



**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, "D" Division**

Conduct Authority

and

**Constable Jason Kitzul**  
Regimental Number 54614

Subject Member

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**Conduct Board Decision**

Kevin Harrison

January 4, 2023

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Mr. Jordan Levis-Leduc, Ms. France Saint-Denis, Sergeant Nycki Basra and Dr. Janice Calzavara, Conduct Authority Representatives

Mr. Josh Weinstein, Subject Member Representative

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## **SUMMARY OF FINDINGS**

The *Notice of Conduct Hearing* contained seven allegations under section 7.1 of the Code of Conduct against Constable Jason Kitzul. These allegations relate to one incident of impaired operation of a motor vehicle and six allegations of verbal and/or physical abuse of the Constable Kitzul's intimate partner. The Conduct Board found Allegations 1, 2, 3, 4 and 7 established on a balance of probabilities. Allegations 5 and 6 were not established. Pursuant to paragraph 45(4)(b) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, the Conduct Board directed Constable Kitzul to resign from the RCMP. If Constable Kitzul fails to resign, then the Conduct Board orders Constable Kitzul's dismissal.

## **INTRODUCTION**

[1] On March 25, 2020, the “D” Division Conduct Authority signed a *Notice to the Designated Officer*, in which she requested the initiation of a conduct hearing in relation to this matter. On March 27, 2020, the Designated Officer appointed me as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] The Conduct Authority signed the *Notice of Conduct Hearing* on July 17, 2020. The *Notice of Conduct Hearing* contained seven allegations of discreditable conduct under section 7.1 of the Code of Conduct. These allegations relate to one incident of impaired operation of a motor vehicle and six allegations of verbal and/or physical abuse of the complainant, Ms. D.R., who was Constable Kitzul’s intimate partner during the relevant time frame.

[3] Constable Kitzul denied all seven allegations.

[4] For the allegations phase of this proceeding, I heard evidence in Dauphin, Manitoba, between October 4 and 7, 2021. The parties provided their submissions in writing. I received the Conduct Authority’s final reply submission on January 13, 2022. I delivered my written decision on the allegations to the parties on April 12, 2022. I found Allegations 1, 2, 3, 4 and 7 established on a balance of probabilities. Allegations 5 and 6 are not established.

[5] I heard the parties’ submissions in the conduct measures phase of the conduct hearing held by videoconference on October 25, 2022. Pursuant to paragraph 45(4)(b) of the *RCMP Act*, I directed Constable Kitzul to resign from the RCMP, and in default of resigning within 14 days, dismissal.

## **APPLICATIONS AND MOTIONS**

### **Application to admit similar fact evidence**

[6] Allegation 7 alleges that Constable Kitzul lit Ms. D.R.’s hair on fire. Two witnesses interviewed during the Code of Conduct investigation mentioned that Constable Kitzul lit Constable Kitzul’s former common-law partner’s, Ms. L.Y., hair on fire while they were together. Investigators did not interview Ms. L.Y. during the statutory or Code of Conduct investigations. The Conduct Authority wished me to issue a summons for Ms. L.Y. to provide evidence at the

conduct hearing. However, in the absence of a statement from her, I was unable to determine whether Ms. L.Y.'s testimony was material and necessary to resolve a conflict in the evidence. On August 12, 2021, I issued a direction for further investigation to obtain a statement from Ms. L.Y.

[7] The Conduct Authority delivered Ms. L.Y.'s statement on September 3, 2021. Constable Kitzul objected to the presentation of the statement on the basis that it contained prejudicial information that was beyond the scope of my direction. At my direction, the parties delivered a vetted version of the statement on September 15, 2021. Constable Kitzul further opposed the admission of Ms. L.Y.'s evidence. On September 17, 2021, the Conduct Authority submitted a formal application to admit the similar fact evidence of Ms. L.Y. I denied the application because the Conduct Authority did not demonstrate on a balance of probabilities that the similar act offered evidence that was so relevant and cogent that its probative value in search of the truth outweighed any potential for misuse or prejudice to Constable Kitzul.

#### **Motion to adjourn the conduct measures phase of the conduct hearing**

[8] On October 13, 2022, the Subject Member Representative presented a motion requesting a six-month adjournment to the conduct measures phase of the conduct hearing to allow Constable Kitzul an opportunity to make an application for a medical discharge. The Conduct Authority opposed the request.

[9] The parties provided written submissions. I denied the motion on the basis that the conduct and medical discharge processes are distinct processes with different purposes. Within the conduct process, the interests of the public, the RCMP, as an employer and a public body, and the third-party complainants, Ms. D.R. and her parents, outweighed Constable Kitzul's interests.

#### **ALLEGATIONS**

[10] The *Notice of Conduct Hearing* contained the following seven allegations and corresponding particulars:

##### **Particulars common to all allegations:**

- At all material times, you were a regular member of the Royal Canadian Mounted Police ("RCMP") posted at Roblin Detachment in "D" Division.

- You were involved in a romantic relationship with Ms. [D.R.]. Ms. [D.R.] resided in Pelican Landing, in the Province of Saskatchewan. You lived in Roblin, in the Province of Manitoba.

### **Allegation 1**

On or between January 1, 2018, and December 11, 2018, at or near Roblin, in the Province of Manitoba, Constable Jason Kitzul 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 of Allegation 1**

1. During the course of your relationship, you verbally abused and belittled Ms. [D.R.] by stating words to the effect of:
  - a) She couldn't think for herself and could not make her own decisions;
  - b) She was overweight;
2. During the course of your relationship, you physically abused Ms. [D.R.]. More specifically:
  - a) On one occasion, while outside your residence in approximately August of 2018, you assaulted Ms. [D.R.] by pushing her lawn chair down (which caused her to fall on her back) and placing Ms. [D.R.] in a headlock. The level of force you used was sufficient to cause Ms. [D.R.] to choke and cough.
  - b) On another occasion, while attending Ms. [D.R.]'s parents' residence during the "labour day classic weekend",<sup>1</sup> you assaulted Ms. [D.R.] by wrestling her to the ground and placing her arm behind her back. You did not release Ms. [D.R.] until she stated words to the effect of "Jason is the king". The level of force you used was sufficient to cause pain to Ms. [D.R.].
  - c) On another occasion, while playing darts in the basement of your residence with Ms. [D.R.] and her parents, between January and March 2018, you assaulted Ms. [D.R.] by striking her buttocks and legs with various items such as a plastic hockey stick and plastic railway track. The level of force you used was sufficient to cause bruising to Ms. [D.R.].

### **Allegation 2**

On or between January 1, 2018, and February 28, 2018, at or near Roblin, in the Province of Manitoba, Constable Jason Kitzul 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*.

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<sup>1</sup> The "labour day classic weekend" is an expression synonymous with a number of classic rivalry football games played over the Labour Day Weekend in the yearly schedule of the Canadian Football League. In this case, the rivalry game was between the Winnipeg Blue Bombers and the Saskatchewan Roughriders.



### **Particulars of Allegation 2**

1. At all material times, you and Ms. [D.R.] frequently socialized in the basement of your residence.
2. While in the basement of your residence, you shot Ms. [D.R.] with a “bb gun”, striking her hip and legs. The force with which the projectile struck Ms. [D.R.] was sufficient to cause bruising on her hip.
3. On another occasion, while in the basement of your residence, Ms. [D.R.] hid underneath the bar in your basement to avoid being shot by your “bb gun”. You began shooting the wall near Ms. [D.R.] while waiting for her to come out of hiding. You eventually stopped shooting the wall and allowed Ms. [D.R.] to come out of hiding.
4. Your actions caused Ms. [D.R.] to fear entering or exiting your basement, as she feared you would shoot her with your “bb gun”.
5. A “bb gun” falls within the definition of a “weapon” as provided by Section 2 of the Criminal Code.
6. By shooting Ms. [D.R.] with a “bb gun”, you committed an assault with a weapon on Ms. [D.R.].
7. On June 6, 2019, you were charged for assaulting Ms. [D.R.] with a weapon, contrary to Section 267 of the Criminal Code.

### **Allegation 3**

On or about March 27, 2018, at or near Lake of the Prairies, in the Province of Manitoba, Constable Jason Kitkul 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 of Allegation 3**

1. At approximately [2:30 p.m.], you attended Mr. [D.R.]’s fishing cabin<sup>2</sup> situated on Lake of the Prairies with Ms. [D.R.] to go ice fishing.
2. You consumed alcohol throughout your time in the fishing cabin and became intoxicated.
3. At approximately [8:20 p.m.], as you were preparing to leave the fishing cabin, you approached Ms. [D.R.] and struck her twice in the ribs and once on the top of her head with your closed fist.
4. Your actions caused physical pain to Ms. [D.R.], who verbalized her discomfort by stating words to the effect of “that hurts, ouch”.

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<sup>2</sup> A fishing cabin is synonymous with a permanent structure placed on the shore of a body of water. The structure in which this allegation took place in what is commonly referred to as a fishing shack. A fishing shack is a portable structure which is placed on the ice of body of water, usually a lake, which is used for shelter while ice fishing. Nevertheless, I have referred to the structure as a fishing cabin throughout this decision for consistency purposes.

5. By striking Ms. [D.R.] in the ribs and on the top of her head, you committed an assault on Ms. [D.R.].
6. On June 6, 2019, you were charged for Assault, contrary to Section 266 of the Criminal Code.

#### **Allegation 4**

On or about March 27, 2018, at or near Lake of the Prairies, in the Province of Manitoba, Constable Jason Kitkul 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 of Allegation 4**

1. At approximately [2:30 p.m.], you drove your vehicle onto the ice of Lake of the Prairies to attend Mr. [D.R.]’s fishing cabin to go ice fishing.
2. You consumed alcohol throughout your time in Mr. [D.R.]’s fishing cabin and became intoxicated. On a scale of 1 to 10, Ms. [D.R.]’s described your level of intoxication as a 9.5.
3. At approximately [8:30 p.m.], you drove your vehicle back to your residence. Ms. [D.R.] followed you in her vehicle for some time.
4. During the time Ms. [D.R.] followed you, she witnessed you driving erratically. Your erratic driving included the following:
  - a) “all over the road”;
  - b) “[...] from one side to the other, across the line, everything. Like, the gravel road was horrifying. He was on one side and there’s a slope on parts of this road and the highway that... I mean, you go off that side, you’re rolling down the hill and stuff, but he was, from white line to white line [...]”.
5. You operated a motor vehicle while impaired by alcohol.
6. On June 6th, 2019, you were charged for the impaired operation of a motor vehicle, contrary to Section 253 of the Criminal Code.

#### **Allegation 5**

On or about July 7, 2018, at or near Pelican Landing, in the Province of Saskatchewan, Constable Jason Kitkul 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 of Allegation 5**

1. You and Ms. [D.R.] attended Ms. [D.R.]’s parents’ residence in Pelican Landing for a social gathering.
2. You consumed alcohol during the gathering and became intoxicated.
3. During the gathering, you walked by Ms. [D.R.] and struck her shoulder with your closed fist.

4. Your actions caused physical pain to Ms. [D.R.], who verbalized her discomfort by stating words to the effect of “ouch”.
5. By striking Ms. [D.R.] in the shoulder, you committed an assault on Ms. [D.R.].

### **Allegation 6**

On or about November 27, 2018, at or near Roblin, in the Province of Manitoba, Constable Jason Kitzul 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 of Allegation 6**

1. While celebrating the results of your hunting expedition at your residence, Ms. [D.R.] arrived and informed you that she had fell on the ice and hurt her wrist.
2. Later that evening, while watching television in your residence with Ms. [D.R.] and your friend Mr. [M.M.], you began experiencing hiccups. Ms. [D.R.] began teasing you about having hiccups and attempted/pretended to plug your nose with her hand.
3. You became annoyed/upset with Ms. [D.R.]. You grabbed Ms. [D.R.]’s injured arm by and “twisted it all the way around”, which caused Ms. [D.R.] to scream in pain.
4. Your actions caused Ms. [D.R.] injury to worsen.
5. By twisting Ms. [D.R.]’s arm, you committed an assault on Ms. [D.R.].

