Federal Court  Cour fédérale

Date: 20210511

Docket: T-2061-19

Citation: 2021 FC 426

Ottawa, Ontario, May 11, 2021

PRESENT: The Honourable Mr. Justice Manson

Docket: T-2061-19

BETWEEN:

CORPORAL PATRICK G. WASYLYNUK
REGIMENTAL NUMBER 36606

Applicant

and

COMMANDING OFFICER "K" DIVISION
ROYAL CANADIAN MOUNTED POLICE,
ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Level II Decision, dated November 17, 2019, of the Commissioner of the Royal Canadian Mounted Police [the "Commissioner"], pursuant to the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (as it was then) [the

"*Applicable RCMP Act*"], which quashed the Applicant's Medical Discharge and found that certain issues raised by the Applicant were moot.

II. Background

A. *Overview*

[2] This case concerns a longstanding history of events between the Royal Canadian Mounted Police [RCMP] and the Applicant, Corporal Patrick G. Wasylynuk, a member of the RCMP. The Respondent is the Commanding Officer, "K" Division, who medically discharged the Applicant.

[3] The Applicant challenged his Medical Profile, the Notice of Intention to Discharge and the Medical Discharge in an internal grievance process before a Level I Adjudicator and the Level II Commissioner. He now seeks a judicial review of the Level II Decision of the Commissioner.

[4] While both the Level I and Level II Decisions quashed the Medical Discharge, the Applicant challenges the Level II Decision on multiple grounds. He alleges a variety of concerns existed within the entirety of the internal grievance process, including with both the Level I and Level II Decisions. Ultimately, the Applicant seeks consideration of all issues raised [the "remaining issues"] on their merits and alleges breaches of procedural fairness, including bias and an incomplete record before the decision makers, including the record now before this Court.

[5] The remaining issues are somewhat interchangeably referred to as the “collateral issues”, “stated concerns” or “specified issues” throughout the record. These terms collectively refer to a body of substantive and procedural concerns for which the Applicant seeks determinations. There is no single list of remaining issues, as they have evolved throughout the grievance process. The scope of these concerns remained diffuse and ill defined before this Court, amounting largely to bald allegations.

[6] The Amended Amended Notice of Application was 22 pages in length, covering 109 detailed paragraphs and sub-paragraphs. There are many issues raised in the pleading and the remaining issues that the Applicant seeks to have determined are woven throughout.

[7] The Applicant seeks an Order quashing the Level II Decision and remitting the matter back to the Commissioner for reconsideration and redetermination of the remaining issues; an Order or Orders in the nature of *certiorari*, *mandamus*, *prohibition*, *declaration* or *injunction*, as may be required; that the matter be disposed of in accordance with directions of this Court; and costs.

B. *Grievances under the Applicable RCMP Act*

[8] Part III of the *Applicable RCMP Act* provides for the presentation and determination of grievances of RCMP members (*Applicable RCMP Act*, above, s 31). This case considers the *Applicable RCMP Act* and associated regulations at the relevant time, prior to amendments made on November 28, 2014.

[9] The Applicant was entitled to access two levels of consideration or review. During the Level I grievance process, the matter is considered before a Level I Adjudicator. The Level II grievance process is a *de novo* process, brought before the Commissioner (*Applicable RCMP Act*, s 32(1)). A Level II grievance is first referred to the External Review Committee, which provides recommendations to the Commissioner (*Applicable RCMP Act*, s 33). The Commissioner is not bound by the findings or recommendations set out in the report of the External Review Committee (*Applicable RCMP Act*, s 32(2)).

C. *The Medical Discharge and Grievance Process*

[10] The Applicant has been a member of the RCMP since 1980. However, he has not worked since June of 2003, when he was placed on medical leave. The Applicant states that this was the result of bullying and harassment from members and officers of the RCMP, which caused him to develop depression and post-traumatic stress disorder.

[11] Various communications occurred between the RCMP, the Applicant and the Applicant's representatives – his lawyer and psychologist. These exchanges related to the Applicant's health and the need for a periodic health assessment to determine if he was fit for duty. No periodic health assessment was ultimately performed.

