

Protected A

2018 RCAD 8



**ROYAL CANADIAN MOUNTED POLICE**

IN THE MATTER OF A CONDUCT HEARING PURSUANT TO THE

*ROYAL CANADIAN MOUNTED POLICE ACT*

BETWEEN:

Commanding Officer, "E" Division

Conduct Authority

and

Constable Chris Rerup, Regimental Number 58776

Subject Member

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**Conduct Board – Allegation Phase Decision**

John A. McKinlay

May 7, 2018

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Staff Sergeant Jonathan Hart, for the Conduct Authority

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Mr. Steven Rogers and Corporal Joel Welch, for the Subject Member

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## SUMMARY

After the formal merger of the conduct hearings for two separate Notices, a single hearing took place. The first series of allegations involved the unauthorized, undocumented physical transfer to a municipal employee of an antique but fully functional semi-automatic pistol (handed in by a family relation of the deceased owner for destruction). The alleged misconduct primarily concerned granting the employee possession of the pistol, thereby aiding the employee to acquire its firearm registration. Only when the firearm registry noted the deceased owner's registration, missed by the Subject Member's electronic queries, did the Subject Member create a PRIME file documenting the pistol's status as a stored exhibit to be destroyed. The resulting allegations involved:

1. concealment and alteration of, and improper RCMP file accounting for, the pistol;
2. untimely and incomplete PRIME file entries and no police notes concerning the pistol;
3. false, misleading and omitted information when inquiring of his supervisor about the "privatized" status of the PRIME file he ultimately created for the pistol;
4. theft and breach of trust for the illegal transfer of the pistol to the municipal employee;  
and
5. outside the performance of the Subject Member's duties, the generation and communication of CPIC and firearm registry query results to the municipal employee to assist his unlawful possession and use of the pistol.

The second series of allegations involved the Subject Member's dealings with found property handed in at the satellite detachment's front counter directly to the Subject Member, or initially to an office colleague.

The Subject Member's physical transfer of the pistol to the municipal employee (a recently retired RCMP corporal) was not established, but the remaining four allegations in the first Notice were otherwise established. None of the other allegations in the second Notice concerning handling of found property were established.

A joint conduct measure proposal was accepted for the forfeiture of 26 days of pay. Also imposed: appropriate training with respect to exhibit handling, and a review of RCMP policies respecting the handling of property relinquished for destruction.

## **REASONS FOR DECISION**

### **INTRODUCTION**

[1] As a result of the joinder of the two Notices of Conduct Hearing, dated December 20, 2016 (Notice 1, Exh. CAR-1), and April 24, 2017 (Notice 2, Exh. CAR-2), respectively, a single "allegation phase" hearing, involving testimony from approved witnesses, including the Subject Member, took place from January 29 to February 1, 2018, inclusively, in Vancouver.

[2] By a letter dated October 3, 2017, the Crown advised that it would direct a stay of proceedings with respect to the parallel criminal charges filed against the Subject Member. Accordingly, the access, distribution and publication restrictions applied to the Subject Member's responses under the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [CSO (*Conduct*)] for Notice 1 were vacated, and the Subject Member's "abeyance" motion was declared moot. All allegations were denied in the written responses filed for each Notice under subsection 15(3) of the CSO (*Conduct*).

[3] At the outset of the hearing in Vancouver, counsel for the Subject Member formally waived the reading of all allegations. After hearing counsel's submissions on the establishment

of the allegations in both Notices and receiving the parties' supporting authorities, this Conduct Board decided on February 1, 2018, to reserve its decision.

[4] An oral decision on the establishment of the allegations was provided on April 9, 2018, with the caveat that my findings, determinations and reasoning could be expanded upon, clarified and explained in greater detail in this final written decision.

[5] A great number of surrounding or contextual facts were not contested by the Subject Member, and were clearly established in the documentary record by the initial investigation materials (including digital photographs as well as video and audio recorded interview statements), and the subsequent submissions and materials filed by the parties.

[6] The reliability of the copies or printouts obtained of specific email communications, electronic firearm registration records, police and firearm database queries, RCMP PRIME file entries, and the like, was not challenged, even if the meaning, significance, or probative value to be applied to some of these materials were disputed.

## **NOTICE 1**

### **Procedural issues**

[7] I will begin by addressing some procedural issues arising from the allegations under Notice 1.

[8] In terms of the nature of the alleged misconduct, the adjudication of each allegation demands consideration of the section of the RCMP Code of Conduct (Code) that the Subject Member is alleged to have contravened, as well as the Subject Member's acts and omissions identified in the particulars which constitute the contravention. Not all of the particulars for a specific allegation may need to be established. Some particulars offer context or narrative; therefore, they do not seek to identify impugned acts or omissions. A single allegation may encompass more than one act or omission that supports an overall finding of contravention. It is also understood that multiple allegations may include a number of similar or identical particulars,

but the allegations themselves must not be duplicitous in the sense that the same *gravamen* misconduct is alleged in more than one allegation.

### **Analysis of potential duplicitous allegations**

[9] In the closing submissions of Mr. Rogers (Member Representative, or MR, for the Subject Member with respect to Notice 1), there was some discussion concerning whether there were duplicitous aspects (“overlap”) among certain allegations. Plainly, the language found in Particular 2 of Allegation 1 is repeated in Particular 2 for all of the other allegations, with a modest addition made to Particular 2 for Allegation 4. I do not find that this element, in itself, gives rise to any issue of duplicitous allegations.

[10] Moreover, after a review of the specific point arising in the MR’s submissions, I am satisfied that Allegation 4, Particular 7, does not give rise to any issue of duplicitous allegations as I find that the *gravamen* misconduct alleged under Allegation 4 is not merely a breach of RCMP policy concerning handling, storage and transfer of firearms, but the illegal transfer of the pistol from the Subject Member to Mr. J., which permitted the latter’s access to, and illegal possession and transport of, a restricted weapon, placing the safety of the general public at unnecessary risk.

[11] There is a further issue of potential duplicitous allegations that requires clarification with respect to Allegations 1 and 2. The issue may not be of great significance in the overall adjudication of Notice 1, and it was not raised by the MRs. Nevertheless, I believe clarification is required.

### *Allegations 1 and 2*

[12] Allegation 1 is brought under section 4.4 of the Code, which states: “Members properly account for, and do not alter, conceal or destroy, without lawful excuse, any property, money or documents coming into their possession in the performance of their duties.” Broadly described, the nature of the misconduct covered by section 4.4 involves a member improperly accounting

for certain types of items the member comes to possess while working, and failing to preserve any such items unless otherwise authorized.

[13] In part, Allegation 1 alleges that the Subject Member “failed to properly account for property that came into his possession”.

[14] In part, Particular 2 of Allegation 1 asserts that the pistol came into the Subject Member’s possession, and he “did not document the firearm seizure”.

[15] Particular 6 of Allegation 1 alleges that the Subject Member “failed to **properly account** for [his] **actions** with respect to this police exhibit [emphasis added]”, but then it goes on to specifically assert that the Subject Member “failed to properly secure and process this seized firearm as per the RCMP Operational Manual and [his] police training”.

[16] Allegation 2 is brought under section 8.1 of the Code, which states: “Members provide complete, accurate and timely accounts pertaining to the carrying out of their responsibilities, the performance of their duties, the conduct of investigations, the actions of other employees and the operation and administration of the Force.”

[17] Broadly described, Allegation 2 alleges that the Subject Member’s failed to provide “complete, accurate and timely accounts” concerning his actions pertaining to the pistol.

[18] Again, in part, Particular 2 of Allegation 2 asserts that the pistol came into the Subject Member’s possession and he “did not document the firearm seizure”. This phrase does not give rise to concerns about duplicitous allegations, as it is simply one common element in the individual contraventions alleged by the Conduct Authority.

[19] However, Particular 4 alleges that the Subject Member failed “to **document [his] actions** with respect to the [pistol] into the applicable PRIME investigation file] in a **complete and timely manner** [emphasis added]”.



[20] A member in a conduct hearing process should not face potential findings of a contravention of the Code, even if under different sections of the Code, for what is not only the same act or omission, but misconduct of essentially the same nature.

[21] Therefore, I must address the problem I see with Allegation 1, Particular 6, and Allegation 2, Particular 4. In the present circumstances, I cannot meaningfully differentiate a failure to document actions in a **complete and timely** manner from a failure to **properly** account for actions respecting an exhibit.

[22] Therefore, Allegation 1, Particular 6 is hereby limited to include only the specific phrase: “Specifically, you failed to properly secure and process this seized firearm as per the RCMP Operational Manual and your police training.” I find the preceding sentence in Allegation 1, Particular 6 (“You failed to properly account for your actions with respect to this police exhibit”) to be duplicitous with Allegation 2, Particular 4. Therefore, this first sentence shall not be considered part of Particular 6 when this allegation is adjudicated.

[23] I acknowledge that Allegation 1 pertains to the alleged contravention of section 4.4 of the Code, which encompasses a member’s specific failure to properly account for property that came into their possession; therefore, proof of the impugned first sentence in Particular 6 might not even be relevant in establishing the allegation. I prefer to exclude the duplicitous element from Allegation 1, Particular 6, altogether.

#### *Allegations 1 and 4*

[24] I have also noted that two separate allegations raise the elements of theft and breach of trust by the Subject Member.

[25] Allegation 1, Particular 7, alleges that the Subject Member committed both theft and breach of trust, and then recites the two corresponding criminal charges subsequently stayed by the Crown.