### **Allegation 7**

On or about December 6, 2018, at or near Roblin, in the Province of Manitoba, Constable Jason Kitzul 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 of Allegation 7**

1. While playing darts in the basement of your residence with Ms. [D.R.]’s, Ms. [D.R.] began texting on her cellphone.
2. As Ms. [D.R.] was texting, she saw a flash of light in her peripheral vision. The flash was caused by you lighting her hair on fire with a lighter.
3. You burned a portion of Ms. [D.R.]’s hair, thus damaging it and creating a hole of missing/burnt hair.
4. By lighting Ms. [D.R.]’s hair on fire, you committed an assault on Ms. [D.R.].

[*Sic throughout*]

[11] The Conduct Authority has the onus of establishing the allegations on a balance of probabilities. This means that I must find that it is more likely than not that Constable Kitzul contravened a provision of the Code of Conduct. This burden is met with sufficiently clear, convincing and cogent evidence.

## **CREDIBILITY OF THE WITNESSES**

[12] The evidence before me in this proceeding is predominantly witness testimony. During the allegations phase of the conduct hearing, I heard from eight witnesses. Ms. D.R., Mr. D.R., Mrs. G.R. and Constable Kitzul were the primary witnesses. The evidence of the remaining witnesses, Mr. J.B., Uncle D.R., Mrs. F.E. and Constable J.B.,<sup>3</sup> supplemented the evidence of the primary witnesses. I begin my assessment of the witnesses' credibility by setting out some of the legal principles applicable to this task.

### **Applicable legal principles to determine the credibility and reliability of evidence**

[13] In assessing witness credibility, I must consider whether the witnesses are being truthful and whether their evidence is reliable. I may find a witness truthful, but unreliable. It is open to me to accept some, none or all of a witness's evidence on a given point. In assessing credibility, I must consider the totality of the evidence. I cannot base my assessment of a witness's evidence solely on their demeanour. Rather, I must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts. The determination of whether a witness's evidence has an air of reality is subjective, but it must be grounded on the totality of the evidence. Finding that one party is credible may be a conclusive result on important issues, because believing one party will mean explicitly or implicitly that I do not believe the other party.

### **Credibility of Constable Kitzul**

[14] Constable Kitzul was not a credible witness for several reasons.

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<sup>3</sup> Prior to the conduct hearing, Constable J.B. was promoted to corporal. For the sake of clarity in this decision, I will refer to him as constable since that is how he is referred to in the record prior to the hearing and in the testimonies at the hearing.

[15] Constable Kitzul has asked me to find none of the Conduct Authority's witnesses credible because they were unable to recall specific details of events, dates or times in their testimony. Furthermore, Constable Kitzul has asked me to find Constable Kitzul credible. At paragraph 94 of Constable Kitzul's submission, Constable Kitzul states:

[...] For an individual having to recall specific dates from three years in the past, dates and events that either never transpired or were innocuous at the time, [Constable] Kitzul presented as an honest witness. [Constable Kitzul's] lack of memory on events was not [Constable Kitzul] being evasive or not forthright [...]

[16] The memory of all the witnesses was clearly faded due to the passage of time. No one, including Constable Kitzul, anticipated Ms. D.R.'s decision to file a complaint against Constable Kitzul. The events occurring during the two-year-long relationship were simply part of the everyday life of everyone involved in this matter. No one kept a notebook.

[17] Constable Kitzul submitted that it is unreasonable for me to find Constable Kitzul not credible because Constable Kitzul cannot recall incidents that Constable Kitzul says never occurred. I agree. However, the number of events that Constable Kitzul acknowledges occurred or were at least possible far exceed those Constable Kitzul denies occurred.

[18] The Conduct Authority suspended Constable Kitzul from duty with pay on May 3, 2019.<sup>4</sup> Since then, Constable Kitzul's lone duty was to prepare for this proceeding. Constable Kitzul received the *Notice of Conduct Hearing* on July 31, 2020. Constable Kitzul knew then that dismissal from the RCMP was a possibility. Yet, Constable Kitzul appears to have made little effort, including not reading all of the investigation report and supporting material, to assist Constable Kitzul's cause by finding ways to appropriately enhance Constable Kitzul's recollection of events. Constable Kitzul's inability to recall almost any significant event in Constable Kitzul's two-year relationship with Ms. D.R. was problematic throughout Constable Kitzul's testimony. For example, Constable Kitzul testified to having had four operations to fix ongoing shoulder problems that were a significant long-term cause for concern, yet Constable Kitzul was unable to provide even the year in which any one of these surgeries occurred.

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<sup>4</sup> The Conduct Authority signed the *Order of Suspension* on April 29, 2019. The *Order of Suspension* was served on Constable Kitzul on May 3, 2019. The *Order of Suspension* became effective upon service on Constable Kitzul.

[19] I also wish to clarify a comment made at paragraph 78 of Constable Kitzul's submission on the allegations, with reference to page 62 of the transcript of Constable Kitzul's testimony on October 6, 2021. The paragraph reads as follows:

[Constable] Kitzul presented as a fair, credible, and reliable witness. From the outset, **[Constable Kitzul] was mindful and respectful of the conditions the [conduct board] imposed on [Constable Kitzul], such as not to identifying [Constable Kitzul] as an officer,** and was forthright in answering questions. [Emphasis added]

[20] When I was swearing Constable Kitzul in as a witness, I asked Constable Kitzul to identify Constable Kitzul for the record by stating Constable Kitzul's name, rank, regimental number and current posting. These are standard straightforward questions asked of RCMP witnesses. Constable Kitzul responded by saying:

I'm currently not able to identify myself as a police officer because of conditions so I can tell you what my reg[imental] number was and what my ranking was at the time of my last post, if that makes sense to you. That's part of my conditions.

[21] The conditions Constable Kitzul referred to are not conditions imposed on Constable Kitzul by me. Constable Kitzul's response appears to be the result of Constable Kitzul's interpretation of the conditions contained in the *Order of Suspension* issued on April 29, 2019. The conditions are the standard conditions included within an *Order of Suspension*. They read as follows:

[...]

You are further directed to not:

- Wear or use any RCMP-issued article, uniform or equipment;
- Exercise the power or authority of a peace officer;
- Perform any police duties, except as may be specified, e.g. court attendance; or
- **Represent yourself as a police officer.**

[...] [Emphasis added]

[22] This was my introduction to Constable Kitzul as a witness. Constable Kitzul demonstrated an inability or unreasonable refusal to respond properly to the simplest of questions, like this one,

numerous times during Constable Kitzul's testimony. The Conduct Authority identified this issue in her submissions. This contributed to my assessment of Constable Kitzul's credibility.

[23] The Conduct Authority also pointed out that Constable Kitzul did not seem to take the proceeding seriously. Constable Kitzul was evasive, argumentative, not forthright and displayed arrogance. I agree with this assessment.

### **Credibility of the Conduct Authority witnesses**

[24] The Conduct Authority did not address the credibility of her witnesses, except for Ms. D.R. in her original submission, but she did in reply to Constable Kitzul's submission. Constable Kitzul submitted that I should find none of the Conduct Authority's witnesses credible.

[25] As a general comment, I find that the Conduct Authority's witnesses appear to be conservative, honest, hardworking and law-abiding people who enjoy simple pursuits. Family and friends appear to be very important to them.

[26] I will add that most of the Conduct Authority's witnesses had an unfavourable opinion of Constable Kitzul because they had had at least one bad encounter with Constable Kitzul that was unrelated to the allegations. Consequently, several of them wished to have little to do with Constable Kitzul. Their limited observations of Constable Kitzul in the relationship with Ms. D.R. simply solidified their already poor opinion of Constable Kitzul. They are entitled to their opinion. I do not find that they exaggerated their evidence or lied because of this.

*Ms. D.R.*

[27] I find that Ms. D.R. was a credible witness.

[28] The Conduct Authority said that Ms. D.R. was credible primarily because she was forthright about her participation in the "physicality" of the relationship with Constable Kitzul.

[29] Constable Kitzul submitted that Ms. D.R. was not a credible witness. She was vague and unreliable. Her statements contain numerous inconsistencies. Her testimony was also inconsistent with those statements and with the testimony of other witnesses. Ms. D.R. minimized her actions

by recalling inflammatory details about Constable Kitzul, but having minimal recollection of her own actions that could have shed a negative light on her.

[30] Constable Kitzul relied heavily on Constable Kitzul's claim that Ms. D.R. was motivated to lie because her family pressured her to report the matter to the RCMP. Prior to the family pressuring her to report the matter, Ms. D.R. did not classify her relationship with Constable Kitzul as unhealthy or abusive. Constable Kitzul supported this claim by stating that Ms. D.R. was texting Constable Kitzul about seeing a moose on the way to make her report to the RCMP. Constable Kitzul claimed that this is consistent with her agreement in cross-examination that her conversations and discussions with Constable Kitzul were "normal and fine". This also supports Constable Kitzul's testimony that Constable Kitzul felt "in the dark" and shocked when informed of Ms. D.R.'s complaint.

[31] Constable Kitzul also noted that Ms. D.R.'s social media posts throughout this process became exceedingly aggressive towards the judicial system and Constable Kitzul.

[32] I agree that there are inconsistencies between Ms. D.R.'s statements and that her testimony is inconsistent with other witnesses; however, there is no rule to determine when inconsistencies will cause a trier of fact to conclude a witness is not credible or reliable. I must consider the totality of the evidence to determine the impact of the inconsistencies. Most of the inconsistencies are not significant.

[33] As for the issue of family pressure, I do not find that Ms. D.R.'s family pressured her to file the complaint against Constable Kitzul or to see her relationship with Constable Kitzul in a negative light when she previously did not. The text messages with her mother following the incident in the fishing cabin (Allegations 3 and 4) demonstrate that Ms. D.R. had concerns about the relationship and Constable Kitzul's behaviour as early as the end of March 2018. Ms. D.R.'s text message about seeing the moose clearly occurred prior to her unexpected decision to file a complaint about Constable Kitzul, not on the way to make the complaint as Constable Kitzul suggested. Consequently, the alleged family pressure has no bearing on her credibility.

[34] With respect to the social media posts, Ms. D.R. identified herself as a victim of Constable Kitzul's actions. She was clearly unhappy and frustrated with the criminal and RCMP conduct



processes. The criminal process took too long and no one in the process kept her informed or seemed to care about her. The production and posting of the videos was her way of venting her frustration.

*Mr. D.R. and Mrs. G.R.*

[35] Mr. D.R. and Mrs. G.R. are Ms. D.R.'s parents. Mr. D.R. first met Constable Kitzul before Constable Kitzul started dating Ms. D.R. Constable Kitzul was on-duty attending an accident scene alone. Mr. D.R. stopped to assist Constable Kitzul. Mrs. G.R. only met Constable Kitzul after Ms. D.R. began dating Constable Kitzul. The parties' submissions and my assessment of their credibility are essentially the same for both, so I will address their credibility together. I find that they were both credible witnesses.

[36] Constable Kitzul claimed that Mr. D.R. and Mrs. G.R. were not credible witnesses. Mr. D.R. had a clear dislike for Constable Kitzul. He blamed Constable Kitzul for "all of the negative changes he saw in his daughter without considering other causes or pressures that could have caused these changes". Mrs. G.R. also blamed Constable Kitzul for the decline in her husband's health and many of her personal family issues. Constable Kitzul suggested that they were motivated to exaggerate or lie to have Constable Kitzul lose Constable Kitzul's job.

[37] The Conduct Authority claimed that Mr. D.R. and Mrs. G.R. were credible. She said that almost all of Constable Kitzul's submissions were either incorrect or not supported by the evidence. I agree and I find that both Mr. D.R. and Mrs. G.R. were credible.

[38] The evidence does not support the claim that Mr. D.R. and Mrs. G.R. were motivated to exaggerate their evidence because of their dislike of Constable Kitzul. The evidence is overwhelming that Mr. D.R.'s and Mrs. G.R.'s sole motivation was to protect their daughter. At no time did either of them say they disliked Constable Kitzul. Their concern was that Ms. D.R.'s relationship with Constable Kitzul was destructive. They saw their daughter go from a healthy, vibrant, capable, "bubbly" young person to someone that was argumentative, irritable, angry, withdrawn and bitter. She was drinking heavily. She was on the verge of losing her job. Mr. D.R.'s concern for his daughter also significantly affected his health.

