

Federal Court



Cour fédérale

Date: 20240920

Docket: T-1155-23

Citation: 2024 FC 1480

Ottawa, Ontario, September 20, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

PHILIP DICKINSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Dr. Philip Dickinson, seeks judicial review of the decision made by the Presidents of the three major Canadian research-funding agencies: the Canadian Institutes of Health Research [CIHR], the Natural Sciences and Engineering Research Council of Canada [NSERC], and the Social Sciences and Humanities Research Council [SSHRC], collectively referred to as the “Tri-Agency”.

[2] The Tri-Agency Presidents dismissed Dr. Dickinson's complaint of "Institutional Non-Compliance" by McGill University [McGill].

[3] Dr. Dickinson's complaint alleged that McGill had breached the Tri-Agency's Framework on the Responsible Conduct of Research [Tri-Agency Framework], which governs the relationship between academic institutions and the Tri-Agency.

[4] The Secretariat on the Responsible Conduct of Research [SRCR] appointed an external reviewer to review Dr. Dickinson's complaint. The Tri-Agency Presidents adopted the findings of the external reviewer and the recommendation of the Panel on Responsible Conduct of Research [the Panel], and dismissed Dr. Dickinson's complaint.

[5] In this Application for Judicial Review, Dr. Dickinson submits that the Tri-Agency Presidents' decision is not reasonable, the process for determining his complaint was procedurally unfair, and the investigation and decision-makers were biased.

[6] Dr. Dickinson's experience in seeking some redress and accountability for his exclusion from a research project that he conceived and developed highlights the need for different approaches to resolve such complaints. Although McGill conducted an investigation into Dr. Dickinson's complaint of research misconduct and issued the report of its Investigation Committee [IC], which acknowledges some of Dr. Dickinson's concerns, this is not the decision subject to judicial review. Dr. Dickinson challenged McGill's determination that there was no evidence of research misconduct by pursuing a complaint to the SRCR of Institutional

Non-Compliance by McGill [INC complaint]. The Respondent notes that the INC complaint process is not an appeal of McGill's decision; but rather is an examination of the process followed by McGill and whether McGill complied with the Tri-Agency Framework.

[7] The many frameworks, agreements, processes, committees and panels, and the limitations of the INC complaint process—described to a limited extent below—portray a bureaucratic maze that offers limited recourse to scholars who seek to navigate this maze. As acknowledged in several documents on the record before this Court, this process was not conducive to addressing Dr. Dickinson's concerns about his exclusion from the research project and the redirection of the funds initially granted for the project to a different project and a different researcher.

[8] Although McGill's IC found that there was no research misconduct, their report acknowledges, to some extent, the impact on Dr. Dickinson. For example, the IC notes, "our investigation did uncover evidence that R1 [Dr. Pruessner, who was Dr. Dickinson's academic supervisor and collaborator] may not have exercised sound research judgment and full transparency toward C [Dr. Dickinson] when it became obvious that C could not be included on the grant..."; and, "C's negative treatment documented by this case, and how it likely impacted on his academic career trajectory, must be acknowledged by the University in a meaningful way, through some form of formal apology that recognises C's role as a victim in this case".

[9] The Panel also noted that the conduct of Dr. Pruessner was a departure from the Tri-Agency Framework, which states: "Researchers shall strive to follow the best research practices honestly, accountably, openly and fairly in the search for and in the dissemination of knowledge".

[10] The Court's focus is on the decision of the Tri-Agency Presidents—who accepted the report of the external reviewer and the recommendation of the Panel—and dismissed Dr. Dickinson's three allegations of Institutional Non-Compliance by McGill.

[11] Regardless of the limitations of an INC complaint, the process must be procedurally fair and the decision of the Tri-Agency Presidents must be reasonable to withstand judicial review.

[12] For the reasons that follow, the Court finds that there was no breach of the duty of procedural fairness owed to Dr. Dickinson by the SRCR in the determination of the INC complaint. The Court also finds that there is no evidence of any reasonable apprehension of bias in the investigation of the INC complaint or by the decision-makers. However, the Court finds that the Tri-Agency Presidents' decision to dismiss the INC complaint with respect to the allegation that the reallocation of funds granted to Dr. Pruessner violated the Tri-Agency Framework is not reasonable.

[13] Contrary to Dr. Dickinson's submission that the Court should substitute its own decision and find that McGill breached the Tri-Agency Framework, there is no reason for the Court to do so. Although the complaint must be redetermined, no bias has been established and no obvious or single outcome to the redetermination is apparent. The Court's role is to determine if the decision-maker erred, not to make the decision.

I. Background

A. *McGill's RCR Obligations*

[14] McGill University is required to maintain a Responsible Conduct of Research policy [RCR policy] that fulfills the minimum provisions set out in the “Tri-Agency Framework: Responsible Research Conduct (2016)” [Tri-Agency Framework]. The Tri-Agency Framework governs institutions applying for and managing Tri-Agency funds, performing research and disseminating results, and the processes that institutions must follow when there is an allegation that the Tri-Agency Framework has been breached. Institutions that receive funding must establish policies to implement the requirements of the Tri-Agency Framework. McGill’s implementing policies are its RCR policy and the “McGill Regulation on the Conduct of Research” and the “McGill Regulation Concerning the Investigation of Research Misconduct” [McGill Regulations].

B. *Dr. Dickinson's doctoral research*

[15] Dr. Dickinson is a neuroscientist and a Vanier Scholar. During his doctoral studies at McGill, he developed a research project to evaluate the impact of beta-blocker drugs on the autobiographical memory of hypertensive patients. Dr. Dickinson authored grant applications to the CIHR to fund the project; however, he was not able to apply directly for grants because, at that time, he was a doctoral student. He worked with his supervisor, Dr. Pruessner, to submit grant applications to the CIHR that acknowledged Dr. Dickinson’s contributions and listed him as a co-applicant.

[16] After four unsuccessful applications, Dr. Pruessner submitted an application to the “2016 1st Live Pilot Project Grant” competition with the CIHR. Dr. Pruessner excluded Dr. Dickinson from the list of co-authors and removed all acknowledgements of Dr. Dickinson in the proposal. The grant application was successful and received funding from the CIHR. Dr. Dickinson notes that immediately after the grant was awarded on July 18, 2016, Dr. Pruessner announced that he no longer wished to pursue the project and wanted to use the funds for other research.

Dr. Pruessner then left on sabbatical and did not return.

[17] Dr. Dickinson learned that the funds were not returned to the CIHR. The funds were later redirected to Dr. Nader, also a professor at McGill, for a different research project related to testing new treatments for smoking addictions.

C. *Dr. Dickinson’s complaint of research misconduct*

[18] On March 18, 2020, Dr. Dickinson submitted a detailed complaint against Drs. Pruessner and Nader to McGill’s Research Integrity Office [the research misconduct complaint].

[19] Dr. Dickinson alleged that:

1. Dr. Pruessner and Dr. Nader did not maintain the highest standards of honesty, integrity, and ethical behaviour (citing the RCR policy at section 3.1.i and the Tri-Agency Framework at section 2.1.2);
2. Dr. Pruessner knowingly engaged in plagiarism (citing the McGill Regulations at section 5.1 and, the Tri-Agency Framework at section 3.1.1.d); and
3. Dr. Pruessner and Dr. Nader used grant funds inconsistent with the CIHR’s policies (citing the Tri-Agency Framework at section 3.1.3).

D. *McGill's IC Determination*

[20] McGill's Research Integrity Office referred the research misconduct complaint to an IC.

[21] On October 27, 2020, McGill advised Dr. Dickinson by letter that McGill's investigation concluded that there was no research misconduct and that his complaint was dismissed.

[22] The IC found no evidence of a violation of the guidelines on ethical behaviour in research.

[23] The IC also found that there was no evidence that Dr. Pruessner intended to plagiarize Dr. Dickinson's work when he submitted the 2016 CIHR application. The IC noted that Dr. Pruessner had acknowledged in emails to Dr. Dickinson and to collaborators that Dr. Dickinson had made intellectual contributions to the formulation of the grant application over an extended period. The IC found that Dr. Pruessner's conduct, in excluding Dr. Dickinson in the 2016 application, was an inadvertent omission. The IC noted that Dr. Pruessner and Dr. Dickinson had discussed the omission and agreed to "deal with the situation" and add Dr. Dickinson's name if the grant were successful.

[24] The IC also found that there was no evidence that the CIHR grant had been used in a manner inconsistent with the Tri-Agency Financial Administration Guide. The IC noted that "many core tenets of the 2016 CIHR grant proposal, for example, which are highlighted in the abstract and public summary – understanding the effects of [med], [disease], a focus on [blank] – are no longer being investigated after the grant was transferred to [R2]. Still a conceptual and

methodological link between R2's current projects and those for which funding was received can be established and the extent from which funded research may divert over time from its original goals is poorly defined by CIHR”.

[25] The IC Report, although concluding that there was no research misconduct, noted several general concerns, including that, “our investigation did uncover evidence that R1 may not have exercised sound research judgment and full transparency toward C when it became obvious that C could not be formally included on the grant (for example, by immediately communicating this situation to C and seeking a resolution before the grant was submitted.)”

[26] The IC also noted, “the Committee believes that C's negative treatment documented by this case, and how it likely impacted his academic career trajectory, must be acknowledged by the University in a meaningful way, through some form of apology that recognizes C's role as a victim in this case”.

[27] The IC also commented that the investigation highlighted “potential vulnerabilities and a lack of judicious oversight in the process of transferring Tri-Council awards to a new PI (principal investigator), which in certain contexts could lead to an unsanctioned use of public funds”. The IC noted, “the degree to which this new line of research is closely aligned with the originally proposed project in 2016 is subject to interpretation”. The IC stated that “to ensure clear standards in the financial administration of publicly awarded funds, and to maintain public trust in peer-reviewed research, the Committee calls on the CIHR and [institution] to re-examine their current policies and processes for transferring Tri-Council awards to a new PI and for overseeing these awards”.

