

Publication ban: Any information that could identify the Complainant must not be published, broadcast or transmitted in any way.



ROYAL CANADIAN MOUNTED POLICE

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

Between:

Designated Conduct Authority for “K” Division

(Conduct Authority)

and

Constable Teri-Lynn Cleary
Regimental Number 56894

(Subject Member)

CONDUCT BOARD DECISION

Jenelle Mack

(Conduct Authority Representative)

Brad Kielmann

(Subject Member Representative)

CONDUCT BOARD: Sandra Weyand

DATE: November 25, 2025

TABLE OF CONTENTS

SUMMARY	3
INTRODUCTION	4
Publication ban	5
ALLEGATION	5
Evidence	6
Credibility and reliability assessment considerations	7
Applicable legal test.....	8
Definition of sexual harassment	9
Analysis	12
<i>Has the identity of the subject member been established?</i>	12
<i>Did the acts occur as alleged?</i>	12
DECISION	19

SUMMARY

On May 24, 2023, Constable Teri-Lynn Cleary was served a *Notice of Conduct Hearing*, containing four alleged contraventions. Allegations 1, 3 and 4 relate to section 2.1 of the RCMP Code of Conduct, alleging that the Subject Member made inappropriate comments of a sexual nature towards her supervisor and sexually assaulted another member on two occasions. Allegation 2 relates to the Subject Member allegedly failing to carry out a lawful order, which would be contrary to section 3.3 of the Code of Conduct.

On August 25, 2023, Allegation 2 was withdrawn at the request of the Conduct Authority. Allegation 3 was the subject of a timeliness motion, which was granted on June 26, 2024. As such, the Conduct Hearing proceeded solely on Allegations 1 and 4. Allegation 1 was withdrawn at the request of the Conduct Authority, mid-hearing, on October 30, 2025.

On October 31, 2025, having heard from three witnesses, including the Subject Member, the Conduct Board found Allegation 4 not established.

INTRODUCTION

[1] On January 16, 2023, the Conduct Authority signed a *Notice to the Designated Officer* to request the initiation of a conduct hearing in relation to this matter. On January 20, 2023, a Conduct Board was appointed, who was subsequently unable to continue with the matter due to administrative reasons. As such, on March 20, 2023, I was appointed as the Conduct Board, pursuant to subsection 43(1) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] On May 24, 2023, Constable Teri-Lynn Cleary was served with a *Notice of Conduct Hearing*, dated May 3, 2023, along with the investigation package. The *Notice of Conduct Hearing* contained four allegations. Allegations 1, 3 and 4 related to section 2.1 of the RCMP Code of Conduct, alleging that Constable Cleary made inappropriate comments of a sexual nature towards her supervisor and sexually assaulted another member on two occasions. Allegation 2 relates to Constable Cleary failing to carry out a lawful order contrary to section 3.3 of the Code of Conduct.

[3] On August 25, 2023, Allegation 2 was withdrawn at the request of the Conduct Authority.

[4] On September 6, 2023, the Conduct Authority requested the withdrawal of Particular 7 and, on September 25, 2023, the withdrawal of Particular 13. I granted each in turn.

[5] On December 20, 2023, Constable Cleary provided a response to the Allegations, pursuant to subsection 15(3) of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291.

[6] On May 24, 2024, Constable Cleary brought a timeliness motion with respect to Allegation 3, which I subsequently granted on June 26, 2024, thereby striking Allegation 3 from the *Notice of Conduct Hearing* for being statute-barred.

[7] The Conduct Hearing in this matter was scheduled to start on August 19, 2024. However, the dates were adjourned due to the Subject Member Representative initiating a motion for abuse of process and stay of proceedings. On February 7, 2025, I dismissed that motion.

[8] On October 3, 2025, an *Amended Notice of Conduct Hearing* was signed to reflect the striking out of Allegations 2 and 3, as well as Particulars 7 and 13.

