

Protected A

2019 RCAD 04



ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF

a conduct hearing pursuant to the

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

BETWEEN:

Commanding Officer, "F" Division

Conduct Authority

and

Constable Taylor Mills

Regimental Number 56608

Subject Member

Conduct Board Decision

Gerald Annetts

March 6, 2019

Staff Sergeant Jonathon Hart, for the Conduct Authority

Staff Sergeant Colin Miller, for the Subject Member

Table of Contents

SYNOPSIS	3
INTRODUCTION	4
ALLEGATIONS	4
Evidence and findings on the allegations.....	7
Undiagnosed mental illness.....	9
Allegation 3	12
Allegation 4	15
CONDUCT MEASURES.....	17
CONCLUSION	21

SYNOPSIS

Twice in the space of two weeks, the Subject Member removed the reflective tape and/or decals from the RCMP patrol police vehicle he was operating, damaging the paint on the vehicle in the process. He also provided a false account to his supervisor on one occasion with respect to what he did during his previous shift. The Subject Member also removed supervisory comments on one occasion from each of two different files. While the Conduct Board found the allegations to be established in relation to each of these contraventions, it also found that the Subject Member's actions were directly attributable to the acute mental illness he was suffering from at the time, which was caused by traumatic events he dealt with earlier in his service. In an unrelated incident, the Subject Member was also found to have breached the Code of Conduct by leaving his shift early without the permission of his supervisor.

Finding the mental illness to be a significant mitigating factor, the Conduct Board held that dismissal was inappropriate. The Board ordered continued professional medical counselling until both the Health Services Officer and the Subject Member, upon the recommendation of his treating professionals, agree it is no longer necessary; a reprimand; and the forfeiture of 10 days' pay.

INTRODUCTION

[1] A *Notice to the Designated Officer* was issued by the Commanding Officer of “F” Division on December 15, 2017, containing five allegations against the Subject Member. The Conduct Hearing convened from October 2 to 4, 2018, in Saskatoon, Saskatchewan. I heard evidence and submissions on all five allegations. This is the written decision.

ALLEGATIONS

[2] Following a Code of Conduct investigation, the Subject Member faced the following allegations and particulars:

Allegation 1:

Between on or about August 22, 2016 and on or about September 2, 2016, at or near [S.], Saskatchewan, [the Subject Member] behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the Royal Canadian Mounted Police.

Particulars:

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “F” Division, Saskatchewan.
2. You intentionally removed the high visibility reflective tape from both sides of an RCMP police vehicle, a Chevrolet Tahoe identified as [number redacted]. You used a tool to forcefully remove the decals, which damaged the paint on the vehicle and left permanent gouge marks exposing the metal in some areas.
3. The police vehicle [number redacted] was subsequently brought to [repair shop] in [W.], Saskatchewan for repair. On or about September 1, 2016, you contacted Mr. [A. M.] at [the repair shop] and inquired about police vehicle [number redacted]. You instructed Mr. [A. M.] not to re-install the reflective tape and decals on the vehicle, however he informed you that he was contracted to repair the vehicle and completed a superficial repair.
4. On September 1, 2016, the repairs were completed and the RCMP was invoiced \$735.84 (invoice #28453).
5. You willfully damaged the property of the Government of Canada; your actions amount to mischief.
6. Your actions also compromised a safety feature of a police vehicle and put at risk your own safety, the safety of other police officers and also the safety of the public.

Allegation 2:

Between on or about September 2, 2016 and on or about September 4, 2016, at or near [S.], Saskatchewan, [the Subject Member] 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

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP"), posted to "F" Division, Saskatchewan.
2. You intentionally removed the high visibility reflective tape, as well as other decals such as the 911 decals and the mounted horse rider from an RCMP police vehicle, a Chevrolet Tahoe identified as [number redacted]. You used a tool to forcefully remove the decals, which damaged the paint on the vehicle and left permanent gouge marks exposing the metal in some areas.
3. You attempted to conceal your actions by applying white paint to fill the gouge marks in the metal body of the vehicle.
4. The police vehicle was brought to [the repair shop] in [W.], Saskatchewan for superficial repair.
5. The repairs were completed and the RCMP was invoiced \$1,102.50 (invoice #28753).
6. You willfully damaged for the second time the property of the Government of Canada; your actions amount to mischief.
7. Your actions also compromised a safety feature of a police vehicle and put at risk your own safety, the safety of other police officers and also the safety of the public.

