Federal Court Cour fédérale

Date: 20220504

Docket: T-1112-21

Citation: 2022 FC 652

Ottawa, Ontario, May 4, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

COREY BUCKINGHAM
JANE SIEMENS

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Sgt. Corey Buckingham and Sgt. Jane Siemens [collectively the Applicants] are members of the Royal Canadian Mounted Police [RCMP]. They seek judicial review of the rejection of their grievances respecting their entitlement to compensation for "operational availability" [OA]

while serving as Non-Commissioned Officers [NCOs] at the Vermilion Detachment of the RCMP in Alberta.

[2] The first level adjudicator [Adjudicator] initially upheld Sgt. Buckingham's grievance on March 27, 2020. However, the RCMP requested reconsideration of the Adjudicator's decision pursuant to s 17(1)(b) of the *Commissioner's Standing Orders (Grievances and Appeals),* SOR/2014-289 [CSO (Grievances and Appeals)].

[3] On September 16, 2020, the Adjudicator granted the RCMP's request for reconsideration and found that Sgt. Buckingham had failed to establish, on a balance of probabilities, that the decision to deny his request for an OA designation was "inconsistent with relevant law, Treasury Board or Force policies, and that he suffered a prejudice as a result".

[4] On October 20, 2020, the Adjudicator rejected Sgt. Siemens' first level grievance for similar reasons.

[5] Sgt. Buckingham and Sgt. Siemens referred their grievances to the second and final level. The Second Level Adjudicator rejected both grievances on the grounds that the Applicants had not established, on a balance of probabilities, that the initial level decisions were based on an error of law, were contrary to the principles of procedural fairness, or were clearly unreasonable.

[6] The grounds advanced by the RCMP in support of its request for reconsideration of the Adjudicator's decision upholding Sgt. Buckingham's grievance exceeded the limits of the

Adjudicator's power to reconsider her previous decision. The Adjudicator wrongly applied the appellate standard of review to her own decision, rather than the test for reconsideration recognized by the Federal Court of Appeal in *Chaudhry v Canada (Attorney General)*, 2009 FCA 376 [*Chaudhry*].

[7] The Adjudicator's initial analysis of Sgt. Buckingham's grievance properly addressed the manner in which he claimed to be aggrieved and the redress he requested. Her revised analysis in the reconsideration decision, and her initial decision respecting Sgt. Siemens' grievance, adopted an overly technical interpretation of the scope of the Applicants' grievances, and did not reflect the evidence or arguments presented.

[8] The application for judicial review is therefore allowed.

II. Background

[9] Sgt. Siemens (formerly Sgt. Boehr) and Sgt. Corey Buckingham were stationed as NCOs in the Vermilion Detachment of K Division. Sgt. Siemens served as the NCO in charge of the detachment, where her title was Unit/Detachment Commander. Sgt. Buckingham served as the Operations NCO. Together they supervised seven RCMP constables.

[10] Sgt. Siemens arrived at the Vermilion Detachment in November 2014. She was told by the departing Detachment Commander that she was expected to be available for consultation by other detachment officers at all times. She initially shared these duties with another member,

until he was replaced by Sgt. Buckingham in September 2015. Sgt. Siemens informed Sgt. Buckingham (then Cpl. Buckingham) that one of them was required to be available at all times.

[11] Between 2015 and 2019, the Applicants remained available after their scheduled work hours to respond to requests for assistance from the constables under their supervision. They agreed to alternate the role of "on-call NCO" every two weeks.

[12] Shortly after Sgt. Buckingham's arrival at the Vermilion Detachment, he and Sgt. Siemens had a discussion with their District Advisory NCO [DANCO] to clarify the RCMP's expectations. According to the initial first level decision respecting Sgt. Buckingham's grievance, the DANCO did not explicitly say that Sgt. Siemens and Sgt. Buckingham were designated to be on-call; however, he told them that "there were no alternatives in place and numerous policies required either attendance or consultation with a supervisor or the Detachment Commander/delegate".

[13] The DANCO conceded that some NCOs in other detachments were compensated with "pager days" for on-call supervision, but this was "off the books" and not in accordance with policy. The DANCO also acknowledged that supervisors had not been compensated for on-call duties as required by policy for many years, and the issue remained unresolved.

[14] In November 2015, Sgt. Siemens submitted a memorandum [business case] to the Acting Commanding Officer of K Division [Commanding Officer]. She asked that both she and Sgt.

Buckingham be approved to receive the OA allowance in accordance with the RCMP *Operational Response Allowance Policy* [ORA Policy].

