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2020 CAD 30



ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF

a conduct hearing pursuant to the

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

Between:

Deputy Commissioner Curtis Zablocki

Conduct Authority

and

Constable Jason Girard
Regimental Number 59171

Subject Member

Conduct Board Decision

Gerald Annetts

December 11, 2020

Staff Sergeant Chantal Le Du and Denys Morel, Conduct Authority Representatives

Mr. Josh Weinstein, Subject Member Representative

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SUMMARY

Constable Girard was accused of five contraventions of the RCMP Code of Conduct; three under section 4.2 for failing to be diligent in carrying out his duties, and two under section 8.1 for providing inaccurate accounts to his Detachment Commander and the Office of the Public Prosecution Service of Canada.

Constable Girard sought and was granted a viva voce hearing in order to test the evidence of the Conduct Authority witnesses and to testify himself. The conduct hearing was held from November 16 to 20, 2020.

All allegations against Constable Girard were found to be established. On November 20, 2020, the Conduct Board imposed a reprimand and the forfeiture of 20 days' pay for Allegations 1, 2, and 3, while it ordered him to resign within 14 days for Allegations 4 and 5.

INTRODUCTION

[1] The conduct hearing in this matter was initiated by the Conduct Authority on November 8, 2019. Five allegations of misconduct under the RCMP Code of Conduct were made against Constable Girard for five different on-duty incidents that took place between November 13, 2018, and September 4, 2019. On November 12, 2019, I was appointed as the Conduct Board for this matter.

ALLEGATIONS

[2] On December 9, 2019, the *Notice of Conduct Hearing* containing the five allegations of misconduct was served on Constable Girard. The Allegations read as follows:

Allegation 1

On or about November 12, 2018, at or near Drumheller, in the Province of Alberta, Constable Jason Girard engaged in conduct contrary to section 4.2 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “K” Division, Drumheller Detachment in Alberta.
2. On or about November 13, 2018, at approximately [6 p.m.], Mr. [K.O.] presented himself to the Detachment. He was the subject of an arrest warrant, which was issued as a result of his failure to attend court following a contravention of Section 94(2) of the Traffic Safety Act (PROS file 2018-1208657).
3. You arrested Mr. [K.O.] in accordance to the arrest warrant and subsequently released him on a promise to appear in court.
4. You failed to confirm and execute the arrest warrant by signing the original warrant.
5. Utilizing the Kive Scan system, you signed in using Constable Katelyn Dagg’s [Human Resources Management Information System (HRMIS)] number. You fingerprinted and photographed Mr. [K.O.], in contravention of RCMP policy [*Operational Manual (OM)*] ch.19.9.1.1.1., and you filled in the charge section by entering a different offence to circumvent the system.

6. You failed to have the arrest warrant removed from [Canadian Police Information Centre (CPIC)].

7. You were not diligent in the performance of your duties.

Allegation 2

On or about November 27, 2018, at or near Drumheller, in the Province of Alberta, Constable Jason Girard engaged in conduct contrary to section 4.2 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “K” Division, Drumheller Detachment in Alberta.

2. At the beginning of your shift, while preparing for duty, you went in the equipment room at the Drumheller Detachment. You reached up and grabbed a shotgun from the shotgun rack. Constable Lucas Stewart was in the room filling out the Taser log.

3. You handled the shotgun in an unsafe manner by not performing a safety and mechanical check and by pointing the shotgun in the direction of Constable Stewart.

4. You were not diligent in the performance of your duties.

Allegation 3

On or about April 19, 2019, at or near Drumheller, in the Province of Alberta, Constable Jason Girard engaged in conduct contrary to section 4.2 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to “K” Division, Drumheller Detachment in Alberta.

2. As a result of a stolen vehicle complaint (PROS file 2019-530102), you attended the parking lot of the “Yavis” restaurant where the vehicle had been located by Constable Marcel Hiemstra.

3. On scene, you spoke with Mr. [K.S.] who was the driver of the vehicle. You subsequently handcuffed him and placed him in the back seat of your police vehicle.

4. You failed to place Mr. [K.S.] under arrest and read him his charter rights.

5. At approximately [12 p.m.], you drove Mr. [K.S.] to the RCMP detachment. You explained to Mr. [K.S.] that he was not under arrest, but detained until you could conduct further investigation.

6. Mr. [K.S.] placed his personal belongings, including his cash money and jewelry on the counter in the cell area. You did not complete a prisoner report (form C-13-1) in contravention of RCMP policy OM ch.19.3.3.2.3.

7. You lodged Mr. [K.S.] in a cell for approximately 3 hours without placing him under arrest and without providing him with his legal rights. You subsequently released him without charges after contacting the complainant.

8. You were not diligent in the performance of your duties.

Allegation 4

On or about August 15, 2019, at or near Drumheller, in the Province of Alberta, Constable Jason Girard engaged in conduct contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "K" Division, Drumheller Detachment in Alberta.