[26] In Allegation 4, Particular 5, commission of theft is again alleged and the same criminal theft charge is cited. Later, in Allegation 4, Particular 8, commission of a breach of trust is alleged and the same corresponding criminal charge is cited.

[27] As previously outlined, Allegation 1 involves a contravention of section 4.4 of the Code, and its particulars assert not only improper accounting for the pistol, but the concealment of its location and existence, and its physical alteration between the time the Subject Member first received it and when he identified it and secured it as an exhibit on a PRIME file.

[28] Allegation 4 relies on a contravention involving discreditable conduct under section 7.1 of the Code, and also relies on the illegal transfer of the pistol to Mr. J., in violation of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], and placing the safety of the general public at unnecessary risk while Mr. J. accessed, possessed and transported the pistol.

[29] Because the *gravamen* misconduct for Allegations 1 and 4 is sufficiently distinct, I am willing to adjudicate these two Allegations without disturbing or limiting the particulars that reference the Subject Member's commission of theft and breach of trust. Furthermore, the Crown's imposition of a stay for the two criminal charges does not, in my view, prevent me from assessing whether these particulars are established after consideration of relevant information in the record and the applicable law. Whether at the allegation phase it is necessary to decide if a particular that references a criminal offence is established, where other particulars suffice to establish an allegation, is a separate consideration.

### **Primary factual dispute in Notice 1**

[30] Following an initial conduct investigation, the Subject Member faced five allegations of misconduct under Notice 1, a copy of which was marked as Exh. CAR-1, appended to this decision.

[31] As noted previously, each allegation contains a Particular 2 containing identical language, which begins by asserting that, in September 2015, a citizen named J. A. (J. A. Sr.) attended the District 2 (D2) office and turned over a restricted weapon, being a Colt semi-

automatic pistol bearing specific model and serial numbers (the pistol). It is not in dispute that J. A. Sr. turned in the pistol for destruction by the RCMP.

[32] From a statement provided by J. A. Sr. to RCMP investigators, it is apparent that J. A. Sr. did not hand the pistol directly to the Subject Member, but to another uniformed RCMP officer. Therefore, the common language of Particular 2 indicates: the pistol “later came into [the Subject Member’s] possession”; he did not document the firearm seizure; and he gave the weapon to Mr. J. , a fellow detachment employee, for his personal use.

[33] The primary factual dispute between the parties concerning Notice 1 is whether the pistol (pictured in Exh. CAR-5) relinquished by J. A. Sr. on or about September 23, 2015, and it was subsequently shown by the Subject Member to Mr. J. on or about September 24, 2015, in the temporary exhibit locker room within the RCMP satellite office in D2, was then allowed by the Subject Member to be in the personal possession of Mr. J. outside the D2, to assist Mr. J.’s pursuit of a firearm registration for the pistol.

[34] The Conduct Authority’s position is that the Subject Member illegally permitted Mr. J. to possess and transport the pistol outside D2, and that the pistol’s return to the Subject Member at D2, on or about October 23, 2015, to be secured by him in a temporary exhibit locker at D2 and formally treated as an exhibit on a PRIME file then created by the Subject Member, only occurred following Mr. J.s’ unsuccessful attempt to personally register the pistol.

[35] The Subject Member’s position is that he only **showed** the pistol to Mr. J. inside the D2 temporary exhibit locker room, certainly on or about September 24, 2015, and potentially on a second occasion later. From the Subject Member’s first receipt of the pistol until the Subject Member delivered it to the main exhibit facility at the main Detachment building, it remained in a locked temporary exhibit locker at D2 under the control of the Subject Member, who maintained uninterrupted possession of the necessary exhibit locker key.

*Inculpatory information*

[36] Information contained in the investigation materials filed with the Conduct Board supports the Conduct Authority's position that, as a result of the Subject Member permitting the physical transfer of the pistol to Mr. J. no later than October 8, 2015 (and quite possibly as early as October 1, 2015), Mr. J came to possess the pistol outside the D2 building, and that Mr. J. subsequently returned the pistol to the Subject Member.

[37] The inculpatory information relied upon by the Conduct Authority is drawn from a number of different sources, namely:

- Canadian Firearms Registry (Registry) records for Mr. J.'s registration application for the pistol, provided as an exhibit to the affidavit of Ms. A. M. sworn on December 16, 2015 (Exh. CAR-6);
- the transcript of the December 22, 2015, telephone interview conducted by an RCMP Professional Standards Investigator with Ms. V. M., Registry employee, including her recollection of her telephone discussions with Mr. J. (Exh. CAR-7);
- email communications exchanged in early November 2015, by Mr. J. with Sergeant (Sgt.) W. M., a member of the Professional Standards Unit tasked with investigating matters pertaining to the pistol (Exh. CAR-8);
- email communications between the Subject Member and Mr. J. related to the pistol in September and October 2015 (Exh. CAR-3).

[38] With respect to the "Client Application" file for the pistol (Exh. CAR-6), a printout of the first electronic filing received by the Registry from Mr. J. contains the following entry (*sic throughout*):

I am a retired RCMP member (June 2, 2015) and happened to be near the front counter in [X] when an older lady came in to have a firearm disposed of that her deceased husband had in his possession. I do not believe this firearm was registered previously. There is no RCMP file created. It is 10-

10 on CPIC. The firearm was probably a bring back trade from Worl War Two. It is lightly rusted with a broken left grip panel. It has a 7 round magazine

[39] In addition, on the second page of this same printout, the following appears:

**Firearm Location**

Place of Registration	Current Location
Same as Residence Address	[Address redacted]

[40] In testimony before the Conduct Board, Mr. J. testified that “On the form there’s a spot where you have to fill in the location of the firearm” and that he “put my address in there” (Transcript, Vol. I, January 29, 2018, page 108).

[41] After pre-hearing conference discussions, examination under oath of Ms. V. M. was not requested by either party; her testimony was not considered necessary by the Conduct Board.

[42] In further Registry documentation (also within Exh. CAR-6), file entries created by Ms. V. M. were reproduced, including the following entry made on October 22, 2015, concerning her telephone conversation on that date with Mr. J. (*sic throughout*):

Client called. He had no idea who turned the firearm. This firearm was turned into the [X] RCMP desk for destruction and the officer in charge gave it to the client to register. The client has been advised to have the Police come and collect this firearm and return it to [X] RCMP as he is not licensed to own this firearm and cannot and should not have transported it anywhere. I was not able to address the barrel length difference in RWRS. Recommend Refuse.

[43] In her recorded telephone statement of December 22, 2015 (Exh. CAR-7), Ms. V. M. confirms that the location of the pistol was raised by her directly with Mr. J. in their telephone conversation on October 22, 2015, and Mr. J. confirmed to her that the pistol was with him at his home. Ms. V. M. also shares her recollection of Mr. J.’s general manner and reaction as being “very friendly”, “very amiable”, and “very agreeable”.

[44] In an email sent by Mr. J. to Sgt. W. M. on November 3, 2015, at 9:05 a.m., Mr. Jones states, in part (Exh. CAR-8):

- There was no theft committed as I had no intent to steal anything and was above board with the Canadian firearms centre from the start as to how it came into my possession.
- I was then given the firearm by [the Subject Member]. At this point no file had been created by [the Subject Member].
- [...] She told me to take the firearm back to [X] to turn it in for destruction. I took it back the next day and told [the Subject Member] that a file had to be created and the firearm disposed of.

[45] In a further email sent by Mr. J. to Sgt. W. M. on November 6, 2015, at 9:04 a.m., Mr. J. states, in part (Exh. CAR-8):

- I should have listened to that little voice and handed the gun back to [the Subject Member].

[46] Lastly, in the CAR's submission, certain email communications between the Subject Member and Mr. J. (Exh. CAR-3) serve to establish:

- the Subject Member first coming into possession of the pistol, as he states, in part, in a September 23, 2015, email (opened by [Mr. J.] at 9:12 AM the next day): "Check with me .... I might have something for you."

[In Mr. J.'s testimony (Transcript, Vol. 1, January 29, 2018, at page 53, the following exchange takes place with the Conduct Authority Representative (CAR):

CAR: All right. Now, there's the other piece that says "I might have something for you."  
Do you recall what [the Subject Member] might have had for you?

JONES: I don't recall what. It was probably that .45 he wanted me to look at.]

- the Subject Member putting the pistol in [Mr. J.]’s bag at the D2 office, having stated in an email of September 24, 2015, at 10:38 AM: “envelope in your bag. it is 10-10 and owner just wanted it disposed of.”
- the extraordinary level of relief expressed by [Mr. J.] on October 29, 2015, to the Subject Member (“Thank Christ... still at main”) when the Subject Member advises that the application of “privatized” status on the PRIME file for the pistol by the Professional Standards Unit (PSU) only relates to the need for a better system to capture exhibit information at the front desk at D2.
- Notwithstanding the Subject Member’s further assurances about the PSU’s issue, [Mr. J.] nevertheless stating in a later email on October 29, 2015: “I owe you a full lunch....I may still be in Dutch with the firearms people though”

*Exculpatory information*

***Mr. J.’s testimony on the pistol’s whereabouts***

[47] In advance of the hearing, the testimony of Mr. J. was considered necessary by the Conduct Board, given his part in the creation of certain documents in the record directly related to the pistol, Ms. V. M.’s account of her telephone conversation with him on October 22, 2015, and his not providing any statement to any criminal or internal investigation. In the absence of any statement from Mr. J., or representations from him concerning his apparent possession of the pistol when dealing with the Registry, it was not known what his position would be before the Conduct Board.

[48] Mr. J. was required to testify under a summons, and immediately after taking his solemn affirmation, advised (Transcript, Vol. I, January 29, 2018, page 28):

And I also want to object to being called here today as a witness because I was charged criminally along with [the Subject Member]. That matter was stayed. The Crown still has up to a year to reopen the matter. And I would also like to invoke section 13 of the *Charter of Rights* that anything that comes out of this hearing can’t be used further against me down the line.

[49] The Conduct Board then recited for Mr. J.'s benefit the terms of subsection 50(1) of the Royal Canadian Mounted Police Act, RSC, 1985, c R-10 [*RCMP Act*], which makes it an offence for any person appearing before a board to refuse to answer any question. Similarly, subsection 45.1(5) of the *RCMP Act* was read to Mr. J., which pertains to a witness not being excused from answering any question on the grounds that the answer may incriminate the witness or make them subject to any criminal, civil or administrative action or proceeding. Finally, the Conduct Board read to Mr. J., and confirmed the operation of, subsection 5(2) of the *Canada Evidence Act*, RSC, 1985, c C-5 [*Canada Evidence Act*], which limits the use and admissibility of compelled answers to prosecution of the witness for perjury or the giving of false evidence.

[50] After a 35-year career as a member of the RCMP, Mr. J. retired as a corporal in June 2015. As a result of a back injury, Mr. J.'s last duties as a member involved the calibration and repair of roadside alcohol detection units at the five RCMP offices in the X Detachment district. Upon his retirement, he was hired as an X municipal employee and continued with exactly the same calibration and repair responsibilities. His pass-protected access at the various RCMP buildings in the district remained as it was before his retirement, and he could still use his own access pass to enter the temporary exhibit locker room at the D2 building.

[51] Mr. J.'s use of his access pass was recorded in a computerized system that captured the door being accessed, with the applicable date and time. Therefore, Mr. J.'s use of his pass to gain entry to the D2 office building ("DIST 2B, In – Outside Kitchen Door"), and its temporary exhibit locker room ("DIST 2B, In – Temp Exhibit 127) were precisely recorded. A printout covering the period from September 1, 2015, to October 15, 2015, was referenced during the hearing (Exh. CAR-4). A comparable printout for the Subject Member's use of his pass was also referenced (Exh. MR-2, spanning from September 1, 2015, to October 23, 2015).

[52] Without diminishing the efforts of counsel to identify times when the Subject Member and Mr. J. each used their respective access pass to enter the temporary exhibit locker room within a few minutes of one another, I must observe that once a person uses their access card to open the temporary locker room door, another person can simply walk in behind them without



using their own pass. To better rule out the opportunity for the Subject Member to meet with Mr. J. one must determine a time when each recently gained access to a different RCMP building. I offer this observation to underline that, notwithstanding the careful analysis performed on Exh. CAR-4 and Exh. MR-2, it was possible for them to meet without the access system indicating that both had recently entered a room requiring authorized entry.

[53] Mr. J. denied that he received the pistol from the Subject Member in a number of testimonial exchanges with the CAR (see relevant excerpts in Transcript, Vol. I, January 29, 2018, at the pages indicated):

***Page 60***

**Q.** Did [the Subject Member] give you the firearm?

**A.** No.

**Q.** No?

**A.** No.

**Q.** Well, if [the Subject Member] didn't give you the firearm, why are you trying to register it?

**A.** I wanted to see if I could register it. I didn't have it.

**Q.** All right. So let's say that you were successful in registering it, then what?

**A.** Then I'd take it, I guess.

**Q.** Did [the Subject Member] offer it to you?

**A.** He showed it to me.

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**Q.** [...] [the Subject Member] appears to reply to you at 10:38 and then it says "Envelope in your bag." Do you recall what that's in reference to?

**A.** The serial number of the firearm, I think.

**Q.** The envelope in your bag refers to the serial number?

**A.** That's my best guess.

[...]

**Q.** And if I was to suggest to you that he provided you with the firearm in a bag, what would you say?

**A.** No.

[...]

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**Q.** [...] And if I was to suggest to you, sir, that the reason you went in the exhibit locker at that time was to retrieve the firearm, what would you say?

**A.** No.

**Pages 74-75**

**Q.** [...] Why would you be thanking Christ in an email, sir?

**A.** I don't know.

**Q.** If I was to suggest to you because now [the Subject Member] is explaining to you that [B. K.] has become involved with respect to you having the gun at your house, what would you say to that, sir?

**A.** That wouldn't be correct.

**Q.** And why is that?

**A.** Because it never happened. I don't know what the conversation was that [the Subject Member] had with [B. K.].

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**Q.** [...] And you comment that you owe a full lunch and that you may be in Dutch with the Firearms people. Why would you owe [the Subject Member] a full lunch, sir?

**A.** For dealing with the whole issue.

**Q.** How is [the Subject Member] dealing with the issue when you're the one who made the application to register the firearm?

**A.** Because he had control of the exhibit.

**Q.** So you owe him a lunch because he has control of the exhibit?

**A.** No, for dealing with the issue.

**Q.** And why would you be in Dutch with the Firearms people, sir?

**A.** For not putting forward an accurate request to register a firearm.

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**Q.** [...] But I take it -- although I've asked you a number of times, your position is that [the Subject Member] never gave you the firearm. Is that correct?

**A.** He had control of it still.

**Q.** So the only sense that you're getting him in trouble is with respect to your application to the Firearms people, because he maintained control of it at all times. Is that correct?

**A.** Yes.

***Pages 86-87***

**Q.** Do you agree with me that's rather specific that you're saying an old lady came whose husband died and dropped it off?

**A.** It is.

**Q.** Did you feel that that was an accurate statement, sir?

**A.** No, I don't.

**Q.** It wasn't accurate?

**A.** No, it's not accurate.

**Q.** And why is that, sir?

**A.** Because it's bullshit. It's a made-up story.

**Q.** So you're submitting an application to register a firearm and your words are that the story -- or sorry, it's a bullshit story? Your testimony, sorry, is that it's a bullshit story?

**A.** Yeah.

**Q.** Why is it a bullshit story, sir?

**A.** Because that's not what happened.

**Q.** Okay. What did happen?

**A.** Well, as I explained earlier, [the Subject Member] showed me the firearm and I thought I would try and register it. I made up the story to try and register it.

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**Q.** Okay. But you don't recall why you went into the exhibit locker on October 1st, 2015?

**A.** Probably just to get the information off the firearm with [the Subject Member].

**Q.** So if it's an exhibit, how do you have access to an item that's in an exhibit locker?

**A.** I didn't have access to the item. [The Subject Member] had the key for it.

**Q.** So if [the Subject Member] has control of the firearm, why is he letting you look at the firearm?

A. Just to get the information off it.

Q. And if I was to suggest to you that you took the firearm at that time?

A. No.

***Pages 101-102***

Q. Do you recall what you informed her?

A. Not exactly, no.

Q. If I was to suggest to you that in her statement you reference having possession of the firearm, what would you say? I can show you in her statement.

A. I may have, yes.

Q. You may have told her that you had possession of the firearm?

A. Yes.

Q. And if I was to suggest to you she went so far as to say that you informed her you had it at your house, what would you say to that?

A. It's possible, yes.

Q. Did you have the firearm at your house?

A. No.

Q. So why would you tell [Ms. V. M.] on the phone that you have the firearm at your house if you didn't have it at your house?

A. I think that's what I put on the form when I applied to register the firearm.

Q. Where is that, sir?

A. On the original form you had to put down the location of the firearm.

Q. So why would you put on the form that you had the firearm at your house if you didn't have it at your house?

A. I thought you had to be in possession of a firearm in order to register it.

Q. So you lied when you put on the application that you had it in your house? Is that what your testimony is?

A. Yeah.

Q. Is that a yes?

A. Yes.

Q. And you misled Ms. [V. M.] when you told her on the phone that you had it at your residence?

A. I did.

Q. But today, while testifying at the Code of Conduct hearing of [the Subject Member], you're telling the truth?

A. Yes.

Q. And if I was to suggest to you that you're only doing that to protect [the Subject Member], what would you say?

A. No, I'm -- he's already in enough shit. Why would I make it worse?

Q. Well, you're admitting that you lied on an application and you're admitting that you lied in a phone call with an employee from the Firearms - - sorry, I want to use the correct word -- the Canadian Firearms Registry.

A. Yeah, did at that time because I was going with what I had written on the application to register.

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Q. In order to possess a licence, do you have to be in good standing, sir?

A. Yes.

Q. If you make a false application to the Canadian Firearms Registry Office, do you believe that is good standing, sir?

A. No.

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Q. And you talk about theft and you had no intent to steal. What did you mean by that, sir?

A. I didn't steal anything.

Q. "There was no theft committed as I had no intent to steal anything and was aboveboard with the Canadian Firearms Centre from the start as to how it came into my possession."

A. Yeah, I was going with the form that I had sent them.

Q. Why would you say it came into your possession if you didn't possess the firearm, sir?

A. Because I told them I already had it.

Q. Does Sgt. [W. M.] work for the Firearms people?

A. No.

Q. So why do you need to continue the lie to her, sir?

A. Because that's what I had already stated on the form, so I figured I was in trouble for lying on the form.

***Pages 109-110***

**Q.** And then you make, in the third sentence of that second paragraph, a very specific wording: “I was then given the firearm by [the Subject Member].”

