Federal Court  Cour fédérale

Date: 20250114

Docket: T-2533-22

Citation: 2025 FC 72

Ottawa, Ontario, January 14, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

SERGEANT WILLIAM TURNER,
REGIMENTAL NUMBER 68215

Applicant

and

THE ATTORNEY-GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a Royal Canadian Mounted Police ("RCMP") Conduct Appeal Adjudicator ("Adjudicator") decision dated October 21, 2022 ("Decision"), dismissing the Applicant's appeal of a decision of the RCMP Conduct Board ("Board") dated December 6, 2018, that ordered the Applicant to resign from the RCMP within 14 days, failing which he would be dismissed.

[2] The Applicant asks this Court to set aside the Decision and quash and/or set aside the ordered disciplinary measures.

[3] The Respondent argued that the issues raised in this application are the same issues that were considered and dismissed by the Adjudicator. The Respondent argued that the Applicant is seeking to have this Court reweigh the evidence and replace the earlier decisions with its own.

[4] For the reasons that follow, this application is dismissed.

II. Background

[5] In the spring of 2014, the Applicant was the sergeant in charge of a cell block at an RCMP detachment for "C Watch" in Surrey, British Columbia. At the time, the Applicant and Ms. A, a female city employee working at the same detachment, started texting each other about work- and non-work-related topics. The text messages eventually became sexual in nature. In June 2014, the Applicant and Ms. A became sexually intimate, while on duty at the detachment. They engaged in sexual activity at work and while on duty several times.

[6] On October 10, 2014, Ms. A performed fellatio on the Applicant in the detachment stairwell. Ms. A alleged that this act was non-consensual. Ms. A told a colleague what had happened and the RCMP Conduct Authority ordered a Code of Conduct investigation against the Applicant (*Code of Conduct of the Royal Canadian Mounted Police* [*Code of Conduct*], a Schedule to the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 [*RCMP Regulations*], pursuant to subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*]).

[7] On November 6, 2014, the Applicant was suspended from duty (*RCMP Act*, section 12). The Applicant was also arrested for sexual assault; however, the Crown did not proceed with the charges.

[8] On December 29, 2014, investigators provided an investigation report. In Ms. A's statement to the investigators, she indicated that she was a willing participant at the beginning; however, she reported that the Applicant became increasingly aggressive, and she wanted the encounters to stop. She reported that she ultimately complied with the Applicant's demands for fellatio to make her work shifts easier. The Applicant declined to provide a statement to investigators.

[9] On October 7, 2015, the RCMP Conduct Authority signed a *Notice to the Designated Officer* to initiate a hearing (*RCMP Act*, paragraph 41(1)). The Initial Conduct Board was appointed on October 15, 2015 (*RCMP Act*, subsection 41(2)). A *Notice of Conduct Hearing* was issued on June 28, 2016, and served on the Applicant on August 4, 2016 (*RCMP Act*, subsection 43(2)).

[10] On November 25, 2016, the Applicant's Member Representative ("MR") filed a motion for a stay of proceedings (*Commissioner's Standing Orders (Conduct)*, SOR/2014-291, s 17 [*CSO (Conduct)*]), due to an alleged unreasonable delay of 10 months between the initiation of the conduct hearing and service of the *Notice of the Conduct Hearing*.

[11] The Initial Conduct Board dismissed the motion on February 6, 2017. While the Initial Conduct Board agreed there had been a delay that was "problematic" and that "caused significant prejudice," it found that that a stay was not required. The Initial Conduct Board indicated that the impacts of the delay may be an appropriate consideration later in the process.

[12] The Initial Conduct Board was replaced with the Board on July 27, 2017, without objection from the Applicant.

[13] During the pre-hearing process, the Applicant responded to the allegations and admitted to engaging in sexual acts with Ms. A while at the workplace and while on duty.

[14] The investigation package provided to the Board included similar fact evidence concerning prior analogous allegations against the Applicant by two other women within the detachment. The MR noted the prejudicial nature of this information; however, the MR and the Applicant did not object to vetted copies of the evidence filed with the Board.

[15] On November 6, 2017, the Applicant was served with a *Notice of Place, Date and Time of Conduct Hearing*, and the hearing was held between November 28 and 30, 2017.

[16] The Applicant faced two allegations of conduct likely to discredit the RCMP (*Code of Conduct*, section 7.1). The Applicant was accused of initiating unwanted sexual conduct and pursuing and engaging in an inappropriate relationship of a flirtatious and sexual nature with a cell block guard with whom he held a position of authority as the cell block sergeant.

[17] At the hearing, the Applicant admitted to participating in an inappropriate sexual relationship with Ms. A for a number of months and to having received oral sex from Ms. A at the detachment while on duty and in uniform on several occasions. The MR acknowledged that dismissal was in the range of possible conduct measures available to the Board but argued that sanctions short of dismissal were appropriate in this case.

[18] In an oral decision on November 30, 2017, the Board stated that the Conduct Authority Representative was required to prove that the Applicant's conduct, as set out in the allegations,

was discreditable or likely to discredit the RCMP. The Board noted that a finding that the conduct was established did not depend on a determination that the Applicant was in a position of authority over Ms. A, or that the conduct was non-consensual. Rather, if those elements were established, they were aggravating factors. The Board found that the parties' agreed facts supported a finding that both allegations were established.

[19] The Board, considering the RCMP *Conduct Measures Guide* ("CMG") and the aggravating and mitigating factors present, including the delay of proceedings, ordered the Applicant to resign within 14 days or be dismissed.

[20] The Board issued its decision on December 6, 2018 (*RCMP Act*, subsection 45(3)). The decision was served on the Applicant on December 27, 2018.

[21] The Applicant appealed the Board's decision on January 9, 2019, and provided his appeal submissions on July 8, 2019. The Applicant requested that the Board's decision be overturned and that he be reinstated to the RCMP.

[22] The appeal was referred to the External Review Committee ("ERC") for review (*RCMP Act*, subsection 45.15(1)). On July 7, 2022, the ERC recommended that the RCMP Commissioner ("Commissioner") dismiss the appeal and affirm the Board's decision (*RCMP Act*, paragraph 45.16(3)(a)).

[23] Pursuant to subsection 45.16(11) of the *RCMP Act*, the Commissioner has delegated the authority to make final and binding decisions on conduct appeals to the Adjudicator. The Adjudicator dismissed the appeal and confirmed the Board's decision on October 21, 2022.

III. Overview of RCMP Member Conduct Process

[24] The *Code of Conduct* sets out the responsibilities of members and promotes the maintenance of good conduct within the RCMP. Decisions concerning allegations of a breach(es) of the *Code of Conduct* by a member are made by conduct authorities (*CSO (Conduct)*, subsection 2(1)). There are three levels of conduct authority with varying responsibilities that align with the alleged severity of the conduct for which measures may be imposed on a member (*CSO (Conduct)*, sections 3–5).

[25] If the conduct authority is of the view that the member's conduct is in contravention of a provision of the *Code of Conduct* and the conduct measures provided in the *CSO (Conduct)* are insufficient, "the conduct authority shall initiate a hearing into the alleged contravention by notifying the officer designated by the Commissioner… of the alleged contravention" (*RCMP Act*, subsection 41(1)). The designated officer then appoints a conduct board to determine if the member's activity contravened the *Code of Conduct* (*RCMP Act*, subsection 43(1)).

[26] RCMP conduct hearings are an administrative process. The board has broad discretion to control its process. If the board is satisfied on a balance of probabilities that the member contravened the *Code of Conduct*, it may impose measures against the member, including dismissal or a direction to resign (*RCMP Act*, subsections 45(1)–(4)); *CSO (Conduct)*, sections 13–24).

[27] Members may appeal a board's decision to the Commissioner (*RCMP Act*, subsection 45.11(1)). The Commissioner may delegate the power to hear the appeal (*RCMP Act*, subsection 45.16(11)).

[28] An appeal that relates to "a financial penalty of more than one day of the member's pay; a demotion; a direction to resign; a recommendation for dismissal; or a dismissal" must be referred to the ERC (*RCMP Act*, subsection 45.15(1)). The Commissioner shall take into account the ERC recommendations and/or findings; however, the Commissioner is not bound to act on those, but must set out reasons for not doing so in the decision (*RCMP Act*, subsection 45.16(8)).

