



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:

Designated Conduct Authority, "E" Division

Conduct Authority

and

Constable Dharmvir Prihar
Regimental Number 53469

Subject Member

Conduct Board Decision

Mr. Kevin L. Harrison

December 18, 2023

Ms. Janice Calzavara and Staff Sergeant Jonathan Hart, Conduct Authority Representatives

Ms. Cait Fleck, Subject Member Representative

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SUMMARY

The original Notice of Conduct Hearing contained three allegations against Constable Dharmvir Prihar. All three allegations were under section 7.1 of the Code of Conduct (discreditable conduct). The Conduct Board withdrew Allegations 1 and 2 prior to the conduct hearing at the Conduct Authority's request. Allegation 3 remained in the amended Notice of Conduct Hearing. A conduct hearing started on May 8, 2023. The Conduct Board found that Allegation 3 was not established.

INTRODUCTION

[1] On March 1, 2022, the Conduct Authority signed a *Notice to the Designated Officer*, in which he requested the initiation of a conduct hearing in relation to this matter. On March 7, 2022, 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 original *Notice of Conduct Hearing* on July 21, 2022. It contained three allegations of discreditable conduct under section 7.1 of the Code of Conduct.

[3] On March 16, 2023, following several Pre-Hearing Conferences, I withdrew Allegations 1 and 2 at the Conduct Authority's request. Only Allegation 3 remained from the original *Notice of Conduct Hearing*.

[4] Allegation 3 alleges that, between December 23, 2019, and January 4, 2020, Constable Prihar telephoned his spouse's parents. He allegedly used offensive and threatening language towards his spouse, Ms. J.K., and his children during the telephone call. The Conduct Authority further alleges that, at other unspecified times, Constable Prihar used derogatory language towards Ms. J.K. and that he sent an offensive video to Ms. J.K.'s brother-in-law, Mr. A.P. The video shows an unidentified male publicly assaulting an unidentified woman. Constable Prihar purportedly sent similar videos to Mr. A.P. on more than one occasion.

[5] A conduct hearing was held in Surrey, British Columbia, from May 8 to 12, 2023. I heard evidence from two witnesses and the parties' submissions on the allegation. I found that Allegation 3 was not established.

[6] The following is my final written decision on the allegation.

PRELIMINARY MATTER

[7] On January 27, 2023, the Conduct Authority filed an application requesting Ms. A.K.J. be allowed to testify by videoconference. Ms. A.K.J. was the Conduct Authority's lone witness. She resides in the United Kingdom. Constable Prihar opposed the application. On May 1, 2023, I granted the Conduct Authority's request with four conditions. All four conditions, which related

to the venue for Ms. A.K.J.'s testimony and testing requirements for the videoconference link, were reasonably met prior to the conduct hearing.

ALLEGATIONS

[8] The original *Notice of Conduct Hearing* contained three allegations of discreditable conduct under section 7.1 of the Code of Conduct.

[9] Allegation 1, in Particulars 12 to 19, concerned an alleged incident of non-consensual sex with Ms. J.K. that occurred between January 5, 2015, and December 31, 2015.

[10] Allegation 2, in Particulars 20 to 31, concerned an alleged sexual assault of Ms. J.K. that occurred in December 2019.

[11] I withdrew Allegations 1 and 2 on March 16, 2023, at the Conduct Authority's request. Only Allegation 3 remained in the amended *Notice of Conduct Hearing*.

[12] I read the amended *Notice of Conduct Hearing* to Constable Prihar at the start of the conduct hearing; however, following a discussion between the parties during a break on the first morning of the conduct hearing, I made further amendments to the *Notice of Conduct Hearing*. These amendments included the removal of portions of Particulars 32 and 33. The further amended *Notice of Conduct Hearing* reads as follows:

Particulars common to all allegations

1. At all material times, you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "E" Division, British Columbia.
2. You are currently posted to the Serious Crime Unit of the Surrey RCMP Detachment.
3. You were married to your wife, Ms. [J.K.], in 2002.
4. You share two children with Ms. [J.K.]: a son named [name withheld] and a daughter named [name withheld].
5. You have an Aunt named Ms. [S.P.], whom you call Auntie ["Auntie"].
6. Your wife has a mother named [Ms. P.D.], a father named [Mr. A.S.], a middle sister named Ms. [A.K.J.], and an oldest sister named Ms. [J.P.].
7. You currently reside at [street address withheld], Langley, British Columbia. You moved to this residence in 2008 or 2009.

8. On March 5, 2021, the Langley RCMP received a call from Ms. [J.K.] regarding domestic violence in progress at your residence. (File #2021-[XXXX]).
9. At the time of this call, you resided in the lower level of [street address withheld], Langley, British Columbia, where Ms. [J.K.] resided with the children on the upper level of the residence.
10. During this call for service, Ms. [J.K.] mentioned you threatened her parents and forcing sexual intercourse on her.
11. This is not the first call for service in relation to your relationship.

Allegation 3

On or between December 23, 2019, and January 4, 2020, at or near Langley, in the Province of British Columbia, Constable Dharmvir Prihar, Regimental # 53469, behaved in a manner likely to discredit to the Force, contrary to section 7.1 of the *Code of Conduct of the RCMP*.

Particulars for Allegation 3:

32. On or between December 23, 2019 and January 4, 2020, you had a fight with Ms. [J.K.]
33. Ms. [J.K.] called the police.
34. The police attended your residence that evening. In the interests of safety, Ms. [J.K.] left the residence that night. She spent the night at her cousin's place, Mr. [R.D.].
35. After the police had left, you call Ms. [J.K.]'s parents, Ms. [P.D.] and Mr. [A.S.].
36. During this call, you used offensive and threatening language, including expletives, such as:
 - a. Calling Ms. [J.K.] stupid;
 - b. Saying that you were going to kill Ms. [J.K.];
 - c. Saying that you were going to kill your children;
 - d. Saying you were going to kill yourself;
 - e. Saying that you were going to "ruin" Ms. [J.K.];
 - f. Saying that you were going to assault Ms. [J.K.], specifically kick her;
 - g. Saying that if child services removed your children, you were "going to lose [your] shit on her!", referring to Ms. [J.K.];
 - h. Saying that you were going to throw her out of the home, referring to Ms. [J.K.]; and

- i. Saying that you were going to “destroy her life”, referring to Ms. [J.K.].
- 37. You had been drinking that evening and were intoxicated.
- 38. Ms. [J.K.]’s sister, Ms. [A.K.J.], overheard what was said on the call.
- 39. Your Auntie, Ms. [S.P.], was also listening.
- 40. When the police called later that evening to ask about your call to Ms. [P.D.] and Mr. [A.S.], you told them that you had just went to sleep after police had left the residence.
- 41. This is not the only time you have used derogatory language against Ms. [J.K.]. You have acted aggressively and in a derogatory manner towards her, or using expletives or offensive language when speaking to her, such as calling her:
 - a. A “bitch”;
 - b. A “fucking cunt”;
 - c. A “slime bucket”;
 - d. An “ungrateful asshole”;
 - e. “fuckn dumb”; and
 - f. A “[f]uckn retard”.
- 42. Sometime after your call to Ms. [P.D.] and Mr. [A.S.], you sent Mr. [A.P.], Ms. [J.K.]’s brother-in-law, a video that showed a man and woman arguing, with the man dragging the woman into the street by her hair and beating her. This was not a new practice, as you had sent multiple videos to Mr. [A.P.] that depicted violence against women.
- 43. You were placed under arrest for one count of Utter Threats under paragraph 264.1(1)(a) of the Criminal Code in relation to these threats, though you were ultimately not charged.
- 44. The behaviour described above is likely to discredit the Force.

[Sic throughout]

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

WITNESS CREDIBILITY AND RELIABILITY

[14] I heard evidence from two witnesses during the conduct hearing. Ms. J.K.'s middle sister, Ms. A.K.J., testified on behalf of the Conduct Authority. Constable Prihar testified on his own behalf. I begin my assessment of witness credibility by setting out some of the legal principles applicable to this task.

Applicable legal principles to determine credibility and reliability of evidence

[15] In assessing witness credibility, I must consider whether the witnesses are credible and whether their evidence is reliable. I may find a witness credible, 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 evidence 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.

Ms. A.K.J.

[16] Ms. A.K.J. testified by videoconference from the Canadian High Commission in London, England. Except for some minor technical issues prior to her testimony, the videoconference link was clear and undisturbed. Ms. A.K.J.'s face and upper body were visible throughout her testimony. Her hands were frequently visible. I had no difficulty observing her facial features as well as most of hand movements and body language.

[17] I found neither counsel had any difficulty examining her despite the examinations being conducted by videoconference. Ms. A.K.J. indicated being fluent in both English and Punjabi. Language was not a barrier to her understanding of the questions posed to her.

[18] Ms. A.K.J. testified that she first met Constable Prihar when she visited Canada for 5 months in 2011. She stayed with Constable Prihar and Ms. J.K. for a period of that time. She testified that the last time she had in-person contact with him was in 2012. That was in England,

when Constable Prihar and Ms. J.K. visited and stayed with her for three weeks. She has spoken with Constable Prihar by telephone only four or five times since then.

[19] Conversely, she testified to frequent contact with Ms. J.K. since 2012. She said she speaks with her two to three times per week by telephone or text message. Their conversations often related to Ms. J.K.'s relationship with Constable Prihar. She also testified to frequent conversations with other family members about Ms. J.K.'s relationship with Constable Prihar. She acknowledged that their family was close.

[20] Ms. A.K.J. admitted to not liking Constable Prihar. She also agreed to calling him a vile person and a chauvinist pig in her statement to the Code of Conduct investigator. However, she also repeatedly testified that Constable Prihar was a good person and that she had concerns for his mental wellbeing and alcohol consumption. Ms. A.K.J. further repeatedly testified to her concerns about the state of Constable Prihar's and Ms. J.K.'s marriage and the hope that they could have a better one.

[21] In terms of the reliability of Ms. A.K.J.'s evidence, she indicated that she suffers from memory loss due to having had a stroke. She also commented several times that the passage of time impacted her recollection of events.

[22] The Conduct Authority Representatives submitted that Ms. A.K.J. was a credible witness. According to them, she was consistent throughout her evidence, particularly with respect to Constable Prihar uttering threats. She was understandably hesitant to discuss areas relating to family dynamics. As Ms. J.K.'s sister, she had nothing to gain personally. Thus, they maintain that her evidence with respect to Constable Prihar was balanced.

[23] The Conduct Authority Representatives suggested that I should exercise some lenience in respect of Ms. A.K.J.'s stroke-related memory loss because regardless of which date Ms. A.K.J. settled on, the stroke occurred during COVID-19, which was a two-year period in which many of us have difficulty placing events. The Conduct Authority Representatives also acknowledged that the passage of time impacted on Ms. A.K.J.'s recollection of events.

[24] The Subject Member Representative suggested that, although a motive to lie is difficult to establish, the dynamics of the situation gave rise to the potential existence of a motive for Ms. A.K.J. to fabricate her evidence. The Subject Member Representative further identified the possibility of collusion in Ms. AK.J.'s evidence.

[25] The Subject Member Representative also pointed out several significant inconsistencies and omissions in Ms. A.K.J.'s evidence. The most notable inconsistencies revolved around Ms. AK.J.'s reasons for not providing the Code of Conduct investigator details of the telephone call and her reaction to it. Other notable omissions were specifics about what Constable Prihar said during the telephone call in terms of the alleged threats to family members and the profanity he allegedly used.

[26] The Subject Member Representative suggested that Ms. A.K.J.'s evidence in relation to her stroke was an example of her self-serving testimony. Ms. A.K.J. had difficulty pinpointing when the stroke occurred. She initially and emphatically stated that the stroke occurred in mid-2020; however, when the Subject Member Representative raised the possibility of the stroke impacting her memory, according to the Subject Member Representative, she "conveniently" placed the stroke as having occurred after she provided her statement to the Code of Conduct investigator in April 2021.

[27] I had several concerns with respect to Ms. A.K.J.'s credibility and reliability. The Subject Member Representative identified most of these in her submission.

[28] My first concern is that, over the 21 years of Constable Prihar's marriage to Ms. J.K., Ms. A.K.J. had limited direct personal contact with Constable Prihar. Furthermore, the limited direct personal contact is also quite dated. Over the same time period, Ms. AK.J. had frequent contact with Ms. J.K. and her family during which they often discussed Ms. J.K. relationship with Constable Prihar. Thus, I was fully aware of the possibility of Ms. A.K.J.'s testimony being influenced by things she was told by Ms. J.K. or other family members rather than her own observations or experiences.

[29] I agree with the Subject Member Representative with respect to Ms. A.K.J.'s stroke. A stroke is a memorable event in a person's life because a stroke, even a mild one, can be life

changing. Ms. A.K.J. testified that the stroke did indeed change her life. It would be difficult not to recall when it occurred with some degree of certainty. Another detractor to the reliability of Ms. A.K.J.'s evidence is the passage of time.

[30] My main concern with Ms. AK.J.'s evidence, and it is a significant one, is that it does not accord with all of the other evidence before me. I am speaking not only of Constable Prihar's evidence, but the objective evidence found in the police reports and the telephone records. Consequently, I found Ms. AK.J.'s evidence was neither credible nor reliable. My finding of her evidence being not credible or reliable becomes evident during my examination of it in the context of the first element of the test for discreditable conduct.

