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ACMT 201533819

2018 RCAD 16



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

*ROYAL CANADIAN MOUNTED POLICE ACT*

BETWEEN:

Commanding Officer, "E" Division

Conduct Authority

and

Sergeant William Turner, Regimental Number 47786

Subject Member

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**Conduct Board Decision**

Kevin L. Harrison

December 06, 2018

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

Staff Sergeant Colin Miller, for the Member

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## SUMMARY

The *Notice of Conduct Hearing* contained two allegations of discreditable conduct against the Subject Member in relation to an inappropriate sexual relationship with Ms. A, a municipal employee working in the Detachment cell block. The first allegation relates to a specific incident involving a sexual act which is alleged to have occurred on October 10, 2014, in the RCMP Detachment building. The second allegation relates to a broader time frame during which the Subject Member is alleged to have engaged in an inappropriate relationship of a flirtatious and sexual nature with Ms. A. Following a contested hearing, the Conduct Board found both allegations were established. The Subject Member was in a position of authority over Ms. A. The Subject Member was directed to resign from the Force and, in default of resigning within 14 days of being directed to do so, the Subject Member will be dismissed.

## REASONS FOR DECISION

### I. INTRODUCTION

[1] On October 7, 2015, 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 in relation to this matter. The original Conduct Board was appointed by the Designated Officer on October 15, 2015.

[2] A *Notice of Conduct Hearing* (the Notice), pursuant to Part IV of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], was issued on June 28, 2016, by the Conduct Authority. The Notice, which contained two allegations, was served on the Subject Member on August 4, 2016.

[3] On April 19, 2017, the Member Representative originally assigned to represent the Subject Member was replaced by a new Member Representative.

[4] Due to the transfer of the original Conduct Board, the new Conduct Board was appointed on July 26, 2017, without any objection from the Subject Member.

[5] A *Notice of Place, Date and Time of Conduct Hearing* was issued by the Conduct Board on November 6, 2017. A conduct hearing was held in Surrey, British Columbia, from November 28 to 30, 2017, both dates inclusive, at which time both allegations were found to be established.

[6] Following the completion of the conduct measures phase, the Conduct Board directed the Subject Member to resign from the Force, and in default of resigning within 14 days of being directed to do so, the Subject Member will be dismissed.

[7] Oral reasons for the decision were delivered at the conclusion of the conduct hearing. The following is the complete written decision, including conduct measures, prepared in accordance with subsection 45(3) of the *RCMP Act*.

## II. ALLEGATIONS

[8] Following a Code of Conduct investigation, the Subject Member faced the following two allegations:

### **Allegation 1**

On or about the 10<sup>th</sup> day of October, 2014, at or near [B], British Columbia, [the Subject Member], engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

#### **Particulars:**

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, in the province of British Columbia.
2. You were a Sergeant on “C” Watch at the [B] detachment, in charge of the cell block.
3. Your duties as a Sergeant included: providing oversight to all cell block policing operations and in-custody matters, and overseeing the duties performed by the Cell Constable and Guards during your shifts.
4. You were in a position of authority over [Ms. A] who was a Cell Guard at the [B] RCMP detachment.
5. At the end of your shift, you encountered [Ms. A] in the stairwell of the [B] RCMP detachment. You initiated and had unwanted sexual contact with her.

### **Allegation 2**

On or between 1<sup>st</sup> day of November 1, 2013 and the 10<sup>th</sup> day of October, 2014, at or near [B], British Columbia, [the Subject Member], while on duty, engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the Code of Conduct of the Royal Canadian Mounted Police.

**Particulars:**

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “E” Division, [location redacted] Detachment in British Columbia.
2. You were a Sergeant on “C” Watch at the [B] detachment, in charge of the cell block.
3. Your duties as a Sergeant included: providing oversight to all cell block policing operations and in-custody matters, and overseeing the duties performed by the Cell Constable and Guards during your shifts.
4. You were in a position of authority over [Ms. A] who was a Cell Guard at the [B] RCMP detachment.
5. Between November 2013 and July 2014, as the Sergeant in charge of the cell block on Watch “C”, you were overseeing the duties performed by [Ms. A].
6. While on duty, your behavior in the workplace towards [Ms. A] was inappropriate and included: grabbing and pulling her ponytail, pulling on the front of her shirt, kissing her, exposing your penis, asking her to perform oral sex.
7. You pursued and engaged in an inappropriate relationship of flirtatious and sexual nature with [Ms. A], a subordinate.

### **III. PRELIMINARY MOTIONS**

#### **Abuse of process**

[9] On November 23, 2016, the Subject Member brought 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 between the time the conduct hearing was initiated by the Conduct Authority and the date the Subject Member was served the Notice.

[10] Although the original Conduct Board found that the delay was unacceptable and that it resulted in significant personal prejudice, the Subject Member’s motion was denied on February

6, 2017, on the basis that the abuse of process was such that proceeding with the conduct hearing would not bring the RCMP conduct process into disrepute and that a stay of proceedings was not warranted.

[11] The original Conduct Board added that according to the Supreme Court of Canada's decision in *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307, a stay of proceedings was not the only remedy available in administrative proceedings, noting that it may be appropriate for the Conduct Board to consider the delay later in the conduct process.

### **Publication ban**

[12] 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 that could identify Ms. A shall not be published in any way in a document or broadcast or transmission.

## **IV. EVIDENCE ON THE ALLEGATIONS**

[13] The two primary witnesses in the allegation phase of the conduct hearing were Ms. A, on behalf of the Conduct Authority, and the Subject Member, on his own behalf. Although they agreed on a number of aspects relating to both allegations, they presented divergent positions on two significant issues in this conduct hearing. These are:

- a. Whether the Subject Member was in a position of authority over Ms. A.
- b. Whether the relationship between the Subject Member and Ms. A, including the sexual acts, was consensual.

[14] Other witnesses were called by both parties to speak to the issue of whether or not the Subject Member was in a position of authority over Ms. A. Documents, including the B Detachment *Cell Block Standard Operating Procedures (Cell Block SOP)* and RCMP policy, were spoken to by the two witnesses. In addition to the testimony of the witnesses at the conduct



hearing, there is other evidence in the Record, including witness statements that address both issues.

[15] A determination with respect to the credibility of the two primary witnesses is of tantamount importance to my decision. Therefore, a thorough review of all of the evidence in the Record is necessary to fully understand the conclusion reached by the Conduct Board.

**Witness testimony – The background and experience of the primary witnesses**

[16] Ms. A was the first witness to testify. She testified that she was initially hired by the City of B, on a part-time basis, as a Cell Guard in the B RCMP Detachment cell block in November 2013. She trained for three blocks of shifts<sup>1</sup> on “A” Watch and then worked various shifts on other watches, including “C” Watch. She became a full-time Cell Guard on January 2, 2014, assigned to “C” Watch. In July 2014, she was the successful candidate in a competition for a Team Lead position on “D” Watch. At this time, Ms. A also performed transcription work for a specialized investigative unit, which operated out of the “E” Division Headquarters building in B.

[17] The Subject Member testified on his own behalf. He became a member of the RCMP on September 5, 2000. Following his graduation from the training academy at Depot Division, he was posted to Chilliwack Detachment to perform general policing duties. He had two additional general duty postings at two other detachments. He spent a brief period on the Integrated Homicide Investigation Team before he asked to be returned to general duty policing. His request was honoured and he was transferred to B Detachment and assigned to a Watch. A few months later, he was promoted to Corporal in general duties at B Detachment. Between September 2011 and January 2012, he performed acting duties as the Cell Block Sergeant at B Detachment. He applied for a permanent position as the Cell Block Sergeant at B Detachment, a position which he eventually obtained in July 2012 on “C” Watch. He occupied this position until he was suspended from duty in October 2014.

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<sup>1</sup> A block of shifts is a set of 12-hour shifts comprised of two day shifts and two night shifts. The employees working a block of shifts follow a designated Watch of the B RCMP Detachment.

**Witness testimony – Workplace environment on the Watch***Evidence of Ms. A*

[18] Ms. A favourably described the workplace environment on the Watch, noting that the team worked well together. There was a lot of teasing and joking on the Watch. However, the pranks were not always positive.

[19] Ms. A described an incident that occurred in November 2013, referred to in the present decision as “the cellular telephone incident”. The Subject Member’s personal cellular telephone went missing from his desk during a shift. He accused the Constable working in the cells at the time and Ms. A of taking it. He became very upset. Ms. A assisted the Subject Member in looking for the cellular telephone. He did not believe that she had nothing to do with its disappearance and subsequently searched her pockets for it. He removed a bag from her personal locker and hid it. He also took the Cell Constable’s personal cellular telephone and locked it in his own personal locker. He eventually returned it to the Cell Constable before the end of his shift. As it turned out, a member who was temporarily in the cell block area had mistakenly taken the cellular telephone. The Subject Member personally called Ms. A to apologize. He had apparently obtained her personal cellular telephone number from the Team Lead<sup>2</sup> for the Watch.

[20] The Subject Member teased Ms. A a lot. The rest of the team followed his lead. She was the focus of one of the team’s standing jokes in which she was portrayed as the bumbling Cell Guard in love with the “town drunk”, who was a regular in the cells. Posters about this were made up by team members. On one occasion, an effigy of the “town drunk” in the form of a bunny rabbit was made and hung in the lunchroom. Ms. A was enticed into the lunchroom and her reaction to seeing this effigy was videotaped<sup>3</sup>. Several members of the team were present and involved.

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<sup>2</sup> The Team Lead is the civilian employee responsible for the Cell Guards.

<sup>3</sup> The same “prank” was played on another Cell Guard as well.

*Evidence of the Subject Member*

[21] The Subject Member presented a similar picture of the Watch to that of Ms. A. He described it as being very collaborative and pleasant with a positive atmosphere. He mentioned that on occasion they would have “food nights” where members of the team would each bring something to share with the rest of the team. He also spoke about playing pranks, but he did not get into specifics about them. Even if nights were busy, they could get long. There was a need for some levity, so they tried to have fun.

[22] The Subject Member had a slightly different view of the cellular telephone incident. He was “very concerned” rather than upset about the missing cellular telephone, because it contained all of his contact information and personal photographs. He suspected members of the team had taken it. He acknowledged taking the Cell Constable’s cellular telephone and Ms. A’s bag as a means of recovering the cellular telephone; however, he denied searching Ms. A’s pockets or “patting her down” in an attempt to locate it.

**Witness testimony – Personal relationship between the Subject Member and Ms. A***Evidence of Ms. A*

[23] Ms. A described a progression of events in the personal relationship between the Subject Member and herself. When she began her employment on “A” Watch, the Subject Member was assigned to “C” Watch. During this time, they had a passing acquaintance, meeting only at shift changes. She also worked a lot of hours with “C” Watch near the end of 2013. During this time, renovations were taking place in the cell block area. This resulted in the Cell Block Sergeant and the guards sitting together for extended periods of time during their shifts. She learned that the Subject Member had a daughter and an ex-wife. She claimed that she was not aware that the Subject Member had a girlfriend until sometime in early August 2014.

[24] At one point, Ms. A became concerned about her behaviour at work. Her concern was based on comments made to her by the Subject Member. He had said that the way she was looking at him and treating him had changed to the extent that she was making him believe that

“she wanted him”. Consequently, she approached her Team Lead to determine what the perceptions of other team members on the Watch were about her. The Team Lead assured her that she had not observed anything untoward about her behaviour.

[25] Ms. A described the Subject Member as a very knowledgeable man who knew what he was doing. He ran the cell block well and was always in control. On the one hand, she said that he seemed like a decent person who was always joking with his staff; but on the other hand, he was an angry and intense person. The Subject Member made life difficult for her with his teasing as well as the constant berating and criticism of her work. This was so noticeable that even a prisoner commented about it on one occasion. She felt it was just easier for her to go along with him.

[26] In cross-examination, Ms. A acknowledged that she and the Subject Member teased each other on a regular basis and agreed that their actions could have been interpreted as flirting.

[27] With respect to her assessment of the Subject Member as a person, she stated that she was “pretty conflicted”. She respected the Subject Member as a Sergeant. She respected his rank, but not the way he treated her. She did not respect the way he teased her and talked down to her. She respected his knowledge, even though he was harassing her and forcing her to perform oral sex on him. In the end, she did not want to damage his career. She just wanted to avoid him because she needed the “abuse” to stop.

### ***Text messaging***

[28] According to Ms. A, the personal relationship with the Subject Member began with a simple text message. She had purchased Girl Guide cookies from him, but she had not yet paid for them. The text message from the Subject Member was a simple reminder for her to bring the money for the cookies to work. She did not receive another text message from him for some time. Then, one day, while on a day off, she received a text message from the Subject Member which simply informed her that he was doing yardwork. A brief exchange about doing yardwork ensued.

[29] These innocuous text messages “morphed” into more graphic text messages with sexual overtones sometime in May 2014. These text message exchanges were sporadic in nature and usually occurred while the pair were on their days off.

[30] Ms. A admitted to being a willing participant in these text message exchanges. She claimed that she did not initiate them, but rather merely responded to requests from the Subject Member. Some of the text messages were very explicit and descriptive in terms of how she would perform oral sex on him.

[31] Although they never met outside of work, the Subject Member did text message her asking her to come to his house for the purpose of having sexual intercourse. She did not go along with these requests because she did not trust being alone with him in a private place. She offered to meet in public places, but he declined these offers.

[32] As the text messaging evolved into those of a more sexual nature, Ms. A mentioned to a few people that the messages were making her feel uncomfortable. She specifically mentioned speaking to a friend and a fellow guard.

[33] In addition to text messages, Ms. A sent the Subject Member a total of three photographs, all at his request. On the first occasion, the Subject Member was very persistent in his request for a photograph. Ms. A succumbed to this persistence and sent him a picture of her breasts with a bra on. The Subject Member responded by saying that if she did not send him a picture of her breasts without her bra, he would show the first photograph to the Cell Constable who was working on the Watch. She believed that he would do this because, “[the Subject Member] usually does what he says”. She did not want the photos shown to anyone, so she complied and sent a photograph of her breasts without her bra on. After she sent the pictures, she begged the Subject Member to delete the photographs from his cellular telephone.

[34] The third photograph was sent on a different occasion. She was at work and received a text message from the Subject Member asking her what bra she was wearing. When she replied that she was wearing a fancy one, he asked her to prove it. She complied by going to the washroom, taking a photograph of her bra and sending it to him.

[35] In late July or early August 2014, she confronted the Subject Member about having a girlfriend. Following this, the text messages from him petered off significantly. Any text messages the Subject Member sent her after this were strictly work related.

[36] In cross-examination, Ms. A stated that she no longer had any of the text messages.

[37] Ms. A admitted to sending the Subject Member explicit text messages, but they were simply in response to things that the Subject Member would ask her.

[38] She indicated that she sent the photographs to the Subject Member because she felt compelled to do so. He kept asking for them “repeatedly”, “non-stop” and “forcefully”. She felt coerced and consequently “gave in” and “did it”. When asked about comments she had made in one of her statements about not being worried about the photographs because she had not included her face in the picture, she agreed that she had made the statement, but she insisted that the photographs were “a huge deal”. She pointed out that if the photographs were not important, then she would not have been so adamant that the Subject Member delete them from his cellular telephone. She recognized that if the Subject Member showed the photographs to other people, then there would be very little that she could have done about it.

*Evidence of the Subject Member*

[39] The Subject Member testified on his own behalf in the allegation phase of the hearing. His testimony is relatively straightforward. He did not know Ms. A that well while she was being trained and he did not have much contact with her until she came over to “C” Watch full time. Once she was on the Watch, they had the opportunity to talk during shifts. These talks included discussions about their personal life. In a conversation which took place early on in their relationship, Ms. A was self- denigrating, stating that she was overweight. The Subject Member claimed that he responded by telling her not to talk that way about herself.

[40] The Subject Member did not describe the same progression in the relationship as Ms. A. Rather, he described the relationship in terms of the exchange of text messages and the acts of a sexual nature.

*Text messaging*

[41] The text messaging between the Subject Member and Ms. A began sometime in the middle of June 2014. The Subject Member recalled this because he obtained a new iPhone at that time. The text messages were on that cellular telephone and not on his previous cellular telephone, an old BlackBerry. The last exchange of text messages between them occurred on October 3, 2014.

[42] The Subject Member testified that Ms. A initiated the text messages between them. One day, while on a day off, he received an unsolicited and unexpected text message from her on his “work phone”. He described the message as “risqué”. He knew he should not have that kind of message on his work cellular telephone.

[43] A few days later, possibly the next day, Ms. A came into his office at work and provided him with her personal email address and cellular telephone number. He reciprocated by giving her his personal cellular telephone number.

[44] The original text message was followed up by another innocuous message, also on a day off. From there, the text messaging progressed into messages with sexual content. After Ms. A moved to a different shift, some of the text messages did relate to work. In one particular case, Ms. A warned him to watch his back because someone at work was talking badly about him.

[45] The Subject Member readily admitted that he was engaged in “sexually charged” exchanges of text messages with Ms. A.

[46] Text messages would also be exchanged while they were at work. Ms. A would send him text messages while he was in his office and she was only 30 feet away.

[47] The Subject Member acknowledged that, on one occasion, he asked Ms. A to send him a photograph. The photograph he received in reply was of Ms. A’s bare chest. He received a second photograph at a later date, but he did not recall what was in the photograph. He did not keep the photographs. Despite having deleted the photographs, Ms. A repeatedly asked him to ensure he had done so.

