

Federal Court of Appeal



Cour d'appel fédérale

Date: 20221108

Docket: A-253-21

Citation: 2022 FCA 191

**CORAM: GLEASON J.A.
MACTAVISH J.A.
MONAGHAN J.A.**

BETWEEN:

DMYTRO FIRSOV

Appellant

and

CANADA (ATTORNEY GENERAL)

Respondent

Heard at Toronto, Ontario, on October 3, 2022.

Judgment delivered at Ottawa, Ontario, on November 8, 2022.

REASONS FOR JUDGMENT BY:

MACTAVISH J.A.

CONCURRED IN BY:

**GLEASON J.A.
MONAGHAN J.A.**

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REASONS FOR JUDGMENT

MACTAVISH J.A.

[1] Dmytro Firsov is a member of the Royal Canadian Mounted Police. He appeals from a decision of the Federal Court (reported as 2021 FC 877) dismissing his application for judicial review of a decision of an RCMP Conduct Adjudicator. The Conduct Adjudicator upheld the earlier decision of Inspector Dean Warr, acting as a conduct authority. Insp. Warr found that two of four allegations of breaches of the RCMP *Code of Conduct* (set out in the schedule of the

Royal Canadian Mounted Police Regulations, 2014, SOR/2014-281) on the part of Cst. Firsov were well founded, and that he should be sanctioned accordingly.

[2] For the reasons that follow, I have not been persuaded that the Federal Court erred as alleged by Cst. Firsov. I have also concluded that it is too late for him to raise new allegations and arguments about the deficiencies in the conduct process at this stage of the proceedings. Consequently, I would dismiss Cst. Firsov's appeal.

I. Background

[3] At the time in question, Cst. Firsov was a member of the V Division Relief Unit in Nunavut. In that capacity, he performed general duty police work in various detachments around the Territory. In April and May of 2017, Cst. Firsov was the Acting Detachment Commander at Coral Harbour while the Detachment Commander was away from Nunavut on training. Constable G.D. was the only other RCMP officer assigned to Coral Harbour at this time, and she and Cst. Firsov handled calls for service in the community and conducted investigations. Cst. Firsov and Cst. G.D. had previously enjoyed a brief romantic relationship.

[4] On her return to her home unit after completing her assignment in Coral Harbour, Cst. G.D. spoke to her supervisor, raising several operational or officer safety concerns she had with respect to Cst. Firsov's conduct. This led to an investigation being initiated by Sergeant Jeff Scott into four allegations that Cst. Firsov had contravened section 4.2 of the RCMP *Code of Conduct*. This provision requires that "[m]embers are diligent in the performance of their duties

and the carrying out of their responsibilities, including taking appropriate action to aid any person who is exposed to potential, imminent or actual danger”.

[5] Sgt. Scott was the acting officer in charge of the V Division Relief Unit at this time while Insp. Warr, the officer in charge of the Unit, was on leave. In that capacity, Sgt. Scott authorized Sgt. André Duval to investigate the allegations regarding Cst. Firsov’s conduct. Cst. Firsov was able to provide a statement to Sgt. Duval with his version of events, and Cst. Firsov stated at the hearing before us that Sgt. Duval had done a very good job on the investigation.

[6] At the same time that the *Code of Conduct* investigation was initiated by Sgt. Scott, Cst. Firsov was served with an Order of Temporary Reassignment, also signed by Sgt. Scott, restricting him to work at the Iqaluit Detachment. The Order stated that the reassignment was effective immediately, and would remain in place “until otherwise determined”.

[7] Sgt. Duval’s investigation report was provided to Insp. Warr, who had since returned to Nunavut and resumed his position as officer in charge of the Relief Unit. Following a review of the investigation report, Insp. Warr determined that two of the four allegations against Cst. Firsov were not well founded, but that there was a *prima facie* case that the other two allegations were indeed well founded.

[8] Insp. Warr then held a conduct meeting with Cst. Firsov, providing him with a further opportunity to respond to the allegations that had been made against him. Cst. Firsov took

responsibility for his conduct in relation to one of the two remaining allegations (Allegation #4), and provided Insp. Warr with his version of events with respect to both outstanding allegations.

