Federal Court Cour fédérale

Date: 20250228

Docket: T-1186-22

Citation: 2025 FC 380

Toronto, Ontario, February 28, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

CONSTABLE ASHLEY GOODYER,
REGIMENTAL NUMBER 61089

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

I. INTRODUCTION

[1] Constable Ashley Goodyer (the "Applicant") seeks judicial review of the decision of Ms. Brenda Lucki, then the Commissioner (the "Commissioner") of the Royal Canadian Mounted Police (the "RCMP"). He seeks the following relief:

1. An order setting aside the Decision of the Commissioner; and

2. any other relief that this Court deems appropriate; and

3. costs of this Application, as determined by this Court.

[2] In her decision, the Commissioner dismissed an appeal from the imposition of a sanction upon the Applicant after a finding of misconduct. The sanction was that the Applicant either resign from the RCMP within fourteen (14) days or be dismissed, and that he forfeit 20 days pay.

[3] The Applicant seeks judicial review only of the sanction imposed, not of the merits of the decision finding misconduct. The misconduct findings related to the following allegations, laid pursuant to section 41(1) of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 (the "RCMP Act"):

1. Between November 12 and November 23, 2016, at or near Kamloops, BC, Cst. Goodyer failed to carry out lawful orders and directions, contrary to s. 3.3 of the Code of Conduct.

2. Between November 12 and November 13, 2016, at or near Kamloops, BC, Cst. Goodyer engaged in discreditable conduct, contrary to s. 7.1 of the Code of Conduct.

3. Between November 12 and November 13, 2016, at or near Kamloops, BC, Cst. Goodyer failed to provide complete, accurate, and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties, and the operation and administration of the Force, contrary to s. 8.1 of the Code of Conduct.

4. On or about November 28, 2016, at or near Kamloops, BC, Cst. Goodyer failed to provide complete, accurate, and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties, and the operation and administration of the Force, contrary to s. 8.1 of the Code of Conduct.

5. On or about January 5, 2017, at or near Kamloops, BC, Cst. Goodyer failed to provide complete, accurate, and timely accounts pertaining to the carrying out of his responsibilities, the performance of his duties, and the operation and administration of the Force, contrary to s. 8.1 of the Code of Conduct.

[4] The "sanction" will otherwise be referred to as the "measures" decision.

[5] Pursuant to Rule 303(3) of the *Federal Courts Rules*, SOR/98-106 (the "Rules"), the Attorney General of Canada is the respondent (the "Respondent") in this application.

II. FACTUAL BACKGROUND

[6] The following facts and details are taken from the Certified Tribunal Record (the "CTR") and the application records filed by the parties.

[7] In support of this application for judicial review, the Applicant filed an affidavit, sworn on September 16, 2022. He set out a history of the allegations against him and the various processes that followed, leading to his appeal before the Commissioner.

[8] The Applicant attached a number of exhibits to his affidavit, including the Certified Tribunal Record, the "Summary of Findings and Recommendations" of the first panel of the ERC, the "Summary of Findings and Recommendations" of the second panel of the ERC, the decision of the Commissioner and some emails relating to reimbursement of 20 days salary that the second ERC panel had recommended as part of the conduct measures.

[9] The Applicant joined the RCMP in 2014. In December 2016, he was advised that he was under investigation for alleged contraventions of the RCMP Code of Conduct, between June and November 2016. He was reassigned temporarily to "A" Watch during November 2016. He was suspended with pay as of November 22, 2017.

[10] On January 9, 2018, the Applicant was served with a Notice of Conduct Hearing (the "Notice"), dated December 21, 2017, from the Deputy Commissioner. The Deputy Commissioner advised the Applicant she would seek his dismissal if the Board determined he contravened the Code of Conduct.

[11] On March 5, 2018, the Applicant responded to the Allegations, admitting Allegations 3, 4, and 5, and admitting certain particulars with respect to Allegations 1 and 2.

[12] On March 7, 2018, the Board advised the parties that it did not consider any testimony to be necessary to determine the merits of the allegations. Neither party disagreed.

[13] On March 16, 2018, the Board issued a decision on the merits of the Allegations. It found Allegations 1, 3, 4, and 5 were established while Allegation 2 was not. The Board expressed the view that it did not think witnesses would be required at the "measures" phase but left it open for the Applicant to address the Board.

[14] Evidence was submitted to the Board by both the Conduct Authority Representative (the "CAR") and the Applicant, on the conduct measures. The ERC referred to some of the letters since they were at issue in the Applicant's appeal.

[15] The CAR presented letters from Corporal Blair Wood and Staff Sergeant Daly. Corporal Wood was the Applicant's direct supervisor on a few shifts when the Applicant transferred to "A" Watch. That transfer happened in November 2016. He expressed the opinion that the Applicant is a good member of the RCMP and could serve as a Field Recruit coach. His letter was characterized by the ERC as addressing the impact of the Applicant's move to "A" Watch.

