

Publication ban: Any information that could identify the individuals referred to as Ms. X, Child A, Child B or Child C in the present decision may not be published, broadcast or transmitted in any way.



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, "F" Division

(Conduct Authority)

and

Constable Michael Elek
Regimental Number 49265

(Subject Member)

Conduct Board Decision

Christine Sakiris

May 12, 2021

Staff Sergeant Chantal Le Dû, Conduct Authority Representative

Mr. Darren Kraushaar, Subject Member Representative

TABLE OF CONTENTS

SUMMARY	3
INTRODUCTION.....	4
Publication ban.....	5
ALLEGATIONS	6
Decision on the allegations	10
<i>Notice of Conduct Hearing 1</i>	11
<i>Notice of Conduct Hearing 2</i>	11
CONDUCT MEASURES	13
Range of possible conduct measures.....	15
Mitigating factors	15
Aggravating factors	17
Decision on conduct measures	18
CONCLUSION	18

SUMMARY

The two *Notices of Conduct Hearing* contain a total of six alleged contraventions of section 7.1 of the RCMP Code of Conduct. The allegations involve discreditable conduct towards Constable Elek's former spouse, their children and his in-laws, as well as the failure to respect orders issued by the family court.

The parties submitted a *Joint Proposal* on February 25, 2021, in which the Conduct Authority Representative withdrew one allegation. Constable Elek admitted to the remaining five allegations. Conduct measures were jointly proposed. The Conduct Board accepted the *Joint Proposal*.

A publication ban on the identity of the children and their mother was jointly requested and granted by the Conduct Board. The names of Constable Elek's former partner and their three children have been anonymized in order to protect their identities.

The following conduct measures were imposed: (1) a financial penalty of 10 days' pay, to be deducted from Constable Elek's pay; (2) a forfeiture of 35 days of annual leave; (3) ineligibility for promotion for a period of three years from January 1, 2021; a direction to abide by the *Treatment and Post Care Relapse Prevention Agreement* signed on March 20, 2020; and (3) a transfer to a different position within "F" Division.

INTRODUCTION

[1] Constable Elek is alleged to have acted in a discreditable fashion towards his former spouse, their children and his in-laws, as well as to have failed to respect orders issued by the family court. The incidents at issue took place between November 30, 2018, and January 1, 2020.

[2] On February 17, 2020, the original Conduct Board was appointed. Subsequently, for reasons unrelated to this matter, that Conduct Board was unable to continue. On January 14, 2021, a change of conduct board appointment was made and I was appointed as the Conduct Board pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [RCMP Act].

[3] The allegations are set out in two *Notices of Conduct Hearing*. The *Notice of Conduct Hearing* 1, which is dated February 17, 2020, contains five alleged contraventions of section 7.1 of the RCMP Code of Conduct. The *Notice of Conduct Hearing* 2, which dated September 15, 2020, contains one alleged contravention of section 7.1 of the RCMP Code of Conduct.

[4] On February 12, 2021, the parties advised that they were close to reaching a resolution of this matter. On February 25, 2021, I received the parties' *Joint Proposal*, which was supported by documentary evidence. With respect to *Notice of Conduct Hearing* 1, the parties proposed a small amendment to Allegation 2 and the withdrawal of Allegation 5 by the Conduct Authority Representative. Constable Elek admitted Allegations 1, 2 (as amended), 3 and 4. He also admitted to the single allegation from *Notice of Conduct Hearing* 2.

[5] The following conduct measures were jointly proposed: (1) a financial penalty of 10 days' pay, to be deducted from Constable Elek's pay; (2) a forfeiture of 35 days of annual leave;

(3) ineligibility for promotion for a period of three years from January 1, 2021; (4) a direction to abide by the *Treatment and Post Care Relapse Prevention Agreement* signed on March 20, 2020; and (5) a transfer to a different position within “F” Division.

[6] Even though Constable Elek has admitted to the allegations, as amended, I must make my own determination on whether the allegations are established by assessing whether the acts to which he admits constitute discreditable conduct. If I find one or more of the allegations to be established, then I must determine whether I accept the *Joint Proposal* on conduct measures. In order to do so, I must find that the terms of the *Joint Proposal* are not against the public interest.

[7] For the reasons that follow, I find that all five allegations are established. I also accept the *Joint Proposal* and impose the conduct measures as proposed by the parties.

Publication ban

[8] The parties requested a publication ban to prevent the identification of Constable Elek’s former spouse and their three minor children.