E. *Dr. Dickinson's complaint to the SRCR of Institutional Non-Compliance by McGill*

[28] On December 22, 2020, Dr. Dickinson submitted his INC complaint against McGill to the SRCR. Dr. Dickinson made three specific allegations:

1. McGill failed to apply the appropriate interpretation of plagiarism as described in Section 3.1 of the Tri-Agency Framework;
2. McGill failed to provide Dr. Dickinson an opportunity to be heard by the Investigation Committee, as described in Section 4.3.4.b of the Tri-Agency Framework; and
3. McGill failed to interpret Section 3 of the Tri-Agency Guide on Financial Administration in a manner that is consistent with the funding opportunity description, in breach of Section 1.3.b of the Tri-Agency Framework.

F. *The SRCR Process*

[29] The Respondent relies on the affidavit of Karen Wallace, the Executive Director of the SRCR at the relevant time, which explains the roles of the Secretariat, the Panel and the process for addressing complaints.

[30] The role of the SRCR is to provide substantive and administrative support to the Panel and the Tri-Agency.

[31] The role of the Panel is to ensure a uniform approach for promoting the responsible conduct of research and to address allegations of a breach of the Tri-Agency policies, consistent with the Tri-Agency Framework.

[32] Ms. Wallace explains that a complaint of institutional non-compliance is “not meant as an appeal process”. She explains:

It is not an avenue for reconsideration of findings in relation to allegations against researchers. The Secretariat addresses allegations of institutional non-compliance by engaging an external assessor to examine whether an Institution has failed to comply with the RCR Framework [i.e. Tri Agency Framework] or the Agreement.

[33] Ms. Wallace also explains that “allegations of institutional non-compliance relate only to the process followed by the Institution when addressing an allegation against their researchers”. There is no assessment of the merits of the allegation made against researchers, which in this case would be the allegations regarding McGill and Drs. Pruessner and Nader.

[34] With respect to the process, Ms. Wallace explains that upon receipt of an allegation of institutional non-compliance, the SRCR contacts the institution and considers whether an external assessment is necessary. If so, the SRCR selects the external reviewer and provides the documents for the purpose of the external reviewer’s assessment. The external reviewer prepares a draft report, which is provided to the complainant and the institution for the purpose of commenting on factual accuracy. The external reviewer then provides the report to the Panel, with the names of the complainant and researchers anonymized. The Panel then considers the report of the external reviewer and makes recommendations to the Tri-Agency Presidents. The SRCR provides the Panel’s recommendations and the relevant background documents to the Tri-Agency Presidents for their final decision.

G. *The processing of Dr. Dickinson's INC complaint*

[35] On April 30, 2021, Dr. Dickinson wrote to the SRCR and to the President of the CIHR expressing his dissatisfaction about the lack of progress regarding his complaint. On May 4, 2021, the SRCR responded with details about the procedure, and noted that an independent external reviewer would be appointed.

[36] On June 4, 2021, the SRCR confirmed that McGill had responded to the complaint.

[37] On July 23, 2021, the SRCR advised Dr. Dickinson that an external reviewer had been selected.

[38] On August 11, 2021, the SRCR confirmed that Dr. Dickinson's original research complaint against McGill would be provided to the external reviewer for context, and that Dr. Dickinson would not be permitted to review McGill's response to his INC complaint.

[39] On August 12, 2021, Dr. Dickinson objected to the external reviewer selected by the SRCR noting that a reviewer who had no previous relationship with either the Tri-Agency or the institutions would be more suitable. The SRCR agreed and undertook to select another external reviewer.

[40] On December 3, 2021, the President of the CIHR responded to Dr. Dickinson's inquiries about the delay and the process, noting, among other things, that a formal process for addressing allegations of institutional non-compliance exists.

[41] On December 22, 2021, the SRCR again responded to Dr. Dickinson regarding efforts to identify candidates to serve as external reviewers.

[42] On March 18, 2022, the SRCR proposed Dr. Robert Lipson as the external reviewer. Dr. Lipson had served two terms as a member on the Panel.

[43] On April 20, 2022, Dr. Dickinson again objected to the delay and to Dr. Lipson's appointment, noting that Dr. Lipson's past affiliation with the Panel raised a "red flag". He noted that the qualified reviewer should not have ties to the SRCR.

[44] On May 2, 2022, the SRCR responded, acknowledging Dr. Dickinson's concerns, but confirming that Dr. Lipson would remain as the external reviewer. The SRCR explained that there was no impediment to Dr. Lipson's ability to assess compliance with "Agency policy", Dr. Lipson's knowledge was an asset, and that a search for another external reviewer would cause further delay.

[45] On July 15, 2022, the SRCR provided Dr. Dickinson with Dr. Lipson's draft report. Dr. Dickinson and McGill were invited to provide comments on the factual accuracy of the draft report. Dr. Dickinson and McGill provided comments.

[46] On September 7, 2022, the SRCR advised Dr. Dickinson that Dr. Lipson would consider the comments and that Dr. Lipson's final report would be sent to the Panel before being sent the Tri-Agency Presidents for final determination.

[47] On September 9, 2022, Dr. Lipson submitted his final report to the SRCR. On October 24, 2022, the Panel met to discuss the report.

[48] In February 2023, the Panel recommended, by way of two briefing notes, that the Tri-Agency Presidents accept the external reviewer's report.

[49] The Panel recommended to the President of the CIHR to accept the IC's report, issue a letter of reprimand to Dr. Pruessner, and declare the INC complaint file closed. (This recommendation was made to the President of the CIHR as the key funding agency for the research at issue.)

[50] The Panel also recommended to the three Presidents of the Tri-Agency to accept Dr. Lipson's report and declare the INC complaint file closed.

[51] On April 26, 2023, the Presidents of the Tri-Agency issued their decision by way of letter to McGill, with a copy to Dr. Dickinson, dismissing Dr. Dickinson's complaint.

II. The Decision At Issue

[52] As noted, the decision that is subject to judicial review is the decision of the Tri-Agency Presidents dismissing Dr. Dickinson's INC complaint against McGill.

A. *The Decision letter*

[53] The decision letter notes the three allegations made by Dr. Dickinson against McGill and the external reviewer's (Dr. Lipson) conclusion that McGill had not breached the Tri-Agency Framework. The letter states:

We have reviewed the file, the external assessor's report and supporting documentation, and the Panel on Responsible Conduct of Research's recommendations. On this basis, we accept the external assessor's conclusion that McGill University did not breach the requirements of the RCR Framework [Tri Agency Framework].

We apologize for the delay in communicating this final decision to you.

We acknowledge that the University's efforts to clarify its regulations to facilitate the participation of complainants in the investigation process and in developing a clear process for graduate students to use when they are dissatisfied with the way in which their work is used in grant applications when the situation is time sensitive.

[54] As noted in *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37:

When the Commission adopts an investigator's recommendations and provides no reasons or only brief reasons, the Courts have rightly treated the investigator's Report as constituting the Commission's reasoning for the purpose of the screening decision under section 44(3) of the *Act* (*SEPQA*, *supra* at para. 35; *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* (1999) 167 D.L.R. (4th) 432, [1999] 1 F.C. 113 at para. 30 (C.A.) [*Bell Canada*]; *Canadian Broadcasting Corp. v. Paul* (2001), 274 N.R. 47, 2001 FCA 93 at para. 43 (C.A.)).

[55] This same principle, reiterated in many subsequent cases and contexts, applies in the present case; the reasons of the Tri-Agency Presidents are brief and adopt the reasons of the external reviewer, Dr. Lipson, and the Panel (which adopted the report of the external reviewer).

The Court, therefore, regards the reasons of the external reviewer as the reasons of the Tri-Agency Presidents.

B. *The External Reviewer's Report*

[56] Dr. Lipson's report summarizes the background related to Dr. Dickinson's INC complaint and lists the documents provided to assist him with the assessment, which include Dr. Dickinson's initial research misconduct complaint.

[57] With respect to Dr. Dickinson's first allegation, regarding the appropriate interpretation of plagiarism, Dr. Lipson cited the Tri-Agency Framework and McGill's Regulations and found that they were consistent. Dr. Lipson concluded that McGill's "policy" (i.e. the McGill Regulations] and McGill's "actions" regarding the plagiarism allegation (which the Court interprets as meaning McGill's approach to determining the plagiarism allegation) did not constitute a breach of the Tri-Agency Framework.

[58] Dr. Lipson characterized Dr. Dickinson's assertion that Dr. Pruessner had acknowledged plagiarism as "a presumption of its proof and of [Dr. Pruessner's] guilt". Dr. Lipson noted that "[i]t is not the role of a Complainant to make such a judgment, but that of the Investigation Committee".

[59] Dr. Lipson cited McGill's response to the INC complaint, which stated that Dr. Pruessner did not admit to plagiarism and that McGill's IC had concluded, "[t]hat the facts, as described 'somewhat differently' by both parties, did not amount to plagiarism".

[60] Dr. Lipson explained that his role was not to reassess the allegations.

[61] With respect to Dr. Dickinson's second allegation, regarding McGill's failure to provide him with an opportunity to appear before the IC, Dr. Lipson found that McGill was not required to do so. Dr. Lipson concluded that both the previous and new versions of McGill's RCR policy were consistent with the Tri-Agency Framework and do not provide a right to the complainant to appear; the opportunity to be heard can be provided in several ways.

