see Sergeant Dhillon frequently. She was working two jobs and had to deal with the activities of an active young child. After the first sexual encounter through to the time Sergeant Dhillon left Coquitlam, the Complainant claims that they met, on average, once a week. They were intimate at each encounter.²

[36] Sergeant Dhillon’s Employee Profile Information document indicates that he was transferred out of Coquitlam to Richmond Detachment on May 15, 2009. The Complainant testified that after Sergeant Dhillon was transferred to Richmond, it was not as convenient for them to get together. Although they still communicated, they were usually not able to get together unless Sergeant Dhillon had RCMP business in Coquitlam (i.e., a trip to the gun range). She testified that the encounters first dropped to twice a month and then became less frequent after that. The encounters became so infrequent that she kept a calendar on her refrigerator to record the dates of their meetings³ so she knew the length of the gaps. She again noted that

² See Conduct Hearing Transcript, Volume 1, page 21, lines 13 and 25.

³ See Conduct Hearing Transcript, Volume 1, page 42, lines 15 to 24.

getting together became more difficult with the distance and the logistics, referring to child care issues and second jobs.⁴ How infrequent the encounters became over time was not determined by the evidence.

[37] Sergeant Dhillon simply states that, between 2008 and 2009, he and the Complainant were intimate on only four occasions.⁵

[38] Particular 4 in Allegation 1 states that the relationship ended in 2013, but it recommenced in February 2016 after Sergeant Dhillon contacted the Complainant via email. The particulars do not provide a time when the relationship between Sergeant Dhillon and the Complainant permanently ended.

[39] According to the Complainant, the relationship ended the first time shortly after the “leg spreading incident”. The particulars state that this occurred in November or December 2012. The Complainant placed this incident in late 2012 for the following reasons:

- it was dark and rainy;
- she had a particular duvet on her bed;⁶ and
- she was employed by a police service other than the RCMP in 2012.⁷

[40] The Complainant pinpointed the end of the relationship with reference to a planned trip to Regina. Sergeant Dhillon was going to Regina for training. According to her, he had invited her to come with him. She took the week off work to facilitate the trip. However, on the day of their

⁴ See Conduct Hearing Transcript, Volume 1, page 43, lines 3 to 7.

⁵ See Conduct Hearing Transcript, Volume 3, beginning at page 4, line 18, to page 5, line 4.

⁶ See Conduct Hearing Transcript, Volume 1, page 43, lines 17 to 20.

⁷ See Conduct Hearing Transcript, Volume 1, page 25, lines 1 and 2.

departure, Sergeant Dhillon failed to pick her up. In her testimony, she placed this failed trip in late 2012 or early 2013.⁸ In her statement to Sergeant Blades, she placed it in February 2013.⁹

[41] The Complainant attempted to contact Sergeant Dhillon by telephone, but he would not answer her calls. When she finally spoke to him by telephone three days later, she challenged him. He was not forthcoming with the reasons for his failure to take her with him. She claimed that, after this, he simply cut off all communications with her. She described this as “falling off the face of the earth”.¹⁰

[42] Conversely, Sergeant Dhillon claimed that he maintained sporadic communication with the Complainant until the end of 2009, but he did not see her in person after he left Coquitlam.¹¹ The Member Representative pointed to several pieces of evidence to support this claim. One of these is an email exchange between Sergeant Dhillon and the Complainant which occurred on February 29, 2016.¹² The pertinent part of the exchange is as follows:

Complainant: I don’t know where to begin. When did you fall off the face of the earth?

Subject Member: After getting cleared of all the bs in Coquitlam and when I went to Richmond. I think that was 2009ish.

Complainant: Wtf? That long? I can’t type six years worth of life; it’s too much.

[43] The Member Representative also noted that, in a statement provided to Sergeant Shane Stovern, a Professional Standards Unit investigator, Sergeant Dhillon said that he was involved

⁸ See Conduct Hearing Transcript, Volume 1, beginning at page 50, line 6, to page 51, line 18.

⁹ See “Sgt. Dhillon – Investigation Report”, page 192.

¹⁰ See Conduct Hearing Transcript, Volume 1, page 51, line 9.

¹¹ See Conduct Hearing Transcript, Volume 3, page 9, lines 12 to 24.

¹² The times on the emails between Sergeant Dhillon and the Complainant are not in sync. This is apparently because of how the emails were transferred and/or downloaded.

in a relationship with the Complainant between 2008 and 2009.¹³ Sergeant Dhillon testified to this as well.¹⁴

[44] Sergeant Dhillon's Employee Profile Information document indicates that he was transferred to Surrey Detachment on May 12, 2015.

[45] The Complainant testified that the relationship was renewed in February 2016 when she received an unsolicited email from Sergeant Dhillon. The message is dated February 22, 2016, at 1:28 p.m.¹⁵ The message simply reads: "Hi Ms [Complainant] how have you been." Sergeant Dhillon claimed that he was responding to an email from the Complainant that he found in his "spam".¹⁶ There is no evidence of such an email.

[46] The renewed relationship progressed to the point where another sexual encounter was arranged. This encounter was to have taken place on April 15, 2016. The "breast grabbing incident" is to have occurred during this meeting. Following this incident, Sergeant Dhillon and the Complainant remained in contact with each other, but they did not see each other in person until August 7, 2016.

[47] On August 7, 2016, around dinner time, the Complainant received a telephone call from a woman who identified herself as Sergeant Dhillon's wife. The woman invited the Complainant to her residence. Even though the Complainant was sceptical, she attended the address provided. The address turned out to be Sergeant Dhillon's residence. When she arrived, Sergeant Dhillon was not home at the time. The women went into the house and talked. During the conversation, both women attempted to contact Sergeant Dhillon without success. As the Complainant was preparing to leave, Sergeant Dhillon arrived home. He went into a rage when he found the Complainant there. A verbal confrontation ensued between Sergeant Dhillon and his wife.

¹³ See Conduct Hearing Exhibit 3, "Statement of Sgt. Dhillon", page 10 of 22, lines 286 to 293.

¹⁴ See Conduct Hearing Transcript, Volume 3, page 24, lines 1 to 5.

¹⁵ See "Sgt. Dhillon – Investigation Report", page 565.

¹⁶ See Conduct Hearing Transcript, Volume 3, page 10, line 14.

Sergeant Dhillon left the residence. He later called the Complainant and told her to leave his house. Sergeant Dhillon was on the telephone with his wife at the same time. He was “screaming” at her “in another language”. The Complainant left prior to Sergeant Dhillon’s return.¹⁷

[48] Following the August 7, 2016, incident, Sergeant Dhillon and the Complainant remained in constant contact by telephone and other electronic means. Much of their communications centred around the Code of Conduct investigation that had been initiated against Sergeant Dhillon pertaining to his actions on the evening of August 7, 2016. The investigation was launched as a result of an anonymous telephone call to the “E” Division Professional Standards Unit. The Complainant was the anonymous caller.

[49] According to the Complainant, her relationship with Sergeant Dhillon ended completely in September 2016. In her testimony,¹⁸ she stated that the culmination of the relationship occurred when she contacted Ms. R. M., another former girlfriend of Sergeant Dhillon. Sergeant Dhillon wanted to know the results of this contact. They discussed it over the telephone. The next day, September 20, 2016, the Complainant claimed that, while she was on her way to work, she noticed that Sergeant Dhillon had deleted her from BlackBerry Messenger (BBM) or had blocked her on Facebook. As a result of this, she contacted him by telephone when she got to work. Sergeant Dhillon began screaming at her and told her never to contact him again. She sent him a text message and he responded again saying to never contact him again. The text message exchange, beginning on September 20, 2016, at 7:40 a.m.,¹⁹ reads as follows:

Complainant: Why did you delete me off bbm?

Sergeant Dhillon: Do not contact me ever again.

Complainant: Gladly, I hope you get the help you need.

¹⁷ See Conduct Hearing Transcript, Volume 1, page 111, beginning at line 7.

¹⁸ See Conduct Hearing Transcript, Volume 1, page 139, beginning at line 12.

¹⁹ See “Sgt. Dhillon - Investigation Report”, pages 706 and 707.

Complainant: Hi, it has taken me a while to see this but your latest blow up has shown me that you are an emotional abuser. The blame, accusations, mind games, rejection. It needs to stop. I hope you find happiness eventually, Suki. I really do.

Sergeant Dhillon: Do not contact me in any format.

Complainant: Prime example ... Don't ask me again to make a statement against psu.

Sergeant Dhillon: Don't contact me.

Complainant: Grow up.

Sergeant Dhillon: Stop texting me.

Sergeant Dhillon: 0

Complainant: I won't contact you again. You re clearly in denial and choose to blame everyone else for your problems. Good bye.

[50] The last message in this exchange is dated September 21, 2016, at 1:24 p.m.²⁰

[51] The Complainant provided similar information in her statements to Staff Sergeant Schneider²¹ and Sergeant Blades.²²

[52] Having set out the evidence on the timeline of the relationship, the nature of the relationship between Sergeant Dhillon and the Complainant can now be explored. This is important to the assessment of the credibility of the witnesses, particularly the Complainant.

Nature of the relationship

[53] Particular 2 in both allegations states that Sergeant Dhillon was engaged in a personal relationship with the Complainant. The relationship involved both consensual and non-consensual sexual activities, all of which took place at the Complainant's residence²³.

²⁰ See "Sgt. Dhillon – Investigation Report", page 707.

²¹ See "Sgt. Dhillon – Investigation Report", page 163.

²² See "Sgt. Dhillon – Investigation Report", page 208.

[54] In his subsection 15(3) of the *CSO (Conduct)* response to the allegations, Sergeant Dhillon admitted to being engaged in an intimate relationship with the Complainant. Both the Complainant and Sergeant Dhillon testified to this as well.

[55] Sergeant Dhillon also admitted that he and the Complainant had consensual sex on four occasions. He did not provide any details as to what took place on these four occasions other than they were normal sexual encounters.²⁴ Conversely, the Complainant's evidence is that consensual sex between her and Sergeant Dhillon occurred on more than four occasions.

[56] Non-consensual sexual activities are the subject of two incidents contained in the particulars of Allegation 1. For example, Particular 5 of Allegation 1 states that on one or more occasions, Sergeant Dhillon applied unwanted physical force on the Complainant. These include the "leg spreading incident" and the "breast grabbing incident". Both of these incidents are alleged to have occurred during what was otherwise consensual sexual activity. However, the continuation of the described acts, if proven, would constitute unwanted physical force or non-consensual sexual activities.

[57] Sergeant Dhillon simply denied ever having engaged in non-consensual sexual activities with the Complainant.

[58] Particular 5 of Allegation 1 also states that their sexual encounters were rough in nature. Other than the evidence of the Complainant in relation to the two specific incidents of alleged non-consensual sexual acts, no evidence was presented during the hearing to support this portion of the particular. Consequently, all that is before me is what the Complainant said in her various statements.

²³ The latter portion of the particular involving consensual and non-consensual sexual activities is not relevant to the second allegation, which deals strictly with the alleged uttering of a threat by the Subject Member against his wife.

²⁴ See Conduct Hearing Transcript, Volume 3, page 6, line 1.

[59] In her statement to Staff Sergeant Schneider, the Complainant made the following comment in response to being asked if she had ever been exposed to physical violence at the hand of Sergeant Dhillon:²⁵

Ya I mean ... when she [Mrs. Dhillon] said that he put his ... his **hands around her [Mrs. Dhillon's] neck** I'm ... like ya that figures 'cause he ... **he's into that for sex ... he likes that** ... [Emphasis added]

[60] In her statement to Sergeant Blades, the Complainant spoke about Sergeant Dhillon's alleged penchant for rough sex as follows:

Uhm we were at my place so Suki, Suki **liked rough sex** and generally I could keep things pretty normal uhm cause our, it seemed like our entire relationship was just about sex. [...].²⁶[Emphasis added]

[61] Finally, in her statement to Detective Brown-John, the Complainant spoke about the rough nature of the sexual relations between Sergeant Dhillon and herself on several occasions. The first example reads as follows:

A: Uhm and the whole sex thing like I don't know how to say this uhm I like fun sex.

Q: Yeah.

A: **He likes rough sex.**

Q: Okay.

A: And I'm aware of that but usually like I figured that's what he wanted was sex on the stairs²⁷.

[Emphasis added]

[62] A second example in this statement reads as follows:

Q: Had there been any previous uhm I guess I don't know how to call it rough sex (U/I) –

²⁵ See "Sgt. Dhillon – Investigation Report", page 159, lines 283 and 284.

²⁶ See "Sgt. Dhillon – Investigation Report", page 187, lines 33 to 35.

²⁷ See "Sgt. Dhillon – Investigation Report", page 232, lines 16 to 23.

A: There was **some things** uhm some things that **he wanted to do** that I didn't want to do 'cause **I didn't trust him**.

Q: Okay.

A: Yeah.

Q: Okay. Yeah I'm guessing (U/I) talk about.

A: Yeah I just didn't trust him because he didn't accept no you know he liked to **push the, the boundaries** so –

Q: Okay.

A: - there was some things I just didn't trust him with.

Q: Okay.

A: Uhm but it was always sex was usually routine that started with me on top then it was me on my back usually there was **hair pulling** uhm you know he would **always reference marking me** uhm and he would say things you know like you're mine now you don't belong to anybody else. It was like a lot of those kind of -²⁸

[Emphasis added]

[63] Finally, the Complainant provided an account of actions taken by Sergeant Dhillon during a sexual act which prevented her from breathing. Her comments included a reference to her belief that Sergeant Dhillon did not respect her boundaries when it came to some of their sexual activities.²⁹

[64] None of these statements were contested by Sergeant Dhillon. Therefore, on the basis of these statements, the sexual encounters between Sergeant Dhillon and the Complainant were shown to be rough in nature, at least on occasion, and in addition to the two specified incidents of non- consensual sex.

[65] Although the particulars of the allegations are focussed on the sexual nature of the relationship, the nonsexual aspects of the relationship are the most critical to the assessment of credibility.

²⁸ See "Sgt. Dhillon – Investigation Report", page 235, lines 4 to 23.

²⁹ See "Sgt. Dhillon – Investigation Report", page 236, line 10, to page 239, line 35.

[66] The Complainant testified that her relationship with Sergeant Dhillon began with casual conversation and work emails. These moved to more of a banter between them. Sergeant Dhillon provided a similar account. The Complainant described the initial part of the relationship as great³⁰ and, at another point, “fantastic”.³¹ They exchanged emails and telephone calls on a regular basis.

[67] The Complainant testified that, a few months after Sergeant Dhillon arrived at Coquitlam, he invited her out to dinner during work. Her account of the dinner was, in some ways, quite odd. She said that Sergeant Dhillon picked her up at home **in the “NCO’s” SUV**. He was about two hours late. They went to a nearby mid-range chain restaurant. Given the time, between 9 and 10 p.m., **the restaurant was closed**. Nevertheless, **the staff allowed them in**. They were the only ones in the restaurant during the dinner.

[68] Their second encounter was planned as a “lunch date”. The Complainant was on a day off. According to the Complainant, Sergeant Dhillon was on a swing shift. Sergeant Dhillon was to pick her up at home. But again, he was two or three hours late. Due to his tardiness, things were a little awkward at first. They went to the family room where Sergeant Dhillon made a pass at the Complainant. They had sex on the couch in the family room. This is also the first time they were intimate. Following their sexual dalliance, they went out for lunch.³²

[69] The Complainant told investigators that, immediately after they had sex the first time, things changed. Sergeant Dhillon became very controlling.³³ At the time, the Complainant was a vegetarian. During their “lunch date”, she was seated facing a fish tank filled with live fish or lobsters. She was feeling uncomfortable looking at the fish tank, so she asked Sergeant Dhillon to change places with her. He was reading a newspaper and refused her request. He ignored her

³⁰ See Conduct Hearing Transcript, Volume 1, page 15, line 17.

³¹ See Conduct Hearing Transcript, Volume 2, beginning at page 81, line 25, to page 82, line 1.

³² See Conduct Hearing Transcript, Volume 1, beginning at page 14, line 25, to page 16, line 16.

³³ See “Sgt. Dhillon – Investigation Report”, page 182, lines 39 and 40.

for the remainder of the lunch. His behaviour left her wondering what she had done wrong.³⁴ This meeting set the tone for the rest of their relationship.

[70] Despite the way the “lunch date” went, their relationship remained amicable with the continuing exchange of telephone calls and emails. However, it is clear from the evidence provided by the Complainant that the relationship was completely controlled by Sergeant Dhillon. She has no gifts or presents. She has no keepsakes like a restaurant menu from a special dinner or a program from a play or a ticket stub from a concert. She has no photographs. In other words, she has none of the mementos that would flow from a normal intimate relationship.

[71] Sergeant Dhillon began his control over the Complainant by directing her not tell anyone about their relationship. He told her that the female members at the office were trying to get the male members in trouble. He also told her that it would be more exciting if no one knew about them.³⁵ In her testimony, she said that he told her not to talk to the female members on the Watch because they were out to get him and that they were liars.³⁶ She was adamant that she kept her promise not to tell anyone until after the relationship finally ended, with two minor exceptions.³⁷ Sergeant Dhillon’s controlling manner kept the Complainant completely isolated in her relationship with him.

[72] Throughout their relationship, Sergeant Dhillon also manipulated the Complainant with lies. She described it as “lies on top of lies”. Because Sergeant Dhillon controlled so much information in the relationship, the Complainant had no reason not to believe him or to question what he was telling her. What he was telling her made sense. She did not even question some of the outlandish things, like his involvement in “Black Ops”.³⁸

³⁴ See Conduct Hearing Transcript, Volume 1, page 16, line 19, to page 17, line 11.

³⁵ See “Sgt. Dhillon – Investigation Report”, page 183, lines 27 to 31.

³⁶ See Conduct Hearing Transcript, Volume 1, page 26 to 27, line 8.

³⁷ See Conduct Hearing Transcript, Volume 2, page 27, lines 23 to 25.

³⁸ See “Sgt. Dhillon – Investigation Report”, page 182, lines 9 to 35.

[73] The lies started at the very beginning of the relationship. For example, the Complainant claimed that Sergeant Dhillon told her that he was separated from his wife and in the process of obtaining a divorce.³⁹ Upon the renewal of the relationship in February 2016, he told her that he had obtained the divorce.⁴⁰ At the conduct hearing, Sergeant Dhillon testified that his divorce was still not finalized.⁴¹

[74] Throughout their entire relationship, Sergeant Dhillon never took her to his residence. He explained this by telling her that he lived in the basement of his parents' house. His parents were very traditional and would not appreciate him going out with a "white" woman.⁴²

[75] The Complainant and Sergeant Dhillon would arrange to meet. However, Sergeant Dhillon would frequently either show up late or not show up at all. He would not contact the Complainant to tell her what was going on. For some of the missed meetings, Sergeant Dhillon claimed that he had to deal with family emergencies or family obligations, like taking his father to Seattle or his mother to San Diego.⁴³ The Complainant's suspicions were not peeked until she met Sergeant Dhillon's wife. During their meeting on August 7, 2016, Sergeant Dhillon's wife specifically questioned the Complainant about times when Sergeant Dhillon did not attend arranged meetings. Sergeant Dhillon's wife was able to debunk most of what Sergeant Dhillon had told the Complainant about his reasons for missing the meetings. For example, according to the Complainant, on one of the occasions when Sergeant Dhillon missed an arranged meeting and provided an excuse, he was actually in Mexico with his wife having a romantic weekend trying to patch up their marriage.⁴⁴

³⁹ See Conduct Hearing Transcript, Volume 1, page 19, lines 20 and 21.

⁴⁰ See Conduct Hearing Transcript, Volume 1, page 70, lines 19 and 20.

⁴¹ See Conduct Hearing Transcript, Volume 3, page 73, lines 2 and 3.

⁴² See Conduct Hearing Transcript, Volume 2, page 19, lines 22 to 25.

⁴³ See Conduct Hearing Transcript, Volume 1, page 114, lines 11 and 12.

⁴⁴ See Conduct Hearing Transcript, Volume 1, page 114, lines 8 to 16.

[76] The Complainant testified that, just before the termination of the relationship in February 2013, things had deteriorated significantly.⁴⁵ In February 2016, the Complainant was reluctant to renew her relationship with Sergeant Dhillon. However, despite what she had gone through, she did not want to live in the past. She hoped things would be the same as when their relationship first began.⁴⁶ Sergeant Dhillon assured her that, during the break in their relationship, the issues in his life were resolved. Consequently, he had changed.

[77] It was not long into the renewed relationship before things were right back where they had left off when the relationship ended suddenly three years earlier.⁴⁷ The lies continued. For example, Sergeant Dhillon told the Complainant that he could not meet with her because he was on straight nights conducting surveillance relative to the shootings that were happening in Surrey. Sergeant Dhillon's shift schedules and overtime claims for the relevant period were entered into evidence. These demonstrated that Sergeant Dhillon was not telling the Complainant the truth. Sergeant Dhillon acknowledged in his testimony that he had lied to the Complainant.⁴⁸

[78] During their conversations, the Complainant claimed that she would remind Sergeant Dhillon that he had previously said something. He would vehemently deny having said the things she claimed he said and would insist on her being wrong. The Complainant testified that the problem became so bad that she felt compelled to keep a notebook of things that he said so she could keep everything straight in her own mind.⁴⁹ The notebook was entered into evidence. This problem became more significant because Sergeant Dhillon was prone to angry outbursts over the slightest things.⁵⁰

⁴⁵ See Conduct Hearing Transcript, Volume 1, page 50, lines 2 to 7.

⁴⁶ See Conduct Hearing Transcript, Volume 1, page 86, lines 5 to 10.

⁴⁷ See "Sgt. Dhillon – Investigation Report", page 193, line 30, to page 194, line 18.

⁴⁸ See Conduct Hearing Transcript, Volume 3, page 70, lines 16 to 21.

⁴⁹ See Conduct Hearing Transcript, Volume 1, page 141, beginning at line 7.

⁵⁰ See "Sgt. Dhillon – Investigation Report", page 183, lines 39 and 40.

[79] The Complainant also testified that if Sergeant Dhillon became upset with her, he would punish her by “stonewalling” her. This meant that he would delete her from BBM⁵¹ or block her on Facebook.⁵² This was evidenced when the Complainant challenged Sergeant Dhillon after he failed to pick her up for their planned trip to Regina in February 2013.

[80] In her statement to Staff Sergeant Schneider, the Complainant’s response to the stalk question used to conclude a statement, “Is there anything else that would be helpful for me to know”, summed up the relationship from her perspective. Her comment reads as follows:

Well I’ve covered everything off that he’s a compulsive liar, highly manipulative uhm totally mind fucks you into thinking you’re crazy uhm and he has like abusive tendencies.⁵³

[81] The Record contains much more, but the foregoing provides an adequate picture of their relationship, which can be characterized as abusive. This abusive relationship provides an explanation for some of the issues relating to the Complainant’s credibility as pointed out by the Member Representative.

Determination on the credibility of the witnesses

[82] In their oral submissions, both parties spoke of the importance of my assessment on the credibility of the witnesses. Only two witnesses, the Complainant and Sergeant Dhillon, testified during the conduct hearing. They provided contradictory accounts relative to most of the key aspects of this case. Therefore, the credibility of these two witnesses is a primary factor in this decision.

[83] The Member Representative identified several inconsistencies between the Complainant’s testimony and her statements. The Supreme Court in *McDougall* provides significant guidance with respect to the treatment of inconsistent statements. The Court indicates

⁵¹ See “Sgt. Dhillon – Investigation Report”, page 209, lines 11 and 12.

⁵² See “Sgt. Dhillon – Investigation Report”, page 166, line 490.

⁵³ See “Sgt. Dhillon – Investigation Report”, page 165, lines 456 and 457.

that there is no rule to determine when inconsistencies will cause a trier of fact to conclude that a witness is not credible or reliable. The totality of the evidence must be considered in order to determine the impact of the inconsistencies. The Court also states that although corroborative evidence is always helpful and does strengthen the evidence of a party, it is not a legal requirement.⁵⁴

[84] The Court further notes that a finding that one party is credible may be a conclusive result, because believing one party will mean explicitly or implicitly that the other party was not believed on the important issues of the case. This becomes especially true when the allegations are altogether denied by the defending party, as is the case here.⁵⁵

[85] Finally, the Court mentions that the assessment of credibility is not a science and that it may be difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events.⁵⁶

[86] Another aspect discussed by the parties is the distinction between credibility and reliability of a witness. To be sure that there is a clear understanding of the difference: a credible witness can give unreliable evidence, but a non-credible witness cannot give reliable evidence.⁵⁷

[87] Having set out the established parameters for the assessment of the credibility of a witness, the assessment of the credibility of the two witnesses can now be undertaken.

⁵⁴ See *McDougall*, paragraph 80.

⁵⁵ See *McDougall*, paragraph 86.

⁵⁶ See *McDougall*, paragraph 72.

⁵⁷ See *R v Morrissey*, 1995 CanLII 3498 (ON CA)

Credibility of the Complainant

[88] Generally, I found the Complainant to be a credible witness. She appeared forthright and forthcoming throughout her testimony. Many of the things she testified about were of a highly sensitive and personal nature, yet she candidly spoke about them.

[89] In her oral submissions, the Member Representative did a credible job of identifying the inconsistencies between the Complainant's statements and testimony. These inconsistencies include:

- the timing of various events surrounding the incidents;
- the degree of aggressiveness by which Sergeant Dhillon is alleged to have grabbed the Complainant's throat during the "choking incident";
- the description of how some incidents occurred (i.e., the Complainant's collapse following the "breast grabbing incident"); and
- the object that was expelled from the Complainant's breast as a result of the "breast grabbing incident".

[90] Certainly, these are inconsistencies. Some were acknowledged by the Complainant during her testimony. However, it is important to note that, under the circumstances, there are bound to be inconsistencies. The Complainant provided three statements. All three statements were for a different purpose. There were significant gaps between the statements. The Complainant testified two years after the last statement was provided. Finally, the possibility of inconsistencies is magnified when some of the events occurred more than ten years prior to the testimony.

[91] Another significant factor with these inconsistencies is that most of the ones identified by the Member Representative are peripheral to the central issues of this case. For example, during the "breast grabbing incident", whether the Complainant collapsed directly on top of Sergeant

Dhillon; directly on top of Sergeant Dhillon then rolling over; or to the left of Sergeant Dhillon, is inconsequential. These are inconsistencies for sure, but the important fact is that she said the pain caused her to collapse. That is significant. The Complainant was consistent throughout on this point.

[92] The most significant issue with respect to the Complainant's credibility is the timing of the incidents. This will be discussed further in relation to each allegation. However, the issue is more a question of reliability rather than credibility.

[93] The Member Representative also raised issues with respect to some of the Complainant's actions. For example, the Member Representative made much of the two statements prepared by the Complainant for Corporal Mills. Both statements are dated August 18, 2016. There are two significantly different versions of these statements. The Member Representative suggested that, since the Complainant demonstrated a propensity to be deceptive through these statements, she should not be generally believed. In some ways, the Complainant's actions do raise concerns with respect to her credibility, but when her actions are viewed through the lens of the abusive relationship, a more plausible alternative emerges.

[94] The Complainant's testimony clearly demonstrated that Sergeant Dhillon was very eager to obtain a copy of her statement. As the Conduct Authority Representative noted, Sergeant Dhillon asked the Complainant for a copy of this statement no fewer than seven times by text or email. The Complainant testified that Sergeant Dhillon was also calling her "morning noon and night about it; after hours, at work".⁵⁸ The Complainant testified that she changed her statement because she knew that when Sergeant Dhillon received a copy of it, he would be very upset if she included anything that was detrimental to him. He even threatened to sue her for slander if there was anything bad about him in her statement.⁵⁹ Furthermore, she had just recently witnessed his rage first hand during the incident at his residence on August 7, 2016.

⁵⁸ See Conduct Hearing Transcript, Volume 2, page 195, lines 3 to 5.

⁵⁹ See Conduct Hearing Transcript, Volume 2, page 195, lines 9 to 11.

Consequently, she prepared a second version of the statement that was more favourable to him. This was the version originally provided to Corporal Mills.

[95] The Complainant also testified that she knew that she had done wrong and that if her actions came to light, then the security clearance for her job could have been adversely affected. Her job required a high degree of integrity and correspondingly required a valid security clearance. At the earliest opportunity, she informed her immediate supervisor of what she had done.⁶⁰ The Complainant's actions do not demonstrate an intent to deceive, but rather they demonstrate an attempt to avoid the wrath of Sergeant Dhillon. It is clear that this was a significant motivator for the Complainant because she placed her employment and financial well-being at risk in order to do so.

[96] Another clear example of the effect the abusive relationship had on the Complainant's behaviour is the circumstances surrounding the disclosure of her relationship with Sergeant Dhillon to others. All of these disclosures occurred after this matter was being investigated. The Member Representative identified this as an issue, suggesting that the disclosures were a ploy by the Complainant to bolster or gain support for her story. Notwithstanding the fact that there is no evidence to support this theory, the Complainant was asked about this during cross-examination and provided an adequate explanation for her actions. The Complainant pointed to Sergeant Dhillon's direction that she was not to tell anyone about their relationship. This direction was given early in their relationship. She is adamant that she honoured her promise, with two minor exceptions. She told two friends that she was dating someone at work, but she did not disclose the identity of the person she was dating.⁶¹ Neither of these women were connected to work.

[97] Layered onto the promise not to tell anyone about their relationship were the lies that she was being told by Sergeant Dhillon, particularly with respect to events that were going on at the Coquitlam office. The promise not to tell others about their relationship isolated the

⁶⁰ See Conduct Hearing Transcript, Volume 2, page 195, beginning at line 12.

⁶¹ See Conduct Hearing Transcript, Volume 2, page 27, lines 23 to 25.

Complainant. The lies provided her only one side of the story and that was Sergeant Dhillon's side.

[98] After the relationship with Sergeant Dhillon ended, the Complainant began therapy in October 2016. She gained insight into herself and her relationship with Sergeant Dhillon. The information she had obtained from Sergeant Dhillon's wife also assisted in this process. The reasons provided by the Complainant for disclosing the relationship after the investigation had started include the following:

- She realized that she had mistreated some people and felt the need to make amends.⁶²
- The disclosure to friends was also part of breaking the isolation caused by the abusive relationship.⁶³
- She needed to ascertain the truth for her own peace of mind. She now knew she had been lied to by Sergeant Dhillon. She needed to find out that she was not stupid, as Sergeant Dhillon repeatedly told her she was.⁶⁴

[99] Finally, the Complainant testified that the manner in which she was raised and how her family dealt with these types of issues was also a contributing factor to her late disclosure of her relationship with Sergeant Dhillon. She said that the dysfunctional aspects of her family were not discussed within the family, let alone with outsiders.⁶⁵

[100] In conclusion, I find the Complainant to be a credible witness with respect to her recollection and testimony about what took place during the relevant period. However, there are reliability issues with respect to the timing of some of the events.

⁶² See Conduct Hearing Transcript, Volume 2, page 63, lines 21 to 23.

⁶³ See Conduct Hearing Transcript, Volume 2, page 69, line 13, to page 70, line 21.

⁶⁴ See Conduct Hearing Transcript, Volume 2, page 192, line 20, to page 193, line 7.

⁶⁵ See Conduct Hearing Transcript, Volume 1, page 143, lines 16 and 17.

Credibility of Sergeant Dhillon

[101] I identified several issues with Sergeant Dhillon's evidence and, consequently, I do not find him to be a credible witness.

[102] The first issue has elements relating to credibility which were identified by the Conduct Authority Representative when he noted that Sergeant Dhillon had offered no explanation as to how his recollection of some inconsequential events was so vivid. This may be correct, but the real issue is one of admissibility of some of the key aspects of his testimony rather than credibility.

[103] Sergeant Dhillon's subsection 15(3) of the *CSO (Conduct)* response to the allegations is quite scant. It is highly repetitive on a common theme. The basic premise is that the allegations cannot have occurred because he was only in a sexual relationship with the Complainant in 2008. During that time, he was intimate with her on only four occasions. He simply denied non-consensual sexual acts with her.

[104] It is not for me to say what should have been initially included in his response. It was open to Sergeant Dhillon to construct it in any way he and his counsel felt appropriate, but there are ramifications to constructing a response to the allegations that consists of simply outright denials. In this case, it is not necessarily the response to the allegations that raises concerns. The issues arise with what follows the response. In particular, when Sergeant Dhillon testified, he provided substantially more information than what he had included in his response to the allegations. The most significant example of this relates to the "breast grabbing incident". Sergeant Dhillon testified that he was elsewhere on this day; therefore, the incident could not have happened as the Complainant said it did.

[105] The starting point for the discussion as to why this is problematic is in the principles of the new RCMP conduct system. These are set out in the *Conduct Board Guidebook* as follows:

2. Principles

2.1 The Legislative Reform Initiative (LRI) was tasked with developing a modernized conduct process. To do so, it engaged in broad-based consultations with a wide range of stakeholders and examined various internal and external reports as well as studies regarding the RCMP and other police agencies, in relation to dealing with instances of alleged misconduct by police officers.

2.2 The reforms adopted under the LRI were expressly based upon certain principles arising from a broad consensus and understanding among the stakeholders: **conduct proceedings, including hearings before a conduct board, are to be timely and not overly formalistic, legalistic, or adversarial.**

2.3 As such, **proceedings before a conduct board are not to be interpreted or understood as requiring highly formalized and legalistic practices and procedures akin to a formal court-like process.** Rather, they will be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit.

[...]

2.5 In support of this approach, **the former rights of the parties to be afforded a full and ample opportunity to present evidence, cross-examine witnesses and to make representations at a hearing were expressly removed from the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*] (former subsection 45.1(8)).**

[...]

2.9 Finally, **subject members are now required to admit or deny an allegation as early in the proceedings as possible and to identify any defences or evidence which they seek to rely upon, in order that the conduct board can effectively complete a conduct proceeding.**

[Emphasis added]

[106] The less formalistic, legalistic and adversarial underpinnings of the new RCMP conduct system are embodied in subsection 15(3) of the *CSO (Conduct)*, which states the following under the heading “Documents to be provided by member”:

Within 30 days after the day on which the subject member is served with the notice or within another period as directed by the conduct board, the subject member must provide to the conduct authority and the conduct board

a) an admission or denial, in writing, of each alleged contravention of the Code of Conduct;

b) any written submissions that the member wishes to make, and

c) any evidence, document or report, other than the investigation report, that the member intends to introduce or rely on at the hearing.

[Emphasis added]

[107] Sergeant Dhillon delivered a subsection 15(3) of the *CSO (Conduct)* response to the allegations, in which he simply denied that the encounters took place and that he only had consensual sex with the Complainant on four occasions, all of which occurred in 2008. No further explanation, submission or evidence was provided to the Conduct Authority or the Board in accordance with Sergeant Dhillon's obligations under subsection 15(3) of the *CSO (Conduct)*. Sergeant Dhillon's testimony at the conduct hearing about his whereabouts on the day the "breast grabbing incident" is to have occurred is evidence that could not have arisen as an epiphany or sudden revelation while he was providing his testimony. He had to have known of his intention to provide this evidence prior to the hearing date. Therefore, he was obliged, by virtue of paragraph 15(3)(c) of the *CSO (Conduct)*, to provide that information to the Conduct Authority and the Board prior to the conduct hearing.

[108] In criminal law, the right of the accused to remain silent is sacrosanct. This is clearly not the case in the RCMP conduct regime, which is administrative in nature. The ultimate goal of the conduct process is to get to the truth. In furtherance of this goal, both parties are obliged to "put their cards on the table" at an early stage of the proceedings. This is one of the significant changes in the new RCMP conduct process. The requirement for a subject member to provide evidence, documents or reports that s/he intends to rely on or introduce at the conduct hearing does not detract from the conduct authority's obligation to establish the allegations on a balance of probabilities.

[109] Despite firmly upholding a criminal accused's right to silence, even the criminal law makes an exception with respect to alibi evidence. The reason for this is due to the fact that alibi

evidence is easily fabricated, coupled with the fact that alibis tend to divert from the central issues at the hearing.⁶⁶

[110] The Ontario Court of Appeal in *R v M.R.*, 2005 CanLII 5845, at paragraph 31, says the following about alibis:

In order to constitute an alibi, the evidence at issue **must be determinative of the final issue of guilt or innocence of the accused**. In essence, such evidence contemplates that **it was impossible for the accused to have committed the crime charged because, at the time of its commission, the accused was elsewhere**: *R. v. Hill* (1995), 102 C.C.C. (3d) 469 (Ont. C.A.) at 478-79.

[Emphasis added]

[111] The evidence from the Complainant and the numerous text messages between Sergeant Dhillon and the Complainant have established that the “breast grabbing incident” occurred on Friday, April 15, 2016. Sergeant Dhillon testified that, during the week of April 11 to 15, 2016, he was in Chilliwack training with the Tactical Troop. He did not get home until 4:30 or 5 p.m. on the Friday. He had custody of his daughter that evening. He had to pick her up at his parents’ residence. He and his daughter went out to dinner with his brother. He even named the restaurant.⁶⁷ The evidence provided by Sergeant Dhillon fits squarely into the definition of an alibi. If proven, his claims would be determinative of the final issue of guilt or innocence in this case.

[112] In the criminal context, all alibi evidence must be disclosed to the Crown, as determined in *Cleghorn*, at paragraph 179. In that case, the Supreme Court of Canada notes that it is settled law that the disclosure of a defence alibi must meet two requirements. These are:

- a. It should be given in sufficient time to permit the authorities to investigate, and

⁶⁶ See *R v Cleghorn*, [1995] 3 SCR 175 [*Cleghorn*], at paragraph 22.

⁶⁷ See Conduct Hearing Transcript, Volume 3, page 14, line 11, to page 15, line 7.

- b. It should be given with sufficient particularity to enable the authorities to meaningfully investigate.

[113] Notwithstanding the paragraph 15(3)(c) of the *CSO (Conduct)* requirement to disclose evidence, there is no reason why these consequences should not be equally applicable to the RCMP conduct process. In this case, if Sergeant Dhillon intended to rely on his alibi evidence, the time to disclose it was in his subsection 15(3) of the *CSO (Conduct)* response to the allegations. If he said that he was not aware of the alibi or other evidence he intended to rely upon at the time his response was delivered, then the evidence should have been delivered as soon as he became aware of it and/or his intention to rely upon it. Both the requirements of subsection 15(3) of the *CSO (Conduct)* and the established common law on alibi evidence clearly required him to deliver the evidence to the Conduct Authority and the Board at the earliest possible time.

[114] There are consequences in the criminal context for not meeting the established requirements. In *R v Noble*, [1997] 1 SCR 874, at paragraph 111, the Supreme Court of Canada stated that if an alibi defence is not disclosed in a sufficient form and at a sufficiently early time to permit investigation prior to trial, the trier of fact may draw a negative inference from the accused's pre-trial silence. This is a rule of expediency rather than a rule of law.⁶⁸

[115] It is surprising that, when knowing that credibility was going to be a primary factor in this case, Sergeant Dhillon did not present this evidence to the Conduct Authority and the Board and allow it to be investigated. The Tactical Troop training could have been verified or confirmed with a training syllabus or other documents from the training facility; an expense claim for travel; or by statements from other members of the Tactical Troop. The dinner at the

⁶⁸ See *Cleghorn*, at paragraph 36.

restaurant could have been confirmed with a statement from Sergeant Dhillon's brother,⁶⁹ a receipt for the meal or a credit card statement showing the purchase.