[9] In accordance with paragraph 45.1(7)(a) of the *RCMP Act*, I order that any information that could identify Constable Elek’s former spouse or any of their three children shall not be published, broadcast or transmitted in any way.

[10] As there are multiple individuals with the same initials, Constable Elek’s former spouse shall be identified as Ms. X. Her parents shall be referred to as Mr. Y and Mrs. Y. The children shall be referred to, from eldest to youngest, as Child A, Child B and Child C.

[11] The children’s specific ages, in particular Child A’s, are not relevant to the allegations. It is sufficient to note that all three children were under the age of 16 at the time of the alleged incidents.

[12] The gender of Child A is relevant to the allegations themselves, as it serves to contextualize Constable Elek’s comments and actions towards her. The genders of Child B and Child C are not relevant to the allegations.

[13] Finally, I note that the allegations have been amended in order to give effect to this publication ban.

ALLEGATIONS

[14] In accordance with the *Joint Proposal*, the allegations, as amended, are as follows:

Notice of Conduct Hearing 1

Allegation 1

On or between November 30, 2018 and December 2, 2018, at or near Regina, in the Province of Saskatchewan, Constable Michael Elek engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a regular member of the Royal Canadian Mounted Police (“RCMP”) posted to Federal Serious and Organized Crime section, in Regina, “F” Division.
2. In October 2018, you and your spouse at the time, [Ms. X], separated. On November 30, 2018, she moved into her new residence with your [three children].
3. Between November 30, 2018 and December 1, 2018, you sent approximately 28 text messages to [Ms. X], including photos of overturned furniture and broken glass taken at your residence. One of your messages stated “I’m still trying to decide what to do with our sex videos. I’m forward them to the school or our Facebook account. I may. Not sure yet.” Fearing your threat, [Ms. X] deactivated her Facebook account, which she used only for work purposes and blocked your number.
4. You subsequently sent a text message to your daughter, [Child A], saying “Lol. Grandpa is a bitch like his daughter” making reference to [Ms. X] and her father, [Mr. Y].
5. The morning of December 2, 2018, you sent a message to [Mrs. Y], the mother of [Ms. X], stating “I plan on crushing your family”.
6. At approximately [11:20 p.m.] on the same day, you attended the residence of [Mr. and Mrs. Y] uninvited. You started pounding on the door and ringing the door bell. You left and returned approximately five minutes later; you started pounding on the door again, and looking into the windows. Your actions left [Mr. and Mrs. Y] fearful as to what you might do and they called Regina Police Service.

7. As a result of your actions, [Mr. Y] ensured that his alarm system was activated and barricaded his doors for about three weeks.

8. Your overall conduct towards [Ms. X], [Mr. and Mrs. Y] and your daughter [Child A] was discreditable.

Allegation 2

On or between December 10, 2018 and December 16, 2018, at or near Regina, in the Province of Saskatchewan, Constable Michael Elek engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to Federal Serious and Organized Crime section, in Regina, “F” Division.

2. In October 2018, you and your spouse at the time, [Ms. X], separated. On November 30, 2018, she moved into her new residence with your [three children].

3. On December 7, 2018, a Family Court Order was issued by Mr. Justice M.T. Megaw and subsequently emailed to your attention. The Order stated, in part, that “the children [...] shall remain in the care of the Petitioner pending the hearing of the Petitioner’s Application” and also that you “shall be restrained from harassing or communicating with the Petitioner or the children, except through counsel, pending the hearing of the Petitioner’s Application”.

4. In the evening of December 7, 2018, Staff Sergeant Craig Toffoli spoke to you about this Court Order and advised you not to contact [Ms. X] or respond to any messages from her.

5. On December 8, 2018, [Ms. X] [...] [Child A] and [Child B] blocked your number on their phones.

6. On December 10, 2018, you proceeded to send text messages to your daughter [Child A] and [Ms. X].

7. On December 11, 2018, you sent an email to [Ms. X].

8. On December 12, 2018, at approximately [8:30 a.m.], you attended the back parking lot of [...] [the school] when [Ms. X.] arrived to drop off [...] [Child A] and [Child B] at school.

9. On December 16, 2018, you sent text messages to [Ms. X] using the numbers [redacted] and [redacted].

10. You failed to respect the Court Order issued by Mr. Justice M.T. Megaw.

Your conduct was discreditable.

Allegation 3

On or about March 17, 2019, at or near Regina, in the Province of Saskatchewan, Constable Michael Elek engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to Federal Serious and Organized Crime section, in Regina, “F” Division.
2. In October 2018, you and your spouse at the time, [Ms. X], separated. On November 30, 2018, she moved into her new residence with your [three children].
3. At approximately [1 p.m.], on March 17, 2019, [Ms. X] dropped off [your children] at your residence located at [redacted]. You were frustrated with [Ms. X] and, as you walked back into your residence, you said something to the effect that you would choke her if she was to call the police again. Your daughter, [Child A] was in the house and heard your comments.
4. At approximately [7 p.m.], [Ms. X] returned to your residence to pick up [your children]. You came out of your residence angry, approached her vehicle and began to aggressively punch the driver’s side window causing [your children] to scream in fear.
5. As a result of your comments and behavior, [Ms. X.] was concern for her safety and the safety of [your children]; she contacted Regina Police Service.
6. Your conduct was discreditable.

Allegation 4

On or between May 2, 2019, and May 5, 2019, at or near Regina, in the Province of Saskatchewan, Constable Michael Elek engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to Federal Serious and Organized Crime section, in Regina, “F” Division.
2. In October 2018, you and your spouse at the time, [Ms. X], separated. On November 30, 2018, she moved into her new residence with your [three children].
3. On January 4, 2019, a Family Court Order was issued by Mr. Justice D.E.W. McIntyre, stating, in part, that you “shall not contact the Petitioner

except as needed to arrange for the pickup or drop-off of the children”. On February 7, 2019, the Court Order was varied by Madam Justice C.M. Richmond, to include that the “parties may also communicate in a dispute resolution forum”.

4. On May 2, 2019, you sent an email to [Ms. X.] stating “My only goal in life is to run u and ur family out of [redacted]”.

5. On May 5, 2019, at approximately [11:10 a.m.], you left a voicemail message for [Ms. X] stating “Cunt, I’m coming for you”, or words to that effect.

6. [Ms. X] felt fearful, threatened and harassed by your actions.

7. You failed to respect the Court Order issued by Mr. Justice D.E.W. McIntyre.

8. Your conduct was discreditable.

Notice of Conduct Hearing 2

Allegation 1

On or about January 1, 2020, at or near Regina, in the Province of Saskatchewan, Constable Michael Elek engaged in discreditable conduct, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars:

1. At all material times, you were a member of the Royal Canadian Mounted Police (“RCMP”) posted to Federal Serious and Organized Crime section, in Regina, “F” Division.

2. Your [three children] were visiting at your residence located at [redacted].

3. You had consumed vodka and were intoxicated.

4. At approximately [7 p.m.], your daughter, [Child A], 15 years old at the time, was returning from work.

5. In front of [your children], you made aggressive comments about their mother, [Ms. X] and their grandparents. You said you were going to slit the throat of their mom’s boyfriend and smash the face of their grandparents or words to that effect. Your comments were inappropriate and, as a result, [your children] were scared of you.

6. You got into an argument with [Child A], and at some point you yelled at her “Get out you aren’t my daughter you are a fucking slut like your mom” or words to that effect.

7. [Child A] was going up the stairs yelling at you to back away so she could leave and you grabbed her by her ski pant suspenders and pulled her down the stairs. As a result, one of the straps of her pants broke; she lost her

balance and fell down the stairs. Although she was not physically injured, [Child A, Child B and Child C] got scared, ran outside and called 911.

8. Regina Police Services attended your residence. While talking to them, you became upset, asking the officers to leave several times and indicating that you wanted to fight them. You eventually calmed down and [your children] were escorted by Regina Police Services to their mother, [Ms. X].

9. As a result of your overall behavior, [Ms. X] and [your children] feared for their safety and temporarily moved in with [Ms. X's] brother.

10. Your conduct was discreditable.

[Sic throughout]

Decision on the allegations

[15] Constable Elek has admitted to the particulars of each allegation. However, I must still determine whether his actions constitute discreditable conduct.

[16] Section 7.1 of the RCMP Code of Conduct states: "Members behave in a manner that is not likely to discredit the Force."

[17] The test for "discreditable conduct" under section 7.1 of the Code of Conduct requires that the Conduct Authority establish the following four elements 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.

[18] By virtue of Constable Elek's admission to the allegations, as amended, I find that the first two elements of the test are satisfied for all five allegations. I must now determine whether the third and fourth elements of the test are established.

