

Publication ban: Any information that could identify the individuals referred to as Ms. X or Mr. Y in the present decision as well as all medical documentation submitted by Constable McCarty and contained in the Record before the Conduct Board may not be published, broadcast or transmitted in any way.



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 Dane McCarty

Regimental Number 53462

(Subject Member)

Conduct Board Decision

Christine Sakiris

September 17, 2020

Ms. France Saint-Denis, Conduct Authority Representative

Mr. John Benkendorf, Subject Member Representative

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SUMMARY

The original *Notice of Conduct Hearing*, dated December 23, 2019, contained two allegations of discreditable conduct arising out of Constable McCarty's interactions with Ms. X and Mr. Y. An amended *Notice of Conduct Hearing* was filed on June 5, 2020. It too contained two allegations of discreditable conduct, contrary to section 7.1 of the RCMP Code of Conduct. However, the particulars were amended. Constable McCarty admitted to both allegations.

The hearing of this matter was held by videoconference on July 3, 2020. The parties provided a joint submission on conduct measures that morning. The Conduct Board heard evidence from Constable McCarty and Ms. X, and considered Mr. Y's *Victim Impact Statement*. The Conduct Board found that both allegations, as amended, were established and accepted the joint proposal on conduct measures.

The following conduct measures were imposed: (1) a financial penalty of 10 days (80 hours) to be deducted from Constable McCarty's pay, payable on or after November 1, 2020; (2) a forfeiture of 8 days (64 hours) of annual leave; (3) an ineligibility for promotion for a period of one year from the date of this written decision; (4) a transfer to another work location at the Conduct Authority's discretion; and (5) a direction to undergo medical treatment as specified by the Health Services Officer for "K" Division.

INTRODUCTION

[1] The original *Notice of Conduct Hearing*, dated December 23, 2019, contained two allegations of contraventions of section 7.1 of the RCMP Code of Conduct, arising out of Constable McCarty's interactions with his then wife Ms. X and their neighbour Mr. Y on or about October 29, 2018.

[2] Following discussions between the parties, a tentative resolution was reached. On June 3, 2020, an amended *Notice of Conduct Hearing* was prepared and served on Constable McCarty. The amended *Notice of Conduct Hearing* contained two allegations of contraventions of section 7.1 of the Code of Conduct.

[3] On June 5, 2020, Constable McCarty provided his response to the amended *Notice of Conduct Hearing*, pursuant to subsection 15(1) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. He admitted to both allegations.

[4] Following a request for clarification from this Conduct Board, the Conduct Authority Representative provided a second amended *Notice of Conduct Hearing*, dated June 5, 2020, in which particular 18 was added to each allegation. Constable McCarty accepted the amendments through his counsel. Any further reference to the *Notice of Conduct Hearing* should be understood as referring to the June 5, 2020, *Notice of Conduct Hearing* as amended.

[5] On July 3, 2020, a hearing was conducted by videoconference. Two publication bans were imposed. In the first one, following a request from the parties, I imposed a publication ban, pursuant to paragraph 45.1(7)(a) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10

[RCMP Act], on any information that could identify the complainants in this matter. In accordance with that publication ban, any information that could identify the individuals referred to as Ms. X or Mr. Y may not be published, broadcast or transmitted in any way.

[6] In the second, the Subject Member Representative requested, without opposition by the Conduct Authority Representative, a publication ban on all medical documentation submitted by Constable McCarty. Consequently, I ordered that all medical documentation submitted by Constable McCarty and contained in the Record before the Conduct Board shall not be published in any document, broadcast or transmitted in any way.

[7] By way of an oral decision, I found Allegations 1 and 2, as amended, to be established. In determining the appropriate conduct measures, I heard oral evidence from Constable McCarty and Ms. X, which I considered in conjunction with Mr. Y.'s *Victim Impact Statement*. The parties provided a joint proposal on conduct measures, which I accepted. This written decision incorporates and expands upon that oral decision.

ALLEGATIONS

[8] The amended Allegations and particulars are as follows. I have amended the text in order to give effect to the publication ban:

Allegation 1: On or about October 29, 2018, [...] in the Province of Alberta, Constable Dane McCarty 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 Constable McCarty was a member of the Royal Canadian Mounted Police posted [...] in "K" Division, in the Province of Alberta (hereinafter the "Subject Member").
2. On Monday, October 29, 2018, the Subject Member was residing at [...] Alberta.
3. On the same date, [Mr. Y] (hereinafter the "Victim"), was residing at [...] Alberta.

