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2021 CAD 06

Publication ban: Any information that could identify Mrs. M.S. and any members of her immediate or extended family, Ms. A.T. as well as Ms. G.S. shall not be published in any way in any document, broadcast or transmission.



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 Wilhelm Scheepers

Regimental Number 56175

Subject Member

Conduct Board Decision

Kevin L. Harrison

February 12, 2021

Mr. Denys Morel, Conduct Authority Representative

Mr. Brad Smith and Ms. Danielle Ching McNamee, Subject Member Representatives

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SUMMARY OF FINDINGS

The *Notice of Conduct Hearing*, dated May 1, 2020, contained three allegations of discreditable conduct contrary to section 7.1 of the Code of Conduct. The first allegation arose when Constable Scheepers sent Mrs. M.S. and members of her family a number of insulting, threatening and harassing text messages in February 2019. The second allegation relates to Constable Scheepers making advances to two female pedestrians he accosted while he was slowly driving his vehicle on a public roadway. The third allegation is an incident of impaired driving. Constable Scheepers's impaired operation of a motor vehicle created a hazard for other drivers on the road and ended with his involvement in a single-vehicle accident.

Constable Scheepers accepted responsibility for his actions by admitting to all three allegations and corresponding particulars in his response to the allegations. The parties submitted a joint proposal on conduct measures for my consideration. With the consent of the parties, the Conduct Board based his decision solely on the Record.

The Conduct Board accepted the joint proposal on conduct measures and imposed the following conduct measures: (1) reprimand; (2) a financial penalty of 45 days' pay; and (3) ineligibility for promotion for three years. Constable Scheepers also agreed to abide with two specified paragraphs contained in an *Aftercare Treatment Agreement* with the Division Health Services Officer. The agreement is for a period of two years ending in September 2022. These paragraphs relate to testing and monitoring for compliance with the member's agreement to abstain from alcohol.

INTRODUCTION

[1] On February 11, 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 February 17, 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 May 1, 2020. The *Notice of Conduct Hearing* contains three allegations of discreditable conduct under section 7.1 of the Code of Conduct.

[3] On October 30, 2020, Constable Scheepers provided his written response to the allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*]. In his extensive submission, Constable Scheepers took the exceptional step of unequivocally admitting to all three allegations and the corresponding particulars. The bulk of his submission pertains to his contention that significant conduct measures short of dismissal are appropriate in this case.

[4] During a Pre-Hearing Conference held on November 13, 2020, the parties advised that they were close to a resolution. The parties agreed that if they presented a joint proposal on conduct measures, then their preference was that I exercise my authority under subsections 23(1) and 24(1) of the *CSO (Conduct)* to render my final written decision based solely on the Record without hearing any testimony.

[5] On January 8, 2021, I held another Pre-Hearing Conference at which time the parties presented an outline of a joint proposal on conduct measures. The parties confirmed their desire to have me render my decision based solely on the Record and that no further submissions other than a formal joint proposal on conduct measures would be forthcoming. The parties provided me with the finalized joint proposal on conduct measures by email on February 1, 2021.

[6] The following is my final written decision on both the allegations and conduct measures.

Publication ban

[7] In the joint proposal on conduct measures, the parties requested that I make an order directing a publication ban pursuant to paragraph 45.1(7)(a) of the *RCMP Act*. This provision allows a conduct board to restrict the publication of information that could identify a complainant, a witness or a person under the age of 18.

[8] In accordance with the request, I am directing that any information that could identify the following persons shall not be published in any way in any document, broadcast or transmission:

- a. Mrs. M.S. and any members of her immediate or extended family involved as witnesses in this proceeding; and
- b. Ms. A.T. and Ms. G.S., both witnesses in allegation 2.

ALLEGATIONS

[9] The *Notice of Conduct Hearing*, dated May 1, 2020, contained the following three allegations and particulars:

Allegation 1

On or between February 19, 2019, and February 23, 2019, at or near Williams Lake, in the Province of British Columbia, Constable Wilhelm Scheepers engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 1

1. At all material times you were a member of the Royal Canadian Mounted Police posted to “E” Division, at the North District General Investigation Section in Williams Lake.
2. Mrs. [M.S.] and [her] two sons, then aged 3 and 11, were living with her parents in Prince George.
3. During the month of February, 2019, you sent [Mrs. M.S.] over a hundred text messages of an insulting, threatening and harassing nature causing her to fear for her and her children’s safety.
4. Despite [Mrs. M.S.]’s repeated pleas that you stop, you continued texting her with numerous text messages of an insulting, threatening and harassing nature such as: “slut”, “cunt”, “gay”, “I swear to God I pray that I am going to

win this war with you and the [C.'s]", "fuk you" "you gay slut liar", "You are a fucking jog!", "Your family is a fuking joke! You will see still cunt!!", "The war is on slut!! I will win! You will see! I am willing to pay with my life are you cowards willing to do the same slut!" "A vulture is a very patient bird".