**A.** Yeah. It wasn’t true.

**Q.** So when you spoke to Sgt. [W. M.], that was a lie and now you’re telling the truth?

**A.** That’s correct.

**Q.** You recognize, sir, that that goes to what I had described earlier about good character. Would you agree?

**A.** Yes.

***Page 113***

**Q.** So what do you need to describe to Sgt. [W. M.], who doesn’t even work at the Canadian Firearms Registry Office, that you brought it back the next day? Why do you need to inform her of that?

**A.** I was just going with the story that I wrote on the form. She has access to everything.

***Page 114***

**Q.** So an application that you admit you provided false information on, you felt you still owed her something by giving her the file number?

**A.** I was just trying to get out of it with the least damage possible.

***Page 115-116***

**Q.** Why did you inform her that you were now worried what is going to happen to [the Subject Member]?

**A.** Because I knew policy wasn’t followed exactly, at all.

**Q.** What do you mean by policy wasn’t followed at all?

**A.** I knew I never should have tried to register it in the first place.

**Q.** Okay. Well, why would [the Subject Member] be in trouble if he’s always kept it under lock and key in the exhibit room?

**A.** Well, because I was dragging him into the mess.

**Q.** And again, sir, if I was to suggest to you that your testimony is to protect [the Subject Member], what would you say?

**A.** No, he’s already in enough trouble.

**Q.** But he gave you the firearm?

A. No, he was hanging onto it for me.

Q. And why do you reference that “We never tried to hide anything or steal anything” if [the Subject Member] is continuously keeping possession of the firearm? What are you stealing if it never left the [X] District 2 Office?

A. Well, it said in the original application that I had it.

Q. But you’ve already admitted that that was not accurate, that that was false.

A. That’s right.

Q. So why do you need to keep going back to that you didn’t steal anything if you never had it in your possession?

A. I don’t know. I was just trying to stick with the original story.

***Page 117***

Q. And then you say: “I should have listened to that little voice.” And again you reference “and handed the gun back to [the Subject Member].” Why did you write that down, sir?

A. When he showed it to me in Exhibits, I never should have even looked at it.

***Page 119***

Q. Would that cause you any concern that a fully functioning restricted firearm wasn’t being handled properly by [the Subject Member]?

A. It was being handled properly as far as I know.

Q. And that’s because it never left the exhibit locker, correct?

A. Yes.

Q. And each instance where I’ve shown you in your testimony where you say you had possession of it, those are all false statements?

A. That’s correct.

[54] Mr. J. repeated that he did not receive the pistol from the Subject Member in answer to a brief series of questions offered by the MR (Transcript, Vol. I, January 29, 2018, at the pages indicated):

***Pages 128-129***

Q. And you testified earlier that your firearms application was inaccurate, right?

A. Yes.

**Q.** And you testified that you told [Ms. V. M.] that the firearm was at your house because that's what had been on the form. Is that right?

**A.** Yes.

**Q.** And you testified that when you wrote an email to [Sgt. W. M.] stating that [the Subject Member] had given you the gun or that you'd taken the gun and given it back to him, that was just in continuing with -- I'm paraphrasing but continuing with the original story?

**A.** That's correct.

**Q.** And so would it be fair to say that you had lied on the initial application?

**A.** Yes.

**Q.** And that you continued to lie in order to maintain consistency with your initial lie?

**A.** That's correct.

**Q.** And at that time you were not under oath; is that right?

**A.** That's correct.

**Q.** And now you are under oath?

**A.** Yes.

**Q.** And do you understand that -- and the Conduct Board identified for you the provisions of the Canada Evidence Act that allow you to testify without incriminating yourself except with respect to perjury. Is that right?

**A.** That's correct.

**Q.** And so you have a lot of incentive in this context to tell the truth. Is that right?

**A.** Yeah.

**Q.** And are you aware that it's an offence to lie on a firearms form?

**A.** I am now, yeah, after I did some further research.

**Q.** And do you know what the penalty is for -- what the potential sentence is for ---

**A.** Now it's an indictable offence, five years.

***Subject Member's testimony on the pistol's whereabouts***

[55] In his testimony before the board, the Subject Member stated the following about whether he gave the pistol to Mr. J. (Transcript, Vol. 3, January 31, 2018, at the pages indicated).



***Page 71***

**Q.** And did you give [Mr. J.] the gun at that time?

**A.** No.

**Q.** Did you ever give [Mr. J.] the gun?

**A.** No, I did not.

**Q.** Did you ever see [Mr. J.] with the gun outside of the evidence locker?

**A.** No, I did not.

**Q.** At any point before you brought the gun to [X] Main Exhibits, did you give the gun to any other person?

**A.** No.

***Page 228-229***

**Q.** And your testimony is that the gun never left your possession whatsoever. It was always in the temporary exhibit locker, correct?

**A.** Correct.

***Page 236-237 – CAR cross-examination***

**Q.** [...] So that would be -- although it's articulated there, you take issue with that because you never actually handed him the gun for personal use, correct?

**A.** Correct

***Applicable standard of proof***

[56] As prescribed by subsection 44(1) of the *RCMP Act*, my role as Conduct Board is to decide whether or not each allegation of a contravention of a provision of the Code is established on a balance of probabilities. I confirm that I am guided by the Supreme Court of Canada's decision in *F.H. v McDougall*, [2008] SCR 41, at paragraphs 44 - 46, where the Court states:

[44] [...] In my view, the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There

is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. [...]

*Assessment of witness credibility*

[57] I confirm that, in assessing witness credibility, the approach described in *Faryna v Chorny*, [1952] 2 DLR 354, at pages 357-358, should be considered and applied:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[58] The decision in *Bradshaw v Stenner*, 2010 BCSC 1398, (affirmed 2012 BCCA 296), at paragraph 186, indicates that the assessment of witness credibility may be guided by a number of factors, including:

- the witness's ability to resist the influence of interest to modify their recollection,
- whether the witness's evidence harmonizes with independent evidence that has been accepted,
- whether the witness's testimony seems unreasonable, impossible, or unlikely,
- whether a witness has a motive to lie, and the demeanour of a witness

[59] The inculpatory communications made by Mr. J. in which he references his possession of the pistol serve as the lynch pin for the Conduct Authority's case.

[60] Before the Conduct Board, however, Mr. J. insisted—in so many words—that whenever he had previously indicated, admitted, or mentioned (even unprompted) his possession of the pistol, it was a lie.

[61] Mr. J. insisted that, after falsely identifying his residence address as the location of the pistol in his online registration application submission, he chose to repeat or perpetuate this lie in not only communications with the Registry, but with an RCMP sergeant posted to the X Professional Standards Unit charged with investigating the handling of the pistol.

[62] I find it somewhat inherently improbable for Mr. J. to continue to lie about possessing an unregistered weapon rather than seek to apologetically correct a false location typed, in one instance, in an online application form.

[63] I note that Mr. J. himself is not an independent witness in this matter. I found his testimony concerning what he described as a disruptive early morning telephone call from Ms. V. M. to be somewhat rehearsed. Notwithstanding his involvement in target shooting and active shooting activities, he made a point early in his examination of volunteering how many Tylenol pills he required at the time of his purportedly early morning discussion with Ms. V. M. This caused me to assess whether this was an attempt to create doubt on whether he was mentally fully functioning when he repeatedly confirmed to Ms. V. M. that he had the pistol at his home.

[64] Having had his criminal charges stayed at the same time as those of the Subject Member, it is reasonable to view Mr. J. as highly motivated to avoid the reinvigoration of his criminal prosecution. Therefore, denying he ever possessed the pistol is a simple and effective strategy that does not risk having to rely on the unfamiliar legal protection of the *Canada Evidence Act*. On the other hand, this denial leaves Mr. J., in principle, open to new criminal liability for perjury or the giving of false evidence, which is a serious prospect any rational witness would carefully weigh before offering false testimony.

[65] I find that some part of Mr. J.'s motivation to now deny he ever had the pistol at his home is to help the Subject Member defend himself against very serious disciplinary allegations. Mr. J., in his testimony, expressed regret that his attempt to register the pistol had drawn the Subject

Member into a mess, and Mr. J. disavowing his possession of the pistol would clearly be to the benefit of Subject Member. However, I did not discern a strong bond or deep friendship between the Subject Member and Mr. J. that might create a motive to lie.

[66] Before the Conduct Board, Mr. J. appeared for the most part an experienced, disciplined witness, which is not surprising given his long RCMP career. His unwillingness to accept certain suggestions framed by the CAR was communicated in a measured, perhaps a little bit gruff manner.

[67] Setting aside Mr. J.'s present disavowal of the false "firearm location" identified in his pistol registration application, one must not forget that, in October 2015, Mr. J. created a fictitious story that he "happened to be near the front counter in [X] when an older lady came in to have a firearm disposed of that her deceased husband had in his possession". It is a complex task to analyze whether the apparent ease with which Mr. J. filed this false story supports or undermines his present disavowal concerning his possession of the pistol. In some way, his credibility as a witness must be undermined by his apparent ease in using false information to advance his own interests.

[68] As part of my assessment of the entire record of relevant information, I have undertaken a careful assessment of Mr. J.'s credibility as a witness. Whatever doubts his demeanour may create in isolation, I conclude that, from the entire record, his testimony that the pistol was never in his possession is not contradicted by any piece of information except the communications he made and which he has condemned under oath as lies.

[69] The emails highlighted by the CAR between Mr. J. and the Subject Member are most certainly related to matters concerning the pistol, but there is no email communication that comes close to establishing Mr. J.'s possession of the pistol on a balance of probabilities. Similarly, the timeline of entries made by the Subject Member and Mr. J. into D2 and the temporary exhibit locker room can, in places, be aligned with certain other activities by the Subject Member and Mr. J., but it falls very short in establishing possession of the pistol by Mr. J.

