Federal Court Cour fédérale

Date: 20140121

Docket: T-723-13

Citation: 2014 FC 67

Ottawa, Ontario, January 21, 2014

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

SHAWN P. ELHATTON

Applicant

and

ATTORNEY GENERAL OF CANADA and APPROPRIATE OFFICER "J" DIVISION OF THE ROYAL CANADIAN MOUNTED POLICE

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Corporal Elhatton, is a member of the Royal Canadian Mounted Police [RCMP"] He seeks judicial review of the decision rendered on March 18, 2013 by the Commissioner of the RCMP, Robert W. Paulson, (the "Commissioner") which sanctioned the applicant and demoted him from Corporal to Constable. For the reasons that follow, the application is dismissed.

Background

[2] The applicant's conduct which has resulted in disciplinary proceedings, including the decision now under review, dates back to 2002.

[3] In 2003, the applicant was served with a first Notice of Disciplinary Hearing with respect to three allegations which occurred in 2002 and 2003. In 2005, the applicant was served with a second Notice of Disciplinary Hearing with respect to three allegations which occurred between 1993 and 1998.

[4] Several of the allegations involve the applicant's ex-wife, Constable Elhatton. The references to Corporal Elhatton refer to the applicant and references to Constable Elhatton refer to the applicant's ex-wife, who was his wife at the time of the earlier incidents.

[5] The six allegations were described in the decision and are summarised below. The allegations were heard together by an Adjudication Board (the "Board") in June and August 2005:

- **Allegation #1** (mitten incident) (December 2002): when the applicant's ex-wife, RCMP Constable Elhatton, came to pick up their children, the applicant yelled at her and her fiancé using "offensive, insulting and vulgar language". The applicant also shook his finger at her, made an obscene gesture and "threw a pair of mittens at her, striking her in the chest". There was a marked RCMP vehicle in front of the house at this time;

- **Allegation #2** (office incident) (February 2003): during a meeting, the applicant was informed that Sergeant F (Sgt F) would be his supervisor. The applicant stated that this was "unconscionable". After the meeting he went to the office of the District Commander

[the "DC"]. The applicant "used offensive and insulting language toward Sgt F, a co-worker and member superior to [him] in rank and authority, and treated him in an aggressive and disrespectful manner" by pointing his finger in Sgt F's face and telling him he was "spineless" and "gutless";

- **Allegation #3** (disobeying a lawful order incident) (July 2003): the applicant failed to obey the order of the DC to attend an appointment with a psychologist relating to anger management counselling;

- **Allegation #4** (car wash incident) (between February 1993 and August 1996): the applicant struck his wife, Constable Elhatton, on the leg with a closed fist;

- **Allegation #5** (gun incident) (between February 1993 and August 1996): during an argument the applicant grabbed his wife's hand and placed it around his service firearm and pointed the firearm to his head saying, "If you hate me so much, just shoot me, shoot me now". His wife told him to put down the firearm and he did;

- **Allegation #6** (vacation incident) (between May and October 1998): during a vacation with his wife and his children, the applicant grabbed his wife by the arm and pounded on her forearm four or five times.

[6] These same allegations were described in a similar way in *Elhatton v Canada (Attorney General)*, 2013 FC 71, [*Elhatton 2013*].

[7] The Adjudication Board's decision dated September 6, 2005 directed the applicant to resign within 14 days or be dismissed.

[8] The applicant appealed the sanction and the Board's findings with respect to allegations 3, 4, 5 and 6 to the Commissioner of the RCMP. Allegation 1 (mitten incident) and allegation 2 (office incident) were not appealed.

[9] Before considering an appeal, the RCMP External Review Committee [the "ERC"] an independent civilian body, reviews the Board's decision and provides a non-binding recommendation to the Commissioner.

[10] The ERC considered additional submissions, including an allegation by the applicant that his former wife had perjured herself before the Board. This allegation related to her misstatement of the date she had first met her fiancé and was not about the specific incidents.

[11] The ERC made recommendations to the Acting Commissioner, Rod Knecht, on February 10, 2009. Among other recommendations, the ERC recommended that the Acting Commissioner allow the appeal with respect to allegation 3 (disobeying a lawful order incident); order a new hearing with respect to allegations 4-6 (car wash, gun and vacation incidents); and take into account the information regarding the perjury allegations. The ERC recommended that the sanctions for allegations 1 and 2 (mitten and office incidents) should be a reprimand and forfeiture of three days pay for each allegation.

[12] The Acting Commissioner, Rod Knecht, accepted the Board's findings regarding allegations 3-6, but not regarding the sanction for allegations 1 and 2.

[13] On April 29, 2011 he directed the applicant to resign within 14 days or the applicant would be dismissed.

[14] The applicant sought judicial review of the April 29, 2011 decision and raised only one issue: whether the Acting Commissioner erred in failing to find that the allegations of perjury required that a new hearing before the Board be constituted to consider the allegations of misconduct.

[15] On January 25, 2013 this Court allowed the Judicial Review of the decision of the Acting Commissioner (*Elhatton 2013*).

[16] Justice Rennie held that the Acting Commissioner, who concluded that his assessment of the credibility of the applicant's ex-wife did not change based on the new evidence presented, was not in a position to make such credibility determinations. Justice Rennie found that allegations 4, 5 and 6 had been sustained on the testimony of the applicant's ex-wife. Justice Rennie set out two options for the Commissioner: remit allegations 4, 5 and 6 to a newly constituted board, or reconsider and vary the decision in respect of the sanction on the basis that allegations 3, 4, 5 and 6 had not been established; in other words, only on the basis of allegations 1 and 2 which were established (*Elhatton 2013* at para 74).

[17] Commissioner Robert Paulsen considered the two options and noted that allegation 3 had been found to have not been established and that allegations 4, 5 and 6 had occurred over 15 years ago and that the disciplinary proceedings had been lengthy. Therefore, it was not reasonable or efficient to remit these allegations to a new Board.

[18] The Commissioner reconsidered the sanction for allegations 1 and 2 and rendered his decision on March 18, 2013. This decision is now the subject of judicial review.

Decision under review

[19] The sole issue considered by Commissioner Paulsen was the appropriate sanction for allegations 1 and 2. The Commissioner disagreed with the ERC's recommendation that the applicant be given a reprimand and forfeiture of three days pay for each of the allegations. In his reasons he found that the ERC did not give sufficient consideration to the applicant's prior misconduct of assaulting a prisoner which demonstrated a lack of discipline and self-control and for which he was formally sanctioned by the Board in 1999 and convicted of a criminal offence.

[20] The Commissioner noted that, in his opinion, the applicant had still not taken responsibility for his prior misconduct or made serious attempts toward rehabilitation. The Commissioner noted the testimony of the DC that management had lost confidence in the applicant.

[21] The Commissioner noted that the applicant continued to minimize the facts surrounding his previous misconduct relating to the assault of a prisoner. He also noted that the Board that dealt with

this incident in 1999 had referred to the seriousness of the applicant's conduct and cautioned the applicant that any recurrence would invite the most serious of sanctions.

[22] The Commissioner considered that allegations 1 and 2 both involved a lack of self control and discipline and found that this demonstrated a progressive pattern of inappropriate behaviour that showed the applicant did not learn from his past discipline and did not appreciate the seriousness of his actions and the importance of the RCMP's core values.

[23] The Commissioner added that both incidents showed that the applicant failed to exercise sound judgment and communicated in a disrespectful and aggressive manner on and off duty. The Commissioner added that the applicant's actions showed poor ethical behaviour and a poor example of leadership. The Commissioner referred to the RCMP's expectations of experienced members holding the rank of corporal and their need to set an example both within the RCMP and in public.

[24] The Commissioner stated that his decision was not based on the applicant's technical competence but on the other factors he described regarding the applicant's lack of judgment, responsibility, leadership, promotion and demonstration of RCMP values.