Allegation 3:

On or about October 5, 2016, at or near [S.], Saskatchewan, [the Subject Member] provided a false account pertaining to his actions, contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "F" Division, Saskatchewan.
2. On October 4, 2016, you were scheduled to work a day shift from [9 a.m. to 5 p.m.].
3. You attended [S.] Provincial Court with [Corporal (Cpl.) C. Z.]; you testified in a preliminary inquiry. You left the courtroom at approximately [10:56 a.m.] and at approximately [11:45 a.m.], you drove Cpl. [C. Z.] back to his residence.

You did not return to [S.] Provincial Court on that day and did not respond to any calls for service.

4. At approximately [4:30 p.m.], you picked up Cpl. [C. Z.] at his residence and drove him to the detachment.

5. On October 5, 2016, you had a discussion with [Sergeant (Sgt.) L. D.]. When asked where you were after your court attendance, you provided a false account pertaining to your actions by replying that you went back to Court to finish watching the proceedings.

Allegation 4:

On or about October 25, 2016, at or near [S.], Saskatchewan, [the Subject Member] failed to remain on duty, contrary to section 4.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "F" Division, Saskatchewan.

2. On October 25, 2016, you were scheduled to work from [6 p.m. to 2 a.m.]. At approximately [11 p.m.], you advised [Constable (Cst.) E. C.] that you had the "okay" to go home, that you were going home and to call you if needed.

3. Cst. [E. C.] was left working alone from [11 p.m.] to [2 a.m.]. You placed Cst. [E. C.]'s safety at risk by leaving her without immediate back-up.

4. You failed to remain on duty and were not authorized to leave your shift early on that day.

Allegation 5:

Between on or about September 7, 2016, and on or about September 8, 2016 at or near [S.], Saskatchewan, [the Subject Member] 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

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "F" Division, Saskatchewan.

2. On October 18, 2014, you were assigned PROS file 20141320711, a motor vehicle accident.

3. On September 5, 2016, Sgt. [L. D.] entered the following supervisory comment on the general report of PROS file 20141320711:

"[September 6, 2016] reviewed, [Sgt. L. D.]

[The Subject Member], follow up on this asap. [Name redacted] is not going to return your call from two months ago. If there are grounds to lay an information in regards to this file why have we not sworn an information and sought a warrant for arrest. The flight from police, as well as having NFA is enough to support the warrant in that the accused are evading service, and/or making it in the public interest that the warrant needs to be sworn. Followup asap on this as to not delay prosecution.”

4. On September 7, 2016, you erased the comment entered by Sgt [L. D.].
5. On June 18, 2015, you were assigned PROS file 2015731049, a motor vehicle accident.
6. On September 6, 2016, Sgt. [L. D.] entered the following supervisory comment on the general report of PROS file 2015731049:

“[September 6, 2016] Reviewed, [Sgt. L. D.]

[The Subject Member], this file is badly overdue, get on it please. Cst [S.] obtained alcohol readings via her ito, and informed you of those results. Since that time nothing has been done on this file, review the investigation and determine if there are enough grounds to lay a charge. You are getting into area of delay of presecution with this file if you don't get on this. d.d. not adjusted and marked high priority.”

7. On September 7, 2016, you erased the supervisory comment entered by Sgt [L. D.] and subsequently wrote:

“[March 17, 2016]

Production Order results from RUH received and scanned into file.”

[*Sic throughout*]

Evidence and findings on the allegations

[3] The Subject Member was facing five allegations of contravening the RCMP Code of Conduct. In his subsection 15(3) Response, the Subject Member admitted to allegation 4, with an explanation. He also admitted to the vast majority of the particulars in the remaining allegations. Despite those admissions, he denied that the particulars within allegations 1, 2 and 5 constituted discreditable conduct. He also denied that the particulars within allegation 3 constituted providing a false account of his actions.