Constable Prihar

[31] The Conduct Authority questioned Constable Prihar's credibility on the basis that his evidence contradicted Ms. A.K.J.'s. According to the Conduct Authority, Constable Prihar downplayed his role in the relationship with Ms. J.K.; his anger and the language he used during the telephone call with Ms. J.K.'s parents; his assessment of Ms. J.K. was not "level".

[32] I found Constable Prihar to be a credible witness. Generally, he was forthright and candid throughout his testimony. He was consistent and held firm when his evidence was challenged during cross-examination. He made admissions to various aspects of his conduct and consistently categorically denied others. Despite not having any notes, his recall of events was clear and where it was not, he readily said so. Finally, and most importantly, his evidence better accords with the majority of the objective evidence, particularly as it relates to the telephone call with Ms. J.K.'s parents.

BACKGROUND FACTS

General contextual facts

[33] The original *Notice of Conduct Hearing* contained 11 particulars under the heading "Particulars common to all Allegations". Although these particulars remained in the final version of the *Notice of Conduct Hearing*, I do not find all 11 particulars relevant to Allegation 3. I begin

my findings of fact with the particulars that I do find relevant to Allegation 3 because they provide context to that allegation.

[34] At all material times, Constable Prihar was a member of the RCMP. He was posted to the Serious Crime Unit of the Surrey Detachment in “E” Division, British Columbia, between December 23, 2019, and January 4, 2020, which is the date range for Allegation 3.

[35] Constable Prihar married Ms. J.K. in 2002. Constable Prihar testified that the marriage was arranged by their families.

[36] Constable Prihar shares two children with Ms. J.K., a boy and a girl.

[37] Constable Prihar and Ms. J.K. moved into their current residence (the family home) in June 2009. The family home is located in Langley, British Columbia.

[38] Ms. J.K.’s father, so Constable Prihar’s father-in-law, is Mr. A.S.

[39] Ms. J.K.’s mother, so Constable Prihar’s mother-in-law, is Ms. P.D.

[40] Ms. J.K.’s sister, so Constable Prihar’s sister-in-law, is Ms. A.K.J.

[41] Mr. A.S., Ms. P.D. and Ms. A.K.J. reside in the United Kingdom.

[42] Ms. S.P. was Constable Prihar’s aunt. She was to appear as a witness for Constable Prihar at the conduct hearing. Unfortunately, she passed away on April 9, 2023.

[43] From an RCMP conduct perspective, this matter began on March 5, 2021, when Constables Renee Romain and Parmvir Bhullar of the Langley RCMP Detachment attended the family home in response to a call for service from Ms. J.K. The occurrence is recorded in file number 2021-XXXX.

[44] On March 5, 2021, Constable Prihar lived in the lower level of the family home. Ms. J.K. lived in the upper level of the family home with their two children.

[45] Ms. J.K. informed the attending officers that Constable Prihar threatened her parents and sexually assaulted her. The RCMP initiated a statutory investigation into these two claims.

[46] On April 9, 2021, the RCMP initiated a Code of Conduct investigation, pursuant to subsection 40(1) of the *RCMP Act*, in relation to four allegations¹ of misconduct, including the matters relating to Allegation 3.

[47] The call for service on March 5, 2021, was not the first call for service relating to domestic issues made to the RCMP by Ms. J.K.

[48] On April 8, 2021, the RCMP arrested Constable Prihar. He was released on an Undertaking that listed the alleged criminal offences of Uttering Threats under paragraph 264.1(1)(a) of the *Criminal Code*² in relation to the threats allegedly uttered to Mr. A.S. and Ms. P.D. and sexual assault under section 271 of the *Criminal Code*. The parties confirmed that the Crown Attorney's office ultimately did not prefer criminal charges for either of the criminal offences.

Contextual facts specific to Allegation 3

[49] Particulars 32, 33 and 34 state that, on or between December 23, 2019, and January 4, 2020, Constable Prihar and Ms. J.K. had a fight. Ms. J.K. contacted the police who attended the residence. In the interests of safety, Ms. J.K. left the residence and spent the night at her cousin's, Mr. R.D.

[50] The police report that corresponds to Ms. J.K.'s call for service is in the Record. From this report, I find the following facts.

[51] Ms. J.K. contacted the RCMP on January 3, 2020, at 9:06 p.m. She reported that her husband, Dharmvir Prihar, had been verbally abusive to her for the preceding two weeks. Her husband had been drinking. Her two children were in the residence. She wanted her husband removed from the residence. Alternatively, she was willing to leave, but she needed police assistance. I also note that Ms. J.K. told the call taker that there was an unloaded, possibly red, practice gun on the kitchen table. This gun was never mentioned again.

¹ The fourth allegation contained in the mandate letter was not included in the *Notice of Conduct Hearing*.

² *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*].

[52] Corporal Peter MacDonald and Constable Safiullah Sharar of the Langley RCMP Detachment were dispatched. They arrived at the family home at 9:22 p.m. Both attending members indicate in their reports that the argument was over financial matters. Ms. J.K. departed the family home on her own accord. Both officers report this was part of the “safety plan”. The evidence is not clear where Ms. J.K. went that night.

[53] Both officers reported that no criminal offence had occurred on this occasion.

[54] The children remained at home with Constable Prihar by choice.

[55] Constable Prihar was drinking that evening.

[56] After Corporal MacDonald and Constable Sharar left the family home, Constable Prihar called Ms. J.K.’s parents, Mr. A.S. and Ms. P.D.

[57] Constable Prihar received a telephone call from Corporal McDonald following his telephone call to Ms. J.K.’s parents.

DECISION ON THE ALLEGATION

[58] As previously noted, Allegation 3 is under section 7.1 of the Code of Conduct. In order to establish an allegation under this section, the Conduct Authority must establish each of the following elements 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.

[59] I can deal with the second element of the test summarily in that Constable Prihar’s identity is not in question in this proceeding. The remaining three elements of the test requires further examination.

Acts constituting alleged behaviour

[60] Particular 44 of the *Notice of Conduct Hearing* reads: “The behaviour described above is likely to discredit the Force.” The “behaviour described above” is included in Particulars 32 to 43.

[61] The described behaviour included the following acts:

- a) During a telephone call with Ms. J.K.’s parents within the specified time period, Constable Prihar used offensive and threatening language enumerated in Particular 36.
- b) When the police called later that evening to ask Constable Prihar about his telephone call to Ms. J.K.’s parents, Constable Prihar told them that he just went to sleep after the police left his residence.
- c) At other times outside of the telephone call with Ms. J.K.’s parents, Constable Prihar used derogatory language towards Ms. J.K. as enumerated in Particular 41.
- d) At some time after the telephone call to Ms. J.K.’s parents, Constable Prihar sent an offensive video depicting a man publicly assaulting a woman to Ms. J.K.’s brother-in-law.
- e) At other times, Constable Prihar sent multiple videos depicting violence against women to Ms. J.K.’s brother-in-law.

[62] I must decide which of these acts the Conduct Authority has demonstrated on a balance of probabilities.

[63] I need to put these acts in context and make some further findings of fact in relation to them in order to make sense of the acts themselves. I will look at each of the acts that I have gleaned from the particulars separately.

[64] My decisions relating to the acts were made easier for the most part due to the absence of evidence. Other decisions were made more difficult for the same reason.

[65] The most glaring gaps in the evidence occur because the Conduct Authority did not call witnesses with relevant evidence to testify. In my draft witness list provided to the parties on March 29, 2023, and discussed during a Pre-Hearing Conference on March 30, 2023, I clearly

identified that Ms. J.K., Mr. A.S., Ms. P.D. and Mr. A.P. had evidence relevant to Allegation 3, but they were not included in my witness list because they were not requested by either party.

[66] Subsection 18(4) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO (Conduct)*], requires a conduct board to provide the parties with a list of witnesses that the conduct board will hear and the conduct board's reasons for accepting or refusing any witness on the list submitted by the parties. This speaks to the need for the parties to comply with subsection 18(2) of the *CSO (Conduct)* in every conduct proceeding.

[67] I am sure the Conduct Authority had reasons for not seeking to have a summons issued for Ms. J.K., but I remain mystified by this decision given that the Conduct Authority had the onus to prove the allegation on a balance of probabilities.

[68] At the start of the conduct hearing, the Subject Member Representative raised concerns with respect to the Conduct Authority's intention to rely on several documents. The Conduct Authority Representatives identified these intentions the Friday before the start of the conduct hearing. Although the Conduct Authority provided these documents at Constable Prihar's request months in advance of the conduct hearing, they were provided in relation to Allegations 1 and 2. Part of the Subject Members Representative's concerns arose from the fact that Ms. J.K. was not summonsed to appear to testify during the conduct hearing to speak to the matters referred to in the documents.

[69] Although conduct boards have been granted inquisitorial powers under the *RCMP Act* and the *CSO (Conduct)*, it is improper for a conduct board to tell any party how to present their respective cases. This includes which witnesses the party should call to prove their case.

[70] Subsection 23(1) of the *CSO (Conduct)* provides for a conduct board to make decisions with respect to the allegations based solely on the record when no evidence is called. This does not permit the conduct board to rely solely on the record, except where a party chooses not to call a witness who was otherwise available to provide evidence relevant to an allegation and the witness's statements in the record are uncontested. When the subject member puts the evidence of a witness at issue in their response to the allegations, the subject member must have the opportunity to test the witness's evidence in cross-examination. This is a fundamental concept of law.

Constable Prihar put the evidence of Ms. J.K., Mr. A.S., Ms. P.D. and Mr. A.P. at issue in his response to the allegations.

[71] Constable Prihar also identified several investigative steps that were not taken in relation to Allegation 3 or questioned the quality of some investigative steps that were taken. This became a considerable source of frustration for Constable Prihar. The investigative steps include the following:

- a) The Conduct Authority's failure to obtain telephone records for the family home telephone, which Constable Prihar says he did not have legal authority to obtain because the telephone was in Ms. J.K.'s name.
- b) The Conduct Authority's failure to obtain Ms. A.K.J.'s cellular telephone records.
- c) The Conduct Authority's failure to interview his children, particularly his son, regarding the evening of January 3, 2020.
- d) The interview of Mr. A.S. and Ms. P.D. was conducted jointly.
- e) The informal manner in which the statement from Ms. A.K.J. was obtained.
- f) The Conduct Authority's failure to follow up with Ms. A.K.J. after Constable Prihar identified the possible existence of an audio recording of his telephone call to Mr. A.S. and Ms. P.D.

[72] I agree that several of the identified investigative steps, especially the first one, were reasonable investigative steps to have taken at an early stage of the investigation, particularly when Constable Prihar specifically requested they be taken.

[73] A Code of Conduct investigator's role is not limited to finding evidence to prove the allegations. Their role is to conduct an unbiased, objective and thorough investigation to gather both inculpatory and exculpatory evidence. This is particularly important given what is at stake for both the subject member and the RCMP as a whole.

[74] The Subject Member Representative pointed out that investigators sought to obtain the telephone records. I noted this in my summary of Pre-Hearing Conference 2 held on December 7, 2022. This investigative step was undertaken at the express request of Constable Prihar. The telephone records no longer existed by that time. This is unfortunate. As the Subject Member

Representative repeatedly pointed out, these telephone records would have assisted greatly in establishing the time of Constable Prihar's telephone call to Ms. J.K.'s parents.

[75] I do not necessarily agree with Constable Prihar about Ms. A.K.J.'s cellular telephone records primarily because of the difficulty in obtaining them in a foreign jurisdiction; however, nothing precluded the investigators from asking her to provide them voluntarily.

[76] I will now move on to my analysis of the acts set out in the further amended *Notice of Conduct Hearing*.

Offensive and threatening language during the telephone call with Ms. J.K.'s parents

[77] Particular 35 states that, after the police left the family home, Constable Prihar called Mr. A.S. and Ms. P.D., Ms. J.K.'s parents. Mr. A.S. and Ms. P.D. reside in the United Kingdom. Although they were both purportedly on the telephone call, neither Mr. A.S. nor Ms. P.D. testified with respect to it.

[78] Particular 38 says that Ms. A.K.J. was present on the call and heard what was said. Ms. A.K.J. was the only witness for the Conduct Authority. Ms. A.K.J. insists that she was present on the telephone call and heard a significant portion of what was said. From the delivery of his response to the allegations through to his counsel's submissions on the allegation, Constable Prihar has maintained: Ms. A.K.J. was not present at her parents' when the telephone call occurred; she was not on the telephone during the call; she did not hear what was said during the telephone call. My finding on this aspect of the case is significant, because if I find that Ms. A.K.J. was not on the telephone call, as Constable Prihar suggests, then all I am left with is Constable Prihar's evidence as to what was said during the telephone call.

[79] Constable Prihar based his claim that Ms. A.K.J. was not present on the telephone call on two grounds. First, she did not make her presence on the telephone call known. Second, at some point after the telephone call, Ms. A.K.J. threatened him with an audio recording of the telephone call, but she failed to produce the recording.