[12] In November of 2005, the Applicant was designated an "O6-Permanent" Medical Profile [the "Medical Profile"], which indicated that the Applicant was unfit for duty indefinitely. The Applicant was informed of the Medical Profile and asked to participate in the accommodation process. On June 24, 2008, the RCMP served the Applicant with a Notice of Intention to

Discharge, pursuant to subsection 20(1) of the *RCMP Regulations 1988,* SOR/88-361, now repealed [the "*RCMP Regulations 1988*"]. The Applicant received a Notice of Discharge on October 6, 2010, pursuant to subsection 20(9) of the *RCMP Regulations 1988*, above [the "Medical Discharge"].

[13] The Applicant grieved his Medical Discharge on October 15, 2010, requesting as corrective action the withdrawal of the Medical Profile, the Notice of Intention to Discharge and the Medical Discharge (or a stay thereof). Several communications and procedural steps followed, relating to requests for extensions, disclosure, the collateral issues and the Applicant's ongoing medical issues. His *Grievance Presentation* was brought before a Level I Adjudicator, who rendered a decision on January 22, 2019 [the "Level I Decision"].

[14] The Level I Adjudicator allowed the grievance and quashed the Applicant's Medical Discharge. The Notice of Discharge was deemed invalid and set aside. The Applicant was not provided with important information in the Medical Discharge process, denying him of the opportunity to know the case against him and breaching his right to procedural fairness. The Level I Adjudicator stated that she could not change the Applicant's Medical Profile, but found it would be up to the Applicant to participate fully in a new process and for the Respondent to ensure that the Applicant is provided with the required information to do so. The Medical Discharge process would begin "anew".

[15] As part of his Level I submissions, the Applicant argued a number of substantive and procedural irregularities. The Level I Adjudicator noted at paragraph 109 of the Level I Decision

that 15 collateral issues were associated with the grievance. The Level I Adjudicator found that the Applicant had either failed to demonstrate these remaining claims on the balance of probabilities or that the issues need not be decided because the "matter should be considered afresh". These allegations included that:

i. The RCMP failed to obtain the Applicant's consent before releasing his personal information either by using it to modify his Medical Profile or by sending it to the Medical Board, in a manner contrary to the *Privacy Act*, RSC 1985 c P-21 [*Privacy Act*]. At the time, the appointment of a Medical Board was a procedural mechanism available to the RCMP to determine the degree of the Applicant's impairment;

ii. There was a lack of meaningful opportunity to make submissions;

iii. The Respondent failed to follow the recommendations of the Medical Board and change the Applicant's Medical Profile;

iv. The Respondent failed to accommodate the Applicant to the point of undue hardship; and

v. The Applicant's grievance was not administered in accordance with relevant policy in light of the raised collateral issues.

[16] The Applicant initiated a Level II review, under the grievance process available to him, which was presented on March 13, 2019. Specifically, he sought other findings and determinations to address the allegedly improper conduct and process resulting in the assigned Medical Profile, along with other concerns. Again, the Applicant requested the withdrawal of the Medical Profile, the Notice of Intention to Discharge and the Medical Discharge (or a stay thereof).

[17] On April 10, 2019, in response to the Level II grievance, the Respondent agreed to withdraw the Medical Profile, the Notice of Intention to Discharge and the Medical Discharge. The grievance nonetheless underwent the Level II review. As required by the grievance process, the Level II review involved the External Review Committee, which made recommendations to the Commissioner, who would render the Level II Decision.

[18] On September 30, 2019, the External Review Committee issued its recommendations. The External Review Committee refused to consider certain arguments related to bias and abuse by a Health Services Officer and the sufficiency of evidence on which the Medical Profile was based, as these allegations were raised for the first time in the Level II submissions. It further found that the remedy requested by the Applicant had been granted and the remaining issues were now moot – the Medical Discharge had been set aside and the process will begin anew. The External Review Committee determined it would not otherwise exercise its discretion to address the otherwise moot issues, which included the alleged privacy breaches and the alleged conduct of the RCMP throughout the Medical Discharge process.

[19] The Level II Commissioner agreed with the External Review Committee's recommendations and quashed the Medical Discharge on the basis of the breach of procedural fairness. The Commissioner found that the other alleged issues regarding the process were moot [the "Level II Decision"].

D. *Procedural History*

[20] Pending this judicial review application, the Applicant brought a motion to enforce a stay provision in section 26 of the *RCMP Regulations 1988*, which he argued prevented the RCMP from making him take any steps that would force (or enable him) to return to work until the final disposition of this application. In *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962, the Federal Court dismissed this motion for an order of *mandamus* and an interlocutory injunction. This decision is under appeal.

