ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF
an appeal of a conduct board's decision pursuant to subsection 45.11(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 (as amended) and Part 2 of the *Commissioner's Standing Orders (Grievance and Appeals)*, SOR/2014-289

BETWEEN:

Constable Daniel Martin
Regimental Number 55176
HRMIS 000139998

(Appellant)

and

Commanding Officer, "K" Division
Royal Canadian Mounted Police

(Respondent)

(the Parties)

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CONDUCT APPEAL DECISION AMENDED

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ADJUDICATOR: Caroline Drolet
DATE: November 10, 2023

This decision was amended for privacy concerns only. The security categorization of the decision was also amended.

Table of Contents

SYNOPSIS 3
INTRODUCTION 4
NOTE 5
BACKGROUND 5
Allegation 7
Appellant's written response 21
CONDUCT PROCEEDINGS 22
BOARD'S FINAL WRITTEN DECISION 30
APPEAL 33
ANALYSIS 34
Considerations on appeal 34
Procedural Fairness 35
Application to this case 36
Error of Law 37
Application to this case 37
Clearly unreasonableness 37
Application to this case 39
Particular 10 39
Appellant submission 40
Respondent submission 40
Findings 41
Appellant's instruction to Ms. X to never tell anyone 41
Appellant's instruction to Ms. X to delete the texts 42
Alternative 44
Credibility of witnesses 45
Appellant submission 45
Respondent submission 46
Findings 46
Discrepancy on whether or not Ms. X got in trouble with her mother 48
Discrepancy regarding the Appellant's instructions to Ms. X to delete the texts 49
Discrepancy regarding Ms. X having deleted the texts on her old phone but not on her new phone 50
Particular 16 (Facilitating and advancing a sexual relationship) 50
Appellant submission 51
Respondent submission 52
Findings 52
Conclusion on the finding for the Allegation 54
Conduct measure 55
Appellant submission 55
Respondent submission 56
Findings 56
DISPOSITION 59
DIRECTIONS 60

SYNOPSIS

The Appellant faced one allegation under section 7.1 of the RCMP *Code of Conduct* for behaving in a manner that is likely to discredit the Force. The Appellant, a volunteer head coach for a lacrosse team, allegedly texted with a 16-year-old co-coach (Ms. X) for several weeks, with the aim of developing a sexual relationship with her. The Appellant contested the allegation.
The Conduct Board (Board) found that the allegation was established and ordered the Appellant to resign within 14 days or be dismissed from the Force. The Appellant appealed this decision.

On appeal, the Appellant argues that the Board's decision was procedurally unfair as important contradictions in the evidence were not explained in the Board's decision and was clearly unreasonable because the Board erred in finding two of the particulars were established; failed to accurately assess the respective credibility of the witnesses; and, imposed a disproportionate conduct measure.

The appeal was referred to the RCMP External Review Committee (ERC) for review. The ERC recommends dismissing this appeal and confirming the conduct measure imposed.

The adjudicator accepted the ERC recommendation after finding no manifest and determinative errors in the Board's decision on the Allegation, or on the conduct measure. The adjudicator found the Board's decision was supported by the record, did not contravene the principles of procedural fairness, was not based on an error of law and was not clearly unreasonable. The adjudicator dismissed the appeal and confirm the finding and the conduct measure imposed by the Board.

INTRODUCTION

[1] The Appellant appeals the RCMP Conduct Board (Board)'s finding that he behaved in a manner that is likely to discredit the Force contrary to section 7.1 of the *RCMP Code of Conduct*, a Schedule to the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 [*Code of Conduct*] (the Allegation) and the conduct measure imposed directing him to resign from the Force within 14 days or be dismissed. The Appellant contends that the decision was reached in a manner that contravened the principles of procedural fairness, was based on errors of law, and was clearly unreasonable.

[2] In accordance with subsection 45.15(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 (*RCMP Act*) the appeal was referred to the RCMP External Review Committee (ERC) for review. In a report issued on June 14, 2023 (ERC C-2021-041 (C-078)) (Report), the Chair of the ERC, Mr. Charles Randall Smith, recommended that the appeal be dismissed.

[3] The Commissioner has the authority, under subsection 45.16(11) of the *RCMP Act*, to delegate his power to make final and binding decisions in conduct appeals and I have received such a delegation.

[4] Upon reviewing the Record, I am satisfied that the Appellant has standing and that the appeal was presented within the statutory time limitation period, pursuant to section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)* (SOR/2014-289) [*CSO (Grievances and Appeals)]*. Therefore, I have jurisdiction to adjudicate this appeal.

[5] In rendering my decision, I have considered the entire Record which consists of the materials before the Board (Material), the 254-page Appeal materials (Appeal) prepared by the Office for the Coordination of Grievances and Appeals (OCGA), and the Report. I refer to documents in the Record by way of page number of the electronic file.

[6] After a careful review of the Record, I agree with the ERC and find that the Appellant has failed to establish on a balance of probabilities that the Board's decision was reached in a manner that contravened the applicable principles of procedural fairness, was based on an error of law, or

was clearly unreasonable. I dismissed the appeal and confirm the finding and the conduct measure imposed by the Board.

NOTE

[7] I note that the Board and the ERC proceeded with a publication ban on any information that could serve to identify the female assistant coach. I agree with the ERC that there is no reason to disturb the ban at this stage of the process. Accordingly, I will adopt the ERC approach and refer to the 16-year-old assistant coach as Ms. X.

BACKGROUND

[8] The ERC summarized the factual background leading to the conduct hearing (Report, paras 7-13):

> **1. Key Events**
>
> [7] In mid-2019, the Appellant was a 40-year-old Constable with roughly 12 years of service. He worked on an Emergency Response Team (ERT) in "K" Division, where he lived with his wife and their two children. He was also the volunteer head coach of a [redacted for confidentiality] lacrosse team.[1]
>
> [8] A mutual contact put the Appellant in touch with Ms. X during the Appellant's search for an assistant lacrosse coach with a better grasp of the game than he and his assistants had. Ms. X was then 16 years old and living with her mother amid her parents' custody battle. She had a lot of lacrosse playing experience, but could not play that year due to injury. She was open to trying coaching. Upon joining the team, she quickly proved to be an eager and able assistant coach.[2]
>
> [9] The Appellant and Ms. X soon started discussing non-lacrosse-related matters. This began when the Appellant comforted Ms. X after Ms. X's mother became upset with Ms. X upon learning that Ms. X had secretly visited Ms. X's father outside the terms of a custody agreement. The Appellant and Ms. X went on to have ongoing text exchanges which became personal and suggestive, and which rarely involved lacrosse. Ms. X's mother ultimately found several of their texts. Local lacrosse officials gained access to some of their texts after that.[3] Subsequently:

[1] Transcript, Volume 2, pp 3-6, 9-10; Witness Statement of Ms. X, p 9.
[2] Appellant's Will Say Statement, p 1.
[3] Investigation Report, Appendices C, G to J, L to Q, U (p 5), V; Affidavit of Ms. X's mother.

- Ms. X's mother submitted a formal complaint to the RCMP in which she alleged that the Appellant had been making sexual advances towards Ms. X;[4]
- The Alberta Court of Queen's Bench approved Ms. X's mother's application (on Ms. X's behalf) for a Civil Restraining Order against the Appellant, after the Appellant consented to a one-year Civil Restraining Order without admitting to information underpinning it;[5]
- The RCMP temporarily reassigned the Appellant to administrative duties;[6] and
- The local lacrosse body suspended the Appellant from coaching, indefinitely.[7]

[10] The RCMP considered, but declined to launch a criminal investigation. The Alberta Serious Incident Response Team concluded that, although the matter was "concerning", it "did not reach a *Criminal Code* threshold".[8] In addition, an RCMP official seemed to confirm this conclusion by determining that the Appellant's conduct did not satisfy the elements of a child luring offence.[9]

2. Conduct Investigation

[11] A Conduct Authority issued a Mandate Letter indicating that he had recently learned about the Appellant's alleged conduct, and that he was ordering a *Code of Conduct* investigation.[10] A Sergeant in the "K" Division Professional Responsibility Unit carried out the investigation. She then drafted an Investigation Report (IR) which considered 44 materials that are either attached to it, or are otherwise found in the record. These include: audio and written statements, text messages, other correspondence, other reports, policy materials, court documents, and one of the Appellant's shift schedules.[11] […]

3. Decision to Hold Conduct Hearing

[12] Less than a year after the Conduct Authority learned of the Appellant's alleged conduct, the Respondent completed a "Notice to the Designated Officer", wherein he sought to deal with that conduct through a conduct hearing. He opined that the conduct measures available to him were

[4] Investigation Report, Appendix C; Occurrence Summary dated June 30, 2019.
[5] Investigation Report, Appendices FF, GG.
[6] Order of Temporary Reassignment; Email from [Ms. X's mother] to [Ms. A], dated August 20, 2019.
[7] Investigation Report, Appendix X; Appendix AA, p 4.
[8] Investigation Report, Appendix A.
[9] Investigation Report, Appendix KK.
[10] Investigation Report, Appendix B.
[11] Investigation Report and Appendixes A to RR.

inadequate, given the severity of the Allegation.[12] The Designated Officer went on to appoint the Board, which consisted of one member.[13]

4. Suspension From Duty

[13] The RCMP ultimately suspended the Appellant from duty, with pay.[14]

Allegation

[9] On July 13, 2020, the Appellant was served with the Notice of Conduct Hearing (the Notice), setting out the Particulars of the Allegation, along with the investigation package[15]. The ERC condensed the Particulars of the Allegation in their Recommendation, which I repeat here:[16]

> ***Allegation 1*** *On or between April 1, 2019, and June 28, 2019, at or near [redacted] in the province of Alberta, [the Appellant] behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the [Code of Conduct].*
>
> *Particulars*
>
> 1. *At all material times, you were a member of the Royal Canadian Mounted Police ("RCMP") posted to "K" Division Emergency Response Team [redacted].*
> 2. *You were a volunteer head coach for the [the local lacrosse body] [redacted for confidentiality] lacrosse team in [redacted]. [Ms. X] was a volunteer assistant coach who you recruited to assist with the team. In April 2019, [Ms. X] was a sixteen-year-old heading into grade eleven at [redacted]. You were in a position of authority over [Ms. X] and an adult mentor to her. On August 14, 2019, you provided a Will Say statement in which you [described Ms. X as a capable and knowledgeable coach].*
> 3. *On July 2, 2019, [Ms. X] provided a statement to [an investigator]. [Ms. X] confirmed that she met you through [redacted]. [Ms. X] voluntarily exchanged her cell phone contact information with you for assistant coaching purposes: [passage of Ms. X's Witness Statement in which she describes how she met the Appellant].*
> 4. *[Ms. X] described how she first commenced communicating with you outside of coaching duties after she got into a fight with her mom and you texted her later that evening to check up on her:*
>
>> *"[Ms. X]: So, it all started in the beginning to the middle of the season. Um, I got in a fight with my mom, [a family friend] drove me*

[12] Notice to the Designated Officer.
[13] Appointment of Conduct Board.
[14] Transcript, Day 5, p 23; Decision, para 24.
[15] Notice of Conduct Hearing, pp 1-13.
[16] Report, paras 14-15.

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

5. *You confirmed in your Will Say that you commenced text messaging with [Ms. X] following your conversation with her about problems she was having with her mom:*

   "After that conversation, [Ms. X] and I would converse over text message occasionally up until the end of June. These conversations would range from her asking questions and advice about relationships to conversations about pedicures to conversations about how she was doing in general. The intent of all conversations was to make [Ms. X] feel better and to treat her like a co-coach. There were no further intentions. I treated her like any other coach, manager, or person that I may meet and get to know. [Ms. X] appeared to be in upset moods at times and I would try to boost her ego and confidence just like I would anyone else. I'm an outgoing, friendly person that doesn't have a problem talking to anyone about almost any topic."

6. *On July 2, 2019, [Ms. X's mother] provided a statement to [an investigator]. In her statement, [Ms. X's mother] acknowledged that she regularly reviews [Ms. X's] text messages [passage of Ms. X's mother's statement in which she explains that it was not uncommon for her to look through the messages on Ms. X's smart watch] [...]*

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

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

"[Q]: Okay. Okay. So then what kind of conversation like when was the first time that you talked to [Ms. X] about this?

[A]: Saturday afternoon late evening.

[Q]: Okay. So, the day you found them.

[A]: Yeah.

[Q]: Later. Okay. So how did that go?

[A]: Um, [i]t went well. [Ms. X] was very nervous like when I told her I saw the messages but sort of relieved that someone found out because she was told not to tell anybody and I just reaffirmed with her that she has done nothing wrong, she is not in trouble and he could not do anything to her."

