



ROYAL CANADIAN MOUNTED POLICE

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

BETWEEN:

Commanding Officer, "E" Division

Conduct Authority

and

Inspector Sukhjit Manj
Regimental Number O2922

Subject Member

Conduct Board Decision

Gerald Annetts

November 8, 2019

Staff Sergeant Jonathon Hart, for the Conduct Authority

Stephen Rogers, for the Subject Member

Table of Contents

SYNOPSIS.....	2
INTRODUCTION	3
ALLEGATION 3	5
Analysis	6
ALLEGATION 6	10
Analysis	12
ALLEGATION 4	18
Analysis	19
ALLEGATION 7	23
Analysis	25
FINAL COMMENT	25
CONCLUSION.....	26

SYNOPSIS

A Notice to the Designated Officer was issued by the Commanding Officer of “E” Division on September 13, 2017, containing seven allegations against Inspector Manj. Prior to the start of the Conduct Hearing, one of those allegations was dismissed as being initiated out of time (2019 RCAD 16) and two more were withdrawn by the Conduct Authority. The Conduct Hearing convened from September 30 to October 4, 2019, in Richmond, British Columbia. I heard evidence and submissions on the remaining allegations and provided an oral decision on October 4, 2019, in which I dismissed all four allegations. This is the written decision.

INTRODUCTION

[1] There are historical events leading up to the issues laid out in the allegations which need to be explained in order to appropriately understand the proper context of this entire Code of Conduct process. I will first set out the undisputed facts before considering the allegations.

[2] In the summer of 2014, Inspector Manj was named the Officer in Charge of Lloydminster Detachment, his first posting as a commissioned officer. He reported to Superintendent Wendell Reimer, the District Operations Officer, but also the Acting District Officer at the time. In early March 2016, Chief Superintendent Shahin Mehdizadeh took over as the District Officer and Inspector Manj reported through Superintendent Reimer to him.

[3] During the first year to year and a half of his tenure as OIC of Lloydminster Detachment, the general consensus is that Inspector Manj performed admirably in managing the operations of Lloydminster Detachment. However, some conflict between employees developed within the office and some relationships deteriorated to the point that a “wellness review” was conducted by one of the Eastern Alberta District Advisory Non-Commissioned Officers in February 2016. That review either uncovered or was the partial cause of a split in the Detachment and strong beliefs formed in favour of or against Inspector Manj’s leadership. The results of that review are not formally known to me, nor are they relevant to my determination of the allegations.

[4] In late November 2015, Lloydminster Detachment hosted a “Christmas levee” and a social gathering followed at Inspector Manj’s home. During that gathering in his home, Inspector Manj made some observations which led him to believe that his Office Manager, municipal employee D. R., was romantically involved with a member of the Detachment, Constable F.. Inspector Manj believed that this relationship was a reportable one under the RCMP Interpersonal Workplace Relationship policy. In late December 2016 or early January 2017, he asked Ms. D. R. if she was involved in a relationship with Constable F.; she denied it. He subsequently raised the issue with other members of the Detachment, including Sergeant Knelsen and Sergeant Walker. His raising the issue with them and with Ms. D. R. served to sour his relationship with Ms. D. R. and contributed to the conflict within the workplace at Lloydminster Detachment. Prior to this point in time, Inspector Manj’s family and Ms. D. R.’s family spent considerable time together socially outside of work. In late May 2016, Ms. D. R. went on sick leave and Inspector Manj’s suspicion of her relationship with

Constable F. may have played a role, although no evidence was called specifically on that point. That resulted in a meeting between Ms. D. R. and Chief Superintendent Mehdizadeh and Superintendent Reimer on May 30, 2016. In that meeting, she raised her frustrations with what she saw as Inspector Manj's interference in her personal life and preoccupation with this relationship, a relationship which she denied existed. That denial was false as she and Constable F. were in fact involved in a romantic or sexual relationship throughout the relevant period of time dealt with by these allegations.

[5] Following their meeting with Ms. D. R., Chief Superintendent Mehdizadeh and Superintendent Reimer met that same afternoon with Inspector Manj. One of the many issues discussed during that meeting was this relationship. It was during this meeting that the Conduct Authority alleged that Inspector Manj was specifically directed by Chief Superintendent Mehdizadeh to cease all of his actions with respect to uncovering this relationship. The basis of Allegation 3 is that he failed to carry out that lawful direction.

[6] On the late afternoon of July 20, 2016, Constable F.'s estranged wife, Ms. V.F., was alerted by Constable F.'s landlady and/or Inspector Manj's wife, Corporal Tammy Hollingsworth, that a woman believed to be his lover was at his residence. Ms. V.F. drove to his residence; when Constable F. answered the door, she attempted to barge past him and up the stairs into his residence in order to see who was there. Constable F. refused to allow her to enter and forcibly removed her by grabbing her arms and pushing her away from the door. She sustained a small scratch and/or bruise on her arm as a result. Ms. D. R. was present in Constable F.'s residence at the time, but she remained in the residence and had no role in the altercation. The basis of Allegation 6 is that Inspector Manj failed to ensure that this incident was properly investigated and failed to ensure Ms. V.F.'s safety.

[7] Immediately after the altercation at his residence on July 20, 2016, between 6:15 and 6:30 p.m., Constable F. called his supervisor, Sergeant Knelsen, to advise her of what happened. She indicated that she listened to his explanation and advised him to call Kitscoty Detachment in order "to have it recorded", but that it was his choice whether to do so or not. Constable F.'s residence falls within Kitscoty Detachment's area of responsibility. Sergeant Knelsen then immediately called Inspector Manj to inform him of the incident. The next day, July 21, 2016, Sergeant Knelsen was

leaving the country on a work-related trip and Inspector Manj was leaving on vacation. Sergeant Walker was the Acting OIC starting at the end of Inspector Manj's shift on July 20, 2016.

[8] When Sergeant Knelsen and Inspector Manj returned to work, it is alleged that Inspector Manj called Sergeant Knelsen and asked her to go to the City of Lloydminster Supervisor for Ms. D. R. and tell him that she could no longer work with her and that Ms. D. R. needs to be fired because she is a liar. It is also alleged that he approached Sergeant Knelsen at work and informed her that he was going to destroy Ms. D. R. because she destroyed his life. This is the basis of Allegation 4.

[9] The final allegation, Allegation 7 consists of eight different instances where the Conduct Authority alleges that Inspector Manj lied in a statement provided to the Code of Conduct Investigator on July 3, 2017, in relation to the events detailed above.