[39] The claim that Mr. D.R. and Mrs. G.R. were motivated to exaggerate their evidence to get Constable Kitzul in trouble overlooks the simple fact that reporting Constable Kitzul to the RCMP was not the only option available to them at the time. Ms. D.R.'s family and friends could have simply encouraged her to end the relationship with Constable Kitzul. No one other than Mrs. G.R. even mentioned this possibility. Clearly, Mr. D.R., Mrs. G.R., their family and friends thought that something more was required, which was reporting the matter to the police. The objective advice given to them by Constable J.B. undoubtedly influenced their decision to make a formal complaint rather than making an informal report to Constable Kitzul's Detachment Commander, whom several of the witnesses knew personally. I find that they were motivated to do the right thing and, accordingly, told the truth to the best of their knowledge and ability.

*Mrs. F.E.*

[40] Mrs. F.E. is Mrs. G.R.'s mother and Ms. D.R.'s 76-year-old grandmother. Mrs. F.E. had memory lapses related to age and the passage of time. She had a clear dislike of Constable Kitzul for several reasons, including an incident in which she said Constable Kitzul bullied her into fishing, but she also felt bad for Constable Kitzul. Her evidence is not overly significant. Nevertheless, I find her credible.

*Uncle D.R.*

[41] Uncle D.R. is Mr. D.R.'s brother and Ms. D.R.'s uncle. He met Constable Kitzul when Constable Kitzul arrived in Roblin. His involvement with Constable Kitzul was primarily through minor hockey. Their sons played on the same team every second year. They also met casually through mutual acquaintances. Uncle D.R. had an unfavourable opinion of Constable Kitzul. Neither party addressed his credibility in their submissions. Subject to the faded memory qualifications attributable to all witnesses, I find that he was a credible witness.

*Mr. J.B.*

[42] Mr. J.B. is a friend of Ms. D.R.'s family. He has known Ms. D.R. since birth. Mr. J.B. was the first person Constable Kitzul met when Constable Kitzul came to Roblin 12 years earlier. Mr. J.B.'s brother is an RCMP member, who worked with Constable Kitzul at Lynn Lake

Detachment. Neither party addressed his credibility in their submissions. Subject to the faded memory qualifications attributable to all witnesses, I find that he was a credible witness.

*Constable J.B.*

[43] Constable J.B. is a member of the RCMP stationed in “F” Division. He is Mr. J.B.’s son. He is originally from Roblin, Manitoba. He was off-duty on medical leave when he became involved in this matter. Most of his testimony focused on his actions and obligations as an off-duty police officer with respect to the reporting of this matter. I did not find him to be overly credible. His evidence is of limited value in any event.

*Assignment of weight to the statements of Ms. T.K. and Mr. D.E.*

[44] The parties addressed evidentiary issues relating to the evidence of Ms. T.K. and Mr. D.E. in their submissions. Ms. T.K. is a family friend of Mr. D.R. and Mrs. G.R. She was present at the “labour day classic weekend” party hosted by Mr. D.R. and Mrs. G.R. Mr. D.E. is Ms. D.R.’s grandfather. He was present at the social gathering referred to in Allegation 5. Both Ms. T.K. and Mr. D.E. provided a statement during the Code of Conduct investigation. The statements are in the record. I issued a summons for both of them to attend the conduct hearing in person. Mr. D.E. was unable to attend due to health concerns. Ms. T.K. was unable to attend because she was out of the country. Due to the late notice of her inability to attend, her attendance by videoconference did not occur.

[45] The Conduct Authority asked me to accept the contents of Ms. T.K.’s and Mr. D.E.’s statements as evidence in the proceeding. Constable Kitzul argued that I should not accept them or give them no weight if I do. Constable Kitzul said that a conflict in the evidence existed. Constable Kitzul further stated that Constable Kitzul did not have the ability to test their evidence through cross-examination, which is an essential function of the truth-finding purpose of a conduct hearing.

[46] I will not delve into this issue with a lengthy legal analysis. Subsection 23(1) of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], provides for conduct boards to render a decision on an allegation without hearing testimony. In such cases, the conduct board bases their decisions on the record. This is a rare occurrence. The amended

legislation purposely excluded the right to cross-examination found in the previous RCMP discipline process. Currently, conduct boards issue witness summons under their authority and approval (per subsections 24(3) and 45(2) of the *RCMP Act*) to assist them in performing their role as set out in subsection 45(1) of the *RCMP Act*. Normally this will occur when the witness is necessary and material to resolving a serious conflict in the evidence.

[47] Mr. D.E.'s evidence related primarily to Allegation 5, for which a serious conflict in the evidence existed. He provided his statement jointly with Mrs. F.E. Although I appreciate why the investigator may have done this, it is inappropriate because it is difficult to ascertain his evidence without proper examination and cross-examination at the hearing.

[48] Ms. T.K.'s evidence related primarily to Particular 2.b of Allegation 1. Other evidence in relation to this particular existed. Nevertheless, I take nothing more from her statement than she was present during the incidents set out in that particular. She observed certain behaviours that she thought were inappropriate. She and her husband would not engage in such behaviour. Despite asking me to ignore her evidence, Constable Kitzul included the same "take away" from her statement in Constable Kitzul's written submission.

## **FACTS UNDERLYING ALL ALLEGATIONS**

[49] Here are my findings of fact relevant to all seven allegations. I draw these findings from the evidence presented by the witnesses.

[50] At all material times, Constable Kitzul was a member of the Royal Canadian Mounted Police. Constable Kitzul transferred to Roblin Detachment, "D" Division, in the late spring of 2010, where Constable Kitzul performed general policing duties until Constable Kitzul's suspension from duty with pay on May 3, 2019.

[51] Constable Kitzul has two children, a boy and a girl, from a previous relationship.

[52] Constable Kitzul and Ms. D.R. met during a group fishing trip in the late summer of 2016. They began dating in late September 2016. The relationship ended on December 11, 2018, when Ms. D.R. and members of her family attended Langenburg Detachment to file a police report

regarding Constable Kitzul's alleged abusive and assaultive behaviour towards Ms. D.R. The matters relating to all seven allegations occurred within the context of this relationship.

[53] Throughout the relevant time, Constable Kitzul and Ms. D.R. maintained separate residences. Constable Kitzul lived in Roblin, Manitoba. Ms. D.R. lived in Pelican Landing, Saskatchewan. Ms. D.R. lived across the street from her parents, Mr. D.R. and Mrs. G.R.

[54] Ms. D.R. was a civilian employed in the agricultural industry. Her father worked for the same company.

[55] The following four pivotal events defined the relationship between Constable Kitzul and Ms. D.R.:

- a) Constable Kitzul's shoulder surgery (possibly in November 2016);
- b) The incident in the fishing cabin (Allegation 3 – March 2018);
- c) The "hair burning" incident (Allegation 7 – November 2018); and
- d) "The intervention" (December 11, 2018).

[56] From their first meeting, Constable Kitzul and Ms. D.R.'s relationship included mutual and consensual roughhousing behaviour. They often wrestled with each other and/or Constable Kitzul's children. The wrestling matches included a ritual in which Constable Kitzul would pin the children or Ms. D.R. to the ground. Constable Kitzul would release them if they submitted by saying, "Jason is the King". Constable Kitzul and Ms. D.R. frequently punched, slapped or pinched each other playfully. These behaviours took place in private, during gatherings of family and friends and, on occasion, public venues like a golf tournament. Several witnesses, including Ms. D.R., characterized their mutual behaviour as that of "grade 7 or 8's". I adopt that assessment.

[57] Constable Kitzul and Ms. D.R. enjoyed many of the same interests. They liked outdoor activities such as fishing, hunting, "quadding", snowmobiling and campfires. Indoors, they frequently played cards, board games and darts. They were competitive in these pursuits. Much of the aforementioned punching, slapping and pinching occurred in this context. They also "trash talked" each other as part of this competitive spirit.

[58] Constable Kitzul had one of several shoulder surgeries while dating Ms. D.R. (possibly in November 2016). He was off-duty on medical leave for a time before returning to work on light

duties. He returned to full duties approximately 12 months after starting light duties. For the most part, Constable Kitzul did not enjoy the period of time on light duties.

[59] The relationship began to deteriorate shortly after Constable Kitzul's shoulder surgery. The deterioration intensified in late 2017 and into early 2018. All of the allegations in the *Notice of Conduct Hearing* are in 2018. These demonstrate a continuing decline in the relationship. Several short-lived breakups also occurred within the March to December 2018 time frame.

[60] Ms. D.R.'s response to the assault in the fishing cabin in March 2018 is the first occasion in the evidence where she expressed concerns about Constable Kitzul's behaviour to her parents. This incident caused Ms. D.R.'s parents to take more notice of Ms. D.R.'s wellbeing.

[61] While others, like Mr. D.R., said that the assault in the fishing cabin scared Ms. D.R., the "hair burning" incident is the first occasion Ms. D.R. said in evidence that she was afraid of Constable Kitzul's actions. Regardless, both incidents had a significant impact on her.

[62] On December 11, 2018, an important meeting took place. On this day, Mr. D.R. took Ms. D.R. to Mr. J.B.'s farm on their return from an out-of-town work trip. Mrs. G.R., Uncle D.R. and his spouse, Mr. J.B. and Constable J.B. were present when they arrived. Uncle D.R. had prearranged the meeting at Mr. D.R.'s request and without Ms. D.R.'s knowledge. The purpose of the meeting was for the attendees to inform Ms. D.R. about their concerns with her relationship with Constable Kitzul. The parties referred to this meeting as the "intervention"<sup>5</sup> throughout the hearing and in their submissions. Following the intervention, Ms. D.R. and several of the attendees drove to Langenburg Detachment to file a police report. Prior to the police report, no one, including Ms. D.R., told Constable Kitzul that Constable Kitzul's behaviour was inappropriate or to stop.

[63] On June 6, 2019, the RCMP laid criminal charges for assault, assault with a weapon and impaired operation of a motor vehicle against Constable Kitzul. The Crown entered a stay of proceedings on the charge of impaired operation of a motor vehicle prior to trial. The remaining two charges proceeded to trial in Provincial Court, in Roblin, on May 4, 2021. Ms. D.R. testified

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<sup>5</sup> An intervention is defined as "the action of becoming intentionally involved in a difficult situation, in order to improve it or prevent it from getting worse" or "an occasion when someone's friends or family speak to them about a problem or situation because the person's behaviour is unreasonable or harmful" (online: <<https://dictionary.cambridge.org/dictionary/English/intervention>>)

at the trial. The Crown Attorney entered a stay of proceedings on the remaining charges immediately following Ms. D.R.'s testimony.

## **ANALYSIS**

[64] As previously noted, all seven allegations are under section 7.1 of the Code of Conduct.

[65] In order to establish an allegation under section 7.1 of the Code of Conduct, the Conduct Authority must establish each of the following on a balance of probabilities:

- a) the acts that constitute the alleged behaviour;
- b) the identity of the member;
- c) whether the member's behaviour is likely to discredit the Force; and
- d) whether the member's behaviour is sufficiently related to their duties and functions so as to provide the Force with a legitimate interest in disciplining the member.

[66] I will deal with the evidence and my findings with respect to the acts that constitute the alleged behaviour for each specific allegation. I will address the remaining three elements of the test more broadly in relation to all seven allegations.

### **What are the acts that constitute the alleged behaviour?**

#### *Allegation 1 "Verbal abuse and specific incidents of physical abuse"*

[67] The acts that constitute the alleged behaviour in this allegation are verbal abuse and physical abuse. The incidents of physical abuse include Constable Kitzul knocking Ms. D.R. off a lawn chair and putting her in a headlock at a social gathering (Particular 2.a.); wrestling Ms. D.R. to the ground and putting her hand behind her back at a family gathering (Particular 2.b.); and striking Ms. D.R. with plastic objects while playing darts (Particular 2.c.).

#### *The evidence relating to verbal abuse*

[68] Ms. D.R. testified that, at the beginning of their relationship, Constable Kitzul was very affectionate and "overly nice". Constable Kitzul called her pet names like "babe" and "sexy".

[69] Constable Kitzul had shoulder surgery in November 2016. After Christmas 2016, their relationship started to decline. The pet names stopped. Constable Kitzul became angry. Although she could not provide specific details, she said Constable Kitzul's behaviour towards her became demeaning. Constable Kitzul felt she could not do things right and could not think for herself. Constable Kitzul commented unfavourably about her eating, her cooking and house cleaning. Constable Kitzul called her fat, stupid and, on the odd occasion, ugly. She "just took it" and/or ignored it.

[70] In cross-examination, Ms. D.R. testified that Constable Kitzul thought her father was being excessively controlling and making life decisions for her. She agreed that comments about a person's weight are appropriate if they relate to health concerns. Constable Kitzul encouraged her to exercise. There were times when Constable Kitzul told her she looked good.

[71] Mr. D.R. testified that he did not recall hearing Constable Kitzul utter derogatory comments to Ms. D.R. in his presence.

[72] Mrs. G.R. testified that, at first, Constable Kitzul seemed like a genuinely nice person. Constable Kitzul was quite a bit older than Ms. D.R., but that did not bother her. In the first year, Constable Kitzul and Ms. D.R. seemed to be a normal dating couple. In the second year, she began to notice more verbal abuse. She noted that Constable Kitzul would ask Ms. D.R. why she went to the gym because it was not helping. She indicated that Constable Kitzul said Ms. D.R. looked like a ghost, could not think for herself, and was fat and stupid. She noticed a significant change in the relationship beginning in early 2018. She stated that Constable Kitzul continued to make comments to Ms. D.R. that were belittling and degrading.

[73] Uncle D.R. testified that the relationship between Constable Kitzul and Ms. D.R. seemed fine at first. He made a point of not getting involved with them, so he only saw them together occasionally. Constable Kitzul was a person he was not going to bring into his "close family circle" because of a prior bad experience with Constable Kitzul. Despite not seeing them often, he witnessed Constable Kitzul teasing Ms. D.R. and calling her names that he thought were inappropriate. He did not witness any wrestling or punching.



[74] Uncle D.R. testified about a specific incident that occurred in September 2017 in Constable Kitzul's backyard. A group of people were present when Constable Kitzul told Ms. D.R. to "get your fat ass up and get water". Constable Kitzul's comments took Uncle D.R. aback because he was not "brought up to talk to women like that". He also noted how fluidly the words came out of Constable Kitzul's mouth and how little Ms. D.R. reacted. He formed the opinion that Ms. D.R. had gotten used to this behaviour because the Ms. D.R. he knew would have "remarked something back to [Constable Kitzul]".

[75] Mr. J.B. testified that he was on the group fishing trip where Constable Kitzul and Ms. D.R. met. Their behaviour was strange. They were on the couch wrestling. This bothered Uncle D.R. He asked them to stop. When they did not, Uncle D.R. threw a pillow then a beer can at Constable Kitzul. The relationship started badly, so Mr. J.B. chose to have little contact with them. He did not think the relationship was a good one.

[76] Constable Kitzul testified that the relationship with Ms. D.R. was "hands on playful", which included poking and tickling. Either of them could initiate wrestling. Constable Kitzul and Ms. D.R. joked around a lot. This included a lot of sarcasm, but nothing demeaning. Constable Kitzul denied calling Ms. D.R. dumb or an idiot.

[77] Constable Kitzul also explained most of the comments attributed to Constable Kitzul by other witnesses. These included the following:

- a) Telling Ms. D.R. to use common sense was simply part of a conversation and was not demeaning.
- b) Ms. D.R. frequently sought Constable Kitzul's opinion or asked Constable Kitzul what she should do in certain situations. Constable Kitzul was not comfortable telling her what to do. Constable Kitzul could offer suggestions, but sometimes she needed to think for herself and make a decision.
- c) Ms. D.R. told Constable Kitzul about her struggle with her weight. On one occasion, she expressed concern that she was not getting the desired results from her exercise program. In an effort to encourage her, Constable Kitzul told her that women who have had children have flat stomachs.

*The evidence relating to particular 2.a*

[78] Ms. D.R. testified that, on one occasion, a group of people were sitting in Constable Kitzul's backyard. Constable Kitzul jumped up without warning, put her in a headlock, and knocked her and her chair over. She was gasping for breath, choking and coughing.

[79] Constable Kitzul did not recall Ms. D.R. choking or coughing when they wrestled. Constable Kitzul denied ever putting Ms. D.R. in a headlock. However, in cross-examination, Constable Kitzul acknowledged that Constable Kitzul may have done so in a playful manner.

*The evidence relating to particular 2.b*

[80] Ms. D.R. testified that on the "labour day classic weekend", Constable Kitzul pushed her to the ground and performed the "Jason is King" ritual. She did not always like when Constable Kitzul did this. She could not recall the level of force Constable Kitzul used on this occasion, but she did recall having difficulty breathing. In cross-examination, Ms. D.R. also said that Constable Kitzul pinched her on this occasion, causing bruising between her legs. She acknowledged that she does bruise easily.

[81] Mr. D.R. testified that he and Mrs. G.R. hosted a social gathering at their home on the "labour day classic weekend" for the past ten years. He named a number of people who were present at this gathering. All of these people were civilians, not members of the RCMP. He was playing "beanbag", so he did not see what occurred leading up to this incident. He did see Constable Kitzul wrestle Ms. D.R. to the ground and put her arm behind her back until she said, "Jason is King". In cross-examination, he said that this was the only occasion where he saw Constable Kitzul and Ms. D.R. wrestle.

[82] Mrs. G.R. did not testify about this specific incident, but she did say that she observed a lot of roughhousing between Constable Kitzul and Ms. D.R. This included wrestling and "pinning down". She said that Constable Kitzul would trip Ms. D.R. or put her arm behind her back. She noted that, sometimes, these incidents were "jovial". On other occasions, she commented that it was like Constable Kitzul saying, "I'm superior" to Ms. D.R.

[83] Constable Kitzul did not recall anything specific about this incident, but Constable Kitzul did acknowledge that Constable Kitzul and Ms. D.R. wrestled at family gatherings. No one ever told Constable Kitzul or Ms. D.R. that it was not appropriate.

*The evidence relating to particular 2.c*

[84] Ms. D.R. testified that she and Constable Kitzul often played darts in Constable Kitzul's basement. When it was her turn to throw, Constable Kitzul hit her on the buttocks with various pieces of plastic to distract her. The plastic race track used was hard plastic, but bendable. She did not recall the level of force used.

[85] Mr. D.R. and Mrs. G.R. testified that they went to Constable Kitzul's for supper on a regular basis. After supper, they played cards or played darts in the basement. When Ms. D.R. lined up to take her shot, Constable Kitzul would hit her on the thigh or buttocks with objects including a ping pong paddle, a small plastic hockey stick or a piece of plastic race track.

[86] Mr. D.R. testified that this occurred on more than three occasions. The strikes caused a "whack" sound. He believed the strikes would sting. He would not have wanted to be hit as hard as Constable Kitzul hit Ms. D.R. In cross-examination, he said that he could not believe Ms. D.R. did not react to Constable Kitzul hitting her with the objects. Mrs. G.R. testified that alcohol was always involved in these visits.

[87] Constable Kitzul testified that playing darts was fun but competitive, much like many other activities Constable Kitzul and Ms. D.R. did together. They would "trash talk" each other as a means of putting the other "off their game". Constable Kitzul agreed that the "trash talk" was not for everyone.

[88] Constable Kitzul did not recall a specific event while playing darts. They played darts often. Constable Kitzul agreed that striking Ms. D.R. with an object might be something Constable Kitzul had done. Constable Kitzul could not provide a specific example since this happened so often. Constable Kitzul said the hitting went both ways. Ms. D.R. would use the same objects to hit Constable Kitzul.

[89] In cross-examination, Constable Kitzul agreed that Constable Kitzul might have used a piece of plastic race track, a plastic hockey stick and a ping pong paddle to hit Ms. D.R. Although Constable Kitzul does not recall striking Ms. D.R. with these objects in the presence of her parents, it was possible.

### *My findings*

[90] My findings on the credibility of Ms. D.R. combined with Constable Kitzul's inability to provide any specifics in relation to these incidents are determinative on my findings of fact when no evidence corroborating Ms. D.R.'s testimony exists. Constable Kitzul admitted to wrestling with Ms. D.R. at family gatherings and striking her with objects while playing darts. I also accept the evidence of Mr. D.R., Mrs. G.R. and Uncle D.R. where it corroborates Ms. D.R.'s evidence as previously set out.

[91] I find that the Conduct Authority has demonstrated on a balance of probabilities the following acts specified in the *Notice of Conduct Hearing*:

- a) Constable Kitzul made comments to Ms. D.R. that demeaned and belittled her, including that she was fat or words to that effect and that she could not think for herself.
- b) On one occasion, while a group of people were sitting in Constable Kitzul's backyard, Constable Kitzul jumped up without warning and put Ms. D.R. in a headlock, causing her to gasp for breath, choke and cough.
- c) At a social gathering at the home of Mr. D.R. and Mrs. G.R. for the 2018 "labour day classic weekend", Constable Kitzul wrestled Ms. D.R. to the ground. Constable Kitzul pinned her arm behind her back and pinched her between the legs until she said the words, "Jason is King". The level of force used was sufficient to cause Ms. D.R. pain and bruising to her legs.
- d) On more than one occasion while playing darts in the basement of Constable Kitzul's residence, Constable Kitzul struck Ms. D.R. on the buttocks and/or legs with objects including a ping pong paddle, a small plastic hockey stick and a piece of plastic race track. The strikes were sufficient to cause Ms. D.R. pain.
- e) Ms. D.R. did not consent to any of the foregoing actions.

*Allegation 2 “Shooting Ms. D.R. with a BB gun”*

***The evidence***

[92] Ms. D.R. testified that Constable Kitzul kept a BB gun at the bottom of the stairs in the basement of Constable Kitzul’s house. Constable Kitzul shot her with the BB gun on several occasions; however, she could only recall one specific incident that occurred in January 2018. She was at Constable Kitzul’s house. They were going to play darts in the basement. While she was setting up, she had her back to Constable Kitzul. She turned to find Constable Kitzul pointing the BB gun at her. Constable Kitzul shot her once in the hip and twice in the buttocks. The shot in the hip “stung for a second” and ultimately left a bruise. She hid behind the nearby bar. Constable Kitzul tried to get her to come out of hiding, all the while shooting the wall above the bar. Constable Kitzul eventually stopped and put the BB gun away. They went on to play their dart game. Both she and Constable Kitzul were intoxicated.

[93] In cross-examination, Ms. D.R. testified that, on several occasions when they would go into the basement to play darts, Constable Kitzul would run to get the BB gun. She would run up stairs to avoid being shot by Constable Kitzul. This was not a game to her. She has no recollection of ever pointing the BB gun at Constable Kitzul.

[94] Constable Kitzul testified that Constable Kitzul bought the BB gun as a Christmas gift for Constable Kitzul’s children. The BB gun became a joke between Constable Kitzul and Ms. D.R. Constable Kitzul could not say how the joke began. Constable Kitzul admitted that, on at least one occasion, Constable Kitzul shot Ms. D.R. in the buttocks with the BB gun from about 30 feet away. She did not express any pain at the time. Constable Kitzul also spoke of another occasion when Ms. D.R. hid behind the bar to escape Constable Kitzul shooting her.

[95] Constable Kitzul also testified that Ms. D.R. tried to shoot Constable Kitzul with the BB gun on two occasions. On one occasion, she missed when she tried to shoot Constable Kitzul from approximately 30 feet away. On the second occasion, she was approximately 3 feet away pointing the BB gun at Constable Kitzul. She pulled the trigger, but forgot to take the safety off. Constable Kitzul grabbed the BB gun from her before she was able to shoot Constable Kitzul. Constable Kitzul put the BB gun away. They stopped playing “the game” after this.

[96] In cross-examination, Constable Kitzul agreed the BB gun could cause harm to someone. Constable Kitzul agreed that pointing a weapon at someone could be a criminal offence, but Constable Kitzul had no criminal intent when Constable Kitzul used the BB gun.

