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2018 RCAD 17



ROYAL CANADIAN MOUNTED POLICE

CONDUCT HEARING

IN THE MATTER OF THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "J" Division

Conduct Authority

and

Constable Carl Poulin, Regimental No. 58111

Subject Member

Conduct Board Decision

Josée Thibault

December 19, 2018

Ms. France Saint-Denis, for the Conduct Authority

Ms. Sabine Georges, for the Subject Member

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SUMMARY OF DECISION

The Subject Member admitted to engaging in discreditable conduct under section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. The Conduct Board concluded that the allegation was established on a balance of probabilities. Furthermore, the Board accepted the joint proposal on conduct measures submitted by the parties and imposed the following:

- a. a reduction of 20 days (160 hours) from the Subject Member's leave bank;
- b. a financial penalty of five days' pay, collected one day per month over a period of five months;
- c. a transfer;
- d. ineligibility for a promotion for a period of three years;
- e. strict supervision during work by a senior Non-Commissioned Officer for a period of one year;
- f. obligation to complete all mandatory training before returning to active duty;
- g. obligation to take any additional training considered necessary by his line officer; and
- h. obligation to meet with the Health Services Officer (HSO) of "J" Division Health Services before returning to active duty and obligation to follow any treatment plan recommended by the HSO, Health Services.

INTRODUCTION

[1] The Notice of Conduct Hearing was signed by the Commanding Officer of "J" Division on May 31, 2017, and was served on the Subject Member on June 12, 2017.

[2] On August 31, 2018, the parties filed a joint motion with the Conduct Board seeking amendments to the allegation and statements of particulars. In addition, they file a joint proposal on conduct measures and a request for decision on the allegation admitted by the Member.

[3] In fact, the Notice of Conduct Hearing contains an allegation of use of excessive force under section 5.1 of the Code of Conduct of the Royal Canadian Mounted Police (RCMP). The parties are seeking to have section 5.1 replaced by section 7.1, that is, a discreditable conduct contravention.

[4] More specifically, the parties request the following:

- a. grant the present motion to amend the allegation and particulars;
- b. take notice of the Subject Member's admissions and explanations, and;
- c. render a decision on the facts regarding allegation 1, admitted by the Member, and;
- d. accept the joint proposal on conduct measures.

[5] Pursuant to the motion, I cancelled the conduct hearing scheduled for the week of October 22, 2018.

[6] This decision grants the joint motion for the amendments to allegation 1 and the statements of particulars. It also contains the Board's findings on allegation 1 and the conduct measures imposed.

ANALYSIS OF PRELIMINARY MOTION 1

Amendments to the allegation and statements of particulars

[7] The parties allege that the Subject Member's situation is unique and that the *RCMP Conduct Measures Guide, 2014* (the Guide) does not provide a range of conduct measures applicable to the case at hand. For example, [translation] "misuse of RCMP vehicles" is covered by section 4.6 of the Code of Conduct. The applicable measures for such misconduct involve forfeiture of one to ten days' pay, not dismissal. As well, the section does not address a scenario where the member has used a dangerous manoeuvre in the operation of a police vehicle causing bodily harm, as in this case. Consequently, the two parties are in agreement that this provision of the Code of Conduct does not apply to the Subject Member's situation.

[8] Regarding the application of section 5.1 concerning the use of excessive force, this contravention of the Code of Conduct is subject to penalties up to and including dismissal. The issue is to determine whether the Subject Member used excessive force when he used his marked car as a weapon to block the passage of the motorcycle heading towards him, thereby making the accident unavoidable. The expert reports provided by the parties indicate that the member's case is not related to a typical application of force because it does not involve a physical confrontation

between the member and the motorcycle driver. The Conduct Authority's expert is of the opinion that the Subject Member's incident is, according to the *Incident Management Intervention Model*, related to the excessive use of force. The expert for the member's representative disagrees. Essentially, the experts have differing opinions about the intervention method used by the member, namely, moving his marked patrol car to show his presence and deter Mr. X from continuing his reckless driving.

[9] Regarding section 7.1 of the Code of Conduct, it concerns the discreditable conduct of a member and, like section 5.1, the range of measures in serious cases includes dismissal. According to the Guide, the provision "is envisaged as a provision to encompass a wide variety of conduct that is not otherwise provided for under the Code of Conduct."