5. On February 23, 2019, you sent text messages to Mr. [R.C.], [Mrs. M.S.]'s father, of an insulting, threatening and harassing nature, such as: "Coward", "Idiot", "A vulture is a patient bird", "Joke!! Idiot!, Fucking joke".

6. On or about February 23, 2019 you sent text messages to Sergeant [C.C.], [Mrs. M.S.]'s brother, of an insulting and harassing nature such as: "coward", "go get fucked if you do not know who it is" or words to that effect.

7. Your text messages caused Mr. [R.C.] and [Sergeant C.C.] serious concerns for their safety and the safety of their family members.

8. Your conduct was discreditable.

Allegation 2

On or about July 20, 2019, at or near Williams Lake, in the Province of British Columbia, Constable Wilhelm Scheepers engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 2

1. At all material times you were a member of the Royal Canadian Mounted Police posted to "E" Division, at the North District General Investigation Section in Williams Lake.

2. On July 20, 2019, at approximately [2:15 p.m.], you were off-duty and driving your personal vehicle, a grey 2015 Honda Pilot, bearing British Columbia licence plate number [XXXXXX], in the [XXX] block of Oliver Street in Williams Lake.

3. You slowed your vehicle down while driving eastbound on Oliver Street and followed Ms. [A.T.] and Ms. [G.S.], both aged 20, who were walking eastbound on the sidewalk. You drove alongside Ms. [A.T.] and Ms. [G.S.] for several minutes at a slow speed while obstructing traffic.
4. Despite Ms. [A.T.] and Ms. [G.S.] asking you to leave them alone, you persisted in following them, and repeatedly asking Ms. [G.S.] for her name, phone number and invited her to get into your vehicle.
5. Ms. [C.C.] observed the situation and became concerned. She stopped to see if Ms. [A.T.] and Ms. [G.S.] needed help and called 911 to report the situation after speaking to them.
6. Your conduct caused Ms. [A.T.] and Ms. [G.S.] to fear for their safety.
7. Your conduct was discreditable.

Allegation 3

On July 20, 2019, at or near Williams Lake, in the Province of British Columbia, Constable Wilhelm Scheepers engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of Allegation 3

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "E" Division, at the North District General Investigation Section in Williams Lake.
2. On July 20, 2019, at approximately [2:18 p.m.], you were off-duty and driving your personal vehicle, a grey 2015 Honda Pilot, bearing British Columbia licence plate number [XXXXX], in the area of Highway 20 and Dog Creek Road.
3. You were observed by members of the public driving in an erratic manner including: driving at excessive speeds, swerving and cutting in front of other

vehicles on the road, going over a median and driving on the wrong side of the road; fishtailing onto the gravel and crashing in the ditch.

4. RCMP officers from Williams Lake Detachment attended the scene of the accident and commence an impaired driving investigation. During the investigation you were uncooperative and argumentative with the investigating officer, Constable Nick Brown. You made disrespectful and condescending comments aimed at [Constable] Brown, such as: “stop being a cunt”, “no fuck you, I am not going there”. “I wish you knew what a fucking clown you are, you are a super cop you’re the RCMP’s best”. [Constable] Brown felt uncomfortable and concerned about your uncooperative and volatile behaviour.

5. You were subsequently taken to Williams Lake Detachment by [Constable] Brown in order to obtain breath samples as part of the investigation. While in the interview room, you appealed to [Constable] Brown to use his discretion and give you a warning as you were also a police officer. When it became clear that [Constable] Brown was not going to give you a warning, you continued to make disrespectful and condescending remarks to him. You subsequently picked up the audio recorder that was on the table and tossed it across the room, striking the wall.

