Federal Court Cour fédérale

Date: 20211209

Docket: T-767-20

Citation: 2021 FC 1385

Ottawa, Ontario, December 9, 2021

PRESENT: Mr. Justice Pentney

BETWEEN:

RYAN LEWIS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ryan Lewis, has acknowledged that on February 14, 2018, he had a bad day at work. He was supervising other Royal Canadian Mounted Police (RCMP) officers at a traffic checkpoint, and he thought that one of those officers had deliberately disobeyed his order about how the operation was to be conducted. He admits that he spoke to that officer in a loud voice. Other RCMP members who witnessed the incident said he was screaming at the top of his

lungs. The Applicant felt badly enough about this that he reported it to his supervising officer (his Line Officer), who advised him that this was no way to manage staff.

[2] However, things did not end there. The officer who the Applicant had yelled at filed a harassment complaint, alleging that this was one of several incidents that constituted a pattern of harassment. The complaint was upheld by the first instance decision-maker (the Commanding Officer of "J" Division (CO)), but only in respect of this one event; the other incidents were found to be legitimate exercises of managerial responsibilities. On appeal, the RCMP Conduct Appeal Adjudicator (CAA) upheld the finding that in this instance, the Applicant's behaviour amounted to harassment, but found that it could not impose conduct measures because the one-year time limit for filing complaints had expired.

[3] The Applicant challenges the CAA's decision (Decision).

[4] This case is unusual because both sides argue that the Decision is unreasonable, but for different reasons, and each with a view to obtaining a different result.

[5] The Applicant says the Decision is unreasonable and should be reversed. The Respondent seeks to uphold the CAA Decision, but at the same time asks the Court to overturn the finding that the time limit began to run when the Applicant had reported the incident to his Line Officer. The Respondent, however, does not seek any remedy in regard to the CAA's alleged error.

[6] For the reasons that follow, the application for judicial review will be dismissed. The Applicant has not demonstrated that the CAA's decision is unreasonable in regard to the two key findings: that the Checkpoint Incident constituted harassment, and that the expiry of the time limit did not prevent the CO from making findings regarding the alleged misconduct. And, while

I agree with the Respondent that the CAA's decision on when the time limit began to run is unreasonable, in the particular circumstances of this case, I find it is not in the interests of justice to overturn the decision on that ground alone.

I. Background

[7] The Applicant is a member of the RCMP, and at the relevant time, he was supervising a team of investigators in a Tactical Traffic Enforcement Unit.

[8] On November 23, 2018, another RCMP member (the Complainant) submitted a harassment complaint against the Applicant, alleging that he had engaged in a pattern of harassing behaviour arising from a series of eight separate events between October 1, 2017 and October 9, 2018.

[9] One incident, described briefly above, is of central importance for the purposes of this case. The Complainant alleged that, on February 14, 2018, the Applicant yelled at him at a traffic checkpoint, because he said the Complainant had deliberately failed to follow his orders (hereafter referred to as "the Checkpoint Incident"). During the investigation of the harassment complaint, witnesses described the Applicant as yelling at the Complainant in front of co-workers and within earshot of the public. Some witnesses said the Applicant was pointing at the Complainant and screaming at the top of his lungs; others said he treated the Complainant, an experienced RCMP member, like a recruit. One witness said the incident was unprofessional and embarrassing. The Investigation Report also revealed that soon after this happened the Applicant disclosed the incident to his supervising Line Officer, who advised him to modify his approach to supervising staff.

[10] A final Investigation Report on the harassment complaint was completed in April 2019 and provided to the CO. The CO found that the evidence established a *prima facie* case of harassment. A conduct meeting was held, at which the Applicant had an opportunity to make submissions in response to the Investigation Report. On May 21, 2019, the CO found that while the Applicant's approach to supervising staff was not optimal, most of the incidents in the complaint were exercises of management responsibilities and did not constitute harassment. However, the CO found that the Checkpoint Incident did amount to harassment, and he imposed the following conduct measures on the Applicant: a written reprimand, ineligibility for promotion for 12 months, and a referral to a health services officer for assessment and subsequent treatment as prescribed.

[11] The Applicant appealed the CO's decision to the Office for the Coordination of Grievances and Appeals, arguing that the finding that a single incident of yelling at a subordinate amounted to harassment was wrong, and also that the entire matter was statute-barred because the Checkpoint Incident had occurred beyond the time limit for matters dealt with through a conduct meeting. The Applicant also raised concerns about procedural fairness, but these were not accepted. I will not discuss this issue further because the Applicant did not pursue it in this judicial review.

[12] On February 18, 2020, the CAA upheld the CO's finding that the Checkpoint Incident amounted to harassment. However, the CAA also found that the one-year limitation period under the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [the *RCMP Act* or the *Act*] had expired by the time the CO's decision was released. The CAA found that the limitations period for the harassment complaint had started to run no later than April 2018, when the Applicant's

Line Officer became aware of the Checkpoint Incident. It had therefore expired before the CO's decision was reached. The CAA determined that while the specific wording of the limitations period provision precluded the imposition of conduct measures, it did not foreclose a conduct meeting being held or findings of misconduct being made.

[13] The Applicant seeks judicial review of the CAA's decision (Decision).

II. Issues and Standard of Review

[14] At the hearing, the Applicant submitted that there are two issues:

A. Was the CAA's finding that the Checkpoint Incident constituted harassment reasonable?

B. Was the CAA's finding that the CO could issue a finding despite missing the time limit unreasonable?

[15] In response to the Respondent's submissions, the Applicant also addressed a third issue, namely:

A. Was the CAA's finding that the one year time limit had expired reasonable, and related to that, does the Respondent have standing to challenge this finding?

[16] This is a convenient way to consider the core questions raised in this case.

[17] The standard of review that applies to these issues is reasonableness, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. None of the exceptions to the presumption of reasonableness as the standard of review apply here.

[18] In summary, under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the Applicant to satisfy the Court “that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

III. Legal and Policy Framework

[19] It will be helpful to describe the governing legal and policy framework before analyzing the legal issues. This framework includes: the discipline regime that governs the RCMP, including the specific elements that deal with harassment, as well as the time limits that apply to conduct matters.

A. *RCMP Discipline Regime*

[20] The *RCMP Code of Conduct* (*Code of Conduct* or *Code*), established pursuant to the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 [*RCMP Regulations*], as a Schedule to those Regulations (titled *Code of Conduct of the Royal Canadian Mounted Police*), sets out the responsibilities for the promotion and maintenance of good conduct within the

RCMP. Decisions regarding any allegation of a breach of the *Code of Conduct* against an RCMP member are made by "conduct authorities" pursuant to the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 [*CSO – Conduct*]. There are three levels of conduct authority with responsibilities that vary according to the severity of the conduct measures they may impose against a subject member: *CSO – Conduct,* sections 2-5.