[116] As a consequence of his failure to disclose this information, I am allowed to make a negative inference. I find that Sergeant Dhillon did not disclose this information prior to the hearing because it is either not true or a full investigation of the alibi would have shown that it was still possible for him to have attended the Complainant's residence on April 15, 2016.

[117] In addition to this, there are further examples where Sergeant Dhillon supplemented his subsection 15(3) of the *CSO (Conduct)* response to the allegations with evidence not previously provided, but these do not necessarily fit within the definition of an alibi. For example, Sergeant Dhillon initially claimed that the sexual part of the relationship with the Complainant ended in 2008. However, in his testimony, he claimed that, due to family obligations in the latter part of 2008, he was unable to engage in any form of relationship with the Complainant. In some ways, this is contrary to other testimony he provided in relation to the duration of the relationship. His testimony appears to be a clear attempt to undermine the Complainant's credibility.

[118] The evidence Sergeant Dhillon provided that was not included in his subsection 15(3) of the *CSO (Conduct)* response to the allegations is as follows:

- a. In September, his father-in-law became seriously ill.
- b. He was required to become more engaged in the care of his daughter, which left him no time for the relationship with the Complainant.
- c. His father-in-law was hospitalized in October 2008 and subsequently passed away in November 2008.

⁶⁹ Sergeant Dhillon indicated a very strong preference not to involve his daughter in these proceedings. The Board recognizes and respects this position.

- d. He was forced to take time off work from October to December 2008 to deal with the situation.
- e. He did not see the Complainant during this time.
- f. He only saw the Complainant when he went back to work after his leave ended.⁷⁰

[119] By virtue of his obligation under paragraph 15(3)(c) of the *CSO (Conduct)*, Sergeant Dhillon was obliged to disclose this evidence to the Conduct Authority and the Board in advance of providing it in his testimony at the conduct hearing.

[120] The father-in-law's illness and death could have been easily proven with medical records and/or a death certificate or even publicly available funeral announcements. Sergeant Dhillon's annual leave could have been verified with a leave summary from the Human Resources Management Information System (HRMIS). Again, why not present these things early? All of this could have boosted his credibility on these issues. It is open to me to draw a negative inference from Sergeant Dhillon's failure to do so.

[121] A further example where Sergeant Dhillon should have provided information in advance of the conduct hearing is his claim that the reason consensual sex with the Complainant occurred on only four occasions was because he is allergic to cats.⁷¹ This could have been a very significant piece of evidence easily verified with medical reports or letters from a health care professional. However, because this information was only disclosed after the Complainant had already testified, I do not even know if the Complainant had a cat during the relevant time period.

⁷⁰ See Conduct Hearing Transcript, Volume 3, page 7, lines 8 to 18.

⁷¹ See Conduct Hearing Transcript, Volume 3, page 5, lines 3 to 9.

[122] Given the foregoing, I cannot accept Sergeant Dhillon's alibi and other similar evidence presented during the conduct hearing. However, this is only one part of the issues I have with his credibility.

[123] During his testimony, Sergeant Dhillon presented a version of the facts that is extremely difficult to reconcile with the evidence. The most glaring example relates to Sergeant Dhillon's claim that the "breast grabbing incident" did not occur despite a string of sexually charged emails leading up to the alleged sexual encounter on April 15, 2016. His explanation, in essence, was simply: "I know what it looks like, but the meeting never took place." His only explanation about the emails was that he was having issues with his wife and "a few other things" at the time. He had no intention of meeting with the Complainant. Rather, the email and BBM messages were sort of an "outlet" for him.⁷²

[124] Finally, during his testimony, Sergeant Dhillon made reference to evidence that he insisted was in the Record. This also relates to the "breast grabbing incident". He claimed that one of his reasons for being unable to attend the planned meeting was that he had custody of his daughter. He claimed that he sent the Complainant a text message to this effect. Despite being provided with a significant opportunity to find this message in the evidence, he was unable to do so. I also conducted a search of the material and was unable to locate anything resembling what Sergeant Dhillon spoke about. As noted by the Conduct Authority Representative, the only reference in the electronic correspondence between Sergeant Dhillon and the Complainant in relation to having his daughter occurred on May 5, 2016, at 10:35 p.m.⁷³ This referred to Sergeant Dhillon having his daughter the following night, May 6, 2016, and not April 15, 2016.

[125] Based on the foregoing, I do not find Sergeant Dhillon's evidence on the significant issues of this case to be credible and, on occasion, reliable.

⁷² See Conduct Hearing Transcript, Volume 3, page 16, lines 14 to 18.

⁷³ See "Sgt. Dhillon – Investigation Report", page 572.

[126] Having made a determination on the issue of credibility, the analysis of the allegations can now be undertaken, beginning with the “choking” and the “uttering threats” incidents.

Finding on the “choking” and the “uttering threats” incidents

[127] The first incident, the “choking incident”, is set out in Particular 6 of Allegation 1. The second incident, the “uttering threats incident”, is set out in Allegation 2. The two incidents are alleged to have occurred during the same encounter with the Complainant. Therefore, the facts relating to them are the same.

[128] The facts relating to the “choking incident”, as set out by the Complainant, are actually quite straightforward.⁷⁴ One night, between 11 p.m. and 3 a.m., she received a telephone call from Sergeant Dhillon. He told the Complainant that he was in the neighbourhood and would be stopping in at her residence. On the one hand, the Complainant was annoyed because the call came without consideration that she might be in bed sleeping, which she was. On the other hand, she wanted to see Sergeant Dhillon to find out how he was doing. He was having a difficult time at work. According to the Complainant, he had been suspended and was, at the time, on stress leave.

[129] When Sergeant Dhillon arrived, she met him at the front door. Her house is a split-level with a set of stairs leading from a landing to the upper and lower levels. They remained standing at the front door where they talked. Sergeant Dhillon was noticeably intoxicated. The Complainant could smell liquor on his breath. She also noticed that he was swaying a bit. She said that Sergeant Dhillon told her that he had come from a Watch party at Corporal Sebastien Lavoie’s residence. She felt that this was odd. Sergeant Dhillon did not usually associate with the members of his Watch outside of work because he was a supervisor.

⁷⁴ See Conduct Hearing Transcript, Volume 1, beginning at page 27, line 15, to page 41, line 1.

[130] Sergeant Dhillon was unusually talkative. He talked about how upset he was with the way he was being treated at work. He felt that he was being persecuted. Then he spoke about his wife and their divorce proceedings. He mentioned that he had moved back into the family home. He was really angry because his wife was making his life miserable. He mentioned a domestic incident at his house. The police were called. They came and seized all of his firearms. He was humiliated. He said that one bullet would solve all of his problems. Initially, the Complainant thought that he was talking about committing suicide and told him that he should not be talking about things like that. Sergeant Dhillon corrected her and said that he was not talking about shooting himself, but rather he was referring to his wife.

[131] Before Sergeant Dhillon made the comment about the one bullet solving all of his problems, the Complainant felt awkward with the both of them standing on the landing arguing, so she sat down on one of the steps leading to the upper portion of the house. While she was seated, Sergeant Dhillon leaned over and grabbed her by the throat. He squeezed it hard with his thumb and forefinger of his right hand. His other hand was on her knee. His face was close to hers. She asked him to stop. He simply sneered at her. She tried to wriggle free, but could not. She again asked him to stop, to which he replied: "I should just take you here on the stairs." The Complainant took this to mean that he should have sex with her on the stairs. After saying this, he simply let go and said that he was leaving. The Complainant estimated that Sergeant Dhillon held her throat for approximately 10 seconds. She said that it felt like quite a long time. She was afraid because she did not know where things were going.

[132] After Sergeant Dhillon let go of her throat and said he was leaving, the Complainant suggested he not drive because he was impaired. Sergeant Dhillon refused and another argument ensued. He finally left the house and drove away. In her statement, she said that she thought of calling the police because he was driving drunk. She did not because he would have been quite

upset if she had.⁷⁵ She provided three reasons for why she did not tell anyone about the incident.⁷⁶

[133] Sergeant Dhillon's only response to the Complainant's claims was that the two incidents never happened. He asserted that he never applied unwanted physical force to the Complainant or anyone else for that matter. This claim is hard to believe, since police officers are frequently required to apply unwanted physical force to the people in the ordinary course of their duties.

[134] With respect to the "one bullet" comment, Sergeant Dhillon simply stated that he would not put a bullet in anyone's head, let alone his wife's. She is the mother of his child. He further noted that he could have had his wife arrested on the numerous occasions when the police attended their residence, but he never wanted that to happen. It is important to note that having someone arrested and putting a bullet in their head are two very different things.

[135] Given the foregoing, the Complainant's version of events is the accepted version; in this respect, I find Particular 6 in Allegation 1 and Allegation 2 to be established. The only problem with the Complainant's account of the events is the time frame in which she says they occurred.

Date range of the particular

[136] The date range set out for these incidents is between November 1, 2009, and February 28, 2010. These dates appear to coincide with the time frame provided by the Complainant in her statements and testimony. The Complainant explained how she arrived at these dates, but it is difficult to reconcile with the evidence. For example, in her statement to Sergeant Blades,⁷⁷ she said this incident occurred when Sergeant Dhillon was suspended in Coquitlam. She said that Sergeant Dhillon claimed that he was on stress leave, but according to her, he was actually suspended. She further placed the occurrence in January or February because she said it was dark

⁷⁵ See "Sgt. Dhillon – Investigation Report", page 215, lines 1 to 14.

⁷⁶ See Conduct Hearing Transcript, Volume 1, page 36, line 22, to page 37, line 5.

⁷⁷ See "Sgt. Dhillon – Investigation Report", page 212, line 14.

outside and it was raining. However, it would have been dark at any time of year between 11 p.m. and 3 a.m. Rain is also a frequent occurrence in the Lower Mainland during much of the year.

[137] The Complainant said that Sergeant Dhillon had been gone from Coquitlam for a couple of months, but he had not yet arrived at Richmond Detachment.

[138] In her statement to Staff Sergeant Schneider, she simply agreed when he said this incident occurred sometime in 2011.⁷⁸

[139] On the night this incident was to have occurred, the Complainant claimed that, before attending her residence, Sergeant Dhillon was at a party. **He told her that.** In her testimony and in her statement to Sergeant Blades, the Complainant identified Corporal Lavoie as possibly being the host of the party. **This information also purportedly came from Sergeant Dhillon.** Corporal Lavoie was a member who worked at Coquitlam Detachment at the time.

[140] Abbotsford Police Service investigators interviewed Corporal Lavoie on May 1, 2017.⁷⁹ Corporal Lavoie did not testify at the conduct hearing, but the interview is part of the Record. In the prelude to the statement, the investigator put the time frame of the party as late 2009 to early 2010. Corporal Lavoie recalled hosting a large party associated with an Ultimate Fighting Championship fight night. He could not remember the specific date. He recalled that there were a lot of people at the party, particularly members of the Emergency Response Team. He knew Sergeant Dhillon, but he did not recall him being at the party, keeping in mind that the party occurred approximately seven years before the interview took place. Corporal Lavoie did not think that he would have invited Sergeant Dhillon, but he added that this did not mean that he was not there. It would certainly make sense that if Sergeant Dhillon attended a party hosted by a Coquitlam Detachment member, then he would have still been posted at Coquitlam Detachment,

⁷⁸ See "Sgt. Dhillon – Investigation Report", page 159, lines 291 and 292.

⁷⁹ See "Sgt. Dhillon – Investigation Report", page 359.

regardless of his duty status. This coincides with the evidence from the Complainant that the event occurred before Sergeant Dhillon was transferred to Richmond.

[141] There was no evidence elicited, either through the testimony of Sergeant Dhillon or the documents filed as exhibits, with respect to a suspension from duty at any time during his tenure in Coquitlam.

[142] Sergeant Dhillon testified that he began a month of medical leave in February 2009. After he left Coquitlam on medical leave, he never went back except to drop off his pass and pick up his belongings.⁸⁰ This was in March 2009.

[143] Although difficult to read and not necessarily accurate for soft vacancies like medical leave, Sergeant Dhillon's Employee Profile Information document shows that he commenced a period of medical leave on February 12, 2009. This coincides with his testimony.

[144] I am also not aware that information related to conduct matters, such as a suspension from duty, would be included in a member's Employee Profile Information document. Due to its sensitive nature, this information is recorded elsewhere.

[145] The same document indicates that Sergeant Dhillon was transferred to Richmond Detachment on May 15, 2009. Based on the evidence before me, the occurrence of this incident, despite everything that the Complainant said, would have been at some point between February 12, 2009, and May 14, 2009. This is a three-month period rather than the five months stated by the Complainant. The five-month period of medical leave was provided to her by Sergeant Dhillon⁸¹.

[146] Also, based on what the Complainant said about Sergeant Dhillon being gone from Coquitlam for a couple of months, but not yet at Richmond, suggests that the incident date is

⁸⁰ See Conduct Hearing Transcript, Volume 3, page 25, line 22, to page 26, line 4.

⁸¹ See Conduct Hearing Transcript, Volume 1, page 27, lines 9 to 11.

probably closer to the end of March or early April. The spring rains would likely still be going on in the Lower Mainland at that time.

[147] There is no evidence that clearly supports the date range provided by the Complainant or the one stated in Particular 6 of Allegation 1 and Allegation 2. Neither party raised this as a concern at any time during the proceedings. So, the question is, despite this finding, can the particular and/or the allegation still be established?

[148] I am of the opinion that Particular 6 of Allegation 1 and Allegation 2 can still be established. The ascertained date range is only marginally different than the one set out in the particulars. In fact, it overlaps the front end of the stated range by 15 days. The slightly misaligned date range does not result in a prejudice to Sergeant Dhillon.

[149] The content requirements of a *Notice of Conduct Hearing* are found in *Administration Manual* XII.1.11.10.1.1 and the corresponding “Note” as follows:

[...] a copy of the notice of conduct hearing from the conduct authority, containing a separate statement of each alleged contravention and a statement of the particulars of the act or omission constituting each allegation.

The statement of particulars must contain sufficient details, including, if practicable, the place and date of each contravention alleged in the notice, to enable the subject member who is served with the notice to identify each contravention in order that the member may prepare a response and direct it to the occasion and events indicated in the notice.

[Emphasis added]

[150] Sergeant Dhillon and the Member Representative were in possession of the same information I used to ascertain the date range for the same amount of time as me. Particular 6 of Allegation 1 and Allegation 2 is sufficiently detailed to identify what is being alleged. It is accurate in terms of where the incident is to have occurred. The Record more than adequately filled in the details with respect to the timing of the incident. Sergeant Dhillon knew better than anyone when he was on medical leave and/or suspended during his time in Coquitlam and when

he was transferred to Richmond Detachment. He should have had no difficulty in ascertaining when this incident occurred.

[151] Based on the analysis of this incident, I find that the Complainant was credible in terms of her account of the events, but not reliable in terms of when they occurred. Given the foregoing, Particular 6 of Allegation 1 and Allegation 2 are established.

Finding on the “leg spreading incident”

[152] The “leg spreading incident” is to have occurred in either November or December 2012. Again, the facts relating to this incident, as set out by the Complainant, are actually quite straightforward.⁸² The biggest issue once again is the timing as to when this took place.

[153] The Complainant testified that this incident followed the same routine as all of their other sexual encounters. The difference on this occasion was that Sergeant Dhillon had previously asked the Complainant if she had rape fantasies. She had told him that she did not. While they were engaged in the act of intercourse, he asked again if she had rape fantasies, and again, she told him that she did not. At one point, Sergeant Dhillon placed the palm of his hands on each of her knees and began to spread her legs apart. He spread them so far apart that it felt like her hips were going to pop. She testified that it hurt very badly. In fact, she said it hurt so bad that she began to cry quietly. The Complainant believed that Sergeant Dhillon saw her crying.

[154] Up to this point, the sexual encounter had been entirely consensual. When Sergeant Dhillon spread the Complainant’s legs apart, she claimed that while his head was turned with his ear close to her mouth, she told him to stop. He did not. Instead, he moved his arm up to her head and turned her face to the side. In her examination-in-chief,⁸³ the Complainant testified that approximately 10 minutes elapsed from the time they began this intimate encounter to the time

⁸² See Conduct Hearing Transcript, Volume 1, beginning at page 43, line 8, to page 48, line 1.

⁸³ See Conduct Hearing Transcript, Volume 2, beginning at page 158, line 1, to page 164, line 23.

Sergeant Dhillon turned her face to the side. In cross-examination,⁸⁴ the Complainant estimated the length of time that Sergeant Dhillon had her legs spread apart was 15 to 20 seconds. In response to a question posed to her by the Board, she estimated the length of time from when she asked Sergeant Dhillon to stop spreading her legs apart to the time he pushed her face to the side was 10 to 15 seconds.

[155] It is clear that the Complainant asked Sergeant Dhillon to stop spreading her legs apart quite soon after he began. When he moved his arm to push her head to the side, he had to release at least one of her legs, so the spreading of the legs would have had to stop at this point. But, for at least 10 to 15 seconds, Sergeant Dhillon ignored the Complainant's demand to stop what he was doing.

[156] In her submission in relation to this incident, the Member Representative pointed to the time frames the Complainant testified to indicating that the difference between 10 minutes and 15 to 20 seconds is a significant inconsistency. However, it is clear by the way she framed her submission that she was not clear about the questions that were posed to the Complainant to elicit these responses. The Complainant's response of 10 minutes was to the question of how long was it from the start of the intimacy to when Sergeant Dhillon pushed her face to the side.⁸⁵ Her response of 15 to 20 seconds was to the question, "So how long was he spreading your legs apart for, approximately?"⁸⁶ These are two very distinct questions, which reasonably elicited two very distinct responses from the Complainant.

[157] The Complainant testified that she was upset because Sergeant Dhillon did not respond to her, but there was nothing she could do because he was on top of her. In her statement to Sergeant Blades, the Complainant said that, while this was going on, Sergeant Dhillon was in a

⁸⁴ See Conduct Hearing Transcript, Volume 2, page 163, lines 7 and 8.

⁸⁵ See Conduct Hearing Transcript, Volume 1, page 45, line 16, to page 46, line 1.

⁸⁶ See Conduct Hearing Transcript, Volume 2, page 163, lines 4 to 8.

“detached state”.⁸⁷ She also testified that after Sergeant Dhillon pushed her face to the side, the act of intercourse continued for another few minutes. When the sexual act was completed, Sergeant Dhillon simply got up and went for his usual post-intercourse shower. When Sergeant Dhillon came out of the shower, the Complainant confronted him about why he did not stop when she asked him to. According to her, his response was: “Shut it woman, you liked it.”⁸⁸

[158] The accounts provided by the Complainant in her statements are relatively consistent with the testimony she delivered at the conduct hearing.

[159] Other than outright denial that this incident took place, Sergeant Dhillon has not put these facts in dispute. Therefore, this portion of the analysis can be wrapped up by stating that, when someone tells someone else to stop what they are doing during a sexual act, it is a clear indication that they are not consenting to what is taking place. The Complainant made it clear to Sergeant Dhillon that she wanted him to stop what he was doing. Instead, he continued what he was doing until he decided it was time to stop. Consequently, I find that the acts stipulated in the particulars relating to this incident are established. But again, the date range stipulated in the particulars remains to be established.

Date range of the particular

[160] The date range of this particular is November or December 2012. In her statement to Sergeant Blades, the Complainant placed the time frame of this incident as being after her birthday in November and settled on the time frame as being in November or December 2012⁸⁹. In her testimony, she also placed this incident in late 2012 because she had her winter duvet on her bed and because it occurred not long before their relationship ended the first time. She referenced the end of the relationship to the Regina trip, which occurred in February 2013.⁹⁰

⁸⁷ See “Sgt. Dhillon – Investigation Report”, page 188, line 1, and page 189, line 37.

⁸⁸ See Conduct Hearing Transcript, Volume 1, page 47, line 19.

⁸⁹ See “Sgt. Dhillon – Investigation Report”, page 187, lines 26 and 27.

⁹⁰ See Conduct Hearing Transcript, Volume 1, page 50, lines 6 to 17.

There is no independent evidence to corroborate the Complainant's testimony about the time frame.

[161] Sergeant Dhillon simply claimed that the sexual relationship with the Complainant ended in 2008, but communication between himself and the Complainant continued until the end of 2009.

[162] The Member Representative pointed to several emails that suggest the relationship between the Complainant and Sergeant Dhillon ended in 2010. The first of these is a BBM⁹¹ message dated August 17, 2016, which reads:

I'm just saying, if you've not been honest with me about anything, you should tell me. Ex, **in 2010 you fell off the face of the earth** because you were seeing someone else. I can think of about four times I've lied to you over time.⁹²

[Emphasis added]

[163] Furthermore, in a message sent on August 23, 2016, the Complainant wrote, "Although I've seen you only twice in six years so what do I know? ..." ⁹³ This comment was made in the context of a discussion about **Sergeant Dhillon's** change in appearance.

[164] The Member Representative pointed out that, in cross-examination, the Complainant claimed that she meant six months and not six years. The Member Representative is correct, but the Complainant attempted to explain the discrepancy by noting that the communication took place in August 2016. She had only seen Sergeant Dhillon twice during the six months since they had reconnected in February 2016.⁹⁴ The Complainant said the two occasions she was referring

⁹¹ It is worthy to note that only the Complainant's communications are shown in this ongoing exchange via BBM. It is also worthy to note that this message contradicts the Subject Member's claim that all communications with the Complainant had ended by 2009, accepting that communications between them were renewed in 2016.

⁹² See "Sgt. Dhillon – Investigation Report", page 747.

⁹³ See "Sgt. Dhillon – Investigation Report", page 759.

⁹⁴ See Conduct Hearing Transcript, Volume 2, page 37, line 25, to page 41, line 11.

to were the sexual encounter in which the “breast grabbing incident” occurred and another occasion when they went for coffee. There are text messages that indicate that Sergeant Dhillon and the Complainant met, or were at least attempting to meet for coffee at a mall.⁹⁵ This text exchange occurred on August 27, 2016. Therefore, the Complainant could not have been referring to this coffee meeting in her text message of August 23, 2016, because the coffee meeting did not take place until four days after the text message in question was sent.

[165] I also note that Sergeant Dhillon and the Complainant met on August 7, 2016, at Sergeant Dhillon’s residence. The Complainant did cover this off in her cross-examination with the following response:

I don’t see my reference about coffee, but then I guess I would have seen him three times, then, at some point; when he came to my house, when I saw him at the other house, and when I saw him at coffee.⁹⁶

[166] Given the foregoing, it is most likely that the two occasions that the Complainant was referring to in the August 23, 2016, email message were April 15, 2016, the date of the “breast grabbing incident” (“when he came to my house”) and August 7, 2016, the date of the incident at Sergeant Dhillon’s residence (“when I saw him at the other house”). Despite the reference to six years rather than six months, this coincides with the Complainant’s explanation of the text message.

[167] The next email exchange took place on February 29, 2016, beginning at 2:35 p.m.⁹⁷ The exchange reads:

Complainant: I don’t know where to begin. When did you fall off the face of the earth?

Sergeant Dhillon: After getting cleared of all the bs in Coquitlam and when I went to Richmond. I think that was 2009ish.

⁹⁵ See “Sgt. Dhillon – Investigation Report”, page 792.

⁹⁶ See Conduct Hearing Transcript, Volume 2, page 40, line 22, to page 41, line 1.

⁹⁷ See “Sgt. Dhillon – Investigation Report”, page 560.

Complainant: Wtf? That long? I can't type six years worth of life; it's too much.

[168] This email exchange was also addressed by the Member Representative (MR) in her cross- examination of the Complainant.⁹⁸ The exchange reads as follows:

MR: And what did you mean by that?

Complainant: I'm meaning that there's a lot to catch up on.

MR: But you said six years?

Complainant: M'hm

MR: What does that six years mean?

Complainant: There it means that I haven't seen him for six years, and I know when we first started communicating by email I think there was a different [time frame] and we had talked about this on the phone.

MR: But why would you say you haven't seen him in six years?

Complainant: Because he said it had been that long.

MR: But you're saying it.

Complainant: In my mind it wasn't that long but he's saying it was that long, so ...

MR: So you agreed with him?

Complainant: M'hm

MR: So it was six years that you haven't seen him?

Complainant: I don't agree with that now. I'm agreeing with it here, in the conversation.

MR: So in February 2016 you agreed that you hadn't seen him in six years but today you don't agree with that? Is that what I'm understanding?

Complainant: At the beginning of our reconnection I said it was at one point and he was saying it was a different point. So I'm just going with the flow.

MR: But I mean, Ms. [the Complainant], you are your own person; you have your own memory.

⁹⁸ See Conduct Hearing Transcript, Volume 2, beginning at page 41, line 24, to page 44, line 11.

Complainant: Yeah

MR: So I assume that you would go by what you remember.

Complainant: One would assume that ---

MR: But what ---

Complainant: But there's a lot of things in my relationship with Suki where I would believe something is true and he convinces me it's otherwise.

MR: So he would convince you that although you know you've been in a committed relationship with someone until 2013, so roughly four and a half or five years, at the most

Complainant: M'hm

MR: --- but he would be able to convince you that it wasn't that you haven't seen him for six years?

Complainant: He would be able to make me question my recollection of events, yes.

MR: For years?

Complainant: For sure.

MR: Now, we're talking about three years' difference here.

Complainant: Yeah

MR: So he would have been able to convince you of the disparity?

Complainant: Yeah

MR: Of years?

Complainant: I'm not saying that's what we're doing right here, I'm saying I'm going along with it.

[169] It is difficult to reconcile what the Complainant is saying, but again when this exchange is viewed through the lens of the abusive relationship, it is understandable. The Complainant testified that Sergeant Dhillon had the ability to convince her something was true despite the fact that she knew it was not. This was part of the reason she began to make her notes, so she could keep things straight. She also testified that Sergeant Dhillon could get quite angry over the slightest things. Therefore, she had to pick and choose her "battles".

[170] Prior to wrapping up this section, it is worth pointing out one further email exchange that the Member Representative did not include in her submission. This exchange may be what the

Complainant was referring to during cross-examination when she said, “At the beginning of our reconnection I said it was at one point and he was saying it was a different point. So I’m just going with the flow.”⁹⁹ This exchange took place on February 25, 2016,¹⁰⁰ and reads as follows:

Complainant: I can’t remember when I last talked to you. **A lot happened at work in 2013** and beyond. A friend of mine is in [a clerical support] competition; I hope she gets it. I’m still in Coquitlam ... What’s new with you?

Sergeant Dhillon: **It’s been a few years.** Not much is new with me still plugging away as usual lol

[Emphasis added]

[171] Based on the foregoing, I accept that there are issues with some of the things the Complainant wrote in the noted messages. But she provided explanations for these issues that made sense when carefully considered. The manner in which she placed the time frame with reference to other significant events, like her birthday, also makes sense.

[172] The Complainant also testified that the number of in-person contacts diminished significantly after Sergeant Dhillon transferred to Richmond Detachment. Given the foregoing, despite Sergeant Dhillon’s insistence that the relationship ended completely in 2009, I accept the Complainant’s dating of this incident to be in November or December 2012 as stipulated in the particular. Consequently, I find that Particulars 7 and 8 of Allegation 1 are established.

Finding on the “breast grabbing incident”

[173] The “breast grabbing incident” is to have occurred in April 2016, as set out in Particular 9 of Allegation 1. The date has been pinned down specifically to April 15, 2016. Again, the facts of this incident are relatively straightforward.

⁹⁹ See “Sgt. Dhillon – Investigation Report”, page 562.

¹⁰⁰ See Conduct Hearing Transcript, Volume 2, page 43, lines 2 to 5.

[174] The Complainant claims that, shortly after Sergeant Dhillon and she renewed contact in February 2016, they began planning to get together. However, they had difficulty finding a day that worked. They finally settled on a date in April. There is a sufficient number of sexually charged text and/or email messages leading up to April 15, 2016, to support their intention of meeting on that day for the purpose of having a sexual encounter.

[175] Sergeant Dhillon testified that I may find it hard to believe that, despite the content of these exchanges, he had no intention of engaging in sexual activities with the Complainant at this time. He claimed that he had a lot going on with his wife and “other things”. The text and BBM messages were more or less an outlet for him.¹⁰¹ Quite frankly, it is hard to believe that the sexual encounter did not happen as the Complainant described it in light of the emails.

[176] There is one final piece of evidence that leads to my finding that the encounter took place. This is an email exchange between the Complainant and Sergeant Dhillon on April 19, 2016. This was four days after the sexual encounter is to have occurred. The exchange takes place under the subject heading “Ghosting”.¹⁰² The exchange, initiated by the Complainant, begins at 7:23 a.m. and reads as follows:

Complainant: Are you ghosting me? If you are, you can’t. You can’t ghost friends. :/

Sergeant Dhillon: Huh what’s that? No I’ve been working nights.

Complainant: Why on earth are you working nights? I’m so confused. I don’t really know what watch is on. **Ghosting is disappearing after sex. :p**

Sergeant Dhillon: I was seconded to surveillance for all of the shootings.

[Emphasis added]

[177] Sergeant Dhillon did not question the Complainant’s explanation of what “ghosting” meant. The natural response to being wrongfully accused of something is to defend oneself. This would seem especially true in this case considering the character of Sergeant Dhillon as

¹⁰¹ See Conduct Hearing Transcript, Volume 3, page 16, lines 14 to 18.

¹⁰² See “Sgt. Dhillon – Investigation Report”, page 574.

described by the Complainant and demonstrated in some email exchanges between them. Instead, Sergeant Dhillon responded by talking about being seconded and working nights.

[178] Since Sergeant Dhillon outright denied this event happened, I only have the Complainant's version of what took place.¹⁰³ According to her, Sergeant Dhillon arrived late in his usual fashion. He arrived between 8:30 and 9 p.m. Notwithstanding Sergeant Dhillon's alibi, he could have arrived home at 5 p.m., picked up his daughter from his parents' place, went to dinner with his brother and still have had time to arrive at the Complainant's by 9 p.m.

[179] They engaged in small talk, catching up on what had transpired in their lives since they last saw each other. This conversation did not last long before Sergeant Dhillon made a pass at her and they began having sex on the sofa in the living room. They moved to the bedroom where they followed the usual routine leading up to their sexual activities. Sergeant Dhillon laid down on the bed. The Complainant got on top of him. At some point, she leaned over and he put his mouth on her right breast. He began to suck or bite her nipple. This hurt a lot. She told him to stop. She tried to pull free, but she was unable to do so, because she was "connected". Her hands were on the bed as she tried to pull away. He used his arm to sweep her arm out of the way and immediately switched breasts. While he was sucking and/or biting her left breast, he also began squeezing it. The squeezing was "really really hard". This caused her significant pain. She was worried that the squeezing would cause some damage. She told Sergeant Dhillon that what he was doing hurt. She began to see stars because of the pain. She collapsed to the left of Sergeant Dhillon, at which time he stopped. They exchanged a few words, during which she rolled over onto her back. Sergeant Dhillon wished to finish having sex, so they did.

[180] In her statement to the Abbotsford Police Service, the Complainant told the investigators that Sergeant Dhillon had squeezed her breast so hard that a mammogram clip was forced through the skin and ejected from her breast. The Complainant made enquiries with her medical

¹⁰³ See Conduct Hearing Transcript, Volume 1, beginning at page 76, line 16, to page 84, line 24.

professionals and learned that no mammogram clips had been placed in her breasts. Other explanations were explored by her, including a non-absorbable suture or a wire from a fine wire biopsy. She settled on the suture, indicating in her testimony that she did find something protruding from her breast. She was able to extract it and save it in a tissue, but she inadvertently threw the tissue out.¹⁰⁴ Much was made of this in the Complainant's cross-examination.

[181] The Complainant also testified that the grabbing of her breasts was so severe it caused bruising in the shape of a hand print. The bruise lasted for at least five weeks.¹⁰⁵ This evidence was not seriously challenged by Sergeant Dhillon.

[182] The Member Representative, in cross-examination, also challenged the Complainant's account of how this incident ended, in particular, the Complainant's description of her collapse. In her testimony, the Complainant said that she collapsed to the left of Sergeant Dhillon. The Member Representative drew the Complainant's attention to the statement she provided to Sergeant Blades, in which she said that she collapsed on top of .Sergeant Dhillon¹⁰⁶ However, a little further into the statement, she said, that she "kinda got up and I leaned over to the other side". This can be construed as having collapsed to one side or the other of Sergeant Dhillon. In the same statement, at page 196, the Complainant told Sergeant Blades that "And it hurt. Okay so it hurt so much that I kinda collapsed over to the side. ..." Based on this, I find that the Complainant was consistent in her testimony and in the statements provided to investigators.

[183] Unlike the other date ranges, there is no doubt about the date range for these particulars. Given the foregoing, I find Particulars 9 and 10 of Allegation 1 to be established.

¹⁰⁴ See Conduct Hearing Transcript, Volume 2, page 177, line 22, to page 182, line 5.

¹⁰⁵ See Conduct Hearing Transcript, Volume 1, page 89, line 5.

¹⁰⁶ See "Sgt. Dhillon – Investigation Report", page 254, line 20.

Conclusion on the Allegations

[184] Thus far, all but two of the particulars have been established. These last two require comment.

[185] Particular 11 of Allegation 1 states that Sergeant Dhillon's actions amounted to discreditable conduct, whereas Particular 5 of Allegation 2 states that Sergeant Dhillon's comments were inappropriate and amounted to discreditable conduct.

[186] The RCMP External Review Committee (ERC) offers its analysis on the nature of conduct "not likely to discredit the Force" [ERC C-2015-001 (C008), February 22, 2016]. I accept and adopt the approach found at paragraphs 92 and 93 of its recommendation. Simply put, the test for whether or not a member has contravened section 7.1 of the Code of Conduct is that any reasonable person with knowledge of the facts, including the realities of policing in general, and the RCMP in particular, would find the conduct discreditable or likely to discredit the Force. The Conduct Authority must demonstrate this on a balance of probabilities.

[187] In applying the test for discreditable conduct, I find that a reasonable person with the knowledge of all of the relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that Sergeant Dhillon's conduct in relation to both allegations was discreditable and sufficiently related to the employment situation to warrant discipline.

[188] Sergeant Dhillon's actions demonstrated a clear and wanton disrespect for both the Complainant and his wife. Not only is respect one of the RCMP's core values, but section 2 of the Code of Conduct states that "members treat every person with respect and courtesy and do not engage in discrimination or harassment".

[189] Additionally, his actions amounted to what can be termed as violence or abuse in a relationship. Violence against women continues to be a serious problem in Canada despite

significant efforts of legislators, law enforcement, including the RCMP, and the judiciary in recent decades to prevent it and respond to it.

[190] RCMP national policy found in *Operational Manual*, Chapter 24.2.1, states that violence/abuse in relationships investigations are a high priority and will be thoroughly investigated and handled expeditiously, maintaining the safety of those involved. As a serving RCMP officer, Sergeant Dhillon is expected to play a significant role in the efforts of the RCMP to prevent and investigate violence in relationships, not be a contributor to the problem. At the time this took place, Sergeant Dhillon was an NCO in the RCMP. Although his actions occurred, for the most part, while he was off-duty, section 1 of the Code of Conduct makes it clear that the Code of Conduct applies to members both on- and off-duty.

[191] With respect to Allegation 2, the Conduct Authority Representative provided the case of the *Appropriate Officer "K" Division v Cardinal*, 14 AD (4th) 182, to support a finding that the allegation is established. In that case, the adjudication board, at paragraph 10, wrote the following:

With respect to Allegation 2, the Subject Member suggested during a conversation with a fellow police officer that he should kill his ex-partner. This type of threat, especially in the context of a relationship breakdown, must be taken seriously. Anyone would be alarmed to hear a threat of that nature coming from a police officer who carries a firearm.

[192] Not only does Sergeant Dhillon carry a firearm for his work, he is highly skilled at using it. He travelled the country providing training to fellow RCMP officers on their use of firearms. Furthermore, Sergeant Dhillon did not only carry a firearm for work, but he also had an extensive personal collection of firearms.¹⁰⁷

[193] Based on the foregoing, I find that his actions were discreditable and sufficiently related to his employment. Given this, I find that both Allegations have been established.

¹⁰⁷ See Conduct Hearing Transcript, Volume 1, page 29, lines 1 to 8.

CONDUCT MEASURES

[194] Sergeant Dhillon did not testify in the conduct measures phase of the conduct hearing. Both parties provided documentary evidence and made submissions.

Conduct Authority Representative's submission

[195] The conduct measure sought by the Conduct Authority, to be globally imposed, was a direction for Sergeant Dhillon to resign from the Force and, in default, dismissal. The Conduct Authority Representative's explanation as to why the Conduct Authority was not seeking outright dismissal was that a direction to resign has often been used to address pension and/or severance pay concerns for the member. He added that most of these concerns no longer exist. He also said that outright dismissal is a more severe conduct measure than a direction to resign.

[196] The Conduct Authority Representative acknowledged Sergeant Dhillon's good work record, but noted that it was not without blemish, as demonstrated in the performance evaluation for fiscal year 2008-2009.

[197] In response to Sergeant Dhillon's claim that the stressors in his personal life should be considered as mitigating factors, the Conduct Authority Representative pointed out that everyone has stressors in their personal lives they must deal with. Consequently, members should not be given too much credit in terms of mitigation when these stressors leech into the workplace and the member's private affairs are affecting his/her professional obligations.

Member Representative's submission

[198] The Member Representative agreed that the Allegations are serious and that dismissal is within the range of possible sanctions. However, she suggested that a high financial penalty would be an appropriate measure in this case.

[199] The Member Representative pointed out that Sergeant Dhillon has 19 years of service. Throughout his career, he has demonstrated above average work performance as identified in the comments contained in the performance evaluations presented by her.

[200] The Member Representative also pointed out that Sergeant Dhillon was experiencing significant stressors in his personal life during the relevant time period. In particular, the significantly strained relationship with his spouse.

[201] The final mitigating factor identified by the Member Representative is that although these matters were investigated by the Abbotsford Police Service, Sergeant Dhillon was never charged criminally.

Decision on conduct measures

[202] Having established the contraventions of the Code of Conduct, subsection 45(4) of the *RCMP Act* obliges a conduct board to impose any one of the following conduct measures:

- a. recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner.
- b. direction to resign from the Force and, in default of resigning within 14 days after being directed to do so, recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner, or
- c. one or more of the conduct measures provided for in the rules.

[203] Subsection 24(2) of the *CSO (Conduct)* states: “A Conduct Board must impose conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct.”

[204] The Conduct Authority Representative correctly stated that the ERC established an analysis framework under the old RCMP discipline system which remains relevant to conduct proceedings implemented under the amended *RCMP Act*. Under this framework, conduct boards are required to first examine the appropriate range of conduct measures and then examine the mitigating and aggravating factors in order to establish appropriate measures for the specific case. This approach is consistent with the provisions of *Administration Manual* XII.1.11.15.

[205] The *Conduct Measures Guide* provides an extensive list of mitigating and aggravating factors that have been recognized by RCMP Adjudication Boards. These have a general application and may be considered by a conduct authority or conduct board when imposing conduct measures.

Conduct Measures Guide recommendations

[206] The *Conduct Measures Guide* sets out a range of possible sanctions for discreditable conduct. Although both Allegations are under section 7.1 of the Code of Conduct, they have very distinct aspects to them.

[207] Allegation 1 deals with three specific incidents of misconduct, any one of which amounts to a serious contravention of the Code of Conduct. All three incidents were found to be established. Using the terminology in the *Conduct Measures Guide*, all three incidents can be characterized as Assaults/Domestic Violence. The incidents did not occur in the context of a marital relationship, but rather an extramarital affair. Nevertheless, they all involved the non-consensual use of physical force against another person. The grabbing of the Complainant's throat was a pure application of unwanted physical force against her. The other two incidents involved the application of non- consensual physical force during what was otherwise a consensual act of sexual intercourse.

[208] The particulars in Allegation 2 set out comments made by Sergeant Dhillon that are also captured in the *Conduct Measures Guide*, specifically, the uttering of threats. The Member

Representative referred to the comment as simply an inappropriate comment, but Sergeant Dhillon's comment, "one bullet would solve all of my problems", in reference to his wife, is clearly a threat to kill or harm her with a firearm.

[209] The *Conduct Measures Guide* is intended to achieve the organizational goal of consistency throughout the conduct process and outlines the expectations of the RCMP for members' conduct. The *Conduct Measures Guide* sets out a range of possible measures that a member may face if an allegation of a contravention of the Code of Conduct is established. The *Conduct Measures Guide* is not something that is "carved in stone". Rather, it is a starting point for reaching the appropriate conduct measure(s). The recommendations help to eliminate the subjectivity in the assessment of conduct measures and provides a framework for discussion.

[210] The recommended conduct measures for contraventions of the Code of Conduct under section 7.1 pertaining to assault/domestic violence is the forfeiture of 1 to 2 days of pay in the mitigated range where the conduct is determined to be minor pushing/shoving or where there is provocation. The normal range is the forfeiture of 3 to 10 days of pay. The aggravated range is between the forfeiture of 15 days of pay and dismissal where there was a severe assault, injury was caused, where there was a use or possession of weapons, or where there was a prolonged pattern of spousal assault.

[211] With respect to the second allegation, the uttering of threats aimed at Sergeant Dhillon's wife, the recommended conduct measures for this category, in the mitigated range, is the forfeiture of pay of 1 to 2 days where the incident involved an emotional outburst or was an isolated incident. The normal range is the forfeiture of 3 to 10 days of pay. The aggravated range recommends a range of 15 days' forfeiture of pay up to dismissal.

[212] Generally speaking, the recommended range for the allegations Sergeant Dhillon is facing is between the forfeiture of 1 day's pay and dismissal. Having established the appropriate range of conduct measures, the mitigating and aggravating factors can now be examined.

Mitigating factors

[213] Sergeant Dhillon's Employee Profile Information document indicates that he was engaged in the Force on October 16, 2000. All of his service has been in the Lower Mainland of British Columbia. I reviewed the various performance evaluations and other performance-related documents provided by the parties. I fully recognize the excellent operational and operational support (i.e., training) work that Sergeant Dhillon has performed during his career. He is deemed to be a Subject- Matter Expert in the area of firearms. He has extensively delivered training to fellow officers in this area and is called upon to testify in court to provide his expert opinion.

[214] He received a letter of appreciation from the Commanding Officer of "E" Division and a Life Saving Certificate. The Commanding Officer's Letter of Appreciation was presented to Sergeant Dhillon in December 2006 for his outstanding contribution to youth in Surrey. This contribution was the creation of a Saturday night sports night at a local secondary school, which evolved into a 5-on-5 basketball tournament. The Life Saving Award was presented by the Order of the Hospital of St. John of Jerusalem Priory of Canada in October 2016. Sergeant Dhillon and several other members of the RCMP were instrumental in saving the life of a severely injured stabbing victim. Sergeant Dhillon is to be commended for his efforts in this regard.

[215] Sergeant Dhillon undertook psychological counselling, on his own accord, and continues to do so. In the letter that he provided, Sergeant Dhillon's treating psychologist indicated that he has diagnosed Sergeant Dhillon with Post-Traumatic Stress Disorder (PTSD). However, the letter does not attribute any of Sergeant Dhillon's actions or behaviours in this matter to that diagnosis.

[216] The Member Representative noted that, during the relevant time period, Sergeant Dhillon was experiencing significant stress in his personal life. The evidence is clear that his strained relationship with his spouse was an ongoing issue. Sergeant Dhillon testified that a divorce had yet to be finalized. The Conduct Authority Representative suggested that members should not be

given too much credit for personal stressors in their lives. Although this may be the case, this factor needs to be examined on a case-by-case basis.

[217] In this case, the most important factor is that I do not have a full and complete understanding of how Sergeant Dhillon's actions contributed to his personal stressors. The evidence is that he engaged in at least three extramarital affairs, with the possibility of several others having occurred during the relevant time period. The incident at his residence on August 7, 2016, is a clear indicator of how the extramarital affair with the Complainant added to the stress in his life, both personally and professionally. There is evidence that a similar occurrence involving another "girlfriend" occurred a few months prior to this incident. These incidents were entirely of Sergeant Dhillon's own making.

[218] These are the mitigating factors of this case as I understand them.

Aggravating factors

[219] I agree with the Conduct Authority Representative that there are more aggravating factors than there are mitigating factors in this case.

[220] The allegations are very serious and occurred at a time when the RCMP was in the midst of a tempest of issues of a similar nature. As pointed out by the Conduct Authority Representative, the conduct board in *Commanding Officer, "H" Division v Constable Pulsifer*, 2019 RCAD 09, citing the board in *Conduct Authority for "NHQ" Division v Civilian Member Calandrini*, 2018 RCAD 10, noted that the degree of seriousness of the misconduct is high and that the RCMP, through repeated messaging to its employees, has communicated that workplace harassment, including sexual harassment, and **off-duty non-consensual sexual misconduct** are all unacceptable and will not be ignored or tolerated.

[221] With respect to assault/domestic violence, the *Conduct Measures Guide* states that assaults involving a member's spouse or children should be considered aggravating factors, considering the vulnerability of the victims. The Board appreciates the intent of the *Conduct*

Measures Guide, but the important takeaway is the vulnerability of the victim. The victim category does not need to be restricted to spouses and children. As the *Conduct Measures Guide* says in the next paragraph, vulnerability can also arise on the basis of differences in size, age or gender. The Complainant was clearly a vulnerable person in the context of her relationship with Sergeant Dhillon.

[222] With respect to the uttering of threats, the *Conduct Measures Guide* reads as follows:

Uttering threats to cause death or grievous bodily harm constitutes a criminal offence and would properly constitute discreditable conduct. The seriousness of the misconduct will be dependent upon the context in which the threat was uttered, the ability or actual fear of carrying out the threat, and the graphic nature of the words used.

[...]

There have been certain exceptional cases warranting an order to resign for uttering threats, albeit such cases typically involve the use of threats of weapons. [...]

[223] At the time of the first incident in 2009, Sergeant Dhillon was a corporal occupying a supervisory position at Coquitlam Detachment. By the time the last incident occurred in April 2016, he had been promoted to the senior NCO rank of sergeant. There is a legitimate expectation that members occupying supervisory and/or senior NCO positions/ranks are to be role models for junior members. Although Sergeant Dhillon may have been a good role model for junior members during his working hours, as demonstrated by the comments in his performance evaluations, he was not a positive role model in his off-duty actions.

[224] The impact on a victim, either physical or emotional, is also an aggravating factor. In this case, Sergeant Dhillon's conduct adversely impacted the Complainant. She testified that she was compelled to undergo psychological counselling as a result of her relationship with Sergeant Dhillon. This began in October 2016, following the termination of their relationship, and was still continuing at the time of the conduct hearing. In her statement to Sergeant Blades, the Complainant said that, from the time of the "choking incident", she was full of anxiety and became an emotional wreck. She noted that, before she met Sergeant Dhillon, she was more

confident and secure in herself.¹⁰⁸ In her testimony, she clearly stated that she felt she was less of a person than she was before she met .Sergeant Dhillon¹⁰⁹ She lost self-worth and confidence and continues to have ongoing trust issues with people.

[225] Lack of remorse is also an aggravating factor. The Conduct Authority Representative provided the case of *The Appropriate Officer, "E" Division v Constable Banman*, 26 AD (4th) 185 [*Banman*]. In that case, the adjudication board noted at the bottom of page 49 that, in their opinion, an essential part of rehabilitation is remorse. I concur.

[226] In this case, Sergeant Dhillon has demonstrated no remorse. In fact, a pattern emerges in the evidence wherein Sergeant Dhillon blames all of his problems and/or issues on everyone but himself.

[227] His reason for telling the Complainant to keep their relationship a secret, and particularly not to tell anyone at work, was because the female members at the Detachment were "out to get him".

[228] He accused RCMP management at Coquitlam Detachment of persecuting him when all they were doing was addressing complaints about his alleged harassing behaviour and other legitimately identified conduct and/or performance issues. They had an obligation to do this under the *RCMP Act*, the *Commissioner's Standing Orders* and RCMP policy.

[229] His comment that "one bullet would solve all of his problems" is a clear indicator that he blamed his wife for their marital difficulties, overlooking any contributions that he may have made to those difficulties.

[230] He blames the Complainant for his problems, calling her stupid for going to his residence and causing the August 7, 2016, incident which resulted in a Code of Conduct investigation.

¹⁰⁸ See "Sgt. Dhillon – Investigation Report", page 215, line 16.

¹⁰⁹ See Conduct Hearing Transcript, Volume 1, page 143, lines 18 and 19.

[231] Finally, in the letter from his psychologist, Sergeant Dhillon blamed his treatment by the RCMP and his involvement in several Code of Conduct matters for not just impeding his recovery, but causing him more psychological trauma, increased anxiety and depression concerns.

[232] In the absence of remorse, Sergeant Dhillon provides no assurance that he will not continue to behave as he has in the past should he be allowed to remain a member of the RCMP.

[233] Another consideration is whether the conduct of the member is an isolated incident or occurred over time. The date range for the allegations is between May 1, 2009, and April 30, 2016. Although the incidents specified in the allegations were spread out during this time period, his actions in terms of the abusive relationship with the Complainant and his involvement in extramarital affairs continued throughout. This becomes more significant when his prior conduct history is considered, because a pattern of behaviour emerges in many aspects of his conduct that is quite disturbing. As the Conduct Authority Representative pointed out, one of the most significant aggravating factors in this case is Sergeant Dhillon's prior conduct and/or conduct-related performance issues. These will be examined in order of date, beginning with the earliest.

Incident 1 – November 2006 – Breach of subsection 39(1) RCMP Act – Informal discipline

[234] The first incident was informal discipline administered in the form of counselling on November 15, 2006. In that case, Sergeant Dhillon faced two allegations under subsection 39(1) of the old *RCMP Act*. This is the equivalent of section 7.1 under the current Code of Conduct.

[235] One of the allegations related to an improper relationship with a female victim in a spousal assault complaint in which Sergeant Dhillon was the lead investigator. The case was marked by Sergeant Dhillon's persistence in pursuing a relationship with that victim, which ultimately became intimate. He made sporadic visits to her residence. He would call her five or six times a day. She suspected he was married and confronted him about it, but he denied it

despite being married. It appears that the woman felt compelled to move to avoid the relationship. Sergeant Dhillon's response was that he could use his authorities and/or influence as a police officer to find her no matter where she went.

[236] The second allegation was the improper use of his government-issued cellular telephone to pursue the relationship.

Incident 2 – October 2008 – Conduct-related performance issue

[237] The second incident, although potentially a discipline matter, was dealt with as a performance issue. The potential misuse of his government-issued cellular telephone was detected by the Detachment Admin NCO. The misuse of government-issued equipment is a violation of section 4.6 of the Code of Conduct. The Admin NCO met with Sergeant Dhillon to discuss the situation. During the meeting, despite being presented with evidence to justify the Staff Sergeant's suspicions, Sergeant Dhillon denied the allegation. In a subsequent meeting with a different Staff Sergeant, he admitted that he used the cellular telephone to contact a "dating service" while he was on duty. He gave assurances that this would not happen again. The matter was resolved with the issuance of a Form 1004 – *Performance Log* and the payment of \$300 to cover the telephone bill. This incident occurred in October 2008.

Incident 3 – January 2009 – Conduct-related performance issue

[238] The third incident is referred to in Sergeant Dhillon's 2008-2009 performance evaluation. In January 2009, female members on Sergeant Dhillon's Watch complained about his harassing behaviour. The allegations were investigated on a preliminary basis at the Watch level; however, the Detachment Operations Officer deemed that there was insufficient evidence to proceed with a Code of Conduct investigation. The complaints had a date range of July to December 2008. The matter was again dealt with by way of a *Performance Log*, issued on January 12, 2009. Sergeant Dhillon refused to sign the document. He did not return to the Watch from that date until he was transferred to Richmond Detachment in May 2009.

***Incident 4 – October 2016 – Contravention of section 7.1 Code of Conduct –
Forfeiture of pay***

[239] The fourth incident occurred in late October 2016. The interesting thing to note about this date is that, at the time this incident occurred, Sergeant Dhillon was the subject of another Code of Conduct investigation for allegedly assaulting his wife following the August 7, 2016, incident at his residence.

[240] In the October 2016 incident, RCMP members responded to a 911 call of a man staring in the window of Ms. R. M.'s residence. Ms. R. M. was another girlfriend of Sergeant Dhillon. Sergeant Dhillon was not at the scene when the members arrived. He was identified by a witness as being the man looking in the window. The members attended Sergeant Dhillon's residence and spoke with him. He denied being at Ms. R. M.'s residence. TSergeant Dhillon was clearly informed that Ms. R. M. did not want anything to do with him. He said he knew that future contact with Ms. R. M. would constitute criminal harassment. He assured the attending officers that he would have no further contact with Ms. R. M. However, while conducting a follow-up with Ms. R. M., the officers were advised that, immediately after they left Sergeant Dhillon's residence, he called Ms. R. M. to say that it was not him outside her residence. Video surveillance footage obtained by the investigating officers confirmed that Sergeant Dhillon was at Ms. R. M.'s residential complex repeatedly during a 105-minute time frame, both on foot and in his vehicle.

[241] In the conduct meeting held in relation to the single allegation under section 7.1 of the Code of Conduct, Sergeant Dhillon admitted to being at the complex where Ms. R. M. lived because he was interested in purchasing a suite in the complex.

[242] The conduct measure imposed was a forfeiture of 3 days of pay. The aggravating factors listed in the *Record of Decision* include:

- Making untruthful statements to the investigating officers;

- Immediately contacting Ms. R. M. despite instructions from a senior NCO not to do so;
- His actions caused Ms. R. M. considerable concern; and
- His lack of remorse.

Identified long-term pattern of behaviour

[243] The pattern that emerges from the four historic matters is very similar to his actions in this case.

[244] In two of these matters, Sergeant Dhillon demonstrated persistence in the pursuit of relationships with women for the purpose of having sexual relations with them. One of these women was extremely vulnerable. Sergeant Dhillon also demonstrated persistence in his relationship with the Complainant. These efforts pertained to the pursuit of the relationship with her and for purposes other than the relationship (i.e., through the pressure he applied to the Complainant to obtain a copy of her statement in relation to his Code of Conduct investigation).

[245] Sergeant Dhillon also attempted to nurture and maintain these relationships through deception and threats. His actions in the case with the victim of spousal assault are almost mirrored in this case in terms of deceptive behaviour.

[246] Respect is a core value of the RCMP and is codified in section 2 of the Code of Conduct. Sergeant Dhillon consistently demonstrated a lack of respect for women. The following are examples of this:

- The complaints of harassment made by the female members on the Watch in Coquitlam.
- He failed to respect the fact that the victim of spousal assault and Ms. R. M. no longer wished to be in a relationship with him.

- He demonstrated a lack of respect for the Complainant's boundaries of their otherwise consensual sexual relationship, as demonstrated by the non-consensual sexual incidents contained in the Record.
- By pursuing several extramarital relationships and threatening to kill or seriously harm his wife, he clearly demonstrated a lack of respect for her.

[247] In this case, there is evidence that Sergeant Dhillon used his government-issued cellular telephone to pursue a relationship with the Complainant. He did this in two of the other prior incidents. He had ample warning and should have had a clear understanding of the acceptable uses of the device prior to this incident. His actions in these matters also demonstrate a clear lack of respect for the authority of the senior members of the Force, who provided him with direction and guidance in the respective matters.

[248] The most important recurring behaviours are his demonstrated lack of honesty and integrity.

[249] The first incident is a matter of integrity in that he preyed on the vulnerability of a woman he was meant to protect in order to pursue a relationship for his own gratification. It is also a matter of honesty in that, during the course of the relationship with this vulnerable woman, he lied to her in order to maintain the relationship with her.

[250] In the second and fourth matters, he was clearly deceitful. In the matter involving the misuse of the government-issued cellular telephone to call the "dating service", he initially lied about it, despite being presented with evidence to the truth of the allegation. Although he later admitted to the misuse of the cellular telephone, the admission was not accompanied by an explanation or sign of remorse. In the fourth incident, he again lied to investigators, denying that he was at the complex where Ms. R. M. lived. When he was presented with evidence of the lie, he lied about his reason for being at the complex. "Lies on top of lies" as the Complainant put it.

[251] As a further matter of integrity in the fourth matter, Sergeant Dhillon failed to keep his promise to investigators that he would not contact Ms. R. M. as he immediately contacted her the minute the investigators left his residence.

[252] In this case, Sergeant Dhillon took a course of action to isolate the Complainant, which placed her in a vulnerable position. He also lied to her repeatedly throughout their relationship. He not only lied to the Complainant during their relationship, but he was less than truthful with Sergeant Stovern during his interview with him. This was demonstrated during his cross-examination. This is another example of the continuation of Sergeant Dhillon's established pattern.

[253] Honesty and integrity are at the heart of a police officer's profession. As the Conduct Authority Representative put it, "it strikes to the core values of the organization". The public has an expectation that police officers will demonstrate a higher standard of honesty and integrity than the average citizen. Without it, it is hard to imagine, in light of the disclosure requirements established by the Supreme Court in *R v McNeil*, 2009 SCC 3 (CanLII), what duties a police officer could effectively perform. Additionally, like trust, a reputation for honesty and integrity, once lost, is very hard to regain.

[254] Despite all of the aforementioned, the "icing on the cake" in terms of honesty and integrity is the lengths that Sergeant Dhillon took to influence or coerce the Complainant to alter her statement. I agree with the Member Representative in that the Complainant is her own person, but in the context of the abusive relationship that Sergeant Dhillon created, she clearly lacked the will, courage or ability (however you wish to characterize it), to stand up to Sergeant Dhillon. It is one thing to personally demonstrate a lack of honesty and integrity, but it is a wholly different matter to drag someone else into that mire of deception and deceit to the point where it put the Complainant's employment at risk. At Sergeant Dhillon's bidding, the Complainant presented a much watered-down version of the statement she intended to provide to Corporal Mills. Sergeant Dhillon clearly attempted to obstruct, pervert or defeat the course of justice by dissuading the Complainant from telling the truth and thereby influencing the outcome

of a Code of Conduct investigation in his favour. Despite the seriousness of his actions and the strength of the evidence, his actions were not included as a separate allegation in this case, as I feel they should have been. In fact, it is surprising that his actions were not the subject of a statutory investigation.

[255] Sergeant Dhillon's actions demonstrate a clear disrespect for the RCMP Code of Conduct and the law in general, something he swore an oath to uphold.

[256] These aggravating factors far outweigh the mitigating factors.

Review of the cases relating to conduct measures

[257] The Member Representative did a credible job of setting out the decisions of other adjudication/conduct boards to support her position that a high financial penalty is appropriate in this case. She indicated that, although I am not bound by these cases, a review will provide assistance in terms of achieving parity of sanction. Comment on each specific case is not necessary, but some general comments are in order.

[258] First, all of the cases included allegations of inappropriate sexual touching, assault or uttering of threats. These occurred in various contexts, including on-duty members; off-duty members; the member's involvement in a casual relationship; or the member's involvement in a more significant domestic relationship. In several of the cases, the subject member was charged criminally. In a few cases, the subject member was convicted of a criminal offence. None of the cases resulted in a member's dismissal. The conduct measures administered included a reprimand combined with other measures such as forfeitures of pay, ineligibility for promotion for a period of time, transfer and/or a recommendation for counselling. The forfeitures of pay ranged from 1 to 45 days, with the majority of the forfeitures of pay being in the range of 4 to 10 days under the old discipline system, keeping in mind that the forfeiture of 10 days of pay was the maximum under that system, and 30 to 45 days which is at the high end of the range under the new conduct system.

[259] All of the cases under the old discipline system involved an agreed statement of facts and a joint submission on sanction. As the Conduct Authority Representative pointed out, reaching sanctions through an agreed statement of facts presented in a joint submission usually involved some form of compromise. Adjudication boards were bound by these joint submissions unless there were exceptional circumstances which allowed the board to deviate from them.

[260] What is most significant about the cases provided by the Member Representative is that they all involve significant mitigating factors that justified the imposition of conduct measures short of dismissal. In all but one case, the member had no prior conduct history. The members expressed remorse and accepted responsibility for their actions. They also made efforts at rehabilitation to address medical issues that were, in some cases, determined to be causal or contributing factors to the members' behaviour. In several cases, although there may have been more than one victim, the allegations arose from the same set of circumstances and were often as a result of extreme levels of intoxication. None of these mitigating factors are present in this case.

[261] The Conduct Authority Representative presented only two cases to support the Conduct Authority's position on conduct measures. The first is the *Commanding Officer, "E" Division v Sergeant Turner*, 2018 RCAD 16. This case involved sexual activities while on-duty and a finding by the conduct board that the member abused his authority. This is not the case here. Consequently, this case is not of much value in this proceeding.

[262] The second case is *Banman*, which was decided in 2005 under the old discipline system. Nevertheless, it does have an application here as there are a number of similarities to this case. The Member Representative pointed out several distinguishing features, which are peripheral to this case. For example, the fact that there were multiple victims or that some of the victims in that case were children. Regardless of these distinctions, all of the victims were vulnerable persons, as is the case here.

[263] The similarities of the *Banman* case with this case go to the essential elements of the case. In providing this case, the Conduct Authority Representative wished to emphasize two specific points that have relevance here. The first relates to the uttering of the threats to kill. In *Banman*, the subject member denied that he uttered the threats, but the board believed the witness and found that he did utter threats. The board went further to say that, even if the subject member never intended to carry out the threat, his intention is not relevant. He uttered the words while he was a police officer and the victim believed he was capable of carrying out the threat. A police officer has the knowledge and understanding of what constitutes a threat in the context of the *Criminal Code*, RSC, 1985, c H-6. The second aspect has broader application to this case as it pertains to the member's rehabilitation.

[264] The Conduct Authority Representative drew my attention to the comments made by the ERC in a case cited as 28 AD (2nd) 213. The comments read as follows:

Good character and rehabilitative potential are normally central to considerations of appropriate sanctions; principles of progressive discipline for a single act of misconduct will normally require a sanction of less than termination where good character and rehabilitative potential are present. However, the presence of good character and rehabilitative potential does not absolutely require a sanction less than termination; rather, these factors still must be measured against the severity of the misconduct. There may be disciplinary situations where factors, while relevant, are not sufficient to overcome the employer's right to terminate the employment relationship. [...] The breach of trust represented by the misconduct in the present case goes to the heart of the employer-employee relationship, as well as to the heart of the public's expectations of police officers in their dealings with vulnerable members of the public.

[Emphasis added]

Imposed conduct measures

[265] Under the circumstances of this case and in light of the foregoing analysis of the mitigating and aggravating factors, I find that this case falls within the aggravated range of discreditable conduct as it relates to the two categories examined herein, namely

assault/domestic violence and uttering threats. In the aggravated range, the suggested conduct measures for both categories is between the forfeiture of 15 days of pay and dismissal.

[266] In the cases presented by the Member Representative in support of a significant forfeiture of pay, the forfeiture of 10 days under the old discipline system was the maximum forfeiture that could be imposed and the forfeitures of pay of 30,¹¹⁰ 35¹¹¹ and 45¹¹² days under the new conduct system are near or at the recommended maximum range of pay forfeitures. These cases involved several and significant mitigating factors and few aggravating ones. This leaves no room to manoeuvre, in terms of parity of conduct measures, to administer a significant forfeiture of pay for cases like this one, where there are a few mitigating factors and many significant aggravating ones.

[267] Sergeant Dhillon's misconduct is serious. This goes to the heart of the employer-employee relationship and the public's expectations of police officers in their dealings with vulnerable members of the public. He has demonstrated neither good character nor rehabilitative potential. The similarity with his misconduct over the last 12 years, coupled with his lack of remorse, is concerning. Also, many of the causal factors of his behaviour suggested by the Member Representative, like the stressors in his personal life, still exist. This provides little hope that Sergeant Dhillon will change his ways if he were allowed to remain in the RCMP.

[268] In light of this, I directed that Sergeant Dhillon be dismissed from the Force pursuant to paragraph 45(4)(a) of the *RCMP Act*.

CONCLUSION

[269] This decision constitutes the written decision required to be served on the parties under subsection 25(3) of the *CSO (Conduct)*. It may be appealed to the Commissioner by filing a

¹¹⁰ See *Commanding Officer, "H" Division v Constable Allan*, 2019 RCAD 10.

¹¹¹ See *Commanding Officer, "H" Division v Constable Pulsifer*, 2019 RCAD 9.

¹¹² See *Commanding Officer, "E" Division v Constable Caram*, 2017 RCAD 8.

statement of appeal within 14 days of the service of the decision on Sergeant Dhillon [section 45.11 of the *RCMP Act*; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-293].



Kevin Harrison

September 3, 2019

Date

Conduct Board