

Federal Court



Cour fédérale

Date: 20210205

Docket: T-692-20

Citation: 2021 FC 118

Ottawa, Ontario, February 5, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

DANIEL LAPORTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] This decision relates to an application, brought by the Applicant, Daniel Laporte, seeking judicial review of the Conduct Appeal Decision dated March 26, 2020 [the Appeal Decision] of Jean-Michel Blais, a Conduct Adjudicator appointed to hear the Applicant's conduct appeal [the Conduct Adjudicator] under sections 45.11 and 45.16 of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [the Act].

[2] The Appeal Decision was rendered on March 26, 2020, and upheld the original conduct decision [the Initial Decision] rendered on February 19, 2018, by Supt. Martine Fontaine of the Royal Canadian Mounted Police [the RCMP], acting as Conduct Authority under subsection 42(1) of the Act [the Conduct Authority]. The Initial Decision found the Applicant guilty of a breach of section 7.1 of the RCMP's Code of Conduct, as prescribed by *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281, Schedule [the Code of Conduct].

[3] The Applicant seeks an order reversing the Appeal Decision, overturning the Initial Decision, and directing the removal of the resulting reprimand from his record.

[4] As explained in greater detail below, this application is allowed, because the Appeal Decision does not contain the reasoning or analysis, justifying its conclusions, necessary to satisfy the reasonableness standard of review. My Judgment will set aside the Appeal Decision and return the matter to a different decision-maker in the role of Conduct Adjudicator for redetermination.

II. **Background**

A. *Events Resulting in Misconduct Allegation*

[5] At the time of the events giving rise to this application, the Applicant was a Constable with the RCMP who had been with the force for 13 years and was posted to the UMECO Unit in Montréal, Quebec. He has since been medically discharged from the RCMP but is pursuing this

application because of the possibility that he may in the future seek to return to employment with a police service.

[6] On August 14, 2016, the Applicant attended a private birthday party for an RCMP colleague. The party was held at that colleague's residence in Chambly, Québec. Several of the Applicant's RCMP colleagues and civilian guests attended the party. Most if not all the guests, including the Applicant, were drinking alcohol. The Applicant was not in his RCMP uniform at any point during the party, nor were any of the other RCMP members in attendance.

[7] During the evening, some of the Applicant's friends began to joke that they would take off their clothes "sooner or later" and stating that they were "going to the spa". Later in the evening, the Applicant took off all his clothes in the kitchen and covered his genitals with a dishwashing brush. He was nude for approximately five minutes.

[8] The Applicant then realized that the freezer had no more ice for drinks. He found a towel, wrapped it around his hips and walked to his residence, approximately 150 metres away, to retrieve ice and bring it back to the party. The Applicant's genitals, buttocks and thighs were covered at all times, and he did not see anyone outside. When the Applicant returned to the residence where the party was taking place, he changed back into his clothes and remained fully dressed for the rest of the evening.

B. Conduct Investigation

[9] On February 24, 2017, one of the RCMP members who had been a guest at the party told another RCMP member, who had not attended the party, about the Applicant's conduct. On February 27, 2017, that latter member relayed this account of the party to Inspector Christian Dubois, the officer-in-charge of the UMECO Unit. Insp. Dubois then launched an administrative investigation into the events of the party pursuant to the Code of Conduct.

[10] On April 28, 2017, another UMECO inspector, Inspector Sylvain Leclerc, prepared a Memorandum, identifying a possible contravention of the Code of Conduct but expressing the opinion that an investigation was not necessary and that the events of the party should not form the basis of a Code of Conduct matter [the Memorandum]. The Applicant's affidavit, filed in support of this application for judicial review, provides the following English translation of that portion of the Memorandum:

Based on the circumstances which have been presented to me, I am of the opinion that an investigation under the Code of Conduct is not necessary. It concerns a joke in bad taste between friends at a private party which took place in August 2016. It appears that no act of this nature has been repeated subsequently on the part of Cst. Laporte.

[11] Insp. Leclerc further expressed his view that the Applicant should still meet with the officer in charge of UMECO, to discuss the situation and to be sensitized to the impact that his conduct could have on himself and the organization if the act were committed in front of strangers. Insp. Dubois endorsed the Memorandum, concurring with its recommendations.