III. Decision Under Review

[21] The decision under review is the Level II Decision of the Commissioner, which quashed the Medical Discharge on the basis of a breach of procedural fairness and found the remaining issues to be moot:

> [80] I agree with the ERC [External Review Committee] finding that "the Grievor [Applicant] had never received disclosure of the relevant material on which the Medical Board and the Respondent based their decision" (Report, para 74). The Record does not indicate that the Grievor knew which material the Respondent had considered or relied upon in issuing the Notice of Intention to Discharge and Notice of Discharge. The Grievor was entitled to receive disclosure of the relevant documents. I am satisfied that his

> right to procedural fairness was breached by the Respondent's failure to provide relevant disclosure (Report, para 74)…
>
> …
>
> [84] Further, in my consideration of *Borowski*, I find that no live controversy remains, unlike the contrasting situation in G-488. It is understandable that the Grievor felt that his privacy was breached. However, I agree with the ERC analysis and finding that the issue of the alleged privacy breach is now moot. Therefore, I will not address the remaining issues, which are also moot at this time.
>
> [85] With respect to the Grievor's request that I nevertheless exercise my discretion to address the moot issues, the exercise of such discretion is not warranted in this situation. The Respondent has agreed to rescind the medical profile, commence a new medical assessment, and take steps to accommodate the Grievor (Report, para 83). Further, the circumstances of the Grievor's case do not render it "worthwhile to apply scarce judicial resources to resolve it" (Report, para 84), nor do they "raise an issue of such public importance that its resolution is in the public interest" (Report, para 85). With respect to the latter, the Grievor's view was that it would be beneficial if his case was heard on this basis, to provide instruction and guidance to the Force in future processes. I do not accept the Grievor's claim in this instance. As noted by the ERC, the medical discharge process was repealed, and replaced by a new process (Report, para 85).
>
> [86] The grievance is allowed and the medical discharge quashed.

IV. Preliminary Motion

[22] Prior to the hearing of the application for judicial review, the Applicant moved for Orders to: (1) adduce new evidence consisting of Exhibit "A" to the Affidavit of Misty McTaggart, sworn April 13, 2021, pursuant to Rules 312 and 313 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]; and (2) strike out certain comments in the Respondent's Memorandum of Fact and Law.

A. *Adducing New Evidence*

[23] Exhibit "A" is a 14-page memorandum from Dr. Douglas Huber of "K" Division, Occupational Health Services to Dr. Cynthia Baxter, an independent medical examiner, dated January 13, 2021. The Applicant submits that Exhibit "A" relates to the continued use of and reliance by the Respondent on the Applicant's medical records, personal information and confidential administrative records, obtained in violation of the *Privacy Act*, above. The Applicant states that Exhibit "A" supports that several issues raised by the Applicant, including the alleged *Privacy Act* violations, are not moot, as found by the Level II Commissioner. Further, Exhibit "A" demonstrates that these issues have not been remedied.

[24] Exhibit "A" is not properly before this Court on judicial review for the following reasons.

[25] The Applicant seeks to introduce the evidence by way of the Affidavit of Ms. McTaggart, a legal assistant with counsel for the Applicant. Ms. McTaggart offers interpretations of the attached Exhibit "A" and comments on its use. She further relies on information from the Applicant's lead counsel. The Affidavit contains hearsay, is argumentative and is improperly before this Court pursuant to Rule 82 of the *Federal Courts Rules*, above:

Use of solicitor's affidavit	**Utilisation de l'affidavit d'un avocat**
82 Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.	**82** Sauf avec l'autorisation de la Cour, un avocat ne peut à la fois être l'auteur d'un affidavit et présenter à la Cour des arguments fondés sur cet affidavit.

[26] The Applicant has further failed to establish the admissibility and relevance of Exhibit "A" under Rule 312 of the *Federal Courts Rules*, the requirements of which are further outlined in *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at paragraphs 4 and 5 [*Forest Ethics*]:

> i. The evidence must be admissible on the application for judicial review. As is well known, normally the record before the reviewing Court consists of the material that was before the decision maker. There are exceptions to this; and
>
> ii. The evidence must be relevant to an issue that is properly before the reviewing Court. For example, certain issues may not be able to be raised for the first time on judicial review.