[25] The Commissioner concluded that the applicant's conduct undermined his ability to lead and act as a role model and that continuing in the force at his present rank would not be appropriate.

[26] Based on the overall history, the Commissioner concluded that progressive discipline was required and that demotion was an appropriate sanction.

[27] The Commissioner imposed the following sanctions:

1. demotion in rank, from Corporal to Constable […];
2. recommendation for a transfer to a detachment other than Oromocto, New Brunswick […];
3. direction to undergo a health assessment; and
4. recommendation to undergo anger management counselling.

[28] The Commissioner also noted that if the applicant found himself before an Adjudication Board again, he would likely face dismissal.

The issues

[29] The applicant submits that the Commissioner should have ordered a new hearing before a newly constituted Board rather than impose discipline for allegations 1 and 2 and that his failure to do so is a breach of procedural fairness. The applicant acknowledges that allegations 1 and 2 were not appealed but due to the unresolved allegations of perjury with respect to the applicant's ex-wife, the allegations of misconduct can not be the basis for the sanctions imposed.

[30] The applicant also argues that allegations 1 and 2 are now over 10 years old and should not now be pursued due to the lapse of time.

[31] The applicant also submits that the decision was unreasonable because the severe sanction imposed is not supported by the evidence nor is it consistent with other sanctions imposed for similar conduct.

Standard of review

[32] It is well-accepted that "[w]hether the Commissioner came to an appropriate decision as to the sanction to be imposed […] is subject to a standard of reasonableness." (*Pizarro v Canada (Attorney General)*, 2010 FC 20, [2010] FCJ No 23 [*Pizarro*] at para 48) As Justice Phelan stated in *Pizarro*, "[p]revious decisions have recognized the greater expertise the Commissioner would have in this regard coupled with the privative clauses, the largely fact-driven nature of the proceeding and the highly discretionary nature of the decision" (at para 48; referring also to *Kinsey v Canada (Attorney General)*, 2007 FC 543, 313 FTR 88 at paras 40-46).

[33] Similarly, Justice Rennie stated in *Elhatton 2013* at paragraph 29:

> The standard of review of the Commissioner is reasonableness. The Commissioner is entitled to considerable deference for both his determination on the Code of Conduct allegations and the appropriate sanction. The Commissioner has specialized expertise on the realities of policing and what is required to maintain the integrity and professionalism of the RCMP: *Gill v Canada (Attorney General)*, 2007 FCA 305.

[34] Justice Rennie emphasized at paragraph 30 that deference is owed:

> The Commissioner has vast experience in assessing the exigencies of policing, including the appropriate use of force and what behaviour in officers' personal and professional lives may reflect on the professionalism of the RCMP. It is the Commissioner who is accountable for the reputation of the RCMP - not the Court.

[35] The standard of review for issues of procedural fairness is correctness.

Should the Commissioner have referred allegations 1 and 2 to a newly constituted Board for adjudication?

[36] The applicant submits that although Justice Rennie provided two options for the Commissioner in allowing judicial review - that allegations 4, 5, and 6 be remitted to a newly constituted board or that the sanctions be reconsidered on the basis that allegations 3, 4, 5 and 6 had not been established - these comments were *obiter,* in other words not binding. The applicant submits that Commissioner Paulsen's decision to determine the sanctions for allegations 1 and 2, which were the remaining allegations, was a breach of procedural fairness because the applicant should have had the opportunity to respond to those allegations again and cross examine the witnesses, particularly because of the "sceptre" or "shadow" of perjury cast on the testimony of his ex-wife.

[37] The applicant argues that the Acting Commissioner had found that the allegation of perjury was substantiated, yet all the findings of fact were made in the context of that testimony. He submits that whether or not there was actual perjury, the findings of fact were likely based on or influenced by at least the perception of perjury and, therefore, the only option for the Commissioner was to convene a new Board of Adjudication to consider the allegations and provide an opportunity for the applicant to cross-examine the witnesses.

[38] The applicant also submits, with respect to the sanction, that the Commissioner placed too much weight on the facts of allegation 1 which was based on the evidence of the applicant's ex-wife.