[16] Staff Sergeant Daly was the Watch Commander of "A" Watch. He related that he had to move another member to another Watch in order to take in the Applicant. He said that this move affected morale on "A" Watch because it lost a senior member who served as a resource to other members.

[17] Staff Sergeant Daly also noted that the incident with the Applicant occurred only three shifts after his arrival, and that morale on "A" Watch was again affected.

[18] The Applicant submitted evidence before the Board through the member Representative (the "MR"). This evidence included some of his performance Evaluations, support letters from eight members of the RCMP and a letter from a Deputy Regional Crown Counsel. The ERC commented on the support letters from Corporal Wood and Corporal Wayne Chung.

[19] Corporal Wood provided a second letter in support of the Applicant, based upon his experience in supervising the Applicant over a six-week period and his Promotional Assessment.

[20] Corporal Wood, although aware of the incidents giving rise to the Conduct proceedings, recommended the Applicant for promotion due to his competencies in policing. He expressed the opinion that the transfer of the Applicant to "A" Watch was to "prevent" an extramarital affair between two members of "A" Watch, not as a result of the allegations against the Applicant.

[21] Corporal Wayne Chung was a supervisor on "A" Watch during the Applicant's assignment there. His letter addressed the management of the extramarital affair involving two members of "A" Watch by Staff Sergeant Daly.

[22] The letter from the regional Crown Counsel provided that, in his opinion, the behaviour of the Applicant was at "the low end of the spectrum" and would not affect his conduct of a prosecution involving the Applicant.

[23] Both parties made written submissions at the measures phase. On May 11, 2018, the Board advised it would contact the parties to determine a timeline for a hearing.

[24] In June 2018, the Board canvassed the availability of counsel for an in-person hearing. After the Applicant's counsel sought clarification of the procedure to be followed, the Board replied that, subject to the Applicant wanting to address the Board, the parties could proceed with a preliminary video conference "if required" followed by a video or in-person hearing "as required".

[25] On June 18, 2018, the Applicant's counsel replied that the Applicant was declining to address the Board and would like to proceed to the decision "given that he has addressed the Board in a statement forming part of the written submissions."

[26] On August 24, 2018, the Board issued its decision. It imposed a forfeiture of 20 days' pay for Allegation 1 and ordered the Applicant to resign, in default of which he would be dismissed, for Allegations 3, 4, and 5.

[27] On September 11, 2018, Applicant appealed this decision to the Commissioner, in accordance with subsection 45.11(1) of the RCMP Act. The Appeal was referred to the ERC, pursuant to paragraph 45.15(1)(c). Initially, the appeal was rejected as being out of time but in May 2019, the Office of the Coordination of Grievances and Appeals consolidated all the appeals filed by the Applicant into one file, in accordance with subsection 29(b) of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 (the "CSO-Grievances").

[28] In March 2021, the ERC recommended dismissing the appeal on the basis of lateness.

[29] The Appeal Adjudicator decided that the issue of timeliness was insufficiently determined and granted a retroactive extension of time in June 2021. The Appeal Adjudicator then gave the Applicant the option of referring the matter to the ERC for a recommendation on the merits, or presenting for a decision without a referral.

[30] In November 2021, the ERC recommended that the appeal be dismissed on all the grounds advanced by the Applicant, with the exception of the forfeiture of twenty (20) days pay.

[31] The matter then proceeded to the Commissioner. The Commissioner agreed with the recommendation of the ERC and issued her decision in May 2022. The Applicant filed his application for judicial review on June 6, 2022.

III. THE DECISION

[32] The subject of this application is the decision of the Commissioner, dated May 5, 2022.

[33] The Commissioner reviewed the recommendations of the ERC relative to the Applicant's appeal from the Conduct Board. That appeal was in respect of the conduct measures only.

[34] Acting pursuant to paragraph 45.16(3)(b) of the RCMP Act, the ERC recommended that the appeal be allowed in part, that is by upholding the measure that the Applicant resign within 14 days or otherwise be dismissed from the RCMP, but recommending that the appeal from the imposition of a 20 day forfeiture of pay be allowed.

[35] The Commissioner acknowledged her role relative to the recommendations of the ERC, that she was not bound to follow those recommendations but that, pursuant to subsection 45.16(8) of the RCMP Act, if she did not accept the recommendations, she was required to provide reasons for not doing so.

[36] The Commissioner proceeded to set out the background to the appeal, including a brief history of the allegations made against the Applicant which led to the proceedings before the Conduct Board.

