

Federal Court



Cour fédérale

Date: 20251014

Docket: T-2496-23

Citation: 2025 FC 1673

Ottawa, Ontario, October 14, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JORDAN IRVINE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Irvine asks the Court to judicially review and set aside a decision by an adjudicator [the Conduct Adjudicator] of the Royal Canadian Mounted Police [RCMP] dismissing his appeal of a suspension order arising from an allegation he had breached the RCMP Code of Conduct [the Appeal Decision]. Mr. Irvine submits that the Appeal Decision is unreasonable. He argues that the Conduct Adjudicator acted without jurisdiction, erred in applying the test for mootness, and failed to consider his submissions concerning procedural fairness and the reasonableness of the suspension order.

[2] I do not necessarily accept Mr. Irvine’s submission that the Conduct Adjudicator would only have jurisdiction if she were enabled by subsection 5(2) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [the *RCMP Act*] which provides that the Commissioner may “delegate to any member ... any of the Commissioner’s powers, duties or functions under this Act...” It is not disputed that the decision-maker here is not a “member” as defined in the *RCMP Act*.

[3] Nevertheless, for the following reasons, I agree with Mr. Irvine, although for different reasons than he advanced, that the Conduct Adjudicator’s Appeal Decision concerning her jurisdiction to make the Appeal Decision under review fails to meet the reasonableness standard described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. This application must be granted on this basis alone. I need not deal with the other issues that have been raised.

I. Basic Facts

[4] Mr. Irvine is a Corporal with the RCMP. In August 2017, it was alleged that he breached the Code of Conduct: *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, Schedule [the Code of Conduct]. He was subsequently transferred to administrative duties, retaining his existing rank, salary, and benefits.

[5] On June 12, 2018, the Deputy Commissioner initiated a conduct hearing under subsection 4(1) of the *RCMP Act*. On that same day, she issued an order suspending Mr. Irvine from duty

with pay [Suspension Order], as required by section 5.4.1.3 of the *Administration Manual* when a decision has been made to initiate a conduct hearing.

[6] Mr. Irvine appealed the Suspension Order on June 27, 2018. He also sought disclosure of the information before the Deputy Commissioner when the Suspension Order was issued. That request was subsequently denied in a decision dated April 22, 2022 [the Disclosure Decision]. While Mr. Irvine now raises procedural fairness and jurisdiction concerns connected to that decision, I note that the Disclosure Decision is not under review in this proceeding.

[7] On November 28, 2018, the Conduct Board found the allegation against Mr. Irvine had not been established. The Suspension Order was rescinded, and he was reinstated retroactive to the date of suspension.

II. Decision Below

[8] The Conduct Adjudicator first rejected Mr. Irvine's jurisdictional challenge, then held that there was no longer a live controversy because the Conduct Board had determined the allegation was not established, the Suspension Order had been rescinded, and Mr. Irvine had been retroactively reinstated in 2018.

III. Issue

[9] As noted, the determinative issue is the reasonableness of the finding on jurisdiction.

[10] The Conduct Adjudicator offered two explanations as to why she had jurisdiction in this appeal. First, she determined that her authority to hear and decide the appeal was grounded in the following statutory, regulatory, and policy instruments taken together: (1) Part IV of the *RCMP Act*; (2) the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 [the *Regulations*]; (3) Parts 2 and 3 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR 2014-290; (4) Section 32 of the *Commissioner's Standing Orders (Conduct)*, SOR 2014-291; and (5) Chapter 4.1, section 2.2 and Chapter 4, section 1.1.18 of the *Administration Manual*. She writes:

Jurisdiction

[3] I have been appointed by the Commissioner to exercise his authority in respect of appeals pursuant to Part IV of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*], the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 [*RCMP Regulations*], and Parts 2 and 3 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [*CSO (Grievances and Appeals)*].

[4] Section 32 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, provides for the appeal of a decision to suspend a member under section 12 of the *RCMP Act*, in accordance with Part 3 of the *CSO (Grievances and Appeals)*. Therefore, I have jurisdiction to adjudicate the matter before me.

[5] In exercising the Commissioner's authority, I am directed by subsection 44(1) of the *CSO (Grievances and Appeals)* to render my decision in respect of an appeal, or any matter arising in the appeal, as informally and expeditiously as the principles of procedural fairness permit. In addition, if any matter arises in the context of an appeal, subsection 44(2) of the *CSO (Grievances and Appeals)* allows me to give any appropriate direction that is not otherwise provided for in the provisions of Part 3 of the *CSO (Grievances and Appeals)*, the *RCMP Act*, or the *RCMP Regulations*.

[11] Towards the end of the Conduct Adjudicator's reasons, at paras 50 – 52, she offered another explanation of jurisdiction. There, she relies on the definition of “adjudicator” in s. 36 in Part 3 of the *Commissioner's Standing Orders (Grievances and Appeals)*, and section 2.2 of the *Administration Manual*, which provides that “the functions administered by the Professional Responsibility Sector, other than a designation as a conduct authority, may be assigned to a person under the jurisdiction of the Commissioner.”

Jurisdictional Issue

[50] With all due respect to the Appellant's position that the Commissioner does not have the authority to designate any person to adjudicate appeals, I disagree. I have set out my authority to adjudicate this appeal in paragraphs 3 to 5 of this decision.

[51] Section 36 of the *CSO (Grievances and Appeals)* defines “adjudicator” as a person designated as such by the Commissioner. Therefore, I am satisfied that the Commissioner does have the authority to designate any person to adjudicate appeals under Part 3 of the *CSO (Grievances and Appeals)*.

[52] For further clarity, *Administration Manual*, chapter 4.1. provides, at section 2, that all designations and delegations that are necessary for the functions administered by the Professional Responsibility Sector, other than a designation as a conduct authority, may be assigned **to a person under the jurisdiction of the commissioner** (see section 2.2.). A person under the jurisdiction of the commissioner means any member or person appointed or employed under Part I of the *RCMP Act*. I am a person under the jurisdiction of the Commissioner and have been properly designated by the Commissioner as a Level I adjudicator to decide this Appeal. [bolding in original]

[12] I am not persuaded that these explanations are reasonable, or indeed correct.

[13] Section 32 of the *Commissioner's Standing Orders (Conduct)*, provides that a decision to suspend a member in accordance with section 12 of the *RCMP Act*, as was done here, may be

challenged by way of an appeal in accordance with the *Commissioner's Standing Orders*

(Grievances and Appeals):

32 (1) A member who is aggrieved by one of the following written decisions may seek redress by means of an appeal of the decision in accordance with the Commissioner's Standing Orders
(Grievances and Appeals):

...

(b) the decision to suspend the member under section 12 of the Act;

...

[14] The *Commissioner's Standing Orders (Grievances and Appeals)* has two Parts dealing with appeals: "PART 2 Appeals (Part IV of the Act)" and "PART 3 Appeals (Other than Part IV of the Act)." Mr. Irvine's appeal, relating to conduct, falls under Part IV of the *RCMP Act*.

[15] Contrary to the Conduct Adjudicator, Part 3 of the *Commissioner's Standing Orders (Grievances and Appeals)*, being sections 36 – 50 has no application to the appeal under review. The jurisdiction of the Conduct Adjudicator must be found in Part 2 of the *Commissioner's Standing Orders (Grievances and Appeals)*, being sections 21 – 35.

[16] Part IV of the *RCMP Act* is entitled "Conduct" and section 39.1 gives the Commissioner authority to make rules governing appeals under that Part. The Commissioner has done so by way of Part 2 of the *Commissioner's Standing Orders (Grievances and Appeals)*. There is nothing therein that speaks to any authority of the Commissioner to designate another to render the appeal decision. Rather, the relevant sections all speak to "an appeal to the Commissioner" and

in section 33(1) “The Commissioner, when rendering a decision as to the disposition of the appeal...”.

[17] The only reference in the Conduct Decision to Part 2 of the *Commissioner’s Standing Orders (Grievances and Appeals)*, relating to jurisdiction over appeals, is in paragraphs 3 and 4, reproduced above. The reference in paragraph 3 to “Parts 2 and 3” grammatically joins the inapplicable Part 3 with the proper reference to Part 2.

[18] The statement regarding Part 2 is brief and declaratory. The reference to suspension appeals being under Part 3 in paragraph 4 of the Reasons is quite simply incorrect:

[4] Section 32 of the *Commissioner’s Standing Orders (Conduct)*, SOR/2014-291, provides for the appeal of a decision to suspend a member under section 12 of the *RCMP Act*, in accordance with Part 3 of the CSO (Grievances and Appeals). Therefore, I have jurisdiction to adjudicate the matter before me. [emphasis added]

[19] The Respondent’s memorandum falls into the same error:

29. Pursuant to section 32 of the Commissioner’s Standing Orders (Conduct), a decision to suspend a member in accordance with section 12 of the RCMP Act, may be challenged by way of an appeal in accordance with the Commissioner’s Standing Orders (Grievances and Appeals).

30. Part 3 of the Commissioner’s Standing Orders (Grievances and Appeals) sets out the process for appeals of suspension decisions. The adjudicator of the appeal is the “person designated as an adjudicator by the Commissioner”. [emphasis added]

[20] The definition of “adjudicator” referenced above is found in Part 3, section 36 of the *Commissioner’s Standing Orders (Grievances and Appeals)* and is specifically stated to apply only to Part 3.

[21] I agree with the Respondent that an adjudicator's consideration of the *RCMP Act*, the *Commissioner's Standing Orders* and the *Administration Manual* are reviewable on the reasonableness standard as described in *Vavilov*. At para 85, the Supreme Court of Canada states that "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."

[22] Expanding on this, the Supreme Court of Canada states at paras 86 and 87:

In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

This Court's jurisprudence since *Dunsmuir* should not be understood as having shifted the focus of reasonableness review away from a concern with the reasoning process and toward a nearly exclusive focus on the *outcome* of the administrative decision under review. Indeed, that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis. This approach is consistent with the direction in *Dunsmuir* that judicial review is concerned with *both* outcome *and* process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.

[23] It may well be that on a proper analysis, this Conduct Adjudicator may be found to have jurisdiction to determine the Suspension Appeal; however, as in *Delta Airlines*, above, the outcome was arrived at on the basis of an unreasonable chain of analysis. In fact, there is no

chain of analysis relating to Part 2 of the *Commissioner's Standing Orders (Grievances and Appeals)*. The chain of analysis offered is incorrect and therefore unreasonable.

[24] Strictly speaking, this is sufficient to dispose of this application for judicial review; however, I wish to offer a few comments on mootness, as the parties spent considerable time on this issue.

[25] The Conduct Adjudicator applied the correct legal test. The leading authority on mootness is *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*]. In that case, the Supreme Court held that once a live controversy has ceased to exist, a decision maker must consider whether to nonetheless proceed. At paragraphs 31, 34, and 40, the Court explained that the discretion, which I regard as the second stage of this framework, is guided by three considerations: (1) whether there remains a genuine adversarial context between the parties; (2) whether judicial resources would be used efficiently; and (3) whether the matter raises issues appropriate for the development of the law.

[26] The Respondent submits that the appeal was properly dismissed as moot. They contend that once the Suspension Order was rescinded, the subject matter of the appeal no longer existed, and the substratum of the dispute had been resolved. In support, they rely on *Stewart v Ontario*, 2013 ONSC 7907 at paragraph 18, where the Court observed that a matter is moot when the issue in dispute has ceased to exist. On this basis, they say the Conduct Adjudicator's determination on mootness was reasonable.

[27] Mr. Irvine submits that the Conduct Adjudicator erred in her application of the *Borowski* framework. He argues, notwithstanding the rescission of the Suspension Order, that six live issues remained at the time of the decision: (1) lost overtime income of approximately \$45,000 to \$50,000; (2) adverse impacts on his career progression; (3) lost training opportunities; (4) the public posting of his conduct case on the RCMP's external website; (5) the continued presence of the Suspension Order on his service and conduct files; and (6) the broader suspension scheme itself. I observe that the sixth ground was not advanced before the Conduct Adjudicator. Mr. Irvine also contends that the Conduct Adjudicator gave only limited attention to the first stage of the *Borowski* test and no analysis at all to the second.

[28] I agree that the Conduct Adjudicator gave little to no analysis as to whether the matters above were such that the appeal ought to be heard notwithstanding that it was moot on the material issue under appeal. The next decision-maker would be well advised to offer a rationale in this respect if the decision made to not hear the matter.

[29] The parties agreed that the successful party would be awarded costs of \$1250.00.

JUDGMENT in T-2496-23

THIS COURT'S JUDGMENT is that this application is granted, the decision under review is set aside, the appeal is remitted back to the Commissioner, and the Applicant is awarded costs of \$1250.00.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2496-23

STYLE OF CAUSE: JORDAN IRVINE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 24, 2025

JUDGMENT AND REASONS: ZINN J.

DATED: OCTOBER 14, 2025

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