[9] From October 27 to 31, 2025, the Conduct Hearing was held in person, in Richmond, British Columbia, on the two remaining Allegations, namely Allegations 1 and 4. I heard evidence from three witnesses, including Constable Cleary.

[10] Following the completion of the evidence, on October 29, 2025, Particulars 4, 5, 6, 8, 10 and 14 under Allegation 1 were withdrawn at the request of the Conduct Authority.

[11] On October 30, 2025, prior to hearing submissions on the allegations from the Representatives, the Conduct Authority requested that Allegation 1 be withdrawn in its entirety, which I subsequently granted. I then heard oral submissions with respect to the one remaining Allegation, namely Allegation 4.

[12] On October 31, 2025, I delivered my oral decision, in which I found Allegation 4 not established.

[13] This written decision incorporates and expands upon that oral decision.

Publication ban

[14] On October 27, 2025, at the outset of the Conduct Hearing, I made an order restricting the publication of the identity of the Complainant in Allegation 4, pursuant to paragraph 45.1(7)(a) of the *RCMP Act*. Consequently, any information that may identify the Complainant, Constable I.G., must not be published, broadcast or transmitted in any way. I note here that Constable I.G., as he is referred to in the *Notice of Conduct Hearing* and *Amended Notice of Conduct Hearing*, has attained the rank of Corporal since the time of the incident described in the Allegation. For purposes of my decision, he will only be referred to as the Complainant.

ALLEGATION

[15] Allegation 4, as set out in the *Amended Notice of Conduct Hearing*, reads as follows:

Particulars relevant to all Allegations

1. Constable Cleary has been a regular member of the RCMP since 2008.
2. At all relevant times, she was posted at the Surrey Detachment, in the Municipal Criminal Intelligence Section (“CIS”).

Allegation 4: On or about October 14, 2020, at or near Surrey, in the Province of British Columbia, Constable Teri-Lynn Cleary sexually assaulted [the Complainant]. It is therefore alleged that Constable Teri-Lynn Cleary engaged in sexual harassment, contrary to section 2.1 of the *Code of Conduct of the RCMP*.

Particulars of Allegation 4:

31. On October 14, 2020, [the Complainant] was at the office working next to Constable Cleary.
32. [The Complainant] was sitting at his computer when he asked Constable Cleary for help.
33. Constable Cleary came standing behind [the Complainant], leaned over his right shoulder to grab the mouse and pushed her breasts up against him.
34. Constable Cleary said to [the Complainant]: “*Does that make you uncomfortable?*” or something to the same effect.
35. Constable Cleary touched [the Complainant] in a sexual manner.
36. [The Complainant] did not consent to Constable Cleary putting her breast against him.
37. [The Complainant] was offended by Constable Cleary touching him in that manner.

[*Sic throughout*]

Evidence

[16] The Record before me contains the *Notice of Conduct Hearing* and the *Amended Notice of Conduct Hearing*, the investigation report and supporting material, the material tendered throughout the course of the conduct process and during the Conduct Hearing, as well as Constable Cleary’s subsection 15(3) response to the allegations, including photos and copies of text messages in support of her response.

[17] At the Conduct Hearing, I heard oral evidence from retired Sergeant Forfellow (with respect to Allegation 1, which was subsequently withdrawn), the Complainant and Constable Cleary.

[18] In arriving at my findings on Allegation 4, I have considered the Record and the oral evidence received at the Conduct Hearing.

Credibility and reliability assessment considerations

[19] This matter squarely centres around a credibility determination. As the Conduct Authority Representative points out, when there are two conflicting versions of the same event, a determination must be made as to which version is preferred over the other.