[37] The Commissioner set out a brief history about the initiation of the appeal from the decision of the Conduct Board, including reference to the three appeals that were filed by the Applicant. Although there was an issue about the timeliness of the appeal, ultimately the three appeals were consolidated and referred to the ERC. A panel of the ERC, chaired by Mr. Charles Randell Smith, issued his recommendations, recorded as C-046, and recommended that the appeal be dismissed for being filed beyond the statutory delays. This panel did not address the merits of the appeal.

[38] Another Conduct Appeal Adjudicator, while acknowledging that the appeal was untimely, found that there was a reasonable explanation for the delay and gave the Applicant the option of sending the merits of the appeal directly to the Commissioner or back to the ERC, for a decision on the merits. The Applicant elected the second option.

[39] The second panel of the ERC issued a report, recorded as C-054, dealing with the first appeal filed by the Applicant and the third appeal, dealing with the 20-day forfeiture of pay.

[40] The Applicant raised the following grounds of appeal before the second panel of the ERC:

1. The Board breached procedural fairness by not holding a hearing on conduct measures;

2. The Board failed to assess the credibility of the authors of the support letters when there was conflicting evidence;

3. The Board erred in its assessment of the mitigating and aggravating factors and did not abide by the principle of parity of conduct measures; and

4. The Board erred in imposing a 20-day forfeiture of pay in addition to dismissal.

[41] The Commissioner reviewed the findings of the ERC, beginning with its identification and application of the applicable standard of review. She noted the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, about the presumptive standard of reasonableness.

[42] However, the Commissioner also referred to subsection 33 (1) of the CSO-Grievances, *supra* which provides as follows:

Decision of Commissioner

> 33 (1) The Commissioner, when rendering a decision as to the disposition of the appeal, must consider whether the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.

[43] In paragraph 37 of her decision, the Commissioner said the following:

> As referenced in multiple Federal Court cases, the term "clearly unreasonable" under subsection 33(1) is equivalent to the common law standard of patent unreasonableness (*Smith v Canada (Attorney General)*, 2021 FCA 73, at para 56; *Kalkat v Canada (Attorney General)*, 2017 FC 794, at para 62).

[44] The Commissioner referred to several cases relative to the "patently unreasonable" standard and noted that the ERC had characterized the "relevant question" as being "whether there is any rational or tenable line of analysis supporting the decision and demonstrating that the decision is not clearly irrational".

[45] The Commissioner observed that the standard of patent unreasonableness means that she cannot reweigh the evidence or "reject the inferences drawn by the decision maker from that evidence." She further observed that the ERC acknowledged the Applicant's argument, on appeal, that the Conduct Board breached his right to procedural fairness by failing to hold a hearing on the conduct measures.

[46] The Commissioner addressed the issue of procedural fairness. She referred to the decision of the Federal Court of Appeal in *Canadian Pacific Railway v. Canada (Attorney General)*, 2018 FCA 69, where that Court ruled that the ultimate question is whether an appellant "knew the case to be met and had a full and fair chance to respond".

[47] The Commissioner noted, at paragraph 44, the observations of the ERC about the effect of a breach of procedural fairness even in the earlier stage of a proceeding, as follows:

> The ERC explained that the decision maker either did or did not follow the principles of procedural fairness. If not, the decision is invalid and must be set aside, except in rare cases where the result is inevitable even if the violation was to be rectified (*Mobil Oil Canada v Canada Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, at p 228).

[48] The Commissioner then addressed a preliminary issue raised by the Applicant before the ERC, that is the introduction of a document on appeal, namely an unsigned copy of a Promotion Assessment that was sought to be introduced before the Conduct Board. The Applicant was able to find the signed version of this document and requested leave to file it upon the appeal to the ERC.

[49] The Commanding Officer, "E" Division, Royal Canadian Mounted Police (the "Commanding Officer") was the respondent to the Applicant's appeal. The Commanding Officer objected to the introduction of "new evidence" upon the appeal but the ERC allowed its admission, having regard to paragraph 25(2)(a) of the CSO-Grievances and section 5.3.1.5 of Chapter II.3 of the RCMP Administrative Manual "Grievances and Appeals".

[50] The ERC found that the "new evidence" contained no new information that was not made available to the Conduct Board, that the only difference was that the "new evidence" was signed, it was a document that originated from the RCMP and was signed by all parties.

[51] The Commissioner then went through the grounds of appeal, beginning with the allegation that the Conduct Board breached procedural fairness by not holding an oral hearing on the conduct measures.

[52] While briefly summarizing the arguments on appeal on this issue, the Commissioner focused on the ERC's analysis of this issue. She noted that the ERC treated this issue in two parts: first, whether the Applicant could raise this ground on his appeal and second, whether the Conduct Board was required to hold an oral hearing.

[53] The Commissioner noted that the ERC found that the Applicant could not raise the issue of procedural fairness arising from the lack of an oral hearing upon his appeal, in light of the factual background showing that he had waived his right to an oral hearing on conduct measures, before the Conduct Board.