**Witness testimony – Sexual relationship between the Subject Member and Ms. A***Allegation 2 – Inappropriate behaviour between November 2013 and October 2014**Evidence of Ms. A*

[48] In her testimony, Ms. A described a progression of events in the relationship between the Subject Member and herself. The non-work-related portion of their relationship began with text messaging, which evolved into messages with significant sexual overtones—“sexting”—and culminating in the sending of explicit photographs at the Subject Member’s insistence. Similarly, the physical aspects of the relationship moved through a progression. The sexual relationship began with grabbing and kissing, moving to the touching of the Subject Member’s penis over his clothes, escalating to the Subject Member’s penis frequently being out of his pants and ultimately to her performing oral sex on the Subject Member on five occasions.

[49] The sexual component of the relationship between the Subject Member and Ms. A, which is the basis of the inappropriate nature of the relationship, began in June 2014. Ms. A insisted that she did not initiate any of the physical contact with the Subject Member and was not “looking for it”. All of the incidents occurred in or near the cell block area of B Detachment. During all of the incidents, the Subject Member was in uniform. All of the sexual encounters took place during the early morning hours of a night shift when it was quiet.

[50] All of the sexual interactions involving oral sex were quick and sporadic, taking 30 seconds or less. They also followed the same pattern. They began with a kiss and moved quickly to her fondling his penis over his clothing and then to her performing oral sex on him. Throughout, the Subject Member would implore Ms. A to “do it”. Immediately following each of the incidents, the pair would simply return to work and resume their duties.

[51] The first incident of a sexual nature happened while Ms. A was walking down the hallway between the change rooms and the front counter. As she was passing by the entrance to the kitchen, the Subject Member grabbed her by the arm and pulled her into the kitchen and then proceeded to kiss her. She told him that they could not do this at work. Sometime later, an



incident similar to the first one occurred with the only difference being that, on this occasion, the Subject Member ripped a button off of her uniform shirt. She stated that she was quite upset with this, whereas the Subject Member thought the loss of the button was “hilarious”.

[52] Two incidents during which Ms. A performed oral sex on the Subject Member occurred in the kitchen area of the cell block. These took place in late June or July 2014, while Ms. A was still on “C” Watch. On these occasions, the Subject Member pushed her head down, saying, “Do it quick; hurry up. You know you want to do this.”

[53] When the Subject Member kissed Ms. A, the kisses were not nice. She described the Subject Member as being very aggressive, animalistic, forceful, angry and intense. When she obliged him, her shift seemed to go easier, because he did not seem to tease her and run her down as much.

[54] Ms. A described the situation while she was on “C” Watch as becoming overwhelming. She claimed that the Subject Member always had his penis out in the lunchroom, wanting her “to do something”. She did not realize how bad things had gotten until she moved to another Watch in July 2014. On the new Watch, she felt no pressure. She was not worried about going to the kitchen or wondering if the Subject Member was going to come around the next corner.

[55] Two further incidents occurred after Ms. A moved to another Watch in July 2014. The Subject Member would occasionally work night shifts on her Watch on an overtime basis. The third incident occurred on one of these overtime shifts.

[56] This third incident began much like the previous two with the Subject Member and Ms. A being alone in the kitchen area. They began kissing; however, on this occasion, the Subject Member pushed Ms. A into the stockroom situated at the end of the galley kitchen. He closed the door. The lights were off. She performed oral sex on the Subject Member. According to Ms. A, this was the only one of the five incidents that resulted in the Subject Member ejaculating. When they had “finished”, the Subject Member turned on the lights and opened the door. He sat on a large roll of shrink wrap. Ms. A informed the Subject Member that they could not “keep doing this”. She was seeing someone who wanted a serious relationship and the Subject Member had a

girlfriend. Ms. A felt that the Subject Member understood. Following this discussion, they talked about potential candidates for the Sergeant position on her Watch.

[57] The fourth incident occurred at the end of her shift. The Subject Member's Watch was replacing hers. An issue had arisen during her shift relating to the payment of bail for a prisoner. The Justice of the Peace dealing with this prisoner's release required the receipt for the bail money. However, both the bail money and the receipt had been sealed in the prisoner bag with the remainder of the prisoner's effects. Ms. A sought the Subject Member's assistance in rectifying the situation, which he agreed to do. She was leaving work because she was off shift. The Subject Member was going to the Court Liaison office located upstairs from the cell block. Both Ms. A and the Subject Member were walking up a set of stairs. The Subject Member was a few stairs ahead of her when he turned around. His penis out, essentially at head level with Ms. A, with the expectation that Ms. A would perform oral sex on him. She complied.

[58] The fifth occurrence is the subject of the first allegation and will be discussed further in relation to that allegation.

[59] Ms. A stated that she could not convince the Subject Member that they could not keep doing the things they were doing. In her words, he was not listening. Consequently, she needed to figure out how to avoid situations where these incidents were occurring.

[60] In cross-examination, Ms. A insisted that she did not invite the Subject Member's actions, but she acknowledged that she did "play along". She also conceded that the teasing between the Subject Member and herself could have been interpreted as flirting. She was flattered by the attention that the Subject Member was giving her, stating that the teasing was better than no attention at all. She did what the Subject Member asked her to do.

[61] Ms. A was asked about giving the Subject Member's daughter a gift. She said that she knew his daughter was excited about going on a holiday because the Subject Member talked about it at work. She bought the gift prior to this holiday. She had met the Subject Member's daughter once before. This was at a Detachment Christmas party.

[62] Ms. A called the Subject Member once after she went to “D” Watch. She was struggling because the Watch had a weak Sergeant. She was also involved in a power struggle with the other guards. Some of this had to do with the fact that she was perceived to have taken someone else’s job as the Team Lead. She was looking for his advice. His advice to her was to “choose her battles” and “which hills she wanted to climb”. She was not enjoying her time on the new Watch, but she did not want to go back to “C” Watch.

[63] Ms. A accepted that she was fine with some of the kissing. However, when it started to get more aggressive and the Subject Member became more demanding, she then started to get uncomfortable with what was happening. In her mind, everything was getting too aggressive and out of control. At this point, she participated but not willingly. She was apprehensive about meeting the Subject Member or being around him. She did not want to be alone with him anymore.

[64] She denied that the second incident occurred as the Subject Member stated, adding that if it occurred the way he said and where he said, then she would have been on “checks” which meant that she would have been staring at the prisoner monitors and would not have engaged in conversation with the Subject Member.

[65] When she rubbed his groin, it was at his request. She never initiated any of the encounters that were of a sexual nature. She granted that, while she was doing this, she may have asked him if it felt OK. When she started touching his penis over his uniform pants, it was already erect. She did not recall sending the Subject Member a text message saying that she would be in the lunchroom.

[66] With respect to the fourth incident, the one on the stairs, the Subject Member was angry at her because he had to fix her “screw up”.

[67] She did not stop the sexual portion of the relationship after the first instance because she felt that after she did what he wanted in the back, he was nicer to her during the shift. He did not run her down as much. To her, this was a matter of self-preservation, so she simply “put up with it”.

[68] She did not want to get caught because she did not want to get into trouble. She was concerned that no one would believe that she was being forced to do this by the Subject Member. When she provided the statement, she still felt some loyalty to the Subject Member as her Sergeant.

[69] Ms. A stated that she felt like she allowed this to happen. She felt that she did not try “hard enough” to stop what was going on. She noted that it took counselling for her to realize that this was not her fault.

[70] Ms. A did not recall the text message where she advised the Subject Member that she had defended him at work.

[71] She was afraid of getting caught, because she knew that it would come down to his word against hers.

[72] She acknowledged that the physical portion of the relationship was fun initially. The kissing in the back room was fine, but when the Subject Member’s behaviour got “animalistic”, “aggressive” and “intense”, it was no longer fun. She added that as soon as it became “about his penis”, it was not fun anymore. Although she did not use the exact words, she told him several times that she did not want to engage in the physical relationship anymore. She felt horrible that the Subject Member had been arrested.

[73] With respect to the Subject Member, she felt like he “had our backs”. She felt safe from the prisoners. She stated that he always took care of the cell block. Working in cells was not about her, rather it was about working as a team. He was a “go to guy” because he always had answers. She noted that when the Subject Member did what he did in the kitchen, he was not him being a Sergeant.

[74] In re-direct, Ms. A denied ever providing the Subject Member with her personal cellular telephone number.

[75] She also denied ever getting the Subject Member sexually aroused out in the main cell block area.

[76] With respect to the fourth incident on the stairway, she provided clarification in that she thought the purpose of the Subject Member going to the Court Liaison office was to get a key to unlock the prisoner lock box, which contained the prisoner bag and personal effects, including the bail money and the receipt.

[77] Also in re-direct, Ms. A confirmed her original testimony that she did play along in the beginning, but the Subject Member turned aggressive. She stated that it became “all about his penis”. He always wanted her to touch it, kiss it or suck it. The relationship was not just a kiss anymore, it was much more physical and aggressive.

### ***Evidence of the Subject Member***

[78] The Subject Member stated that there were a total of six incidents of a sexual nature. One incident simply involved Ms. A rubbing his groin area while he was standing at the CABS terminal. Two of the remaining five incidents also involved Ms. A rubbing his groin area, but all five of these incidents culminated in Ms. A performing oral sex on him. Each of these five encounters ended with his ejaculation. Three of the liaisons occurred in the cell block area kitchen, while the remaining two occurred in a stairwell just off the cell block area.

[79] The Subject Member described the first incident as being random. According to him, both Ms. A and he happened to be in the kitchen at the same time for different reasons. They started talking and, while they were doing that, they moved closer together. They started kissing. Ms. A began rubbing his groin and then got down on her knees and performed oral sex on him. These were spontaneous actions.

[80] The second occurrence began in the guardroom. The Subject Member was standing reading something on a bulletin board. Ms. A was seated beside it. Ms. A got his attention. He turned to speak with her. She reached up and began to rub his groin. He walked away and went into the Cell Block Sergeant's office. A while later, they both happened to be in the kitchen together. Once in the kitchen, events progressed the same as the first incident; however, they made a mutual decision to move into the stockroom. The lights were on and the door was

partially open. Ms. A proceeded to perform oral sex. When this act was completed, they came out to the kitchen. They talked about work issues for a while, then they went back to work.

[81] The next incident began in the Cell Block Sergeant's office. Ms. A came in to get some Prisoner Logs (form C-13) signed. She started rubbing his groin. He became paralyzed and sexually aroused. Ms. A left the office, but 15 minutes later he received a text message from her telling him that she was going to the kitchen. He went back to the kitchen and they began kissing in the same fashion as the two previous incidents. He did not use force on her. He did not provide her any direction as to what to do. They had no conversation following the encounter and simply went back to work.

[82] The fourth incident occurred at the start of his night shift. Ms. A was on the Watch he was relieving. She was concluding her shift and had already changed out of her uniform. He had been away on holiday. He walked out of the cell block and down the corridor when he met Ms. A. She said she wanted to "leave him on a good note". They started kissing and she began rubbing his groin. The incident occurred much the same as the other three incidents had. When they "finished", she left.

[83] The first incident involving fellatio was a random, spontaneous incident. All of the remaining incidents of a sexual nature were initiated by Ms. A.

[84] The Subject Member simply denied that the incident referred to by Ms. A during which a button was ripped off of her uniform occurred. He also categorically denied the prior incident during which Ms. A alleged that he pulled her into the kitchen and kissed her.

[85] The Subject Member testified that he pulled Ms. A's ponytail on only one occasion. While in a group setting, Ms. A took offence to his laughing at something. She grabbed his leg and squeezed it hard, causing him pain. He responded by pulling her ponytail in an effort to have her release her grip. He denied ever "playfully" pulling Ms. A's ponytail.

[86] He insisted that Ms. A was voluntarily engaging in the sexual relationship and that it was mutual and consensual.

[87] In cross-examination, the Subject Member readily admitted that the relationship with Ms. A, which ran for several months, was inappropriate. He indicated that the inappropriate portion of the relationship with Ms. A began in June 2014 and continued through to September 2014.

[88] He maintained that Ms. A was the initiator of the sexual encounters, adding that he felt that he was “being invited” when she rubbed his groin out in the cell block area, which, on one occasion, was followed with a text message.

[89] With respect to the incident at the CABS terminal, which did not appear in his prepared letter to the Officer in Charge of B Detachment, dated December 10, 2014, the Subject Member stated that the encounter would have been recorded on video tape because there are dozens of cameras in the cell block area, including all CABS terminals and the entire booking desk.

[90] He further advised that the incident at the CABS terminal was included in his testimony and not the letter to the Officer in Charge of B Detachment because his memory and recall on the date of his testimony was better than when he prepared the letter to the Officer in Charge of B Detachment. He claimed the reason for this was that he was trying to formulate the statement and submit it as quickly as possible to explain his actions and take accountability for his actions.

*Allegation 1 – The sexual encounter of October 10, 2014*

***Evidence of Ms. A***

[91] On October 10, 2014, Ms. A was scheduled to work a day shift beginning at 6:00 a.m. When working this shift, she liked to be heading down the stairs to the cell block at 5:45 a.m. in order to get the “pass on” so she could relieve the Team Lead of the outgoing watch so they could go home. On this day, Ms. A was in a hurry because she was a few minutes late. She was carrying a large “messenger bag”, a thermos style coffee mug and her building pass.

[92] At the bottom of the stairs, the handrails were such that she had to move around them to the left of the exit door to allow the door to open. The door opens into a hallway which leads to the cell block area. As she was pulling the door open, the Subject Member was coming through it

from the other side. She was shocked to see him because she did not expect anyone to be coming through the door at the same time as her.

[93] The Subject Member's shift had ended. He was still in his full uniform. He was in the process heading upstairs to change prior to leaving the building. He was also carrying some bags.

[94] As the Subject Member came through the door, he was smiling. He called Ms. A by his nickname for her. He pushed her with his body. She was caught off guard and stumbled back a bit. The Subject Member simply kept following her into the corner. He said that he missed her and wanted her to tell him that she missed him.

[95] Her hands were full. He attempted to grab her coffee. She resisted and held the coffee between them. They engaged in a bit of "banter". She informed him that she needed to go because she was late for work.

[96] He had put his bags down by this time and proceeded to place his hands on the top of her head, pushing it down. As he was pushing her down, she tried desperately not to fall. Her knees went to the ground as did her hand with the coffee cup in it. She does not know how it happened, but his penis was already out of his pants. He wanted her to perform oral sex on him at that time.

[97] He said things like, "You want this", "Just do it quick" and "Hurry up". She resisted verbally. She asked him to let her go. Finally, she asked him if he would let her go if she complied with his demand. She believes she may have kissed his penis before she was able to push him back. He backed up, pulled up his zipper, picked up his bags and departed up the stairs. The last thing he said to her was, "Tell me you miss me."

[98] She went through the door and walked down the hallway. She noticed she was a mess. Her knees were dirty so she brushed them off. She does not recall whether or not she got the "pass off" before or after she changed into her uniform. She also had to fix her hair because it was in a mess.

[99] When things had calmed down in the cell block, she went to the Cell Block Sergeant's office to speak to her. This was at approximately 8:00 a.m. Instead of reporting the incident, she



asked Sergeant A to text her in the future to advise her when the Subject Member left the cell block area. She hoped this would allow her to avoid further encounters with the Subject Member. She advised Sergeant A that the Subject Member was a “little bit out of control”, but provided no further details. She declined Sergeant A’s offer to speak with the Subject Member. She thought this was the end of things for the day.

[100] Sergeant A’s suspicions were roused by Ms. A’s approach to her. She reported her suspicions to management. Ms. A was summoned to a meeting a few hours later. She stated that she was “blindsided” by this. She did not want the matter reported. She was humiliated by what was going on and simply wanted it to stop. She did not want the Subject Member to be angry with her or have the report “ruin things in cells” for her.

[101] In cross examination, Ms. A stated that she did not speak to Sergeant A until 8:00 a.m. because both she and the Cell Block Sergeant are usually busy at the beginning of the shift. She did not want to interrupt the Sergeant’s duties.

[102] Once the matter was reported, she tried to stop it, but felt trapped and realized that she had to follow through with it.

[103] She did not call out or otherwise seek assistance while the stairwell incident was ongoing because the Subject Member was a sergeant and she was a guard. Although her encounter with the Subject Member was “not fun”, she did not report the matter(s) because she believed it would come down to her word against his.

[104] Much was made of whether or not Ms. A had her cellular telephone out as she exited the stairwell where this incident occurred. She stated that she has no independent recollection of having her cellular telephone out or any understanding as to how she would have pulled it out. She has only said that she had it out because she was told by investigators that she did. She stated that if she had her cellular telephone out, it would have been to check the time as she was running late or to see if she had missed any emails. She did not call anyone because “no one in her world” is awake at that time of the morning.

***Evidence of the Subject Member***

[105] The Subject Member related a somewhat similar account of the events associated with this allegation to that of Ms. A. However, the differences in his testimony relate to the significant aspects of the allegation.

[106] The Subject Member testified that his shift had ended. He was in the process of leaving the building. He opened the door to the stairwell. Ms. A was coming through the door at the same. They startled each other. They ended up standing very close to each and had a brief conversation. They were both carrying things which they placed on the ground before they began kissing. Ms. A began rubbing his groin before she knelt down in front of him. They both pulled down the zipper of his pants. She pulled his penis out and started to perform oral sex on him. At that point, he came to the realization that what they were doing was wrong. Consequently, he made the decision to stop what was going on by pulling away from Ms. A. She looked at him “quizzically”. He did not say anything. He zipped up his pants. She stood up. They both picked up their things and said their good-byes. He walked up the stairs. She went through the door. He met another member at the top of the stairs. They spoke briefly. He went to the change room and changed out of his uniform.

[107] In cross-examination, the Subject Member presented a similar version of events to that provided in direct evidence, however, he did concede that the fact that he and Ms. A had some conversation before engaging in the sexual act, which was what he testified to, was not included in his prepared letter to the OIC Surrey Detachment.

**Other evidence of the nature of the relationship between the Subject Member and Ms. A**

[108] In addition to the testimony of the Subject Member and Ms. A, there is other evidence in the Record that speaks to the nature of the relationship between them. A total of 14 witness statements, not including the statements of Ms. A, were provided to the Conduct Board. Of these 14 statements, 7 contained information that I feel is pertinent to this hearing. The statements of these witnesses were not challenged by the Subject Member. Consequently, their testimony at

the hearing was not material and necessary in resolving a serious or significant conflict in the evidence. However, it remains open to me to consider their statements.

*Statement of the Team Lead*

[109] The Team Lead became a Team Lead on “C” Watch in 2011. She remained in this position during the majority of the relevant time period. Although still the Team Lead, she was not present on the Watch beginning in early September 2014. Her statement includes the following:

- Her responsibility as a Team Lead was to oversee two or three Cell Guards and to liaise with the Cell Block Sergeant, other members and other municipal employees. Her primary focus was on the prisoners’ well-being.
- They were all very close on the Watch.
- She had a good working relationship with Ms. A.
- She and Ms. A were close. During their conversations at work, they talked about family, social life and their personal lives. It never came up that Ms. A was interested in the Subject Member in any way. She just liked working with him.
- A few months after Ms. A started working on the Watch, she mentioned to her that the Subject Member was teasing her. She was not sure of the date of this conversation, but she was sure that it occurred within the first six months of Ms. A starting on the Watch.
- Ms. A mentioned to her that she felt the Subject Member was “a bit much”. She offered to speak to the Subject Member on Ms. A’s behalf.
- Ms. A also mentioned that the Subject Member had sent her text messages at different times at night and on their days off. The text messages were on her personal cellular telephone. He asked her to meet him. Ms. A did not go to meet him. The Team Lead did not think this was appropriate but it was their time off.

- On one occasion prior to Ms. A's departure to "D" Watch, Ms. A commented to her that she was in the kitchen on one occasion when the Subject Member also came in. She believed Ms. A said that the Subject Member tried to kiss her. He was also making comments that were making her feel "uncomfortable". He asked her to go into the back room to "suck my dick". According to Ms. A, the Subject Member thought this was what she wanted because of their interactions together.
- Ms. A was adamant that she (the Team Lead) say nothing. She did not want to get anyone into trouble.
- She felt Ms. A approached her as a friend and not as a supervisor.
- She did not tell anyone about what she was told by Ms. A because Ms. A was so adamant that she did not want anything done. The disclosures placed the Team Lead in a very awkward position as a supervisor. She struggled with this. She did not want to ruin the trust they had built.
- She observed the Subject Member playfully pull Ms. A's ponytail.
- She never thought there was a time when she felt either the Subject Member or Ms. A "went over the line".
- She never observed Ms. A "make any motions" or do anything that gave her the impression that she wanted a relationship or was otherwise interested in the Subject Member. All of their interactions were "friendly banter back and forth". She knew Ms. A was seeing other men outside of work, off and on.
- She was shocked that the Subject Member would say something like Ms. A claimed he did, but Ms. A had no reason to say something that was not true. She had never known Ms. A to make things up.
- The Subject Member was a "fantastic guy to work with". He was always concerned for everyone's safety. This is why she was shocked when she heard what was happening.

- The Subject Member would “bug” Ms. A. In response, she would slap him on the leg or playfully punch him on the shoulder. She saw nothing inappropriate with this. This was more along the line of playfulness and part of good team spirit. She observed the Subject Member walk up behind Ms. A and pull her hair or get really close over her shoulder. She would jump. Ms. A was quite jumpy. Other guards would do the same thing to her. Some of Ms. A’s reactions were egging other team members on.
- The Team Lead described the cellular telephone incident in much the same way as others. The Subject Member got angry. She thought he could have handled the situation differently. He sent a text message to everyone to apologize for his actions. She thought that was nice of him. She did not recall if she provided Ms. A’s personal cellular telephone number to the Subject Member or whether he would have simply obtained it from the office telephone list. If she did give him the number, it would have been for the purpose of sending the apology.
- She did not recall anyone else approaching her about anything inappropriate going on between the Subject Member and Ms. A.

*Statement of male Cell Guard on “C” Watch*

[110] The male Cell Guard on “C” Watch began working in the B Detachment cell block on a part-time basis in October 2012. He became full-time in January 2014 until September 2014. The relevant information from his statement includes the following:

- At all times, the Subject Member was professional in his dealings with him.
- The Subject Member and he did not discuss their personal lives with each other.
- There was one specific incident that Ms. A spoke to him about. The Subject Member was off duty. He was sending Ms. A text messages. She said she was not comfortable with these messages.

- He could not recall when the conversation about the text messages occurred. He thought the conversation may have occurred about three months before he left the Watch in September 2014.
- Ms. A did not show him the text messages, but he thought that the Subject Member was asking her out. She said she was uncomfortable because she had a boyfriend at the time and he was upset about the messages.
- He was surprised when Ms. A told him that she was uncomfortable with the messages because during the interactions he observed between them, they were teasing each other, laughing and joking around. He did not observe any signs that there was anything negative going on between them. The relationship between the two of them, which included the teasing, was the same throughout Ms. A's time on the Watch.
- During other conversations, Ms. A commented that the Subject Member was "great" in terms of work and how he knew everything. She also spoke very highly of his work ethic.
- Ms. A did not appear to be too "stressed", but she was not "happy". He felt that she was being sincere in what she was saying. She was not extremely mad nor was she crying when she told him. She simply appeared to be "venting".
- Ms. A said that she did not want to report this because she was leaving the Watch and would not see the Subject Member.
- The Subject Member teased other members of the Watch, including himself.

*Statement of female Cell Guard*

[111] The statement of the female Cell Guard provided to the Conduct Board for the purpose of the allegation phase of the conduct hearing was heavily redacted. The female Cell Guard did not work with the Subject Member and Ms. A on "C" Watch, but nevertheless has information pertinent to this stage of the proceeding. This information includes the following:

- She only saw the Subject Member and Ms. A at shift changes. The interaction between the Subject Member and Ms. A seemed to be all “fun and games”. It appeared that they were flirting. Ms. A did not seem to be offended by it. She appeared like she went along with it. The Subject Member frequently called Ms. A by his nickname for her. At times, it seemed to her that the Subject Member and Ms. A “had something going on”. She had no proof, it was just her impression. She formed this opinion based on the way they looked at each other, the fact that they appeared to be consensually liking the interaction they were having and the “vibe” she got from them.
- Ms. A never made any comments to her to the effect that she did not appreciate the way she was being treated by the Subject Member. She did note that when the Subject Member was around, Ms. A would laugh, but when he was not around, she would say that he was weird.
- She did not particularly like Ms. A. She believed that Ms. A was a phony. She said that Ms. A had not been truthful with her on occasions. These occasions related to petty work things (i.e., being interviewed for a job). Because she did not work with Ms. A, she did not have the time or opportunity to sit down and speak with Ms. A to any extent. Despite this, she was aware that Ms. A had a boyfriend. She also knew that she was divorced. She believed that Ms. A was one of those people that seemed to need attention.
- She noted that there were cameras everywhere in the cell block, but there were places where there were no cameras. This would include the lunchroom, the supply room, the change rooms and the stairwells. She added that there were always people around during the day time; therefore, she could not see why someone would try to engage in the activities that are the subject of the allegations. However, she did know that there were times when it would be easy for this to happen. During the day, there were always people in and out, but it was quieter at night and on weekends when there were not as many prisoners and there were fewer people around. Night shifts would provide the best opportunity to have liaisons.

*Statement of former Cell Constable 1*

[112] Former Cell Constable 1 worked on “C” Watch for a period of three months, between February and May 2014. He imparted the following information in the statement provided to investigators:

- The Subject Member and the Team Lead were very good. They were regimented and kept tabs on everything. This led to things running smoothly and the team being a “well-oiled machine”.
- The environment on the Watch was fun, healthy and light-hearted. There was a lot of joking. Pranks were played. One of the standing pranks or jokes was that Ms. A was in love with one of the “regulars” in the cell block. It got to the point that she was becoming annoyed with the whole thing, but it “always seemed that she was in on the fun”.
- The relationship between the Subject Member and Ms. A was “mostly normal” and amicable. He would make fun of her and she would play along.
- Ms. A would complain about other members who were temporarily working in the cell block replacing the Subject Member while he was away on holiday.
- He observed the Subject Member pull Ms. A’s ponytail on five occasions during his three-month tenure in the cell block. He observed no other physical contact between them.
- He never had an inkling or got a “vibe” that either of them might be interested in each other. He never observed any behaviour that he considered to be flirting.
- He knew they were both single. He also knew that Ms. A had recently gone through a divorce and that she had a couple of boyfriends.
- When he first heard of the allegations, he was surprised. Based on his knowledge of the *Criminal Code* and RCMP policy, the Subject Member was the last person he would have



expected to put himself in the position of facing a Code of Conduct investigation, let alone a *Criminal Code* investigation. He did not think Ms. A would be involved in “something like that” either.

*Statement of former Cell Constable 2*

[113] Former Cell Constable 2 worked as the Cell Constable on “C” Watch, beginning sometime in May or June 2014. He replaced former Cell Constable 1. He was on the Watch for approximately three and a half months. He provided two statements to investigators. The second statement was obtained as a result of concerns raised by investigators. The investigators felt that he was truthful in his original statement, but that he was less than forthcoming. The following information is a combination of the information provided in the two statements:

- Everyone on the Watch was happy. There was a lot of “comedy and jokes” between the members of the team.
- The Subject Member was a considerable source of knowledge. He was the most knowledgeable Cell Block Sergeant in B. “C” Watch was deemed to be the best cell guard team.
- He did not notice anything unusual about the relationship between the Subject Member and Ms. A. They talked back and forth. They engaged in a lot of friendly banter with the Subject Member doing more talking than Ms. A. He did not notice anything flirtatious about their actions. He never observed the Subject Member pull Ms. A’s hair, but they would poke each other. He intentionally did not pay much attention to what they were doing because he did not want to get involved with what he thought was childish behaviour.
- He spoke to Ms. A daily for the entire time he was in the cell block. Only once during these conversations did she say anything about the Subject Member. She told him that the Subject Member was sending her text messages “nonstop”. She went to show him the text messages on her telephone, but he stopped her. He told her that if she was feeling

uncomfortable about what was going on, then she needed to inform a supervisor. He believed this conversation may have taken place in mid-September (2014).

- He observed two interactions in the kitchen between the Subject Member and Ms. A. They were near the refrigerator and separated when he entered the room. At the time, he did not feel it was suspicious. It just appeared to be two people having an argument of some kind. At the time, he had his keys in his back pocket and was therefore not making much noise prior to entering the kitchen area.
- He was aware that there were video cameras throughout the cell block area.

*Statement of Ms. A's friend*

[114] Ms. A's friend did not testify at the hearing, but he did provide a statement to investigators. Given that he did not work in or have any other connection with the B Detachment cell block, all of the information he had would have come from Ms. A originally. He provided the following:

- He was aware that there was a lot of horseplay and sexual innuendos taking place among the staff on the Watch. There was nothing going on that did not occur in a general workplace.
- The "Staff Sergeant"<sup>4</sup> was acting inappropriately towards Ms. A to the point where she was getting uncomfortable with the situation.
- She would flirt back when he made a sexual comment, but the sexual comments were escalating and she was not getting any support from her peers.

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<sup>4</sup> At the end of his statement, Ms. A's friend indicates that he is not familiar with the RCMP rank structure and that the person he referred to as a "Staff Sergeant" throughout his statement could have been a Sergeant.

- She had received some text messages from the “Staff Sergeant”. She told him to stop, but he would not take “no” for an answer. Everything was fine with Ms. A until she started to receive the text messages from the Subject Member. He believed this began in May 2014.
- She would always comment on how excellent the “Staff Sergeant” was at his job.
- She told him that the Subject Member would pull her hair and would “grab her and grope her”. He thought she said he would grope her chest.
- He told her to speak to her brother (a police officer) about this.
- In mid to late July 2014, he received a call from Ms. A one night. He noticed that something was not right with her and he convinced her to talk to him about it. She disclosed that the Subject Member had pulled her into a room, groped her, undid his pants and “ripped out his privates”. He tried to force her head down to perform oral sex on him, but she was able to step out of the room. She told him that she believed someone may have witnessed what took place.
- He urged Ms. A to report what was going on. She said she would deal with it.
- When she got the Team Lead position on another Watch, she was happy that she would no longer be working with the “Staff Sergeant”, but she was disappointed because he set the tempo of how a shift would operate. From a work perspective, she really liked him. She had a “love/hate kind of feeling” for him.
- The new Watch did not run as smoothly as the other Watch. It was chaotic.
- She told him about the matter being reported. She was very distraught about it. She was also very conflicted about how she felt. On the one hand, she did not want to affect the Subject Member’s career, but on the emotional side, what the Subject Member was doing was not right and was hurting her. She realized that since “the cat was out of the bag”, there was no going back. She was also concerned about her peers and about the gossip. The fewer people knew about what had happened, the better she felt.

*Evidence of Ms. A's former boyfriend*

[115] Ms. A's former boyfriend advised that he had met Ms. A approximately one year prior to their starting to date. Although they remain friends, they had not dated for approximately four months prior to the taking of the statement. He provided the following information:

- He recalled Ms. A saying a few times that she was being harassed at work.
- A Sergeant was "pressuring her". He had made inappropriate comments to her. She commented that she hated being in the same room as him.
- Ms. A informed him that the Subject Member started off by touching her neck from behind. She mentioned something about her hair and him pressing his body against hers. The things Ms. A spoke about were not "subtle things".
- He advised her on several occasions to tell someone in order to make the Subject Member stop. On the first occasion, she indicated that "it is not that easy".
- Sometime after the original conversation, Ms. A informed him that things were escalating in the relationship between herself and the Subject Member. Ms. A informed him that the Subject Member had grabbed her breast.
- Ms. A did not want to talk too much about what was going on.
- A few weeks prior to the statement being taken, Ms. A told him that the Subject Member had forced her to perform oral sex on him and that a few days later the matter was reported.

*The lone surviving text message string*

[116] Prior to the conduct hearing, the Conduct Board was of the understanding that none of the text messages between Ms. A and the Subject Member existed. None were provided to the Conduct Board by the parties. At the hearing, Ms. A testified that she deleted all of the text messages between herself and the Subject Member. However, during his cross-examination, the

Subject Member disclosed that he was in possession of a text message. Both the Conduct Board and the Conduct Authority Representative were surprised by this disclosure. Neither the Subject Member nor the Member Representative provided an explanation as to why this text message had not been previously disclosed.

[117] The text message included numerous subjects running together into one string of text messages. The string began on September 7, 2014, at 6:50 p.m., and ended on October 10, 2014, at 4:37 p.m. The messages appear to pertain to mostly work-related matters, but they also have personal content. There are three specific “conversations” that interested me.

[118] The first conversation occurred on September 8, 2014, beginning at 7:10 p.m. The first message in this string read: “Am I ever gonna be allowed to have fun and play?”

[119] The Member Representative suggested that this message, which possibly followed the fourth incident in the stairwell, was an indication that Ms. A was seeking more reciprocity in the sexual relationship. Therefore, the Member Representative indicated that it should have some significance in my assessment of the consensual nature of the relationship between the Subject Member and Ms. A. Although this is a possible interpretation of the words, given that there is no context to this message, I find that I am unable to adopt this interpretation without further evidence of its meaning.

[120] In the initial message in this string, Ms. A informed the Subject Member that she had defended him at work. She also warned the Subject Member to be careful about how and what he said to people. When asked, Ms. A refused to tell the Subject Member to whom she needed to defend him. The Subject Member pressed for the name of the person. He ended up by typing a single word—“Name”—20 times. Ms. A relented and provided the “name” when the Subject Member threatened to discontinue text messaging with her.

[121] Ms. A was asked about telling the Subject Member to be careful, but she had no recollection of sending this text message. I note that the actual message was not put to her at the time the question was asked. The existence of the text message was not known to the Conduct

Board at that point of the hearing, but it was clearly known to and in the possession of the Member Representative.

[122] The third conversation took place on October 3, 2014, at 11:27 p.m. This communication began with Ms. A asking the Subject Member if he was awake and available for a question about a warrant. Ms. A hesitated in asking her question. The Subject Member responded with repeated short messages, which included such entries as “????”; “Waiting .....”; “Tick tick tick”; and “Tick tock”.

### **Evidence – Position of authority**

[123] In addition to the evidence provided by Ms. A and the Subject Member, both parties called independent witnesses relative to the issue of whether or not the Subject Member was in a position of authority over Ms. A.

[124] There is a general agreement among the witnesses that a Watch in the B RCMP Detachment cell block, at the relevant time, was ordinarily comprised of five persons. These included an RCMP Sergeant, an RCMP Constable, a Team Lead and two Cell Guards. The Team Lead and Cell Guards were employees of the City of B. The Cell Guards had a reporting line separate from the RCMP. Each of the witnesses had their own interpretation as to how the reporting structure worked.

#### *Evidence of Ms. A*

[125] Ms. A presented the following evidence in relation to the operations of the cell block:

- The Cell Guards took their direction from the Team Lead.
- The Team Lead was responsible for liaising with the RCMP Cell Block Sergeant and implementing “whatever the RCMP Cell Block Sergeant wants done is implemented”.
- The Team Lead reported to a manager at the City of B. This manager was responsible for scheduling and ensuring adequate resource levels on each shift.

- Notwithstanding this reporting structure, the Cell Guards could take direction from the RCMP Cell Block Sergeant. The RCMP Sergeant was in charge of the entire cell block.

[126] With respect to the Subject Member, Ms. A testified that he could make things difficult and that she wanted someone as powerful as the Subject Member on her side. The Subject Member had a lot of friends. He had been in the Detachment and in the cells a long time. Everyone knew him. She was a municipal Cell Guard just starting out. She was not even working full-time when she met him. The Sergeant is the one who can make or break you in the cells.

[127] In cross-examination, Ms. A stated that the Cell Block Sergeant had every right to instruct a guard to “do a duty”. The Cell Guards reported to Cell Block Manager in a roundabout way. This Manager was only responsible for the paperwork associated to the cell block. The operation of the cell block was entirely up to the RCMP and was run by the Cell Block Sergeant. The Cell Block Manager completed performance evaluations and dealt with discipline. The Cell Block Manager did not work with the Cell Guards for 12 hours per day. They did not delegate responsibilities for the running of the cell block. The RCMP dictated the responsibilities. The Cell Block Sergeant was the “end all and be all”. He dictated what the Cell Guards did, following the *Cell Block SOP* of the city. The Team Lead supervised the two Cell Guards to ensure the policies of the city were being implemented and that their paperwork was accurate. The Cell Block Sergeant did not supervise, but he or she could give direction.

*Evidence of the Subject Member*

[128] The Subject Member did not provide any direct evidence about the operation of the cell block operations, but he presented the following evidence during cross-examination:

- As the Cell Block Sergeant, he was the only Non-Commissioned Officer in the cell block.
- The Cell Block Sergeant was responsible for the operations in the cell block.
- The Cell Block Sergeant had some authority over “the people” in the cell block to ensure things were done correctly.

- Although the Cell Block Sergeant had authority over everyone in the cell block, there were clear divisions in the roles of the police officers and the civilian guards.
- The Cell Block Sergeant could suggest things in terms of direction (i.e., prisoners needed to be fed, a duty performed exclusively by the Cell Guards).
- Despite the clear division in roles, the operation of the cell block was a collaborative team effort.
- Section F.3.a. of the B *Cell Block SOP* represented the reality in the cell block as it is written.
- The word “employees” in section F.3.d. of the B *Cell Block SOP* includes both regular members and guards.

*Evidence of Staff Sergeant D*

[129] Staff Sergeant D was called as a witness by the Conduct Authority Representative. He is a regular member of the RCMP with 32 ½ years of service. He became the Senior Operations Non-Commissioned Officer at B Detachment in September 2014. He remained in this position until October 2017. One of his responsibilities in this position was the B Detachment Cell Block. He was responsible for the “global issues surrounding the cell block”. These global responsibilities included lighting in the cell block, development of and assistance with the *Cell Block SOP*, and liaison with other agencies including the City of B. The Cell Block Sergeants had “dotted line” reporting to him and a direct line reporting to the Watch Inspector.

[130] Staff Sergeant D spoke to the B Detachment *Cell Block SOP*, specifically some of the provisions found in section F, which deals with cell block duties. According to this document, the RCMP Cell Block Sergeant was responsible for the daily operations of the cell block, including oversight of both the RCMP and municipal employees in terms of operations and overall functioning of the cell block. According to him, the *Cell Block SOP* is an accurate reflection of how the cell block operated.



[131] Staff Sergeant D was asked to provide his interpretation of section F.3.a. of these *Cell Block* SOP, which reads, “The cellblock duty sergeant is in charge of the cellblock at all times and must ensure that all policies and procedures are followed by members and guards.” He stated that the Cell Block Sergeant was the ultimate “decider” in terms of prisoner safety and health. As such, they had the ultimate decision-making power with respect to calling emergency health services or an ambulance. They also had oversight to ensure that all prisoners received the appropriate legal entitlements. The Cell Block Sergeant was also responsible for orchestrating the movement of prisoners during covert operations.

[132] The Team Lead was responsible for ensuring the Cell Guards conducted and documented their checks correctly and ensured that any direction provided by the Cell Block Sergeant was undertaken. The Team Lead was also responsible for ensuring that there were sufficient resources to manage the shift requirements. The Team Lead dealt directly with the Cell Guards to ensure cell block policies and procedures were completed correctly.

[133] The Team Lead reported to the Cell Block Manager. The incumbent in this position worked strictly day shifts. These shifts would be carried out either directly in the cell block or in the main part of the Detachment. The performance of actual guard duties by the Cell Block Manager was a very rare occurrence and would only occur if a shift was extremely short-staffed.

[134] Staff Sergeant D also noted that the policy in the *RCMP Administration Manual* I.3.2.2, which reads, “Unless directed otherwise, the senior ranking/level employee on duty will assume charge when carrying out a duty or assignment with other employees or the employee in charge of a detail or operations is incapacitated [...]”, represented the practice in the cell block.

[135] Whether or not the Cell Block Sergeant dealt directly with a Cell Guard would depend on the issue at hand. The circumstances also dictated whether or not the Team Lead was involved. “One off” performance problems could be dealt with unilaterally by the Cell Block Sergeant or with the involvement of the Team Lead. Any significant performance or discipline issues involving a Cell Guard would be dealt with by City of B managers.

[136] In cross-examination, Staff Sergeant D indicated that although he had never performed the duties of a Cell Block Sergeant at B Detachment, he had performed the equivalent duties as a Corporal at White Rock Detachment.

[137] Staff Sergeant D clarified that for certain issues like “[human resources] issues, medical issues, scheduling issues, things along those lines”, the Cell Guards reported to the Cell Block Manager, but the day-to-day operations and running of the cell block was the responsibility of the Cell Block Sergeant. The Team Lead has direct supervisory responsibility for the Cell Guards.

[138] The normal practice in relation to performance issues with a Cell Guard was for the Cell Block Sergeant to deal directly with the Team Lead. Significant performance issues or discipline would be dealt with by the Cell Block Manager.

[139] In re-direct, Staff Sergeant D stated that although the Cell Block Sergeant had no direct involvement in the preparation of a Cell Guard’s annual performance evaluation, the performance evaluation of the guards could include incidents raised by the Cell Block Sergeant through the B Detachment Operations Non-Commissioned Officer.

*Evidence of Staff Sergeant E*

[140] Staff Sergeant E was called as a witness by the Member Representative. He testified that, while attending school on a full-time basis prior to joining the RCMP, he worked for the City of B as a Cell Guard in the B RCMP Detachment cell block. This employment was on a part-time basis for a period of approximately two years between the fall of 1999 and September 2001. After he joined the RCMP, he was posted to B Detachment. He did a rotation of approximately four or five months as the Cell Constable in the B Detachment cell block. This would have occurred in 2003 and 2004. In March 2014, he was promoted to the rank of Sergeant into the position of the Cell Block Sergeant for approximately one year. He was a Cell Block Sergeant on another Watch when this matter came to light.

[141] In addition to his direct experience working in the B Detachment cell block, Staff Sergeant E was also a “Sub Rep” at B Detachment within the RCMP Staff Relations Representative Program for approximately eight years. In this capacity, he was a member of the B Detachment Continuous Improvement Committee. He noted that the Detachment cells were always a “contentious and high liability issue”. Following the Coroner’s Inquests into two in-custody deaths, he advocated for various changes, including the hiring of a full-time registered nurse, which were adopted by the Officer in Charge.

[142] With respect to the duties of the Cell Block Sergeant, he stated that the Cell Block Sergeant had “complete oversight of operations of the cell block” with the primary responsibility being the safety of the prisoners, with a focus on the proper search of prisoners at the time they are booked into cells and the authorization of the use of the “restraint chair”. Other duties included ensuring the existence of proper grounds to incarcerate the prisoners, conducting bail hearings and the review of all “in custody reports” to Crown Counsel.

[143] The Cell Constable’s role was to assist the Cell Block Sergeant, particularly with the movement of prisoners during the bail hearing process and any other jobs delegated by the Cell Block Sergeant.

[144] The civilian Cell Guards were responsible for monitoring the prisoners and to record their observations in their log book, including the movement of prisoners and to enter data into the booking system as prisoners were booked into cells. Finally, they were responsible for bagging, labelling and securing prisoner effects. Civilian Cell Guards were not allowed to have any “hands- on” contact with the prisoners.

[145] Staff Sergeant E initially agreed with the Member Representative that part of the Cell Block Sergeant’s role was to give direction to the civilian employees in the cell block. However, he later stated that the Cell Block Sergeant could not give direction to the civilian guards in light of the union rules that governed their employment. All direction to the civilian guards was provided by the Team Lead. Given the “tight” union rules, the Cell Block Sergeant could only make requests of the Cell Guards. Any issues arising with respect to a Cell Guard would go

through the RCMP Staff Sergeant, who would in turn liaise with the Cell Block Manager. If the matter was disciplinary in nature, a union representative needed to be involved in addressing the matter.

[146] To demonstrate the limited role of the Cell Block Sergeant, he provided an example in which the wrong prisoner was released from cells following a bail hearing. As the Cell Block Sergeant, he made inquiries to determine what had occurred. He was criticized for doing so because a Cell Guard was potentially in jeopardy of disciplinary sanctions. He was told that another unionized employee should have been present when he made these inquiries.

[147] When Staff Sergeant E worked as a Cell Guard prior to joining the RCMP, his direct supervisor was the Cell Block Manager. The Cell Block Manager worked Monday to Friday and was responsible for dealing with issues relating to his performance. However, at some point around 2004 or 2005, the management structure changed to include the Team Lead and a high-ranking manager equivalent to the RCMP Operations Officer.

[148] He stated that any contentious issues would essentially start at the top and trickle down to where it needed to go. Staff Sergeant E was clear that he could not give any negative feedback directly to a unionized municipal employee, including Cell Guards and Telecommunications Operators. Performance or discipline issues with a Cell Guard would go up to the Staff Sergeant on the RCMP side. He or she would in turn take the concerns to the “city side of management” to be addressed. He claimed the reporting structure was very black and white. The regular members in the cell block had no role in training, scheduling, and feedback to the Cell Guards.

[149] In cross-examination, Staff Sergeant E agreed that the B Detachment *Cell Block SOP* represented reality. When asked how he reconciled his position concerning the Cell Block Sergeant’s total lack of authority over the Cell Guards with the B Detachment *Cell Block SOP*, his response was, “I’m confused ...”.

[150] He indicated that he had some involvement with providing feedback in terms of a guard’s overall performance. The Staff Sergeant would ask if he, as the Cell Block Sergeant, had any issues in the cell block. He never had any major issues, just small ones, but at least he was asked.

The Staff Sergeant would meet with the Cell Block Manager to “discuss the list”. He conceded that the Cell Block Sergeant was in a good position to observe and assess the performance of a Cell Guard, but he was never asked to do so.

[151] Staff Sergeant E also provided some insight into the routine in the cell block. He advised that bail hearings from the cell block were only required when a court was not available. This would usually be on the weekend. The B Detachment cell block also serviced four other police services, so they could get busy during a weekday because there were cut-off periods for the court during the day. If the officers did not make it to court prior to the cut-off, the prisoner would have to go to an evening bail hearing that was conducted at the cell block. During the week, most bail hearings would run between 6:00 p.m. and 10:00 p.m. On the weekend, they could start as early as 8:00 a.m. and as late as 4:00 p.m. The length of time it would take to run the bail hearings depended on the number of hearings that needed to be conducted. Sometimes, it could take all day.

[152] Outside of the bail hearings, the busy time during the week was from 7:00 a.m. to 9:00 a.m. This was the time when prisoners were being moved out of the cells either because they were released outright from custody or because they were picked up by Sheriffs for escort to court. Once the prisoners were gone, there was usually a lull for two to three hours. The afternoon would start to get busy because of late arrests and the preparation of bail packages, which needed to be ready for the evening shift. The peak time was between 2:00 p.m. to 10:00 p.m.

[153] Covert operations also had an impact on how busy the shift was. Staff Sergeant E had as many as three ongoing at the same time. These covert operations were very challenging to manage because they involved judicial authorizations, special equipment and other logistical requirements. When these operations were ongoing, everyone went to the Cell Block Sergeant for answers.

[154] The evening shift began at 6:00 p.m. Upon arrival, bail hearings were waiting to be conducted. The shift also included reviewing Reports to Crown Counsel and “chasing paper and

members”. This usually lasted until between 10:00 p.m. and 11:00 p.m. During some evening shifts, they had as much as six hours of down time. On other nights, they might only have a couple of hours of down time. Routinely, the quietest time of the evening shift was between midnight and 5:00 a.m. He added that the cell block was a busy place that “never has an up or down”.

[155] Staff Sergeant E had involvement with the Subject Member, as a Staff Relations Representative, after the matter came to light. He clearly noted that he was highly critical of the way management handled the matter.

*Evidence of former Cell Constables*

[156] Former Cell Constable 1 indicated in his statement that there had to be an officer (regular member) in charge of the prisoners at all times. The Cell Guards performed a lot of duties, but they were not allowed to perform the duties that were the responsibility of a regular member. This included any physical interactions with a prisoner. The Cell Block Sergeant had oversight over the Cell Constable. The city manager worked a straight day shift from 8:00a.m. to 4:00 p.m.; because of this, she did not have any effect on the day-to-day operations in the cell block. The Team Lead was in charge of the guards.

[157] Former Cell Constable 2 noted in his statement that the Subject Member was his immediate supervisor while he was on the Watch. The Cell Block Sergeant’s role was to review and approve the Prisoner Reports (form C-13), review Reports to Crown Counsel, conduct most of the bail hearings, and to liaise with other Non-Commissioned Officers. The Cell Block Sergeant would address any questions arising from the Prisoner Reports and address them with either the Cell Constable or a Cell Guard. There was always a Team Lead on the Watch. Their responsibility was to deal with staffing issues, particularly in relation to scheduling.

## V. SUBMISSIONS ON THE ALLEGATIONS

### Conduct Authority Representative

[158] The Conduct Authority Representative opened his submission by reminding the Conduct Board that the Supreme Court of Canada, in *F.H. v McDougall*, [2008] 3 SCR 41, 2008 SCC 53 [*McDougall*], confirmed that the lone standard of proof in civil cases was proof on a balance of probabilities.

[159] The Conduct Authority Representative also submitted that the facts contained in the *Determination of Established Facts* remained consistent with the evidence.

[160] The Conduct Authority Representative then spent considerable time addressing the issue of whether the Subject Member was in a position of authority over Ms. A. His position was that the Subject Member was in a position of authority over Ms. A. In making this assertion, he relied heavily on the testimony of Staff Sergeant D, who took the position that the RCMP Cell Block Sergeant was responsible for the daily operations of the cell block, including oversight of both the RCMP and municipal employees in terms of operations and overall functioning of the cell block.

[161] He noted that the Subject Member, in his subsection 15(3) *CSO (Conduct)* response to the allegations, recognized that he had authority over Ms. A, but in a limited way.

[162] He also pointed to the fact that several of the witnesses, including Staff Sergeant D and the Subject Member, stated that the B *Cell Block SOP* reflected the practice in the cell block. This would include the provision at section F.3.a., which states, “The Cell Block Duty Sgt is in charge of the cell block at all times and must ensure that all policies & procedures are followed by Members and Guards.”

[163] The Conduct Authority Representative added that the RCMP policy found in the *Administration Manual*, at section I.3, supported his contention that, as the senior Non-Commissioned Officer in the cell block, the Subject Member was in charge of the cell block; therefore, he had authority over Ms. A.

[164] The Conduct Authority Representative noted that although Staff Sergeant E confirmed various aspects of the reporting structure on the municipal side of the house, he added a caution that the Conduct Board should not put much reliance on the remainder of his evidence. In making this claim, he pointed to Staff Sergeant E's negative view of management's actions in this case. Also, his examples of the limitations on the Cell Block Sergeant's authority related to higher level matters, like discipline and performance, and not the day-to-day operations of the cell block. Consequently, his evidence did not coincide with that of Staff Sergeant D, the Subject Member and the B *Cell Block SOP*.

[165] However, he added that, in his opinion, whether or not the Subject Member was Ms. A's direct supervisor is not determinative as to whether or not he was in a position of authority over Ms. A.

[166] The Conduct Authority Representative then moved on to discuss the application of the RCMP's *Conflict of Interest – Interpersonal Workplace Relationships* policy, found in the *Administration Manual* at section XVII.1.10., noting that, in his opinion, the relationship between the Subject Member and Ms. A fell within the policy relating to reportable interpersonal workplace relationship. A reportable interpersonal workplace relationship is defined as “a romantic or sexual relationship or liaison between a person in authority and another employee”.

[167] A person in authority is defined by the same policy as “a person who has actual or perceived ability, authority or responsibility, whether full-time or temporary, to direct, control, evaluate, or influence the work, workplace, or career of an employee [...]”. The definition includes a number of enumerated situations, none of which apply to this case.

[168] In relation to this policy, the Conduct Authority Representative noted that, during her testimony, Ms. A stated that, in her view, the Cell Block Sergeant was “in control” and, consequently, she viewed herself as the Subject Member's subordinate. This opinion influenced her actions. Although she stated that she held the Subject Member in high regard, she provided a reasonable explanation as to why she did not come forward to complain.



[169] With respect to the issue of the nature of the relationship between the Subject Member and Ms. A, the Conduct Authority Representative conceded that, at the outset of the relationship, Ms. A was a willing participant. However, once the physical relationship moved beyond mere kissing, she wanted it to stop. Ms. A's testimony also made it clear that she was intimidated by the Subject Member. The Conduct Authority Representative noted that, although there are inconsistencies in her testimony, her evidence on this point was consistent throughout.

[170] The Conduct Authority Representative indicated that the statements of other witnesses, like the Team Lead, Cell Constable 1, the male Cell Guard on "C" Watch and Ms. A's friend support various aspects of her testimony, particularly the fact that it was the Subject Member and not Ms. A who initiated the sexual aspects of the relationship.

[171] With respect to Allegation 1, the Conduct Authority Representative submitted that the version of events put forth by Ms. A was more likely than the one presented by the Subject Member. Much of what she said about the incident was confirmed by the video footage. Furthermore, it did not make sense that if she was running late for work, which was confirmed by the video footage, that she would stop to take the time to perform oral sex on the Subject Member.

[172] The Conduct Authority Representative pointed out that the Subject Member claimed that his recollection of what took place was better during his testimony than it was at the time when he carefully drafted the letter to the Officer in Charge of B Detachment, dated December 10, 2014. He noted that the Subject Member's testimony was provided after he had an opportunity to review the investigation report and supporting material. He then proceeded to highlight the various inconsistencies between the Subject Member's testimony and the letter.

### **Member Representative**

[173] The Member Representative submitted that neither of the allegations was established. He suggested that the entire matter came down to an issue of credibility between Ms. A and the Subject Member. He noted that the Subject Member readily admitted engaging in inappropriate sexual conduct with Ms. A. Therefore, the only issues remaining for the Conduct Board to decide

in order to find the allegations to be established was whether the Subject Member was in a position of authority over Ms. A and whether the sexual contact between the Subject Member and Ms. A was consensual.

[174] In his submission, the Member Representative took a methodical walk through the evidence. In doing so, he did a credible job of identifying the differences in the testimony of the Subject Member and Ms. A. He pointed out the following items that he felt were inconsistencies in Ms. A's account of things:

- Ms. A claimed that she did not find out about the Subject Member's girlfriend until August 2014, despite having had numerous personal conversations with the Subject Member.
- Ms. A had difficulty reconciling her feelings for the Subject Member as a Sergeant versus the person whom she claimed was forcing her to perform oral sex on him.
- Ms. A made a claim that during a car ride to "E" Division Headquarters, the Subject Member said, "If you want to find a woman that lacks confidence you can pretty much get her to do anything you want." However, Ms. A was unable to put this statement into context. The Subject Member outright denied making the statement.
- Ms. A claimed that she was adamant that the Subject Member delete the photographs she sent him, yet in her statement she said that she was not worried about them because her face was not showing.
- Ms. A testified that she was relieved to be away from the Subject Member, yet she continued to seek his advice on work-related matters.
- Ms. A claimed that she was forced to perform oral sex on the Subject Member in the store room, yet she remained for 10 to 15 minutes afterward talking to him.
- Ms. A's account of the first sexual encounter on the stairway did not make sense because the Court Liaison office would have been closed at the time she claimed the incident

occurred and, as the Subject Member testified, the matter could have been rectified without leaving the cell block.

- Ms. A's claim that she did not want to damage the Subject Member's career was inconsistent with someone who claimed being forced to perform oral sex.
- Ms. A's claim that she was coerced into sending the photographs to the Subject Member was not consistent because she was already engaged in a text message exchange and a flirtatious relationship with the Subject Member.
- Ms. A testified that she was flattered by the attention she was getting from the Subject Member, but at other times she told others that she did not like him.
- Ms. A stated that she felt safe in the cell block and that the Subject Member always had their back. These statements were inconsistent and irreconcilable with someone who was allegedly being forced to perform oral sex on the same person.
- Ms. A's account of a gift she bought for the Subject Member's daughter for her trip was not consistent with the Subject Member's position. She could not have known that the Subject Member's daughter was excited about the trip because he had not told his daughter about the trip until they were on their way. Also, Ms. A had only met his daughter once.
- Ms. A's account that, in the first encounter, the Subject Member grabbed her by the arm and kissed her was inconsistent with her claim that the relationship became more aggressive.
- Ms. A claimed to have told her boyfriend about this matter, yet he did not provide a statement to investigators.
- Ms. A initially gave her consent to provide investigators with her cellular telephone, but she later withdrew this consent.

- Despite being in a public area within the Detachment, Ms. A never made any attempt to call out or otherwise seek assistance of passersby.
- Ms. A claimed that she was living in fear of meeting the Subject Member, yet when he called her by her nickname when he came through the door on October 10, 2014, she smiled.
- Ms. A originally claimed that the Subject Member let her up during the incident in the stairwell on October 10, 2014, but she later said that she pushed the Subject Member back in order to get up.
- The fact that Ms. A had her cellular telephone out when she exited the stairwell following the incident on October 10, 2014, was inconsistent with her statements. The video footage clearly showed that she had her cellular telephone out. The Member Representative's theory was that she had the telephone out in the event someone had heard voices in the stairwell. With the telephone out, she could fain a telephone call to avoid being caught.
- When Ms. A left the stairwell, she was more concerned with her appearance than with the fact that she had allegedly been forced to perform oral sex on someone.
- Speaking with her Team Lead about the perceptions of others regarding her behaviour was more in line with her desire not to get caught than a simple check on her behaviour.
- Ms. A could not recall coming to the Subject Member's defence at work. Nevertheless, coming to his defence was inconsistent with her claim that he gave her the creeps.

[175] Conversely, the Member Representative asserted that the Subject Member's testimony was clear, direct and adamant. He pointed to the following aspects of the testimony in support of his claim:

- The Subject Member denied applying physical force, making threats or giving commands to direct Ms. A to perform oral sex on him. This was not contested during cross-examination.
- He flatly denied ripping the button off Ms. A's shirt, as she claimed.
- He explained why Ms. A would have known he had a girlfriend prior to August 2014.
- He admitted that the Cell Block Sergeant had oversight over the cell block operations, but he disagreed that he had sufficient authority over Ms. A to establish her as a subordinate.
- He only grabbed Ms. A's ponytail on one occasion.
- He acknowledged that the sexual relations were inappropriate, but they took place with mutual consent.

[176] The Member Representative also canvassed the differences in the testimony between Staff Sergeant D and Staff Sergeant E relating to the authority of the Cell Block Sergeant over the Cell Guards. He submitted that Staff Sergeant D's testimony was inconsistent. He stated that the Cell Block Sergeant was the ultimate decision maker when it came to prisoner safety, which was not consistent with his later testimony when he said the Cell Block Sergeant could not discipline a Cell Guard nor do they have any input into the assessment of Cell Guards. The Member Representative suggested that I should place greater weight on the testimony of Staff Sergeant E because of his breadth of experience gained through performing numerous jobs in the cell block and because he provided examples which re-enforced his claim that Cell Block Sergeants have no authority over the municipal Cell Guards.

[177] The Member Representative also spoke to the contents of the sole surviving text message and made the following observations:

- Although not suggesting that the opening comment by Ms. A is of a sexual nature, he suggested that it typified the relationship between the Subject Member and Ms. A.

- Ms. A's comments, "... You will hate me & think I'm just jealous ..." and "... I care about you ..." were strange comments for someone who was allegedly being forced to perform oral sex on the Subject Member.

[178] With respect to the RCMP's *Conflict of Interest – Interpersonal Workplace Relationships* policy, the Member Representative simply commented that the policy had been updated since October 2014. He pointed out that none of the scenarios enumerated in the *Administration Manual* XVII.1.10.1.1.2. were applicable to this case. Finally, his position was that the policy was irrelevant because the determination of whether the Subject Member was in a position of authority was a question of fact to be determined by the Conduct Board.

[179] The Member Representative concluded his submission by presenting the theory that Ms. A was a willing participant in the sexual relationship with the Subject Member. However, when he stopped the sexual encounter in the stairwell and walked away from her on October 10, 2014, she felt rejected. She was embarrassed. This was why she wanted to avoid future encounters with the Subject Member.

## **VI. FINDINGS ON THE ALLEGATIONS**

[180] Both allegations faced by the Subject Member are for "conduct likely to discredit the Force" under section 7.1 of the Code of Conduct. The particulars, as set out in the *Notice of Conduct Hearing*, allege that this discreditable conduct was related to an inappropriate relationship of a sexual nature with a co-worker.

[181] The RCMP External Review Committee (ERC) offered 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 this decision, which read as follows:

Section 7 of the Code of Conduct requires that members behave in a manner that is not likely to discredit the Force. Section 7 differs from its predecessor provision found in subsection 39(1) of the prior Code of Conduct.

Section 39(1) required that members not engage in any disgraceful or disorderly conduct that could bring discredit on the Force. The ERC and the Commissioner have stated that the test under section 39(1) asked whether a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular would be of the opinion that the conduct was a) disgraceful and b) sufficiently related to the employment situation so as to warrant discipline against the member. [...] Section 7 of the Code of Conduct does not import the requirement of disgraceful or disorderly conduct in order to discredit the Force. However, the Force's Code of Conduct Annotated Version (2014) largely adopts the test under the prior Code of Conduct for discreditable conduct under the new section 7, noting that "Discreditable behaviour is based on a test that considers how the reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the behaviour." The language used in the Code of Conduct Annotated Version (2014) is consistent with the tests established in other police jurisdictions to establish that misconduct is "likely to discredit a police force". As pointed out in P. Ceyssens' *Legal Aspects of Policing*, Volume 2, 2002 [...] "... where statutory language governing discreditable conduct addresses acting in a manner "likely to discredit the reputation of a police force", actual discredit need not be established. Rather, the extent of the potential damage to the reputation and image of the service should the action become public knowledge is the measure used to assess the misconduct. In conducting this assessment, the conduct must be considered against the reasonable expectations of the community."

[182] In *McBain v. Attorney General of Canada*, 2016 FC 829 [*McBain*], at paragraph 24, the Federal Court of Canada addressed the issue of disgraceful conduct as it relates specifically to sexual relations occurring while a member is in uniform and on duty, as follows:

Applying the test for disgraceful conduct, the Commissioner concluded that a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and in the RCMP in particular, would be of the opinion that having sexual relations while in uniform and on duty is disgraceful and sufficiently related to the employment situation so as to warrant discipline.

[183] Given the acceptance by the Federal Court of the test for disgraceful conduct applied by the Commissioner and the ERC's comments with respect to the application of the test for discreditable conduct, notwithstanding that they are contained in the particulars and, therefore, are subject to proof, I find that I do not need to determine that the Subject Member was in a

position of authority over Ms. A or that the sexual relations between the two of them were not consensual in order to find that the Subject Member contravened the Code of Conduct in relation to both allegations.

[184] The Subject Member admitted that he had an inappropriate sexual relationship with Ms. A. The relationship spanned a period of several months. He also admitted to five separate occasions when sexual acts occurred. These acts involved Ms. A performing oral sex on him. During all five sexual encounters, he was on duty and in uniform. All five of these liaisons occurred within the B RCMP Detachment building, in areas where there was a high risk of being caught. The fact that he was a senior Non-Commissioned Officer, holding the rank of Sergeant, is not disputed. Whether the Subject Member was in a position of authority over Ms. A or whether the sexual relations were non-consensual, in my opinion, goes to the degree of moral blameworthiness of the Subject Member's conduct rather than to a determination as to whether or not his conduct was discreditable or likely to discredit the RCMP. The fact that the *Conduct Measures Guide* sets out two very distinct levels of sanctions relating to the inappropriate sexual conduct of a member supports this assertion.

[185] As the Commissioner did in *McBain*, I find that a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and of the RCMP in particular, would be of the opinion that a senior Non-Commissioned Officer having sexual relations with a co- worker on several occasions in an RCMP facility, while in uniform and while on duty, is discreditable and sufficiently related to the employment situation so as to warrant discipline. Whether the Subject Member was in a position of authority and/or the sexual relations were non- consensual is an aggravating factor that, if demonstrated, would demand the imposition of more significant conduct measures. Therefore, I will deal with these two issues below in the conduct measures portion of this decision.

[186] Given the foregoing, I find that both allegations have been established on a balance of probabilities.



## **VII. EVIDENCE ON CONDUCT MEASURES**

### **Supporting documentation on behalf of the Subject Member**

[187] In addition to the Subject Member's testimony, the Member Representative presented the following documents for the Conduct Board's consideration:

- Five Performance Logs (form 1004) with a date range of October 2001 through July 2011;
- Supervisor/Line Officer Support narrative dated January 27, 2012, prepared in relation to a Non-Commissioned Officer Promotion Process;
- Performance evaluations for the years 2011-2012 and 2013-2014;
- A letter from a member of the public, dated February 2009;
- Ten letters of support from regular members, including prior supervisors or peers.

[188] Four of the five performance logs related to the Subject Member's involvement in serious criminal matters, including domestic violence situations, an armed robbery and a multiple vehicle traffic accident. All four of these performance logs identify a member with sound operational skills. The fifth performance log commended the Subject Member for his efforts in training a cadet in the Field Coaching Program.

[189] The narratives from the Subject Member's annual performance evaluations for the fiscal years of 2011-2012 and 2013-2014 and the Supervisor/Line Officer Support narrative dated January 27, 2012, depict a strong operational member who was well organized, able to multi-task and well-liked by his co-workers.

[190] The letter from a member of the public, dated February 2, 2009, recognized the Subject Member for demonstrating patience, integrity and respect in dealing with a landlord-tenant situation involving the author of the letter.

[191] The ten letters of support from regular members depict a solid performing member. Words such as dedicated, respected, admired, capable, conscientious, hard-working, knowledgeable, attentive, smart, well-spoken, well-rounded and respectful were used to describe the Subject Member. Many of the authors of the letters indicated that if they had the opportunity, they would work with the Subject Member.

[192] The Subject Member received the following commendations for bravery:

- Commendation from the Officer in Charge of B Detachment, dated June 9, 2013.
- Commanding Officer's Commendation, dated May 10, 2012.
- Commendation for Valour from the Province of British Columbia, dated 2011.

[193] All three of these commendations stem from a single incident which occurred in August 2008. This incident involved an armed suspect in a double shooting. The Subject Member demonstrated courage in the apprehension of the suspect thereby bringing the matter to a successful conclusion.

[194] The Member Representative also submitted a letter from the Subject Member's psychologist. The delivery of the letter at the conduct hearing did not comply with the 30-day notice period required under subsection 19(1) of the *CSO (Conduct)* for me to accept this letter as an expert report, but that does not mean that the letter has no value in this proceeding. I will consider the information that I deem to be facts as opposed to the opinions proffered by the psychologist.

[195] The letter, dated November 20, 2017, was prepared by the Subject Member's treating psychologist. The letter sets out his various qualifications. The letter was prepared at the Subject Member's request expressly for the Conduct Board's consideration in this matter. The letter notes that the psychologist had been treating the Subject Member since August 2009. The Subject Member had completed 61 sessions with the psychologist. The Subject Member had self-referred. The original reason for this self-referral was related to the break-up of his marriage. The Subject Member was originally diagnosed with a particular disorder related to the marriage

break-up. However, the focus of the treatment changed when the Subject Member informed the psychologist about other problems he was experiencing. These included difficulty sleeping, anxiety, irritability, listlessness and flashbacks. This occurred in October 2014, following this matter coming to light. The psychologist indicated that he assessed the various disorders in the moderate to severe range. Although the Subject Member was “very motivated for treatment”, the psychologist did not offer any prognosis for recovery. He did note that the issues the Subject Member was facing “tend to be chronic and long standing in nature”.

### **The Subject Member’s oral testimony**

[196] The Subject Member testified on his own behalf in this phase of the conduct hearing. He stated that, since his suspension from duty, he had been engaged in efforts towards self-improvement in two specific areas, namely academic pursuits and psychological therapy.

[197] The Subject Member entered the RCMP with a two-year college diploma in criminal justice. Since his suspension, he had completed several on-line courses directly related to policing through Dalhousie University. He also completed numerous courses through the Canadian Police College Knowledge Network and the Pacific Region Training Centre. He also successfully completed a private investigator course.

[198] The Subject Member had also been receiving psychological therapy for approximately eight years. Since October 2014, he had attended regular sessions in an effort to understand and improve his “behaviour from the poor decisions” he had made. He indicated that he had been diagnosed with Post-Traumatic Stress Disorder (PTSD).

[199] He provided detailed accounts of the incident that gave rise to his commendations for valour and the incident which purportedly gave rise to his PTSD diagnosis. Both incidents involved violence to a person, one a homicide and the other a suicide. Both incidents were extremely tragic and undoubtedly stressful and traumatic for all of those involved.

[200] The Subject Member expressed remorse and regret for his actions. He offered what appeared to be a sincere and heartfelt apology, stating that he was angry because he had

disappointed himself, his daughter, his family, his peers and colleagues on his Watch, at the Detachment and the RCMP as a whole.

[201] In cross-examination, the Subject Member was asked about a prior discipline matter for which he received a reprimand on January 5, 2010. He acknowledged that the matter related to the use of RCMP databases to conduct queries on the boyfriend of a woman he was also seeing at the time.

[202] The Subject Member was also asked about a matter allegedly involving excessive text messaging with another female Cell Guard. The Subject Member denied that he was excessively sending text messages to the female Cell Guard, but rather she was sending the messages to him. He also denied being spoken to about the matter by a Sergeant F. He clearly admitted sending an apology to Staff Sergeant G in regards to his communication with the Cell Guard.

[203] With respect to his involvement in the investigation of this matter, the Subject Member testified that he was never asked by investigators to sit down for a formal interview; however, he was asked to provide a statement. After consulting with his legal counsel, he decided to follow their direction and not provide a statement.

[204] The Subject Member agreed that he had not provided an apology to Ms. A because he was instructed to “stay away from her”.

[205] In his re-direct evidence, the Subject Member denied sending an apology to Staff Sergeant G. Instead, he claimed he sent an apology to Inspector H. He claimed that he did not apologize for excessively sending text messages to the Cell Guard, but rather he apologized in the event his playful and jovial behaviour in the cell block had offended anyone or made anyone uncomfortable.

[206] The Subject Member also voluntarily provided a more detailed account of the circumstances surrounding the reprimand. He stated that Ms. I, a Telecommunications Operator with the RCMP, another male (Mr. J) and he were involved in a “toxic triangle”. He claimed that Ms. I would “bounce back and forth” between Mr. J and himself. At one point, Ms. I advised

him that she suspected that Mr. J was a member or associate of a well-known organized crime group. Consequently, he conducted various computer queries on Mr. J over a period of time. He claimed that the queries were made because of the potential work-related value of the information, if Ms. I's suspicions were correct. These queries became known to management for some reason. The matter was investigated by the Professional Standards Unit and disciplinary measures were imposed.

[207] Since the Subject Member made this an issue, the investigation report relating to this other Code of Conduct matter was admitted into evidence without objection from the Member Representative in order to provide the Conduct Board context to the Subject Member's testimony.

**The investigation report relating to the matter of prior discipline**

[208] This matter began when Ms. I complained to her Shop Steward about the Subject Member harassing her. Although the statement obtained from Ms. I did not provide evidence of harassment, it did provide evidence that the personal relationship between her and the Subject Member was deteriorating. Ms. I made comments that gave rise to other concerns about the Subject Member's actions.

[209] Ms. I indicated that her relationship with the Subject Member ended on bad terms in September 2008 when Ms. I met the Subject Member's wife. Despite this, they maintained a relationship, but were not 'together'. She began her relationship with Mr. J in November 2008. Shortly after this, the Subject Member told Ms. I information about Mr. J that was beyond anything that she had told anyone.

[210] The Code of Conduct investigation revealed that the Subject Member did in fact use various databases to conduct checks on Mr. J. Consequently, his conduct was found to be disgraceful under subsection 39(1) of the *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361. The noted reprimand was the disciplinary measure imposed as a result.

[211] Although the Subject Member was reprimanded for the misuse of police databases, there was a whole other back story to the matter which appeared in the investigation report. After disclosing the personal information about her boyfriend, the Subject Member, over a period of a month, began sending Ms. I three or four text messages per day indicating that he wished to continue in a relationship with her. She initially provided friendly responses, but eventually she had to advise the Subject Member to stop because it was impacting her relationship with her boyfriend.

[212] The contact between the Subject Member and Ms. I did not completely stop. While at work, the Subject Member would invite Ms. I to meet him in the smoking area of the Detachment. This would occur two or three times during a “block” without incident until one day it ‘exploded’. The Subject Member began “speaking in code” and accused Ms. I of having sexual relations with two other RCMP members. The Subject Member allegedly confronted the fiancé of one of these two members about his belief. This caused some difficulties. The situation evolved to the extent that the Subject Member began speaking about committing suicide.

### **Complaint of excessive texting with another female guard**

[213] The statements of Staff Sergeant G, Sergeant F and Ms. K were included in the original investigation package. However, they were very heavily vetted due to concerns raised by the Member Representative with respect to the potential prejudicial nature of the statements during the allegation phase of this proceeding. Un-vetted versions of these statements were provided to the Conduct Board during the conduct measures phase of this proceeding. These statements provide further insight into the Subject Member’s testimony. The Member Representative took no position with respect to the statements being before the Conduct Board during the conduct measures phase of the conduct hearing.

[214] It is clear that this matter was never the subject of a Code of Conduct investigation. Rather, it was dealt with informally at the time. Staff Sergeant G, Sergeant F and Ms. K did not testify at the conduct hearing. All that is before the Conduct Board are their statements and the handwritten notes of Staff Sergeant G. Although the Subject Member was asked questions during

cross-examination about the incident, the three statements were not put directly to him. The statements paint a different picture to the one presented by the Subject Member during his brief testimony about it. This different picture shows a strikingly similar pattern to this matter.

[215] In her statement, Ms. K reported that she was receiving an excessive number of text messages from the Subject Member. She also spoke of the Subject Member's behaviour at work, which she characterized as being unprofessional. This behaviour included the Subject Member grabbing her, hugging her, kissing her on the top of the head or smelling her hair. He was persistent in telling her that she was going to give in and engage in a relationship with him. He made comments about getting married and having three children. He also frequently called her by his nickname for her. She did not want to get him in trouble by making a complaint, but other people were beginning to talk and make comments about them having a relationship. This prompted her to speak to her "superiors". The Cell Block Manager from the City of B got involved and the messages from the Subject Member suddenly stopped. She also said that if he sent a message and she did not reply, "it was ping, ping, ping, ping".

[216] In his statement, Sergeant F said that he was informed by Ms. K that she was receiving an excessive number of text messages and telephone calls from the Subject Member. She told him that because of the frequency of the text messages and telephone calls, she was having problems sleeping. In response, he had a very brief conversation with the Subject Member and told him to stop. The Subject Member was very abrupt, but agreed to stop. Sergeant F provided a specific date and time for this conversation (April 25, 2014, at 11:40 a.m.). Sergeant F reported the matter to Staff Sergeant G.

[217] One chilling thing that Sergeant F said in his statement is that Ms. K had advised him that she thought the Subject Member was watching her on the video monitors at shift change. She got this impression because on occasion, as she was arriving at the back door on her way to work, the Subject Member would also coincidentally be at the door at the same time, on his way out after work.

[218] In his statement, Staff Sergeant G advised that, in April 2013 (possibly April 25, 2013), he was informed by the Cell Block Manager from the City of B that she had received a complaint about the Subject Member excessively sending text messages to Ms. K. The text messages were becoming bothersome. He was aware that Sergeant F had a conversation with the Subject Member, at which time he told the Subject Member to stop. He was satisfied with Sergeant F's actions, but nevertheless informed his Superintendent because he was also aware of a previous incident involving the Subject Member and a Radio Room Operator.

[219] The Cell Block Manager from the City of B also informed him that another Cell Guard had come forward with a similar complaint. Nothing further came of that complaint.

[220] Approximately one week after this matter arose, Staff Sergeant G believed he received an apology from the Subject Member. He was not aware of any further incidents after this.

## **VIII. SUBMISSIONS ON CONDUCT MEASURES**

### **Conduct Authority Representative**

[221] The conduct measure sought by the Conduct Authority, to be globally imposed for both allegations, was a direction for the Subject Member to resign from the Force.

[222] The Conduct Authority Representative acknowledged the Subject Member's good performance record, including his various awards for bravery, but at the same time noted that the Subject Member's behaviour in this particular case is inconsistent with the RCMP's core values and the promise to provide a safe and respectful workplace for its employees. Therefore, he suggested that a strong message needed to be sent. The message is that sexual misconduct in the workplace will not be tolerated in the RCMP.

[223] The Conduct Authority Representative identified numerous aggravating factors which he claimed were compelling. These include the following:

- The Subject Member was a senior Non-Commissioned Officer.



- This matter was not a simple lapse in judgment, but rather a course of inappropriate conduct that was repeated over several months.
- The Subject Member's actions had a negative effect on Ms. A personally.
- The Subject Member's actions also had a negative effect on the organization, including the relationship with the City of B, a contracting partner, and B Detachment in terms of the disruption to service delivery in the cell block.
- These incidents took place in areas where the likelihood of being caught was high, thereby demonstrating disrespect for his fellow employees.
- The Subject Member was in uniform during all five incidents.
- The Subject Member has previous informal discipline in the form of the reprimand.
- The Subject Member was involved in another matter very similar to this one. That matter was handled completely informally.

[224] The Conduct Authority Representative also pointed out several mitigating factors, which include the following:

- The Subject Member expressed remorse and offered an apology for his actions.
- The Subject Member cooperated with the investigation of this matter by providing a prepared statement some months after the investigation began. Although this co-operation should be considered, the weight given to it should not be the same as that given to a member who steps up at the outset of an investigation to provide a full account of their actions.
- Although it was open to the Subject Member to exercise his rights and contest this matter, the result is different than if a member simply takes responsibility for their actions because, in the case of a contested hearing, the Subject Member's admissions are qualified.

[225] The Conduct Authority Representative concluded this portion of his submission by stating that the seriousness of the misconduct in this case amounts to a repudiation of the employment contract. The aggravating factors outweigh the mitigating factors. Therefore, this case lands squarely in the dismissal range.

[226] The Conduct Authority Representative submitted the following three RCMP Adjudication Board decisions for the Conduct Board's consideration:

- *Appropriate Officer "K" Division v Ray*, 10 AD (4<sup>th</sup>) 237

The matter involved seven allegations of disgraceful conduct. Four of the allegations involved inappropriate sexual encounters in the workplace. These encounters were in varying degrees and for varying durations. The Board noted that but for a joint submission from the parties, the Subject Member would have been dismissed. Great deference was paid to the joint submission resulting in sanctions which included a reprimand, a forfeiture of 10 days' pay, a demotion, a recommendation for a transfer and a recommendation for continued counselling.

- *Appropriate Officer "K" Division v Cooke*, 15 AD (4<sup>th</sup>) 475

The Notice of Disciplinary Hearing included two allegations of disgraceful conduct in relation to the Subject Member forcing a female prisoner to perform fellatio on him while driving her home after having released her from cells. The Subject Member was directed to resign within 14 days after a finding that the allegations were established.

- *Appropriate Officer "K" Division v Cardinal*, 17 AD (4<sup>th</sup>) 111

Three allegations of sexual misconduct in the workplace and one allegation of sexual misconduct at a work-related function during off-duty hours were established. The allegations involved three female co-workers over a period of eighteen months. The recent prior and related record of discipline of the Subject Member was found to be a serious aggravating factor on sanctions. The Subject Member was ordered to resign within 14 days in default of which he would be dismissed.

[227] In reply to the Member Representative's submission, the Conduct Authority Representative cautioned me about simply accepting the sanctions imposed by an Adjudication Board in decisions that stemmed from a joint submission on sanctions. He noted that, in cases where non-dismissal was the result, the sanction was usually reached as a result of a compromise between the parties. Therefore, these cases should be given little weight. He also cautioned me about the age of some of the cases presented by the Member Representative, pointing out that some date back to matters that occurred in 1999 and 2000.

[228] The Conduct Authority Representative stated that he did not think it appropriate for the Conduct Board to consider the delay in this proceeding and essentially provided many of the same reasons presented to the original Conduct Board in the abuse of process motion.

[229] Finally, according to the Conduct Authority Representative, the two significant factors that justify dismissal or a direction to resign in this case were the imbalance of power between the parties and the fact that the sexual acts were unwanted acts.

### **Member Representative**

[230] The Member Representative agreed that the matters before the Conduct Board were serious in nature and that dismissal was in the range of possible sanctions. However, he submitted that the appropriate sanction was one short of dismissal. He noted that previous Adjudication Boards have taken a strong stand against inappropriate sexual behaviour, but not all of their decisions have ended in dismissal. He believed this level of sanction required the existence of significant aggravating factors.

[231] The Member Representative submitted the following six RCMP Adjudication Board decisions to the Conduct Board for consideration:

- *Appropriate Officer "K" Division v Cruchley*, 7 AD (4<sup>th</sup>) 63

The Subject Member faced two allegations for his off-duty activities at a bar. He consumed an excessive amount of alcohol and inappropriately touched two female employees. The Subject Member admitted to both allegations. The Subject Member also received two

criminal convictions. The Board administered two written reprimands and a combined forfeiture of pay amounting to 11 days.

- *Appropriate Officer “HQ” Division v Marquis*, 9 AD (4<sup>th</sup>) 351

The Notice of Disciplinary Hearing contained two allegations, one for an inappropriate sexual relationship with a subordinate and the other for inappropriate advances made to a subordinate. The Board recognized the member’s many years of exemplary service and the fact that he had no prior disciplinary record. The most compelling mitigating factor was that, immediately following the second incident, the member came forward on his own to report the incident and, but for the report, the RCMP would not have known about the incident. The parties delivered a joint submission on sanction which called for a written reprimand and the forfeiture of three days’ pay on the first allegation and a written reprimand and a forfeiture of five days’ pay on the second allegation.

- *Appropriate Officer “K” Division v Ray*, 10 AD (4<sup>th</sup>) 237

This is the same case relied upon by the Conduct Authority Representative.

- *Appropriate Officer “E” Division v Pearson*, 11 AD (4<sup>th</sup>) 327

The Notice of Disciplinary Hearing was originally commenced jointly against two members for engaging in sexual relations with each other in a police vehicle and for using RCMP equipment inappropriately. During the hearing, the Notice was severed. The Subject Member admitted that the relationship, although consensual, was inappropriate. He received a written reprimand, a forfeiture of 10 days’ pay and a recommendation for continued counselling.

- *Appropriate Officer “C” Division v Lebrasseur*, 14 AD (4<sup>th</sup>) 520

Three contraventions of the Code of Conduct were established against this member following a contested hearing. On three separate occasions, she acted in a disgraceful manner towards her immediate supervisor. On one occasion, she entered the change room while he was showering, opened the shower curtain and touched his back. On another occasion, she

touched his genitals while a group photo was being taken. Lastly, she grabbed his genitals during an official function where foreign dignitaries, other policing partners and RCMP members were present. A joint submission on sanctions was accepted and the Board imposed a reprimand and the forfeiture of 10 days' pay on each allegation for a global forfeiture of 10 days' pay.

- *Appropriate Officer "J" Division v Heon*, 29 AD (3<sup>rd</sup>) 1

This matter involved three allegations relating to the inappropriate touching of two different women and the consumption of alcohol in a motor vehicle. While off-duty, the Subject Member became highly intoxicated. He inappropriately touched the wife of a subordinate and inappropriately touched another female while dancing with her. Following a joint submission on sanctions, the Subject Member received a written reprimand and a forfeiture of 10 days' pay on each of the three allegations.

[232] The Member Representative pointed to several mitigating factors, which include:

- The amount of time this matter has taken to adjudicate has placed undue stress and hardship on the Subject Member.
- The Subject Member has accepted responsibility for what he thinks he has done. He has apologized and expressed remorse.
- The Subject Member has a very good work record with demonstrated ability, dedication and commitment to the RCMP.
- The Subject Member suffers from PTSD, which is a result of his service. He has expressed a commitment to continue with treatment.
- The Subject Member has made considerable efforts academically towards self-improvement.

- Although not a “one-time event”, it is clear that the Subject Member had a significant lapse in judgment. He understands the gravity of his actions and assures the Conduct Board that it will not happen again.
- He cooperated with the investigation by voluntarily providing his cellular telephone with the password and by providing a statement.

[233] The Member Representative reminded the Conduct Board that the purpose of the conduct system is rehabilitative and corrective—not punitive. He added that the goal of general and specific deterrence can be accomplished in this case with measures short of dismissal, including a high financial penalty, demotion, transfer, a recommendation for continued counselling and/or a reprimand.

## **IX. DECISION ON CONDUCT MEASURES**

[234] Having established the contraventions of the Code of Conduct, subsection 45(4) of the *RCMP Act* obliges me 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.

[235] 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”.

[236] The Appendix of the *Administration Manual* Chapter XII.I provides an extensive list of mitigating and aggravating factors that may be considered by a conduct authority or conduct board when imposing conduct measures. Many of these were spoken to by the parties in their submissions.

**Credibility of the witnesses**

[237] The reliability and/or credibility of the two main witnesses, Ms. A and the Subject Member, was a primary focus of the parties in the allegation phase of the hearing. But, as I have already stated, I believe it is a central issue in this phase of the conduct hearing. Their testimony relates in some way to the issue of whether or not the Subject Member was in a position of authority and it relates directly to the issue of whether or not the sexual relationship between the Subject Member and Ms. A was consensual.

[238] The Supreme Court of Canada, in *McDougall*, has provided some insight into the assessment of a witness's credibility in the following passage:

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

[239] In this case, the stories of both witnesses are plausible. Both witnesses appeared to be forthright in their testimony. I note that, throughout, the Subject Member chose his words very carefully. He tended to downplay his involvement in matters that were not overly favourable to him. The account of his involvement in both the prior disciplinary matters and the complaint of excessive text messaging with another Cell Guard are clear examples of this. Although there are discrepancies between what they provided in their statements and their oral testimony, these inconsistencies are either relatively minor in nature, relate to collateral matters or can be reasonably explained when considered with other evidence.

[240] I will begin with an analysis of the issue of whether or not the Subject Member was in a position of authority over Ms. A because it is significantly less influenced by the credibility of these two primary witnesses.

*Was the Subject Member in a position of authority?*

***The relevant policy and procedures***

[241] There are three sets of policy and/or procedure provisions relevant to this decision. Although they are separate policies and/or procedures, all three are interconnected. These policies/procedures include:

- a. The RCMP *Conflict of Interest* policy found in the *Administration Manual*, section XVII.1;
- b. The RCMP *Administration Manual* 1.3.2.2 “Duties and Responsibilities”; and
- c. *B Cell Block SOP*.

[242] The RCMP *Conflict of Interest* policy is found in the *Administration Manual*, section XVII.1. The policy at *Administration Manual* XVII.1.1.10 specifically addresses interpersonal workplace relationships. The stated objective of this section is to manage conflicts of interest, ensure public and employee confidence in the integrity and management of the RCMP, provide a safe and respectful workplace, protect employees from abuse of authority or harassment, and support the operational activities and effectiveness of the RCMP.

[243] A reportable interpersonal workplace relationship is defined as a romantic or sexual relationship or liaison between a supervisor and a subordinate reporting within the supervisor’s regular, special or temporary span of organizational responsibility or control, or a person in a position of authority and another employee.

[244] The policy defines a person in a position of authority as a person who has the actual or perceived ability, authority or responsibility, either full-time or temporary, to direct, control, evaluate, or influence the work, workplace, or career of an employee, which includes, but is not limited to, situations involving a list of enumerated duties. None of these enumerated duties apply to this case.



[245] The policy also states that volunteers, auxiliaries, provincial, and municipal employees are to be guided by and are to respect the intent of this Directive while engaged in their duties and activities for the RCMP. The fact that municipal employees are asked to respect the intent of the policy rather than comply with it is a clear indication of the existence of a distinction between RCMP and municipal employees in terms of the RCMP's ability to compel municipal employees to abide by its policies.

[246] The single relevant policy provision relating to "Duties and Responsibilities" is found at *Administration Manual* 1.3.2.2, which states the following:

Unless directed otherwise, the senior ranking/level employee on duty will assume charge when carrying out a duty or assignment with other employees, or the employees in charge of a detail or operation is incapacitated.

[247] The B Detachment *Cell Block SOP*, at page 39, sets out the duties of the Cell Block Sergeant in Section F.3. The relevant provisions of these standard operating procedures are as follows:

F.3.a. The Cell Block Duty Sgt. is in charge of the cell block at all times and must ensure that all policies & procedures are followed by Members and Guards.

[...]

F.3.d. Provide supervisory oversight to all activities in the cell block and provide direction to the employees in the cell block.

***Application of the relevant policy and procedures***

[248] In his submission on the allegations, the Conduct Authority Representative stated that it was not necessary to find that the Subject Member was Ms. A's direct supervisor or that Ms. A had direct line reporting to the Subject Member in order to find that the Subject Member was in a position of authority over Ms. A. I agree.

[249] To begin, a person in a position of authority must have the actual or perceived ability, authority or responsibility to direct, control, evaluate, or influence the work, workplace, or career of an employee. Regardless of the union environment in the cell block that limited the Cell Block

Sergeant's authority, the combination of the *Administration Manual* and section 3.F.a. of the B *Cell Block SOP* clearly give the Cell Block Sergeant a high degree of authority over the day-to-day operations of the cell block.

[250] In my oral decision at the conduct hearing, I stated that the provisions of the *Administration Manual* entitled "Duties and Responsibilities" support the provisions of the B *Cell Block SOP* found in section F.3.a. However, after reviewing the material in more detail, I have a bit of a change of heart in this respect. I believe the reverse is a more correct way of viewing the interaction between the two in light of the primacy the national policy found in the *Administration Manual* would have over a detachment's standard operating procedures.

[251] As noted above, *Administration Manual* 1.3.2.2 clearly places the senior ranking/level RCMP employee on duty in charge of operations when carrying out a duty or assignment with other employees. The use of the term "employees" rather than "members" or even "RCMP employees", in my mind, warrants a broad interpretation of this policy to include municipal employees working with the RCMP under contract.

[252] Section F.3.a. of the B *Cell Block SOP* corresponds with the noted provisions of the *Administration Manual* by placing the Cell Block Sergeant, the senior and only Non-Commissioned Officer, as the person in charge of the cell block at all times. These words are unequivocal. The use of the phrase "Members and Guards" supports the broader interpretation of the *Administration Manual* policy that I have suggested.

[253] At one point in his testimony, the Conduct Authority Representative asked Staff Sergeant E how he reconciled his claim that the Cell Block Sergeant had a total lack of authority over the Cell Guards because of the "union rules" with what is written in the B *Cell Block SOP* which place the Cell Block Sergeant in charge of the cell block at all times, Staff Sergeant E's response was, "I'm confused ...". Quite frankly, I am also confused with his position. I do not find Staff Sergeant E's position compelling. It simply does not make sense for several reasons.

[254] First, much of what Staff Sergeant E spoke to in terms of division of responsibilities related to matters that are more administrative in nature and not directly to the performance of

the operational duties in the cell block on a daily basis. I do not disagree with his perspective on the assignment of various duties and how they operate, but the level at which he spoke is one layer above the cell block team in terms of the organizational hierarchy.

[255] Second, if the union rules are as black and white as Staff Sergeant E suggests, then I am sure that the B *Cell Block SOP* would reflect those rules and not leave it up to the employees working in the cell block to sort out the “minutia of the wording” for themselves.

[256] Third, much of the testimony about the operation of the cell block revolved around the “team” concept involving both the RCMP regular members and the Cell Guards employed by the City of B. I cannot comprehend how a “team” that operates on a 24-hour basis could function effectively while being totally fractured by two sets of rules—RCMP and “Union”—with the only means of reconciling these issues resting with supervisors whose work is performed almost exclusively during the day, Monday to Friday, as Staff Sergeant E suggested was the case.

[257] In my mind, the more tenable position is the one offered by Staff Sergeant D. It is clear from the testimony of both Staff Sergeants E and D that the RCMP Operations Officer and the City of B Cell Block Manager, who worked the Monday to Friday day shift, dealt with the higher level issues related to what can be termed as human resources issues. These included staffing, scheduling, annual performance evaluations and performance management, including recurrent/serious performance issues and discipline relative to the employees under their direct control. This makes perfect sense. However, **someone** has to be in charge of the day-to-day operational functioning of the cell block which operates 24 hours a day, 7 days a week. It is clear from the *Administration Manual* I.3.2.2 and the B *Cell Block SOP* that that **someone** is the RCMP Cell Block Sergeant.

[258] Although they could not agree on the level of authority, all of the witnesses, including Staff Sergeants D and E, the Cell Constables, Ms. A and the Subject Member, testified that the Cell Block Sergeant had some degree of authority over the Cell Guards. Most of these witnesses also testified that section F.3.a. of the B *Cell Block SOP* represented the day-to-day reality on the ground in the cell block.

[259] These policy provisions are sufficiently clear to support the position that the Subject Member, as the Cell Block Sergeant, the senior RCMP employee and only Non-Commissioned Officer working directly in the cell block, had the actual ability, authority or responsibility to direct, control, evaluate, or influence the work, workplace, or career of an employee. At the very least, a person, having read these provisions, could reasonably perceive that the Cell Block Sergeant had the ability, authority or responsibility to direct, control, evaluate, or influence the work, workplace, or career of an employee. However, it is also clear from the testimony of the witnesses that the ability, authority or responsibility of the Cell Block Sergeant to direct, control, evaluate, or influence the work, workplace, or career of an employee was tempered by the unionized environment. But, this does not mean that the Cell Block Sergeant was not a person in authority over Ms. A, because all that is required by policy is that the person need only have, at the very least, the ability to influence the work, workplace and career of an employee. This is a relatively low threshold.

[260] There is a substantial amount of evidence in the Record to demonstrate that the Subject Member had significant influence on the work and workplace of the Cell Guards. One clear example is contained in the narrative of his 2013-2014 Performance Evaluation, which reads as follows:

[...] [The Subject Member] is continually looking for ways to improve the efficiency of handling and processing of prisoners, so that the members can return back to the road as quickly as possible. One of the procedures that he has developed was to have the members call in while in route to the cell block, with the information on the prisoner, and the file number. This has enabled the cell block staff to start the booking process, prior to the member even arriving. [The Subject Member] has gone as far as making contact with the supervisors of other agencies that bring prisoners to [B] Detachment cells, and explained this process to them both verbally and in writing, explaining the benefits of this, and the time saving for their staff. As a result of this, these agencies have embraced this process and are pleased with the success it has with returning their staff back to the road.

[261] Ms. A testified that, after her move to “D” Watch, she reached out to the Subject Member for advice because the Watch was struggling. She attributed this to the Cell Block Sergeant of that Watch, whom she characterized as being weak. This was not refuted by the Subject Member.

The fact that a cell block team can struggle because of an inefficient or ineffective Cell Block Sergeant speaks to the importance of that position and the incumbent in it to the functioning of the Watch. Other witnesses, including some who provided letters of reference for the Subject Member, speak to how the Subject Member's skills and abilities had a positive influence on the operation of the cell block for his Watch. Therefore, the Cell Block Sergeant clearly has an influence over a Watch in the cell block.

[262] Staff Sergeant E testified that, although he was never asked to have input into the annual assessment of a Cell Guard, the Cell Block Sergeant was in a very good position to observe the performance of a Cell Guard on a day-to-day basis. Clearly, if the Cell Block Sergeant were to make repeated complaints, whether justified or not, to the Team Lead and/or the RCMP Operations Non-Commissioned Officer about the performance of a Cell Guard, I find it highly likely that such complaints would have an impact on the Cell Guard's performance evaluation and potentially the Cell Guard's career. In such a case, although the Cell Block Manager for the City of B may have the responsibility of preparing the annual evaluation of a Cell Guard or dealing with disciplinary matters, the Cell Block Sergeant would certainly have influence, and I would suggest a significant influence, over the performance evaluation or the disciplinary actions.

[263] Based on the foregoing, I find that the Subject Member had the actual ability, authority and responsibility to direct and influence the work, workplace and career of Ms. A and was, therefore, in a position of authority over her.

#### **The nature of the relationship between the Subject Member and Ms. A**

[264] Although my finding that the Subject Member was in a position of authority over Ms. A has an influence on the consensual nature of the relationship between the Subject Member and Ms. A, it is not wholly determinative on this issue. Consequently, it is in relation to this issue that the credibility of the primary witnesses comes into play given the parties' divergent positions.

[265] The Subject Member has admitted to being engaged in an inappropriate sexual relationship with Ms. A. However, his position is that it was Ms. A who, with the exception of

the first random encounter in the kitchen, was the initiator of all of the actions leading to the sexual encounters that are the subject of the two allegations against him. Therefore, she was more than just a consenting partner and/or fully willing participant, she aggressively pursued the relationship. He goes further to suggest that the only reason Ms. A went to speak to Sergeant C following the encounter in the stairway on October 10, 2014, was not to find a way to avoid future encounters, but rather, it was because she was embarrassed by the fact that the Subject Member had jilted her when he simply walked away from her in the stairwell.

[266] The Subject Member pointed out that, in his testimony, he categorically denied the allegation at the time of his arrest and that his denial was recorded in the transcript of his arrest on October 10, 2014. The transcript does reflect that he made a denial, but what he denied was that he had committed a sexual assault on Ms. A. He maintained this denial in his later statement provided in the form of the letter to the Officer in Charge of B Detachment, dated December 10, 2014.

[267] This letter is dated some two months after the events came to light. This two-month delay provided the Subject Member with the opportunity to prepare the statement, which appears to be well thought out and carefully crafted. The Subject Member did make certain admissions and denials in this letter. Despite having time to consider his statement, the Subject Member did leave out certain events that he testified to, in particular the incident at the CABS terminal, claiming that his recollection when he testified, over three years after the last incident, was better than his recollection only two months after the last incident. He claimed that he was still in shock some two months following his arrest.

[268] Conversely, Ms. A acknowledged that she was a willing participant at the beginning of the relationship. She admitted to finding the attention she was receiving from the Subject Member and others on the team, in the form of being the focus of various pranks and practical jokes, was better than no attention at all. She admitted to engaging in sexually explicit text messaging with the Subject Member. She also admitted that the flirting and initial physical relationship, including kissing, was fun. However, she insisted that it was the Subject Member's persistent and aggressive behaviour that compelled her to act far beyond the bounds of what she

deemed to be acceptable behaviour. She admitted that she participated in the sexual acts, but not voluntarily. She complied with the Subject Member's demands simply to make her day-to-day life in the cell block easier for her. Once things became too aggressive, or as she put it, overwhelming, she wanted the physical relationship to end. She was motivated to avoid being caught or to not complain about the Subject Member's behaviour because she felt that she would not be believed. In her mind, she was a lowly, newly hired municipal Cell Guard working in an environment controlled by the RCMP. Whereas, the Subject Member was a highly respected senior Non-Commissioned Officer who appeared to possess significant personal and positional influence on the Watch and within the Detachment in general.

[269] For the reasons that follow, I find Ms. A's position is not without blemish, but it is the more believable of the two scenarios.

[270] The most significant problem I have with the Subject Member's evidence is that other than his word, there is very little or no evidence to corroborate his position. In fact, portions of his claims are contradicted by the evidence and, in other cases, it simply does not make sense. A few of these were canvassed in my oral decision.

[271] The Subject Member spoke of several occasions where he alleges that Ms. A rubbed his groin to sexually arouse him and/or entice him into further sexual acts. These actions, according to the Subject Member, occurred in very public areas of the cell block. These include the incident at the CABS terminal, which was conspicuously absent from his letter to the Officer in Charge of B Detachment, dated December 10, 2014; an incident while he was reading something on a bulletin board; and an incident in his office while he was reviewing C-13 forms. Two of these incidents are alleged to have occurred in highly public areas of the cell block and within the watchful eyes of the surveillance cameras. The third incident is alleged to have occurred in the Subject Member's fish bowl of an office.

[272] In the portion of Ms. K's statement that was provided to the Conduct Board in the allegation phase of the hearing, Ms. K noted that there were numerous cameras in the cell block area. She even went so far as to point out those areas where there were no cameras. Several other

witnesses, either in their oral testimony or in their written statements, also spoke of being aware that there were numerous cameras in the cell block area. The location of the cameras in the cell block, and it would appear, the blind spots, were generally known to the employees working in the cell block. The Subject Member even commented in his testimony that the incident at the CABS terminal would have been caught on camera. He also testified that there was a considerable number of people around the Cell Block Sergeant's office at all times.

[273] I think it is safe to say that neither the Subject Member nor Ms. A wanted their sexual encounters exposed. Ms. A clearly testified that she did not want to get caught because she knew it would come down to her word against the Subject Member's. So why would Ms. A take the risk on her own accord or without prompting? Such actions are not consistent with the character demonstrated by Ms. A. She clearly lacked self-confidence. She frequently referred to her weight and being a large person during her testimony. She also testified that she was not a coordinated person. She and the Subject Member had a conversation in which she told him that she felt she would not do as good a job as a Team Lead as some of the other Team Leads. The Subject Member had to assure her that she would do a good job. The fact that she frequently sent text messages to the Subject Member to seek his advice on operational matters is further indication that she was not sure of herself. None of this melds with the brazen behaviour of highly public advances that the Subject Member attributed to her.

[274] Another portion of the Subject Member's testimony that does not make sense to me is the manner in which he described how he terminated the sexual encounter and the relationship with Ms. A on October 10, 2014. He claimed that as Ms. A was on her knees performing oral sex on him in the stairwell, he came to the sudden realization that what they were doing was wrong and chose at that instant to stop it. He backed up, returned his penis to his pants, zipped them up and walked away up the stairs without saying a word, leaving Ms. A with a "quizzical look" on her face. If his true intention was to terminate the relationship, rather than simply stop an extremely high risk encounter, then why did he simply walk away without saying a word? Why did he not expressly tell Ms. A that they could no longer continue with their behaviour, as Ms. A claims she repeatedly did, or that he wished to end their relationship? Simply walking away would not have brought any closure to their relationship or the sexual encounters.



[275] While there is little or no evidence to support the Subject Member's position, there is significant evidence to corroborate Ms. A's testimony, albeit circumstantial and hearsay. To me, the most compelling supporting evidence is that almost all of the witness statements I have referenced in this decision made some mention of Ms. A complaining or making comments about being uncomfortable with the text messaging and, in some cases, the Subject Member's aggressive behaviour being unwanted. These comments to these other witnesses are in line and consistent with her testimony at the conduct hearing in terms of the timing of various complaints and the words used to describe the various actions of the Subject Member.

[276] The Member Representative suggested that Ms. A's evidence should not be believed because of the manner in which the original statement was coaxed from her by Sergeant C and Constable L on October 10, 2014. He claimed the investigators inappropriately manipulated Ms. A in a way that impacted the way she reported the events. In support of his claim that Ms. A embellished the truth, he pointed to Ms. A's words at line 1580/81 of her initial statement, when she said: "Now that you guys made me talk about it, it seems a little bigger than it was."

[277] Although I have some difficulty with the way in which Sergeant C and Constable L convinced Ms. A to provide her initial statement, I do not feel that this impacted on the veracity of her statement. Rather, I think the lengths that the investigators were forced to go to in order to convince her to provide a statement is indicative of Ms. A's desire to not have the matter investigated or otherwise pursued or to "put the brakes on the investigation". Her comment that the matter seemed bigger once she was convinced to talk about it appears to be nothing more than the fact that she had come to the realization of the gravity of what had taken place rather than being influenced to provide a version of events that was not accurate.

[278] The Member Representative pointed to numerous inconsistencies in Ms. A's testimony; however, many of the inconsistencies he pointed to are inconsistent only because they do not coincide with the Subject Member's version of events. I find that she was consistent on the essential parts of her testimony and with the content of her two statements.

[279] Some of the evidence canvassed by the Conduct Authority Representative as corroborating Ms. A's evidence also serves to contradict the Subject Member's evidence. For example, the Subject Member claimed that he only pulled Ms. A's ponytail on one occasion. He was very specific about that occasion. However, several other witnesses clearly indicated that they observed the Subject Member pull Ms. A's ponytail playfully on a number of occasions.

[280] Ms. A stated that she felt safe in the cell block and that the Subject Member always had their back. According to the Member Representative, these statements are inconsistent and irreconcilable with someone who was allegedly being forced to perform oral sex on the same person. I do not agree. Ms. A and other witnesses, like the Team Lead, testified to the fact that they felt safe from the prisoners when the Subject Member was the Cell Block Sergeant. There is a significant difference between feeling safe generally and feeling safe specifically as it related to interactions between the cell block staff and their clients.

[281] Where Ms. A runs into difficulties with her statements and/or her testimony is when words were put into her mouth by others. For example, during her interviews, she was told by one of the investigators that she was carrying her cellular telephone immediately following the stairwell encounter on October 24, 2014. She stated clearly that she had no recollection of this until it was pointed out to her. She continued with this claim in her testimony. Clearly, not recalling something is fine. But, Ms. A appeared to simply agree with what others told her she had done. I think this is more a product of her inexperience in these types of matters rather than a deliberate attempt to mislead, to be untruthful or an example of inconsistencies in her evidence.

[282] I viewed the video footage of Ms. A leaving the stairwell on October 10, 2014, many times and I find that I am unable to say with certainty that she had her cellular telephone in her hand when she came through the door. All I am able to say with certainty is that she appeared to be in a hurry. She also had her left hand up to the side of her head and may have had something in it. I do not have the same certainty that it was her cellular telephone in her hand as others do because the video is not abundantly clear.

[283] The Member Representative stated that Ms. A's admiration for the Subject Member, as a Cell Block Sergeant, and her claim that she did not want to harm his career cannot be reconciled with her claim that the Subject Member was sexually abusing her. I do not necessarily agree with this position. Although this position is difficult to reconcile, Ms. A clearly made the distinction between the Subject Member, as an RCMP Cell Block Sergeant, and the Subject Member as a person. In doing so, she clearly compartmentalized his behaviour into these two spheres.

[284] Several other witnesses, in their statements, made similar observations. They clearly spoke of their admiration of the Subject Member as a knowledgeable and capable Cell Block Sergeant. Like Ms. A, they said they felt safe **from the prisoners** when they worked with the Subject Member. They also felt that he had their backs. Although some were surprised when they found out about Ms. A's complaint, others were not.

[285] Ms. A testified that she gave in to the Subject Member's demands because he was both persistent and aggressive in order to get his own way. She was consistent in this position throughout her statements and in her testimony. In my opinion, the Subject Member demonstrated these characteristics throughout this matter. His persistent behaviour is exemplified in the following incidents:

- His threat to show the original photograph to the Cell Constable if Ms. A did not send him a picture of her breasts without her bra.
- His response to his missing cellular telephone during the cellular telephone incident included the taking and withholding of the property of others (i.e., the Cell Constable's cellular telephone and Ms. A's bag) and the pat down search of Ms. A.
- The numerous text messages sent to Ms. I following their break-up in which he was seeking a renewal of their relationship.
- The excessive text messaging with Ms. K in his pursuit of a relationship with her.

[286] The lone surviving text message provides additional clear evidence of his persistent character. The fact that he typed the single word “name” 20 times in order to get Ms. A to tell him someone’s name and messages like “Tick tick tick” exemplify the persistence in his character.

[287] Ms. M’s statement in relation to her complaint of the excessive text messaging from the Subject Member demonstrates similar persistence in his actions.

[288] The Subject Member also exhibited similar signs of his persistence in getting his own way during his testimony, particularly in his responses to the questions of the Conduct Authority Representative. On many occasions, he had to get his own “two cents worth” in, beyond what the response to the question required. His attempt to do the Member Representative’s job by pointing out inconsistencies in Ms. A’s testimony as an “add on” to his testimony is another clear example.

[289] Ms. A testified that she repeatedly told the Subject Member that they could not continue to behave as they were in the workplace. On the first occasion, she simply told him that their actions were inappropriate in the workplace. On another occasion, she told the Subject Member that they could not continue in their relationship because he had a girlfriend and she had a boyfriend with whom she wished to have a serious relationship. She did not want to be a party to cheating on their significant others. Infidelity was the cause of the break-up of her first marriage. The Subject Member did not provide any evidence to refute these claims.

[290] On the basis of the foregoing, I find that the relationship between the Subject Member and Ms. A was not always a consensual relationship. Although Ms. A voluntarily participated in various aspects of the relationship in the beginning, including text messaging, flirting and kissing, once the relationship became more sexually involved, although she participated further, this participation was not consensual. She clearly told the Subject Member on several occasions that she wanted the sexual relationship to stop. The Subject Member did not refute these claims other than with the simple statement that she never told him that she did not want to continue with the physical relationship.

[291] The reasons for not reporting the abuse or not calling out to seek assistance, particularly during the incident in the stairwell on October 10, 2014, provided by Ms. A are reasonable and make sense in the circumstances.

[292] Ms. A provided significant and consistent testimony with respect to her belief that the Subject Member had significant authority in the cell block. Ms. A's nickname for the Subject Member, as noted in the letter to the Officer in Charge of B Detachment authored by the Subject Member, was "Lord and Master of Cells". Although only a nickname, it speaks volumes as to what she perceived the Subject Member's role was in the cell block and her perception of the power he had in the relationship between them.

[293] I find this situation very similar to the one set out by the Board in *Appropriate Officer "K" Division v Cooke*, 15 AD (4<sup>th</sup>) 475. In relation to that case, the Board wrote the following, which is perfectly adaptable to this case, at paragraph 38:

Ms. [X] was definite in her testimony that she felt compelled to perform fellatio when the Subject Member told her to, due to his position as a police officer. She indicated that she felt she had no choice in the matter, otherwise she would not have performed the act. Put simply, she did not feel she had any choice but to do as she was directed. Given the imbalance of power between the Subject Member and Ms. [X] in that circumstance, I believe that is an objectively reasonable conclusion for her to reach. In my view, she was in fact compelled to do what the Subject Member directed. I also find that, again as she testified, the Subject Member repeatedly told her not to tell anyone about what happened.

[294] In this case, Ms. A felt compelled to perform fellatio on the Subject Member due to the imbalance of power in the relationship. Ms. A testified that she complied with the Subject Member's demands for oral sex because it made the remainder of her shift go easier because he did not berate her. Given the imbalance of power, I find that Ms. A made an objectively reasonable assessment of the situation. Therefore, I find that the sexual relations between the Subject Member and Ms. A was not mutual and consensual in nature as the Subject Member would have it.

**Mitigating factors**

[295] I fully recognize the solid operational work record of the Subject Member throughout his career, as set out in his annual performance evaluations, the Performance Logs, and the numerous letters of support. His commendable performance is highlighted by various entities within the police community through the commendations for valour for his response to a shooting incident. His actions posed a significant potential risk to his life for the sake of saving others.

[296] I recognize the Subject Member's efforts towards self-improvement in the area of academic studies, particularly during the time of his suspension.

[297] I also recognize the toll that his duties as a police officer have taken on his psychological well-being and that he has taken steps through counselling to understand his behavioural issues and to correct them. I also wish to note that his original reason for seeking psychological counselling was not for duty-related reasons, but rather due to the break-up of his marriage.

[298] The Subject Member made what was obviously a heartfelt apology to a number of people (i.e., his family, friends and co-workers) and organizations (i.e., the RCMP and the City of B) for the harm his actions have caused them. I acknowledge this apology. However, there was one apology that he failed to make and, in my mind, it was the most important apology of them all. That is an apology to Ms. A. He explained the absence of this apology was due to the fact that he was precluded from communicating with Ms. A since this matter came to light. However, there was nothing preventing him from making this particular apology along with the other apologies he made during the hearing. He chose not to do so.

[299] The Member Representative asked me to consider the delay in the process as a mitigating factor, a possibility that was suggested by the original Conduct Board in his decision on the preliminary motion for abuse of process. I note that the delay was lengthy and I concur with the comments of the original Conduct Board in his decision on the abuse of process motion. Although lengthy, the reasons for the delay were adequately explained in the Conduct

Authority's submission on the motion and considered by the original Conduct Board in that process. I do not find the delay to be a sufficient mitigating factor at this time.

[300] The Member Representative also asked me to consider the Subject Member's co-operation with the investigation as a mitigating factor. I find that the Subject Member provided what he was asked for by investigators, including the voluntary surrender of his cellular telephone and the access code. With respect to the delay in providing his prepared statement to the Officer in Charge of B Detachment, I accept that the Subject Member was simply following the direction of his legal counsel and provided the statement at the earliest opportunity possible.

[301] I wish to make further comments with respect to the Subject Member's co-operation with the investigation. He definitely voluntarily turned over his cellular telephone to investigators, but I note that the first thing he did when the cellular telephone was returned to him was to delete Ms. A's contact information. It appeared that he could not do that fast enough.

[302] With respect to the statement, I note that subsection 40(2) of the *RCMP Act* provides that members are not excused from answering questions related to the matter being investigated when compelled to do so by the person conducting the investigation. Given this, I do not find the voluntary provision of a statement to be a compelling mitigating factor. In providing the statement, he simply did what he was legally obliged to do following the request from the investigators.

### **Aggravating factors**

[303] The Conduct Authority Representative said in his submission that there are more, or at least more significant aggravating factors, than mitigating factors in this case. I agree.

[304] The allegations are very serious in nature. They involve a senior Non-Commissioned Officer taking advantage of his position to obtain sexual favours from a person he was in a position of authority over.

[305] His actions adversely impacted Ms. A. She was disciplined by the City of B for her involvement in this incident. She missed time from work and has undergone psychological

counselling following the incident coming to light. Despite these impacts on her, the Subject Member's heartfelt apology failed to include her.

[306] The Subject Member acknowledged that his activities adversely affected his family, his friends, other members of "C" Watch and members of the RCMP generally.

[307] Although there is no clear evidence in the Record to show how or if the relationship between the RCMP and its contracting partner, the City of B, was adversely affected by the Subject Member's actions, I find it hard to believe that it was not.

[308] The trust of the Canadian public, the people that the Subject Member had sworn to serve, has been impacted by this and other similar cases involving inappropriate sexual behaviour of RCMP members.

[309] The Subject Member's prior disciplinary record is also important. It shows that the Subject Member has a demonstrated history of poor decision-making when it comes to his personal relationships with females and the intersection of these relationships with his work. It is clear from his prior history and the evidence in this case that the Subject Member has difficulties understanding the boundaries of appropriate behaviour, especially when females in the workplace are involved.

[310] The matter involving allegations of excessive text messaging with Ms. K, another Cell Guard, presents a strikingly similar set of circumstances to the early stages of this matter. Sergeant F had a firm recollection of speaking to the Subject Member and his promise that the text messages to Ms. K would stop. Staff Sergeant G recalled receiving an email from the Subject Member apologizing for his actions. The Subject Member's position on this is not clear; he testified at one point that he made an apology for the excessive text messaging while, at another point in his testimony, he said that he had no specific recollection of providing an apology for his actions to Staff Sergeant G. He stated that if he did apologize, it would have been in the event his jocularity in the cell block offended someone. Even if I accept that the Subject Member made an apology for his horseplay in the cell block, it is clear from the evidence that he continued to engage in behaviour that he had promised to stop. Although Ms. A did not



specifically state that she minded the teasing about the bumbling Cell Guard and the town drunk, I personally found it offensive. The Subject Member played a significant role in this teasing and corresponding pranks.

[311] I think the version of Staff Sergeant G and Sergeant F is a more likely version of events. When he spoke to Sergeant F, the Subject Member acknowledged excessively sending text messages to Ms. K and promised to stop. He honoured that promise. The evidence is clear that he sent no further text messages to Ms. K. However, it was no more than six weeks later when he began the text messaging with Ms. A. He now tells me, through the Member Representative, that the behaviour displayed in this case will never happen again. In light of his past behaviour and similar promises to others in authority, how can I believe him now?

[312] The Conduct Authority Representative has asked me to consider the fact that the Subject Member contested the allegations as an aggravating factor. I note that every member alleged to have contravened the Code of Conduct has a right to deny the allegation and put the Conduct Authority to the test of proving it. Therefore, I cannot consider this an aggravating factor.

[313] The Member Representative has suggested that conduct measures short of dismissal would be sufficient to satisfy the demands for specific and general deterrence. However, the allegations of sexual misconduct against the Subject Member occurred at a time when the RCMP was facing severe public criticism for its alleged failure to protect its employees from harassment, in particular, sexual harassment. The tarnish to the reputation of the RCMP caused by the extensive and prolonged public scrutiny cannot be erased.

[314] The notions of specific and general deterrence are at play in every conduct proceeding where the allegations are established. However, I believe that the importance of the concept of general deterrence rises to the top in cases of sexual misconduct in the workplace, particularly now that the RCMP is on the path to correcting the past wrongs to provide a safe and respectful work environment for all employees. The Conduct Board in 2018 RCAD 10 agreed with my assessment. At paragraph 175, the Board wrote:

There is, however, a well-documented need for general deterrence. Well before the dates encompassed by this Notice of Conduct Hearing, issues of sexual harassment in the RCMP were of foremost concern to the Commissioner, who issued a series of internal bulletins to all employees and engaged in discussions with the media regarding a zero-tolerance policy. Conduct measures imposed for contraventions of this sort must reinforce this stance. These are serious contraventions and, as such, must be seen to merit a serious response in terms of conduct measures. General deterrence is of particular importance in this case.

[315] The need for general deterrence becomes even more acute when the perpetrator of the contravention is someone in a position of authority as I have found the Subject Member was in this case. For it is those in a position of authority who bear the greatest responsibility of ensuring that every RCMP workplace is safe and respectful.

[316] The objective of the *Conflict of Interest* policy in relation to interpersonal relationships, as previously stated, is, in part, to provide a safe and respectful workplace, to protect employees from abuse of authority or harassment and to support the operational activities and effectiveness of the RCMP. Even though Ms. A was a municipal employee, she deserved to be provided a safe and respectful workplace and to be protected from abuse of authority and harassment.

[317] Municipal employees work throughout the RCMP. They perform numerous functions that are integral to the effective operational and administrative functioning of the Force. Simply because municipal employees are not employed directly by the RCMP does not mean that they do not deserve the same level of protection from harassment as other employees in an RCMP-run workplace. They most certainly do. That message needs to be sent, heard and understood.

### ***Conduct Measures Guide Recommendations***

[318] The *Conduct Measures Guide* sets out a range of possible sanctions for discreditable conduct. The *Conduct Measures Guide* speaks to two “categories” of discreditable conduct that involve sexual activity while the subject member is on duty, as is the case with both of the allegations in this case.

[319] The first category is described in the *Conduct Measures Guide* as “pre-existing relationship or engaging in sexual, intimate or romantic activity with a willing participant in an

inappropriate location such as a police vehicle or facility”. The recommended sanctions for this first category range from the forfeiture of 7 to 10 days of pay in the mitigated range when the conduct is an isolated incident. The normal range calls for the forfeiture of 11 to 15 days of pay. The aggravated range, which considers the potential for being caught in the act in uniform and the frequency on duty, calls for the forfeiture of pay in the range of 16 to 30 days.

[320] The second category relates to conduct that involves “engaging in or seeking a romantic relationship with a subordinate”. The recommended sanctions for the second category in the mitigated range, where the incident is a consensual **single** act, is the forfeiture of 20 to 30 days of pay, whereas both the normal and aggravated range recommend dismissal.

[321] The allegations include elements of both of these categories in that all of the sexual activity occurred in an RCMP facility while the Subject Member was in uniform. Four out of the five sexual acts clearly occurred while the Subject Member was on duty. The fifth incident, the subject of the first allegation, occurred while the Subject Member had completed his shift and in the process of leaving the building. He was technically still on duty. There was a significant risk of being caught in the act during all five sexual encounters. The sexual acts were not isolated incidents, but rather several instances over a period of several months.

[322] In my opinion, the most significant factor is that the Subject Member was in a position of authority over Ms. A. which, as Ms. A testified, served to coerce her consent to the demands of the Subject Member. This clearly places this matter within the normal or aggravated range of the second category of discreditable conduct involving sexual activity. Both of these categories recommend the member be dismissed. The Conduct Authority Representative was seeking a direction for the Subject Member to resign from the Force, which is in keeping with the recommended conduct measures.

## **X. CONDUCT MEASURES IMPOSED**

[323] The Subject Member was directed to resign from the Force and, in default of resigning within 14 days of being directed to do so, the Subject Member will be dismissed.

**XI. CONCLUSION**

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

December 6, 2018

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Kevin L. Harrison

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Date

Conduct Board