2. On July 5, 2019, you were tasked via email by your Detachment Commander, Staff Sergeant Edmond Bourque, to serve a witness summons on behalf of the Alberta Securities Commission ("ASC"), a partner agency to the RCMP (PROS file 2019-1223935).

3. On July 22, 2019, you received an email from Staff Sergeant Bourque asking you to update Ms. Nicole Blaszcak from the ASC.

4. On July 26, 2019, you received an email from Ms. Blaszcak requesting an update on the service of the witness summons, to which you replied "*Your email is the first I've heard about this so I will try to make attempts as soon as I can*".

5. On July 31, 2019, you received an email from Ms. Vi Pickering, supervisor at the ASC, asking for an update on the status of the service of the witness summons.

6. On August 15, 2019, Staff Sergeant Bourque asked you for an update on the service of the witness summons. You told him it had been completed and that you had returned the affidavit of service to the ASC.

7. Staff Sergeant Bourque asked you to show him the email confirming you had completed the service and sent the affidavit of service to the

ASC. You told him you thought you had deleted your email and had mailed the original affidavit to the ASC.

8. As confirmation that you had served the witness summons, you showed Staff Sergeant Bourque an email dated July 31, 2019, where Ms. Pickering from the ASC was thanking you for your assistance.

9. Staff Sergeant Bourque confronted you with this email and you eventually admitted that, although you had served the summons you did not know where it was and, contrary to what you had previously stated to him, the affidavit had not been sent to the ASC.

10. As a result of your actions, Staff Sergeant Bourque had to contact the witness and confirm she had been served with the summons.

11. You provided false or misleading information to Staff Sergeant Bourque in relation to the completion of an affidavit of service.

Allegation 5

On or between March 20, 2019, and September, 4, 2019, at or near Drumheller, in the Province of Alberta, Constable Jason Girard engaged in conduct contrary to section 8.1 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "K" Division, Drumheller Detachment in Alberta.

2. On December 12, 2018, Corporal Gerald Sherk served you with a record of decision in relation to 11 Code of Conduct allegations against you. In this decision, all allegations were established and you were advised of your *"legal requirement to file a McNeil disclosure with Crown Counsel in all matters where you may be called to give evidence as a witness"*. You were also advised that *"when completing the McNeil disclosure indicate "Yes" at box #3 "I have a finding of guilt for misconduct under the RCMP Act" and "you must complete the chart stating the date of the finding(s), the Section (offence) and conduct measure (disposition) imposed"*.

3. In March 2019, as a result of a request from the Alberta Provincial Crowns Office, Corporal Rachel Pergunas requested that you provide her with an updated McNeil disclosure form.

4. On March 20, 2019, you submitted a McNeil form to Corporal Pergunas indicating you had no previous findings of guilt for misconduct under the RCMP Act. She returned the form to you and requested that you provide an updated form as you had *"findings"* under the RCMP *Code of Conduct* to be added to your form.

5. On August 9, 2019, you emailed your McNeil form to Mr. Sean Funk, a paralegal at the Calgary Crown Prosecutors Office. Your form indicated you had no previous findings of guilt for misconduct under the RCMP Act and was not signed by your supervisor.

6. Mr. Funk, who already had knowledge that you had “*findings*” under the RCMP Act, emailed you back for clarification and wrote in part “*When I spoke with your detachment commander Cpl. Pergunas, she indicated that you have a finding under the RCMP Act*” [...] *Can you clarify? Was it mistake made by Cpl. Pergunas or did you appeal the finding?*”. You responded to him that “*the matter is still being investigated and when everything is finished with district, I will send an updated form*”.

7. On or about September 4, 2019, Staff Sergeant Edmond Bourque, your Detachment Commander, asked you why you had twice submitted a McNeil form indicating you had no previous findings of guilt for misconduct under the RCMP Act. You explained in part that the findings in the record of decision of December 2018 may affect your credibility in future court proceedings, which made you uncomfortable.

8. You provided false or misleading information to the Calgary Crown Prosecutors Office, a partner agency to the RCMP.

[*Sic throughout*]

[3] Pursuant to subsection 15(3) of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291, Constable Girard submitted a response to the *Notice of Conduct Hearing*. In his response, he denied all five Allegations while admitting many of the particulars of each Allegation. His position is that the particulars captured in the Allegations amount to performance issues that do not rise to the level of misconduct.

Decision on the Allegations

[4] In order to find Allegations under sections 4.2 and 8.1 of the Code of Conduct to be established, I must first determine whether the facts alleged by the Conduct Authority have been established on a balance of probabilities.

Allegation 1

[5] Constable Girard wholly or partially admitted each of the particulars except for particular 7, which is the conclusory statement that he was not diligent in the performance of his

duties. Particulars 1 to 3 were outright admitted, while particulars 4 to 6 were admitted with an explanation.