[27] If these two preliminary requirements are established, the Applicant must convince the Court to exercise its discretion in favour of granting the Order under Rule 312 of the *Federal Courts Rules*, which is guided by additional considerations (*Forest Ethics*, above at para 6). The Applicant has not established the admissibility nor the relevance of Exhibit "A" to this application for judicial review.

[28] A reviewing Court should not be a place where new evidence is adduced. The general rule is that a reviewing Court is limited to the evidentiary record as it was before the administrative decision maker. The reviewing Court does not decide the case on its merits, but reviews the decision before it (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 85-87 [*Tsleil-Waututh*]). Exhibit "A" does not relate to the Level II Decision of the

Commissioner, nor does it assist this Court by providing general background information, raising procedural defects that are unavailable on the evidentiary record or highlighting the absence of evidence before the Commissioner (*Tsleil-Waututh*, above at para 98). The relevance of Exhibit "A" has also not been established.

B. *Striking Comments in the Memorandum of Fact and Law*

[29] The Applicant further seeks an Order striking out certain comments in the Respondent's Memorandum of Fact and Law, which he states are not grounded in the Certified Tribunal Record.

[30] No valid basis has been raised upon which to strike portions of the Respondent's argument in advance of this hearing, pursuant to Rule 221 of the *Federal Courts Rules*. The Applicant does not rely on Rule 221 and its requirements are not made out on the facts of this case. The Respondent's arguments will be considered in the context of the hearing as a whole, and accepted or rejected on the basis of the evidence. Striking portions of the Respondent's Memorandum of Fact and Law prior to the hearing is unwarranted.

[31] The preliminary motion is dismissed, with costs to the Respondent.

V. Issues

[32] The issues in this application are:

i. Is the record before this Court incomplete or was the record before the Commissioner incomplete, in rendering the Level II Decision?

ii. Did the Commissioner act in a biased manner in rendering the Level II Decision?

iii. Was the Level II Decision reasonable in finding that the remaining issues were moot?

VI. Standard of Review

[33] The first issue considers the completeness of the record before the Commissioner, in rendering the Level II Decision. This is a question of procedural fairness, reviewable on the standard of correctness (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 45; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[34] The second issue regarding any bias or reasonable apprehension of bias on the part of the Commissioner is also a matter of procedural fairness, reviewable on the standard of correctness (*Baker*, above at para 45; *Vavilov*, above at para 23).

[35] The third issue is asking this Court to consider the merits of the Commissioner's finding of mootness and is reviewable on a standard of reasonableness (*Vavilov* at para 23).

VII. Analysis

A. *Completeness of the Record*

[36] The Applicant alleges that deficiencies exist within the record before this Court. These concerns stem from the initial Certified Tribunal Record filed in this proceeding, which was incomplete. From this starting point, the Applicant suggests the records before the Level II Commissioner and Level I Adjudicator were also incomplete, although his assertions are generalized allegations, which remain unspecified despite oral submissions. I will address the completeness of the record at each instance, as it relates to this judicial review and the task before this Court.

[37] First, there is nothing to suggest that the current record before me is incomplete. Pages initially omitted from the Certified Tribunal Record have been corrected and included in the Supplemental Tribunal Record, pursuant to an Order of this Court. Further, the Applicant has access to the Level II Decision, which is submitted by way of his own Application Record.

[38] The Respondent acknowledges that there was an initial error in filing the Certified Tribunal Record, in that pages that were part of the record before the Level II Commissioner were omitted. The Respondent engaged in several corrective actions to ensure the Certified Tribunal Record was supplemented. This included filing the Affidavit of Carole Smith-Doiron, the Registrar with the Recourse Appeals and Review Branch of the RCMP, sworn on September 2, 2020. Attached to this affidavit, as Exhibit “D” were the missing pages of the External Review

Committee Record. The complete Supplemental Tribunal Record was filed on November 25, 2020.

[39] The Applicant has been unable to specify any missing documents from the current Supplemented Tribunal Record. The Supplemental Affidavit of Ms. Smith-Doiron, filed on October 8, 2020, explained discrepancies in page counts between the External Review Committee Record and the Certified Tribunal Record. The Applicant further had the opportunity to cross-examine Ms. Smith-Doiron. I am satisfied the record has been corrected and note that despite the opportunity for cross-examination, the Applicant has been unable to establish any viable position on the balance of probabilities.