6. At approximately [4 p.m.], the first sample obtained of your breath registered 280 milligrams of alcohol in 100 millilitres of blood. When you failed to provide the required second breath sample, you were taken to the hospital to allow blood samples to be obtained. At [7:01 p.m.], a blood sample was taken from you and the subsequent analysis of your blood determined that you had a blood alcohol content of 249 milligrams of alcohol in 100 millilitres of blood.

7. You were charged with Impaired Operation of a Motor Vehicle pursuant to s. 310(1)(a) of the Criminal Code and Dangerous Operation of a Motor Vehicle pursuant to s. 320.13(1) of the Criminal Code.

8. You were driving your vehicle while impaired.

9. You put your safety and the safety of the public at risk by driving your vehicle in an unsafe manner.

10. Your conduct was discreditable.

[*Sic throughout*]

Submissions on the allegations

[10] The Conduct Authority made no submission with respect to the allegations beyond the 676-page investigation report and supporting material.

[11] Constable Scheepers' submission on the allegations are contained exclusively in his 323-page response to the allegations. The bulk of this submission relates to conduct measures. The portion relating to the allegations is simply an admission to all three and their corresponding particulars.

Decision on the allegations

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

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

[13] The particulars set out in the *Notice of Conduct Hearing* in respect of each allegation accurately represent the evidence contained in the investigation report and supporting material. Constable Scheepers does not challenge this evidence. Therefore, I find that the first element of the test is met for all three allegations.

[14] The investigation report and supporting material clearly identify Constable Scheepers as the member alleged to have committed the acts set out in the allegations. Constable Scheepers admitted that he was a member of the Royal Canadian Mounted Police and accepted responsibility for the actions attributed to him in the *Notice of Conduct Hearing*. Therefore, I find that the second element of the test is met for all three allegations.

[15] With respect to the third element, the RCMP External Review Committee (ERC) offers its analysis on 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 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.

[16] In allegation 1, the Conduct Authority particularized that, during February 2019, Constable Scheepers sent Mrs. M.S. and members of her immediate family over 100 text messages. The *Notice of Conduct Hearing* characterized the messages as “insulting, threatening and harassing nature” and purportedly caused the recipients to fear for their own safety as well as the safety of their respective families. I find Constable Scheepers’ actions in relation to allegation 1 to be discreditable or likely to cause discredit to the Force.

[17] Allegation 2 alleges that, while driving his vehicle at a slow rate of speed on a public roadway while highly impaired, Constable Scheepers accosted two young females. Although he asked the young women to get into his vehicle, his actions were not overtly threatening, but his persistence caused the two young women to fear for their safety. Constable Scheepers’ behaviour was such that a third-party witness felt compelled to contact the police. Since Allegation 3 deals with the impaired operation of a motor vehicle, I characterize Constable Scheepers’ actions in this allegation as public intoxication/disorderly conduct. I find Constable Scheepers’ actions in relation to allegation 2 to be discreditable or likely to cause discredit to the Force.

[18] The third allegation pertains to the impaired operation of a motor vehicle. Constable Scheepers is currently before the courts in relation to this criminal offence. The *Conduct Measures Guide*, at page

42, states that all criminal behaviour, whether it occurred on- or off- duty, would be considered discreditable conduct. Adjudication and conduct boards have consistently found impaired operation of a motor vehicle to be discreditable conduct. I find Constable Scheepers' actions in relation to allegation 3 to be discreditable or likely to cause discredit to the Force.

[19] With respect to the fourth and final element of the test, I note that the incidents relating to all three allegations occurred while Constable Scheepers was off-duty. The *2014 Annotated Version of the RCMP Code of Conduct*, at page 7, provides insight as to how off-duty conduct can be sufficiently related to a member's duties and reads as follows:

[...]

As a member of the RCMP, you have chosen to enter a unique profession that has expectations of a higher standard of behaviour, a responsibility that is not intermittent, but constant. The relationship between a member and the Force is not the same as between a citizen and the government. Your conduct, whether on or off duty, will be scrutinized based on your status as a police officer.

Any conduct which places in doubt your integrity, honesty or moral character may weaken your effectiveness to perform your duties and cause the public to lose confidence in the Force. The responsibilities contained within the Code of Conduct are meant to promote sound ethical decision[-]making that goes beyond the boundary of the work environment. By fulfilling these responsibilities you will meet the professional expectations of the Force and Canadians.

[...]

[20] All three allegations relate to matters that fall within behaviour that members of the Force respond to in their enforcement activities on a daily basis. All three allegations place Constable Scheepers' moral character in doubt. His actions may weaken his effectiveness to perform his duties and cause the public to lose confidence in the Force. Consequently, the Force has a legitimate interest in disciplining him. Therefore, I find that his conduct in all three allegations sufficiently relates to his duties.

Conclusion on the allegations

[21] Based on the foregoing analysis, I find that all three allegations contained in the *Notice of Conduct Hearing* are established.

CONDUCT MEASURES

[22] Having found the allegations 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 (remedial conduct measures), 4 (corrective conduct measures) and 5 (serious conduct measures) of the *CSO (Conduct)*.

Joint proposal on conduct measures

[23] As previously noted, the parties presented me with a joint proposal for global conduct measures. The joint proposal included the following conduct measures:

- a. a reprimand pursuant to paragraph 3(1)(i) of the *CSO (Conduct)*;
- b. a financial penalty of 45 days deducted from Constable Scheepers’ pay pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*;
- c. ineligibility for promotion for 3 years pursuant to paragraph 5(1)(b) of the *CSO (Conduct)*.

[24] On September 12, 2020, Constable Scheepers entered into an *Aftercare Treatment Agreement* with the “E” Division Health Services Officer. Pursuant to subsection 3(2) of the *CSO (Conduct)*, the Conduct Authority and Constable Scheepers have agreed that he will abide by paragraphs 8 and 9 of the *Aftercare Treatment Agreement* for a period of two years from the date the agreement was signed. The noted paragraphs read as follows:

8. I agree that I will be in communication with my monitoring [company] at a frequency to be determined [by] the company, and I authorize them to provide

verbal and written progress reports to the [Health Services Officer] at any time but at a minimum of at least once a month, by phone, fax or email.

9. I agree to provide urine, blood, hair or breath samples on request of my monitoring company within the time frame asked.

[25] The joint proposal also presents the analysis undertaken by the parties in terms of the appropriate range of conduct measures as well as the aggravating and mitigating factors they considered in reaching their proposal. I will expand on this aspect of the joint submission after I have reviewed the common law relating to the treatment I must accord joint proposals.

Common law on joint proposals

[26] The courts have extensively examined joint submissions in the criminal context. In *R v Anthony-Cook*, 2016 SCC 43 [*Anthony-Cook*], the Supreme Court stated that judges are not obliged to accept joint submissions, but that they should only reject them in rare circumstances after applying the “public interest” test. Under this 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. Moldaver J. provided further guidance on behalf of the Court, at paragraph 34, when he wrote:

[...] a joint submission should not be rejected lightly, a conclusion with which I agree. 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 of 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. This is an undeniably high threshold – and for good reasons, as I shall explain.

[27] In *Rault v Law Society (Saskatchewan)*, 2009 SKCA 81 [*Rault*], the Saskatchewan Court of Appeal noted that there are good policy reasons for the principle of deference to joint submissions in the context of professional discipline cases. The overriding and paramount objective of decision-making in relation to such submissions is to maintain the public’s confidence in the integrity of the profession and the profession’s ability to govern its own members effectively.

[28] RCMP adjudication and conduct boards have consistently applied the principles set out in *Anthony-Cook* and *Rault* to RCMP conduct proceedings.

[29] In applying the direction from the courts 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

[30] An analysis framework in relation to conduct measures established by the ERC under the old RCMP discipline system remains relevant to conduct proceedings under the current *RCMP Act*. Under this framework, I must ascertain the appropriate range of conduct measures and then examine the aggravating as well as mitigating 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.

[31] The starting point for the determination of the appropriate conduct measures is the *Conduct Measures Guide*. It sets out a range of recommended conduct measures for all sections of the Code of Conduct, including discreditable conduct under section 7.1. Prior adjudication and conduct board decisions may also assist in this determination.

Appropriate range of conduct measures for allegation 1

[32] In the joint proposal on conduct measures, the parties note that the *Conduct Measures Guide* does not specifically address the conduct set out in allegation 1. They suggest that the text messages sent by Constable Scheepers fall squarely in the aggravated range under the category of discourtesy. The *Conduct Measures Guide* associates the use of profanity, racial epithets, arrogant behaviour or rudeness towards a member of the public, a superior or an employee with this category.

[33] In the category of discourtesy, the recommended conduct measures in the mitigated range are remedial conduct measures less than a reprimand. The mitigated range would include spontaneous

utterances or provocation. The normal range calls for remedial measures up to a financial penalty of one day. The aggravated range, which includes racial or sexist overtones and/or vulgar and offensive content, calls for a financial penalty of between 2 and 10 days. Therefore, I find that the appropriate range of conduct measures for discourtesy is between measures less than a reprimand and a financial penalty of 10 days.

[34] I agree that Constable Scheepers' text messages were vulgar, rude and offensive. As such, they meet the components of discourtesy set out in the *Conduct Measures Guide*, but his conduct went beyond discourtesy. The *Notice of Conduct Hearing* described the text messages as "insulting, threatening and harassing nature". Although the Crown stayed the proceedings in April 2020, Constable Scheepers was initially charged under subsection 372(3) of the *Criminal Code*, RSC, 1985, c C-46. This provision creates a criminal offence for everyone who, without lawful excuse and with intent to harass a person, repeatedly communicates, or causes repeated communications to be made, with them by means of telecommunication. This is more in line with Constable Scheepers' actions.

[35] Again, the *Conduct Measures Guide* does not deal specifically with this type of behaviour. It does examine other related criminal offences such as assault/domestic violence and uttering threats. Given the underlying similarity of these offences to the present case, a review of these is useful. Emotional outbursts or isolated incidents are included in the mitigated range that proposes a financial penalty of 1 to 2 days. The normal range suggests a financial penalty between 3 and 10 days. The use of a weapon or sustained actions are the listed hallmarks in the aggravated range that suggests measures between a financial penalty of 15 days to dismissal.

[36] The parties did not present me with any prior conduct board decisions to assist in my analysis of this allegation.

[37] Consequently, I find the appropriate range of conduct measures for allegation 1 to be between remedial conduct measures less than a reprimand and a financial penalty of 15 days.

Appropriate range of conduct measures for allegation 2

[38] For the reasons previously set, I have characterized Constable Scheepers' conduct in allegation 2 as public intoxication/disorderly conduct. The *Conduct Measures Guide* contains a section that expressly deals with public intoxication/disorderly conduct. In the mitigated range, the *Conduct Measures Guide* suggests remedial conduct measures such as alcohol treatment. The recommended normal range is a financial penalty between 2 and 10 days. The aggravated range includes belligerent or lewd behaviour that occurred in full public view and/or involved arrest by police. The recommended range is a financial penalty of between 11 and 15 days.

[39] In the joint submission, the parties examined Constable Scheepers' conduct in the context of harassment and suggested that the matter arguably lies with the range of a financial penalty of between 10 and 15 days.

[40] Again, the parties did not present me with any prior conduct board decisions to assist in my analysis of this allegation.

[41] Thus, I find the appropriate range of conduct measures for allegation 2 to be between remedial conduct measures less than a reprimand and a financial penalty of 15 days.

Appropriate range of conduct measures for allegation 3

[42] The *Conduct Measures Guide* contains a section that expressly deals with a first offence impaired operation of a motor vehicle. The recommended conduct measure in the mitigated range is a financial penalty of 10 days. Suggested considerations within this range include no criminal conviction, a low blood alcohol concentration, no accident or driving pattern evidence and treatment for alcoholism. The recommended normal range is a financial penalty of between 15 and 25 days. In the aggravated range, the *Conduct Measures Guide* recommends a financial penalty of between 26 to 45 days with the identified considerations of an accident or injury, the use of a Force vehicle, a high blood alcohol concentration, attempts at favour and uncooperative behaviour.

[43] Further to Constable Scheepers' response to the allegations and the joint proposal on conduct measures, the parties have provided me with three decisions of prior adjudication or conduct boards

relating to impaired operation of a motor vehicle. These cases provide support for the imposition of significant conduct measures short of dismissal in appropriate circumstances.

[44] In *The Appropriate Officer, "E" Division v Constable Grainger* (2010), 6 A.D. (4th) 225, the subject member faced one allegation of disgraceful conduct relating to an incident of impaired operation of a motor vehicle. The aggravating factors were that his dangerous driving resulted in a single-vehicle rollover accident and significant impairment. The mitigating factors were that the subject member had received counselling, was abstaining from alcohol and was cooperative throughout the process including an early acceptance of responsibility. Following a joint submission, the board administered a reprimand and the forfeiture of 10 days of pay, which was the highest financial penalty available under the old conduct regime.

[45] In *Commanding Officer "F" Division v Sergeant Wilson*, 2017 RCAD 6, the subject member admitted to a single allegation of impaired operation of a motor vehicle for which he received a criminal conviction. The subject member had a prior discipline record for impaired operation of a motor vehicle and another alcohol-related offence. The parties presented a joint submission on conduct measures that included a reprimand, an indefinite demotion from sergeant to constable, on-duty testing for a minimum of two years, off-duty testing and a transfer to other duties. While noting that the aggravating factors outweighed the mitigating factors, the conduct board considered dismissal. In the end, the conduct board accepted the parties' joint submission. The apparent tipping point for the conduct board was that the subject member had agreed to the imposition of an alcohol testing measure, a novel measure at the time, which had conduct consequences in the event of a failure to abstain from alcohol consumption.

[46] In *Commanding Officer "K" Division v Corporal Doktor*, 2020 CAD 18, the conduct board administered several very significant conduct measures short of dismissal despite the aggravating factors of a prior contravention of the Code of Conduct involving the impaired operation of a motor vehicle, high blood alcohol readings and belligerent, obstructive and assaultive behaviour towards the investigating police officers. In justifying the subject member's retention, the conduct board noted the subject member's ready acceptance of responsibility for her actions and her impressive efforts towards rehabilitation. These factors gave the conduct board "a rare confidence of a low risk of recidivism".

[47] I note that with the exception of the use of a Force vehicle, Constable Scheepers' actions involved all of the identified considerations for the aggravated range. Many of the aggravating and mitigating factors identified in the cited conduct board decisions are present in this case. Consequently, I find that the appropriate conduct measures for this allegation fall within the range of a financial penalty of between 15 and 45 days.

Appropriate range of cumulative conduct measures for all three allegations

[48] In his response to the allegations, Constable Scheepers staunchly advocated for "allegation specific" conduct measures rather than the imposition of global conduct measures. He based this submission on two factors. First, allegation 1 occurred months before the distinct events set out in allegations 2 and 3. Second, although allegations 2 and 3 occurred on the same day, the gravamen underlying the two allegations is significantly different. Despite this original position, the joint submission proposed global conduct measures.

[49] Imposing individualized conduct measures is possible in this case. The nature of the conduct in all three allegations is distinct and discernable. Aggravating factors are easily attributable to each allegation. However, global measures minimize the redundancy of the most significant mitigating factors since they are generally applicable to all three allegations.

[50] The joint proposal does not rule out the possibility of dismissal in the absence of significant mitigating factors. However, the foregoing analysis suggests that a significant financial penalty in combination with other conduct measures would carry out both the deterrent and remedial purposes of conduct measures, which is appropriate in this case.

[51] I ascertain that the appropriate cumulative range for the financial penalty is between 30 and 70 days. However, the *Conduct Measures Guide*, at pages 5 and 6, provides further guidance with respect to affixing a maximum financial penalty. As stated in the *Conduct Measures Guide*, although there is no statutory maximum financial penalty as there was under the previous RCMP conduct regime, "there is a pragmatic ceiling beyond which financial or other measures should not be imposed and, should a conduct authority feel that a member's conduct warrants a higher measure, dismissal ought to be considered".

[52] The *Conduct Measures Guide* proposes a “soft” maximum equivalent to 30 days’ pay for a contravention with aggravating factors, when dismissal is not a consideration. The Conduct Authority initiated a conduct hearing in this case. This signifies that she considered dismissal. Therefore, the “soft” maximum does not apply here.

[53] The *Conduct Measures Guide* also provides a recommendation for a “hard” maximum financial penalty. It states the following with respect to this “hard” maximum:

[...]

A “hard” maximum financial penalty of 31-45 days for cases of serious contraventions where dismissal from the Force is a distinct possibility. This hard maximum is to be employed in situations where the conduct authority is “on the fence” about retaining or terminating a member but decides, in light of all the aggravating and mitigating factors, to continue to employ the member. A member receiving a 45-day financial penalty should be thankful to still have a job at the conclusion of the conduct [hearing].

[...]

[54] In light of the foregoing, the appropriate range for a global financial penalty in this case is between 30 and 45 days.

Aggravating and mitigating factors

[55] The parties provided me the following aggravating factors in the joint proposal on conduct measures:

Allegation 1

- a. Constable Scheepers sent more than 100 “concerning” text messages to Mrs. M.S. and her immediate family.
- b. Constable Scheepers’ actions caused Mrs. M.S. to fear for the safety of herself and her children.

- c. Members of Mrs. M.S.'s family, who are either retired or serving members of the RCMP, also feared for their safety and that of their families.

Allegation 2

- a. The conduct arising out of allegation 2 occurred approximately four months after the events of allegation 1. At this time, a conduct investigation relative to allegation 1 was in progress.
- b. Constable Scheepers' conduct caused concern to a member of the public to the extent that she called 911.

Allegation 3

- a. The conduct arising out of allegation 3 occurred approximately four months after the events of allegation 1. At this time, a conduct investigation relative to allegation 1 was in progress.
- b. Constable Scheepers' blood alcohol concentration was three times the legal limit.
- c. Constable Scheepers drove his vehicle in an erratic and dangerous manner that could have had serious consequences for members of the public.
- d. The incident culminated in a motor vehicle accident.

[56] I accept the aggravating factors presented by the parties and I add the following::

Allegation 1

- a. Although the Crown stayed criminal charges in April 2020, Constable Scheepers was initially charged with one count under section 264 (criminal harassment) and two counts under subsection 372(3) (harassing communications) of the *Criminal Code*, RSC, 1985, c C-46.

Allegation 2

- a. The incident occurred in public and involved members of the public.

b. Constable Scheepers' actions were such that the young women he accosted feared for their safety.

c. Despite the young women asking him to stop, Constable Scheepers' inappropriate advances persisted.

d. Although his driving was incidental to allegation 3, it was such that it unnecessarily and significantly impeded the normal flow of traffic, thereby affecting additional members of the public.

Allegation 3

a. Constable Scheepers was extremely belligerent to the member investigating the motor vehicle accident and impaired driving offence.

b. Constable Scheepers used his status as a police officer in an attempt to gain favour (i.e., he identified himself as a police officer).

[57] The parties presented me with the following mitigating factors in the joint proposal. I accept them, noting that almost all of them have application to all three allegations:

- a. Constable Scheepers expressed a desire to resolve the allegations at the earliest opportunity. His admission to the allegations has avoided the need for a contested hearing.
- b. Constable Scheepers has expressed remorse for his actions and has tendered apologies to Mrs. M.S. and Constable Brown.
- c. Constable Scheepers has no prior discipline record.
- d. The events giving rise to the allegations are isolated incidents.
- e. Constable Scheepers has and continues to engage in community service. In particular, he is committed to using his experience to assist in the rehabilitation of others who suffer from similar circumstances.

- f. At the time of his misconduct, Constable Scheepers was facing intense personal stressors, including cultural and familial isolation, significant work stress, all while suffering from Post-Traumatic Stress Disorder and Alcohol Use Disorder.
- g. Since his misconduct, Constable Scheepers received, at his own initiative, and continues to receive treatment for his diagnosed psychological disorders.
- h. Constable Scheepers entered into an *Aftercare Treatment Agreement* with the “E” Division Health Services Officer on September 12, 2020. This agreement is in effect for two years from that date.
- i. When the parties submitted the joint proposal, Constable Scheepers had abstained from alcohol for over 13.5 months.

[58] Constable Scheepers’ diagnosed medical conditions, both physical and psychological, and his efforts towards rehabilitation are set out in the numerous letters he provided from his various caregivers as well as an independent assessor, who specializes in addiction medicine. The letters are clear. Constable Scheepers has fully participated in his treatment plan. He demonstrated his commitment through his attendance at residential treatments on two occasions. He is actively involved in outpatient recovery programs and is committed to his “recovery journey”. His prognosis for a return to work is excellent. However, there is a cautionary note in the independent assessor’s report. Some of the significant stressors that gave rise to his misconduct continue to exist. Some of these stressors, like this conduct proceeding, the criminal matters and his divorce will end in the short term, but others will not. Consequently, he will need to be “hyper-vigilant to ensure that he remains fully connected with the recovery community and professional supports” to ensure a relapse does not occur. The *Aftercare Treatment Agreement* provides some comfort in that respect.

[59] As for my consideration of his diagnosed psychological disorders, Constable Scheepers presented the decision in *Commanding Officer “F” Division v Constable Mills*, 2019 RCAD 4. Essentially, this decision stands for the proposition that although a diagnosis of Post-Traumatic Stress Disorder (or other relevant psychological disorder) does not absolve a member from accountability for

their actions, a diagnosis that reasonably explains the member's actions is a very substantial mitigating factor.

[60] Constable Scheepers' positive work record was included in the list of mitigating factors provided in the parties' joint proposal. In his response to the allegations, he provided me with several performance-related documents, including an annual evaluation from fiscal 2009/2010, performance logs dated in 2008 and 2012, cadet training and field coaching assessments from 2008 and 2009. These documents are all quite dated. Although Constable Scheepers showed early promise in his career, they provide me with little insight into his recent performance. The only recent information provided to me was a covering letter for a promotional process in early 2018. The letter authored by Constable Scheepers is self-serving since its intended purpose was to gain promotion. The covering letter is not an objective evaluation of his performance; therefore, it has no value in this proceeding.

[61] Finally, Constable Scheepers presented me with nine letters of support from co-workers, peers and supervisors. Although one letter characterized him as a "true Mountie", the letters speak mostly to Constable Scheepers "the man", rather than Constable Scheepers the "Mountie". The general flavour of these letters is that Constable Scheepers is a selfless, cheerful, warm-hearted, confident but humble man of honour. His misconduct, in allegation 1 in particular, is significantly out of character for him. He truly regrets his actions and is sincerely remorseful for them.

Conclusion on conduct measures

[62] Having considered the evidence before me, the nature of the misconduct, the aggravating and mitigating factors as well as the joint submission from the parties, I do not find that the jointly proposed conduct measures would bring the administration of justice into disrepute or that it is contrary to the public interest.

[63] I cannot understate the seriousness of Constable Scheepers' misconduct. In the absence of **significant** mitigating factors, dismissal was certainly an option. However, as Constable Scheepers' counsel aptly pointed out in the response to the allegations, he experienced "a perfect storm" in terms of his personal and work life stressors leading up to what others, including Constable Scheepers, have described as a "meltdown".

[64] Constable Scheepers accepted responsibility for his actions with his early and unequivocal admission to the allegations. He welcomed accountability for his actions, but he does ask for a second chance.

[65] In tandem with other conduct measures, the reprimand provides the Conduct Authority with a formal opportunity to communicate to Constable Scheepers the disapproval of his actions by the organization. As I have identified, a financial penalty of 45 days is at the high end of the range of acceptable outcomes. Ineligibility for promotion for three years recognizes the seriousness of Constable Scheepers' actions. The agreement to abide by the *Aftercare Treatment Agreement* provides a mechanism to promote his rehabilitation and identify non-compliance that could lead to future misconduct.

[66] The proposed conduct measures are an appropriate mix of both remedial and serious measures that reflect the circumstances of this case. Therefore, I accept the parties' joint proposal on conduct measures.

CONCLUSION

[67] Having found the allegations established and in accordance with the joint proposal on conduct measures presented by the parties, the following conduct measures are imposed:

- a. a reprimand pursuant to paragraph 3(1)(i) of the *CSO (Conduct)*, which will consist of this written decision;
- b. a financial penalty of 45 days to be deducted from Constable Scheepers' pay pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*;
- c. an ineligibility for promotion for 3 years pursuant to paragraph 5(1)(b) of the *CSO (Conduct)*; and
- d. by agreement pursuant to subsection 3(2) of the *CSO (Conduct)*, Constable Scheepers will abide by paragraphs 8 and 9 of the *Aftercare Treatment Agreement* for a period of two years ending at midnight on September 12, 2022. The relevant paragraphs read as follows:

8. I agree that I will be in communication with my monitoring [company] at a frequency to be determined [by] the company, and I authorize them to provide verbal and written progress reports to the [Health Services Officer] at any time but at a minimum of at least once a month, by phone, fax or email.

9. I agree to provide urine, blood, hair or breath samples on request of my monitoring company within the time frame asked.

[68] My acceptance of the joint proposal provides Constable Scheepers an opportunity to continue his career with the RCMP. His supervisors and the appropriate conduct authority will seriously review any future contravention of the Code of Conduct and could lead to his dismissal from the Force.

[69] 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.

[70] This decision constitutes my final 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).



February 12, 2021

Kevin L. Harrison

Conduct Board