[10] Regarding the evidence in the record, I note that the independent investigation report by the City of Bathurst Police Department recommends that, based on the circumstances of the incident, no criminal charge be brought against the Subject Member.

[11] As well, on January 2, 2018, Mr. X pleaded guilty to driving his motorcycle, an off-road vehicle, within 7.5 metres of the travelled portion of a highway, contrary to section 16 of the *Off-Road Vehicle Act*, SNB 1985, c. O-1.5.

[12] Finally, Sergeant Y, who was the Subject Member's supervisor at the time of the incident, admits in his supplementary declaration of December 6, 2017, that his description of the facts in the report dated August 6, 2016, and entitled Supplementary Occurrence Report, may have hurt the Member and been misleading. Sergeant Y explains that he did not amend his report after viewing the video of the incident because he believed that the situation had been resolved following the investigation report from the City of Bathurst Police Department, which did not recommend laying criminal charges against the Member. He was therefore surprised to learn that the Member had been suspended for contravention of the Code of Conduct.

[13] I carefully reviewed the explanations provided by the Subject Member, the two experts' reports, the independent investigation report from the City of Bathurst Police Department and the clarifications given by Sergeant Y. In light of all of the evidence in the record and the particular

circumstances of the incident, as well as my in-depth review of sections 4.6 (misuse of vehicle), 5.1 (excessive use of force) and 7.1 (discreditable conduct) in the Guide, I allow the parties' joint motion to replace allegation 1 and the particulars thereunder.

[14] Consequently, the allegation of excessive use of force under section 5.1 of the Code of Conduct shall be modified by section 7.1 for discreditable conduct.

[15] I also take note of the admissions and explanations given by the Subject Member.

ANALYSIS OF PRELIMINARY MOTION 2

Sealing order for prior discipline

[16] The parties asked the Board to issue a sealing order with respect to the Subject Member's prior discipline, except for the generic information included in their email of September 6, 2016. The motion was denied.

[17] The parties raised several elements in their motion that I addressed in my response of November 29, 2018. In that decision, I included a summary of my analysis dealing with the Board's administrative process, including the open court principle, protected information in an in-camera hearing and the application of the Dagenais/Mentuck test to sealing orders.

Open court principle

[18] With respect to the open court principle, the parties allege that, in accordance with the new disciplinary process, the Board can hold its hearings in public or render a paper decision without a hearing. Thus, the fact that the Committee usually holds its hearings in public is academic in this case because there is no hearing.

[19] In their motion, the parties refer to the decision in *Goodyer* 2018 RCAD 13. I would point out that this case is to be distinguished from the case at hand because it involved a contested conduct hearing in which the Board rendered its decision on the basis of the documentary evidence in the record.

[20] In contrast, in the case before me, the Subject Member admitted the allegation. Therefore, no witnesses needed to be heard to allow me to render a decision on the allegation. Furthermore, the parties submitted a joint proposal on conduct measures. Finally, as proposed by the parties, I concluded that a conduct hearing was not required in the circumstances.

[21] As indicated in my response to the parties, the legislative reform of November 2014 put in place a modernized disciplinary process. According to subsection 46(2) of the *RCMP Act*, the Board can deal with issues as informally and expeditiously as the circumstances and considerations of procedural fairness permit. It can also adapt the rules of procedure if the principles of procedural fairness permit (*Commissioner's Standing Orders (Conduct)*, SOR/2014-291, section 13). As well, in accordance with subsection 45.1(2) of the *RCMP Act*, the Board's hearings are public. Accordingly, while the Board's administrative process for rendering its decision in this case may be more flexible and less formalistic, the right to transparency in judicial proceedings and public access are paramount.

[22] The open court principle is supported by the case law and in *Southam Inc. v. Canada (Attorney General)*, 1997 CarswellOnt 4376, which clearly indicates that the RCMP's disciplinary process is a quasi-judicial process that is public. In his decision, Rutherford J. explains that because of the public nature of police officers' duties and the broad powers given to them by law in the execution of those duties, and because conduct board proceedings can affect RCMP members' rights so significantly, the public has a very strong interest in such hearings.