[80] With respect to Ms. A.K.J. not making her presence on the telephone known, she testified that she was not present for the entire telephone call. It was very early in the morning. Mr. A.S.

was already up. Mr. A.S. and Ms. P.D. get up between 3 a.m. and 4 a.m. every morning to meditate. She was sleeping in an upstairs bedroom. Loud voices, not the telephone ringing, woke her up. She lay in bed for a few minutes before realizing that Constable Prihar had telephoned. This was something he did often. The loud voice was her agitated father speaking to Constable Prihar on the telephone in the lounge on the lower level of the house, which is apparently not very large. She went downstairs and listened to the remainder of the telephone call on the telephone's speaker. She encouraged her parents to say nothing and let Constable Prihar say what he had to say. She gave this advice primarily because she had determined that Constable Prihar was intoxicated.

[81] Particular 39 says that Constable Prihar's aunt, Ms. S.P., was also listening on the telephone call. None of the witnesses mentioned her presence on the telephone call in their statements. Presumably, this is because she too did not make her presence on the telephone call known.

[82] Constable Prihar explained how Ms. S.P. came to be on the telephone call and why she would not have been able to make her presence on the telephone call known. Nevertheless, Constable Prihar's position in this respect cuts both ways.

[83] I find that Ms. A.K.J.'s failure to make her presence on the telephone known alone is not sufficient evidence that she was not present on the telephone call. But when considered with the other evidence, it does give rise to the possibility that she was not on the telephone call as she claims.

[84] With respect to Ms. A.K.J. threatening him with an audio recording of the telephone call, Constable Prihar submits that if Ms. A.K.J. was on the telephone, she would know that he did not threaten anyone during the telephone call.

[85] Ms. A.K.J. explained that the audio recording was a lie. She testified that there never was an audio recording. Claiming that she possessed a recording of the telephone call was a ploy to get Constable Prihar to admit to the things that he said during the telephone call.

[86] During her submission, the Subject Member Representative pointed out that Ms. A.K.J. became uncomfortable and evasive when discussing the audio recording, particularly when she was asked about the origins of the idea to threaten Constable Prihar with the audio recording. The Subject Member Representative went further to suggest that Ms. A.K.J.'s evidence in this regard was deceitful and self-serving.

[87] Constable Prihar provided some insight into this portion of his claim. He said that the first mention of an audio recording came from Ms. J.K. during a family mediation session held on January 4, 2020. He was asked to attend the meeting by a family friend. During the meeting, he asked Ms. J.K. to produce the recording. She said Ms. A.K.J. had it. He has insisted on being provided with a copy of the audio recording since that time. The recording has never been produced despite the RCMP investigators being aware of its alleged existence. When he spoke to Ms. A.K.J. about the recording, she claimed to have the audio recording, but she never mentioned that she actually heard the telephone call because she was not present during the telephone call. Constable Prihar believed that confronting him with her presence on the telephone would have been the more logical approach to have taken. That also makes sense to me.

[88] I find that the "audio recording ploy" alone is not definitive proof that she was not on the telephone call. But when considered with the other evidence and the manner in which Ms. A.K.J. testified about it, it does give rise to a reasonable belief that she was not present on the telephone call as she claims.

[89] This leads me to the issue of the timing of the telephone call, which is my most significant concern with Ms. A.K.J.'s evidence.

[90] The particulars indicate that Constable Prihar's telephone call to Ms. J.K.'s parents occurred immediately following the departure of the police from the family home when they were responding to Ms. J.K.'s call for service. Ms. A.K.J. insists that the telephone call occurred on December 23, 2019, while she was visiting her parents for the weekend to celebrate Christmas.

[91] The Conduct Authority Representatives agreed that the evidence does not support the telephone call taking place on December 23, 2019, but rather on January 3, 2020. They stated that Christmastime falls within the time frame of the allegation; therefore, Ms. A.K.J.'s recollection of

the date should not be a concern to me. I disagree with the latter statement. To state the obvious, if Ms. A.K.J. was not at her parents when Constable Prihar placed the telephone call, she could not have heard what Constable Prihar said during the telephone call. Therefore, anything she said in her statement to the Code of Conduct investigator and in evidence at the conduct hearing came from someone else. To testify that she overheard the telephone call directly, if she did not, is a lie. She cannot be a proxy witness for her parents.

[92] As noted, the Subject Member Representative raised concerns of possible collusion in Ms. A.K.J.'s evidence given the closeness of her family and the gap between the incident and her statement to the Code of Conduct investigator. Ms. A.K.J. had ample opportunity through her numerous contacts with Ms. J.K. and other family members to acquire sufficient information about the telephone call to provide a convincing statement to the Code of Conduct investigator; particularly when the investigator did not diligently pursue details of what was said during the telephone call.

[93] Under closer examination, Ms. A.K.J. was unable to provide any specific detail as to what was said during the telephone call. Her evidence with respect to Constable Prihar's alleged threat to kill Ms. J.K. was vague. As the Subject Member Representative pointed out, Ms. A.K.J. only included Constable Prihar's threat to kill himself and his children in response to a leading question. The Subject Member Representative also noted that Ms. A.K.J. was only able to speak to other aspects of the telephone conversation after being "walked through" a list during cross-examination. In terms of expletives used by Constable Prihar, Ms. A.K.J. simply said he was swearing.

[94] Neither the Code of Conduct investigator in her statement nor the Conduct Authority Representatives in their evidence pinned Ms. A.K.J. down on the dates of her Christmas visit with her parents. She said she was at her parents for the weekend to celebrate Christmas. My understanding of that statement is that she was there for a few days, at most. The discrepancy in the dates is a full 10 days.

[95] The timing of Constable Prihar's telephone call to Mr. A.S. and Ms. P.D. is directly linked to the departure of the police following a call for service. The only call for service to the police from Ms. J.K. during the time frame specified in the allegation occurred on January 3, 2020.

Constable Prihar testified that this was the first time the police attended the family home in response to a call for service from Ms. J.K.

[96] Corporal McDonald and Constable Sharar clearly indicate in their respective reports that they attended the family home on January 3, 2020.

[97] Corporal McDonald's supplementary report³ indicates that Ms. J.K. called the Operational Communications Centre at 12:13 a.m. on January 4, 2020, to report that Constable Prihar had called "the UK and was aggressively talking to [her] family". The transcript of the telephone call provides more detail. Ms. J.K.'s telephone call to Corporal McDonald is more than an hour after the latest possible time that Constable Prihar's telephone call with Ms. J.K.'s parents ended. The information Ms. J.K. provided to Corporal McDonald, which Ms. J.K. appears to have obtained from her parents, is rife with inaccuracies.

[98] Finally, Constable Prihar provided an explanation of his cellular telephone records, which he provided in his response to the allegations.

[99] Although there are unexplained calls, for example, the 26 minutes while the police were at the family home, the records support the fact that Constable Prihar called Ms. J.K.'s parents on January 3, 2020, shortly after the police left the family home and not on December 23, 2019. The evidence does not support that Ms. A.K.J. was at her parents' house on January 3, 2020. The telephone records from the family home land line would have been extremely helpful in further placing the telephone call.

[100] Based on this and the other identified issues with Ms. A.K.J.'s testimony, I find that Ms. A.K.J.'s evidence is neither credible nor reliable. Therefore, I cannot accept her evidence that she was present at her parents' home for the telephone call and heard what was said during the call. Consequently, I am left with only Constable Prihar's evidence as to what was said on the telephone call.

[101] Particular 36 says that, during the call to Mr. A.S. and Ms. P.D., Constable Prihar used offensive and threatening language that included:

³ See "Prihar binder for NOCH redacted", at page 638 of 748.

- a) Calling Ms. J.K. stupid;
- b) Saying he was going to kill Ms. J.K.;
- c) Saying he was going to kill his children;
- d) Saying he was going to kill himself;
- e) Saying he was going to ruin Ms. J.K.;
- f) Saying that he was going to assault Ms. J.K. by kicking her;
- g) Saying that if child services removed his children, he was 'going to lose [his] shit on [Ms. J.K.]';
- h) Saying that he was going to throw Ms. J.K. out of the family home; and
- i) Saying that he was going to destroy Ms. J.K.'s life.

[102] Constable Prihar testified that, after speaking with his aunt after the police left the family home, he decided his best course of action was to call Ms. J.K.'s parents to seek their assistance in dealing with the issues in his marriage. He felt Ms. J.K.'s call to the police that evening was not necessary and the beginning of a cycle he wanted to "get ahead of".

[103] In cross-examination, Constable Prihar said he felt it was preferable to deal with the situation sooner rather than later. He admitted to being upset and becoming frustrated when Ms. J.K.'s parents seemed to accept or recognize the gravity of the situation. He said that on an anger scale of 1 to 10, he was a 2 or a 3.

[104] He admitted to saying that if child services removed his children, he was "going to lose his shit" on Ms. J.K., but he noted that is an English translation of what he said in Punjabi. What he said in Punjabi was that if child services took his children, he would be "pissed".

[105] Constable Prihar also admitted to saying that he was going to throw Ms. J.K. out of the family home, but he explained that he did not mean it in a physical way. He was simply trying to jar Mr. A.S. and Ms. P.D. into action to assist him.

[106] Constable Prihar denied saying any of the other particularized comments. He expressly denied saying that he was going to kill Ms. J.K., his children and himself. He denied shouting or using profanity on the call. He said he discussed Ms. J.K.'s call to the police; her erratic behaviour; their financial situation, including the debt, and the fact that Ms. J.K. was unemployed.

[107] The Conduct Authority challenged Constable Prihar's claim of being only at an anger level of a maximum of 3 based on a list of reasons that Constable Prihar provided in his evidence including:

- a) The nature of the family debt;
- b) His daughter being traumatized by the attendance of the police to the family home;
- c) The potential of police attendance at his home affecting his employment;
- d) The embarrassment of his work colleagues being privy to his personal affairs; and
- e) Ms. J.K.'s parents not listening to him on the telephone call.

[108] I agree that the combination of these things would make a person quite upset; however, I look to the fact that neither Corporal McDonald nor Constable Sharar mentioned in their reports that Constable Prihar was excessively angry. I trust that this is something they would have included if that had been the case. Having the parties separate following a domestic dispute is a normal police procedure, whether there is actual physical violence or not. I note the first question in the *Violence in Relationships* report completed by Constable Sharar is: "Was there a safety plan established in accordance with policy, given the risk factor?"

[109] I also note that Constable Prihar had an opportunity to calm down, see to his children and seek advice from his aunt in the intervening time between the police's departure from the family home and his telephone call to Ms. J.K.'s parents.

[110] To sum up Particular 36, I find the following:

- a) I heard no evidence that Constable Prihar called Ms. J.K. stupid; therefore, I find that Particular 36a. is not established.
- b) I heard no credible evidence that Constable Prihar threatened to kill Ms. J.K., his children or himself; therefore, I find that Particulars 36b., c. and d. are not established.
- c) I heard no evidence that Constable Prihar said he was going to ruin Ms. J.K.'s life; therefore, I find that Particular 36e. is not established.
- d) I heard no evidence that Constable Prihar threatened to assault Ms. J.K. by kicking her; therefore, I find that Particular 36f. is not established.
- e) In his response to the allegations, Constable Prihar admitted to saying that if child services removed his children, he was "going to lose [his] shit on [Ms. J.K.]". He

reaffirmed his admission to the statement in his testimony with the aforementioned explanation. Based on his admission, I find that Particular 36g. is established.

- f) In his response to the allegations, Constable Prihar admitted to saying that he was going to kick Ms. J.K. out of the family home. He reaffirmed his admission to the statement in his testimony with the aforementioned qualifier. Based on his admission, I find that Particular 36h. is established.
- g) I heard no evidence that Constable Prihar said he was going to destroy Ms. J.K.'s life; therefore, I find that Particular 36i. is not established.

[111] Particular 37 says that Constable Prihar was intoxicated on the call. Although I have already rejected Ms. A.K.J.'s evidence related to Constable Prihar's telephone call, I note that she testified that Constable Prihar was highly intoxicated when he called Mr. A.S. and Ms. P.D. However, her evidence is also contradicted by other evidence.

[112] Constable Prihar admitted to having "two whiskey and diet cokes" prior to the arrival of the police at the family home. The "Call Hardcopy" report⁴ associated to the call for service indicates that Ms. J.K. reported to the call taker that Constable Prihar had had three drinks. Although it was Corporal McDonald who spoke to Constable Prihar during the call for service, Constable Sharar wrote in his report that "Prihar had a few drinks, however, he was stable and able to communicate with police without issue".

[113] I have no evidence that Constable Prihar had anything further to drink between the time the police left the family home and his telephone call to Mr. A.S. and Ms. P.D. Constable Prihar denied that he did. Although he had been drinking, I do not find that he was intoxicated. On this basis, I find that Particular 37 is not established.

Telephone call from Corporal McDonald

[114] Particular 40 says that "when the police called that evening to ask [Constable Prihar] about his telephone call to Mr. A.S. and Ms. P.D., [Constable Prihar] told them that [he] had just went

⁴ The Conduct Authority Representatives provided the "Call Hardcopy" by email on May 5, 2023. It is a one-page document.

to sleep after police had left the residence.” Neither party addressed this particular in their submissions.

[115] Corporal McDonald authored a supplemental report to the call for service on January 3, 2020. The report is in the Code of Conduct investigation report.⁵ The supplemental report indicates that he received a telephone call from Ms. J.K. shortly after midnight on January 4, 2020. Corporal McDonald indicated that Ms. J.K. informed him of Constable Prihar’s telephone call to her parents that evening and of Constable Prihar speaking to them “aggressively”. Corporal McDonald makes no mention of Constable Prihar’s alleged threats to kill Ms. J.K., his children and himself.