[15] The ORA Policy empowers a Commanding Officer or delegate to designate RCMP members to receive an OA allowance when they remain available while they are off-duty "for any operational or operational support function where an immediate operational response is not required" (*Operations Manual*, chapter 16.12.1.2).

[16] On February 8, 2018, more than two years after Sgt. Siemens submitted the business case, the Applicants were informed that the Commanding Officer had denied their request.

III. Initial Level Grievances

[17] The Applicants grieved the refusal of their request for the OA allowance. Both grievances were heard at the first level by the same Adjudicator, and the Applicants relied on each other's circumstances throughout their submissions.

A. *Initial Decision (Sgt. Buckingham)*

[18] The Adjudicator allowed Sgt. Buckingham's grievance in part, holding that the RCMP was estopped from denying his claim for the OA allowance for the 27-month period from the date Sgt. Siemens submitted the business case until the date it was rejected. The Adjudicator described the test for estoppel as follows:

> [62] The test for estoppel essentially consists of three elements: Did the words or conduct of the Detachment Commander or the DANCO direct the Grievor's behaviour in working OA? Did the Grievor rely on this representation and work on-call? If so, did the Grievor suffer a detriment as a result?

[19] The Adjudicator continued:

> [63] In one perspective, the DANCO represented management and assured both the Grievor and his Detachment Commander that they were required to perform on-call work according to RCMP policy and he confirmed others in the division did likewise and had for many years. […]
>
> [65] The Grievor himself confirms that he was not specifically told to be on-call, yet he argues that his DANCO confirmed he had a duty requirement (as deemed so by policy) to provide on-call supervision. Therefore, the Grievor may have acted in good faith and accepted the direction given to him by a knowledgeable person […].

[20] The Adjudicator held that Sgt. Buckingham remained available for on-call work in the evening and on weekends, fettering his personal time, as required by RCMP policy. She found that the RCMP's "silence" during the 27 months that the Commanding Officer was apprised of the business case, coupled with the advice given to Sgt. Buckingham by Sgt. Siemens and the DANCO, amounted to estoppel by representation (at paras 68-82).

[21] The Adjudicator therefore concluded that Sgt. Buckingham had established, on a balance of probabilities, that he was aggrieved. She directed that, within 30 days of receiving the decision, Sgt. Buckingham present his OA claims to the RCMP for approval, and that the RCMP

take the necessary actions within 30 days thereafter to ensure he was compensated in accordance with the *Operations Manual*, chapter 16.12.

B. *Reconsideration Decision (Sgt. Buckingham)*

[22] The RCMP requested that the Adjudicator stay the decision respecting Sgt. Buckingham's grievance, and reconsider it pursuant to s 17(1)(b) of the CSO (Grievances and Appeals). The Adjudicator agreed to these requests, and both parties were given an opportunity to make submissions.

[23] Sgt. Buckingham took the position that the Adjudicator's initial decision did not contain any errors warranting reconsideration. He also challenged the Adjudicator's jurisdiction to reconsider the initial decision at the behest of the RCMP.

[24] Sgt. Buckingham noted that s 17(1) of the CSO (Grievances and Appeals) does not expressly state that a respondent to a grievance may request reconsideration. Because Parliament has granted the Commissioner the express power to reconsider grievance decisions at the final level, Sgt. Buckingham argued there could be no implied reconsideration power for a first level adjudicator under the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10. To the extent that s 17(1)(b) of the CSO (Grievances and Appeals) could be read as conferring one, this would be *ultra vires* the Commissioner's power to make standing orders.

[25] Sgt. Buckingham also argued that adjudicators, who are appointed by the Commissioner, are not independent from management, but rather form a part of management. It was therefore contrary to the grievance scheme for the Respondent, a Commissioner's delegate, to challenge the decision of the Adjudicator, another Commissioner's delegate, through a request for reconsideration.

[26] The Adjudicator dealt with these arguments as follows:

> [37] Contrary to the Grievor's assertion, the ability of the initial level to amend or rescind their decision is found in the *CSO (Grievances and Appeals)*. Subject to the provisions of the *RCMP Act* and the *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281, the Commissioner has the power to make rules by virtue of subsection 21(2) of the *RCMP Act*. By virtue of section 36 of the *RCMP Act*, the Commissioner may create rules with respect to the grievance process specifically. Therefore, I find that the Commissioner has been granted the ability to make rules and that the *CSO (Grievances and Appeals)* is an appropriate venue for these rules. Furthermore, I find that Parliament has intentionally created this grievance structure to include the possibility of challenging the results of grievance decisions.