[6] Particular 5 alleges that Constable Girard used the Live Scan fingerprint system under Constable Dagg's HRMIS number and that he fingerprinted Mr. K.O. in contravention of RCMP policy by filling in the charge section with an indictable offence in order to circumvent the system. Constable Girard acknowledges using the Live Scan system under Constable Dagg's credentials. He says it was because she was already logged into it and that that was a common occurrence in the Detachment. There is no evidence to the contrary, no evidence that he actually signed in with her HRMIS number and password or that he would have known her password in order to do so.

[7] The second aspect of that particular has also not been proven. I understand the Conduct Authority's position to be that, in order to take Mr. K.O.'s fingerprints, Constable Girard would have had to enter into the system an indictable offence or a hybrid offence because the Live Scan system would not have accepted the summary conviction offence under the *Traffic Safety Act*, RSA 2000, c T-6, for which Mr. K.O. had been charged, but failed to appear in court. However, I have been provided with no evidence in terms of what offence was entered in the charge section in order to circumvent the system.

[8] Therefore, the facts alleged in particular 5 have not been proven; however, particular 5 is not the crux of the allegation. That would be particulars 4 and 6. Particular 4 alleges that Constable Girard failed to execute and confirm the arrest warrant by signing the original warrant. Constable Girard explained in his response and on the witness stand that he processed Mr. K.O. on the warrant and released him accordingly, but he did not execute the warrant by signing the original as such. His explanation does not take away from the fact that he failed to confirm the warrant; consequently, I find this particular to be established.

[9] Particular 6 alleges that Constable Girard failed to have the arrest warrant removed from CPIC. Constable Girard admits this, but he explains that he thought someone else would do this,

such as another member or the administrative staff. He provided no explanation as to why he believed this or how someone else would even know that it needed to be done.

[10] With his admissions, the necessary facts are established. The next step is to determine whether his explanations convince me that he exercised the necessary diligence in performing his duties. The test in that regard is in my view best described in the Commissioner's decision in *Constable Lawless and Appropriate Officer "J" Division*, G-395-15-1, starting at paragraph 24. I will paraphrase by saying that whether an employee can be disciplined because of work performance problems depends on whether the problems are within the employee's control. One can be disciplined where there is an element of fault, carelessness or negligence. One cannot be disciplined for incompetence, incapacity or disability, because those are conditions beyond one's control, and not amenable to correction.

[11] The legal terms 'carelessness' and 'negligence' are interchangeable; they involve failing to exercise due diligence in order to prevent the harm in question from occurring. Applying that to Allegation 1, carelessness would amount to not taking the steps that a reasonable constable in Constable Girard's shoes would take to ensure the arrest warrant was executed and removed from CPIC. Several witnesses testified as to the appropriate procedures required to properly execute and then remove a warrant from CPIC. The are not overly involved or difficult. Constable Girard admitted that he had been trained to do this, but that he did not do so in this instance. He also failed to provide any explanation as to why it would be reasonable for him to expect that someone else would do so for him in relation to an accused whom he had arrested and released. The obvious question that arises is how would another member or the administrative staff even know that it had to be done. There is no evidence that anyone other than Constable Doucette, who was on leave at the time, knew about the arrest on the warrant and no evidence that Constable Girard asked anyone to remove it from CPIC on his behalf.

[12] Constable Girard cannot be disciplined for incompetence, incapacity or disability because those are conditions beyond his control. There has been no evidence provided of an incapacity or disability on his part. It was argued that there are members "more swift" than Constable Girard, that some members get it right away and others like him need a certain push and assistance.

However, needing a little push and assistance does not equal incompetence. The evidence was that when he was subjected to close supervision by Corporal Lloyd over a 30-day period in 2016 or 2017 in the Performance Enhancement Program, Constable Girard displayed sound decision-making and performed appropriately. Corporal Lloyd had no concerns with his performance. That leads to the reasonable inference that, when adequately motivated, he is able to competently perform his duties and there is no incapacity or disability preventing him from doing so.

[13] My conclusion in relation to Allegation 1 is that Constable Girard acted carelessly or negligently in not properly endorsing the warrant when the individual was arrested and not having the warrant removed from CPIC after it was executed. That amounts to a failure to be diligent in the performance of his duties and I find Allegation 1 to be established.

Allegation 2

[14] Constable Stewart testified that he was in the equipment room of Drumheller Detachment on November 27, 2018, at the beginning of his shift, to sign out a taser. He indicated that Constable Girard reached up to the shotgun rack in that room, removed a shotgun and pointed the barrel towards him as he brought the shotgun down. He also indicated that Constable Girard then levelled the shotgun about knee high at his legs before racking it and loading rounds into it. He did none of the safety checks and may not have even looked into the breach to verify that it was unloaded. He asked Constable Girard “what the hell” he was doing, then yelled at him and stormed out of the room before reporting the incident to Corporal Sherk.

[15] Constable Stewart indicated that this incident left him upset and disappointed when this happened because Constable Girard is a good friend of his and he doesn’t want to see him or anyone else get hurt. The fact that he was upset about the incident was confirmed by Corporal Sherk, who indicated that he was still so upset about it the next day that he thought it best to put off talking to him about it. Constable Stewart fairly conceded on cross-examination that Constable Girard may have already been in the equipment room before he entered, but he was adamant in terms of Constable Girard pointing the shotgun at him and failing to perform the required safety checks.

