

Restriction on publication: By order of the Conduct Board, all information that would allow the identification of Ms. K.L. in this decision shall not be published, broadcast or transmitted to the public in any way.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, "K" Division

Conduct Authority

and

Constable Daniel Martin
Regimental Number 55176

Subject Member

Conduct Board Decision

Josée Thibault

September 24, 2021

Staff Sergeant Jonathan Hart, for the Conduct Authority

Mr. Paul Wood, for the Subject Member

Table of contents

SUMMARY	3
INTRODUCTION	4
ALLEGATION.....	5
Summary of established facts by the Conduct Board	21
Credibility of witnesses and reliability of evidence	23
Test for discreditable conduct	25
Analysis.....	25
CONDUCT MEASURES.....	36
Range of conduct measures.....	36
Aggravating factors.....	40
Mitigating factors	41
Parity of sanctions	42
CONCLUSION.....	45

SUMMARY

The *Notice of Conduct Hearing* contained one allegation of discreditable conduct contrary to section 7.1 of the RCMP Code of Conduct. This case involves text messages sent from May to June 2019 between Constable Martin, who was a 40-year-old lacrosse coach at the time, and Ms. K.L., who was a 16-year-old lacrosse assistant coach at the time. It is alleged that Constable Martin engaged in text messaging with Ms. K.L. outside of his coaching duties and responsibilities with the objective of facilitating and advancing a sexual relationship with her.

Following a contested hearing, the Conduct Board concluded that the allegation was established on a balance of probabilities. Constable Martin was ordered to resign from the Force within 14 days, in default of which he would be dismissed.

INTRODUCTION

[1] The *Notice of Conduct Hearing* (the Notice) contained one allegation of discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct. It was signed by the Conduct Authority on June 22, 2020, and served on Constable Daniel Martin on July 13, 2020, along with the investigation package.

[2] The allegation arose following text messages sent in May and June 2019 between Constable Martin, who was a 40-year-old lacrosse coach at the time, and Ms. K.L., who was a 16-year-old lacrosse assistant coach at the time. Constable Martin was in a position of authority and a mentor to Ms. K.L. More specifically, it is alleged that Constable Martin engaged in text messaging with Ms. K.L. to facilitate and advance a sexual relationship with her. He also sought to conceal the inappropriate sexual nature of the text communications by directing her to delete them. In addition, on one occasion, Constable Martin touched Ms. K.L.'s thigh while they were coaching a game together. Finally, his behaviour was predatory as he was actively attempting to groom Ms. K.L. for his own personal sexual gratification.

[3] On June 29, 2019, I was appointed as the Conduct Board in this matter, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[4] On September 15, 2019, Constable Martin provided his response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. Constable Martin admitted that his conduct was discreditable and that it breached section 7.1 of the RCMP Code of Conduct. However, he denied having a predatory, grooming or sexual intent as alleged.

[5] The conduct hearing in this matter took place by videoconference starting on July 12, 2021. Oral evidence was received from three witnesses, including Constable Martin. The oral decision on the allegation was delivered on July 14, 2021. The sole allegation was established and the oral decision on conduct measures was delivered on July 21, 2021. This written decision incorporates and expands upon those oral decisions.

ALLEGATION

[6] The sole allegation before the Conduct Board reads as follows:

Allegation 1

On or between April 1, 2019, and June 28, 2019, at or near [town] and [town] in the Province of Alberta, Constable Daniel Martin 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*.

Particulars

1. At all material times, you were a member of the Royal Canadian Mounted Police (RCMP) posted to “K Division Emergency Response Team South, [town], Alberta.

2. You were a volunteer head coach for the [...] Division 1 boy’s lacrosse team. Ms. K.L. was a volunteer assistant coach who you recruited to assist with the team. In April 2019, Ms. K.L. was a sixteen-year-old heading into grade eleven at [school]. You were in a position of authority over Ms. K.L. and also an adult mentor to her. On August 14, 2019, you provided a Will Say statement in which you described Ms. K.L. as an assistant coach in the following manner:

“I had not issues with Ms. K.L. throughout the season. She was a very eager and competent coach. She was very good with the kids and she was a bit help to the coaching staff as she understood the game better than most of us. She was assigned to coordinating warm ups for both practices and games and she would also run certain drills during practice when we broke off into stations. She would also attend most games and assist the coaching staff by explaining penalties and certain plays. She was treated with respect like any other coach by the entire coaching staff and management team.”

3. On July 2, 2019, Ms. K.L. provided a statement to Constable M.E. of the RCMP Detachment. Ms. K.L. confirmed that she met you through the parents of a boy who played on a hockey team that you also coached. Ms. K.L. voluntarily exchanged her cell phone contact information with you for assistant coaching purposes.

“KL: So my mom...

ME: ... get changed?

KL: ... does a day home, he’s one of the day home kids. We’ve know them since forever best friends with his parents. Um, his hockey practice would start at four thirty. My mom wasn’t able to get and stay with him

so I'd just walk over from school. So then, I'd have to help him get ready and of course Dan was the coach so like that's how Dan and I met.

ME: Okay.

KL: And the Dan's close with [name of child]. Dan and his parents are close I think. They're, they're friends outside of hockey too.

ME: Okay.

KL: Um, and Dan had talked to [mother] and [father] which are the parents and asked if I was wanting to coach because he knew that I played lacrosse and his son [child] was on like the team and he was wondering if I wanted to go. So I did and that's how like that connection started.

ME: Okay. So [child's name] is Dan's son.

ME: OKAY and so when did he approach you to coach? Do you remember when that happened?

KL: Beginning of the lacrosse season."

4 Ms. K.L. described how she first commenced communicating with you outside the coaching duties after she got into a fight with her mom and you texted her later that evening to check up on her.

"KL: So it all started in the beginning to the middle of the season. Um, I got in a fight with my mom, [name] drove me to practice, she knew that I was upset, I walked into the change room with the boys and Dan was in there and he asked if I was okay and I said no. So we went into the arena and we talked and he said that like if I ever needed anything that I could talk to him and then later that night he messaged me to make sure I was okay um, I, I, knew him outside of lacrosse um, through hockey. A boy that I babysat um, I'd go to his practices and pick him up and drop him off and Dan was his coach so I knew Dan from outside lacrosse. I knew him as a mentor and someone that I would look up too and he, I trusted him and he definitely betrayed that. Um, he knew that like my mom and I when like got into that fight it was pretty serious like she wouldn't talk to me. We're, we're okay now obviously but um, he suggested that we'd go for a pedicure just and I thought that, that was a normal thing that you would do with someone you look up too. I'd do that with parents and stuff. Like you know someone that you know and then it just go progressively worse from there."

5. You confirmed in your Will Say that you commenced text messaging with Ms. K.L. following your conversation with her about problems she was having with her mother.

"After that conversation, Ms. [K.L.] and I would converse over text message occasionally up until the end of June. These conversations

would range from her asking questions and advice about relationships to conversations about pedicures to conversations about how she was doing in general. The intent of all conversations were to make Ms. [K.L.] feel better and to treat her like a co-coach. There were no further intentions. I treated her like any other coach, manager, or person that I may come into contact with and get to know. Ms. [K.L.] appeared to be in upset moods at times and I would try to boost her ego and confidence just like I would anyone else. I'm an outgoing, friendly person that doesn't have a problem talking to anyone about almost any topic."

6. On July 2, 2019, Ms. K.L.' mother [T.P.] provided a statement to Constable L.K. of the RCMP. In her statement she acknowledged that she regularly reviews her daughter's text messages.

"LK: Okay, So you first notices it on the watch?

TP: Watch, yeah

LK: Okay and they so how do you access the watch thing?

TP: Um, I just took it and I found the little button for conversations for text messages and I go through her, her text message.

LK: Is that like a regular practice or?

TP: Um, it has been since I caught her lying about visiting her dad.

LK: Okay. So it's, it's not like a password thing, you just...

TP: No.

LK: ... push a button and you can...

TP: There's no password."

7. The mother confirmed that she is both the owner and bill payer for all of Ms. K.L.'s technology. She took screen shot photos of the text messages you sent to her daughter immediately after observing them.

"LK: Okay. Okay. So she has two phones, a watch, and a laptop

TP: Yeah

LK: That kind of all talk to each other. Who pays like how does the billing for all of those things work?

TP: I pay for it all and they're all under my name.

LK: Okay. Um...