[9] Following this meeting, Insp. Warr rendered his decision. In his written Record of Decision, Insp. Warr reviewed the testimony of Cst. G.D. and Cst. Firsov, finding that each of Allegation #3 and #4 had been established.

[10] Allegation #3 stated:

On or about May 2, 2017 [...] while secondary on call to respond to complaints as backup, Constable Dmytro Firsov refused to attend as backup to a complaint of domestic violence [...] with [Cst. G.D.], contrary to RCMP backup policy, Operations Manual chapter 16.9. It is therefore alleged that Constable Dmytro Firsov has contravened Section 4.2 of the *Code of Conduct: Diligence and Aid*.

Whereas Allegation #4 stated:

On or about May 5, 2017 [...] Nunavut, during the course of his duties, Constable Dmytro Firsov failed to give adequate attention to a duty he was required to perform in relation to [...]. It is therefore alleged that Constable Dmytro Firsov has contravened Section 4.2 of the *Code of Conduct: Diligence and Aid*.

[11] After considering the aggravating and mitigating factors, Insp. Warr ordered that Cst. Firsov forfeit eight days of annual leave, that he be ineligible for promotion for one year, that he review the RCMP's national back-up policy, and its national and divisional policy on violence/abuse in relationships, with his NCO/i/c, and that he complete two courses with respect to domestic violence investigations.

[12] Prior to rendering his decision, however, Insp. Warr had ordered Cst. Firsov to perform relief duties in Igloolik, Nunavut. Shortly thereafter, Cst. Firsov was involved in a shooting incident. Cst. Firsov had been attacked by a male suspect carrying a weapon. Fearing for his life, Cst. Firsov was forced to use his service weapon to stop the threat. An investigation by the Ottawa Police Service ultimately cleared Cst. Firsov of any wrongdoing in relation to the shooting.

II. The Appeal to the Adjudicator

[13] In accordance with section 45.11 of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 and section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 (*CSO (Grievances and Appeals)*), Cst. Firsov appealed Insp. Warr's decision to a Conduct Adjudicator. In accordance with subsection 33(1) of the *CSO (Grievances and Appeals)*, to succeed in his appeal, Cst. Firsov had to establish that Insp. Warr's decision contravened the principles of procedural fairness, was based on an error of law or was clearly unreasonable.

[14] In his Notice of Appeal, Cst. Firsov alleged that Insp. Warr's decision had been reached in a manner that contravened the applicable principles of procedural fairness and that it was clearly unreasonable. Cst. Firsov also challenged the conduct measures that had been imposed by Insp. Warr, alleging that they were unduly punitive.

[15] Amongst other things, Cst. Firsov submitted that he was denied procedural fairness due to bias on the part of the Insp. Warr. According to Cst. Firsov, Insp. Warr was in a conflict of interest as he had authorized the investigation into the shooting incident. Cst. Firsov argued that the involvement of Insp. Warr in the investigation of the shooting incident while he was simultaneously charged with determining whether the allegations against Cst. Firsov should proceed to a conduct meeting raised a reasonable apprehension of bias on Insp. Warr's part. Cst. Firsov further submitted that Insp. Warr was not impartial, as he was overly frustrated with having to deal with Cst. Firsov's issues, and that this was why Insp. Warr imposed such unreasonably harsh sanction measures on him.

[16] The Adjudicator considered Cst. Firsov's argument that Insp. Warr was not impartial. The Adjudicator noted that it was not uncommon for members holding a senior rank to be dealing with several issues involving subordinates at the same time. After reviewing the record, the Adjudicator found that there was no indication that Insp. Warr had acted in a manner that exhibited partiality. Indeed, the Adjudicator found that Insp. Warr's impartiality had been demonstrated by the fact that he had found that two of the four allegations against Cst. Firsov had not been established.

[17] After reviewing the evidence relating to Allegations #3 and #4, the Adjudicator found that Insp. Warr had not erred in law in coming to his decision, nor had Cst. Firsov been treated unfairly in the discipline process. The Adjudicator acknowledged that while there may be some debate as to whether Cst. Firsov's actions in this matter amounted to misconduct, or should have been dealt with through performance management, it was not for the Adjudicator to substitute his

preference for that of Insp. Warr. The Adjudicator further found that Insp. Warr's decision was within the range of acceptable outcomes and was reasonable.

[18] Insofar as the sanctions imposed by Insp. Warr were concerned, the Adjudicator found that the measures ordered by Insp. Warr fell within the recommended range as provided by the *Conduct Measures Guide*, that they were within his authority to impose, and that they were reasonable. Consequently, Cst. Firsov's appeal was dismissed.

III. The Federal Court's Decision

[19] Cst. Firsov then sought judicial review of the Adjudicator's decision.

[20] In support of his application for judicial review, Cst. Firsov submitted that he had been denied procedural fairness in the administrative process in three different ways. He repeated his claim that Insp. Warr lacked impartiality and that he was in a conflict of interest because of his involvement in the investigation of the shooting incident. Cst. Firsov also contended that Insp. Warr had initially been of the view that Allegation #4 raised a performance issue rather than a conduct issue, but that his view of the matter changed after he met with a Conduct Advisor. Finally, Cst. Firsov asserted that his right to be heard had been violated because Insp. Warr did not truly consider his submissions.

[21] Insofar as Cst. Firsov's involvement with the shooting incident was concerned, the Federal Court observed that Insp. Warr did not take part in the investigation of this incident, and

that his role had been limited to directing the Ottawa Police Service to investigate the shooting. This was a responsibility vested in him by subsection 40(1) of the *RCMP Act*, and as his actions were permitted by statute, they could not ground an allegation of procedural unfairness.

[22] Distinguishing cases relied on by Cst. Firsov, the Federal Court found that there was no suggestion that Insp. Warr had made any negative comments about Cst. Firsov's character or conduct when authorizing the shooting investigation, nor had he made any negative comments about Cst. Firsov's character when addressing the allegations at issue in this matter. The Court was also satisfied that any comments that Insp. Warr had made regarding Cst. Firsov's conduct were appropriately made within the analysis of his culpability, or lack thereof, with respect to each of the allegations.

[23] The Federal Court further found that there was nothing in the record to indicate that Insp. Warr acted with partiality, agreeing with the Adjudicator that the fact that Insp. Warr found two of the allegations not to have been founded was evidence to the opposite effect.

[24] As noted above, however, Cst. Firsov raised a second procedural fairness argument in the Federal Court. He alleged that the record shows that Insp. Warr had initially been of the view that Allegation #4 raised a performance issue rather than a conduct issue, but that his view changed after meeting with a Conduct Advisor. Notes in the record confirm that "[f]urther discussion with Conduct Advisor convinced [Insp. Warr] that [Allegation] #4 [was] supported". Cst. Firsov argued that this was clear evidence of "operational bias". He also complained that he

was not present during the meeting, and that he did not have an opportunity to respond to the Conduct Advisor's position.

[25] The Federal Court rejected this argument, finding that the notes in question did not form part of Insp. Warr's decision, but were made early in the process when he was determining whether there was a *prima facie* case against Cst. Firsov with respect to any of the allegations. The Court further found that Cst. Firsov had not put anything before the Court, beyond his bare assertion, to support his position that he was entitled to be part of the internal consultation with the Conduct Advisor, or that he was entitled to an opportunity to respond to the Conduct Advisor's position.

[26] Finally, Cst. Firsov asserted that his right to be heard had been violated because Insp. Warr did not truly consider his submissions, rendering the conduct process unfair. Had his submissions truly been considered, Cst. Firsov says, the evidence of Cst. G.D. would have been revisited, and a subsequent investigation would have been ordered based on her having provided false information.

[27] The Federal Court rejected this submission, finding that the fact that a fact-finder prefers one version of events over another is not evidence of bias, nor is it an example of an individual not being heard. Cst. Firsov was arguing that the right to be heard included a right to a particular outcome in his favour, and he was essentially asking that the Court reweigh the evidence that was before Insp. Warr and come to a different conclusion.

[28] Insofar as the reasonableness of the Adjudicator's decision was concerned, the Federal Court considered the description of events provided by Cst. Firsov and Cst. G.D. as well as Cst. Firsov's explanation for his conduct. Noting that the Federal Court owed deference to the Adjudicator, the Court could find no indication that the Adjudicator had erred in finding Insp. Warr's decision with respect to either Allegation #3 or Allegation #4 to be reasonable.

[29] The Court noted that the Adjudicator's decision was transparent, intelligible, and justified, and that his reasons added up. The factual and legal constraints imposed by the *Code of Conduct* and other relevant documents were considered and applied in an internally coherent and rational chain of analysis.

[30] Cst. Firsov also failed to persuade the Federal Court that the sanction imposed on him by Insp. Warr was unreasonable.

[31] Referring to the 2014 Annotated *Code of Conduct*, Cst. Firsov argued that in circumstances of clear neglect not aggravated by serious consequences, the proposed normal range of recommended measures varied between a reprimand and 5 days forfeiture of pay. Cst. Firsov further submitted that neither Allegation showed "clear neglect", and that each had exculpatory factors weighing in his favor, with the result that the forfeiture of four days annual leave in relation to each Allegation could not be reasonable.

[32] Cst. Firsov also argued that the *Code of Conduct* entitled Insp. Warr to order that he be ineligible for promotion for a period of not more than one year. Insp. Warr had thus imposed the

maximum penalty available in this regard – an outcome that Cst. Firsov says was patently unreasonable in the circumstances.

[33] The Federal Court held that the fact that the sanctions imposed on Cst. Firsov by Insp. Warr were at or near the upper end of the spectrum was not evidence of an error. Insp. Warr had considered the mitigating and aggravating factors, as well as the guidance provided by the *Conduct Measures Guide*. He explained that he had imposed the corrective measures to impress on Cst. Firsov the importance of responding to domestic violence complaints appropriately, and because he felt it was important that Cst. Firsov not be promoted until he had taken steps to rectify his actions to ensure they did not occur again.

[34] The Federal Court found that the Adjudicator had not overlooked any important fact or legislative provision in finding that the sanctions imposed on Cst. Firsov were reasonable, and they were within the recommended range provided in the *Conduct Measures Guide*. The Adjudicator's reasons for upholding Insp. Warr's penalty decision were, moreover, justified, intelligible and transparent, his reasoning added up and it contained no fatal flaws or shortcomings.

[35] Having found no reviewable error on the part of the Adjudicator, Cst. Firsov's application for judicial review was dismissed by the Federal Court.

IV. The Role of this Court on an Appeal such as This

[36] Before addressing the merits of Cst. Firsov's appeal, it is helpful to explain the role of this Court when sitting on appeal from a decision of the Federal Court in relation to an application for judicial review.

[37] On an appeal such as this, this Court is not empowered to review the entirety of the record, to reassess and reweigh the evidence that was before Insp. Warr and the Adjudicator, or to substitute our views for theirs: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59.

[38] Our job is, rather, to determine whether the Federal Court identified the correct standard of review -- correctness or reasonableness -- and whether it properly applied that standard: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47. This has been described as requiring us to "step into the shoes" of the Federal Court judge, focusing on the administrative decisions below -- here, the decisions of Insp. Warr and the Adjudicator.

[39] It is also necessary to identify the issues that are properly before this Court on this appeal and those that are not. This question will be addressed next.

V. The Scope of this Appeal

[40] I have reviewed the proceedings giving rise to this appeal in some detail, as it is important to understand what issues were raised by Cst. Firsov at different stages in this process, and how they compare to the issues that he now seeks to have this Court address.

[41] This is the fourth hearing with respect to Cst. Firsov's conduct. The arguments that Cst. Firsov advanced before Insp. Warr, the Adjudicator, the Federal Court and now before us have evolved over time. Some of the arguments that he raised earlier (such as Insp. Warr's change of heart as to whether Allegation #4 raised a performance issue or a conduct issue after meeting with a conduct advisor) have not been pursued before us, and new arguments have been introduced by Cst. Firsov for the first time in this Court.

[42] Indeed, Cst. Firsov's primary argument before us was that having initiated the investigation into his conduct, Sgt. Scott (who, it will be recalled, was the acting officer in charge of the V Division Relief Unit in Insp. Warr's absence) was the "Conduct Authority" for the purpose of his case, and that Insp. Warr had no authority in this regard. Indeed, the vast majority of Cst. Firsov's oral submissions were directed to this issue. Consequently, I will deal with this issue first.

VI. Insp. Warr's Status as a Conduct Authority

[43] In support of his contention that Insp. Warr lacked the authority to act as the conduct authority in his case, Cst. Firsov points to subsection 40(1) of the *RCMP Act*. This states that where it appears to a “conduct authority” that a member “has contravened a provision of the *Code of Conduct*, the conduct authority shall make or cause to be made any investigation that the conduct authority considers necessary to enable the conduct authority to determine whether the member has contravened or is contravening the provision”.

[44] The term “conduct authority” is defined in subsection 2(1) of the *RCMP Act* as “in respect of a member, ... a person designated under subsection (3) in respect of the member”. Subsection 2(3) of the *RCMP Act* states that “[t]he Commissioner may designate any person to be a conduct authority in respect of a member either for the purposes of this Act generally or for the purposes of any particular provision of this Act”.

[45] According to Cst. Firsov, it was “an outright lie” for Insp. Warr to represent himself as the conduct authority in his case, as Insp. Warr had never been designated as such. Cst. Firsov asserts that such a claim would be contrary to the *RCMP Act* and the RCMP’s own policy on conduct, as there is an entire process that has to be followed before a different conduct authority can take over a member’s conduct process.

[46] I understand Cst. Firsov to acknowledge that this argument is being raised for the first time before us. As a result, we do not have the benefit of decisions on this question from the

Federal Court, the Adjudicator or Insp. Warr. There is also little in the record explaining the conduct process, the designation of conduct authorities in specific cases or the process to be followed in reassigning responsibility to act as a conduct authority.

[47] We do know that subsection 2(1) of the *Commissioner's Standing Orders (Conduct)*, SOR 2014/291 seems to suggest that individuals are designated as conduct authorities by virtue of the position that they occupy. That is, subject to any requirements that may be established by the Commissioner under subsection 2(2), the following categories of persons are designated as conduct authorities in relation to members under their command:

- (a) members who are in command of a detachment and persons who report directly to an officer or to a person who holds an equivalent managerial position;
- (b) officers, or persons who hold equivalent managerial positions; and
- (c) officers who are in command of a Division.

[48] However, we have little information beyond this as to how the conduct process operates on an administrative level. In particular, there is little information in the record to explain why or how Insp. Warr took over from Sgt. Scott as the conduct authority in Cst. Firsov's case upon Insp. Warr's return to Nunavut. Nor do we have the benefit of the views of Insp. Warr or the Adjudicator on this question.

[49] Courts generally will not consider a new issue on judicial review where the issue could have been, but was not, raised before the administrative decision-maker: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paras. 21-26;

Canada (Attorney General) v. Valcom Consulting Group Inc., 2019 FCA 1 at para. 36; *Gordillo v. Canada (Attorney General)*, 2022 FCA 23 at para. 99. The reasons for this include the risk of prejudice to the responding party, and the potential to deny the reviewing court an adequate evidentiary record: *Alberta Teachers' Association v. Alberta* at paras. 24-26.

[50] Similarly, appellate courts such as the Federal Court of Appeal will usually decline to consider a new issue on an appeal that was not raised in the court of first instance – the Federal Court in this case. In addition to the concern with respect to the adequacy of the evidentiary record, there is also a concern that the appellate court will not have the benefit of the views of the Court from which the appeal is taken on the question in issue: *Oleynik v. Canada (Attorney General)*, 2020 FCA 5 at para. 72; *Eli Lilly Canada Inc. v. Teva Canada Limited*, 2018 FCA 53 at paras. 44-45, leave to appeal to S.C.C. refused, [2018] 3 S.C.R. vi.