ALLEGATION 3

[10] Allegation 3 reads as follows in the *Notice of Conduct Hearing*:

Allegation 3

On or between May 30, 2016, and August 13, 2016, at or near Lloydminster in the Provinces of Alberta and Saskatchewan, Inspector Sukhjit MANJ failed to carry out lawful orders and directions, contrary to section 3.3 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention

1. At all material times you were a member of the Royal Canadian Mounted Police ("RCMP") and posted at the Lloydminster RCMP Detachment in "K" Division as the Officer In Charge ("OIC").
2. Ms. [D.R.] was a municipal employee at the Lloydminster RCMP Detachment. Your spouse [Corporal (Cpl.)] Tammy Hollingsworth ("Cpl. Hollingsworth") was close personal friends with Ms. [V.F.]. Together with Cpl. Hollingsworth, you deliberately decided to become involved in [Ms. V.F.]'s personal marital issues. [Ms. V.F.] was the estranged spouse of [Constable F.]. [Constable F.] is the RCMP dog handler posted to Lloydminster Detachment and supervised by Sergeant Sarah Knelsen.
3. [Constable F.] was residing in a rented room on the property of Mr. [G.M.] and Ms. [D.M.]. The underlying motive as to why you purposefully became involved in the private affairs of [Constable F.] and Ms. [D.R.] was that you simply could not accept that he and Ms. [D.R.] were involved

in a close private relationship. Additionally, you believed that Ms. [D.R.] had a professional obligation to report her private relationship with [Constable F.] to you as the OIC of the Detachment. When Ms. [D.R.] refused to acknowledge to you that she was in fact in a private relationship with [Constable F.], you took it personally and became obsessed with gathering evidence to expose the relationship.

4. Chief Superintendent [(C/Supt.)] Shahin Mehdizadeh (“Mehdizadeh”) and Superintendent Wendell Reimer both became aware of your quest to gather information about the close private relationship between [Constable F.] and Ms. [D.R.] and demanded to meet with you in-person in their capacity as your supervisors. In this meeting, you were informed by C/Supt. Mehdizadeh that there existed no position of authority between Ms. [D.R.] and [Constable F.] and that it was not your problem and to not become involved. You were specifically directed by C/Supt. Mehdizadeh that there existed no duty to report this relationship by either [Constable F.] or Ms. [D.R.] and to cease all of your actions with respect to uncovering it. You failed to carry out this direction and continued to actively seek out evidence to “out” the relationship despite being directed by your superiors on more than one occasion to cease and desist.

[Sic throughout]

Analysis

[11] While some context is provided in the first three particulars, the meat of the allegation is contained within Particular 4. Essentially the allegation is that Inspector Manj was told by Chief Superintendent Mehdizadeh that the Constable F. and Ms. D.R. romantic relationship was not his problem; he was specifically directed by Chief Superintendent Mehdizadeh to cease all of his actions with respect to uncovering it; and that despite this direction, he “continued to actively seek out evidence to out the relationship”. The allegation falls under section 3.3 of the Code of Conduct. Thus, the Conduct Authority is required to prove two essential elements: 1) that the lawful order or direction was provided; and 2) that Inspector Manj failed to carry out that order or direction. A failure to prove either of the required elements is fatal to the Conduct Authority’s case.

Was there a lawful order or direction?

[12] The direction alleged by the Conduct Authority was not provided in writing, so it has to be pieced together from the documentation contained in the material and from the evidence of those who testified. The only relevant documentation specific to the direction that was provided to the Conduct Board are the notes that (now) Chief Superintendent Reimer referred to in his testimony

with respect to the May 30, 2016, meeting. In those notes he wrote: “[District Officer] told him it was not his problem, leave it alone.”

[13] I note that, in his statements and in his examination in chief, Chief Superintendent Reimer relied exclusively on those notes. While he claimed to have an independent recollection of the events of May 30, 2016, and other events, what he told the Code of Conduct Investigators and what he testified to before me was essentially a reading of his notes. He didn’t augment them, he didn’t change anything and he didn’t expand upon them. He had no recollection of other details of the meeting that were not captured within his notes. Consequently, the reasonable inference to be drawn is that he did not have an independent recollection of what occurred in that meeting and the direction provided by Chief Superintendent Mehdizadeh. In proceedings of this type, this is normally not fatal because I can rely on notes that are routinely made by someone in the course of their duties if I consider them to be reliable.

[14] However, the problem in this case is that the notes made by Chief Superintendent Reimer were not made contemporaneously with the events, they were made some seven and a half months after the fact. The notes were only made on January 16, 2017, in preparation for a statement that he was being asked to provide a few days later in the course of the Code of Conduct investigation against Inspector Manj.

[15] As he acknowledged, seven and a half months is a very long time in the life of a superintendent in the RCMP and the issues he deals with every day. I would not expect him or anyone else in that position to remember specific details as to what occurred that long ago without refreshing his memory from notes made at the time.

[16] In addition, Chief Superintendent Reimer acknowledged that he had several discussions with Chief Superintendent Mehdizadeh and others about the May 30, 2016, meeting and other related events in the period of time between that meeting and January 16, 2017, when the notes were made. I have little confidence that his evidence was not tainted by those conversations or by the investigations and interviews that were underway. Therefore, I find both the notes he made on January 16, 2017, and his testimony of what was said to Inspector Manj by Chief Superintendent Mehdizadeh to be unreliable.

[17] Even were I to give any weight to Chief Superintendent Reimer's evidence, it was hardly unequivocal. He acknowledged in cross-examination that he could not recall the words that were spoken by Chief Superintendent Mehdizadeh, his own interpretation and summary of what was said is that Inspector Manj "should leave it alone". He also acknowledged that he did not know how Inspector Manj interpreted the direction because he did not follow up with him about it after the meeting.

[18] The only other evidence from the Conduct Authority of the direction given by Chief Superintendent Mehdizadeh is his own testimony of what occurred during that meeting. He admitted to making no notes of the direction he provided and he also acknowledged that he did not tell Inspector Manj to stop doing anything specific. Three years later, he testified that he said words to the effect of and/or he made it clear that "this has to stop".