[23] Thus, when the parties submit the Subject Member's disciplinary record before the Board as documentary evidence in the present conduct proceedings, it should, generally speaking, be available to the public—subject to the application of the *Access to Information Act*, RSC (1985), c. A-1 and the *Privacy Act*, RSC (1985), c. P-21. On the other hand, it is not my role to determine what information will be shared with a third party seeking access to the Subject Member's disciplinary record. That request will be dealt with by the responsible RCMP coordinator in accordance with the respective statutes.

Protected information in an in camera hearing

[24] The parties also argued that, practically speaking, the effect is the same for the public whether the hearing is conducted entirely behind closed doors or whether the Board renders a paper decision without a hearing.

[25] In my response, I indicated to the parties that I disagreed with that assertion. In fact, an order for an *in camera* hearing is not a general provision for the protection of information, but rather an exception to the open court principle that is within the Board's discretion. Subsection 45.1(2) of the *RCMP Act* provides that the Board, on its own initiative or at the request of any party, may order that the hearing or any part of it is to be held *in camera* if it is of the opinion that such an order is necessary in order to prevent certain information from being disclosed in the course of the hearing. Among the reasons for making such an order would be that the information is injurious to the defence of Canada or law enforcement or pertains to the financial or personal affairs of a person whose interest or security outweighs the public's interest in the information. I explained that the parties did not request any such order and that the information contained in the member's disciplinary record does not meet those criteria.

The Dagenais/Mentuck test for a sealing order

[26] Finally, the parties submitted that the member's previous discipline should be excluded because the fact pattern involved was quite different from the facts in the present case; the value of the previous discipline is not determinative in the case as a whole; non-disclosure of the previous discipline has minimal impact on the public interest, whereas disclosure would have negative consequences for the parties involved; the public only has to be informed that previous discipline exists. It does not need to be made aware of the details of the previous discipline.

[27] In my response, I indicated that the *RCMP Act* provides that the Board may issue an *in camera* order or a publication ban. As for a sealing order, it has been used on a limited basis in previous RCMP conduct board decisions. For example, in *Caram* (2017 RCAD 8), a sealing order on the conduct hearing record was issued on a temporary basis until the member's criminal case was finished. In *Appropriate Officer of "E" Division and Sergeant R.F. Blair*, 8 A.D. (3d)

83, submitted by the parties, the conduct board issued a sealing order for a document that contained comments about the complainant's work performance. The Board was of the opinion that making the document accessible to the public could be injurious to the complainant's privacy and would not serve the interests of justice. Furthermore, the complainant did not have the opportunity to challenge the content of the documents, which were not relevant to the allegations made against the member. These two decisions are different from the case at hand because the parties here are asking for a seal of indefinite duration on the previous discipline of the Member who is subject to the current administrative process.

[28] A sealing order must be justified on the basis of the *Dagenais/Mentuck* test (*Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835; *R. v. Mentuck*, [2001] 3 SCR 442). In *Canadian Broadcasting Corp., v. The Queen*, 2011 SCC 3, the Supreme Court of Canada concluded that this test is applicable to all discretionary decisions relating to the open court principle. It was also applied in administrative decisions rendered by the Public Service Staff Relations Board. Under the *Dagenais/Mentuck* test, a sealing order is issued when:

- a. such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk;
- b. the salutary effects of the order outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[29] The test required that I carefully consider whether the confidentiality of the information contained in the Member's disciplinary history outweighs its deleterious effects, including its effect on freedom of expression, which in this context includes the public interest in open court proceedings.

[30] I noted in my response to the parties that the fact that the Member's record contains information that could embarrass him if published does not pose a serious risk to the proper administration of justice. Indeed, the RCMP Code of Conduct states that members, whether on or off duty, should consider how their actions and behaviours will affect their ability to preserve their credibility and the trust of the public. As a member of the RCMP, the Member chose to

enter a unique profession that has expectations of a higher standard of behaviour—and that responsibility is constant.

[31] Moreover, after *R. v. McNeil*, [2009]1 SCR 66, 2009 SCC 3 (CanLII), the disciplinary records of police officers can now be disclosed to the public because they have a special duty of disclosure with respect to the Crown prosecutor in all cases where they are likely to be called as witnesses. In this case, it is the Crown that determines whether the previous discipline is relevant and needs to be disclosed to the defence. It is also important to note that if the Member is ever involved in another disciplinary process before an RCMP conduct board in the future, his disciplinary record may again be made available to the public.

