Federal Court Cour fédérale

Date: 20230608

Docket: T-571-22

Citation: 2023 FC 811

Ottawa, Ontario, June 8, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

HOWARD PERSAUD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a member of the Royal Canadian Mounted Police ("RCMP"). In February 2012, he went on medical leave from his duties. In December 2016, when he had still not been approved to return to full-time operational duties, the applicant presented a grievance under section 31 of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 ("*RCMP Act*"). (The pertinent statutory provisions are set out in the Annex to this decision.) In his grievance,

the applicant alleged that the RCMP's divisional Occupational Health Services ("OHS") had failed to manage his case properly and that this had unjustifiably delayed his return to full-time duties. The applicant contended that, because of this failure on the part of Health Services, he had missed opportunities to acquire the skills and work experience necessary to be competitive for promotion. By way of redress, the applicant requested a promotion of two ranks.

[2] The applicant's grievance was initially dismissed because it was found to have been filed out of time. That decision was overturned in April 2018 and the grievance was then adjudicated on its merits.

[3] The merits adjudication took place in two stages.

[4] First, under subsection 18(2), of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 ("*CSO (Grievances and Appeals)*"), an initial level adjudicator had to determine whether "the decision, act or omission that is the subject of the grievance is consistent with the relevant law, or the relevant Treasury Board or Force policy and, if it is not, whether it has caused a prejudice to the grievor." If satisfied that the grievance should be allowed, under paragraph 16(b) of the *CSO (Grievances and Appeals)*, the initial level adjudicator could remit the matter in question for reconsideration or direct any appropriate redress.

[5] In a decision dated June 1, 2021, the initial level adjudicator agreed with the applicant that his medical profile had not been managed in accordance with RCMP policy and that this had prejudiced the applicant. The adjudicator found that the mismanagement of the medical profile

had started on January 26, 2014, and ended on March 30, 2017, when the applicant was deemed fit to return to operational duties. The adjudicator found that this mismanagement had prejudiced the applicant because he had lost opportunities to develop the competencies he needed to be competitive for promotion. The adjudicator concluded, however, that she did not have the legal authority to order the applicant's promotion, as the applicant was requesting. She therefore included the following comments in her decision:

> Considering the limit of my jurisdiction in terms of redress, I can only offer the Respondent [i.e. the RCMP] the following suggestions:
>
> 1. The Respondent (via the Grievor's chain of command) should endeavour to restimulate the Grievor's career;
>
> 2. The Respondent (via the Grievor's chain of command) should endeavour to provide the Grievor with meaningful training and learning opportunities to facilitate his career development;
>
> 3. The Respondent will endeavour to provide members with timely feedback on all tests administered and update their medical profiles as per policy.

[6] After receiving this decision, the applicant requested that the matter be referred to the final level of the grievance process. Under subsection 32(1) of the *RCMP Act*, the Commissioner of the RCMP constitutes the final level in the grievance process; however, the Commissioner's authority in this regard may be delegated to an adjudicator pursuant to subsection 5(2) of that Act. The applicant's final level grievance was presented to an adjudicator acting pursuant to delegated authority.

[7] The authority of a final level adjudicator is limited to determining whether the initial level adjudicator's decision was reached in a manner that contravened the principles of

procedural fairness, was based on an error of law, or is clearly unreasonable: see subsection 18(2) of the *CSO (Grievances and Appeals)*. Under subsection 18(1) of the *CSO (Grievances and Appeals)*, the final level adjudicator may dismiss the grievance and confirm the decision rendered at the initial level or, if the adjudicator allows the grievance, they may remit the matter for reconsideration or a new decision or direct any appropriate redress.

[8] The applicant (who represented himself throughout the grievance process) provided extensive written submissions in connection with the final level review. He challenged the initial level adjudicator's decision on several grounds including that the decision maker had erred by precluding him from arguing that he had been subjected to racial and religious discrimination and harassment. (This was an issue the applicant had raised for the first time in his rebuttal submissions at the initial level.) The applicant contended in his final level grievance presentation that, "at its core," the grievance concerned the racism and discrimination he had experienced as a member of the RCMP. The applicant also argued that the initial level adjudicator's suggested redress was clearly unreasonable. He maintained that the only adequate redress was a promotion of two ranks. When he presented his rebuttal submissions to the respondent's submissions, the applicant raised for the first time the allegation that the initial level adjudicator "has a self-interest to support the RCMP because she is internal and paid by the RCMP." According to the applicant, the initial level adjudicator was biased against him and her "prejudicial attitude is evident throughout her deliberations on the facts."

[9] In a decision dated February 11, 2022, the final level adjudicator concluded that the applicant had not established that the initial level decision was contrary to the principles of

procedural fairness, was based on an error of law, or is clearly unreasonable. The final level adjudicator rejected the applicant's allegation of bias on the part of the initial level adjudicator. She also found that the initial level adjudicator did not err in concluding that she could not grant the redress the applicant was seeking – namely, promotion. The final level adjudicator also found that the suggested redress provided by the initial level adjudicator (see paragraph 5, above) "is not clearly unreasonable since it will provide the Grievor with the best possible chance of regaining missed experiences and training, so he can demonstrate his potential to promote to higher ranks." Accordingly, the final level adjudicator dismissed the grievance and confirmed the initial level adjudicator's decision.

[10] The applicant (who continues to be self-represented) has applied for judicial review of the final level adjudicator's decision under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. He submits that the decision is tainted by a reasonable apprehension of bias on the part of the decision maker and, in any event, that it is unreasonable.

[11] As I explain in the reasons that follow, I am unable to agree with the applicant in either respect. In my view, there is no basis for the reasonable apprehension of bias allegation. As well, the final level adjudicator's decision – including her decision upholding the redress determination – is reasonable when viewed in light of the legal constraints on the decision maker. The applicant obviously and perhaps even understandably believes that he was not provided with meaningful redress for the mishandling of his medical file and the impact this has had on his career; however, he has not demonstrated any basis on which I could interfere

with the final level adjudicator's decision. This application for judicial review must, therefore, be dismissed.