[54] The Commissioner also noted that the ERC turned its mind to the effect of a lack of hearing upon the Applicant's rights to a "fair" hearing and a "procedurally fair process".

[55] The Commissioner accepted the ERC's recommendations about part one of this issue. In paragraph 82, she made the following finding:

> Courts have generally adopted the view that procedural fairness is entrenched within any hearing before a tribunal and constitutes an essential aspect of the proceedings. The Appellant participated fully in the hearing, corresponding on time, and voicing any concerns as they arose. Having not objected to the lack of in-person hearing after many opportunities, the Appellant implicitly waived his right to object after the fact.

[56] The Commissioner then went on to address the ERC's recommendation about the second part of the procedural fairness issue. She characterized this issue in terms of a question – whether the Conduct Board was "required" to hold an oral hearing?

[57] The Commissioner referred to subsection 45.1(2) of the RCMP Act and in paragraph 90 made the following observation:

> The maxim of *audi alteram partem* does not mean that a viva voce hearing is always necessary. The current conduct regime, in force since November 28, 2014, removed from the RCMP Act the right of the parties to a traditional hearing in all cases.

[58] The Commissioner then reviewed the Applicant's plea that the Conduct Board failed to assess the credibility of the authors of support letters, that is S/ Sgt. Daly, Cpl. Blair Wood and Cpl. Wayne Chung. He argues that since there was conflicting evidence, the Conduct Board should have heard from these individuals, in order to assess their credibility.

[59] The Commissioner noted that the conflicting evidence related to the reason why the Applicant was transferred to a different Watch.

[60] The ERC rejected the Applicant's argument that the Conduct Board's failure to assess the credibility of the authors of those support letters by way of oral testimony, in the face of conflicting evidence, gave rise to a reviewable error.

[61] The ERC observed that the Applicant could have called the authors of the support letters, as witnesses, and did not do so.

[62] The Commissioner agreed with the recommendation of the ERC and found that the Conduct Board was not obliged to make credibility findings about the authors of the support letters.

[63] The Commissioner proceeded to address the Applicant's plea that the Conduct Board erred in its assessment of the mitigating and aggravating factors and failed to apply the principles of parity in setting the conduct measures.

[64] The ERC recommended that this ground of appeal be dismissed, on the grounds that conduct boards enjoy broad discretion in the imposition of conduct measures.

[65] The ERC recognized that the Conduct Board did not consider the lying by the Applicant to be an aggravating factor in imposing conduct measures. The ERC also recognized that the Conduct Board explained why some "proposed" mitigating factors were given less weight.

[66] The ERC concluded that the Conduct Board did not err in finding that precedents for conduct measures, that were based on joint submissions, were to be given less weight.

[67] The ERC considered the manner in which the Conduct Board looked at parity of sanctions and concluded that it took the appropriate principles into account when determining the conduct measures to be imposed in this case.

[68] The Commissioner agreed with the ERC's analysis of this issue and adopted its recommendation to dismiss this ground of appeal. She acknowledged the high degree of deference due to the Conduct Board in the matter of imposing conduct measures.

[69] The Commissioner addressed the Applicant's appeal against the imposition of a 20-day forfeiture of pay in addition to the sanction of dismissal.

[70] The ERC considered this ground of appeal from the perspective of the authority of the Conduct Board to impose this sanction. It concluded that, having regard to the relevant legislation and applicable principles of statutory interpretation, the Conduct Board did not have the authority to impose both the conduct measures and the 20-day forfeiture of pay. It recommended that this ground of appeal be allowed.

[71] The Commissioner accepted this recommendation. In disposing of the appeal, she said the following at paragraphs 168 to 171:

> [168] I allow the appeal of conduct measures in part. Although the Respondent was found to have contravened the *Code of Conduct* with respect to Allegation 1, regardless of the Board's intention, I rescind the 20-day forfeiture of pay, and direct the Respondent to ensure the Applicant is reimbursed without delay.
>
> [169] Paragraph 45.16(3)(b) and subsection 45.16(5) of the *RCMP Act* enable me to impose any conduct measure to replace the one rescinded, as long as the measure constitutes one that the Board could have imposed. Since the Board determined that Allegations 3, 4, and 5 were also established and held that they collectively made it untenable for the Appellant's employment with the RCMP to continue, I order the measure for Allegation 1 to form part of the global sanction originally imposed by the Board.
>
> [170] The appeal is dismissed on the remaining grounds.

> [171] Pursuant to paragraph 45.16(3)(a) of the *RCMP Act*, I confirm the Board's order directing the Appellant to resign from the Force within 14 days, in default of which he was to be dismissed.

IV. SUBMISSIONS

A. *The Applicant*

[72] The Applicant challenges the Commissioner's finding that the Board was not required to hold an oral hearing on the measures. He submits that the Commissioner's finding was unreasonable. He relies on the decision in *Constable Andrew Hedderson v. Commanding Officer, "E" Division*, 2021 CAD 22, where the lack of an oral hearing was found to give rise to a breach of procedural fairness.