4. On October 29, 2018, the Subject Member was a member of the [...] RCMP. The wife of the Subject Member, [Ms. X], was a member of [...] RCMP.

5. On October 29, 2018, the Subject Member and [h]is wife were separated. On this date, his wife was at the residence of the Victim as they had been in a romantic relationship for the past 4 months, and his wife had been living at the Victim's residence for 2 weeks immediately prior to this date. The Subject Member had consumed alcohol on this date and, at approximately 10:00 p.m., he attended at the residence of the Victim looking for his wife.

6. Upon arriving at the Victim's residence, the Subject Member found his wife in the garage. The Subject Member tried to persuade his wife to come back home with him. His wife refused and an argument ensued. The Subject Member then decided to enter the Victim's residence to confront him. The Subject Member did not have permission to enter the Victim's residence.

7. At this time, the Victim was inside his residence with his five year old son. The Subject Member was aware that the Victim lived at this residence with his son.

8. His wife tried to prevent the Subject Member from entering the Victim's residence. The Subject Member pushed his wife out of the way and entered the Victim's residence. Once inside, the Subject Member assaulted the Victim by punching him 3-4 times. The Victim's five year old son was inside a bedroom with the door closed and, although he did not see the assault, he did hear the commotion.

9. His wife followed the Subject Member into the house and her and the Victim were able to stop the Subject Member from continuing his assault. The Subject Member and his wife left the residence and went into the garage. At this time, the Victim moved his son to another area of the house.

10. The Subject Member and his wife continued to argue in the garage and the Subject Member decided he was going to go back inside the residence to confront the Victim again. His wife tried to stop the Subject Member from entering the residence but the Subject Member again pushed her out of the way and entered the residence.

11. Once inside, the Subject Member again assaulted the Victim by punching him 2-3 times. His wife again followed the Subject Member inside and her and the Victim were able to stop the Subject Member's assault. The Subject Member returned to the garage. The [...] RCMP were called and officers attended in response.

12. The Victim suffered a small cut on his upper nose between his eyes. He also had redness below his right eye. During the assaults, the Victim's Fitbit watch was ripped off of his arm and a foot sized hole was caused to the

drywall. The Victim's shirt was ripped around the neckline and there was blood on the back of his left shoulder and on his abdomen.

13. Upon arriving at the Victim's residence, RCMP found the Subject Member walking around the driveway area and drinking from what appeared to be a bottle of beer. The Subject Member said to the officers, "Arrest me boys" and "He's fucking my wife".

14. The Subject Member then placed his hands behind his back. Officers observed that the fingers on the Subject Member's left hand were bloody.

15. One officer stayed outside with the Subject Member while another officer entered the Victim's residence. This officer noted blood on the floor inside the residence and [Ms. X] on the floor crying heavily. Officers confirmed that [Ms. X] was uninjured.

16. The Subject Member was arrested and taken to the [...] RCMP detachment and was subsequently charged with four counts:

- Count 1: Breaking and entering to commit an assault on the Victim, contrary to sections 348(1)(B) / 266 of the Criminal Code;
- Count 2: Assaulting his wife, contrary to section 266 of the Criminal Code;
- Count 3: Damaging property of a value not exceeding \$5,000.00 (the Victim's watch), contrary to section 430(1)(A) of the Criminal Code.
- Count 4: Damaging property of a value not exceeding \$5,000.00 (the Victim's drywall in house), contrary to section 430(1)(A) of the Criminal Code.

17. On April 16, 2019, the Subject Member pleaded guilty to one count of assault regarding the assaults on the Victim (section 266 of the *Criminal Code*) and received a conditional discharge and twelve months probation with conditions. The other counts were withdrawn at the Crown's request.

18. The Subject Member behaved in a way that is contrary to Section 7.1 of the Code of Conduct of the RCMP by pushing [h]is wife aside on two occasions to forcefully enter into the home of the Victim. (Count 2).

Allegation 2: On or about October 29, 2018, [...] in the Province of Alberta, Constable Dane McCarty 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:

Particulars 1 to 17 of Allegation 1 are incorporated here as particulars 1 to 17 of the current Allegation.

18. The Subject Member behaved in a manner that is contrary to Section 7.1 of the Code of Conduct of the RCMP by entering the Victim's property without permission, by assaulting the Victim (Count 1), by damaging the Victim's property (Count 3 and Count 4) and by threatening the Victim.

[Sic throughout]

Decision on the Allegations

[9] Section 7.1 of the RCMP Code of Conduct states: "Members behave in a manner that is not likely to discredit the Force."

[10] The test for "discreditable conduct" under section 7.1 of the Code of Conduct requires that the Conduct Authority establish the following four elements on a balance of probabilities:

- a. the acts that constitute the alleged behaviour;
- b. the identity of the member who is alleged to have committed these acts;
- c. that the member's behaviour is likely to discredit the Force; and
- d. that the member's actions are sufficiently related to their duties and functions as to provide the Force with a legitimate interest in disciplining them.

[11] By virtue of Constable McCarty's admission to the Allegations and particulars, I find that the first two elements of the test are met.

[12] I must now determine whether the third and fourth elements of the test are established.

[13] With respect to Allegation 1, Constable McCarty's behaviour toward Ms. X, as set out in the particulars, is problematic on several fronts. Violence in relationships has significant long-term impact on victims and their families. Like many police forces, the RCMP has recognized the profound societal impact and risks associated with this type of violence.

[14] As a police officer, Constable McCarty is called upon to investigate incidents of violence in relationships. His actions, in pushing his own wife, call into question his ability to impartially

investigate these offences. The public's confidence in a member's ability to enforce laws is compromised when that member does not personally respect those laws.

[15] It is well established that police officers are held to a higher standard than the general public. Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. 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 Constable McCarty's actions as likely to bring discredit to the Force.

[16] Noting that Constable McCarty's actions fall squarely within behaviour that the Force has prioritized in its enforcement activities, I find that his actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. As such, I find that Constable McCarty's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[17] Allegation 1, as amended, is accordingly established on a balance of probabilities.

[18] With respect to Allegation 2, Constable McCarty entered Mr. Y's personal residence, without his permission, with the sole purpose of assaulting him. In so doing, he injured Mr. Y and damaged Mr. Y's personal property. He chose to do this knowing that Mr. Y's five-year-old son also resided in the house. While he did not actually see Mr. Y's son during the incident, he reasonably ought to have known that the child was in the residence. To say that Constable McCarty exercised poor judgment is an understatement.

[19] This was not a minor incident. It was necessary for Ms. X to call 911 and for other RCMP members to attend Mr. Y's residence in order to bring an end to the incident.

[20] Once again, Constable McCarty's behaviour calls into question his ability to enforce laws that he did not respect.

[21] In fact, Constable McCarty pleaded guilty, and was sentenced to a conditional discharge and 12 months' probation with conditions, for the assault on Mr. Y.

[22] 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 Constable McCarty's actions as likely to bring discredit to the Force.

[23] Once again, I find that Constable McCarty's actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. Therefore, his actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[24] Allegation 2, as amended, is accordingly established on a balance of probabilities.

CONDUCT MEASURES

[25] Having found that the two allegations are established, I am required, in accordance with subsection 45(4) of the *RCMP Act* and the *RCMP Conduct Measures Guide*, to impose "a fair and just measure that is commensurate to the gravity of the contravention, the degree of blameworthiness of the member, and the presence of mitigating and aggravating factors". 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, [...] are educative and remedial rather than punitive".

[26] The Conduct Authority Representative and the Subject Member Representative provided a joint submission on conduct measures. Constable McCarty and Ms. X offered oral evidence in support of the joint submission. I will begin by providing an overview of their evidence, Mr. Y's *Victim Impact Statement* and the letters of support provided by Constable McCarty.

Evidence of Constable McCarty

[27] Constable McCarty had, in advance of the hearing, requested to address the Conduct Board during the conduct measures phase of the proceedings. His evidence focused on his personal circumstances, both prior to and after the incident, which forms the subject of these allegations.

[28] Constable McCarty described, in some detail, his insights both with respect to the stressors in his life in or around the time of the incident, as well as his inability to cope with these stressors in a healthy way. He described the treatment that he has undergone, as well as the specific coping strategies that he now has in place. He also explained how he has re-established a support network and has reconnected with his father as a primary source of support.

[29] Constable McCarty provided examples of how he has incorporated these coping strategies and how, when faced with significant stressors, he has handled the situation in a much different and positive way.

[30] It is clear that Constable McCarty is a private person and that giving evidence about his personal circumstances was difficult. However, he did so in a forthright and sincere manner. He did not seek to minimize the severity of his conduct. Rather, his focus was on the efforts he has made to identify what led to his behaviour and on the concrete steps he has taken to ensure that it is not repeated.

Evidence of Ms. X

[31] Ms. X described the decline in Constable McCarty's mental health prior to the incident. She detailed her efforts to find support for him and for herself. She indicated that she was frustrated with the lack of support available. She explained that, on the night in question, she did not call 911 out of fear. Rather, she called because she felt that it would compel the RCMP to respond, thereby facilitate Constable McCarty's access to support.¹

[32] Ms. X described the stark contrast between Constable McCarty then and now. She described her observations of the coping strategies he has put in place. She indicated that he now seemed to be back to the man she knew "before everything happened".² While they are no longer

¹ Transcript, at pages 58-59.

² Transcript, at page 60, line 6.

together, she noted how supportive he was and described him as “the best version of himself” and as her best friend.³

[33] Ms. X also described the serious impact that this incident has had on their young children and, in particular, her opposition to the press release following the incident. She contends that, as a victim and in accordance with RCMP policy, she asked the RCMP not to release Constable McCarty’s name in the press release. They live in a very small town and she was concerned about the impact on their children. This request was, by her account, refused by the RCMP. She then went on to detail the backlash she and their young children were confronted with in the community. They are still supporting one of their children to overcome the negative impacts of this experience.

Victim Impact Statement of Mr. Y

[34] Mr. Y provided a *Victim Impact Statement*, a format used within the criminal court process. I am mindful of the Subject Member Representative’s concerns about the formality of this statement and its applicability within the RCMP conduct process. However, I had indicated to counsel in advance of the hearing that I would receive representations from Mr. Y. These were provided by the Conduct Authority Representative on June 19, 2020. The Subject Member Representative did not raise any concerns in advance of the hearing regarding their format. Therefore, I accepted the representations as submitted by the Conduct Authority Representative.

[35] Mr. Y’s representations were brief. He indicated that he and Constable McCarty continue to live in the same community. Mr. Y indicated that Constable McCarty harboured ongoing animosity toward him. On this point, I acknowledge the Subject Member Representative’s assertion that this is not admitted to by Constable McCarty. However, it is reflective of Mr. Y’s perspective and is related to his primary concern, which he expressed as follows:

[...] As an RCMP officer, [Constable McCarty] will hold a position of authority and the prospect of potentially being policed by someone who

³ Transcript, at page 64, lines 4 to 12.

harbours resentment toward me and has demonstrated a willingness to act unlawfully toward me is troubling.

I think that [Constable McCarty] returning to active duty in the areas my family and I live and frequent, would be detrimental to our feeling of safety and security.⁴

Letters of support

[36] Constable McCarty provided three letters of support. The first was from a friend and former colleague, S.C. The second was from Sergeant P., his supervisor in his most recent posting. The third is from his current girlfriend, Ms. C.

[37] Both S.C. and Sergeant P. described a conscientious and reliable member. To this day, S.C. remains a friend to Constable McCarty.

[38] Sergeant P. supervised Constable McCarty prior to the incident in question. He provided a very positive account of his operational strengths and his contributions to the detachment and to the community. He noted Constable McCarty's decline in health prior to the incident. He provided a frank account of Constable McCarty's difficulties and their impact on the detachment. Notwithstanding the latter, Sergeant P. recognized that Constable McCarty appeared to have "elevated himself from that point in his life".

[39] Ms. C. was a mutual friend of Ms. X and Constable McCarty prior to their separation. She and Constable McCarty are now in a relationship. She provided a heartfelt account of her observations of his struggles and the changes she has seen in Constable McCarty. She provided her observations of how he has implemented specific coping strategies and their positive effect on his well-being. Her description of Constable McCarty mirrored that provided by Ms. X.

Joint proposal on conduct measures

[40] The parties have proposed the following conduct measures:

- a. a financial penalty of 10 days (80 hours) to be deducted from Constable McCarty's pay;

⁴ Conduct Authority's Material on Conduct Measures, at page 70.

- b. a forfeiture of 8 days (64 hours) of annual leave;
- c. ineligibility for promotion for a period of one year from the date of this Conduct Board's written decision;
- d. a transfer to another work location at the Conduct Authority's discretion; and
- e. a direction to undergo medical treatment as specified by the Health Services Officer for "K" Division.

[41] In support of their joint proposal, the parties have provided a number of prior decisions from RCMP conduct boards. I note that a number of these were determined under the former disciplinary process. Since the current RCMP conduct process came into effect in 2014, the range of disciplinary measures has increased significantly. I agree with the Conduct Authority Representative that they may still be useful to provide a relative indication of where a particular conduct may fall within the range. However, they are of somewhat limited value, as they are not reflective of the full range of measures that are currently available to me.

[42] When presented with a joint submission on conduct measures, there are very narrow circumstances in which a conduct board may refuse to accept the proposed conduct measures.

[43] The Supreme Court of Canada has recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.⁵ Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless doing so would be against the public interest.

[44] Therefore, I must determine whether accepting the proposed conduct measures would be against the public interest. This is not a question of whether the conduct measures proposed are the same as what I would impose. Rather, the public interest test sets a much higher threshold.

⁵ See for example *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19; and *R. v Anthony-Cook*, 2016 SCC 43 [Cook].

[45] In its *Cook* decision, the Supreme Court of Canada provided the following guidance, which is applicable to administrative tribunals:

[...] a joint submission should not be rejected lightly [...] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of [in this case, the conduct process] had broken down.⁶

[46] In order to determine whether the proposed conduct measures are against the public interest, it is helpful to have some sense of what the possible measures may be. The RCMP *Conduct Measures Guide* is a useful reference in this regard. However, it is important to note that the *Conduct Measures Guide* is just that, a guide. It is not meant to be prescriptive.

[47] Section 7.1 of the Code of Conduct contemplates a range of behaviours, including assault or domestic violence. Using the *Annotated Conduct Measures Guide* as a reference as well as having considered both the decisions and submissions provided by the parties, I find the range of sanction in this case to be in the aggravated range, falling between 15 days' financial penalty, alone or in combination with other measures, and dismissal. Given that the two allegations arise from the same incident, I find that a global sanction is appropriate. That said I must now consider the mitigating and aggravating factors.

Mitigating and aggravating factors

[48] The parties have outlined several mitigating and aggravating factors in this case.

[49] Of these, I accept the following aggravating factors:

- a. Constable McCarty was criminally charged and pleaded guilty to one count of assault.
- b. Constable McCarty's actions involved a member of the public.
- c. Constable McCarty's actions were deliberate.

⁶ Cook, supra note 1, at paragraph 34.

- d. Alcohol was involved.
- e. Mr. Y expressed concern about his security. While the Subject Member Representative suggested that there is additional context to Mr. Y's statements, Mr. Y was not proposed as a witness in these matters. I have only his written representation before me and I take it at face value.
- f. There is public awareness of the incident, as evidenced by the media accounts of the incident. I have not ascribed any weight to the views expressed in the articles provided to me. I am also mindful of the Subject Member Representative's comments with respect to the appropriateness of the initial media release, in the face of Ms. X's stated request, as a victim, not to include Constable McCarty's name. It is inappropriate for me to comment on the actions of the RCMP, given the absence of comprehensive evidence and submissions on this point. I will simply state that while media accounts of the incident have the effect of raising public awareness of the incident, I do not ascribe significant weight to this factor.
- g. Constable McCarty has prior and recent discipline. Although, Constable McCarty has yet to complete a training requirement imposed as a conduct measure in his prior discipline, I am satisfied with the explanation provided by both parties. I note that Constable McCarty has undertaken to complete the required course as soon as he is able to access an RCMP computer.

[50] Of the mitigating factors presented, I have retained the following:

- a. Constable McCarty co-operated with investigators and accepted responsibility for his actions, in both the criminal and conduct processes. This saved both the cost and the burden on witnesses of a full conduct hearing.
- b. There were significant stressors in Constable McCarty's life at the time of the incident. The evidence I received at the hearing helped to answer some questions that I had in terms of the nature of those stressors and how they contributed to the incident.

- c. Neither Ms. X nor Mr. Y wanted Constable McCarty to get a criminal record for his actions. While I appreciate that the parties are seeking to establish that the victims in this case were empathetic toward Constable McCarty's situation, it is of limited value.
- d. Constable McCarty completed his probation without any difficulties.
- e. Constable McCarty completed treatment for his medical conditions.
- f. Constable McCarty has the support of Ms. X and has provided three other letters of support. Here, I put considerable weight on the evidence of Ms. X, in conjunction with the other letters of support, in particular those of Ms. C. and Sergeant P.

[51] I am also mindful that the Commanding Officer of "K" Division has, via the joint proposal on conduct measures, expressed his support for Constable McCarty's continued employment.

Decision on conduct measures

[52] On a balance of all of these factors, I cannot find that the proposed measures are against the public interest. Considering the Record and the oral evidence received at the hearing, it appears that Constable McCarty went through a difficult time, during which he made some poor decisions. I do not find that his actions are so egregious that they have effectively severed the employment relationship.

[53] I will note that I did have some concern, upon my review of the Record, as to whether Constable McCarty held meaningful insight into his actions. That has been put to rest through the oral evidence of Constable McCarty and Ms. X. I found Ms. X's evidence to be particularly compelling. It speaks volumes to the extent to which Constable McCarty has gained insights into his behaviour, is self-aware, and has adopted healthy strategies to ensure that it is not repeated. Her evidence, in conjunction with the letters of support from Ms. C. and Sergeant P. confirm that Constable McCarty has course corrected and is maintaining this course. This evidence supports his rehabilitative potential.

[54] The proposed measures are comprised of remedial, corrective and serious measures. They reflect the mitigating and aggravating factors of this case. They will serve as a deterrent to Constable McCarty as well as a warning to other members. They also support Constable McCarty's reintegration into the workplace. Finally, the imposition of a transfer to another work location ensures that Mr. Y's concerns are addressed.

[55] For all of these reasons, I accept the parties' joint submission on conduct measures.

CONCLUSION

[56] Having found the two allegations established as amended and in accordance with the joint submission presented by the Conduct Authority Representative and the Subject Member Representative, the following conduct measures are imposed:

- a. pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 10 days' (80 hours) pay to be deducted from Constable McCarty's pay . The deductions for this payment shall not begin before November 1, 2020;⁷
- b. pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*, a forfeiture of 8 days (64 hours) of annual leave;
- c. pursuant to paragraph 4(a) of the *CSO (Conduct)*, an ineligibility for promotion for a period of one year from the date of this written decision;

⁷ During the conduct measures phase of the hearing, Constable McCarty requested that the collection of the financial penalty be delayed until November 1, 2020, due to financial hardship. His request was supported by the Conduct Authority Representative. I am mindful that subsection 7(2) of the *CSO (Conduct)* provides that the Commissioner's delegate (in most cases, the Divisional Commanding Officer) will determine the manner in which a financial penalty is to be collected. In the context of a joint submission, the Conduct Authority Representative is acting on the instructions of the Commanding Officer of "K" Division, as the Commissioner's delegate. On the specific facts of this case, I agreed to the parties' request to delay the collection of the financial penalty. I do not believe that in doing so I have usurped the Commissioner's authority under subsection 7(2) of the *CSO (Conduct)*. In the event that I am in error, the proposed timeline should be read as a recommendation from this Conduct Board, to be considered within the Commissioner's discretion.

- d. pursuant to paragraph 5(1)(g) of the *CSO (Conduct)*, a transfer to another work location at the Conduct Authority's discretion;
- e. pursuant to paragraph 3(1)(d) of the *CSO (Conduct)*, a direction to undergo medical treatment as specified by the Health Services Officer for "K" Division.

[57] Constable McCarty is being permitted to continue his career with the RCMP. However, any future contravention of the Code of Conduct will be seriously reviewed by the appropriate conduct authority and could lead to dismissal from the Force.

[58] Any interim measures in place should be resolved, in a timely fashion, in accordance with section 23 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[59] Either party may appeal this decision by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.11 of the *RCMP Act*.

	September 17, 2020
Christine Sakiris	Date

RCMP Conduct Board