[39] The respondent submits that there is only one issue for this judicial review and that is the reasonableness of the sanctions imposed for allegations 1 and 2. These allegations have been established and were not appealed. The applicant can not now seek to challenge these allegations. The respondent also submits that there was no finding of perjury by Justice Rennie.

There was no breach of procedural fairness

[40] I do not agree that the options provided by Justice Rennie at paragraph 74 of *Elhatton 2013* were *obiter*. The two options were a key part of the decision, although the options were phrased in a permissive manner:

> The Commissioner, may, in the exercise of the powers available to him under subsection 45.16(2) and paragraph 45.16(3)(b) of the *Act*, remit Allegations 4, 5 and 6 to a newly constituted Board. The Commissioner may also reconsider and vary his decision in respect of sanctions on the basis that Allegations 3, 4, 5 and 6 have not been established. [Emphasis added]

[41] The Commissioner was guided by the decision and chose to focus on the sanctions for the allegations which had been established, i.e. allegations 1 and 2.

[42] In the decision of April 2011, the Acting Commissioner found that the Board did not err in finding that the conduct of both incidents was disgraceful and brought discredit to the RCMP contrary to subsection 39(1) of the *Royal Canadian Mounted Police Regulations*, 1988 (SOR/88-361) (the "*Regulations*").

[43] Commissioner Paulsen's reliance on the two established allegations as the basis for the sanction imposed does not constitute a breach of procedural fairness. Allegations 1 and 2 are no

longer allegations as they have been established and the findings of the Adjudication Board with respect to the allegations were not appealed.

[44] The only issue before the Commissioner was the appropriate sanction on the basis of the established misconduct; the mitten incident and the office incident.

[45] With respect to the applicant's submissions about the shadow of perjury, Justice Rennie noted in *Elhatton 2013* at paragraph 71 that "whether Cst. Elhatton in fact gave perjured testimony remains unproven."

[46] The respondent submits that Justice Rennie did not make a finding of perjury. This is true, as that is not the role of the Court on judicial review. However, Justice Rennie expressed concern about the reliance on testimony which had not been subjected to cross examination, but this focussed on allegations 4, 5 and 6:

> [71] Before concluding, it should be noted that the question whether Cst. Elhatton in fact gave perjured testimony remains unproven. The applicant was denied a chance to establish that point. The fact that no criminal charges were laid is not determinative. The dual prosecutorial test of a reasonable prospect of conviction and it being in the public interest to prosecute have no bearing on whether the credibility of Cst. Elhatton, when confronted with the contradictory evidence, remained intact.
>
> [72] Secondly, the Commissioner received as fresh evidence a "joint affidavit", signed by Cst. Elhatton and her fiancé. Joint affidavits are unknown to our legal system. There are many good reasons for this; they inherently reflect a collusion between two separate and distinct witnesses and interfere with the truth-seeking function of cross-examination. In respect of this particular affidavit, the affiant deposes that it was based on personal knowledge when it is manifestly not; rather it is replete with egregious hearsay.

> [73] The evidence in the joint affidavit was relied on to explain the outcome of the perjury investigation, and to support the conclusion that the credibility of Cst. Elhatton would be unaffected. While the Commissioner is not bound by strict rules of evidence, reliance on the joint affidavit to conclude that her credibility would be unaffected falls short of the *Dunsmuir* standard of cogency. It does not follow that because no charges were laid her credibility in respect of her testimony before the Board would be unaffected.

[47] Ideally the Adjudication Board should have resolved the issue of when the applicant's ex-wife, Constable Elhatton, actually met her fiancé and whether her alleged misstatement had any bearing on the credibility of her testimony regarding the descriptions of the incidents.

[48] Allegation 1 was based, at least in part, on her testimony. However, allegation 1 is no longer an allegation. It was established.

[49] Allegation 2, which is a serious matter on its own, despite the applicant's attempt to characterise it as minor, had nothing to do with the testimony of his ex-wife. The incident occurred within the RCMP and was witnessed by RCMP officers. On its own, it would justify a sanction. It was found to be disgraceful and disorderly conduct contrary to section 39(1) of the *Regulations*. The Commissioner's reasons regarding the sanctions stem as much from this incident as the mitten incident. For example, the Commissioner referred to his loss of confidence in the applicant, the applicant's lack of leadership and the applicant's lack of respect for RCMP core values.

[50] The only issue on this judicial review is the reasonableness of the sanction imposed for the established allegations.

***Was the Commissioner's decision reasonable*?**

[51] The applicant submits that the decision to demote the applicant was unreasonable: the Commissioner did not consider mitigating factors and the sanction was disproportionate when compared to the conduct of others that resulted in demotion.

[52] With respect to mitigating factors, the applicant submits that the Commissioner failed to consider that the allegations are now over 10 years old and should not now be pursued. The applicant also submits that the mitten incident relates to his relationship with his ex-wife and not to his professional conduct and that the office incident is minor and relates to only one interchange with one supervisor.

[53] The applicant further submits that the Commissioner failed to apply the principle of parity in sanctions. The applicant referred to several decisions pursuant to the *Regulations* that sanctioned members for disgraceful behaviour with a reprimand and forfeiture of pay rather than demotion.

[54] The respondent's position is that the Commissioner properly considered the aggravating and mitigating factors and applied the principle of parity and that the progressive discipline model supports the sanction of demotion.

[55] The respondent submits that the Commissioner identified the applicant's poor potential for rehabilitation as an aggravating factor and noted that the applicant was unwilling to take responsibility for his prior misconduct and repeatedly minimized his assault of a prisoner to such a point that he misled the Board. The respondent relies on *The Appropriate Officer of "F" Division*

and Constable Morton (2003), 19 AD (3d) 40 (Commr) as authority for the proposition that a member who does not take responsibility for his actions is not in a position of rehabilitation.

[56] In addition, the Commissioner considered the seriousness of the applicant's assault of a prisoner and the Board's warning that any future discipline would invite the most serious of sanctions.

[57] The Commissioner noted as a mitigating factor that the applicant had the support of some members who he works with but emphasized that management had lost confidence in him.

[58] The respondent submits that the Commissioner was not obliged to consider the passage of time as a mitigating factor. The respondent notes that the process of serving the Notice of Disciplinary Action and the Notice of Disciplinary Hearing and the hearings followed the procedures and time periods provided by the *Royal Canadian Mounted Police Act*, (RSC, 1985, c R-10) (the "*Act*"). The elapsed time is due to the statutory appeal process and the fact that this is the second judicial review.

[59] The respondent acknowledges the principle of parity in sanctions and that parity is a relevant consideration but submits that other decisions of the Commissioner support the reasonableness of the decision to demote the applicant. The respondent referred to several cases involving similar aggravating factors where the Commissioner had demoted the member.

[60] The respondent also notes that the applicant does not submit that the delay in proceeding now has breached his right to procedural fairness, and that there is no evidence that the length of proceedings caused prejudice to him.

The decision was reasonable

[61] The Commissioner provided thorough reasons which set out the factors he took into account and how these considerations justified his decision to demote the applicant.

[62] The Commissioner did not fail to consider mitigating factors or properly balance them with aggravating factors. The reasons refer to several aggravating factors, including: the applicant's prior misconduct and, in particular, his failure to take full responsibility for his actions and to rehabilitate himself; the lack of discipline and self control at the root of the mitten and office incident and the applicant's prior misconduct; and, management's loss of confidence in the applicant. These factors led the Commissioner to conclude that progressive discipline was necessary and that the sanction proposed by the ERC was inadequate.

[63] The Commissioner's reasons also indicate that he considered mitigating factors; he acknowledged the support of some colleagues and the professional counselling sought from a clinical social worker. The Commissioner, however, emphasized that the applicant's technical competence was not at issue but rather his responsibility and leadership abilities. The Commissioner noted that although the applicant sought counselling, he did not attend the anger management counselling that was recommended.

[64] With respect to the applicant's submission that the Commissioner should not have proceeded to impose sanctions for such old allegations, or that this is a mitigating factor, I do not accept that the age of the misconduct precludes the consequences. The applicant pursued all possible options to challenge the related allegations (i.e. those included in the first and second notice) and can not now assert that the passage of time which has resulted from these processes makes the remaining allegations, which have been established, immune from sanction because the misconduct occurred over 10 years ago.

[65] The Commissioner took the passage of time into consideration with respect to allegations 4, 5 and 6 as these were over 15 years old and had involved lengthy proceedings and still remained to be established. The Board initially came to its decision regarding the six allegations in 2005 (*The Appropriate Officer of "National Headquarters Division" and Corporal Shawn P. Elhatton* (2011), 8 AD (4th) 209 (Commr)). As the respondent notes, the applicant has not established how proceeding to sanction the established allegations would prejudice him.

[66] The applicant also submits that the mitten and office incidents were minor and should not have been pursued at all. The applicant submits that the mitten incident occurred in the context of his estranged relationship and that the office incident was an isolated incident.

[67] The Commissioner did not view the mitten incident as a trivial domestic argument nor did he view the office incident as a minor exchange between colleagues and he provided clear reasons for his findings. The Commissioner noted that the applicant:

> "[…] became verbally aggressive and disrespectful to his former spouse, in the presence of his children and in public, and also at the

> office, towards a co-worker, who was a member superior in rank, displayed a critical lapse in judgment and responsibility. This failure in judgment and leadership, taking into account his previous related misconduct, has led me to conclude that Corporal Elhatton should not maintain his current rank as corporal." (Decision at para 35)

[68] While the mitten incident could seem minor viewed on its own, without the backdrop of the other allegations, the applicant's disciplinary history provides relevant context for this incident. In addition, the mitten incident occurred in the presence of the applicant's children and outside his home with a RCMP vehicle on display in front of the home.

[69] The Commissioner's characterization of the events and his reasons for finding that the applicant was not deserving of maintaining his rank was reasonable and was supported by the evidence on the record.

[70] With respect to the applicant's position that the Commissioner's decision was unreasonable because it did not observe the principle of parity, it is well-settled that decisions of the Board (and of Commissioners) are not binding on other Commissioners or on the Court. According to Justice Rouleau in *Rendell v Canada (Attorney General)*, 2001 FCT 710, 208 FTR 1 [*Rendell*], "while the principle of parity of sanctions is certainly relevant in the context of disciplinary proceedings within the RCMP, it cannot be applied in such a manner as to fetter the discretion bestowed upon the Commissioner by the legislation" (at para 13)

[71] In *Rendell*, Justice Rouleau described the "complex and comprehensive internal disciplinary process" (at para 14) set out under Part IV of the *Act*. He noted at paragraph 17 that:

> Accordingly, the Commissioner is the highest appellate body within the disciplinary process as set out by Parliament in the legislation. As such, he cannot be considered to be bound by previous decisions of the Adjudication Board in the manner suggested by the applicant. This is not to say that the disposition of similar cases is not relevant. However, such cases are for the purpose of consideration only. The Commissioner remains free and unfettered to make a decision based upon the specific and unique facts of each individual case before him. It was therefore, certainly within his power to conclude that in Constable Rendell's case, unlike previous cases of members committing domestic violence, there were insufficient mitigating circumstances to warrant the imposition of a less severe sanction.

[72] It was within the Commissioner's discretion to find that there were sufficient aggravating circumstances to impose a serious sanction on the applicant. As the Federal Court of Appeal stated in *Gill v Canada (Attorney General)*, 2007 FCA 305, 370 NR 257, "findings of disgraceful conduct and findings on the sanctions to be imposed are primarily fact-driven and discretionary determinations" (at para 14).

[73] As noted by the respondent, the policy of progressive discipline supports the Commissioner's decision to sanction the applicant by way of demotion.

[74] I note that subsection 45.12(3) of the *Act* sets out the options for sanctions. The member could be forfeited pay for up to 10 days, recommended for demotion, directed to resign, or dismissed, with each sanction being more serious. Given that the applicant had previously been sanctioned with forfeiture of pay, the next level of discipline was demotion. That sanction could have been applied for the mitten incident or the office incident on their own, or for both incidents.

[75] I do not agree with the applicant that the Commissioner's decision is unfair when compared with other decisions. The applicant referred to several Board decisions where members received reprimands and forfeiture of pay for misconduct amounting to insubordination or disgraceful conduct. However, when these decisions, all of which can be distinguished on their facts, are probed, they do not support the argument that the sanction imposed on the applicant is unreasonable due to lack of parity.

[76] For example, the decision in *The Appropriate Officer of "D" Division and Cst. Blanchette* (2007), 1 AD (4th) 254 is distinguishable on the basis of the Board's finding that the Constable's "serious medical condition at the time of the misconduct militates heavily in favour of leniency and compassion" and that the Constable apologized shortly after the argument and accepted responsibility by participating in an Early Resolution Process.

[77] In *The Appropriate Officer of "E" Division and Cpl. Perhar* (2012), 11 AD (4th) 231, the member used inappropriate language and offensive comments, characterized by sexual content, in the workplace over a seven or eight month period. The Board, unlike the applicant's case, accepted a joint submission on a sanction. While the misconduct was very serious, the facts differed. In addition, the Board noted that a significant mitigating factor was the Member's formal admission of his misconduct along with the support from his peers and his unblemished disciplinary record.

[78] *The Appropriate Officer of "F" Division and Insp. Sabean* (2009), 5 AD (4th) 107 may appear to be more analogous as it involved a Member using vulgar, inflammatory and unprofessional language in the course of an arrest who had four previous and similar disciplinary

measures. However, the prior misconduct was less serious than that of the applicant's assault of a prisoner. In addition, the parties submitted an Agreed Statement of Facts and a joint proposal on the sanction. The Board accepted the proposal and noted that without the support of the Appropriate Officer, it would have imposed a more serious sanction and added that it found the member to be extremely hard working, principled, and dedicated to the Force and that very favourable comments had been provided by his superiors.

[79] In *The Appropriate Officer of "K" Division and S.S. Ray* (2011), 10 AD (4th) 237, a Member was sanctioned for allegations of disgraceful conduct involving grabbing his spouse in a manner that caused her a minor injury, restraining her from departing and careless storage of a firearm. Unlike the applicant's case, the parties submitted a jointly proposed sanction which the Board accepted, noting that there were mitigating and supporting factors on behalf of the member including his immediate apology to his spouse and his "sincere apology to the RCMP" and the support of his immediate superior and the confidence of the Commanding Officer.

[80] In conclusion, there is no doubt that the sanction of demotion is severe, but on the spectrum of sanctions in a progressive discipline model, it is not the most severe. Moreover, it is justified by the Commissioner's thorough consideration of the conduct and the aggravating and mitigating factors, including the applicant's past disciplinary record.

[81] As noted by Justice Rennie in *Elhatton 2013* and referred to above, the Commissioner has specialized expertise and knows what is required to maintain the integrity of the RCMP. Deference is owed to the decision of the Commissioner. The Commissioner's decision clearly conveys that the

applicant's conduct does not reflect the model of policing the RCMP strives to achieve and the Commissioner's reasons set out the justification for that conclusion.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-723-13
STYLE OF CAUSE:	SHAWN P. ELHATTON v ATTORNEY GENERAL OF CANADA and APPROPRIATE OFFICER "J" DIVISION OF THE ROYAL CANADIAN MOUNTED POLICE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 27, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	KANE J.
DATED:	JANUARY 21, 2014

APPEARANCES:

William R. Gilmour Christine Wiseman	FOR THE APPLICANT
Shelley C. Quinn Jacqueline Wilson	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Gilmour Barristers Barristers and Solicitors Brampton, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS