



ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

ROYAL CANADIAN MOUNTED POLICE ACT

BETWEEN:

Commanding Officer, "K" Division

Conduct Authority

and

Constable Tyler Cull, Regimental Number 54689

Subject Member

Conduct Board Decision (Corrected)

John A. McKinlay

May 1, 2018

Mr. Denys Morel and Sergeant Julie Beaulieu, for the Conduct Authority

Mr. Gordon Campbell, for the Subject Member

TABLE OF CONTENTS

SUMMARY	4
INTRODUCTION	4
External neuropsychological assessment	8
Testimony of HSO	8
Testimony of Division Psychologist	12
Testimony of Subject Member	15
MR raising “admissibility issues”	16
ALLEGATIONS	19
FINDINGS ON THE ALLEGATIONS	23
Allegation 3	24
Testimony of consulting neuropsychologist	25
Allegation 1	26
1. Medical emergency	26
2. Medical file theft	27
3. MVA with pedestrian	28
4. Two 911 hang-up calls	29
5. Taxi driver threats	29
6. Sexual assault complaint	29
7. Domestic assault	30
8. Domestic dispute	31
Summary of findings on Allegation 1	32
CONDUCT MEASURES	33
Allegation 1	33
Allegation 3	44
Further conduct measures imposed	47
Observation concerning apparent PROS system flaw	49
CONCLUSION	49

SUMMARY

The Subject Member faced one allegation of discreditable conduct involving eight investigation files. His acts or omissions involved his responses to assigned calls, note taking and electronic file entries, as well as his concluding tasks and occurrences himself, which prevented supervisory review. In addition, he faced a second allegation regarding utterances he made, tantamount to threats, for which he was criminally charged but ultimately entered into a peace bond.

For the first allegation, misconduct was established on all eight files, with a total of 50 days loss of pay imposed.

For the threats-related contravention, a loss of 15 days of pay resulted.

Given that the Subject Member admitted in his testimony to non-prescribed steroid use, a physician monitored cessation process was ordered, together with the Subject Member's mandatory provision of samples for any drug testing administered by the Health Services Officer. Also imposed: 1) A three-month restriction to administrative duties; 2) Health Services Officer fitness assessment for operational duties; 3) One-year period of close supervision; 4) One-year restriction preventing acting Corporal and supervisor duties; and 5) Three-year ineligibility for promotion. In addition, mandatory training was ordered respecting the investigation of 911 calls, violence in relationship and sexual assault matters, and PROS system performance standards and appropriate procedures.

REASONS FOR DECISION

INTRODUCTION

[1] This Conduct Board was appointed on April 6, 2016. On August 4, 2016, the Registrar received the Notice of Conduct Hearing, dated July 12, 2016, together with the initial investigative materials, and the Conduct Authority's list of proposed witnesses under subsection 18(1) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*].

[2] After receiving one filing extension, the Member Representative (MR) for the Subject Member filed his response under subsection 15(3) of the *CSO (Conduct)* on September 30, 2016 (Response). The Subject Member had provided a recorded statement to an internal investigator on May 18, 2015, and the Response filed by the MR described matters that were neither covered by the Subject Member's statement, nor corroborated by any statement or documentation contained in the investigation materials. The Conduct Authority Representative (CAR) did not accept as accurate specific assertions in the Response concerning the lack of supervision and certain reasons or factors affecting the Subject Member's investigative efforts.

[3] The parties participated in pre-hearing conferences (PHC) with the Conduct Board on November 4 and December 16, 2016, as well as on March 6, June 1, June 7, and September 7, 2017. Arising out of the PHC process, the CAR undertook to have certain members interviewed concerning certain matters asserted in the Subject Member's response.

[4] As a result, two additional packages of materials were filed by the CAR on December 2, 2016, and March 24, 2017. These materials resulted from further investigative steps actioned after discussions in the PHCs. The CAR tasked an investigator to seek corroboration from certain supervisors and operational colleagues of the Subject Member on specific information that, in a fairly general manner, had been asserted in the Response. In addition, shift rosters were filed, indicating the Watch members (including supervisors) likely working with the Subject Member on the occasions relevant to the investigations cited under Allegation 1 (see Exh. CAR #2, Tab 5). Also, documentation was filed for the Subject Member's absences from duty while on approved medical, compassionate and other leave.

[5] In addition, the CAR identified and provided copies of the various policies alleged to have been contravened for each of the eight investigative matters particularized under Allegation 1. An initial filing of applicable policies was filed by the CAR on November 23, 2016. After the issuance on November 22, 2016, of the Minutes for the PHC of November 4, 2016, the CAR filed a more detailed series of applicable policies on December 1, 2016.

[6] For Allegation 1, RCMP policies required the following: the Subject Member's PROS file entries and ("task" and "occurrence") actions be reviewed by a supervisor; complete, timely and accurate PROS entries be completed; and a heightened priority and specific investigative checklist be applied when a file involved "violence in relationship" (VIR) indicators (see Exh. CAR #2, Tabs 2, 3 and 4).

[7] It is of note that the record contains numerous references chronicling the difficulties encountered by the MR in obtaining a complete copy of the Subject Member's RCMP medical file. The Conduct Board now views these difficulties as creating a significant distraction for all concerned, a distraction that served to draw the conduct process into an exploration of the Subject Member's medical issues that prompt delivery of his medical file would almost certainly have avoided or greatly expedited.

[8] On December 16, 2016, at the second PHC, the MR was directed to advise the Conduct Board by January 16, 2017, of any issues on the Subject Member obtaining a copy of his RCMP medical file. On that date, the MR advised that, notwithstanding the initial filing of an "Authorization for Release of Medical Documents and Information by the RCMP" form executed by the Subject Member, the Subject Member had been required to file a formal Access to Information and Privacy Act (ATIP) request, seeking a copy of his own RCMP medical file. At the PHC on March 6, 2017, the Conduct Board confirmed:

Particularly with respect to the threats-based allegation, [the Conduct Board] views Subject Member's health status at the time of the misconduct as relevant and probative in terms of proportionate conduct measures, and procedural fairness dictates the file be made available to the MR.

[9] The Subject Member received 327 pages of materials in response to his ATIP request for his medical file. However, on May 30, 2017, the MR advised that it appeared that the Subject Member had been subject to psychological assessments in late 2013 and early 2014, which were still "under seal" and not provided. The MR filed collateral materials on May 30, 2017, but advised that he would not further pursue the assessment reports.

[10] In the materials filed on May 30, 2017, the MR provided materials he described as “significant evidence of the psychological stress” and “symptoms of depression, anxiety, and adverse effects of psychiatric medication” that the Subject Member was suffering from at the relevant time.

[11] Ultimately, a Production Order was issued by the Conduct Board to the Health Services Officer (HSO) for “K” Division, and then a Summons (in essence *duces tecum*) to the HSO, in order for the Subject Member’s complete file to be accessed.

[12] By email on May 30, 2017, the CAR indicated his intention not to proceed with Allegation 2. The CAR’s formal withdrawal of Allegation 2 was confirmed on September 27, 2017, at the “live” Conduct Board Hearing in Ottawa. Therefore, Allegation 2 was not subject to adjudication.

[13] On September 19, 2017, the CAR filed additional information with regard to the chronology of events, made up of various orders issued to the Subject Member to attend medical assessments, and regarding the date on which the Subject Member’s father died.

[14] The hearing involved a “live” component in Ottawa, where the Subject Member testified in person. This component took place from September 25 to 28, 2017.

[15] Before the Subject Member began his testimony in the allegation phase of the hearing, testimony was obtained on September 25, 2017, by speakerphone from a neuropsychologist, Dr. P., who, at the direction of Dr. H., the “K” Division HSO (HSO), had performed an assessment of the Subject Member not long before the commission period encompassing the allegations in the Notice.

[16] The Subject Member’s complete medical file was sent by the HSO to the Health Services Office within the Ottawa RCMP building where the “live” hearing took place. It was released to the CAR on the afternoon of September 25, 2017, after Dr. P. had testified. Complete copies of the file were provided to the MR and Conduct Board on the morning of September 26, 2017.

[17] Testimony was then obtained by videoconference on September 26, 2017, from the HSO and Dr. S., the “K” Division Psychologist.

External neuropsychological assessment

[18] On March 12, 2014, Dr. P. performed a neuropsychological assessment of the Subject Member at the request of Dr. S., and produced a report dated April 2, 2014. Qualified as an expert in psychology, including neuropsychology, Dr. P. testified under summons by teleconference on September 25, 2017, and again by teleconference on September 27, 2017.

[19] The MR conducted an examination of Dr. P. that, among a number of issues, explored Dr. P’s findings and specific recommendations for:

- The Subject Member to undergo an MRI neuro-examination,
- A determination of suitable mental-health directed medication and appropriate dosage, and
- Further psychotherapy, for a period of six months, before the Subject Member’s return to work.

Testimony of HSO

[20] The HSO testified first by videoconference on September 26, 2017. He became aware of the Subject Member in late 2013, early 2014. Health Services professionals made referrals in the past to Dr. P., a consulting neuropsychologist, where concerns arose about a member’s duty fitness from a neurocognitive perspective. He or Dr. S. could seek a neuropsychological assessment where they viewed the clinical presentation of a member to be confusing, where concerns arose regarding a member’s cognitive ability, the cause of performance issues, or a member’s history included reference to injuries or learning disorders.

[21] Dr. S. saw the Subject Member in late December, 2013. The HSO joined Dr. S. in subsequent meetings with the Subject Member in January and February, 2014. Following a review in February, 2014, it was determined the Subject Member should be referred to Dr. P.

[22] In the HSO's view, shared by Dr. S., the Subject Member's history was complicated as it included his reports of multiple concussions, possible attention disorder features earlier in his life, his recent reported behaviour, and his unstable behaviour when interacting with the HSO and Dr. S.

[23] Dr. P.'s report dated April 2, 2014, was reviewed by the HSO with the Subject Member on May 7, 2014. The HSO testified that he reviewed the neuropsychological results, and obtained the Subject Member's consent to send the report to his community treating physician, Dr. R., as well as to his therapist in Fort McMurray, Mr. L.

[24] As a result of certain recommendations in Dr. P's report, the Subject Member was ordered to provide samples suitable for laboratory drug testing to try to reconcile the Subject Member's poor testing scores with his previously adequate work history. Lab results issued on May 14, 2014, indicated testosterone levels consistent with steroid use or abuse. I wish to emphasize that the results were negative concerning all other drugs.

[25] Dr. P. made a recommendation for a psychiatric consultation. The HSO took this to mean if the Subject Member's mental health did not improve after further psychotherapy and medication, then a consultation with a psychiatrist was suggested.

[26] Dr. P. also recommended the Subject Member undergo neuroimaging to rule out any organic source for his testing performance. The HSO indicated that the RCMP did not make any such referral, leaving any such referral to the Subject Member's personal physician, to whom a copy of Dr. P.'s report was provided. The HSO held the view that given how the Subject Member came to present clinically, neuroimaging was not required.

[27] Approximately three months after his assessment of May 7, 2014, the Subject Member was considered fit for return to full policing duties. Before the Subject Member's return to duty,

Dr. H. discussed the need to monitor his performance with his NCO, and the need to be advised if difficulties arose.

[28] By the last time the HSO saw the Subject Member in July, 2014, he had “settled” and presented in a fit-for-duty capacity. The HSO testified that a psychiatric consultation, as recommended by Dr. P., or additional assessment, could still have been pursued if there were any further behavioural or performance issues.

[29] In discussions with the HSO and Dr. S on July 10, 2014, the Subject Member indicated counselling was ongoing, his issues with alcohol consumption were addressed, and he was advised that steroid use was “not compatible with policing”. The Subject Member’s level of agitation in earlier meetings had given way to a more appropriate demeanour; he appeared more stable and settled.

[30] There were three meetings with the Subject Member after receipt of Dr. P.’s neuropsychological report, and after consideration of information from his community medical practitioner and presentation at those meetings, the HSO did not believe, contrary to Dr. P., that the Subject Member would need six months of treatment before his return to full operational duties.

[31] The HSO noted that upon the Subject Member’s return to work in July, 2014, he understood he was able to sustain his performance of operational duties into December, 2014. However, the HSO was not aware of the misconduct allegations that arose concerning the Subject Member’s acts and omissions in the fall of 2014, upon his return to duties.

[32] The HSO confirmed that the Subject Member was then off duty again from late December 2014 (or January, 2015) until April, 2015, when he was again deemed fit for duty after meeting with different doctors in the HSO’s office.

[33] Around April, 2014, the Subject Member was experiencing issues with his thyroid that the HSO understood were being managed by the Subject Member’s personal physician, and a

possible need for transfer out of Fort McMurray in order to receive specialist treatment was documented in a health assessment in July, 2014.

[34] In Fort McMurray, Mr. L, a counsellor, and Ms. TA, a psychologist, both treated the Subject Member over the period of January to April, 2015.

[35] The HSO and Dr. S. both noted the Subject Member's initial unusual behaviour in his meetings with them, in particular his level of irritability, and given what appeared a "confused" health history, including self-reporting about numerous concussions and potential attention deficit issues, assessment by Dr. P. was considered appropriate. In addition, a briefing note dated April 7, 2014, from Supt. M. provided some background information that, combined with Dr. P.'s report, contributed to the HSO's order for the Subject Member's testing for his thyroid condition and also for drugs including steroids.

[36] On April 10, 2014, the Subject Member met with the HSO and Dr. S., a meeting where the HSO believe he and Dr. S. were "at times very frank and open with him in regard to our concerns" and were motivated to see the Subject Member healthy and productive.

[37] On April 15, 2014, test results of the Subject Member's samples provided on April 9, 2014, were received by the HSO. These results indicated an underactive thyroid and warranted follow up by the Subject Member's personal physician. No "street" drug of any kind was detected. Analysis by a different laboratory was required to address steroids, and this test result was only received on May 14, 2014. The Subject Member's ratio of testosterone to epitestosterone indicated testosterone use or abuse.

[38] In a further meeting with the HSO on July 10, 2014, this latter result was discussed and the Subject Member acknowledged use of a specific steroid substance in the past. As documented in the HSO's notes of this discussion, the HSO recalled that the Subject Member was advised that steroid use was not compatible with policing and that he could be subject to further testing in future if there were concerns about continued use.

[39] The HSO confirmed that steroid use or abuse can cause some rage, aggression, and changes in behaviour. Withdrawal from medications can bring mood changes, depression and fatigue. The HSO testified that Subject Member's steroid use may have been a contributing factor to his behaviours.

[40] The Subject Member's personal physician provided a report on July 8, 2014, indicating he was fit for operational work, and, consistent with that opinion, the HSO assigned a "fit for work" medical profile after meeting with the Subject Member on July 10, 2014.

[41] Given the detection of steroid use, and the lack of behavioural disturbance noted in the Subject Member when he met with the HSO on July 10, 2014, the HSO did not see sufficient value in an MRI to detect neurological deficits. If the Subject Member had continued to present with behavioural disturbance, probably a psychiatric clinical assessment would have been pursued to determine fitness for duty.

[42] The HSO was never consulted about any health aspect that might be associated with the Subject Member's presently adjudicated misconduct, and last saw him on July 10, 2014.

[43] The commission period for the Subject Member's misconduct spans from September 3, 2014, to June 15, 2015. In that period, he received prescriptions for a sleeping medication, and two different antidepressants.

Testimony of Division Psychologist

[44] The testimony of Dr. S., a registered psychologist, was received later on September 26, 2017. With the agreement of both parties, the Conduct Board deemed Dr. S. qualified to give expert opinion evidence concerning clinical psychological matters, including psychological assessment, diagnosis, treatment and prognosis, as well as occupational health.

[45] Dr. S. received an email from Sergeant JW on January 15, 2014, which caused Dr. S. concern. She had interactions with the Subject Member in 2013, but was not aware that he had not returned to duty on December 26, 2013. Upon receipt of the email, she immediately called the Subject Member to check on him. Mention of medication making the Subject Member

fatigued, in light of known thyroid problems, made Dr. S. view his situation as complex and warranting a clinical meeting. The email writer described the Subject Member having a blunted affect (“when mood is not wide ranging”) which, among a number of possibilities, might be associated with clinical depression.

[46] The Subject Member did not undergo assessment or treatment by a psychiatrist as a result of the January 15, 2014, email. It was Dr. S.’s belief he was being monitored by his family physician who was prescribing anti-depressant medication.

[47] On February 19, 2014, Dr. S. sent an email to Dr. P. concerning an “interesting and [...] recently [...] somewhat urgent” referral involving the Subject Member. The urgent nature arose from the Subject Member’s instability and fluctuating presentation, his going off work and returning to duty while denying feelings of depression. Dr. S.’s email raised possible cognitive concerns, given the Subject Member had related how he had suffered numerous (possibly as many as 22) concussions in the past, and had been prescribed a specific medication that raised the possibility of attention deficit and hyperactivity issues. Dr. P. was considered a suitable consultant to explore these cognitive issues, given his neuropsychological expertise and experience receiving similar referrals.

[48] Dr. S. confirmed her understanding of certain elements of the report prepared by Dr. S. Dr. P. recommended “neuroimaging to rule out an organic etiology for the observed difficulties during testing” but this was not acted upon directly by the RCMP health services system. Instead, a copy of Dr. P.’s entire report was sent to the Subject Member’s family physician. If this physician had requisitioned an imaging scan for the Subject Member, then the office of the HSO could have expedited such a procedure. It was open to the HSO to have himself requisitioned, or certainly to have expedited, an imaging scan for the Subject Member. Similarly, while the HSO had the ability to refer the Subject Member to a psychiatrist, such referrals were typically made by a member’s treating physician.

[49] Dr. S. was aware that from the issuance of Dr. P.’s report in April, 2014, the Subject Member remained off work for a further three months, until July, 2014. In early July, 2014, the

Subject Member met with Dr. S., and they were then joined by the HSO. Dr. S. characterized the joint meeting as involving the HSO reviewing the medical lab results with the Subject Member, the Subject Member providing confirmation he was ready to return to work and being deemed fit for duty. Dr. S. had no involvement with the Subject Member throughout the remainder of 2014, and to the mid-point in 2015, the period encompassing the Subject Member's acts of misconduct, and she had no contemporaneous knowledge of any misconduct concerns. At the Subject Member's insistence, he then met with a different Force psychologist and Force doctor.

[50] As a result of her professional involvement in the Subject Member's occupational health matters, in the years 2013 and 2014, Dr. S. felt she could offer some professional conclusions regarding the impact of the personal stressors the Subject Member was experiencing. These stressors were "significant in his life" and involved his divorce, challenges single parenting, and a terminal disease affecting one of his parents resident in Ontario. In her opinion, he "tried really hard to go to work and maybe shouldn't have been there some of the time but told us he was okay."

[51] Under questioning by the CAR, Dr. S. confirmed that with respect to fitness for duty assessments, her responsibilities typically involve psychological and emotional issues, whereas the HSO's duties related to medical considerations. Many member's circumstances involve an overlap in these areas of responsibility.

[52] Dr. S. stated that where a member lacks counselling or psychological assistance, she can assist in locating and setting up such assistance. In the Subject Member's case, she understood he was receiving treatment from a personal psychologist in Fort McMurray.

[53] As a result of unsolicited information received by Health Services, Dr. S. understood there were unsubstantiated concerns that the Subject Member was involved in excessive alcohol consumption, illegal drug use, and steroid use. Accordingly, Dr. S. sought consideration of these elements when Dr. P. conducted his assessment of the Subject Member, to assist in determining if they were contributing to the Subject Member's fluctuating condition and the volatility

sometimes observed. In his report, Dr. P. did indicate: “Substance abuse is a common etiology and I would suggest further exploration of same.”

[54] At her last meeting with the Subject Member in July, 2014, Dr. S. was satisfied with the level of psychological support available to him. There were no indications the Subject Member was struggling at that point, he seemed on a stable path. The need for a psychiatric consultation, mentioned in Dr. P.’s report, was not indicated as there had been improvement in the Subject Member from April to July, 2014. Neither the Subject Member’s personal physician nor his psychologist had indicated otherwise.

Testimony of Subject Member

[55] After admitting to the contraventions of the Code of Conduct under Allegations 1 and 3 before the Conduct Board on the morning of September 27, 2017, the Subject Member began his testimony in the allegation phase of the hearing. It was understood that, for hearing expediency, the Subject Member would also testify to matters required for any conduct measure considerations.

[56] Because the Subject Member’s complete medical file was not available to the CAR, MR, and Conduct Board at the time that Dr. P. testified by telephone on September 25, 2017, the Conduct Board permitted further testimony from Dr. P. by telephone on September 27, 2017.

[57] With the MR’s consent, the Subject Member’s testimony was interrupted so that Dr. P. could be questioned on two specific points by the CAR:

- Would the Subject Member’s positive test for steroids of April, 2014 change Dr. P.’s interpretation of the standardized testing results obtained for the Subject Member?
- Would this test result change Dr. P.’s prognosis that the Subject Member could successfully return to duty in six months?

MR raising “admissibility issues”

[58] Notwithstanding the MR’s agreement that the record for the Subject Member’s conduct hearing included the contents of the investigation materials that accompanied the initial Notice of Conduct Hearing (an agreement captured in the Minutes for the PHC of November 4, 2016), the MR raised “admissibility issues” on September 27, 2017, soon after the Subject Member orally admitted Allegations 1 and 3. It was the MR’s submission that a document from the materials would only become a “probative exhibit” if the document was:

- put to the Subject Member during his testimony and admitted,
- the subject of an affidavit filed with the Conduct Board, or
- otherwise established through a live witness.

[59] In the MR’s submission, the “disclosure” of the investigative materials to the Conduct Board, as required under the CSO (Conduct), should be treated as only serving to facilitate case conferences, resolution, and case management in the pre-hearing stage of the process. The MR submitted that the conduct board would be expected to “disabuse” itself of all information received in the pre-hearing stage that was not ultimately, formally, admitted into evidence. The MR asserted that “just because there is an investigative file [that] does not mean that [...] all of that is part of the record, because there’s simply no authority for it”.

[60] Specifically, the MR cited paragraph 24.1(3)(c) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], as granting a conduct board only the power of a board of inquiry to “receive and accept on oath or by affidavit such evidence and other information as the board sees fit, whether or not such evidence or information is or would be admissible in a court of law”. The CAR’s only written submissions on this point were pages 1, 14, and 32 – 33, selected from “Royal Canadian Mounted Police Act, RSC 1985, c R-10”, retrieved from CanLii on September 27, 2017.

[61] Without hearing from the CAR, the Conduct Board responded to the position advanced by the MR. The Conduct Board did not accept the MR’s insistence on formal proof and

admission into evidence of information relied upon by either party. All materials filed with the Conduct Board would be considered part of the record. If the Subject Member believed that there were inappropriate materials put before the Board, then it was open to the Subject Member to argue that those materials should be excluded from consideration, but the default state of affairs was that all filed materials were part of the record, to be assigned appropriate relevance and weight by the Conduct Board, unless expressly excluded by the Board. In making this ruling, the Conduct Board relied upon the design of the entire *RCMP Act*, including the *CSO (Conduct)*, and the wide discretion given to a conduct board in how it conducts a hearing. The Conduct Board also observed that a series of PHCs had been undertaken, and that the MR's opposition to the content of the record should have been raised much earlier in the process.

[62] As noted above, for the first PHC on November 4, 2016, the Minutes reflect: Parties in agreement that the materials now filed with the [Conduct Board], and any additional materials to be filed, will constitute the Record, and the necessity of a "live" hearing where documentary or other types of exhibits are put to witnesses is not considered at all likely.

[63] The Conduct Board added that the marking of a document as an exhibit simply assisted counsel and expedited the hearing, as then the document would not have to be formally described each time it was put to a witness or was the subject of counsel submissions. The process of marking materials as exhibits was one of convenience, ready identification and practical assistance to counsel engaged in interplay with witnesses. Marking a collection of documents as an exhibit made them no more relevant than documentation that was simply filed with the Conduct Board. The record was the materials filed with the Conduct Board, subject to formal exclusion by the Board.

[64] Further to the Conduct Board's ruling that all materials filed with the Board were part of the record, unless expressly excluded, it should be noted for future guidance that, in accordance with subsection 15(3) of the *CSO (Conduct)*, extensive information is filed with the conduct board prior to the hearing. While evidence and exhibits were previously produced only at the hearing, available information is now produced beforehand and treated as a conduct board sees fit. The specific reference to "evidence" produced at the hearing in the former paragraph

45.13(1)(c) of the *RCMP Act* has been replaced by a more general reference to any “information” provided to a conduct board in paragraph 26(c) of the *CSO(Conduct)*.

[65] Further commentary and direction on this issue, including identification of the numerous systemic reforms introduced by the present conduct management system, are provided in the Principles section of the *Conduct Board Guidebook* (2017), and paras. 132 – 139 of the decision by the Level II (appeal) Adjudicator in *Commanding Officer “J” Division v. Constable Cormier* (dated November 20, 2017) (file 2016-33572, C-017).

[66] At the close of the “live” proceedings in Ottawa, the hearing was scheduled to continue by recorded, transcribed teleconference, on October 18, 2017, when the parties would make closing submissions on the establishment of the allegations. The CAR filed a written submission on the allegations shortly before this teleconference began, and corrected an error in those submissions by follow-up email later on the afternoon of October 18, 2017.

[67] The MR made oral submissions at the transcribed teleconference on October 18, 2017, and provided a brief written submission on October 20, 2017, in response to the CAR’s main written submissions on the allegations. The MR did not file any authorities, but made reference to the *RCMP Conduct Measures Guide* (November 2014) (the Guide), a copy of which the Conduct Board added to the record.

[68] On October 20, 2017, the MR also filed an email he had received on October 13, 2017, from the HSO, regarding the direction the HSO had given to the Subject Member to follow up with his treating physician as the HSO was not aware of any “treatment programs” specifically for steroid abuse to support cessation or withdrawal.

[69] The Conduct Board rendered an oral decision on the establishment of the allegations on October 23, 2017. Given limited witness availability in advance of this oral decision on the allegations, the Conduct Board permitted examination of Sergeant T. on his will-say, and further testimony from the Subject Member, which was to be considered by the Conduct Board at the conduct measures phase of the proceeding. A can-say for Sergeant T. had been filed by the CAR on October 19, 2017.

[70] On October 25, 2017, the Conduct Board delivered its oral decision on conduct measures.

[71] The oral decisions of October 23 and 25, 2017, were given with the caveat that findings, determinations and reasons would be expanded upon, clarified and explained in greater detail in this final written decision.

ALLEGATIONS

[72] The Appellant faced the following allegations at the commencement of the hearing on September 25, 2017 (Exh. CAR #1):

Allegation 1

Between September 3, 2014 and December 15, 2014, at or near Fort McMurray, in the province of Alberta, [the Subject Member] engaged in discreditable conduct in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “K” Division, in the province of Alberta.

Occurrence 2014-1112570 [1. **Medical Emergency** – see Exh. CAR #2, Tab 6]

2. On September 3, 2014, Fort McMurray RCMP received a call of a medical emergency. The Police Reporting and Occurrence System (“PROS”) report number 2014-1112570 was generated and you were assigned as the primary investigator for this file.

3. You failed to document the investigative actions you took in regard to this call for service into PROS as required.

4. On October 3, 2014, you approved the task related to this occurrence and concluded the occurrence without submitting them to your supervisor for review and approval.

5. You knew that you were not authorised to approve your own task and conclude your own occurrence and knew that your actions were contrary to the PROS policy.

6. Your actions concealed your failure to properly document PROS Occurrence 2014-1112570 from your supervisor.

Occurrence 2014-1170712 [2. **Medical File Theft** – see Exh. CAR #2, Tab 7]

7. On September 16, 2014, Fort McMurray RCMP received a complaint of theft from the Associated Medical Clinic. PROS Occurrence 2014-1170712 was generated and you were assigned as the primary investigator for this file.

8. In the PROS Occurrence summary, you wrote that the stolen item had been recovered and returned to its lawful owner. This information was inaccurate.

9. As the lead investigator you failed to take the necessary measures to ensure the accuracy of the information entered into PROS.

10. You failed to enter into PROS the stolen item that came into your control as directed by “K” Division Operation Manual, Section 47.2 - PROS General Occurrences.

Occurrence 2014-1187572 [3. **MVA with pedestrian** – see Exh. CAR #2, Tab 9]

11. On September 19, 2014, Fort McMurray RCMP received a call of a motor vehicle accident [(MVA)] involving a pedestrian. PROS Occurrence 2014- 1187572 was generated and you were assigned as the primary investigator for this file.

12. You failed to respond to this call for service and did not document the occurrence as required.

13. On September 24, 2014, you approved the task related to this occurrence without submitting it to your supervisor for review and approval.

14. You knew that you were not authorised to approve your own task and knew that your actions were contrary to the PROS policy.

15. Your actions concealed your failure to properly investigate and document PROS occurrence 2014-1187572 from your supervisor.

Occurrence 2014-1209098 [4. **Two 911 hang-up calls** – see Exh. CAR #2, Tab 11]

16. On September 24, 2014, Fort McMurray RCMP received two 911 hang-up calls originating from the same telephone number. PROS Occurrence 2014-1209098 was generated and you were assigned as the primary investigator for this file.

17. You failed to respond to this call for service and did not document the occurrence as required.

18. On September 27, 2014, you approved the task related to this occurrence and concluded the occurrence without submitting them to your supervisor for review and approval.

19. You knew that you were not authorised to approve your own task and conclude your own occurrence and knew that your actions were contrary to the PROS policy.

20. Your actions concealed your failure to properly investigate and document PROS Occurrence 2014-1209098 from your supervisor.

Occurrence 2014-1333626 [5. **Taxi Driver Threats** – see Exh. CAR #2, Tab 12]

21. On October 21, 2014, Fort McMurray RCMP received a 911 call from a taxi driver complaining of threats he had received from another driver. PROS Occurrence 2014-1333626 was generated and you were assigned as the primary investigator for this file.

22. You failed to respond to this call for service and did not document the occurrence as required.

23. On October 22, 2014, you approved the task related to this occurrence and concluded the occurrence without submitting them to your supervisor for review and approval.

24. You knew that you were not authorised to approve your own task and conclude your own occurrence and knew that your actions were contrary to the PROS policy.

25. Your actions concealed your failure to properly investigate and document PROS Occurrence 2014-133626 from your supervisor.

Occurrence 2014-1333463 [6. **Sexual Assault Complaint** – see Exh. CAR #2, Tab 13]

26. On October 21, 2014, Fort McMurray RCMP received a complaint of sexual assault. PROS Occurrence 2014-1333463 was generated and you were assigned as the primary investigator for this file.

27. You failed to conduct any follow-up investigation in regard to this call for service and did not attempt to obtain a statement from the suspect.

28. On October 26, 2014, you extended the task diary date although you were not in an active supervisory role contrary to “K” Division Operational Manual, Section 47.2 - PROS General Occurrences.

29. On November 27, 2014, you approved the task related to this occurrence and concluded the occurrence without submitting them to your supervisor for review and approval.

30. You knew that you were not authorised to approve your own task and conclude your own occurrence and knew that your actions were contrary to the PROS policy.

31. Your actions concealed your failure to properly investigate and document PROS Occurrence 2014-1333463 from your supervisor.

Occurrence 2014-1475177 [7. **Domestic Assault** – see Exh. CAR #2, Tabs 14, 15, 17, 18 and 19]

32. On November 22, 2014, Fort McMurray RCMP received a call for a possible domestic assault. PROS Occurrence 2014-1475177 was generated and you were assigned as the primary investigator for this file.

33. You failed to conduct a proper Violence in Relationships investigation and did not complete a (VIR) Check Sheet as directed by RCMP and “K” Division Operation Manual, Section 2.4 - Violence/Abuse in Relationships.

34. You failed to document your investigative actions, including the arrest and release of the subject of complaint, in the PROS Occurrence as required.

35. You failed to submit the occurrence or the related task for review to your supervisor in a timely manner, as directed by the RCMP Operational Manual, Section 47.1 - Management of PROS.

Occurrence 2014-1540341 [8. **Domestic Dispute** – see Exh. CAR #2, Tabs 16, 17, 18 and 19]

36. On December 9, 2014, Fort McMurray RCMP received a call for a domestic dispute. PROS Occurrence 2014-1540341 was generated and you were assigned as the primary investigator for this file.

37. You failed to conduct a proper Violence in Relationships investigation and did not complete a (VIR) Check Sheet as directed by RCMP and “K” Division Operation Manual, Section 2.4 - Violence/Abuse in Relationships.

38. You failed to take any statements from the complainants, attempt to obtain a statement from the subject of complaint and document your investigative actions in the PROS Occurrence as required.

39. You failed to submit the occurrence or the related task for review to your supervisor in a timely manner, as required by RCMP Operational Manual, Section 47.1 – Management of PROS.

40. Your conduct in relation to the eight above PROS Occurrences was discreditable.

[...]

Allegation 3

On or about June 15, 2015, at or near Fort McMurray, in the province of Alberta, [the Subject Member] engaged in discreditable conduct in a manner

that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention:

1. At all material times you were a member of the Royal Canadian Mounted Police (RCMP) posted to “K” Division, in the province of Alberta.
2. On April 20, 2015, you were placed on administrative duties and assigned to work with the traffic section under the direct supervision of [Corporal (Cpl.)] [M.M.]. As the [Non-Commissioned Officer in Charge] of the Administrative Unit - Member Services, [Sergeant (Sgt.)] [D.T.] was responsible to oversee your placement.
3. On June 15, 2015, you met with Cpl. [M.M.] and Cst. [P.E.] to discuss work related issues.
4. During the meeting, you became very angry and made inappropriate comments towards other members of the RCMP. In particular you made statements to the effect that:
 - Cpl. [I.C.] was lucky that your daughter was around when he went to your place as otherwise you would have punched him out;
 - Sgt. [D.T.] better send the Emergency Response Team (ERT) the next time he sends someone to your place as something bad is going to happen. There would be an assault peace officer charge for sure;
 - You were going to kill Sgt. [D.T.] if he ever show up at your place again.
5. Your comments and behaviour caused Sgt. [D.T.] to fear for his safety.
6. You therefore behaved in a manner that is likely to discredit the Force.

[*Sic throughout*]

FINDINGS ON THE ALLEGATIONS

[73] As briefly described above, the Subject Member was approved to testify, as the written Response filed by the MR contained information and references beyond those provided in the Subject Member’s recorded statement with an RCMP internal investigator. This testimony also permitted cross-examination of the Subject Member concerning information and assertions contained in both his statement and written submissions.

[74] The Conduct Board’s immediate review of the investigation materials indicated that the lion’s share of the particulars provided for Allegation 1 were established by the PROS entries,

the task/occurrence conclusions by the Subject Member, and the admissions he provided in his initial statement to an internal investigator. However, the position argued by the MR was to the effect that, notwithstanding his admissions of contraventions under Allegations 1 and 3, certain of the Subject Member's admitted acts and omissions should not be found discreditable conduct, or should be found significantly mitigated, given inadequate supervision, the Subject Member's file workload, competing investigative obligations surrounding his dispatch on the identified files, and approved absences from duty related to his father's treatment in Ontario for a serious medical illness.

[75] Therefore, the CAR tendered a tabbed binder containing the PROS file records for each of the eight investigation matters (Exh. CAR #2) to facilitate the CAR's examination of the Subject Member on matters which were put forward to deny or mitigate misconduct under Allegation 1.

[76] I confirm my duty to employ the balance of probabilities standard of proof when determining whether any contravention has been established. It is clear from the submissions of the parties that the Subject Member's identity was not at issue with respect to both Allegations 1 and 3.

Allegation 3

[77] After a review of the record, including the peace bond hearing transcript, the admissions contained in the Response filed under subsection 15(3) of the *CSO (Conduct)*, the statements of the members interacting with and observing the Subject Member when his impugned utterances were made, the testimony of the Subject Member, and after considering all written and oral submissions of the representatives, I find all of the particulars for Allegation 3 to be established.

[78] Allegation 3 is brought under section 7.1 of the Code of Conduct, which states: "Members behave in a manner that is not likely to discredit the Force."

[79] In determining whether an allegation under section 7.1 is established, I have applied the approach articulated in the analysis made by the RCMP External Review Committee (ERC) at

paras. 92 - 93 of ERC recommendations C-2015-001, C- 008, contained in reasons dated February 22, 2016:

Discreditable behaviour is based on the task 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.

Testimony of consulting neuropsychologist

[80] The examination of Dr. P., Dr. S., and the HSO explored the extent to which the Subject Member's poor performance on certain tests administered by Dr. P. might indicate cognitive problems that could be tied to the Subject Member's impugned acts and omissions identified in the Notice. As a general proposition, the MR questioned whether, given the recommendations in Dr. P.'s report, including the suggestion that (commencing in April, 2014) the Subject Member should receive six months of psychotherapy before return to duty, the Subject Member should have returned to full duties in July, 2014. With two other recommendations of Dr. P. not acted upon (MRI neuro- imaging, and psychiatric assessment), the MR questioned the propriety of asserting misconduct under the Notice.

[81] I do not find the HSO's approval of the Subject Member's return to duty in July, 2014, to create any defence to the alleged misconduct, nor to make my adjudication of the alleged misconduct some sort of condonation on my part of an abuse of process by the Conduct Authority.

[82] Moreover, in the re-examination of Dr. P. by the CAR, it became apparent that the Subject Member's steroid use at the time of his April, 2014, assessment by Dr. P. (only confirmed in the lab results received in May, 2014) significantly diminished any imperative or obligation for Dr. P.'s recommendations for MRI imaging and psychiatric assessment to be completed before the Subject Member's return to full operational duties.

[83] Accordingly, having found the particulars for Allegation 3 to be established on a balance of probabilities, I further find that the Subject Member's conduct under Allegation 3 contravenes section 7.1 of the Code of Conduct, in that his utterances, and overall aggressive demeanour

when making those utterances, would cause a reasonable person to find his conduct brought discredit on the Force.

Allegation 1

1. Medical emergency

[84] On the basis of the Subject Member's handwritten police notes, his statement during the internal investigation, the Response, and his testimony, I find that the Subject Member attended this call, which involved an individual in need of medical attention and for whom emergency medical services had been offered and declined.

[85] After a review of the PROS system documentation contained in the record, I find Particulars 3, 4 and 5 established as the Subject Member plainly failed to document his investigative actions. In his statement, the Subject Member readily summarized his deficiencies on this call, "I showed up. There was no medical. They didn't need police. I didn't document this plain and simple." As established by the PROS file print out, it is not in dispute that the Subject Member approved the initial electronic PROS file "task" and concluded the PROS "occurrence". He performed these steps knowing he lacked authority to do so; therefore, he acted contrary to the PROS policy.

[86] Specifically with respect to the Subject Member's awareness that he lacked authority to conclude file items himself, rather than forward them to a supervisor to be concluded as covered by Particular 5, the pertinent portion of the Subject Member's statement and his testimony in cross-examination establish that he had this awareness, and that his actions were not the result of a simple mistake or innocent series of faulty entries or actions.

[87] With respect to Particular 6, and this applies to other similar particulars, I find that the Subject Member failed to properly document his actions by making the necessary entries on the PROS file system, and by approving the task and concluding the occurrence with no supervisor being aware of his failure to document his investigative actions. As correctly submitted by the CAR, "[it is] unacceptable for a member to attend a call and not write a single thing in the file".

2. Medical file theft

[88] I find that Particulars 7, 8 and 9 established, as plainly the Subject Member was the primary investigator concerning a patient file taken from a medical clinic by the patient herself, he made an inaccurate entry on the PROS file that the file had been returned to the clinic (technically its “lawful owner”), and given that the file was instead found in his bin at the Detachment, he failed to ensure this PROS entry was accurate.

[89] Particular 10 alleges that he failed to enter into PROS an item that came into his control. I note that there is no handwritten police note by Cst. T. that she dropped the medical file in the Subject Member’s bin, and there is no PROS entry by Cst. T. to that effect. When contacted by investigators, a considerable time after the fact, Cst. T. nevertheless believed that she had promptly placed the stolen patient file in the Subject Member’s bin after acting on the Subject Member’s request to attend the patient’s residence and retrieve the file.

[90] It is important to consider the Subject Member’s reaction when questioned on this file, at page 18 of his statement:

That was a [inaudible] and [location redaction] took it. I was in contact with Cst. [T].

She went and got it. She said she had it. I thought she was going to bring it to the clinic so I said conclude, brought back. Had I known it was in my file bin we would have returned it, or seen it. I didn’t know it was in my file bin. That’s what -- that’s the only -- I’m fucking scared about that one because I didn’t -- that’s how we work downtown, oh, okay, you’re going to take it, okay, thanks, I’ll conclude the file, done. I didn’t see her physically take it and I didn’t know it was in my frigging file.

[91] Having considered the relevant information, including the Subject Member’s spontaneous reaction when questioned, I am not satisfied on a balance of probabilities that the Subject Member was aware that the retrieved stolen medical file had been placed in his bin, and not, as he initially understood it would be, returned directly to the medical clinic by Cst. T.

[92] This still leaves me with the issue of the Subject Member’s failure to make an electronic file entry related to a stolen item that came into his control. To the extent that the stolen medical

report ended up in his bin, to be located by a subsequent review of his files while he was absent from duty, he certainly failed to ever make any entry concerning it. But I am simply not satisfied that he noted whenever it was placed in his bin. I do not believe at the time that the Subject Member made the impugned entry with respect to the medical file that he was aware that the recovered medical file was in his bin. I am not satisfied that he was aware that the medical file was in his bin until questioned, and further when it was brought to his attention upon receipt of the investigation report.

[93] I accept that from the time that the Subject Member received this call for service until he departed to Ontario in order to see his father, he worked 36 shifts. Therefore, I acknowledge that it may be hard to believe that the patient file could be in the Subject Member's bin for that length of time, but my impression is, given the struggle that he was having with keeping up with his files, it may simply have been overlooked by the Subject Member. Had there been an entry by Cst. T. on the PROS system, or simply confirmation by email to the Subject Member, to the effect that the stolen file had been returned to the Subject Member's bin, and not to the medical clinic, my finding could well have been different. As such, an entry or email would have alerted the Subject Member to the file's location *before* he concluded the file.

3. MVA with pedestrian

[94] With respect to the MVA complaint involving a pedestrian, clearly all particulars are established. From the Subject Member's statement, the Response and his testimony, as well as the PROS entries (or lack thereof) for this matter, I am satisfied that he failed to respond to this call for service, did not document the occurrence as required, and approved the task related to this occurrence without submitting it to his supervisor for review and approval.

[95] I am not convinced that another call, in which the Subject Member's availability was taken up by his attending roadside at the scene of a stolen motor vehicle, or taken up attending a casino to assist in breaking up a fight, prevented him from attending this MVA complaint, or at least communicating with telecoms, or a colleague or supervisor then on duty, to request that the file be reassigned to another member to attend the call. I agree with the CAR that a fifteen-

minute delay before the complainant called seeking a police response, and the complainant's apparent lack of physical injuries, did not provide a legitimate basis for the Subject Member to minimize his duty to respond.

4. Two 911 hang-up calls

[96] With respect to the occurrence involving two 911 hang-up calls, clearly all particulars are established on the basis of the Subject Member's admissions, combined with the PROS file entries (or lack thereof). I am not convinced that another legitimate duty obligation, assisting at the Detachment building with tasks arising from the execution of a search warrant, prevented the Subject Member from responding to these 911 hang-up calls, or at a minimum prevented him from ensuring another member responded if he was genuinely unable to respond appropriately.

5. Taxi driver threats

[97] With respect to the occurrence involving the 911 taxi driver threats, again all particulars are established on the basis of the Subject Member's admissions and the PROS file entries (or lack thereof). I find that he was assigned as the primary investigator for this file, he failed to respond to this call for service, he did not document the occurrence as required, and he approved the task related to this occurrence and concluded the occurrence without submitting them to his supervisor for review and approval.

[98] Whether or not another member responded to the call, the fact remains that the Subject Member was the assigned investigator and he made no entries on the file. I am not convinced that the Subject Member's availability to respond to this matter was compromised by his conducting a lengthy interview with a complainant in a sexual assault matter.

6. Sexual assault complaint

[99] The next impugned investigative matter involves a complaint of sexual assault, involving the complainant, Ms. P., and the suspect, Mr. W.

[100] The CAR concedes that, with respect to Particular 27, the Subject Member did conduct an interview with Ms. P., and that, whether in person as could be the case or by telephone as the CAR submits, the Subject Member contacted the hotel to determine in some manner the existence of a surveillance or security video. However, it is also true that, as captured in Particular 27, the Subject Member did not attempt to obtain a statement from the suspect. And so, in that regard, that portion of Particular 27 is established.

[101] For Particular 28, there is no issue that the Subject Member extended his own diary date contrary to PROS policy. And for Particular 29, there is no issue that the Subject Member approved his own task and concluded the occurrence. Particulars 30 and 31 are also clearly established. I am not convinced that the passing of the Subject Member's father at Christmas 2014 strongly influenced the Subject Member's decision to conclude the file himself, as the file was concluded on November 27, 2014.

[102] The investigation of this matter was reinstated after it was concluded by the Subject Member. A voluntary statement from the suspect, Mr. W., was obtained, and it was determined that Ms. P.'s participation was voluntary, leaving investigators with insufficient grounds to further pursue a sexual assault charge. Nevertheless, it was also incumbent on the Subject Member to enter Mr. W.'s details in the ViClas system when he still had responsibility for the investigation.

7. Domestic assault

[103] With respect to this call concerning a possible domestic assault, I find Particular 32 is established.

[104] However, concerning Particular 33, I find that, while that the Subject Member did not conduct a violence in relationship (VIR) investigation and he did not complete a VIR check sheet (Exh. CAR #3), in the circumstances, these omissions by the Subject Member do not support discreditable conduct, because I am satisfied that the Subject Member reasonably determined that there was insufficient evidence of a domestic assault shortly after his arrival on scene. This

is consistent with information received from Cst. S. (who also attended the call) and it is consistent with the CAR's own oral submissions.

[105] However, Particular 34 is established. While the Subject Member may have made handwritten notes of his interactions on scene, there are no entries in PROS by the Subject Member. In addition, there is no reference to the "POPE" arrest and release of the male encountered at the scene as identified in Particular 34 (Exh. CAR #4). However, there appears to be an entry of this male's details on the file by Cst. S. I accept the CAR's timeline to the effect that, from when he first received this file, the Subject Member had approximately 13 shifts in which to make appropriate file entries, documenting his rationale for not treating the file as a domestic assault matter.

[106] Given the initial dispatch of this matter as a domestic assault, and given the fact that it remained open at the time of the Subject Member's extended period when he was off duty sick, I find that Particular 35 is established in that this investigation report was not submitted to the Subject Member's supervisor in a sufficiently timely manner.

8. Domestic dispute

[107] The last impugned occurrence involves a call that was dispatched as a "domestic dispute". This is another matter where the Subject Member clearly did attend the incident, given the entry in his handwritten notes. However, while his conversations with security guards and with Mr. C., and potentially his taking a piece of wood away from Mr. C. are in some manner captured in his handwritten police notes, there is little to suggest that any other investigative steps were taken. He did not document his investigative actions in the PROS file, an omission identified in Particular 38.

[108] The CAR argues that because Mr. C. was noted as knowing the "girl in pink", and because the Subject Member described her as a girlfriend (seemingly of Mr. C.) in his notes, this matter should have been treated as a domestic dispute that required adherence to VIR procedures and the completion of the related VIR check sheet.

[109] While it is the case that the Subject Member failed to document his investigative actions, based primarily on his statement to investigators, I am satisfied that he had reasonably formed the opinion that this was not a VIR matter and instead was more akin to a mischief matter involving potential damage to property. Had the Subject Member adequately captured his observations and rationale in a PROS entry, the CAR's suggestion of a discreditable failure to complete the VIR procedures and checklist would likely not have arisen.

[110] The Subject Member's failure to properly document investigative steps in the PROS file for a matter dispatched as a domestic dispute matter is nevertheless troubling, as is the fact that this matter remained open by virtue of the Subject Member failing to submit it for review in a timely manner. I find that Particular 39 is established.

Summary of findings on Allegation 1

[111] Based on my above-noted specific findings concerning the investigations particularized under Allegation 1, I am satisfied that, with respect to the individual investigative files, the Subject Member's failure to respond to calls and to make entries capturing investigative actions, his extension of his own diary date, and his approval or conclusion of tasks and occurrences himself, constitute discreditable conduct under Allegation 1.

[112] In finding Allegation 1 established under section 7.1 of the Code of Conduct, I confirm that I have applied the approach articulated in the analysis made by the ERC paras. 92 - 93 of ERC recommendations C-2015-001 and C-008, contained in the reasons dated February 22, 2016.

[113] As explained in my analysis for Allegation 3 above, I do not find any defence or abuse of process argument arises from the Subject Member's return to duty in July, 2014, without completion of the MRI imaging, psychiatric assessment, and extended psychotherapy identified in Dr. P.'s report.

[114] The particulars in various places allege that the Subject Member himself concluding his own tasks and occurrences on the PROS system *concealed* other discreditable acts or omissions

he committed on his investigative files. It is my finding that these particulars are established, but only in the sense that they simply state the result of the Subject Member concluding matters himself. The actions or inactions that he took on files were not made known to his supervisors as a result of him personally concluding or approving matters as he did. It will be in the conduct measures phase for the parties to argue any other inferences that I should draw from these facts.

CONDUCT MEASURES

[115] On October 20, 2017, the CAR filed the following authorities concerning appropriate conduct measures:

- (2013), 13 A.D. (4th) 267 (Adj. Bd., sanction varied to accept non-dismissal joint proposal, by Acting Commissioner Dubeau's Level II appeal decision issued on January 24, 2018, D-133)
- (2006), 29 A.D. (3d) 20 (Adj. Bd.)
- (2005), 25 A.D. (3d) 276 (Adj. Bd.)
- (2017), 2017 RCAD 3

[116] I confirm that I am obliged to consider the nature and circumstances of the contraventions and to identify proportionate conduct measures. In doing so, I am obliged to consider aggravating and mitigating factors. A number of aggravating factors I consider of significance were identified by the CAR. To perhaps a more limited extent, I accept certain mitigating factors that were articulated by the MR.

Allegation 1

[117] The Conduct Authority seeks an order pursuant to paragraph 45(4)(b), directing the Subject Member to resign from the Force within 14 days or be dismissed. From the CAR's point of view, the range of sanctions ranged from a high financial penalty in the 35- to 45-day range, to a reduction in the rate of pay, to a direction to resign. I believe the CAR accurately describes the

range of potential conduct measures for the type of misconduct established against the Subject Member.

[118] The CAR submits that, when the Conduct Board considers the totality of the Subject Member's situation, there is insufficient mitigation available to retain the Subject Member in the Force.

[119] With regards to Allegation 1, I accept the following as aggravating factors:

- The investigation related to acts and omissions occurred over a period of four months.
- The misconduct was not accidental, in the sense that the Subject Member's concluding of his own files involved an element of concealment, and necessarily had the effect of preventing the Subject Member's supervisors from reviewing his work. I consider too extreme, and therefore do not fully accept, the CAR's characterization of this aspect of the misconduct as intentional acts of deceit.
- The misconduct resulted in the Subject Member obtaining a personal benefit in the sense that he avoided accountability for his lack of action on files.
- Some files involved inaction on serious matters, or at least matters that when dispatched appeared serious, requiring a prompt police response.
- Some omissions on files required other members to complete appropriate investigative and follow-up work months later, reflecting badly on the Force.
- While admitting to the allegations in his written submissions, the Subject Member offered in his testimony a number of unsupported and inconsistent explanations for his deficient investigative actions and file documentation and review, undermining his integrity and credibility before the Conduct Board. I must observe that many of the inconsistencies in the Subject Member's testimony seemed to be the product of his confusion over timelines, or lapses in memory, rather than the result of deliberate attempts to offer misleading or favorable testimony.

[120] With respect to Allegation 3, I find the informal discipline imposed on the Subject Member by way of a reprimand, administered on July 17, 2014, respecting a traffic stop performed on his then estranged girlfriend for a non-operational purpose, to be of limited relevance. I do not find this informal discipline in any way relates to the investigative deficiencies, and bypassing of supervisory review, encompassed by Allegation 1. More generally, however, the fact that the Subject Member received this informal reprimand not long before his outburst at the Detachment on June 15, 2015 (encompassed by Allegation 3) eliminates any thought that the threatening utterances might be an isolated episode of misconduct in an otherwise unblemished RCMP career.

[121] The CAR points to a final aggravating factor that, in the CAR's submission, made the Subject Member's loss of employment appropriate: his admitted steroid use.

[122] It was argued that the Subject Member's willingness to undergo rehabilitation for steroid use had come too late in the day. The Subject Member had been taking steroids over an extended period of time and this was not compatible with his status as a police officer. His use of steroids had (by his testimony, with some deliberate interruptions and unsuccessful efforts to stop) continued from the time he was warned by the HSO, in July 2014, right up to his testimony on October 23, 2017. His steroid use had continued, the CAR argues, until he was confronted with the positive lab test results of May 2014 during this Conduct Board hearing. This aggravating factor, argues the CAR, severely compromises the Subject Member's suitability as a police officer.

[123] The challenge for this Conduct Board is to assess the significance of the Subject Member's steroid use as a possible mitigating contributor to his misconduct, but also to determine the extent to which his steroid use should be considered an aggravating factor, particularly when it continued (with, apparently, some interruptions) right up to his testimony before this Conduct Board. Complicating this assessment or weighing of competing factors was the difficulty experienced by the MR in obtaining the Subject Member's complete medical file, and how the MR's efforts to obtain disclosure of the complete file came to involve its disclosure to the Conduct Board and the CAR. I find that the denial of the complete file to the MR, even

with a signed authorization from the Subject Member, and instead the file's ultimate provision to both parties and the Conduct Board by issuance of a summons, to some extent compromised the procedural fairness due the Subject Member. The medical file materials concerning the Subject Member's steroid use may not have been brought under the Conduct Board's scrutiny if they were, from the start, only provided to the MR and his client. Ordinarily, his steroid use would be a clear and serious aggravating factor, but in the unique circumstances of this matter, I am not prepared to assign it such significance that it demands the loss of the Subject Member's employment – not as an isolated factor, not as a factor of such significance that it tips the “proportionate” balance to require loss of employment.

[124] Information filed by the MR, for consideration specifically in the conduct measures phase, comprised:

- Email exchanges involving the Division Psychologist, Dr. S., and the Non-Commissioned Officer in Charge of Member Services, [location redacted] Detachment, concerning the troubling observations made of the Subject Member by members attending his residence on January 14, 2014, which included issues of lethargy, “blunted [e]ffect” and non-adherence to prescribed medication for depression issues.
- A “Summary of Attendance” from Mr. E.L. (Masters degree in Social Work, Alberta Health Services), dated September 19, 2016, identifying the completed anger management counselling sessions ordered on April 16, 2016, as part of the peace bond conditions arising from the Subject Member's criminal threats charge (referenced under Allegation 3). This document also provides Mr. E.L.'s findings that the Subject Member has been a reflective, contemplative and active participant in counselling, who has made good progress, recognized the unacceptable nature of his past behaviour, and appeared generally remorseful. Mr. E.L. indicates that the Subject Member “remains duly motivated to embrace anger management counselling” and would benefit from continued counselling. It is notable that neither Mr. E.L., nor any other health professional, was directly requested by the HSO to address steroid use issues with the Subject Member,

notwithstanding the provision of Dr. P.'s report to the Subject Member's personal physician.

- An undated letter from the Subject Member's aunt, providing her observations and opinions concerning her nephew's appropriate interaction with her over a 15-month period, including when she visited him in April and September 2015. She states that the Subject Member provided his two young daughters with excellent parenting and "always appeared in control of situations". The letter is very brief, states in one portion that the Subject Member has "shared the distress he feels from some of his duties as a RCMP officer" and goes on to mention Post Traumatic Stress Disorder and, it appears, some of its symptoms. The writer identifies herself as "Dr. [G.G.] C. Psych.", but no further information exists in the MR's submitted materials establishing any professional expertise or qualifications. It is my finding that this letter is of very limited weight, and only serves to confirm that the Subject Member has support from other family members, either by telephone or in-person.
- A letter dated March 22, 2016, by the Subject Member's mother, providing her character reference for him, and outlining her belief that the uttering threats charge was "highly contrary to his work ethic and disposition in life". I consider of more assistance and relevance her pithy overview of significant stressors in her son's life during the relevant misconduct period:

This offence occurred at a time in [the Subject Member]'s life when he had been under extreme stress from 2012 to 2015 due to the breakup of his marriage, the pressure of being a co-parent with a high demanding job, and the sickness and death of his father in Ontario. [*Sic throughout*]

- A synopsis of the statement obtained from Staff Sergeant J.K. on January 13, 2017, Watch Commander for the Subject Member's shift starting in the fall of 2014. The statement touches on a number of items, referencing the Subject Member's need for compassionate leave related to his father's illness, the members responsible for his direct supervision, and Staff Sergeant J.K. not being aware of, nor involved in, issues concerning the Subject Member's completion of investigations.

- The “Wood Buffalo RCMP 2014 Annual Report to our Community”, which includes graphs and other presentations of statistics concerning crime rates, calls for service, human resources, and analysis of prevalent types of offences that were prosecuted.
- A report from Statistics Canada entitled “Police-reported crime statistics in Canada, 2015”
- The Subject Member’s RCMP “Performance Evaluation and Learning Plan” for the period of April 1 to October 31, 2012, during which he worked in the Property Crime Unit working out of the Fort McMurray Detachment.
- The synopsis for Cpl. M.Q.’s statement, obtained on January 12, 2017, which includes reference to his role as an acting supervisor on “A” Watch, and the fact that he never directly supervised the Subject Member.
- A collection of documents drawn from the Subject Member’s RCMP medical file, received by the Conduct Board on July 14, 2017, coincidental with a PHC within the RCMP headquarters building in Ottawa.
- A collection of materials mailed to the Conduct Board by the office of the Member Representative Directorate, received on September 5, 2017, and referred to in the “live” hearing in Ottawa as the “Campbell package” given they were medical documents disclosed by the MR (Exh. MR #1). These materials include the HSO’s handwritten entry of July 10, 2014, recording matters discussed on that date with the Subject Member (joined by Dr. S.). One recorded item indicates:

[...] reviewed drug testing – acknowledged use of Anavar in past. Advised that steroid use not compatible with policing and that he may be subject to further testing in future by writer.

The filing of these materials by the MR is noted, as the tortuous process by which the MR (and the CAR and the Conduct Board) ultimately received a complete copy of the Subject Member’s full medical file was only completed later; therefore, it did not play a part in the disclosure of this reference to steroid use.

- A further collection of medical documents, contained within the complete RCMP medical file for the Subject Member, which was raised in witness questioning on September 28, 2017, and by agreement of the parties, were then hard copied into a marked exhibit for ease of reference. (Exh. MR #2).

[125] I find that performance log documentation filed by the CAR establishes prior performance issues were brought to the Subject Member's attention concerning unreliable work attendance (Exh. CAR #5), file management and completion of appropriate investigative reports (Exh. CAR #6, a performance log that lacks a signed acknowledgment by the Subject Member, but which I find was likely raised with him, on the basis of Sergeant T.'s testimony). While dealt with as a performance issue, the Subject Member's deficient file work constitutes an aggravating factor in the sense that the Subject Member was made aware that greater attention to his written investigative file work was required. At the same time, it places the Subject Member's investigative omissions in a context that clearly involved his struggling to meet reasonable performance standards documenting a number of his files. This Conduct Board views the Subject Member's predicament as involving, to some extent, his continuing willingness to bite off more dispatched calls than he could successfully, administratively chew.

[126] I find the following mitigating factors exist in the circumstances of the contraventions established in this matter:

- In his statement to the internal investigator concerning the elements of Allegation 1, the Response, and his testimony before the Conduct Board, the Subject Member admitted to the misconduct, or at least readily admitted to his acts and omissions, on numerous occasions, demonstrating (on occasion on something less than an unreserved basis) his willingness to be accountable and responsible.
- By the manner in which he, at a relatively early point in the criminal proceeding, admitted to his actions, and entered into a peace bond concerning the threatening utterances encompassed by Allegation 3, the Subject Member demonstrated a willingness to be accountable and responsible.

- By his completion of anger-management counselling ordered as part of the terms of his peace bond, the Subject Member demonstrated a willingness to participate in, and a capacity to benefit from, mental health services directed to his rehabilitation, and the prevention of any repetition of this type of misconduct.
- While his continued use of steroids is not acceptable, the Subject Member's admission under oath that he was still using them indicates that the Subject Member still operates in accordance with the core values of honesty and accountability. This admission was clearly an embarrassing one for the Subject Member to make, and his comment that he was not offered "rehab" (which suggests a deflection of personal responsibility) has to be assessed against the emotional state he was in at this point in his testimony.

[127] With respect to Allegation 1, the fact that performance, or poor performance, bled into discreditable conduct, has to be reflected in the nature of the contraventions to be addressed by conduct measures. I simply do not consider the nature of the misconduct under Allegation 1 to rise to the level of dishonesty and self-benefit involved in the reported theft cases, and other disciplinary cases, cited by the CAR as justifying the Subject Member's loss of employment as the proportionate conduct measure. The Subject Member's actions involved omissions in necessary investigative and administrative steps, and inappropriate task and file conclusion without appropriate supervisory review. He did not make false entries, he did not make any attempt to falsify information or evidence in order to aid in an individual's prosecution.

[128] **Medical emergency – 2 days' loss of pay:** The Subject Member's failure to enter information from his police notes (documenting his investigative actions) may be viewed as a performance issue. However, the approval of his own task, and concluding of the occurrence, was contrary to policy and undermined the role of file supervision expected by that policy. Therefore, this crossed the line from performance to misconduct. A forfeiture of 2 days of pay is imposed for the acts/omissions and resulting lack of supervisory oversight identified in Particulars 4, 5, and 6.

[129] **Medical file theft – 1 day's loss of pay:** I have identified the RCMP adjudication board decision in (2004) 21 A.D. (3d) 168, which involved a similar situation where a member stated something as completed, when it was yet to be completed. In that adjudication board matter, the member stated a warrant was cancelled on a certain date, when in reality it was only cancelled on a later date. The subject of the warrant was obliged to respond to the warrant until its cancelled status was determined. The adjudication board imposed a reprimand and the forfeiture of 3 days of pay. In the present case, the Force has a legitimate expectation that file entries are accurate; therefore, the actions of the Subject Member are deserving of correction under the conduct management system. There are overarching remedial measures I will identify later that pertain to performance, but I impose a forfeiture of 1 day's pay for this inaccurate entry in PROS. The medical file was ultimately located in the Subject Member's bin. I do not accept that he made the inaccurate entry knowing the medical file was not delivered to the clinic by Cst. T. I am not satisfied that the file was immediately placed in his bin by Cst. T, notwithstanding her recollections captured in her subsequent email to an investigator. I am influenced by the Subject Member's reaction in his investigation interview, confirmed in his testimony before the Conduct Board. When this file was sent to his supervisor, it was still open to the supervisor to point out that, under policy, the recovered stolen medical file should have been essentially logged into the PROS system as an exhibit, rather than returned directly to the clinic. This lack of supervisory input must be taken into account in assessing a proportionate penalty.

[130] **MVA with pedestrian – 2 days' loss of pay:** The lack of any response to this call, which was a relatively low priority call, was not acceptable and although it reflects poor performance, it crosses into a matter of misconduct given that there was apparently no effort to have the file reassigned to another member working on that shift who could respond. I view it as appropriate to impose a 1 day forfeiture of pay for the failure to respond and a further 1 day forfeiture of pay for the Subject Member approving his own task. This occurrence matter remained subject to review by a supervisor. While it may be the case, in practice, that approving the task would cause a supervisor to conclude the file, supervisory oversight remained and the absence of any documented actions by the Subject Member could, or perhaps should, have been questioned before the file was concluded.

[131] **Two 911 hang-up calls – 15 days' loss of pay:** I consider the Subject Member's failure to respond, by taking some action to address the receipt of two 911 hang-up calls, to be a serious matter, which calls for the imposition of a significant forfeiture of pay in order to deliver a sharp corrective message, specifically to him, and to make it clear as a matter of general deterrence that this type of matter requires the tasked member to respond or to ensure that the response is assigned to another member. Therefore, I impose a forfeiture of 12 days of pay for the lack of any response or suitable efforts to ensure a response by another member. Given the seriousness of the matter, I impose a greater penalty of 3 days' loss of pay for the Subject Member's approval of his own task, and his concluding of the occurrence. I note that this matter remained open from September 24, 2015, when the two hang-up calls took place, until September 27, 2015, when the occurrence was concluded. I would expect supervisory members to be keeping abreast of a high priority matter like this one. I view the absence of any input by any level of supervision as concerning. The apparent absence of active file monitoring may reflect the staffing shortfalls identified in Sergeant T.'s testimony. I consider the absence of active supervision of this matter, not the mere presence of an identified supervisor or supervisors on any particular shift, to be mitigating for this matter.

[132] **Taxi driver threats – 3 days' loss of pay:** With respect to this item, it appears to be a question more of performance than of discreditable conduct. However, the individual involved was owed a response; therefore, my view would be that the failure to respond, or perhaps in this case to ensure another member at least responded by contacting the complainant, warrants the imposition of two days' loss of pay. And for the member having approved and concluded the matter, I would impose a one-day's loss of pay. It is my understanding that there was no further call received from the complainant on this taxi threat file, and while certainly that complainant was owed a response, it indicates to me that the matter was not urgent.

[133] In addition, I believe that the Subject Member's familiarity with some of the community that he policed, including some of the taxi drivers working in his patrol zone, may have informed his view of whether the complaint was legitimate, and whether there was a real threat to public safety. However, it may also have worked against him by causing him to become somewhat callous and desensitized, leading him to treat the request for police assistance inappropriately.

[134] **Complaint of sexual assault – 21 days’ loss of pay:** The Subject Member fully admitted his unacceptable rationale for concluding this file as he did. Ultimately, when the subject of the complaint was interviewed by another investigator, no charge respecting sexual assault was considered appropriate. Nevertheless, the Subject Member’s failure to conduct an appropriate investigation warrants severe condemnation and correction. Therefore, I impose a forfeiture of 15 days for his failure to take steps to obtain a statement from the suspect, 1 day for extending his own diary date, and 5 days for approving his own task and concluding the file himself. I view a greater loss of pay for the task approval and file conclusion aspects as warranted, given the high priority to be given to any complaint of sexual assault. The deficiencies in this investigation were apparently only noted in January 2016 and greater investigative actions were taken some time after that. This no doubt reflects the initial status of the file as concluded, but it may also reflect a broader need for greater, more timely review of high priority matters by further levels of supervision.

[135] **Domestic assault and domestic dispute files:** With respect to both of these matters, I view the Subject Member’s failure to record his investigative actions (reflected in entries in his notebook, but never entered in the PROS files) as ultimately the *gravamen* misconduct of the established discreditable conduct. In both instances, the Subject Member determined that no matter how they were described in the dispatch summaries, neither instance called for an investigation as a VIR matter. The absence of timely entries documenting investigative actions and assessments supporting non-VIR treatment by the Subject Member could be viewed as performance matters. However, given how these matters were initially described, his failure to make those entries in a timely manner raises these occurrences to the level of misconduct as it reflects a significant lack of diligent performance of his duties, which constitutes discreditable conduct.

[136] **Domestic assault – 3 days’ loss of pay:** The Subject Member should have recorded the subject of the complaint’s arrest and release on an unrelated warrant matter on the file, but I find that this oversight partially reflected his lack of knowledge, at the time, concerning how the hard-copied documentation he completed for the arrest and future court date would be processed within the Detachment file systems.

[137] **Domestic dispute – 3 days’ loss of pay:** The Subject Member’s notes indicate that he communicated with one or more complainants – the security guards -- but his failure to take down their details and at least summarized statements reflects more than poor performance, as does his failure to input the details for the subject of the complaint and, if she could be located upon his arrival, the details for the “girl in pink”.

[138] The total forfeiture imposed for Allegation 1 amounts to 50 days’ loss of pay:

- *Occurrence 2014-1112570* - 1. Medical Emergency 2 days
- *Occurrence 2014-1170712* - 2. Medical File Theft 1 day
- *Occurrence 2014-1187572* - 3. MVA with pedestrian 2 days
- *Occurrence 2014-1209098* - 4. Two 911 hang-up calls 15 days
- *Occurrence 2014-1333626* - 5. Taxi driver threats 3 days
- *Occurrence 2014-1333463* - 6. Sexual assault complaint 21 days
- *Occurrence 2014-1475177* - 7. Domestic assault 3 days
- *Occurrence 2014-1540341* - 8. Domestic dispute 3 days

[139] Therefore, under my authority to impose a financial penalty under paragraph 5(1)(j) of the *CSO (Conduct)*, I impose a forfeiture of 50 days’ loss of pay for Allegation 1. I also impose a reprimand under paragraph 3(1)(i).

Allegation 3

[140] I view the full range of conduct measures described in the Guide at pp. 48-49 as being of potential application in the circumstances of this contravention.

[141] I have very carefully considered the submissions of the CAR with respect to the aggravating features that pertain to Allegation 3. I accept the following aggravating factors, as identified by the CAR:

- It is true that the Subject Member was in an administrative role at the time of this contravention, and really was on notice that his best behaviour was expected.
- His utterances took place in the workplace, and were directed to other employees.
- He persisted in making at least the final utterance, notwithstanding being advised that his remarks were being written down. And while it did not form part of the acts or omissions in Allegation 3, when he left the meeting where the impugned comments were made, he repeated his comments to the same effect to other employees.

[142] Accordingly, I believe that the aggravated range identified in the Guide for misconduct involving uttering threats is most appropriate.

[143] However, if one looks at some of the other aggravating features considered in the aggravating range, they are absent here. There was no direct person-to-person threat. There was no weapon present. The central feature of the Subject Member's comments was that if anybody came to his house again, then X would happen, then he would do Y. These are not "I am going to" clear expressions of intention to harm. These are conditional "If X ever happens again" type of threatening comments. While the Subject Member's utterances were completely unacceptable, they were not a direct threat. I am prepared to surmise that it was the absence of a direct threat that contributed to the Crown permitting the Subject Member to enter into a peace bond.

[144] I am prepared to accept that some mitigating factors must be considered in determining proportionate measures for Allegation 3. For Allegation 3 (and this, to a lesser extent, also pertains as a mitigating factor under Allegation 1), it is clear that the Subject Member's life was in a "day-in, day out" state of real personal and family turmoil early in the year 2015. His father had died at Christmas 2014. Throughout the fall of 2014, the Subject Member had been experiencing acrimonious relations with his estranged wife. He was dealing with challenging

childcare matters as a single parent. He was dealing with not only his father's illness, but with extensive travel to and from Ontario to assist his father with medical treatment.

[145] While the misconduct identified under Allegation 3 took place some months later, it is clear to me from the observations made of the Subject Member — and in this I include the letters filed from family members and the testimony of Dr. S. — that, at the time of this misconduct, the Subject Member's life was still in turmoil.

[146] At the time of the conduct hearing commencing September 25, 2017, I find the above-identified turmoil no longer existed. The Subject Member is remarried. In his testimony, he certainly described, and I accept, that his home life is much more stable. In addition, the MR has filed a counselling report confirming that the Subject Member not only participated in the anger-management sessions required under his peace bond, but that he benefitted generally from the counselling that was provided. The Subject Member's willingness to continue with any psychotherapy that is indicated is a mitigating factor.

[147] The Subject Member proved a very effective investigator when posted to the Auto Theft team, and his designation as an acting supervisor at the rank of constable indicates his past proficiency at operational duties. It is my finding that when motivated, and feeling that he has the support of his co-workers and supervisors, the Subject Member is capable of fully satisfactory performance. Appropriate psychotherapy can be applied to monitor the Subject Member's health status and ensure he maintains a realistic perspective on the legitimate demands and expectations of his supervisors. Any repetition of the unprofessional and unsettling utterances captured under Allegation 3 will, in my view, signal that the Subject Member cannot act appropriately despite appropriate health supports.

[148] After weighing the aggravating and mitigating features for Allegation 3, I find that it is proportionate to impose a reprimand under paragraph 3(1)(i), and the loss of 15 days' pay.

[149] I confirm that the total combined forfeiture of pay for all established allegations under the Notice amounts to 65 days. In the same way described in my decision in 2016 RCAD 2 (Corrected) (affirmed by the Level II appeal decision, C-017, issued November 20, 2017), I gave

very careful consideration here to whether, given the number of days forfeiture of pay, the conduct measures for this matter could only be considered proportionate if they resulted in the Subject Member's loss of employment. However, I believe that the flexibility which is given to me as Conduct Board under the new conduct management system permits the imposition of significant forfeitures of pay and other highly individualized conduct measures, which not only address correcting, deterring and, to some extent, punishing the Subject Member's misconduct, but which also serve to maintain the public's confidence in the Force, and to protect the public interest, where the Subject Member is to be retained and will continue to perform duties as a member of the RCMP.

Further conduct measures imposed

[150] In addition to a reprimand and the forfeiture of 65 days of pay identified above, I impose the following additional measures for Allegations 1 and 3:

- A transfer to another work location under paragraph 5(1)(g) of the *CSO (Conduct)*. I find that the Subject Member has become quite familiar with certain groups within the community that he has been policing in the Fort McMurray and surrounding area. The Subject Member's statement to the internal investigator (which I appreciate took place at a time when he presented as very angry, and capable of making comments that did not reflect well on him at different times) captures the frank, at times callous and jaded, perspective then held by the Subject Member. Therefore, while I believe some of the Subject Member's investigations may have genuinely benefitted from insights he may have gained into certain communities in Fort McMurray, I also believe that the Subject Member may fall victim to conscious and unconscious biases regarding certain groups and regarding certain kinds of complaints. Therefore, it is now timely and appropriate for him to be posted to another policing community.
- A direction under paragraph 3(1)(e) to the Subject Member that he shall engage in an activity, that activity being a physician-monitored cessation process respecting steroids and all other non-prescription medications and prohibited substances. The Subject

Member shall ensure that the terms of any such cessation process, and his participation in and completion of it, are communicated directly by any treating physician to the HSO.

- A further direction under paragraph 3(1)(e) to the Subject Member that he shall engage in an activity for the next three months, which shall be completed in the next three months, that activity being his successful completion of all available RCMP-approved training, whether by online modules or courses, or otherwise, respecting all policies on:
 - a. investigation of 911-call related matters;
 - b. investigation of VIR related matters;
 - c. investigation of sexual assault matters; and
 - d. expected performance standards and appropriate/required procedures related to the PROS system.
- A restriction on the Subject Member's duties under paragraph 5(1)(a) for the next three months, that restriction being his performance of administrative duties only, at the end of which his fitness for operational duties shall be determined by the HSO.
- A restriction of the Subject Member's duties under paragraph 3(1)(g) for the maximum period of the next one year, that restriction being that the Subject Member shall not be designated an acting corporal, or a supervisor, and also shall not be given the authority to approve tasks or conclude occurrences for any other member via the PROS system.
- A direction under paragraph 3(1)(d) that the Subject Member undergo medical treatment as specified by the HSO, including a direction that the Subject Member shall comply with any urine or blood or other sample collection required of him by the HSO for detection of non-prescription medications and prohibited substances, including steroids.
- A direction under paragraph 3(1)(b) to the Subject Member to work under close supervision for the maximum period of one year.

- An order, under paragraph 5(1)(b), for the Subject Member's ineligibility for promotion for the maximum period of the next three years.

Observation concerning apparent PROS system flaw

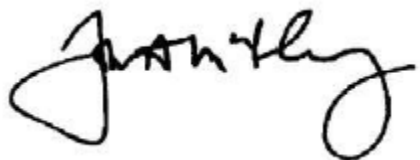
[151] I wish to comment on the flaw that appeared to exist in the PROS system in this matter, which permitted the Subject Member to serve as his own supervisor for investigative "tasks" and "occurrences". If no member is to serve as their own supervisor, then the PROS system should be corrected to prevent any member from approving completion of specific assigned tasks or approving the conclusion of their own files.

CONCLUSION

[152] Pursuant to subsection 25(2) of the *CSO (Conduct)*, my oral decision concerning proportionate conduct measures, rendered on October 25, 2017, in the presence of the Subject Member attending by teleconference, took effect on that date.

[153] This written decision issued on today's date, May 1, 2018, constitutes the written decision required to be served on each party 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 this decision on the Subject Member (section 45.11 of the *RCMP Act*; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-293).

CORRECTION: The sequential numbering of the paragraphs in the final written decision issued on May 1, 2018, is corrected herein.



Corrections issued May 7,
2018

John A. McKinlayr

Conduct Board