[20] In assessing a witness's evidence, I must consider whether they are being truthful and whether their evidence is reliable. Concerning reliability, I must determine whether the witness is in a position to accurately perceive and recollect what they observed. It is also open to me to accept some, none or all of a witness's evidence on a given point.¹

[21] A witness's evidence cannot be assessed only on their demeanour,² that is, on whether they appear to be telling the truth. Rather, a decision maker must determine whether the witness's story is consistent with the most probable interpretation of the surrounding facts and assess the credibility and reliability of witnesses within the context of the evidence as a whole.³

[22] The Supreme Court of Canada notes that a finding that one party is credible may be a conclusive result, because believing one party will mean explicitly or implicitly that the other party was not believed on the important issues of the case.⁴ This becomes especially true when the allegations are altogether denied by the defending party, as is the case in this matter.

[23] The determination of whether the witness's account has an air of reality is subjective, but it must be grounded in the totality of the evidence.⁵

[24] In assessing each witness's credibility, I have considered several factors as outlined in jurisprudence⁶, including:

- a) the capacity and opportunity of the witness to observe the events at issue;
- b) the witness's ability to remember those events;

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

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

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

⁴ *McDougall*, at paragraph 86.

⁵ *McDougall*, at paragraph 58.

⁶ *R. v. Rochemont*, 2017 BCSC 930; *Faryna v. Chorny* [1952] 2 DLR 354; *Designated Conduct Authority for "H" Division and Sanford*, 2025 CAD 09.

- c) the ability of the witness to resist being influenced by their interest in recalling those events;
- d) internal and external inconsistency in the witness's evidence, in other words, whether their testimony changed over time;
- e) whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence;
- f) whether the witness has any interest in the trial outcome or has any motive to fabricate;
- g) whether the witness's evidence seems unreasonable, improbable or unlikely; and
- h) the witness's demeanour while testifying (which I have approached with caution) and whether the questions are answered in a frank and forthright fashion without evasion, speculation or exaggeration.

[25] I will incorporate my credibility and reliability assessments of each witness within my analysis of Allegation 4.

Applicable legal test

[26] Section 2.1 of the Code of Conduct states: "Members treat every person with respect and courtesy and do not engage in discrimination or harassment."

[27] To establish a contravention of section 2.1 of the Code of Conduct, the Conduct Authority must establish each of the following on a balance of probabilities:

- a) the identity of the subject member;
- b) whether the acts occurred as alleged (and, for sex-related matters, whether the acts were sexual in nature); and
- c) whether the acts are indicative of a lack of respect and courtesy, amounting to harassment, sexual or otherwise.
 - This prong is assessed based on whether a reasonable person, with knowledge of all the facts of the case, and knowledge not only of policing in general, but policing in the RCMP in particular, would have known or ought to have known that the actions of the subject member would cause offence or humiliation to

any employee or be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

[28] In applying this test, I must consider the totality of the circumstances. Furthermore, the onus is on a conduct authority to demonstrate on a balance of probabilities that the allegation is established. As stated by the Supreme Court of Canada, the evidence must be “sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”.⁷

[29] Before I discuss Allegation 4, using the aforementioned test, I note that Allegation 4 is framed as a sexual assault, alleging sexual harassment. As such, I will speak to the definition of sexual harassment prior to commencing my further analysis.

Definition of sexual harassment

[30] At the outset, I note that the alleged incident took place on October 14, 2020.

[31] RCMP policy in effect with respect to sexual harassment as alleged in Allegation 4 before me evolved around the turn of 2021.

[32] Specifically, there was a change in the *Canada Labour Code*, RSC, 1985, c L-2 [*Canada Labour Code*] that came into force on January 1, 2021, which impacted RCMP and Treasury Board policies.

[33] Prior to January 1, 2021, harassment fell within the scope of *Violence and Prevention in the Workplace* of the *Canadian Occupational Health and Safety Regulations*, SOR/86-304. The effective policy within the RCMP was found in the *Administration Manual* at Chapter XII.8 “Investigation and Resolution of Harassment Complaints” (May 7, 2018, version).

[34] The applicable definition of harassment at that time reads:

[...]