[4] The basis of the Subject Member's defence was that he suffered from an undiagnosed psychological condition at the time of these events, which caused or contributed to him acting in an

unreasonable manner. Given the nature of the defence and the circumstances captured by the allegations, I felt it necessary to hear *viva voce* evidence and to clarify some of the particulars. Therefore, in addition to the investigation report and the other materials contained in the Record, I heard *viva voce* evidence from five witnesses: Staff Sergeant (S/Sgt.) G. A., Sgt. L. D., J. L., Dr. C. C., and the Subject Member.

[5] After the evidence was heard and in his closing submissions, the Subject Member admitted to all of the particulars in allegations 1, 2 and 5. Despite those admissions, some clarification was still required. With respect to particular 2 in allegation 1, the evidence showed that the decals were not removed on this occasion; only on the second occasion captured by allegation 2. I accept the Subject Member's testimony on that issue, which was corroborated by the statement of Mr. [A. M.] from the repair shop, where the vehicle was taken for repair. Therefore, that admission to the particulars is accepted with that clarification and I find those particulars to be proven.

[6] The second particular in allegation 2 also required some clarification. That particular reads as follows:

You intentionally removed the high visibility reflective tape, as well as other decals such as the 911 decals and the mounted horse rider, from an RCMP police vehicle, a Chevrolet Tahoe identified as [number redacted]. You used a tool to forcefully remove the decals, which damaged the paint on the vehicle and left permanent gouge marks exposing the metal in some areas.

[7] Again, I accept the Subject Member's evidence on this particular, as it was consistent with that of Mr. A. M. It was on the first occasion, captured within allegation 1, that the gouge marks in the paint were made and when the white epoxy was used to partially repair those gouge marks such that they could be covered again with the reflective tape. As such, I find that the particular is established to the extent that the Subject Member intentionally removed the high visibility tape and the decals. I do not find that he used a tool on this removal occasion which damaged the paint on the vehicle and left the gouge marks exposing the metal in some areas. The remainder of the particulars are also established.

[8] There are no clarifications required in relation to the Subject Member's admission of the particulars for allegation 5.

Undiagnosed mental illness

[9] The Subject Member argued that, despite the particulars having been proven and admitted for each of these allegations, the allegations as a whole were not established because he was suffering from an undiagnosed psychological condition at the time of these events, which caused or contributed to him acting in an unreasonable manner. Because of his illness, he argued that a reasonable person would not find his actions likely to discredit the Force.

[10] In order to consider this argument, it is necessary to go into the details of the expert report and testimony provided by Dr. C. C. The expert report indicates that Dr. C. C. sees the Subject Member on a monthly basis. At the time this report was written, he had met with him on seven occasions. His diagnosis is that the Subject Member was suffering from Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder at the time of these events and that he continues to suffer from those disorders today, although to a lesser extent.

[11] He indicated that PTSD involved exposure to trauma, intrusive re-experiencing of the memories, avoidance of triggers for such, negative cognitive and emotional effects, and hyper-arousal symptoms. Some of the traumatic events leading to the development of these disorders dated as far back as 2010. The Subject Member felt that his superiors would not be supportive if he disclosed his difficulties, and this perceived lack of support can increase the risk of PTSD. The hyper-arousal symptoms included hyper-vigilance in the community and increased paranoia that people may be following him, as well as a sense that a supervisor was trying to have him fired.

[12] In his testimony, the Subject Member also admitted to other reckless behaviour not captured in the allegations, such as driving too fast. He further explained that, in his flawed reasoning at the time of these events, he saw that as a way to make himself a more difficult target for someone trying to shoot him. He also explained that he routinely unhooked the GPS in the police vehicle so that his supervisors would not know how fast he was driving.

[13] The Conduct Authority accepted the majority of Dr. C. C.'s findings, but did take some issue with paranoia being recognized as a symptom of PTSD. However, Dr. C. C. was quite clear that paranoia can be a symptom or an associated feature with PTSD. He also indicated that paranoia, either realistic or unrealistic, can cause a person's self-preservation to take priority over everything else, which can lead to lying, which is, of course, the subject of allegation 3. The Conduct Authority did not call rebuttal evidence on the issue and I accept Dr. C. C.'s evidence and find that paranoia can be a symptom or an associated feature of PTSD.

