



ROYAL CANADIAN MOUNTED POLICE

in the matter of a conduct hearing pursuant to the
Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Between:

Commanding Officer, "F" Division

(Conduct Authority)

and

Constable Kaylee Moar
Regimental Number 58353

(Subject Member)

Conduct Board Decision

Louise Morel

September 21, 2023

Staff Sergeant Jonathan Hart, Conduct Authority Representative

Mr. Darren Kraushaar, Subject Member Representative

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SUMMARY

The *Notice of Conduct Hearing* contains three allegations of contraventions of the RCMP Code of Conduct. Allegation 1 involves Constable Moar, while off-duty, transporting an unauthorized passenger, for non-operational purpose, in a marked RCMP police motor vehicle. Allegation 2 involves Constable Moar intentionally pointing her loaded service firearm at Constable S.P. Finally, Allegation 3 states that Constable Moar used unwanted physical force of a sexual nature against Constable S.P.

The Conduct Board found Allegation 1 established. Allegations 2 and 3 were not established. The parties submitted a joint proposal on conduct measures that the Conduct Board accepted: a reprimand and a financial penalty of 2 days' pay.

INTRODUCTION

[1] The *Notice of Conduct Hearing* contains one allegation of misuse of RCMP property in contravention of section 4.6 of the RCMP Code of Conduct, and two allegations of discreditable conduct in contravention of section 7.1 of the RCMP Code of Conduct. It was signed by the Conduct Authority on February 3, 2022, and served on Constable Moar on March 17, 2022, along with the Code of Conduct investigation package.

[2] Two of the allegations arose in the context of a tumultuous personal relationship between Constable Moar and Constable S.P. that began in November 2019 and ended in or around November 2020.

[3] On February 5, 2020, while on-duty, Constable Moar drove Constable S.P. to Moosomin Hospital. Constable S.P. states that, while she was sitting near the nurses' station, waiting to be admitted, and suffering from a severe migraine, she said something along the lines of "put me out of my misery" to Constable Moar. Constable S.P. alleges that, in response to her comment, Constable Moar un-holstered her loaded RCMP firearm and pointed it at her head.

[4] In the early morning hours of February 15, 2020, Constable Moar, while off-duty, attended Constable S.P.'s residence. Constable S.P. alleges that they initially engaged in consensual sexual relations; however, at some point, Constable Moar began aggressively penetrating her with her hand, causing her physical pain. Constable S.P. states that despite her screaming and trying to get out from under Constable Moar, Constable Moar continued penetrating her, without her consent.

[5] On November 29, 2020, while off-duty, Constable Moar used a marked RCMP police motor vehicle to drive M.B., a public service employee, to that employee's residence. It is alleged that Constable Moar misused RCMP property by transporting an unauthorized passenger for a non-operational purpose.

[6] On October 28, 2021, Gerry Annetts was appointed as the conduct board in this matter, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [RCMP Act]. Due to administrative reasons, on May 26, 2022, I was appointed as the new Conduct Board in this matter.

[7] On May 30, 2022, Constable Moar provided her response to the *Notice of Conduct Hearing*, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291. She denied all three allegations.

[8] In accordance with section 45 of the *RCMP Act*, I must decide whether each allegation is established on a balance of probabilities. In other words, I must determine for each allegation whether it is more likely than not that Constable Moar has contravened the RCMP Code of Conduct. If I find one or more of the allegations to be established, then I must impose conduct measures.

[9] The Conduct Hearing in this matter was held in Regina, Saskatchewan, the week of February 22, 2023. The oral decision on the allegations was delivered on February 24, 2023, in which I found Allegation 1 established on a balance of probabilities, and Allegations 2 and 3 not established. This written decision incorporates and expands upon that oral decision.

[10] The parties presented a joint proposal on conduct measures consisting of a reprimand and two days' forfeiture of pay for Allegation 1. I accepted the joint proposal. Thus, the conduct measures, as proposed, are imposed.

ALLEGATIONS

[11] The allegations as set out in the *Notice of Conduct Hearing* are as follows:

Allegation 1

On or about, November 29, 2020, at or between Grenfell and Kennedy, in the Province of Saskatchewan, Constable Moar engaged in conduct contrary to section 4.6 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. On or about November 29, 2020, while off-duty, you used a Police Motor Vehicle ("PMV") to drive [M.B.], a Kipling Detachment Services Assistant, to her home.
2. You misused RCMP property by transporting an unauthorized passenger for a non-operational purpose.
3. There is a WatchGuard video showing [M.B.] exiting your PMV at her residence.

4. You admitted to Sergeant [D.E.] to being wrong in using the PMV for your own personal use.
5. You provided a written statement admitting that you made a poor choice having [M.B.] in the PMV and apologized.
6. You misused RCMP property by transporting an unauthorized passenger for a non-operational purpose.

Allegation 2

On or between February 1, 2020, and February 29, 2020, at or near Moosomin, in the Province of Saskatchewan, Constable Moar engaged in conduct contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. On February 4, 2020, Constable [S.P.] was not feeling well and towards the end of the day, was sent home.
2. On February 5, 2020, while on duty, you picked Constable [S.P.] up from the doctor's office on February 5, 2020, and took her to the hospital.
3. At the hospital, Constable [S.P.] checked in with the nurse and was asked to take a seat near the nurse's station. Constable [S.P.] suffered from a severe migraine and said something to you along the lines of "Put me out of my misery", "put one between my eyes".
4. You subsequently un-holstered your RCMP pistol and pointed it at her. Constable [S.P.] reacted to you pointing a loaded firearm at her and you said something along the lines of, "Oh come on. I'm just fucking kidding".
5. You intended to point a loaded firearm at Constable [S.P.].
6. Your actions were reckless.
7. You conducted yourself in a manner that discredits the Force.

Allegation 3

On or between February 1, 2020, and February 29, 2020, at or near Whitewood, in the Province of Saskatchewan, Constable Moar engaged in conduct contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars

1. In the early morning hours of February 15, 2020, Constable [S.P.] let you enter into her apartment and bedroom.
2. You subsequently took your clothes off and right away penetrated Constable [S.P.] with your hand/fingers. Constable [S.P.] was shocked and initially aroused, but this was short lived.

3. During the penetration, you went too far and you caused Constable [S.P.] physical pain which made her scream. At that point the penetration was no longer consensual.
4. Despite Constable [S.P.] screaming from pain and struggling to get out from under you, you continued to aggressively penetrate her.
5. Penetrating Constable [S.P.] without her consent constitutes sexual assault.
6. On February 18, 2020, you acknowledged the sexual assault and the fact that you had hurt Constable [S.P.] in a text message exchange between yourself and Constable [S.P.]. The text exchange was as follows (our emphasis):

Constable Moar, [12:42 a.m.] – “And why are you refusing to talk?”

Constable [S.P.], [12:42 a.m.] – “Bc I may actually have to see a fucking doctor regarding what you fucking did to me.”

Constable Moar, [12:43 a.m.] – “Oh fucking great.”

Constable Moar, [12:44 a.m.] – “And you are mad at me for it.”

Constable [S.P.], [12:45 a.m.] – “Well what the actual fuck [Constable Moar]??”

Constable Moar, [12:49 a.m.] – “I knew everything would fucking backfire.”

Constable [S.P.], [12:50 a.m.] – “And yes you still fucking did it.”

Constable [S.P.], [12:52 a.m.] – “Yet”

Constable Moar, [2:23 a.m.] – “I didn’t realize I was hurting you. Or I wouldn’t have done it. Great now I get to worry about that too.”

Constable Moar, [2:05 p.m.] – “Come on babe, please talk to me.”

7. The sexual assault was a very scary experience for Constable [S.P.]. Constable [S.P.] has suffered physically, mentally and emotionally as a result.
 8. You have conducted yourself in a manner that discredits the Force.
- [*Sic throughout*]

EVIDENCE

[12] The Record before me includes transcribed statements from Constable S.P. and six other interviewed witnesses; a January 11, 2021, written statement from Constable Moar in response to

the Code of Conduct allegations; the April 14, 2021, Code of Conduct investigation report; and copies of various text message exchanges between Constables S.P. and Moar. At the Conduct Hearing, both members testified.

[13] In arriving at my findings of fact, I have considered the February 10, 2023, *Determination of Established Facts*, in conjunction with the oral evidence received at the Conduct Hearing.

Summary of established facts by the Conduct Board

[14] On February 10, 2023, the Conduct Board provided a *Determination of Established Facts*, which sets out the following undisputed facts to which the parties agree.

[15] At all material times, the Subject Member, Constable Moar, was a member of the Royal Canadian Mounted Police posted to Broadview Detachment, “F” Division, Saskatchewan.

[16] Constable Moar has been a regular member of the RCMP since October 2009, and posted at Broadview Detachment, Saskatchewan, since May 2016.

[17] Constable S.P., the Complainant in this matter, has been a regular member of the RCMP since September 11, 2019. At all material times, she was posted at Broadview Detachment, Saskatchewan.