[19] I have to weigh that evidence against the testimony of Inspector Manj. Inspector Manj testified that the conversation about the Ms. D.R./Constable F. relationship took up about 15 to 20 minutes of their 3-hour meeting on that day and that no direction was given by Chief Superintendent Mehdizadeh. He indicated that, during that 15 or 20 minutes, he tried to explain to Chief Superintendent Mehdizadeh why it was important for the relationship to be declared and how it fell under RCMP policy. He stated that he was repeatedly cut off by Chief Superintendent Mehdizadeh, who simply said the relationship was not contrary to policy and he should just leave it alone. Essentially the two of them agree that they argued over whether the Constable F. and Ms. D.R.'s relationship fell under the RCMP Interpersonal Workplace Relationship policy and neither was able to convince the other to change his mind. (Whether the relationship actually fell under the policy is irrelevant for the purposes of the allegation.) Where they disagree is whether Chief Superintendent Mehdizadeh provided the alleged direction.

[20] When he testified, Chief Superintendent Mehdizadeh may have believed that he gave direction to Inspector Manj on May 30, 2016, to stop doing something. However, I'm not in a position today to be able to know what it was that he was to stop doing.

[21] An order or direction need not be in writing, nor does the word "order" need to be used, but it has to be **clear** and **unequivocal** [see *Amato v York Regional Police Service*, 2014 ONCPC 16 (CanLii), and *Flannigan and Ontario Provincial Police*, November 18, 1987, OPC].

[22] The evidence before me is anything but clear. Chief Superintendent Mehdizadeh made notes on that day of his meeting with Inspector Manj and he specifically noted 11 items that were either discussed or were observations he made of Inspector Manj's state of mind. Although he noted that they discussed Ms. D.R., there is no mention of any order or direction given to Inspector Manj in relation to ceasing and desisting the investigation of that relationship or whether the relationship fell under the aforementioned policy. That is a curious omission given the importance of such a direction relative to some of the other things that were noted and given his acknowledgment in cross-examination that Inspector Manj kept returning to this topic in the meeting and just wasn't listening to his direction. I would think that kind of behaviour in response to an explicit direction from a superior officer would be something that would be documented.

[23] Finally, Chief Superintendent Mehdizadeh testified that he heard rumours within Eastern Alberta District within days of this May 30, 2016, meeting that Inspector Manj was still talking to other members about the relationship. He indicated that he believed that information to be credible; however, he failed to address the issue further. If I accept his evidence that he provided clear direction to Inspector Manj to "leave it alone", then I must also accept that when provided with subsequent information that Inspector Manj was in fact failing to follow that direction, he chose to ignore the resulting Code of Conduct contravention. Given this allegation in these proceedings and the intensity of his testimony against Inspector Manj on the witness stand, this doesn't seem likely. Therefore, I am not persuaded that the evidence he provided in relation to providing a specific direction to Inspector Manj to cease and desist is reliable.

[24] Where it differs from that of Chief Superintendent Mehdizadeh and Chief Superintendent Reimer, I prefer the testimony of Inspector Manj on what occurred during this meeting. In cases such as this, where there is conflicting testimony, it is necessary to assess the evidence in accordance with the Supreme Court of Canada decision in *F.H. v McDougall*, [2008] 3 SCR 41 [*McDougall*], in which the Court said, at paragraph 86:

However, in civil cases in which there is conflicting testimony, the trial judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the

important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case. W.(D.) is not an appropriate tool for evaluating evidence on the balance of probabilities in civil cases.

[25] The Ontario Court of Appeal followed up on those statements in *Law Society of Upper Canada v Neinstein*, 2010 ONCA 193, at paragraphs 21 and 22:

[21] The appellant's argument that the three-step approach in W.(D.), or its purposive equivalent, must be used in assessing conflicting evidence in non-criminal cases was put to rest in McDougall, a decision rendered after the Divisional Court released its reasons in this case. [...] In the Supreme Court of Canada, the court unanimously concluded that a W.(D.) type analysis was inappropriate in a civil case. [...]

[22] McDougall has direct application to this case. The Hearing Panel was required to determine whether the allegations were made out on the balance of probabilities. In doing so, the Hearing Panel was required to consider the totality of the evidence and to make credibility assessments in the context of the totality of the evidence. As in McDougall, a finding by the Hearing Panel that the complainants were credible could be determinative of the outcome. In light of McDougall, the Hearing Panel's application of a modified W.(D.) analysis was inappropriate to the inquiry it was required to make. [...]

[26] Given my findings with the respective testimony of the two Conduct Authority witnesses and that of Inspector Manj, and applying the test presented in *McDougall*, I prefer the testimony of Inspector Manj on this issue and I find that the Conduct Authority has failed to establish on a balance of probabilities the first required element of this contravention. It is clear that the matter was discussed and that Chief Superintendent Mehdizadeh and Inspector Manj argued about whether the relationship was one that needed to be reported pursuant to policy. However, it is anything but clear that an order or direction was provided to Inspector Manj during that discussion. Therefore, Allegation 3 cannot be established.

ALLEGATION 6

[27] Allegation 6 reads as follows in the *Notice of Conduct Hearing*:

Allegation 6

On or between July 20, 2016, and August 13, 2016, at or near Lloydminster in the Provinces of Alberta and Saskatchewan, Inspector Sukhjit MANJ failed to

be diligent in the performance of his duties and the carrying out of his responsibilities, including taking appropriate action to aid any person who is exposed to potential, imminent or actual danger, contrary to section 4.2 of the Code of Conduct of the Royal Canadian Mounted Police.

Particulars of the contravention

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) and posted at the Lloydminster RCMP Detachment in “K” Division as the Officer In Charge (“OIC”).
2. Ms. [D.R.] was a municipal employee at the Lloydminster RCMP Detachment. Your spouse Cpl. Tammy Hollingsworth (“Cpl. Hollingsworth”) was close personal friends with Ms. [V.F.]. Together with Cpl. Hollingsworth you deliberately decided to become involved in [Ms. V.F.]’s personal marital issues. [Ms. V.F.] was the estranged spouse of [Constable F.]. [Constable F.] is the RCMP dog handler posted to Lloydminster Detachment and supervised by Sergeant Sarah Knelsen.
3. [Constable F.] was residing in a rented room on the property of Mr. [G.M.] and Ms. [D.M.]. The underlying motive as to why you purposefully became involved in the private affairs of [Constable F.] and Ms. [D.R.] was that you simply could not accept that he and Ms. [D.R.] were involved in a close private relationship. Additionally, you believed that Ms. [D.R.] had a professional obligation to report her personal relationship with [Constable F.] to you as the OIC of the Detachment. When Ms. [D.R.] refused to acknowledge to you that she was in fact in a personal relationship with [Constable F.], you became obsessed with gathering evidence to expose the relationship.
4. Cpl. Hollingsworth and [Ms. D.M.] devised an elaborate plan for [Ms. V.F.] and [Ms. D.M.] to meet in-person. On July 20, 2016, [Ms. D.M.] sent Cpl. Hollingsworth a text message to instruct [Ms. V.F.] to drive to the [Mr. G.M. and Ms. D.M.] property so that she could personally observe a red truck and its driver – believed to be Ms. [D.R.] - at the rented residence of [Constable F.]. The details of this discussion are contained in a multitude of text messages. [Ms. V.F.] did attend to the [Mr. G.M. and Ms. D.M.] property and a physical confrontation occurred between [Ms. V.F.] and [Constable F.]. You became aware of all aspects of this physical confrontation including having the opportunity to discuss first hand with the victim of the assault – [Ms. V.F.] – at your residence.
5. Following the physical confrontation [Ms. V.F.] attended to your personal residence and proceeded to relate to you the complete details as to what had taken place. You were presented with overwhelming evidence including a visible physical injury to the elbow of [Ms. V.F.] along with knowledge of third party witnesses being present to the confrontation. You failed to be diligent in the performance of your duties and the carrying out of your responsibilities, including taking appropriate action to aid [Ms. V.F.] who had been exposed to actual danger. You further failed to

properly address the genuine fear held by [Ms. V.F.] that [Constable F.] might later come uninvited to [Ms. V.F.]’s personal residence. Your failure to be diligent in your duties occurred despite the fact that you are a highly trained police officer and also the OIC of Lloydminster Detachment.

6. In addition to failing to ensure that what had occurred on the [M. G.M. and Ms. D.M.] property was properly and thoroughly investigated by appropriate RCMP personnel, you deliberately obstructed the matter by informing [Ms. V.F.] that she was in the wrong and that it was her actions which might very well be investigated if the matter were to be reported to the authorities. This position completely ignores the indisputable fact that the whole physical confrontation was a planned “set up” and that it never would have occurred but for the actions of yourself, Cpl. Hollingsworth and [Ms. D.M.].
7. You spoke by telephone with [Ms. D.M.] the evening of July 20, 2016. [Ms. D.M.] informed you that she believed [Constable F.] had assaulted [Ms. V.F.] on his property. You took no steps to ensure that [Ms. D.M.] filed a criminal complaint to police about this incident. You took no steps to ensure that [Mr. G.M.] was properly interviewed. In fact [Ms. D.M.] was concerned that any complaint would not be taken seriously and might be covered up as part of an “old-boys’-club” attitude. You failed to address this concern with [Ms. D.M.].
8. You attempted to justify your inaction by suggesting that you were leaving the detachment and would soon be on holidays. This position is directly contrary to your duties and responsibilities as an experienced senior member of the RCMP who oversaw the actions of every employee at the Lloydminster Detachment.

[Sic throughout]

Analysis

[28] In order to properly assess this allegation, a review of the RCMP Violence in Relationships policy is necessary. Everyone, from the initial Code of Conduct Investigator in this matter to the Conduct Authority who initiated the Conduct Hearing, seems to have accepted as fact that the July 20, 2016, incident fell under that policy and that Inspector Manj was required to ensure a complete and exhaustive investigation was conducted, which would have resulted in an assault charge against Constable F.. The policy is contained in the *Operational Manual*, Chapter 2.4, and it reads as follows:

1. Definitions

1. 1. Violence in Relationships means the use of abusive behaviour by an individual in a relationship to control and/or harm the other individual in the relationship, including, but not limited to, different forms of physical neglect and/or emotional abuse. For forms and types of violence, refer to the Department of Justice website.

1. 2. Relationships means current or previous relationships, including but not limited to: spouse, intimate partner, common-law partner, or dating partner.

1. 3. Abuse means violence, threats of violence, or other criminal acts which may include, but are not limited to: criminal harassment, physical abuse, sexual abuse, psychological abuse, or emotional abuse.

1. 4. Community Partners (Community Resources) means entities in the community responsible for joining together to foster effective intervention and prevention of violence/abuse in relationships, including but not limited to: law enforcement agencies, prosecutors, parole and probation officers, advocacy organizations, social service agencies, adult and child protective services, clergy, educators, government agencies, animal welfare organizations, and businesses and/or employers.

1. 5. Protection order means a non-contact condition or other court order issued for the purpose of preventing violent or threatening acts or harassment against, direct or indirect contact or communication with, or physical proximity to, another person. This includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or awaiting/during litigation of another order during a separate proceeding, so long as the order was issued in response to a complaint, petition, or motion filed by, or on behalf of, a person seeking protection.

1. 6. Self-defence means certain legal circumstances under which persons may use a reasonable amount of force to protect themselves, their property or another individual. Their actions are based on the actual belief that they are, their property is, or another individual is, in imminent danger, coupled with reasonable grounds. **If force has been legally used in self-defence under the law, there is an absolution of guilt or culpability, according to Sec. 34-35, CC.**

1. 7. Safety Plan means a personalized, practical plan that is designed to aid in keeping an individual safe, including but not limited to: transporting the victim to a safe place, contacting a friend or family member, the use of code words, and referrals to community partners. As the victim's needs vary throughout the investigation, note that safety plans can be modified/enhanced to meet the needs of the client.

2. General

2. 1. Violence/abuse in relationships investigations are a high priority and will be thoroughly investigated and handled expeditiously, maintaining the safety of those involved.

2. 1. 1. In determining the appropriate course of action, consider all the circumstances, including but not limited to: allegations of aggression, history, pattern of abuse, frequency/escalation of violence in the relationship, the presence of children, the use of weapons, the presence of pets, and safety planning.

2. 1. 2. A comprehensive list of investigative aids can be found in the Violence/Abuse in Relationships Investigational Aids - Resource Guide (00004081-WBT-00006084) located in Agora.

2. 2. Police may enter private dwellings, without a warrant, in response to distress calls to protect life. Refer to ch. 1.1. First Response Investigations and R. v. Godoy - SCC 1999.

2. 3. Members should be familiar with

2. 3. 1. the CC,

2. 3. 2. the Canadian Victims Bill of Rights, and

2. 3. 3. provincial or territorial legislation relating to violence/abuse in relationships.

