



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:

Chief Superintendent Marlene Bzdel
Designated Conduct Authority, "E" Division

Conduct Authority

and

Constable Kristine Roesler
Regimental Number 62627

Subject Member

Conduct Board Decision

Inspector Colin Miller

July 27, 2020

Staff Sergeant Jonathon Hart, Conduct Authority Representative

Mr. Daniel Pinsky and Ms. Sabine Georges, Subject Member Representatives (allegation phase)

Mr. David Butcher, Subject Member Representative (conduct measures phase)

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SUMMARY

Constable Roesler was served with a *Notice of Conduct Hearing*, which contained one allegation under section 7.1 of the RCMP Code of Conduct for pointing her firearm at another RCMP member while in the Detachment.

The Conduct Hearing for this matter proceeded via written submissions after a determination was made by the Conduct Board that the Record was sufficient to provide a finding on the allegation.

On April 17, 2020, the Conduct Board issued an oral decision in which he found the allegation to be established. On June 18, 2020, following written submissions from the parties, the Conduct

Board provided his oral decision on conduct measures. The Conduct Board imposed the following measures:

- a. A financial penalty consisting of the forfeiture of 15 days' pay, to be deducted from Constable Roesler's pay
- b. A transfer to another work location, to be implemented in accordance with the operational needs of the Division
- c. To work under close supervision for a period of not more than one year
- d. To complete additional counselling in accordance with a treatment plan approved by the Divisional Health Services Officer

INTRODUCTION

[1] The alleged incident in this matter took place on or about March 6, 2019, while Constable Kristine Roesler was working as a general duty member, posted at Kelowna Detachment, in British Columbia. Pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], an investigation into Constable Roesler's actions was initiated on March 21, 2019.

[2] On November 5, 2019, the Designated Conduct Authority for "E" Division signed a *Notice to the Designated Officer* in which she requested the initiation of a Conduct Hearing in relation to this matter. On November 12, 2019, I was appointed as the Conduct Board pursuant to subsection 43(1) of the *RCMP Act*.

[3] The *Notice of Conduct Hearing* was signed by the Conduct Authority on November 19, 2019. It was served on Constable Roesler on November 27, 2019, along with the investigation package.

[4] On January 24, 2020, Constable Roesler provided her response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. She admitted to the allegation, but she disputed some of the particulars. Included

with her response was a document entitled “APPENDIX “A” Statement of [Constable] Kristine Roesler”.

[5] On January 29, 2020, following a Pre-Hearing Conference, I issued a summary of the meeting to the parties. Included in the summary was the agreement that a Conduct Hearing would take place in Kelowna, British Columbia, starting on April 7, 2020.

[6] On February 4, 2020, after further consideration of the file, I informed the parties that I was going to proceed via written submissions and invited the parties to propose a schedule for their submissions.

[7] On March 16, 2020, I received the Conduct Authority Representative’s submission on the allegation. On March 31, 2020, I received the Subject Member Representative’s response to the Conduct Authority Representative’s submission. On April 7, 2020, I received the Conduct Authority Representative’s rebuttal.

[8] On April 17, 2020, I delivered an oral decision in which I found the allegation established.

[9] On April 23, 2020, I was informed that Constable Roesler would be represented by new counsel for the conduct measures phase of the Conduct Hearing.

[10] On June 4, 2020, I received the Conduct Authority Representative’s written submission on conduct measures. On June 9, 2020, I received the Subject Member Representative’s submission on conduct measures. On June 12, 2020, I received the Conduct Authority Representative’s rebuttal.

[11] On June 18, 2020, I delivered my oral decision on the conduct measures. This written decision incorporates and expands upon those oral decisions.

Conduct Authority Representative's objection to proceeding by written submissions only

[12] On January 31, 2020, after advising the parties by email that I believed I could resolve these issues through written submissions for both the allegation and conduct measures, the Conduct Authority Representative objected to my proposal.

[13] He submitted that the evidence before me was significantly opposite in terms of whether the firearm was pointed in the direction of Constable Hess or not. The Conduct Authority Representative asserted that this was a material fact that simply could not be adequately addressed in written submissions. He stated that this issue could only be resolved at a formal hearing in which the two participants are called to testify and are subject to cross-examination before the Conduct Board.

[14] The Conduct Authority Representative also held concerns with the recollection of the Subject Member Representative of my statement at the commencement of the Pre-Hearing Conference, which had been captured in an email. The Conduct Authority Representative submitted that the reference to this statement appeared to be a suggestion by the Subject Member Representative of a pre-determined sanction outcome.

[15] Later that same day, the Subject Member Representative advised that he had no issues with this matter proceeding by way of written submissions.

[16] On February 4, 2020, I responded to the concerns raised by the Conduct Authority Representative via email. I advised the parties of the following:

[...] I have reflected on your comments and am aware of the conflicting accounts in relation to the manner in which the firearm was handled. However, I am of the position that witnesses are not necessary in resolving that conflict, as the information before me is sufficient to resolve any serious or significant conflict in the evidence.

I believe that my Amended [Pre-Hearing Conference] summary properly captures the comment I made at the onset of the [Pre-Hearing Conference], so the [Subject Member Representative]'s incorrect recollection has no bearing on this matter. [...]

[17] In his written submission on the allegation, the Conduct Authority Representative once again raised this issue, submitting that my decision to permit Constable Roesler to enter untested affidavit evidence was a breach of procedural fairness. The Conduct Authority Representative indicated that, in effect, on February 4, 2020, I issued a “summary judgement [*sic*]” to the parties with respect to the right to cross-examine witnesses. The Conduct Authority Representative stated that, until this decision was rendered, he held the belief that a hearing would be taking place the week of April 7, 2020.

[18] The Conduct Authority Representative further indicated that there existed a genuine issue for trial with respect to the contradictory position on where the firearm was pointed. The Conduct Authority Representative submitted that the accuracy of the facts in dispute was solely within the knowledge of Constable Hess and Constable Roesler, and that my decision of February 4, 2020, was premature.

[19] The Conduct Authority Representative cited *Wells v General Motors of Canada Company*, 2019 SKCA 29, at paragraph 24, in which it was held improper to take too narrow of a view as to when cross-examination is appropriate in a summary judgment context:

24 In my respectful view, the Chambers judge erred in principle by concluding that a cross-examination is permitted only where there is contradictory evidence before the court or it is necessary to clarify information deposed to by the affiant where the information is solely within the knowledge of the affiant. In *Ter Keurs Bros. Inc.*, cross-examination was ordered largely because the facts relating to the issues in dispute were solely within the knowledge of the party whose affidavit was offered in support of the application for summary judgement [*sic*].

[20] The Conduct Authority Representative submitted that there existed not only contradictory evidence, but also a genuine need to clarify the content of both statements provided by Constable Roesler. However, he acknowledged that my decision was final and binding.

[21] In response, the Subject Member Representative indicated that my decision to proceed via written submissions was in line with the finding that an administrative decision maker is the master of its own procedure, citing *Prasad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560. As such, he argued that it was open to me to determine how

best to proceed with the Conduct Hearing and that it remained open to the Conduct Authority to appeal my final decision and, in so doing, challenge my decision to proceed via written submissions.

[22] As noted by the Conduct Authority Representative, my decision to proceed via written submissions is final and binding. I agree with the Subject Member Representative that it is open to the Conduct Authority to appeal if she wishes to challenge this decision.

ALLEGATION

[23] The *Notice of Conduct Hearing* contains the following allegation:

Allegation 1 On or about March 6, 2019, at or near Kelowna, in the Province of British Columbia, Constable Kristine ROESLER 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 “E” Division, Kelowna Detachment in British Columbia.
2. At all material times you were on-duty.
3. At approximately 3:00 a.m., you were completing paperwork in your office cubicle. You were visibly frustrated at the time, as the Report to Crown Counsel you were working on had been reviewed by a supervisor and was deemed in need of corrections. You were approached by Constable Kevin Hess (“Hess”) who began teasing you by pretending to be your supervisor and jokingly commenting on your work. You became agitated by the incessant teasing of Constable Hess, who it is admitted did not stop his good natured verbalizing despite your comments for him to “fuck off” and that you were “not in the mood” to joke.
4. Without any excuse or justification, while in a seated position, you removed your loaded RCMP issued 9mm Smith and Wesson Semi-Automatic service pistol (“service pistol”) from your holster and pointed it in the direction of Constable Hess. While holding your service pistol in your hand you stated to Constable Hess to “go away” and to “fuck off”.
5. In his statements, Constable Hess described the manner in which you held your service pistol as follows: “And it was like pointed at me. Like if it went off like I honestly can’t say like a hundred percent like if it would hit me or

not. But I do remember seeing like the, the circle of the barrel...” and “Like, and then I remember like she pulled it out, and then I remember like it being kinda like that, and then like I remember seeing the barrel of the gun”.

[24] The burden is on the Conduct Authority to establish the Allegation on a balance of probabilities. Practically speaking, this means that I must find that the Conduct Authority has established that it is more likely than not that Constable Roesler has contravened section 7.1 of the RCMP Code of Conduct. Section 7.1 of the RCMP Code of Conduct states: “Members behave in a manner that is not likely to discredit the Force.”

Decision on the allegation

[25] The test for “discreditable conduct” under section 7.1 of the Code of Conduct requires that the Conduct Authority prove the following 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. whether the member’s behaviour is likely to discredit the Force; and,
- d. that the behaviour is sufficiently related to the member’s duties and functions as to provide the Force with a legitimate interest in disciplining them.

Are the acts proven?

[26] I find the following uncontested details to be facts:

- a. On or about March 16, 2019, Constables Hess and Roesler were on uniformed general duty at the Kelowna Detachment.
- b. At approximately 3 a.m., Constable Roesler was sitting at her desk, venting her frustration in relation to the failure by her supervisor to review her Reports to Crown Counsel (RTCC), and was making corrections to them.

- c. Constable Hess, who was Constable Roesler's best friend outside of work, came to her desk and began teasing her, pretending to be her supervisor and making comments in relation to the completion of her paperwork.
- d. Constable Hess continued teasing Constable Roesler, despite her telling him to stop. At which time, she removed her firearm from her holster and told him to "go away" or "fuck off".
- e. After only a few seconds, Constable Roesler returned her firearm to its holster and Constable Hess made comments about the size of Constable Roesler's firearm and her shooting prowess.

[27] Particulars 1, 2 and 3 of the allegation are not contested. Upon my review of the materials contained in the Record, including Constable Roesler's statement, I find them to be established. It is particulars 4 and 5 that remain in dispute; however, upon examination of particular 5, it is merely the quoting of a passage from one of Constable Hess' statements. Hence, while Constable Roesler may dispute its content, the establishment of particular 5 is not, in and of itself, a constituent element of the allegation.

[28] Effectively, it is particular 4 that contains both of the contested issues:

- a. Was Constable Roesler sitting or standing?
- b. Where was Constable Roesler's firearm pointed?

a) Was Constable Roesler sitting or standing?

[29] In Constable Hess' statements, including the re-enactment, he indicated that Constable Roesler remained seated throughout their exchange. He stated that she may have levered her forearm or elbow on her desk or the armrest of her chair with her firearm pointed in his direction.

[30] Conversely, Constable Roesler stated that, after several minutes of asking to be left alone and Constable Hess continuing to tease her, she stood up from her chair and un-holstered her firearm.

[31] In addition to Constable Hess and Constable Roesler, several other members were in the detachment at the time of the incident. Constable N.D., who was seated a short distance away from Constable Roesler, observed a portion of the incident, while others, including Corporal B.D., overheard the exchange between Constable Hess and Constable Roesler. Statements were obtained from these individuals and formed part of the Record.

[32] Constable N.D., while not the most confident witness, perhaps due to her lack of experience, and most certainly affected by her friendship with Constable Roesler, provided an account of what she saw that was consistent with Constable Roesler's. At lines 23-26 and 157-158, respectively, of her statement, she said:

[...] At some point, I'm not quite sure what she said but I saw her, she was sit down and stood up and she remove her firearms from the holster. I didn't see if she pointed at Constable HESS or not. But I know that the firearm was not in the holster when I see it...saw it.

[...] ...and she stood up and (stands up and motions as removing pistol from holster), this is what I saw.

[33] During Constable N.D.'s statement, she was asked by the interviewer to demonstrate what she saw. Constable N.D. described that Constable Roesler was sitting at her computer typing and that Constable Hess was to her right at an angle. At 10:02 of the video recording of her statement, Constable N.D. is shown rising to her feet, still facing where the computer would be and pretended to draw her pistol out of its holster. Her demonstration showed the firearm being lifted to mid-torso height, with the barrel pointing down at the ground.