2.8 **Harassment** means any improper conduct by an individual that is **directed at, and is offensive to**, another individual in the workplace, including at any event or any location related to work, **and that the**

⁷ *McDougall*, at paragraph 46.

individual knew, or **ought reasonably to have known, would cause offence** or harm. **It comprises an objectionable act, comment, or display that** demeans, belittles, or **causes personal humiliation or embarrassment**, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act.

2. 8. 1. **Harassment** is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

2. 8. 2. **Harassment** includes sexual harassment.

[...] [Bold and underline added]

[35] On January 1, 2021, the definitions under subsection 122(1) of the *Canada Labour Code* changed to:

[...]

harassment and violence means any action, conduct or comment, **including of a sexual nature**, that can **reasonably be expected to cause offence**, humiliation or other physical or **psychological injury or illness** to an employee, including any prescribed action, **conduct or comment**.

[...] [Bold and underlining added]

[36] Moreover, Chapter XII.8 of the *Administration Manual* was rescinded in January 2021 and replaced with Chapter 2.1 “Work Place Harassment and Violence Prevention, Investigation, and Resolution” at the end of July 2021.

[37] While *Administration Manual* 2.1 did not come into effect until July 30, 2021, the *Canada Labour Code* was applicable to the RCMP as a federally regulated employer, since in January 2021.

[38] Similar to the prior policy, *Administration Manual* 2.1 also goes on to state at section 3.1.6:

3.1.6 [...] harassment generally involves a series of behaviours that persist over time. However, a serious one-time incident can also be considered harassment. Harassment can be direct or indirect, obvious or subtle, physical or psychological. It can occur in many ways, such as through spoken words, text, gestures, and images.

[39] Treasury Board and the RCMP also accepted the definition of sexual harassment in the workplace by the Supreme Court of Canada:

[...] Sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. [...] ⁸

[40] The RCMP *Conduct Measures Guide* (November 2014 version), at page 13, further specifies that sexual harassment is:

[...]

“any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any employee, or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.”

[...]

[41] The Conduct Authority Representative submitted that the applicable definition in this matter is the post-2021 definition under *Administration Manual 2.1*, seeing that the complaint filed by the Complainant was dated January 11, 2022, after the January 2021 change in policy.

[42] The Subject Member Representative submitted that it is the pre-2021 policy and harassment definition that should apply to the incident, seeing that it is alleged to have taken place in October 2020, prior to the change to the *Canada Labour Code*.

[43] I agree that the applicable policy and definition of harassment are those in place pre-2021. It is the date of the alleged incident, not the date of the filing of a complaint that is determinative of the policy to be applied. Current policy is not retroactive to occurrences prior to its existence, and a subject member should be held to the standard that was applicable at the time the incident allegedly occurred.

[44] I now turn to my analysis of Allegation 4 in accordance with the three-prong test under section 2.1 of the Code of Conduct.

⁸ *Janzen v Platy Enterprises Ltd.*, [1989] 1 SCR 1252, at page 1284.

Analysis

Has the identity of the subject member been established?

[45] Constable Cleary's identity is not in question. Therefore, the first prong of the test under section 2.1 of the Code of Conduct is met.

Did the acts occur as alleged?

[46] In order to establish the second element of the test, I need to assess whether the Conduct Authority has established on a balance of probabilities that the alleged actions occurred, namely that the Complainant was sitting at his desk and, upon asking for help from Constable Cleary, she leaned over his right shoulder to grab the mouse and pushed her breasts up against him, stating: "Does that make you uncomfortable?"

[47] Constable Cleary denies outright these events. She does not recall assisting the Complainant on the date outlined, though she acknowledges that she often helped him with his documents. She explains that, when doing so, she would crouch down at what was described as the north-west corner of his desk or would assist him from her own workstation, never touching him in any way.

[48] Constable Cleary also spoke about a prior incident, in a different unit, where she was the victim of sexual misconduct and how this has made her very aware of her own body and other's personal space. She explained that she was sensitized to sexual assault and would never position herself in a way as described or make someone else feel uncomfortable.