[73] Otherwise, the Applicant submits that the Commissioner's decision to uphold the penalty is unreasonable.

B. *The Respondent*

[74] The Respondent raises a preliminary objection, that is to the introduction by the Applicant of new evidence that was not before the Commissioner, and accordingly, not properly before the Court in this Application.

[75] The Respondent objects to the inclusion by the Applicant, as exhibit H to his affidavit, of certain emails relating to the reimbursement of 20 days salary. He argues that this material was not before the Commissioner and should not be before the Court.

[76] I agree that this evidence was not before the Commissioner. However, the reimbursement of salary to the Applicant is not an issue in this application and the objection is largely meaningless. The evidence is not relevant to the disposition of this application.

[77] In any event, the Respondent argues that according to the decision in *Vavilov, supra*, the choice of procedure in the administrative law setting is presumptively reviewable on the standard of reasonableness.

[78] The Respondent further submits that the merits of the decision are reviewable on the standard of reasonableness, again relying on the decision in *Vavilov, supra*. He argues that the Commissioner's decision meets the applicable standard.

V. DISCUSSION and DISPOSITION

[79] The first issue for consideration is the appropriate standard of review.

[80] Following the decision in *Vavilov, supra*, the merits of the decision are reviewable on the standard of reasonableness.

[81] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra*, at paragraph 99.

[82] I turn now to the substance of the Commissioner's decision. She accepted the recommendation that the Applicant resign from the RCMP within fourteen (14) days, failing which he would be dismissed.

[83] The Applicant raised three arguments under the heading of breach of procedural fairness: first, that the Commissioner committed a breach of procedural fairness by refusing to allow him to raise the absence of an oral hearing as an issue upon his appeal; second, by finding that the "hearing" procedure adopted by the Board met the requirements of subsection 45.1(2) of the Act that a conduct hearing "shall be held in public"; and third, that a hearing was necessary to address credibility.

[84] In respect of the first issue the Applicant relies on the decision in *Constable Andrew Hedderson v. Commanding Officer, "E" Division*, 2021 CAD 22 where an appeal adjudicator found that Constable Hedderson reasonably expected that the Board would convene a hearing to address credibility, in spite of silence about that issue at first instance.

[85] In the present case, I agree with the submissions of the Respondent that the Commissioner reasonably found that the Applicant has had the opportunity to request an oral hearing when he first learned of the Board's intention to proceed on the basis of the written record and submissions.

[86] In my opinion, the decision in *Mand v. Canada*, 2023 FC 94 applies to the present circumstances. At paragraph 17, the Federal Court of Appeal said the following:

> In short, because the appellant raised no objection before the Tax Court as to its manner of proceeding, she cannot claim to have been denied procedural fairness for the first time before this Court. As noted by this Court at paragraph 17 of *Canada v. Raposo*, 2019 FCA 208, [2019] G.S.T.C. 50, it is well established that individuals who believe they have been denied procedural fairness must raise the issue at the first opportunity, failing which they will generally be found to have waived their right to raise the issue of procedural fairness.

[87] The Commissioner reasonably concluded that the Applicant had the opportunity to object to the procedure chosen by the Board and agreed to proceed without an oral hearing, when his counsel advised on June 18, 2018 that he would like to proceed to a decision.

[88] The decision in *Hedderson, supra* does not assist the Applicant. In that case, Constable Hedderson did not have the opportunity to object to the Conduct Board's decision to proceed without an oral hearing until he appealed its decision.

[89] In the present case, the Applicant had such an opportunity and did not object. Rather, through his counsel, he agreed to the procedure proposed by the Board.

[90] The Applicant pleads that the Board did not follow the procedure set out in subsection 45.1(2) of the Act which provides as follows:

(2) The hearing shall be held in public but the conduct board, on its own initiative or at the request of any party, may order that the hearing or any part of it is to be held in camera if it is of the opinion	(2) Les audiences sont publiques; toutefois, le comité de déontologie, de sa propre initiative ou sur demande de toute partie, peut ordonner que toute partie de l'audience soit tenue à huis clos s'il estime :

(a) that information, the disclosure of which could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or to the detection, prevention or suppression of subversive or hostile activities, will likely be disclosed during the course of the hearing;	a) que des renseignements dont la communication risquerait vraisemblablement de porter préjudice à la défense du Canada ou d'États alliés ou associés avec le Canada ou à la détection, à la prévention ou à la répression d'activités hostiles ou subversives seront probablement révélés au cours de l'audience;
(b) that information, the disclosure of which could reasonably be expected to be injurious to law enforcement, will likely be disclosed during the course of the hearing;	b) que des renseignements risquant d'entraver le contrôle d'application de la loi seront probablement révélés au cours de l'audience;
(c) that information respecting a person's financial or personal affairs, if that person's interest or security outweighs the public's interest in the information, will likely be disclosed during the course of the hearing; or	c) que des renseignements concernant les ressources pécuniaires ou la vie privée d'une personne dont l'intérêt ou la sécurité l'emporte sur l'intérêt du public à l'égard de ces renseignements seront probablement révélés au cours de l'audience;
(d) that it is otherwise required by the circumstances of the case.	d) par ailleurs, que les circonstances exigent une telle mesure.