[51] Given the sparsity of the record on this issue, and the fact that the issue was not raised before Insp. Warr, the Adjudicator or the Federal Court (where, I note, Cst. Firsov was represented by counsel), I agree with the Attorney General of Canada that this Court should decline to consider the question of Insp. Warr's status as the conduct authority in this case.

[52] As will be discussed further on in these reasons, Cst. Firsov has also raised new arguments with respect to the issues that he raised before the Federal Court and the Adjudicator. These arguments will be addressed in the context in which they arise.

VII. Conflict of Interest / Reasonable Apprehension of Bias

[53] As noted earlier, Cst. Firsov submitted to both the Adjudicator and the Federal Court that Insp. Warr had a conflict of interest or was biased against him because Insp. Warr had authorized the investigation into the shooting incident while he was simultaneously charged with determining whether the allegations against Cst. Firsov should proceed to a conduct meeting. Cst. Firsov contends that Insp. Warr was not impartial, as he was overly frustrated with having to deal with Cst. Firsov's issues. This allegation was rejected by both the Adjudicator and the Federal Court, who found that there was no indication in the record that Insp. Warr had acted in a manner that exhibited partiality.

[54] I have not been persuaded that the Federal Court erred in this regard. The Federal Court correctly identified allegations of conflict of interest and bias as potentially affecting the fairness of the administrative proceedings involving Cst. Firsov. As such, it was for the Court to determine whether Cst. Firsov knew the case to be met and had a full and fair chance to respond, a review that is sometimes described as being on the correctness standard: Federal Court decision at para. 33.

[55] Having determined that the Federal Court identified the correct standard of review to be applied to questions of procedural fairness, I am also not persuaded that the Court erred in applying that standard.

[56] First, the Federal Court did not err in identifying the test for bias. It is whether “an informed person, viewing the matter realistically and practically – and having thought the matter through – ... [would] think that it is more likely than not that the [decision-maker], whether consciously or unconsciously, would not decide fairly”: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at paras. 20-21, 26.

[57] An allegation of bias, especially an allegation of actual, as opposed to apprehended, bias, is a serious allegation as it challenges the very integrity of the adjudicator whose decision is in issue. The Federal Court thus correctly noted that the threshold for establishing bias is high: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 113, 151 D.L.R. (4th) 193.

[58] Cst. Firsov did not point to any evidence that could show an error in the Federal Court’s determination in this regard. The Court clearly identified each of the arguments advanced by Cst. Firsov and explained why it was not persuaded that there had been any unfairness in the process followed in his case. I agree with the Court’s analysis in this regard and have not been persuaded that Cst. Firsov was treated unfairly, based upon these allegations.

[59] There is, however, an additional procedural fairness argument now being advanced by Cst. Firsov.

[60] In this Court, Cst. Firsov argues for the first time that there is a second reason for finding that Insp. Warr was in a conflict of interest, thus denying him a fair hearing. Cst. Firsov argues that Insp. Warr had deployed him to perform relief duties in Igloolik, notwithstanding that there

was an Order of Temporary Reassignment in effect that restricted him to work at the Iqaluit Detachment. It was while Cst. Firsov was in Igloolik that the shooting incident took place. According to Cst. Firsov, by disobeying the Order of Temporary Reassignment, Insp. Warr exposed the RCMP to civil liability and public scrutiny, and potentially invited *Code of Conduct* proceedings against Insp. Warr himself, all of which put Insp. Warr in a position of conflict of interest *vis à vis* Cst. Firsov's conduct proceedings.

[61] Once again, it is simply too late for Cst. Firsov to raise this issue on this appeal. Cst. Firsov would have been aware of the fact that Insp. Warr had assigned him to Igloolik, in the face of the Order of Temporary Reassignment (assuming that it was still in effect) at the time that it happened. Allegations of bias or procedural unfairness must be raised at the earliest practical opportunity – before Insp. Warr, as the first-instance decision-maker, if possible, and, if not, before the Adjudicator. Having failed to raise this issue before now, the respondent has had no opportunity to adduce evidence with respect to the status of the Order of Temporary Reassignment or to advance arguments in this regard.

[62] Indeed, as was noted earlier, the Order of Temporary Reassignment stated that it would remain in effect “until otherwise determined”. Because Cst. Firsov did not raise this argument earlier, we do not know whether the Order was still in place at the time that Insp. Warr assigned Cst. Firsov to Igloolik, or whether the fact that Insp. Warr assigned Cst. Firsov to Igloolik implicitly terminated the Order of Temporary Reassignment.

[63] We do not have the benefit of Insp. Warr's position in this regard, nor do we have reasons from the Adjudicator or the Federal Court in relation to this issue. Consequently, I am of the view that this Court should decline to consider Cst. Firsov's new argument regarding the implications of Insp. Warr's alleged breach of the Order of Temporary Reassignment.

VIII. Cst. Firsov's Remaining Arguments

[64] Cst. Firsov raises a number of other arguments in his memorandum of fact and law in support of his appeal. He characterizes them variously as relating to the failure of the Federal Court to recognize:

- an alleged breach of his right to notice;
- a breach of procedural fairness (identified specifically as a breach of his right to notice);
- the violation of the law relating to the designation of conduct authorities in determining that the conduct measures imposed by Insp. Warr were reasonable;
- the significance of the Order of Temporary Reassignment in assessing the impartiality of Insp. Warr; and
- that Insp. Warr and the Adjudicator had failed to properly follow the conduct process and overlooked serious breaches of procedural fairness, such that their decisions were not entitled to deference.

[65] While framed as discrete arguments, Cst. Firsov's submissions with respect to each of these issues are largely based on his new arguments regarding Insp. Warr's alleged lack of authority to act as the conduct authority in relation to the allegations against him and/or Insp. Warr's purported breach of the Order of Temporary Reassignment.

[66] Having already determined that this Court should not entertain these new arguments, I would decline to address the additional arguments identified above.

IX. The Financial Remedy Sought by Cst. Firsov

[67] Cst. Firsov also seeks payment of \$1,000,000.00 as “punitive damages” for what he asserts was the improper treatment he has received at the hands of the RCMP. However, as we explained to Cst. Firsov in the course of the hearing, damages are not available as a remedy in connection with judicial review applications: *Brake v. Canada (Attorney General)*, 2019 FCA 274 at para. 26; *Garshowitz v. Canada (Attorney General)*, 2017 FCA 251 at para. 10, [2017] F.C.J. No. 1268; *Maximova v. Canada (Attorney General)*, 2017 FCA 230 at para. 14, [2017] F.C.J. No. 1212. Consequently, none will be awarded here.

X. Conclusion

[68] I understand how deeply the events surrounding the conduct process have affected Cst. Firsov, and how convinced he is that he has been mistreated in that process. Unfortunately, he has been unable to persuade me that the Federal Court erred in its identification of the appropriate standards of review to be applied to the Adjudicator’s decision in his case, or that it erred in the application of those standards to the issues before it.

[69] The Federal Court clearly identified each of the arguments advanced by Cst. Firsov, and explained why it was not persuaded by these arguments. It correctly found that Cst. Firsov had

not been treated unfairly in the conduct process, based on the procedural fairness arguments he advanced in that Court. Moreover, as the Federal Court noted, the Adjudicator's decision was responsive to Cst. Firsov's submissions, and was justified, transparent and intelligible, thereby satisfying the requirements of a reasonable decision set out by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[70] Consequently, I would dismiss Cst. Firsov's appeal. In the exercise of my discretion, I would decline to make an order of costs to the respondent.

“Anne L. Mactavish”

J.A.

“I agree.

Mary J.L. Gleason J.A.”

“I agree.

K. A. Siobhan Monaghan J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE: DMYTRO FIRSOV v. CANADA
(ATTORNEY GENERAL)

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REASONS FOR JUDGMENT BY: MACTAVISH J.A.

CONCURRED IN BY: GLEASON J.A.
MONAGHAN J.A.

DATED: NOVEMBER 8, 2022

APPEARANCES:

Dmytro Firsov ON HIS OWN BEHALF
(IN PERSON)

James Elford FOR THE RESPONDENT
(BY VIDEO CONFERENCE)

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