[27] Sgt. Buckingham also maintained that the common law power of reconsideration did not permit reconsideration on the basis of "an error of fact and law". Furthermore, because there was no time limit for reconsideration, there was a danger that either party might request reconsideration long after the 14 day period for a grievance to be raised to the second or final level had expired. Sgt. Buckingham relied on the legal doctrine of *functus officio*, and asserted that this could be ousted only by clear statutory language.

[28] The Adjudicator disagreed, holding that s 17(1)(b) of the CSO (Grievances and Appeals) provided further guidance on its application:

> [41] […] For instance, a request for an amendment or rescission cannot be presented if the grievance has been submitted at the final level. Furthermore, it is silent on who may activate it; therefore, there is no limitation on either party or the initial level adjudicator from triggering its application.
>
> [42] The purpose of subsection 17(1) of the CSO (Grievances and Appeals) is to ensure that the initial level adjudicator remains seized of a grievance and is not *functus officio* (whose mandate has expired) upon the issuance of the initial level decision. Therefore, the initial level retains jurisdiction until the grievance is elevated to the final level.

[29] The Adjudicator held that the RCMP's reconsideration request should be decided in accordance with the appellate standard of review. She concluded that findings of fact should not be reversed unless it could be established that the decision maker made a "palpable and overriding error"; and errors of law were reviewable on a correctness standard and were owed no deference.

[30] The Adjudicator reconsidered and reversed her initial decision because she found her previous decision to contain an error of fact. Contrary to her earlier determination, she held that Sgt. Buckingham's grievance did not concern the denial of an OA payment claim, but only the denial of the business case (at paras 63-64).

[31] The Adjudicator found no error in her decision to apply the legal doctrine of estoppel, noting that this had been considered in various grievance decisions in the past, including by the

RCMP External Review Committee and the Commissioner. However, upon reconsideration she reached a different conclusion about whether the test was met:

> [83] Upon reviewing the second prong of the estoppel test, I cannot find that the Grievor acted on the reliance of the Respondent's actions or silence in this matter. The Grievor was making himself available during his time-off, despite knowing that he was not designated OA. The Grievor could not self-designate as being OA simply by making himself available to work. The Grievor could not expect that he would be designated OA simply because a business case was submitted to the CO/delegate. In other words, estoppel cannot apply if the Grievor knew the facts and was aware that the action on which he sought to rely for estoppel was not true.

[32] The Adjudicator therefore rescinded the redress ordered in her previous decision, rejected Sgt. Buckingham's grievance, and informed him of his right to refer the grievance to the final level within 14 days if he was of the view that the amended analysis and outcome (a) contravened the principles of procedural fairness; (b) was based on an error of law; or (c) was clearly unreasonable.

C. *Initial Decision (Sgt. Siemens)*

[33] The Adjudicator applied her amended analysis to Sgt. Siemens' grievance, and rejected it for the same reasons. She commended Sgt. Siemens for acting responsibly, and for putting policing services to Canadians before anything else. She acknowledged that Sgt. Siemens "felt compelled to follow RCMP policy", but noted that the need to be formally designated for OA was also RCMP policy and must also be followed (at para 60).

[34] The Adjudicator found that her authority was restricted to determining whether the Commanding Officer's decision not to designate Sgt. Siemens for OA was contrary to policy. Even if she had the authority to retroactively recognize an entitlement for OA compensation and order the redress sought, the Adjudicator concluded that Sgt. Siemens would still have to prove she was formally designated before she could receive the OA allowance (at para 62).

[35] Both Sgt. Siemens and Sgt. Buckingham referred their grievances to the second and final level.

IV. Second Level Grievances

[36] The Second Level Adjudicator rejected both of the Applicants' grievances in June 2021. He found no breach of procedural fairness, nor any error of law in the identification and application of the policy governing the Commanding Officer's discretion to designate members as eligible for the OA allowance.

V. Issue

[37] The sole issue raised by this application for judicial review is whether the rejection of the Applicants' grievances was reasonable.

VI. Analysis

[38] The rejection of the Applicants' grievances is subject to review by this Court against the standard of reasonableness *(Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court must consider the outcome of the administrative decision in light of its underlying rationale, and ensure that the decision as a whole is transparent, intelligible and justified (*Vavilov* at para 15).

[39] Subsection 17(1) of the CSO (Grievances and Appeals) provides as follows:

17(1) An adjudicator who has rendered a decision that disposes of a grievance at the initial level may	**17 (1)** L'arbitre qui a rendu une décision disposant d'un grief de premier niveau peut:
(a) amend the decision to correct clerical or typographical errors or any errors of a similar nature or to clarify unclear wording; or	**a)** la modifier pour corriger toute erreur matérielle, typographique ou autre de même nature, ou pour préciser toute formulation équivoque;
(b) if the grievance has not been presented at the final level, rescind or amend their decision on the presentation of new facts or on determining that an error of fact or law was made in reaching the decision.	**b)** si le grief n'a pas été présenté au dernier niveau, l'annuler ou la modifier si de nouveaux faits lui sont présentés ou si la décision comporte une erreur de fait ou de droit.

[40] A request that a decision maker reconsider a decision previously rendered is neither an appeal nor a request for redetermination. Rather, it is a limited exception to the finality of decisions that permits the decision maker to revisit the decision in the light of fresh evidence or a new argument (*Chaudhry* at para 8).

[41] In the broader context of federal labour relations, the Federal Public Sector Labour Relations and Employment Board has articulated six principles to assist in delineating the limits of a decision maker's power to reconsider a decision previously issued. Reconsideration must: (a) not be a re-litigation of the merits of the case; (b) be based on a material change in circumstances; (c) consider only new evidence or arguments that could not reasonably have been presented at the original hearing; (d) ensure that the new evidence or argument have a material and determining effect on the outcome of the complaint; (e) ensure that there is a compelling reason for reconsideration; and (f) be used judiciously, infrequently and carefully (*Chaudhry v Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 39 at para 29).

[42] The RCMP requested reconsideration of the Adjudicator's initial decision upholding Sgt. Buckingham's grievance on the grounds that she misconstrued the nature of the grievance; misinterpreted the applicable RCMP policy; and misapplied the test for estoppel. None of these grounds involved new evidence or arguments that could not reasonably have been presented at the original hearing. There had been no material change in circumstances. The request for reconsideration was a transparent attempt to re-litigate the merits of the case.

[43] Rather than applying the test for reconsideration, the Adjudicator applied the appellate standard of review. In essence, she purported to hear an appeal of her own decision:

> [45] The courts have consistently held that deference is owed to findings of fact made by trial courts and decision makers of first instance; they recognize that it is the function of those bodies to weigh the evidence before them. Deference is owed to trial-level courts by appellate-level courts, with regard to findings of fact (*Schwartz v Canada*, [1996] 1 SCR 254). Findings of fact should not be reversed

> unless it can be established that the trial judge or decision maker made a "palpable and overriding error".
>
> [46] An error of law is generally described as the application of an incorrect legal requirement or a failure to consider a requisite element of a legal test. Errors of law are reviewable on a correctness standard and are owed no deference. Accordingly, when an error of law has been found, the appropriate legal test must be applied to the factual findings (see *Housen v Nikolaisen*, [2002] 2 SCR 235; and *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339).
>
> [47] While I am aware that paragraph 17(1)(b) of the CSO (Grievances and Appeals) does not call on me to review the March 2020 Decision at an appellate level, I adopt the standards of review as previously set out.

[44] The Adjudicator concluded that she should reconsider and reverse her previous ruling because of an erroneous finding of fact:

> [63] Upon review, I must agree with the Respondent and find that the issue at hand was the denial of the business case, which was in fact a request for OA designation and permission to claim OA, rather than a denial of an OA payment claim, given that it was clear that designation had not been granted. The Grievor had the onus of showing that the Respondent failed to follow policy in denying the business case, in which he requested approval for the OA designation and allowance. While I have no doubt that the Grievor did suffer a prejudice because of the denial of the business case, I cannot reunite the redress ordered with the actual impugned decision. My role in this instance is not to decide who may or may not be approved for OA allowance, but rather it is to ensure that due process is followed in making that determination.
>
> [64] Therefore, I find that the March 2020 Decision contains an error of fact that I cannot ignore as it highlights a gravamen that cannot be reconciled with the subsequent analysis, findings and redress. In light of the foregoing, I am satisfied that the Respondent has demonstrated that an error occurred within the meaning of paragraph 17(1)(b) of the CSO (Grievances and Appeals) that warrants a reconsideration of the March 2020 Decision.

[45] In confirming the Adjudicator's reconsideration of her initial decision respecting Sgt. Buckingham's grievance, the Second Level Adjudicator remarked that a member cannot "self designate as being an OA" and only the Commanding Officer or delegate has the authority to "designate a member as being an OA". The Second Level Adjudicator was not persuaded that the first level decision was unreasonable, as Sgt. Buckingham never received an OA designation.

[46] But Sgt. Buckingham never claimed to have received an OA designation. This was explicitly recognized by the Adjudicator in her initial decision upholding his grievance:

> [65] The Grievor himself confirms that he was not specifically told to be on-call, yet he argues that his DANCO confirmed he had a duty requirement (as deemed so by policy) to provide on-call supervision.

[47] In her reconsideration and reversal of her initial decision, the Adjudicator found that, contrary to her previous determination, Sgt. Buckingham's grievance was directed towards the denial of the business case. In his grievance presentation dated February 15, 2018, Sgt. Buckingham's described the subject of his grievance as follows:

> In November 2015, Cpl. Buckingham and Sgt. Boehm prepared and submitted a business case for the on call NCO to be paid operational availability. The business [case] clearly outlined that both parties took turns being on call in a supervisory capacity to address certain requirements within policy. Cpl. Buckingham was advised by EAD District Officer C/Supt. Wendell Reimer that he had met with the CO of K Division, D/Commr. Todd Shear, who ultimately denied the business case for OA payment to on call supervisors.

[48] However, Sgt. Buckingham's description of the manner in which he had been aggrieved was: "Loss of financial compensation directly from lack of OA payment. Loss of unfettered time off". The redress he requested was "OA payment from the date of the business case submission and moving forward until alternate on call arrangements are made". None of this required the Adjudicator to make a determination respecting the propriety of the Commanding Officer's rejection of the business case. Sgt. Buckingham did not ask that the rejection of the business case be overturned.

[49] As the Adjudicator found in her initial decision, Sgt. Buckingham's entitlement to the OA allowance did not arise from his formal designation under the ORA Policy. Rather, it arose from representations made to him by Sgt. Siemens, confirmed by the DANCO, that numerous RCMP policies required him to be on call despite the absence of a formal designation. Senior officers of the RCMP were aware that Sgt. Buckingham and Sgt. Siemens had made themselves available while off-duty in accordance with the RCMP's expectations, and through their silence exposed the RCMP to liability to compensate them for the performance of these additional duties.

[50] This was clearly explained by the Adjudicator in her initial decision upholding Sgt. Buckingham's grievance:

> [68] The Grievor, when having to work on-call, was following OA requirements and had made himself available for on-call work, in the evenings and weekends, impeding upon his personal time with his family, including not leaving the detachment area, as noted in *Brooke v RCMP*.

> [69] I accept the Grievor worked OA with the understanding that he was expected to as a senior NCO. I also note the Grievor attempted to apply for and receive the appropriate designation in good faith.
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> […]
>
> [77] The delay in the response may suggest the Respondent had considered the business case before replying. The lack of response also signifies that, while the Respondent considered the business case, he allowed the Grievor to believe his request for OA designation and compensation was supported. Contrary to this would require the Respondent to have given an order to stop on-call work. In fact, I note that even after the business case was rejected, at no time was the Grievor told to stop working on-call until May 2019.
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> [78] The Respondent had noted in his submission of May 17, 2019, that the Grievor "would not be criticized or disciplined had he not taken calls for service"; yet, the Grievor was not advised of this at any time during his wait for a response on his business case.
>
> [79] The Respondent's "silence" during the 27 months, in essence, supported the advice given to the Grievor by his Detachment Commander and his DANCO. Estoppel by representation notes that silence is a form of representation as the Grievor was under the belief that the Respondent was aware he was working OA.

[51] As Justice Russel Zinn held in *McBride v Canada (Attorney General)*, 2018 FC 118 [*McBride*] at paragraph 34:

> […] in assessing whether Sgt. McBride was "required" to be on standby, the Adjudicator looks only to whether the District Commander had properly authorized standby (which clearly he had not, for otherwise Sgt. McBride would have received standby pay). But, the propriety of the actions of the District Commander is not determinative, nor even relevant to whether Sgt. McBride was required to be on standby. In my view, the uncontradicted evidence is that he had been so required, as shown by what he was told in his meeting with the District Commander when he arrived. To suggest

> otherwise would be tantamount to a finding that directions given orally by a superior officer are not binding and need not be obeyed.

[52] The Federal Court of Appeal's decision in *Brooke v Royal Canadian Mounted Police (Deputy Commissioner)*, [1993] 152 NR 231 (FCA) [*Brooke*], cited by the Adjudicator in her initial decision, is to similar effect (at para 7).