[14] Some of the negative emotional and cognitive symptoms of PTSD present in the Subject Member included general depression, anxiety and irritability. He was finding little pleasure in his life and drew away from social contact with others. He was concerned about sharing with others what he was experiencing and admitting to needing help because of the negative connotations around mental illness. While his symptoms started as early as 2010, they became more intense in 2016. He developed persistent paranoia regarding personal safety, and he worried about what it would mean to his career if he were to share anything about his mental illness with others. As his paranoia developed, this included concerns that others in the RCMP wanted him fired and would use his mental illness against him.

[15] Dr. C. C. opined that his heightened anxiety for safety in the community and within the RCMP seemed to be a major factor driving his actions at the time. He also noted that major depression can significantly affect concentration and, combined with the anxiety, may lead to poor decision-making, which was apparent in these incidents. Given the perceived threats to his life and safety, he took the steps he felt were necessary to protect his life, which seemed to be the driving motive behind the behaviour captured in these allegations of misconduct.

[16] Dr. C. C. felt that the Subject Member's false statement, which is the subject of allegation 3, may have been an attempt to protect himself from criticism for negligence in doing his job, which he saw as something that would threaten his career. With respect to allegation 5, he opined that the Subject Member's removal of the supervisory comments were due to a concern that they would be used against him to have him fired. This seemed to stem from the increased paranoia and anxiety he was experiencing. He was concerned about people knowing that he was struggling with mental

illness and he did not know what the consequences would be if he were to admit this. He was concerned for job security and worried that having a comment on record that he was behind in his work would cost him his job.

[17] The Subject Member took the stand and testified to experiencing these thoughts and feelings, among others. He indicated that they were the primary factors driving his behaviour at the time.

[18] I'm not a psychiatrist nor a psychologist, but even I was able to make some observations of the Subject Member during the course of the hearing, which were consistent with the symptoms described by Dr. C. C. For example, the Subject Member was noticeably uncomfortable on the witness stand with his back to the door, and without fail, turned around at the slightest sound coming from the hallway behind him. In addition, during breaks in the proceedings, when he was not consulting with counsel, he stood with his back in the very corner of the room.

[19] Dr. C. C. was challenged on cross-examination on some of his conclusions. While he was less articulate on the witness stand than in his report, I don't feel that the reliability of his conclusions in the report were significantly diminished. At the end of the day, I find his opinion very helpful in reaching the conclusion that the evidence in totality showed that the Subject Member was suffering from undiagnosed psychological conditions at the time, being PTSD and Major Depressive Disorder. That diagnosis was in fact conceded by the Conduct Authority. I also agree that those psychological conditions caused or contributed to him acting in the unreasonable manner in which he did in relation to the events captured within the allegations against him.

[20] Most notably, I find that the Subject Member's fear of being harmed or targeted or fired overrode his common sense with respect to the events outlined in allegations 1, 2 and 5. The nature of these events themselves was I think illustrative of this. It's hard to imagine that he could ever expect not to be found out for removing the decals on the police vehicle that other members of the Detachment knew he was driving, yet he did it anyway. No other motive or explanation has been offered by the Conduct Authority, nor is any evident to me.

[21] Similarly, it is difficult to believe that he could expect to get away with deleting the supervisory comments on his files when his supervisor would be reviewing the updates he made almost immediately. Yet, he did it anyway. None of these actions are the hallmarks of a criminal mastermind at work, rather they are indicative of someone whose thinking was impaired by mental illness.

[22] Having said that, I don't accept that the existence of mental illness excuses him from being culpable for his misconduct without more. Dr. C. C. was very clear in his testimony in response to my questions that the Subject Member was both aware of what he was doing and of the fact that there would be consequences to his actions. His state of the mind at the time was simply that self-preservation was more important than those consequences. His free will was still present and he made the conscious choice to do what he did on each occasion. While the contributory factor of his mental illness was very relevant in terms of the appropriate penalty, it doesn't shield him from having to answer for his actions, nor does it change the outcome of the test for discreditable conduct.

[23] In my view, a reasonable person with knowledge of policing in general and the RCMP in particular would be of the view that the Subject Member's actions captured within allegations 1, 2 and 5 and admitted to by the Subject Member are likely to discredit the Force. Therefore, I find all three of those allegations to be established.

Allegation 3

[24] Allegation 3 reads as follows:

On or about October 5, 2016, at or near [S.], Saskatchewan, [the Subject Member] provided a false account pertaining to his actions, contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

[25] The Subject Member admits to particulars 1, 2 and 4 of this allegation, but he denies particulars 3 and 5. With respect to particular 3, in his Response, he indicated that he did go back to the courthouse, but he remained in his vehicle and did not go back inside. Instead, he called the prosecutor to obtain an update on the outcome of the preliminary hearing in which he had testified that morning.

[26] He testified that, after dropping off Cpl. [C. Z.] at his residence, he went out on the road and ate his lunch in his police vehicle as he normally did. He then conducted some highway patrols and conducted some file work before returning to the courthouse, where he could not bring himself to go inside due to his fears of being targeted. Instead, he called and spoke to the Crown prosecutor on the preliminary hearing because he wanted to inform her of a potential conflict on the file if the matter went to trial. He said that he had a conversation with her of 20 minutes or less. After that conversation, he returned to the Detachment at the end of his shift.

[27] All of that is really neither here nor there, because it's not particular 3 that constitutes the alleged contravention of the Code of Conduct. It's particular 5 and his denial of particular 5 is based on his version of the conversation that he had with Sgt. L. D. In his written Response, the Subject Member indicated that he did tell Sgt. L. D. that he went back to court or the courthouse, but he did not tell him that he went back to finish watching the proceedings. He indicated that Sgt. L. D. was visibly upset, so he did not feel comfortable and wanted to end the interaction. As a result, he did not provide him with a detailed explanation.

[28] However, in his testimony before the Conduct Board, he indicated that he didn't recall telling Sgt. L. D. that he went back to court. While that may initially be seen as a minor inconsistency, when compared to Sgt. L. D., certainly in terms of what he was told, it was significant.

[29] Sgt. L. D. was very clear in his testimony that he called the Subject Member into his office and left the door open. The two of them had a brief conversation that lasted two minutes or less. He asked the Subject Member where he was yesterday afternoon and the Subject Member told him that he went back to watch the rest of court. He responded to him that if he was going to do that he had to call the office and get permission because they were short-staffed and busy.

[30] He remembered being satisfied with the explanation at the time. It wasn't until later that day that he became concerned when he discovered that it was actually a preliminary inquiry. Therefore, the Subject Member would not have been allowed to watch the remainder of the proceedings, because it would have tainted his future testimony at trial. When he discovered that, he believed the Subject Member lied to him, so he informed S/Sgt. G. A.

[31] Sgt. L. D.'s testimony was consistent with the statement he provided to Sgt. M. on November 15, 2016, in relation to what he was told by the Subject Member. It was inconsistent on some of the collateral issues, such as the details of what Cst. M. relayed to him about his conversation with the Subject Member; however, that was not what he was concerned with at the time. It is understandable that he would have a better recollection about this in-person conversation with the member he was dealing with at the time.

[32] In cases such as this where there is conflicting testimony, it is necessary to assess that evidence guided by the Supreme Court of Canada's decision in *F.H. v McDougall*, [2008] 3 SCR 41 [*McDougall*], in which the Court said:

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

[33] The Ontario Court of Appeal followed up on those statements in *Law Society of Upper Canada v Neinstein*, 2010 ONCA 193:

[21] The appellant's argument that the three-step approach in W.(D.), or its purposive equivalent, must be used in assessing conflicting evidence in non-criminal cases was put to rest in *McDougall*, a decision rendered after the Divisional Court released its reasons in this case. [...] In the Supreme Court of Canada, the court unanimously concluded that a W.(D.) type analysis was inappropriate in a civil case. [...]

[22] *McDougall* has direct application to this case. The Hearing Panel was required to determine whether the allegations were made out on the balance of probabilities. In doing so, the Hearing Panel was required to consider the totality of the evidence and to make credibility assessments in the context of the totality of the evidence. As in *McDougall*, a finding by the Hearing Panel that the complainants were credible could be determinative of the outcome. In light of *McDougall*, the Hearing Panel's application of a modified W.(D.) analysis was inappropriate to the inquiry it was required to make. [...]

[34] Given my findings with the respective testimony of the two witnesses and applying the test presented in *McDougall*, I prefer the testimony of Sgt. L. D. on this issue and I find that the Subject Member did provide a false account pertaining to his actions, contrary to section 8.1 of the Code of Conduct.

Allegation 4

[35] Allegation 4 reads as follows:

On or about October 25, 2016, at or near [S.], Saskatchewan, [the Subject Member] failed to remain on duty, contrary to section 4.1 of the *Code of Conduct* [...]

[36] The Subject Member admitted to this allegation, with an explanation. The explanation was that he believed he had been rescheduled to work from 4 p.m. to midnight as opposed to 6 p.m. to 2 a.m., which he discovered when he arrived at the office at 4 p.m. He indicated that he worked until 11:30 p.m., when he advised Cst. E. C. that he was owed some travel time and he was going to go home. He indicated to her that he had a radio with him and he would be up until the end of her shift at 2 a.m. and to call him if she was called out of the office. His account of the events was consistent with that of Cst. E. C. contained in the statement she provided to investigators. The major contradiction with respect to the Subject Member's version of events and the particulars as detailed was that he believed the two hours he was owed was being given at the end of his shift as opposed to the beginning of his shift.

[37] There is general agreement that what would normally have been a ten-hour night shift was changed to an eight-hour night shift. Sgt. L. D. testified that it was eight hours because the shift was changed from day to night and, when those changes are made, they try to keep the same number of hours as was originally scheduled. Day shifts are normally eight hours and night shifts are usually ten hours. In this case, the eight-hour day shift was changed to an eight-hour night shift in accordance with that general policy.

[38] There was no contradictory evidence presented and I accept the Subject Member's testimony that he worked from 4 p.m. to 11:30 p.m. Therefore, the Subject Member worked seven and one-half

hours before heading home at 11:30 p.m. I accept that he made the mistake that he acknowledged in terms of the start time of his shift. That leads to the finding that he intentionally left work a half hour before the end of the shift. Because he did not obtain permission from anyone who had the authority to grant his request, I find that he did fail to remain on duty, contrary to section 4.1 of the Code of Conduct.

[39] I will note for the sake of clarity that I do not accept particular 4 as having been established. Particular 4 alleged that the Subject Member placed Cst. E. C.'s safety at risk by leaving her without immediate backup. The only evidence before me on that issue is from the Subject Member, who indicated that Cst. E. C. advised him that she was working in the office on PROS for the remainder of her shift and that he told her to call him if something came up as he would be up until the end of her shift. Under those circumstances, I don't see that he placed her safety at risk.

[40] Finally, in relation to this allegation, the Subject Member also argued that this matter was previously dealt with by S/Sgt. G. A. in a meeting with the Subject Member and Sgt. L. D.; therefore, the Board had no jurisdiction to deal with it. He argued that S/Sgt. G. A. was the appropriate conduct authority to deal with the issue, that he counselled the Subject Member on the officer safety issue and that that should have been the end of the matter. He indicated that S/Sgt. G. A. acknowledged this in the can-say that he signed off on days before the hearing commenced and that was provided to the Conduct Board.

[41] However, on the witness stand, S/Sgt. G. A. explained that he identified all of the issues he had with the Subject Member to the Professional Responsibility Unit and left the decision with them in terms of what should be included in the Code of Conduct investigation that was mandated. He did that because of all the different issues that were involved and because of its expertise in the area, which exceeded his. He indicated that the can-say in question was drafted by the Member Representative and forwarded to him for his adoption. He did not catch the incorrect statement contained in the can-say and that the correct version of events was what he testified to.

[42] The only real evidence before me on the issue was provided by S/Sgt. G. A., who indicated that he did not deal with this allegation as the conduct authority. There is no documentation in the

form of a 10-04 performance report or a written reprimand to contradict him and I accept his testimony on the issue. I also note that it's only good management to address the issues as soon as they arise and that directing someone that they need to stop doing something in relation to their duties is not necessarily imparting a conduct measure. It's a necessary risk management step to prevent future Code of Conduct contraventions and potential liability on the part of the Force.

[43] Allegation 4 is established with the noted clarifications.

CONDUCT MEASURES

[44] Having found that the Subject Member contravened the RCMP Code of Conduct on five occasions, I'm required by subsection 45(4) of the Royal Canadian Mounted Police Act, RSC, 1985, c R-10, to impose an appropriate conduct measure or measures.

[45] The Conduct Authority is seeking the Subject Member's dismissal or forced resignation from the Force. The Subject Member's position is that the more appropriate global sanction is a reprimand, the forfeiture of 30 days' pay, a transfer, and continued professional counselling.

[46] In making my decision, I'm first required to establish the range of conduct measures appropriate for the misconduct involved. In cases involving the misconduct established against the Subject Member, that range normally runs from a significant forfeiture of pay to dismissal.

[47] Once the range has been established, I'm then required to assess the aggravating and mitigating factors present in the circumstances of the case. In terms of aggravating factors, the only one suggested by the Conduct Authority in this case is the fact that the damage to the police vehicle was repetitive, in that it happened for the second time shortly after the vehicle was initially repaired.

[48] Balanced against that are the following mitigating factors. With respect to almost all of the conduct contained within the allegations, the Subject Member immediately admitted responsibility when questioned or confronted. He also admitted to his actions before me, though challenging the finding of discreditable conduct in relation to three of the allegations based on the existence of

mental illness. Because that defence had an air of reality to it, I find that this challenge doesn't diminish his acknowledgment of responsibility.

[49] The Subject Member demonstrated authentic remorse on the witness stand and issued what I saw as a sincere and heartfelt apology to everyone affected by his actions. He also demonstrated an awareness, not always apparent to members in his position, in terms of the scope of those who may have been affected by what he did and these proceedings.

[50] The Subject Member has no prior discipline and he was able to provide letters of support from members who have worked with him in the past and who characterize this misconduct as out of character for him.

[51] He also has the support of his wife and family in dealing with his mental illness, which brings me to the last, and by far most important, mitigating factor. The Subject Member was diagnosed as suffering from PTSD and Major Depressive Disorder before, during, and after these events occurred. The symptoms of his illness trace as far back as 2010, but were at their most acute in 2016, at the time this misconduct occurred.

[52] The Subject Member testified that this was the lowest point of his life, a time when he was consumed with paranoid thoughts about him being targeted by people looking to kill him, among other things. His overriding concern every day was to keep himself from being shot and killed, and he saw potential threats everywhere. That is what led him to remove the reflective tape and decals from the police vehicle he was driving.

[53] On the first occasion, he drove out into the middle of a remote field where no one could find him and he peeled off the reflective tape with his knife. On the second occasion, he used gasoline and a laminated card to peel off the tape and decals in the attached garage of his home. He did this while his wife fumed over what he was doing, because she was able to foresee the consequences, consequences that in his mind were much less important than the need to stay safe.

[54] He also lied to his supervisor and he removed a supervisor's comments from two police reports because he thought if he didn't he risked being fired. The Conduct Authority is right in his

submissions that those actions amount to displays of deceit and dishonesty in most cases that would warrant consideration of dismissal as the appropriate conduct measure. I would consider dismissal as being within the range of appropriate conduct measures, but for the fact that everyone agrees that he was suffering from a serious work-related mental illness at the time, an illness that was a significant contributory factor to his misconduct.

[55] Mental illness is not something that people can readily see in someone, even when they're looking for it and even when they know what to look for. S.Sgt. G. A. was not looking for it in the Subject Member, but he did suspect that something was wrong; therefore, he requested, two years ago, that he attend a mental health evaluation. He did that because the actions of the Subject Member simply didn't make sense for someone who was right-thinking. His suspicions were 100 percent correct.

[56] Nothing in the circumstances of this case has really changed since then. But here we are, two years later, in a conduct hearing where the Conduct Authority is still arguing for the Subject Member's dismissal. In my view, this ceased to be a dismissal case the moment the diagnosis of PTSD and Major Depressive Disorder came to light that reasonably explained the Subject Member's actions. This case is not about deceit and dishonesty. It's about the diagnosed mental illness and what comes with it: poor judgment, paranoia, fear of being found out, and of not being able to tell someone about it. Those of us who have not lived through it can only imagine the isolation and loneliness the Subject Member felt every day, believing that he was being targeted by people looking to kill him, and not being able to tell somebody about it.

[57] I am not going to go into the details, but the evidence is clear that he was struggling with an occupational injury incurred while in the course of his duties as a police officer. The actions he took were not for any nefarious purpose, but due to unreasonable paranoid beliefs he held at the time and directly attributable to his mental illness. In assessing the appropriate conduct measure to be levied against him, I accept in its entirety the report of Dr. C. C. and the explanation it provides of the Subject Member's actions. While it is not enough to allow him to escape liability for those actions, it is a very substantial mitigating factor.

[58] I also acknowledge that the first goal of discipline is rehabilitation. In this case, the rehabilitation required is more medical than conduct related. In light of all those factors, I'm not inclined to accept the submission put forward by either of the parties. In my view, the appropriate conduct measures, taking into account all of the circumstances of this case, are a reprimand, continued professional medical counselling until both the Health Services Officer and the Subject Member, upon the recommendation of his treating professionals, agree it is no longer necessary, and the forfeiture of 10 days' pay. Having not heard anything in terms of why a transfer to another work location is required, I decline to give such an order. If that is something required from a medical perspective, then it should be dealt with on that basis.

[59] I would like to finish with one final note. In the conduct measures phase of this hearing, the Conduct Authority Representative implied that he didn't have the authority to seek anything but dismissal as the appropriate conduct measure, because the matter was before a Conduct Board. With respect, I disagree. The Conduct Authority Representative has the role of prosecutor in these proceedings. With that role comes certain responsibilities that were dealt with by the Prince Edward Island Court of Appeal in *Griffin v Summerside (City)*, [2008] PEIJ No 46 (leave to appeal to the Supreme Court of Canada refused). In this case, the plaintiff, Deputy Director of Police Services, was successful in his action against Arsenault, the Director of Police Services, for malicious prosecution in the context of police discipline. The Court of Appeal held that Arsenault did not have grounds to lay disciplinary charges against Griffin and stated at page 8:

It is now well settled that professional disciplinary bodies and individuals with the authority to initiate proceedings before such bodies do not have immunity from suits for malicious prosecution.

[60] It goes without saying that if a prosecutor in disciplinary proceedings can be held liable for malicious prosecution like a prosecutor in criminal proceedings, then his or her ethical responsibilities are similar to those of a prosecutor in criminal proceedings, as characterized by the Supreme Court of Canada in *Boucher v R.*, [1955] SCR 16, at 23-24. I find further support for that position at paragraph 1.n. of the RCMP *Representative's Code of Ethics*:

n) when engaged as a representative of the conduct authority, not primarily seek to obtain a finding of a contravention of the Code of Conduct, but to see that justice is done;

[61] In my view, in the context of RCMP conduct hearings, that means that the prosecution must continually assess the evidence to ensure there is a reasonable likelihood of a finding of a contravention of the Code of Conduct. If there is not, then the prosecution must be discontinued. That is the responsibility of the Conduct Authority Representative just as much as it is the responsibility of the Conduct Authority; that responsibility supersedes instructions from the Conduct Authority. Along with the continual assessment of the evidence to determine if there is a reasonable possibility of a finding of a contravention of the Code of Conduct is the continual assessment of whether there is a reasonable possibility that dismissal will be the appropriate or likely conduct measure. If and when that is no longer the case, then dismissal should be taken off the table and the Subject Member and the Conduct Board advised of the conduct measure being sought. It is inappropriate for a Conduct Authority or a Conduct Authority Representative to delegate either of these responsibilities to the Conduct Board, and in that way unnecessarily drag out the proceedings.

CONCLUSION

[62] I find that all five allegations are established, with the clarifications previously noted with respect to certain particulars. I impose conduct measures consisting of a reprimand, continued professional medical counselling until both the Health Services Officer and the Subject Member, upon the recommendation of his treating professionals, agree it is no longer necessary, and the forfeiture of 10 days' pay.

[63] The parties are reminded that section 45.11 of the *RCMP Act* sets out the provisions to appeal this decision and the rules governing such an appeal are contained in the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

March 6, 2019

Gerald Annetts

Date

Conduct Board