[62] With respect to Dr. Dickinson's third allegation, regarding McGill's failure to interpret the Tri-Agency Guide on Financial Administration consistently with the funding agreement and the Tri-Agency Framework, Dr. Lipson found no inconsistency. Dr. Lipson concluded that the repurposing of the grant and the transfer of the funds to Dr. Nader's project did not breach the Tri-Agency Framework.

[63] Dr. Lipson relied on his own experience, noting that research agencies fund programs rather than specific projects, and that several projects typically make up a program. Dr. Lipson noted that principal investigators "have the flexibility to change projects provided that they [sic] fall within the general theme of the program. This flexibility is essential for many reasons including allowing [principal investigators] to follow emerging opportunities, and to respond to results published over the lifetime of the grant".

C. *The Panel's recommendation*

[64] The Panel's recommendations are set out in two briefing notes prepared by the SRCR. The briefing notes recount the history of Dr. Dickinson's complaint, the findings of the IC, and the Panel's discussion.

[65] The briefing note addressed to the President of the CIHR summarized the discussion of the Panel, including that Panel members were of the view that "poorly communicated expectations were at the heart of the [Dr. Dickinson's] allegations", and that with "proper mentorship... [Dr. Dickinson] might have had a more realistic expectation of the role of a co-applicant on a grant application". The Panel also noted that Dr. Pruessner's conduct was a departure from article 2.1.2 of the Tri-Agency Framework, which states: "Researchers shall strive to follow the best research practices honestly, accountably, openly and fairly in the search for and in the dissemination of knowledge".

[66] The SRCR noted that Dr. Pruessner's conduct, "while undoubtedly a failure of the principles of ethical behaviour that risk impacting a student's career trajectory, is not a breach of a specific article of the RCR framework [Tri-Agency Framework]".

[67] The Panel agreed with the SRCR's assessment that Dr. Pruessner should receive a letter of reprimand to remind him of the requirement to follow the best research practices. The Panel also suggested that the CIHR clarify its guidelines about how to transfer a grant from one researcher to another and under what conditions. The briefing note concludes with recommendations:

That the Panel on Responsible Conduct of Research recommend that the President of CIHR:

- 1) accept the Institution's report;
- 2) issue a letter of reprimand to [Dr. Pruessner], and
- 3) declare the file closed.

[68] The briefing note addressed to the Tri-Agency Presidents reiterates much of the same information. The briefing note explains that the Panel acknowledged that Dr. Dickinson “appears to have devoted countless hours of time and effort, with minimal acknowledgement, to putting the application together with the expectation that [he] would be able to have a key role in carrying out the research”; however, both the Panel and the SRCR agreed with Dr. Lipson that McGill did not breach the requirements of the Tri-Agency Framework or any other Tri-Agency policy. The briefing note concludes with recommendations:

That the Panel on Responsible Conduct of Research recommend that the Presidents of CIHR, NSERC and SSHRC:

- 1) accept the report; and
- 2) declare the file closed.

[69] The Tri-Agency Presidents accepted the recommendations.

D. *Other Evidence*

[70] The information considered by the Tri-Agency Presidents in making their decision is set out in the Certified Tribunal Record (CTR) and is comprised of:

- Two briefing notes;
- Dr. Dickinson's INC complaint;

- The Final Report of the IC;
- Responses to the IC Report from Dr. Pruessner and Dr. Nader;
- Dr. Dickinson's and McGill's comments regarding Dr. Lipson's draft report; and
- Dr. Lipson's Final Report.

[71] The Respondent submits that only the documents in the CTR should be considered by the Court in determining the reasonableness of the decision.

[72] As a general rule, new evidence (i.e. evidence not part of the record before the decision-maker) is only permitted on judicial review on an exceptional basis (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [*Access Copyright*]). The recognized exceptions are for evidence that: (1) provides general background information that may assist in understanding the relevant issues but does not add new evidence on the merits; (2) draws the attention of the reviewing court to procedural defects that cannot be found in the decision-maker's record; and (3) highlights the absence of evidence before the decision-maker on a particular finding (*Access Copyright* at para 20).

[73] The Court notes that the CTR does not include many of the documents relied on by both the Applicant and Respondent, including the various frameworks, the RCR policy or McGill Regulations cited by the Applicant and Respondent. Nor does it include all the documents provided to Dr. Lipson for the external review.

[74] The Court also notes that Dr. Dickinson's Application Record is over 2000 pages and includes documents that are not in the CTR. Similarly, the Respondent's Record includes documents not in the CTR.

[75] The Respondent's Record includes Ms. Wallace's affidavit, which provides an overview of the SRCR's policies and procedures for complaints. Ms. Wallace's affidavit attaches several exhibits, including the documents that were provided to the external reviewer, Dr. Lipson (for example, the research misconduct complaint, the IC report, the Tri-Agency Framework, the McGill Regulations and other correspondence).

[76] Dr. Dickinson does not oppose the Court's receipt of Ms. Wallace's affidavit. The Court finds that Ms. Wallace's affidavit provides general background information. The affidavit is admitted in accordance with a recognized exception (*Access Copyright*).

[77] The Respondent objects to the Court's consideration of Dr. Dickinson's exhibits to his affidavit that were not provided to the Tri-Agency Presidents, including his original research misconduct complaint, with its attachments, which included the description of the 2016 1st Live Pilot Project Grant and related information about "foundation grants". However, the Respondent's objection overlooks that a copy of the research misconduct complaint is included in the Respondent's record, as part of the documents provided to Dr. Lipson for the external review.

[78] In addition, Dr. Dickinson's submissions and affidavit note that he provided a copy of his research misconduct complaint along with his INC complaint to the SRCR as required by the

Tri-Agency Framework. Dr. Dickinson's research misconduct complaint to McGill refers to the 2016 1st Live Pilot Project Grant several times, noting that it was the basis for the grant awarded. He also made the submission in his research misconduct complaint (as he does before this Court) that Foundation Grants support researchers and their broad interests, whereas the 2016 1st Live Pilot Project Grant was designed to fund specific projects, with references to the relevant parts of the application criteria.

[79] In Dr. Dickinson's response to Dr. Lipson's draft report, he again attached the information regarding "Applying to the CIHR's Project Scheme: 2016 1st Live Pilot Project", which describes the objectives and application approval process, among other things.

[80] The Court finds that many of the documents included in both the Applicant's record and the Respondent's Record provide essential background information and/or highlight the absence of evidence before the decision-maker; these documents fall within the exceptions noted in *Access Copyright*. In addition, although only the documents in the CTR were provided to the Tri-Agency Presidents to make their decision, the Tri-Agency Presidents adopted Dr. Lipson's report. The documents that were considered by Dr. Lipson should, therefore, be considered by the Court in assessing the reasonableness of the decision.

E. *The relevant provisions of the legislation and frameworks*

[81] As noted, there are many policies, agreements, frameworks and regulations included in the records of the Applicant and Respondent. Those noted below are relevant to the INC complaint and its determination.

[82] The CIHR is governed by the *Canadian Institutes of Health Research Act*, SC 2000, c 6. The relevant provisions describing the objectives and mandate of the CIHR are set out in Annex A.

[83] The 2016 Tri-Agency Framework describes its objectives as including the promotion of fairness in the conduct of research and in the process for addressing allegations of policy breaches, defines what constitutes a breach, and describes how allegations of a breach are investigated. The Breach of a Tri-Agency Research Integrity Policy includes plagiarism, which is defined in section 3.1.1 (d). The relevant provisions are set out in Annex A.

[84] The Agreement on the Administration of Agency Grants and Awards by Research Institutions [the Agreement] between McGill and the Tri-Agency requires McGill to, among other things, comply with the requirements of the Tri-Agency Framework, conduct independent reviews where a breach is believed to have occurred, and take corrective action where a “default” is found (which includes a material breach of the agreement). The relevant provisions are set out in Annex A.

[85] Excerpts of the McGill Regulation on the Conduct of Research are also included in Annex A.

III. Issues and Standard of Review

[86] Dr. Dickinson has raised many arguments and issues, but all relate to two key issues: whether the decision is reasonable and whether Dr. Dickinson was afforded the level of

procedural fairness owed to him in the circumstances by the SRCR and the Tri-Agency Presidents with respect to his complaint of institutional non-compliance by McGill.

[87] The presumptive standard of review for administrative decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]).

[88] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law” (*Vavilov* at para 85), and where the reasons for the decision are justified, intelligible, and transparent (*Vavilov* at para 95).

[89] On judicial review, the court does not reweigh and reassess the evidence that was before the decision-maker (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). However, decisions must be justified in light of the facts (*Vavilov* at para 126, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[90] For a decision to be found unreasonable and set aside, the reviewing court must find serious shortcomings or flaws that are central to the decision (*Vavilov* at para 100); this includes irrational reasoning and indefensible outcomes in light of the relevant factual and legal constraints (*Vavilov* at para 101).

[91] Where there are allegations of a breach of the duty of procedural fairness, the Court considers whether the procedure followed by the decision-maker was fair having regard to all the

circumstances. The Court must ask, “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Brown v Canada (Attorney General)*, 2022 FCA 104 at para 13). Where a breach of procedural fairness is found, no deference is owed to the decision-maker.

[92] The scope of the duty of procedural fairness is variable and is informed by several factors established in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC) [*Baker*]. The *Baker* factors include, as applicable: the nature of the decision, the nature of the statutory scheme, the importance of the decision to the person affected, the legitimate expectations of that person, and the choice of procedure made by the decision-maker. The cumulative assessment of the relevant factors guide the level or scope of the duty owed; no one factor is determinative.

IV. The Applicant’s Submissions

[93] Dr. Dickinson submits that the process for the determination of his INC complaint was not procedurally fair. He also alleges that the process and the decision-maker were biased as both favoured McGill. Dr. Dickinson further submits that the decision of the Tri-Agency Presidents is not reasonable.

A. *Breach of Procedural Fairness*

[94] Dr. Dickinson submits that he was owed a high degree of procedural fairness, relying on the *Baker* factors. He submits that his INC complaint alleging that McGill breached the

Tri-Agency Framework created an adversarial process; the decision was very important to him; there is no further appeal; and, he had a legitimate expectation that the process would be made known to him, would be followed, would be timely, and that he would have an opportunity to respond to the external reviewer's report before it was finalized. He also submits that he should have been provided with McGill's reply to his INC complaint. He submits that as a result, he did not know the whole case he had to meet or to respond.

[95] Dr. Dickinson notes that the determination of his INC complaint took over two and a half years, rather than the seven months as expected. Dr. Dickinson argues that the excessive delays impeded his ability to resolve his issues with McGill in a timely manner, making a return to the research project impossible and prejudiced him in his pursuit of other remedies. Dr. Dickinson argues that the delay on its own constitutes a breach of procedural fairness.

B. *The SRCR's conduct shows a reasonable apprehension of bias*

[96] Dr. Dickinson submits that the INC complaint process is respondent-focused, contrary to the CIHR's duty to support the careers of health science researchers. He submits that the focus on McGill's interests resulted in a biased investigation process and biased decision-making.

[97] Dr. Dickinson submits that the SRCR's cumulative actions during the investigation of his INC complaint support finding a reasonable apprehension of bias. Dr. Dickinson alleges that the SRCR withheld information from Dr. Lipson and made "inappropriate accommodations" for McGill, and that Dr. Lipson revised his report at McGill's request and these revisions went

beyond factual errors. Dr. Dickinson also alleges that the SRCR falsely attributed the delay to Dr. Dickinson's own legitimate concerns about bias in the selection of the external reviewer.

[98] Dr. Dickinson adds that the Tri-Agency Presidents apologized to McGill in the decision letter, but the SRCR did not apologize to Dr. Dickinson, despite the recommendation of the IC to do so.

C. *The decision is not reasonable*

[99] Dr. Dickinson further submits that the Tri-Agency Presidents' decision is not reasonable; the decision is not justified, the decision-makers ignored evidence and their reasons lack logic and rationality.

[100] With respect to his allegation that McGill failed to apply the appropriate interpretation of plagiarism in accordance with the Tri-Agency Framework, Dr. Dickinson submits that Dr. Pruessner's actions were—by definition—plagiarism.

[101] Dr. Dickinson asserts that Dr. Lipson and the Tri-Agency Presidents were not provided with the final IC report or with Dr. Dickinson's submissions to the Research Integrity Office, which explained how Dr. Pruessner's conduct constituted plagiarism. He argues that this lack of evidence prevented Dr. Lipson from identifying the lack of logic—i.e. by finding that there was no plagiarism because there was no intent to plagiarize. Dr. Dickinson submits that the IC found only that there was no evidence of intention—not that there was no evidence of plagiarism.

[102] Dr. Dickinson submits that Dr. Lipson erred by accepting the conclusion of the IC without considering whether plagiarism was demonstrated and erred by finding that both the Tri-Agency Framework and the McGill Regulation regarding plagiarism were consistent.

[103] With respect to the dismissal of Dr. Dickinson's allegation that McGill failed to give him the opportunity to appear before the IC contrary to the Tri-Agency Framework, Dr. Dickinson argues that Dr. Lipson relied on erroneous information. Dr. Dickinson notes that, in response to the draft report, he clarified that he had in fact requested to meet with the IC. However, Dr. Lipson's final report perpetuated erroneous information by stating that Dr. Dickinson had appeared before the IC when he had not. Dr. Dickinson argues that the Tri-Agency Presidents accepted Dr. Lipson's finding based on this incorrect information, which renders their decision unreasonable.

[104] Dr. Dickinson submits that Dr. Lipson also erred by dismissing Dr. Dickinson's allegation that McGill failed to interpret the Tri-Agency Guide on Financial Administration consistently with the funding opportunity description and in breach of the Tri-Agency Framework. Dr. Dickinson argues that Dr. Lipson relied on his own experience as a researcher and recipient of grants rather than on the Guide and the funding description. Dr. Dickinson argues that Dr. Lipson confused "Foundation Grants", which fund programs, with the "2016 1st Live Pilot Project Grant", which funds projects and which funded the initial research.

[105] Dr. Dickinson submits that the transfer of the grant funds to Dr. Nader resulted in the funding of a very different project. Dr. Dickinson submits that transferring grant project money

to other projects is contrary to the Tri-Agency Framework and the legislation governing the CIHR, which requires transparency and the accountability for how funds are used.

V. The Respondent's Submissions

[106] The Respondent disputes that there was any breach of the duty of procedural fairness or bias. The Respondent further submits that the decision is reasonable.

A. *No breach of the duty of procedural fairness owed*

[107] The Respondent submits that based on the *Baker* factors, Mr. Dickinson was owed minimal procedural fairness rights, which were provided.

B. *The Decision is reasonable*

[108] The Respondent submits that the manner in which Dr. Dickinson framed his allegations in his INC complaint attempts to seek a fresh determination of the IC's findings, but this is not the mandate of the SRCR or Tri-Agency Presidents when determining an INC complaint.

[109] The Respondent submits that important evidence was not withheld and the decision-maker did not overlook any evidence. The Respondent notes that, contrary to Dr. Dickinson's assertion, Dr. Lipson and the Tri-Agency Presidents had a copy of both Dr. Dickinson's INC complaint and his original research misconduct complaint.

[110] With respect to the allegation that Dr. Lipson erred in finding that McGill interpreted plagiarism in accordance with the Tri-Agency framework, the Respondent submits that there is

no error. The Respondent notes that an INC complaint is not an appeal process. The Respondent submits that Dr. Lipson's role—as the external reviewer—was not to review the merits of Mr. Dickinson's allegations against McGill or the IC's finding regarding plagiarism, but to determine if there had been a breach of the Tri-Agency Framework in the determination of the research misconduct complaint regarding the plagiarism allegation. The Respondent adds that it is also not the Court's role to assess the merits of McGill's finding.

[111] With respect to Dr. Dickinson's allegation that he was not given an opportunity to be heard by the IC, the Respondent submits that Dr. Lipson reasonably found that the Tri-Agency Framework does not require that a complainant appear before an IC. The Respondent adds that the error in Dr. Lipson's final report stating that Dr. Dickinson had appeared is of no consequence to the reasonableness of the decision, given that Dr. Dickinson had an opportunity to be heard, albeit not an opportunity to make oral submissions to the IC.

[112] The Respondent also submits that the decision to dismiss Dr. Dickinson's allegation that McGill failed to interpret the policy regarding the redirection of funds consistently with the funding opportunity description, in breach of the Tri-Agency Framework, by redistributing the grant funds, is reasonable. The Respondent reiterates the reasons of Dr. Lipson, noting that the CIHR funds programs rather than projects. The Respondent submits that Principal Investigators have the flexibility to change projects provided that they fall within the general theme of the program.

[113] As noted above, the Respondent argues that Dr. Dickinson seeks to rely on new evidence regarding the 2016 1st Live Pilot Project Grant and Foundation Grants that was not on the record before the decision-maker and which the Court should ignore.

VI. There is no breach of Procedural Fairness

[114] Contrary to Dr. Dickinson's assertion that he was owed a high degree of procedural fairness, consideration of the relevant *Baker* factors supports the conclusion that the scope or level of procedural fairness owed to Dr. Dickinson in the INC complaint process was at the lower end of the spectrum.

[115] The INC process is inquisitive or investigative and not adversarial or "court-like"; the role of the decision-maker (the Tri-Agency Presidents, adopting the external reviewer's report) was to investigate the complaint made by Dr. Dickinson against McGill; the governing legislation does not set out any particular process; the Tri-Agency Framework sets out the general process for investigating complaints; the SRCR has some flexibility in establishing its own process and did so; the SRCR's process, although undergoing some refinement, was consistent with the procedure outlined by Ms. Wallace and in the Tri-Agency Framework; Dr. Dickinson cannot assert a legitimate expectation that a particular process would be followed but was not followed; and, although the decision is important to Dr. Dickinson, it is also important to McGill given that the allegations are made against McGill.

[116] As this Court noted in *National Council of Canadian Muslims v Canada (Attorney General)*, 2022 FC 1087 at para 201 [*NCCM*], the importance of the decision to those affected is

a significant factor in determining the content of the duty of procedural fairness. While this factor is often focused on the subject of a complaint, the importance of the decision to the complainant cannot be overlooked. The decision is clearly important to Dr. Dickinson; he pursued his complaint and made repeated attempts to obtain updates and provide input. As he noted, his motivation was not only due to his own experience but also for other scholars who may face obstacles in seeking redress for potential breaches of the various frameworks.

However, as in *NCCM* at para 208: “[t]he importance of the decision to the complainants, on its own, does not support finding a higher level of procedural fairness than that provided.”

[117] Contrary to the Respondent’s submission, the impact of the SRCR’s delay on Dr. Dickinson cannot be dismissed as speculative or indirect. Dr. Dickinson noted the impact on his career and his return to research. The Panel also acknowledged the impact on Dr. Dickinson. In any event, the lengthy delay does not elevate the scope of the duty of procedural fairness owed by the SRCR in the overall circumstances.

[118] Dr. Dickinson reasonably expected a more timely resolution of his complaint. However, Dr. Dickinson’s reliance on *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 160 [*Blencoe*] to argue that the excessive delay constitutes an abuse of process and breach of procedural fairness is misplaced. In *Blencoe* the issue was the impact of excessive delay in an administrative process to resolve allegations against Mr. Blencoe to the extent that pursuing that administrative process would constitute an abuse of process and require a stay of proceedings. Dr. Dickinson is not the subject of the allegations, nor does he want a stay of proceedings that he initiated.

[119] Even where the duty of procedural fairness owed is at the lower end of the spectrum, the minimal requirements of procedural fairness must be met. Individuals affected by decisions should have the opportunity to present their case and to have decisions affecting their rights and interests made in a fair, impartial, and open process that is appropriate given the statutory, institutional, and social context of the decision (*Baker* at para 28).

[120] However, these minimal requirements have some limits. The opportunity to present the case and to be heard does not necessarily require oral submissions or several rounds of submissions, nor does knowing the case to be met require that every response be shared with the complainant and commented on.

[121] While Dr. Dickinson would have preferred greater participatory rights, including to better explain the impact of his exclusion from a research project he conceived, there was no breach of procedural fairness. Dr. Dickinson submitted his detailed complaint with specific allegations; he set out the “case to be met” by McGill. The SRCR was not required to disclose McGill’s response to the INC complaint to Dr. Dickinson. The external review process addressed the specific allegations set out in the INC complaint. Dr. Dickinson received the draft report of the external reviewer and provided comments on its factual accuracy. There was no obligation on the external reviewer or the SRCR to provide another draft for further comments. Dr. Dickinson received the final decision of the Tri-Agency Presidents.

VII. There is no evidence to support a reasonable apprehension of bias

[122] Allegations of bias are serious and require material evidence; allegations cannot be made on mere suspicion, conjecture, or impression of an applicant (*Right to Life Association of Toronto v Canada (Employment, Workforce and Labour)*, 2021 FC 1125 at para 110; *Ernst v Canadian National Railway Company*, 2021 FC 16 at para 50; *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8).

[123] The threshold to establish bias was established in *Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 at 394 (SCC) and was reaffirmed in *Baker* at para 46:

[The] 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.”

[124] Dr. Dickinson’s allegations of bias rely to a large extent on his allegations related to procedural fairness, including allegations of an imbalanced process. Dr. Dickinson has failed to provide evidence that demonstrates a reasonable apprehension of bias to an informed person. There is no evidence that Dr. Lipson, the SRCR, or the Tri-Agency Presidents were biased against Dr. Dickinson or close-minded when reviewing his complaint.

VIII. The Decision to dismiss the INC complaint against McGill is not reasonable

[125] I do not agree with the Respondent that Dr. Dickinson crafted his allegations to expand the scope of the SRCR’s review of his INC complaint, which the Respondent submits is limited

to examining whether the proper process was followed and nothing more. Dr. Dickinson framed his allegations as non-compliance with specific provisions of the Tri-Agency Framework.

Dr. Lipson explained that his mandate as external reviewer was limited to assessing compliance with the Tri-Agency Framework and he made his findings accordingly. The issue for the Court is whether the decision of the Tri-Agency Presidents, who accepted Dr. Lipson's findings, is reasonable.

[126] The Court finds that the decision of the Tri-Agency Presidents to dismiss the INC complaint against McGill is not reasonable with respect to their finding that the redirection of the grant to a different project complied with the Tri-Agency Framework.

A. *Plagiarism*

[127] The dismissal of Dr. Dickinson's allegation that "McGill failed to apply the appropriate interpretation of plagiarism as described in Section 3.1 of the Tri-Agency Framework" is reasonable.

[128] Dr. Lipson's reasons explain that it was not his role to determine whether plagiarism had occurred, but whether McGill's determination of the allegations of plagiarism was in accordance with the Tri-Agency Framework. Dr. Lipson explains his interpretation of both McGill's Regulations and the Tri-Agency Framework as "conditional statements requiring first proof that a Respondent has been involved in plagiarism". Dr. Lipson concluded that the Tri-Agency Framework and the McGill Regulations are consistent as interpreted in this manner.

[129] The McGill Regulation and the Tri-Agency Framework need not be identical to be consistent.

[130] The Tri-Agency Framework states at section 3.1:

<p>.... In determining whether an individual has breached an Agency policy, it is not relevant to consider whether a breach was intentional or a result of honest error. However, intent is a consideration in deciding on the severity of the recourse that may be imposed.</p>	<p>. . . . Pour déterminer si une personne a violé une politique d'un organisme, le fait qu'une violation soit intentionnelle ou découle d'une erreur de bonne foi n'entre pas en ligne de compte. Cependant, l'intention est prise en compte pour décider de la sévérité de la sanction qui pourrait être exercée.</p>
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[131] Plagiarism, which is a breach of an Agency policy, is defined at section 3.1.1 (d) as:

<p>Presenting and using another's published or unpublished work, including theories, concepts, data, source material, methodologies or findings, including graphs and images, as one's own, without appropriate referencing and, if required, without permission.</p>	<p>L'utilisation des travaux publiés ou non publiés d'une autre personne, notamment les théories, les concepts, les données, les documents originaux, les méthodes et les résultats, y compris les graphiques et les images, comme si c'était les siens sans faire les mentions appropriées et, le cas échéant, sans permission.</p>
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[132] McGill's Regulation on the Conduct of Research states:

<p>5.1 Researchers <u>shall not knowingly engage in Plagiarism.</u></p> <p>5.1.1 Upon the demonstration that a Researcher has engaged in Plagiarism it shall be</p>	<p>5.1 Les chercheurs <u>ne doivent pas se livrer sciemment à des actes de plagiat.</u></p> <p>5.1.1 S'il est démontré qu'un chercheur a commis un acte de plagiat, il est présumé l'avoir fait en toute</p>
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<p>presumed that the Researcher did so knowingly and they shall bear the burden of rebutting the presumption by evidence satisfying the Person or body investigating the matter that no such knowledge existed.</p>	<p>connaissance de cause et il lui incombe de réfuter cette présomption en apportant à la personne ou à l'organisme chargé de l'enquête la preuve que la connaissance en question n'existait pas préalablement.</p>
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[Emphasis added]

[133] The Court notes that Dr. Dickinson's research misconduct complaint against McGill alleged that "Dr. Pruessner knowingly engaged in Plagiarism" (citing section 3.1 of the Framework and Section 5 of the McGill Regulation). The IC considered this specific allegation and found that Dr. Pruessner did not knowingly engage in plagiarism. The IC Report states:

The Committee found no evidence that Dr. Pruessner intended to plagiarize the work of Dr. Dickinson when he submitted the 2016 CIHR application, which failed to list Dr. Dickinson as a Co-applicant. The record demonstrates that Dr. Pruessner rightfully acknowledged in emails to both Dr. Dickinson and to collaborators that Dr. Dickinson had made intellectual contributions to the formulation of the 2016 CIHR grant over an extended period of time (beginning with the March 2013 CIHR grant applicant "spearheaded" by Co-applicant Dickinson, and in all subsequent applications). According to Dr. Pruessner, he then made a mistake by excluding Dr. Dickinson on the 2016 application...

This led to the inadvertent omission of Dr. Dickinson... they agreed to "deal with the situation" and add Dr. Dickinson to the grant if it were funded. The Committee found no evidence to refute Dr. Pruessner's claim that he had made "a mistake" by omitting Dr. Dickinson and that he had no intent to plagiarize or misrepresent Dr. Dickinson's work as his own...

[134] The IC Report also found "no strong evidence" that Dr. Pruessner failed to obtain Dr. Dickinson's consent to proceed with the application for the grant, noting among other things,

that discussions had occurred and there was a “tacit agreement and consent to move forward with the grant submission and to ‘fix things later’”.

[135] Dr. Dickinson argues that the IC should have found plagiarism, based on the definition and the evidence he provided to the IC, and that intent should have only been considered to determine the recourse against Dr. Pruessner, and not to avoid a finding of plagiarism.

[136] Dr. Dickinson argues that Dr. Lipson erred in accepting the IC’s finding. Dr. Dickinson also argues that Dr. Lipson should have been provided with the evidence he had provided to McGill regarding his allegations of plagiarism, which would have informed Dr. Lipson in determining whether McGill failed to apply section 3.1 of the Tri-Agency Framework.

[137] Regardless of whether Dr. Lipson had this evidence, it was not Dr. Lipson’s role to re-examine or redetermine whether plagiarism had occurred. The INC complaint process is not an appeal of the IC decision. Dr. Lipson noted that he was precluded from revisiting the IC’s assessment and finding that Dr. Pruessner’s conduct did not amount to plagiarism.

[138] Dr. Lipson also cited McGill’s response to the INC complaint; McGill stated that Dr. Pruessner did not admit to plagiarism and the IC had concluded that on the facts, which were described “somewhat differently” by both parties, the conduct did not amount to plagiarism as defined “by institutional policy”.

[139] Dr. Lipson did not err in concluding that both the Tri-Agency Framework and the McGill Regulations are consistent in the first step of their approach—i.e., that plagiarism must be demonstrated.

[140] The McGill Regulations prohibit “knowingly engaging in plagiarism” and create a rebuttable presumption—upon the demonstration of plagiarism—that the plagiarism was intentional (done knowingly). The Tri-Agency Framework does not consider intent until a later stage, when determining the recourse for a finding of plagiarism. In both scenarios, there must first be a demonstration or finding that the conduct involves plagiarism.

[141] While the IC report begins by stating that Dr. Pruessner did not knowingly engage in plagiarism, this statement is the IC’s response to Dr. Dickinson’s specific allegation and to the McGill Regulation on the Conduct of Research, which prohibits knowingly engaging in plagiarism.

[142] Although the Court’s role is not to review the IC decision, the Court observes that when read in context, the IC concluded both that Dr. Pruessner’s conduct did not amount to plagiarism and that the conduct was not intentional. The IC considered Dr. Pruessner’s conduct, noting that he had acknowledged Dr. Dickinson’s intellectual contributions but then inadvertently excluded him from the 2016 application, characterizing this as a “mistake”. The IC also noted that Dr. Pruessner had subsequently attempted to rectify the omission. The IC noted that there were discussions between Dr. Pruessner and Dr. Dickinson and a tacit agreement about rectifying the omission if the grant were awarded. The IC also noted that there was no strong evidence of a lack of consent by Dr. Dickinson, which is an element of the definition of plagiarism. In other

words, McGill’s approach was consistent with the Tri-Agency Framework that the first step is to determine whether there is a breach of policy—in this case whether the conduct involves plagiarism. McGill determined that there was no breach of the policy—i.e. no plagiarism.

[143] Dr. Lipson reasonably regarded the IC’s determination as complying with the Tri-Agency Framework because the IC did not regard Dr. Pruessner’s conduct as plagiarism, which is the first step in both the Tri-Agency Framework and the McGill Regulations.

[144] Dr. Lipson explained his mandate and his rationale for finding that McGill did not fail to apply the appropriate interpretation of plagiarism as set out in the Tri-Agency Framework. There is no serious shortcoming or flaw that undermines this finding.

B. *Opportunity to be heard*

[145] Dr. Lipson reasonably found that McGill did not breach the Tri-Agency Framework by failing to provide Dr. Dickinson with an opportunity to be heard by the IC, as described in Section 4.3.4.b of the Tri-Agency Framework. Dr. Lipson found that the opportunity to be heard includes either oral or written submissions.

[146] Dr. Lipson acknowledged that Section 4.3.4 b of the Tri-Agency Framework appears to provide a right to be heard by an IC. It states:

An investigation process for determining the validity of an allegation that provides the complainant and respondent with an opportunity to be heard as part of an investigation, and that allows

Prévoir un processus d’investigation pour déterminer la validité d’une allégation qui donne au plaignant et à la personne visée la possibilité d’être entendus dans le Cadre de

for the respondent to appeal if a breach of policy is confirmed.	l'investigation et qui permet à la personne visée de demander une révision si la violation de la politique est confirmée.
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[147] However, Dr. Lipson noted that the “RCR Framework Interpretations: Opportunity to be Heard”, available on the RCR website, clarifies this:

An interview with the Complainant, be it verbal or in writing, is often, but not always needed. For example, for allegations of plagiarism, a comparison of documents may be sufficient for determining whether or not a breach occurred. Similarly, the information included in the allegation may be self-explanatory and therefore complete. In these cases, once the Complainant has made the allegation and provided any needed documentation, further interaction between the Institution and the Complainant might not be necessary.

[148] Dr. Lipson also noted that the McGill Regulations provide that the complainant may request an opportunity to be heard and the Committee may grant the request where it believes the complainant can provide relevant information. Dr. Lipson reasonably found that McGill had not breached the Tri-Agency Framework by not providing Dr. Dickinson with an opportunity to appear before the IC.

[149] Although Dr. Dickinson did not appear before the IC, as erroneously stated by Dr. Lipson, and although he had requested to appear, the Tri-Agency Framework does not require that an institution provide a right to a complainant to appear. The dismissal of this allegation was not due to erroneous information, but due to compliance with the Tri-Agency Framework.

[150] Dr. Lipson’s reasons are transparent, intelligible, justified, and reveal how he reached his conclusion. Moreover, an opportunity to be heard, as noted in the assessment of Dr. Dickinson’s procedural fairness allegations, does not necessarily mean appearing and giving oral evidence.

C. *Redirection of the Funds*

[151] Dr. Lipson’s conclusion, accepted by the Panel and the Tri-Agency Presidents that the redirection of the funds granted to Dr. Pruessner to a different project and a different researcher did not constitute a breach of section 1.3.b of the Tri-Agency Framework is not reasonable; the conclusion lacks analysis and ignores the evidence.

[152] The objectives of the Tri-Agency Framework include to:

<p>...</p> <p>b. ensure public funds for research are used responsibly and in accordance with funding agreements;</p>	<p>[...]</p> <p>b. faire en sorte que les fonds publics consacrés à la recherche soient utilisés de façon responsable conformément aux ententes de financement;</p>
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[153] The Tri-Agency Framework includes provisions to reflect this objective including in section 3.3.3 regarding the “Mismanagement of Grants or Award Funds”, for example “using grant or award funds for purposes inconsistent with the policies of the Agencies”.

[154] Dr. Lipson cited section 3 of the Tri-Agency Guide on Financial Administration, which states:

<p>Unless otherwise specified in program/funding literature and any agency agreements,</p>	<p>Sauf indication contraire dans la documentation relative au programme ou à la possibilité</p>
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grant recipients may deviate from the proposed research/activities. They are not required to strictly adhere to the allocation of funds set out in the application, as long as they use their grant for the broad purpose for which it was originally awarded.

de financement ou encore dans toute entente conclue avec l'organisme, les titulaires de subvention peuvent déroger à la recherche ou aux activités proposées. Pour autant qu'ils utilisent leur subvention aux fins générales pour lesquelles elle a été attribuée au départ, ils ne sont pas tenus de respecter à la lettre l'attribution des fonds prévue dans la demande.

[155] Dr. Lipson relied on his own subjective knowledge of the Tri-Agency's research funding in concluding that there was no breach of the Tri-Agency Framework:

Based on my experience as someone who held uninterrupted Tri-Council funding for my entire career, and has sat on a Tri-Council grants committee as both a member and Chair, I can state with confidence that Tri-Council agencies (CIHR, NSERC, SSHRC) fund programs, not projects. Several projects typically make up a program. PIs have the flexibility to change projects provided that they [*sic*] fall within the general theme of the program. This flexibility is essential for many reasons including allowing PIs to follow emerging opportunities, and to respond to results published over the lifetime of the grant. This perspective aligns fully with Section 3 on Deviation from Proposed Budget/Activities in The Tri-Agency Guide on Financial Administration, which states: "*Unless otherwise specified in program/funding literature and any agency agreements, grant recipients may deviate from the proposed research/activities. They are not required to strictly adhere to the allocation of funds set out in the application, as long as they use their grant for the broad purpose for which it was originally awarded.*" Therefore, in my opinion, the Institutional policy and actions regarding allegation 3 do not constitute a breach of the RCR Framework.

[156] Although Dr. Lipson was appointed as an external reviewer because of his experience, he was responsible for providing an objective assessment of the allegations based on the facts. Dr. Lipson's finding is based exclusively on his own experience with grant funding and the type of

research CIHR funds. Dr. Lipson did not consider the relevant “agency agreements” to determine whether deviation from the proposed research was permitted or was not permitted due to being “otherwise specified in program/ funding literature or any agency agreements”.

[157] Dr. Lipson does not provide any rationale for concluding that the project to which the funds initially allocated for Dr. Pruessner’s research (which Dr. Dickinson conceived or collaborated on) were transferred to an entirely different research project constitutes the use of the grant “for the broad purpose for which it was originally awarded.” There is no analysis at all.

[158] Even if the Court does not consider Mr. Dickinson’s evidence regarding the 2016 1st Live Pilot Project Grant and Foundation Grants, the Court would find Dr. Lipson’s conclusion not reasonable.

[159] However, Dr. Lipson was provided with the description of the 2016 1st Live Pilot Project Grant by Dr. Dickinson, if not by the SRCR. The information that was available to researchers when applying for the 2016 1st Live Pilot Project Grant was also referred to in Dr. Dickinson’s initial complaint to McGill. Dr. Dickinson appears to have ignored this, as he does not provide any explanation whether the criteria for that research funding would permit deviation. Nor does Dr. Lipson explain whether or how the “broad purpose” of the original research funded by the 2016 Grant is reflected in the project to which the funds were “repurposed” or how the project would fit within “the general theme of the program”.

[160] The information about the 2016 1st Live Pilot Project Grant states:

The Project Scheme is designed to capture ideas with the greatest potential to advance health-related knowledge, health research,

health care, health systems, and/or health outcomes. It supports projects with a specific purpose and a defined endpoint. The best ideas may stem from new, incremental, innovative, and/or high-risk lines of inquiry or knowledge translation approaches.
[Emphasis added.]

[161] Dr. Lipson appears to have ignored Dr. Dickinson’s submission that the grant program he applied for differed from CIHR’s other funding schemes and that the research project that the funds were redirected to differed significantly from the research project for which the funds were granted.

[162] The Court notes that the IC commented that the alignment of the new research with the originally proposed research was “subject to interpretation” and called on the CIHR and McGill to re-examine their policies for the transfer of awards to new principal investigators. Although the decision of the Tri-Agency Presidents is the subject of judicial review and not the IC report and findings, the Court observes that Dr. Lipson, as external reviewer, did not grapple with the interpretation of the program funding criteria or agency agreements that applied.

IX. Conclusion

[163] The Court finds that there was no breach of procedural fairness by the SRCR in the determination of the INC complaint. The Court also finds that there is no evidence of any reasonable apprehension of bias in the investigation of the INC complaint or by the decision makers.

[164] However, the Court finds that the decision to dismiss Dr. Dickinson's allegation of non-compliance with the Tri-Agency Guide on Financial Administration consistently with the funding opportunity description and in breach of the Tri-Agency Framework is not reasonable.

[165] The INC complaint must be redetermined by the Tri-Agency Presidents.

[166] With respect to costs, Rule 400 of the *Federal Courts Rules* provides that the Court has discretion to determine whether costs should be awarded and in what amount. The non-exhaustive factors set out in Rule 400(3) provide guidance to the Court in making this determination (*Francosteel Canada Inc v African Cape (The)*, 2003 FCA 119).

[167] The factors include the result of the proceeding, the importance and complexity of the issues, any written offer to settle, the amount of work, the conduct of a party that tended to shorten or lengthen the proceeding, whether any step in the proceeding was improper, vexatious or unnecessary, and any other matter that the Court considers relevant. In the present case, the result of the proceeding is the most relevant factor, and carries significant weight because, as a general rule, costs should follow the event (*Merck & Co, Inc v Novopharm Ltd*, 1998 CanLII 8260 (FC) at para 24, 152 FTR 74).

[168] Dr. Dickinson seeks his costs, but he did not make submissions on costs, nor provide a Bill of Costs at the hearing. Although the Court's Practice Direction addresses the need to do so, Dr. Dickinson, as a self represented litigant cannot be faulted for not doing so and this is not fatal to an award of costs.

[169] Dr. Dickinson has clearly invested significant time and effort in this Application and the outcome of this Application supports awarding costs to him. Self-represented litigants are not barred from an award of costs, although the considerations in awarding costs may differ (*Jagadeesh v Canadian Imperial Bank of Commerce (CIBC)*, 2019 FC 1445, at para 8). The Court is not inclined to invite detailed submissions on costs or to order an assessment of costs as this would entail further costs for both parties. A lump sum amount for a nominal cost award is preferable. The Court finds that the Respondent should pay Dr. Dickinson the amount of \$1000.

JUDGMENT in file T-1155-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is granted.
2. The Applicant's complaint of Institutional Non-Compliance by McGill University shall be redetermined by the Tri-Agency Presidents.
3. The Respondent shall pay the Applicant costs in the amount of \$1000.

"Catherine M. Kane"

Judge

ANNEX ARELEVANT PROVISIONS

The CIHR is governed by the *Canadian Institutes of Health Research Act*, SC 2000, c 6 [*CIHR Act*]. The relevant objectives and powers and functions of the CIHR are set out below:

Objective	Mission
<p>4 The objective of the CIHR is to excel, according to internationally accepted standards of scientific excellence, in the creation of new knowledge and its translation into improved health for Canadians, more effective health services and products and a strengthened Canadian health care system, by</p> <p>...</p> <p>(b) creating a robust health research environment in Canada, based on internationally accepted standards of scientific excellence and a peer review process, that will attract, develop and keep excellent researchers and provide them with the opportunity to contribute to the improvement of people's health in Canada and the world;</p> <p>...</p> <p>(e) promoting, assisting and undertaking research that meets the highest international scientific standards of excellence and ethics and that pertains to all aspects of</p>	<p>4 IRSC a pour mission d'exceller, selon les normes internationales reconnues de l'excellence scientifique, dans la création de nouvelles connaissances et leur application en vue d'améliorer la santé de la population canadienne, d'offrir de meilleurs produits et services de santé et de renforcer le système de santé au Canada, et ce par :</p> <p>[...]</p> <p>b) la création au Canada d'un milieu de recherche dynamique — selon les normes internationales reconnues de l'excellence scientifique et la revue par les pairs —, qui attirera, formera et retiendra des chercheurs d'élite et leur offrira la possibilité de participer à l'amélioration de l'état de santé de la population canadienne et de la population mondiale;</p> <p>[...]</p> <p>e) la promotion et l'exécution de projets de recherche — ainsi que l'aide à leur réalisation — qui satisfont aux normes internationales les plus élevées d'excellence et</p>

health, including bio-medical research, clinical research and research respecting health systems, health services, the health of populations, societal and cultural dimensions of health and environmental influences on health;	d'éthique scientifiques et qui portent sur tous les aspects du domaine de la santé, notamment la recherche biomédicale, la recherche clinique et la recherche sur les services et systèmes de santé, sur la santé des populations, sur les dimensions sociales et culturelles de la santé et sur les effets de l'environnement sur la santé;
...	[...]
(I) ensuring transparency and accountability to Canadians for the investment of the Government of Canada in health research.	I) la garantie de la transparence des investissements du gouvernement du Canada dans la recherche en matière de santé et l'obligation de rendre des comptes à la population canadienne.

Powers and functions

5 For the purpose of achieving its objective, the powers and functions of the CIHR are to

(a) promote, assist and undertake health research;

(b) foster the development and ongoing support of the scientific careers of women and men in health research;

...

Attributions

5 Dans la poursuite de sa mission, IRSC exerce les attributions suivantes :

a) promouvoir, aider et entreprendre la recherche dans le domaine de la santé;

b) favoriser le perfectionnement professionnel des femmes et des hommes qui font carrière dans la recherche en matière de santé et les appuyer de façon continue;

[...]

The relevant sections of the 2016 Tri-Agency Framework describe the objectives:

1.3 Objectives

1.3 Objectifs

The objectives of the RCR Framework are to:

- a. ensure that the funding decisions made by the Agencies are based on accurate and reliable information;
- b. ensure public funds for research are used responsibly and in accordance with funding agreements;
- c. promote and protect the quality, accuracy, and reliability of research funded by the Agencies; and
- d. promote fairness in the conduct of research and in the process for addressing allegations of policy breaches.

...

3.1 Breaches of Agency Policies

A breach [footnote omitted] of the RCR Framework is the failure to comply with any Agency policy throughout the life cycle of a research project – from application for funding, to the conduct of the research and the dissemination of research results. In determining whether an individual has breached an Agency policy, it is not relevant to consider whether a breach was

Voici les objectifs du Cadre de référence :

- a. faire en sorte que les décisions de financement prises par les organismes soient basées sur des données exactes et fiables;
- b. faire en sorte que les fonds publics consacrés à la recherche soient utilisés de façon responsable conformément aux ententes de financement;
- c. promouvoir et protéger la qualité, l'exactitude et la fiabilité des travaux de recherche financés par les organismes;
- d. promouvoir l'équité dans la conduite de la recherche et dans le processus d'examen des allégations de violation des politiques.

[...]

3.1 Cas de violation des politiques des organismes

Une violation [note en bas de page omise] du Cadre de référence est le manquement à toute politique d'un organisme à quelque étape que ce soit d'un projet de recherche – de la demande de fonds à l'exécution des travaux de recherche et la diffusion des résultats. Pour déterminer si une personne a violé une politique d'un organisme, le fait qu'une violation soit intentionnelle ou découle

intentional or a result of honest error. However, intent is a consideration in deciding on the severity of the recourse that may be imposed. The following is a non-exhaustive list of breaches of Agency policies:

...

d. Plagiarism: Presenting and using another's published or unpublished work, including theories, concepts, data, source material, methodologies or findings, including graphs and images, as one's own, without appropriate referencing and, if required, without permission.

...

3.1.2 Misrepresentation in an Agency Application or Related Document

a. Providing incomplete, inaccurate or false information in a grant or award application or related document, such as a letter of support or a progress report.

b. Applying for and/or holding an Agency award when deemed ineligible by CIHR, NSERC, SSHRC, or any other research funding organization world-wide for reasons of breach of

d'une erreur de bonne foi n'entre pas en ligne de compte. Cependant, l'intention est prise en compte pour décider de la sévérité du recours qui pourrait être exercé. Voici une liste non exhaustive de cas de violation de la politique des organismes.

[...]

d. Plagiat : L'utilisation des travaux publiés ou non publiés d'une autre personne, notamment les théories, les concepts, les données, les documents originaux, les méthodes et les résultats, y compris les graphiques et les images, comme si c'était les siens sans faire les mentions appropriées et, le cas échéant, sans permission.

[...]

3.1.2 Fausse déclaration dans une demande ou un document connexe des organismes

a. Fournir de l'information incomplète, inexacte ou fautive dans une demande de subvention ou de bourse ou dans un document connexe, par exemple une lettre d'appui ou un rapport d'étape.

b. Demander ou détenir des fonds d'un organisme après avoir été déclaré inadmissible à demander ou à détenir des fonds du CRSNG, du CRSH, des IRSC ou de tout autre organisme de financement de

responsible conduct of research policies such as ethics, integrity or financial management policies.

la recherche, au pays ou à l'étranger, pour des motifs de violation d'une politique en matière de conduite responsable de la recherche, notamment une politique relative à l'éthique, à l'intégrité ou à la gestion financière.

c. Listing of co-applicants, collaborators or partners without their agreement.

c. Inclure le nom de cocandidats, de collaborateurs ou de partenaires sans leur consentement.

3.1.3 Mismanagement of Grants or Award Funds

3.1.3 Mauvaise gestion des fonds d'une subvention ou d'une bourse

Using grant or award funds for purposes inconsistent with the policies of the Agencies; misappropriating grants and award funds; contravening Agency financial policies, namely the Tri-Agency Financial Administration Guide, Agency grants and awards guides; or providing incomplete, inaccurate or false information on documentation for expenditures from grant or award accounts

Utiliser les fonds de la subvention ou de la bourse à des fins qui ne sont pas conformes aux politiques des organismes; détourner les fonds d'une subvention ou d'une bourse; ne pas respecter les politiques financières des organismes, à savoir le Guide d'administration financière des trois organismes et les guides des organismes pour les subventions et les bourses; ou donner de l'information incomplète, inexacte ou fautive au sujet de la documentation liée aux dépenses imputées aux comptes d'une subvention ou d'une bourse.

...

[...]

4.3.4 Investigating Allegations

4.3.4 Examen des allégations

a. An initial inquiry process to establish whether an

a. Prévoir un processus d'enquête initiale pour déterminer si une allégation

allegation is responsible and if an investigation is required.	est réfléchi et si une investigation est requise.
b. An investigation process for determining the validity of an allegation that provides the complainant and respondent with an opportunity to be heard as part of an investigation, and that allows for the respondent to appeal if a breach of policy is confirmed.	b. Prévoir un processus d'investigation pour déterminer la validité d'une allégation qui donne au plaignant et au défendeur la possibilité d'être entendus dans le cadre de l'investigation et qui permet au défendeur de faire appel si la violation de la politique est confirmée.
c. investigation committee, appointed with the authority to decide whether a breach occurred. The investigation committee shall include members who have the necessary expertise and who are without conflict of interest, whether real or apparent, and at least one external member who has no current affiliation with the institution.	c. Prévoir la création d'un comité d'investigation qui a le pouvoir de décider s'il y a eu violation des politiques. Ce comité doit comprendre des membres qui ont l'expertise nécessaire et qui n'ont aucun conflit d'intérêts réel ou apparent et au moins un membre externe qui n'a aucun lien actuel avec l'établissement.
d. Reasonable timelines for completing an inquiry, completing an investigation, reporting the findings, making a decision on what action should be taken, and communicating with the parties involved. The timelines must be within the reporting timeframes outlined in Article 4.4	d. Prévoir des délais raisonnables pour réaliser l'enquête et l'investigation, déclarer les résultats, décider des mesures à prendre et communiquer avec les parties concernées. Ces délais doivent tenir compte des délais prévus pour les rapports à l'article 4.4.

McGill is bound by an agreement with the three research-funding agencies: "The Agreement on the Administration of Agency Grants and Awards by Research Institutions" [the Agreement]. The relevant sections provide:

4.2 Responsible Conduct of Research

The Institution shall comply with the requirements set out in the Tri-Agency Framework: Responsible Conduct of Research, as amended, which sets out the responsibilities of Institutions, Researchers and the Agencies in respect of the responsible conduct of research, including the procedures to be followed in the event of a breach of an Agency requirement, or an allegation thereof.

...

5.2 Independent Review in Certain Cases

If an Agency reasonably believes that there has been a material breach of this Agreement, it may require the Institution to cause an independent review to be carried out promptly by a qualified person to verify and report on compliance by the Institution with Agency requirements, the cost of which shall be borne by the Institution. The Institution shall make this independent review report and any working papers of the review available to the Agency.

5.3 Default and Remedies

4.2 Conduite responsable de la recherche

L'établissement doit respecter les exigences énoncées dans le Cadre de référence des trois organismes sur la conduite responsable de la recherche, qui est modifié et qui énonce les responsabilités des établissements, des chercheuses et chercheurs et des organismes relativement à la conduite responsable de la recherche, y compris les procédures à suivre dans le cas de l'inobservation d'une exigence de l'organisme, ou d'une allégation à ce sujet.

[...]

5.2 Examen indépendant dans certains cas

Si un organisme a un motif raisonnable de croire qu'il y a eu une violation substantielle de la présente entente, il peut exiger que l'établissement fasse exécuter rapidement un examen indépendant par une personne qualifiée pour vérifier la conformité de l'établissement aux exigences de l'organisme et en faire état. Les coûts doivent être assumés par l'établissement, et ce dernier doit mettre à la disposition de l'organisme le rapport indépendant et les documents de travail de l'examen.

5.3 Défauts et recours

- | | |
|---|--|
| <p>a. The following shall constitute an event of default:</p> <p>i. If the Institution has committed a material breach of this Agreement;</p> <p>ii. If the Institution has submitted materially false or misleading information or has made misrepresentations of a material nature to an Agency, other than in good faith;</p> <p>iii. If the Institution ceases to operate, is dissolved, or an order is made or resolution passed for the winding up of the Institution; or</p> <p>iv. If the Institution becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute being in force relating to bankrupt or insolvent debtors.</p> <p>b. If an event of default occurs, and the default is related to a specific Grant or Award, the Agency may demand that the Institution take corrective action within a specified period of time. The Agency may also immediately suspend the Grant or Award and require that the Institution stop the payment of funds in respect of it. If the Institution fails to take corrective action satisfactory to the Agency, the Agency may exercise one or</p> | <p>a. Les situations suivantes constituent des cas de défaut :</p> <p>i. si l'établissement a commis une violation substantielle de la présente entente;</p> <p>ii. si l'établissement a fourni des renseignements substantiellement faux ou trompeurs ou a fait des déclarations inexactes d'importance auprès d'un organisme, autrement que de bonne foi;</p> <p>iii. si l'établissement cesse ses activités, est dissout, ou si une ordonnance est établie ou une résolution adoptée pour la liquidation de l'établissement;</p> <p>iv. si l'établissement fait faillite ou devient insolvable, est mis sous séquestre ou se prévaut de lois en vigueur en matière de faillite ou d'insolvabilité des débiteurs.</p> <p>b. Si un cas de manquement se produit et que le défaut est lié à une subvention ou à une bourse en particulier, l'organisme peut demander à l'établissement de prendre des mesures correctives dans un certain délai. L'organisme peut également suspendre immédiatement la subvention ou la bourse et exiger que l'établissement cesse le versement de fonds relativement à la subvention ou à la bourse. Si l'établissement ne prend pas les mesures correctives à la</p> |
|---|--|

more of the following remedies:	satisfaction de l'organisme, l'organisme peut exercer un ou plusieurs des recours suivants :
i. If the Agency has not already done so, suspend the Grant or Award and require that the Institution stop the payment of funds in respect of it;	i. si l'organisme ne l'a pas déjà fait, suspendre la subvention ou la bourse et exiger que l'établissement cesse le versement de fonds relativement à la subvention ou à la bourse;
ii. Terminate the Grant or Award; or	ii. mettre fin à la subvention ou à la bourse;
iii. Require the Institution to repay part or all of the funds remaining in the Grant or Award account or, in exceptional cases, require the Institution to repay all the funds provided by the Agency in respect of the Grant or Award.	iii. exiger que l'établissement rembourse une partie ou l'ensemble des fonds qui restent dans le compte de la subvention ou de la bourse ou, dans des cas exceptionnels, exiger que l'établissement rembourse tous les fonds accordés par l'organisme concernant la subvention ou la bourse.
c. If an event of default occurs, in a case other than b), the Agency may demand that the Institution take corrective action within a certain time. If no demand is made, or if the Institution fails to comply with a demand in a way that is satisfactory to the Agency, the Agency may exercise one or more of the following remedies:	c. Si un cas de manquement se produit, dans un cas autre qu'en b), l'organisme peut demander à l'établissement de prendre les mesures correctives en un certain laps de temps. Si aucune demande n'est faite, ou si l'établissement ne se conforme pas à une demande à la satisfaction de l'organisme, ce dernier peut exercer un ou plusieurs des recours suivants :
i. Demand that the Institution cease payments	i. demander que l'établissement cesse tout

from any or all Grant and Award accounts;	paiement pour des comptes de subvention ou de bourse;
ii. Terminate any obligation that the Agency may have to provide funding to the Institution;	ii. annuler toute obligation de l'organisme de fournir du financement à l'établissement;
iii. Require the Institution to repay any funds paid to it that were misused or that were paid by the Agency as a result of a misrepresentation; and	iii. demander que l'établissement rembourse tous les fonds payés par l'organisme à l'établissement qui ont été mal utilisés ou qui ont été versés à l'établissement à la suite d'une déclaration inexacte;
iv. In exceptional cases only, declare the Institution ineligible to apply for funding.	iv. dans des cas exceptionnels seulement, déclarer l'établissement inadmissible à une demande de financement.
d. Any amount owed to the Agency under this Agreement constitutes a debt due to the Crown, which the Institution agrees to repay upon 30 days written notice. In the case of a demand for repayment, the Agency is entitled to interest on the amount demanded that accrues 30 days from the date of demand at the interest rate set out in the Interest and Administrative Charges Regulations, as amended.	d. Tout montant à remettre à l'organisme conformément à la présente entente constitue une dette envers l'État, que l'établissement accepte de rembourser dans les 30 jours suivant la réception d'un avis par écrit. Dans le cas d'une demande de remboursement, l'organisme a droit à des intérêts, sur le montant demandé, qui commencent à s'accumuler 30 jours à partir de la date de la demande, au taux d'intérêt indiqué dans le Règlement sur les intérêts et les frais administratifs, tel qu'il est modifié.

McGill Regulations on the Conduct of Research, address the use of work at Section 5. The relevant provisions, referred to by the external reviewer are, 5.1, 5.1.1 and 5.2.

5.1 Researchers shall not knowingly engage in Plagiarism.

5.1.1 Upon the demonstration that a Researcher has engaged in Plagiarism it shall be presumed that the Researcher did so knowingly and he or she shall bear the burden of rebutting the presumption by evidence satisfying the Person or body investigating the matter that no such knowledge existed.

5.2 Researchers shall obtain the prior permission of another Person before using, even with proper attribution, the unpublished work or Data of the other Person.

5.1 Les chercheurs ne doivent pas se livrer sciemment à des actes de plagiat.

5.1.1 S'il est démontré qu'un chercheur a commis un acte de plagiat, il est présumé l'avoir fait en toute connaissance de cause et il lui incombe de réfuter cette présomption en apportant à la personne ou à l'organisme chargé de l'enquête la preuve que la connaissance en question n'existait pas préalablement.

5.2 Les chercheurs doivent préalablement obtenir l'autorisation de la Personne concernée avant d'utiliser, même avec la mention appropriée, des travaux ou des données non publiés par cette Personne.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1155-23

STYLE OF CAUSE: PHILIP DICKINSON v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JULY 10, 2024

JUDGMENT AND REASONS: KANE J.

DATED: SEPTEMBER 20, 2024

APPEARANCES:

Philip Dickinson

FOR THE APPLICANT

Jean-Simon Castonguay

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT