



ROYAL CANADIAN MOUNTED POLICE

in the matter of

a conduct hearing pursuant to the

Royal Canadian Mounted Police Act, RSC, 1985, c R-10

BETWEEN:

Commanding Officer, "K" Division

Conduct Authority

and

Constable Yannick Coulombe, Regimental Number 58782

Subject Member

Conduct Board Decision

Josée Thibault

November 21, 2019

Staff Sergeant Jonathan Hart, for the Conduct Authority

Staff Sergeant Peter Hearty and Sergeant Joel Welch, for the Subject Member

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SUMMARY

The original *Notice of Conduct Hearing* contained two allegations of discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct. It was alleged that three videos of approximately 15 to 30 seconds were recorded by Constable Coulombe, using his smartphone, while engaged in sexual acts with the two complainants. At the time of the recording, the complainants were involved in a romantic relationship with Constable Coulombe and were having consensual sexual relations. The videos were recorded without the complainants' knowledge or consent while Constable Coulombe was off-duty. Constable Coulombe saved the videos on his computer for his personal use only and did not distribute them.

Following a contested hearing, the Conduct Board concluded that the two allegations were established on a balance of probabilities. Given the nature of the allegations and the similarity of events, the Conduct Board imposed a global sanction comprised of:

- a. a financial penalty of 30 days' pay to be deducted from Constable Coulombe's pay;
- b. ineligibility for promotion for a period of 2 years, to start from the date of Constable Coulombe's reinstatement; and
- c. a direction to work under close supervision for a period of 1 year, to start from the date of Constable Coulombe's reinstatement.

INTRODUCTION

[1] On December 18, 2018, the Commanding Officer and Conduct Authority for "K" Division (the Conduct Authority) signed a *Notice to the Designated Officer* requesting the initiation of a conduct hearing in relation to this matter. On December 21, 2018, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] The *Notice of Conduct Hearing* contained two allegations of discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct. It was signed by the Conduct Authority on January 18, 2019, and served on the Constable Coulombe, together with the investigation package, on February 7, 2019. The particulars of the allegations describe conflicting accounts by the parties regarding three videos of approximately 15 to 30 seconds in length, which were recorded by Constable Coulombe, using his smartphone, while engaged in sexual acts with the two complainants, Ms. C.F. and Ms. J. S. At the time of the recordings, the complainants were involved in a romantic relationship with Constable Coulombe and were having consensual sexual relations.

[3] No criminal charges were laid against Constable Coulombe for the offence of voyeurism. Unlike the scope of the RCMP Code of Conduct investigation, the Alberta Serious Incident Response Team (ASIRT) only investigated Ms. C.F.'s complaint.

[4] On March 6, 2019, Constable Coulombe provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*].

[5] The hearing in this matter was held in Edmonton, Alberta, from September 9 to 12, 2019. Oral evidence was received from three witnesses, including Constable Coulombe. The oral decision on the allegations was delivered on September 12, 2019. The two allegations were established and the oral decision on conduct measures was delivered on September 19, 2019. This written decision incorporates and expands upon those oral decisions.

ALLEGATIONS

[6] The two allegations before the Conduct Board read as follows:

Allegation 1

On or between July 1, 2016, and August 4, 2017, at or near Devon and Spruce Grove, in the Province of Alberta, Constable Yannick COULOMBE behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 1

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "K" Division, Serious Crimes Branch – Edmonton.
2. At all material times you were involved in a romantic relationship with Ms. C.F. who became your girlfriend. It is acknowledged that your relationship with Ms. C.F. included consensual sexual relations. Your personal residence was located in Spruce Grove and the personal residence of Ms. C.F. was located in Devon. You each frequented the residence of the other and you had in fact provided Ms. C.F. with a key so that she could gain unfettered access to your residence. Ms. C.F. also had unfettered access to the contents of your home including your personal computer which did not require a password to log-in.
3. On August 4, 2017, Ms. C.F. accessed your personal residence when you were away with her key. Once inside of your residence, Ms. C.F. further accessed your personal computer and opened an icon that was titled: "iPhone photos". This saved folder contained numerous named files that were identified by way of first name in small letters and last name capitalized. The named files contained sexually explicit photos and videos

of Ms. C.F. and five other women. Ms. C.F. recorded the names of all five females and immediately confronted you via text messaging concerning her observations.

4. Ms. C.F. observed two videos that you had recorded without her consent or permission:

i. On one occasion you recorded Ms. C.F. performing fellatio on you while you were at her residence in her kitchen. Ms. C.F. noted that the angle of the recording was taken from a direction above her head as she was kneeling/crouched down in front of you while you were standing. Ms. C.F. did not observe that you were recording her with your iPhone while she was performing fellatio on you. Ms. C.F. did not consent to you recording her while performing this sexual act or to you saving a recording of this sexual act on your personal computer.

ii. On another occasion you recorded Ms. C.F. performing fellatio on you while she was at your residence and both of you were sitting on your leather reclining couch. Ms. C.F. again observed that the angle of the recording was taken from a direction above her head while you were in a reclined back position and that the video was of a side view of the sexual act. Ms. C.F. did not observe that you were recording her with your iPhone. Ms. C.F. did not consent to you recording her while performing this sexual act or to you saving a recording of this sexual act on your personal computer.

5. Ms. C.F. exchanged numerous text messages with you on August 4, 2017, in which she made it explicitly clear to you that she never gave her consent or permission for you to record her performing a sexual act. The following - not exhaustive - texts speak directly to the issue of lack of consent on the part of Ms. C.F.:

X: "And you fucking recorded me giving you a blow job

Coulombe: You saw me

X: No I didn't

Coulombe: Yes you did I took out phone

X: No I didn't I wouldn't be crying my eyes out devastated

Coulombe: Why you devastated You saw me If you didn't I apologize and delete it

X: And more than one"

[Disclosure, text messages, pages 181 and 182 of 412]

X: "You never had my permission to record me

Coulombe: U saw me

X: No I didn't And I'm pretty sure I told you how my ex recorded me without my permission and how that made me fee

Coulombe: How the hell did you not You never told me that

X: I'm disgusted Heartbroken I trusted you"

[Disclosure, text messages, pages 183 and 184 of 412]

X: "Who is suppose to uphold the law

Coulombe: I did nothing wrong

X: And took videos of me without my knowledge"

[Disclosure, text messages, page 188 of 412]

X: "You never had I permission I never once seen your phone or thought you would betray me in this way You as an officer should know rights"

[Disclosure, text messages, page 189 of 412]

X: "The video was embarrassing

Coulombe: What video

X: oh me

Coulombe: Of me and my girlfriend being intimate and sexy

X: Without my permission

Coulombe: You say me and I don't buy that

X: Honestly Yannick you need to come home now. You never once asked if you could video me."

[Disclosure, text messages, page 193 and 194 of 412]

X: "I didn't consent It's a crime You of all people should know this Yannick

Coulombe: I'll educate you about that....In your example he was black mailing her and threatening to post it which is extortion Mine was in your kitchen where I was at legally with you seeing Me with my phone

X: You can't take video without consent No I didn't and there was more than one of me

Coulombe: No I can't video you through a video like peeping tom which is voyeurism

X: I didn't see you with your phone now please come home and deal with this"

[Disclosure, text messages, pages 200 and 201 of 412]

6. You denied that anything you did was improper and attempted to intimidate Ms. C.F. by informing her that the RCMP was: "...such a boys club and they have each other's backs and I'll [Ms. C.F.] start getting harassed, like I'll get pulled over all the time, I can't do it." [Disclosure, page 64 of 412]

7. On March 1, 2018, you provided a Warned Statement to Alberta Serious Incident Response Team investigators who were conducting a statutory investigation into the offence of voyeurism following a complaint made by Ms. C.F. In your statement you confirmed the existence of the two videos of a sexual nature with Ms. C.F.: "She saw videos, two videos that she knew we had taken because she had said our sex life wasn't good, so we, we discussed watching adult videos and making videos. Um she sent me a message, she was at my house 'cause we were going away for a long weekend, so she said um I saw these videos and then pictures of girls on your computer. So I'm like what are you talking about these videos, like you, we both knew this was happening, we discussed this." [Disclosure, page 256 of 412] You acknowledged in your statement to making both videos with your iPhone, however, denied that Ms. C.F. was not a fully cooperating participant who was not aware that you were recording her: "Like I'm not, I know the law I'm not gonna do videos without consent, this is two consenting adults making videos." [Disclosure, page 286 of 412].

8. Ms. C.F. had a reasonable expectation of privacy when she engaged in sexual activity with you. Ms. C.F. had no knowledge that you were using your iPhone to record her while she performing fellatio. The consent of Ms. C.F. to engage in sexual activity with you in no way justified or authorized your decision to both surreptitiously record and also save the digital recordings.

Allegation 2

On or between January 1, 2016, and September 27, 2016, at or near Spruce Grove, in the Province of Alberta, Constable Yannick COULOMBE behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 2

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "K" Division, Serious Crimes Branch – Edmonton.

2. At all material times you were involved in a romantic/dating relationship with Ms. J.S. It is acknowledged that your relationship with Ms. J.S. included consensual sexual relations. Ms. J.S. frequented your residence as part of your relationship.

2019 RCAD 19

Coulombe: “(Talk over) The, everything that Ms. J.S. sent, she sent to me, yeah so it...

Anderson: (Talk over) Right.

Coulombe: ...would have been of Ms. J.S.

Anderson: Right.

Coulombe: Yeah.

Anderson: And Ms. J.S. knows this?

Coulombe: Oh Yeah.

Anderson: Ms. J.S. would have no issue if she was contacted but...

Coulombe: No.

Anderson: ...like this is not gonna be a huge surprise...

Coulombe: No.

Anderson: ...other than maybe some embarrassment for Ms. J.S.?

Coulombe: No, not not a surprise at all.”

[Disclosure, pages 298 and 299 of 412]

Anderson: “Okay. There is one video that we have and it’s a, it’s a sexual act of you, and well believe it’s you and another lady with a ...

Coulombe: (Talk over) Ms. J.S.

Anderson: It could be. But I mean it’s obviously you’re videotaping her.

Coulombe: Mm.

Anderson: Would Ms. J.S. be aware of that?

Coulombe: Yeah.

Anderson: Do you remember that video?

Coulombe: Yeah.

Anderson: Can you describe it to me?

Coulombe: I was having sex.

Anderson: Okay. And do you remember the positions or anything like that?

Coulombe: Not off the top of my head, no but it’s, it’s her yeah.

Anderson: And that’s, so the video that we think were talking about is the one with Ms. J.S.?

Coulombe: Yeah.

Anderson: And you have, obviously, you have some type of mechanism recording it's because it's a video.

Coulombe: Yeah we...

Anderson: (Talk over) Right?

Coulombe: ...we both have that video, yeah.

Anderson: Yeah. Did you ever have conversations with these girls and terms of that kind of stuff?

Coulombe: Yeah ah Ms. J.S., I, I, we both watched the video when we were done with it.

Anderson: Okay."

[Disclosure, pages 302 and 303 of 412]

3. On March 1, 2018, you provided a Warned Statement to Alberta Serious Incident Response Team investigators who were conducting a statutory investigation into the offence of voyeurism following a complaint made by Ms. C.F. who was a former girlfriend of yours. You confirmed the existence of a video of a sexual nature with Ms. J.S. that was located by Ms. C.F. on your personal home computer to investigators. You informed investigators that if asked, Ms. J.S., would confirm that the video of sexual intercourse with her was made with her full knowledge and consent.

4. On August 30, 2018, Ms. J.S. provided a statement to Sergeant Bellamy of the "K" Division RCMP Professional Responsibility Unit. Ms. J.S. denied consenting to having any videos or pictures taken while engaged in sexual acts with you. In particular, Ms. J.S. specifically stated that: "I've never consented to being videotaped during intercourse." [Ms. J.S. statement, page 10] Ms. J.S. further stated that she never watched any videos depicting you and her engaged in sexual intercourse with you or that she was even aware that she had been video-taped while engaging in sexual intercourse with you.

5. On November 13, 2018, Ms. J.S. provided a statement to RCMP Staff Sergeant Paul Strader in which she again confirmed that at no time did she consent to a digital recording being made of you and her engaging in sexual intercourse. Ms. J.S. further stated that she never watched any video of you and her engaging in sexual intercourse with you. [Disclosure, pages 152 and 153 of 165]

6. Ms. J.S. had a reasonable expectation of privacy while engaged in sexual activity with you. Ms. J.S. had no knowledge that you were using your iPhone to record her while the two of you were engaged in sexual intercourse. The consent of Ms. J.S. to engage in sexual activity with you in no way justified or authorized your decision to both surreptitiously record and also save the digital recording.

[*Sic throughout*]

DECISION ON THE ALLEGATIONS

Summary of established facts

[7] Constable Coulombe had a romantic relationship with Ms. J.S. from January 2016 to September 2016, approximately 9 months.

[8] While dating Ms. J.S., Constable Coulombe was also involved in a romantic relationship with Ms. C.F. from June 2016 to November 7, 2017, approximately 17 months. During their relationship, Constable Coulombe gave Ms. C.F. a key to his residence. In March 2017, while he was still in a relationship with Ms. C.F., he became romantically involved with his current spouse.

[9] On August 4, 2017, Ms. C.F. was at Constable Coulombe's residence. While using his computer, she opened a folder entitled "iPhone photos" which contained three videos depicting sexual acts that would have taken place in 2016. In two of these, she was performing fellatio on Constable Coulombe and, in the other, he was having sexual intercourse with Ms. J.S. The file also contained nude photos of Ms. J.S. and four other women, all of which, were identified by name and action.

[10] Angered by her discovery, Ms. C.F. immediately confronted Constable Coulombe, by texting him a photo of a nude breast, while he was out for the evening with a friend. The parties then started to exchange a myriad of texts on this issue (i.e., approximately 243 texts in two hours). Ms. C.F. insisted that she never gave him permission to record her. Constable Coulombe maintained that she saw the smartphone and the videos were made between two consenting adults.

[11] Ms. C.F. wrote down the names of the five other women, and she emailed one video of herself and one of Ms. J.S. before deleting the content of the folder saved on Constable Coulombe's computer. Only the photo of the nude breast that was sent by text to Constable Coulombe and the video of Ms. J.S. were recovered from Ms. C.F.'s smartphone by ASIRT. It

should be noted that Constable Coulombe's personal computer and smartphone were never searched by ASIRT nor by the RCMP Code of Conduct Investigator.

[12] Despite their disagreement, and as previously planned, the parties left the next day to visit Ms. C.F.'s family in Saskatchewan during the August 2017 long weekend.

[13] On November 7, 2017, Constable Coulombe ended the relationship with Ms. C.F.

[14] On December 13, 2017, Ms. C.F. wrote a letter to the RCMP to denounce Constable Coulombe's behaviour and stated that she never gave him consent to record her when performing sexual acts.

[15] Constable Coulombe admitted to making three videos (two of Ms. C.F. and one of Ms. J.S.). Two videos were recorded in Constable Coulombe's home and one in Ms. C.F.'s home.

[16] When the videos were recorded, both complainants were involved in a romantic relationship with Constable Coulombe and were having consensual sexual relations.

[17] The videos were recorded while all parties were sober and Constable Coulombe was off-duty. Constable Coulombe saved the videos on his computer for his personal use only and never distributed them.

Credibility of witnesses

[18] I heard oral evidence from three witnesses: Ms. C.F., Ms. J.S. and Constable Coulombe. I found that the latter provided contradictory accounts of key elements in this matter. In the end, my assessment of the witnesses' credibility was pivotal to the outcome of this decision.

[19] In assessing the witnesses' credibility and the reliability of the evidence, I took into consideration, for example, their motivation, whether they were frank, forthright or evasive and consistent throughout. I also considered the major inconsistencies and the witnesses' ability to accurately observe, recount, and recall details of the events given the passage of time (i.e., approximately 2-3 years in this matter). Finally, I considered the totality of the evidence included

in the record such as the Notice of Conduct Hearing, the investigation package, Constable's Coulombe response as well as oral evidence received during the hearing.

[20] Finally, I have been guided by cited authorities found in the conduct board decision in *Commanding Officer, "E" Division, v Constable Irvine*, 2019 RCAD 03, provided by the parties. In addition, I have relied on the Supreme Court of Canada decision in *F.H. v McDougall*, [2008] 3 SCR 41, which indicates that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test."

[21] In *Faryna v Chorney*, (1952) 2 DLR 354, the Court noted that a witness's evidence cannot be assessed solely on whether he or she appears to be telling the truth. More specifically, the Court states that "a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken."

[22] Finally, in *R. v T.B.*, 2018 PESC 3, paragraph 56, the Court provides the following cautionary observations on credibility assessment:

[...] The assessment of credibility is not a science (*R. c. Gagnon*, [2006] 1 S.C.R. 621 (S.C.C.)). The law directs that I consider a variety of factors in assessing credibility including common sense and logic. Articulating and verbalizing a credibility assessment can be challenging. As the courts have made clear as well, I must be cautious in relying merely on "impressions" which I may form of a witness as this may risk placing too much emphasis on "demeanour" which appeal courts have clearly said cannot be the sole determining factor. [...]

[23] I found Ms. J.S. to be a credible witness and for her evidence to also be reliable. In fact, she was balanced when expressing herself and did not seek to cast Constable Coulombe in a negative light. She had no motive to fabricate. She even admitted that she had sent him nude photos of herself and videos containing sexual content. She was frank and consistent, and her oral evidence at the hearing reinforced her statements on the record. She was able to accurately recall and recount details of the events. I also find that there is no evidence to support that her statements provided in the Code of Conduct Investigation were influenced by Sergeant Bellamy's instructions to her as submitted by the Member Representative.

[24] As for Ms. C.F., it is true that she was devastated following the end of their relationship and that she conducted herself inappropriately. For example, she told Constable Coulombe she was pregnant. When retrieving her belongings at his home, she left the door ajar, did not remove her wet shoes while walking throughout the house, she damaged an older pillow and took items belonging to Constable Coulombe. She even contacted Constable Coulombe's ex-wife, as well as his new spouse, to tell them that he had cheated on her.

[25] I agree with the Member Representative that the breakup between Constable Coulombe and Ms. C.F. motivated her to write a letter to the RCMP to denounce his misconduct in relation to the videos. However, I disagree that she embarked on a concerted campaign to destroy the member's life and career and that her evidence should consequently be subjected to careful scrutiny.

[26] In her letter sent to the RCMP, Ms. C.F. made it clear that she was conveying her concerns regarding Constable Coulombe's conduct. She testified that she never expected that her denunciation would come this far: "I honestly thought that this letter would just be read and that was it, and I had spoken my truth and it would be done."

[27] I also disagree with the Member Representative that Ms. C.F. lacked credibility because she never mentioned that Constable Coulombe had recorded the two videos when speaking to his ex-wife and current spouse. In fact, I find that an adverse inference should not be drawn because Ms. C.F. did not share this private and intimate information with everyone she spoke to before and after the breakup.

[28] When hearing Ms. C.F.'s oral testimony at the hearing and when looking at the totality of the evidence, I find that she was a very well-spoken woman whose overall oral testimony was consistent with her previous statements on the record. She did not try to embellish her answers nor perfect them over time. She was a credible witness and her evidence reliable.

[29] As for Constable Coulombe, many significant inaccuracies were raised during his testimony. For example, in his statement to ASIRT of March 1, 2018, he stated that, prior to recording the video in the computer room, he was watching a pornographic video on the

computer with Ms. C.F. However, during the hearing, he said that he was playing StarCraft with his friend on the computer. When asked to explain the discrepancy, he said that he received oral sex more than once in the computer room; therefore, he just mixed up the events.

[30] Constable Coulombe's position was that he recorded the videos with Ms. C.F. to improve their sex life. When asked at the hearing why they never watched the two 20- to 30-second videos they made together as a couple, he replied: "We never got around to watching them. We started spending less and less time together, because I was [also dating my current spouse] in early 2017, and we never got around to watching them." When questioned again by the Conduct Authority Representative on why he did not watch them although he was still seeing Ms. C.F. approximately once a week prior to the breakup, he replied: "Well, we got preoccupied with other things. We went on trips. We were doing stuff, and working on us, and we never got around to watching them." Finally, in his sworn statement to ASIRT or to the Code of Conduct Investigator, Constable Coulombe said that he watched the video he made with Ms. J.S. However, she strongly denied watching the video and I preferred by far her testimony on that point.

[31] In the end, the more Constable Coulombe tried to explain himself, the more his testimony became implausible and troubling. When examining more closely the totality of his evidence, I find that his statements and his testimony at the hearing were self-serving and lacked an air of reality. As such, I find that he was not a credible witness and his evidence was unreliable.

Test for discreditable conduct

[32] Section 7.1 of the RCMP Code of Conduct states: "Members behave in a manner that is not likely to discredit the Force." The test for "discreditable conduct" was developed by the RCMP External Review Committee and consist of three steps. First the Conduct Authority must prove, on a balance of probabilities, the acts that constitute the alleged conduct, as well as the identity of the member who is alleged to have committed these acts. Second, if the Conduct Authority is successful, the Conduct Board must then determine if a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general

and of the RCMP in particular, would view Constable Coulombe's conduct as likely to discredit the Force. Finally, the Conduct Board must determine whether the conduct is sufficiently related to Constable Coulombe's duties and functions as to provide the Force with a legitimate interest in disciplining him.

Allegation 1 – Videos of Ms. C.F.

[33] This Allegation pertains to the two videos taken of Ms. C.F. while she was performing fellatio on Constable Coulombe. The latter admitted to Particulars 1, 2, 3, 5 and 7, but he denied Particulars 4, 6 and 8.

[34] With regard to Particular 2, Constable Coulombe agreed that Ms. C.F. had a key to his residence. However, he explained that she did not have unfettered access to his residence and that she had to inform him each time she was going to use the key. As for Ms. C.F., she testified that she had no conditions to abide by and that she used to go into Constable Coulombe's home to clean, bring groceries, cook dinner and pick up his dry cleaning. She also moved into Constable Coulombe's home for a few days when his parents came to visit in February 2017 and he was called out to work. In his statement to ASIRT, Constable Coulombe admitted that he also had a key to Ms. C.F.'s residence.

[35] When cross-examined by the Conduct Authority Representative, Constable Coulombe contradicted himself. At first, he said that he gave Ms. C.F. the key at the end of August or September 2017, following an incident in which Ms. C.F. was locked outside as the internal garage door connected to the home was locked. When questioned further by the Conduct Authority Representative, Constable Coulombe admitted that Ms. C.F. actually had a key to his residence when she discovered the videos on August 4, 2017. In light of the aforementioned, the Conduct Board preferred Ms. C.F.'s account and found that it was more likely than not that she had unfettered access to Constable Coulombe's home as alleged.

[36] With regard to the use of Constable Coulombe's computer by Ms. C.F., the evidence showed that the computer was not always password-protected and that she used it to print off

random documents. Consequently, I find that, once again, it was more likely than not that Ms. C.F. had unfettered access to Constable Coulombe's computer as alleged.

[37] With regard to Particular 6, Constable Coulombe denied doing anything improper or that he attempted to intimidate Ms. C.F. into preventing her from filing a complaint. He denied informing her that the RCMP was "such a boys [sic] club and they have each other's backs and [Ms. C.F. would] start getting harassed, like I'll get pulled over all the time, I can't do it".

[38] Although the record shows that Constable Coulombe may have tried to convince Ms. C.F. that he had done nothing wrong and that making pornographic videos was what normal couples did, the evidence did not support that he tried to intimidate Ms. C.F. in order to prevent her from making a complaint to the RCMP. In fact, Ms. C.F. clarified in her testimony that she personally believed that other RCMP members may pull her over or harass her if she complained in light of previous stories she heard from Constable Coulombe regarding his teammates. This part of her testimony also mirrored the testimony of Constable Coulombe. She further explained that she was not harassed and, in fact, the RCMP members she dealt with were very understanding and empathetic towards her. For these reasons, Particular 6 was not established.

[39] As indicated by the parties, the crux of Allegation 1 resides in Particulars 4 and 8. Particular 4 pertains to two videos that were recorded by Constable Coulombe while Ms. C.F. was performing fellatio on him. It was Ms. C.F.'s position that she did not observe Constable Coulombe recording her with his smartphone and that she did not consent to being recorded while performing these sexual acts or for Constable Coulombe to save the two videos on his personal computer. On the other hand, Constable Coulombe admitted that he recorded two videos of approximately 15 to 30 seconds. He was adamant that he had obtained Ms. C.F.'s explicit consent prior to recording and her implicit consent during the recording.

[40] Unfortunately, the two videos were deleted from Constable Coulombe's computer by Ms. C.F. on August 4, 2018, the night she discovered them. The evidence confirms that Constable Coulombe wanted Ms. C.F. to delete the photos and videos saved on his computer. He was also worried about the copies made by Ms. C.F. using her smartphone and was asking her by text to

delete them as he was worried that they would be distributed. For example, he said: “Now that they are all deleted was asking if you did [the] right thing and delete them that’s all. ... But I also don’t see the reason to have them on your phone... ...Start by deleting pics”.

[41] With regard to the first video, both parties agreed that it was recorded in Ms. C.F.’s kitchen. Constable Coulombe was standing and leaning on the kitchen counter when Ms. C.F. was kneeling down in front of him and performing fellatio. Constable Coulombe was filming her holding his smartphone in his hand, above her head.

[42] As for the second video, both parties agreed that it was taken at Constable Coulombe’s residence and that Ms. C.F. was recorded performing fellatio on him. The parties disagreed on the location that the video was taken. Ms. C.F. alleged that they were both sitting on the leather reclining couch located on the main floor of the house, while Constable Coulombe claimed that he was sitting in a chair in his computer room located on the second floor of the house.

[43] During his testimony at the hearing, Constable Coulombe gave contradictory evidence as to the events that led to the recording of that video. As explained in the assessment of his credibility, he first mentioned in his March 2018 statement to ASIRT that, prior to recording, he was watching a pornographic video with Ms. C.F. During his testimony at the hearing, he said that he was playing StarCraft with his friend. Once again, I preferred Ms. C.F.’s account of events and determined that the second video was recorded on the leather couch and not in the computer room as submitted by Constable Coulombe.

[44] Whether Ms. C.F. gave consent to the videos is the central issue of this Particular. For both videos, Ms. C.F. testified that she did not observe the smartphone nor give consent to Constable Coulombe to record her. She also stated that, even if he had the smartphone in his hands at the time of the recording, “never in a million years would I have thought that he would record me and do something so devastating to me”.

[45] She agreed in cross-examination that there was a difference with someone texting on their smartphone and just holding it still in plain view to record. However, Ms. C.F. reiterated that she did not think he was recording and therefore, did not request clarification. Finally, she

testified that Constable Coulombe was always on his smartphone due to his work responsibilities. To get his attention, she would sometimes start to kiss him or even perform sexual acts.

[46] The fact that Ms. C.F. acted improperly after the relationship ended is not relevant in this matter. In the end, the videos were recorded when the parties were involved in a serious romantic relationship over the course of approximately 17 months. Ms. C.F. testified that she trusted him enough to stop using birth control and start a family. Constable Coulombe was also aware that Ms. C.F. works with families, youth and children, with whom she teaches the dangers of sharing pictures and videos on social media. As she explained in her testimony: “once something is out there, once a recording is made, once you know a picture is sent, you have no control over that. You have no control where it goes. It’s not something that I’ve ever been okay with, and I teach that.”

[47] Constable Coulombe submitted that Ms. C.F. provided him explicit consent to be recorded during numerous previous conversations they had on this issue, as well as implicit consent in the first video when she made eye contact and smiled for the video. He submitted that she also gave him implicit consent in the second video. He stated that he asked her to look at the camera and smile, and she replied something to the effect of: “it might be tough”. Constable Coulombe said that the camera was in plain view and no attempts were made to conceal it. On the other hand, Ms. C.F. denied making eye contact and smiling.

[48] In the case of *R. v Ewanchuk*, 1999 CarswellAlta 99, [1999], 1 SCR 330, the Supreme Court of Canada examined the meaning of consent in a case of sexual assault and determined at paragraph 49 that “Consent means that the complainant had affirmatively communicated by words or conduct her agreement to engage in sexual activity with the accused”. The Court also explained at paragraph 31 that, in cases where implied consent is argued, the “trier of fact may only come to one of two conclusions: the complainant either consented or not. There is no third option.”

[49] I am of the opinion that there is a significant difference between talking about making videos while performing sexual acts and actually recording them. It is not sufficient for Constable Coulombe to say that they had talked about it previously in other conversations. The evidence confirms that Ms. C.F. had not affirmatively communicated by words or conduct her consent to making the videos. I am also convinced that Constable Coulombe fabricated that Ms. C.F. looked at him and smiled not only on the first video, but also on the second video, which was recorded at different intervals. In his cautioned statement to ASIRT, Constable Coulombe contradicted himself once again when he confirmed that he never expressly told anyone, including Ms. C.F., that he was recording her.

[50] Finally, I believe that if Constable Coulombe was truly recording the videos to improve their sex life as he claimed, he would have simply told Ms. C.F. what he was doing. He did not do so because he knew she would not consent to his proposal.

[51] Finally, as indicated by the Conduct Authority Representative, her initial text messages are revealing of her initial reaction when discovering the videos on the computer:

- Text 1: “WTF is this Yannick” commenting on a photo of a naked breast and Constable Coulombe’s face in the right bottom corner.
- Text 2: “you fucking recorded me giving you a blow job”
- Text 3: “No I didn’t” when replying to Constable Coulombe’s text saying that “You saw me.”
- Text 4: “No I didn’t” when replying to Constable Coulombe text saying that “yes you did I took out the phone”
- Text 5: “No I didn’t”
- Text 6: “I wouldn’t be crying my eyes out devastated”.

[52] Ms. C.F.’s evidence was clear, convincing and cogent. She did not consent to recording the two videos nor did she give Constable Coulombe permission or consent to save them on his computer. The evidence shows that Ms. C.F. accidentally discovered the videos when using Constable Coulombe’s computer. In his response to the Conduct Board and during his testimony, Constable Coulombe admitted that he purposely removed the photos and videos from his smartphone and saved them on his personal computer to secure them. In essence, he did it to

prevent that friends and family inadvertently see them when scrolling through his smartphone in their presence. He did not say that he had discussed the issue with Ms. C.F.

[53] For these reasons, Particular 4 is established on a balance of probabilities.

[54] Finally, with regard to Particular 8, Constable Coulombe admitted that Ms. C.F. had a reasonable expectation of privacy when she engaged in sexual activity with him. To determine if the recording was done surreptitiously by Constable Coulombe, the Ontario Court of Appeal in *R. v Trinchi*, 2019 ONCA 356, provides the following guidance at paragraph 46:

[...] the ordinary meaning of the word “surreptitiously” does include intent as part of its meaning. A person who observes or records with the intention that the subject not be aware that he is doing so, is **attempting to avoid notice or attention**. [...] [Emphasis added]

[55] In this matter, the Member Representative submitted that Constable Coulombe did not surreptitiously record the two videos as his smartphone was in plain view. Also, Ms. C.F. made eye contact, she smiled, and at no time was there an attempt on the part of Constable Coulombe to conceal his smartphone.

[56] I disagree with the Member Representative. As testified by Constable Coulombe, the purpose for making the videos was to improve their sex life. However, the couple never watched them together because, according to Constable Coulombe, “we never got around to watching them... we got preoccupied with other things. We went on trips. We were doing stuff, and working on us.” In addition, the length of the video is questionable as they were approximately 15 to 30 seconds in duration, which raises concerns as Constable Coulombe’s true intentions when recording them. I find that Constable Coulombe’s explanation lacks an air of reality.

[57] In fact, he admitted in his text messages that he “used those videos instead of porn it’s hot. Instead of porn I use us.” He also went to the trouble of removing the videos from his smartphone, saving them on his home computer and labelling each one by name and action. The evidence indicates that he had ample opportunities to view the videos with Ms. C.F. He purposely chose not to show her the videos because he knew that she was not aware of the recordings.

[58] For the aforementioned reasons, I find that, on both occasions when Constable Coulombe recorded Ms. C.F. performing sexual acts on him, he was attempting to avoid notice or attention; therefore, he did it surreptitiously. Particular 8 is established on a balance of probabilities.

Allegation 2 – Videos of Ms. J.S.

[59] In Allegation 2, Constable Coulombe admitted to Particulars 1, 2, 3, and he denied Particulars 4, 5 and 6.

[60] With regard to Particulars 4 and 5, Ms. J.S. denied consenting to having videos or pictures taken while engaged in sexual acts with Constable Coulombe. She specifically stated: “I’ve never consented to being videotaped during intercourse”. She also stated that she never watched any video of the parties engaged in sexual intercourse as suggested by Constable Coulombe. For his part, he was 100% sure that they discussed recording prior to making the video and she consented without her face being in it: “I definitely 100% never took any videos without anyone’s consent, or never tried to sneakily take any videos without anyone’s consent. That is 100% not something I would ever do.”

[61] In her testimony, Ms. J.S. was again very clear. When sending pictures or videos of herself to Constable Coulombe, she never showed her face to avoid being recognized. Nonetheless, she did not provide consent to Constable Coulombe to making the video and she did not watch it with him in the stairwell as alleged.

[62] Given my assessment of Ms. J.S.’s credibility and reliability, I do not see why she would make public statements about her personal sexual life and testify at this hearing if she had consented to making the video. She had no animosity towards Constable Coulombe at the end of the relationship and no reason to lie. The fact that she previously sent nude images of herself or even videos did not provide Constable Coulombe explicit or implicit consent to record the video. As I said before, there is a clear difference between talking about making a video and doing it.

[63] Another revealing factor in Ms. J.S.’s testimony is when she admitted that she had previously made a video with another partner but that she did not trust Constable Coulombe

enough to make one with him: “There has only been one person in my life where I felt comfortable and trustworthy of videotaping a moment like that, and Yannick was not that person.”

[64] When reviewing the totality of the evidence, her testimony mirrors the testimony of Ms. C.F. These two women, who do not know each other and have never spoken, state clearly that they had no knowledge of the videos, they did not consent to the recording, they never viewed them with Constable Coulombe, and they never give him permission to save them on his computer.

[65] For these reasons, I prefer by far the evidence of Ms. J.S. over Constable Coulombe’s and I find that Particulars 4 and 5 are established on a balance of probabilities.

[66] As for particular 6, Constable Coulombe admitted that Ms. J.S. had a reasonable expectation of privacy when she engaged in sexual activity with him.

[67] Constable Coulombe testified that Ms. J.S. approved 100% to making the video. He also claimed that they both watched the video in the stairwell and that Ms. J.S. had a copy of the video. The evidence confirms that Ms. J.S. never had a copy of the video and the couple never watched it together. Ms. J.S. found out about the video when questioned by Sergeant Bellamy during the Code of Conduct investigation. Finally, the video is less than 30 seconds in duration, which once again raises concerns as to Constable Coulombe’s true intention for recording it. I find that when he was recording Ms. J.S. during intercourse, he was attempting to avoid notice or attention.

[68] In fact, the evidence indicates that Ms. J.S. was not aware that Constable Coulombe’s smartphone was recording when having sexual intercourse with him, as she was engaged, in the moment, in a sexual position where her face was looking in the opposite direction. When asked by the Member Representative in cross-examination if she would notice if Constable Coulombe reached for his phone or had his phone in his hand, she candidly replied: “If I were facing him, which clearly in that video I am not.”

[69] For the aforementioned reasons, I find that Constable Coulombe knew that Ms. J.S. was unaware that she was being recorded. He intended to record her surreptitiously. Therefore, Particular 6 is established.

Relation to employment

[70] Having found that the complainants did not consent to making the videos and never gave permission for Constable Coulombe to save them on his computer, I must now determine whether this discreditable conduct brings discredit to the RCMP and is sufficiently related to the employment situation to warrant discipline.

[71] It is commonly understood that members of the RCMP are held to a higher standard of behaviour than the general public, both on- and off-duty, but this standard does not call for perfection. (*The Queen and Archer v White*, [1956] SCR 154 at 158).

[72] In accordance with the *Conduct Measures Guide* (2014):

[...] Off-duty conduct that would not normally constitute a breach of criminal law may nevertheless be considered discreditable, provided the circumstances surrounding the behaviour can be reasonably expected to affect the Force's reputation or the member's ability to discharge his or her duties as a police officer. [...]

[73] In addition, section 37 of the *RCMP Act* stipulates that "the responsibility of every member is to act at all times in a courteous, respectful and honourable manner."

[74] In this matter, the Member Representative stated that there was no nexus between the sexual activities of off-duty members in the privacy of their bedroom and the interest and the responsibilities of the RCMP unless the conduct was criminal. Doing so was, according to the Member Representative, "needlessly intrusive and opens up potential code of conduct violations in every acrimonious divorce". He also cited the Alberta Law Enforcement Review Board,¹ which specified:

¹ *Commanding Officer, "E" Division v Constable Marshall*, 2015 RCAD 1

[...] In our free and democratic society it has long been recognized that employees (in public or private occupations) are entitled to a private life while off duty. During that time period people are at liberty to choose their activities and regulate their lawful conduct as they see fit so long as their employer is not damaged or harmed in some fashion. A *prima facie* presumption exists in favour of the off duty right to privacy, non-interference, and the absence of surveillance. [...]

[75] The Conduct Authority Representative disagreed and stated that Constable Coulombe's actions fell within the area of sexual misconduct because it violated the sexual integrity of the two complainants. The misconduct constituted a breach of trust during a couple's most intimate time. It violated the women's sexual integrity and privacy rights. The short length of the video did not limit the trauma suffered by the two women or undermine the seriousness of the violation. There was a growing awareness of the harm caused by non-consensual recording of sexually explicit images and videos taken by new technology, such as a smartphone. The violation of the complainants' sexual integrity was not just the fact that they were being recorded, it was also knowing that the person can reuse the recordings and share them, which fortunately was not the case in this matter.

[76] The Conduct Authority Representative also cited the September 2017 decision rendered by the Ontario Civilian Police Commission in *Orser*,² (*Orser*) which states at paragraph 58:

Technology has opened up new avenues for bullying, shaming, humiliation and abuse. There is growing awareness of the harm caused by non-consensual recording and sharing of sexually explicit images and videos. We should all enjoy a right to privacy that assumes our most personal and intimate moments will not be shared with others without our consent.

[77] Finally, the Conduct Authority Representative was clear in his submissions that if the Conduct Board found that Ms. C.F. and Ms. J.S. consented to the videos and were willing participants, then Constable Coulombe should not be held accountable in these proceedings.

[78] As previously indicated, the facts in this case establish that Ms. C.F. and Ms. J.S. did not consent to being recorded surreptitiously by Constable Coulombe while engaged in sexual acts

² *Orser v Ontario Provincial Police*, 2018 ONCPC 7

and in the privacy of their home. Nor did they consent to the videos being saved on Constable Coulombe's personal computer. By the nature of his misconduct, Constable Coulombe violated the complainants' trust and personal integrity.

[79] Although his off-duty conduct did not constitute a breach of criminal law such as voyeurism, it was nevertheless serious in nature. His conduct was irresponsible and breached the complainants' privacy in the most intimate of settings and he compounded that violation when he saved the videos on his personal computer. Although the videos were never shared, Constable Coulombe was careless by saving them on his computer and taking no steps to prevent someone from gaining access. His misconduct breached the core values of the RCMP, namely integrity, honesty, professionalism, compassion, respect and accountability. Furthermore, the circumstances surrounding Constable Coulombe's behaviour can reasonably be expected to negatively affect the public's confidence and the reputation of the RCMP.

[80] For these reasons, I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view the actions of Constable Coulombe as likely to bring discredit to the Force. His actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[81] The Conduct Authority did not have to establish each particular, just enough that those that are established meet the threshold of discreditable conduct. Although Particular 6 of Allegation 1 was not established, I find for the aforementioned reasons that Allegations 1 and 2 are established on a balance of probabilities.

CONDUCT MEASURES

[82] The RCMP External Review Committee has established a three-step test for the imposition of conduct measures. At first, a conduct board must consider the appropriate range of conduct measures applicable to the misconduct at issue. Then, it must consider the aggravating and mitigating factors. Finally, the conduct board must impose conduct measures which

accurately and fairly reflect the gravity of the misconduct at issue, keeping in mind the principle of parity of sanction.

Range of conduct measures

[83] As indicated by the Member Representative, the two allegations of non-consensual recording of the videos do not fall within a specific category listed in the *Conduct Measures Guide* (2014), which provides guidance on considerations around the imposition of conduct measures. While an instructive and useful reference, the Guide is not prescriptive nor binding on a conduct board.

[84] In support of his position on conduct measures, the Conduct Authority Representative relied on the decision in *Commanding Officer "E" Division v Constable Hedderson*³ to submit that a violation of sexual integrity falls within the label of sexual misconduct. Given the extremely serious nature of that conduct and the recognition by the Force that it should be dealt with severity, the sanction sought in those cases by the conduct authority is dismissal.

[85] A second decision relied upon by the Conduct Authority Representative is the 2019 Supreme Court of Canada decision of *Jarvis*,⁴ in which a teacher was found guilty of voyeurism for using a camera pen to record images of female students. The Conduct Authority Representative argued that the decision speaks to how repulsively society views a violation that occurs when someone is recorded in a surreptitious manner. This is due to the vulnerable state they are left in because the offender breached their trust, as is the case with Constable Coulombe.

[86] Finally, the Conduct Authority Representative relied upon the Ontario Civilian Police Commission decision in *Orser* which upheld the decision of the Ontario Provincial Police Hearing Officer, who ordered the member to resign. The Commission held that the seriousness of the misconduct was so significant and egregious that the member was not a viable candidate for rehabilitation. In that case, the police officer had recorded a sex video of his former girlfriend

³ *Commanding Officer "E" Division v Constable Hedderson*, 2018 RCAD 19

⁴ *R. v Jarvis*, 2019 SCC 10

without her consent and, on two separate occasions, showed the video to fellow officers following their breakup.

[87] Although this case has some similarities to the present matter, it also presents some significant distinctions. First, the video was distributed in the workplace and the officer had prior discipline for making comments of a sexual nature while on-duty. Secondly, the former girlfriend realized that she was being recorded despite not consenting to it. Thirdly, she demanded that the officer delete the video, but he lied and kept it. In the course of her employment, the woman had regular contact with members of the Ontario Provincial Police, including members of the detachment where the officer worked. Finally, the officer had a record of prior discipline where he was involved in an inappropriate on-duty interaction with a young woman, which was described as “sexual overtones”.

[88] The Member Representative relied upon the 2019 decisions of previous RCMP Conduct Boards including: *Pulsifer*,⁵ *Allen*,⁶ *Brown*,⁷ *Little*⁸ as well as the 2017 decision in *Caram*.⁹ He submitted that those decisions all pertained to sexual integrity findings where the conduct measures imposed by the conduct board were less than dismissal. He recommended a global sanction of 30 days’ forfeiture of pay.

[89] Even if I am not bound by previous conduct board decisions or other cases provided by the parties, they are still very helpful in establishing the range of conduct measures applicable to misconduct that is similar in nature, while ensuring consistency and fairness to adjudicated conduct matters. I am satisfied that dismissal falls within the range of possible measures for this contravention to the RCMP Code of Conduct.

⁵ *Commanding Officer "H" Division v Constable Pulsifer*, 2019 RCAD 09

⁶ *Commanding Officer "H" Division v Constable Allen*, 2019 RCAD 10

⁷ *Commanding Officer "K" Division v Constable Brown*, 2019 RCAD 15

⁸ *Commanding Officer "E" Division v Constable Little* – used oral decision rendered on August 28, 2019.

⁹ *Commanding Officer "E" Division v Constable Caram*, 2017 RCAD 8

[90] I recognize that dismissal is the most serious punishment that can be imposed in a disciplinary decision. To determine if it is a proportionate measure in this case, I must consider the aggravating and mitigating factors.

Aggravating factors

[91] I consider the following to be aggravating factors:

- a. The surreptitious recording of the three videos by Constable Coulombe was not an isolated incident.
- b. The conduct constitutes a significant betrayal and violation of trust on the part of an intimate partner, who is a police officer, responsible for upholding the law.
- c. The incidents had an impact on the complainants. Both women testified being ashamed and embarrassed by the videos, having to provide statements and ultimately testify about their intimate sexual acts in a public hearing.

Mitigating factors

[92] I consider the following to be mitigating factors:

- a. Constable Coulombe has approximately 9 years of productive service with the RCMP. His performance evaluations are very positive and describe him as a member with excellent work ethics and great potential.
- b. He has no record of prior discipline.
- c. The letters of reference submitted by his peers, supervisors and his current spouse indicate that Constable Coulombe has always been professional and reliable. He was never observed to be disrespectful or offensive to male or female coworkers or members of the public. He has the ongoing support of his peers, his family, his immediate supervisor as well as previous supervisors.

- d. The videos were recorded by Constable Coulombe while he was off-duty, in the privacy of his home or Ms. C.F.'s home.
- e. The videos were recorded for his personal use only. They were never distributed by him (for example, via social media, email, etc.) nor viewed by friends or even colleagues in the workplace. Constable Coulombe no longer has copies of the three videos and photos, which were completely deleted by Ms. C.F. Therefore, the complainants can be reassured that no further distribution is possible.

[93] Collectively, these mitigating factors demonstrate a minimal likelihood of recidivism. As such, I have no reason to suspect that Constable Coulombe would commit any further contraventions of a similar nature.

Parity of sanction

[94] Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be proportionate to the nature and circumstances of the contravention of the Code of Conduct and, where appropriate, they must be educative and remedial rather than punitive.

[95] Having considered the record before me, the nature and seriousness of the misconduct and the cases submitted, I find that the presence of significant mitigating factors lessens the gravity of Constable Coulombe's misconduct. Therefore, I find that dismissal is not a proportionate response in this matter.

[96] Nonetheless, given the specific circumstances of this case, I find that serious conduct measures are required to not only serve as a deterrent to Constable Coulombe, but also as a warning to other members to ensure that this inappropriate behaviour is not repeated.

Conclusion

[97] Given the nature of the two established allegations and the similarity of events described, I find it appropriate to impose a global sanction. In accordance with subsection 45(4) of the *RCMP Act*, I impose the following conduct measures:

- a. A financial penalty of 30 days' pay to be deducted from Constable Coulombe's pay;
- b. Ineligibility for promotion for a period of 2 years, to start from the date of Constable Coulombe's reinstatement; and
- c. A direction to work under close supervision for a period of 1 year, to start from the date of Constable Coulombe's reinstatement.

[98] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on the Subject Member, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-293.

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Josée Thibault	November 21, 2019
	Date

RCMP Conduct Board