[40] Second, the Applicant submits that listed "specified material documents" did not form part of the Level I Adjudicator's package, denying him of an opportunity to make written submissions before the Level I Adjudicator and the Level II Commissioner. However, the Applicant does acknowledge that these materials were before the External Review Committee and Level II Commissioner in his Amended Amended Notice of Application. The Applicant has failed to substantiate his claim that he was somehow prevented from making submissions before the Level II Commissioner on the basis of an incomplete record before the Level I Adjudicator. The Level I Decision is not currently before this Court and the Level II Decision resulted from a *de novo* process. The Applicant has failed to demonstrate that any alleged deficit in the Level I Adjudicator package impacted the Level II Decision, in which he acknowledges the record was complete.

[41] Third, to the extent the Applicant suggests that the record before the Level II Commissioner was incomplete, he contradicts his own allegation. His assertions are unspecified and limited to the fact that the Commissioner did not specifically address that records were missing before the Level I Adjudicator. The Applicant admits in his Amended Amended Notice of Application at paragraph 72 that "[b]oth the First CTR and the Supplemental CTR includes certain specified material documents that were before both the ERC at the time of the making of the ERC *Recommendations* to the Commissioner, as well as before the Commissioner at the time of the Commissioner as the Level II Adjudicator in the course of her considering and making the Level II Decision". [Emphasis in original]

B. *Reasonable Apprehension of Bias*

[42] The Applicant further alleges that the Commissioner acted in a manner creating a reasonable apprehension of bias. She rendered final decisions in three collateral harassment complaints brought by the Applicant, concerning the conduct of Deputy Commissioner Curtis Zablocki, Public Service Employee Christine Greeno, and Inspector Scott Isaac. The final decisions, dated December 23, 2019, found the respondents in the harassment complaints to be acting within the scope of their duties or that their actions did not meet the definition of harassment, as set out in policy.

[43] The Applicant submits that these final decisions allegedly failed to address the most significant aspect underlying the entirety of the harassment complaints, being the intentional and repetitive breach of the section 26 mandated stay, pursuant to the *RCMP Regulations 1988*. At paragraph 74 of the Applicant's Amended Memorandum of Fact and Law, the Applicant further

provides that the bias of the Commissioner is clearly manifested in the final decisions. This bias would have been "fully operative at the time of the rendering by the Commissioner of the Level II Decision".

[44] Procedural fairness requires that decisions be made by an impartial decision maker, free from a reasonable apprehension of bias (*Baker* at para 45). The test for a reasonable apprehension of bias is set out as follows (*Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at 394):

> … [T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information… [T]hat test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly."

[45] This is an inherently contextual and fact-specific inquiry. The Applicant is subject to a high burden in order to rebut the presumption of a decision maker's impartiality (*Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at paras 25-26).

[46] I do not accept the Applicant's submissions on this issue. No basis has been established to ground a finding that the Commissioner acted in a manner creating a reasonable apprehension of bias. The Applicant's assertions amount to pure speculation, which fail to meet the high threshold for the allegation of a reasonable apprehension of bias.

C. *Mootness*

[47] The Applicant disputes the Commissioner's finding that the remaining issues are moot. After finding that the Applicant's right to procedural fairness was breached, specifically by the Respondent's failure to provide relevant disclosure, the Commissioner decided:

> [84] Further, in my consideration of *Borowski*, I find that no live controversy remains, unlike the contrasting situation in G-488. It is understandable that the Grievor felt that his privacy was breached. However, I agree with the ERC analysis and finding that the issue of the alleged privacy breach is now moot. Therefore, I will not address the remaining issues, which are also moot at this time.

[48] The Applicant argues that he is entitled to a determination of several collateral or remaining issues. While he raises a myriad of such procedural and substantive issues that allegedly occurred throughout the discharge and grievance process, these largely include: (1) the alleged *Privacy Act* violations; (2) asserted failures in the accommodation process; (3) a failure to consider the Medical Profile as a separate decision; (4) that the Applicant was entitled to present new allegations and new evidence at the Level II process; and (5) various procedural irregularities. I agree with the Respondent that the remaining issues asserted by the Applicant are ill defined in their number and lack of specificity. They are made without a proper evidentiary basis. Nonetheless, the task before this Court is to determine whether the Level II Commissioner's finding that any remaining issues are moot is reasonable.

[49] The role of this Court on judicial review is to consider the outcome of the administrative decision in light of its underlying rationale. When conducting a reasonableness review, the decision as a whole must be transparent, intelligible and justified. The focus is on the decision

actually made and the justification for it, not what conclusion the Court would have reached in the decision maker's place (*Vavilov* at para 15). The role of reviewing Courts is to *review* and refrain from deciding the issues themselves (*Vavilov* at paras 13, 83):

> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

[50] A principled approach to reasonableness review begins with the reasons. A reviewing Court must seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). "[A] reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[51] Only the Level II decision is reviewable before me. To the extent the Applicant has raised concerns with the Level I Decision, those concerns are irrelevant.

[52] The Level II Decision was reasonable in that the Commissioner found the remaining issues moot and exercised her discretion not to consider the otherwise moot issues. I have not been pointed to any unreasonable findings of fact on the part of the Commissioner in rendering her Level II Decision.

[53] The Commissioner applied the correct legal test. Both parties agree that the legal framework for mootness is set out by the Supreme Court in *Borowski v Canada* [1989], 1 SCR 342 [*Borowski*], which asks "whether the required tangible and concrete dispute has disappeared and the issues have become academic" (*Borowski*, above at 353). The Commissioner found that "no live controversy remains" at paragraph 84 of her Level II Decision.

[54] The Commissioner further considered whether to exercise her discretion to determine the remaining issues, notwithstanding the finding of mootness (*Borowski* at 353):

> [85] With respect to the Grievor's request that I nevertheless exercise my discretion to address the moot issues, the exercise of such discretion is not warranted in this situation. The Respondent has agreed to rescind the medical profile, commence a new medical assessment, and take steps to accommodate the Grievor (Report, para 83). Further, the circumstances of the Grievor's case do not render it "worthwhile to apply scarce judicial resources to resolve it" (Report, para 84), nor do they "raise an issue of such public importance that its resolution is in the public interest" (Report, para 85). With respect to the latter, the Grievor's view was that it would be beneficial if his case was heard on this basis, to provide instruction and guidance to the Force in future processes. I do not accept the Grievor's claim in this instance. As noted by the ERC, the medical discharge process was repealed, and replaced by a new process (Report, para 85).

[55] The Applicant's submissions amount to re-arguing these remaining issues. The substantive and procedural issues raised by the Applicant were a means to achieving three outcomes, notably the withdrawal of the Medical Profile, the Notice of Intention to Discharge and the Medical Discharge. These outcomes have been achieved both by the Respondent's withdrawal of the same and due to the Commissioner's Level II Decision, where the Medical Discharge was quashed and the process must begin anew. I do not find that section 17(1) of the

Commissioner's Standing Orders (Grievances), SOR/2003-181 [*Standing Orders*], now repealed, required the Commissioner to determine the remaining issues. Section 17(1) provides:

> **17(1)** If the level considering the grievance determines that they have jurisdiction over the grievance under subsections 31(1) and (2) of the Act, the level shall determine if the decision, act or omission that is the subject of the grievance is consistent with the applicable legislation and the Royal Canadian Mounted Police and Treasury Board policies.

[56] Neither do I find that the Applicant was deprived in any way from bringing this case due to the Respondent's withdrawal of the Medical Profile, the Notice of Intention to Discharge and the Medical Discharge and pursuant to section 19 of the *Standing Orders*, above. The Applicant's grievance nonetheless proceeded before the External Review Committee and the Level II Commissioner. The Applicant had an opportunity to submit his grievance and his concerns related to all issues. In quashing the Medical Discharge, the Level II Commissioner's determination that the remaining issues were moot was reasonable.

VIII. Conclusion

[57] For the reasons above, I have not found any omissions in the record before the Commissioner or this Court, nor is there sufficient evidence that leads me to conclude there was a reasonable apprehension of bias on the part of the Commissioner. Further, the Level II Decision is not unreasonable for determining that any remaining issues were moot.

[58] This application is dismissed.

IX. Costs

[59] Costs are awarded to the Respondent in the agreed amount of $7,500.

JUDGMENT in T-2061-19

THIS COURT'S JUDGMENT is that:

1. This application is dismissed; and

2. Costs are awarded to the Respondent in the amount of $7,500.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2061-19
STYLE OF CAUSE:	CORPORAL PATRICK G. WASYLYNUK REGIMENTAL NUMBER 36606 v COMMANDING OFFICER "K" DIVISION ROYAL CANADIAN MOUNTED POLICE, ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	EDMONTON, ALBERTA
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DATED:	MAY 11, 2021

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