[32] For these reasons, I concluded that the Subject Member's interest in protecting the contents of his disciplinary record does not outweigh the public's interest in the principle of open court proceedings. I rejected the motion for a sealing order with respect to the Member's previous discipline.

ALLEGATIONS

[33] As previously indicated, I am granting the parties' joint motion to replace allegation 1 and its statements of particulars. The new allegation, statements of particulars and responses of the Subject Member now read as follows:

[translation]

Allegation 1

On or about August 6, 2016, at [name redacted], in the Province of New Brunswick, or in the vicinity, [Subject Member] engaged in discreditable conduct, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police. – **Subject Member agrees with allegation 1.**

Particulars with respect to the allegation:

1. At the material time, you were a member of the Royal Canadian Mounted Police (RCMP) assigned to [name redacted] Detachment, in "J" Division. – **Subject Member agrees with detail 1.**

2. While on duty, you started an investigation into the erratic driving of an off-road motorcycle, or dirt bike (motorcycle), which, you learned

subsequently, was being driven by [Mr. X]. It is admitted that [Mr. X] was driving the motorcycle on various residential streets of the town of [name redacted], in New Brunswick. It is also admitted that the way in which [Mr. X] was driving the motorcycle in a residential area was contrary to the *Off-Road Vehicles Act 2003*, c. 7, s. 1, of New Brunswick. – **Subject Member agrees with detail 2.**

Subject Member's explanations:

According to the subject member's observations, not only was Mr. X driving the motorcycle on an arterial road, he was driving recklessly. Mr. X was driving on the main street of the town of [name redacted] (Canada Street) at high speed and was "popping wheelies" as he passed cars (between the cars; between the cars and the sidewalk). At that time of the day, in the summer, Canada Street was busy, with high vehicle traffic and many pedestrians on the sidewalks. According to the Subject Member, Mr. X's operation of the motorcycle was endangering public safety.

Consequently, concerning his driving that day, the report on Mr. X's prior offences demonstrates that on January 2, 2018, Mr. X pleaded guilty of violating of the *Off-Road Vehicle Act*, SNB 1985, c. O-1.5 (within 7.5 metres of the travelled portion of a highway).

3. You were driving a PC 30 CII (today 2A4), a marked police vehicle (Ford) equipped with a video camera. It is admitted that the time posted on the video recording precedes the actual time by about one hour (Atlantic time zone). Consequently, this contradicts the times indicated in your general report for the Police Reporting and Occurrence System (file 2016-1024404). For the purposes of this Notice of Conduct Hearing, the times indicated match the times posted in the video document recorded by the camera. – **Subject Member agrees with detail 3.**

4. At approximately 12:09 p.m., you decided to challenge [Mr. X] in connection with his erratic driving. While you were driving, you activated the siren and flashing lights of the police vehicle. - **Subject Member agrees with detail 4.**

5. At approximately 12:12 p.m., the motorcycle was heading south on Martel Street while your patrol car was heading north. You deliberately positioned your police vehicle on an angle in the path of the motorcycle at the intersection of Martel and Gagnon Streets. In so doing you caused a collision that, for [Mr. X], led to serious injuries necessitating medical care. - **Subject Member agrees with detail 5.**

Subject Member's explanations:

The Subject Member acknowledges that he positioned himself at a 45 degree angle in the intersection of Martel and Gagnon Streets for the purpose of showing his presence and deterring Mr. X.

As he was positioning himself in the intersection, and the front of his police vehicle was moving left (towards Gagnon Street), the Subject Member saw the motorcycle approaching quickly and popping a wheelie. The Subject Member acknowledges that he underestimated the speed at which Mr. X was driving. By the time the Subject Member realized that a collision was imminent, he had very little time to react in order to avoid the collision.

The Subject Member acknowledges that his manoeuvre, positioning his vehicle at a 45 degree angle, and the fact that he estimated Mr. X's speed incorrectly, played a role in the collision. He agrees to take responsibility for the role that he played.

However, it should be noted that he is not entirely responsible for the collision. Mr. X has a major share of the responsibility for this unfortunate collision. He was driving at twice the speed limit while popping wheelies. Furthermore, he failed to stop as required at the intersection of Martel and Gagnon Streets. Mr. X's dangerous driving is an irrefutable element in the file, including the expert reports of ([Corporal (name redacted)] and Mr. [name redacted]).

6. Under the circumstances, this manoeuvre was not appropriate and was dangerous. It demonstrates a lack of judgement on your part and constitutes discreditable conduct. - The Subject Member agrees with detail 6.

[French original quoted verbatim]

SUMMARY OF THE FACTS

[34] On August 6, 2016, the Subject Member was assigned to a detachment in "J" Division, in New Brunswick.

[35] While he was on duty, his patrol car collided with a motorcycle driven by Mr. X. The patrol car was equipped with a video camera that recorded the accident.

[36] More specifically, at approximately 11:15 a.m., on Saturday, August 6, 2016, the member was in a parking lot facing Canada Street, which is the main street of the town in question. He observed Mr. X driving his motorcycle erratically on the street, contrary to the *Off-Road Vehicles*

Act 2003, c. 7, s. 1, of New Brunswick. Specifically, Mr. X was “popping wheelies” while passing cars and driving at high speed.

[37] The member tried to challenge Mr. X regarding his erratic driving. Yet, despite the fact that the flashing lights and siren of the patrol car were activated, Mr. X did not stop. Instead, he drove by the patrol car which was heading in the opposite direction on the street.

[38] Having lost sight of the motorcycle, the member briefly placed the patrol car on the shoulder of Martel Street, pointing south. A few seconds later, the member saw the motorcycle at some distance away popping a wheelie and heading directly towards him at high speed. The motorcycle was on the same side of the road, heading north.

[39] With approximately 3.5 seconds to assess the situation and react, the member moved the patrol vehicle to a 45 degree angle in the left lane, towards Gagnon Street. At the same time, the motorcycle had also changed lanes and was again heading towards the patrol car. Mr. X lost control of the motorcycle, which slid into the patrol car near the right front quarter panel. The collision took place at the intersection of Martel and Gagnon Streets.

[40] The member was not injured, but Mr. X suffered serious injuries necessitating medical care.

DECISION ON THE ALLEGATION

[41] After reviewing all of the documents in the record, I must now decide whether the contravention set out in allegation 1 has been established on a balance of probabilities.

Discreditable conduct – section 7.1 of the Code of Conduct

[42] In the Code of Conduct, discreditable behaviour is assessed on the basis of a test that considers how a reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the behaviour.

[43] To determine whether allegation 1 is established on a balance of probabilities, I applied a test similar to the one developed by the Royal Canadian Mounted Police External Review Committee in recommendation (1991), 4 A.D. (2d) 103, regarding disgraceful conduct pursuant to subsection 39(1) of the *Royal Canadian Mounted Police Regulations, 1988*, SOR/88-361, in force prior to the legislative reform of November 2014.

[44] The test requires first that the Conduct Authority prove the acts constituting the alleged behaviour, as well as the identity of the member who is alleged to have committed these acts. Second, the Conduct Board must conclude that the member's behaviour is likely to discredit the RCMP. Third, the behaviour must be sufficiently related to the member's duties and functions to provide the RCMP with a legitimate interest in disciplining the member.

[45] Based on the Subject Member's admissions in his response to the allegations set out above and the documentary evidence in the record, I find that the identity of the Member and the acts constituting allegation 1 have been established by the Conduct Authority on a balance of probabilities.

[46] The Conduct Authority also established that the Subject Member challenged Mr. X, who was driving his motorcycle in contravention of section 16 of the *Off-Road Vehicle Act*, SNB 1985, c. O-1.5. The member deliberately positioned his patrol car diagonally in the path of the motorcycle in the intersection of Martel and Gagnon Streets. As a result of the collision between the two vehicles, Mr. X suffered serious injuries. This manoeuvre was dangerous and inappropriate in the circumstances, amounting to a lack of judgement on the part of the Member in the circumstances.

[47] At the time of the incident on August 6, 2016, the Member had almost seven years' experience in the RCMP. I find that, considering the nature of his duties and responsibilities, the Member ought to have comparatively assessed the risk and urgency associated with arresting the rider of the motorcycle, who was committing a traffic offence, against his own safety, Mr. X's safety and the safety of the general public.

[48] Accordingly, I find that a reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the Member's behaviour as discreditable and likely to discredit the Force. Conduct measures must be imposed against him, given that his behaviour is related to his duties and functions as a member of the RCMP.