### *My findings*

[97] I find that the BB gun was capable of causing injury or harm to a person. I further find that the Conduct Authority has demonstrated on a balance of probabilities that Constable Kitzul shot at Ms. D.R. with a BB gun on more than one occasion. Constable Kitzul hit Ms. D.R. with a shot from the BB gun on at least one occasion. This caused her harm in the form of brief pain and bruising to her hip.

*Allegation 3 “Assault in the fishing cabin” and Allegation 4 “Impaired operation of a motor vehicle”*

### *The evidence*

[98] Ms. D.R. testified that, on the “Thursday before Good Friday” in 2018, she and Constable Kitzul went ice fishing on the Lake of the Prairies. She left her vehicle parked on shore. They drove to her father’s fishing cabin in Constable Kitzul’s vehicle. They fished for most of the day into the evening. It was dark when they left to go home.

[99] Constable Kitzul was upset about going back to work on full duty because Constable Kitzul was still having shoulder trouble.

[100] She consumed one beer during their time on the lake. Constable Kitzul brought a bottle of hard liquor, possibly vodka, and a cooler with cans of beer in it. She “watched [Constable Kitzul] drink all day”. She stated that Constable Kitzul was “very very intoxicated”.

[101] They were packing up to leave when Constable Kitzul positioned Constable Kitzul’s body to prevent Ms. D.R. from moving past Constable Kitzul, essentially pinning her against the wall of the fishing cabin without applying force. Without warning, Constable Kitzul punched her in the ribs twice. Although she could barely feel these punches through her parka, they caused her to lean forward at which time Constable Kitzul punched her in the head. She responded by saying, “Ouch”. The punch to the head caused no injury. She did not seek medical treatment.

[102] Constable Kitzul drove from the fishing cabin to shore. Once on shore, Ms. D.R. offered to drive Constable Kitzul home because of Constable Kitzul's intoxication. Constable Kitzul declined the offer. Once in her vehicle, Ms. D.R. sent a text message to her parents. Ms. D.R. then followed Constable Kitzul to the highway. Constable Kitzul was driving "all over the road". Constable Kitzul's driving was "erratic and scary". At the highway, they turned in opposite directions to go to their respective homes.

[103] When she arrived home, Ms. D.R. went to her parents and told them about what took place in the fishing cabin and on the way home. While she was telling her story, Constable Kitzul called three times to tell her Constable Kitzul had arrived home. On the second and third calls, Constable Kitzul said essentially the same thing as the previous call(s) and appeared to have no recollection of making the previous call(s).

[104] Mr. D.R. and Mrs. G.R. testified that they were returning home from a trip to Regina when they received a text message from Ms. D.R. Shortly after they arrived home, Ms. D.R. came to their house. She was visibly upset and appeared to have been crying. Ms. D.R. told them about Constable Kitzul hitting her in the stomach and head and that Constable Kitzul drove while impaired. While telling her story, Ms. D.R. shook and paced the room. While they were talking with Ms. D.R., Constable Kitzul called her three times within a short period.

[105] In cross-examination, Mr. D.R. testified that he went ice fishing with Constable Kitzul a "couple of times" near the end of the relationship. Consuming alcohol was common when ice fishing with Constable Kitzul.

[106] Mrs. G.R. testified that Ms. D.R. told her that, while in the fishing cabin, Constable Kitzul was upset. Constable Kitzul was berating her relatives and Mr. J.B. Constable Kitzul was also upset because Constable Kitzul and Ms. D.R. always had to do what Mr. D.R. wanted, including fishing in his fishing cabin. After this incident, Mrs. G.R. made a point of sending Ms. D.R. a text message every morning just to check on her wellbeing.

[107] Constable Kitzul testified that ice fishing with Ms. D.R. was a common occurrence. Constable Kitzul's testimony was predominantly general statements about what would usually occur when Constable Kitzul went ice fishing. Constable Kitzul had no specific recollection of this

incident, but Constable Kitzul did have photographs of Constable Kitzul and Ms. D.R. fishing on March 29, 2018. Constable Kitzul had no recollection of making the telephone calls to Ms. D.R. Constable Kitzul was “completely baffled” by the allegation because Constable Kitzul never assaulted Ms. D.R. in the fishing cabin. In cross-examination, Constable Kitzul admitted that, although Constable Kitzul did not recall punching Ms. D.R. in the ribs or head, it is possible that Constable Kitzul did so accidentally.

[108] Several undated text messages relevant to Allegations 3 and 4 are in the investigation report. With respect to Allegation 3, they generally demonstrate the relationship between Constable Kitzul and Ms. D.R. being a concern to Ms. D.R. and her parents at that time. They also corroborate the testimony of Ms. D.R. and her parents.

[109] With respect to Allegation 4, Ms. D.R. sent a text message at 9:04 p.m., in which she wrote, “Jason is driving into town fucking hammered”. This corroborates her testimony regarding Constable Kitzul’s high degree of intoxication while operating his vehicle.

### *My findings*

[110] With respect to Allegation 3, I find that the date of this incident was March 29, 2018, not March 27, 2018, as stipulated in the *Notice of Conduct Hearing*. The Conduct Authority has demonstrated on a balance of probabilities that Constable Kitzul punched Ms. D.R. several times in the fishing cabin without her consent. These punches included two lighter punches to the ribs and one significant punch to the head. Ms. D.R.’s reaction clearly indicates that this incident exceeded the roughhousing behaviour that was an ordinary part of her relationship with Constable Kitzul.

[111] With respect to Allegation 4, I find that the Conduct Authority has demonstrated on a balance of probabilities that Constable Kitzul operated a motor vehicle while impaired by alcohol. Constable Kitzul attended the fishing cabin with a significant quantity of alcohol, including a bottle of hard liquor and cans of beer. I accept that Ms. D.R. observed Constable Kitzul drinking the entire time they fished. Based on Ms. D.R.’s evidence and the corroborating text message to her mother, I find that Constable Kitzul was highly intoxicated. Ms. D.R. had no reason to embellish Constable Kitzul’s state of intoxication in a private text message to her parents. Constable Kitzul’s



driving was so erratic that Ms. D.R. feared to drive close to Constable Kitzul. Constable Kitzul made three telephone calls to Ms. D.R. after Constable Kitzul arrived home. I accept that Constable Kitzul did not recall making these calls due to Constable Kitzul's highly intoxicated state.

*Allegation 5 "Punch in the arm at a social gathering"*

***The evidence***

[112] Ms. D.R. testified that, in the summer of 2018, possibly early July, she and Constable Kitzul were at her parents' house for a social gathering with her grandparents and a few friends. At some point during the visit, Constable Kitzul walked passed her and punched her in the shoulder. Constable Kitzul punched her in the arm or shoulder on a regular basis. She would reciprocate on occasion. Punching her was Constable Kitzul's way of showing affection. She could not recall how hard the punch was on this occasion. She was drinking on this day, but not heavily. Constable Kitzul did not drink because Constable Kitzul had to work later.

[113] Mr. D.R. testified that, in early July 2018, Mrs. G.R.'s parents were visiting. They were on the back deck of their house when Constable Kitzul and Ms. D.R. arrived. Constable Kitzul was already intoxicated. At one point, Constable Kitzul "came around the corner" and punched Ms. D.R. in the arm. She responded by saying, "Ouch". They continued to socialize following the incident, but the mood changed.

[114] Constable Kitzul had no specific recollection of this incident. Constable Kitzul said that Constable Kitzul would not get intoxicated if Constable Kitzul had to work later.

***My findings***

[115] The core act in this allegation is Constable Kitzul's punch to Ms. D.R.'s arm. The Conduct Authority alleges that this was an assault. The evidence is inconsistent, particularly with respect to Constable Kitzul's consumption of alcohol. However, the evidence of several witnesses is consistent with respect to the punch in the arm. I find that Constable Kitzul punched Ms. D.R. in the arm on this occasion. Mr. D.R. and Mr. D.E. found the punch to be inappropriate; however, I find that, unlike the incident in the fishing cabin, this punch in the arm was simply part of the roughhousing behaviour that was an ordinary part of the relationship between Constable Kitzul

and Ms. D.R. Ms. D.R. was a consenting participant in this behaviour. I will address whether this is discreditable when I reach the analysis of the third and fourth elements of the test.

*Allegation 6 “Twisting of Ms. D.R.’s injured wrist”*

***The evidence***

[116] Ms. D.R. testified that she hurt her right wrist earlier in the day when she slipped on some ice and fell to the ground. It was deer hunting season in November 2018. Constable Kitzul was excited because Constable Kitzul had shot a deer. She went to Constable Kitzul’s house after work to see the deer. Constable Kitzul had been drinking prior to her arrival. A friend, Mr. M.M., and Constable Kitzul’s children were already there. When she arrived, she told Constable Kitzul about her injured wrist.

[117] Constable Kitzul had the hiccups. They joked about it. She told Constable Kitzul that Constable Kitzul needed to hold Constable Kitzul’s breath. She put her hand in front of Constable Kitzul’s face and pretended to plug Constable Kitzul’s nose. Constable Kitzul grabbed her sore wrist and twisted it. She screamed. Mr. M.M. and Constable Kitzul’s son admonished Constable Kitzul for hurting Ms. D.R. Constable Kitzul was upset, stating that she “did not need to do that”, referring to Ms. D.R.’s attempt to plug his nose.

[118] Mobility in Ms. D.R.’s wrist was restricted for several days. She did not seek medical attention, but she did purchase a wrist brace because her wrist hurt while she was driving.

[119] In cross-examination, Ms. D.R. testified that Constable Kitzul’s reaction was quite quick. She agreed that Constable Kitzul might have forgotten about her sore wrist.

[120] Constable Kitzul testified that Constable Kitzul was on the couch. Ms. D.R. was going to put her hand over Constable Kitzul’s mouth. Constable Kitzul reacted naturally and removed her hand. Ms. D.R. verbalized that it hurt. Constable Kitzul realized after that it might have been her sore hand. She had told Constable Kitzul about the slip and fall hours earlier. Constable Kitzul simply forgot about it. Constable Kitzul apologized.

[121] In cross-examination, Constable Kitzul testified that the incident happened very fast. Although it is possible, Constable Kitzul did not believe Constable Kitzul twisted Ms. D.R.’s wrist.

***My findings***

[122] The particulars allege that Constable Kitzul was annoyed. Constable Kitzul grabbed Ms. D.R.'s injured arm and "twisted it all the way around" thereby committing an assault on Ms. D.R.

[123] I find that Ms. D.R. initiated the contact with Constable Kitzul by placing her injured hand in front of Constable Kitzul's face to cover Constable Kitzul's nose. Constable Kitzul's immediate response was to remove her hand. The evidence is not clear on whether Constable Kitzul grabbed Ms. D.R.'s wrist. Even if I accept that Constable Kitzul did grab her wrist, there is no evidence that Constable Kitzul "twisted it all the way around". Regardless, Constable Kitzul caused pain to Ms. D.R.'s wrist in the process of removing her hand. Since Ms. D.R. told Constable Kitzul about the injury several hours prior to the incident occurring, it was reasonable for Constable Kitzul to have forgotten about the injury under the circumstances. I find that Constable Kitzul had no intent to injure Ms. D.R. Constable Kitzul's response was simply an immediate and natural reaction to Ms. D.R.'s hand in front of Constable Kitzul's face. Given this, the Conduct Authority has not established on a balance of probabilities the acts set out for Allegation 6 in the *Notice of Conduct Hearing*. Therefore, Allegation 6 is not established.

*Allegation 7 "Lighting Ms. D.R.'s hair on fire"*

***The evidence***

[124] Both Constable Kitzul and Ms. D.R. testified that they were playing darts in Constable Kitzul's basement. Ms. D.R. was standing facing away from Constable Kitzul while she checked her cellphone.

[125] Ms. D.R. testified that Constable Kitzul came up behind her. She observed a flash of light beside her head. She realized that Constable Kitzul had lit her hair on fire. All Constable Kitzul said once her hair was out was that Constable Kitzul did not know she wore hairspray. She was upset and went to the washroom to check the damage. She went to the hairdresser and had an inch cut off her hair to remove the damaged portion. The incident scared her.

[126] Constable Kitzul testified that Constable Kitzul's basement was quite messy, so the area where they played darts was quite small. Constable Kitzul was lighting a cigarette when the back of Ms. D.R.'s hair caught on fire. Constable Kitzul quickly put the fire out with Constable Kitzul's hand. This was an accident. Constable Kitzul got the impression that Ms. D.R. was "a little bit displeased". Constable Kitzul may have apologized.

[127] In cross-examination, Constable Kitzul testified that Constable Kitzul and Ms. D.R. were standing so close together that they may have been touching when her hair caught on fire. Constable Kitzul knew hair is flammable. Constable Kitzul did not know why Constable Kitzul thought Ms. D.R. was wearing hairspray. Constable Kitzul also cannot recall if Constable Kitzul was drinking at the time.

### *My findings*

[128] Constable Kitzul knew hair is flammable. Constable Kitzul knew or reasonably ought to have known that lighting Ms. D.R.'s hair on fire was likely to cause harm, even if it was no more than damage to her hair. Constable Kitzul lit Ms. D.R.'s hair on fire while Constable Kitzul lit a cigarette in close proximity to her hair while she used her cellphone. Constable Kitzul's actions caused damage to Ms. D.R.'s hair. Although small, Constable Kitzul's basement was large enough to play darts; therefore, Constable Kitzul had sufficient room in the basement to light a cigarette safely. Alternatively, Constable Kitzul could have gone to the garage where Constable Kitzul said, in relation to Allegation 6, Constable Kitzul would go to smoke.

[129] Particular 4 of this allegation states that, by lighting Ms. D.R.'s hair on fire, Constable Kitzul committed an assault, which requires proof of intent. Constable Kitzul says this was an accident. I do not accept Constable Kitzul's claim that this was an accident. The claim simply does not accord with the evidence. I also do not find that the Conduct Authority has demonstrated on a balance of probabilities that Constable Kitzul actually intended to light Ms. D.R.'s hair on fire. I do find that Constable Kitzul's actions demonstrated a wanton or reckless disregard for Ms. D.R.'s safety, which is sufficient to establish the act in this allegation. There is absolutely no excuse for this to have happened. Therefore, Allegation 7 is established.

*Conclusion on the acts that constitute the alleged behaviour*

[130] In summary, I have found that the Conduct Authority has established on a balance of probabilities that Constable Kitzul committed the following acts:

- a) Made comments to Ms. D.R. that demeaned and belittled her, including that she was fat or words to that effect and that she could not think for herself.
- b) Without warning, put Ms. D.R. in a headlock causing her to gasp for breath, choke and cough.
- c) Wrestled Ms. D.R. to the ground, pinning her arm behind her back and pinching her between the legs at a social gathering.
- d) On more than one occasion, struck Ms. D.R. in the buttocks and/or legs with objects including a ping pong paddle, a small plastic hockey stick and a piece of plastic race track, while playing darts in the basement of Constable Kitzul's residence.
- e) Shot at Ms. D.R. with a BB gun on more than one occasion and hit Ms. D.R. with a shot from the BB gun on at least one of these occasions.
- f) Punched Ms. D.R. several times, including two lighter punches to the ribs and a more forceful punch to her head, in the fishing cabin.
- g) Operated a motor vehicle while impaired by alcohol.
- h) Recklessly lit Ms. D.R.'s hair on fire while lighting a cigarette.

**Is Constable Kitzul the member responsible for the alleged conduct?**

[131] The second element of the test for discreditable conduct is the identity of the member. The evidence clearly identifies Constable Kitzul as the member responsible for the alleged conduct.

**Is Constable Kitzul's behaviour likely to discredit the Force?**

[132] The test for behaviour likely to discredit the Force is how a reasonable person in society, with knowledge of all relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the behaviour.

[133] The Conduct Authority simply submitted that Constable Kitzul engaged in acts of intimate partner violence and one incident of impaired driving. A reasonable person, with knowledge of the

circumstances, including the realities of policing in general and the RCMP in particular, would view these actions as likely to bring discredit to the RCMP.

[134] Constable Kitzul submitted that Constable Kitzul's conduct did not amount to discreditable conduct.

[135] I agree with Constable Kitzul's characterization of the roughhousing behaviour between Constable Kitzul and Ms. D.R. as childish. To be frank, it is well below the standard of conduct the general public and the Force have the right to expect of RCMP members, on- or off-duty. Constable Kitzul's demeaning and belittling comments directed at Ms. D.R. fall into the same category. Where such behaviour occurred in private, it was unlikely to discredit the Force. However, much of this childish behaviour occurred in public and many of Constable Kitzul's actions crossed the line of childish behaviour to assaultive behaviour. All of the civilian witnesses found that Constable Kitzul's behaviour during the relationship with Ms. D.R. was, at the very least, inappropriate.

[136] Conduct boards, including myself, have consistently found that assaultive behaviour towards an intimate partner by a member of the Force, whether on-duty or off-duty, and the operation of a motor vehicle while impaired by alcohol or a drug are conducts that are discreditable or likely to discredit the Force. Assault and impaired driving are conducts that fall within the realm of behaviours that members of the RCMP respond to in their enforcement activities on a daily basis. Society expects police officers to adhere to the laws they are to uphold. I see no reason to deviate from such findings in this case. There is little question that a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the established actions of Constable Kitzul as likely to bring discredit to the Force.

[137] Therefore, the Conduct Authority has established this element of the test on a balance of probabilities.

**Is Constable Kitzul’s behaviour sufficiently related to Constable Kitzul’s duties and functions as to provide the Force with a legitimate interest in disciplining Constable Kitzul?**

[138] The Conduct Authority submitted that the RCMP has a legitimate interest in disciplining Constable Kitzul for the following reasons:

- a) Intimate partner violence is an offence that members are required to respond to and “one of the prevailing issues which plague our society”; and
- b) Constable Kitzul’s actions may impair Constable Kitzul’s ability to investigate acts of intimate partner violence and impaired driving; the public would lose confidence in Constable Kitzul’s ability to investigate these matters.

[139] Constable Kitzul submitted that the *RCMP Act* requirement for members to be respectful at all times does not displace the long-standing employment principle that employees are entitled to private lives, and that there must be a nexus to warrant professional discipline.

[140] At paragraphs 13 through 17 of Constable Kitzul’s submission and with reference to *Lingl*,<sup>6</sup> Constable Kitzul states that the established test for the nexus for off-duty conduct of police officers contains several factors, any one of which could establish the nexus to the member’s employment. These factors are as follows:

- a) Where the conduct of the officer harms the reputation or credibility of the police service.
- b) Where the officer’s behaviour renders them unable to perform their duties in a satisfactory manner.
- c) Where the officer’s behaviour leads to a refusal, reluctance, or inability of other officers or employees to work with the officer.
- d) Where the officer has contravened the law in a manner that renders their conduct injurious to the reputation of the service and its members.
- e) Where the officer’s conduct places difficulty in the way of the service to properly carry out its functions and effectively manage its work or effectively direct its workforce.

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<sup>6</sup> *Lingl v Calgary Police Service*, (1993) 2 ALERB 128 [*Lingl*], at page 14.

[141] Constable Kitzul insisted that there is no nexus to justify disciplinary action. Constable Kitzul's behaviour "did not amount to criminal assault or any criminal charges and would not cloud Constable Kitzul's judgment in investigating possible crimes". Constable Kitzul indicated that Constable Kitzul's behaviour is a result of a childish relationship with a consenting partner. Individuals working for the RCMP have a right to a private life. Barring any nexus to the member's employment, the RCMP cannot discipline a member for living a private life. Constable Kitzul added that Constable Kitzul's private and consensual relationship with Ms. D.R. would not bring the reputation or credibility of the RCMP into question or harm. Although the allegations include multiple incidents, they all stem from one relationship; therefore, at worst, they would amount to the isolated misconduct of one police officer. Constable Kitzul's actions cannot result in lowering the goodwill or reputation of the RCMP. Furthermore, there is no evidence that Constable Kitzul's actions would affect Constable Kitzul's work performance.

[142] In reply to Constable Kitzul's submission, the Conduct Authority submitted that the criminal nature of the allegations is a sufficient nexus to discipline an off-duty police officer. The *Notice of Conduct Hearing* contains multiple acts of domestic violence against Ms. D.R. over a prolonged period. Everyone involved in this matter knew Constable Kitzul was a police officer. They hesitated to report Constable Kitzul's behaviour because of this.

[143] The discreditable acts that I have found Constable Kitzul to have committed all occurred while Constable Kitzul was off-duty. The 2014 *Annotated Version of the RCMP Code of Conduct*, at page 7, provides insight as to how off-duty conduct can be sufficiently related to a member's duties:

[...]

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

Any conduct which places in doubt your integrity, honesty or moral character may weaken your effectiveness to perform your duties and cause the public to lose confidence in the Force. The responsibilities contained within the Code of Conduct are meant to promote sound ethical decision[-]making that



goes beyond the boundary of the work environment. By fulfilling these responsibilities you will meet the professional expectations of the Force and Canadians.

[...]

[144] I agree with Constable Kitzul that the non-criminal childish behaviour occurring between Ms. D.R. and Constable Kitzul in private and with Ms. D.R.'s consent did not harm the reputation or credibility of the RCMP nor did it render Constable Kitzul unable to perform Constable Kitzul's duties in a satisfactory manner.

[145] I do not agree with Constable Kitzul's claim that Constable Kitzul's behaviour did not amount to criminal assault or any criminal charges nor do I agree that this is the isolated misconduct of one police officer. Particulars 2.a, b and c of Allegation 1 and Allegations 2, 3, 4 and 7 relate to matters that fall within behaviours that members of the Force respond to in their enforcement activities on a daily basis. These occurred in a prolonged series of events over a 12-month period, at various locations, in the presence of civilians whom the RCMP is to protect. On-duty or off-duty, the public view members of the RCMP as persons in a position of authority in their communities. They rightly expect police officers to conduct themselves with respect and courtesy towards the public at all times.

[146] Furthermore, the RCMP laid criminal charges against Constable Kitzul for assault, assault with a weapon and impaired operation of a motor vehicle in response to Ms. D.R.'s complaint. The media reported the laying of the criminal charges. Constable Kitzul was identified as a member of the RCMP in these media accounts. Constable Kitzul appeared in the same criminal court as persons Constable Kitzul had charged with criminal offences over the past 12 years. Constable Kitzul's criminal trial took place in that same courtroom. The trial was open to the general public.

[147] The outcome of Constable Kitzul's criminal charge was not determined by the trial judge, but by a stay of proceedings requested by the Crown Attorney. The Crown Attorney provided no clear explanation for that decision in the public courtroom. Constable Kitzul's actions place Constable Kitzul's moral character in doubt.

[148] Furthermore, Roblin is a small rural community. Like many similar communities the RCMP provides policing services to across Canada, everyone knows everyone else and their

business. After 12 years in the community, many of its citizens knew of Constable Kitzul's personal affairs that likely included the details of Constable Kitzul's relationship with Ms. D.R.; therefore, Constable Kitzul's actions may weaken Constable Kitzul's effectiveness to perform Constable Kitzul's duties and cause the public to lose confidence in the Force. Consequently, I find that Constable Kitzul's conduct sufficiently relates to Constable Kitzul's duties to provide the RCMP with a legitimate interest in disciplining Constable Kitzul.

[149] Therefore, the Conduct Authority has established this element of the test on a balance of probabilities.

### **Conclusion on the allegations**

[150] Based on the foregoing analysis, the Conduct Authority has established all four elements of the test for discreditable conduct in Allegations 1, 2, 3, 4 and 7. These allegations are established. The Conduct Authority has not established all four elements of the test for Allegations 5 and 6; therefore, these allegations are not established.

### **CONDUCT MEASURES**

[151] Having found 5 of the 7 allegations established, I am obliged by subsection 45(4) of the *RCMP Act* to impose at least one of the conduct measures set out under that subsection. These conduct measures include dismissal, a direction to resign and "one or more of the conduct measures provided for in the rules". The conduct measures "provided for in the rules" are found in sections 3, 4 and 5 of the *CSO (Conduct)*.