[12] Nevertheless, on October 3, 2017, Insp. Dubois served the Applicant with a Code of Conduct Investigation Mandate Letter. Inspector Dominic Duchesneau was assigned to the investigation in November 2017 and completed an investigation report on January 10, 2018. On January 19, 2018, Insp. Dubois recused himself from the investigation, which the Respondent explains was due to a possible conflict of interest resulting from Insp. Dubois having been interviewed as part of the investigation. Superintendent Martine Fontaine was therefore appointed as Conduct Authority, replacing Insp. Dubois.

C. Conduct Authority Decision

[13] On February 5, 2018, Supt. Fontaine, acting as Conduct Authority, served the Applicant with a Notice of Conduct Meeting to take place on February 12, 2018. The Applicant attended the conduct meeting, at which the Conduct Authority alleged that the Applicant had breached section 7.1 of the Code of Conduct by behaving in a manner likely to discredit the RCMP. As translated by the Respondent from French to English, the exact allegation under investigation reads as follows:

During the month of August 2016, at or near Chambly, in the province of Québec, Constable Laporte would have had a disgraceful behaviour. While under the influence of alcohol, he undressed completely inside of the residence, in sight of the guests, which would discredit the Royal Canadian Mounted Police.

[14] On February 19, 2018, the Conduct Authority issued the Initial Decision, concluding that the facts of the allegation against the Applicant were established and finding the Applicant guilty of a breach of section 7.1 of the *Code of Conduct*. The Conduct Authority imposed the following conduct measures:

- A. that the Applicant submit to medical treatment as soon as possible according to the directives of a Health Services Officer;
 - B. if required by such treatment, that the Applicant attend counselling services or complete a rehabilitation program;
 - C. if required by such treatment, that the Applicant complete a program or engage in an activity as per the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, para 3(1)(f); and
 - D. that a written reprimand be kept in the Applicant's personnel file.
- D. *Appeal to the Conduct Adjudicator*

[15] On March 5, 2018, the Applicant submitted an appeal of the Initial Decision by the Conduct Authority to the RCMP Commissioner's Conduct Appeal Authority, in accordance with subsection 45.11(3) of the Act. As grounds of appeal, the Applicant asserted that the Initial Decision resulted from a breach of applicable principles of procedural fairness, was based on an error of law, and was unreasonable.

[16] On March 26, 2020, the Conduct Adjudicator issued the Appeal Decision dismissing the Applicant's appeal. The Conduct Adjudicator found no breach of procedural fairness. However, as the Applicant has not raised issues of procedural fairness in the present application for judicial review, it is not necessary to detail the arguments and analysis surrounding procedural fairness any further. The Conduct Adjudicator also found that:

- A. the Conduct Authority had applied the appropriate legal test in the Initial Decision;
- B. the Applicant's behaviour at the party had been effectively linked to his duties and functions as an RCMP member and that such behaviour had not respected the RCMP values of integrity and professionalism; and
- C. the Initial Decision was reasonable.

[17] The details of those findings, and the Applicant's arguments challenging the reasonableness of the Appeal Decision, will be explained in the Analysis portion of these Reasons.

III. **Issues and Standard of Review**

[18] The Applicant submits that this application raises the following issues for the Court's consideration:

- A. Did the Appeal Decision reasonably find that the Conduct Authority had applied the correct legal test in the Initial Decision?
- B. Did the Appeal Decision reasonably find that the Applicant's behaviour at the party had been effectively linked to his duties and functions as an RCMP member?
- C. Did the Appeal Decision give reasonable consideration to Insp. Dubois' recommendation in the Memorandum?

[19] The Respondent submits that the sole issue is whether the Appeal Decision is reasonable. I prefer the Applicant's more granular articulation of the issues, as it tracks the arguments advanced by the Applicant in challenging the reasonableness of the Appeal Decision.

[20] Consistent with the parties' respective articulations of the issues, they agree, and I concur, that the applicable standard of review is reasonableness.