[91] The Applicant acknowledges that subsection 13(2) of the *Commissioner's Standing Orders (Conduct)* (the "CSO-Conduct"), SOR/ 2104-291 allows the Board to "adapt" rules of procedure "if the principles of procedural fairness allow".

[92] Subsection 13(2) of those Standing Orders provides as follows:

The conduct board may adapt these rules of procedure if the principles of procedural fairness permit.	Il peut adapter les présentes règles de procédure en tenant compte de l'équité procédurale.

[93] The Applicant complains that his hearing was not accessible to the public and that the Commissioner's finding that the Board did not breach the principles of natural justice lacks justification because it goes beyond the limits set by the language of the Act, contrary to the teachings in *Vavilov*, *supra* at paragraph 110.

[94] The Applicant also submits that the rules of procedure in the CSO-Conduct contemplate formal proceedings, referring to subsection 18(1), section 26 and subsection 20(1).

[95] The Respondent argues that the Commissioner reasonably found that that a hearing "in public" is not necessarily equivalent to an oral hearing. He submits that the Commissioner observed that subsection 23(1) of the CSO-Conduct contemplates that a board may make a decision based solely on the record, without any oral evidence. He further argues that subsection 45.1(2) of the Act is meant to reflect the open court principle, not to require oral hearings.

[96] Subsection 18 (1), subsection 20(1) and section 26 of the CSO-Conduct provide as follows:

18 (1) Within 30 days after the day on which the notice of hearing is served, the parties must submit to the conduct board a list of the witnesses that they want to have summoned before the board and a list of the issues in respect of which they may want to rely on expert testimony

18 (1) Dans les trente jours suivant la date de la signification de l'avis d'audience, les parties soumettent au comité de déontologie la liste des témoins qu'elles désirent faire comparaître devant lui et la liste des questions pour lesquelles elles voudront peut-être faire témoigner un expert

[…]

[…]

20 (1) At the commencement of a hearing, the conduct board must read to the subject member each allegation of contravention of the Code of Conduct that is set out in the notice of the hearing, and the member must admit or deny each allegation.

20 (1) Au début de l'audience, lecture est faite par le comité de déontologie au membre visé des contraventions alléguées au code de déontologie énoncées dans l'avis d'audience. Le membre admet ou nie chacune des allégations.

26 The conduct board must compile a record after the hearing, including

26 Après l'audience, le comité de déontologie établit un dossier comprenant notamment :

(a) the notice of hearing referred to in subsection 43(2) of the Act;

a) l'avis d'audience prévu au paragraphe 43(2) de la Loi;

(b) the notice served on the subject member of the place, date and time of the hearing;

b) l'avis des date, heure et lieu de l'audience signifié au membre visé;

(c) a copy of any other information provided to the board;

c) copie des renseignements transmis au comité;

(d) a list of any exhibits entered at the hearing;

d) la liste des pièces produites à l'audience;

(e) the directions, decisions, agreements and undertakings, if

e) les directives, décisions, accords et engagements consignés

any, referred to in subsection 16(2);	en application du paragraphe 16(2);
(f) the recording and the transcript, if any, of the hearing; and	f) l'enregistrement de l'audience et, le cas échéant, sa transcription;
(g) a copy of all written decisions of the board.	g) copie de toute décision écrite du comité.

[97] In my opinion, subsection 45.1(2) of the Act does not support the submissions of the Applicant. The words "shall be held in public" must be read in context. This provision grants the Board a discretion to hold hearings *in camera*, but it also provides that such proceedings are not the default position.

[98] In my opinion, subsection 45.1(2) distinguishes between confidential and non-confidential proceedings, not between oral and written proceedings.

[99] I conclude that the Commissioner reasonably found that a "public" hearing does not necessarily require an "oral" hearing.

[100] As for the rules of procedure in the CSO-Conduct, cited by the Applicant, the Commissioner reasonably followed subsection 13(2), in finding that the principles of procedural fairness did not require an oral hearing in this case when the Applicant had the opportunity to exercise his participatory rights.

[101] The third argument advanced by the Applicant under the heading of breach of procedural fairness relates to the loss of an opportunity to assess credibility. This argument relates to the credibility of the individuals, all members of the RCMP, who submitted letters to the Board.

[102] Letters were submitted by Corporal Wood and Corporal Chung, in support of the Applicant. A letter was also submitted by Sergeant Daly. The Applicant argues that the letters from Corporal Wood and Corporal Chung gave a version of facts that contradicted the version set out by Sergeant Daly. The Applicant argues that the Board should have assessed the credibility of Sergeant Daly before relying on his letter.

[103] The Applicant also challenges the conclusion of the Commissioner that he bore the responsibility of calling witnesses. He refers to paragraph 2.4 of the "Conduct Board Guidebook" that grants the Board authority to control its own processes and to compel evidence . He pleads that the Board should have exercised its authority to resolve the credibility issue before relying on the letter from Sergeant Daly.

[104] The Respondent submits that no oral hearing was required to assess the credibility of the authors of the letters since the Board's findings did not rest on credibility. He argues that it was up to the Applicant to call Sergeant Daly as a witness if he wanted to challenge his credibility. He submits that the Commissioner reasonably relied upon the decision in *Ferguson v. Canada (Citizenship and Immigration)*, 2008 FC 1067 in concluding that the Board was entitled to discuss the probative value of the letters without determining the credibility of the authors.

[105] I agree largely with the position of the Respondent, that the Board's findings did not turn on credibility. The Board found that the factual differences between the letter were not relevant and declined to resolve the difference.

[106] In my opinion, the Commissioner reasonably found that the Board was not obliged to make credibility findings.

[107] However, I will acknowledge one error made by the Commissioner where she misstated that there had been evidence that Applicant's assignment to administrative duties impacted morale on "A" Watch. The only source for this information was in Sergeant's Daly's letter, which suggests that the Board accepted his letter as being credible.

[108] The Respondent acknowledges this misstatement.

[109] In my opinion, this mistake does not affect the reasonableness of the Commissioner's decision.

[110] Morale on "A" Watch was not a factor in the Board's analysis. This mistake does not impact the Commissioner's ultimate finding, that it was the responsibility of the Applicant to call witnesses and examine them, if he wanted to test their credibility.

[111] Finally, the Applicant argues that the Commissioner erred by failing to consider if the Board committed an error of law. He refers to subsection 33(1) of the *Commissioner's Standing Orders (Grievances and Appeal)*, SOR/ 2014-89 which provides as follows:

33 (1) The Commissioner, when rendering a decision as to the disposition of the appeal, must consider whether the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or unreasonable is clearly	33 (1) Lorsqu'il rend une décision sur la disposition d'un appel, le commissaire évalue si la décision qui fait l'objet de l'appel contrevient aux principes d'équité procédurale, est entachée d'une erreur de droit ou est manifestement déraisonnable.

[112] This provision requires the Commissioner whether the decision of the Board "contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable".

[113] The Applicant submits that although the Commissioner correctly identified the "clearly unreasonable" standard and that the correctness standard applies to issues of procedural fairness, she did not identify the standard of review applicable to errors of law.

[114] In particular, the Applicant argues that the Commissioner failed to appreciate that he raised an error of law in his appeal, that the Board repeatedly used the offence itself to dismiss mitigating factors, in particular those raised in the letters of support. He relies on the decision in *Hasani v. Canada (Citizenship and Immigration)*, 2020 FC 125 to support his argument that the elements of an offence cannot re treated as aggravating factors.

[115] The Respondent submits that the Commissioner reasonably concluded that this argument from the Applicant was an invitation for her to reweigh the evidence.

[116] I agree with the Respondent on this issue. The ERC recommended that this ground of appeal be dismissed. The Commissioner reasonably declined to interfere with the Board's conclusion.

[117] Finally, the Applicant argues that the Commissioner's decision to maintain the Board's choice of sanction was unreasonable. He submits that the Board failed to consider the difference between lying in an operational and a non-operational context.

[118] The Applicant also argues that the Board failed to take into account the parity of sanctions, referring to the decision in *Commanding Officer "E" Division and Constable Vellani*, 2017 RCAD 3, a case where a finding of egregious misconduct was sanctioned by dismissal. He submits that his misconduct was lesser: Constable Vellani had been found to have lied under oath, among other aggravating factors.

[119] The Respondent argues that the Board did take into account the factual differences between the Applicant's misconduct and that of Constable Vellani. The Board considered that the Applicant's initial lie straddled the line between a non-operational and operational context, but that he had lied during an internal conduct investigation.

[120] The Respondent submits that the Commissioner understood the relevant factors and explained how they were weighed, and the Commissioner rightly observed that was not her role to reweigh the factors considered by the Board, in imposing the sanction of dismissal.

[121] In my opinion, the Commissioner reasonably addressed this element of the appeal. She reasonably determined that the Applicant was looking for a reweighing of the aggravating and mitigating factors, and reasonably concluded that such was not her role.

[122] The Applicant characterizes the major issue in this application as one of procedural fairness. He contends that he advanced a "layered" argument about procedural fairness.

[123] The principal element of procedural fairness is the right of an "affected" person to know the case to be "met" or the case to be "made". I refer to the decision of the Federal Court of Appeal in *Canadian Pacific Railway Company v. Canada (Attorney General)*, [2019] 1 F.C.R. 121.

[124] I also refer to the decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, where the Supreme Court of Canada set out a non- exhaustive list of factors that inform the content of procedural fairness. Those factors were identified in *Mowi Canada West Inc. v. Canada (Fisheries, Oceans and Coast Guard)*, 2022 FC 588 at paragraph 162:

1. The nature of the decision and the process followed in making it;
2. The nature of the statutory scheme and the statutory terms under which the decision maker operates;

3. The importance of the decision to the person or persons affected;
4. The legitimate expectations of the individuals challenging the decision; and
5. The choices of procedure made by the decision maker.

[125] The Applicant focuses on the lack of an oral hearing before the Board. He pleads that the Board erred by disregarding the terms of its governing statute, specifically subsection 45.1(2) of the RCMP Act. He pleads reviewable error by the Commissioner in accepting the recommendations of the ERC about the effect of proceeding without an oral hearing and without calling, on its own initiative, three members of the RCMP who submitted letters as evidence upon the assessment of conduct measures.

[126] The Applicant sought to make procedural fairness "the" issue in this application for judicial review. Consideration of that issue begins with consideration of the manner in which the Board proceeded. The Commissioner, in her decision, acknowledged that a breach of procedural fairness at an earlier stage of the process, could "taint" the whole process. I refer to paragraph 80 of the Commissioner's decision where she said the following:

> … This is an independent and unqualified right that has been well established in law. If there has been a denial of a right to a fair hearing, it cannot be cured by the tribunal's subsequent decision.

[127] There is no doubt that the Applicant knew the case to be met, that is a response to the allegations that were set out in the Notice.

[128] The Applicant waived his right to an oral hearing. This fact is clear from the record. The Commissioner noted this at paragraph 82 of her decision.

[129] The interpretation of subsection 45.1(2) of the RCMP Act promoted by the Applicant does not stand up, when the ordinary rules of statutory interpretation are applied. I refer to the decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, where the Supreme Court of Canada set out those principles as follows:

> 21. Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 S.C.R. 213**; *Royal Bank of Canada v. Sparrow Electric Corp.*, 1997 CanLII 377 (SCC), [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, 1996 CanLII 186 (SCC), [1996] 3 S.C.R. 550; *Friesen v. Canada*, 1995 CanLII 62 (SCC), [1995] 3 S.C.R. 103.
>
> 22. I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

[130] At paragraph 110 in its decision in *Vavilov*, *supra*, the Supreme Court of Canada commented on the need to interpret statutory provisions in context, as follows:

> Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a

> legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language. Other language will fall in the middle of this spectrum. All of this is to say that certain questions relating to the scope of a decision maker's authority may support more than one interpretation, while other questions may support only one, depending upon the text by which the statutory grant of authority is made. What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. It will, of course, be impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.

[131] In these comments, the Supreme Court said nothing that detracts from the guiding principles of statutory interpretation set out in *Rizzo, supra*.

[132] The interpretation of subsection 45.1(2) proposed by the Applicant ignores the overall context of the RCMP Act, that is the regulation and management of the RCMP. At times, such regulation and management will involve disciplinary matters.

[133] The decision of the Commissioner, not the recommendations of the ERC, is the subject of this application for judicial review. That decision is subject to review on the standard of reasonableness, according to the decision in *Vellani v. Canada (Attorney General)*, 2023 FC 37.

[134] It was open to the Applicant to plead a breach of procedural fairness, but an argument is only an “argument”. The submissions of the Respondent are more persuasive than those of the Applicant, having regard to the evidence and statutory context.

[135] In conclusion, the Applicant has failed to show any basis for judicial intervention and this application for judicial review will be dismissed.

[136] If successful in this application, the Respondent seeks costs, and costs will be ordered in the usual event.

[137] If the parties cannot agree on costs, brief submissions can be made, in accordance with a Direction to be issued.

JUDGMENT IN T-1186-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs to the Respondent. If the parties cannot agree on costs, brief submissions can be made in accordance with a Direction to be issued.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1186-22
STYLE OF CAUSE:	CONSTABLE ASHLEY GOODYER, REGIMENTAL NUMBER 61089 v**.** THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HYBRID HEARING BETWEEN EDMONTON AND VANCOUVER
DATE OF HEARING:	JUNE 12, 2024
REASONS AND JUDGMENT:	HENEGHAN J.
DATED:	FEBRUARY 28, 2025

APPEARANCES:

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