### **The parties' submissions on conduct measures**

#### *Conduct Authority's submission*

[152] The Conduct Authority asked that I dismiss Constable Kitzul from the RCMP or, in the alternative, direct Constable Kitzul to resign from the Force as a global sanction. The basis of the Conduct Authority's request is that although conduct measures are intended to be remedial and

educative, the RCMP has a right and an obligation to prevent and deter its members' conduct that is not acceptable to its organizational objectives and goals as well as the public interest.<sup>7</sup>

[153] The RCMP has taken a strong stance against intimate partner violence both in its law enforcement activities, as reflected in its policies,<sup>8</sup> and relative to its members' conduct, as reflected in prior conduct board decisions.<sup>9</sup> Constable Kitzul breached the core values of the RCMP. Constable Kitzul failed to uphold the ethical and social norms of the RCMP. Therefore, Constable Kitzul's actions fundamentally breached the employment relationship.

[154] Constable Kitzul showed "a stunning lack of appreciation" for Constable Kitzul's actions. Constable Kitzul downplayed Constable Kitzul's actions throughout Constable Kitzul's testimony. Constable Kitzul displayed a dismissive and cavalier attitude towards the conduct process in general. Constable Kitzul failed to demonstrate any remorse despite the opportunity to do so at the conduct measures phase of the conduct hearing. This pattern of behaviour, coupled with Constable Kitzul's two previous conduct matters, does not bode well for Constable Kitzul's rehabilitative prospects.

[155] The Conduct Authority Representative provided a lengthy list of aggravating factors, most of which are included in my analysis of the proportionality factors set out later in this decision.

*Constable Kitzul's submission*

[156] Constable Kitzul maintained that a significant forfeiture of pay and/or annual leave, either apportioned to each established allegation or as a global sanction, is appropriate. Alternatively, Constable Kitzul suggested that if I feel the proposed financial penalty is not sufficient, a direction to resign from the Force is preferable to a dismissal. Constable Kitzul noted that the conduct board in *Sandhu*<sup>10</sup> established the range of conduct measures for allegations of intimate partner violence to be between a 40-day forfeiture of pay and dismissal; therefore, a significant financial penalty is

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<sup>7</sup> See at *Commanding Officer, "F" Division v Corporal Toma*, 2020 CAD 14, at paragraph 111.

<sup>8</sup> See *D Division Operation Manual*, Chapter 2.4 and *D Division Operational Manual*, Chapter 2.4, Appendix 2-4-1.

<sup>9</sup> See *Commanding Officer, "E" Division v Sergeant Dhillon*, 2019 RCAD 13; *Commanding Officer, "F" Division v Corporal Toma*, 2020 CAD 14; and *Delegated Conduct Authority, "E" Division v Constable Sandhu*, 2021 CAD 07.

<sup>10</sup> *Commanding Officer, "E" Division v Constable Sandhu*, 2021 CAD 07, at paragraph 160.

within the range of appropriate outcomes. Constable Kitzul added that a 60-day forfeiture of pay appears to be the current maximum pay forfeiture.

[157] Constable Kitzul recognized the importance of RCMP members upholding the law. Constable Kitzul said that the evidence does not support the Conduct Authority's contention that Constable Kitzul failed to appreciate the issues of domestic violence. Constable Kitzul insisted that, despite Constable Kitzul's two prior conduct matters and Constable Kitzul's actions related to this conduct proceeding, there is "not a good chance of recidivism".

[158] All of the cases provided by the Conduct Authority as precedents for a direction to resign or dismissal are more severe in terms of the degree and/or duration of the intimate partner violence. Consequently, at best, I should consider Constable Kitzul's behaviour in the normal range of conduct measures. At worst, Constable Kitzul's conduct relative to the impaired operation of a motor vehicle and the intimate partner violence where weapons were involved is at the lower end of the aggravated range.

[159] Finally, Constable Kitzul acknowledged that media attention relating to an RCMP member's misconduct can affect the reputation of the RCMP; however, there is no way of ascertaining how the public reacts to these media accounts generally, let alone how the public reacted to the media accounts pertaining to Constable Kitzul's specific case. Consequently, I should give no weight to the Conduct Authority's claim that the media attention given Constable Kitzul's case adversely affected the reputation of the RCMP.

### **Modernization of the RCMP approach to conduct measures**

[160] In an effort to modernize how the RCMP administers conduct measures, RCMP conduct boards, including myself, are moving away from the somewhat outdated framework established by the RCMP External Review Committee prior to the amended provisions of the *RCMP Act* coming into force on November 28, 2014. The modernized approach seeks to find and administer appropriate conduct measures by applying five foundational principles.

[161] In February 2022, a report on the application of conduct measures to sex-related misconduct in the Force<sup>11</sup> was delivered to the RCMP. Despite its somewhat narrow focus, the report provided insight and contained recommendations related to the imposition of conduct measures generally. At page 22, the authors of the report summarized five principles that they suggest are foundational “for the process of crafting a fit conduct measure”, as follows:

[...]

- a) A conduct measure must fully accord with the four purposes of the police complaint and conduct process:
  - i. the public interest: ensuring a high standard of conduct in the RCMP, and public confidence in the RCMP;
  - ii. the RCMP’s interests in its ‘dual capacity’ as an employer seeking to maintain integrity and discipline in the workplace, and as ‘a public body responsible for the security of the public’;
  - iii. the interests of the Subject Member in being treated fairly; and
  - iv. in cases where others are affected, to ensure that the interests of those individuals (such as public complainants or other RCMP employees) are addressed.
- b. Corrective and remedial dispositions should prevail, where appropriate.
- c. A presumption that the least onerous disposition applies, which presumption would be displaced if the public interest or other specified considerations should prevail.
- d. Proportionality.
- e. A higher standard applies to police officers’ conduct, compared to employees generally, principally because police hold a position of trust.

[...]

### **Application of the five foundational principles**

[162] These five foundational principles are accepted and employed elsewhere in the Canadian policing community and, generally, in other relevant labour relation fields. I have already addressed many of the aspects of these principles in the allegations portion of this decision. I will endeavour to apply them here without too much repetition.

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<sup>11</sup> Ceyssens, Paul and Childs, W. Scott, *Phase I Final Report Concerning Conduct Measures, and the Application of Conduct Measures to Sex-Related Misconduct under Part IV of the Royal Canadian Mounted Police Act*, February 24, 2022 (*Phase I Final Report*).

*Accordance with the purposes of Part IV of the RCMP Act*

[163] Part IV of the *RCMP Act* deals with the complaint and conduct processes of the RCMP. Section 36.2 of the *RCMP Act* sets out the purposes of Part IV:

**36.2** The purposes of this Part are

- a) to establish the responsibilities of members;
- b) to provide for the establishment of a code of conduct that emphasizes the importance of maintaining the public trust and reinforces the high standard of conduct expected of members;
- c) to ensure that members are responsible and accountable for the promotion and maintenance of good conduct in the Force;
- d) to establish a framework for dealing with contraventions of provisions of the Code of Conduct, in a fair and consistent manner, at the most appropriate level of the Force; and
- e) to provide, in relation to the contravention of any provision of the Code of Conduct, for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

[164] The stated purposes of Part IV of the *RCMP Act* reflect the four purposes set out by the authors of the *Phase I Final Report*. My role is to balance the competing interests of the community as a whole—the RCMP, as an employer and a public body; Constable Kitzul, as the Subject Member; and the affected third parties, Ms. D.R. and her parents—to arrive at the appropriate conduct measure(s).

*Corrective and remedial conduct measures should prevail*

[165] Paragraph 36.2(e) of the *RCMP Act* requires that conduct measures be proportionate to the nature and circumstances of the individual case and, where possible, should be educative and remedial rather than punitive.

[166] The Conduct Authority's request for Constable Kitzul's dismissal, the 60-day forfeiture of pay suggested by Constable Kitzul, and the alternative direction to resign suggested by both parties have no corrective or remedial value. All three options are strictly punitive. The fact that the parties agree that strictly punitive measures need to be imposed on Constable Kitzul speaks to the fact that

educative and/or remedial conduct measures are not warranted given the nature of the conduct and the circumstances of this case.

*Presumption of least onerous disposition*

[167] As noted in the summary of the five foundational principles, the presumption of the least onerous disposition can be displaced if the public interest or other considerations prevail. Both the public interest and other considerations are at play here and must prevail.

[168] The RCMP has a stated zero tolerance policy relative to intimate partner violence. The Federal Court in *Rendell*<sup>12</sup> confirmed that RCMP conduct boards may consider the RCMP zero tolerance policy on intimate partner violence when administering conduct measures. A zero-tolerance policy does not equate to an automatic or presumptive dismissal of an offending member. Rather, it signifies that members' conduct involving intimate partner violence will not be tolerated and will be dealt with seriously, but with due consideration of the circumstances of the individual case.

[169] The conduct board in *Wilson*<sup>13</sup> identified the public interest concerns with respect to the impaired operation of a motor vehicle when he wrote, "Drinking and driving has been a highly publicized issue across Canada for a number of years and it is responsible for the death and injury of thousands of Canadians every year; facts well known to police officers [...]".

[170] Although Constable Kitzul did not kill or injure anyone or even cause property damage, it does not lessen the fact that a very different outcome could have occurred. Constable Kitzul made a grave error in his professional and personal thinking when Constable Kitzul chose to drink and drive.

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<sup>12</sup> *Rendell v Attorney General of Canada*, 2001 FCT 710 [*Rendell*], at paragraph 20.

<sup>13</sup> *Commanding Officer, "F" Division v Sergeant Wilson*, 2017 RCAD 6, at paragraph 33.

*Proportionality*

[171] Both paragraph 36.2(e) of the *RCMP Act* and subsection 24(2) of the *CSO (Conduct)* state that conduct measures are to be proportionate to the nature and circumstances of the contravention of the Code of Conduct.

[172] The application of this fourth principle is similar to the framework established by the RCMP External Review Committee under the former RCMP discipline system. Under this framework, conduct boards were required to ascertain the appropriate range of conduct measures and then examine the mitigating and aggravating factors in order to determine the appropriate conduct measures for the specific case. Until recently, conduct boards applied this test to arrive at appropriate conduct measures.

[173] Under the modernized approach, conduct boards must first identify the relevant proportionality factors, then assess whether each identified factor is mitigating or aggravating. Finally, the conduct board must balance or weigh these considerations to arrive at appropriate conduct measures.

*Identification of the proportionality factors*

[174] I have identified the following proportionality factors applicable to this case:

- the public interest;
- the seriousness of the conduct;
- recognition of the seriousness of the conduct;
- disability and extenuating personal circumstances;
- potential to reform or rehabilitate;
- parity (consistency of disposition);
- general deterrence;
- damage to the reputation of the RCMP.



*Assessment of the proportionality factors*

**The public interest**

[175] I have already addressed most of the relevant considerations regarding the public interest in my analysis in the allegations phase. Essentially, although Constable Kitzul's conduct was off-duty, the public and the RCMP have a strong interest in ensuring that Constable Kitzul is held to account to ensure the integrity of the RCMP conduct process and to protect the public. Given the nature of Constable Kitzul's conduct and the direct relationship between Constable Kitzul's actions and Constable Kitzul's law enforcement duties, the public interest militates in favour of significant conduct measures.

**The seriousness of the conduct**

[176] The seriousness of the conduct is a fundamental consideration in almost every conduct proceeding. Although criminal charges against Constable Kitzul were stayed, his conduct in all five established allegations was criminal in nature; therefore, it is serious. Both the impaired operation of a motor vehicle and the intimate partner violence have long been a concern for the public, the police and the criminal justice system.

[177] Constable Kitzul's improper conduct occurred over a significant period during Constable Kitzul's two-year relationship with Ms. D.R. The behaviour was not isolated. Constable Kitzul's assaultive behaviour involved the use of weapons, including the BB gun and other objects such as the ping pong paddle, the plastic hockey stick and the piece of plastic race track. Shooting at Ms. D.R. with the BB gun and striking her with objects occurred more than once.

[178] Although Constable Kitzul did not cause Ms. D.R. physical injury that required medical attention, Constable Kitzul's actions nevertheless caused harm to her and her parents. I heard testimony about this harm from Ms. D.R., Mr. D.R., Mrs. G.R. and Uncle D.R. during the conduct hearing and in the impact statements of Ms. D.R. and Mrs. G.R.

[179] This proportionality factor falls within the aggravated range.

### **Recognition of the seriousness of the misconduct**

[180] Recognition of the seriousness of the misconduct includes a member's insight into the gravity of their conduct, acceptance of responsibility for their actions and a demonstration of remorse.

[181] I agree with the Subject Member Representative's assertion that the exercise of a member's right to make a full answer and defence to allegations through a contested hearing "should not have that counted against them". However, the evidence demonstrates that during the time frame of the allegations, Constable Kitzul did not have an insight into the gravity of his conduct. It appears Constable Kitzul still has not gained such insight nor has Constable Kitzul accepted responsibility. Constable Kitzul downplayed Constable Kitzul's actions throughout Constable Kitzul's testimony and characterized many of Constable Kitzul's actions as "a joke" or all in good fun with Ms. D.R. Constable Kitzul also displayed a dismissive and cavalier attitude towards the conduct process in general. Constable Kitzul has also failed to demonstrate any remorse despite the opportunity to do so at the conduct measures phase of the conduct hearing. These are aggravating factors.

### **Disability and extenuating personal circumstances**

[182] As a proportionality factor, both disability and extenuating personal circumstances have the potential to serve as a mitigating factor for Constable Kitzul. Prior to the date range of the allegations, Constable Kitzul experienced several setbacks in Constable Kitzul's personal life, including the separation from the mother of Constable Kitzul's two children. Constable Kitzul also experienced ongoing shoulder problems, which became a significant factor that influenced Constable Kitzul's behaviour in the relationship with Ms. D.R. Other documents provided to me indicate that Constable Kitzul was diagnosed with an Operational Stress Injury and several other psychological disorders.

[183] Although I empathize with Constable Kitzul's situation during the relevant time period to the present, I have a limited understanding of what that is. Constable Kitzul had an opportunity to provide medical evidence to assist me in fully understanding Constable Kitzul's medical and personal situations, but Constable Kitzul chose not to do so in a meaningful way.

[184] Constable Kitzul asked me to postpone the conduct measures phase of the conduct hearing to allow Constable Kitzul to pursue a medical discharge. I denied the motion on the basis that, although Constable Kitzul had recently re-engaged with “D” Division Health Services and attended an Operational Stress Injury Clinic, Constable Kitzul was aware of Constable Kitzul’s physical and psychological health issues since at least January 31, 2019, as was demonstrated by documents provided to me in support of Constable Kitzul’s motion. Constable Kitzul was suspended with pay in May 2019. So, Constable Kitzul had almost three and a half years to deal with these issues. Yet Constable Kitzul chose not to deal with these issues until recently. Constable Kitzul’s efforts are, unfortunately for Constable Kitzul, “too little too late”.

[185] The letters of support provided by Constable Kitzul suggest that Constable Kitzul has achieved a sense of stability and positive aspects to Constable Kitzul’s current personal life. This is encouraging; however, the absence of tangible supporting evidence of disability and extenuating personal circumstances positions this proportionality factor as a neutral or, at best, moderately mitigating.

#### **Potential to reform or rehabilitate**

[186] The potential for reform or rehabilitation is closely connected to remorse and employment history, and should be considered as a dispositional factor in all conduct proceedings.<sup>14</sup>

[187] This conduct proceeding occurs within the context of an employer-employee relationship. Despite this, I have no information about Constable Kitzul in the workplace other than the fact that Constable Kitzul has been the subject of two prior conduct matters.

[188] On July 17, 2012, Constable Kitzul was found to have engaged in disgraceful conduct under subsection 39(1) of the *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361, in relation to a domestic incident. Constable Kitzul argued with Constable Kitzul’s former common-law partner. Following the argument, Constable Kitzul’s former common-law partner slipped and fell on some ice. Constable Kitzul assisted her up by grabbing the collar of her jacket.

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<sup>14</sup> *Phase I Final Report*, at page 38.

A significant factor considered by the decision maker was that the events occurred in front of their two children. Constable Kitzul was reprimanded and required to forfeit one Regular Time Off day.

[189] In May 2016, Constable Kitzul was found to have neglected his duty contrary to section 4.2 of the Code of Conduct. A finding of neglect of duty is not necessarily relevant to an allegation of discreditable conduct, but in this case, the duties neglected by Constable Kitzul related to a complaint of domestic violence made by a local resident. Constable Kitzul failed to open a file, let alone properly investigate the matter. When properly investigated, two criminal charges were laid against the alleged perpetrator. Constable Kitzul was given a reprimand and required to forfeit two days of pay. Constable Kitzul was also required to review the Division domestic violence policy and take an on-line course relative to domestic violence.

[190] Constable Kitzul's apparent failure to learn from these two prior conduct matters does not bode well for Constable Kitzul's rehabilitation prospects as does Constable Kitzul's failure to demonstrate any remorse. This is a significant aggravating factor.

#### **Parity of sanctions**

[191] In the interests of consistency of outcome, the underlying notion of parity of sanctions is that similar conduct should be treated similarly. The cases provided by the Conduct Authority to support the request for dismissal demonstrate that a broad range of appropriate conduct measures exists, including dismissal. As pointed out by the Subject Member Representative, none of the cases are directly on point. All of them are more serious in terms of the degree and/or duration of the intimate partner violence. Nevertheless, conduct boards, including myself, have concluded that cases involving any form of intimate partner violence may warrant a member's discharge from the Force, either through dismissal or a direction to resign.

[192] Conduct boards have also historically dealt with the impaired operation of a motor vehicle severely with dismissal being a distinct possibility in the appropriate circumstances.

[193] Given my findings of the serious nature of Constable Kitzul's conduct in relation to both the intimate partner violence and the impaired operation of a motor vehicle, this proportionality factor falls within the aggravated range.

### **Specific and general deterrence**

[194] Specific and general deterrence are both legitimate objectives of the RCMP conduct process. The number of cases of intimate partner violence and impaired operation of motor vehicles that come before RCMP conduct boards, despite the RCMP zero-tolerance policy in respect of both forms of misconduct, speaks to the need for conduct boards to give serious consideration to the concept of general deterrence as a means of “sending a message to other members of the RCMP” to reinforce the strong stance of the RCMP against any form of intimate partner violence and impaired driving; therefore, this proportionality factor falls within the aggravated range.

### **Damage to the reputation of the RCMP**

[195] The last identified proportionality factor is damage to the reputation of the RCMP, which is not easily demonstrable. Conduct boards have been cautioned about overstating damage to the reputation of the RCMP or finding damage to the reputation of the RCMP in the absence of evidence to support the conclusion because it would be procedurally unfair to do so.<sup>15</sup> However, police boards of inquiry in Ontario have been making such determinations about conduct likely to discredit the reputation of a police service in the absence of evidence for years by applying an objective test. The test, originally enunciated in *Girard*<sup>16</sup> and cited in *Hassan*<sup>17</sup>, is as follows:

[...]

- a) The test is primarily [an] objective one.
- b) The Board must measure the conduct of the officer by the reasonable expectations of the community.
- c) In determining the reasonable expectations of the community, the Board may use its own judgment, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprised of the circumstances of the case.
- d) In applying this standard the Board should consider not only the immediate facts surrounding the case, but also any appropriate rules and regulations in force at the time.

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<sup>15</sup> See *Sergeant Turner v Commanding Officer, “E” Division*, 2022 CAD 14, at paragraph 103.

<sup>16</sup> *Girard v Delaney*, (1995) 2 PLR 337 (Ont. Bd. Inq.) [*Girard*], at page 349.

<sup>17</sup> *Hassan v Peel Regional Police Service*, 2006 ONCPC 7 (CanLII) [*Hassan*].

- e) Because of the objective nature of the test, the subjective element of good faith referred to in the *Shockness* case is an appropriate consideration where the officer is required by the circumstances to exercise [their] discretion.

[...]

[196] The Conduct Authority provided two media accounts relating to Constable Kitzul being charged with assault in support of the contention that Constable Kitzul's actions damaged the reputation of the Force. The Subject Member Representative indicated that his "Google" search revealed other media articles relating to the Crown's stay of proceedings of Constable Kitzul's criminal charges.

[197] RCMP members' misconduct is reported in the media daily. I find it reasonable for me to infer that with each media account about member misconduct, the reputation of the RCMP and the corresponding public trust is eroded to some degree. However, on a broader scale, I doubt that the media accounts relating to Constable Kitzul's criminal proceeding contributed significantly to that erosion. The real impact of Constable Kitzul's behaviour is at the local level.

[198] As I previously noted, most of the Conduct Authority's witnesses had an unfavourable opinion of Constable Kitzul because they had at least one bad encounter with Constable Kitzul unrelated to the allegations. Consequently, several of them wished to have little to do with Constable Kitzul. Their limited observations of Constable Kitzul in the relationship with Ms. D.R. simply solidified their poor opinion of Constable Kitzul. Several of the witnesses had ties to other members of the RCMP, either as relatives or acquaintances. I believe all of them are intelligent enough to separate Constable Kitzul's personal actions from the rest of the RCMP. Nevertheless, several of these witnesses identified Constable Kitzul as an RCMP member and commented that they subsequently did not expect the kind of behaviour from Constable Kitzul that they observed. They found even the behaviour that was non-criminal to be unacceptable for a member of the Force.

[199] I have over 20 years of experience providing front line policing in Manitoba. Much of this experience, albeit somewhat dated, involved policing small towns like Roblin. Through this, I have practical insights into the reasonable expectations of these communities. This experience accords with the expectations expressed by the various witnesses I heard in the allegations phase.

[200] Furthermore, in small communities like Roblin, everyone knows everyone else and much about their personal affairs. This is often accentuated with RCMP members who are often prominent or well-known members of these small communities. Therefore, the misconduct of RCMP members in small communities, whether on-duty or off-duty, potentially adversely impacts the reputation of the RCMP in that community. The corollary of this is that the off-duty conduct of RCMP members posted in small communities can result in them being held to a higher standard than members based in large metropolitan centres. I find this to be wholly appropriate since policing small rural communities is the “bread and butter” of RCMP policing duties and the reality of employment as a regular member of the RCMP.

[201] I find that Constable Kitzul’s conduct, at the very least, caused damage to the reputation of the RCMP in the local community. This marks this proportionality factor as aggravating.

***Balancing of the proportionality factors***

[202] All of the proportionality factors I have identified, with the exception of disability and extenuating personal circumstances, are aggravating factors to varying degrees. Consequently, the balance of proportionality factors is tipped heavily in favour of significant conduct measures, up to and including dismissal.

*Higher standards apply to police officers*

[203] Paragraph 36.2(b) of the *RCMP Act* states that one of the purposes of the RCMP conduct regime is to provide for the establishment of a code of conduct that emphasizes the importance of maintaining the public trust and reinforces the high standard of conduct expected of members.

[204] The courts and RCMP conduct boards<sup>18</sup> have long recognized that police officers are held to a higher standard of conduct than the general public. The public has a right to expect that persons they trust to uphold and enforce the law will also adhere to it. Constable Kitzul’s verbal and physical abuse of Ms. D.R. and Constable Kitzul’s decision to operate a motor vehicle while impaired breached that trust in significant ways.

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<sup>18</sup> See *Commanding Officer, “H” Division v Constable Whalen*, 2021 CAD 17, at paragraph 189.

### **Decision on conduct measures**

[205] Having applied the five foundational principles to the circumstances of this case, I find very few redeeming aspects of Constable Kitzul's case; therefore, Constable Kitzul's retention in the RCMP would erode the public trust in the organization. Accordingly, I hereby direct Constable Kitzul to resign from the RCMP within 14 days. If Constable Kitzul fails to do so, I direct Constable Kitzul's dismissal.

### **CONCLUSION**

[206] This decision constitutes my written decision required by subsection 45(3) of the *RCMP Act*. Subsection 25(3) of the *CSO (Conduct)* requires that it be served on the parties. The decision may be appealed to the Commissioner by filing a statement of appeal within 14 days of the service of the decision (section 45.11 of the *RCMP Act*; section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289).



Kevin Harrison  
Conduct Board

January 4, 2023