[49] She further points out that the alleged incident occurred in October 2020 when COVID-19 protocols were in place and members were sanitizing their desks daily. As such, she would not have leaned over anyone to grab their mouse.

[50] As both Representatives pointed out, I must decide whether the Conduct Authority met their burden to prove, on a balance of probabilities, that the events occurred as alleged, based on the totality of the evidence. In doing so, I need to engage in a credibility and reliability assessment of each witness's evidence. I note here that I will only focus on a credibility and reliability

assessment with respect to Constable Cleary and the Complainant. While I heard from retired Sergeant Forfellow, his testimony related mainly to Allegation 1, which has since been withdrawn and is not relevant to Allegation 4.

[51] The Conduct Authority Representative asked me to find that the Complainant was consistent in his testimony, candid, clear, logical and consistent on the core issues, recalling the central elements of the alleged incident with only minor discrepancies affecting peripheral details. She states that any differences in his recollection are understandable, given the passage of time. She also cautioned me with respect to any reliance on post-incident behaviour, stating that there is no one way a victim might act after a sexual assault incident.⁹

[52] With respect to Constable Cleary, the Conduct Authority Representative describes her testimony as implausible, self-serving, and marked by material inconsistencies. She stated that Constable Cleary's evidence showed a pattern of denial, selective recall and minimization when pressed, appearing calibrated rather than grounded in objective fact. She urged that I find Constable Cleary's evidence neither credible nor reliable.

[53] The Subject Member Representative's assessment of credibility diverges greatly from that of the Conduct Authority Representative's. He argues that the Complainant's evidence lacks reliability and credibility and that his evidence shifted in many ways, showing internal and external inconsistencies and lacking common sense. Furthermore, the Subject Member Representative asks that I find Constable Cleary's testimony to be largely consistent, credible and reliable.

[54] I will begin with my assessment of the Complainant's evidence. I find that his description of the alleged incident varies greatly across the several statements he has provided on the topic, including in his statement as part of the Independent Centre for Harassment Resolution (ICHR) investigation, in his two statements provided as part of this Code of Conduct investigation, and in his oral evidence before me. The discrepancies relate, in part, to the date on which the incident occurred, what Constable Cleary was alleged to have said as she leaned over him, and what part

⁹ *R. v Barton*, 2017 ABCA 216, at paragraphs 97 to 100.

of the Complainant's body was touched by Constable Cleary. In my view, these are all integral parts of the alleged sexual assault.

[55] More specifically, the Complainant's ICHR statement references the incident having occurred on October 15, 2020, at two separate entries, whereas his statement to the Professional Responsibility Unit investigators and his evidence before me was in reference to the October 14, 2020, date as outlined in Allegation 4. He has referenced different areas of his body having been touched by Constable Cleary's breasts when she leaned over him, namely his back, head and shoulder. In his first statement, he told investigators that Constable Cleary pressed her breasts into his right shoulder. In his second statement, he made mention of his head. His wife relayed that he told her Constable Cleary pressed her chest into his back. Moreover, his notes make no mention of which area of his body was touched at all. When asked on cross-examination where exactly the touch occurred, he was unable to specify and only repeated that it was in that "general area".

[56] The Complainant testified that he told his wife about the incident the same day it occurred in October 2020, yet, his wife, in her statement, outlines that she only found out about the incident in early 2021. His wife also states that Constable Cleary said, "you like this, don't you?" when she leaned over the Complainant, which he testified was an accurate reflection of what was said. However, he told the investigator in one statement that she said, "does that bother you?"; while in another statement and before me now, he indicated that Constable Cleary said, "Does that make you uncomfortable?" as she leaned over him. He claims that all three are accurate, which is entirely impossible, given that he states that she only made one comment. Furthermore, he was unable to provide an explanation for these inconsistencies.

[57] In addition, when confronted about inconsistencies related to his wife's statement or when he disclosed the incident to her, the Complainant became evasive and argumentative.