[34] I find Constable N.D. to be wholly credible in her account of what transpired for the following reasons. She is consistent throughout her statement. Although citing that Constable Roesler is a friend, and appearing reticent to say something that may adversely impact her friend, she provided an account that does not benefit Constable Roesler.

[35] Moreover, the accounts of Constable Roesler and Constable N.D. are more consistent with the practicalities of removing a firearm from its holster, especially given the training that RCMP members receive. Not to mention the cumbersome nature of trying to remove a firearm

from its holster while sitting in a chair with armrests as presented by Constable Hess' account of the events.

[36] For these reasons, I find that Constable Roesler was standing when she removed her firearm from its holster.

[37] That said, this finding is inconsequential. While it is a point of contention and may have value for merely a factual perspective, whether Constable Roesler was sitting or standing when she removed her firearm from its holster is of no consequence.

[38] Simply put, it is inconceivable as to what benefit might be gained by inaccurately asserting that she was standing as opposed to sitting. The removal of the firearm from its holster and what happens thereafter are truly what are of importance.

b) Where was Constable Roesler's firearm pointed?

[39] In his re-enactment of the incident, Constable Hess appears to leverage his arm on the armrest of the chair, with the firearm pointed forward. There are some small discrepancies in Constable Hess' recollection of the manner in which Constable Roesler handled her firearm, but he is consistent in his assertion that once removed from its holster, the firearm was pointed in his general direction. Although he could not say for certain that he would have been hit if Constable Roesler had discharged her firearm, he repeatedly spoke of his ability to see the barrel of her firearm.

[40] In contrast, Constable Roesler asserted that she held the firearm in a safe manner, without her finger on the trigger, and at waist height. She claimed that while her firearm was unholstered, it faced the unoccupied office across from her cubicle which was a 45-degree angle away from Constable Hess' position. She again asked to be left alone and returned the firearm to its holster.

[41] Although Constable N.D. admittedly did not see where Constable Roesler pointed her firearm, what she did witness is still of significant value. Constable N.D. stated, and demonstrated, that when Constable Roesler rose to her feet, she was still facing her computer,

while Constable Hess remained at an angle to her right, when she removed her firearm from its holster. Constable N.D. demonstrated that the firearm was raised out of its holster, to approximately mid-torso height, with the barrel pointing at the ground.

[42] While I have not accepted Constable Hess' account on the sitting versus standing issue, his account of where the firearm was pointed is, at least in part, corroborated by Constable N.D.

[43] Conversely, Constable Roesler indicates that, upon her drawing her firearm from its holster, Constable Hess was to her left as she was facing the vacant office. This would have required that she had turned 90 degrees to her right before removing her firearm, either while still sitting or upon standing. This is not consistent with the account of the other two witnesses.

[44] Therefore, I agree with the Conduct Authority Representative that her account is self-serving as I find that it lacks an air of reality. Her suggestion that she was not angry and that her action was done in the spirit of "dark humour" is not plausible. By her own account, she was upset about the reviewed Reports to Crown Counsel, not in the mood to be teased, and had repeatedly told Constable Hess to leave her alone.

[45] Additionally, the other witnesses who heard the exchange between Constable Roesler and Constable Hess indicated that she was already upset and venting about her Reports to Crown Counsel when he started teasing her. It seems that the more he teased her, the more upset she became. The more upset she became, the more laughs he got, which reinforced his behaviour. It is reasonable to believe that upon her having enough of this teasing, Constable Roesler, in a moment of frustration and poor judgment, reacted by drawing her firearm.

[46] Furthermore, if Constable Roesler was in the state of mind to take the steps to ensure her firearm was handled "safely" as she claims, she would have also had the presence of mind not to take it out of her holster in the first place.

[47] I find that Constable Roesler did, while perhaps not directly, point her firearm in Constable Hess' general direction, which prompted him to react by uttering the words about the size of her gun and her shooting ability as overheard by Corporal B.D.

[48] Moreover, as it relates to the materiality of this second issue, I want to express that, although the direction in which Constable Roesler pointed her firearm may be seen as aggravating, the mere removal of her firearm in the bullpen and pointing it in any direction is what is truly material to the allegation.

[49] For these reasons, I find that particular 4 is established.

Has the identity of the member been established?

[50] By virtue of Constable Roesler's admission to the allegation and my review of the materials contained in the Record, I find that her identity as the member who committed the contravention is established.

Is Constable Roesler's conduct discreditable?

[51] Although Constable Roesler acknowledges that it was inappropriate to un-holster her firearm at that time and admits that her behaviour constitutes a contravention of the Code of Conduct, I am troubled by her assertion that she held the firearm in a "safe manner". A small error on her part could have resulted in serious injury to Constable Hess or any other member who may have been in the bullpen area. In fact, based on the information contained in his statement, Corporal B.D. was seated in the cubicle immediately in front of Constable Roesler.

[52] While I agree with the Subject Member Representative that the Conduct Authority Representative did not flesh out the duty of care in great detail, he does speak to the training that members of the RCMP receive in relation to the handling of their firearms. Although, I am not going to import any offences under the *Criminal Code*, RSC, 1985, c C-46, I do take note of the definition of carelessness that it provided.

[53] Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. In handling her firearm in the manner that she did, after becoming upset and potentially endangering other members who were in the Detachment, Constable Roesler's conduct was a significant departure from the standard expected of a member of the RCMP. 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 her actions as likely to bring discredit to the Force.

Is Constable Roesler's behaviour sufficiently related to her duties and functions as to provide the Force with a legitimate interest in disciplining her?

[54] Constable Roesler was on-duty, wearing her full work uniform and physically located in the RCMP Kelowna Detachment at the time of this incident. Her conduct involved the use of her RCMP-issued firearm and impacted other members of the RCMP. Hence, I find that Constable Roesler's behaviour is sufficiently related to her duties and functions as to provide the Force with a legitimate interest in disciplining her.

Conclusion

[55] For the aforementioned reasons, I find that Constable Roesler, without justifiable excuse, after becoming agitated with Constable Hess' incessant teasing, stood up, removed her RCMP-issued firearm from its holster and pointed it in his general direction. Constable Roesler's actions resulted in the endangerment of Constable Hess and the other occupants of the Detachment. Therefore, I find her conduct to be discreditable and, as a result, I find the allegation against her to be established on a balance of probabilities.

CONDUCT MEASURES

[56] With my finding that the allegation has been established, I am now required, in accordance with paragraph 36.2(e) of the *RCMP Act*, to impose conduct measures that are: "proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, which are educative and remedial rather than punitive".

[57] Dismissal is the most serious punishment that can be imposed in a disciplinary process such as this one. Before imposing the appropriate conduct measures, I must first consider the appropriate range of measures and take into account the aggravating and mitigating factors.

[58] In delivering my oral decision on the allegation, I stressed the seriousness of Constable Roesler's misconduct in that she exposed not only Constable Hess to potentially serious harm, but all the other occupants of the building as well. One small mistake could have had serious and long lasting effects.

[59] As police officers, we are granted considerable power by the various levels of government here in Canada and, by extension, the Canadian citizens. This includes the ability to infringe on the rights of individuals, to deprive them of their liberty, and to use reasonable force, up to and including lethal force. To enforce the laws that we are sworn to uphold, we are authorized to openly carry firearms. With that ability comes a great responsibility to use them appropriately. The brandishing of one's firearm due to being teased by a co-worker does not fit this description.

[60] In relation to the criminal cases that were adduced by the Conduct Authority Representative, I agree with the Subject Member Representative in that they all had an element of premeditation. Furthermore, in *Thanancheyan*¹ and *Valade*,² there was a discharge of a firearm; while the situation in *Serdyuk*³ was much more serious than the present matter as the incident had similarities to a home invasion.

[61] While I do agree with the Conduct Authority Representative's argument concerning the need to denounce and deter the careless use of firearms, I do not believe that dismissal is the only way to achieve this objective. While the accused in each of the cases provided were convicted, in this matter, the Crown elected not to proceed with charges.

[62] Nevertheless, the Conduct Authority has made a strong case for Constable Roesler's dismissal. While the arbitral decisions he provided can be distinguished from the situation in the present matter, I agree with the Conduct Authority Representative that the RCMP has a

¹ *R. v Thanancheyan*, 2012 ONCJ 487

² *R. v Valade*, 2018 ONSC 5539

³ *R. v Serdyuk*, 2011 ABPC 81

responsibility to provide a safe workplace and Constable Roesler's conduct impinged on that ability.

[63] In each of the cases submitted by the Conduct Authority Representative, the offending employee had his employment terminated. In particular, I note that the Arbitrator in *Viceroy*⁴ stated that "to threaten the life of another human being, or to put it at risk just to make a statement, is not acceptable in normal society".

[64] Conversely, the Subject Member Representative has argued that dismissal would be a grossly disproportionate sanction for Constable Roesler's misconduct.

[65] The Subject Member Representative, citing *Florkow*⁵, contends that it is more appropriate to examine police discipline decisions and has submitted five such cases, four being RCMP Adjudication Board decisions. Out of the five decisions proffered by the Subject Member Representative, none of them resulted in dismissal, with the forfeiture of pay being imposed instead. He also referenced a number of police discipline summaries, emanating from British Columbia, which resulted in remedial measures being imposed.

[66] However, all of the referenced RCMP Adjudication Board decisions were resolved under the former RCMP Conduct Process, three of which were resolved via joint submissions on measures, hence, they have limited applicability in the current process.

[67] To assist in determining what the present range for such misconduct should be, I refer to the *Conduct Measures Guide*. Though Constable Roesler was alleged, and subsequently found to have committed discreditable conduct contrary to section 7.1 of the Code of Conduct, I find that the most relevant guidance in relation to the range of measures for such misconduct is found on pages 35 and 36, titled "Unsafe use of Firearm or Police Equipment".

⁴ *Viceroy Homes Ltd. v Retail Wholesale Union, Local 580*, 2006 CarswellBC 4370

⁵ *Florkow v British Columbia (Police Complaint Commissioner)*, 2013 BCCA 92.

[68] Contained in the table which sets out the various ranges, the description of the contravention is as follows:

Manipulating, pointing or discharging a service weapon, conductive energy device or other piece of equipment in an unsafe manner or contrary to training. Includes both accidental discharges and deliberate safety violations, but excludes use of a firearm to commit an indictable offence. [Emphasis in original.]

[69] Page 36 of the Guide also provides the following guidance when determining which range the misconduct in question falls:

As such, the normal range of conduct measures for such incidents should remain consistent at 2-5 days for contraventions involving carelessness or matters where injury has occurred accidentally.

The aggravated range of sanction should be raised to reflect the severity of voluntarily misusing police equipment, be it out of **frustration** or as a prank. The aggravated range of conduct measure for such conduct should be from 5-15 days. This is not meant to cover instances where police equipment is used in excess against a suspect (see excessive force) or used to threaten a person in the course of an argument (off-duty criminal conduct).

A mitigated range of sanction could consist of remedial measures to one day in cases without injury, mishandling a weapon without discharge, or any unsafe handling of a weapon without any aggravating features.

[Emphasis added.]

[70] In consideration of the events that occurred in this incident, the cases proffered by the parties and the instruction provided in the *Conduct Measures Guide*, I find the appropriate range to be the forfeiture of 2 to 15 days' pay, the normal to aggravated range.

[71] With the range being established, I must now review the relevant aggravating and mitigating factors to determine the appropriate measure(s) to be imposed.

Aggravating factors

[72] I have considered the submissions by both parties and I find the following to be aggravating factors:

1. The seriousness of the misconduct and its potential to put other members at risk.
 - i. Constable Roesler removed her RCMP issued firearm, a semi-automatic pistol, from her holster and pointed it in Constable Hess' direction.
 - ii. Her conduct endangered him and any other occupants of the detachment as well.
2. The impact on the victim.
 - i. I accept that this incident has had a serious impact on the victim and reject the Subject Member Representative's submission that Constable Hess' account be given little weight or "viewed with a degree of skepticism".
 - ii. While Constable Hess may have been dismissive of the incident at the time, given more time to contemplate what took place, he has stated that this incident affected him. Although he does not explain exactly what impact it has had, he did comment that it affected him both personally and professionally.
 - iii. It is widely accepted that everyone experiences events differently and in fact, it may take a person some time to process an incident.
 - iv. As such, I derive no negative inference from the fact that his perspective of the incident has changed
3. That Constable Roesler has difficulty controlling her emotions and resorted to her firearm in a state of anger or frustration, in response to Constable Hess' teasing.
4. *McNeil*⁶ implications.
 - i. Although not raised by the Conduct Authority Representative, and while unknown what impact will result from her misconduct, Constable Roesler's retention, may place an administrative burden on the Force.

⁶ *R. v. McNeil*, 2009 SCC 3 (CanLII), [2009] 1 SCR 66

Mitigating factors

[73] I find the following to be mitigating factors:

- a. Although I do credit Constable Roesler for admitting to the allegation, this matter was still subject to adjudication in order for the facts of the incident to be determined. Given this, I cannot accept that she took full responsibility for her actions, hence, this tempers the weight of its mitigation.
- b. Constable Roesler is remorseful and has issued a written apology in which she apologizes to Constable Hess, her co-workers who were present, the members of Kelowna Detachment, the Conduct Authority, the Conduct Board, the RCMP as a whole and the community of Kelowna.
- c. Constable Roesler has no record of prior discipline.
- d. While I do accept that Constable Roesler is a hard worker and is progressing in a manner consistent with her service, this only affords limited mitigation. As evidenced by there only being one performance evaluation before me, she has not built a history of above average performance to draw upon, due to the short duration of her service.
- e. This is an isolated incident and was a momentary lapse of judgement.
- f. Constable Roesler had significant personal stressors in her life at the time, given the dissolution of her marriage, financial concerns, being distant from her family and starting a new career.
- g. At her own instigation, she has sought out and is receiving psychological treatment. I do consider it a positive step that she is getting help, which may aid in her ability to better manage the stressors in her life.
- h. From both her performance evaluation and the reference letters, it is evident that Constable Roesler is a good team player.

- i. Ten letters of reference - one from the community, four from peers and five from more senior officers - provided in support of Constable Roesler were very positive. They describe her as hard-working, reliable, professional and most notably, provide her their support and express their willingness to work with her again.
- j. Constable Roesler took two Firearm Acquisition Courses to improve her knowledge in relation to the handling and use of firearms.
- k. Constable Roesler cooperated with the internal investigation.

Conclusion

[74] After considering the totality of the circumstances, I find the measure being sought by the Conduct Authority to be disproportionate to the gravity of Constable Roesler's misconduct.

[75] Although very serious in nature, this type of misconduct, the unsafe and unjustified pointing of a service weapon, was clearly contemplated at the outset of the new conduct process, and the *Conduct Measures Guide* is quite persuasive in establishing the correct range of measures. While there may be instances, as noted in the *Guide*, where this range may not be sufficient, I do not find those circumstances to be present in this matter

[76] After having given consideration to the letters of support, particularly the letter from Inspector D.S., the detachment operations officer, I believe that Constable Roesler has significant rehabilitative potential and I trust that she will not repeat the same mistake in the future and that she will hold herself to the high standard required of an RCMP employee in the performance of her duties.

[77] However, I do not want anyone to underestimate the seriousness of Constable Roesler's misconduct. I find it exceedingly aggravating that Constable Roesler would, in reaction to being teased, draw her Force-issued firearm, endangering all the occupants of the bullpen and surrounding area of the detachment. Accordingly, while heeding the intent of the conduct process to be educative and rehabilitative as opposed to punitive, I must also ensure that the measures imposed reflect both specific and general deterrence.

[78] Bearing in mind the principle of parity of sanction and the ranges suggested by the *Conduct Measures Guide*, I impose the following conduct measures:

- a. A financial penalty consisting of the forfeiture of 15 days' pay, to be deducted from Constable Roesler's pay.
- b. A transfer to another work location, to be implemented in accordance with the operational needs of the division.
- c. To work under close supervision for a period of not more than one year.
- d. To complete additional counselling in accordance with a treatment plan approved by the Divisional Health Services Officer.

[79] Constable Roesler is being given an opportunity to continue in her 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 her dismissal from the Force.

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

[81] 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 Orders (Grievances and Appeals)*, SOR/2014-289.

Inspector Colin Miller

July 27, 2020

Ottawa, Ontario

Conduct Board