2. 4. An injury resulting from a person acting in self-defence is neither abuse, nor a crime. Refer to Sec. 34-35, CC.

2. 5. If the accused is an RCMP member, refer to ch. 54.3. Responsibility to Report.

[Emphasis added]

[29] RCMP policy confirms what the law says, an injury resulting from a person acting in self-defence under section 35 of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*], is neither abuse nor a crime; there is no criminal culpability in preventing a trespasser from entering your dwelling, so long as you use reasonable force in doing so. Section 35 of the *Criminal Code* reads as follows:

35. (1) A person is not guilty of an offence

(a) they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds is in peaceable possession of property;

(b) they believe on reasonable grounds that another person

(i) is about to enter, is entering or has entered the property without being entitled by law to do so,

[...]

(c) the act that constitutes the offence is committed for the purpose of

- (i) preventing the other person from entering the property, or removing that person from the property, or

[...]

- (d) the act committed is reasonable in the circumstances.

[30] In this case, it is clear that Constable F. was acting in defence of his property pursuant to section 35 of the *Criminal Code*. His estranged wife, Ms. V.F., was an uninvited trespasser to the property intent on barging past him into his home to see who was present. He grabbed her around the arms as she attempted to do so and removed her. During that incident, her elbow was banged either on the doorway or on the mirror of the truck parked nearby, causing a small scratch which later turned into a bruise.

[31] Contrary to the position taken by the Code of Conduct Investigators and by the Conduct Authority, there is no additional duty required by policy to further investigate a matter in these circumstances. Policy confirms that, in the circumstances, Constable F.'s actions do not meet the definition of violence or abuse; policy further confirms that section 35 of the *Criminal Code* is a complete defence to an assault charge that might otherwise result from the non-consensual physical force applied to the trespasser.

[32] A police officer must have reasonable and probable grounds to believe that an offence has been committed before he or she can swear an information. If there is an obvious defence to a potential charge that is being considered, that must be taken into account in determining whether to lay a charge and whether it is necessary to continue an investigation. Police officers have considerable discretion in both deciding whether to lay a charge and in deciding how much time and effort is to be put into an investigation (see *R v Beaudry*, 2007 SCC 5). The only limitation on the exercise of a police officer's discretion is that it must be exercised reasonably. First, the discretion must have been exercised honestly and transparently (subjectively reasonable). Second, the exercise of discretion must be justified upon consideration of the material circumstances and legal factors (objectively reasonable).

[33] In this case, Inspector Manj heard both sides of the story immediately after the incident occurred; directly from Ms. V.F. at his residence and indirectly from Constable F. through Sergeant Knelsen. There was little variance in their respective versions of events. He formed the opinion that

no offence had been committed by Constable F.. He felt that Ms. V.F. was clearly the uninvited trespasser who instigated the incident and caused the use of force to remove her or prevent her from entering the residence, and that no excessive force was used by Constable F. in doing so. Because the incident took place in another detachment area, Constable F. had already been advised to report the incident to Kitscoty Detachment if he so chose.

[34] The Conduct Authority's most credible and reliable witness in these whole proceedings was Sergeant Walker. He tried hard to be accurate in his testimony, acknowledged when he didn't recall something, and made appropriate concessions when confronted with contradictory evidence in cross-examination. In short, he attempted to be fair with his evidence and I prefer it to that of any of the other Conduct Authority witnesses. He indicated that, when this incident took place, he was already acting as the OIC and that it would be his responsibility to deal with it the next day when he and Constable F. were to meet and talk about what happened. He also stated that, in his view, there was nothing more to be done because Constable F. had done nothing wrong and neither he nor Ms. V.F. were interested in pursuing the matter any further.

[35] He did say in hindsight that he should have simply called Kitscoty Detachment to let them know what had occurred. While that may have been an appropriate courtesy to extend to a neighbouring detachment, for the reasons already stated, it was not required under law or policy given that both Ms. V.F. and Constable F. were advised to report the incident to Kitscoty Detachment if they so chose. In my view, Sergeant Walker was influenced to make that comment only because Inspector Manj was facing this allegation for failing to take further action himself. I believe that Inspector Manj, Sergeant Walker and Sergeant Knelsen all made the correct call on this incident. That view is somewhat supported by the fact that no charges were laid when the matter was reinvestigated months later when a public complaint was made. In any event, there was no further duty owed by any of them, in law or in policy, in these circumstances. Given that Inspector Manj was already on leave and Sergeant Walker was already Acting OIC at the time, it is a very big stretch to suggest that Inspector Manj specifically had any duty to ensure that the matter was further investigated.

[36] This addresses Allegation 6 in an overall sense, but the manner in which some of the Particulars were drafted requires specific comment.

[37] First of all, in Particular 5, it states:

You failed to be diligent in the performance of your duties and the carrying out of your responsibilities, including taking appropriate action to aid [Ms. V.F.] who had been exposed to actual danger. You further failed to properly address the genuine fear held by [Ms. V.F.] that [Constable F.] might later come uninvited to [Ms. V.F.]’s personal residence. Your failure to be diligent in your duties occurred despite the fact that you are a highly trained police officer and also the OIC of Lloydminster Detachment.

[38] Both those assertions completely ignore the fact that Ms. V.F. intentionally precipitated this whole incident. Regardless of how and why she ended up at Constable F.’s residence, she attempted to trespass, uninvited, into his home. If she was in any danger from Constable F. preventing her from entering his home, she put herself in that position.

[39] In addition, there is simply no basis in the evidence for the bald statement that Inspector Manj failed to “properly address the genuine fear held by [Ms. V.F.] that [Constable F.] might later come uninvited to [Ms. V.F.]’s personal residence” (presumably to do her harm). That assertion by the Conduct Authority ignores the evidence that Ms. V.F. was the aggressor in this situation and Constable F. was simply defending his property, which he was fully entitled to do in law. In order for there to be any validity to that assertion, there must be some reasonable basis for any fear held by Ms. V.F. of that eventuality actually occurring. There is nothing in the material that would point to a risk of Constable F. attending Ms. V.F.’s residence to do her harm. The evidence was actually to the contrary. The suggestion that Constable F. “might later come uninvited to [Ms. V.F.]’s personal residence” is groundless speculation and is not supported by the evidence.

[40] Particular 6 states that “you deliberately obstructed the matter by informing [Ms. V.F.] that she was in the wrong and that it was her actions which might very well be investigated if the matter were to be reported to the authorities”. The facts are that it was Ms. V.F. who attended to Constable F.’s residence uninvited and attempted to barge past him into his home in order to see who was there with him. In doing so, she may have committed a trespass under the provincial legislation or mischief under section 430(1)(d) of the *Criminal Code*, among other potential offences. Inspector Manj advising her of that fact does not constitute obstruction. It is a reasonable analysis of the situation and an accurate application of the law to the facts. Had the Conduct Authority undertaken that kind of analysis at the outset of this matter, some of these proceedings may have been avoided.

[41] In addition, it is further alleged in Particular 6 that “This position completely ignores the indisputable fact that the whole physical confrontation was a planned “set up” and that it never would have occurred but for the actions of yourself, Cpl. Hollingsworth and [Ms. D.M.]” There are two problems inherent with that assertion. First, it is inconsistent with Particular 4, where it indicates that “Corporal Hollingsworth and [Ms. D.M.] devised an elaborate plan for [Ms. V.F.] and [Ms. D.M.] to meet in person so that [Ms. V.F.] could see the red truck” that was parked at Constable F.’s residence. Second, no evidence was presented or referred to by the Conduct Authority at the *Conduct Hearing* to back it up.

[42] I understand that the Conduct Authority’s initial theory of the prosecution in this matter was that Inspector Manj orchestrated the July 20, 2016, incident between Ms. V.F. and Constable F. Both Chief Superintendent Mehdizadeh and (now) Staff Sergeant Knelsen made it very clear in their testimony that they believed that to be the case from the start. That theory survived the investigation and subsequent reviews, despite the lack of evidence to support it. However, it was the Conduct Authority’s own witnesses who clearly established the timeline of events on July 20, 2016, and the only reasonable finding to be made is that Inspector Manj wasn’t even aware of the incident between Constable F. and Ms. V.F. until after it took place. There was absolutely no evidence from any witness with any knowledge of the circumstances that he was responsible for orchestrating the incident.

[43] For all these reasons, Allegation 6 is not established.

ALLEGATION 4

[44] Allegation 4 reads as follows in the *Notice of Conduct Hearing*:

Allegation 4

On or between August 1, 2016, and August 13, 2016, at or near Lloydminster in the Provinces of Alberta and Saskatchewan, Inspector Sukhjot MANJ failed to act with integrity, fairness and impartiality, and did compromise or abuse his authority, power or position, contrary to section 3.2 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of the contravention

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) and posted at the Lloydminster RCMP Detachment in “K” Division as the Officer In Charge (“OIC”).
2. Ms. [D.R.] was a municipal employee at the Lloydminster RCMP Detachment. Your spouse Cpl. Tammy Hollingsworth (“Cpl. Hollingsworth”) was close personal friends with Ms. [V.F.]. Together with Cpl. Hollingsworth, you deliberately decided to become involved in [Ms. V.F.]’s personal marital issues. [Ms. V.F.] was the estranged spouse of [Constable F.]. [Constable F.] is the RCMP dog handler posted to Lloydminster Detachment and supervised by Sergeant Sarah Knelsen (“Knelsen”).
3. [Constable F.] was residing in a rented room on the property of Mr. [G.M.] and Ms. [D.M.]. The underlying motive as to why you purposefully became involved in the private affairs of [Constable F.] and Ms. [D.R.] was that you simply could not accept that he and Ms. [D.R.] were involved in a close private relationship. Additionally, you believed that Ms. [D.R.] had a professional obligation to report her private relationship with [Constable F.] to you as the OIC of the Detachment. When Ms. [D.R.] refused to acknowledge to you that she was in fact in a private relationship with [Constable F.], you took it personally and became obsessed with gathering evidence to expose the relationship.
4. You contacted Sgt. Knelsen by telephone after her return from Baton Rouge, Louisiana. In this conversation, you asked Sgt. Knelsen to go to the supervisor for Ms. [D.R.] – Doug Rodwell – and tell him words to the effect that: “I cannot work with Dayna, Dayna needs to be fired because she is a liar.” Sgt. Knelsen refused your request as she enjoyed working with Dayna and believed she was doing an excellent job.
5. You blamed Ms. [D.R.] for your transfer from Lloydminster Detachment. Prior to your transfer, you approached Sgt. Knelsen at work and informed her that: “I’m going to destroy Dayna. She’s destroyed my life.”

[Sic throughout]

Analysis

[45] As acknowledged by both parties, this is a he said/she said situation which turns on the credibility of Inspector Manj and Staff Sergeant Knelsen. I have many concerns with Staff Sergeant Knelsen’s evidence before me and the manner in which her initial statement was taken. I find the statement dated October 18, 2016, by Sergeant Morton to be leading and biased. Sergeant Morton admittedly strayed beyond the scope of the public complaint that he was investigating, he led her, he suggested answers to the questions he was asking, and he laid out his own conclusions and invited her to adopt them.

[46] A few examples to illustrate. At 12:13 of the audio recording, Sergeant Morton asked Staff Sergeant Knelsen to go through the RCMP Interpersonal Workplace Relationship policy with him. He read through the definitions and then asked her “If it’s the Office Manager and a Constable, does it fit into that definition?” She responded with “I would say it doesn’t.” To which he replied encouragingly: “Perfect!” At 27:00, he asked: “Why do you think that Suki chose not to follow the policy of the RCMP with regards to domestic violence investigations?” He then asked: “Am I exaggerating when I say it’s contrary to policy?” Not surprisingly, she then agreed that Inspector Manj’s actions were contrary to policy.

[47] Despite the fact that Staff Sergeant Knelsen is an experienced police officer, her evidence is susceptible to the power of suggestion like every other witness. Sergeant Morton’s invitation to adopt his view of the policy and the “fact” that Inspector Manj failed to follow that policy is entirely inappropriate. This approach is reflected throughout much of the statement. The manner in which he took the statement renders its contents unreliable. Worse, it taints her evidence before me.

[48] The statement is also illustrative of how premature conclusions may have been reached early on in this process (as evidenced and acknowledged by the testimony of Chief Superintendent Mehdizadeh before me) and encouraged by those conducting the investigation. The danger with all of this is that bias may continue through the prosecution unless those reviewing the matter down the line are completely impartial and objective in assessing the likelihood of establishing the allegations in a conduct hearing.

[49] However, there is more that prevents me from placing any reliance on Staff Sergeant Knelsen’s evidence. There are many external inconsistencies between her actions and her testimony, and internal inconsistencies within her testimony.

[50] While some of this does not directly relate to Allegation 4, it is relevant to assessing her overall credibility. I refer first to the notes she made about the events of July 20, 2016. On that date, one of her direct reports called her to tell her that he was involved in a physical altercation with his estranged wife. She listened to him and provided her opinion, she then called her OIC to inform him of what had happened. So what do her notes consist of?

[July 20, 2016] Wednesday

1830 Received call from [Constable F.] stating that D.R. had been at his house and his wife had come over irate, pushed her way past [Constable F.] yelling and screaming. [Constable F.] took [Ms. V.F.] by arms to keep her out of the house and placed her outside. I advised [Constable F.] to call Kitscoty RCMP just to have it recorded. However it was his choice. After the conversation with [Constable F.] I immediately called Insp. Suki Manj to advise him of the situation. Right when he answered the phone he said “what did he say.” I told him what [Constable F.] had told me about [Ms. V.F.] barging her way into the house and how he had to block her and take her arm to keep her out of the house. Insp. Manj already knew the details as he had spoken to someone but he did not say who.

Notes are taken by police officers to preserve their memory of the events for future reference and sometimes to protect themselves down the road when their actions are questioned. Anyone who has been a police officer for any length of time understands this. Staff Sergeant Knelsen is an experienced RCMP officer; at the time, she was a sergeant in charge of several different units. Her notes are interesting in that they contain statements made by her Inspector in response to what she has told him, akin to those a police officer would take from a suspect in the investigation of an offence. They appear to be made for the purpose of recording evidence against Inspector Manj as opposed to recording what happened between Constable F. and his estranged wife and what was done about it.

[51] It’s even more puzzling when you consider that Staff Sergeant Knelsen testified that she made her notes immediately after the phone calls, but it wasn’t until the next day that she came to the stunning realization that Inspector Manj must have orchestrated the incident between Constable F. and his estranged wife. She testified that she reached the conclusion that Inspector Manj had orchestrated the events of July 20, 2016, based on three different things that occurred that week. She indicated that, on Monday, July 18, 2016, Corporal Hollingsworth stated something to the effect that she thought Constable F. and Ms. D.R. were going to be found out soon. She also stated that earlier, on Wednesday, July 20, 2016, en route to the farewell luncheon being held for Inspector Manj and Corporal Hollingsworth, that Inspector Manj said he had a bad feeling. Finally, during the telephone conversation between herself and Inspector Manj, when she called him to tell him about what Constable F. had reported, he already knew what happened and he also said to her something to the effect of “people are going to say I had something to do with this, but I didn’t”. In terms of inconsistencies, it also needs to be noted that this alleged statement by Inspector Manj does not

appear in her notebook, despite its obvious relevance to the other things she recorded after speaking to him. Again, it's something that comes up for the first time, months later, in her statement to Sergeant Morton.

[52] Regardless, Staff Sergeant Knelsen thought about those three things and came to the conclusion the next day that Inspector Manj had set up the July 20, 2016 incident in order to out the relationship between Constable F. and Ms. D.R. She testified to being very upset by that realization and believing that his actions were outrageous. However, she kept that conclusion to herself until several weeks later, once Inspector Manj had left Lloydminster for his new posting. It was only then that she disclosed this, not to her supervisor so that the matter might be investigated, but only to her friend Ms. D.R.

[53] Staff Sergeant Knelsen also testified, as per Particular 5, that Inspector Manj told her that Ms. D.R. had destroyed his life and he was going to destroy her. However, again, she made no note of it and told no one. That testimony is curious when one considers the circumstances. This is her Inspector, who she has recently come to believe orchestrated the events of July 20, 2016, in order to out the infamous relationship and who declared that he is going to destroy her good friend's life. It's not until the public complaint is made and an investigation starts months later that this allegation is raised for the first time. It is also in this statement that, for the first time, she tells anyone about Inspector Manj's request for her to go to Doug Rodwell and tell him that she can no longer work with Ms. D.R. because she is a liar. In these circumstances, in this conflicted workplace at the time, most police officers would have appreciated the significance of both of those statements and either reported those conversations to someone in authority or at least made detailed notes of them. It's even more puzzling when you consider that, according to her own testimony, there was no relationship remaining between her and Inspector Manj to worry about preserving.

[54] I don't believe Staff Sergeant Knelsen is a credible witness in these proceedings and I don't find her evidence reliable. Contrary to good police work, I believe she jumped to unsubstantiated conclusions. I also believe she picked sides in a dispute between her good friend, Ms. D.R., and Inspector Manj. Those things coloured her account of events and her recollection.

[55] In the absence of any reliable evidence to prove that these statements were made, I prefer Inspector Manj's reasonable and more reliable explanation of what he said to her. He testified that he

told Staff Sergeant Knelsen and others the same thing that he told Ms. D.R. when she called him on the morning of July 21, 2016. He told her that Ms. D.R. had ruined his career with the RCMP and that the next time he spoke to Ms. D.R. it would be through his lawyer. He also testified that he has followed through with that intention by launching a lawsuit against her for defamation.

[56] Given those credibility findings and applying the previously noted test in *McDougall*, I find that the Conduct Authority has failed to prove on a balance of probabilities that those statements were made or intended as alleged. Therefore, Allegation 4 is not established.

ALLEGATION 7

[57] Allegation 7 reads as follows in the *Notice of Conduct Hearing*:

Allegation 7

On or about July 3, 2017, at or near Chilliwack in the Province of British Columbia, Inspector Sukhjit MANJ failed to provide a complete and accurate account pertaining to the carrying out of his responsibilities, the performance of his duties, and the actions of other employees contrary to section 8.1 of the *Code of Conduct of the Royal Canadian Mounted Police*.

Particulars of contravention

1. At all material times you were a member of the Royal Canadian Mounted Police (“RCMP”) and posted at the Lloydminster RCMP Detachment in “K” Division as the Officer In Charge (“OIC”).
2. Ms. [D.R.] was a municipal employee at the Lloydminster RCMP Detachment. Your spouse Cpl. Tammy Hollingsworth (“Cpl. Hollingsworth”) was close personal friends with Ms. [V.F.]. Together with Cpl. Hollingsworth you deliberately decided to become involved in [Ms. V.F.]’s personal marital issues. [Ms. V.F.] was the estranged spouse of [Constable F.]. [Constable F.] is the RCMP dog handler posted to Lloydminster Detachment and supervised by Sergeant Sarah Knelsen (“Knelsen”).
3. [Constable F.] was residing in a rented room on the property of Mr. [G.M.] and Ms. [D.M.]. The underlying motive as to why you purposefully became involved in the private affairs of [Constable F.] and Ms. [D.R.] was that you simply could not accept that he and Ms. [D.R.] were involved in a close private relationship. Additionally, you believed that Ms. [D.R.] had a professional obligation to report her personal relationship with [Constable F.] to you as the OIC of the Detachment. When Ms. [D.R.] refused to acknowledge to you that she was in fact in a personal

relationship with [Constable F.], you became obsessed with gathering evidence to expose the relationship.

4. On July 3, 2017, you provided a voluntary warned statement to Sergeant John Lovie in Chilliwack. Your voluntary statement included false and misleading information:

- a) You falsely claimed that Ms. [D.R.] had “full authority” over [Constable F.] as you alleged that she looked after all of the scheduling of [Constable F.] when in actual fact he reported to Sgt. Knelsen and moreover you previously acknowledged that you addressed [Constable F.] working far too many hours with S/Sgt. Weinisch: “She’s a manage, she had full authority to make, she, she looked after his financials. She looked after his TEAM, all his scheduling, everything. She did it all.”
- b) You falsely stated that you never tried to uncover the relationship between [Constable F.] and Ms. [D.R.]: “So, so if you believe that I tried to uncover their alleg, their thing. I never once did.”
- c) You falsely implied that you were completely uninvolved in the physical confrontation that occurred between [Ms. V.F.], [Constable F.] and Ms. [D.R.], in your own misleading words: “So I had nothing to do with it.”
- d) You falsely stated that you did not know that your spouse Cpl. Hollingsworth was communicating with [Ms. D.M.] and [Mr. G.M.] about the July 20, 2016, physical confrontation, when in actual fact you too were in communication via texting with [Ms. D.M.]: “So, no, I didn’t know. I didn’t have a crystal ball. I didn’t know [Ms. D.M.] and [Mr. G.M.] had, had been communicating with Tammy and, any of that stuff.”
- e) You purposefully downplayed your level of knowledge of what was occurring between [Constable F.], [Ms. V.F.] and [Ms. D.M.] and made the following misleading statement: “Look into the, him being involved in the, driving cars and stuff. That’s all I know about that stuff.”
- f) You falsely implied that Sgt. Gerry Walker already knew about the physical confrontation of July 20, 2016, on the [Mr. G.M. and Ms. D.M.] property prior to when you telephoned him: “That night I’m on the phone with Gerry Walker. I get a call from Sarah Knelsen saying, and she says that I knew it was her. I, I, my, it was caller ID block, I had my work phone. I’m on the phone with Gerry talking about this. He already knew about it. She tells me that Mark phoned. So I get off the phone with Gerry.”
- g) You falsely stated that you directed Sgt. Knelsen to go speak to the [Mr. G.M. and Ms. D.M.] as witnesses to the physical confrontation: “I go, “the [Mr. G.M. and Ms. D.M.] are there. You need to talk to

them to find out what”, was I supposed to go talk to the [Mr. G.M. and Ms. D.M.]? So I assigned my Sergeant to fuckin’ do this. And whatever she did, I told her I’m leaving, they all knew I was leaving, they knew I was away from the cell phone.”

- h) You falsely implied that you were the one who suggested to Sgt. Knelsen that [Constable F.] should be contacting Kitscoty RCMP if he wants to lay a complaint, when in actual fact it was Sgt. Knlesen who raised this with you.

[Sic throughout]

Analysis

[58] In his submissions to the Conduct Board, the Conduct Authority conceded that if none of the other allegations were found to be established by the Conduct Board, then Allegation 7 could not stand. Given that concession and my findings with respect to Allegations 3, 4 and 6, I find that Allegation 7 has also not been established.

FINAL COMMENT

[59] I feel obliged to make one more comment on the manner in which these proceedings were conducted. In his closing submission, the Member Representative commented on the evidence being relied on by the Conduct Authority and asked the question: “Why are we here?” The Conduct Authority Representative chose to respond to that question in his final reply with “Each of these allegations has a conflict in the evidence, that’s why we’re here.” With all due respect to the Conduct Authority and the Conduct Authority Representative, that is not an appropriate test to either initiate a Conduct Hearing or to continue such proceedings.

[60] I will remind Conduct Authorities and their representatives that they have the role of prosecutor in these proceedings. With that role comes certain responsibilities that were dealt with by the Prince Edward Island Court of Appeal in *Griffin v Summerside (City)*, [2008] PEIJ No 46 (leave to appeal to the Supreme Court of Canada refused). In that case, the plaintiff, Deputy Director of Police Services, was successful in his action against Arsenault, the Director of Police Services, for malicious prosecution in the context of police discipline. The Court of Appeal held that Arsenault did not have grounds to lay disciplinary charges against Griffin and stated at page 8:

[...] It is now well settled that professional disciplinary bodies and individuals with the authority to initiate proceedings before such bodies do not have immunity from suits for malicious prosecution. [...]

[61] It goes without saying that if a prosecutor in disciplinary proceedings can be held liable for malicious prosecution like a prosecutor in criminal proceedings, then his or her ethical responsibilities are similar to those of a prosecutor in criminal proceedings, as characterized by the Supreme Court of Canada in *Boucher v R.*, [1955] SCR 16, at 23-24. I find further support for that position at paragraph 1.n. of the *RCMP Representative's Code of Ethics*:

n) when engaged as a representative of the conduct authority, not primarily seek to obtain a finding of a contravention of the Code of Conduct, but to see that justice is done;

[62] In the context of RCMP conduct hearings, that means that the Conduct Authority must continually assess the evidence to ensure there is a reasonable likelihood of a finding of a contravention of the Code of Conduct. If there is not, then the prosecution must be discontinued. It is inappropriate for a Conduct Authority to avoid that responsibility and instead leave it to the Conduct Board to make the inevitable finding.

CONCLUSION

[63] I find that the Conduct Authority has failed to establish on a balance of probabilities any of the four allegations against Inspector Manj. Therefore, all four allegations are dismissed. The parties are reminded that section 45.11 of the *RCMP Act* sets out the provisions to appeal this decision and the rules governing such an appeal are contained in the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289.



Gerald Annetts
Conduct Board

November 8, 2019

Date