9. *In her statement, [Ms. X] described how you would turn an innocuous Imessage text conversation with her into something inappropriate.*

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

[Q]: Okay.

[A]: Otherwise, it was him contacting me first and it seemed like a normal conversation that then it would just lead to inappropriate things.

[Q]: Okay and was this by an app or by?

[A]: Imessage.

[Q]: Imessage, okay. Any other forms of contact besides Imessage?

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

[Q]: Okay. And when you say Imessage that, that's where ...

[A]: In text message.

[Q]: ... the inappropriate ...

[A]: Yeah.

[Q]: ... it's, you're meaning text messages but you both ...

[A]: Yeah.

[Q]: ... have Iphones?

[A]: But we both have Iphones, yeah.

[Q]: Okay. Any other form or apps?

[A]: No, I don't have him on Instagram or Snap Chat."

10. *You instructed [Ms. X] to never tell anyone that you were communicating with her and that she was to delete all your exchanged text messages.*

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

    [Q]: Okay.

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

    (Q]: Okay so how did he tell you that? Was that ...

    [A]: It was over text.

    [Q]: Okay and is that on his phone or ...

    [A]: No, I deleted those messages because that's what he told me to do.

    [Q]: Okay and it was that on his phone or was that on your old phone?

    [A]: Old phone."

11. *[Ms. X] also described how she wanted the inappropriate text messaging to end and that she only communicated with you because you were her coach and that she was concerned the messaging would get her into trouble:*

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

    [Q]: Mmm hmm.

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

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

"[A]: I like didn't, I was always annoyed when he would text me because I knew that it would lead to inappropriate things and I always was very short with my answers and I was like almost like [distancing] myself with the conversations like just sending laughy face emojis because I didn't know what else to say because I didn't want to say anything that would possibly lead him to believe that I wanted the conversation to carry on. I would say either okay or yeah. I would never go into like great detail with my answers because I just, just wanted the conversation to end because I knew that it would always lead to inappropriate things and I was um, scared to tell him to stop because I knew that he is like I, this doesn't have anything to do with it but like I knew he was like a police officer and I didn't know if he would like kept these messages and that I would get into trouble or anything and I didn't, you know, I just felt almost uncomfortable telling him to stop even though I should have because I knew that this was wrong. Um, I never told anyone about this because he told me not too. He told me [...] to delete the messages but I didn't with as soon as I got this new phone, I hadn't deleted any of them."

12. *You were fully aware that [Ms. X] was a sixteen-year-old young person at the time you were text messaging with her and that her personal home life included parents who were divorced: [passage of Ms. X's Witness Statement in which she indicates that she told the Appellant her age, and that her parents were divorced].*

13. *[Irrelevant to appeal].*

14. *On July 1, 2019, you were suspended from your coaching duties by [redacted], the Discipline Director for [the local lacrosse body]. On July 2, 2019, you acknowledged your suspension from coaching.*

15. *In your Will Say, you have adopted a position that you engaged in text messaging with [Ms. X] to be supportive and helpful of her and denied that your communications with her had any sexual intent whatsoever.*

16. *You engaged in text messaging with [Ms. X] with the objective of facilitating and advancing a sexual relationship with her. You were in a*

position of trust and authority over [Ms. X] and a clear power imbalance existed between yourself and [Ms. X] as a vulnerable young person. Your text messaging with [Ms. X] outside of Lacrosse coaching matters, was completely unnecessary and highly inappropriate as an RCMP officer. You sought to conceal your text communications with [Ms. X] by directing her to delete your shared text messages. You were actively attempting to groom [Ms. X] for your own personal sexual gratification purposes.

17. *The following chronologically listed text messages, demonstrate the predatory and inappropriate sexual nature of your communications with [Ms. X]:*

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

    You: "How's the foot?"

    [Ms. X]: "Foot is fine?? My blister??"

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

    [. . .]

    You: "Look after your pretty feet!!!! Don't ruin them."

    [Ms. X]: "Okok 😊 😊 I'll probably wear my nmds tmrw idk it's supposed to be really hot tho"

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

    [Ms. X]: " 😊 😊"

    You: "Am I too much?"

    [Ms. X]: "Ik it's a joke so"

    You: "We do need to go for a pedi tho"

    [Ms. X]: "100%!!"

    You: "I want to pick the colour tho"

    [. . .]

    You: "No fair!!"

    [Ms. X]: "Okok Then what colour"

    You: "Clear?"

    [Ms. X]: "No fun"

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

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

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

You: "You're an awesome and very attractive woman [Ms. X]. Enjoy your newfound freedom of being single. Remain friends. Be friends with everyone. He may come back. You never know!!"

[Ms. X]: "Thank you. I don't want to lose him as a friend and if I bring it up will affect that so I'm just going to leave it."

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

[Ms. X]: "Exactly I'll just leave it"

You: "Smart girl. Nice day out!!"

[Ms. X]: "It is"

You: "Lol. Bikini weather today too"

[. . .]

You: "True. Are you in class??"

[Ms. X]: "Maybe ... "

You: "Fack!! I'll stop!"

[Ms. X]: "We're just watching movies 😊*"*

You: "Wtf?!"

[Ms. X]: "It has a project to it tho But I finished"

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

[Ms. X]: "Anywhere but here 😊*"*

You: "You're trouble"

[Ms. X]: "Lol English is just boring"

You: "I can think of other things to be doing too"

c) *On June 13, 2019, you initiated a text message exchange starting from work in which you openly acknowledged [Ms. X's] status as a young person:*

You: "Do you play basketball?"

[Ms. X]: "I did in grade 8 but I didn't enjoy it"

You: "Haha"

[Ms. X]: "Girls are so dramatic"

You: "Oh??"

[Ms. X]: "They think it's fun to start drama"

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

[...]

[Ms. X]: "Raptors took the dub!!"

You: "Pretty wicked game to watch actually hey?"

[Ms. X]: "Omg it was so good!!"

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

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

You: "Haha. Yup. How's school today?"

[Ms. X]: "Meh"

You: "Haha. Brutal weather."

[Ms. X]: Yep, but I like the rain so"

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

[Ms. X]: "Yeah 😊 After the game I sat outside on the deck"

You: "In the rain??"

[Ms. X]: "Yep In the covered part but still I"

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

***[Ms. X]:** " 😊 😊"*

You: "I shouldn't say that. My bad."

***[Ms. X]:** "Lol"*

You: "It's hard not to tho."

***[Ms. X]:** emoji*

You: "No comment?"

***[Ms. X]:** "I dk what to say?"*

You: "Lol I don't freak you out?"

[Ms. X]: "No?"

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

[Ms. X]: "Lol no we're good 😊"

You: "You're a tame one."

e) *On June 17, 2019, you initiated a late-night conversation with [Ms. X] while on a work-related training trip:*

You: "Were you at the game??"

[Ms. X]: "Yessir"

You: "Awesome game?!"

[Ms. X]: "Yessir"

You: "Lol. Bed time? "Yessir"

[Ms. X]: "Yessir 😊 😊 but am I going to bed ... Nosir"

You: "Watcha doin??"

[Ms. X]: "Studying for science ®®"

You: "Awww. With friends or on your own?"

[Ms. X]: "By my self, I only talk to like 2 people in my science class the rest are weird, druggies, or my ex soo"

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

[Ms. X]: "Training?"

You: "Ya."

[Ms. X]: "Fun"

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

[Ms. X]: "Ooo fun"

*You: "I'm having more fun now tho emoji" *Emoji exchange*

You: "Can't believe I said that"

[Ms. X]: "Emoji

You: "Should I go and let you study?"

[Ms. X]: "No I gave up on that ik do more throw Tomorrow"

You: "Oh ok ... "

[Ms. X]: "We need to go for our pedis soon!!"

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

[Ms. X]: "Yes"

You: "Were you in Birks tonight?"

[Ms. X]: "Yes and you missed it 😊"

You: "Damnit!!!! Is it enjoyable for you knowing I like that?"

[Ms. X]: Is it a joke or are you being real??"

You: "I'm scared to answer"

[Ms. X]: "Oh?"

You: "Lol. Yes."

[Ms. X]: "Which one?"

You: "Yes, I'm scared to answer. I don't want to get into trouble"

[Ms. X]: "I'm a take that as its real 😊"

You: "Do you think less of me?"

[Ms. X]: "No?"

You: "I like your feet"

[Ms. X]: "Lol thanks"

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

[Ms. X]: "Lol"

**Emoji exchange*

You: "Can I ask more questions?"

[Ms. X]: "Ig?"

You:"?"

[Ms. X): "I guess"

You: "I better not"

[Ms. X]: "Okay?"

You: "Frick"

[Ms. X]: "Okay?"

You: "You ask me something"

[Ms. X]: "I'm going to bed I'm so tired and I have a big day tomorrow. When do you come back?"

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

[Ms. X]: "So not in time for the game?"

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

*[Ms. X]: "Okay well goodnight, Tyler Tty! *"*

You: "Hehe. Tyler. I like it"

[Ms. X]: " 😊 gn"

You: "What colour are they?"

[Ms. X]: "Blue"

You: "Omfg Dying"

[Ms. X]: " 😊 goodnight"

You: "Ok ok. Sweet dreams"

[Ms. X]: "Yea you too"

You: "I hope I do too"

[Ms. X]: "Tty!"

You: "I hope so."

[Ms. X]: "Dw"

You: "Fack"

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

You: "How did it go??"

[Ms. X]: "Meh"

You: "Aced it"

[Ms. X]: "Nope"

You: "At least you had nice polish on"

[Ms. X]: " 😊 that doesn't exactly get me through school tho"

You: "Damn Makes my evenings at the box much better"

[Ms. X]: "Haha"

You: winking emoji

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

[Ms. X]: "I wore birks today and I had to walk from school to gen and now my birks are soacked"

You: "Awwwwww What about your shirt??"

[Ms. X]: "I have a hoodie on"

You: "Great mental pic!"

h) On June 23, 2019, you initiated the following:

You: "Dry out your Birks yet?"

[Ms. X]: "Kinda 😊 😊"

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

[Ms. X]: I usually will just take them off and walk in bear feet”

You: drooling emoji

You: ‘‘The blue is nice”

[Ms. X]: “Nail polish?”

You: “Yes!”

[Ms. X]: “Lol feet are about to get wrecked with field”

You: “Awwww. We best take care of them”

[Ms. X]: “ 😊 😊 I’ll try I had no luck last year my ankles are scared to scrap Crap”

You: “May need to have a few pedis!”

[Ms. X]: “I think I will 😊”

You: “Can I pick the colour?”

[Ms. X]: “Maybe”

You: “Awesome!!”

[Ms. X]: “What colour are you thinking cause the blues look good with my tan”

You: “Either a brighter blue or even a light one”

[Ms. X]: “Okok”

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

[Ms. X]: “No it’s going to grey fast 😊 in cleats all summer and when I’m not in them I’m in birks which my toes get dirty fast 😊”

You: “Grey is hot too!!”

[Ms. X]: ‘‘Nah Way to basic Literally all the girls that are annoying af and think they are top shit get yellow”

You: “Ya?! I don’t know this stuff. Lol”

[Ms. X]: “I can tell 😊 😊 It’s okay I’ll teach you”

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

i) On June 28, 2019, you observed [Ms. X] in person and [then] initiated the following conversation:

You: "Slow down!"

[Ms. X]: "??"

You: "Saw you running around the corner at [redacted]"

[Ms. X]: "Ohh haha I need my mom to sign a sheet of paper [redacted]"

You: "Ahhh. Lol."

[Ms. X]: "Yea but he wasn't even there so"

You: "Damnit! Coming to the game today?"

[Ms. X]: "Yessir I'll be there all weekend!!"

You: "Wicked!"

[Ms. X]: "Yep are you??"

You: "Just this afternoon"

[Ms. X]: "Bummer"

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

[Ms. X]: "Crop top yea but I didn't think I was leaving the house and didn't have time to change"

You: "It looked great!!"

j) Also on June 28, 2019, you initiated the following late night conversation with [Ms. X]:

You: "How's your night goin?"

[Ms. X]: "Meh [redacted] team just lost to [redacted] so that sucks"

You: "[redacted]?"

[Ms. X]: "He's my best friend"

You: "Oh damn Sorry"

[Ms. X]: "Meh they played shit d so"

You: ''That happens"

[Ms. X]: yea"

You: "Going out tonight?"

[Ms. X]: "No still at the area with [redacted]"

You: "[redacted]?"

[Ms. X]: "Yepp"

You: "Fun"

[Ms. X]: "It is"

You: "Are you volunteering like [redacted]?"

[Ms. X]: "No I just stayed to watch his game and I helped her out to"

You: "Ahhh you're a big help"

[Ms. X]: "Yepp"

You: "Lol"

[Ms. X]: "I'm ready for bed"

You: "Well that's where I am ... "

[Ms. X]: "Lol lucky I'm so sleep deprived"

You: "Wish I could help with that"

[Ms. X]: "I choose to stay up talk to people and not sleeping"

You: "Lol Well ... it is summer holidays"

[Ms. X]: ''True true"

You: "It's hard to text you. Lol"

[Ms. X]: "Why?"

You: "I'm biting my tongue"

[Ms. X]: "k"

You: "Lol. Know what I mean?"

[Ms. X]: "No it's probably better that way 😊*"*

You: "Geez"

[Ms. X]: "I'm so tired"

You: "Get to bed!"

[Ms. X]: "I can't I'm still here"

You: "You need a foot rub likely"

[Ms. X]: "Lol"

[15] *Shortly after the RCMP served the Appellant with the Notice, it supplied him with disclosure of the materials it was relying on to support the Allegation, including the IR and its appendices.*[17]

[17] Email from the Appellant's Lawyer to the Board Registrar, dated July 27, 2020.

Appellant's written response

[10] On September 15, 2020, the Appellant submitted a written response to the Allegation.[18] He acknowledged that his behaviour breached section 7.1 of the *Code of Conduct*, but insisted that dismissal would be too harsh a conduct measure in the circumstances. The ERC summarized his written submission as follows:[19]

> [16] […] He explained that:
>
> - he was a family man with a long and admirable history of RCMP and community service;
> - he did not have any predatory, sexual, grooming, or other ill intent towards Ms. X;
> - his inappropriate behaviour was limited to texting with Ms. X;
> - he did not realize that his texting exchanges with Ms. X were making her uncomfortable;
> - he regretted his behaviour and wished to sincerely apologize to Ms. X and her mother;
> - this incident was the only stain on his otherwise pristine work and volunteer records; and
> - his behaviour was not as severe as the behaviour in some comparable conduct matters, where dismissal was still found to be unwarranted.
>
> [17] The Appellant specifically answered the Particulars of the Allegation, as follows:
>
> - he generally agreed with Particulars 1, 2, 3, 4, 5, 12, 14 and 15;
> - he had no first-hand knowledge of Particulars 6, 7 and 8;
> - he disagreed with Particulars 9, 10, 11, 13 and 16; and
> - he disagreed with Particular 17 on the point that his texts were "predatory".
>
> [18] The Appellant attached copies of many of his performance reviews. They chiefly indicated that he was a hardworking, skilled, and reliable member who demonstrated leadership qualities.

[18] Written Response, dated September 15, 2020, including attached letter and performance reviews.
[19] Report, paras 16-18.

CONDUCT PROCEEDINGS

[11] The hearing was held from July 12 to July 16, 2021. The Appellant, Ms. X, and her mother each testified. The ERC summarized the relevant aspects of the hearing on the Allegation:[20]

> **B. Evidence on Allegation**
>
> **CAR**
>
> [20] The CAR's two witnesses were Ms. X's mother and Ms. X.
>
> *Ms. X's Mother*
>
> [21] Ms. X's mother made two key points on direct examination.
>
> [22] First, Ms. X's mother indicated that she confronted Ms. X after finding some text messages between the Appellant and Ms. X that were "very inappropriate and of a sexual nature towards [Ms. X]".[21] Ms. X's mother recalled Ms. X telling her that Ms. X had been unable to say anything about the texts, given the Appellant's direction to delete and never tell anyone about them.[22]
>
> [23] Second, according to Ms. X's mother, the Appellant's behaviour deeply affected both her and Ms. X, largely because he was an RCMP member in a position of trust [*sic* throughout]:[23]
>
> > *This is very, very heartbreaking for myself and [Ms. X]. This is not something I would ever picture would ever happen from an RCMP officer, to take advantage of a minor child.*
> >
> > *We have had - I have had anxiety. I have had blaming myself for not being able to protect my daughter, for her to not be able to come to me.*
> >
> > *I've always told my daughters, "Always trust the police. Always trust your teachers. Always trust anybody who is in a position to protect you". And this has been taken away in the worst possible way.*
> >
> > *[Ms. X] has had anxiety attacks. She has panic attacks. She was so fearful when all of this started that she slept with me for over two months.*
> >
> > *She can't go outside by herself. She has zero self-confidence. She gets panic attacks when strange men look at her because of some of the messages that have been sent to her.*
> >
> > *Her grades have gone from Bs to failing, to she barely graduated high school. She is redoing her Grade 12 year.*

[20] Report, paras 20-43.
[21] Transcript, Volume 1, p 23.
[22] Transcript, Volume 1, p 28.
[23] Transcript, Volume 1, pp 31-32.

> *Because this came from a coach, she has lost her dream to go to the States to play lacrosse. She's lost the love of her favourite sport.*
>
> *She's not my loving, confident child that I had. She's lost. She's hurt. She's violated. And I blame myself for not protecting her, that she was getting messages that any child should not be getting from an adult, let alone a coach who was there to protect, who was there to take care of, an RCMP officer who is - swore an oath to protect the children, to protect the people. And he violated her in the worst way possible.*

[24] On cross-examination, Ms. X's mother emphasized that she had not been angry with Ms. X for concealing text messages. Ms. X's mother said she believed Ms. X's explanation that the Appellant directed Ms. X to delete the texts, even though Ms. X had very recently deceived her by secretly visiting Ms. X's father. Ms. X's mother clarified that she and Ms. X had moved past that incident, and rebuilt their trust, after she assured Ms. X that Ms. X could visit her father.[24]

Ms. X

[25] On direct examination, Ms. X discussed her communications with the Appellant.

[26] Ms. X stated that she initially viewed the Appellant as a "mentor" and a leader who was "there for me".[25] She explained that, at one point, when she was crying after quarrelling with her mother, the Appellant comforted her, hugged her, and told her she could trust him and come to him about anything.[26] She recalled that she and the Appellant began texting shortly after that.[27]

[27] Ms. X said that the Appellant's texts to her were "normal at first", but became "weird". She elaborated that, although she did not fully realize it at the time, many of his texts were sexually suggestive and made her uncomfortable.[28] She offered the following reflections about the texts:

- the Appellant commonly began their text conversations later at night, including on school nights, oftentimes when she was alone and getting ready for bed, or already in bed;[29]
- the Appellant frequently asked her about, or otherwise redirected their discussions to her feet and toes, and twice texted her drooling emojis when discussing her feet and toes;[30]

[24] Transcript, Volume 1, pp 53, 58-59.
[25] Transcript, Volume 1, pp 67-68.
[26] Transcript, Volume 1, pp 68, 76.
[27] Transcript, Volume 1, pp 69, 71-72.
[28] Transcript, Volume 1, pp 78-79.
[29] Transcript, Volume 1, pp 79-80, 93, 116, 122, 146.
[30] Transcript, Volume 1, pp 96-97, 101-103, 127-128, 130, 133-134, 137-143, 149.

- the Appellant made unprompted comments that seemed to evoke her private body parts, including comments involving wearing a bikini, a wet white t-shirt, and a crop top;[31]
- the Appellant made unprompted, seemingly sexual comments about wanting to have fun, feeling lonely at night, being in bed, and wishing he could help her sleep;[32]
- the Appellant periodically indicated that he knew his comments might be inappropriate;[33]
- she never told the Appellant that he was making her feel uncomfortable, since he was a police officer who held substantial authority, and she did not want to risk upsetting him;[34]
- she instead replied with emojis, or said nothing at all, to try to stop conversations;[35] and
- she lived in fear of the Appellant, and suffered sleeping issues as well as panic attacks.[36]

[28] Ms. X said the Appellant told her to delete all their texts, and to never tell anyone about the texts so the two of them would not get into trouble. Ms. X noted that she did delete their texts up until June 9, 2019, which was when she obtained a new phone. Ms. X also stressed that she did not talk about the texts with anyone until her mother discovered them. After that, Ms. X and her mother discussed the texts with trusted friends, community lacrosse officials, and the RCMP.[37]

[29] On cross-examination, Ms. X acknowledged the following:

- some of her text discussions with the Appellant involved harmless, everyday topics such as hockey, basketball, camping, going to the lake, school, exams, and the weather;[38]
- she never asked the Appellant to stop discussing topics that made her uncomfortable, so the Appellant may have assumed that she was comfortable texting about those topics; [39]
- although she and the Appellant sometimes vaguely texted about the idea of getting a pedicure together, they never actually did so, or even made specific plans to do so;[40]

[31] Transcript, Volume 1, pp 108,110, 117-119, 121, 135-136, 144-145.
[32] Transcript, Volume 1, pp 103-104, 122-123, 146-148.
[33] Transcript, Volume 1, pp 119-120, 125-127, 148.
[34] Transcript, Volume 1, pp 100,107, 118-120, 131-132, 134,147,150.
[35] Transcript, Volume 1, pp 101, 104, 124, 132, 143.
[36] Transcript, Volume 1, pp 150-151.
[37] Transcript, Volume 1, pp 72-74, 81-85, 151.
[38] Transcript, Volume 1, pp 173-175.
[39] Transcript, Volume 1, pp 176-177, 203-205.
[40] Transcript, Volume 1, pp 181-184, 210, 242-243.

- the Appellant did not forward her or ask for photographs, behave improperly during their lone phone call, attempt to engage her on social media, or try to see her socially;[41] and it is possible that the Appellant meant for some of his texted comments that she felt were inappropriate to be innocent and friendly, and in certain instances even complimentary.[42]

[30] However, Ms. X disagreed with the LR [Legal Representative]'s suggestion that she lied to her mother about why she concealed the texts. Ms. X conceded that she previously hid a visit with her father, that this had upset her mother, and that she did not want to upset her mother again. But Ms. X insisted that she was being honest when she explained to her mother that the Appellant had told her to delete their texts, and to keep their exchanges private.[43] In Ms. X's view, this explanation still did not help her. Ms. X reasoned that, since she was a people-pleaser who blamed herself for bad things, she assumed that what occurred was her fault, and that her mother was upset with her.[44]

[31] Ms. X agreed that her decision to stop deleting texts after she received her new phone on June 9, 2019 marked a "drastic change in behaviour".[45] She explained that, by that point, she no longer felt she had to delete texts, given that she had made up with her mother after secretly visiting her father, and did not think her mother or anyone else would look through her phone.[46]

LR

[32] The LR's lone witness was the Appellant. He spoke to four issues on direct examination.

[33] First, the Appellant addressed the subject of why the earlier texts between him and Ms. X were unavailable. The Appellant recalled that he, too, obtained a new phone in June 2019, and that he deleted many texts on his old phone before he transferred the contents of his old phone to his new phone.[47] He then disputed the idea that he instructed Ms. X to delete their texts:[48]

> *Q: Now, it's alleged that in those messages that have not been produced in this proceeding you instructed [Ms. X] to delete those texts or delete the conversation and not show anyone because they could be seen as inappropriate.*
>
> *What is your response to that allegation?*
>
> *A: I don't recall ever saying that. I don't believe that to be true at all.*

[41] Transcript, Volume 1, pp 182, 188, 243-245.
[42] Transcript, Volume 1, pp 191, 198-199, 213-214.
[43] Transcript, Volume 1, pp 224-254.
[44] Transcript, Volume 1, pp 254-256.
[45] Transcript, Volume 1, pp 237.
[46] Transcript, Volume 1, pp 246-247.
[47] Transcript, Volume 2, pp 27-28.
[48] Transcript, Volume 2, pp 31-32.

[34] Second, the Appellant discussed his initial objectives in texting with Ms. X, and how he saw their exchanges in retrospect. He urged that he meant to boost Ms. X's confidence, treat her like a co-coach, and do those things in ways that were cordial, fun, funny, engaging, supportive, and helpful.[49] Looking back, he acknowledged that some of their discussions were inappropriate and unnecessary, and that others straddled the line between proper and improper.[50] He ultimately described their interactions as mutually "flirtatious", but conceded that what he did was wrong.[51]

[35] Third, the Appellant did not agree that texts between him and Ms. X were sexual, or that he had a sexual aim. He stated that their texts contained no discussions of physical sex or anything explicit, and that there were no pictures or videos.[52] In his opinion, the idea that he was pursuing a sexual relationship with Ms. X, based on their texts alone, was "extremely over the top".[53]

[36] Fourth, the Appellant apologized to Ms. X, her mother, the Board, and the RCMP. He said he did not realize at the time that he was upsetting Ms. X. He stressed that he was ashamed of his conduct, that he sought professional help, and that he made significant changes in his life.[54]

[37] On cross-examination, the Appellant made the following acknowledgements and/or points:

- Ms. X was a "youth" and a "vulnerable person" under local lacrosse body policies, which could be construed as prohibiting him from having one-on-one conversations with her;[55]
- although some of his text exchanges with Ms. X were inappropriate and unnecessary;[56]
- they were not romantic, sexual, predatory, or indicative of an attempt to groom Ms. X;[57]
- he did not see the text exchanges as sexually evocative, given that they did not mention physical sex, sexual positions or pornography, and nobody asked for or sent pictures;[58]

[49] Transcript, Volume 2, pp 32, 39, 41-42, 54, 57-58, 62, 65, 69.
[50] Transcript, Volume 2, pp 32, 38, 42, 45-46, 48-49, 51-55, 57, 62, 67-69, 82, 86.
[51] Transcript, Volume 2, pp 50, 86.
[52] Transcript, Volume 2, pp 75, 82-83.
[53] Transcript, Volume 2, p 33.
[54] Transcript, Volume 2, pp 35, 69, 87.
[55] Transcript, Volume 2, pp 105-114.
[56] Transcript, Volume 2, pp 94-97, 114, 124-127, 132-133, 148-149, 161,171, 180-186, 190-193, 201.
[57] Transcript, Volume 2, pp 117, 145-146, 153, 155, 161, 164, 165, 168-171, 179, 184, 188, 201-202.
[58] Transcript, Volume 2, pp 95, 97, 143, 171.

- he did not find Ms. X attractive or like her feet, and his texts - which took on a world of their own - were silly banter meant to be funny and to give Ms. X someone to talk to;[59]
- he intended to be nice to Ms. X and treat her like a co-coach, but admitted that he never discussed going for pedicures with, or saying "sweet dreams" to his other co-coaches;[60]
- he sometimes received texts from Ms. X that he considered to be flirtatious, but he never told her that the texts were inappropriate or asked her to stop sending them to him;[61] and
- he did not reach out to inform Ms. X's mother that Ms. X had discussed serious, family-related concerns with him, or that he was having ongoing communications with Ms. X.[62]

[38] The Appellant repeated that he could not recall asking Ms. X to delete their text messages, and that he did not believe he had made such a request.[63]

[12] Next, the ERC summarized the respective Parties' Board submissions respecting the Allegation:[64]

CAR

[39] The CAR submitted that the Allegation was established. The CAR stated that the Appellant gradually tried to use his lacrosse coaching relationship with, and positions of trust over Ms. X to predatorily groom her for a sexual purpose. The CAR explained that the Appellant built trust with Ms. X through ongoing electronic messages that were beyond her mother's oversight, and that often occurred later at night when Ms. X was alone but feeling safe at home. The CAR indicated that the messages did not need to include sexually explicit language to be sexual in nature, and that the Board could objectively consider all the circumstances to determine that the messages were sexually suggestive. The CAR said that there was no reason not to accept Ms. X's position that the Appellant told her to delete their texts and say nothing about their interactions, and that the Appellant's position to the contrary lacked an air of reality. According to the CAR, the record revealed that the Appellant knew what he was doing was wrong, but did not stop doing it until he was caught. The CAR declared that there was a duty to protect the sexual integrity of youth.[65]

[59] Transcript, Volume 2, pp 125, 150, 180.
[60] Transcript, Volume 2, pp 115, 148-151, 160, 184.
[61] Transcript, Volume 2, pp 177-178, 195.
[62] Transcript, Volume 2, pp 130-131.
[63] Transcript, Volume 2, pp 132.
[64] Report, paras 39-42.
[65] Transcript, Volume 3, pp 3-34, 72-74.

LR

[40] The LR submitted that the Allegation was not made out,[66] for two reasons.

[41] First, the LR urged that Particular 10 of the Allegation (Appellant allegedly directed Ms. X to delete their texts, and to not tell anyone that they were conversing) was not established. The LR suggested that Ms. X made up this idea to avoid upsetting her mother, who recently learned that Ms. X lied to her about visiting Ms. X's father. The LR opined that this alleged ploy worked, noting that Ms. X's mother stated that she was not upset with Ms. X because the Appellant had told Ms. X to delete their texts and to conceal their communications. The LR then questioned why Ms. X would abruptly stop deleting texts upon receiving her new phone if the Appellant had directed her to delete their texts. The LR added that none of the texts in evidence said anything about such a direction. The LR also queried why the Appellant would explicitly regulate his tone in certain texts if he directed Ms. X to delete those texts and assumed they would be deleted.[67]

[42] Second, the LR acknowledged that the Appellant behaved inappropriately and violated the *Code of Conduct,* but asserted that the Appellant did not intend to develop a sexual relationship with Ms. X, and was not a predator. The LR said that the exchanges between the Appellant and Ms. X were often innocuous, and did not progress beyond periodic flirtatiousness, even though there were real opportunities for the Appellant to sexualize them. The LR also observed that the Appellant never attempted to meet Ms. X socially, or to communicate with her other than by text. In the LR's view, the Appellant's behaviours did not match the severity of behaviours in various criminal grooming cases, where the wrongdoing was notably assertive and sexually explicit. The LR argued that the Appellant's actions were more indicative of harassment than of discreditable conduct, and suggested that the Board recategorize the Appellant's conduct as harassment.[68]

[13] On July 15, 2021, the Board delivered an oral decision on the Allegation. It determined that the Appellant breached section 7.1 of the *Code of Conduct*; therefore, the Allegation was established.[69]

[14] The next day, the Board held a half-day hearing on conduct measures. The ERC summarized the contents of this hearing as follows:[70]

[66] Transcript, Volume 3, pp 34-71.
[67] Transcript, Volume 3, pp 37-48.
[68] Transcript, Volume 3, pp 49-71.
[69] Transcript, Volume 4, pp 2-22.
[70] Report, paras 45-48.

B. LR's Evidence on Conduct Measure

[45] The Appellant mostly described his personal and professional backgrounds, and how the conduct process had affected him. He highlighted the importance of his family, and discussed his passions for being a member of the RCMP, serving on an ERT, and coaching youth sports. He noted that he worked very hard and made significant personal sacrifices for the RCMP and for the communities he had served. He also stressed that his performance reviews spoke to his professionalism, work ethic, and team focus. He added that he did not have a record of previous discipline or criminality. He stated that his suspension from duty had affected his mental health, and that he was taking steps, including seeing a psychologist, to ensure that he never repeated his misconduct. He apologized to the Board, the RCMP, Ms. X, Ms. X's family, and his family.[71]

[46] The LR filed a copy of a letter from the Appellant's psychologist, dated July 12, 2021. The psychologist indicated that she had been treating the Appellant since late 2019, "with the stated objectives of dealing with the current situational stressors associated with the [Allegation]". She explained that the Appellant told her he was being investigated for sending inappropriate texts to a minor. She observed that he "expressed remorse and responsibility" for his poor judgment. She opined that there was "no evidence to suggest that this situation will occur in the future".[72]

C. Submissions on Conduct Measure

[47] The CAR asked the Board to direct that the Appellant resign from the RCMP, or otherwise be dismissed. The CAR asserted that the Appellant breached an essential trust with the RCMP, as well as with the public, by deliberately and ongoingly exploiting Ms. X, who he knew was a vulnerable youth over whom he had authority. The CAR contended that the Appellant violated Ms. X's sexual and bodily integrity, and caused her real psychological and emotional harm. The CAR urged that this behaviour was intolerable even though it did not involve physical contact.[73]

[48] The LR argued that a dismissal was unwarranted in this matter. Rather, he suggested that dismissals were appropriate in more severe cases, such as those involving "highly inappropriate sexual activities and relationships that arose directly out of the members' duties as an RCMP Officer".[74] The LR also pointed to two cases in which boards did not dismiss members who had had improper sexual relationships with an 18-year-old, and a cadet, respectively. Furthermore, the LR emphasized that the Appellant's case had many mitigating factors. He specified that the Appellant: apologized twice; expressed remorse; sought treatment; had a strong, discipline-free work record; had a long history of community service; had been cooperative; had

[71] Transcript, Volume 5, pp 7-26.
[72] Letter from Appellant's Psychologist dated July 12, 2021.
[73] Transcript, Volume 5, pp 31-44.
[74] Transcript, Volume 5, p 50.

> the support of his superiors; and was very unlikely to reoffend. The LR proposed that the Appellant be given a reprimand, a forfeiture of 20 to 30 days' pay, and possibly a period of ineligibility for promotion.[75]

BOARD'S FINAL WRITTEN DECISION

[15] On September 24, 2021, the Board issued its written decision, finding the Allegation to be established, and ordered the Appellant to resign from the RCMP within 14 days or be dismissed (Decision). The Decision was served on the Appellant on September 28, 2021.

[16] The ERC summarized the Board's written decision as follows:[76]

> [50] The Board indicated that the outcome rested heavily on witness credibility. It found Ms. X and her mother to be credible and reliable witnesses. It also found the Appellant to be credible and his evidence reliable "[f]or the most part".[77] It explained this qualification by noting that the Appellant said some offensive things on the stand regarding Ms. X which lessened his credibility and weakened his evidence that he wanted to be her sincere, caring, and trustworthy friend.[78]
>
> [51] The Board observed that the essence of the Allegation was set forth in Particulars 9, 10, 11, 16 and 17, each of which the Appellant had denied, to varying degrees. The Board went on to make the following findings with respect to those Particulars:[79]
>
> - Particular 9 (Appellant allegedly turned mild texts into something inappropriate) was established. The evidence showed that the Appellant guided several text exchanges to inappropriate and unnecessary topics, then heightened and prolonged the exchanges.[80]
> - Particular 10 (Appellant allegedly directed Ms. X to delete their texts, and to not reveal that they had been conversing) was established. Ms. X's evidence on this point was consistent and preferable to the Appellant's evidence. The Board did not accept the idea that Ms. X lied to her mother about this part of the story to avoid trouble. The evidence indicated that Ms. X never told anyone about her discussions with the Appellant. Ms. X also explained that she stopped deleting texts when she obtained a new

[75] Transcript, Volume 5, pp 44-76.
[76] Report, paras 50-57.
[77] Decision, paras 26-30.
[78] Decision, para 76.
[79] Decision, paras 41-88.
[80] Decision, paras 41-45.

phone because she was working on her relationship with her mother, and they were rebuilding trust.[81]

- Particular 11 (Ms. X allegedly wanted the inappropriate text discussions to end) was established. The evidence showed that Ms. X mainly initiated texts for coaching reasons, and that she would often attempt to deflect or disregard inappropriate texts. It was not up to Ms. X to tell the Appellant to stop texting her, given her young age and vulnerability.[82]
- Particular 16 (Appellant allegedly tried to groom Ms. X for sexual gratification purposes, and texted with her with the aim of developing a sexual relationship) was established. The Appellant displayed grooming behaviour to the extent that he befriended Ms. X, cultivated her trust, developed an emotional connection that made her feel comfortable confiding in him, and steered their text messages into sexual exchanges which he often escalated. The Appellant could have stopped this conduct, but chose not to until he was caught. Such behaviour, which moved beyond mere flirting, was not that of a friend who meant to treat Ms. X as a co-coach and lift her ego. There was an aim to develop some kind of sexual relationship, evidenced by gradually more sexualized texts that included, for instance, the Appellant making uninvited comments that evoked Ms. X's breasts, and the Appellant informing Ms. X that he was in bed and wished he could help her sleep.[83]
- Particular 17 (Appellant's text exchanges with Ms. X were allegedly inappropriate and predatory) was established, in part. The texts were "sexually inappropriate". However, the evidence did not allow for a finding that the Appellant's behaviour was "predatory".[84]

[52] The Board determined that "a reasonable person in society" with knowledge of the relevant circumstances, including the realities of policing in general, and the RCMP in particular, would view the Appellant's conduct towards Ms. X as likely to discredit the RCMP. The Board found that the Appellant's conduct was sufficiently linked to his work to create a legitimate interest in disciplining him, noting that police officers must always protect youth and make them feel safe.[85]

[53] Turning to the subject of the appropriate conduct measure, the Board applied the following three-prong analysis, and then directed the Appellant to resign from the RCMP or be dismissed.

[54] First, the Board found that the Appellant's conduct - which amounted to sexual misconduct and not harassment - attracted a range of conduct measures that spanned from a loss of 20 to 30 days' pay, up to dismissal. The Board found that some of the RCMP conduct board decision the parties debated in

[81] Decision, paras 46-48.
[82] Decision, paras 49-52.
[83] Decision, paras 58-79.
[84] Decision, paras 80-81.
[85] Decision, paras 86-88.

relation to appropriate conduct measures were of limited value because the conduct measures ordered in them stemmed from joint proposals. The Board considered other decisions before it to be unhelpful, primarily because they involved dissimilar facts.[86]

[55] Second, the Board listed the numerous factors it considered when contemplating a conduct measure.[87] The Board specified that the aggravating factors were that the Appellant:

- knew that Ms. X was a 16-year-old vulnerable young person and a member of the public;
- committed a breach of trust by seeking to exploit his multi-levelled authority over Ms. X;
- knowingly committed inappropriate conduct for weeks, until that conduct was reported;
- tried to minimize the seriousness of the conduct by describing it as "just silly banter"; and
- caused lasting, adverse psychological and emotional impacts on Ms. X and her mother.

[56] The Board then specified that the mitigating factors were that the Appellant:

- apologized to Ms. X, her mother, the Force, and the Board for his embarrassing conduct;
- had about 13 years of productive RCMP service, and some strong performance reviews;
- had clean discipline and criminal histories, and complied with the Civil Restraining Order;
- enjoyed the support of his relatives, peers, and superiors who attended the hearing; and
- had a long history of volunteering with youth (this received less weight, due to the facts).

[57] Third, the Board explained why a direction to resign was a proportionate conduct measure. It reasoned that the Appellant's behaviour went to the heart of the employment relationship, and to the public's expectation of police in dealing with the vulnerable. It stated that protecting youth, who use technology for social reasons, was a crucial Canadian value. It gave little weight to the letter from the Appellant's psychologist, stressing that it was more of a letter of support than an expert report, and that it contained no evidence of a medical issue that could help to explain the misconduct. It added that the Appellant downplayed his actions by placing blame on Ms. X, and by

[86] Decision, paras 91-104.
[87] Decision, paras 105-106.

> urging that their texts were open to interpretation. In the Board's opinion, this showed a lack of self-reflection, and cast doubts on whether the Appellant had learned from his mistakes. The Board found that the mitigating factors did not justify leniency, and that deterrence was needed. The Board concluded that the Appellant had violated the Force's values of respect, integrity and professionalism, repudiated his obligations as a member, and fatally breached the public trust.[88]

APPEAL

[17] The Appellant filed his Statement of Appeal on October 12, 2021[89] initially making over 20 arguments, alleging wide-spread procedural unfairness, errors of law, errors of mixed fact and law, and various other mistakes.

[18] On November 30, 2021, the Appellant provided his written submissions for this appeal in which he raised the following primary grounds of appeal:

> a. The Decision contained no reasons recognizing conflicts in key evidence nor detailing how conflicting evidence was reconciled, constituting a breach of procedural fairness, or in the alternative, insufficient reasons that were clearly unreasonable;
>
> b. Crucial findings of fact were contrary to the evidence, based on misapprehensions of the evidence, and were clearly unreasonable;
>
> c. The conduct measures imposed were clearly unreasonable as they flowed from the above errors; and
>
> d. The Decision reversed the onus of proof onto [the Appellant].

[19] On December 20, 2021, the Respondent submitted his written submissions.

[20] On January 5, 2022, the Appellant submitted his rebuttal in which he reaffirmed raising procedural fairness issues about the Board's decision not explaining how it reconciled contradictions and competing evidence.

[88] Decision, paras 107-121.
[89] Appeal, pp 3-5.

[21] Considering the Appellant's procedural fairness arguments, I will make a determination in this regards. I agree with the ERC that the Appellant's remaining arguments can be organized under the following issues:[90]

> [58] The Appellant brought an appeal in which the LR initially made over 20 arguments, alleging wide-spread procedural unfairness, errors of law, errors of mixed fact and law, and various other mistakes.[91] The LR later presented an appeal submission wherein he seemingly condenses the appeal into the following four positions that he believes are somewhat interconnected:[92]
>
> (a) the Board erred in concluding that Particular 10 of the Allegation was established;
>
> (b) the Board failed to properly assess the credibility of the witnesses who testified before it;
>
> (c) the Board erred in concluding that the Appellant was pursuing a sexual relationship; and
>
> (d) the Board decided on a conduct measure that was unreasonable in the circumstances.
>
> [59] The Appellant asks the Final Adjudicator to allow his appeal, and to correct certain Board findings or order a new hearing. He also asks that the conduct measure be quashed or varied.[93]

[22] The ERC noted that it would not further address the initial, unrelated, unexplained, undeveloped and/or unsupported arguments raised by the Appellant prior to his appeal submissions since this would require significant guesswork. I agree with and adopt this course of action.

ANALYSIS

Considerations on appeal

[23] In considering the appeal of a decision rendered on a conduct matter, the adjudicator's role is governed by subsection 33(1) of the *CSO (Grievances and Appeals)*, which states:

> 33 (1) The Commissioner, when rendering a decision as to the disposition of the appeal, must consider whether the decision that is the subject of the appeal

[90] Report, para 58-59.
[91] Statement of Appeal and Schedule "A" thereto.
[92] Appellant's Appeal Submission.
[93] Statement of Appeal.

> contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.

[24] *Administration Manual* (*AM*), Chapter II.3 "Grievances and Appeals" (version July 9, 2015), section 5.6.2, states that the adjudicator must consider the following documents in their decision-making process:

> 5. 6. 2. The adjudicator will consider the appeal form, the written decision being appealed, material relied upon and provided by the decision maker, submissions or other information submitted by the parties, and in those instances where an appeal was referred to the [ERC], the [ERC]'s report regarding the appeal.

Procedural Fairness

[25] The conduct process involving a conduct hearing set out in the *RCMP Act*, the *Commissioner's Standing Orders (Conduct)* SOR/2014-291 (*CSO (Conduct)*) and the *Administrative Manual*, Chapter XII.1 "Conduct" provides a higher degree of procedural fairness. Of note, subsection 45(3) of the *RCMP Act* states that the conduct board's decision must be recorded in writing and include a statement of the conduct board's findings on questions of fact material to the decision, reasons for the decision and a statement of the conduct measure, if any, imposed under subsection (4).

[26] Similarly, the appeal regime set out in the *RCMP Act* and the *CSO (Grievances and Appeals)* provides for a high degree of procedural fairness[94]. It is explained in section 1.4 of the *National Guidebook – Appeals Procedures* and is comprised of:

> The right to know what matter will be decided and the right to be given a fair opportunity to state his case on this matter;
>
> The right to a decision from an unbiased decision maker;
>
> The right to a decision from the person who hears the case;
>
> The right to reasons for the decision.

[94] *Smith v Canada (Attorney General)*, 2019 FC 770 at para 40.

[27] Any issue of procedural fairness will be reviewed without deference as ultimately, I must ensure that the procedure was fair having regard to all of the circumstances.[95] If not, the decision can be set aside, except in rare cases where the result found therein is inevitable even if the violation was to be rectified.[96]

Application to this case

[28] The Appellant argues that the Board breached the duty of fairness in failing to provide reasons regarding significant contradictions and inconsistencies in key evidence such as between Ms. X's evidence and her mother's, in regards to the Appellant's instructions to Ms. X to delete texts and the Board's credibility assessments.

[29] I do not find that the Board's decision to be procedurally unfair. The Appellant's concerns about the alleged inconsistencies or contradictions between Ms. X and her mother's testimonies on whether Ms. X actually avoided getting in trouble with her mother after telling her the Appellant had told her to delete the texts were not a question of fact *material* to the decision as per subsection 45(3) of the *RCMP Act*. Indeed, how her mother reacted does not affect Ms. X's alleged motive for lying and therefore was not a question of fact to be resolved by the Board.

[30] The Appellant acknowledged that the Board's decision actually dealt with the key issues or central arguments regarding the Appellant's alleged instructions to Ms. X to delete the texts (Appeal, p 68) and witness credibility assessment (Appeal, p 74) but argues that the Board made errors in doing so.

[31] Consequently, I agree with the ERC that the Appellant's arguments do not pertain to a failure to provide reasons but rather to the sufficiency of the reasons provided which go to the merits of the Board's decision and are reviewable on the clearly unreasonableness standard[97].

[95] *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43. Also, *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 54-55; *Gulia v Canada (Attorney General)*, 2021 FCA 106 at paragraph 9; and *Davidson v Canada (Attorney General)*, 2021 FCA 226 at paragraph 14.
[96] *Mobil Oil Canada v. Canada Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, at page 228.
[97] Report, para 73.

[32] For these reasons, I find the Board's decision did not contravene the principles of procedural fairness.

Error of Law

[33] An error of law is generally described as the application of an incorrect legal requirement, or a failure to consider a requisite element of a legal test[98]. It requires proof that the decision maker relied on an incorrect law or legal standard in rendering a decision.

Application to this case

[34] In his submissions, the Appellant did not specifically argue that the Board's decision was based on an error of law. As previously mentioned, I find that most of the Appellant's arguments do not pertain to an error of law per say but instead involve questions mixed of fact and law which I will review them in the next section.

[35] Although not raised by either Parties, I find that, although the Board used paragraph 45(4)(a) instead of 45(4)(b) of the *RCMP Act* to direct the Appellant to resign from the Force, this was a clerical error and not an error of law as the Board's intention, as indicated in its summary, was an order to resign from the Force within 14 days, in default of which he would be dismissed and not a dismissal.

[36] Consequently, I conclude that there was no error of law.

Clearly unreasonableness

[37] Subsection 33(1) of *CSO (Grievances and Appeals)* requires the final level adjudicator on appeal to respond to allegations of errors of fact or mixed fact and law by considering whether the decision under appeal was "clearly unreasonable." The term "clearly unreasonable" is equivalent

[98] *Housen v Nikolaisen*, 2002 SCC 33, at paragraph 36.

to the common law standard of patent unreasonableness[99]. Therefore, significant deference must be provided to the Board in the application of the clearly unreasonable standard[100].

[38] Essentially, a decision is clearly, or patently, unreasonable if the "defect is apparent on the face of the tribunal's reasons," in other words, if it is "openly, evidently, clearly" wrong[101]. The decision must be "clearly irrational," "evidently not in accordance with reason," or "so flawed that no amount of curial deference can justify letting it stand."[102] Under the clearly unreasonableness standard, it is not enough to merely demonstrate that the reasons provided are insufficient[103]. The Appellant must not only identify that the Board erred, but that it was determinative in reaching an outcome that would not have been possible without the mistake.

[39] Finally, the Appellant must prove that the Board has not only committed an error, but also that the error is such that I have no other choice but to quash the decision. Consequently, my interference will only be justified in a case where the Board made a manifest and determinative error. Accordingly, I must give a high degree of deference to the Board's decision.

[40] In addition, although I understand that I must apply the clearly unreasonableness standard, I find *Vavilov*'s instructions on how to consider the reasonableness of a decision provide useful guidance. In considering the reasonableness of the decision, I must focus both on the decision maker's reasoning process and the outcome[104]. In doing so, I must give respectful attention to the reasons provided by the Board and seek to understand how it arrived at its conclusion[105]. Furthermore, in reviewing the outcome reached by the Board for reasonableness, I must review "holistically and contextually" any written reasons in light of the entire context, including the evidentiary record and the submissions made, with "due sensitivity to the administrative regime"[106]. These written reasons must not be assessed against a standard of perfection.[107] Moreover, I must keep in mind that the reasonableness standard must be applied in a rigorous way

[99] *Smith v. Canada (Attorney General)*, 2021 FCA 73 at paragraph 56; *Kalkat v. Canada (Attorney General)*, 2017 FC 794 at paragraph 62.
[100] *Vavilov*, at paragraphs 34-35.
[101] *Canada (Director of Investigation and Research) v. Southam Inc*, [1997] 1 SCR 748, at paragraph 57
[102] *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at paragraph 52
[103] *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at paragraph 37.
[104] *Vavilov* at para 83.
[105] *Vavilov* at paras 91, 127-128.
[106] *Vavilov*, paras. 94, 97, 103 and 123.
[107] *Vavilov*, paras 91-92.

where the impact of the administrative decision on an individual is high[108]. Also, "according to the principle of responsive justification, where the impact of a decision on an individual's rights and interests is severe, the reasons provided to the individual must reflect the stakes"[109].

Application to this case

Particular 10

[41] Particular 10 states "You instructed [Ms. X] to never tell anyone that you were communicating with her and that [Ms. X] was to delete all exchanged text messages".

[42] The Board's decision indicates the following in regards to Particular 10:

> [46] Particular 10 alleges that Constable Martin instructed Ms. [X] to never tell anyone that they were communicating and to delete all of the exchanged text messages. Constable Martin denied this particular. The Subject Member Representative suggested at the conduct hearing that Ms. [X] fabricated this part of the story to avoid getting into more trouble with her mother, who had caught her lying a few weeks before when she had visited her father without her mother's knowledge. I disagree. In fact, the evidence indicates that Ms. [X] never told anyone about the messages, not even her best friend, which is consistent with her statement and the evidence at the conduct hearing.
>
> [47] As for deleting the messages, as indicated by the Subject Member Representative, I recognize that there was a "drastic change in behaviour" by Ms. [X] when using the IPhone 6 (known as the old phone) and the IPhone 8, the new phone she obtained on June 9, 2019. When using the old IPhone, she used to delete all her text messages with Constable Martin before going to bed. A practice she stopped after receiving her new IPhone 8. Ms. X explained that she had no reason anymore to delete the messages as she was working on her relationship with her mother and they were trying to be trustworthy with each other. The evidence also indicates Ms. [X] voluntarily submitted her old IPhone 6 to the RCMP in an attempt to retrieve the old messages, which unfortunately could not be done.
>
> [48] Constable Martin testified that he could not produce the messages as he deleted them from his old IPhone at the end of June, when he replaced it with a new one. On the whole, Ms. [X]'s account of events is consistent and I prefer her evidence to Constable Martin's on this point. Consequently, I find

[108] *Vavilov*, para 133.
[109] Vavilov, para 133, *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at para 76.

> that it is more probable than not that Constable Martin had told her to delete the messages. Thus, particular 10 is established.

Appellant submission

[43] I agree with the ERC that the Appellant's arguments respecting this ground of appeal are difficult to comprehend. With that being said, I believe the ERC accurately distilled the appeal submission:[110]

> [63] […] He specifies that the Board did not acknowledge, analyze, or give any reasons for dismissing the bases of his position that Ms. [X] lied to her mother about Ms. [X] being told to delete texts.[111]
>
> [64] Second, the LR says the Decision was "clearly unreasonable"[112] because the Board made vital errors in finding that Particular 10 of the Allegation was established. The Board allegedly:
>
> - "outright dismissed" the LR's position by finding that Ms. [X] hid texts from everyone;[113]
> - accepted Ms. X's shaky explanation for abruptly ceasing to delete texts, without saying why it did so, or how it reconciled Ms. [X]'s inconsistent and troubling evidence;[114] and
> - put the burden of proof on the Appellant by faulting him for not providing missing texts.[115]
>
> [65) According to the LR, this demonstrated that the Board based its finding that Particular 10 was established on: "unfair inferences resulting in a reverse onus, unexplained conclusions and misapprehensions of the evidence on key issues".[116]

Respondent submission

[44] The Respondent defends the Board's findings with respect to Particular 10. He submits that the first part of this Particular (instruction to never tell anyone) and the Board's finding at paragraph 46 of its decision that it was established, were essentially unchallenged during the hearing, and now in this appeal. He submits that the Appellant misrepresented Ms. X's evidence

[110] Report, paras 63-65.
[111] Appellant's Appeal Submission, para 19; Appellant's Rebuttal, para 1.a.
[112] Appellant's Appeal Submission, para 32.
[113] Appellant's Appeal Submission, paras 20-21.
[114] Appellant's Appeal Submission, paras 2, 22-30, 33.
[115] Appellant's Appeal Submission, para 31.
[116] Appellant's Appeal Submission, para 32; Appellant's Rebuttal, paras 1.a. to 1.e.

as to why she stopped deleting texts and suggests that Ms. X provided a reasonable explanation. The Respondent disputes the Appellant's claim that the Board blamed him for failing to provide the missing texts, noting that the Board simply observed that no one could produce the texts; therefore, it had to engage in a consideration of the Parties' respective credibility.[117]

Findings

[45] I agree with the ERC; the Board's finding with respect to Particular 10 is not clearly unreasonable[118]. Since Particular 10 includes two different behaviour or actions, I will examine each separately.

Appellant's instruction to Ms. X to never tell anyone

[46] The Board's finding that this first part of this Particular was established is supported by the evidence in the Record. More specifically, the evidence provided on this point is comprised of Ms. X's statement during the investigation (Investigation Report, p 35), Ms. X's testimony during the hearing (Transcript of July 12, 2021, starting at p 75, 252) and the Appellant's response (The Appellant's 15(3) response, p 37) and his testimony during the hearing (Transcript of July 13, 2021, starting at p 132).

[47] Essentially Ms. X's evidence is that the Appellant had told her that she was to delete the messages and *not tell anyone* about them because they could both get in trouble for it. Although the Appellant denied Particular 10, his evidence regarding the first part of the Particular was neutral and not conflicting with Ms. X's evidence. Indeed, his evidence is "I don't recall whatsoever asking her to do that and I don't believe it happened" and his follow up answers during cross-examination were focused towards the second part of this Particular (asking Ms. X to delete the text messages).

[48] Based on this, I do not find that there was any conflicting evidence to be reconciled by the Board. Furthermore, the Board gave weight to the fact that Ms. X did what she was allegedly told to do. It found that "the evidence indicates that Ms. X never told anyone about the messages, not

[117] Respondent's Appeal Submission, paras 6-18.
[118] Report, para 97.

even her best friend, which is consistent with her [witness] statement and the evidence at the conduct hearing".

[49] As a result, the Board's finding for this portion of Particular 10 was based on clear, cogent, and convincing evidence and the Board's reasons sufficiently dealt with this issue and were not clearly unreasonable.

Appellant's instruction to Ms. X to delete the texts

[50] As it relates to the second portion of Particular 10, I find that the Board's finding is also supported by the Record.

[51] More specifically, the evidence provided on this point is comprised of Ms. X's statement during the investigation (Investigation Report, p 35), Ms. X's testimony during the hearing (Transcript of July 12, 2021, starting at p 75, 257), the Appellant's response (Appellant's 15(3) response, p 37) and his testimony during the hearing (essentially that he did not recall asking her to do that and that he did not believe it happened) (Transcript of July 13, 2021, starting at p 135).

[52] As previously indicated, Ms. X's evidence is that the Appellant *had told her that she was to delete the messages* and not tell anyone about them because they could both get in trouble for it. After carefully reviewing the evidence, I find that the Appellant's evidence regarding this part of the Particular was indeed conflicting with Ms. X's evidence. Although I agree with the ERC that most of the Appellant's evidence was not nearly as resolute as Ms. X's evidence, he did state "I didn't tell her to do that" (Transcript of July 13, 2021, p 138).

[53] However, contrary to the Appellant's assertion and as I will explain, I do find that the Board's reasons properly reconciled and dealt with this contradicting evidence.

[54] First, the Board demonstrated that it was alive to this contradicting evidence by acknowledging the Appellant's position, namely, that Ms. X fabricated the story that he asked her to delete texts in order to avoid getting into trouble with her mother, who had previously caught her in a lie about visiting her father without her mother's knowledge or permission[119].

[119] Decision, para 46.

[55] The Board also recognized there was a drastic change in behavior by Ms. X when she started using her new phone. However, the Board found Ms. X's account of events to be consistent and preferable to the Appellant's account.[120] Similarly to the ERC, it is not clear to me how her evidence was genuinely conflicted and I agree that it was not unreasonable for the Board to prefer Ms. X's steadfast recollection over the Appellant's more equivocal recollection, and to allow this preference to inform its analysis of Particular 10.

[56] Consequently, and contrary to the Appellant's argument, I find this matter to be distinguishable from *Walton v Alberta (Securities Commission)*, 2014 ABCA 273 as this finding of fact made by the Board was not drawn in the absence of any evidence or on bare speculation. In fact, I find that the Board's finding for this Particular was based on clear, cogent, and convincing evidence.

[57] Moreover, I reject the Appellant's argument that the Board reversed the onus of proof and required the Appellant to produce deleted texts as proof of innocence[121]. The Board was clearly aware that the Conduct Authority must prove on a balance of probabilities the acts that constitute the alleged conduct and indicated such in its decision (Appeal, p 27). I find the Board's comments at paragraphs 47-48 to be a summation of the respective Parties' testimony during the hearing and of the evidence obtained on this point, rather than a reversal of the burden of proof.[122] Without these texts, there was no documentary proof as to whether the alleged request to delete texts had been made, therefore, the Board was required to consider other evidence to determine whether the request had been made, including a consideration of the credibility of the witnesses.

[58] While the Board's findings on Particular 10 could have been more fulsome on why Ms. X's evidence was preferred to the Appellant's on this point, I find that the basis for the decision can be clearly discerned, as I previously indicated, from the Record[123] but also in the rest of the decision when it further discussed the credibility and reliability of the Appellant's evidence (Appeal, p 35, paragraphs 74 to 77).

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[120] Decision, para 48.
[121] Appellant's Appeal Submission, para 31.
[122] Transcript, Volume 2, p 28.
[123] *Vavilov*, para 103. *Burlacu v Canada (Attorney General)*, 2022 FCA 197, paras 4, 6) (*Burlacu).*

[59] Indeed, contrary to the Appellant's suggestion, the situation here can be distinguished from the situation in *Law Society of Upper Canada v. G.N.*, 2005 ONLSAP 0001 where the Hearing panel did not provide any reason for disbelieving the member in order to address the contradictory evidence related to the material issues. In the present matter, paragraphs 74 to 77 read in conjunction with paragraphs 47 and 48, provide "a clear path"[124] by which the Board preferred Ms. X's evidence instead of the Appellant's.

[60] Furthermore, it is important to reiterate that "written reasons given by an administrative body must not be assessed against a standard of perfection"[125] and that under the clearly unreasonableness standard, it is not enough to merely demonstrate that the reasons provided are insufficient. I will further expand on the Parties' credibility assessment in the next section.

[61] As a result, the Board's finding for this portion of Particular 10 was based on clear, cogent, and convincing evidence and the Board's reasons sufficiently dealt with this issue and were not clearly unreasonable.

Alternative

[62] Should I be wrong in confirming the Board's finding that the Appellant instructed Ms. X to delete the texts, pursuant to paragraph 45.16(1)(b) of the *RCMP Act*, I would still make the determination that the Appellant contravened the Allegation and impose the same conduct measure.

[63] The Appellant attributes significant weight to Particular 10, claiming that the Board's alleged error "reverberated throughout the decision":

> The above errors had a significant effect on the decision, and the resulting conduct measure imposed, as they resulted in the findings that [the Appellant] instructed [MS. X] to delete the messages and that he intended to form a sexual relationship with her, which reverberated throughout the decision[…].

[64] In reality, there were multiple other considerations:

[124] *Law Society of Upper Canada v. G.N., 2005 ONLSAP 0001*, para 111.
[125] *Vavilov*, paras 91-92.

> [116] 1) [T]he sexual nature of the texts sent in private, using a social media platform and for a prolonged period of time; 2) the vulnerable status of [Ms. X] given her young age and how [the Appellant] sought to conceal the text communications by directing her to delete them; finally 3) the sexual intent of [the Appellant] in cultivating the relationship in order to pursue some kind of relationship with [Ms. X] while in a position of trust and authority.

[65] Whether the Appellant instructed Ms. X to delete the texts or not, he still cultivated a private relationship based on sexual innuendos, stemming from a power imbalance, with a sixteen-year-old youth with the objective of facilitating and advancing a sexual relationship with her. It is a trite principle within the RCMP conduct process that not all particulars need to be made out in order to substantiate a breach of the *Code of Conduct*.

[66] In sum, I find the Board did not commit a reviewable error by finding that the Appellant instructed Ms. X to delete the impugned texts. In the alternative, I would not classify the theoretical error as being sufficient to render the decision itself and the associated conduct measure clearly unreasonable.

Credibility of witnesses

Appellant submission

[67] The Appellant argues that the Board failed to properly assess the credibility of the witnesses appearing before it:[126]

> The procedure to address credibility and reliability issues is summarized in Re: Constable Jordan Irvine. The type of analysis one would expect is outlined in Re: Constable Steve Morrison. The Decision here lost sight of the proper analysis and applied significantly uneven scrutiny to the witness testimony. This ranged from no scrutiny at all ([Ms. X's mother]) to no scrutiny on key issues and inconsistencies ([Ms. X]), to significant scrutiny ([the Appellant]), despite numerous and obvious red flags in the evidence of [Ms. X and her mother].

[126] Appellant's Appeal Submission, paras 17, 34-35.

[68] The Appellant disputes the Board's description of Ms. X's evidence as "consistent"; instead, he claims that the Board's characterization is "absurd" in light of the unaddressed inconsistencies relating to Particular 10 and other "key issues".[127]

Respondent submission

[69] The Respondent refutes the Appellant's position, claiming it to be poorly constructed and inaccurate. He notes that the Appellant failed to provide specific examples of the alleged inconsistencies referred to in Ms. X's evidence. Moreover, as there was not any true credibility findings at issues (other than the disagreement on whether he instructed the deletion of the messages), the Appellant contends that the Board's responsibility was with respect to "how to objectively interpret" the impugned texts, not to decide whose evidence to prefer.[128]

Findings

[70] I agree with the ERC that this ground of appeal is meritless.[129] The ERC summarized principles and case-law governing a Board's assessment of credibility:[130]

> - a board should assess a witness's testimony by considering the circumstances of the witness, including their demeanour, relationship to the parties, and ability to communicate *(Wallace v Davis;*[131] *MacDermid v. Rice*[132]);
> - a board must also decide whether the testimony is "in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" *(Faryna v. Chorny*[133]); and
> - a decision on credibility ought to be established on clear and convincing evidence, and must be properly explained in reasons.

[127] Appellant's Appeal Submission, para 35.
[128] Respondent's Appeal Submission, paras 19-20.
[129] Report, para 87.
[130] Report, para 88.
[131] (1926), 31 OWN 202.
[132] (1939), R. de Jur. 208.
[133] [1952] 2 DLR 354 (*Chorny*), p 357.

[71] I find that the Board followed these principles in carrying out its credibility assessment and find that the ERC accurately summarized the Board's approach in this regard:[134]

> [90] To begin, the Board explained that evidence in support of credibility findings "must always be sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test".[135]
>
> [91] The Board also indicated that it had considered the "totality of the evidence", as well as the witnesses' abilities to recollect the details of the key events some years after they took place.[136]
>
> [92] The Board went on to describe Ms. X as a credible and reliable witness. It pointed to, and gave examples of the clarity, candour, and balance it thought she had shown on the stand:[137]
>
> > *As for [X], I find that she was an articulate and forthcoming witness, She was balanced when expressing herself and did not seek to cast [the Appellant] in a negative light. She was frank and her oral evidence was consistent, both during her testimony and with her statements in the record. She did not try to embellish her answers nor perfect them over time. For example, she admitted that she never met [the Appellant] for a private meeting, she only called him once for lacrosse coaching purposes and she never told anyone about the text messages. I find that her testimony was credible and reliable.*
>
> [93] The Board then described the Appellant as a credible witness whose evidence was reliable "[f]or the most part".[138] The Board expanded on this qualification when discussing Particular 16 (alleged attempt to groom Ms. X for sexual gratification purposes, and texting her with an aim of developing a sexual relationship). The Board specified that the Appellant made some off-putting statements on the stand regarding Ms. X, and that those statements dented his believability and undermined his evidence that he wanted to be Ms. X's sincere, caring, and trustworthy friend:[139]
>
> > However, when cross-examined at the conduct hearing, [the Appellant] maintained that he did not "really like [Ms. X's] feet or "even want to be alone with her". When questioned further, he explained that there is "no meaning" to his text messages. He stated that text messaging "kind of takes on its own world of itself. [...] it was just silly banter. You know I tried to be kind of funny and you know, it's somebody for her to talk to". In the end, I find that the numerous statements like these made during the conduct hearing were offensive and disrespectful to [Ms. X],

[134] Report, paras 90-95.
[135] Decision, para 27.
[136] Decision, para 26.
[137] Decision, para 29.
[138] Decision, para 30.
[139] Decision, para 76.

> who was led to believe, for approximately six weeks, that he was a genuine and caring friend whom she could trust. Such statements put in doubt not only his credibility and the reliability of his evidence, but also his true intentions regarding their relationship.
>
> [94] I conclude from this passage that, compared to Ms. X's evidence, the Board viewed the Appellant's overall evidence as somewhat less "in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable".[140]
>
> [95] I do not see anything unreasonable or problematic with the above evaluations.

[72] Much like the ERC, I concede that the Board's rationale for finding Ms. X's mother credible was somewhat "bare"[141]. Nevertheless, brevity in this respect was not determinative of any reviewable error. The Board relied on Ms. X's mother for:[142]

> [96] […] [E]vidence that she was deeply concerned about Ms. X, and that the Appellant's behaviour had ongoing psychological and emotional impacts on both her and Ms. X.[143]

[73] The Appellant did not dispute either of these findings and so nothing turns on the mother's credibility.

[74] Finally, the Appellant challenges the Board's credibility assessments on other "key issues"; however, he only refers to one issue, namely, the Board's findings respecting Particular 10. I already explained that whether or not Ms. X got in trouble with her mother was not material or a key issue for the decision to be addressed in the Board's reasons. However, considering the Parties' submissions regarding potential discrepancies on this point, I will cover it as well with the other points of alleged discrepancies.

Discrepancy on whether or not Ms. X got in trouble with her mother

[75] The Parties referred to the rule of *Browne v Dunn* in their submissions. This rule typically deals with the expectation that a witness will be given the opportunity to comment on a

[140] *Chorny* at p 357.
[141] Appellant's Appeal Submission; Transcript, Volume 2, pp 75, 82-83.
[142] Report, para 96.
[143] Decision, paras 28, 105.

contradictory version of the facts on a central issue or significant matters (the witness's own contradictory evidence or someone else) that will be later raised by the other party, in its evidence.

[76] Here, the LR (Appellant's legal representative) did raise with Ms. X that she was contradicting her mother's testimony when she testified that her mother was upset with her (Transcript of July 12, 2021, p 258) and provided her with a proper opportunity to respond. Regardless, Ms. X adamantly maintained that she did not lie and that her mother was upset (in fact "she still was upset") with her. I find that the rule of *Browne v Dunn* was not offended.

Discrepancy regarding the Appellant's instructions to Ms. X to delete the texts

[77] Ms. X's evidence is that she deleted the texts as the Appellant instructed her to do so as he stated they could both get in trouble (Transcript July 12, 2021, p 75). In his submission, the Appellant is trying to assert that Ms. X's evidence was that she deleted the texts **solely** in order to obey the Appellant and not because her mother was checking her texts.

[78] On this issue, I agree with the Respondent that the LR did not raise any of Ms. X's prior alleged inconsistent statement with Ms. X. This is easily explained as Ms. X did not provide any prior inconsistent statement on this point.

[79] Indeed, as mentioned by the Respondent, Ms. X never testified nor was she asked on cross-examination whether the Appellant's instructions to delete the texts was the sole reason she deleted them. In rebuttal, the Appellant explains that since Ms. X never suggested another explanation, there was no reason and no obligation for defence counsel to ask further questions regarding a sole motivation. Furthermore, the Appellant indicates it was just argument-based on the evidence. I understand by that that the Appellant was not trying to attack Ms. X's credibility or offend the rule of *Browne v Dunn.*

[80] Ultimately, as there was no prior inconsistent statement from Ms. X on this point to reconcile by the Board, Ms. X's evidence remained that the Appellant did ask her to delete the texts. To use her own words, this was not a lie and "That was straight up honesty" (Transcript July 12, 2021, p 257).

[81] Furthermore, I do not find that the fact that Ms. X stated "We were trying to be trustworthy with each other (referring to her mother and her) I had no reason to delete them" (Transcript July 12, 2021, p 252) to be a contradiction of her prior version. This sentence was uttered by Ms. X within the context of her relationship with her mother not the Appellant. In other words, Ms. X felt that, as far as her mother was concerned, she did not have any reason to delete the texts because her mother was now trusting her and not checking her phone.

[82] As the Board pointed out in her reasons, the outcome of this matter rested heavily on the credibility of the witnesses. This was especially true for Particular 10. As the only contradictory version on this point was the Appellant's, the Board rightly resolved it by making a credibility assessment of the Parties.

Discrepancy regarding Ms. X having deleted the texts on her old phone but not on her new phone

[83] The Appellant described the fact that Ms. X was deleting the texts on her old phone but not on her new phone as a discrepancy or contradictory evidence.

[84] However, this was not a discrepancy or contradictory of **Ms. X's prior version of the facts** but perhaps a discrepancy or contradiction of **her previous behaviour**. As the Board rightly pointed out in her reasons, this was in fact a "drastic change in behaviour" to which Ms. X provided an explanation. As there was no contradictory evidence to reconcile, I find the Board's reasons were sufficient.

[85] As such, the Board's credibility assessment was not only justifiable but also was justified by the Board through its reasons.

[86] Accordingly, this ground of appeal is dismissed.

Particular 16 (Facilitating and advancing a sexual relationship)

[87] Particular 16 states the following:

> You engaged in text messaging with Ms. [X] with the objective of facilitating and advancing a sexual relationship with her. You were in a position of trust

> and authority over Ms. [X] and a clear power imbalance existed between yourself and Ms. [X] as a vulnerable your person. Your text messaging with Ms. [X], outside of Lacrosse coaching matters, was completely unnecessary and highly inappropriate as an RCMP Officer. You sought to conceal your text communications with Ms. [X] by directing her to delete your shared text messages. You were actively attempting to groom Ms. [X] for your own personal sexual gratification purposes.

Appellant submission

[88] The Appellant submits that the Board erred by relying exclusively on the inappropriate texts between the Appellant and Ms. X while excluding their other, more innocuous, interactions:[144]

> At paragraph 78, the Board concluded that [the Appellant] intended to advance "some kind of" sexual relationship with [Ms. X]. This determination was based almost solely by examining certain texts and ignoring the rest of his frequent interactions with [Ms. X] during that time, none of which were inappropriate.

[89] Moreover, the Appellant criticized the Board for failing to provide "justification for how ultimate intent can be determined by only analyzing [the troubling texts between the Appellant and Ms. X]".[145]

[90] The ERC summarized the Appellant's argument as follows:[146]

> [99] […] [T]he Appellant and Ms. X regularly had contact at lacrosse events, but that none of those interactions were inappropriate. He adds that the two had no questionable face-to-face or phone exchanges and no private video, Snapchat, or Instagram interactions whatsoever. He urges that the Board should have included, and grappled with, those dynamics in its analysis.[147]

[144] Appellant's Appeal Submission, para 36.
[145] Report, para 99.
[146] Report, para 99.
[147] Appellant's Appeal Submission, para 36; Appellant's Rebuttal, para 1.f.

Respondent submission

[91] The Respondent submits that the impugned texts clearly demonstrate the sexual nature of the communication and support the Board's finding that the Appellant intended to form sexual relationship with Ms. X.[148]

Findings

[92] I agree with the ERC; the Board's finding that the Appellant intended to foster a sexual relationship with Ms. X (Particular 16) is well supported by the evidence.[149]

[93] First, much like the ERC, I reject the suggestion that the Board overlooked the benign interactions that occurred between the Appellant and Ms. X. These interactions were well-documented in the Record and the Board's decision specifically refers to the fact that at first the relationship between the Appellant and Ms. X was platonic and in line with his initial position that he messaged her to be supportive and helpful to her (Decision, paragraph 66). The ERC highlighted the following instances in which the Board engaged with these interactions:[150]

> [103] […] In fact, throughout its Decision, the Board exhibited that it was alive to the evolution and nuances of the relationship at issue. It noted that the relationship was at first platonic, and that the Appellant did at one point try to support and help Ms. X, both via text and in person.[151] It also observed that the two sometimes communicated harmlessly about lacrosse games and practices, including by phone.[152] It further acknowledged that several of their texts were "normal", especially early on.[153] Moreover, it took note of the Appellant's denial that the impugned texts showed a sexual aim.[154]

[94] The ERC then accurately summarized the tenable line of analysis upon which the Board relied to find Particular 16 established:[155]

> [104] […] The Board reasoned that he:

[148] Respondent's Appeal Submission, paras 21-23.
[149] Report, para 102.
[150] Report, para 103.
[151] Decision, paras 12, 14, 40, 66.
[152] Decision, para 42.
[153] Decision, para 66.
[154] Decision, para 72.
[155] Report, para 104.

- maintained a secretive, non-lacrosse-related text messaging relationship with Ms. X;[156]
- sent Ms. X texts that became objectionable, sexualized, and egregious over time;[157]
- often "tested the limits" of what Ms. X could tolerate, and then waited for her to reply;[158]
- recognized in some of his texts that what he was saying might be viewed as improper;[159]
- was obligated to stop what was happening, but did not do so until he was caught;[160] and
- conceded in his testimony that many of his texts were unnecessary and inappropriate.[161]

[105] The Board based this reasoning on the transcripts and texts before it,[162] and relied on two extremely troubling text communications in particular. First, it pointed to the text exchange dated June 14, 2019, as set forth in Particular 17(d), where the Appellant seemed to evoke the topic of Ms. X's breasts by making a sexualized remark regarding a wet white t-shirt. The Appellant then said "I shouldn't say that. My bad.", "It's hard not to tho", "No comment?", and "LOL. I don't freak you out?", while Ms. X replied with emojis and reservations. Ms. X later testified that she did not protest, due to the Appellant's authority and ability to make trouble for her.[163] Second, the Board referred to a text chat dated June 28, 2019, as set forth in Particular 17), which it felt displayed a "clear progression in the sexual intent of [the Appellant]".[164] In that late-night exchange, Ms. X let the Appellant know she was ready for bed, to which the Appellant replied that: he was in bed, he wished he could "help [her sleep]", "it's hard to text you", and "I'm biting my tongue".[165]

[106] Considering this evidence, and the Appellant's personal and policing background, the Board found that the Appellant texted with Ms. X to form a sexual relationship of some type:[166]

> *Although [the Appellant] emphatically denied any intent to entice [Ms. X] into a sexual relationship, I am truly not convinced that he was just flirting or having fun as claimed. Furthermore, I fail to understand why*

[156] Decision, para 65.
[157] Decision, paras 66, 73.
[158] Decision, para 74.
[159] Decision, paras 69, 71.
[160] Decision, paras 74, 77.
[161] Decision, paras 58, 72, 77.
[162] Decision, paras 58-79.
[163] Decision, paras 67-70.
[164] Decision, para 71.
[165] Decision, para 71.
[166] Decision, para 78.

> *a 40-year-old man, a father, a husband, a trained RCMP member with extensive coaching expertise with youth needs to engage in progressively more sexualized conversations with a 16-year-old. I find that he knowingly engaged in text messaging with [Ms. X] for the purposes of his own sexual gratification and to facilitate or advance some kind of sexual relationship with her.*

[95] The Record demonstrates a clear progression and overt sexualization of the Appellant's conversations with Ms. X over time. Particular 16 speaks to the Appellant's objective to foster a sexual relationship and attempt to groom Ms. X for his own personal sexual gratification purposes. The Board was entitled to find this Particular established after considering the impugned text messages and the absence of any efforts by the Appellant to end the "flirtatious" and progressively sexualized relationship. In fact, even the Appellant at times admitted that they could be seen as sexual.[167] The Board's decision also refers to the fact that these series of events were stopped by Ms. X's mother, *not* the Appellant.

[96] As such, I find the Board's inferences (that the Appellant engaged in text messaging with Ms. X for the purposes of his own sexual gratification and to facilitate or advance some kind of sexual relationship with her) were drawn from facts (the sexual nature of the texts) that were proven or admitted (the Appellant admitted sending the texts and that they could have a sexual connotation) and were a logical conclusion drawn from the available evidence before it. In fact, much like the Respondent, I find it would be irrational to find otherwise. I find that the Board's finding for this Particular was based on clear, cogent, and convincing evidence.

[97] I find no apparent defect in the Board's reasons for finding Particular 16 established. To the contrary, I find the Board's reasoning to be a clear tenable line of analysis following careful consideration of the evidence and not clearly unreasonable.

[98] Therefore, this ground of appeal is dismissed.

Conclusion on the finding for the Allegation

[99] Given that the Board's findings respecting the Particulars were not clearly unreasonable, I find the Board's finding that Allegation of a contravention of section 7.1 of the *Code of Conduct*

[167]Transcript of July 13, 2021, p 173.

was established was not clearly unreasonable. I confirm the Board's finding and dismiss the appeal of the established Allegation. I will now consider the reasonableness of the conduct measure imposed.

Conduct measure

[100] When considering the clearly unreasonable standard in the context of conduct measures, and reasons are provided, significant deference is owed to the adjudicator.

[101] Furthermore, subsection 36.2(e) of the *RCMP Act* states that one of the purpose of the conduct regime is to provide, in relation to the contravention of any provision of the *Code of Conduct*, for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

Appellant submission

[102] The ERC summarized the Appellant's submissions as to why the imposed conduct measure was clearly unreasonable:[168]

> [111] First, in the appeal submissions, the LR returns to what he describes as the Board's "errors" in finding that: the Appellant told Ms. X to delete their texts, and meant to form a sexual relationship with her. If I understand, the LR alleges that those erroneous findings resulted in the Board committing three additional mistakes when selecting the conduct measure, namely:[169]
>
> a) querying if the Appellant had been honest with his psychologist, thereby disqualifying the psychologist's letter as a mitigating factor and turning it into detrimental evidence;
>
> b) finding that the Appellant repudiated some of the RCMP's then values; and
>
> c) concluding that the severity of the misconduct outweighed the mitigating factors.

[168] Report, paras 111-112.
[169] Appellant's Appeal Submission, para 37; Appellant's Rebuttal, paras 1.g and 1.h.

> [112] Second, in Schedule "A" to the Statement of Appeal, the LR raises four other issues with the Board's conduct measures analysis and chosen conduct measure. He thinks the Board:[170]
>
> - misidentified the range of appropriate conduct measures for the Appellant's misconduct;
> - failed to set forth and consider all the mitigating factors that applied to the Appellant;
> - failed to place appropriate weight on mitigating and aggravating factors; and
> - confused and misapplied the test for whether a resignation or dismissal was appropriate.

Respondent submission

[103] The Respondent endorses the Board's direction for the Appellant to resign from the RCMP or otherwise be dismissed. He characterizes the Appellant's submission as narrow and fragmented without any precedent or rationale as to how the Board should have decided otherwise.[171]

Findings

[104] I agree with the ERC; the Appellant's position is meritless.[172] As I've already discussed, I find that the Board's findings respecting the Particulars were not clearly unreasonable and so those findings do not impugn the conduct measure itself.

[105] Moreover, I adopt the ERC analysis of the alleged mistakes the Board made in its determination of the appropriate conduct measure:[173]

> a) The Board properly dealt with the Appellant's psychologist's evidence. The Board did not question if the Appellant had been honest with the psychologist. Rather, the Board noted that the CAR did not want the Board to admit the psychologist's letter as evidence, since it was unclear to the CAR if the psychologist was aware of all the circumstances. The Board said that it admitted the letter as evidence but gave it little weight

[170] Schedule "A" to Statement of Appeal, p 2.
[171] Respondent's Appeal Submission, paras 24-30, 32.
[172] Report, para 117.
[173] Report, para 118.

because it was not really an expert report, and it did not offer a medical rationale for the misconduct.[174]

b) The LR does not otherwise explain, and it is unclear how the Board erred by finding that the Appellant offended what were the RCMP's values of professionalism, respect, and integrity. The Appellant's treatment of Ms. X was plainly at odds with those values, which called for RCMP members to behave in a principled, ethical, and conscientious manner.

c) The LR does not otherwise clarify how the Board erred in finding that the gravity of the Appellant's actions outweighed the mitigating factors. I will deal with some of the LR's more specific issues with the Board's conduct measures analysis, including its alleged mistreatment of mitigating factors, in the next part of this discussion (directly below).

[106] Finally, I reject the arguments forwarded by the Appellant in Schedule "A" to the *Appeal Presentation* contesting the methodology employed by the Board to determine the appropriate conduct measure.

[107] The RCMP and ERC have long utilized a three-part process to identify appropriate conduct measures:

> • Determine the appropriate range of sanction, given the seriousness of the conduct;
>
> • Determine any mitigating and/or aggravating factors; and
>
> • Select a penalty that best reflects the severity of the misconduct, and the nexus of the misconduct and the requirements of the policing profession.

[108] A Board is not required to reference each step as a *de facto* test; however, they must demonstrate consideration of each essential element. This process is also entrenched in policy at *Administration Manual*, Chapter XII.1 "Conduct" (version January 22, 2019), sections 7.2.1.7.3. 9.2.1.6 and 9.2.1.7, and in the *Conduct Measures Guide*, 2014.

[109] I find that the Board was alive to its requirements and adequately fulfilled them. Moreover, I agree with the ERC assessment of the alleged mistakes made by the Board in fulfilling this process:[175]

[174] Decision, paras 109-110.
[175] Report, paras 120-123.

[120] First, although the LR says the Board "[m]isapprehended the range of appropriate conduct measures",[176] he does not explain, and it is unclear, how the Board did this. The Board observed that the Appellant's discreditable conduct did not fall within a specific category listed in the Force's Conduct Measures Guide (Guide).[177] However, it found that the appropriate range of conduct measures for the misconduct was a loss of 20 to 30 days' pay, up to dismissal.[178] This range is not problematic. It captures the conduct measures each party proposed to the Board,[179] and is reflective of the ranges of conduct measures for the different types of sexual misconduct identified in the Guide.[180] To the extent that the LR might still view the Appellant's behaviour as harassment (a view neither the Board nor I share),[181] I note that the range of conduct measures for that conduct will also include dismissal if the conduct is sexual and/or persistent in nature.[182]

[121] Second, although the LR alleges that the Board did not list and consider all the mitigating factors that applied to the Appellant,[183] he does not say which factors he thinks were ignored. As best I can tell, the LR raised one mitigating factor during the conduct measures hearing which the Board did not rely on or seem to address in the Decision; namely, the Appellant cooperated during the conduct and restraining order proceedings.[184] In my view, the Board's failure to list this as a mitigating factor does not affect the reasonableness of its direction for the Appellant to resign or be dismissed. As I will note below, the Board thoroughly explained why this conduct measure was necessary in the circumstances, despite the existence of many mitigating factors.

[122] Third, although the LR states that the Board failed to give appropriate weight to mitigating and aggravating factors, he specifically disputes only the Board's treatment of his psychologist's letter, which he suggests should have received more weight.[185] I do not agree. Again, the Board clarified that it gave the letter little weight because it was not a true expert report, and it did not offer a medical rationale for the Appellant's conduct.[186] This finding is reflective of the evidence. I would add that the Appellant did not specifically contest any of the Board's aggravating factors.

[123] Fourth, I am not certain what the LR means when he argues that the Board erred by "[m]isapprehending and misapplying the test for whether

[176] Schedule "A" to Statement of Appeal, p 2.
[177] Decision, para 91.
[178] Decision, para 94.
[179] Notice of Conduct Hearing; Transcript, Volume 5, p 76.
[180] Guide, pp 56-60.
[181] Transcript, Volume 3, pp 67-69.
[182] Guide, pp 13-15.
[183] Schedule "A" to Statement of Appeal, p 2.
[184] Decision, paras 106, 109-110; Transcript, Volume 5, p 69.
[185] Schedule "A" to Statement of Appeal, p 2; Appellant's Appeal Submission, para 37.
[186] Decision, paras 109-110.

> dismissal (or direction to resign) was appropriate".[187] The LR does not identify any mandatory test on appeal, and I am otherwise not aware of one. The LR may be returning to points he made at the hearing, when he urged that a conduct measure must be "proportionate in nature and fit the circumstances of the particular contravention", and that dismissal is to be a "last resort".[188] This generally reflects the third prong of the above-noted process for selecting a conduct measure. The Board satisfied this part of the process by reasoning that its order for the Appellant to resign or be dismissed was proportionate in the circumstances, and that his continued RCMP employment was unjustifiable, given that:[189]
>
> - his misconduct went to the very heart of his employment relationship with the RCMP;
> - his misconduct betrayed the public's expectation of police who deal with the vulnerable;
> - it is critical that the police protect young people, who use technology for social purposes;
> - there was no evidence of a medical issue that may have helped explain his misconduct;
> - he showed a lack of self-reflection, and it was unclear if he learned from his mistakes;
> - he repudiated his obligations as a member, and fatally breached the public trust; and
> - the mitigating factors did not outweigh the severity of the misconduct.

[110] Ultimately, the Board found that the Appellant abrogated his responsibility to protect young and vulnerable members of our society. Nothing presented by the Appellant suggests otherwise. Given the high degree of deference owed to the Board, I see no compelling reason to interfere with the conduct measure imposed.

DISPOSITION

[111] In accordance with paragraphs 45.16(1)(a) and (3)(a) of the *RCMP Act*, I dismissed the appeal and confirm the finding and the conduct measure imposed by the Board.

[187] Schedule "A" to Statement of Appeal, p 2.
[188] Transcript, Volume 5, pp 47-49.
[189] Decision, paras 107-121.

DIRECTIONS

[112] The OCGA must serve a copy of this decision on the Parties.

[113] Those individuals who have been provided a copy of this decision are reminded of their obligation to handle such information properly in accordance with the applicable policies and legislation governing the treatment of personal information.

[114] Should the Appellant disagree with my decision, he may seek recourse to the Federal Court pursuant to subsection 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7.

Caroline Drolet Final Level Adjudicator	November 10, 2023 Date