

Protected A

2021 CAD 02



ROYAL CANADIAN MOUNTED POLICE

in the matter of

a conduct hearing pursuant to the

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

Between:

Commanding Officer, "E" Division

Conduct Authority

and

Constable Josef Landrum

Regimental Number 57414

Subject Member

Conduct Board Decision

Kevin Harrison

January 25, 2021

Staff Sergeant Jonathan Hart, Conduct Authority Representative

Mr. Ryan Hira and Mr. Mark Rowan, Subject Member Representatives

TABLE OF CONTENTS

TABLE OF CONTENTS.....	3
SUMMARY OF FINDINGS	3
INTRODUCTION	4
ALLEGATIONS.....	5
Agreed Statement of Facts	6
Decision on the allegation	6
CONDUCT MEASURES.....	7
Joint proposal on conduct measures.....	7
The common law on joint proposals.....	8
Decision on conduct measures	9
Appropriate range of conduct measures	9
Mitigating and aggravating factors.....	11
Conclusion on conduct measures	13
CONCLUSION.....	14

SUMMARY OF FINDINGS

The original *Notice of Conduct Hearing*, dated June 1, 2020, contained two allegations of discreditable conduct, contrary to section 7.1 of the Code of Conduct. The first allegation arose from a complaint of a single incident of non-consensual sexual misconduct involving Constable Landrum's

estranged spouse. The second allegation pertains to Constable Landrum sending his estranged spouse a number text messages or Internet memes of a sexual nature over an approximate period of two years despite her repeated requests for him to stop.

Prior to the conduct hearing, the parties submitted an *Agreed Statement of Facts* and a joint proposal on conduct measures. The conduct hearing proceeded by video conference on January 14, 2021. The Conduct Authority withdrew Allegation 1. Constable Landrum admitted Allegation 2. The Conduct Board found Allegation 2 established.

The Conduct Board accepted the parties' submissions and imposed the following conduct measures: (1) a forfeiture of 20 days' pay; (2) a direction to receive or continue counselling deemed appropriate by the "E" Division Health Services Officer or their delegate; (3) a recommendation for a transfer.

INTRODUCTION

[1] On May 12, 2020, the Designated Conduct Authority for "E" Division (the Conduct Authority) signed a *Notice to the Designated Officer*, in which she requested the initiation of a conduct hearing in relation to this matter. On May 14, 2020, the Designated Officer appointed me as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] The Conduct Authority signed the *Notice of Conduct Hearing* on June 1, 2020. The *Notice of Conduct Hearing* contained two allegations under section 7.1 of the Code of Conduct. Pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], Constable Landrum filed his written response to the allegations on August 25, 2020. This submission contained few admissions beyond that he intermittently sent text messages to his estranged wife [the Complainant] that were lewd, in poor taste and inappropriate.

[3] Prior to the conduct hearing, the parties advised me that they had come to a resolution. The parties provided me with an *Agreed Statement of Facts* and a joint proposal on conduct measures.

[4] A conduct hearing proceeded by video conference on January 14, 2021. The Conduct Authority withdrew Allegation 1. I found Allegation 2 to be established. I also accepted the parties'

joint proposal on conduct measures. This written decision incorporates and expands upon that oral decision.

ALLEGATIONS

[5] The *Notice of Conduct Hearing* contained two allegations under section 7.1 of the Code of Conduct.

[6] The first allegation arose from a complaint of a single incident of non-consensual sexual misconduct involving the Complainant and reads as follows:

Allegation 1

On or about August 6, 2019, at or near Qualicum Beach, in the Province of British Columbia, Constable Josef Landrum behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

[7] The second allegation reads as follows:

Allegation 2

On or between July 4, 2017, and August 6, 2019, at or near Qualicum Beach, Nanaimo and Courtenay, in the Province of British Columbia, Constable Josef Landrum behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

[8] In this second allegation, the Conduct Authority particularized that, during the specified time period, Constable Landrum sent the Complainant 45 inappropriate text messages or Internet memes of a sexual nature (the inappropriate text messages) despite her repeatedly asking him to stop.

Agreed Statement of Facts

[9] On December 7, 2020, the parties presented me with an *Agreed Statement of Facts*. The Conduct Authority Representative signed the document on behalf of the Conduct Authority. Legal counsel for Constable Landrum signed it on his behalf.

