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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:

Chief Superintendent Amanda Jones

Conduct Authority

and

Civilian Member Kristoffer Esteban
Regimental Number C8571

Subject Member

Conduct Board Decision

Gerald Annetts

November 19, 2021

Mr. Denys Morel and Staff Sergeant Chantal Le Dû, Conduct Authority Representatives

Mr. Jeffrey Sanders, Subject Member Representative

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SUMMARY

Civilian Member Esteban was accused of five alleged contraventions of the RCMP Code of Conduct. At issue were tens of thousands of dollars of allegedly unauthorized and non-duty-related purchases made with RCMP funds, misleading descriptions of the items purchased in RCMP records, and providing false or inaccurate information to the Code of Conduct investigator pertaining to those purchases.

The matter proceeded to a conduct hearing via video conference from September 20 to 24, 2021, and the Conduct Board heard from a total of 11 witnesses. Prior to the close of Civilian Member Esteban's defence, the parties requested an adjournment in order to commence discussions to resolve the matter. The parties subsequently submitted a joint proposal that included Civilian Member Esteban admitting one amended allegation, the Conduct Authority withdrawing the other four allegations, and a joint submission on conduct measures. The joint proposal was accepted by the Conduct Board, who imposed conduct measures consisting of a financial penalty of five days' pay and the forfeiture of ten days' annual leave.

INTRODUCTION

[1] The Conduct Authority initiated the conduct hearing in this matter on September 4, 2020. Five allegations of misconduct were made against Civilian Member (CM) Esteban for tens of thousands of dollars of allegedly unauthorized and non-duty-related purchases he made with

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RCMP funds, providing misleading descriptions of the items purchased within RCMP records, and providing false or inaccurate information to the Code of Conduct investigator pertaining to those purchases. The misconduct was alleged to have occurred between February 18, 2016, and September 4, 2020. On September 8, 2020, I was appointed as the Conduct Board and on November 25, 2020, CM Esteban was served with the *Notice of Conduct Hearing*.

[2] Pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], CM Esteban provided his response to the *Notice of Conduct Hearing*. In his response, CM Esteban admitted some of the Particulars, but denied all five allegations. Given the nature of the evidence against CM Esteban and his response to the allegations, I deemed it necessary to hear oral evidence. Therefore, the matter proceeded to a conduct hearing via video conference from September 20 to 24, 2021, and I heard from a total of 11 witnesses. Prior to the close of CM Esteban's defence, the parties requested an adjournment in order to commence discussions to resolve the matter. The parties subsequently submitted a joint proposal that included CM Esteban admitting to one amended allegation and the Conduct Authority withdrawing the other four allegations.

ALLEGATION

[3] The amended allegation reads as follows:

TAKE NOTICE THAT it is alleged that you have committed the following contravention to the Code of Conduct of the Royal Canadian Mounted Police:

Allegation 4: On or between February 18, 2016 and March 5, 2020, at or near Iqaluit, in the Canadian Territory of Nunavut, [CM] Esteban 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 Civilian Member ("C/M") of the Royal Canadian Mounted Police ("RCMP"). You were posted at the Iqaluit detachment in "V" Division, employed as a Wireless Network Technician with the "V" Division Information Management and Information Technology Department (the "IM/IT").

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2. Your duties as a Wireless Network Technician included making various duty related purchases. Purchases within IM/IT were, for the most part, completed by using one of two methods of payment. The first method being by way of invoicing, the second being by way of RCMP issued acquisition cards.

3. C/M Darcie Way was your manager at the time and had expenditure initiation authority.

4. On December 23, 2015, you signed the Desjardins Visa acquisition card application form and as such agreed to the acknowledgement of responsibilities and obligations associated with the card usage.

5. During the alleged period, you made purchases which had not been previously authorized by a manager with the expenditure initiation authority, including the following items, as listed in Appendix 10 of the investigative binder, in the total amount of \$13,049.66.¹

22. Canon 70-200 Zoom Lens (\$1,546.78)

30. Circular polarizer (\$265.59)

33. Sony a7R III 42.4MP Full-Frame Mirrorless camera (\$3,989.97)

50. Sigma Mount Converter MC-11 (\$355.78)

51. 82mm x2 3-Stop Neutral Density (ND) Filter (\$202.97)

52. NiSi 100mm System Filter Kits (\$1,168.00)

54. 77mm X2 3-Stop Neutral Density (ND) Filter - MRC8 - Nano- H-K9L...(\$209.74)

56. JOBY GorillaPod 5K Kit (Professional Tripod 5K Stand and Ballhead 5K for DSLR Cameras or Mirrorless Camera with Lens up to 5K (11 lbs.); Sony RM-VPR1 Remote Control w/Multi-terminal cable (\$278.30)

57. Manfrotto MT055CXPRO4 055 Carbon Fiber 4-Section Tripod with Horizontal Column (\$514.49)

58. Manfrotto XPRO Ball Head with quick release plate; Manfrotto MHXPRO-3W X-PRO 3-Way Head with Retractable Levers and Friction Controls (\$434.64)

61. Metabones Canon EF/EF-S Lens to Sony E Mount T Smart Adapter (\$642.97); 3 ft Mini DisplayPort to DisplayPort 1.2 Adapter Cable (3 @ \$16.30 each + HST) (\$642.97)

¹ This total was subsequently corrected by the parties after the original joint proposal was submitted.

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68. 82mm X2 10-Stop ND Filter for Camera Lenses; 77mm X2 10-Stop ND Filter for Camera Lenses (\$459.66)

69. 67mm X2 6-Stop Neutral Density (ND) Filter - MRC8 - Nano - H-K9L Glass
(\$212.32)

71. Breakthrough Photography 82mm X2 Solid Neutral Density 1.8 Filter (6 Stop) (\$199.56)

73. Sony SEL85F14GM FE 85mm F1.4 GM Lens (\$2519.99)

6. On December 17, 2019, you met with C/M Way and Inspector Jim Mirza. When you were asked about some questionable purchases that you had made, you indicated that you had RCMP property and equipment at your residence. You were directed by Inspector Mirza to return the items to the detachment and subsequently complied with the directive.

7. You brought and kept RCMP property and equipment at your residence, including two adjustable desks, one desktop computer, one photo printer, one office chair and camera lenses. You had not been previously authorized by your manager to bring and keep this equipment at your residence.

8. On March 5, 2020, during your voluntary statement to Sergeant Paul McManus in relation to your Code of Conduct investigation, you provided unreasonable explanations regarding the purchases of the following items: the Canon Pro 1000 printer, the Ergotron sit-stand/ power desks, the printer stands and the office chair for the Critical Incident Room.

9. Your conduct was discreditable.

b. The Subject member admits the amended version of Allegation 4 and its corresponding particulars amounting to discreditable conduct.

c. On the basis of the Subject Member's admissions and the grating of the joint motion to amend allegation 4, the Conduct Authority withdraws allegations 1, 2, 3, and 5 of the Notice of Conduct Hearing dated November 25, 2020.

d. Given the investigative materials filed with the Conduct Board related to the above allegation, the oral testimony heard and the Subject Member's admissions, the parties submit that the allegation of discreditable conduct is established.

[*Sic throughout*]

Decision on the allegation

[4] The particulars contained within the joint proposal submitted by the parties are brief and to the point, which is in stark contrast to the investigative materials that accompanied the *Notice of Conduct Hearing*. The particulars within the joint proposal are also consistent with the testimony provided by the 11 witnesses who testified prior to the adjournment of the conduct hearing. While that testimony is of limited relevance given the resolution proposed by the parties, its consistency confirms the appropriateness of the proposed resolution.

[5] The one allegation now before me alleges a contravention of section 7.1 of the Code of Conduct. The test to establish discreditable conduct includes four stages that the Conduct Authority must meet.

[6] The first stage is to prove on a balance of probabilities that it was CM Esteban who committed the acts in question. Given his admission to the allegation, identity is not in issue in this case.

[7] The second stage of the test for discreditable conduct involves a determination on a balance of probabilities of whether the actions alleged actually took place. Again, given the joint proposal submitted by the parties, I find that the actions contained within the aforementioned particulars were committed by CM Esteban.

[8] The third stage of the test requires a determination on how 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 the behaviour. That threshold of discreditable conduct is met when that reasonable person would view the actions of CM Esteban as likely to discredit the Force. While CM Esteban's admission to discreditable conduct is helpful, it does not end the inquiry. The onus is still on the Conduct Authority to establish the discreditable nature of the misconduct.

[9] CM Esteban's misconduct in this matter essentially amounts to him taking advantage of a lack of financial supervision. Using RCMP funds and without pre-authorization, he made

purchases of items that were either not required to perform his duties or were well in excess of what was necessary to perform his duties. He then, without obtaining prior approval from anyone, stored and used many of those items at his residence without letting anyone know where they were. Finally, when questioned on those purchases during the Code of Conduct investigation, he provided unreasonable explanations.

[10] Every member of the RCMP who is delegated the financial authority to make purchases with an acquisition card receives training as to the responsibilities and obligations that come with that privilege. Even without that training, it should be obvious to any employee who spends the money of his or her employer in the course of their employment, that there is an obligation to purchase only what is needed to perform their duties. The non-existence of proper financial controls in his unit did not give CM Esteban free rein to buy whatever he desired, whether work related or not. He took advantage of a situation where, although he may not have actively concealed his purchases, he knew they were not being reviewed by his supervisor.

[11] In the circumstances, I have no hesitation in reaching the conclusion that a reasonable person, aware of the facts as well as the realities of policing and of the RCMP, would find CM Esteban's actions as likely to bring discredit on the RCMP.

[12] The fourth and final stage of the test is to determine whether the discreditable conduct is sufficiently related to the duties and responsibilities of CM Esteban so as to provide the RCMP with a legitimate interest in imposing conduct measures against him. There is little analysis required here. CM Esteban's actions occurred while he was working and responsible for RCMP funds. There is no doubt under the circumstances that his discreditable conduct is entirely related to his duties and responsibilities as a member of the RCMP. Therefore, the Force has a legitimate interest in imposing conduct measures in order to condemn and deter similar future misconduct.

[13] Consequently, I find that discreditable conduct has been established.

CONDUCT MEASURES

[14] Having found that the allegation is established, subsection 45(4) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], and the *Conduct Measures Guide* require that I 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, educative and remedial rather than punitive”.

[15] In making my determination on the appropriate sanction, I must begin by considering the appropriate range of conduct measures and then take into account the aggravating and mitigating factors present in this case. I am not bound by the decisions of other conduct boards, but previously decided cases of a similar nature do help to establish the applicable range of sanctions. The parity of sanctions principle seeks to ensure fairness so that similar forms of misconduct are treated in a similar fashion. This lends predictability to conduct matters. In addition, the *Conduct Measures Guide* is available for guidance on considerations around the imposition of conduct measures. However, it is not binding or determinative as it is just that, a guide.

[16] The parties’ joint submission on sanction suggested that the significant mitigating factors present in CM Esteban’s case reduced the appropriate conduct measures below the 30 to 45 days ordinarily appropriate in the *Conduct Measures Guide* for these circumstances. The joint submission calls for a financial penalty of five days to be deducted from his pay pursuant to paragraph 5(1)(j) of the *CSO (Conduct)* and a forfeiture of ten days of annual leave pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*.

[17] When presented with a joint submission on conduct measures, I am bound to accept it unless it is clearly unreasonable or not in the public interest. That obligation was explained this way by the Supreme Court of Canada in *R. v Anthony-Cook*, 2016 SCC 43, at paragraph 32:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[18] In order to determine whether the proposed sanction is unreasonable or would bring the administration of justice into disrepute, I must consider the aggravating and mitigating factors. In terms of aggravating factors, the parties submitted the following:

- a. CM Esteban signed the Visa acquisition card application form on December 23, 2015; as such, he agreed to the acknowledgement of responsibilities and obligations associated with the card usage.
- b. CM Esteban had previous experience in “O” Division and understood his responsibilities and obligations associated with the acquisition card.
- c. Overall, CM Esteban’s misconduct was not an isolated incident and unfolded over a period of several years (from February 18, 2016, to March 5, 2020).

[19] In terms of mitigating factors, the parties submitted the following:

- a. CM Esteban is a reputable employee and is appreciated by his peers.
- b. At the time of this misconduct, there was a lack of supervision and the applicable procedures and policy were not systematically followed by management.
- c. CM Esteban’s performance evaluations have been consistently positive from the time he joined the RCMP on April 9, 2009, and he has no prior discipline.
- d. CM Esteban now has the support of the Commanding Officer to return to work.

[20] I accept the aforementioned aggravating and mitigating factors. I add that it was the lack of supervision and failure to follow established procedures and policies that allowed CM Esteban to make the purchases he made without being questioned. I also add one important factor that I consider to be mitigating: the witness testimonies at the conduct hearing did not support the five serious allegations of misconduct made against CM Esteban in the *Notice of Conduct Hearing*.

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Had the Conduct Authority's main witness's evidence been subjected to more scrutiny during the course of the Code of Conduct investigation, or subsequent review, this hearing may have been avoided altogether and this matter could have been concluded with a conduct meeting long ago. Therefore, CM Esteban has had this conduct hearing hanging over his head unnecessarily for far too long.

[21] Those comments should not be interpreted as me implying that CM Esteban's fault in this matter is somehow lessened. It is not. He took advantage of a situation in which he felt he could get away with purchasing whatever he wanted in order to perform his duties and indeed he did get away with it for years. He made unnecessary and extravagant purchases with money that did not belong to him and his behaviour certainly requires correction.

[22] I find that the joint submission on conduct measures presented by the parties is appropriate to the misconduct when the aggravating and mitigating factors are considered. In my view, it will send the necessary message of denunciation and deterrence, while acknowledging that CM Esteban is a valuable employee who deserves a second chance. Therefore, its acceptance would not bring the administration of justice into disrepute. Nor is it otherwise contrary to the public interest. Consequently, I accept the joint submission.

DECISION

[23] The allegation against CM Esteban is established. I impose the following conduct measures:

- a. pursuant to paragraph 5(1)(j) of the *CSO (Conduct)*, a financial penalty of 5 days to be deducted from his pay;
- b. pursuant to paragraph 5(1)(i) of the *CSO (Conduct)*, a forfeiture of 10 days of annual leave.

[24] 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 CM Esteban, as set out in section

45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Order (Grievances and Appeals)*, SOR/2014-289.

November 19, 2021

Gerald Annetts

Edmonton, Alberta

Conduct Board