DECISION ON CONDUCT MEASURES

Analysis of conduct measures

[49] The RCMP External Review Committee established that the Board's analysis of conduct measures must be carried out as a three-step process:

1. establish the range of appropriate sanctions;
2. consider the aggravating factors and mitigating factors to assess the seriousness of the misconduct; and
3. impose a fair and just conduct measure proportionate with the seriousness of the misconduct in question while taking the principles of parity of sanction and deterrence into account.

Range of conduct measures

[50] As indicated by the two parties in their email of August 31, 2018, I agree that this is a serious case and that the range of conduct measures applicable to the Subject Member's misconduct, which is in contravention of section 7.1 of the Code of Conduct, extends all the way to dismissal.

Aggravating factor

[51] As an aggravating factor, the parties submitted the Subject Member's recent discipline dated January 4, 2016, for a violation of section 7.1 and 4.6 of the Code of Conduct. The section 7.1 violation was in connection with an intimate relationship he had with a member of the public

while he was in a position of authority. Consequently, the Conduct Authority ordered a transfer to another work location, a financial penalty of 15 days, a reduction from the annual leave bank of 120 days and ineligibility for any promotion for a period of three years, ending in January 2019. The section 4.6 contravention is related to the misuse of RCMP property for personal reasons. For that contravention, the Conduct Authority imposed a financial penalty of 10 days' pay and a reduction of 80 hours from the annual leave bank.

Mitigating factors

[52] The commanding officer is no longer seeking the dismissal of the Subject Member. This is an important factor, given that the case is currently before the Board; initially, the Conduct Authority was seeking dismissal.

[53] I would add that the Subject Member admitted to allegation 1. He acknowledged his misconduct and waived his right to a contested conduct hearing.

Imposition of conduct measures

[54] The third and final step is to determine the appropriate sanction in this case.

[55] In accordance with paragraph 36.2(e) of the *RCMP Act*, conduct measures are required to be proportionate to the nature and circumstances of the contravention and, where appropriate, educative and remedial rather than punitive.

[56] In this case, the parties submitted a joint proposal on conduct measures and rely on the following decisions concerning Board deference to parties' joint proposals:

- a. *Constable Coleman and Appropriate Officer, "F" Division*, (2018) 18 A.D. (4th) 270, Acting Commissioner G.J. Dubeau;
- b. *Appropriate Officer for "E" Division and Special Constable Bedi*, (2017), 17 A.D. (4th) 88, D.A. (3rd) 228 (2005);
- c. *R. v. Anthony-Cook*, 2016 SCC 43 [Cook]; and

d. *Rault v. Law Society (Saskatchewan)*, 2009 SKCA 81 [*Rault*].

[57] In *Cook*, the Supreme Court of Canada unanimously stated at paragraph 32 that:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[58] Further, at paragraph 34, the Court added that a joint proposal should not be rejected lightly:

Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the proper functioning of the justice system had broken down.

[59] The public interest test was also adopted in the context of professional discipline in *Rault*, and in the recent decision of the RCMP Commissioner, *Constable Coleman and Appropriate Officer, "F" Division*, (2018) 18 A.D. (4th) 270. Following *Rault*, a joint proposal must be seriously considered by the Board unless it is unsuitable, unreasonable, or contrary to the public interest.

CONCLUSION

[60] Having reviewed the evidence on the record, the nature of the Member's misconduct, the aggravating and mitigating factors, the decisions submitted by the parties and the Member's recent importance of promoting certainty in resolution discussions, to believe that the discipline (2016), I am unable to conclude that the joint proposal on conduct measures submitted by the parties is contrary to the public interest.

[61] Therefore, I accept the joint proposal on conduct measures, and I impose the following:

- a. a reduction of 20 days (160 hours) from the leave bank;
- b. a financial penalty of five days' pay, collected one day per month over five months;
- c. a transfer;

- d. ineligibility for any promotion for a period of three years;
- e. strict supervision during work by a senior Non-Commissioned Officer for a period of one year;
- f. obligation to complete all mandatory training before returning to active duty;
- g. obligation to take any additional training considered necessary by his line officer; and
- h. obligation to meet with the Health Services Officer (HSO) of “J” Division Health Services before returning to active duty and obligation to follow any treatment plan recommended by the HSO, Health Services.

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

(signed)

Josée Thibault

Conduct Adjudicator

December 19, 2018

Date