[53] The Respondent attempts to distinguish *McBride* and *Brooke* on the ground that they concerned the RCMP's former *Standby Policy*, not the current ORA Policy that permits only the Commanding Officer to designate a member as eligible for the OA allowance. However, the principle is equally applicable here. Directions given orally to a member by a superior officer are binding (*McBride* at para 34). It is not for members to question the decision. They must obey their orders.

[54] There is no dispute that Sgt. Buckingham was ordered by Sgt. Siemens to remain on-call while he was off-duty. This requirement was explicitly confirmed by the DANCO, both in his communications with Sgt. Buckingham and Sgt. Siemens, and in his written advice to his superiors.

[55] In a memorandum dated October 18, 2017, the DANCO listed 57 "policies and protocols which compel our General Duty NCOs to be operationally available (OA) for duty in units which are not resourced to provide 24 hour supervision" [emphasis added]. The Second Level Adjudicator's decision rejecting Sgt. Siemens' grievance acknowledged that "one of them had to

be available at all times as the on-call NCO and that they would take turns in this role in two-week periods" (at para 10).

[56] The rejection of the Applicants' grievances was therefore unreasonable.

VII. Conclusion

[57] The Adjudicator's initial analysis of Sgt. Buckingham's grievance properly addressed the manner in which he claimed to be aggrieved and the redress he requested. The grounds advanced by the RCMP in support of its request for reconsideration exceeded the limits of the Adjudicator's power to reconsider her previous decision. The Adjudicator wrongly applied the appellate standard of review to her own decision, rather than the test for reconsideration recognized by the Federal Court of Appeal in *Chaudhry*.

[58] Even if one accepts that the CSO (Appeals and Grievances) confers a broader power of reconsideration than is available at common law, the Adjudicator's decision to reconsider and reverse her initial decision was unreasonable. The revised analysis in the Adjudicator's reconsideration decision, in which she reinterpreted the grievance as being restricted to the Commanding Officer's denial of the business case, was overly technical and did not reflect the evidence or arguments presented on behalf of Sgt. Buckingham. It is a well-established principle of labour law that, to the greatest extent possible, a grievance should not be won or lost on the technicality of form, but on its merits (*Parry Sound (District) Social Services Administration Board v OPSEU, Local 324*, 2003 SCC 42 at para 68).

[59] In light of this conclusion, it is unnecessary to consider the Applicants' arguments that the Adjudicator was without jurisdiction to reconsider her initial decision at the behest of the RCMP, or that s 17(1)(b) of the CSO (Grievances and Appeals) is *ultra vires* the power of the Commissioner to issue standing orders. If the RCMP continues to assert a right to request reconsideration of first level grievance determinations, it should review the jurisdictional and policy concerns raised by the Applicants in this proceeding, and revise or clarify the CSO (Grievances and Appeals) if appropriate.

VIII. Remedies

[60] The parties agree that the Second Level Adjudicator is deemed to have adopted the Adjudicator's analysis respecting the decision to reconsider and reverse her initial decision upholding Sgt. Buckingham's grievance. Accordingly, the Second Level Adjudicator's decision respecting the grievance should be set aside, and the Adjudicator's initial decision upholding Sgt. Buckingham's grievance should be restored.

[61] Both the Adjudicator and the Second Level Adjudicator adopted an unreasonably narrow and technical interpretation of the scope of the Applicants' grievances and the requested redress. The Second Level Adjudicator's decision respecting Sgt. Siemens' grievance must be set aside, and the matter must be remitted to a different first level adjudicator for redetermination.

[62] In redetermining Sgt. Siemens's grievance, it will be open to an adjudicator to make a ruling contrary to the decision upholding Sgt. Buckingham's grievance; but not without giving

consideration to that decision or without providing an explanation for why identical or near identical facts produce different results (*McBride* at para 29).

[63] By agreement of the parties, costs are awarded in the all-inclusive sum of $1,500.00 to each Applicant, for a total of $3,000.00.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The Second Level Adjudicator's decision respecting Sgt. Buckingham's grievance is set aside, and the Adjudicator's initial decision upholding Sgt. Buckingham's grievance dated March 27, 2020 is restored.

3. The Second Level Adjudicator's decision respecting Sgt. Siemens' grievance is set aside, and the matter is remitted to a different first level adjudicator for redetermination in accordance with the Reasons for Judgment.

4. Costs are awarded in the all-inclusive sum of $1,500.00 to each Applicant, for a total of $3,000.00.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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