[58] The Complainant stated that the comment that accompanied the touching is what further brought the incident into the sexual realm for him; and yet he is unable to recall the precise statement made. This is even more curious in light of the fact that he made a notebook entry of the words uttered by Constable Cleary and could have referred to his notes when providing his statements, ensuring he was reflecting the comment with accuracy and consistency.

[59] Furthermore, with respect to the notes, I agree with the Subject Member Representative that the entry is missing key details that a trained police officer would ordinarily include in the notation of such a vital event; an event that the Complainant states tremendously affected his life and relationship with his wife.

[60] The Complainant also stated that he recorded the note because it was very obvious to him that this was not a brushing by accident, but that it was intentional and shocked him. Despite how important the incident felt to him, the notebook entry makes no mention of the specific time or even the general time of day, which, notably, the Complainant was still unable to pinpoint when questioned at the Conduct Hearing. He himself verified that his ordinary use of his notebook would be to record a date, time, as well as anything of substance and relevance. He also agreed that notes must be accurate and honest. Yet, the notes do not indicate that Constable Cleary grabbed the Complainant's computer mouse, whether anyone was around when the alleged incident of sexual assault occurred or where on his body Constable Cleary's breasts were pressed. There is also a notable difference in writing style, pen colour and ink thickness when looking at the last line of his handwritten notebook entry, which captures the phrase "pressed breasts against me". When the Complainant was questioned on these discrepancies, he only stated that these were his notes but evaded the question of whether the last notation was made at a different time from the rest. After further pressing, he conceded that it was possible the line was written with a different pen.

[61] Though his notebook entry was the most contemporaneous recording of the incident in time, his recall of details actually evolved from there, with the Complainant recalling more details as time went on, which is unusual. The order of events within this alleged incident also changed from Constable Cleary leaning over him, stating "does that make you uncomfortable?" and then pressing her breasts against him, to leaning over him, pressing her chest against him, and then making the alleged comment.

[62] Overall, the Complainant was unsure of his answers on cross-examination. He provided nonsensical responses at times or did not answer at all. He had no explanation for discrepancies in his testimony. Furthermore, after being pressed, even he conceded that his accounts were inconsistent, yet he could offer no justification or rationale, only stating that these were his statements and that it was a stressful time for him.

[63] In commenting on the disclosure of this alleged incident by the Complainant to his supervisor, Sergeant Forfellow, I am fully aware that late reporting is not a relevant component to consider when assessing a sexual assault allegation. The element I wish to note is that neither Sergeant Forfellow nor the Complainant made any notes of the disclosure of the incident, even though both are experienced police officers who have been taught the importance of note-taking, especially given a serious incident such as a sexual assault. Both witnesses acknowledged this when questioned. I find that the lack of such notes impacts the reliability of the testimony provided on this topic.

[64] In addition, while I take no issue with the Complainant not disclosing this October 2020 incident until January 2022, I find his explanation for the timing curious. The Complainant states that he was unable to report and deal with the incident because he went on leave shortly after it happened. However, he reported another alleged sexual assault by Constable Cleary against him that took place in June 2020 to Sergeant Forfellow at the end of October or beginning of November 2020, prior to going on leave. This shows that he did “deal with” a sexual assault allegation at that time, just not the one that allegedly occurred just a couple of weeks prior. As such, while I take no issue with the timing of his reporting, I find his explanation that he was unsure how to report the matter because he was embarrassed and about to be away on leave improbable and lacking an air of reality.

[65] Lastly, much of the evidence surrounded a series of text messages exchanged between Constable Cleary and the Complainant in July and August 2021, with a specific focus on a conversation that took place on August 5, 2021. I am, again, mindful of post-incident conduct and am not considering the messages to draw an inference based on the Complainant’s behaviour after the alleged sexual assault. However, I am considering the text messages as part of my credibility analysis with respect to assessing the accuracy of the Complainant’s explicit assertions.

[66] The Complainant testified that he had no relationship with Constable Cleary, that they would communicate only with respect to work and that he was never flirtatious with her. The text exchange shows otherwise in that the Complainant reached out to Constable Cleary with a meme that alluded to him having a difficult time and Constable Cleary then engaging in a conversation with him, about his personal life and offering support. Notably, the Complainant denied ever

reaching out to Constable Cleary until the message exchange was put to him, at which point he conceded that he did reach out to her because she was nice. In his messages sent to Constable Cleary, the Complainant is very clear that Constable Cleary is the only woman in his life who knows certain personal details about him and who understands him. Despite being shown these texts, the Complainant maintained the two had no relationship at all.

[67] The message exchange then turned to the Complainant enquiring whether Constable Cleary was drunk, and suggesting that he wished she were not married, eventually commenting that Constable Cleary should “go get lucky” with her husband and “fuck like rabbits”, which the Complainant first denied was flirtatious, but later admitted was sexual in nature, again, negating the statement he originally made. As such, not with respect to post-incident conduct, but only in relation to statements made by the Complainant that then turn out to be false, based on the documentary evidence presented, I find that this exchange negatively affects my credibility assessment of his evidence.

[68] In addition, the Complainant’s memory was selective when he was questioned about a deleted message within the August 5, 2021, conversation. He could not recall what the message might have referenced, yet, only a few minutes later, he suddenly had a clear recollection of context. He explained that the deleted message related to a conversation he and Constable Cleary allegedly had in the pit of the detachment at some other time. The comment had no basis in the context of the current discussion of the text conversation, which again lacks an air of reality.

[69] In contrast, I found Constable Cleary to be steadfast in her responses, genuine and consistent. She took accountability for speaking harshly about the Complainant during her ICHR interview and admitted to being outspoken about her dislike and disrespect of another member in the unit. I found her to have shown compassion and kindness in her interactions with the Complainant when he reached out to her over the WhatsApp text message application, and I found her to be forthcoming in her evidence before me, admitting that she uses profanities around the office and engages in crude office humour at times. I found Constable Cleary to be appropriately emotional, given the severe consequences she was facing, and her evidence internally and externally consistent. She was not rattled on cross-examination and answered all questions fully without evading or exaggerating her responses.

[70] The Subject Member Representative brought my attention to the following relevant case law:

[458] [...]

...Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory [...]¹⁰

[71] The inconsistencies in the Complainant's testimony led me to conclude that his memory is unclear, incomplete and uncertain. When considering the totality of the circumstances and the context surrounding Allegation 4, my assessment of the Complainant's testimony is determinative in this matter. I find his evidence to be neither credible nor reliable.

[72] As such, I was not provided with sufficiently clear, cogent and convincing evidence to conclude that Constable Cleary leaned over the Complainant and touched his right shoulder, let alone that the touch was sexual in nature as is alleged in Allegation 4. Therefore, the acts did not occur as alleged.

[73] I note that the Subject Member Representative also raised arguments with respect to retaliation, collusion and fabrication of evidence. Given the sufficiency of the foregoing and my finding that the acts did not occur as alleged based on my credibility and reliability assessment, I need not comment on these additional arguments. As such, I decline to do so.

[74] Accordingly, I am not satisfied that the behaviour occurred as outlined. Consequently, I find that the Conduct Authority has not demonstrated the second element of the test to establish a

¹⁰ *R. v Kruk*, 2024 SCC 7, at paragraph 73.

contravention of section 2.1. for sexual assault or sexual harassment and I need not address the third prong of the test.

[75] Therefore, I find that Allegation 4 is not established on a balance of probabilities.

DECISION

[76] I have found that Allegation 4 is not established. As such, there is no need to consider the imposition of conduct measures in this matter.

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

[78] Either party may appeal this decision by filing a statement of appeal with the Commissioner within 14 days of the service of this decision as set out in section 45.11 of the *RCMP Act* and section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.

Sandra Weyand
Conduct Board

November 25, 2025
Date