[21] Decisions by a conduct authority may be subject to review by a "review authority" (*CSO – Conduct*, s 9). That section provides that, if a review authority determines that a finding is clearly unreasonable or a conduct measure is clearly disproportionate and it is in the public interest to do so, the review authority may rescind the measures and substitute other conduct measures deemed appropriate. It may also initiate a conduct board hearing, which may lead to the imposition of measures up to and including dismissal or a direction to resign (*RCMP Act*, s 45(4)).

[22] A member who is aggrieved by a decision may appeal pursuant to the *RCMP Act*, section 45.11, following the procedures set out in the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [*CSO – Grievances and Appeals*]. A CAA must determine whether the decision below "contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable" (*CSO – Grievances and Appeals*, s 18(2)).

[23] It should be noted here that under the RCMP discipline procedure in place prior to 2014, all contraventions of the *Code of Conduct* were referred to adjudication boards. This had resulted in substantial backlogs as the boards dealt with both serious and less serious breaches.

[24] As a result of changes implemented via Bill C-42 in 2014, contraventions of the *Code* which could be dealt with at the unit, branch or divisional level were referred to the CO at each level for conduct meetings with the subject member. The severity of the conduct measures that could be imposed if the contravention was established depended on the CO's level of seniority. The most serious matters continue to be dealt with through conduct boards, with all of the procedural protections of a more formal hearing.

B. *RCMP Harassment Policy*

[25] The RCMP Administration Manual includes the RCMP Harassment Policy, which sets out the RCMP's definition of harassment:

> **2. 8.** Harassment means any improper conduct by an individual that is directed at, and is offensive to, another individual in the workplace, including at any event or any location related to work, and that the individual knew, or ought reasonably to have known, would cause offence or harm. It comprises an objectionable act, comment, or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act, i.e. based on race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability, and pardoned conviction.
>
> **2. 8. l.** Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.
>
> **…**
>
> **2. 8. 3.** Harassment, if established, is a contravention of the Code of Conduct in respect of a member, and a member who has committed harassment may be subject to conduct proceedings under the RCMP Act.
>
> **2. 8. 4.** The legitimate and proper exercise by an employee of powers, duties , functions, authorities, responsibilities provided for under the RCMP Act, Regulations, or Commissioner's Standing Orders, is not harassment.

[26] This definition mirrors the definition that the Treasury Board of Canada used in the public service of Canada at the relevant time (the *Directive on the Prevention and Resolution of Workplace Harassment and Violence* replaced the former policy as of January 1, 2021).

[27] In the *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)*, SOR/2014-290 [*CSO – Harassment Complaints*], the decision maker in regard to harassment complaints is defined in the following way:

Decision maker	**Décideur**
3 (1) The decision maker in respect of a complaint is	**3 (1)** Le décideur est :
(a) the person designated by the Commissioner; or	**a)** la personne désignée par le commissaire;
(b) a conduct board appointed under subsection 43(1) of the Act, if one has been appointed.	**b)** si un comité de déontologie a été constitué en application du paragraphe 43(1) de la Loi, ce comité.

[28] A decision maker is required to decide in writing if the complaint was submitted within the time limit (*CSO – Harassment Complaints*, s. 6(1)). If it was, once sufficient information has been obtained, the decision maker must decide either to initiate a conduct hearing under s 41(1) of the *Act*, or decide in writing if the member has contravened the *Code of Conduct* and if so, the decision maker may impose conduct measures (*CSO – Harassment Complaints*, ss 6(2) and (3)).

C. *Limitations Periods*

[29] The *RCMP Act* contains two distinct limitations periods, for less serious and more serious allegations:

Limitation or prescription period	**Prescription**
41(2) A hearing shall not be initiated by a conduct authority in respect of an alleged contravention of a provision of	**41(2)** L'autorité disciplinaire ne peut convoquer une audience, relativement à une contravention au

the Code of Conduct by a member after the expiry of one year from the time the contravention and the identity of that member as the one who is alleged to have committed the contravention became known to the conduct authority that investigated the contravention or caused it to be investigated.	code de déontologie qui aurait été commise par un membre, plus d'un an après que la contravention et l'identité du membre en cause ont été portées à la connaissance de l'autorité disciplinaire qui tient ou fait tenir l'enquête.
…	[…]
Limitation or prescription period	**Prescription**
42(2) Conduct measures shall not be imposed under subsection (1) in respect of the contravention after the expiry of one year from the time the contravention and the identity of that member became known to the conduct authority that investigated the contravention or caused it to be investigated.	**42(2)** Les mesures disciplinaires visées au paragraphe (1) ne peuvent être prises plus d'un an après que la contravention et l'identité du membre en cause ont été portées à la connaissance de l'autorité disciplinaire qui tient ou fait tenir l'enquête.

[30] In addition, the limitation period that applies to harassment complaints provides that a member may file a complaint of harassment against another member "within one year of the last incident of harassment alleged in the complaint" and this time limit may be extended in "exceptional circumstances" (*CSO – Harassment Complaints*, ss 2(1) and (2)).

[31] With this background, I turn to a consideration of the issues.

IV. Analysis

A. *Was the CAA's decision that the single allegation constituted harassment reasonable?*

[32] As noted previously, the Conduct Authority, in this case the CO of "J" Division, found that all of the other allegations of harassment were unfounded because they constituted legitimate exercises of managerial responsibilities. The CO also found, however, that the

Checkpoint Incident did amount to harassment, and the CAA later upheld this finding. The question raised is whether the CAA's conclusion is reasonable.

(1) The Submissions of the Parties

[33] The Applicant does not dispute the facts at issue regarding the Checkpoint Incident. Rather, he submits that a single incident such as this cannot reasonably be interpreted as harassment because that is inconsistent with the RCMP's definition of the term and with applicable Federal Court and arbitral jurisprudence.

[34] The starting point for the Applicant's argument is that the Court must exercise caution in applying the standard of reasonableness review to the CAA's finding. While acknowledging that the CAA was required to determine whether the CO's finding was "clearly unreasonable" (*CSO – Grievances and Appeals*, s 18(2); *CSO – Conduct*, s 9), the Applicant submits that a failure to inquire into whether the harassment finding itself was reasonable would provide too much leeway to the RCMP. The Applicant's written submissions make this point in the following way:

> 27. As such, there is a risk that the Court only considers whether the review of the harassment finding was reasonable, as opposed to the finding of harassment itself. The later [sic] would provide far too much deference to the RCMP, who could effectively shield decisions from a proper reasonableness review by creating multiple level of internal appeal, with deference at every level. It is the administrative law equivalent of a hat on a hat.
>
> 28. The question this Court ought to ask is whether the ultimate finding of harassment was reasonable – not whether it was reasonable for the CAA to conclude that the CA's decision was plausible.

[35] On the substance of the issue, the Applicant argues that the CAA's Decision conflicts with both court jurisprudence and arbitral decisions by upholding the CO's finding that yelling at a subordinate on one occasion is harassment.

[36] The Applicant relies on the decision in *Green v Canada (Aboriginal Affairs and Northern Development*, 2017 FC 1121 [*Green*], where the Federal Court considered Treasury Board's policy on harassment. There, the Court found that a certain level of seriousness or repetition is required to support a conclusion of harassment and that an isolated incident of improper behaviour that is less serious is not likely to constitute harassment. Similarly, the Court concluded in *Ryan v Canada (Attorney General)*, 2005 FC 65 at paras 29-31 that while harassment can be the result of one incident in "exceptional cases", generally a pattern of behaviour must be proven. In *Green*, the Court also noted that a decision maker is required to take an objective look and consider what a reasonable person would conclude based on the situation.

[37] The Applicant also points to numerous arbitral decisions that he contends are factually similar, where isolated instances were found to not have amounted to harassment except in very severe circumstances.

[38] The Applicant contends that the CO's and the CAA's decisions each failed to adequately consider and give weight to the context of the Checkpoint Incident, namely that the Complainant was disobeying his order, which is itself a breach of the *Code of Conduct*. The CO found this to be irrelevant and the CAA merely accepted the CO's finding as plausible.

[39] The Applicant says that while he did not handle the Checkpoint Incident as well as he could have, he apologized immediately and reported it to his Line Officer. By virtue of the finding that the single incident amounted to harassment, the Applicant says he is now labelled as harasser, which brings about serious implications for his career. He says the Decision has rendered him "McNeil positive", meaning he now has to reveal this status to all Crown counsel, so that they can decide whether they need to disclose it to defence counsel in order that he can be cross-examined on his credibility (*R v McNeil*, 2009 SCC 3 [*McNeil*]).

[40] The Applicant contends that the Checkpoint Incident was not harassment, and was better dealt with as a performance issue.

[41] In response, the Respondent argues that the CAA's Decision is reasonable. They underline that the CAA was required to determine whether the CO's decision was "clearly unreasonable" – which is a highly deferential standard – and therefore the CAA's Decision should receive a broad margin of deference on review (*Kalkat v Canada (Attorney General),* 2017 FC 794 [*Kalkat*] at para 52).

[42] In reviewing the harassment finding, the CAA considered arguments that the CO failed to consider the objective component required to make a finding of harassment and that the single incident was not serious enough to constitute harassment. The CAA reasonably found that the harassment finding was plausible based on the evidence presented to the CO.

[43] The Respondent argues that the Applicant's argument invites this Court to re-assess the evidence and find that the Checkpoint Incident was less serious than found by the CO. This is not the role of the Court on judicial review.

[44] Finally, in respect of both the court and arbitral cases relied upon by the Applicant, the Respondent notes that this jurisprudence is of little assistance given that a harassment finding is context-specific. From both a subjective and objective perspective, being yelled at in one context may not have the same impact as being yelled at in another.

(2) Discussion

[45] As a preliminary point, I disagree with the Applicant's argument that the question before me is the reasonableness of the harassment finding. I am not persuaded that applying the traditional reasonableness review framework to the CAA's Decision would have the effect of granting too much leeway to the RCMP as to how it structures its internal discipline regime, and in any event it is not evident whether or how that is a relevant consideration.

[46] The CAA understood that their job under the legislative scheme was to determine whether the CO's finding was "clearly unreasonable." That determination by the CAA is to be reviewed on a reasonableness standard in accordance with *Vavilov* and it is neither necessary nor appropriate to add any gloss to the framework set out in that decision. On this, I agree with Justice Michael Manson's comment in *Kalkat* at para 63 that in this context, "[t]here may well be a need for revision of the existing standard of review to a different threshold, but that is a matter for new legislation, not for this Court."

[47] As noted previously, the CAA fully understood what this standard demanded. The requirement to assess whether the decision under appeal was "clearly unreasonable" required an approach akin to that applied on judicial review under the patent unreasonableness standard. This meant that the CAA had to determine whether there was any evidence capable of supporting the

CO's decision even though the CAA may not itself have reached the same conclusion (*Kalkat* at para 37; *United Brotherhood of Carpenters and Joiners of America, Local 579 v Bradco Construction Ltd*, [1993] 2 SCR 316, [1994] SCJ No. 56 at p 340). Under this standard, the CAA was to defer to the decision below where they found the evidence merely to be insufficient to support the finding (*Kalkat* at para 62).

[48] Viewed in this light – and based on the appeal record before the CAA – I find that it was reasonable for the CAA to conclude that it was not "clearly unreasonable" for the CO to find that the Checkpoint Incident amounted to harassment. I agree with the Respondent that the Applicant's submissions are largely a request for the Court to reweigh the evidence in favour of the Applicant.

[49] The CAA's analysis of this question bears all of the "hallmarks of reasonableness – justification, transparency and intelligibility" and it is "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[50] The CAA began the analysis by noting that in most instances, harassment requires a pattern of inappropriate behaviour. In the case before it, the Applicant had acknowledged that his conduct during the Checkpoint Incident was unacceptable, and so the only question was whether it was sufficiently serious to constitute harassment.

[51] The CAA accepted that there was some merit in the Applicant's argument that he had crossed the line as a manager but the incident was not so egregious as to amount to harassment. The CAA accepted that supervisors have a difficult role and do not have to be perfect. Addressing the Applicant's submissions, the CAA stated at para 36:

> I find that it is significant that the [Applicant] has accepted that his behaviour was inappropriate, that this was an isolated incident, and that he immediately reported his behaviour to his Line Officer. All of these observations support the [Applicant's] perspective that the incident was not severe enough to justify treating this as harassment.

[52] However, the CAA also points to the CO's finding that the severity of the incident "was not only demonstrated by [the Complainant], but also the witnesses present." Further, the CAA notes at paragraph 10 of the Decision that the CO found that the incident's lasting impact on the Complainant demonstrated the severity of the incident.

[53] The CAA acknowledged that the CO's decision would have been stronger if it contained a more thorough discussion of the rationale for the conclusion that the Checkpoint Incident amounted to harassment. It then reiterated the test it was to apply: "[t]he test is, after taking into account mistakes or imperfections in the decision, whether the outcome under appeal is still plausible based on the evidence and submissions presented to the decision maker" (Decision at para 38).

[54] Applying this test to the facts of this case, the CAA set out its key findings:

> The evidence… did not portray a simple disagreement, or a situation in which voices were merely raised. The Complainant describes the [Applicant] as yelling until he was red in the face. The [Record of Decision] does refer to the Complainant's evidence that this incident had a significant impact on him, however – even if this finding was inaccurate – the decision also refers to the observations of several other witnesses who describe the situation as one in which the [Applicant] is yelling at his subordinate in front of co-workers and within earshot of members of the general public. The [Applicant] is described as pointing at the Complainant and screaming at the top of his lungs. One witness said that the [Applicant] was treating the Complainant (a senior police officer) like a recruit and another witness said it was unprofessional and

> embarrassing to see a senior officer treated in that manner
> (Decision at para 39).

[55] Based on all of this, the CAA held that the CO's finding that the inappropriate behaviour was severe enough to constitute harassment was "plausible given the evidence which was presented" to the CO. (Decision, para 40)

[56] The Applicant does not challenge the test for single incident harassment applied by the CAA, nor does he point to a particular crucial fact omitted from the analysis. Instead, he submits that the CAA failed to give sufficient weight to the context for the incident and to the jurisprudence that requires a single incident to be sufficiently serious or egregious in order to constitute harassment.

[57] These arguments amount to a request to re-weigh the evidence, and that is not the role of a reviewing Court. I am not persuaded that the CAA's finding on this issue is unreasonable.

B. *Was the CAA's finding that the CO could issue a finding despite missing the time limit unreasonable?*

[58] The CAA found that the one-year time limit set out in subsection 42(2) of the *RCMP Act* had expired, and that, while conduct measures could not be imposed, this provision did not foreclose the CO from holding a conduct meeting and making findings in relation to the allegations of misconduct.

(1) The Submissions of the Parties

[59] The Applicant states that there can be no dispute that the CAA missed the one-year time limit that applies in this case. He submits, however, that once the CAA found that the time limit

expired, it was not reasonable to go on to find that a conduct meeting could proceed and that it could result in the making of findings against him.

[60] The Applicant argues that in accordance with *Vavilov*, there cannot be multiple reasonable interpretations of the limitation period provision: “Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker perhaps limiting it one. . .” (*Vavilov* at para 68, emphasis in the original).

[61] The Respondent agrees that the standard of review is reasonableness but did not address the Applicant’s submission on this point.

[62] The Applicant argues that ambiguity arises here because of the difference in wording used in the specific limitations periods that apply to conduct hearings and conduct meetings. The *Act* provides that after one year a “hearing shall not be initiated by a conduct authority” (s 41(2)), while in regard to matters dealt with through a conduct meeting, it states that “conduct measures shall not be imposed” after one year (s 42(2)).

[63] The CAA interpreted this ambiguity as allowing the CO to hold a meeting and make findings, but barring it from imposing conduct measures. The Applicant submits that this is unreasonable because it is contrary to the prior jurisprudence interpreting limitations periods in the *RCMP Act*, parliamentary intent in adding a limitations period for less serious allegations, and the purpose of limitations periods more generally.

[64] Based on the plain wording of the provisions, the Applicant submits that the *RCMP Act* provides for a “discovery rule” by which the time limit runs from the day the appropriate officer

has knowledge of the existence of the offence and the identity of the perpetrator. The Applicant contends that this ensures better protection to the public because increases the opportunities for the RCMP to prosecute alleged misconduct, whether or not the member affected files a complaint.

[65] The Applicant also submits that conduct measures as defined in the *CSO (Conduct)* includes both an admonishment and a reprimand, and he contends that making a finding of misconduct amounts to an admonishment. Therefore, the CO in this case was barred from making such a finding because the time limit for doing so had expired.

[66] In addition, the Applicant says that if for valid reasons the RCMP is unable to complete its investigation within one year, it can apply for an extension of time. This adds further flexibility to the system.

[67] The Applicant argues as well that it is unreasonable that a finding can be made outside of the limitations period because doing so has the effect of making him *McNeil* positive, which will have a significantly negative impact on his career. The Applicant contends that the making of findings is thus tantamount to imposing conduct measures.

[68] In response, the Respondent submits that the CAA's determination that findings of misconduct are not barred by the time limit is reasonable. The Respondent argues that the CAA considered the clear wording of the two specific limitations periods that apply to conduct matters, and properly assessed the clear difference in wording between the provisions. The Respondent contends that if Parliament had intended the time limit to prohibit any conduct meetings from being held or findings being made in regard to less serious matters, it would have

said so. On this, the Respondent points out that by the wording of s 41(2) of the *Act*, Parliament explicitly barred the holding of a conduct hearing for more serious matters after the expiry of the limitation period. It argues there is no basis to read a similar limitation into s 42(2) of the *Act*.

[69] The Respondent says that this is consistent with the text, purpose and context of this provision. The changes to the RCMP discipline regime disclose a clear intent that less serious matters be dealt with in a less formal manner, and Parliament included a time limit to be fair to members who may be subject to discipline. However, this time limit only prohibits conduct measures from being imposed. For more serious matters, the time limit prevents any hearing beyond the time limit (unless an extension of time is granted), and this is appropriate given the seriousness of the consequences for these types of allegations.

[70] In addition, the Respondent points to the appeal provisions in the *RCMP Act*, which include different provisions for the appeal of findings and conduct measures both in relation to decisions made by conduct boards – for more serious matters (paragraphs 45.11(1) (a) and (b)), as well as conduct authority decisions – for less serious matters (paragraphs 45.11(3)(a) and (b)). This bolsters the CAA's interpretation, according to the Respondent.

[71] Finally, the Respondent points to the RCMP's commitment to providing a safe and respectful workplace free of harassment and discrimination. It says that the Applicant's approach would undermine this by introducing considerable uncertainty for all concerned about when the time limit begins to run.

(2) Discussion

[72] I am not persuaded by the Applicant's arguments on this point.

[73] This question required the CAA to interpret its home statute, and therefore my analysis of whether its decision on this point is reasonable must be guided by the approach to reviewing such matters set out in *Vavilov*. That decision demands that a reviewing Court pay attention to the different roles played by the original decision-maker and the reviewing Court (*Vavilov* at paras 115-116). The key question is whether the decision-maker interpreted the statutory provision "in a manner consistent with the text, context and purpose of the provision, applying its particular insight into the statutory scheme at issue." (*Vavilov* at para 121; see also *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156).

[74] In undertaking this task, the Supreme Court of Canada in *Vavilov* signalled both the duty on the reviewing court, and the necessary caution to be applied:

> [124] Finally, even though the task of a court conducting a reasonableness review is not to perform a de novo analysis or to determine the "correct" interpretation of a disputed provision, it may sometimes become clear in the course of reviewing a decision that the interplay of text, context and purpose leaves room for a single reasonable interpretation of the statutory provision, or aspect of the statutory provision, that is at issue: Dunsmuir, at paras. 72-76. … [A] court should generally pause before definitively pronouncing upon the interpretation of a provision entrusted to an administrative decision maker.

[75] Adopting this approach, I agree with the Applicant's assertion that there cannot be several reasonable interpretations of the limitations period provision in relation to the key question here, namely: can a conduct hearing be held and can findings be made if the matter is outside of the one-year limitation period? On this, it is pertinent that the statutory language does not endow the decision-maker with a wide discretion, or reflect specialized policy considerations that call for a particular expertise.

[76] Basic fairness demands that members, RCMP management, and the public all be assured that there is a common approach to the resolution of these types of questions relating to police discipline. As discussed in *Thériault v Royal Canadian Mounted Police*, 2006 FCA 61 [*Thériault*] at para 22, “standards of conduct imposed on professionals or police officers vested with special powers to ensure that the law is observed are enacted both to protect the public and to promote the public’s confidence in professional and public bodies.”

[77] As the Federal Court of Appeal stated in *Thériault*, at para 23, “[t]he purpose of introducing a limitation provision into a disciplinary system is to provide some fairness in the treatment of offenders and to enable them to put forward a full and complete defence which may be compromised by the lapse of time or undue delay in taking action.”

[78] I disagree with the Applicant’s claim that the text of this provision, juxtaposed with the wording of subsection 41(2) of the *RCMP Act*, results in an ambiguity. On the contrary, the two provisions are reflective of a specific intention to treat different types of alleged contraventions in distinct ways. Namely, in respect of less serious contraventions, the limitation period applies only in respect of the imposition of conduct measures. On the other hand, in respect of more serious infractions, the limitation period operates as a bar to the conduct hearing itself, and findings of misconduct are also barred as a natural corollary of that.

[79] The fact that the *Act* includes separate provisions allowing for an appeal of conduct findings (s. 45.11(3)(a)), and conduct measures (s. 45.11(3)(b)) is also consistent with the CAA’s approach.

[80] Further, in my view, the Applicant's submissions on the general policy reasons behind limitation periods, or the discovery rule and the possibility of extension of the limitation period, do not support his position. The two provisions clearly distinguish how the severity of the particular alleged infraction influences the operation of the limitation period as envisaged by Parliament. The general principles referenced do not rebut the specific intention that emerges from a reading of the provisions at issue in their ordinary and grammatical sense.

[81] In my opinion, this is equally true of the legislative intent relied upon by the Applicant in reference to Hansard, to the extent that this sort of legislative history is a relevant consideration. The aim of the Bill C-42, as set out in the Legislative Summary, was to modernize discipline and grievance processes with a view to correcting conduct issues in a timely and fair manner. The amendments sought to reform the disciplinary processes governing grievances in the RCMP and the picture presented by the Applicant in furtherance of its arguments is skewed as he only presents excerpts from the record of the Standing Committee on Public Safety and National Security.

[82] A broader review of the legislative debates indicates that the proposed legislation was intended to "reorient and streamline a system that [was] bogged down in red tape, overburdened with administrative processes, and plagued with lengthy proceedings that [could] last for years in some cases" (House of Commons Debates, 41-1, No 146 (17 September 2012) at 1330 (Hon Ryan Leef); see also at 1210 (Hon Vic Toews, Minister of Public Safety)). As with the discussions cited by the Applicant, the debates show that the new legislation was intended to expedite the system by allowing more matters to be dealt with locally, thereby reducing delays:

> For most disciplinary actions of any severity, for example, the RCMP is required to use a three-person adjudication board. These

> boards effectively undermine the role of front-line managers who lack the ability to resolve issues promptly, as well as the flexibility to make decisions on sanctions. As a result, the use of boards creates an adversarial work climate, not to mention long delays in the process.
>
> Under the proposed changes, front-line managers would finally gain the authority and responsibility to impose appropriate, punitive measures. These measures would range from remedial training to corrective action such as holding back pay. Managers would not have to resort to a formal board process, except in the case of dismissal (House of Commons Debates, 41-1, No 146 (17 September 2012) at 1210 (Hon.Vic Toews, Minister of Public Safety)).

[83] In my view, there is nothing expressed in the debates at the House of Commons, Senate or the Committees to suggest that Parliament intended anything other than what it has expressly written in the words of the provisions.

[84] I agree with the Respondent's submission that there is no "statutory absurdity" in not having a limitation period for making findings about less serious contraventions of the *Code of Conduct*. The previous version of the *RCMP Act* had no limitation period for less serious contraventions at all, and the imposition of one regarding disciplinary measures emerging from these contraventions does not somehow necessitate that a limitation period apply to the investigative and adjudicative process as well. If Parliament had intended the limitation period to apply to findings as well as to conduct measures, it would have said so in clear terms.

[85] I also agree with the Respondent that while the Applicant's Line Officer could act as the conduct authority in respect of some matters (in furtherance of the reform introduced by Bill C-42), the Line Officer cannot be considered the conduct authority in respect of this matter. Subsection 42(2) of the *RCMP Act* refers to "the conduct authority that investigated the

contravention or caused it to be investigated"; in my view, the Line Officer is neither of those things.

[86] I also find that it would be contrary to the Harassment Policy, which serves as part of the context in interpreting the applicable limitation period, to afford a complainant 12 months after the last alleged incident of harassment to make a complaint, but potentially start the timing of the limitations clock prior to a complaint being filed. Such a result would bring disrepute to the grievance process in the RCMP.

[87] Another factor bolsters the CAA's approach on this issue. There are legitimate reasons why a conduct authority would want to hold a conduct meeting and make findings even after the expiry of the limitation period. In the case of a harassment complaint, leaving the allegations unresolved is unsatisfactory for all parties. A complainant would be left feeling that a serious issue has been ignored. The member who was the subject of the complaint would remain an accused harasser with no opportunity to respond to the allegations or clear his or her name. The result would be equally unsatisfactory for any co-workers who witnessed any of the incidents or were otherwise aware of the matter, and to RCMP management that would have to deal with the aftermath of unresolved allegations of workplace misconduct. Finally, the wider public would also be left in the dark about the outcome, to the extent any of this became public. Such a result is neither necessary nor appropriate.

[88] One final consideration here is that there is a public interest element in that findings of misconduct may render an RCMP member "*McNeil* positive" which will then give rise to the question of whether to disclose the finding if that member gave evidence in a criminal prosecution. It would not serve the public interest to adopt an approach requiring that such

findings depended entirely on whether conduct measures were imposed, which would be a consequence of the Applicant's argument.

[89] On the question of whether the Applicant was *McNeil* positive in light of the CAA's finding, it should be noted that the Respondent candidly admitted that it was not at all certain that the finding that the Applicant had committed harassment by yelling at a subordinate on one occasion would be sufficient to render him *McNeil* positive. The Respondent's written submissions include the following:

> The evidence before this Court suggests that the Applicant should have no reason to believe that the harassment finding would have to be disclosed because of *McNeil*. The evidence shows the Applicant to be a dedicated, hard-working and respected officer. There does not seem to be any information in the record that would cause a prosecutor to make a *McNeil* disclosure. The fact that he yelled at his subordinate is not relevant to the credibility and reliability issues that *McNeil* is aimed at (Respondent's Factum at para 36).

[90] However, even if I were to accept that the Applicant might have to disclose this finding, that would not make the CAA's Decision unreasonable. There is a public interest that allegations of misconduct against an RCMP member be investigated and recorded, whether or not disciplinary action results. Failing to do so could reduce public confidence in the professionalism of the RCMP. From a management perspective, such findings may also provide a context for assessing any future misconduct.

[91] On the basis of the foregoing, I find that the CAA's interpretation of the *RCMP Act* limitation provisions is reasonable. There is no compelling reason not to give effect to the clear wording of subsection 42(2), under which conduct measures cannot be imposed after the expiry

of the one-year time limit (assuming no extension of time has been granted). However, this does not foreclose a competent Officer from holding a conduct meeting or making findings.

[92] This is sufficient to deal with the Applicant's challenge to the CAA decision. For all of these reasons, I would dismiss the application for judicial review.

[93] However, in light of the arguments advanced by the parties on the Respondent's claim that the CAA's finding regarding when the one year time limit was triggered, and in case I am found to be wrong in regard to any of my conclusions above, I will also deal with the remaining issue. It is relevant that this issue has already arisen in other cases (see, for example: *Calandrini v Canada (Attorney General)*, 2018 FC 52 and *Quibell v Canada (Attorney General)*, 2021 FC 1208), and it merits further discussion here since it was so fully canvassed by the parties.

C. *Was the CAA's finding that the one year time limit had expired reasonable, and does the Respondent have standing to challenge this finding?*

[94] As mentioned previously, this case is unusual because the Respondent seeks to uphold the Decision, but argues that the CAA's finding that the one year limitation period had expired by the time the CO's decision on the complaint was issued was unreasonable. The Respondent says it is concerned because of the impact the CAA's approach would have in future cases involving allegations of harassment.

[95] To set the stage for the discussion that follows, it is important to recall the key dates in this case. The harassment complaint was filed on November 23, 2018, alleging a pattern of incidents between October 1, 2017 and October 9, 2018. Most of these incidents were found not to amount to harassment; however, the Checkpoint Incident, which happened on February 14,

2018, was found to constitute a single incident of harassment. The CO's decision on the complaint was issued on May 21, 2019.

(1) The Submissions of the Parties

[96] Both parties argue that the CAA's interpretation was unreasonable, albeit for different reasons. In the circumstances, it will be useful to reverse the usual manner of summarizing the submissions of the parties, so I will begin with a review of the Respondent's position.

[97] The main argument of the Respondent is that the CAA's interpretation of the limitations period was unreasonable because the one-year period did not begin to run until the harassment complaint was filed. The Respondent notes that this case involves a complaint that the Applicant had engaged in a pattern of behaviour that amounted to harassment. Under the RCMP Harassment Policy (RCMP Administration Manual, Ch XII.8), only the CO of a Division is a conduct authority who can initiate or investigate a harassment complaint. Although the Applicant's Line Officer may be a Conduct Authority for other Code of Conduct matters, he was not authorized to investigate the allegations of harassment.

[98] While the CAA's approach may be logical for contraventions that a conduct authority has the ability to investigate, the Respondent contends that it does not work for allegations of harassment. If yelling at a subordinate was a stand-alone contravention of the Code of Conduct, the conduct authority could have investigated it when it happened and the limitation period would start to run as of that date. However, the conduct authority cannot initiate a harassment investigation without a complaint. Absent any investigation or, at a minimum, conversation with a complainant, the conduct authority has no way of knowing how a particular incident (such as

being yelled at) at could be perceived by a subordinate, or whether such an incident will lead to a harassment complaint.

[99] Similarly, the CAA's interpretation runs afoul of the Harassment Policy, which provides that a complainant has 12 months after the last alleged incident of harassment to make a complaint. In this case the last alleged incident of harassment occurred on October 9, 2018, and under the Harassment Policy the Complainant had until October 9, 2019 to make a complaint. The CAA's interpretation removes all power and agency from the Complainant and gives it to a Line Officer who was not authorized to conduct harassment investigations, did not consider the incident as possible harassment, and did not speak to the complainant.

[100] In addition, the Respondent points to the definition of harassment adopted by the CAA: "[h]arassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual" (Decision, para 64). Under this definition, the Conduct Authority would have to know how the behaviour affected the complainant in order to be aware that harassment may have occurred. In this case, the Line Officer did not treat the incident as harassment, nor did he speak to the Complainant about the incident or conduct any other investigation, and therefore the knowledge required to trigger the time limit did not exist until the Complainant filed his harassment complaint.

[101] The Respondent notes that the Federal Court of Appeal has determined (in relation to an earlier version of the discipline regime) that in order for the limitations period to run, the relevant authority must have "sufficient credible and persuasive information about the components of the alleged contravention..." (*Thériault* at para 47). The Respondent argues the CAA should have followed this reasoning.

[102] In this case, the alleged contravention was harassment, and one of the elements of that term's definition is a long-lasting impact on the complainant. As previously stated, without conducting any investigation or any communication with the Complainant the Line Officer did not – and could not – know whether this impact existed until the Complainant filed his complaint, and therefore until then one of the crucial "components of the alleged contravention" was missing.

[103] In addition, the Respondent contends that under the RCMP Harassment Policy, a complaint must be filed within one year of the last alleged incident of harassment. The CAA's approach of assessing the time limit in relation to the Checkpoint Incident because it was the sole incident found to constitute harassment, rather than the continuing pattern alleged in the complaint, introduces needless uncertainty into the process and is unfair to complainants. It makes it impossible for them to know when the limitation period has begun to run. Under the CAA's approach, the commencement of the limitation period would be contingent on which, if any, specific incident of a continuing pattern of misconduct is found to constitute harassment, which can only be known at the end of the process.

[104] For all of these reasons, the Respondent argues that the CAA's interpretation is unreasonable.

[105] On the question of its standing to raise this issue, the Respondent argues that because it does not seek to change the disposition made by the decision maker, there was no reason to bring its own application for judicial review. However, once the Decision was challenged, the Respondent submits that it had the right to impugn the reasons in order to have the application dismissed on grounds other than those adopted by the decision maker (*Canada (Attorney*

General) v Dussault, 2003 FCA 5 [*Dussault*]). The Court has sufficient discretion in ordering a remedy to dismiss the application rather than sending the matter back for further determination. This case is similar to that in *Soullière v Canada Blood Services*, 2016 FC 1346 [*Soullière*] at para 18, where the respondent, as the successful party, was unable to seek judicial review, but "had every right to challenge the underlying reasons with which it took issue" once the applicant challenged the decision.

[106] The Respondent submits that raising a concern with the reasons of a decision maker is consistent with the Attorney General of Canada's mandate the exercise of his public duty: "because the Attorney General is also the defender of the public interest and has a duty to uphold the rule of law, there may be limits to how vigorously he should properly defend the merits of a public body's decision" (*Douglas v Canada (Attorney General)*, 2013 FC 451 at para 67 [*Douglas*]).

[107] The Applicant takes issue with the Respondent's submissions on all aspects of this question. He argues that the Respondent lacks standing to challenge the Decision, and that the CAA's finding that the time limit had begun to run when he reported the Checkpoint Incident to his Line Officer was reasonable.

[108] On the standing issue, the Applicant submits that in responding to this application the Attorney General is acting as the legal representative of the RCMP as a governmental department and should be bound by the same rules of standing as any other party. The Applicant argues that to redress perceived illegality or improper performance by public bodies (as in *Douglas*), the Attorney General can resort to subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c. F-7, which was not done here.

[109] Even if the Respondent has standing to the challenge the CAA's decision, it should not be permitted to do so. The logical implication of the Respondent's submission that the CAA unreasonably concluded that the one-year limitation period had expired would lead to the CAA's Decision being set aside. However, the Applicant notes that the Respondent does not seek this relief explicitly, and the Respondent has not filed its own application for judicial review. A party may not seek judicial review of a portion of a decision without filing their own notice of application, as is the case with the Respondent *(Systèmes Equinox inc v Canada (Public Works and Government Services)*, 2012 FCA 51 [*Systèmes Equinox*] at para 12). This situation is different from a respondent seeking to improve the reasons for judgment or trying to have an application dismissed on grounds other than those adopted by a trial judge or tribunal (*Dussault* at para 5). The Applicant argues that the Respondent's submissions necessitate a different result by the CAA, which is not permissible absent a notice of application.

[110] The Applicant also disagrees with the merits of the Respondent's submissions. He submits that under the *RCMP Act*, the limitation period begins to run from the time the contravention and the member responsible "became known to the conduct authority that investigated the contravention or caused it to be investigated" (*RCMP Act*, s 41(1), 42(2)). The term 'conduct authority' means a person designated by the Commissioner as such (*RCMP Act*, ss 2(1) and (3)).

[111] The *CSO – Conduct* provides at subsection 2(1) that all "members who are in command of a detachment and persons who report directly to an officer" are designated as conduct authorities. The Commissioner has also drafted a Harassment Policy stating that a harassment decision maker includes a CO as well as anyone else designated by the Commissioner. This

means that for any given alleged breach of the *Code of Conduct,* a member has more than one person who can serve as their conduct authority. In this case, the CAA reviewed the reporting structure of the Applicant's workplace and found that the Line Officer "served as the Appellant's conduct authority."

[112] The Applicant argues that the Respondent is incorrect in arguing that the uncertainty regarding whether the victim of harassment suffered serious harm means that the triggering date for the one-year limitation period can only run from the date the complainant makes a complaint. He asserts that human rights tribunals, as well as this Court, have routinely addressed harassment complaints in the context of a limitation period in human rights legislation. The limitation period applies such that allegedly harassing events that occur prior to the period covered by the limitation period are excluded from consideration unless they form a "continuing contravention" of human rights legislation (*Heiduk v Whitworth*, 2013 FC 119 at paras 24, 28; *Syed v Canada (Attorney General)*, 2020 FC 608 at paras 43-44; *Manitoba v Manitoba Human Rights Commission* (1983), 2 DLR (4th) 759, 2 WWR 289 (MBCA); *School District v Parent obo the Child*, 2018 BCCA 136 at paras 46-64).

[113] Even if the Respondent is correct that the limitation period does not commence until the alleged incident has a demonstrated effect on the complaint, the Applicant notes that the complainant in this case booked off sick due to stress on March 23, 2018, and thus the demonstrated effect was known at that time. Even using this approach, the Applicant argues that the one-year limitation period had expired.

(2) Discussion

[114] This issue arises because the CAA found that the one-year time limit began to run when the Applicant discussed the Checkpoint Incident with his Line Officer. The CAA found on the evidence that this conversation occurred either on the date of the incident, February 14, 2018, or when the Complainant went off duty sick on March 23, 2018. Either way, it happened before April 2018, and thus the time limit had expired by the time the CO rendered his decision on the complaint on May 21, 2019.

[115] It bears repeating that the Respondent contends that the time limit had not expired because it only began to run when the harassment complaint was filed. The Respondent's concern with the CAA's finding does not relate to the outcome of this particular case, but rather it arises to the extent this determination sets a precedent for future cases.

[116] In summary, I find that the Respondent has standing to raise this issue, and I also find that the CAA's treatment of this issue is unreasonable. I will briefly explain my reasoning on each question.

[117] On the question of the Respondent's standing to raise this issue when it has not filed its own application for judicial review, I find that this case bears more similarities to the authorities cited by the Respondent (*Dussault* and *Soullière*) than to the decision in *Systèmes Equinox* relied on by the Applicant. The Attorney General of Canada appears in this case as the legal representative of the RCMP, but in doing so, he continues to carry public law duties as the Chief Law Officer of the Crown, as discussed in *Douglas*.

[118] As mentioned above, the question of when the time limit begins to run under the RCMP discipline regime is a matter of public importance that has arisen in this and other cases, and it can be expected to be raised in future cases. The Respondent is raising this as a matter of principle, rather than to overturn the CAA's decision. I am persuaded that the Respondent should be able to raise this point once the Applicant brought the matter before the Court. It is not necessary to determine whether the Respondent could have sought judicial review of the Decision on its own; the fact is that this was not done. Now that the matter is before the Court, I find that the Respondent "has every right to challenge the underlying reasons with which it took issue" (*Soullière* at para 18).

[119] In light of this, the Respondent has standing to argue that a portion of the CAA's decision is unreasonable. I will return to the question of whether any remedy should be granted below, but I note here that the legal or practical implications of an argument should not, in and of themselves, somehow automatically deny the Respondent standing to raise a question.

[120] Turning to the substance of the issue, the question the CAA had to answer was when the time limit began to run. In addressing this point, the CAA noted that the point had not been raised before the CO, and so it did not clearly fall within the "clearly unreasonable" standard on the appeal.

[121] This question required the CAA to determine when "the contravention and the identity of [the member] became known to the conduct authority that investigated the contravention or caused it to be investigated" (*RCMP Act*, s 42(2)). The CAA found that the Applicant's Line Officer was that conduct authority, and that he had sufficient knowledge of the details of the Checkpoint Incident when the Applicant reported it to him.

[122] I have already found that it was unreasonable to conclude that the Line Officer was the conduct authority here, because he was not empowered to deal with harassment complaints under the RCMP Harassment Policy. That is sufficient to dispose of this question.

[123] In light of the submissions of the parties, however, I would add that I find the CAA's conclusion that the Line Officer had sufficient information to trigger the time limit to be unreasonable. That conclusion is not supported on the facts and is inconsistent with the law and policy that govern this question. Despite the deference owed to a finding by a CAA, pursuant to this Court's jurisprudence (see *Kalkat*), I am unable to find that this determination meets the reasonableness standard.

[124] I agree with the Respondent that it is unreasonable to parse the dates of various incidents that allegedly constitute a pattern of harassment in order to determine when the time limit for each one would begin to run. This approach is contrary to logic and also runs counter to the thrust of the RCMP's Harassment Policy. The fact that the Policy explicitly states that a complaint can be filed within one year of the last incident is a clear indication that the time limit should begin only from that date.

[125] I find that the CAA's approach would create unnecessary and unacceptable uncertainty for complainants and for members who are subject to a complaint, as well as for RCMP management and the public.

[126] One final point. I do not agree with the Respondent's argument that the time limit in every case cannot begin to run until a harassment complaint is filed. What is required, under subsection 42(2) of the *RCMP Act*, is that the competent RCMP officer has sufficient knowledge

of the identity of the alleged perpetrator and the essentials of the alleged misconduct. In some instances that may happen before a complaint is filed. For example, in this case, if the Complainant had told the Applicant during the Checkpoint Incident that he felt he was being harassed and that he intended to file a complaint about it, and the Applicant had reported this to his Line Officer, the time limit would have begun as soon as the Line Officer reported that to a conduct authority who was authorized to deal with harassment complaints. That is not what happened, however.

[127] Each case will turn on its particular facts, and so I reject the Respondent's effort to establish a hard and fast rule. However, on the facts of this case, I find that the CAA's determination that the time limit had begun to run to be unreasonable.

[128] The question then arises, should this lead to an order overturning the CAA's decision, despite my findings on the other issues?

[129] I am not persuaded that this is what justice requires, in the unusual situation before the Court.

[130] First, the Respondent does not ask for this relief. Instead, the Respondent acknowledges that if the result of its argument was to lead to a reversal of the CAA's decision, this could have the perverse result of leaving the Applicant worse off than if he had never sought judicial review. That would arise because the CAA upheld the CO's findings, but overturned the conduct measures imposed on the Applicant after finding they were barred by the time limit. If the CAA's decision on this point is reversed, the Applicant could be exposed to these conduct measures once again. The Respondent accepts the obvious – this is neither just nor necessary.

[131] I also find that this result need not follow inexorably from my finding that the CAA's decision on this point is unreasonable. In *Vavilov*, the Supreme Court of Canada discussed the remedial discretion available to a court on judicial review, and noted at paragraph 139 that "the question of the appropriate remedy is multi-faceted" and that it "engages considerations that include… the great diversity of elements that may influence a court's decision to exercise its discretion in respect of available remedies."

[132] The focus of the remainder of the Supreme Court of Canada's discussion in *Vavilov* is on whether a reviewing court must always remit the decision back for reconsideration. It again emphasizes the principles that should guide the choice of remedy, including "concern for delay, fairness to the parties, urgency of providing a resolution to the dispute…costs to the parties, and the efficient use of public resources [which] may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed…" (para 142).

[133] Applying these principles to the instant case, I can see no basis to overturn the CAA's Decision on this point. The impact of this is simply to leave the remedial aspect of the Decision intact. The Respondent has not suggested any public interest rationale to send the matter back to the CAA, or to expose the Applicant to the penalties originally imposed. I see no principled reason to do so, and instead I find it would be contrary to the interests of justice and to the goal of expedient and cost-efficient decision making to send the matter back.

[134] For all of these reasons, I find that the CAA's determination regarding when the time limit began to run in this case to be unreasonable, but I will not reverse the Decision on that basis alone.

V. Conclusion

[135] For the reasons set out above, I am dismissing this application for judicial review. The CAA's findings that the Checkpoint Incident amounted to harassment, and that the CO could make findings of misconduct but could not impose conduct measures outside of the one-year time limit are both reasonable. Those were the grounds raised by the Applicant in his application for judicial review, and these conclusions are therefore dispositive of the matter.

[136] Dealing with the Respondent's submission, however, I also find that the Respondent has standing to challenge the CAA's finding that the one-year time limit had expired. On the substance of this point, I conclude that the CAA's finding was unreasonable. However, in the unusual circumstances of this case, I find that it is neither necessary nor in the interests of justice to overturn the CAA's Decision on this point alone.

[137] For all of these reasons, the Applicant's application for judicial review is dismissed.

[138] The parties agreed that costs should be in the cause, and should be fixed in the lump sum amount of $4,000. I find that this is reasonable, and so order.

<u>JUDGMENT in T-767-20</u>

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.

2. The Applicant shall pay the Respondent's costs, in the lump sum amount of $4,000.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-767-20
STYLE OF CAUSE:	RYAN LEWIS V. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 10, 2021
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	DECEMBER 9, 2021

APPEARANCES:

CHRISTOPHER ROOTHAM AND AMANDA LE	FOR THE APPLICANT
KEVIN PALFRAMAN	FOR THE RESPONDENT

SOLICITORS OF RECORD:

NELLIGAN O'BRIEN PAYNE LLP Barristers and Solicitors Ottawa, Ontario	FOR THE APPLICANT
DEPARTMENT OF JUSTICE Ottawa, Ontario	FOR THE RESPONDENT