[10] The agreed facts pertain exclusively to Allegation 2 since the resolution agreement proposal included the withdrawal of Allegation 1 by the Conduct Authority. I have summarized the *Agreed Statement of Facts* as follows:

- The *Notice of Conduct Hearing* contained four particulars applicable to both allegations. The essential wording of these particulars are included in the agreed facts.
- At paragraph 5, Constable Landrum accepts and agrees that between July 4, 2017, and August 6, 2019, he behaved in a manner that discredited the Force, which is contrary to section 7.1 of the Code of Conduct of the RCMP.
- The remainder of the document is a reiteration of the three particulars contained in the *Notice of Conduct Hearing* for Allegation 2, with a few minor wording changes.

This includes a detailed list of 45 inappropriate text messages sent to the Complainant by Constable Landrum.

[11] The facts coincide with those contained in the investigation report and the supporting material. Therefore, I accept and adopt the facts as presented to me in the *Agreed Statement of Facts*.

Decision on the allegation

[12] The RCMP External Review Committee (ERC) offers its analysis of the nature of conduct “likely to discredit the Force” in ERC recommendation C-2015-001 (C-008), dated February 22, 2016. Simply put, the test for whether a member has contravened section 7.1 of the Code of Conduct is that any reasonable person with the knowledge of the facts, including the realities of policing in

general, and the RCMP in particular, would find the conduct discreditable or likely to discredit the Force. The Conduct Authority must demonstrate this on a balance of probabilities.

[13] In accordance with the resolution agreement, I withdrew Allegation 1 at the request of the Conduct Authority.

[14] Based on the general admission made by Constable Landrum to Allegation 2, his admissions to the various particulars in his subsection 15(3) of the *CSO (Conduct)* response to the allegations, and the facts presented to me in the *Agreed Statement of Facts*, I find that Allegation 2 is established.

CONDUCT MEASURES

[15] Having found Allegation 2 established, I am obliged, by virtue of subsection 45(4) of the *RCMP Act*, to impose at least one of the conduct measures set out under that subsection. These conduct measures include dismissal, a direction to resign or “one or more of the conduct measures provided for in the rules”. The conduct measures “provided for in the rules” are found in sections 3, 4 and 5 of the *CSO (Conduct)*.

Joint proposal on conduct measures

[16] During a pre-hearing conference held on January 12, 2021, the parties presented me with a joint proposal on conduct measures. This joint proposal included the following conduct measures:

- an order for the forfeiture of 20 days’ pay; and
- a direction that Constable Landrum continue counselling deemed appropriate by the Health Services Officer.

[17] Our discussion on the joint proposal included a consideration of the appropriateness of an order for a transfer. Given that an order for a transfer could only be at the discretion of the Commanding Officer, the parties requested that I simply consider making a recommendation for a transfer in hopes that meaningful discussions between the “E” Division Career Development and Resourcing Section and Constable Landrum could result in a “positive” transfer. The parties defined a

“positive” transfer as one that would bring Constable Landrum closer to the Complainant and his infant son to mitigate the stressors associated with their respective co- parenting duties.

The common law on joint proposals

[18] The Supreme Court of Canada, in *R v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*], at paragraph 25, recognized that joint submissions on criminal sanctions are not only an accepted and desirable practice, but they are “vitally important to the well-being of our criminal justice system, as well as our justice system at large”. The Court further noted that the majority of such agreements are “unexceptional” and readily approved by judges. However, judges are not obliged to follow these joint proposals for various reasons. These notions are equally applicable to conduct adjudicators in the RCMP conduct regime.¹

[19] In *Anthony-Cook*, the Supreme Court declared the test a judge must apply when considering a joint submission in a particular case is the “public interest” test. The question is whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

[20] In determining whether a joint submission will bring the administration of justice into disrepute or is contrary to the public interest, the Supreme Court noted that the following statements made by the Newfoundland and Labrador Court of Appeal, in two separate cases, capture the essence of the “public interest” test. The statements are as follows:

[...] despite the public interest considerations that support imposing it, it is so
‘markedly out of line with the expectations of reasonable persons aware of the

¹ See *Rault v Law Society of Saskatchewan*, 2009 SKCA 81; and *Constable Coleman v Appropriate Officer, "F" Division*, (2018) 18 AD (4th) 270.

circumstances of the case that they would view it as a [breakdown] in the proper functioning of the criminal justice system’. [...] ²

And:

[...] trial judges should ‘**avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts**’.

[...] ³[Emphasis added]

[21] In applying the direction from the Supreme Court to this decision, I must consider whether the joint proposal on conduct measures will bring the administration of justice into disrepute or whether it is contrary to the public interest. In doing so, I must consider whether the proposal is so markedly out of line with the expectations of a reasonable person aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the RCMP conduct system.

Decision on conduct measures

[22] The ERC established an analysis framework under the old RCMP discipline system, which remains relevant to conduct proceedings under the amended *RCMP Act*. Under this framework, I must ascertain the appropriate range of conduct measures and then examine the mitigating and aggravating factors in order to determine the appropriate conduct measures for the specific case. This approach is consistent with the provisions of *Administration Manual* XII.1.11.15.

Appropriate range of conduct measures

[23] The *Conduct Measures Guide* sets out a range of possible conduct measures for discreditable conduct relating to section 7.1 of the Code of Conduct; however, it does not contain a specific section pertaining to the circumstances of this case.

² *R v Druken*, 2006 NLCA 67, 261 Nfld & PEIR 271, at paragraph 29.

³ *R v B.O.2*, 2010 NLCA 19 (CanLII), at paragraph 56.

[24] The *Conduct Measures Guide* does contain a section under section 7.1 that deals with off-duty conduct, which includes assault and domestic violence. Clearly, Constable Landrum's actions did not amount to acts such as threats of violence, pushing, shoving or hitting, all acts normally associated with the term "domestic violence". The *Notice of Conduct Hearing* characterized Constable Landrum's actions as sexual harassment. He admitted to this characterization.

[25] On January 1, 2021, legislation came into effect that will change the way the RCMP deals with workplace harassment. I understand these legislative changes came about because harassment in the workplace is considered violence in the workplace. Using this same logic, sexual harassment in a domestic relationship could also be considered "domestic violence".

[26] In the category of assault or domestic violence, the mitigated range includes minor pushing or shoving and an isolated incident. The recommended conduct measures in the mitigated range are the forfeiture of between 1 and 2 days of pay. The normal range calls for a financial penalty of between 3 and 10 days of pay. The aggravated range, which includes several examples of specific factors, none of which are present in this case, calls for conduct measures between the forfeiture of 15 days of pay and dismissal.

[27] Although Allegation 2 is under section 7.1 of the Code of Conduct, I also looked at the recommended conduct measures under section 2.1 of the Code of Conduct. This section relates to respect, courtesy and harassment.

[28] The most serious conduct measures under this section deal with harassment in the workplace. The recommended range is between remedial measures and dismissal. Allegation 2 does not involve the workplace or an RCMP employee. Consequently, I find that the recommended conduct measures for disrespectful or discourteous conduct are more appropriate to consider. The recommendations in this section span from remedial measures (less than a reprimand) in the mitigated range to forfeiture of 10 days of pay in the aggravated range.

[29] The parties did not provide me with any prior conduct board decisions dealing with circumstances similar to this case.

[30] In light of the foregoing, I find the appropriate conduct measures in this case to be a financial penalty of between 1 and 10 days in the normal range and a financial penalty of no less than 15 days in the aggravated range.

Mitigating and aggravating factors

[31] The Conduct Authority Representative made the following submissions relating to conduct measures:

- Constable Landrum's conduct is sexual in nature, which is a significant aggravating factor.
- The Complainant requested Constable Landrum stop sending her emails. Constable Landrum failed to consider these requests and continued with his offending behaviour.
- The Complainant was hesitant to participate in the conduct process. The resolution of this matter by joint proposal on conduct measures negates the requirement for the Complainant to testify against Constable Landrum at a conduct hearing.

[32] The Conduct Authority also provided me with a *Victim Impact Statement* prepared by the Complainant. Counsel for Constable Landrum identified a difference of opinion with respect to the relevant portions of the document such as the Complainant's comments on her assessment of the couple's marriage and the RCMP. However, he did not want these minor differences of opinion to impede the resolution of this matter. I find the following portions of the *Victim Impact Statement* to be relevant to this proceeding:

- The Complainant was "on edge 100% of the time" and felt weak and helpless during the 25-month period that Constable Landrum sent her the inappropriate text messages.
- Constable Landrum's actions left the Complainant feeling broken and will have a lasting effect on her.

[33] Notwithstanding the negative impacts on her, the Complainant also indicated the following:

- Since she reported the matter to the RCMP in August 2019, Constable Landrum has changed.

- Constable Landrum has “stepped up” as a father to their son and has been helpful to her.
- Constable Landrum has been kind and civil with no recurrence of the inappropriate text messages.
- She is hopeful that, in light of his changed behaviour, they can continue to successfully co-parent their son.
- She feels that Constable Landrum deserves a second chance.

[34] Counsel for Constable Landrum made the following submissions relating to conduct measures:

- Constable Landrum has not sent any additional inappropriate text messages to the Complainant since August 16, 2019 (the date of the complaint).
- At no time during the relevant period did the Complainant fear for her safety because of the inappropriate text messages.
- Constable Landrum sought out treatment prior to the Complainant’s report to the RCMP to assist him with diagnosed Post-Traumatic Stress Disorder. He has made “therapeutic gains” since he began treatment.
- Constable Landrum and the Complainant have reconciled. They have enjoyed a cordial relationship over the past 15 months, which includes dining and vacationing together.
- Constable Landrum’s performance evaluations favourably report on his abilities as a police officer.
- Constable Landrum has the support of his co-workers and a supervisor.

[35] Constable Landrum provided a letter from a registered psychologist with his original response to the allegations. The psychologist has diagnosed Constable Landrum with Post- Traumatic Stress Disorder. This diagnosis followed Constable Landrum’s voluntary attendance at the psychologist’s

clinic in May 2019. Constable Landrum has attended psychotherapy sessions since that time and has shown progress. Constable Landrum continues to require ongoing weekly psychotherapy sessions for the foreseeable future.

[36] Before the conduct hearing, Constable Landrum's counsel also presented me with six letters of support for Constable Landrum. These letters were from co-workers, peers and supervisors. The general flavour of these letters is that Constable Landrum has an exceptional work ethic and that, while at work, he embodies the core values of the RCMP, particularly compassion, on a daily basis.

[37] During the conduct hearing, Constable Landrum made a heartfelt and apparently sincere apology to the Complainant in which he expressed regret for his actions and acknowledged their impact on her.

Conclusion on conduct measures

[38] Allegation 1 involved non-consensual sexual misconduct, albeit off-duty. Other conduct boards, including myself, have noted that the degree of seriousness of a member's sexual misconduct is high and that the RCMP, through repeated messaging to its employees, has communicated that workplace harassment, including sexual harassment and off-duty non-consensual sexual misconduct are all unacceptable and will not be ignored or tolerated. Therefore, while Allegation 1 remained before me and, if proven, Constable Landrum's dismissal from the Force was a real possibility.

[39] Although Allegation 2 is serious, once Allegation 1 was withdrawn, the seriousness of the matter as a whole significantly diminished to the extent that conduct measures short of dismissal are appropriate.

[40] Having considered the record before me, the nature of the misconduct, the mitigating and aggravating factors as well as the submissions from the parties, I do not find that the joint proposal on conduct measures would bring the administration of justice into disrepute or that it is contrary to the public interest. A financial penalty of the forfeiture of 20 days of pay is at the high end of the range of acceptable outcomes I have identified. A direction to undertake or continue counselling is in line with

the remedial purpose of conduct measures. Therefore, I accept the parties' joint proposal on conduct measures.

CONCLUSION

[41] Having found the lone remaining allegation established and in accordance with the joint proposal presented by the parties, the following conduct measures are imposed:

- a. a financial penalty of the forfeiture of 20 days of pay;
- b. a direction that Constable Landrum undertake or continue counselling deemed appropriate by the "E" Division Health Services Officer or their delegate; and
- c. a recommendation for a transfer.

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

[43] This decision constitutes my written decision. Subsection 25(3) of the *CSO (Conduct)* requires that it be served on the parties. The decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of the decision (section 45.11 of the *RCMP Act*; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289).



January 25, 2021

Kevin L. Harrison

Conduct Board