[16] I found Constable Stewart to be credible and his evidence to be reliable. He was forthright in his testimony, he fairly conceded what he wasn't certain of, he has "no dog in the fight" so to speak, and he clearly did not relish testifying against his friend in these proceedings. It seems unlikely that Constable Stewart would simply make up this allegation against his friend out of nowhere.

[17] Constable Girard's position is that he was in the equipment room prior to Constable Stewart entering and that he performed the safety checks on the shotgun and he did not point it towards Constable Stewart. I found his evidence less than convincing. He stated that he remembers that day like it was yesterday and I'm sure he does after this incident occurred. However, while he was going about retrieving the shotgun in an otherwise unremarkable start to his shift, there would have been nothing unusual to remember, until Constable Stewart blew up at him. His statement that Constable Stewart was having a bad day and the implication that he made up this allegation against him because of that is simply not supported by any evidence. It does not seem likely to me.

[18] Where their evidence differs, I prefer the evidence of Constable Stewart in relation to this incident. Given that, the holding of the Supreme Court of Canada in *F.H. v McDougall*, [2008] 3 SCR 41, at paragraph 86, in relation to conflicting evidence in non-criminal cases is particularly relevant:

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

[19] I find that Constable Stewart's version of events is more likely than Constable Girard's version. As a result, I find that the Conduct Authority has proven the facts contained in the particulars of Allegation 2. Constable Girard failed to handle the shotgun in a safe manner in

accordance with his training and policy. In not doing so, he failed to exercise the necessary diligence that would have prevented the incident from occurring. Constable Girard's handling of the firearm in the manner he did clearly amounts to carelessness in the circumstances. Therefore, this Allegation is established.

Allegation 3

[20] Constable Girard admits each of the particulars in this allegation; therefore, the facts alleged by the Conduct Authority are established. However, Constable Girard denies that his actions amount to failing to be diligent in the performance of his duties. He acknowledges that he detained the driver of the reported stolen vehicle and that he locked him in cells for three hours without arresting him and without providing him with his *Charter*¹ rights, including the right to counsel. He also acknowledges that he failed to follow policy with respect to lodging him in cells. His explanation is that, although he was well aware of the legal and policy requirements, he had good reason to ignore them in the circumstances. For the purposes of this decision, it is not necessary to go into the details of his reasons, which were provided in camera, but I will give him the benefit of the doubt and say that those reasons were subjectively valid in his mind.

[21] This begs the question of whether having a reason or purpose in mind is a reasonable excuse for committing *Charter* and policy breaches. His position is that he knew the people involved in this incident and he knew from the start that there would not likely be criminal charges at the end of the day against the driver of the vehicle. Given that, he felt it was okay to proceed in the manner he did in order to attempt to achieve a secondary purpose.

[22] However, that logic doesn't hold up under scrutiny: the end cannot justify the means for a police officer. That is the edge of a very slippery slope. Constable Girard is a police officer sworn to uphold the law, which includes abiding by the *Charter*. He can't choose to do so when it is convenient for him and not do so when it isn't. That's the conscious choice he made in this

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

case; it was a careless and reckless choice that pushes his actions across the line from performance to misconduct. Therefore, I find Allegation 3 to be established.

Allegation 4

[23] Constable Girard admits each of the particulars in relation to Allegation 4 in his subsection 15(3) response and in the *Agreed Statement of Facts* provided by the parties prior to the conduct hearing. However, he denied particular 2 in his testimony before me. In his submission, he acknowledges that he was tasked verbally with serving this summons, but he didn't recall receiving the email from Staff Sergeant Bourque.

[24] In my view, how he was tasked is not overly important. Either way, he acknowledges that he was tasked with serving the summons on behalf of the ASC. His denial that his actions amount to providing false or misleading information to Staff Sergeant Bourque in relation to the completion of an affidavit of service is based on him being mistaken in several instances. He argues that his being mistaken amounts to an honest but mistaken belief in what he had done and should not attract liability under section 8.1 of the Code of Conduct.

[25] The test in relation to section 8.1 of the Code of Conduct is well articulated in *Commanding Officer "K" Division and Constable Greenlaw*, 2019 RCAD 22, where the conduct board indicates there are generally three categories of cases:

- a. where the police officer knew the statements he made were false, misleading or inaccurate;
- b. where the police officer was negligent, reckless or careless as to the validity of the statements being purveyed; and
- c. where the police officer makes an honest but mistaken statement that ultimately turns out to be false, misleading or inaccurate.

[26] The first two categories attract liability, while the third does not.