[70] I have considered Mr. J.'s reaction when Ms. V. M. directed him to have the pistol collected from Mr. J.'s home by a police officer. Mr. J. does not seek assistance from an officer, something I would have thought he would readily arrange given a lifetime of police acquaintances. This supports Mr. J.'s present position that, in fact, there was no pistol at his home to collect.

[71] In terms of the harmony of Mr. J.'s present position with the preponderance of the information, the MR raised a compelling point. Why would Mr. J. need the pistol at his home when the necessary serial number, model number and other details and the like, appear to have been noted at the time that the Subject Member performed his first queries at D2 to determine if the pistol was "10-10"?

[72] Was there really any compelling reason for Mr. J. to have had the pistol at his home? I am prepared to state now just what an extraordinary lapse in judgment it was for the Subject Member to in any way acquiesce or be supportive of any attempt by Mr. J. to obtain a legitimate registration for the pistol. But if it was really Mr. J.'s intention to steal the pistol by taking it home, why bother to file an online registration application that made reference to the pistol surfacing at an RCMP site when it was handed in for destruction? I find that Mr. J. taking the pistol to his residence to keep, whether or not it was ever registered, does not accord with the preponderance of facts.

[73] I now turn to the Subject Member's credibility on this issue of Mr. J. having possession of the pistol, and his credibility generally. Whatever holes there were in the Subject Member's recollection of details concerning his activities, in September and October 2015, and on the individual files referenced in Notice 2, the fact remains that, under oath and subject to cross-examination, the Subject Member has consistently denied allowing Mr. J. possession of the pistol at any time. The Subject Member's response, under subsection 15(3) of the *CSO (Conduct)*, comprehensively denied any transfer of the pistol to Mr. J. Obviously, the Subject Member is not a disinterested or independent witness, and denying Mr. J.'s possession of the pistol is clearly to his benefit, but there is simply no communication in the record between the Subject Member and Mr. J. that relates to Mr. J. actually having possession of the pistol.

[74] Accordingly, while I have some doubts about the credibility of Mr. J. as a witness, and hold some doubts about the veracity of his testimony denying possession of the pistol, I find, on a balance of probabilities, that there is insufficient information in the record to establish that Mr. J. was given the gun by the Subject Member for his personal use or unlawful possession or for any other purpose.

[75] Therefore, it is my finding concerning Particular 2 for each allegation that possession of the pistol was not allowed by the Subject Member to pass to Mr. J. at any time.

## **FINDINGS ON ALLEGATIONS IN NOTICE 1**

### **Allegation 1**

#### *Statements of Mr. J. A. Sr.*

[76] Mr. J. A. Sr. provided a recorded KGB statement on May 10, 2016 (ending at 2:14 p.m.). I have painstakingly compared the transcript with the recording to determine what Mr. J. A. Sr. is saying in those places that are transcribed as “inaudible”. The nature or condition of the grips on the handle of the pistol, one of which is described as being “chipped” when it was turned in by Mr. J. A. Sr., cannot be determined with any degree of clarity.

[77] Later on May 10, 2016, Mr. J. A. Sr. provided a further statement from 2:20 to 2:30 p.m., which provides no information concerning the grips on the pistol handle.

[78] Mr. J. A. Sr. participated in a taped re-enactment on May 19, 2016, by which it was confirmed that he turned in the pistol at the D2 building. No information was provided concerning the grips on the pistol handle.

#### *Statement of Mr. J. A. Jr.*

[79] On May 12, 2016, the son of Mr. J. A. Sr., Mr. J. A. Jr., provided a statement. His recollection of the pistol can be gleaned from various excerpts from his statement:

M: Mm-hmm. Mm 'kay. Can you describe the guh (ph) – the gun from what you remember?

A: I remember – it was black.

M: Mm-hmm.

A: The handle seemed to be a – the – the – the two handles seemed like little pieces that come off.

M: Two handles?

A: Not handles but the pieces on the side of the gun where the handle is, where you hold it here ...

M: Mm-hmm. Mm-hmm.

A: ... like this.

M: Mm-hmm.

A: The two pieces here were – I don't know. They had seemed like ...

M: Mm-hmm.

A: ... (indiscernible) – as I remember, a slightly different colour.

M: Mm-hmm.

A: But one side was broken. It's almost like one was complete and one was ...

M: Mm-hmm.

A: ... a half.

M: Okay. So one side was broken.

A: Yeah. 210 And the other one was still complete, I think.

M: And the other side was – you say you could –

A: It was all there.

M: Complete.

A: Yeah.

[...]

M: Now, what could – did you recognize the handgun as being the same one from your childhood?

A: The ...

M: And your adult –

A: ... the style but it looked like the handles were gone. Like they'd been taken off.

M: Ha (ph) –

A: The two handle parts were not on there ...

[...]

A: Yeah, yeah, yeah. Because of that, it didn't look exactly the same that way.

And the handles weren't on it.

[...]

A: ... I think it was full. But the other side it was half of it.

M: Mm-hmm.

A: The bottom half, I remember.

M: So one side of the gun had, um, a handle I assu (ph) –

A: Yeah.

M: (Indiscernible). And ...

A: Yeah. Like the one side it was in there. And the other side was –

M: Mm-hmm.

A: I – I'm pretty sure it was the top half that was broken.

[...]

M: So what do – what do you recall about the gun you – you – you remembered?

A: Yeah, I remember that. That's ...

M: (Indiscernible) –

A: ... that that was on there.

M: What about the other side?

A: And this side – one side was broken.

M: Okay.

A: (Indiscernible). As far as I remember, that was it.

M: Mm-hmm. This han (ph) – a handle was on – like a – something was on – A: Yeah. Yeah.

M: Handle was on one side.

A: Yeah.

[...]

M: And the other side it was what again?



A: It was half broken. Like –

M: Mm-hmm.

A: Like only, uh, I think it was only the bottom was on there. I think it was like –

M: Mm-hmm.

A: But I'm pretty sure it was the bottom only. M: Bottom only was ...

A: Yeah.

M: ... was there?

A: Either that – yeah. Only the bottom. I'm pretty sure only half ...

M: Mm-hmm.

A: ... of it was on there.

M: Okay.

A: Either that or was – kuh (ph) – you know, I'm pretty sure half of it was just missing.

[80] The difficulty in assigning any weight to the description of the pistol provided by Mr. J. A. Jr. is that it appears from his statement that he last observed the pistol in his **childhood**, and there is no information he can provide concerning its condition at the time it was turned in by his elderly father, Mr. J. A. Sr. At the time of the hearing, Mr. J. A. Sr. was deceased.

*Testimony of Sgt. R. and Staff Sgt. C.*

[81] Neither Sgt. R. (Transcript, Vol. I, January 29, 2018, page 216) nor Staff Sgt. C. (Transcript, Vol. 2, January 30, 2018, page 83) had any recollection of receiving the pistol when it was turned in by Mr. J. A. Sr. to a uniformed sergeant at the front counter of the D2 office. Accordingly, neither member could offer any observations concerning the appearance of the pistol, in particular the existence and condition of any grips on the handle.

*Mr. J.'s testimony and written description of the pistol grip*

[82] Mr. J. provided a written description of the pistol's condition in his application to the Registry (Exh. CAR-6), filed soon after Mr. J. first observed it and, in my view, very likely briefly handled it in the temporary exhibit locker room with the Subject Member: "It is lightly rusted with a broken left grip panel."

[83] For ease of reference, I reproduced excerpts from the CAR's examination of Mr. J. with respect to his observation of the grip on the pistol (Transcript, Vol. 1, January 29, 2018, at the pages indicated):

***Page 70***

**Q.** How many times did you see the gun, sir?

**A.** Just the once, as far as I know, and then again when I was questioned at Headquarters sometime later, or I saw pictures of it sometime later when I was questioned at Headquarters.

***Pages 70-71***

**A.** It looks similar to the firearm that I saw. I don't know if it's the same one or not.

**Q.** Well ---

**A.** The one I looked at had a little corner of a piece of plastic on the grip that doesn't appear to be there now.

**Q.** Thank you, sir. So the firearm that you saw originally had something on the handle or the grip?

**A.** It had a piece of the grip barely hanging on by the screw.

**Q.** But there was something?

**A.** Yeah.

**Q.** Was it only on one side that it was sort of hanging there or on both sides?

**A.** Just on one side, as far as I know.

**Q.** So what was on the other side of it?

**A.** There was no grip.

**Q.** So one side had no grip and then the other side just had a little piece hanging on it?

**A.** Yes, as far as I remember.

***Page 90***

**Q.** Now, it says: "It is likely [*sic*] rusted with a broken left grip panel." Now, you had testified earlier that you saw or that the firearm, you believed, had a grip on one side. Do you recall that?

**A.** Yeah.

**Q.** And the picture I'm showing you there doesn't appear to have any handle on it. Would you agree?

A. Yeah, that's correct.

Q. So when you saw the firearm, it had a handle on it?

A. Well, it had a tiny piece of the grip hanging on by one of the screws there, yeah.

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Q. Did you take the left grip panel off?

A. No.

Q. So where did the left grip panel go, sir?

A. Like I said, it looked like it was barely hanging on. It could have fallen off.

*Subject Member's testimony and written description of the pistol grip*

[84] In his first entry on the PRIME file he created for the pistol on October 23, 2015 (Exh. CAR-10), the Subject Member offers the following description of it: "Gun is rusty and broken handle; with one mag."

**Page 137-138**

Q. There's one more document I'm going to put to you and it's already in evidence, and I think it's CAR-5, the photograph of the pistol. First of all, do you remember what the gun looked like when you got it, specifically?

A. It was broken and looked like a piece of junk and it stunk. That's my most vivid memory of it. It reeked.

Q. Mr. [J. A. Jr.], in his statement, said that he recalled that it had a -- both [Mr. J. A. Sr. and Jr.] said something about a mahogany grip or a mahogany grip on the handle. Do you remember whether the gun you received had a mahogany grip on the handle when you got it?

A. No. This is what I remember it being, broken, like this.

Q. And Mr. [J.] testified that there was a small piece of grip hanging off of a screw on one side. Do you remember whether that -- do you have a memory of that?

A. No.

Q. And so when you say no, you don't have a memory of that, do you remember that it didn't have a piece of grip hanging off it? Do you remember exactly what it looked like, or are you saying that ---

A. I don't remember it having a piece of grip on it or off it. I don't remember. But I remember it being broken like this, like...

***Page 138-139***

**Q.** Did you do anything to change the pistol at any time after you first received it?

**A.** No.

**Q.** Did you clean the gun or anything?

**A.** No.

**Q.** Did you take any piece off of the gun?

**A.** No.

***Page 228***

**Q.** But your testimony is that the gun is as appears in CAR-5 without any handles, yes?

**A.** That's what it looked like to me.

***Page 229***

**Q.** So how is it that Mr. [J.], although he may have lied on some respects, doesn't at all move from the fact that he says there was a handle on the gun, and yet the gun that was always in your possession doesn't have a handle?

**A.** When he said that, I was surprised as well.

[85] After a review of all the information in the record concerning the grips on the pistol handle, I find that there is insufficient information by which I can determine, on a balance of probabilities, the state of the pistol at the time the Subject Member received it. A further complication in trying to determine the condition of any handle grips is that Mr. J. A. Sr. was very clear that the pistol was first received by a uniformed sergeant who took the ammunition clip and vigorously jammed it into the pistol handle. It was after this event that the pistol came under the Subject Member's control when, according to him, he found it on his desk, accompanied by a single page with some notations. Accordingly, I do not find that the Subject Member altered, destroyed, or otherwise failed to preserve, the grips on the pistol handle as they appeared to Mr. J. A. Jr. in his childhood. The CAR seeks to establish the allegation by comparing the descriptions of the pistol handle and any grips made by the Subject Member and Mr. J. I find that it is possible that a relatively small and insignificant piece of the grip continued to "hang" from one of the grip screws, as suggested by Mr. J.'s recollection of what he saw in the temporary exhibit locker room in September 2015. It is the Subject Member's recollection now that the pistol appeared as it is pictured in Exh. CAR-5.

[86] I find that the loss of a small piece of grip material hanging at the corner of a grip that goes missing does not equate to a firearm being altered, the word used in Particular 5. I do not find Particular 5 to be established.

[87] Clearly, Particular 4 is not established.

[88] Despite my finding concerning Particular 2, that possession of the pistol was not allowed by the Subject Member to pass to Mr. Jones for a time preceding October 23, 2015, I find that it is established that the Subject Member failed to properly secure and process the pistol as required by policy and the training received by all RCMP members concerning exhibit handling (training confirmed by Sgt. R. and other Non-Commissioned Officers in their testimony). I do not find that the Subject Member's actions resulted in the existence and location of the pistol being concealed. I am persuaded by the Subject Member's view that he didn't conceal the pistol's location simply because he "just didn't open up a file and document it right away" (Transcript, Vol. 3, January 31, 2018, page 238).

[89] Accordingly, I find that Particulars 1 and 2 (except the portion "and gave the weapon to [Mr. J.], a fellow [X] detachment employee for his personal use") and the second sentence in Particular 6 are established, and a contravention of Allegation 1 is established under section 4.4 of the Code on this basis.

[90] Particular 7 makes reference to the Subject Member's commission of theft and breach of trust, offences under the *Criminal Code*. However, given the nature of Allegation 1, I do not see Particular 7, even if established, as being probative or otherwise supportive of a finding of contravention under section 4.4 of the Code. In any event, I do not find Particular 7 to be established.

## **Allegation 2**

[91] I do not accept that some sort of overwhelming workload, or excessive interruptions to address matters at the front counter, caused the Subject Member to only create the PRIME file on October 23, 2015. I do not accept that the absence or inadequacy of supervisory direction or

corrective action on some of the Subject Member's other files (that took longer than the pistol's PRIME file to create) contributed to the lack of timely file creation or made the delay in the file creation here something other than misconduct.

[92] I do not accept that it was simply an oversight by the Subject Member in failing to promptly document the CPIC query of September 26, 2015, on a PRIME file for the pistol, nor do I accept that the disappearance of any query or other papers concerning the pistol from the Subject Member's desk caused the deficiencies identified in Particular 4. I do not accept that any failure by the uniformed member who first received the pistol to better document Mr. J. A. Sr.'s details when he turned in the pistol contributed to the delay in creating the PRIME file. A finding of contravention under this allegation might have been avoided had the Subject Member fully recorded in police notes the appropriate actions taken to secure the pistol and properly advanced its destruction.

[93] In all the circumstances, it is my finding that the Subject Member intentionally did not create the PRIME file pending news from Mr. J. on his registration exploration for the pistol. It is my finding that the file was only created as a result of Mr. J.'s telephone interaction with Ms. V. M., after which the need for the creation of the file at D2 for the pistol was relatively immediately completed.

[94] I find Particulars 1, 2, 3 (second sentence only), and 4 (in its entirety) established. Consequently, I find Allegation 2 established as the file created by the Subject Member, on October 23, 2015, was not complete, accurate, nor timely in its accounting for his actions respecting the pistol, which is in contravention of section 8.1 of the Code.

[95] With respect to Particulars 5(a) and (b), I find it suspicious that the Subject Member used the date of October 23, 2015, at the very beginning of the first sentence of his synopsis entry, and that he made no effort to indicate that the pistol was turned in weeks before in September 2015. Based on the entries made at the start of the synopsis on other files (for example, contained in other PRIME files seized under Notice 2), the Subject Member usually cited the date on which

the first event took place, and he did not simply repeat the date on which the entry was being inputted on the file.

[96] Notwithstanding my reservations about the Subject Member's omission of any reference to events in September 2015, Particular 5 requires proof of "false and misleading information" and not just incomplete and inaccurate accounts. Accordingly, I do not find Particular 5 to be established, even if the use of the October date may smack of misdirection, but there is insufficient evidence to conclude that its use was intentionally false or misleading. Even lacking the paper document that the Subject Member says accompanied the pistol when he first received it, the Subject Member would still have known on October 23, 2015, that he performed a CPIC query involving a potential owner of the pistol in September 2015. The synopsis entry is not complete for this reason, but I am unable to find the reference to an "unknown member of the public" false or misleading. I do not find Particulars 5a and 5b to be established.

### **Allegation 3**

[97] In his testimony before the Conduct Board, Corporal (Cpl.) K. provided his recollection of the conversation initiated by the Subject Member on October 29, 2015 (Transcript, Vol. I, January 29, 2018, pages 150-151, 154 and 165):

He mentioned that he had found a firearm that was dropped on his desk at the front counter and that there was no documentation, so he was unaware of who dropped it off or where it came from. He had mentioned that he has run into problems in the past with items being dropped on his desk where he would have to send out emails and try to figure out who had dropped it there and try to figure out a way to get it -- make sure that the member, whoever might have dropped it there, took ownership. He mentioned that he had taken the item and -- and I assume it was placed into the temporary locker. I don't know where it was or timelines or anything like that. And that he sought the assistance of retired member [Mr. J.] to query the firearm because he perceived him to be a bit of a firearms expert. He had said once he realized -- figured out, I guess, where it came from, he created a file. I'm not sure if he figured out or whatever, but he created a file eventually and the item was moved to the Main Detachment.

[...]

**A:** [He] told me it was found on the desk. He tried to figure out who owned it and that he sought [Mr. J.'s] assistance in trying to find out who the owner was and had him query it. That was it.

**Q.** When you say he found it on the desk, did he provide you with a date when he found it on the desk?

**A.** He just said that he had held onto it for a little while.

[...]

**Q.** And you testified that [the Subject Member] advised you that the firearm had been in the temporary exhibit locker for a while?

**A.** Yeah. I didn't ask for him to elaborate on how long a while was. He just said "a while".

[98] In the impugned conversation, I find that the Subject Member misled his supervisor concerning the seizure and handling of the pistol by withholding the information that Mr. J. had tried to register the pistol under Mr. J.'s name. It is my finding that the Subject Member clearly knew that Mr. J. had made a registration application, and not merely registry telephone inquiries, at the time of his conversation with Cpl. K. Given the testimony heard from Cpl. K., it is my view that the Subject Member's misconduct is founded in his misleading Cpl. K. by omission, rather than by the positive act of giving him false or inaccurate information. Therefore, I find Particulars 1, 2 (except for "gave the weapon [Mr. J.] for his personal use" and also "Mr. [J.] later returned the weapon to you as he was unable to register it"), 3, and 5b only to be established. As the misconduct arises from the important information the Subject Member clearly failed to provide, I do not find Particular 4 to be established.

[99] I view Allegation 3 as established simply because the Subject Member made no mention of Mr. J.'s attempt to register the weapon as identified by Particular 5(b): a central fact in the handling of the file by the Subject Member. Failing to mention this central fact to Cpl. K., in my view, constitutes discreditable conduct in the circumstances.

[100] I find the established acts and omissions by the Subject Member during this specific interaction with Cpl. K. to be discreditable conduct in contravention of section 7.1 of the Code. I find Allegation 3 to be established. I confirm that, in coming to this finding, I have applied the



interpretation of section 7.1 of the Code as identified in 2017 RCAD 17, citing the RCMP External Review Committee ( C-2015-001, C-008, February 22, 2016, paragraphs 92-93)

#### **Allegation 4**

[101] Clearly, Mr. J. did not have any “color of right” respecting the pistol, and never possessed a valid registration for it. Therefore, Particulars 1, 2 (except for “gave the weapon [to Mr. J.] for his personal use”), and 3 are established. However, given my finding under Particular 2 (across all allegations in Notice 1) that the Subject Member did not allow the pistol to come into Mr. J.’s possession outside the D2 building, I find no physical transfer without legal authority of the pistol took place, and no violation of section 101 of the *Criminal Code*. Accordingly, Particular 4 is not found to be established.

[102] To the extent that Mr. J. may have joined the Subject Member in the temporary exhibit locker room at D2, and initially touched or held the pistol on or about September 24, 2015, I do not consider any appreciable risk to public safety resulted simply because Mr. J. was by then a citizen, having retired as a member of the RCMP in June 2015. I accept that Mr. J. was well known within the D2 office as a former long-serving member, a shooting enthusiast and gun collector when off- duty, and any brief handling of the pistol by him in the Subject Member’s presence would not constitute discreditable conduct by the Subject Member.

[103] I find that the Subject Member did not engage in discreditable conduct in contravention of section 7.1 of the Code. Therefore, I find that Allegation 4 is not established. I confirm that, in coming to this finding, I have applied the interpretation of section 7.1 of the Code as identified by the RCMP External Review Committee in the above-noted analysis.

#### **Allegation 5**

[104] The Subject Member admitted in cross-examination that he lacked any operational reason to provide Mr. J. with the negative results of the CPIC queries identified in Particulars 3 and 4. These negative results were communicated to Mr. J. when the Subject Member advised Mr. J.

that the pistol was “10-10”, meaning primarily that it was not referenced in any investigative file, thus establishing Particular 5.

[105] The MR argued that the queries performed by the Subject Member (cited in Particulars 3 and 4) were nevertheless legitimate (even if incorrectly performed) queries, which would be done by any assigned investigator in any case involving the relinquishment of a firearm. I am prepared to find that the Subject Member’s “accessing” of the query-related information was not outside the proper course of his duties.

[106] Nevertheless, I find Particulars 1, 2 (except for “gave the weapon [Mr. J.] for his personal use”), 3, 4, 5 and 6 (except for “in retaining unlawful possession of the seized firearm”) to be established by the Subject Member’s use and disclosure of the information to Mr. J., in breach of his oath to maintain the confidentiality of his police work. Therefore, I find the Subject Member to have contravened section 9.1 of the Code. Accordingly, I find Allegation 5 to be established on this basis.

## **NOTICE 2**

[107] Following a second conduct investigation, the Subject Member faced six allegations of misconduct under Notice 2, a copy of which was marked as Exh. CAR-2, appended to this decision. These allegations were all brought under section 7.1 of the Code; therefore, I have again applied the interpretation of section 7.1 identified by the RCMP External Review Committee (C-2015-001, C- 008, February 22, 2016, paragraphs 92-93). I confirm that while Allegations 1 and 5 from the Notice to the Designated Officer were not pursued in Notice 2, the numbering for the surviving allegations was maintained by the Conduct Authority.

## **Allegation 2**

[108] I have carefully reviewed the PRIME file (Exh. CAR-12) created by the Subject Member concerning three found BC health cards handed in at the D2 office on January 13, 2015. The Subject Member’s synopsis entry of January 14, 2015, indicates he “checked PRIME and cpic and none were reported missing” and the cards were then seized and sent to the main X

Detachment exhibits location “to be returned to agency”. The basis for this allegation of cursory and improper investigative actions lacking thoroughness, and failure to follow applicable policy, seems to be that the names of the three card holders were searched in subsequent PRIME searches conducted on February 3, 2016, by a corporal, who was able to locate an address for each individual.

[109] This is clearly, and at most, a relatively minor performance issue and the acts and omissions of the Subject Member do not rise to the level of discreditable conduct. Also, in the Subject Member’s testimony, he acknowledged that he may have overlooked relevant contact information if it appeared in relatively obscure portions of a lengthy PRIME report, suggesting that he may have lacked sufficient experience to locate the information that was found by a more file savvy corporal. I do not find Allegation 2 to be established.

### **Allegation 3**

[110] My view of this Allegation, and the acts and omissions of the Subject Member in his efforts to locate the owners of the found property identified in his PRIME file (Exh. CAR-13), closely mirrors the view I have expressed concerning Allegation 2. This is clearly, and at most, a relatively minor performance issue involving lack of strict adherence to applicable policies. The Conduct Authority chose to pursue this matter as a contravention of section 7.1 of the Code (and not, for example, a failure to diligently perform one’s duties and the carrying out of responsibilities, as covered by section 4.2 of the Code). The Subject Member’s actions do not rise to the level of discreditable conduct, and I do not find Allegation 3 to be established.

### **Allegation 4**

[111] It was clearly established that the temporary storage, at the D2 building, of oversized property such as found, recovered, and relinquished bicycles and televisions could not be achieved using temporary exhibit lockers. Pieces of property were placed against walls, or parked on open shelving or other unsecured surfaces. Given these circumstances, I do not find that a missing television wall mount, initially identified as seized by the Subject Member when he logged the related found television, constitutes discreditable conduct. The fact that the wall

mount could not be located at the main X Detachment exhibit room may reflect a lack of care or attention to detail on the Subject Member's part, but in the circumstances present at the D2 office, any breach of policy concerning the handling of this benign item of found property constitutes a relatively minor performance matter. I do not find Allegation 4 to be established.

### **Allegation 6**

[112] After a careful review of the statement obtained from Mr. D. B. by RCMP investigators, and his frank testimony before the Conduct Board (Transcript, Vol. 2, January 30, 2018, pages 45 -57), I find that it is not established that the wallet handed in by Mr. D. B. at the front counter of the D2 office was initially handled by the Subject Member.

[113] Mr. D. B. clearly recalled that it was first handled by an unknown woman whom he encountered at the front counter wearing no police uniform, who in turn handed the wallet to a uniformed male officer. While Mr. D. B. observed this male officer begin to go through the wallet, when asked if he recognized this male officer in the hearing room, he did not identify the Subject Member nor any other person in attendance.

[114] I am satisfied that when Mr. D. B. brought the wallet to the front counter of the D2 office, it still contained a small clear plastic Ziploc baggie containing white powder, described by Mr. D. B. as looking like a "dime bag".

[115] However, I am not satisfied on a balance of probabilities that, by the time the Subject Member received the wallet, it still contained this baggie. It may have fallen out while being handled by the woman who first dealt with Mr. D. B. It may have fallen out, or have been deliberately discarded, when another male uniformed member first looked at it.

[116] In making this determination, I have carefully considered the quite detailed account provided by the Subject Member in the PRIME file for the turned in wallet (Exh. CAR-15, "Narrative – SYNOPSIS – 1") and his testimony concerning whether he merely discarded the baggie to avoid the required processing of it.

[117] Based on the totality of the relevant information, I do not find that the Subject Member failed to take steps to determine the white powder's composition, nor do I find that he failed to acknowledge taking possession of the baggie and white powder; therefore I do not find Allegation 6 to be established.

### **Allegation 7**

[118] After a careful review of the statement of Ms. M. L. obtained by RCMP investigators on May 13, 2016, Ms. M. L.'s testimony before the Conduct Board (Transcript, Vol. 2, January 30, 2018, pages 58 - 72), the Subject Member's PRIME file concerning the "ID and some unnamed loyalty cards" handed in by Ms. M. L. on September 11, 2015 (Exh. CAR-16, "Narrative: SYNOPSIS – 1"), and the Subject Member's testimony on his handling of this file, I do not find Allegation 7 to be established. There is insufficient reliable information to establish that the Subject Member kept for himself or knowingly locally destroyed any property exhibits that were "negotiable instruments" such as "50 pre-paid gift and VISA cards". The information provided by Ms. M. L. did not establish on a balance of probabilities that any locally destroyed cards could not be readily confused with "loyalty cards" of no monetary value, or VISA or Mastercard credit cards that could not be used without a required PIN number. Accordingly, in the circumstances, I do not find the Subject Member's failure to have the local destruction of any of the found cards independently witnessed amounts to discreditable conduct. I do not find Allegation 7 to be established.

[119] As an observation, practically all uniformed members are now issued an RCMP cellphone that contains some sort of digital camera. To avoid any issue of exactly what type of cards were destroyed without an independent witness, an exacting investigator might want to quickly photograph the seized cards in groups, with the digital photos then associated to the file.

### **Allegation 8**

[120] My view of this Allegation mirrors the view I have expressed concerning Allegation 2. Any omissions or lack of diligence by the Subject Member in his efforts to locate the owner of the wallet and the credit cards, driver's licence, and other cards noted on the PRIME file (Exh.

CAR-17) are clearly a performance issue, involving a lack of strict adherence to applicable policies. The Conduct Authority chose to pursue this matter as a contravention of section 7.1 of the Code (and not, for example, a failure to diligently perform one's duties and the carrying out of responsibilities, as covered by section 4.2 of the Code). The Subject Member's actions do not rise to the level of discreditable conduct, and I do not find Allegation 8 to be established.

## CONDUCT MEASURES

[121] After rendering my oral decision on the allegations on Monday, April 9, 2018, I invited the parties to conduct discussions after the conclusion of the video/teleconference hearing concerning any joint proposal they might wish to make on appropriate conduct measures before that phase of the hearing began on April 10, 2018. I asked to be advised by the close of the day on April 9, 2018, whether a joint proposal would be presented concerning Allegations 1, 2, 3, and 5 under Notice 1.

[122] By email received on April 9, 2018, the MR communicated the terms of the parties' joint proposal concerning conduct measures. The proposal reads as follows (*sic throughout*):

Following your oral ruling on the allegations in this matter, the parties have agreed to make joint submissions with respect to sanction. Specifically, the parties have agreed that the following is an appropriate sanction within the range established by the case law as applied to the particular facts of this case:

Allegation #1 – 3 days' forfeiture of pay

Allegation #2 – 6 days' forfeiture of pay

Allegation #3 – 15 days' forfeiture of pay

Allegation #5 – 2 days' forfeiture of pay

The parties jointly submit that this sanction is within the range of appropriate sanctions based on the Conduct Board's findings of fact in the allegations phase decision. In our submission, the Conduct Board ought to adopt the sanction jointly submitted unless the Conduct Board determines that it would "bring the administration of justice into disrepute, or otherwise operate contrary to the public interest." 2017 RCAD 9 (O'Brien) and R. v Anthony-Cook, 2016 SCC 43.

The Conduct Authority has identified four decisions which can provide guidance with respect to the range of appropriate sanctions. We will send pdfs of these decisions by email separately, along with the *R. v. Anthony-Cook* decision of the SCC:

(1) 2016 RCAD 3 (Clarke) and 2017 RCAD 4 (Prettie) both deal with mishandling exhibits and honesty. In Clarke, the sanction for a misleading PROS entry was a forfeiture of 8 days' pay while mishandling exhibits contrary to RCMP policy resulted in a forfeiture of 3 days' pay.

(2) 2016 RCAD 2 (Cormier) deals with dishonesty in reporting to a supervisor. In that case, one dishonest report to a supervisor resulted in a 10 day forfeiture of pay, while another resulted in a 20 day forfeiture of pay.

(3) 2017 RCAD 9 (O'Brien) deals with misuse of CPIC. In that case, the Conduct Board approved a joint submission on sanction which resulted in a 2 day suspension for use or disclosure of searches on the RCMP electronic file system for an unauthorized purpose.

Given that each of the sanctions proposed by the parties have been previously awarded by Conduct Boards in recent cases for similar findings of Code of Conduct Breaches, we submit that the Conduct Board ought to issue such sanction in this case.

[123] As stated by the Supreme Court of Canada in *R. v Anthony-Cook*, 2016 SCC 43 [Anthony- Cook], when considering a joint submission on sanction, the public interest test must be applied, which is: whether the proposed sanction would bring the administration of justice into disrepute, or is otherwise contrary to the public interest (paragraph 32).

[124] In determining whether the public interest requires that a joint submission be rejected, the Court in *Anthony-Cook* adopted a high threshold stating (paragraph 34):

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 the justice system had broken down.

[125] Although *Anthony-Cook* dealt with a joint submission in the criminal context, the public interest test has previously been asserted and adopted in the professional discipline context (see,

*Rault v Law Society (Saskatchewan)*, 2009 SKCA 81), including the former RCMP discipline system (see, 17 A.D. (4th) 88).

[126] It was with respect to Allegations 1, 2, 3 and 5 of Notice 1 that I found misconduct established. Therefore, it is with respect to those allegations that I must consider proportionate conduct measures.

[127] Allegation 1 involves contravention of section 4.4 of the Code for failing to account for property. Allegation 2 was brought under section 8.1 and relates to the Subject Member failing to provide complete, accurate and timely accounts. Allegation 3 is a contravention established under section 7.1 of the Code with respect to the Subject Member withholding information during a conversation with his supervisor, Cpl. K. With respect to Allegation 5, contravention of section 9.1 of the Code involves the improper disclosure of queried information to a citizen, Mr. J., where the Subject Member did not have a legitimate operational reason to disclose that information to Mr. J.

[128] Allegation 5, Particular 6, indicates the purpose for the Subject Member's query and disclosure was to assist Mr. J. That is established. However, I do not find that the purpose was to assist Mr. J. in retaining unlawful possession of the seized firearm. Therefore, that portion of Particular 6 is not established.

[129] The parties submitted a number of cases indicating an appropriate range of conduct measures for contraventions of the same nature as those found established for the Subject Member. I accept the MR's submission with regard to the deference which the *Anthony-Cook* decision indicates should be shown when a tribunal receives a joint proposal respecting penalty or conduct measures.

[130] The decisions submitted certainly support a range of forfeiture of pay and in that range fall the four proposed forfeitures of pay for the Subject Member.

[131] The Conduct Board is obliged to identify conduct measures which are proportionate to the nature of the contraventions and, in doing so, must consider any aggravating or mitigating



factors. Neither party offered formal submissions concerning these factors in this phase, with the MR simply pointing to materials previously filed in support of the Subject Member, and the extensive arguments made in the allegation phase concerning circumstances surrounding the Subject Member's actions.

[132] I believe it is appropriate to document my understanding of the basis on which the CAR agreed to the joint proposal on conduct measures. The CAR stated in part (Transcript, Vol. 6, April 10, 2018, pages 6 – 7):

BOARD: Now, with respect to submissions on my accepting the joint proposal. [CAR], have you got some submissions you want to offer?

CAR: If this is the — it's not with respect to the joint proposal, so I certainly can, but I would prefer until -- I mean I don't want to be coy. The bottom line is my friend and I have had a number of discussions, and my friend is aware that I have instructions to appeal. However, this is a joint proposal and I don't wish to deviate from that, but I did want it on the record, the other matter. My friend and I are just engaged in fruitful discussion.

BOARD: I'm not entirely sure why you mention to appeal this is relevant to my accepting or not a joint proposal that the parties are making with respect to conduct measures, but is that the extent of your submissions, [CAR]?

CAR: Yes.

[133] I have had the benefit of reviewing the cases submitted by the parties, including the materials referenced by the MR and filed in advance, which pertain to the Subject Member's circumstances. I have had the opportunity to determine not only which particulars were established or not established, but to consider the severity of the misconduct as a result of what was and was not established.

[134] I find that it is not contrary to the administration of justice nor otherwise unreasonable or contrary to the public interest for me to accept the joint proposal with respect to the specific forfeitures of pay which have been identified by the parties.

[135] Therefore, under Notice 1, I impose forfeitures of pay as follows::

- Allegation 1: 3 days

- Allegation 2: 6 days
- Allegation 3: 15 days
- Allegation 5: 2 days

[136] Each of these forfeitures, in my view, is within the range, having considered the appropriate range for each contravention. I find nothing in the proposal which warrants me disturbing the amount of forfeiture of pay.

[137] In the submitted cases, I note that often the subject member also receives a reprimand for the contraventions. Therefore, in accepting the parties' joint proposal, I also impose a formal reprimand which this written decision shall constitute.

[138] I do not consider two other measures to be punitive; therefore, their addition does not disturb or run afoul of my obligation to exercise deference in accepting the punitive or corrective aspects of the conduct measures proposed by the parties.

[139] These two measures are intended to assist the Subject Member in his rehabilitation and in addressing any shortcomings in his training or level of knowledge with respect to certain administrative requirements of his policing duties.

[140] I order the Subject Member, within six months of his return to full operational duties, to complete any appropriate RCMP training, whether it is delivered in online modules or in a course that one must attend in person, with respect to exhibit handling.

[141] In addition, within 90 days of the Subject Member's return to full operational duties, I order him to have completed a review of all national and divisional RCMP policies respecting the handling of property that is relinquished for RCMP destruction.

[142] The Subject Member shall furnish proof of his completion of both of these tasks to the Conduct Authority, within six months, with respect to the exhibit handling training and within 90 days with respect to his review of appropriate national and divisional policies.

[143] It is clear from the performance evaluation that was considered at the hearing that a number of more senior RCMP members consider the Subject Member to have talents and abilities which would be of assistance to the Force and would well serve the citizens of the communities that are policed by the RCMP in “E” Division.

[144] Nevertheless, I trust that the Subject Member shall take to heart the deficiencies in his conduct that were identified in the course of this hearing.

[145] Notwithstanding acceptance of the parties’ joint proposal on conduct measures, the Subject Member should understand that if he finds himself facing allegations of a similar nature in the future, the consequences for his employment could well be much more serious.

[146] In addition, while no formal direction was issued to address the element of the Subject Member’s misconduct that involves his misleading Cpl. K, this Conduct Board trusts that, whether it is in writing or as his counsel recommends, the Subject Member will communicate to Cpl. K an apology concerning the misconduct that came to involve him.

## CONCLUSION

[147] This written decision issued on today’s date, May 7, 2018, constitutes the written decision required to be served on each party under subsection 25(3) of the *CSO (Conduct)*. It may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of this decision on the Subject Member (section 45.11 of the *RCMP Act*; section 22 of the *Commissioner’s Standing Orders (Grievances and Appeals)*, SOR/2014-293).

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John A. McKinlay

Conduct Board

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May 7, 2018

Date