[18] Constables Moar and S.P. first met in September 2019 and began a romantic relationship in November 2019.

Facts related to Allegation 1

[19] On or around November 29, 2020, Constable Moar used a police motor vehicle to drive M.B., a Kipling Detachment Services Assistant, to her residence.

[20] There is a WatchGuard video, taken by Constable S.P., showing M.B. exiting Constable Moar’s police motor vehicle at her residence.

Facts related to Allegation 2

[21] Constable S.P. was a patient at the Southeast Integrated Care Centre (Moosomin Hospital) from January 27 to 29, 2020, and again from February 5 to 8, 2020.

[22] On February 5, 2020, while on-duty, Constable Moar picked up Constable S.P. from her residence and drove her to the Moosomin Hospital, where Constable S.P. was admitted at 2:05 p.m.

Facts related to Allegation 3

[23] In the early morning hours of February 15, 2020, after finishing a night shift, Constable Moar attended Constable S.P.'s apartment. Constable S.P. buzzed her into the building and returned to her bedroom to wait for Constable Moar.

[24] Constables Moar and S.P. had sexual relations in the early hours of February 15, 2020.

Applicable legal principles to determine credibility and reliability of evidence

[25] I heard oral evidence from Corporal M.H., Constable S.P. and Constable Moar. In assessing a witness's evidence, I must consider whether they are being truthful as well as whether their evidence is reliable (i.e., whether the witness is in a position to accurately perceive and recollect what they observed). I may find a witness's evidence to be truthful, but unreliable. It is also open to me to accept some, none or all of a witness's evidence on a given point.¹

[26] The British Columbia Court of Appeal² notes that a witness's evidence cannot be assessed solely on their demeanour, i.e., that they appear to be telling the truth. Rather, a trier of fact must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts.

¹ *R. v R.E.M.*, 2008 SCC 51, at paragraph 65.

² *Faryna v Chorney*, [1952] 2 DLR 354, at page 357.

[27] The determination of whether the witness's account has an "air of reality" is subjective, but it must be grounded in the totality of the evidence.³

[28] Finally, the Supreme Court further notes that a finding that one party is credible may be determinative, because believing one party will mean explicitly or implicitly that the other party was not believed on the important issues of the case. This becomes especially true when the allegation is altogether denied by the defending party, as is the case here.⁴

[29] In assessing the credibility of the three witnesses that testified before me, I have taken into consideration the witnesses' ability to recall all the details of the events given the passage of time (approximately three years). I have also considered the totality of the evidence adduced in the proceedings, unaided by any presumptions.

Evidence of Corporal M.H.

[30] Corporal M.H. was Constable S.P.'s Shift Supervisor from the summer of 2020 until November of 2020 at Broadview Detachment. He was on-duty on November 29, 2020, when Constable S.P. followed Constable Moar to M.B.'s residence and reported that Constable Moar had an unauthorized passenger in her police motor vehicle. On that same date, he was also the individual to whom Constable S.P. disclosed the alleged sexual assault and the pointing of a firearm by Constable Moar.

[31] Corporal M.H. was a neutral, independent witness. His testimony before me was consistent with the December 7, 2020, statement he provided in the context of the statutory investigation. He answered questions clearly and in a forthright manner. I find his testimony credible and reliable. However, I do note that he was not present during the instances of alleged misconduct.

Evidence of Constable Moar

[32] Constable Moar was an articulate, direct and forthright witness. She answered questions directly and clearly. I agree with the Subject Member Representative's submission that Constable

³ *F.H. v McDougall*, 2008 SCC 53 [*McDougall*], at paragraph 58.

⁴ *McDougall*, at paragraph 86.

Moar was not shaken during cross-examination; she did not default to “I don’t remember” when it came to difficult questions; and her evidence did not evolve during her testimony.

[33] Constable Moar was balanced when expressing herself, she did not seek to embellish or exaggerate her answers, and she did not express opinions or comments that attacked or disparaged the Constable S.P. I find that her testimony was credible and reliable.

Evidence of Constable S.P.

[34] Constable S.P. presented in her testimony as an articulate and confident individual. I acknowledge that a victim of misconduct, including, of course, of a sexual nature, may harbour a deep anger or other negative feelings toward their attacker. Having said this, I find that Constable S.P. made a point, repeatedly, of denigrating Constable Moar by uttering statements, such as “[Constable Moar] is reckless” and “[Constable Moar] does stupid things”, in an effort to bolster the truthfulness of her account.

[35] I noted critical inconsistencies and improbabilities in her evidence. There are numerous discrepancies between her disclosure to Corporal M.H., her statement to the Code of Conduct investigator, and her testimony before me.

[36] As an example of one inconsistency, Constable S.P. contacted Corporal M.H. on November 29, 2020, to report that Constable Moar was driving a police motor vehicle past Broadview Detachment with M.B. in the passenger seat and that Constable Moar was driving her to her residence. Corporal M.H. testified that he ordered Constable S.P. to cease pursuing Constable Moar and to return to the Detachment. She did not obey Corporal M.H.’s direct order.

[37] During her November 30, 2020, interview with Sergeant G.S. in the context of the statutory investigation of the allegations, Constable S.P. stated that she was sitting in the Detachment parking lot, writing her notes, when a police motor vehicle drove by and that she looked over and saw M.B. in the passenger seat of the vehicle being driven by Constable Moar. Constable S.P.

stated that she decided to follow Constable Moar because she thought that Constable Moar “[...] was taking her to the hospital, is what I thought [...]”.⁵

[38] I find it difficult to reconcile Constable S.P.’s various assertions. Why would she engage in the pursuit of Constable Moar if she believed that Constable Moar was driving M.B. to the hospital?

[39] The evidence establishes that, on November 29, 2020, Constable Moar was now in a romantic relationship with M.B. When I look at the totality of the evidence, I find that it is more likely that Constable S.P. was upset about this new relationship. As a result, I find that Constable S.P.’s explanation of her pursuit lacks credibility.

[40] With respect to the allegation that Constable Moar pointed a loaded firearm at her head, in her disclosure to Corporal M.H., Constable S.P. stated that “[...] it might have been inadvertent [...]”.⁶

[41] However, during her November 30, 2020, interview with Sergeant G.S., Constable S.P. stated that, while at Moosomin Hospital, she was sitting in a chair while Constable Moar, in full uniform, was standing next to her. Constable S.P. stated that she told Constable Moar words to the effect of “put one between my eyes” or “put me out of my misery”, after which Constable Moar unholstered her pistol, lifted it toward her and then re-holstered it. Constable S.P. stated that she did not think anyone witnessed this incident. In addition, she stated that, after February 5, 2020, when she was getting better and started walking, “doing laps” in the hospital, she noticed a camera on the ceiling of the nurses’ station.⁷

[42] During her testimony before me, on February 22, 2023, Constable S.P. testified that, when she and Constable Moar arrived at the nurses’ station of Moosomin Hospital on February 5, 2020, there was no one at the station. There was one chair in the corner beside the nurses’ station; she sat in it and noticed that “[...] there’s a camera above the chair [...]”.⁸

⁵ *Transcript of the Recorded Interview of [Constable S.P.]*, November 30, 2020, at page 58.

⁶ *Transcript of the Recorded Interview of Corporal [M.H.]*, December 7, 2020, at page 19.

⁷ *Transcript of the Recorded Interview of [Constable S.P.]*, November 30, 2020, at pages 48 to 51.

⁸ *Transcript of Conduct Hearing*, February 22, 2023, at page 38.

[43] Constable S.P. testified that Constable Moar was standing in front of her, straddling her, while she was sitting with her head down, and touching the top of her head. Constable S.P. stood up to demonstrate what occurred and stated that “[...] she was standing in front of me like, you know, kind of waiting for the nurse looking around, but she was petting my head. She was petting the top of my head like, ‘Baby, what can I do? How can I make you feel better?’... And so I just – I just looked at her, like, ‘you know what I want you to do.’ What I was insinuating was the things that I’ve said in the past about migraines and discomfort. [...]”⁹

[44] Constable S.P. testified that, throughout her relationship with Constable Moar, when suffering from a migraine, she had routinely made statements such as “just put me out of my misery” or “put one round in my head”.

[45] Constable S.P. continued her testimony by stating that “[...] I don’t remember what or if I even said anything or if it was just the look like, ‘you know, what you need to do.’ And as soon as I did that, she was facing me this way, she was straddled she said, ‘What, like this?’ And then she un-holstered her pistol, pointed it at me and re-holstered it very quickly. [...]”¹⁰

[46] According to Constable S.P., immediately following this interaction, a nurse came around the corner and called her into a room where she was admitted. Constable Moar stayed with her “[...] to make sure everything went all right [...] She stayed until I was settled. [...]”¹¹

[47] Constable S.P. testified that she never spoke to Constable Moar about the firearm incident after it occurred, as there was nothing to say. According to Constable S.P., “that’s just [Constable Moar] ... that’s what she does”.¹² When asked if she told anyone about this incident at or around the time it allegedly occurred, Constable S.P. responded “[...] No. Like I said, I was Team [Constable Moar]. I felt like the relationship that I was getting into, I wanted to protect her [...] I didn’t want to hurt her career. I was all her. I was on her team. I was on her side. [...]”¹³

⁹ *Transcript of Conduct Hearing*, February 22, 2023, at pages 40 to 42.

¹⁰ *Transcript of Conduct Hearing*, February 22, 2023, at page 42.

¹¹ *Transcript of Conduct Hearing*, February 22, 2023, at pages 44 and 45.

¹² *Transcript of Conduct Hearing*, February 22, 2023, at pages 45 and 46.

¹³ *Transcript of Conduct Hearing*, February 22, 2023, at pages 46 and 47.

[48] Constable S.P. went on to state that the incident was scary, but that she made “a conscious observation” that there was a camera behind that chair and “[...] I kind of put it in my memory in case anything ever were to happen then I would have known that there would have been footage of the whole thing. [...]”¹⁴

[49] In the first instance, during her disclosure to Corporal M.H., Constable S.P. stated that the pointing of the firearm “might have been inadvertent”. It begs the question as to how one could ever point a loaded firearm at someone “inadvertently”. Then, in her November 30, 2020, statement, Constable S.P. stated that she did not think there was anyone at the nurses’ station and that she said to Constable Moar words to the effect of “put me out of my misery”. Then, she stated that it was after February 5, 2020, while “doing laps” around the hospital, that she noticed a camera above the chair in which she had sat.

[50] During her February 22, 2023, testimony she was categorical that there was no one at the nurses’ station; she stated that she only had to look at Constable Moar to imply “you know what you need to do”; and that she immediately noted that there was a camera above her chair and consciously stored that information should she ever need proof of the incident.

[51] Constable S.P.’s version of events evolved from her first disclosure to Corporal M.H., her statement to Sergeant G.S. the next day, and her testimony before the Conduct Board.

[52] I note that Constable S.P. was admitted at Moosomin Hospital on Wednesday, February 5, 2020, at 2:05 p.m. It is inconceivable to believe that there was no one present at the nurses’ station or that no one would notice a police officer, in full uniform, drawing her firearm in a public place. There is simply no “air of reality” to the Constable S.P.’s testimony.

[53] As noted in *McDougall*,¹⁵ “[...] a series of inconsistencies may become quite significant and cause a trier of fact to have a reasonable doubt about the reliability of the witness’ evidence [...]”.

¹⁴ *Transcript of Conduct Hearing*, February 22, 2023, at page 47.

¹⁵ *McDougall*, at paragraph 57.

[54] When I must look at the totality of the inconsistencies throughout Constable S.P.'s evidence, I have serious doubts with respect to the reliability of her evidence.

[55] Furthermore, the fact that I found Constable Moar's evidence to be reliable and credible, as stated in *McDougall*, is determinative and leads to the inevitable conclusion that I do not believe Constable S.P.'s evidence.

ALLEGATION 1 – MISUSE OF A FORCE VEHICLE

[56] Section 4.6 of the RCMP Code of Conduct states: "Members use government-issued equipment and property only for authorized purposes and activities".

[57] The *Conduct Measures Guide*¹⁶ states: "Misuse of a Force vehicle includes [...] transportation of unauthorized persons [...]"

[58] In order to establish an allegation under section 4.6 of the Code of Conduct, the Conduct Authority must prove each of the following on a balance of probabilities:

- a) The identity of the member;
- b) That the member used government-issued equipment or property;
- c) That the member used the equipment for an unauthorized or non-operational purpose;
- d) That the equipment or property was used for a personal reason.

Analysis of evidence for Allegation 1

[59] In the conduct process, the onus is on a conduct authority to demonstrate that, on a balance of probabilities, the allegations are established. A conduct board is then responsible for determining whether this burden has been met.

[60] I found as an established fact¹⁷ that, on November 29, 2020, Constable Moar used a police motor vehicle to drive M.B., a Kipling Detachment Services Assistant, to her residence. The

¹⁶ *Conduct Measures Guide*, November 2014, at page 29.

¹⁷ *Determination of Established Facts*, dated February 10, 2023, at paragraph 5.

Record before me contained a WatchGuard video that clearly shows a civilian exiting the vehicle driven by Constable Moar.

[61] In a January 22, 2021, statement, Constable Moar admitted to driving from her residence to Broadview Detachment, in her police motor vehicle, with her girlfriend, M.B., a Detachment Services Assistant. Her intent was to switch vehicles at Broadview Detachment, and to continue on to M.B.'s residence in her private vehicle.

[62] However, upon arriving at Broadview Detachment, Constable Moar observed Constable S.P. in the parking lot, near her personal truck. In order to avoid a possible confrontation with Constable S.P., she decided to drive on to drop off M.B. at her residence.

[63] Constable S.P. followed Constable Moar for approximately 45 minutes, to M.B.'s residence, using the WatchGuard video in her police motor vehicle to record the fact that M.B. was a passenger in Constable Moar's vehicle.

[64] Upon returning to Broadview Detachment, Constable Moar admitted to Corporal M.H. that she had driven, without authorization, M.B. to her residence in a police motor vehicle. In her January 22, 2021, statement, she apologized for her actions. In her subsection 15(3) *Response to the Code of Conduct Hearing* submission, she acknowledged the particulars of Allegation 1.

[65] Furthermore, at the outset of the Conduct Hearing, Constable Moar admitted this allegation.

Findings on Allegation 1

[66] I accept Constable Moar's admission and, consequently, the allegation of misuse of a police motor vehicle is established on a balance of probabilities.

ALLEGATIONS 2 AND 3 – DISCREDITABLE CONDUCT

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

[68] In steps 1 and 2, a conduct authority must establish on a balance of probabilities the acts constituting the alleged conduct and the identity of the member who committed those acts. In order to establish the act or acts constituting the alleged conduct, it must be demonstrated that the particulars that are essential to the allegations have in fact occurred. It is not necessary to establish each particular, just enough that those that are established meet the threshold of discreditable conduct.

[69] In step 3, a conduct board must determine whether the subject member's conduct likely brings the RCMP into disrepute. This involves determining whether a reasonable person in society, with knowledge of all of the relevant circumstances, including the realities of policing in general and of the RCMP in particular, would consider the conduct to be discreditable.

[70] Finally, in step 4, a conduct board must determine whether the conduct is sufficiently related to the subject member's duties and functions as to provide the Force with a legitimate interest in disciplining them.

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

Analysis of evidence for Allegation 2

[72] In the conduct process, the onus is on a conduct authority to demonstrate on a balance of probabilities that the allegations are established. A conduct board is then responsible for determining whether this burden has been met.

[73] As stated by the Supreme Court of Canada in *McDougall*, "[...] evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. [...]".¹⁸ However, the Supreme Court recognizes that there is "[...] no objective standard to measure sufficiency [...]".¹⁹

¹⁸ *McDougall*, at paragraph 46.

¹⁹ *McDougall*, at paragraph 46.

[74] The *Notice of Conduct Hearing*²⁰ alleges that, on February 5, 2020, Constable Moar “intentionally” pointed her loaded service firearm at Constable S.P.’s head. This is alleged to have taken place at the nurses’ station of Moosomin Hospital while Constable S.P. was waiting to be admitted.

[75] It is undisputed that on February 5, 2020, while on-duty, Constable Moar picked up Constable S.P. from her residence and drove her to Moosomin Hospital, where Constable S.P. was admitted at 2:05 p.m.

Constable S.P.’s evidence

[76] In her November 30, 2020, interview, Constable S.P. stated that, on February 5, 2020, Constable Moar, who was on-duty, drove her to the hospital to be admitted. While waiting to be admitted, Constable S.P. was seated in a chair, across from the nurses’ station, suffering from a migraine, and she said something to the effect of “put me out of my misery” or “put one between my eyes”. In response to her comment, Constable Moar, who was standing in front of her, in full uniform, un-holstered her RCMP-issued firearm and pointed it at her and said “What like this?” and then re-holstered her firearm.

[77] During her testimony before me, she could not remember if she said anything to Constable Moar or if it was simply a “look”. She stated that Constable Moar was facing her, straddling her and petting her head, and asked “What can I do to make you feel better?”. Constable S.P. testified that she looked up at Constable Moar and her “look” implied “you know what I want you to do”.²¹

[78] Constable S.P. testified that, following “the look”, Constable Moar stated “What ‘like this’” and unholstered her firearm, pointed it at her and re-holstered it very quickly.²² During this narrative, Constable S.P. stood and demonstrated how Constable Moar allegedly performed this action.

²⁰ *Notice of Conduct Hearing*, February 3, 2022, at page 2.

²¹ *Transcript of Conduct Hearing*, February 22, 2023, at pages 40 to 42.

²² *Transcript of Conduct Hearing*, February 22, 2023, at page 42.

[79] Constable S.P. testified that she then lifted her head and said “did you just point a – it’s a loaded gun. You just – did you just point a loaded gun at me?”, to which Constable Moar allegedly stated “Oh my god – it was a fucking joke. Relax.”²³

[80] Constable S.P. then testified that she confronted Constable Moar because she did not believe what just happened and continued by stating “I know [Constable Moar]’s done some fucked up things, and she’s a bit reckless, but – I don’t know. I – I mean, the fact that I didn’t flinch kind of tells you I was kind of used to things that she would do ... And she just took it out, pointed it, and then put it away like this was something that was normal to her. So I was in shock. Like I said, I didn’t believe it, but I think my lack of reaction was kind of testament to this is just her. She does stupid shit. She does not care”.²⁴

[81] Constable S.P. stated that, after her initial comment to Constable Moar, she never mentioned this alleged pointing of a loaded firearm again.

[82] Constable S.P. testified that, although she did not see anyone around when the incident occurred, there might have been someone sitting behind the nurses’ station counter; she explained that one cannot see the nurses when they are sitting in that area.

Corporal M.H.’s testimony

[83] Corporal M.H. testified that when Constable S.P. disclosed the alleged pointing of a firearm by Constable Moar, she made a reference about not knowing if it was intentionally pointed at her. He stated:

Yeah, I do remember that. I do remember that. I don’t know if she meant it or not, but “it was pointed at my head” or something like that.²⁵

[84] Corporal M.H.’s testimony before me was consistent with his December 7, 2020, statement to Sergeant G.S. When recounting Constable S.P.’s November 29, 2020, disclosure of the alleged contraventions, he recalled that Constable S.P. stated:

²³ *Transcript of Conduct Hearing*, February 22, 2023, at page 42, lines 14 to 19.

²⁴ *Transcript of Conduct Hearing*, February 22, 2023, from page 42, line 24, to page 43, line 15.

²⁵ *Transcript of Conduct Hearing*, February 22, 2023, at page 308, lines 6 to 9.

[...] “She pointed a loaded firearm at ... at me.” She’s like ... she said something about it being in ... it might have been inadvertent or ... but ah ... she did it out in public and it was at the hospital. [...]”²⁶

Constable Moar’s Testimony

[85] Constable Moar testified that, on February 5, 2020, Constable S.P. phoned her to advise that she needed to be admitted to Moosomin Hospital and to ask if Constable Moar could drive her.

[86] Constable Moar explained that she was scheduled to work a night shift and called the Broadview Detachment Staff Sergeant for authorization to drive Constable S.P. to Moosomin Hospital. The Staff Sergeant agreed and Constable Moar picked up Constable S.P. at her residence, in Whitewood, and drove her to Moosomin Hospital.

[87] Constable Moar testified that she was in uniform, wearing her service firearm, and was in a police motor vehicle. She recalled that she left her residence in Grenfell around 1 p.m. and arrived at the hospital with Constable S.P. somewhere between 2 p.m. and 2:30 p.m.

[88] Constable Moar stated that Moosomin Hospital is one of the larger hospitals in the southeast part of rural Saskatchewan with 27 inpatient beds, an X-ray department, with lab and ultrasound capabilities, 2 large waiting rooms, a long-term care wing and an emergency department. She testified that she had attended this hospital in excess of 100 times since she was posted in Moosomin for six years prior to her transfer to Broadview Detachment.

[89] Constable Moar testified that, on February 5, 2020, a weekday in the middle of the afternoon, the hospital was having a normal “bustling” day.

[90] Constable Moar recalled that, when they arrived at the hospital, they entered the main entrance, stopped at the registry desk to check in, where Constable S.P. was given a pink sheet and directed to go around to the back to where the inpatient area was. They walked down the hall to the nurses’ station.

²⁶ *Transcript of Interview of Corporal [M.H.]*, December 7, 2020, at page 19.

[91] Constable Moar recalled that there was a chair beside some sort of desk area where one could sit down with a nurse and go through one's paperwork. She recalled that she did not sit down in the chair, but she could not recall if Constable S.P. did.

[92] When asked if there was a nurse at the nurses' station, she testified that there were people all over the area and that if there had not been somebody in the hospital, then it would have thrown alarm bells for her.²⁷

[93] Constable Moar did not recall seeing any security cameras around the nurses' station, but she stated that she was aware of cameras at the entrances to the hospital from her time in Moosomin.

[94] Constable Moar testified that she could not recall what actually happened when they arrived at the nurses' station, but she knew that they were not in the open area for too long before being moved into a room.

[95] She did not recall any conversations with Constable S.P., but she noted that Constable S.P. was obviously in pain and that she was trying to console her as much as she could.

[96] Constable Moar denied that she ever pulled her firearm out and pointed it at Constable S.P. She testified that, throughout her career, she had never pulled her firearm out jokingly. She further, denied that Constable S.P. ever confronted her about pulling her firearm or ever had a conversation with her about drawing her firearm and pointing it at her. In addition, she testified that Constable S.P. had never sent her a text or email about that.

[97] Constable Moar testified that she first learned of the alleged incident in November 2020 when Constable S.P. made the allegation.

Findings on Allegation 2

[98] This is a case of oath pitted against oath. I note that there are inconsistencies between Corporal M.H.'s testimony with respect to Constable S.P.'s disclosure of the alleged pointing of

²⁷ *Transcript of Conduct Hearing*, February 22, 2023, at page 16, lines 7 to 10.

the firearm as possibly being “inadvertent” and her testimony. She categorically denied making this statement during her testimony before me.

[99] I find that Constable S.P.’s accusation is an uncorroborated account of an implausible event. I cannot, for one instance, believe that a police officer, in full uniform, at 2 p.m. in the afternoon at the nurses’ station of a hospital, could pull out her firearm, point it at a patient, and go unnoticed. This defies logic and common sense.

[100] There is no “air of reality” to Constable S.P.’s testimony and I find that her version of what occurred changed and evolved from November 29, 2020, to her testimony before me. The totality of the discrepancies leads me to find that Constable S.P.’s testimony is not reliable and I prefer the account provided by Constable Moar.

[101] The Conduct Authority Representative has failed to establish, on a balance of probabilities, the act constituting the alleged misconduct. That is, Constable Moar “intentionally or otherwise” unholstered her service firearm and pointed it at Constable S.P.

[102] Allegation 2 is not established.

Analysis of evidence for Allegation 3

[103] The *Notice of Conduct Hearing*²⁸ asserts that, in the early morning hours of February 15, 2020, Constable Moar attended Constable S.P.’s apartment. It is alleged that Constable Moar penetrated Constable S.P. with her hand/fingers and that, initially, Constable S.P. was aroused. However, during penetration, Constable Moar went too far and caused Constable S.P. physical pain that made her scream and struggle to get out from under Constable Moar. It is further alleged that this constitutes a sexual assault.

[104] It is an undisputed fact that Constable Moar attended Constable S.P.’s apartment in the early morning hours of February 15, 2020. What actually transpired is at issue.

²⁸ *Notice of Conduct Hearing*, February 3, 2022, at page 2.

[105] As previously stated in the context of Allegation 2, the onus is on a conduct authority to demonstrate on a balance of probabilities that the allegation is established and that, as per the Supreme Court of Canada's holding in *McDougall*,²⁹ the "[...] evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test [...]"

Constable S.P.'s evidence

[106] Constable S.P. testified that, prior to February 15, 2020, there was tension in her relationship with Constable Moar. According to her, the problem was that Constable Moar was about to leave for a one-week vacation in Las Vegas with her ex-spouse. Constable S.P. was upset and confronted Constable Moar about this trip.

[107] Constable S.P. recalled that they were messaging back and forth, and Constable Moar indicated that she would drop by after her shift, to which she agreed. Upon Constable Moar's arrival, Constable S.P. remained in bed, naked and buzzed her into the building using her cell phone. She stated that she heard Constable Moar enter the apartment and remove what she assumed was her duty belt.

[108] Constable S.P. emphasized that all the lights were off in the apartment and that she was in complete darkness. Constable Moar opened her bedroom door, entered and did not say a word. According to the Constable S.P., Constable Moar immediately got into bed, lifted the bottom half of the sheet covering her and "instantly she got on top of me and she inserted her fingers inside me".³⁰

[109] Constable S.P. testified that the penetration was initially a pleasurable thing, but that during the second penetration with her fingers, Constable Moar went inside her too deeply, "she just shoved her hand further. Like it felt intentional."³¹

[110] Constable S.P. testified that she started screaming and shifted her hips, but that Constable Moar did not react and that "It felt like she was in a trance".³² She continued stating that she put a

²⁹ *McDougall*, at paragraph 46.

³⁰ Transcript of Conduct Hearing, dated February 22, 2023, at page 54, lines 18 to 20.

³¹ Transcript of Conduct Hearing, dated February 22, 2023, at page 57, lines 10 to 12.

³² Transcript of Conduct Hearing, dated February 22, 2023, at page 58, lines 8 to 10.

leg up to try to get her off of her, screaming and crying, but that Constable Moar simply put all of her weight on top of her to continue penetrating her with her hand.

[111] Constable S.P. stated that she felt like her insides were swelling, that she felt like they were ripped. At one point, she let her body go limp and Constable Moar rolled off her.

[112] According to Constable S.P., she then rolled away from Constable Moar, pulled her knees up and started sobbing. Constable S.P. recalled stating to Constable Moar “like if you know you hurt me, why are you not holding me right now?”³³

[113] Constable S.P. testified that she was waiting for Constable Moar to hold her, but instead, she stood next to the bed and started frantically buttoning up her shirt. Constable S.P. explained that she could “see” Constable Moar buttoning her uniform shirt because there is a light outside her apartment that came through her blackout curtains.

[114] Constable S.P. repeated that Constable Moar was “looking through her”³⁴ as if she was not present or in a trance. In response, Constable S.P. got off the bed and went to Constable Moar “to calm her down”³⁵ and get her out of the trance she was in.

[115] Constable S.P. testified that Constable Moar then stated, verbatim: “Oh, I can just see it now. Senior member rapes junior member” and “Oh, and you’re going to tell them that I loaded a – I pointed a loaded firearm at you, too?”³⁶

[116] Constable S.P. stated that she continued to try to reassure Constable Moar and grabbed on to her. She slowly got Constable Moar to stop buttoning her shirt, sat on the bed and pulled Constable Moar down onto the bed so that she could hold her.

[117] According to Constable S.P., she rolled back into a fetal position, Constable Moar laid next to her, and that she grabbed her arm and placed it around herself.

³³ *Transcript of Conduct Hearing*, February 22, 2023, at page 61, lines 11 to 13.

³⁴ *Transcript of Conduct Hearing*, February 22, 2023, at page 64, line 5.

³⁵ *Transcript of Conduct Hearing*, February 22, 2023, at page 64, line 9.

³⁶ *Transcript of Conduct Hearing*, February 22, 2023, at page 64, lines 20 to 23.

[118] Constable S.P. could not recall if they started talking, whether they made love for a second time, nor how long Constable Moar allegedly stayed.

[119] In response to the Conduct Authority Representative's question as to whether she sustained an injury, Constable S.P. stated: "Like, I never saw a doctor, but my insides were sliced up, I know that. My insides were swelling, I could feel that. It was awful."³⁷ Constable S.P. stated that, other than the swelling, she noticed a few days later a discharge when she wiped herself and she took a picture of it.³⁸

[120] The Conduct Authority Representative asked that the photograph, timestamped to February 17, 2020, be marked as his second exhibit. In entering it as an exhibit, I described the photograph as a "picture of toilet paper with brown discharge".³⁹ Constable S.P. corrected me by explaining that she was in the process of cleaning the bathroom and used a paper towel, instead of toilet paper, to wipe herself.

[121] When asked what she recalled about her interactions with Constable Moar following the alleged February 15, 2020, sexual assault, Constable S.P. testified that she simply went back to normal. She stated that Constable Moar texted her later that same day to mention that she was going to the city and to enquire if Constable S.P. needed anything. Constable S.P. asked that she pick up cat food. Constable Moar picked up the cat food and dropped it off at Constable S.P.'s apartment prior to leaving on her trip to Las Vegas.

[122] Constable S.P. confirmed that, while Constable Moar was in Las Vegas with her ex-spouse, they continued to text each other. She produced a February 18, 2020, text message exchange between herself and Constable Moar. The first text is timestamped 12:08 a.m. from Constable Moar and reads "Tattoo time! No names this time hahaha".

³⁷ *Transcript of Conduct Hearing*, February 22, 2023, at page 70, lines 1 to 3.

³⁸ Conduct Authority Representative Exhibit 2, "picture of a toilet paper with brown discharge".

³⁹ *Transcript of Conduct Hearing*, February 22, 2023, at page 71, lines 22 and 23.

[123] At 12:42 a.m., Constable S.P. writes that she might have to go see a doctor regarding what Constable Moar did to her. At 2:23 a.m., Constable Moar responded that “[...] I didn’t realize I was hurting you. Or I wouldn’t have done it. [...]”⁴⁰

[124] Constable S.P. testified that she never went to see a doctor about the alleged injuries that she sustained and that she never mentioned or discussed the incidents of February 15, 2020, with Constable Moar following the aforementioned exchange nor did Constable Moar mention it.

[125] Constable S.P. testified that she brought up the sexual assault to Corporal M.H. in November 2020 because their “relationship was ending, and I wanted people to know what she was capable of doing. And part of me feels responsible to stop that from happening to other people.”⁴¹

Cross-examination of Constable S.P.

[126] During her cross-examination, Constable S.P. confirmed that, during her relationship with Constable Moar, they communicated by text, email, WhatsApp and in person. She used both her personal cell phone as well as her work cell phone during these communications.

[127] Constable S.P. testified that she had told friends about the various incidents that underlie the allegations against Constable Moar. She specified that she spoke to her ex-wife, J.P., her friends K.P., S.M., S.G., and Brit.

[128] The Subject Member Representative questioned Constable S.P. about “Brit”. Constable S.P. confirmed that “Brit”, also known as “B.J.”, was actually RCMP Constable B.J., her best friend, and that she spoke or communicated with her on a daily basis, either by phone, text or email messages. Constable S.P. stated that her constant communications with Constable B.J. was a source of tension between herself and Constable Moar.⁴²

[129] Constable S.P. testified that she told Constable B.J. about all the incidents as they occurred, but that she did not provide her name to Sergeant G.S. as a witness to be interviewed. When

⁴⁰ Conduct Authority Representative Exhibit 3 – 2 pages.

⁴¹ *Transcript of Conduct Hearing*, February 22, 2023, at page 80, lines 5 to 8.

⁴² *Transcript of Conduct Hearing*, February 22, 2023, at page 99, lines 11 to 25, and page 100, lines 1 to 9.

questioned about why she would not have provided Constable B.J.'s name and contact information, Constable S.P. stated that she did not want to involve her since Constable B.J. could face a Code of Conduct investigation for failing to report the incidents. Constable S.P. stated that Constable B.J. asked her to leave her name out of the investigation.

[130] Constable S.P. further revealed that she also spoke to another police officer, "J.", and never brought her name forward.

[131] During her cross-examination, Constable S.P. stated that her relationship with Constable Moar was good when they were together and that they rarely fought. However, when they communicated by text or email, they would have arguments and Constable S.P. would routinely block Constable Moar on text or WhatsApp.

[132] Constable S.P. confirmed that she was upset about the fact that Constable Moar was going to Las Vegas with her ex-spouse and that they fought about that trip for a relatively long period of time.

[133] Constable S.P. conceded that, when she was upset with Constable Moar about something, she would routinely confront her about it via text or email. She confirmed that, prior to the alleged February 15, 2020, sexual assault, she was fighting with Constable Moar about the upcoming Las Vegas trip.

[134] Constable S.P. could not recall the conversation that led up to Constable Moar attending her residence; all she remembered was that Constable Moar stated "I'm fucking coming over".⁴³ Constable S.P. testified that she did not remember if she asked Constable Moar to come over or whether it was Constable Moar who asked to come over to make things right before she left on her trip.

[135] The Subject Member Representative then asked Constable S.P. to refer back to her November 30, 2020, statement to Sergeant G.S., which states:

[...] But she knew I was having a hard time thinking how things were going to go with her and her ex going away on vacation. So, um, our, our, our chat

⁴³ *Transcript of Conduct Hearing*, February 22, 2023, at page 118, lines 8 to 11.

was kind of like, 'Baby, let me come see you. Let me come. I just want to see you, and, you know, make this right before we go or whatever.' [...]⁴⁴

[136] Constable S.P. confirmed that she did state this and that she was trying to describe the context surrounding Constable Moar coming over.

[137] The Subject Member Representative suggested to Constable S.P. that the reason Constable Moar was attending her apartment on February 15, 2020, was to pick up various items that she needed for her trip, such as her cologne, migraine medication and jacket.⁴⁵ Constable S.P. testified that she could not recall any of this. She testified that, at some point in their relationship, she threw out Constable Moar's cologne, but she could not remember the timing of that event.⁴⁶

[138] Constable S.P. could not describe Constable Moar's position on top of her. She repeated that Constable Moar entered the bedroom, got on top of her and inserted her hand inside her. The Subject Member Representative asked where Constable Moar's head was in relation to Constable S.P.'s body, to which Constable S.P. responded that Constable Moar's head was right above her crotch.⁴⁷

[139] When asked how it was possible for Constable Moar to be on top of her if her head was at Constable S.P.'s crotch, Constable S.P. first stated that Constable Moar straddled her, that she could not remember how her legs were positioned, and that she only remembered that Constable Moar was inside her.

[140] Constable S.P. then insisted that Constable Moar was pushing all of her weight on her. She could not describe how Constable Moar was holding her down, she could not describe what, if any, part of her body was on top of her, only that Constable Moar had one hand planted on the bed next to her. Constable S.P. stated:

⁴⁴ *Transcript of the Recorded Interview of* [Constable S.P.], November 30, 2020, at page 7.

⁴⁵ *Transcript of Conduct Hearing*, February 22, 2023, at page 121, lines 17 to 25, and page 122, lines 1 to 5.

⁴⁶ *Transcript of Conduct Hearing*, February 22, 2023, at page 123, lines 11 and 12.

⁴⁷ *Transcript of Conduct Hearing*, February 22, 2023, at page 139, lines 19 and 20.

I don't know what was on me. I couldn't get her off of me. I don't know – she wasn't, like laying on me. Clearly she wasn't laying if she was able to do this motion back and forth.⁴⁸

[141] During cross-examination, Constable S.P. testified that she could not recall if she required mental health support following the alleged incident. She confirmed that, in the spring or summer of 2020, she undertook a fertility process and this included having an internal examination. When asked by counsel if the internal examination revealed any scarring, Constable S.P. deliberately avoided the question.

[142] The Subject Member Representative then asked Constable S.P. directly if, in November 2020, she told Corporal M.H. that she had actual scars from the alleged sexual assault. The exchange was as follows:

Q. Do you deny that you told him you had scars, you had actual scars from this event?

A. I don't know what I said to him.

Q. Okay. If you would have told him that, though, that would have been incorrect; right?

A. Again, I can't attest to what I was referring to when I said "scars".

Q. No, but you don't have scars from this.

A. I don't know, I never had a doctor look to see if there was scars.

Q. You don't have scars that you're aware of.

A. I don't know what the inside of me looks like, no.

*[Sic throughout]*⁴⁹

[143] During her November 30, 2020, statutory interview with Sergeant G.S., Constable S.P. testified as follows:

[...] I recently have ... have ... I've been going through tests because I was trying to have a baby and ... I had an internal exams, etcetera. And that was one of the concerns I had, was... if I would've had any deep scarring or

⁴⁸ *Transcript of Conduct Hearing*, February 22, 2023, at page 144, line 23, to page 145, line 2.

⁴⁹ *Transcript of Conduct Hearing*, February 22, 2023, at page 198, line 20, to page 199, line 10.

anything. Uhm ... but as of right now, the tests are clear, so ... [...] [*Sic throughout*]⁵⁰

Corporal M.H.'s testimony

[144] Corporal M.H. testified that one of the first interactions he had with Constable S.P. was on November 18, 2020, when she approached him for advice on how to deal with an office clerk who was having problems with an ex-spouse. During that conversation, after discussing the issue with the clerk, he brought up the fact that he had noticed that she was withdrawn and asked Constable S.P. if there was anything going on.

[145] Corporal M.H. explained that Constable S.P. came on his shift around May 2020 and that he had found her to be outgoing, to have a good sense of humour and to be joining into conversations. However, in October 2020, he noticed a change in her personality. She no longer joined the team members for lunch or coffee breaks nor would she engage in conversations.

[146] Corporal M.H. recalled that, in response to his enquiring about why she was withdrawn, Constable S.P. stated that something criminal happened to her, but that she was not ready to come forward.

[147] Corporal M.H. testified that, on November 29, 2020, when Constable S.P. returned to the Detachment after following Constable Moar and M.B., he brought her into his office at the Detachment. He recalled that she was upset and that he encouraged her to give details about what she meant on November 18, 2020, when she stated that something criminal had happened to her. Corporal M.H. stated:

And she blurted out that she - - that [Constable Moar], I think she said raped her and pointed a gun at her.⁵¹

[...]

And I think at one point she had said "there's scarring from what happened."⁵²

⁵⁰ *Transcript of the Recorded Interview of* [Constable S.P.], November 30, 2020, at page 45.

⁵¹ *Transcript of Conduct Hearing*, February 22, 2023, at page 288, lines 9 to 11.

⁵² *Transcript of Conduct Hearing*, February 22, 2023, at page 288, lines 16 and 17.

[148] Corporal M.H. further elaborated that Constable S.P. did not mention a specific body part when she alluded to her scarring, but he believed that she might have said something like “down there”.⁵³ During cross-examination, Corporal M.H. testified that he understood Constable S.P. to be talking about having physical scars that would prove she was raped.

[149] Corporal M.H. testified that after Constable S.P. blurted out the comment about being raped and a firearm, he did not probe for further details. He called the Detachment Commander to report Constable S.P.’s disclosure and initiate a statutory investigation. He explained that Constable S.P. was scared for her safety, did not want to be left alone, and that she ended up staying at his residence overnight.

Constable Moar’s evidence

[150] Constable Moar testified that, when she first met Constable S.P., in September 2019, she was and had been in a relationship with N.D. for approximately five or six years and that they shared a residence together. That relationship broke down in mid-October of 2019 and, in November 2019, she began a relationship with Constable S.P. Constable Moar testified that N.D. did not move out of their residence until March 2020, and that this was a source of tension between herself and Constable S.P.

[151] Constable Moar described her relationship with Constable S.P. as a casual one and that Constable S.P. did not want to put a label on their relationship or make any commitment. She noted that they argued a lot, over texts and emails, and that, in hindsight, it was not a healthy relationship.

[152] Constable Moar testified that there was never any violence or threats of violence in the relationship. She stated that, during the course of the relationship, they often went their separate ways for a week or two with Constable S.P. blocking her on social media.

[153] Constable Moar advised that the relationship permanently ended on October 19, 2020, and that it was a mutual decision. At the end of October 2020, she began seeing M.B., her current partner.

⁵³ *Transcript of Conduct Hearing*, February 22, 2023, at page 290, line 15.

[154] Constable Moar testified that, in 2019, she and N.D. experienced a miscarriage. The child's due date would have been February 2020. In order to deal with the loss, they planned a trip to Las Vegas from February 16 to 21, 2020.

[155] Constable Moar recalled that, early in her relationship with Constable S.P., she advised her of the February 2020 trip. Constable S.P. was upset about the planned trip and they frequently argued about it over texts and emails. In the days prior to February 15, 2020, there was increased tension in their relationship.

[156] Constable Moar testified that, on February 15, 2020, she was working a night shift and was texting Constable S.P. in an effort to stop by Constable S.P.'s apartment and pick up various items that she required for her Las Vegas trip. Specifically, she wanted to get her North Face spring jacket, some cologne and her migraine medication.

[157] According to Constable Moar, Constable S.P. agreed to let her stop by and pick up her belongings. Constable Moar stated that, in her mind, she believed that her visit would likely turn into some sort of sexual experience. She noted that, in the course of their relationship, the pattern was that they would argue and then make up by having sex.

[158] Constable Moar stated that, on February 15, 2020, it did not matter to her either way; her focus was to pick up her items for her upcoming trip.

[159] Constable Moar recalled that her shift ended at 2 a.m., it was a 15-minute drive to Whitewood, and she believed she would have arrived at Constable S.P.'s apartment around 2:30 a.m. or 3 a.m.

[160] Constable Moar testified that, when she arrived, Constable S.P. buzzed her in; she took the elevator to the correct floor and walked into the apartment. She noted that Constable S.P. was in bed and that there were no lights on.

[161] Constable Moar stated that she walked into Constable S.P.'s bedroom and used the light from her cell phone to find her belongings within the bedroom. She recalled that they started talking and she asked Constable S.P. why she had been so difficult with respect to letting her attend and retrieve her stuff.

[162] Constable Moar recalled that she was unable to find her cologne and asked Constable S.P. where it was. Constable Moar stated:

And she said that she had thrown it out because she didn't want me to wear it and - - so after some conversation as far as like, "what's going on here? Why are you so upset about this?", she revealed that she had more feeling for me than what she kind of had let on and the thought of me going to Vegas was even more of a sore spot now because she felt like it was going to be the end and I was going to go and reconcile with [N.D.] completely and we'd be done.⁵⁴

[163] Constable Moar went on to state that Constable S.P.'s acknowledgement of her feelings initiated a romantic moment:

We ended up kissing. You know, it turns into kind of like a passionate make-out session and eventually turned into I guess what you'd call intercourse or sex.⁵⁵

[164] When asked to describe the mechanics of how they had intercourse, Constable Moar explained:

Okay. So she was lying on her back and she - - naked. She always sleeps naked, so tonight she was naked. I - - she's on her back. I kind of flip over not on top of her, but kind of between her legs so that my upper body and torso is between her thighs or knees she's got up.

My left hand is supporting my upper body weight so that I'm not leaning on her. And I'm using my right hand to stimulate her sexually on her vagina.⁵⁶

[165] Constable Moar testified that Constable S.P. was moaning and appeared to be enjoying it. After several minutes, she could tell that Constable S.P. had climaxed and she laid beside her.

[166] Constable Moar recalled that they talked about her trip and that she attempted to reassure Constable S.P. regarding her mistaken belief that the trip would lead to a reconciliation with her former spouse.

⁵⁴ *Transcript of Conduct Hearing*, February 23, 2023, at page 25, lines 4 to 13.

⁵⁵ *Transcript of Conduct Hearing*, February 23, 2023, at page 25, lines 19 to 22.

⁵⁶ *Transcript of Conduct Hearing*, February 23, 2023, at page 26, lines 1 to 10.

[167] Constable Moar denied that Constable S.P. was screaming and crying or that she ever said “no” to the February 15, 2020, sexual interaction. At no time did she have any concerns or belief that Constable S.P. was not consenting.

[168] Constable Moar recalled that, after a short time, she got up and left the bedroom. Constable S.P.’s cat was mulling around and Constable Moar fed him. She noticed that the cat food was getting low and that she offered to purchase cat food for Constable S.P. since she had to go to the city that day, before her departure for Las Vegas. According to Constable Moar, Constable S.P. agreed and stated that she would send Constable Moar an e-transfer for it. According to Constable Moar, the mood was a happy one.

[169] Constable Moar testified that she left the apartment and went to her house where she slept for a few hours before going to Regina with N.D. to purchase last-minute toiletries and items for their trip.

[170] Constable Moar also purchased cat food for Constable S.P.’s cat, which she dropped off at her apartment the morning of February 16, 2020, on her way past Whitewood to the airport.

[171] Constable Moar provided the Conduct Board with a copy of the Gmail Interac e-transfer from Constable S.P., dated February 15, 2020, at 1:15 p.m. The e-transfer of one hundred dollars contained the following message:

Cat food and last night [smiley face emoji]⁵⁷

[172] Constable Moar testified that she arrived in Las Vegas shortly after supper, Las Vegas time, on February 16, 2020, and that she continued to communicate with Constable S.P. via text message throughout her stay.

[173] Constable Moar was unable to produce any of those text messages or WhatsApp messages from around that time frame. She explained that, in July of 2020, she and Constable S.P. once again broke up and she stated:

⁵⁷ Constable Moar’s subsection 15(3) *Response to the Code of Conduct Hearing*, May 30, 2022, at Tab 3.

So when you go through break-up spells, there was one in particular in July when I just - - I couldn't do it any more [sic] and I got rid of anything that was directly in front of me that kind of reminded me of her and the relationship that we kind of had on and off, so I got rid of anything prior to those dates and kind of along the line I would delete the conversations.⁵⁸

[174] Constable Moar testified that, while in Las Vegas, she wanted to have a tattoo done. She did so on February 17, 2020, at 3:41 p.m. When she had the stencil on her forearm, she immediately took a photo of it and sent it to Constable S.P.

[175] Constable Moar was able to provide a copy of the photo she forwarded to Constable S.P. while sitting at the tattoo shop.⁵⁹ During her testimony, Constable Moar explained the contents of the photo:

So February 17th, 2020 was the date of the appointment and the date of the tattoo, and the 3:41 p.m., that would have been Las Vegas time. And that was the time that the photo was actually taken as I sat in the chair.⁶⁰

[176] At the top of the text message, there is a timestamp indicating "10:42". Constable Moar explained that this represented the current time on her cell phone from when she took the screenshot of the photo on her phone.

[177] Constable Moar testified that, during her stay in Las Vegas, the exchanges with Constable S.P. were on and off. She noted that she did not have data for her phone while in Las Vegas and she only used her phone to take photos and quickly send off a message sporadically.

[178] Constable Moar further testified that Constable S.P. never brought up an allegation of sexual assault nor did she ever mention it in a text, email or conversation. She first learned about the sexual assault allegation within a day or so of November 29, 2020, when Constable S.P. made the allegation.

⁵⁸ *Transcript of Conduct Hearing*, February 23, 2023, at page 34, lines 4 to 11.

⁵⁹ Constable Moar's subsection 15(3) *Response to the Code of Conduct Hearing*, May 30, 2022, at Tab 4.

⁶⁰ *Transcript of Conduct Hearing*, February 23, 2023, at page 35, lines 16 to 20.

[179] Constable Moar returned to Saskatchewan on February 22, 2020. On February 23, 2020, she went to Constable S.P.'s apartment where she stayed for a week. She testified:

... we were getting along, which is I think why I was there so long. Everything was really good. Like I would go to work and then I'd come back to her place and we'd make supper and she was off duty sick at the time, so she was always there. And so I'd, you know, make supper or she would make supper, vice versa.

And everything was - - was good for that week.⁶¹

[180] Constable Moar denied that there was a sexual assault or that she ever asked Constable S.P. if she was going to tell people that she pointed a firearm at her.

Documentary evidence

[181] The Conduct Authority Representative entered as Exhibit 3 a 2-page document containing a series of text messages, dated February 18, 2020, timestamped 12:08 a.m. to 2:05 p.m., between Constable Moar and Constable S.P. This document was provided to Sergeant G.S. by Constable S.P.

[182] The first text message, timestamped 12:08 a.m., is "Tattoo time. No names this time hahaha". Constable Moar testified that this was a reference to the fact that she has her first wife's name tattooed on her arm as well as her second spouse's initials "N.D." on her other arm. She explained that this was a "joke/sore spot" and that if she were ever to get a tattoo again, she would never get someone's name tattooed on her.

[183] Constable Moar confirmed that she remembered sending that text message to Constable S.P., but not at the time shown in the text. She explained that she sent the photo immediately after taking it at 3:41 p.m. Las Vegas time. There is a two-hour time difference between Las Vegas and Saskatchewan; therefore, the timestamp should read 5:41 p.m.

[184] The next text message, also timestamped 12:08 a.m., reads "So am I getting the cold shoulder now?"⁶² Constable Moar testified that she recalled sending a similar text message as she

⁶¹ *Transcript of Conduct Hearing*, February 23, 2023, at page 45, line 22, to page 46, line 5.

⁶² Conduct Authority Representative Exhibit 3, at Tab 13 of the *Electronic Binder of Evidence* of the parties.

was frustrated that Constable S.P. had not responded. However, the timestamp is incorrect since she did not send that message until after her tattoo was completed. The tattoo took two hours to complete.

[185] With respect to the rest of the text message exchanges contained on this two-page document, Constable Moar recalled similar messages, but she could not confirm that these were her actual messages as the times indicated did not make sense.

[186] One of the text messages, timestamped 12:42 a.m., reads:

Bc I may actually have to see a fucking doctor regarding what you fucking did to me.⁶³

[187] Constable Moar testified that she did recall having a similar conversation with Constable S.P. She stated:

I remember the conversation. She was upset and said that her mental health was so horrible and she wanted to spend her ODS time, so Off-Duty Sick time, back in Ontario so that she could see her old psychologists and doctors and that she had spoken to somebody that she had known from Ontario that was kind of like assisting her with that possible process.⁶⁴

[188] As to the reasons why her mental health was struggling, Constable Moar stated:

[...] She cast a lot of blame on me for my relationship with [N.D.], that is [sic] was causing her grief and stressing her out, [...]⁶⁵

[189] Constable Moar testified that she understood the noted exchange to mean that Constable S.P. was upset and angry with her for having gone on the trip to Las Vegas, and that she was assuming that Constable Moar was getting a tattoo together with N.D.

⁶³ Conduct Authority Representative Exhibit 3, at Tab 13 of the *Electronic Binder of Evidence* of the parties, at page 2.

⁶⁴ *Transcript of Conduct Hearing*, February 23, 2023, at page 39, lines 5 to 12.

⁶⁵ *Transcript of Conduct Hearing*, February 23, 2023, at page 39, lines 16 to 18.

[190] Constable Moar was asked about the text message, timestamped 12:49 a.m., which reads “I knew everything would fucking backfire”.⁶⁶ She stated that she could not recall saying that exact thing, but if she did, then it would have been in relation to going on the trip.

[191] The next text message that was put to Constable Moar is timestamped 2:23 a.m. and states:

I didn’t realize I was hurting you. Or I wouldn’t have done it. Great now I get to worry about that too.⁶⁷

[192] Constable Moar did not recall sending this exact message, but she explained that she would not have been referring to hurting Constable S.P. physically, like in the context of a sexual assault. Constable Moar explained that she would have been referring to:

Going on the trip, getting the tattoo. Basically everything that I had done.

As [*sic*] this point, I’m trying to say whatever I can to smooth over the conversation because I know, looking back, my main concern was, great, I’m in Las Vegas, she’s in Saskatchewan. She’s now talking about, you know, going back and, you know, possibly moving back in with her parents if she can get the help that she thinks that she needs.

By the time I get back to Saskatchewan, is she even still going to be there?⁶⁸

Finding on Allegation 3

[193] As previously outlined, it is undisputed that Constable Moar attended Constable S.P.’s apartment in the early morning hours of February 15, 2020, after her night shift. Constable S.P. buzzed her into the building with her cell phone, had unlocked her apartment door, and remained in bed, naked, with no lights on.

[194] According to Constable Moar, she was going to retrieve personal items before leaving for a trip to Las Vegas with her ex-spouse, and she wanted to determine where the relationship stood between her and Constable S.P..

⁶⁶ Conduct Authority Representative Exhibit 3, at Tab 13 of the *Electronic Binder of Evidence* of the parties.

⁶⁷ Conduct Authority Representative Exhibit 3, at Tab 13 of the *Electronic Binder of Evidence* of the parties.

⁶⁸ *Transcript of Conduct Hearing*, February 23, 2023, at page 40, line 25, to page 41, line 10.

[195] Constable S.P. did not testify or mention that Constable Moar wanted to retrieve personal items. However, when asked about this during her cross-examination, she testified that she could not recall whether Constable Moar wanted to pick up a jacket, medication and her cologne.

[196] Constable S.P. did recall an issue with the cologne, but not in reference to that night. Constable S.P. stated that she had thrown out Constable Moar's cologne at some point.

[197] I find it interesting that Constable Moar testified that she was able to recover her jacket and medication, but that on that date, Constable S.P. told her she had thrown out the cologne. However, upon her return from Las Vegas, while staying at Constable S.P.'s residence, Constable Moar found her cologne.

[198] Although there are consistencies in the evidence of Constable S.P. and Constable Moar about the events surrounding the morning of February 15, 2020, they each provided different evidence on the specific act of misconduct set out in the *Notice of Conduct Hearing*. Overall, I prefer Constable Moar's version.

[199] Constable S.P. states that she was sliced inside and that she was swelling and bleeding the following days. However, she does not "recall" blood on her sheets or comforter. Common sense dictates that if she had been sliced, swelling and bleeding, then her sheets or comforter would have been stained with blood, she would have noticed it at some point and cleaned off.

[200] In her November 30, 2020, statement to Sergeant G.S., she states that there was dark bleeding from her vagina—that she had "[...] dark, dark blood coming out of [...]"⁶⁹ her.

[201] However, her text message of February 18, 2020, to K.P. speaks of "brown stuff with flakes"⁷⁰ coming out and when K.P. mentions she might just be starting her period, she responds that "[...] it's legit brown, not dark blood [...]"⁷¹

⁶⁹ *Transcript of the Recorded Interview of* [Constable S.P.], November 30, 2020, at page 44.

⁷⁰ Conduct Authority Representative Exhibit 3, at Tab 12 of the *Electronic Binder of Evidence* of the parties.

⁷¹ Conduct Authority Representative Exhibit 3, at Tab 12 of the *Electronic Binder of Evidence* of the parties.

[202] The photo she produced, taken on February 17, 2020, at 1:47 p.m., is of a “paper towel” with a brown substance.⁷² Constable S.P. testified that she was in the process of cleaning the bathroom using paper towel when she felt the need to use the toilet. She then used paper towel to wipe herself. One needs to wonder as to why Constable S.P. would have used a paper towel to allegedly wipe herself after using the bathroom rather than toilet paper?

[203] Constable S.P. testified that she recalled seeing Constable Moar buttoning up a shirt and looking angry after the alleged assault, but she had previously testified that she was lying in complete darkness when Constable Moar first arrived.

[204] None of the neighbours who were interviewed during the statutory investigation heard screaming and crying in the early morning hours of February 15, 2020.

[205] Constable S.P.’s dramatic disclosure to Corporal M.H. regarding the “scars” she had to prove the assault on November 29, 2020, is contradicted by the fact that she had internal examinations in the spring of 2020 as well as her statement to Sergeant G.S. on November 30, 2020, wherein she confirmed that she did not have any scars.

[206] I also note Constable S.P.’s argumentative and evasive responses on the issue of scarring during her cross-examination.

[207] There are too many inconsistencies in Constable S.P.’s evidence to enumerate them all. I note that I have already summarized a number of these inconsistencies⁷³ and I will not reiterate them at this juncture. Suffice it to say that I prefer and accept Constable Moar’s testimony with respect to the events of the early morning hours of February 15, 2020.

[208] As stated in *McDougall*, there are times when the finding on a witness’s credibility will be determinative of the outcome. This is such a case.

⁷² Conduct Authority Representative Exhibit 2, at Tab 11 of the *Electronic Binder of Evidence* of the parties.

⁷³ See paragraphs 36 to 50 of the present decision.

[209] I have not been presented with clear, cogent and convincing evidence that Allegation 3 is established on a balance of probability. To the contrary, the evidence clearly supports Constable Moar's version of events.

[210] The Conduct Authority Representative has failed to establish, on a balance of probabilities, the act constituting the alleged misconduct. That is, that Constable Moar penetrated Constable S.P. without her consent.

[211] Allegation 3 is not established.

CONDUCT MEASURES

[212] Having found Allegation 1, improper use of RCMP equipment and property, established and in accordance with subsection 45(4) of the *RCMP Act* as well as with the *RCMP Conduct Measures Guide*, I am required to impose "[...] a fair and just measure that is commensurate to the gravity of the contravention, the degree of blameworthiness of the member, and the presence of mitigating and aggravating factors".⁷⁴ Pursuant to paragraph 36.2(e) of the *RCMP Act*, conduct measures must be "[...] proportionate to the nature and circumstances of the contravention of the Code of Conduct, and where appropriate, [...] are educative and remedial rather than punitive [...]".

[213] I acknowledge that, in light of my findings on the allegations and in particular my finding that Allegations 2 and 3 are not established, the Conduct Authority Representative has indicated that dismissal is no longer a proportionate measure. I agree.

[214] The Conduct Authority Representative and the Subject Member Representative provided a joint proposal of a reprimand and a financial penalty of two days to be deducted from Constable Moar's pay.

[215] The Conduct Authority Representative relied on RCMP Conduct Board decision 2021 CAD 16 [*MacGillivray*], which set a range of three to six days of pay. He noted that a forfeiture

⁷⁴ *Conduct Measures Guide*, November 2014, at page 3.

of two days' pay was more than reasonable and that it would constitute an appropriate level of deterrence.

[216] The Subject Member Representative noted that Constable Moar wants finality and agrees with the proposed conduct measures.

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

[218] The Supreme Court of Canada has recognized the value of settlement discussions, as well as the strong policy reasons that favour the promotion of certainty to the parties when a settlement is reached.⁷⁵ Generally speaking, an administrative tribunal will not override a settlement reached by the parties unless it is against the public interest.

[219] Therefore, I must determine whether accepting the joint proposal would be against the public interest. In order to make this determination, it is helpful to have some sense of what the possible measures may be. The *Conduct Measures Guide* is a useful reference in this regard.

Range of possible conduct measures

[220] The *Conduct Measures Guide*, at pages 28 to 30, specifically identifies the range of conduct measures imposed for the misuse of Force vehicles. An aggravated range of measures ranging from 1 to 10 days is said to be warranted in situations where the member's misuse of a vehicle involved repeated or prolonged misuse, carrying of an unauthorized passenger, or continued use despite prior warnings.

[221] Constable Moar admits that she used a fleet vehicle for purely personal purposes. She transported an unauthorized passenger.

[222] This was an isolated incident and Constable Moar does not have any prior discipline. She acknowledges that she did not have authorization to have M.B. as a passenger and to drive her to her residence.

⁷⁵ *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at paragraph 19.

[223] That said, in using the vehicle to drive M.B. to her residence in order to avoid a possible confrontation with Constable S.P., who was in the Detachment parking lot next to Constable Moar's private vehicle, I find that Constable Moar did not use the vehicle for a highly improper purpose that would compromise the reputation of the RCMP.

[224] I find that the appropriate range is in the middle to aggravated range, which constitutes a financial penalty of between 1 and 3 days' pay, alone or in combination with other measures.

Finding on conduct measures

[225] The proposed conduct measures accord with three purposes of the discipline process: the public interest; the RCMP's interest in maintaining discipline; and the interest of Constable Moar in having this matter concluded.

[226] In addition, the proposed conduct measures are both remedial and corrective, and are at the lower end of the appropriate range. They recognize that the misuse of the vehicle in this instance was not for a highly improper purpose and did not compromise the reputation of the RCMP.

[227] Finally, the proposed conduct measures serve as an acknowledgement that police officers should be held to a higher standard of behaviour. They will serve as a deterrent to Constable Moar as well as a warning to other members.

[228] On the balance of these factors, I conclude that the proposed conduct measures are not against the public interest. Therefore, I accept the proposed conduct measures and hereby impose the following:

- a) a written reprimand; and
- b) a financial penalty of two days to be deducted from Constable Moar's pay.

CONCLUSION

[229] Allegation 1 is established. Allegations 2 and 3 are not established.

[230] Having found one allegation established, the aforementioned conduct measures are imposed.

[231] Any interim measures in place should be resolved, in a timely fashion, in accordance with section 23 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281.

[232] Finally, either party may appeal this decision by filing a statement of appeal with the Commissioner in accordance with subsection 45.11 of the *RCMP Act*.

Louise Morel
Conduct Board

September 21, 2023
Ottawa, Ontario