Notice of Conduct Hearing 1

[19] Constable Elek's actions, as set out in Allegation 1, involve the intimidation of Ms. X, Mr. Y and Mrs. Y, causing them to fear for their safety. He also threatened to violate Ms. X's sexual integrity by threatening to post intimate videos on a public forum.

[20] Constable Elek's actions, as set out in Allegation 2, as amended, demonstrate a lack of regard and observance of the Court Order issued by Mr. Justice M.T. Megaw. Constable Elek was ordered not to harass Ms. X or to communicate with her, except through counsel. By attending the children's school as Ms. X was dropping them off and, subsequently, sending her multiple text messages, Constable Elek failed to respect that Court Order.

[21] Constable Elek's actions, as set out in Allegation 3, involve threats of violence towards Ms. X in front of the children and violent behaviour towards her. While he did not make physical contact with Ms. X, punching the car window is a violent act, which scared her and the children.

[22] Constable Elek's actions, as set out in Allegation 4, involve threatening and intimidating texts to Ms. X. This communication was in contravention of a Court Order issued by Mr. Justice D.E.W. McIntyre.

Notice of Conduct Hearing 2

[23] Constable Elek's actions, as set out in Allegation 1, involve threats to physically harm Ms. X, Ms. X's boyfriend and Mr. and Mrs. Y. These threats were uttered in front of the children. This understandably created considerable fear in the children. Constable Elek then compounded the damage by directing offensive insults at his teenage daughter and engaging physically with her, causing her to fall down the stairs before she and her siblings fled from the house. Finally, Constable Elek was aggressive with the police officers that attended after the children had called 911.

[24] Collectively, the allegations involve acts of domestic or family violence and, in the case of contraventions of Court Orders, a lack of respect for the administration of justice.

[25] I note that domestic or family violence is not limited to acts of physical violence. It includes emotional abuse, such as threats, put-downs, name calling or insults, bullying, and harassing or stalking behaviours.¹

[26] It is well established that police officers are held to a higher standard than the general public. Members of the RCMP must adhere to the Code of Conduct both on- and off-duty. I find that a reasonable person in society, with knowledge of all the relevant circumstances, including the realities of policing in general and the RCMP in particular, would view Constable Elek's actions as likely to bring discredit to the Force.

[27] Like many police forces, the RCMP has recognized the profound societal impact and risks associated with domestic violence. Former Commissioner Zaccardelli clearly articulated the position of the RCMP, as one of the organizations responsible for effective responses to domestic violence, as follows:

We must send a message that this kind of behaviour will not be tolerated, particularly when perpetrated by members of the RCMP. I have previously articulated my expectations with respect to the organization in this regard. Domestic violence is a scourge in our society.²

[28] Members of the RCMP are called upon to investigate incidents of domestic violence. Constable Elek's actions call into question his ability to impartially investigate these offences. The public's confidence in a member's ability to enforce laws is compromised when that member does not conduct themselves in a manner consistent with those same laws.

[29] Noting that Constable Elek's actions fall squarely within behaviour that the Force has prioritized in its enforcement activities,³ and that they contravene a member's duty to maintain the administration of justice, as set out in paragraph 37(a) of the *RCMP Act*, I find that his actions may impair his ability or the public's confidence in his ability to impartially perform the duties of a member of the RCMP. As such, I find that Constable Elek's actions are sufficiently

¹ <https://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html>, as referenced in section 1.1 of the *Operational Manual*, Chapter 2.4 "Violence/Abuse in Relationships".

² *Rendell v Canada (Attorney General)*, 2001 FCT 710, at paragraph 5, citing the Commissioner's decision of June 21, 2001, at paragraphs 23 and 24.

³ See *Operational Manual*, Chapter 2.4 "Violence/Abuse in Relationships".

related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[30] Allegations 1, 2 (as amended), 3 and 4 of *Notice of Conduct Hearing 1* and Allegation 1 of *Notice of Conduct Hearing 2* are accordingly established on a balance of probabilities.

CONDUCT MEASURES

[31] Having found the allegations established and in accordance with subsection 45(4) of the *RCMP Act* and the *RCMP Conduct Measures Guide*, I am required to impose “a fair and just measure that is commensurate to the gravity of the contravention, the degree of blameworthiness of the member, and the presence of mitigating and aggravating factors”. Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be “proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, [...] are educative and remedial rather than punitive”.

[32] The Conduct Authority Representative and the Subject Member Representative provided a written joint submission on conduct measures, with supporting documentation and jurisprudence. They proposed the following global conduct measures:

- a. a financial penalty of 10 days (80 hours) to be deducted from Constable Elek’s pay;
- b. the forfeiture of 35 days of annual leave;
- c. ineligibility for promotion for a period of three years from January 1, 2021;
- d. a direction to abide by the *Treatment and Post Care Relapse Prevention Agreement* signed on March 20, 2020; and
- e. a transfer to a different position within “F” Division.

[33] When presented with a joint submission on conduct measures, there are very narrow circumstances in which a conduct board may refuse to accept the proposed conduct measures.

[34] The Supreme Court of Canada has recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.⁴ Generally speaking, courts or administrative tribunals will not override a settlement reached by the parties unless doing so would be against the public interest.

[35] Therefore, I must determine whether accepting the joint proposal on conduct measures would be against the public interest. This is not a question of whether the conduct measures proposed are the same as what I would impose. Rather, the public interest test sets a much higher threshold.

[36] In *Cook*, the Supreme Court of Canada provides the following guidance, which is applicable to administrative tribunals:

[...] a joint submission should not be rejected lightly [...] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of [, in this case, the conduct process] had broken down.⁵

[37] In order to determine whether the proposed conduct measures are against the public interest, it is helpful to have some sense of what the possible measures may be. The *Conduct Measures Guide* is a useful reference in this regard. However, it is important to note that the *Conduct Measures Guide* is just that, a guide. It is not meant to be prescriptive.

[38] As a starting point, I find that global measures are appropriate in this case. All of the allegations took place within a period of 14 months, over the course of Constable Elek's separation from Ms. X.

⁴ See for example *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19; and *R. v Anthony-Cook*, 2016 SCC 43 [*Cook*].

⁵ *Cook*, *supra* note 4, at paragraph 34.

Range of possible conduct measures

[39] All five allegations involve contraventions of section 7.1 of the Code of Conduct. The *Conduct Measures Guide*, at pages 46 to 48, specifically identifies the range of conduct measures to be imposed for domestic violence.

[40] I agree with the parties that Constable Elek's actions fall within the aggravated range identified by the *Conduct Measures Guide*. Over the course of his separation from Ms. X, his misconduct involves acts of domestic or family violence, including uttering threats. Based on the evidence before me, there is little question that an objective person would conclude that Constable Elek's threats were credible. For example, after sending a threatening text to Mrs. Y, Constable Elek attended their house late at night and pounded on their doors. Ms. X, the children as well as Mr. and Mrs. Y certainly took his threats seriously and suffered prolonged and/or recurring fear as a result.

[41] I do not find the two cases cited by the parties to be of great assistance in determining the applicable range of conduct measures as they both involve joint proposals.

[42] That said, I find that the applicable range in this case is from a forfeiture of 15 days of pay, alone or in conjunction with other conduct measures, to dismissal. I must now consider the mitigating and aggravating factors.

Mitigating factors

[43] Of the mitigating factors proposed by the parties, I have retained the following.

[44] First, Constable Elek's admissions have avoided the need for a contested hearing and the testimony of vulnerable witnesses.

[45] Second, Constable Elek has expressed remorse and accepted responsibility for his actions.

[46] Third, at the time of the misconduct, Constable Elek was facing significant personal stressors, including a separation from his spouse, limited visitation access to his children, while also suffering from significant medical conditions.

[47] I do recognize that personal illness was a stressor in Constable Elek's life. However, in the absence of a clear causal link between the individual diagnoses and the specific misconduct at issue, I have declined to include each of those conditions as mitigating factors in their own right.

[48] Fourth, Constable Elek has been actively participating in medical treatment to address his medical conditions. The available medical evidence indicates that Constable Elek has made significant progress as a result.

[49] Fifth, Constable Elek has been respecting the terms of the *Treatment and Post Care Relapse Prevention Agreement*, which he signed on March 20, 2020.

[50] Sixth, Constable Elek has provided several letters of support, which show that he is well regarded by his colleagues and members of the community.

[51] Seventh, Constable Elek's performance evaluations have been consistently positive from the time he joined the RCMP in 2002.

[52] I recognize that, on October 28, 2020, Ms. X, through her counsel proposed that Constable Elek's parental access be increased. I also recognize that this was done in accordance with the children's wishes. While these are positive steps for Constable Elek's relationship with his children, they do not explain or lessen the gravity of his misconduct.

[53] Finally, while not a mitigating factor *per se*, I recognize that, by virtue of the joint proposal, Constable Elek has his Commanding Officer's support to return to work. It is noted that the Commanding Officer expects that, in the future, Constable Elek will demonstrate exemplary conduct.

Aggravating factors

[54] Of the aggravating factors proposed by the parties, I have retained the following:

[55] First, the incidents involve aspects of domestic violence. His misconduct was not an isolated incident. Rather there were multiple incidents that unfolded over a period of 14 months (November 2018 to January 2020).

[56] Second, Constable Elek's violent actions in Allegation 1 of *Notice of Conduct Hearing 1* left Ms. X's elderly parents, Mr. and Mrs. Y, fearful of what he might do.

[57] Third, Constable Elek's actions in Allegation 2 of *Notice of Conduct Hearing 1* occurred despite the advice provided by his supervisor not to contact Ms. X.

[58] Fourth, Constable Elek's comments and actions in Allegation 3 of *Notice of Conduct Hearing 1* took place in the presence of his children. They caused Ms. X to be concerned for her safety and that of their children, which resulted in the involvement of a partner agency.

[59] Fifth, Constable Elek's comments and actions in Allegation 4 of *Notice of Conduct Hearing 1* caused Ms. X to feel harassed and threatened.

[60] Sixth, Constable Elek's comments and actions in Allegation 1 of *Notice of Conduct Hearing 2*, although not causing any physical injuries, left his children fearful, which resulted, once again, in the involvement of a partner agency. In addition, Constable Elek behaved inappropriately in his interactions with that partner agency.

[61] Seventh, by not respecting a Family Court Order on two separate occasions, Constable Elek demonstrated a significant lack of respect for the administration of justice.

[62] Eighth, Constable Elek has prior unrelated discipline (one incident).

[63] Finally, as result of his actions, Constable Elek was the subject of a peace bond application pursuant to section 810 of the *Criminal Code*, RSC, 1985, c C-46. I do not accord significant weight to this factor as Constable Elek successfully abided by all of the conditions

over a one-year period and, on April 15, 2021, the peace bond application was withdrawn by the Crown.

Decision on conduct measures

[64] The *Conduct Measures Guide*, at pages 5 and 6, provides that where a financial penalty of 30 to 45 days is insufficient to correct improper behaviour, to rehabilitate the member and to preserve the public trust in the RCMP, dismissal is appropriate. Here, the parties have proposed a cumulative financial penalty (in leave and in pay) of 45 days. The proposed conduct measures accordingly fall within the higher end of the acceptable range. I find that this is an appropriate recognition of the severity of the misconduct at issue.

[65] Collectively, the proposed conduct measures are comprised of remedial and serious measures. They reflect the mitigating and aggravating factors in this case. They will serve as a deterrent to Constable Elek, as well as a warning to other members. In addition, they facilitate Constable Elek's continued health, which will be important to ensuring that his misconduct is not repeated. Therefore, on a balance of all of the factors before me, I cannot conclude that the proposed conduct measures are against the public interest.

CONCLUSION

[66] Allegations 1, 2 (as amended), 3 and 4 of *Notice of Conduct Hearing 1* and Allegation 1 of *Notice of Conduct Hearing 2* are established.

[67] Having found the allegations to be established and in accordance with the joint submission presented by the Conduct Authority Representative and the Subject Member Representative, the following conduct measures are imposed:

- a. pursuant to paragraph 5(1)(j) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], a financial penalty of 10 days (80 hours) of pay to be deducted from Constable Elek's pay;
- b. pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*, the forfeiture of 35 days of annual leave;

- c. pursuant to paragraph 5(1)(b) of the *CSO (Conduct)*, ineligibility for promotion for a period of three years starting from January 1, 2021;
- f. pursuant to paragraph 3(2) of the *CSO (Conduct)*, a direction to abide by the *Treatment and Post Care Relapse Prevention Agreement*, which was signed on March 20, 2020; and
- g. pursuant to paragraph 5(1)(g) of the *CSO (Conduct)*, a transfer to a different position within “F” Division.

[68] Constable Elek is being permitted to continue his career with the RCMP. However, any future contravention of the Code of Conduct will be seriously reviewed by the appropriate conduct authority and could lead to 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] Either party may appeal this decision by filing a statement of appeal with the Commissioner in accordance with subsection 45.11 of the *RCMP Act*.

	May 12, 2021
Christine Sakiris	Date

Conduct Board