TP: The dad bought her the watch but there's no bills or association to the watch, it's just a watch but her cell phones I, I have them under my name and I pay for them.

LK: Okay. So the devices that would be sending the message to the watch, you pay for?

TP: I own.

LK: Okay. Okay. And so which day again did you figure out the messages?

TP: Saturday

LK: Saturday. And they you mentioned something about screen shots, how did you take those ore...

TP: I took pictures with...

LK: ...what do you mean?

TP: ... my phone of her watch of the conversations.

LK: Okay. So like what identified this person to you like how did you know it was a conversation between these two people?

TP: His name was at the top.

LK: Okay.

TP: Of who it was.”

8. The mother further stated that she approached her daughter about the text messaging on the same day that she discovered the messages.

“LK: Okay. Okay. So then what kind of conversation like when was the first time that you talked to [K.L.] about this?

TP: Saturday afternoon late evening.

LK: Okay. So the day that you found them.

TP: Yeah.

LK: Later on. Okay. So how did that go?

TP: Um, It went good. She was very nervous like when I told her I saw the messages but sort of relieved that someone found out because she was told not to tell anybody and I just reaffirmed with her that she has done nothing wrong, she is not in trouble and he could not do anything to her.”

9. In her statement, Ms. K.L. described how you would turn an innocuous Imessage text conversation with her into something inappropriate.

“KL: I don't know what do you want to hear? Like ah, most of our conversation was inappropriate. I would only message him first if I needed to know something about a practice or a game that was happening.

ME: Okay.

KL: Otherwise it was him contacting me first and it seemed like a normal conversation and then it would just lead to inappropriate things.

ME: Okay and was this by an app or by?

KL: Imessage.

ME: Imessage, okay. Any other forms of contact besides Imessage?

KL: Um, nothing the only inappropriate stuff happened on Imessage but we have group chat with all the coaches and the managers on Team Snap and then there, oh nu um, Team Snap with all the parents and then we have what's app group chat with all the coaches and the two managers. [...]

ME: Okay. And when you say Imessage that, that's where...

KL: In text message.

ME: ... the inappropriate...

KL: Yeah.

ME: ...it's, you're meaning text messages but you both...

KL: Yeah.

ME: ... have Iphones?

KL: But we both have Iphones, yeah.

ME: Okay. Any other form or apps?

KL: No I don't have him on Instagram or Snap Chat."

10. You instructed Ms. K.L. to never tell anyone that you were communicating with her and that she was to delete all of your exchanged text messages.

"KL: Um, it like kind of like all started with like a let's go and like get pedicures. I was just thinking it would be a normal thing and then he said this could be inappropriate. He told me not to tell anyone that we were texting each other, that he was texting me. Um, he stated that this would be, that it was inappropriate thing or that it could be perceived as inappropriate. He told me to delete all messages I have messages on my phone though, I just deleted previous one because that's wat I was told to do.

ME: Okay.

KL: Um, he told me not to tell anyone and that this would just stay between him and I.

ME: Okay so how did he tell you that? Was that...

KL: It was over text.

ME: Okay and is that on his phone or...

KL: No I deleted those messages because that's what he told me to do.

ME: Okay and it was that on his phone or was that on your old phone?

KL: Old phone."

11. Ms. K.L. also described how she wanted the inappropriate text messaging to end and that she only communicated with you because of the fact that you were her coach and that she was concerned the messaging would get her into trouble.

"KL: Um, this is on June 9th um, this is when I got my phone. And then I don't know I was like I don't know. I had to text him because of the new phone, um, I didn't have What's App set up so I didn't have the practice plans for that practice so I needed, I messaged him and I needed them so he sent them to me. Um, I was wearing Birkenstocks as I am right now and I had a blister on my foot and then I was like walking weird and he was like oh like what's wrong and then I said I had a blister on my foot and then he texted me later that night asking how my foot was. Mmm I like, I really don't want to have anything to do with any of these conversations. I would be very bland just saying okay or oh. I never like went like, I never said a lot because I just, I wanted it to be over. ME: Mmm. Hmm.

KL: Right like I didn't enjoy talking to him cause I knew that it would just lead to like inappropriate things. I'd um, leave it unread and then he would just text back um, I don't know. Like yeah we did have conversations because I didn't want to be like all distant because he was my coach and I did have like he, I coached with him and I did have to see him so.

KL: [...] Um, half the time I just don't answer him cause I don't want it to go any further. I've never told anyone because he told me not too um, there are other messages on my old phone which are deleted because that's what he told me to do.

KL: I like didn't I was always annoyed when he would text me because I knew that it would lead to inappropriate things and I always was very short with my answers and I was like almost like distancing myself with the conversations like just sending laughy face emojis because I didn't know what else to say because I didn't want to say anything that would possibly lead him to believe that I wanted the conversation to carry on. I would say either okay or yeah. I would never go into like great detail with my answers because I just, just wanted the conversation to end because I knew it would always lead to inappropriate things and I was

um, scared to tell him to stop because I knew that he is like I, this doesn't have anything to with it but like I knew he was like a police officer and I didn't know if he would like keep these messages and that I would get into trouble or anything and I didn't, you know I just felt almost uncomfortable telling him to stop even though I should have because I knew that this was wrong. Um, I never told anyone about this because he told me not too. He told me to delete any of the messages or he told me to delete the messages but I didn't with as soon as I got this new phone I hadn't deleted any of them.

12. You were fully aware that Ms. K.L. was a sixteen-year-old young person at the time you were text messaging with her and that her personal home life included parents who were divorced.

“ME: Okay. And is Dan Martin aware of your age?”

KL: Yes

KL: Because um, I know that like he's asked me how old I was and I told him I was sixteen. He's asked me like what grade I was going into before and I said grade eleven and the generic age for grade eleven is fifteen, sixteen, seventeen if you're really old.

ME: Okay.

KL: Right.

ME: Any other discussions about kind of your background or anything like that, that you've had with him?

KL: I mean like he knows that my parents are divorced. He, I didn't have a ride home from practice so he had driven me.

ME: Okay.

KL: Um, that was like [name] was in the car with us which is his son.

ME: Mmm hmm.

KL: Um, and there's nothing just that like my parents are divorced and that my dad um, left my mom for a flight attendant. That was it.

ME: Mmm hmm.

KL: Um, he knows that like my mom and I got into a fight obviously because I told him about it. Um, he knows that they're divorced. He knows that like I have a sister and that I'm very close with [name] and his family.”

13. In her statement, Ms. K.L. described how on one occasion you inappropriately and without excuse or justification, touched her thigh while coaching with her.

“KL: I feel like the calf was fine but like when he touched my thigh I felt like that was a little bit inappropriate because you don’t have any reason to touch my thigh.

ME: Okay. And did you feel like that right from that time on or is that now that you have kind of progressed with these conversations?

KL: No I knew like I knew when he had touched my thigh I knew that that like why.”

14. On July 1, 2019, you were suspended from you coaching duties by [name] the Discipline Director of the Lacrosse Association. On July 2, 2019, you acknowledged your suspension from coaching.

15. In your Will Say, you have adopted a position that you engaged in the text messaging with Ms. K.L. to be supportive and helpful of her and denied that your communication with her had any sexual intent whatsoever.

16. You engaged in text messaging with Ms. K.L. with the objective of facilitating and advancing a sexual relationship with her. You were in a position of trust and authority over Ms. K.L. and a clear power imbalance existed between yourself and Ms. K.L. as a vulnerable your person. Your text messaging with Ms. K.L., outside of Lacrosse coaching matters, was completely unnecessary and highly inappropriate as an RCMP Officer. You sought to conceal your text communications with Ms. K.L. by directing her to delete your shared text messages. You were actively attempting to groom Ms. K.L. for your own personal sexual gratification purposes.

17. The following chronologically listed text messages, demonstrate the predatory and inappropriate sexual nature of your communications with Ms. K.L.

a) On June 11, 2019, you initiated the following text message exchange:

“You: How’s the foot?

KL: Foot is fine?? My blister??

You: Good I was referring to your blister Yes. Lol

[...]

You: Look after your pretty feet!!!! Don’t ruin them

KL: Okok 😊😊 I’ll probably wear my nmuds tmrw idk it’s support to be really hot tho.

You: Hmmm. This is tough. I kinda want you to be able to show them off. Lol

KL: 😊😊

You: Am I too much?

KL: lk it's a joke so

You: We do need to go a pedi tho

KL: 100%!!

You: I want to pick the colour tho

[...]

You: No fair!!

KL: Okok then what colour

You: Clear?

KL: No fun

You: Oh, I wanna have fun. Trust me!"

b) On June 12, 2019, after Ms. K.L. informed you that she had broken up with her boyfriend, the following text message exchange occurred:

"KL: it's hard to explain but like he did a loving thing and he continued to play with my feeling and stuff. Lot of. True I was thinking of leaving it I don't want any drama and we're still friends so.

You: You're an awesome and very attractive woman K. Enjoy your new found freedom of being single. Remain friends. Be friends with everyone. He may come back. You never know!!

KL: Thank you. I don't want to lose him as a friend and if I bring it up will effect that so I'm just going to leave it.

You: Exactly. You know. So don't need to be confronting him about it. Just keep it in your back pocket.

KL: Exactly I'll just leave it.

You: Smart girl. Nice day out!!

KL: It is

You: Lol. Bikini weather today too

[...]

You: True. Are you in class??

KL: Maybe...

You: Fack!! I'll stop!

KL: We're just watching movies 😊

You: WtF?!

KL: Is has a project to it tho But I finished

You: I see why you want to be tanning. Lol

KL: Lol anywhere but here 😊

You: You're trouble

KL: Lol English is just boring

You: I can thing of other things to be doing too.”

c) On June 13, 2019, you initiated a text message exchange starting from work in which you openly acknowledged Ms. K.L. status as a young person:

“You: Do you play basketball?

KL: I did in grade 8 but I didn't enjoy it

You: Haha

KL: Girls are so dramatic

You: Oh??

KL: They think it's fun to start drama

You: Girls are the worst. Yup! Especially early teens

[...]

KL: Raptors took the dub!!

You: Pretty wicked game to watch actually hey??

KL: Omg it was so good!!

You: Where did you watch it? Guess you can't go to the bar. Lol.”

d) On June 14, 2019, you engaged in text message exchange with Ms. K.L. about her school day, followed by a sexualized reference to her upper body:

“You: Haha. Yup. How's school today?

KL: Meh

You: Brutal weather

KL: Yep but I like the rain so

You: Oh ya? Dancing barefoot in the rain kinda gal?

KL: Yea 😊 After the game I sat outside on the deck

You: In the rain??

KL: Yep in the covered part but still I

You: White T-shirt? Oh. Lol. Damn.

KL: 😊😊

You: I shouldn't say that. My bad

KL: Lol

You: It's hard not to tho

KL: 😊

You: No comment?

KL: Idk what to say?

You: Lol I don't freak you out?

KL: No?

You: Phew I know I walk the line with being offside

KL: Lol no we're good 😊

You: You're a tame one."

e) On June 17, 2019, you initiated a late night conversation with Ms. K.L. while on a work related training trip:

You: Were you at the game??

KL: Yessir

You: Awesome game?!

KL: Yessir

You: Lol. Bed time? Yessir

KL: Yessir 😊😊 But am I going to bed... Nosir

You: Watcha doing??

KL: Styding for science 😊😊

You: Awww. With friends or on your own?

KL: By my self, I only talk to like 2 people in my science class the rest are weird, druggies, or my ex soo

You: Bahaha. Fair enough. I'm in Lethbridge all this week. Kinda lonely at night.

KL: Training?

You: Ya.

KL: Fun

You: Our bush week training. All rural operations stuff it is

KL: Ooo fun

You: I'm having more fun now tho 🤪🤪 [emojis: Stuck-out tongue and astonished face]

You: Can't believe I said that

KL: 😊😊

You: Should I go and let you study?

KL: No I gave up on that lk do more throw Tomorrow

You: oh ok...

KL: We need to go for our pedis soon!!

You: We do!! I need to find spare time soon!

KL: Yes

You: Were you in Birks tonight?

KL: Yes and you missed it 😊

You: Damnit!!!! It is enjoyable for you knowing I like that?

KL: It is a joke or are you being real??

You: I'm scared to answer

KL: Oh?

You: Lol. Yes.

KL: Which one?

You: I am scared to answer. I don't want to get into trouble

KL: I'm a take that as it is real 😊

You: Do you think less of me

KL: No?

You: I like your feet

KL: Lol thanks

You: So not joking. Lol But still joking...

KL: Lol

You: Have you painted them lately?

KL: Yessir

You: 🤤 [emoji: drooling face]

KL: 😊

You: Can I ask more questions?

KL: Ig

You: ?

KL: I guess

You: I better not

KL: Okay?

You: Frick

KL: Okay?

You: You ask me something

KL: I'm going to bed I'm so tired and I have a big day tomorrow.
When do you come back.

You: Aww. That's too bad. But I get it. Back on Wednesday night

KL: So not in time for the game?

You: Likely not. We'll see tho. Going to try to rush that day.

KL: Okay well goodnight Tyler Ttyl

You: Hehe. Tyler. I like it

KL: 😊 gn [good night]

You: What colour are they?

KL: Blue

You: Omfg [oh my fucking God] Dying

KL: 😊 goodnight

You: Ok ok. Sweet dreams

KL: Yea you too

You: I hope I do too

KL: Ttyl [talk to you later]

You: I hope so

KL: Dw [don't worry]

You: Fack

f) On June 20, 2019, you initiated a conversation asking about a school exam:

You: How did it go??

KL: Meh

You: Aced it

KL: Nope

You: At least you had a nice polish on

KL: 😊 that doesn't exactly get me through school tho

You: Damn Makes my evenings at the box much better

KL: Haha

You: 😏 [emoji: winking face]

g) On June 21, 2019, the following exchange occurred:

KL: I wore birks today and I had to walk from school to gen and now my birks are soaked

You: Awwwwww What about your shirt??

KL: I have a hoodie on

You: Great mental pic!

h) On June 23, 2019, the following exchange occurred:

You: Dry out the Birks yet

KL: Kinda 😊😊

You: They're terrible in the rain. Like walking with two full pails of water on your feet

KL: I usually will just take them off and walk in bear feet

You: 😬 [emoji: drooling face]

You: The blue is nice

KL: Nail polish?

You: Yes!

KL: Lol feet are about to get wrecked with field

You: Awwwww. We best take care of them then

KL: 😊😊 I'll try I had no luck last year my ankles are scared to scrap
Crap

You: May need to have a few pedis!

KL: I think I will 😊

You: Can I pick the colour?

KL: Maybe

You: Awesome!

KL: What colour are you thinking cause the blues look good with my tan

You: Yes. Either a brighter blue or even a light one

KL: Okok

You: You'd like it I'm looking at colours now 😊 What about white?

You: No it's going to grey fast 😊 in cleats all summer and when I'm not in them I'm in birks which my toes get dirty fast 😊

You: Grey is hot too!!

KL: Nah Way to basic Literally all the girls that are annoying af [as fuck] and think they are to shit get yellow

You: Ya?! I don't know that stuff . lol

KL: I can tell 😊😊 it's okay I'll teach you

You: I'm willing to learn!!! I just want to see your feet in perfect colour

i) On June 28, 2019, you observed Ms. K.L. in person and initiated the following conversation:

You: Slow down!

KL: ??

You: Saw you running around the corner at Bert

KL: Ohh haha I need my mom to sign a sheet of paper before my teacher left

You: Ahhh. Lol.

KL: Yea but he wasn't even there so

You: Damn! Coming to the game today?

KL: Yessir I'll be there all weekend!!

You: Wicked!

KL: Yep are you??

You: Just this afternoon

KL: Bummer

You: Were you wearing a shirt that shows of your belly?

2021 CAD 23

KL: Crop top yea but I didn't think I was leaving the house and didn't have time to change

You: It looked great!!

j) Also on June 28, 2019, you initiated the following late night conversation with Ms. K.L.

You: How's your night going?

KL: Meh Blake's team just lost to Denver so that sucks

You: Blake?

KL: He's my best friend

You: Oh damn Sorry

KL: Meh they played shit d so

You: That happens

KL: Yea

You: Going out tonight?

KL: No still at the arena with [name]

You: [family name]

KL: Yepp

You: Fun

KL: It is

You: Are you volunteering like her?

KL: No I just stayed to watch his game and I helped her out to

You: Ahhh you're a big help

KL: Yepp

You: Lol

KL: I'm ready for bed

You: Well that's where I am

KL : Lol lucky I'm so sleep deprived

You: Wish I could help with that

KL: I choose to stay up talk to people and not sleeping

You: Lol Well... it is summer holidays

KL: True true

You: It's hard to text you. Lol

KL: why?

You: I'm biting my tongue

KL: K

You: Lol. Know what I mean?

KL: No it's probably better that way 😊

You: Geez

KL: I'm so tired

You: Get to bed!

KL: I can't I'm still here

You: You need a foot rub likely

KL: Lol

[Sic throughout]

Summary of established facts by the Conduct Board

[7] Constable Martin is a member of the RCMP posted in "K" Division.

[8] In April 2019, he was the head coach of a [...] Division boy's lacrosse team. Due to the high level of skill and development required of the players at that age and the fact that the coaching staff had little experience in playing lacrosse, he requested help from a more experienced player/coach.

[9] Ms. K.L. was 16 years old. Due to an injury, she could no longer play lacrosse. In light of her great knowledge of the game, the penalties and the plays, she was recommended by one of the player's parents.

[10] Constable Martin was in a position of authority over Ms. K.L. and an adult mentor to her. He was aware of her young age and that her parents were divorced.

[11] Both parties voluntarily exchanged their personal cell phone contact information for coaching purposes.

[12] On or about May 20, 2019, Ms. K.L. came to the practice visibly upset following an argument with her mother. The same parent who had recommended Ms. K.L. as an assistant

coach was aware of her home situation and asked Constable Martin if he would speak to her. During the conversation, Constable Martin was supportive and helpful and Ms. K.L. felt better. He also told her that she could contact him at any time if she wanted to talk or needed advice.

[13] That same night, or possibly the next day, Constable Martin and Ms. K.L. started to converse via text messages for a period of approximately six weeks. All text messages were sent by Constable Martin using his personal iPhone. Some text messages were sent when he was on duty but the majority of them were sent while he was off-duty.

[14] The first text was sent by Constable Martin to check on her. Soon after, Constable Martin suggested that they go for pedicures together. Ms. K.L. thought it was a normal thing to do with someone you look up to.

[15] The text messaging ended on June 28, 2019, when Ms. T.P., K.L.'s mother, read the text messages on her daughter's I-Watch, which she would occasionally review. Disturbed and alarmed by the content of the text messages, she took screenshots of the messages. Concerned that she was overreacting, she then sent copies to her close friends looking for advice.

[16] On June 30, 2019, Ms. T.P. filed, on behalf of her daughter who was a minor at the time, a complaint with the RCMP against Constable Martin. She claimed that he was making unwanted sexual advances towards her daughter.

[17] On July 1, 2019, Constable Martin was suspended from coaching duties by the Lacrosse Association Discipline Director.

[18] On July 4, 2019, this matter was sent to the Alberta Serious Incident Response Team (ASIRT) for review.

[19] On July 5, 2019, an RCMP Code of Conduct Investigation was initiated. The *Conduct Investigation Mandate Letter* was served on Constable Martin on July 8, 2019. Initially, he was temporarily reassigned to administrative duties.

[20] On July 15, 2019, a *Civil Restraining Order* was obtained and served on Constable Martin, who respected all conditions imposed by the court.

[21] On July 18, 2019, on the recommendation of the Crown Prosecutor, ASIRT confirmed that, while concerning, the evidence did not meet the elements of criminal harassment or luring of a child pursuant to the *Criminal Code*.¹ Although the matter was outside the scope for ASIRT, it was deemed to be best served by the RCMP Code of Conduct process.

[22] Notwithstanding the Code of Conduct process and the issue of public confidence in relation to a minor, on August 15, 2019, Constable Martin was reassigned to operational duties. It was determined by RCMP management at the time that this was appropriate as he was not a front-line member. Rather, he worked on a support unit and would have minimal contact with the general public. Although he was subject to a civil restraining order, the RCMP felt that it was highly unlikely that he would come in contact with the affected person(s) during the normal course of his duties.

[23] On April 14, 2020, the Conduct Authority signed a *Notice to the Designated Officer*, in which he requested the initiation of a conduct hearing in relation to this matter pursuant to subsection 41(1) of the *RCMP Act*.

[24] On May 14, 2020, Constable Martin was suspended from duty.

[25] It must be noted that Constable Martin did not provide a copy of the text messages. As for Ms. K.L., she deleted the messages that were in her “old iPhone 6”, which were dated from mid-May to June 8, 2019. However, she provided a copy of approximately 29 text messages that were sent from June 9, 2019, to June 28, 2019 (20 days), and contained in her “new iPhone 8”.

Credibility of witnesses and reliability of evidence

[26] I have heard oral evidence from three witnesses: Ms. T.P., Ms. K.L. and Constable Martin. In assessing the credibility of the three witnesses, I have taken into consideration the

¹ *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*].

witnesses' ability to recall all the details of the events given the passage of time (approximately 2 years). I have also considered the totality of the evidence in assessing each witnesses' credibility and the reliability of their evidence.

[27] In accordance with the Supreme Court of Canada decision in *McDougall*,² “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”. The court recognized, however, that there is “no objective standard to measure sufficiency”.

[28] The outcome of this matter rests heavily on the credibility of the witnesses. First, Ms. T.P. expressed great concern for this situation involving her young daughter, whom she was not able to protect. She explained that it was heartbreaking for her family as she has always told her children to trust the police, teachers or anybody in a position to protect her, and this trust was taken away in the worst possible way. I found her to be a credible witness and her evidence to also be reliable.

[29] As for Ms. K.L., I find that she was an articulate and forthcoming witness. She was balanced when expressing herself and did not seek to cast Constable Martin in a negative light. She was frank and her oral evidence was consistent, both during her testimony and with her statements in the record. She did not try to embellish her answers nor perfect them over time. For example, she admitted that she never met Constable Martin for a private meeting, she only called him once for lacrosse coaching purposes and she never told anyone about the text messages. I find that her testimony was credible and reliable.

[30] For the most part, I found Corporal Martin to be credible and his evidence reliable.

² *F.H. v McDougall*, [2008] 3 SCR 41 [*McDougall*].

Test for discreditable conduct

[31] Section 7.1 of the RCMP Code of Conduct states: “Members behave in a manner that is not likely to discredit the Force.” The test for “discreditable conduct” was developed by the RCMP External Review Committee and consist of four steps.

[32] First, the Conduct Authority must prove on a balance of probabilities the acts that constitute the alleged conduct.

[33] Second, the identity of the member who is alleged to have committed these acts.

[34] Third, if the Conduct Authority is successful, the Conduct Board must then determine if a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and of the RCMP in particular, would view Constable Martin’s conduct as likely to discredit the Force.

[35] Finally, the Conduct Board must determine whether the conduct is sufficiently related to Constable Martin’s duties and functions as to provide the Force with a legitimate interest in disciplining him.

[36] There is no dispute surrounding step 2 concerning the identity of Constable Martin. The other three steps require further analysis.

[37] Allegation 1 contains 17 particulars. The burden is on the Conduct Authority to establish the allegation on a balance of probabilities. However, he does not have to establish each particular, just enough that those that are established meet the threshold of discreditable conduct.

Analysis

[38] Constable Martin admitted particulars 1, 2, 3, 4, 5, 12, 14 and 15, which are supported by the evidence in the record.

[39] As for particulars 6, 7 and 8, Constable Martin neither admitted nor denied them as they pertain to a statement made to the RCMP by Ms. T.P., on July 2, 2019, when she initiated the

complaint on behalf of her daughter. I find that these particulars are statements of facts and they provide context to the allegation; therefore, they do not require to be established by the Conduct Authority to prove the allegation of discreditable conduct.

[40] The crux of the sole allegation contained in the *Notice of Conduct Hearing* is found in particulars 9, 10, 11, 13, 16 and 17. Constable Martin confirmed in his *Response to the Allegation* as well as at the conduct hearing that he engaged in text messages with Ms. K.L. to be supportive and helpful to her. The contents of the text messages are not in dispute. However, Constable Martin denied that his communications had any sexual intent whatsoever.

[41] Particular 9 alleges that Constable Martin would turn an innocuous text conversation into something inappropriate, which he denied. According to him, he did not always initiate the conversation with Ms. K.L. and not all messages were turned into something inappropriate.

[42] The record demonstrates that approximately 29 messages were sent from June 9 to 28, 2019. As indicated in her statement and at the conduct hearing, the evidence shows that, on some occasions, Ms. K.L. left Constable Martin on “read”. In Internet slang, this means that Ms. K.L. read the message but that she did not respond. She mostly only messaged him first when she needed to know something about a practice or game that was happening. On June 25, 2019, she asked permission to give him a quick call. At the conduct hearing, she confirmed that the proposed call was related to lacrosse.

[43] Also, the evidence confirms that several text message conversations ended in highly inappropriate and unnecessary comments on the part of Constable Martin, given Ms. K.L.’s young age. For example, a conversation that started on June 11, 2019, about a blister on Ms. K.L.’s foot, ended with Constable Martin saying how she had pretty feet, how he wanted her to show them off, asking if he is “too much” and him saying “oh, I wanna have fun. Trust me!”

[44] Another example is the conversation of June 17, 2019, when Constable Martin was on training and admitted to feeling lonely at night. The conversation led again to Ms. K.L.’s feet and how they needed to go for a pedicure. Constable Martin asked her if she was wearing her Birkenstock shoes at lacrosse that night. When Ms. K.L. replied yes, the conversation led by

Constable Martin inappropriately escalated. He admitted that he liked her feet and that he was sad to have missed seeing them at practice. When Ms. K.L. asked if he was joking, he replied that he was scared to answer because he did not want to get into trouble. He then asked her if he could ask more questions. When Ms. K.L. replied that she was not sure, he replied “I better not”. While Ms. K.L. was trying to end the conversation by saying she was going to bed, Constable Martin kept the conversation going by asking her what colour were her toe nails. When she replied blue, he responded “ [Oh my fucking God (OMFG)], Dying”. Ms. K.L. then said goodnight and Constable Martin replied “Ok. Ok. Sweet dreams”. The conversation finally ended as follows:

K.L. Yea you too.

C.M. I hope I do too.

K.L. [talk to you later (ttyl)]

C.M. I hope so

K.L. [don't worry (dw)]

C.M. Fack

[45] For these reasons, particular 9 is established.

[46] Particular 10 alleges that Constable Martin instructed Ms. K.L. to never tell anyone that they were communicating and to delete all of the exchanged text messages. Constable Martin denied this particular. The Subject Member Representative suggested at the conduct hearing that Ms. K.L. fabricated this part of the story to avoid getting into more trouble with her mother, who had caught her lying a few weeks before when she had visited her father without her mother's knowledge. I disagree. In fact, the evidence indicates that Ms. K.L. never told anyone about the messages, not even her best friend, which is consistent with her statement and the evidence at the conduct hearing.

[47] As for deleting the messages, as indicated by the Subject Member Representative, I recognize that there was a “drastic change in behaviour” by Ms. K.L. when using the iPhone 6 (known as the old phone) and the iPhone 8, the new phone she obtained on June 9, 2019. When using the old iPhone, she used to delete all her text messages with Constable Martin before going

to bed. A practice she stopped after receiving her new iPhone 8. Ms. K.L. explained that she had no reason anymore to delete the messages as she was working on her relationship with her mother and they were trying to be trustworthy with each other. The evidence also indicates Ms. K.L. voluntarily submitted her old iPhone 6 to the RCMP in an attempt to retrieve the old messages, which unfortunately could not be done.

[48] Constable Martin testified that he could not produce the messages as he deleted them from his old iPhone at the end of June, when he replaced it with a new one. On the whole, Ms. K.L.'s account of events is consistent and I prefer her evidence to Constable Martin's on this point. Consequently, I find that it is more probable than not that Constable Martin had told her to delete the messages. Thus, particular 10 is established.

[49] In relation to particular 11, Constable Martin denied Ms. K.L.'s account of wanting the inappropriate text messaging to end. She only communicated with him because of the fact that he was her coach. However, the evidence does not support his denial.

[50] A review of the text messages confirms that Ms. K.L. mostly initiated text communication with Constable Martin for coaching purposes. She would often not respond to messages sent later at night until the next morning or she would not reply following inappropriate comments. For example, on June 28, 2019, at 11:47 a.m., Constable Martin asked her if she was wearing a shirt that showed off her belly. Ms. K.L. replied yes, but she explained that she had left the house in a hurry and had not had the time to change. He replied: "It looked great!!" Ms. K.L. did not respond. At 4:14 p.m. that same day, Constable Martin sent her a text about the game. He then engaged with her again at 10:09 p.m. asking her how her night was going.

[51] Ms. K.L. admitted at the conduct hearing and in her statement to the conduct investigator that she never specifically told Constable Martin to stop messaging her. I agree with the Conduct Authority Representative's submission that it was not her responsibility to do so, considering the considerable age gap between the parties and her vulnerability. As conceded by Constable Martin, he knew that he was in a position of trust and authority over her.

[52] For these reasons, particular 11 is established.

[53] In particular 13, it is alleged that, on one occasion, Constable Martin inappropriately and without excuse or justification touched her thigh while coaching with her. The evidence indicates that there were three touches. The first one was a hug given after Ms. K.L. confided in Constable Martin about the argument she had with her mother. She described the hug as a comforting gesture by Constable Martin.

[54] The second touch was a brush of the calf during a lacrosse game where Constable Martin told her something to the effect of “Good job coach”. Ms. K.L. agreed at the conduct hearing that the hug and touch of the calf were all within reason.

[55] As for the touch of the thigh, it also happened during a lacrosse game. Ms. K.L. described it as a passing touch along the thigh, “nothing hard, just like a light brush”. She felt that there was no reason for it and she just ignored it. In her view, it was just unnecessary.

[56] As for Constable Martin, he did not remember touching her calf nor her thigh. He acknowledged that it could have happened given that he was in a tight space with 17 players and 4 coaches during the game. In his submissions, the Subject Member Representative suggested that if Constable Martin touched Ms. K.L.’s thigh on the bench, it was inadvertently and not intentionally. As such, he indicated that this particular should not be established.

[57] During her testimony, Ms. K.L. had a hard time explaining the touch into words. She stated that she felt his hand, more like a brush against her thigh. She confirmed that it only happened once and that she could not remember when during the season it occurred, which started in April and ended in June. Given the evidence, I am satisfied that the touch was accidental; therefore, particular 13 is not established.

[58] In respect to particular 16, Constable Martin admitted that he was in a position of trust and authority over Ms. K.L. and that a clear power imbalance existed between them. He also conceded that the text messaging, outside of lacrosse coaching matters, was completely unnecessary and highly inappropriate as an RCMP officer.

[59] On the other hand, he denied that he sought to conceal the text communication with Ms. K.L. by directing her to delete the shared messages. This element of the particular has been established in particular 10 and I will not comment on it further.

[60] Two issues remain in this particular. First, it is alleged that Constable Martin was actively attempting to groom Ms. K.L. for his own personal sexual gratification purposes. Second, he engaged in text messaging with Ms. K.L. with the objective of facilitating and advancing a sexual relationship with her.

[61] The Conduct Authority Representative provided many authorities with principles related to child luring, grooming and sexual exploitation that pertain to the criminal sphere. As submitted, the principles relied upon were to guide the Conduct Board in its determination of the particulars and the allegation.

[62] As submitted by the Subject Member Representative, grooming is not a criminal offence. It is an aggravating factor to other underlying criminal offences involving sexual exploitation and luring of children.

[63] As recognized by the Conduct Authority Representative, my role in this conduct process is not to make a determination as to whether Constable Martin committed, for example, the criminal offence of child luring. This is the jurisdiction of the criminal court. As previously mentioned in another RCMP conduct decision, the parties must guard against wholesale importation of criminal law concepts into the RCMP conduct process.

[64] Constable Martin's conduct towards Ms. K.L. mirrored behaviours consistent with grooming when he befriended her, cultivated her trust, established an emotional connection where she felt comfortable in confiding in him and steered the conversation towards sexual topics. More specifically, Ms. K.L. described him as "someone that was strongly liked upon the community. He didn't come across as rude or passive aggressive. [...] He was very kind towards me, and I saw him as a mentor, as someone who could help me He was in a very leadership role

to me.” He told her that she “could confide in him; and I could trust him, that I could come to him about anything. And then I realized that he was there for me and he would support me.”³

[65] Constable Martin knew that Ms. K.L. was a 16-year-old vulnerable young person. He admitted that he was in a position of trust and authority. He maintained the relationship with Ms. K.L. outside his coaching duties and functions by using text messaging. No one knew about the messages except the two of them, not even Ms. K.L.’s best friend. The text messages on the old iPhone 6 were also deleted ensuring no one would get into trouble.

[66] I find that at first the relationship between Constable Martin and Ms. K.L. was platonic and in line with his initial position that he messaged her to be supportive and helpful to her. However, shortly after, the messages became inappropriate and, most importantly, sexualized. As clearly expressed by Ms. K.L., “they were normal at first and then they just got weird towards the end. They made me feel somewhat uncomfortable with things that he would say.”

[67] Many text messages were sent between the parties, but I will focus on two. The first one was sent by Constable Martin on June 14, 2019, at 9:02 a.m. He asked Ms. K.L. about her school day. It was raining and he introduced in the chat a sexualized comment about wearing a white t-shirt. Although it is common knowledge for an adult to know that a wet, white t-shirt worn by a woman is meant to expose her breasts or undergarment, Ms. K.L. testified that she “didn’t think about it like that at the time”.

[68] When Constable Martin texted: “White t-shirt?”, Ms. K.L. replied with 2 laughing emojis. As explained during the conduct hearing, two laughing emojis are used by Ms. K.L. when things are funny or to replace words when she is feeling uncomfortable. In this situation, she explained that she replied with the emojis because she did not want to engage with words.

[69] Constable Martin replied: “Oh. Lol. Damn.” He knew that the comment was inappropriate, so he replied: “I shouldn’t say that. My bad”; [...] “It’s hard not to tho”; “No comment?”. At this point, Ms. K.L. replied: “[I don’t know (IDK)] what to say”, and Constable

³ Transcripts, PDF version, dated July 12, 2021, page 67, lines 21 to 25, and page 68, lines 6 to 10.

Martin replied: “Lol. I don’t freak you out?”. When Ms. K.L. replied “No?”, he then replied: “Phew; I know I walk the line with being offside [...] You’re a tame one.”

[70] In cross-examination, Ms. K.L. was asked whether Constable Martin could have interpreted her answers as “Okay, maybe we are all good?” even though this was not necessarily what she intended to say. Ms. K.L. was clear, cogent and convincing that she was not going to tell him that what he was doing was wrong: “Because I don’t know what kind of trouble I’m going to be in, so, yeah, I’m going to tell him that – whatever, things are fine. Do I understand that if I thought something was wrong, I should have said something? Yeah, I understand that, but you have to understand the position I was in.”⁴

[71] Another message worth mentioning is the last one sent by Constable Martin on June 28, 2019, at 10:09 p.m., while he was at home in bed. This text shows a clear progression in the sexual intention of Constable Martin. He started by asking Ms. K.L. how was her night. She replied that she was volunteering at a lacrosse game and that she was ready for bed. Constable Martin then said: “well that’s where I am...”. Ms. K.L. replied “LOL lucky I’m so sleep deprived”. Constable Martin then replied: “Wish I could help with that [...] it’s hard to text you. Lol”; when asked why, he replied: “I’m biting my tongue [...] Lol. Know what I mean?”. Ms. K.L. then replies: “No it’s probably better that way 😊”.

[72] During his testimony, Constable Martin stated that Ms. K.L. was also flirting with him at times, for example when she initiated a conversation about going for their pedicure, which was very often a subject of their conversations. He admitted that his communications were inappropriate, but he denied that they show an intent to satisfy his own personal sexual gratification or to engage in a sexual relationship with Ms. K.L. I disagree.

[73] I find that a reasonable person reading the totality of the text messages provided in the evidence would conclude that they are sexualized and were getting more egregious with time. In

⁴ Transcripts, PDF version, dated July 12, 2021, page 204.

fact, Ms. K.L. testified that the last message of June 28, 2019, sent by Constable Martin was her “turning point”. That is when she realized that “maybe this isn’t normal.”⁵

[74] As properly stated by the Conduct Authority Representative: “these communications stopped not because of [Constable Martin’s] newfound sense of responsibility as an adult or as police officer or as a person in a position of authority, but rather because he was caught.”⁶ In fact, I find that Constable Martin’s private conversations with Ms. K.L. do not reconcile with his initial intent of being supportive and helpful. On many occasions, he was testing the limits and waited for Ms. K.L.’s response to reassure himself that he still had her trust. He could have stopped text messaging her, but chose not to. This is not the behaviour of a friend whose intent is to treat her as a co-coach in order to boost her ego and confidence as claimed.

[75] I also agree with the Conduct Authority Representative that Constable Martin was seeking to downplay his actions. He admitted certain elements of the allegation and particulars in a qualified manner in order to hide or conceal his true purpose. In fact, I find that his story was inconsistent and self serving. For example, in various text messages, Constable Martin told Ms. K.L. that he liked her feet, she should look after them, she should show them off, and that he was “dying” when he found out that she had painted her toe nails blue.

[76] However, when cross-examined at the conduct hearing, he maintained that he did not “really like her feet” or “even want to be alone with her”. When questioned further, he explained that there is “no meaning” to his text messages. He stated that text messaging “kind of takes on its own world of itself. [...] it was just silly banter. You know I tried to be kind of funny and you know, it’s somebody for her to talk to.”⁷ In the end, I find that the numerous statements like these made during the conduct hearing were offensive and disrespectful to Ms. K.L., who was led to believe, for approximately six weeks, that he was a genuine and caring friend whom she could trust. Such statements put in doubt not only his credibility and the reliability of his evidence, but also his true intentions regarding their relationship.

⁵ Transcripts, PDF version, dated July 12, 2021, page 220, lines 22 and 23.

⁶ Transcripts, PDF version, dated July 14, 2021, page 9, lines 6 to 9.

⁷ Transcripts, PDF version, dated July 13, 2021, page 125.

[77] In cross-examination, Constable Martin recognized that the content of the text messages could get him in trouble. As he said, he was “trying to stay on the appropriate side of the conversation, and, you know, that line was crossed a few times.”⁸ As clearly expressed by the Conduct Authority Representative, “no solo communications, external to ensuring the progression of the coaching and lacrosse related roles and duties were either justified or necessary between a 40-year-old man and a 16-year-old.”⁹ I also reiterate that it was not Ms. K.L.’s responsibility to stop the inappropriate conduct. Constable Martin was well aware of her vulnerable status, given her age, and nonetheless assumed that “she was enjoying the conversation”.¹⁰

[78] Although Constable Martin emphatically denied any intent to entice Ms. K.L. into a sexual relationship, I am truly not convinced that he was just flirting or having fun as claimed. Furthermore, I fail to understand why a 40-year-old man, a father, a husband, a trained RCMP member with extensive coaching expertise with youth needs to engage in progressively more sexualized conversations with a 16-year-old. I find that he knowingly engaged in text messaging with Ms. K.L. for the purposes of his own sexual gratification and to facilitate or advance some kind of sexual relationship with her.

[79] For the aforementioned reasons, particular 16 is established.

[80] Finally, particular 17 contains numerous text messages that intend to demonstrate the predatory and inappropriate sexual nature of Constable Martin’s communications with Ms. K.L.

[81] In light of my findings and comments with respect to particular 16, I find that the text messages were sexually inappropriate in nature. The evolution of their contents is concerning and I believe that they did not progress any further due to the lack of response from Ms. K.L. However, I find that the evidence in the record is insufficient for me to conclude on a balance of

⁸ Transcripts, PDF version, dated July 13, 2021, page 179.

⁹ Transcripts, PDF version, dated July 14, 2021, page 4.

¹⁰ Transcripts, PDF version, dated July 14, 2021, page 32.

probabilities that Constable Martin's behaviour was predatory. Consequently, particular 17 is partially established.

[82] With regard to the 17 particulars, I reiterate the following:

- a. Particulars 1, 2, 3, 4, 5, 12, 14 and 15 were admitted by Constable Martin and are established;
- b. Particulars 6, 7 and 8 were contextual and not required to be established;
- c. Particular 13 regarding the touching of the thigh was not established;
- d. Particulars 9, 10, 11 and 16 are established; and
- e. Particular 17 was partially established regarding the text messages being of an inappropriate sexual nature. However, the behaviour was not considered predatory given the lack of evidence.

[83] In order to determine whether a conduct is discreditable and contrary to the Code of Conduct, the evidence must establish that the conduct brings discredit to the RCMP, which requires some nexus to the employment relationship. As indicated previously, it was established that Constable Martin sent most text messages while he was off-duty. However, some were sent while he was on-duty.

[84] It is commonly understood that members of the RCMP are held to a higher standard of behaviour than the general public, both on- and off-duty. In accordance with the *Conduct Measures Guide* (2014):

[...] Off-duty conduct that would not normally constitute a breach of criminal law may nevertheless be considered discreditable, provided the circumstances surrounding the behaviour can be reasonably expected to affect the Force's reputation or the member's ability to discharge his or her duties as a police officer. [...]

[85] In addition, section 37 of the *RCMP Act* stipulates that "the responsibility of every member is to act at all times in a courteous, respectful and honourable manner."

[86] 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 Martin's actions towards Ms. K.L. as likely to bring discredit to the Force.

[87] Police officers have a duty to protect youth and make them feel safe at all times. I find that Constable Martin's actions are sufficiently related to his duties and functions as to provide the Force with a legitimate interest in disciplining him.

[88] Accordingly, allegation 1 is established on a balance of probabilities.

CONDUCT MEASURES

[89] Subsection 24(2) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, states: "A Conduct Board must impose conduct measures that are proportionate to the nature and circumstances of the contravention of the Code of Conduct."

[90] The RCMP External Review Committee has established a three-step test for the imposition of conduct measures. First, a conduct board must consider the appropriate range of conduct measures applicable to the misconduct at issue. Then, it must consider the aggravating and mitigating factors. Finally, the conduct board must impose conduct measures that accurately and fairly reflect the gravity of the misconduct at issue, keeping in mind the parity principle of sanctions.

Range of conduct measures

[91] As submitted by the parties, the allegation of discreditable conduct established in this matter does not fall within a specific category listed in the *Conduct Measures Guide*, which provides guidance on the considerations around the imposition of conduct measures. While an instructive and useful reference, the *Conduct Measures Guide* is not prescriptive nor binding on a conduct board. Rather, it is a starting point for reaching the appropriate conduct measure(s).

[92] The Conduct Authority Representative requested that the Conduct Board direct Constable Martin to resign from the Force within 14 days from the date of the oral decision on conduct measures.

[93] The Subject Member Representative recognized that serious conduct measures are warranted in this matter and suggested: a penalty of 20 to 30 days, leaving it to the Conduct Board's discretion to impose a forfeiture of pay or a combination of pay and annual leave; ineligibility for promotion for 2 years; and a reprimand.

[94] In addition, the Subject Member Representative suggested that it may be appropriate to reclassify Constable Martin's conduct as harassment pursuant to section 2.1 of the Code of Conduct, instead of discreditable conduct under section 7.1 of the Code of Conduct. The Conduct Authority Representative disagreed with this argument and, given my findings in the circumstances, I find that Constable Martin's conduct is more akin to sexual misconduct than harassment. Therefore, I reject the Subject Member Representative's reclassification proposal. The recommended sanction for sexual misconduct spans from 20 to 30 days of pay in the mitigated range, which was recommended by the Subject Member Representative, up to dismissal.

[95] In support of their position on conduct measures, the parties also relied on criminal law authorities as well as RCMP conduct board decisions where dismissal was within the range of sanctions available. As indicated by the Subject Member Representative, RCMP case law that can provide specific guidance in this instance is fairly scarce. He submitted that dismissal is not the appropriate result in the circumstances as Constable Martin's behaviour did not approach the level of conduct seen in cases justifying dismissal.

[96] I would like to emphasize that with the exemption of the *Jenkins*¹¹ and *Eden*¹² decisions, all other RCMP conduct board decisions relied upon by the parties stem from joint submissions

¹¹ *Commanding Officer "T" Division v Constable Jenkins*, 2017 RCAD 4.

¹² *Commanding Officer "E" Division v Constable Eden*, 2017 RCAD 7. It must be noted that, at the time of the hearing in the present matter, that decision was under appeal. On August 3, 2021, the RCMP Commissioner

and are of limited value. I am not bound by previous conduct board decisions. In addition, joint submissions are usually based on the consideration of multiple factors and are the result of compromises negotiated by the parties, without the knowledge of the decision maker.

[97] For example, in *Bergmann*,¹³ the member who was 28 years of age was volunteering as a Sea Cadets instructor, while the complainant was a 17-year-old Sea Cadet. The member was in a position of trust and authority. He had been warned by the Sea Cadets organization regarding his behaviour towards the complainant's older sister. Despite a complaint made by the mother, the member who had promised not to engage any further with the complainant, sent her Facebook messages. Shortly after she turned 18, the parties became sexually involved and kept it a secret from her parents. The member was not dismissed, but he was imposed conduct measures short of dismissal including a) a financial penalty of 45 days' pay; and b) a transfer to another location within "E" Division. However, as clearly stated by the conduct board at paragraph 28 when presented with a joint submission on conduct measures, its role is to "determine whether accepting the proposed 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. [Emphasis added]" Hence, I attribute limited value to that decision in this matter.

[98] With regard to *Jenkins*, the member was an instructor at RCMP "Depot" and entered into a romantic relationship with a cadet. Once the cadet graduated, the member told his supervisor that they were going to begin a relationship and further lied by denying having been involved with the cadet during her training. A month after training ended, the cadet found out she was pregnant thereby completely exposing the member's lie. At the earliest opportunity, the member admitted to engaging in conduct of actual, apparent or potential conflict of interest and making false, misleading or inaccurate statements to his supervisor about when the relationship started.

rendered her final decision (20173351284 (C-045)), which dismissed the appeal and confirmed the conduct measures imposed by the conduct board.

¹³ *Commanding Officer "E" Division v Constable Bergmann*, 2019 RCAD 02.

[99] The Subject Member Representative stated that Constable Martin's behaviour did not approach this level. Relying on the conduct board's finding at paragraph 38, "Though the Subject Member's misconduct remains serious, but I am not able to conclude that dismissal is the only solution", the Subject Member Representative argued that dismissal was effectively a last resort and the measures must be proportionate in nature and fit the circumstances of the particular contravention of the Code of Conduct.

[100] I do not disagree with the Subject Member Representative's position regarding a conduct board's responsibility to impose a fair and just measure in the circumstances. In *Jenkins*, the member was in a position of authority and the conduct board recognized the inappropriate nature of the relationship. However, as argued by the Conduct Authority Representative, a very clear distinction can be drawn. The relationship involved two consenting adults.

[101] In addition, I find that when rendering its decision in 2017, the conduct board was satisfied that the conduct measures imposed would preserve public confidence in the Force. I cannot come to the same conclusion in this case. Given the level of concern expressed by the public in relation to the protection of youth when communicating on social media as well as efforts made by police forces worldwide in this regard, I find that a reasonable person would find that the actions of Constable Martin lessen the reputation of the RCMP in the eyes of the community. It must be noted that Constable Martin was immediately suspended from coaching lacrosse when the text messages came to light.

[102] With regard to *Eden*, which bears some similarity to the facts in this case, the member was dismissed. That case involves the establishment of four contraventions of the Code of Conduct. Two allegations of discreditable conduct for inappropriate communications and two allegations of misuse of Force property. As for the inappropriate communications, at first, the member accessed RCMP electronic file information and obtained the cellular phone number of a 17-year-old complainant of sexual assault. He initiated text message exchanges in which he requested photographs from her, sent her two photos of a male figure, one in form-fitting underpants and another under bed covers with an erection. The exchange ended when the complainant's text message indicated suicidal thoughts and the member called for assistance to

respond to her location. The second inappropriate communication happened after the member issued a speeding ticket to a motorist. Using unrelated RCMP electronic file information, he later called her residence, identified himself as police and obtained her cellular number from her employee. He then texted her, asking if she wanted to meet for coffee.

[103] As indicated in the conduct board summary of that decision, several serious aggravating factors were present, including breach of trust and exploitation of a police client. There was conflicting expert evidence on the existence of the member's medical condition. Except for dismissal, the conduct board concluded that no other conduct measures sufficiently protected public confidence in the Force.

[104] I recognize that Constable Martin's misconduct is not on the same spectrum as the one described in *Eden* nor does it have to be that egregious for me to conclude that dismissal is within the range of possible measures. On the totality of the evidence adduced, I am satisfied that dismissal is within the appropriate range of conduct measures. Thus, I must now consider the aggravating and mitigating factors.

Aggravating factors

[105] I consider the following to be aggravating factors:

- a. Constable Martin was 40 years old at the time of the incident and knew that Ms. K.L. was a 16-year-old vulnerable young person and a member of the public.
- b. Constable Martin was in a position of authority on multiple levels. He was her coach, her mentor and a police officer responsible for upholding the law. There was a clear power imbalance and breach of trust when seeking to exploit the position.
- c. This was not an isolated incident. The text messages were exchanged between the parties for a period of about 6 weeks. As per the evidence, the inappropriate sexual nature of the communications lasted about 2 to 3 weeks and were making Ms. K.L. increasingly more uncomfortable over time given the sexualized content.

- d. Constable Martin knew what he was doing was inappropriate; nonetheless, he continued his misconduct until Ms. K.L.'s mother found the text messages and reported it. This demonstrates extremely poor judgment on his part.
- e. In his testimony, Constable Martin minimized the serious nature of his actions by suggesting that the text messages were just silly banter and fun, despite the sexualized inference that can be drawn from reading them as a whole.
- f. Even if there was no physical contact, the incident had a lasting adverse psychological and emotional impact on Ms. K.L. and her mother, who testified that she blamed herself for not being able to protect her daughter. As for Ms. K.L., she explained that she did not leave the house for almost a year as she was afraid of meeting Constable Martin and to be confronted by him. She also could not sleep alone at night for several months, she started to have panic attacks and stopped driving. Hence, the incident had a serious impact on her personality as a whole, her schooling and her level of trust with adults.

Mitigating factors

[106] I consider the following to be mitigating factors:

- a. Constable Martin apologized to Ms. K.L., her mother, his family, his supervisors and the Conduct Board for his embarrassing behaviour and the unnecessary burden he has inflicted on the Force.
- b. Constable Martin has approximately 13 years of productive service with the RCMP. His performance evaluations indicate that he is a strong performer. They describe him as being very positive, diligent, hardworking and conscientious. He possesses great skills, attitude, enthusiasm and drive.
- c. He has no record of prior discipline and no prior *Criminal Code* convictions. He has also respected the conditions of the restraining order obtained against him.

- d. Constable Martin did not submit letters of reference from his family, colleagues and supervisors, but many were present throughout the conduct hearing to support him.
- e. Constable Martin has a substantial history of volunteering with youth for over 24 years. As this case involves a 16-year-old teenager whom Constable Martin met through a sporting event for which he was a volunteer coach, I did not attribute significant weight to this factor as a mitigating one.

Parity of sanctions

[107] 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, they must be educative and remedial rather than punitive.

[108] It is a well-established principle in employment law that dismissal is only to be considered in the most extreme cases and that rehabilitation is the primary purpose of the imposition of conduct measures. This principle is reflected in the case of *Ennis*.¹⁴ RCMP case law has also confirmed that rehabilitative potential is an important consideration, but it does not overcome the right to terminate employment when the breach goes to the heart of the employer-employee relationship.

[109] Constable Martin sought treatment in August 2019, one month after the incident. He has continued to receive psychological assistance on a regular basis since December 2019 from Dr. D.W. Per the evidence, Constable Martin had no medical condition or stressors in his personal life that could possibly provide some kind of explanation for his lack of critical thought and sound decision-making during the six weeks he was text messaging Ms. K.L.

[110] At the conduct hearing, the Subject Member Representative requested to admit in evidence a two-page letter from Dr. D.W., dated July 12, 2021, in which she summarized her observations following her discussions with Constable Martin. As explained by the Subject

¹⁴ *Ennis v Canadian Imperial Bank of Commerce*, (1986) BCJ 1742 [*Ennis*].

Member Representative, the letter was not to be considered a true expert report. It was more a letter of support from a treating psychologist. The Conduct Authority Representative objected to the admission of the letter. He submitted that it was unclear whether Dr. D.W. was provided the full details of the text messages and whether she was aware of the totality of the circumstances. As indicated at the conduct hearing, I have admitted the letter in evidence and I have attributed little weight to it.

[111] I find that Constable Martin failed to acknowledge the true extent of his misconduct when he stated for example that Ms. K.L. was also flirtatious, that it takes two people to have a conversation: “[...] Being flirty, like it’s joking around, its not meant to be taken seriously, I didn’t think there was any need.”¹⁵ Given the significant age gap between the parties, the mutuality of the conversations between the parties has no bearing on the gravity of the contravention nor the degree of blameworthiness of the member.

[112] Moreover, while Constable Martin admitted in his testimony that the text messages were inappropriate, he avoided accountability by claiming that the inferences that can be drawn from the text messages are a matter of perception: “Although people can interpret things any way they want, they cannot assume my intent or meaning”¹⁶ or “[...] you’re asking me this question, so clearly it’s not appropriate in your perceptions, and yeah, I shouldn’t, have mentioned it.”¹⁷

[113] Constable Martin also made a similar statement during his therapy sessions with Dr. D.W.: “[Constable] Martin stated that he will be more cautious about boundaries in the future and will mindfully examine how actions can be interpreted from an external perspective.” I find that this lack of introspection throughout Constable Martin’s testimony made me question his rehabilitation progress in terms of the full acceptance of his responsibility as well as any reassurance that this type of misconduct will not be repeated in the future.

¹⁵ Transcripts, PDF version, dated 13 July 2021, page 145.

¹⁶ Transcripts, PDF version, dated July 13, 2021, page 125.

¹⁷ Transcripts, PDF version, dated July 13, 2021, page 161.

[114] Deterrence is of particular importance in this case not only as a warning to other members, but also as insurance that this inappropriate behaviour is not repeated. The need for specific deterrence becomes even more acute when the perpetrator of the contravention is someone in a position of trust and authority as I have found Constable Martin was on multiple fronts.

[115] A sacred value of Canadian society is the need to protect our children and teenagers, who frequently use modern technology for social purposes. In doing so, they engage with individuals who may prey on their vulnerability and accessibility in the privacy of their homes. Through legislation, Parliament prohibits inappropriate sexual communications between an adult and a young person given their lack of maturity level and that their ability to address this type of situation is limited. The courts have also long recognized that such communications using social media platforms and technology are a very serious matter that demands strong denunciation and deterrence.

[116] Although some mitigating factors were accepted, I find that they are not strong enough to counter the seriousness of the misconduct such as to reduce the ultimate sanction that I feel necessary considering: 1) the sexual nature of the texts sent in private, using a social media platform and for a prolonged period of time; 2) the vulnerable status of Ms. K.L. given her young age and how Constable Martin sought to conceal the text communications by directing her to delete them; finally 3) the sexual intent of Constable Martin in cultivating the relationship in order to pursue some kind of relationship with Ms. K.L. while in a position of trust and authority.

[117] Constable Martin's misconduct is serious and goes to the heart of the employer-employee relationship and the public's expectation of police officers in their dealings with vulnerable members of the public. As indicated in the Code of Conduct: "The responsibilities contained within the Code are meant to promote sound ethical decision making that goes beyond the boundary of the work environment. [...] this responsibility is not intermittent but constant."¹⁸

¹⁸ *Code of Conduct of the Royal Canadian Mounted Police, Annotated Version 2014, pages 7 and 8.*

[118] I find that, through his misconduct, Constable Martin has repudiated several of the essential core values of the Force including professionalism, which is defined as having “a conscientious awareness of [the Force members’] role, image, skills and knowledge in the commitment to quality client[-]oriented service”; respect, which is the “objective, unbiased consideration and regard for the rights, values, beliefs and property of all people”; and integrity, which is acting “consistently with [the Force’s] other core values”.¹⁹

[119] The police discipline system plays a vital role in maintaining the public’s confidence in the Force. As stated in *Eden*:²⁰

The powers granted a police officer are considerable; the public justifiably expects members of the RCMP to observe the highest ethical and professional standards. This necessarily includes the bedrock expectation that members shall only act to protect the health and safety of Canada’s youth, and shall never deliberately and repeatedly exploit any vulnerable young person. Retention of the Subject Member would clearly imperil the public’s confidence in the Force.

[120] I find that Constable Martin’s actions constitute a fundamental breach of the public trust and a repudiation of his obligations as a member of the RCMP.

CONCLUSION

[121] Given the nature of the established allegation, I simply cannot justify retaining Constable Martin as a member of the RCMP.

[122] Pursuant to paragraph 45(4)(a) of the *RCMP Act*, I direct Constable Martin to resign from the Force. If he fails to do so within 14 days, then I direct his dismissal.

[123] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision on Constable Martin, as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner’s Standing Order (Grievances and Appeals)*, SOR/2014-293.

¹⁹ RCMP core values (date modified: December 3, 2019), online: <https://www.rcmp-grc.gc.ca/en/rcmp-core-values>

²⁰ *Commanding Officer “E” Division v Constable Eden*, 2017 RCAD 7, paragraph 92.

September 24, 2021

Josée Thibault

Date

RCMP Conduct Board