[29] On an appeal of a board's decision, the Commissioner or their delegate, the Adjudicator, must consider if the decision under appeal contravenes principles of procedural fairness, is based on an error of law, or is unreasonable (*Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [*CSO (Appeals)*] ; see also *Calandrini v Canada (Attorney General)*, 2018 FC 52 [*Calandrini*] at paras 2–3).

[30] The Commissioner may dispose of an appeal by dismissing it and confirming the board's decision (*RCMP Act*, paragraph 45.16(1)(a)); by allowing the appeal and ordering a new hearing or substitute its findings for that of the board (*RCMP Act*, paragraph 45.16(1)(b)); by dismissing the appeal and confirming the conduct measure (*RCMP Act*, paragraph 45.16(3(a)); or by rescinding the conduct measures and/or ordering new conduct measures (*RCMP Act*, paragraph 45.15(3)(b)).

IV. Issues

[31] It is important to clarify that this application is a review of the Adjudicator's Decision. This is not an appeal or judicial review of the Board's decision.

[32] The Respondent noted that the Applicant's submissions for this application focus on his disagreement the Board's findings. The Respondent is of the view that the Applicant has not

satisfied the necessary threshold to demonstrate that the Decision is unreasonable. Further, the Respondent noted that the Applicant seeks to have this Court re-weigh the evidence and review the Board's decision on a correctness standard, which is not appropriate on judicial review.

[33] A judicial review is not a hearing *de novo* or a re-hearing of the original administrative decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 83). Rather, the Court's role on an application for judicial review is supervisory in nature: did the administrative decision-making body perform its statutory duty legally, reasonably, and fairly? This is to respect Parliament's intention concerning the role of the administrative process. This is a robust form of review that is rooted in the principle of judicial restraint "and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at paras 12–13). In other words, the Court must show respect and deference to an administrative body's roles and expertise (*Vavilov* at para 46).

[34] In addition, this Court and the Federal Court of Appeal have recognized that RCMP adjudicators have specialized expertise and knowledge with respect to the integrity and professionalism of the RCMP. Accordingly, their decisions are entitled to considerable deference (see *Calandrini* at paras 51, 97; *Kalkat v Canada (Attorney General)*, 2017 FC 794 at para 52; *Vellani v Canada (Attorney General)*, 2023 FC 37 at para 61; *Firsov v Canada (Attorney General)*, 2021 FC 877 [*Firsov*] at paras 38, 109, aff'd *Firsov v Canada (Attorney General)*, 2022 FCA 191, leave to appeal to SCC refused, 40547 (18 May 2023).

[35] In *Firsov*, Madam Justice Susan Elliot held that arguments that ask this Court to reweigh evidence and substitute its views for the decision maker's are improper on an application for judicial review:

> … It is trite law that a decision maker may assess and evaluate the evidence before it and, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.
>
> [at para 162]

[36] The Applicant framed the issues for this judicial review in respect of the Board's decision and the ERC recommendation. I agree with the Respondent that what is at issue in this application is not the Board's decision nor the ERC recommendation, but rather the Adjudicator's Decision.

[37] The issues in this application are:

A. What is the applicable standard of review?

B. Was the Adjudicator's Decision reasonable? In particular:

    1. Did the Adjudicator reasonably find that the Board did not err in declining to provide a remedy for the delay?
    2. Did the Adjudicator reasonably find that the Board did not err in determining it did not need to make a finding on all particulars of the allegations?
    3. Did the Adjudicator reasonably find that the Board did not err in weighing the evidence and assessing Ms. A's credibility?
    4. Did the Adjudicator reasonably find that the Board did not err in relying on evidence of the Applicant's past conduct?

C. Can this Court order a remedy for the alleged abuse of process arising from the delays in the proceedings?

V. Analysis

A. *Applicable standard of review*

[38] The applicable standard of review for this application is reasonableness (*Vavilov* at paras 25, 86).

[39] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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 that constrain the decision maker" (*Vavilov* at para 85).

[40] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100). In other words, the decision does not exhibit the hallmarks of reasonableness: justification, intelligibility, and transparency (*Vavilov* at para 99). Ultimately, the burden is on the Applicant to demonstrate that the Adjudicator's Decision is unreasonable (*Vavilov* at paras 13, 24, 30).

B. *Reasonableness of the Adjudicator's Decision*

[41] The Applicant argued that the failure to remedy the alleged breach of procedural fairness—the delay—attracts the standard of correctness. In the alternative, the Applicant argued that the Decision is unreasonable because the Board failed to provide a rationale for not considering the delay at the conduct measure stage.

[42] The Respondent argued that the Adjudicator's Decision is reasonable. The Respondent argued that the Adjudicator reviewed the circumstances and considered the issues raised by the Applicant in his appeal of the Board's decision. The Respondent argued that the Adjudicator identified the applicable legal test and diligently reviewed the issues and evidence before the Board. However, the Adjudicator did not re-weigh the evidence or substitute its own findings for those of the Board; rather, the Adjudicator deferred to the Board's findings of fact and credibility.

[43] The Respondent submitted that the Adjudicator found that the Board's decision was procedurally fair and that the Applicant had not demonstrated that the Board's decision was unreasonable. The Adjudicator's reasons are transparent, justifiable, and intelligible.

(1) Remedy for the delay

[44] The Applicant argued that that the Board erred in its failure to provide a remedy for the finding that there had been an "unreasonable delay." The Applicant's arguments on this point are two-fold and rooted in the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. First, the Applicant argued that there was a breach of his *Charter* right to have his hearing within a reasonable period of time, building off of the Supreme Court of Canada ("SCC") decision in *R v Jordan*, 2016 SCC 27 [*Jordan*]. Second, the Applicant argued that the failure to provide a remedy was an abuse of process/natural justice.

[45] The Applicant also argued that the failure to remedy the breach of procedural fairness was an error of law. In the alternative, the Applicant argued that the Adjudicator's Decision was

not reasonable because not all essential elements of the decision were addressed in the reasons, failing to meet the *Vavilov* standard of transparency, justification, and intelligibility.

[46] The Respondent argued that the Adjudicator considered the applicable jurisprudence and appropriately applied the reasonableness standard of review. The Applicant appealed the failure of the Board to grant a remedy, not its finding on the issue of delay; accordingly, the decision regarding the failure to grant a remedy attracts a more deferential standard of review.

[47] The Adjudicator found that it was the "failure to grant a remedy" that that Applicant appealed, not the issue of abuse of process; accordingly, a more deferential standard of review was appropriate (Decision at para 58). A review of the reasons demonstrate that the Adjudicator clearly considered the relevant legal framework and undertook a thorough analysis to support their conclusion that a reasonableness standard applied (Decision at paras 59–65).

[48] I agree that the appropriate standard of review of the Adjudicator's Decision on the issue of delay is reasonableness. The Applicant has not persuaded me that there is any legal question exception that attracts the standard of correctness in this application: a constitutional question; general questions of law of central importance to the legal system as a whole; and questions concerning the jurisdiction between administrative bodies (*Vavilov* at para 53).

(a) *Charter Right*

[49] In *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*], the SCC cautioned against blurring criminal and administrative concepts (at para 88). The SCC noted that "[t]here is no analogous provision to s. 11(*b*) which applies to administrative proceedings, nor is there a constitutional right outside the criminal context to be 'tried' within a

reasonable time" (*Blencoe* at para 88). More recently in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*], the SCC confirmed that "there are important reasons why *Jordan* does not apply to administrative proceedings. *Jordan* deals with the right to be tried within a reasonable time under s. 11(b) of the [*Charter*]. No such *Charter* right applies to administrative proceedings. As such, there is no constitutional right outside the criminal context to be 'tried' within a reasonable time" (at para 47). This is so because of the significant and fundamental distinctions between the focus and the objective of criminal and administrative proceedings (*Abrametz* at para 48).

[50] The Adjudicator noted that the Initial Conduct Board, as constituted at the time, found that "while the delay was problematic, it did not warrant a stay of proceedings" (Decision at para 15). Further, the Adjudicator noted that the Board found that "[t]he Initial [Conduct] Board concluded that *Jordan* did not apply in the administrative context" (Decision at para 15). The Adjudicator noted that the Initial Conduct Board found that the delay was unreasonable because of some unexplained periods of time where the *Notice of the Conduct Hearing* could have been served on the Applicant, and the determination that the *Notice of Conduct Hearing* was not served in a timely way. This delay ultimately "prolonged the suspension" of the Applicant and caused "significant prejudice" (Decision at para 15). However, the Initial Conduct Board did not find that the abuse of process met the *Blencoe* threshold to stay the proceeding (Decision at para 15).