[27] In my view, this case falls into the second category of cases. Whether it was via email or verbally, Constable Girard acknowledges that he was tasked with the service of this summons from the ASC sometime shortly after July 5, 2019. Over the course of the next month, he was asked for a status update on the service of the summons at least three times: on July 22, 2019, by Staff Sergeant Bourque; on July 26, 2019, by the ASC directly; and then again on July 31, 2019, by the ASC directly. The summons was served on August 6, 2019, but it was not until August 15, 2019, when Staff Sergeant Bourque received another prompt from the ASC and confronted Constable Girard that Constable Girard told anyone that the summons had actually been served.

[28] He told Staff Sergeant Bourque at that time that the summons had been served and the affidavit of service returned to the ASC. When Staff Sergeant Bourque asked to see the email confirming that the affidavit of service had been returned, Constable Girard initially told him that he had deleted the email and had mailed the original affidavit to the ASC. That statement was false and quite frankly ridiculous, given that there could never be a valid reason to delete such an email. Constable Girard then pulled up an email from the ASC dated July 31, 2019, as proof that the summons had been served and the affidavit of service returned. That was obviously not the case given that the summons wasn't served until August 6, 2019. The information he provided to Staff Sergeant Bourque was clearly false and misleading, but do his actions amount to misconduct?

[29] His explanation for all of this was that he confused this summons with other subpoenas he was dealing with at the time. He argues that what he told Staff Sergeant Bourque reflected his honest, but mistaken, belief in terms of what he had done.

[30] Constable Girard is a police officer with eight years of service at the time this incident occurred. He testified that he understood the value and necessity of making good notes and documenting his actions in the course of his duties, one of the most fundamental requirements of police work. Something that is even more important for someone who knows that he may be less organized and require more assistance than the average member. Yet, he made no notes to refer

to in this case, either in his notebook or in a PROS file that he could simply check in order to give Staff Sergeant Bourque accurate information on the service of the summons.

[31] In addition, a reasonable constable when asked an operational question directly by their staff sergeant would go out of their way to ensure what they told him was accurate. Constable Girard's reaction was to spin a lie about deleting an email and then offer as proof an email that obviously could not have been what he held it out to be. That does not add up to an honest, but mistaken, belief in my mind. Rather, the totality of his actions reflect a recklessness or carelessness as to the accuracy of the information he provided to Staff Sergeant Bourque. That pushes this case well over the line from a performance issue to misconduct. Therefore, I find the Allegation to be established.

Allegation 5

[32] Again, Constable Girard admits each of the particulars of Allegation 5, but he provided an explanation for most. However, he denies that he provided misleading information to the Calgary Office of the Public Prosecution Service of Canada (PPSC), a partner agency to the RCMP. The relevant facts as admitted by Constable Girard and as I find them to be are as follows.

[33] On December 12, 2018, Constable Girard was served with the *Record of Decision* (ROD) in relation to eleven Code of Conduct contraventions that were found to be established at a conduct meeting. He was advised in that ROD that he has a legal requirement to file a McNeil disclosure report to the Crown. He was further specifically advised that, in completing that McNeil report, he was to check "Yes" at Box 3, which indicates that he has a finding of guilt for misconduct under the *RCMP Act*, and to complete the chart stating the date of the findings, the section and the conduct measures imposed. That information and direction were readily available within the ROD and he acknowledged having read the ROD when it was served on him.

[34] In March 2019, as a result of a request from the Crown's Office, Corporal Pergunas requested that Constable Girard provide her with an updated McNeil form. On March 20, 2019, Constable Girard submitted a McNeil form to her. All of the boxes on the form had been checked

“No”, indicating that he had no findings of misconduct under the *RCMP Act* and that he had nothing to report. Corporal Pergunas returned the form to him and directed him to provide an updated form as he did in fact have findings of misconduct under the *RCMP Act*.

[35] Several months passed and Constable Girard was reminded that the McNeil form needed to be completed. He then asked Corporal Pergunas for assistance in completing the form. She quite reasonably referred him to Staff Sergeant Akitt in the Professional Standards Unit. On July 22, 2019, Constable Girard emailed Staff Sergeant Akitt with a question about what to include on the form. She answered his question thirteen minutes later. He was satisfied with her response and had no further questions for her.

[36] On August 9, 2019, Constable Girard emailed his McNeil disclosure form directly to Sean Funk, a paralegal at the Calgary Office of the PPSC. It was not submitted through his supervisor, Corporal Pergunas, nor did it contain her signature or the signature of any other supervisor as required. His form again indicated that he had no previous findings of guilt for misconduct under the *RCMP Act*. In other words, instead of checking “Yes” and listing the findings as directed in the ROD, he checked “No”. It also indicated that he had no outstanding allegations of misconduct, which was also false.

[37] Mr. Funk sought clarification from Constable Girard as Mr. Funk was already aware that Constable Girard had findings of misconduct. Constable Girard responded that “the matter is still being investigated and when everything is finished with district, I will send an updated form”. Mr. Funk believed that he had been deceived and reported the matter to his supervisor and it was eventually brought to the attention of Staff Sergeant Bourque.

[38] On September 4, 2019, Staff Sergeant Bourque asked Constable Girard why he had twice submitted a McNeil form with no findings of misconduct; Constable Girard explained in part that those findings may affect his credibility in future court proceedings, which made him uncomfortable. At the end of the day, his submission of the inaccurate or false form resulted in the Crown staying charges in four serious *Controlled Drugs and Substances Act* cases over concerns about his credibility.

[39] Constable Girard's explanations for not submitting an accurate McNeil form focused around not believing that his prior misconduct was yet in effect. He didn't believe it was yet in effect because the ordered forfeiture of pay from the ROD had not yet been deducted. He also indicates that the ordered review of policy in the ROD had yet to be completed, although in cross-examination he acknowledged that he had completed that review, as he had stated in his warned statement provided to the Professional Responsibility Unit.

[40] Constable Girard further testifies that he didn't understand the importance of the McNeil form and that he had sought assistance from his supervisors, but had received none. That testimony was contradicted by the Conduct Authority's witnesses. When questioned, only Corporal Pergunas and Corporal Lloyd indicated that they had been asked by Constable Girard for assistance. In response to his request, Corporal Pergunas referred him to Staff Sergeant Akitt from the Professional Responsibility Unit, who did assist him. Corporal Lloyd was the person at the end of the day who sat down with him to complete the form after he had submitted the inaccurate form to Mr. Funk at the PPSC. Each of the other supervisors at Drumheller Detachment denied being asked by Constable Girard for assistance in completing the form, but they indicated that they would have assisted him had they been asked.

[41] Much was made by Constable Girard on the lack of instruction provided in policy for the completion of the McNeil form. However, even a cursory examination reveals that it is not a complicated form. Constable Girard was provided direction in the ROD served on him on December 12, 2018, as to his obligations when completing the form, most notably to check "Yes" at Box 3 in order to indicate that he had findings of misconduct under the *RCMP Act*. Even if he was confused, as he claimed, and didn't know how to complete the remainder of the form, that much should have been crystal clear to him, that he had to check the "Yes" box. Yet on the form he submitted to Mr. Funk, he checked the "No" box. He did not provide an explanation for that contradiction.

[42] Even if he was confused, as claimed, Constable Girard was well aware that it was his obligation to complete and submit an accurate form. If he needed assistance in doing so, that assistance was available. I do not believe him when he says that he asked his supervisors and no

one would assist him. The evidence is to the opposite effect. When he asked Corporal Pergunas for assistance, she referred him to the expert, Staff Sergeant Akitt. Staff Sergeant Akitt answered his question immediately and he did not reach out to her again for any additional assistance. If he needed further assistance, as he argues, that's all he had to do. Instead, he submitted the form with the false information directly to the Crown's office and intentionally bypassed his supervisor in doing so. I do not believe his contention that in a detachment with a staff sergeant and five corporals, supervisors were never around to sign off on the document.

[43] I believe this case fits into the first category of those discussed in *Greenlaw*, where the statements were known to be false, misleading or inaccurate. Even if I were to give a very large benefit of the doubt to Constable Girard that he was confused in terms of what needed to be included on the form (what boxes needed to be checked), he failed to seek assistance in its completion, assistance that was readily available to him. That failure and his submission of the form without it being reviewed and verified by his supervisor amount to recklessness, carelessness and negligence in failing to ensure the validity of the statements being purveyed to Mr. Funk. Therefore, I find Allegation 5 to be established.

CONDUCT MEASURES

[44] Since I have found that the Allegations against Constable Girard have been established by the Conduct Authority, I am statutorily obligated under subsection 45(4) of the *RCMP Act* to impose appropriate conduct measures. In arriving at my decision, I must be guided by paragraph 36.2(e) of the *RCMP Act*, which sets out the purpose of the conduct process:

(e) to provide, in relation to the contravention of any provision of the Code of Conduct, for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

[45] The Conduct Authority is seeking the global sanction of Constable Girard's dismissal. The Conduct Authority argues that the nature of the contraventions in totality does not support an educative or remedial response. Most seriously, Constable Girard has been found to have made false statements to his Detachment Commander and to the Crown Prosecutors Office in

relation to his McNeil form. The Conduct Authority's position is that he has so significantly breached the core values of honesty and integrity for personal gain that, in accordance with the rationale in *Commanding Officer, "J" Division v Constable Cormier*, 2016 RCAD 2, his employment is no longer tenable.

[46] Constable Girard argues that, under the circumstances of the case, I am justified in imposing a sanction less than dismissal and that a substantial forfeiture of pay would make the appropriate statement that this type of misconduct cannot be tolerated. He urges me to avail myself of the flexibility under the *Conduct Measures Guide* to impose conduct measures short of dismissal.

[47] In determining the appropriate sanction, I must first determine the applicable range of conduct measures for the established Allegations. I must then consider the aggravating and mitigating factors. While I may be guided by prior conduct board decisions for the sake of parity of sanction, I am not bound by these decisions. Nor am I bound by the *Conduct Measures Guide*. I must make my own determination on the facts of this case.

[48] The Allegations established against Constable Girard fall under two different sections of the Code of Conduct. Allegations 1 to 3 constitute a failure to be diligent in the performance of his duties under section 4.2, while Allegations 4 and 5 involve providing inaccurate and incomplete accounts pertaining to carrying out his responsibilities and the performance of his duties under section 8.1. I will deal with Allegations 1 to 3 together in a global fashion and I will do the same with Allegations 4 and 5.

Range of conduct measures

[49] I have reviewed the material provided to me by both parties and have considered their submissions. The Conduct Authority tendered a series of Constable Girard's past performance evaluations in an attempt to show his lack of rehabilitative potential. I declined to review those documents or to consider them as an argument as I am dealing with Code of Conduct contraventions, not performance issues.

[50] The Conduct Authority also relied on the conduct board decision in *The Appropriate Officer “K” Division and Constable Swain*, 12 AD (4th) 1, as support that Constable Girard’s dismissal is appropriate in the circumstances. Constable Girard did not rely on any additional cases in the conduct measures phase of the hearing.

[51] On my review of the *Conduct Measures Guide* and the cases provided by the parties, I find that the appropriate range of global conduct measures for Allegations 1 to 3 is between 10 and 20 days’ pay. I find that the appropriate range for Allegations 4 and 5 is 30 days’ pay to dismissal.

[52] Having determined the appropriate range, I will now consider the aggravating and mitigating factors.

Mitigating and aggravating factors

[53] The mitigating factors are as follows:

- a. Although he did exercise his right to defend himself in these proceedings, Constable Girard admitted the majority of the particulars for each Allegation, which prevented the need for additional hearing time and Conduct Authority witnesses. He is to be given credit for that.
- b. Constable Girard tendered three letters of support from members of the community. The first is from a manager at the Drumheller Institution who speaks highly of his personality. The other two are from friends and fellow members of the community who agree that he is a good person and is involved in the community. There is no mention in the letters that the authors are aware he was facing allegations of misconduct or the nature of those allegations.
- c. Constable Girard provided two brief medical reports to show that he is making progress in dealing with some mental health issues that affect him. However, it was made clear that he is not alleging any link between his health issues and the misconduct in question

or any explanation for his misconduct. Nor do the reports cast any light on the possibility of rehabilitation or the likelihood of recidivism. As such, the reports are of limited value.

- d. Staff Sergeant Bourque confirmed that Constable Girard performed well when he was removed from operational duties and placed on administrative duties before he was suspended. While I give him credit for that, he was hired as a police officer and the duties he was performing during that period of time were not those of a police officer.

[54] It should be noted that the absence of any sort of medical explanation for Constable Girard's actions is significant in that it is a mitigating factor present in many cases where similar behaviour has not resulted in dismissal.

[55] Those mitigating factors have to be considered against the substantial aggravating factors in this case:

- a. The misconduct has the potential to seriously tarnish the reputation of the RCMP with partner agencies, including the Crown's Office, Corrections Canada and the ASC. I heard evidence from Staff Sergeant Bourque that this potential has already become reality with respect to the Drumheller Penitentiary.
- b. A member of the public was involved in Allegation 4 when Staff Sergeant Bourque was required to contact her to ensure the summons was served. That has the potential to lessen the reputation of the RCMP in her eyes.
- c. Constable Girard has recent prior related discipline. The ROD dated December 12, 2018, contains 8 established allegations under section 4.2 of the Code of Conduct. This makes it clear that his failure to be diligent in the performance of his duties is not new or an isolated incident. Those findings by Chief Superintendent Chapman and the conduct measures imposed should have served as a warning to him. It appears he did not heed that warning.
- d. More significantly in my view, that ROD also established an allegation under section 8.1 of the Code of Conduct. Constable Girard was found to have, on December 31, 2017,

ignored the operational direction he was given on a missing person's file. He was also found to have falsely documented the PROS report on that file to better align with the action he took, as opposed to the direction he failed to take. Again, it appears he did not heed the warning provided by Chief Superintendent Chapman in the December 12, 2018, ROD.

- e. While the misconduct detailed in Allegation 4 may have been a panicked response to being challenged on his failure to perform his duties, the misconduct contained in Allegation 5 was not. It can more accurately be described as planned and deliberate. Submitting the McNeil form in the manner he did also involved the deliberate action of bypassing his supervisors.
- f. The misconduct was for personal gain as that term is used in *Cormier*, noted above and cited with approval in many subsequent decisions. Personal gain includes seeking to avoid responsibility or accountability for one's prior actions or inactions. Constable Girard's actions with respect to Allegation 4 were aimed at avoiding accountability for failing to return the affidavit of service to the ASC. In the case of Allegation 5, it can be inferred from his actions that he attempted to prevent Crown counsel from knowing about his Code of Conduct contraventions.
- g. Finally, ironically and most importantly, these findings of misconduct will have implications for the RCMP arising out of the Supreme Court of Canada's decision in *R. v McNeil*, 2009 SCC 3. They will impose an organizational burden on the RCMP in terms of where Constable Girard can be posted in the future.

[56] The relative weight of this burden depends on the facts of each case and is usually somewhat speculative. However, in the circumstances of this case, we have evidence as to what that effect has already been. Per the correspondence provided by the Calgary Office of the PPSC, that office has already conducted its own assessment of the allegations and stayed four serious prosecutions involving *Controlled Drug and Substances Act* matters in which Constable Girard was considered to be an essential witness for the Crown.

[57] Those stays were directed when these matters first arose, when they were only allegations of misconduct. Now that those allegations have been established after a conduct hearing, the effect is not going to be any less. Therefore, the Force is in the position of having to accommodate someone whose lack of credibility is going to be an issue in any future court proceeding. It goes without saying that Constable Girard was hired to be a police officer and his experience to date with the Force has been as a general duty investigator. At this point in his career, that is what he seems to be qualified to do. It would be a significant hardship for the RCMP to have to accommodate him in these circumstances.

[58] More generally, and aside from the McNeil implications, police work at its core requires honesty and integrity above all. The criminal justice system depends on it and it is essential in the operation of a police service. If one police officer cannot rely on the accuracy of another's reports, a detachment cannot operate efficiently or effectively. If a Crown prosecutor cannot count on the word of a police officer in the course of a prosecution, that prosecution cannot succeed. Nothing can compromise the effectiveness of a police service as seriously as the loss of confidence in an officer's propensity to tell the truth.

[59] Having said that, it is a well-established principle that dismissal is only to be considered in the most extreme cases and that rehabilitation is the primary purpose of the imposition of conduct measures. That principle is reflected in the case of *Ennis v the Canadian Imperial Bank of Commerce*, (1986) BCJ 1742, in which the Court said in relation to dismissing an employee:

[...] Real misconduct or incompetence must be demonstrated. The employee's conduct and the character it reveals must be such as to undermine or seriously impair the essential trust and confidence the employer is entitled to place in an employee in the circumstances of their particular relationship. The employee's behaviour must show that he is repudiating the contract of employment or one of its essential ingredients.
[...]

[60] As the conduct board noted in *Commanding Officer "E" Division and Constable Vellani*, 2017 RCAD 3 (starting at paragraph 55), although rehabilitative potential is an important consideration, it does not overcome the right to terminate employment when the breach goes to the heart of the employer-employee relationship. I believe that, through his actions, Constable

Girard has repudiated the contract of employment going to the heart of the employer-employee relationship.

[61] I acknowledge that, in some cases involving dishonesty and deception, the sanction imposed is rightfully something less than dismissal. However, past decisions make it entirely clear that one of the possible sanctions against members, whose actions demonstrate these characteristics, is dismissal from the RCMP. Dismissal was not imposed in those cases because the respective conduct boards found that there were sufficient mitigating circumstances to warrant a less severe sanction. The conduct board in *Cormier* stated it another way when he said, at paragraph 110, when dishonesty or a lack of integrity has been ascribed to a member, dismissal typically only occurs where there has been personal gain sought or obtained, and significant mitigating factors are absent. As indicated above, Constable Girard's attempt to avoid responsibility for his actions amounts to personal gain in the circumstances of this case.

[62] Constable Girard did not take the stand in the conduct measures phase of the hearing and he did not address the Conduct Board. Therefore, I have no indication as to whether he realizes the gravity of his misconduct since the Allegations were established. In relation to Allegation 5 specifically, he submitted a false McNeil report to the Crown's Office, a report that the Crown relies on in part to determine whether it will continue to proceed with prosecutions, a decision that has enormous implications for accused persons. If not detected, that false report would have caused Crown prosecutors to unwittingly mislead the court and defence counsel in the course of their duties. While the impact of Constable Girard's actions has already been significant, it could have been much worse.

[63] Without any indication that Constable Girard understands the seriousness of his misconduct and absent any positive evidence of rehabilitative potential, I can only say that his conduct reveals a character flaw of reverting to dishonesty in order to avoid responsibility. In my view, Constable Girard's conduct is inconsistent with the terms of his service and incompatible with the due and faithful discharge of his duties.

[64] Under these circumstances and given the position of responsibility and trust held by Constable Girard, as a police officer sworn to enforce the law, I simply cannot justify retaining him as a member of the Force. That would not be in the public interest. Nor would it send a strong enough message to other members of the Force or the general public that this type of misconduct cannot be tolerated. This is a case where deterrence and denunciation necessarily override the primary goal of rehabilitation. As a result, I impose the following conduct measures:

- Allegations 1 to 3: a reprimand and the forfeiture of 20 days' pay.
- Allegations 4 and 5: I direct Constable Girard to resign. If he fails to do so within 14 days, then I direct that he is to be dismissed.

[65] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on Corporal Girard, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

Gerald Annetts

Conduct Board

December 11, 2020

Edmonton, Alberta