[21] Finally, I note that the parties disagree on the appropriate remedy that should be awarded, in the event the Applicant is successful in this application for judicial review.

IV. Analysis

A. Did the Appeal Decision reasonably find that the Conduct Authority had applied the correct legal test in the Initial Decision?

[22] Section 7.1 of the Code of Conduct requires that “[m]embers behave in a manner that is not likely to discredit the Force.” The parties agree that, as devised by the RCMP's External Review Committee, there is a four-part test applicable to a finding of “dishonourable conduct” by a Conduct Authority under this section:

- A. The Conduct Authority must prove the identity of the member;
- B. The acts constituting the alleged conduct must be established on the balance of probabilities;
- C. The Conduct Authority must determine if a reasonable person in society, informed of all the pertinent circumstances, and understanding the realities of

police work in general and of the RCMP in particular, would be of the opinion that the conduct of the member casts discredit on the RCMP; and

- D. The Conduct Authority must conclude that the conduct is sufficiently linked to the duties and functions of the member to give the RCMP a legitimate interest in disciplining the member.

[23] In his appeal of the Initial Decision by the Conduct Authority, the Applicant argued that the Conduct Authority had not applied this test. In the Appeal Decision, the Conduct Adjudicator agreed with the Applicant that the Conduct Authority had not set out this test in the Initial Decision. However, the Conduct Adjudicator nevertheless concluded that the Conduct Authority had applied the test. The first and second elements of the test are not in issue. In relation to the third element of the test, the Appeal Decision states as follows (as translated by the Applicant from French to English):

[40] Even if the respondent did not indicate this fact in her decision, it appears upon reading the decision that the respondent concluded that a reasonable person in society, informed of all the pertinent circumstances, and understanding the realities of police work in general and of the RCMP in particular, would be of the opinion that the dishonourable conduct of the appellant in the allegation in question casts discredit on the RCMP. The respondent directly cited the evidence coming from four witnesses, police officers and civilians, as well as the evidence of the appellant himself, and came to the conclusion that the appellant's conduct was dishonourable.

[24] The relevant portion of the Initial Decision, to which the above paragraph appears to refer, states as follows (as translated by the Applicant from French to English):

The facts demonstrate that you have admitted you were completely nude while you were under the influence of alcohol, and this, while you were inside the residence in front of friends, members of the Royal Canadian Mounted Police, and civilians, some of whom you do not know. Clothed with a small towel, you went outside to look for ice at your residence.

As a result, since the facts of the allegation are established, and since they constitute a breach of the Code of Conduct, this allegation is established according to the balance of probabilities.

[25] In challenging the reasonableness of the Appeal Decision, the Applicant submits that it does not set out an intelligible basis for the Conduct Adjudicator's conclusion that the Conduct Authority had considered and applied the third element of the test for dishonourable conduct. The Applicant notes that the Initial Decision summarizes the witnesses' evidence, finds therefrom that the Applicant was nude and under the influence of alcohol inside the residence and then clad in a small towel outside the residence, and proceeds to conclude that these facts constitute a breach of the Code of Conduct. However, the Applicant argues that the Initial Decision does not contain any chain of reasoning or analysis explaining how the facts satisfy the third element of the test. That is, the Conduct Authority does not explain how it determines that the requisite reasonable person in society would be of the opinion that the conduct represented by those facts casts discredit on the RCMP.

[26] The Respondent's position is that the Conduct Adjudicator's conclusion, that the Conduct Authority had applied the correct legal test, falls well within the range of possible, acceptable outcomes about which the reasonableness standard of review is concerned. The Respondent argues that the Appeal Decision shows a careful consideration of the relevant materials, including the Initial Decision, the Applicant's written observations, and the internal investigation

report, which in turn includes witness statements. The Conduct Adjudicator found that the Initial Decision cited the evidence from both police officers and civilians, as well as the evidence of the Applicant himself, resulting in the Conduct Adjudicator's finding that the Applicant's conduct was discreditable. The Respondent submits that, based on the record before the Conduct Adjudicator, the Appeal Decision was reasonable, as it is implicit in the Initial Decision that the Conduct Authority had concluded from the evidence that the third element of the test was satisfied.

[27] I agree with the Applicant's position on this issue. The Initial Decision explains that the evidence supports a conclusion that the Applicant engaged in the conduct that forms the basis of the allegation. This represents a conclusion sufficient to satisfy the first and second elements of the relevant test. However, the Initial Decision leaps from that conclusion to a finding that the allegation of dishonourable conduct has been established, without any express engagement with the third element of the test.

[28] As explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*], at paragraph 86, reasonableness review of administrative decision-making is concerned not only with whether the outcome of a decision is justifiable but also with whether it is justified through the decision maker's reasons. I agree with the Applicant that the Initial Decision contains no justification for a conclusion on the third element of the test and therefore no justification for the finding of dishonourable conduct.

[29] Of course, as the Respondent correctly points out, this judicial review relates not to the Initial Decision but rather to the Conduct Authority's consideration thereof in the Appeal Decision. However, the reasonableness of the Appeal Decision can only be assessed against the backdrop of the Initial Decision. The Appeal Decision itself contains no justification for its conclusion that the Conduct Authority applied the third element of the test. In the absence of such analysis supporting that conclusion, or any reasoning in the Initial Decision that could be relied upon to support that conclusion, the Appeal Decision is itself unreasonable.

B. Did the Appeal Decision reasonably find that the Applicant's behaviour at the party had been effectively linked to his duties and functions as an RCMP member?

[30] This issue relates to the fourth element of the dishonourable conduct test, i.e. the requirement that the conduct is sufficiently linked to the duties and functions of the member to give the RCMP a legitimate interest in disciplining the member. Again, the Applicant argues that neither the Initial Decision nor the Appeal Decision demonstrates any analysis underlying a conclusion that this element is satisfied.

[31] The relevant paragraph of the Appeal Decision reads as follows (as translated by the Applicant from French to English):

[41] Finally, the conduct was effectively linked to the appellant's duties and to his functions as a member of the RCMP, which therefore justifies the imposition of conduct measures. In addition, in his capacity as an RCMP member, according to the evidence, the appellant did not respect certain values of the RCMP, namely integrity and professionalism.

[32] It is not particularly clear from the Appeal Decision whether this paragraph represents a conclusion by the Conduct Adjudicator that the required link was established or rather a conclusion by the Conduct Adjudicator that the Conduct Authority had found the link to be established. However, the Applicant argues that neither decision demonstrates any analysis supporting such a conclusion.

[33] The Respondent relies on the investigation report and witness statements, referenced in the Initial Decision, as forming the evidentiary basis for the Conduct Authority to draw the required link between the Applicant's conduct and his duties and functions as an RCMP member. The Respondent argues that the Initial Decision was based on the evidence and the Appeal Decision on this point was therefore reasonable.

[34] Again, I must agree with the Applicant's position. Regardless of whether the evidence might be capable of supporting a finding of the required link, neither the Initial Decision nor the Appeal Decision demonstrates any analysis as to how the evidence results in such a finding.

[35] The Applicant refers to *Millhaven Fibres Ltd v O.C.A.W., Local 9-670*, [1967] O.L.A.A. No 4 (Ont. Arb.), the work of the RCMP's External Review Committee, Off-Duty Conduct (Discussion Paper 7) at p. 5, and applicable jurisprudence (*Lévis (Ville) v Côté*, 2007 SCC 14, [2007] 1 SCR 591 at para 41, *Braidon v Ratcliff*, 2008 CanLII 91558 (AB LERB) at paras 12-15 citing with approval *Lingl and Calgary Police Service (1993)*, 2 ALERB 128 at para 141, and *Constable WD Silverman v Ontario Provincial Police*, 1997 CanLII 22046 (ON CPC) at para 32) for an explanation of principles governing when police officers and other employees can be

disciplined for off-duty conduct. In the context of the present application, there is no need for me to canvass the details of these principles, as the administrative decisions in the case at hand demonstrate no reasoning, applying these principles or otherwise, underlying a conclusion on the fourth element of the dishonourable conduct test.

[36] Based on this second issue raised by the Applicant, I again find that the Appeal Decision is unreasonable.