[51] The Adjudicator found this ground of appeal to be without merit (Decision at para 68). For the reasons above, in an administrative proceeding, there is no *Charter* right to a hearing within a reasonable time. Accordingly, the Adjudicator's Decision that the "Initial [Conduct]

Board correctly characterized the delay as an abuse of process, not a *Charter* breach" is reasonable (Decision at para 68).

(b) *Procedural fairness/natural justice—abuse of process*

[52] With respect to the right of procedural fairness, it is useful to consider the background context in respect of delay and the doctrine of abuse of process.

[53] The doctrine of abuse of process is rooted in the Court's inherent and residual discretion to prevent abuse of its own process (*Abrametz* at para 33). It applies in various contexts and is characterized by its flexibility, which is essential in an administrative context given the manner and circumstances in which delegated authority is exercised by administrative bodies (*Abrametz* at paras 34–36).

[54] In an administrative process, "abuse of process is a question of procedural fairness" (*Abrametz* at para 38; *Blencoe* at paras 105–107. There are two ways in which delay may be an abuse of process. First, the fairness of a hearing may be jeopardized where the delay impacts a party's ability to respond to the case. For example, where evidence has been lost, or key witnesses are unavailable (*Blencoe* at para 115). Second, delay may still be an abuse of process where the party relying on delay can demonstrate that it is both inordinate and caused significant prejudice (*Blencoe* at para 115; *Abrametz* at para 44). Where those factors are met, a final assessment of the delay will proceed where the Court will consider "if it is manifestly unfair to a party or in some other ways brings the administration of justice into disrepute" (*Abrametz* at para 43).

[55] A stay of proceedings is the "ultimate remedy" for abuse of process (*Abrametz* at para 83). In professional conduct matters, such as the present matter, this means that the allegations and/or issues will not be addressed. "Given these consequences, a stay should only be granted in the 'clearest of cases', when the abuse falls at the high end of the spectrum of seriousness" (*Abrametz* at para 83).

[56] The decision to grant a stay requires the tribunal to strike a balance "between the public interest in *fair administrative processes untainted by abuse* and the competing public interest in having the *complaint decided on its merits*" (emphasis in original; *Abrametz* at para 84). The SCC has been clear that a stay will be more difficult to obtain where the charges are of a more serious nature (*Abrametz* at para 86). Finally, the SCC has noted that where abuse of process is established, but the abuse does not warrant the granting of a stay, other remedies may be appropriate (*Abrametz* at para 89; *Blencoe* at para 117).

[57] In my opinion, in view of the applicable factual and legal frameworks, the Adjudicator's Decision is reasonable. The reasons for decision are transparent, justified, and intelligible. The Adjudicator clearly considered the reasonableness of the Board's decision.

[58] Specifically, the Adjudicator noted that the Initial Conduct Board properly characterized the delay issues as an abuse of process rather than a breach of the *Charter* (Decision at para 68). Second, the Adjudicator noted that the "[Applicant] has not demonstrated how the respective Boards erred by not issuing a remedy to the [Applicant] in response to the delay" (Decision at para 70).

[59] The Adjudicator noted at the appeal level, the MR chose to focus on the issue of delay as a mitigating factor. The Adjudicator found that "[w]hile the Initial [Conduct] Board found that

the [Applicant] suffered significant prejudice, it did not find that the delay rose to the level that would justify a stay of proceedings. Instead, it proposed that the delay *may* be remedied later in proceedings. The subsequent Board was in no way bound by this speculative suggestion" (emphasis in original; Decision at para 70). Further, the Adjudicator held that "[i]f the inordinate delay amounted to an abuse of process, but was not so prejudicial as to warrant a stay, then neither would the delay warrant classification as a mitigating factor sufficient to justify reducing the [Applicant's] dismissal to a financial penalty" (Decision at para 72).

[60] A review of the Decision indicates that the Adjudicator considered the reasonableness of the Board's decision with respect to the issue of procedural fairness. Further, the Adjudicator clearly considered the applicable legal framework in its assessment of the reasonableness of the Board's decision. The Applicant has not persuaded me that the Adjudicator's Decision is unreasonable, in light of the applicable factual and legal frameworks.

[61] Finally, I note that the Applicant raised an issue in this application concerning further delays in the process stemming from the ERC recommendations. This issue was not raised in the appeal to the Adjudicator and will not be considered by this Court.

[62] The Applicant argued that the RCMP complaint process, that was intended to expedite conduct proceedings, thwarts the *Commissioner's Standing Orders* and the *RCMP Act*. In this matter there was a significant delay: the impugned conduct having taken place in 2014; the Initial Conduct Board decision on the stay is dated February 6, 2017; the Board's oral decision is dated November 30, 2017, followed by the written decision dated December 6, 2018; the ERC report was completed on July 7, 2022; and the Adjudicator's Decision dated October 21, 2022. The cumulative computation of delay in this matter by the Applicant obfuscates the delay issue

that is before me in this application. The Applicant cannot attribute delays related to his subsequent appeals of the Board's decision and assert that collectively the delays are unreasonable and require remedy by this Court.

[63] Generally, an application for judicial review is limited to the record and issues raised in the earlier administrative proceedings. "As a general rule, a court will not consider an issue on judicial review where the issue could have been but was not raised before the administrative decision-maker" (*Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 71, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 21–26). Further, the Federal Court of Appeal has noted that applicants are precluded from raising an issue not raised at the administrative tribunal on judicial review in the Federal Court, because the reasonableness of the decision "cannot normally be impugned on the basis of an issue not put to it" (*Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6).

[64] I agree with the Respondent that the Applicant ought to have raised this issue at the first opportunity, which would have been in his appeal to the Adjudicator. Accordingly, I will not consider this new issue. Nor do I agree that the Adjudicator erred in respect to its assessment of the reasonableness of the Board's decision to not provide a remedy for the earlier process delays that were before the Board.

(2) Findings on particulars of the allegations of misconduct

[65] The Applicant argued that the Board erred at law when it found that the elements of the allegations of misconduct were established, without requiring each particular element of the misconduct to be established. In support of his argument, the Applicant relied on *Canada (Attorney General) v Gill*, 2007 FCA 305 [*Gill FCA*], affirming *Gill v Canada (Attorney*

General), 2006 FC 1106 [*Gill FC*]. In particular, he noted that while he admitted to certain elements of the allegations of his conduct, namely that he participated in an inappropriate relationship, he did not make admissions in respect of the non-consensual aspects of the allegations.

[66] The Respondent argued that the Applicant's argument focused on a disagreement with the Board's findings, and by extension the Adjudicator's Decision. However, the Applicant has not set out how the Adjudicator's Decision is unreasonable. The Respondent also asserted that the *Gill FCA* decision stands for the proposition that the party must have notice of the allegations, not that each particular element of the alleged misconduct must be established.

[67] The Adjudicator found that this ground of the Applicant's appeal could not succeed (Decision at para 79). The Adjudicator was of the view that the Applicant was misapplying the ratio in the *Gill FCA* decision, which stands for the principle that a board cannot find misconduct that falls outside of the four corners of the particular elements, and that an accused must have adequate notice of the allegations against them (Decision at paras 79–80).

[68] The Adjudicator further noted that in *Re Golomb and College of Physicians and Surgeons of Ontario*, 1976 CanLII 752, 12 OR (2d) 73 (ONSC), the Ontario Superior Court noted that allegations of professional misconduct need not have the same degree of precision that is required in a criminal prosecution. Ultimately, what is required is that the person has reasonable notice of the allegations so that they may fully and adequately respond (Decision at paras 79–80). This same standard was applied by this Court and the Federal Court of Appeal in *Gill FC* and *Gill FCA*.

[69] The Adjudicator noted that there was no issue in the Applicant's case concerning notice or the ability to know and respond to the allegations of misconduct (Decision at para 80). Further, the Adjudicator noted that "the Board found, based on the [Applicant's] admission, that he participated in the inappropriate relationship described in both [a]llegations, there was sufficient evidence to establish the discreditable conduct" (Decision at para 81). The Adjudicator cited other decisions where the Commissioner has clarified that not all elements or particulars of an allegation must be established (Decision at para 82).

[70] The Applicant did not provide support or authority for the principle set out in his memorandum of argument that the allegation must be established "as drafted."

[71] The Applicant has not persuaded me that the Adjudicator's Decision is unreasonable. The Adjudicator reasonably concluded that the Board's decision was reasonable and based on the Applicant's own admissions and evidence. In other words, the Board reasonably found that the elements of the allegations were made out, including that the conduct was non-consensual. Further, the Adjudicator reasonably found that the Applicant had sufficient notice of the allegations he was responding to in the context of the conduct proceedings. The reasons for Decision are transparent, justified, and intelligible.

(3) Weight of evidence and credibility findings

[72] The Applicant also took issue with the Board's assessment of Ms. A's credibility, and by extension, the reasonableness of the Adjudicator's Decision. Again, the Applicant focused on the elements of the allegations related to consent, and the Board's finding that Ms. A did not explicitly say "no."

[73] The Respondent noted that on appeal before the Adjudicator, the Applicant had the burden to demonstrate that the Board's decision concerning the credibility of Ms. A was clearly unreasonable. The Respondent noted that the Board's findings of fact and credibility are entitled to considerable deference, as they are the trier of fact at first instance. Similarly, they argued that the Adjudicator's findings on the reasonableness of the Board's decision is entitled to deference (see *Firsov* at paras 108–109). Finally, the Respondent cautioned this Court against interfering with those findings, given that the present application is now two-levels removed.

[74] The Adjudicator found that this ground of appeal could not succeed (Decision at para 88). The Adjudicator noted that it was not appropriate to substitute his findings on credibility issues, absent any "evidence that the Board made clearly wrong findings that are unsupported by evidence" (Decision at para 88).

[75] A review of the Decision highlights that the Adjudicator was live to the applicable legal considerations where there are inconsistencies in witness evidence (Decision at para 89). The Adjudicator properly noted that findings of credibility by the Board are "owed considerable deference" (Decision at para 88). The Adjudicator clearly considered the Applicant's concerns with the findings of the Board:

> In each of the examples provided by the [Applicant], the Board had acknowledged the associated issues or inconsistencies. The Board recognized that Ms. A's position and recollections were "not without blemish"; irrespective of that observation, it still found her version of events to be more credible than the [Applicant's], which it characterized as self-serving…
>
> …
>
> The [Applicant] submits that Ms. A never actually told the [Applicant] "no", but Ms. A did testify that she told the [Applicant] she wanted to end their relationship… I agree with the ERC that this is consistent with saying "no" to the [Applicant]…

> In summary, the Board was alive to issues with Ms. A's testimony, but nevertheless found her more credible than the [Applicant].
>
> [Decision at paras 90–92.]

[76] The Adjudicator was of the view that on balance, the Board's decision was reasonable and was consistent with earlier jurisprudence, notably, *FH v McDougall*, 2008 SCC 53.

[77] In oral argument, the Respondent argued that the Applicant's submissions concerning the issue of consent, particularly in relation to if Ms. A did or did not say "no," have no place in a modern society. I agree (see *R v Seaboyer; R v Gayme*, [1991] 2 SCR 577). There are many myths and stereotypes about sexual assault that can cause victims to feel shame, guilt, and blame. Not only do these myths and stereotypes have no place in a modern society, in my view, we have an obligation to dispel them. Today, sexual assault continues to be underreported, the reasons for this are tied to these antiquated myths and stereotypes. Consent to sexual activity is nuanced and while the word "no" may not be used, other verbal and non-verbal cues must be considered ("The Law of Consent in Sexual Assault", Women's Legal Education & Action Fund, online: <https://www.leaf.ca/news/the-law-of-consent-in-sexual-assault/>).

[78] The Board reasonably found that there was no consent to the incident occurring on October 10, 2014, and the Adjudicator reasonably found that decision was reasonable and not in error. I am of the view that the Adjudicator's Decision is reasonable. The reasons are transparent, justified, and intelligible. As stated at the outset, what is at issue before me is the Adjudicator's Decision, not the Board's decision. The Adjudicator reasonably concluded that the Board's preference of Ms. A's evidence over the Applicant's did not render the decision unreasonable.

(4) Reliance on improper evidence

[79] The Applicant argued that that the Board improperly relied on evidence not before it, in particular, the Board's conclusion that his conduct negatively impacted the relationship the RCMP had with the city. In addition, the Applicant raised concerns about the Board's reliance on a prior investigation report, statements from other RCMP members, and similar fact evidence in the form of statements from other female co-workers who were in sexual relationships with the Applicant.

[80] A review of the Adjudicator's Decision indicates that the Adjudicator considered this issue to be a matter of procedural fairness.

[81] The Adjudicator agreed with the Applicant that the Board erred in its conclusion that his behavior negatively impacted the relationship between the RCMP and the city "without some modicum of evidence to support such a conclusion" (Decision at para 103). However, the Adjudicator went on to note that other aggravating factors noted by the Board, which included the Applicant's prior discipline record in respect of similar incidents, the impacts that the Applicant's actions had on Ms. A, and that the RCMP is making efforts to eliminate and address sexual harassment in the workplace, were "sufficient to justify the Board's conduct measure" and did not "fatally undermine its decision" (Decision at paras 99, 103). The Adjudicator described the error as a "minor misstep" (Decision at para 103).

[82] I agree, as the SCC has noted that reasons need not be perfect and the errors warranting intervention must go to the merits of the decision (*Vavilov* at para 100). The Adjudicator considered the error but found that there was other evidence and findings that justified the Board's conclusion on the appropriate conduct measure.

[83] The Adjudicator noted that the Applicant did not raise the procedural fairness issue concerning the similar fact evidence at the earliest opportunity. By failing to do so, the Adjudicator found that he was precluded from raising this new issue on appeal (Decision at para 104).

[84] For the reasons noted above concerning the Applicant's new issue related to delay, the Adjudicator's Decision on this point is reasonable, and consistent with the applicable factual and legal frameworks.

C. *Appropriate Remedy*

[85] The Applicant raised the issue of remedy, however, did not elaborate or provide submissions on this issue. Rather, the Applicant asserted the Court can issue a remedy in respect of the delay in these proceedings.

[86] The Respondent argued that it would not be appropriate for this Court to issue the remedy sought by the Applicant. The Respondent argued that the Board and the Adjudicator fully canvassed the Applicant's argument concerning delay and determined that it was not appropriate to issue a stay, and that the Applicant failed to satisfy the criteria to establish an abuse of process.

[87] I agree. As set out above, this issue was before the Adjudicator, who reasonably determined that no remedy was appropriate, despite the delay.

VI. Conclusion

[88] The issues addressed in this application are largely the same as the issues reviewed by the Initial Conduct Board, the Board, the ERC, and the Adjudicator. The Applicant's arguments

have been repeatedly determined to be without merit. The Applicant did not persuade me that the Adjudicator's Decision was unreasonable or made in error.

[89] I appreciate that the incidents of 2014 have ultimately cost the Applicant a long career in the RCMP. As noted by the Respondent in oral argument, the *Code of Conduct* is premised on maintaining public trust and confidence in the RCMP. Ultimately, the Applicant's own actions lead to his dismissal. While I understand he is dissatisfied with the results of the conduct process, most notably his dismissal from the RCMP, that the Applicant disagrees does not render the Adjudicator's Decision unreasonable or in error. The conduct in question was of a serious nature, and in my opinion, the Board's decision was reasonable and the Adjudicator properly found that there was no reviewable error.

[90] Both parties asked for their costs of this application in the event they were successful. Following the hearing, the parties came to an agreement on the issue of costs, agreeing that costs for this application would be fixed at $500.00 for the successful party.

JUDGMENT in T-2533-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The Respondent, as the successful party and pursuant to the agreement, is awarded costs in the amount of $500.00.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2533-22
STYLE OF CAUSE:	SERGEANT WILLIAM TURNER, REGIMENTAL NUMBER 68215 v THE ATTORNEY-GENERAL OF CANADA
PLACE OF HEARING:	EDMONTON, ALBERTA AND BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 13, 2024
JUDGMENT AND REASONS:	BLACKHAWK J.
DATED:	JANUARY 14, 2025

APPEARANCES:

Tracy L. Benkendorf	FOR THE APPLICANT
Larissa Volinets Schieven	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Tracy L. Benkendorf Barrister and Solicitor Leduc County, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT