



**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, "H" Division

Conduct Authority

- and -

Constable Dean (James) Boland, Regimental Number 51257

Subject Member

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**Conduct Board Decision**

John A. McKinlay

November 19, 2019

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Mr. Jordan Levis-Leduc and Staff Sergeant Jon Hart, for the Conduct Authority

Mr. Gordon Campbell, for the Subject Member

## SYNOPSIS

The original *Notice of Conduct Hearing* contained a single allegation of misconduct. On the first day of the “live” conduct hearing, and with the complainant’s cross-examination not yet completed, the Conduct Authority requested permission to withdraw the allegation. The Subject Member did not oppose the request. The request was granted on November 13, 2019, by oral decision, and the matter was deemed concluded. This is the final written decision.

## INTRODUCTION

[1] On January 24, 2019, the Commanding Officer of “H” Division (Conduct Authority) requested a conduct hearing be initiated concerning an allegation of misconduct by the Subject Member, Constable (Cst.) Dean James Boland, Reg. No. 51257.

[2] On January 28, 2019, the Designated Officer appointed me as Conduct Board to adjudicate Cst. Boland’s matter.

[3] On March 14, 2019, the Conduct Authority signed the Notice of Conduct Hearing (NOCH). The NOCH alleged that on or about December 16, 2012, Cst. Boland perpetrated off duty sexual misconduct involving Cst. L.M., contrary to section 7.1 of the Code of Conduct. Section 7.1 provides: “Members behave in a manner that is not likely to discredit the Force.”

[4] On April 5, 2019, Cst. Boland was served with the NOCH, and the package of related investigative materials (package). I received the NOCH and package on April 14, 2019.

[5] On April 17, 2019, I granted the Member Representative for Cst. Boland (MR) a filing extension to June 7, 2019, to submit Cst. Boland’s responses under subsection 15(3) and section 18 of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. The filing date was extended to June 10, 2019, as the MR was pursuing court materials involving Cst. Boland and Cst. L.M. respecting family matters.

[6] On June 10, 2019, I received Cst. Boland's responses under subsection 15(3) of the *CSO (Conduct)*. He denied any contravention of section 7.1 of the Code of Conduct, and specifically denied that he engaged in any non-consensual act with Cst. L.M.

[7] On June 17, 2019, I advised that the response did not appear to conform with the distinct elements set out in paragraphs 15(3)(a), (b), and (c). In particular, I raised the distinction between the "written submissions" contemplated by paragraph 15(3)(b) and any "evidence, document or report" that the Subject Member intended to reply upon under paragraph 15(3)(c). The MR then filed Cst. Boland's distinct signed statement, dated June 25, 2019, pursuant to paragraph 15(3)(c).

[8] The MR also requested that I direct that further investigation take place, in the form of the taking of statements from two members to whom Cst. Boland said he had expressed concerns about Cst. L.M. raising the present allegation to advance her interests in family court matters. I declined the MR's request, finding the information sought to be of low probative value. In addition, the Subject Member was not forever prevented from obtaining statements (even if only brief emails) from these two individuals at the time that he filed his original responses under subsection 15(3) the *CSO (Conduct)*.

[9] Finally, under a further filing extension to August 2, 2019, the MR filed recent family law related affidavits and court transcripts in which the present allegation concerning events on or about December 16, 2012, was referenced by Cst. L.M., and was explained and denied by Cst. Boland.

[10] A pre-hearing conference took place on August 2, 2019 (PHC #1) via teleconference. At PHC #1, I approved testimony from Cst. Boland and Cst. L.M. Later, it was formally confirmed that testimony would include both direct-examination and cross-examination.

[11] On August 19, 2019, I sent the representatives my list of the items in the initial package and further submitted materials that referenced the alleged misconduct described in the allegation. Neither party advised of any overlooked references.

[12] The “live” conduct hearing began on November 13, 2019. Ultimately, the only witness who gave testimony in this conduct hearing was Cst. L.M. She had completed her testimony under direct-examination, and was responding to questions from the MR under cross-examination, when the Conduct Authority Representative (CAR) asked for her testimony to be interrupted so that he might confer with the MR and obtain instructions from his client, the Conduct Authority. The MR was in agreement with this request, and I granted an adjournment from 11:40 a.m. until 2:00 p.m.

[13] When the hearing resumed, I granted the CAR’s request that Cst. L.H. be excluded from the hearing room. The CAR then advised that, after receiving instructions from the Conduct Authority, he was requesting that I permit the Conduct Authority to withdraw the single allegation contained in the NOCH, which would bring the hearing to an end. The CAR cited his professional duty to continually assess the case being advanced.

#### **DECISION ON ALLEGATION WITHDRAWAL**

[14] While I provided a brief oral decision on the CAR’s request on the afternoon of November 13, 2019, in which I permitted the withdrawal of the allegation and deemed the matter concluded, this is my final written decision.

[15] The CAR submits that my permission to withdraw the allegation is required given the allegation is before me as Conduct Board. The CAR advises that his request is in keeping with his professional obligation to continuously assess the merits of the case being advanced on behalf of the Conduct Authority. In answer to my question concerning a stated rationale for the withdrawal request, the CAR confirms that the request is being made as a result of the testimony provided by Cst. L.H. I shall expressly not comment on that testimony.

[16] Importantly, the CAR states that the Conduct Authority’s request includes the undertaking that the misconduct alleged in the NOCH against Cst. Boland shall not be pursued in any further conduct process.

[17] The MR does not oppose the Conduct Authority's request to withdraw the allegation contained in the NOCH, and takes the view that with the allegation deemed withdrawn, the matter should simply be declared "concluded". The MR states that it is his understanding that the Conduct Authority has no intention of re-commencing any conduct proceeding against Cst. Boland. Accordingly, no stay of proceedings or other form of remedy is requested by the MR as part of my response to the CAR's withdrawal request.

[18] The MR identifies two RCMP cases that consider the authority or discretion of a conduct authority to withdraw an allegation that is before a conduct board.

[19] I issued the decision in 2017 RCAD 9 (*O'Brien*). On the eve of the "live" hearing in *O'Brien*, it was learned that the complainant would never be capable of testifying due to health issues determined by Force medical experts to be legitimate. At paragraph 15 of *O'Brien*, a request to withdraw a number of denied allegations was granted where cross-examination of the complainant was considered necessary for procedural fairness. Notwithstanding the appointment of a conduct board to adjudicate the allegations in *O'Brien*, discretion was found to remain with the conduct authority to withdraw allegations contained in the applicable notice of conduct hearing.

[20] The second case is the decision in 2015 RCAD 1 (*Marshall*) at paragraph 3, where at the outset of the conduct hearing, the conduct authority's representative advised of the recent death of the primary witness in two allegations, and "those allegations were withdrawn."

[21] It is my view that the Conduct Authority in Cst. Boland's matter continues to enjoy a broad discretion concerning the withdrawal of the allegation contained in the NOCH. While I have been provided with the investigative package, and other filed materials, since the initiation of this conduct hearing, and have heard direct and partial cross examination testimony from Cst. L.H., it is my view (as articulated in the *O'Brien* case) that the discretion to withdraw the allegation remains with the Conduct Authority. Unless the withdrawal request is clearly contrary to the public interest, the request should be respected.

[22] In the present matter, the Conduct Authority has undertaken not to pursue the matter encompassed by the allegation in the NOCH after November 13, 2019, and has advised that the Conduct Authority's request to withdraw the allegation has been brought after consideration of testimony heard in this conduct hearing.

[23] I find the Conduct Authority's request to be supported by a reasonable if limited rationale, and to be consistent with the public interest and the ongoing obligation of any CAR to continuously assess the merits of their case.

### **CONCLUSION**

[24] I approve the Conduct Authority's request. Therefore, the sole allegation contained in the NOCH is withdrawn.

[25] Having permitted the withdrawal of the only allegation that was contained in the original NOCH, there is no allegation of misconduct against Cst. Boland to be adjudicated by me as Conduct Board.

[26] This conduct process or matter involving Cst. Boland is deemed to be concluded.

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John A. McKinlay	November 19, 2019
	Date

Conduct Board