C. Did the Appeal Decision give reasonable consideration to Insp. Dubois' recommendation in the Memorandum?

[37] In advancing this as a final ground of review, the Applicant relies on the recommendation in the Memorandum to the effect that a conduct investigation was not necessary. He argues that the opinion of the senior officers involved in the preparation of the Memorandum represents evidence relevant to the third element of the dishonourable conduct test, i.e. how a reasonable person would regard the impugned conduct. The Applicant submits that the Appeal Decision is unreasonable because it did not engage with this argument on appeal.

[38] I decline to address this ground of review. This application for judicial review must be allowed based on my findings in relation to the first two issues. Those findings turn on the absence of the requisite analysis in the Initial Decision and the Appeal Decision. Without the benefit of such analysis, it is not possible to assess the potential significance of the evidence represented by the Memorandum.

V. **Remedy**

[39] In his Notice of Application, the Applicant seeks an order setting aside the decision of the Conduct Adjudicator. Based on my findings surrounding the reasonableness of the decision, this relief is clearly available. However, the Applicant also seeks an order directing that his appeal to the Conduct Adjudicator be allowed and, in argument, he requests that the Court order the removal of the reprimand from his RCMP record. Only in the alternative does he seek an order that the appeal be remitted for redetermination.

[40] The Respondent submits that the Applicant is seeking relief beyond what would typically be awarded by a Court sitting in judicial review. The Respondent argues that it is not the Court's role to re-weigh the evidence and arrive at its own conclusions on the merits of the conduct proceeding. Rather, if the Court concludes that the administrative decision is unreasonable, the appropriate remedy is to quash the decision and remit the matter for redetermination.

[41] The Respondent is correct that the remedy, which typically follows a successful judicial review, is to quash the decision and return to the decision-maker for reconsideration. Indeed, I understand the Applicant to acknowledge that this is the usual remedy. The thrust of the Applicant's argument in support of the requested relief is that the conclusion he committed dishonourable conduct is not only unjustified in the administrative decisions but is unjustifiable on the record before the decision-makers. He refers to the evidence in the record, including not only the favourable recommendation in the Memorandum but also the evidence of non-RCMP witnesses who attended the party, to the effect that they were not concerned about his conduct.

[42] On the issue of the appropriate remedy, I agree with the Respondent's position. I understand the Applicant's argument that there is considerable evidence in the record supporting a conclusion that the test for dishonourable conduct has not been met. However, I am not prepared to find that such a conclusion is inevitable. On this point, I agree with the Respondent's submission that the administrative decision-makers empowered under the Act bring specialized expertise to their role, that the standard of review confirmed by *Vavilov* warrants considerable deference to such decision-makers, and that it would be beyond the Court's appropriate role in this particular judicial review to reach a conclusion on the merits of the conduct proceeding. Rather, the appropriate result is for the matter to be returned to a different decision-maker in the role of Conduct Adjudicator for redetermination in accordance with the applicable test.

VI. Costs

[43] Each of the parties has claimed costs in the event of its success in this application. At the conclusion of the hearing, with the Court's encouragement, counsel advised that the parties had reached agreement on quantification of costs to be awarded to the successful party. The parties agree that costs should be quantified as a lump sum of \$2,100.00, inclusive of fees, disbursements and HST if applicable, a figure which I understand is premised upon Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106.

[44] While costs are ultimately in the discretion of the Court, I agree with counsel that the figure upon which they have agreed is appropriate. As the Applicant has prevailed in this application, my Judgment will award lump sum costs in his favour in the amount of \$2,100.00.

JUDGMENT IN T-692-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed, the decision of the Conduct Adjudicator dated March 26, 2020 is set aside, and the matter is returned to a different decision-maker in that role for redetermination.
2. The Applicant is awarded lump sum costs of \$2,100.00 all-inclusive.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-692-20

STYLE OF CAUSE: DAVID LAPORTE V MCI

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ONTARIO

DATE OF HEARING: JANUARY 25, 2021

ORDER AND REASONS: SOUTHCOTT J.

DATED: FEBRUARY 5, 2021

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