[116] Corporal McDonald committed to call Constable Prihar to get him to refrain from calling Ms. J.K.’s parents. He held true to this commitment and called Constable Prihar. He reported that he apparently woke Constable Prihar up. Corporal McDonald does not say what he asked Constable Prihar, but he did indicate that Constable Prihar told him that he went to bed after the police left the family home. Corporal McDonald was not called to testify to clarify the contents of his supplemental report.

[117] Constable Prihar testified that, after the police left the family home, he settled the children down and put them to bed. He then called his aunt, Ms. S.P., for advice. He called Ms. J.K.’s parents, then called Ms. S.P. back. After these telephone calls, he went to bed with the children.

[118] He also testified that Corporal McDonald asked him if he had called Ms. J.K.’s parents and threatened them. He responded “no”. He said because he was roused from his sleep and was not expecting a call from the police, he had difficulty processing what was happening.

[119] In fairness to Constable Prihar, if what Corporal McDonald asked him was, “Did he call Ms. J.K.’s parents and threaten them?”, that is a two-pronged question. If Constable Prihar’s “no” response was to both parts of the question or a denial that he made the telephone call, then the “no” response was untrue; however, if the “no” response related to the threats, then from his perspective, the answer was true.

⁵ See “Prihar binder for NOCH redacted”, at page 638 of 748.

[120] Nevertheless, the Conduct Authority has not demonstrated what Corporal McDonald asked Constable Prihar nor Constable Prihar's response to whatever he was asked. Beyond the fact that Corporal McDonald called Constable Prihar after his telephone call to Ms. J.K.'s parents, I find that Particular 40 is not established on a balance of probabilities.

Use of derogatory language at other times

[121] Particular 41 states that Constable Prihar acted aggressively towards Ms. J.K. and used derogatory language towards Ms. J.K. on other occasions. The alleged derogatory language used is included in a list of six enumerated expletives.

[122] Constable Prihar admitted to using insulting and derogatory language towards Ms. J.K. at times during their marriage. He admitted that he probably made some of the listed comments to Ms. J.K. at some point in their marriage, but he needed some context to say for certain.

[123] Within the time frame of the allegation, Constable Prihar testified that following an argument on Christmas Eve, Ms. J.K. left the family home with their children. They stayed at his father's for approximately one week. Although he may have spoken with his son, he did not speak directly with Ms. J.K. during this time period. Contact between Constable Prihar and Ms. J.K. was limited during the relevant time period.

[124] Notwithstanding that Particular 41 is overly broad and vague as to when the comments were purportedly made, Ms. J.K. was not called to testify.

[125] I heard no direct evidence from the Conduct Authority in relation to this Particular. The Conduct Authority has not demonstrated that Constable Prihar made the particularized comments within the specified time frame, or at any time; therefore, I cannot find that Particular 41 is established.

Offensive videos to Ms. J.K.'s brother-in-law

[126] Particular 42 has two parts. The first part says that some time after the telephone call to Ms. J.K.'s parents, Constable Prihar sent Ms. J.K.'s brother-in-law, Mr. A.P., a video showing "a

man and woman arguing, with a man dragging the woman into the street by her hair and beating her”.

[127] In his response to the allegations, Constable Prihar admitted to sending the video to Mr. A.P. He reaffirmed this admission during his testimony. I will address his evidence surrounding the sending of the offensive video further when I address whether Constable Prihar’s actions were discreditable.

[128] The Conduct Authority presented no evidence to prove the video was sent or that it was sent within the time frame of the allegation. Nevertheless, based solely on Constable Prihar’s admission, I find this portion of Particular 42 to be established.

[129] The second part of Particular 42 says that Constable Prihar sent Mr. A.P. multiple videos depicting violence against women. I heard no evidence with respect to this portion of the Particular; therefore, I find this portion of the particular to not be established.

Conclusion on the acts that constitute the alleged behaviour

[130] In summary, I have found the following acts to be established on a balance of probabilities:

- a) Constable Prihar called Ms. J.K.’s parents after the police departed the family home on January 3, 2020. During that telephone call, Constable Prihar said:
 - i. If child services removed his children, he was “going to lose [his] shit on [Ms. J.K.]” or words to that effect in Punjabi;
 - ii. He was going to have Ms. J.K. move out of the family home.
- b) Constable Prihar sent the disturbing video to Mr. A.P.

[131] I can now move on to the third element of the test which is whether Constable Prihar’s conduct is discreditable or likely to cause discredit to the Force.

Likelihood of Constable Prihar’s behaviour to discredit the Force

[132] The test for whether a member’s conduct is discreditable or likely to discredit the Force is well established: would any reasonable person with the knowledge of the facts, including the

realities of policing in general, and the RCMP in particular, find the conduct discreditable or likely to cause discredit to the Force?

[133] The Conduct Authority Representative rightly identified that the Code of Conduct applies to RCMP member's both on- and off-duty. They also correctly stated that police officers are held to a higher standard of conduct than the general public.

[134] Citing paragraph 27 of the conduct board decision in *Elek*,⁶ the Conduct Authority Representatives also pointed out that the RCMP recognizes the profound societal impact and associated risks of intimate partner violence. As the conduct board wrote in *Elek*, "as one of the organizations responsible for effective responses to [intimate] partner violence", the RCMP will not tolerate intimate partner violence perpetrated by its members.

[135] I begin my analysis of the established particulars regarding the comments Constable Prihar made during the telephone call with Ms. J.K.'s parents with some contextual facts.

[136] Despite the fact that the marriage was arranged by their respective families, Constable Prihar and Ms. J.K. entered the marriage willingly. Constable Prihar's marriage was not a happy one from a very early stage. It was turbulent with frequent arguments, some of which resulted in Ms. J.K. calling the police. The arguments, although heated at times, were verbal arguments. As the Subject Member Representative pointed out, they were not one-sided affairs. They were mutual arguments.

[137] The argument that resulted in the police being called on January 3, 2020, was generated by the state of the family finances. The police reports of Corporal McDonald and Constable Sharar confirm this. The police reports also indicate that there was no primary aggressor on that day.

[138] Constable Prihar testified that, at some point, he and Ms. J.K. discussed purchasing a condominium to generate income. Ms. J.K. had exclusive responsibility for the family's financial affairs. Constable Prihar was not involved in this. He had no knowledge of the state of their finances. In early December 2019, he checked their finances to determine how they might finance

⁶ *Commanding Officer, "F" Division v Constable Elek*, 2021 CAD 13 [*Elek*].

the condominium. This was done with Ms. J.K.'s assistance. He learned that they were significantly in debt with no ability to repay. The debt became a source of tension in their marriage.

[139] A reasonable person would agree that this alone was reason for Constable Prihar to be upset; however, as the Conduct Authority Representatives previously pointed out, Constable Prihar had other reasons to be upset with Ms. J.K.'s call to the police.

[140] The Subject Member Representative added that Constable Prihar testified that he felt the call to the police was not necessary and that, with the call, Ms. J.K. potentially triggered other unintended consequences, like the involvement of child services.

[141] Within this context, Constable Prihar chose to call Ms. J.K.'s parents to seek their assistance with the situation. He testified that the telephone call was uncomfortable because of his limited contact with Mr. A.S. and Ms. P.D.

[142] The Conduct Authority Representatives believed the Conduct Authority had established that Constable Prihar's conduct was discreditable or likely to cause discredit on the RCMP. This claim is premised on the assumption that Constable Prihar's comments on the telephone call with Ms. J.K.'s parents constitute intimate partner violence, noting that intimate partner violence is not limited to physical violence. The Conduct Authority Representatives supported this assertion by adopting the Department of Justice definition of family violence, which includes physical violence, sexual abuse, emotional abuse, financial abuse and neglect.

[143] I accept this definition and agree that if I had found Constable Prihar threatened to kill Ms. J.K., his children and himself or that he threatened to assault Ms. J.K. by kicking her, his conduct would be discreditable. But that is not what I found. I found that Constable Prihar made two specific comments in an emotionally charged domestic situation that had significant personal consequences to him. Both comments are open to interpretation as to their meaning. They were intended to convey his concerns to Ms. J.K.'s parents and to bring them on his side to help him deal with his domestic situation. I do not find that he made the comments as a threat or for any other improper purpose.

[144] I do not find that a reasonable person with knowledge of the facts of this case, including the realities of policing in general, and the RCMP in particular, would find the conduct discreditable or likely to discredit the Force.

[145] With respect to the disturbing video Constable Prihar sent to Mr. A.P., I recognize that the video is highly disturbing and offensive. Constable Prihar readily agreed with this.

[146] Constable Prihar testified that the video was sent to him by someone else, so he did not seek it out for the purpose of sharing it.

[147] Constable Prihar sent the video to Mr. A.P. without comment.

[148] I seriously question Constable Prihar's judgment in sending the video to anyone; however, I note that highly respected organizations like Mothers Against Drunk Driving (MADD), the Society for the Prevention of Cruelty to Animals (SPCA) and other charitable organizations frequently use public displays of graphic disturbing images to strongly bring attention to their various causes. My point is simply that disturbing videos can be used to promote good as much as they can be used to promote evil because they are an effective means of generating conversations about the disturbing images.

[149] Again, I seriously question Constable Prihar's judgment in sending the video to anyone. RCMP members should give serious consideration in obtaining and subsequently distributing disturbing and offensive material from publicly available sources that may give rise to a conflict with their duties.

[150] The Conduct Authority provided no motive for Constable Prihar's actions. It is pure speculation for the Conduct Authority to say that the video was sent as a threat to Ms. J.K. or to promote violence against women, although it may, without proof as to why Constable Prihar sent the offending video to Ms. J.K.'s brother-in-law. His motive is not clear. Constable Prihar did not expressly provide a motive nor was he asked to provide one. For me to find that his conduct was discreditable, I would have to impute a motive for Constable Prihar's actions. Notwithstanding the offensiveness of the video, in the absence of a clear motive for sending the video, I cannot find that Constable Prihar's conduct is discreditable or likely to discredit the Force.

[151] Given these findings, I find that the Conduct Authority has not established this third element of the test for discreditable conduct on a balance of probabilities.

Sufficient link between Constable Prihar's behaviour to duties and functions for Force to disciplining him

[152] I have found that the Conduct Authority has not demonstrated that Constable Prihar's conduct was discreditable or likely to cause discredit to the Force. Nevertheless, I will briefly discuss the fourth element of the test for discreditable conduct in the event I am not correct about his conduct not being discreditable.

[153] In this element of the test, the Conduct Authority must establish that Constable Prihar's conduct is sufficiently related to his duties and functions so as to provide the RCMP with a legitimate interest in disciplining him.

[154] The Conduct Authority Representatives based their submission entirely on my finding that Constable Prihar threatened to kill Ms. J.K., his children and himself during the telephone call to Ms. J.K.'s parents. I did not make this finding, so the submission is not helpful.

[155] The Subject Member Representative simply stated that the RCMP cannot "dig into" every strained marital situation involving a member of the Force because this would unreasonably expose its members to situations where ill-considered comments made in the heat of a mutual argument may result in dismissal from the Force. Constable Prihar had legitimate reasons for being upset. There was a lot at stake for him. Constable Prihar made the telephone call to Ms. J.K.'s parents in an effort to deal with the dysfunctional family situation in a peaceful way.

[156] I have found that the established comments attributable to Constable Prihar were not threatening. He made the comments to express his concerns and to convince Ms. J.K.'s parents to assist him in repairing or, at the very least, in stabilizing the marital situation. He became frustrated when Ms. J.K.'s parents did not "buy into" the peaceful solution. He may have spoken out of hand, but put into the context of the entire situation, he acted in a way that a reasonable person would have acted. I do not believe that a reasonable person looking at Constable Prihar's actions would

find that his ability to perform his duties as a police officer was compromised under the circumstances.

[157] With respect to the offensive video sent by Constable Prihar to Mr. A.P., I agree that had the Conduct Authority established that Constable Prihar sent the video as a threat to Ms. J.K. or to promote violence against women generally, his behaviour would have been sufficiently related to his duties to provide the RCMP with a legitimate interest in disciplining him. As I noted at paragraph 190 of *Dhillon*,⁷ a serving RCMP officer is expected to play a significant role in the RCMP's efforts to prevent and investigate violence in relationships, not to be a contributor to the problem.

[158] Although sending an offensive video like the one Constable Prihar sent to Mr. A.P. may promote violence against women, there is no evidence that it did in this case. Again, in the absence of a clear motive for sending the video, I cannot find that the private sharing of a publicly available, but offensive, video to a relative without something more is sufficiently related to Constable Prihar's duties and functions so as to provide the RCMP with a legitimate interest in disciplining him.

[159] Given my findings, I find that the Conduct Authority has not demonstrated this fourth element of the test for discreditable conduct on a balance of probabilities.

CONCLUSION

[160] Given the foregoing, I find that the Conduct Authority has not established all four elements of the test for discreditable conduct on a balance of probabilities. Therefore, I find that the Conduct Authority has not established Allegation 3, the lone remaining allegation in this matter.

[161] 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

⁷ *Commanding Officer, "E" Division v Sergeant Dhillon*, 2019 RCAD 13 [*Dhillon*].

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

December 18, 2023

Mr. Kevin L. Harrison
Conduct Board