II. BACKGROUND

A. *The Applicant's Work History – February 2012 to September 2017*

[12] The applicant has been a member of the RCMP since 2001. On February 22, 2012, he went on medical leave from his duties. When he first went on leave, he was not working in any capacity. This leave was supported by regular reports from the applicant's healthcare provider. Eventually, in August 2012, the applicant's medical profile was updated to "O6 – Unfit for Duty." Following further reviews of the applicant's case, on December 13, 2012, this profile was updated to "Temporary O4 – Administrative Duties Only" (effective January 2, 2013). A plan was then put in place for the applicant's graduated return to work in a non-operational role.

[13] The applicant returned to work as planned. However, in February 2013, his supervisor contacted OHS with a concern that a medical issue may be affecting the applicant's performance at work. After discussing the matter with the applicant, and with his support, in June 2013 OHS initiated an Employer-Mandated Medical Assessment ("EMMA") with a psychiatrist in private practice. This assessment commenced on July 23, 2013. In the meantime, the applicant's medical profile was continued as temporary O4.

[14] The grievance record suggests that after this there was essentially no further activity by OHS until June 25, 2014, when OHS contacted the EMMA assessor to check on the progress of

the assessment. OHS finally received the results of the EMMA on August 25, 2014. However, it did not share the results with the applicant or take any other steps in response to the assessment. In the meantime, the applicant continued to be on restricted hours and duties, with his maximum time at work capped at eight hours per week.

[15] In January 2016, the applicant obtained a copy of the 2013 EMMA through an access to information request.

[16] Following requests from the applicant that he be permitted to return to operational status, his file was transferred to a new clinical team in May 2016. A new graduated return to work plan was eventually developed to increase the applicant's work hours. OHS also requested an updated EMMA from the original assessor to determine the applicant's current fitness for operational duty.

[17] The second EMMA was conducted between September and November 2016. While the details are not entirely clear on the record before me, it appears that, during discussions with the assessor and/or his clinical team in connection with the updated assessment, the applicant learned that, although his diagnosed medical condition was permanent, it had a minimal impact on his ability to return to operational duties and he would have been capable of returning to operational duties years earlier.

[18] By the end of March 2017, the applicant was approved to return to full-time operational duty effective April 2, 2017. It appears that he eventually did so in September 2017.

B. *The Applicant's Grievance*

[19] As noted above, in December 2016, the applicant commenced a grievance concerning the handling of his medical profile. The respondent to the grievance was the Employee Management Resource Officer "O" Division.

(1) The Applicant's Initial Submission

[20] The applicant advanced three key submissions in the initial presentation of his grievance. First, OHS failed to conduct and consider the health assessments in a timely manner. Second, this failure was contrary to governing law and policy, including requirements concerning regular updates of medical profiles and timely feedback on test results. And third, the applicant had been prejudiced by this delay. More specifically, the applicant had lost the opportunity to compete for promotions because his medical status remained undetermined and he was not fully engaged in operational duties. According to the applicant, he was not able to compete for advertised positions "because his career advancement had stopped in 2013 while he waited for Health Services to review his file." In short, "with the many unknowns [the applicant] faced due to the unduly long delay in his medical profile status, he could not reasonably have assumed that he could meet any promotional profile."

(2) The Respondent's Submission

[21] The respondent's representative provided written submissions in response to the applicant's submissions. Included with the respondent's submissions was a chronological

overview of the applicant's medical file as it pertained to the grievance prepared by a Health Services Officer.

[22] The respondent acknowledged that, while on leave in 2013, the applicant "experienced delays in the assessment of his fitness for duty by OHS including the assessment of his 2013 EMMA results and communication of the results to [him]." While the respondent did not agree that all the policy instruments cited by the applicant applied in his case, the respondent accepted that the applicant should have been provided with the results of the 2013 EMMA in a timely manner and this did not occur. On the other hand, the respondent maintained that the 2016 EMMA and the eventual approval for the applicant to return to full-time duties were handled properly. Finally, the respondent did not agree that the applicant was prejudiced by the delays in handling his medical profile. According to the respondent, nothing had prevented the applicant from applying for promotion during the time in question and, in any event, there is no way to know whether he would have been successful or not.

(3) The Applicant's Rebuttal

[23] The applicant submitted a lengthy written rebuttal to the respondent's submissions. In it, he raised for the first time in connection with this grievance the allegation that, throughout his career with the RCMP, he had been subjected to racial and religious discrimination and harassment. He also raised for the first time the allegation that the 2013 EMMA was not a genuine inquiry into his fitness for duty but, rather, was intended to facilitate his dismissal from the RCMP. The applicant reiterated his submission that the 2013 EMMA in particular took unreasonably long to complete, that he was not informed of the results in a timely way, and that

he was prejudiced by these delays. The applicant countered the respondent's submission that he could have applied for promotion during the time in question by pointing out that he had never suggested otherwise. Rather, his argument was that it would have been pointless to do so because he would not have been competitive for promotion given the loss of work experience and the missed opportunities to develop the necessary competencies.

C. *The Initial Level Decision*

[24] The initial level adjudicator framed the subject matter of the grievance as the respondent's "omission to properly manage the Grievor's EMMA which impacted his return to operational duties in a timely manner".

[25] The adjudicator noted that the applicant had raised several other topics, many of which were raised for the first time in his rebuttal submissions, including allegations of racism, discrimination and harassment. Because they were only raised in rebuttal, the adjudicator considered these "new facts and new grounds" to be outside the scope of the review. The adjudicator noted that under the policy governing the grievance process, a rebuttal may not raise new facts or grounds except with the permission of the adjudicator. The adjudicator determined that many of the new matters raised by the applicant would likely fall under the jurisdiction of other processes, such as the Code of Conduct processes outlined in Part IV of the *RCMP Act*. As a result, she found that she lacked jurisdiction to address these matters (see *RCMP Act*, subsection 31(1)). The adjudicator also found that, in any event, most of the events to which the applicant refers occurred before 2013 and, consequently, would likely not meet the statutory time

limits for bringing a grievance (see *RCMP Act*, subsection 31(2)). The adjudicator therefore declined to consider the new matters raised by the applicant.

[26] The adjudicator noted that, under the applicable health services policy, "Temporary profiles must not last for more than six months without review by [OHS] and the date of review must be recorded as 'Temp until (date)' on form." The adjudicator found that, contrary to this policy, OHS had failed to consistently update the applicant's medical profile between the 2013 and 2016 EMMAs. More specifically, OHS had updated the applicant's medical profile on November 28, 2013. This profile was valid until January 26, 2014, but it was not updated in a timely way after that. In the adjudicator's view, this was the "first sign of mismanagement." The adjudicator also found that, subsequently, OHS did not manage the applicant's temporary medical profile properly pending and following the 2013 EMMA and pending the 2016 EMMA. This mismanagement continued until March 30, 2017, when the applicant was approved to return to full operational duties.

[27] The adjudicator also found that, given the importance of the EMMA process for the applicant, in order to be treated fairly, the applicant was owed timely feedback and meaningful review of the 2013 EMMA results. This requirement of procedural fairness was reinforced by the applicable health services policy, which states that members are to be provided with feedback on all tests administered during an assessment. This did not happen. All of this had prejudiced the applicant by hindering the progression of his career.

[28] Having therefore concluded that the grievance was meritorious, the initial adjudicator turned to the appropriate redress. While agreeing with the respondent that the applicant was not prevented from applying for a promotion during the time period in question, the adjudicator also agreed with the applicant that there is a difference between *applying* for a promotion and *being competitive* in the application process. The adjudicator found that the mismanagement of the applicant's medical profile meant that he had "lost important work experiences and learning opportunities to become a qualified candidate for promotion." The respondent's omissions had adversely affected the applicant's "capacity to develop the competencies needed to be competitive in a promotion process."

[29] Despite these findings, the adjudicator recognized that she was limited in the remedy she could order. She could not grant the applicant the redress he was seeking because the RCMP Commissioner "did not delegate the power of awarding a promotion" set out in subsection 7(1) of the *RCMP Act* to grievance adjudicators. The adjudicator also agreed with the respondent that, in any event, "there is no guarantee that the [applicant] would have received a promotion even if the impugned omission did not happen." Subsection 16(1)(b)(i) of the *CSO (Grievances and Appeals)* gives the adjudicator the authority to remit a matter to the point of error but this remedy "would be pointless and would not remedy the [applicant's] prejudice." Subparagraph 16(1)(b)(ii) of the *CSO (Grievances and Appeals)* gives the adjudicator the power to direct "any appropriate redress." Considering the limits on her jurisdiction, the adjudicator concluded that she could only offer the respondent (via the applicant's chain of command) "suggestions" on re-stimulating the applicant's career, providing members with timely feedback on tests, and updating medical profiles in accordance with policy (see paragraph 5, above). The

adjudicator also directed that a copy of her decision be provided to the applicant's Commanding Officer "to ascertain proper follow up on the above suggestions."

[30] Finally, the adjudicator offered the applicant her sincere apology for the delays in the processing of his grievance.

D. *The Applicant's Final Level Grievance*

[31] Under paragraph 31(2)(b) of the *RCMP Act*, the applicant was entitled to present a final level grievance within fourteen days after receiving the initial level grievance decision. As noted above, a final level grievance is limited to determining whether the initial level decision contravenes the principles of procedural fairness, is based on an error of law, or is clearly unreasonable. As well, the RCMP *Administration Manual* (paragraph II.3.4.9.3) states that the parties "may present new evidence or information at the final level only if the evidence or information was not, and could not reasonably have been, known at the time of the initial level decision."

(1) The Applicant's Submission

[32] In summary, the applicant alleged two fundamental errors on the part of the initial level adjudicator. First, she erred in failing to take into account "the totality of the circumstances" of how the applicant was treated by Health Services and the RCMP "and the damages he is suffering" because of this. The applicant contended that Health Services had wilfully sabotaged his career and that this was part of a pattern of racial and religious discrimination and harassment

to which he had been subjected for his entire career with the RCMP. As a result of Health Services seeking an assessment of his fitness, the applicant has been "negatively stigmatized to be mentally incapable to perform." Second, the applicant submitted that the suggested redress is unreasonable. The adjudicator's suggestions "are non-committal and have no compensatory conditional weight in relation to the opportunity costs associated to the lost opportunities" he has suffered. The RCMP is responsible for these harms to the applicant's career and it "should correct this through promotions." The applicant also identified several specific statements in the adjudicator's decision which he maintained were inaccurate and required clarification.

(2) The Respondent's Submission

[33] As a preliminary matter, the respondent's representative objected to the applicant's inclusion of allegations of racial and religious discrimination and harassment in his final level grievance submission. According to the respondent, the initial level adjudicator had properly declined to consider these matters because they were outside the scope of the grievance. Moreover, these allegations did not constitute new evidence within the meaning of the *Administrative Manual* (paragraph II.3.4.9.3) and so were not properly raised in the final level grievance.

[34] As to the merits of the final level grievance, the respondent did not dispute that the 2013 EMMA would have supported a graduated return to full-time operational duties or that, as the initial level adjudicator found, the applicant's medical profile had been mishandled. The respondent defended the adjudicator's decision as fair, legally correct, and not clearly

unreasonable. The respondent noted that the applicant had not advanced any arguments to establish that the initial level grievance process was unfair or that the decision was based on an error of law. On the subject of procedural fairness in particular, the respondent's representative wrote: "While not an exhaustive account, I find that both Parties were provided with: information on the grievance process; the right to be given a fair opportunity to state respective cases (submissions) and to correct or contradict relevant statements or evidence with which we disagree. I found the Adjudicator unbiased and impartial in her communication through the Decision."

[35] With respect to the redress determination, the respondent accepted as reasonable the initial level adjudicator's finding that the respondent's omissions had affected the applicant's "capacity to develop the competencies needed to be competitive in a promotion process." The respondent therefore submitted that the redress based on re-stimulating the applicant's career and providing him with meaningful training and learning opportunities to facilitate his career development was appropriate. The respondent did not accept the applicant's contention that his reputation and credibility were permanently damaged by anything that had happened in connection with the fitness assessments. In short, the respondent defended the redress determination as "sufficient to support [the applicant's] career aspirations moving forward."

(3) The Applicant's Rebuttal

[36] Once again, the applicant provided a lengthy rebuttal to the respondent's submissions. He reiterated the history of racial and religious discrimination and harassment he alleged he had suffered during his entire time with the RCMP. He also raised for the first time the allegation

that the initial level adjudication process was procedurally unfair because of bias on the part of the adjudicator. According to the applicant, the adjudicator "has a self-interest to support the RCMP because she is internal and paid by the RCMP. As an internal employee of the RCMP, trained by the RCMP she analyzed the events to mitigate RCMP responsibility." The applicant submitted that this biased mindset was demonstrated by the adjudicator's factual determinations, her refusal to consider the allegations of racial and religious discrimination and harassment, her failure to properly compensate the applicant for his losses, and the failure to provide effective redress. The applicant also identified for the first time errors of law he submitted had been made by the initial level adjudicator. Finally, the applicant reiterated his position that the only reasonable redress is promotion.

III. DECISION UNDER REVIEW

[37] The final level adjudicator dismissed the grievance and confirmed the decision of the initial level adjudicator.

[38] The final level adjudicator first addressed the issue of whether there was a breach of procedural fairness due to the alleged bias of the initial level adjudicator. Despite the fact that the applicant had raised this issue for the first time in his rebuttal submissions, the final level adjudicator decided it was appropriate to address it for two reasons. First, "an allegation of adjudicator bias is very serious, as it calls their credibility into question." And second, the respondent's representative had "proactively" raised the issue of bias in his final level written submissions by arguing that the initial level adjudicator "was unbiased and impartial in her communication through the Decision."

[39] The final level adjudicator begins her analysis of this issue by setting out the general requirements of procedural fairness as established in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. She notes in particular the fundamental importance of the right to be heard and the right to a decision from an unbiased decision maker as elements of procedural fairness. She also notes that the RCMP's *National Guidebook – Grievances Procedures* expands on the elements of procedural fairness in the grievance process, setting out expressly both the right to be heard and the right to a decision from an unbiased adjudicator (among other rights).

[40] The final level adjudicator then sets out the test for a reasonable apprehension of bias established in *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369, and *R v S(RD)*, [1997] 3 SCR 484. She notes that RCMP adjudicators are designated by the Commissioner to perform their role on a full-time basis. She also notes that they are recognized as administrative tribunals and as experts in their field. She observes that they do not represent the interests of one party over another and they do not have a vested interest in the outcome of a grievance. She underscores that RCMP adjudicators are required to render their decisions on the basis of the evidence, legislation, policy, and the parties' submissions.

[41] The final level adjudicator then states the following in rejecting the applicant's allegation of bias:

> All this is to say, the allegation of bias is a serious one. The Grievor made a delayed allegation against the initial level adjudicator, in his final level rebuttal, with no evidence in support of his assertion. The mere fact that an adjudicator is not able to provide the redress a grievor requests, or decides not to consider arguments presented on rebuttal to uphold the principles of procedural fairness, is not sufficient to demonstrate a reasonable

> apprehension of bias or a lack of impartiality. The Grievor has not presented any evidence that the initial level [adjudicator] was favouring or attempting to please the Respondent, that she approached the facts of the case in a non-objective manner, or that she prevented the Grievor from being heard. He has only provided his opinion over whether the new information should have been considered and the inadequacy of the grievance process in providing compensation for damages. In actuality, the initial level adjudicator comes across as keenly alive and sensitive to the issues and their impact on the Grievor. I see absolutely no indication of a "prejudicial attitude", a lack of impartiality, or a reasonable apprehension of bias on the initial level adjudicator's part. To suggest she is biased because she is paid by the RCMP is not a probative argument. The Grievor and the Respondent are also paid by the RCMP. An adjudicator does not lose or gain anything in deciding in favour or against a party in a grievance.

[42] The final level adjudicator also finds that the applicant had been accorded full participatory rights throughout the grievance process. She was therefore satisfied that the grievance process was in accordance with the requirements of procedural fairness.

[43] Next, the final level adjudicator explains why she has not been persuaded that the initial level adjudicator made any errors of law. The final level adjudicator finds that the initial level adjudicator understood her jurisdiction and the applicable legislation and policy correctly. The initial level adjudicator also "adhered to the required application of the legal standards to the facts surrounding the disputed decision." Accordingly, the final level adjudicator concludes that the decision does not reveal any errors of law.

[44] Lastly, the final level adjudicator finds that the initial level decision is not clearly unreasonable.

[45] The final level adjudicator begins by describing the standard she must apply when determining whether the decision of the initial level adjudicator is clearly unreasonable. She

notes that the question before her is not what decision she would have made in place of the initial level adjudicator but, rather, whether the applicant "has established that the initial level decision is deficient in policy, law or facts, or on justification, transparency and intelligibility, when applying the law or policy to the facts." In determining whether this is so, the final level adjudicator must give "respectful attention" to the reasons provided by the initial level adjudicator in seeking to understand how she arrived at her conclusions (citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 48, and *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 84). The final level adjudicator also notes that she is required to "provide a broad margin of deference when applying the 'clearly unreasonable' standard to the initial level adjudicator's finding[s] of fact and mixed fact and law." She observes that this is akin to applying the standard of patent unreasonableness (citing *Kalkat v Canada (Attorney General)*, 2017 FC 794 at para 62, and *Smith v Canada (Attorney General)*, 2021 FCA 73 at paras 55 and 56). In sum, the final level adjudicator instructs herself that interference with the decision of the initial level adjudicator is justified only if the applicant establishes an error of fact or mixed fact and law under this deferential standard and that the error "was determinative in reaching an outcome that would not have been possible without the mistake."

[46] Having so instructed herself, the final level adjudicator turns to the two key issues raised by the applicant: first, whether it was clearly unreasonable for the initial level adjudicator to refuse to consider the allegations of racism, discrimination and harassment; and second, whether the initial level adjudicator's redress determination is clearly unreasonable.

[47] With respect to the racism, discrimination and harassment issues, the final level adjudicator finds that the initial level adjudicator's decision to not consider them is not clearly unreasonable. The initial level adjudicator reasonably determined that these were new issues that

should not have been brought up for the first time in the applicant's rebuttal submissions. If the applicant wished to have these issues addressed as part of the grievance, he should have included them as part of his original grievance (along with the necessary supporting evidence) and not waited until his rebuttal submissions. The final level adjudicator also noted that the applicant had not provided any explanation for why he did not raise this issue at the first available opportunity. Finally, in any event, these issues "would not have changed the redress that is legally available to the adjudicator."

[48] Turning to the issue of redress, the final level adjudicator finds that the initial level adjudicator's determination is not clearly unreasonable. The initial level adjudicator did not have the authority to promote the applicant, as the applicant was requesting. Since the applicant had not actually applied for a promotion and been denied, there was no staffing action that could be returned to the point of error. Many of the applicant's objections to the redress determination were effectively complaints that it failed to compensate him for the losses he suffered due to the respondent's inaction but this is not the purpose of a grievance. The final level adjudicator accepts the initial level adjudicator's finding that the mismanagement of the applicant's medical profile caused him to lose important work experiences and learning opportunities which would qualify him for promotion; "performing duties on a full-time basis would naturally provide these experiences and opportunities." However, without the applicant having applied for promotion during the time period in question, "it is difficult at best to determine to what degree, if any, the delays had on him being promotable."

[49] The final level adjudicator concluded that the initial level adjudicator's redress determination is not clearly unreasonable since it will provide the applicant "with the best possible chance of regaining missed experiences and training, so he can demonstrate his potential

to promote to higher ranks." As the final level adjudicator also observes, "To promote a member to a rank that they have not demonstrated an ability to perform could have detrimental consequences to the member, the Force, and clients." The final level adjudicator therefore finds that the applicant has failed to establish that the initial level adjudicator "committed a manifest and determinative error in reaching her decision, rendering it clearly unreasonable."

[50] For these reasons, the final level adjudicator concludes that the applicant had not established that the initial level adjudicator's decision was contrary to the principles of procedural fairness, was based on an error of law, or is clearly unreasonable. She therefore confirms the initial level decision and dismisses the grievance.

IV. STANDARD OF REVIEW

[51] The applicable standards of review are not in dispute.

[52] Reasonableness is the presumptive standard of review on the merits of the final level adjudicator's decision (*Vavilov* at para 10). A reviewing court "should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law" (*ibid.*). There is no basis for derogating from this presumption here.

[53] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the

reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

[54] For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[55] The onus is on the applicant to demonstrate that the final level adjudicator's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[56] The applicant also contends that the final level adjudicator's decision should be set aside because it is tainted by a reasonable apprehension of bias on the part of the decision maker. Since this is a matter of procedural fairness, the question I must ask in this connection is whether the procedure before the final level adjudicator was fair having regard to all of the circumstances: see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Gulia v Canada (Attorney General)*, 2021 FCA 106 at para 9; and *Davidson v Canada (Attorney General)*, 2021 FCA 226 at para 9. More particularly, I must

conduct my own analysis and determine whether the applicant has established a reasonable apprehension of bias on the part of the final level adjudicator. (The test for establishing a reasonable apprehension of bias is set out below.) Strictly speaking, this does not involve the application of a standard of review to a determination made by the decision maker.

[57] On the other hand, in his challenge to the first level adjudicator' decision, the applicant raised several concerns about bias on the part of the initial decision maker which are addressed by the final level adjudicator in her decision. The parties agree that these determinations are to be reviewed on a reasonableness standard. The parties also agree that the final level adjudicator's overall conclusion that the initial level adjudicator's decision was not reached in a manner that contravened the principles of procedural fairness is to be reviewed on a reasonableness standard as well. I agree with the parties in both of these respects.

V. ANALYSIS

A. *Has the applicant established a reasonable apprehension of bias on the part of the final level adjudicator?*

[58] The principles governing an allegation of reasonable apprehension of bias are well established. The test is whether a reasonable and informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide the matter fairly. It is indisputable that an impartial decision maker is an essential element of a fair process. The objective of the test is to ensure not only that adjudicative processes are fair but also that they appear to be so. The burden of proof rests on the party

alleging bias (whether actual or perceived). In the absence of evidence to the contrary, members of administrative tribunals, like judges, are presumed to have acted fairly and impartially. The threshold for a finding of bias (whether actual or perceived) is therefore high. It cannot be raised lightly. The party alleging it must establish a real likelihood or probability of bias; mere suspicion, conjecture, insinuation or a party's impressions are insufficient. Disagreement with a decision maker's decision alone is incapable of supporting an allegation of bias. See *Yukon Francophone School Board, Education Area #23 v Yukon Territory (Attorney General)*, 2015 SCC 25 at paras 20-26, and the cases cited therein; see also *Zündel v Citron*, [2000] 4 FC 225 (CA) at paras 36-37; *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8; and *Blank v Canada (Justice)*, 2017 FCA 234 at para 5.

[59] The applicant relies on the following in attempting to establish a reasonable apprehension of bias on the part of the final level adjudicator: (1) the final level adjudicator's prior involvement in the case management of the applicant's grievance; (2) the institutional design argument the applicant also made in relation to the initial level adjudicator – namely, having been appointed to her position by the Commissioner, the adjudicator will favour the interests of RCMP management over those of an employee; (3) the final level adjudicator made discriminatory comments and engaged in discriminatory reasoning in her decision; and (4) the final level adjudicator lacked independence from the initial level adjudicator (according to the applicant, the two must have "collaborated" in the decision of the final level adjudicator).

[60] These allegations are wholly without merit.

[61] In April 2017, acting then as an initial level adjudicator, the final level adjudicator issued directions concerning the filing of submissions on the timeliness of the applicant's grievance. She did not address the merits of the grievance in any way. A different initial level adjudicator later determined that the grievance had been presented out of time (a decision which, as noted above, was subsequently overturned). The final level adjudicator's prior involvement in this purely procedural matter falls well short of providing a reasonable basis for a concern that she would not decide the merits of the grievance fairly.

[62] Likewise, the institutional design argument does not provide any reasonable basis for the allegation of bias. There no reason whatsoever to think that, simply because she is employed by the RCMP, the final level adjudicator would therefore favour management's interests over an employee's. Indeed, in addressing the applicant's submissions alleging a reasonable apprehension of bias on the part of the initial level adjudicator, the final level adjudicator clearly articulated her own understanding of the critical importance of an adjudicator's independence and impartiality. The applicant has not pointed to anything capable of supporting his allegation that, despite this, the final level adjudicator failed to determine his grievance independently and impartially.

[63] The applicant's allegation that the final level adjudicator made discriminatory comments and engaged in discriminatory reasoning in her decision is wholly without merit. Apart from his disagreement with the outcome, the applicant has not pointed to any parts of the decision to substantiate this serious allegation.

[64] Finally, the suggestion that the final level adjudicator must have collaborated with the initial level adjudicator (because there is no other explanation for how they came to the same conclusions) is entirely baseless. The final level adjudicator's decision demonstrates that she gave careful consideration to the applicant's submissions. That decision provides a reasoned explanation for why the final level adjudicator was not persuaded that there were grounds to intervene. There is nothing in the decision or the surrounding record to suggest, let alone establish, that the final level adjudicator did not decide the matter independently and impartially.

[65] For these reasons, the applicant has not established that the final level adjudicator's decision is tainted by a reasonable apprehension of bias. This ground of judicial review must, therefore, be rejected.

B. *Has the applicant established that the final level adjudicator's decision is unreasonable?*

[66] The applicant challenges the reasonableness of the final level adjudicator's decision in three respects: (1) the decision to uphold the first level adjudicator's decision not to consider the allegations of racism, discrimination and harassment; (2) the determination that the initial level adjudicator's decision is not tainted by a reasonable apprehension of bias; and (3) the decision to uphold the initial level adjudicator's redress determination.

[67] The applicant has not established a basis for intervention in any of these respects.

[68] Looking first at the allegations of racism, discrimination and harassment, the final level adjudicator provided detailed reasons explaining why she found that it was not clearly

unreasonable for the initial level adjudicator to decline to consider these allegations. These reasons are grounded in the elementary principle that, by the time one has reached the rebuttal stage of a grievance, it is generally not appropriate to raise new issues. This principle serves to promote the orderly presentation of a grievance. It also helps ensure fairness to other parties to the grievance. The RCMP grievance process allows for exceptions to this general rule in appropriate circumstances but the applicant did not provide any basis for an exception to be made in his case. Indeed, as the final level adjudicator found, he did not provide any explanation for why he did not raise these concerns earlier in the grievance process. The final level adjudicator also agreed with the initial level adjudicator that the applicant's allegations of racism, discrimination and harassment would be beyond the purview of a grievance adjudication in any event. The applicant has not established any basis for interfering with these determinations.

[69] In this connection, the applicant also submits that the final level adjudicator erred by assessing this issue as part of whether the first level adjudicator's decision is clearly unreasonable as opposed to whether the process followed by the first level adjudicator met the requirements of procedural fairness. More specifically, by declining to consider the issues of racism, discrimination and harassment, the first level adjudicator had limited the applicant's right to present his case fully and fairly, contrary to the requirements of procedural fairness. This is potentially significant because a less deferential standard of review would arguably apply when determining whether the initial level adjudication was contrary to the principles of procedural fairness as opposed to determining whether the decision is clearly unreasonable.

[70] I am not persuaded that the applicant has established a reviewable error on the part of the final level adjudicator. Even assuming for the sake of argument that a final level adjudicator would apply a less deferential standard of review (one more akin to correctness) when determining whether an initial level grievance process met the requirements of procedural fairness, in the present case, the final level adjudicator approached this issue as she did because of how the applicant had framed his submissions in support of the final level grievance. The applicant never suggested that the initial level adjudicator's decision to decline to consider the issues of racism, discrimination and harassment breached the requirements of procedural fairness. Rather, his submissions were directed entirely to what he contended was the clear unreasonableness of that determination. As *Vavilov* holds, in assessing the reasonableness of a decision, a reviewing court must consider how the parties framed their concerns before the administrative decision maker (see paras 127-28). In the present case, the final level adjudicator engaged meaningfully with the issues the applicant presented. The reasonableness of the decision is not impugned because the decision maker did not address an argument that was not put to her.

[71] Turning to the issue of reasonable apprehension of bias on the part of the initial level adjudicator, the applicant has not established that the final level adjudicator's determination is unreasonable. The final level adjudicator set out the applicable legal test correctly. She gave comprehensive reasons that were directly responsive to the issue of bias as alleged by the applicant. As set out above (see paragraph 41), the final level adjudicator provided a clear and cogent line of analysis that explains why she rejected the applicant's allegations. The applicant has not identified any flaws in this analysis that would warrant the Court's intervention.

[72] For the sake of completeness, I note that the applicant did not challenge in any other way the reasonableness of the final level adjudicator's determination that the initial level grievance process met the requirements of procedural fairness.

[73] Turning, finally, to the redress determination, I begin by noting that the applicant has not provided any basis to question the key premise of the adjudicators' decisions – namely, that a grievance adjudicator does not have the authority to order a promotion. This is a crucial legal constraint against which the reasonableness of the final level adjudicator's decision must be assessed (c.f. *Vavilov* at paras 85 and 108-110).

[74] I accept that, from the applicant's perspective, the suggested redress is far from perfect. Nevertheless, the jurisdiction of the final level adjudicator was limited to determining whether the initial level adjudicator's determination is clearly unreasonable. She explained why she found that, given the limits on the remedial authority of the first level adjudicator, that determination is not clearly unreasonable. My role is limited to determining whether that conclusion is unreasonable. The final level adjudicator explained that the form of redress the applicant sought was simply not available. She reasonably determined that the redress suggested by the final level adjudicator would provide the applicant with the best possible chance of regaining missed experiences and training in order to be able to compete for promotions. Contrary to the applicant's submission, even if the decision maker could have said more about this, she does explain why she reached this conclusion. That explanation is transparent, intelligible and justified.

[75] The applicant submits that the final level adjudicator's decision is unreasonable because she failed to address alternative forms of redress such as recommending that he be considered for promotion or that he be placed in an acting role. This submission faces several difficulties. First, these alternative forms of redress were not put to the final level adjudicator so she cannot be faulted for not addressing them. Second, since the applicant never suggested these alternative forms of redress in his final level grievance, I do not have the benefit of the adjudicator's views on whether they would fall within the scope of her authority or not. Third, in any event, these alternatives suffer from the same inherent flaw as the applicant's primary position. The fundamental premise of the applicant's request for redress, which both adjudicators accepted, was that the mismanagement of his medical profile had caused him to lose the opportunity to develop the qualifications he needed to be competitive for promotion. It is difficult to imagine how it could ever be appropriate for an adjudicator to direct that the applicant be placed in a role for which he is not qualified (even if such a direction were within the scope of an adjudicator's authority). On the contrary, as the final level adjudicator noted, to place the applicant in a position for which he is not qualified could have detrimental consequences for the applicant, for the RCMP, and for the public they both serve.

[76] In sum, the applicant has not established that the final level adjudicator's decision is unreasonable. As a result, there is no basis upon which I could interfere with that decision.

VI. CONCLUSION

[77] For these reasons, the application for judicial review will be dismissed.

[78] The respondent sought costs in the event that the application for judicial review were dismissed but did not press this request vigorously at the hearing. In my view, this is not an appropriate case for costs.

[79] Finally, the original style of cause names the Royal Canadian Mounted Police as the respondent. The correct respondent is the Attorney General of Canada: see *Federal Courts Rules*, SOR/98-106, rule 303(2). As part of this Court's judgment, the style of cause will be amended accordingly.

JUDGMENT IN T-571-22

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to name the Attorney General of Canada as the correct respondent.
2. The application for judicial review is dismissed.
3. No costs are awarded.

"John Norris"
Judge

ANNEX

***Royal Canadian Mounted Police Act*, RSC, 1985, c R-10**

Commissioner	**Commissaire**
Appointment	**Nomination**
5 (1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, to hold office during pleasure, who, under the direction of the Minister, has the control and management of the Force and all matters connected with the Force.	**5 (1)** Le gouverneur en conseil peut nommer, à titre amovible, un officier appelé commissaire de la Gendarmerie royale du Canada, qui, sous la direction du ministre, a pleine autorité sur la Gendarmerie et tout ce qui s'y rapporte.
Delegation	**Délégation**
(2) The Commissioner may delegate to any member, subject to any terms and conditions that the Commissioner directs, any of the Commissioner's powers, duties or functions under this Act, except the power to delegate under this subsection, the power to make rules under this Act and the powers, duties or functions under subsections 45.4(5) and 45.41(10).	**(2)** Le commissaire peut déléguer à tout membre, aux conditions qu'il fixe, les pouvoirs ou fonctions que lui attribue la présente loi, à l'exception du pouvoir de délégation que lui accorde le présent paragraphe, du pouvoir que lui accorde la présente loi d'établir des règles et des pouvoirs et fonctions visés aux paragraphes 45.4(5) et 45.41(10).
[…]	[…]
Appointment and designation	**Nomination et désignation**
7 (1) The Commissioner may appoint members of the Force other than officers and, by way of promotion, appoint a member other than an officer to a higher rank, other than to the rank of Deputy Commissioner, or to a higher level, for which there is a vacancy.	**7 (1)** Le commissaire peut nommer les membres qui ne sont pas officiers et, par voie de promotion, nommer un membre qui n'est pas officier à un grade ou échelon supérieur, autre qu'au grade de sous-commissaire, pour lequel il existe une vacance.
[…]	[…]
Presentation of Grievances	**Présentation des griefs**
Member's right	**Règle**
31 (1) Subject to subsections (1.01) to (3), if a member is aggrieved by a decision, act or	**31 (1)** Sous réserve des paragraphes (1.01) à (3), le membre à qui une décision, un acte ou

omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

une omission liés à la gestion des affaires de la Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue par la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour réparer ce préjudice.

Limitation

(1.01) A grievance that relates to the interpretation or application, in respect of a member, of a provision of a collective agreement or arbitral award must be presented under the *Federal Public Sector Labour Relations Act.*

Réserve

(1.01) Tout grief qui porte sur l'interprétation ou l'application à l'égard d'un membre de toute disposition d'une convention collective ou d'une décision arbitrale doit être présenté sous le régime de la *Loi sur les relations de travail dans le secteur public fédéral.*

Limitation

(1.1) A member is not entitled to present a grievance in respect of which an administrative procedure for redress is provided under any other Act of Parliament, other than one provided for in the *Canadian Human Rights Act*.

Réserve

(1.1) Le membre ne peut présenter de grief si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception d'un recours administratif prévu par la *Loi canadienne sur les droits de la personne*.

Limitation

(1.2) Despite subsection (1.1), a member is not entitled to present a grievance in respect of the right to equal pay for work of equal value.

Réserve

(1.2) Malgré le paragraphe (1.1), le membre ne peut présenter de grief relativement au droit à la parité salariale pour l'exécution de fonctions équivalentes.

Limitation

(1.3) A member is not entitled to present a grievance relating to any action taken under any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

Réserve

(1.3) Le membre ne peut présenter de grief portant sur une mesure prise en vertu d'une instruction, d'une directive ou d'un règlement établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

Order to be conclusive proof

(1.4) For the purposes of subsection (1.3), an order made by the Governor in Council is conclusive proof of the matters stated in the order in relation to the giving or making of an instruction, direction or regulation by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

Force probante absolue du décret

(1.4) Pour l'application du paragraphe (1.3), tout décret du gouverneur en conseil constitue une preuve concluante de ce qui y est énoncé au sujet des instructions, directives ou règlements établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

Limitation period

(2) A grievance under this Part must be presented

(a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and

(b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.

Prescription

(2) Un grief visé à la présente partie doit être présenté :

a) au premier niveau de la procédure applicable aux griefs, dans les trente jours suivant celui où le membre qui a subi un préjudice a connu ou aurait normalement dû connaître la décision, l'acte ou l'omission donnant lieu au grief;

b) à tous les autres niveaux de la procédure applicable aux griefs, dans les quatorze jours suivant la signification au membre de la décision relative au grief rendue par le niveau inférieur immédiat.

Restriction

(3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part.

Restriction

(3) Ne peut faire l'objet d'un grief en vertu de la présente partie une nomination faite par le commissaire à un poste visé au paragraphe (7).

Access to information

(4) Subject to subsection (4.1) and any limitations specified under paragraph 36(b), a member presenting a grievance shall be granted access to any written or documentary information under the Force's control and relevant to the grievance that the

Documentation

(4) Sous réserve du paragraphe (4.1) et des restrictions imposées en vertu de l'alinéa 36b), le membre qui présente un grief peut consulter la documentation pertinente placée sous la responsabilité de la Gendarmerie et dont il a besoin pour bien présenter son grief.

member reasonably requires to properly present it.

Access to standardized test

(4.1) A member is not entitled to have access to a standardized test used by the Force, or to information concerning such a test, if in the opinion of the Commissioner, its disclosure would affect its validity or continued use or would affect the results of such a test by giving an unfair advantage to any person.

Communication de test standardisé

(4.1) Le membre ne peut consulter un test standardisé utilisé par la Gendarmerie ou des renseignements relatifs à celui-ci si, selon le commissaire, la communication aurait pour effet de nuire à la validité ou à l'utilisation continue de ce test ou porterait atteinte aux résultats d'un tel test en conférant un avantage indu à une quelconque personne.

Definition of standardized test

(4.2) In this section, standardized test has the meaning assigned by rules established by the Commissioner.

Définition de test standardisé

(4.2) Au présent article, test standardisé s'entend au sens des règles établies par le commissaire.

No penalty for presenting grievance

(5) No member shall be disciplined or otherwise penalized in relation to employment or any term of employment in the Force for exercising the right under this Part to present a grievance.

Aucune sanction liée à la présentation d'un grief

(5) Le fait qu'un membre présente un grief en vertu de la présente partie ne doit entraîner aucune peine disciplinaire ni aucune autre sanction relativement à son emploi ou à la durée de son emploi dans la Gendarmerie.

Decision

(6) As soon as feasible after the presentation and consideration of a grievance at any level in the grievance process, the person constituting the level shall render a decision in writing as to the disposition of the grievance, including reasons for the decision, and serve the member presenting the grievance and, if the grievance has been referred to the Committee under section 33, the Committee Chairperson with a copy of the decision.

Décision

(6) La personne qui constitue un niveau de la procédure applicable aux griefs rend une décision écrite et motivée dans les meilleurs délais après la présentation et l'étude du grief, et en signifie copie au membre intéressé, ainsi qu'au président du Comité en cas de renvoi devant le Comité en vertu de l'article 33.

Excluded appointments

Exclusions

(7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

(7) Le gouverneur en conseil peut, par règlement, déterminer, pour l'application du paragraphe (3), les postes dont le titulaire relève du commissaire, directement ou par l'intermédiaire d'une autre personne.

***Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289**

PART 1 Grievances

Decision at initial level

16 (1) An adjudicator may dispose of a grievance at the initial level by rendering a decision

(a) dismissing the grievance and confirming the decision, act or omission that is the subject of the grievance; or

(b) allowing the grievance and

(i) remitting the matter, with directions for reconsidering the decision, act or omission, to the respondent or to the person who is responsible for the reconsideration, or

(ii) directing any appropriate redress.

Considerations

(2) An adjudicator, when rendering the decision, must consider whether the decision, act or omission that is the subject of the grievance is consistent with the relevant law, or the relevant Treasury Board or Force policy and, if it is not, whether it has caused a prejudice to the grievor.

[…]

Decision at final level

18 (1) An adjudicator may dispose of a grievance at the final level by rendering a decision

(a) dismissing the grievance and confirming the decision rendered at the initial level; or

(b) allowing the grievance and

PARTIE 1 Griefs

Décision au premier niveau

16 (1) L'arbitre qui dispose d'un grief de premier niveau peut rendre une décision :

a) le rejetant et confirmant la décision, l'acte ou l'omission à l'origine du grief;

b) l'accueillant et :

(i) renvoyant l'affaire avec des directives relatives au réexamen de la décision, de l'acte ou de l'omission à l'intimé ou à la personne chargée de faire un tel réexamen,

(ii) ordonnant la réparation qui s'impose.

Éléments à considérer

(2) Lorsqu'il rend la décision, l'arbitre évalue si la décision, l'acte ou l'omission qui fait l'objet du grief est conforme à la législation pertinente ou à la politique pertinente du Conseil du Trésor ou de la Gendarmerie et si, en cas de non-conformité, un préjudice a été causé au plaignant.

[…]

Décision au dernier niveau

18 (1) L'arbitre qui dispose d'un grief de dernier niveau peut rendre une décision :

a) le rejetant et confirmant la décision de premier niveau;

b) l'accueillant et :

(i) remitting the matter, with directions for reconsidering the decision, act or omission, to the respondent or to the person who is responsible for the reconsideration,

(ii) remitting the matter, with directions for rendering a new decision to the adjudicator at the initial level or to another adjudicator, or

(iii) directing any appropriate redress.

Considerations

(2) An adjudicator, when rendering the decision, must consider whether the decision at the initial level contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.

[…]

(i) renvoyant l'affaire avec des directives relatives au réexamen de la décision, de l'acte ou de l'omission à l'intimé ou à la personne chargée de faire un tel réexamen,

(ii) renvoyant l'affaire à l'arbitre qui a rendu la décision au premier niveau ou à un autre arbitre, avec des directives en vue d'une nouvelle décision,

(iii) ordonnant la réparation qui s'impose

Éléments à considérer

(2) Lorsqu'il rend la décision, l'arbitre évalue si la décision de premier niveau contrevient aux principes d'équité procédurale, est entachée d'une erreur de droit ou est manifestement déraisonnable.

[…]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-571-22
STYLE OF CAUSE:	HOWARD PERSAUD v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 2, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JUNE 8, 2023

APPEARANCES:

Howard Persaud	ON HIS OWN BEHALF
Daniel Côté-Finch	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT