Protected A

File 2020335714

2021 CAD 14

ROYAL CANADIAN MOUNTED POLICE

IN THE MATTER OF

an appeal of a conduct board's decision pursuant to subsection 45.11(4) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 (as amended)

BETWEEN:

Commanding Officer, "D" Division

Royal Canadian Mounted Police

(Appellant)

and

S/Sgt. Charla Keddy

Regimental Number 49105

(Respondent)

(the Parties)

CORRECTED

Protected A

File No. 2020335714

CONDUCT APPEAL DECISION

ADJUDICATOR: Steven Dunn

DATE: May 18, 2021

SYNOPSIS

In July 2018, a non-employee spouse, Ms. L, of an RCMP member, Sgt. L, made a complaint in relation to the Respondent. Sgt. L […] had been engaged in an extramarital affair. Ms. L alleged that the Respondent had harassed her, used her position to access Ms. L's personal information, and engage in inappropriate conduct. The Respondent's line officer, […], was advised of the complaint. A Code of Conduct investigation eventually ensued (Allegation 1).

In October 2018, the Respondent attended a course […]. An incident was alleged to have occurred there that resulted in additional alleged contraventions of the Code of Conduct being brought against the Respondent.

The Respondent was served with a Mandate Letter and an Order of Temporary Reassignment. Two Code of Conduct investigations were initiated into the various alleged contraventions. At one stage in the process, there were six allegations against the Respondent.

The Mandate Letter was updated several times, and the allegations were modified accordingly. In the end, only Allegation 1 would remain.

An Order of Suspension was also served on the Respondent, and later, an Updated Order of Suspension.

In June 2019, a *Request for the Extension of Time Limitations* was filed, seeking a 90-day extension to the initial prescription date of July 18, 2019. The Delegated Officer granted that extension in August 2019, and the new prescription date became October 16, 2019.

In addition, in October 2019, a second *Request for the Extension of Time Limitations* was filed, seeking a further 90-day extension to the prescription period. The Delegated Officer granted that extension, and the new prescription date became January 14, 2020.

Following the appointment of a Conduct Board on January 6, 2020, a *Notice of Conduct Hearing* was issued on January 29, 2020.

The Respondent requested a stay of proceedings on the basis that the extension decisions were unreasonable.

On September 16, 2020, the Board rendered a decision, finding that the extension decisions were indeed unreasonable. The Board, having found that the matter was initiated out of time, and therefore lacked jurisdiction to hear it, granted the Respondent's motion to stay the proceedings.

The Conduct Appeal Adjudicator confirmed the Board had the authority to review the extension decisions, found that the Board's decision did not contravene the principles of procedural fairness, was not based on an error of law, and is not clearly unreasonable, and dismissed the appeal.

INTRODUCTION

[1] The Commanding Officer (CO), "D" Division, as a conduct authority (Appellant), appeals, pursuant to subsection 45.11(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, as amended on November 28, 2014 (*RCMP Act*), the decision by a Conduct Board (Board), dated September 16, 2020, to grant a stay of proceedings due to the expiration of the time limitation to initiate the conduct hearing, as set out in subsection 41(2) of the *RCMP Act*.

[2] At the outset, I note that at one stage in the conduct proceedings, there were six allegations involving the Respondent. However, as the process continued, most of the allegations were withdrawn, and only one allegation remained (Allegation 1).

[3] The Appellant challenges the Board's decision to grant a stay of proceedings on the basis that the Board did not have the authority to review the extension decision, and by doing so, committed manifest and determinative errors.

[4] Under subsection 45.16(11) of the *RCMP Act*, the Commissioner can delegate her power to make final and binding decisions in conduct appeals. I have received such a delegation.

[5] In rendering this decision, I have considered the material that was before the Board who rendered the decision that is the subject of this appeal (Material), as well as the appeal record

(Appeal) prepared by the Office for the Coordination of Grievances and Appeals (OCGA), collectively referred to as the Record. Unless otherwise stated, I will refer to documents in the Material and the Appeal by page number.

[6] In addition, references to legislative provisions reflect those in effect at the time of the events.

[7] For the reasons that follow, the appeal is dismissed.

BACKGROUND

[8] On July 18, 2018, […] was briefed by Insp. A, NHQ Covert Operations, in relation to information provided by a non-employee spouse (Ms. L) of an RCMP member, Sgt. L of NHQ Covert Operations, which also involved the Respondent. […] was the line officer for the Respondent. Ms. L's concerns stemmed from an extramarital affair between Sgt. L […], claiming that the Respondent had allegedly harassed her, used her position to access Ms. L's personal information, posted information on social media using pseudonyms, and engaged in other inappropriate conduct.

[9] On July 25, 2018, Ms. L lodged a formal complaint (Material, BN and Mandate Docs, External Complaint Letter). She was contacted by […] on the following day.

[10] On August 6, 2018, […] received, by email, a written complaint from Ms. L. A copy of the complaint was subsequently provided to Supt. B, OIC Federal Policing Criminal Operations, "H" Division, for his review.

[11] In October 2018, the Respondent attended a course […] as approved by […]. I note that an incident, which is alleged to have occurred […], subsequently resulted in additional allegations being brought against the Respondent. All of those allegations would be eventually withdrawn.

[12] On October 30, 2018, […] provided a Briefing Note to Criminal Operations for the information of NCO i/c Professional Responsibility Unit (PRU).

Code of Conduct Proceedings

i. Mandate Letter

[13] On January 7, 2019, […], as the acting Federal Policing Criminal Operations Officer, "H" Division, signed a Code of Conduct Investigation Mandate Letter (Mandate Letter), which initiated an investigation into an alleged contravention of the RCMP Code of Conduct:

> **Allegation**: On or between October 1, 2015 and June 30, 2018 at or near [X], Nova Scotia and other places to be determined, [S/Sgt. K] did engage in discreditable conduct by repeated, unwanted communication with [Ms. L]. It is therefore alleged that [S/Sgt. K] has contravened Section 7.1 of the Code of Conduct.

[14] The Respondent received a copy of the Mandate Letter on the same date.

[15] On February 17, 2019, an Order of Temporary Reassignment in relation to the Respondent came into effect.

[16] On March 7, 2019, […] was made the subject of a Code of Conduct investigation due to his alleged involvement in the incident that occurred […].

[17] On March 11, 2019, the CO, "H" Division, signed an updated Code of Conduct Investigation Mandate Letter, which initiated an investigation into four additional alleged contraventions of the RCMP Code of Conduct not associated with Allegation 1.

[18] On the same date, the CO, "H" Division, issued an Order of Suspension in relation to the Respondent.

[19] On March 14, 2019, the CO, "H" Division removed herself from the process, due to a conflict of interest which arose in relation to her involvement as a witness.

[20] On March 19, 2019, in my capacity as the Acting Professional Responsibility Officer (PRO), upon receiving a recommendation from the National Conduct Management Section in the Workplace Responsibility Branch at NHQ, I designated the Appellant, the CO, "D" Division, as the conduct authority in relation to the Respondent's alleged contraventions of the Code of

Conduct (Material, BN and Mandate Docs, Letter of Designation). My involvement was limited to approving the recommendation by signing the completed designation. I believe I can decide this appeal impartially.

[21] On March 24, 2019, the Respondent was served with the Suspension Order and the updated Mandate Letter, which included four new allegations.

[22] On April 5, 2019, the Respondent was notified by the PRU, "H" Division, that the PRU, "D" Division was taking over the investigation.

[23] On April 30, 2019, the Appellant signed an Updated Investigation Mandate Letter, ordering an investigation into a sixth allegation associated to the previous four that were added in March.

[24] On the same date, the Respondent was contacted by investigators to inquire about whether or not she would provide a statement.

[25] On May 7, 2019, the Respondent was served with the new allegation.

[26] On May 16, 2019, the Respondent met with investigators and gave them a prepared information package, rather than providing a subject member statement. The investigators were expecting the latter from the Respondent.

[27] On June 28, 2019, the Appellant signed an Updated Investigation Mandate Letter, in which it was determined that Allegation 4, on the Mandate Letter dated March 11, 2019, should be removed. The allegation numbers were modified accordingly.

[28] On the same date, an Updated Order of Suspension was issued to the Respondent.

Request for the Extension of Time Limitations

[29] On June 28, 2019, a 90-day extension to the initial prescription date of July 18, 2019, was sought, due to the extent of material required, the investigative steps being conducted, and the time it would take to generate a final report and complete the conduct process.

[30] On July 2, 2019, the Respondent received a copy of the Request for an Extension of Time Limitations, dated June 28, 2019.

[31] On August 15, 2019, the request for an time extension was granted pursuant to subsection 47.4(1) of the *RCMP Act*. The prescription date then became October 16, 2019.

Second Request for an Extension of Time Limitations

[32] On October 4, 2019, a second extension was sought by the Appellant, and on October 24, 2019, the Delegated Officer granted a further 90-day extension extending the prescription period to January 14, 2020.

ii. Investigation

[33] The Code of Conduct Investigation Report, dated October 30, 2019, was completed by Sgt. Y (Investigator) (Material, Code of Conduct Investigation, pp 1-915).

[34] The Investigator reviewed various witness statements, correspondence with and information provided by Ms. L, correspondence with Canada Post security, correspondence from Supt. P, notes by Sgt. L and Supt. P, information provided by Insp. E, an open source intelligence report dated May 3, 2019, information regarding liaison officer assistance, a polygraph report dated May 28, 2019, and a private polygraph examination report dated June 17, 2019.

[35] The Investigator also reviewed the Federal Policing Organizational Chart within "H" Division, the Conflict of Interest policy AM – ch. XVII.1, and various email correspondence.

[36] In addition, the Investigator reviewed the Respondent's response to Allegation 1, a witness member statement including a member witness waiver by the Respondent, the Respondent's response to the other four remaining allegations, her leave transactions and shift schedule in May 2018, along with various other documents.

Request for a Conduct Hearing

[37] On January 3, 2020, in a Notice to the Designated Officer, the Appellant requested that a conduct hearing be initiated into the following alleged contraventions:

> **Allegation 1:** On or between October 1, 2015, and June 30, 2018, at or near [X], in the Province of Nova Scotia and [X], in the Province of Ontario, [S/Sgt. K] behaved in a manner that is likely to discredit the Force, contrary to section 7 .1 of the *Code of Conduct of the Royal Canadian Mounted Police.*
>
> **Allegation 2:** On or about October 22, 2018, at or near […], [S/Sgt. K] behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police.*
>
> **Allegation 3:** On or between October 27, 2018, and March 5, 2019, at or near [X], in the Province of Nova Scotia, [S/Sgt. K] behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police.*
>
> **Allegation 4:** On or between October 27, 2018, and March 5, 2019, at or near [X], in the Province of Nova Scotia, [S/Sgt. K] behaved in a manner that is likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct of the Royal Canadian Mounted Police.*

[38] As I noted at the outset, various allegations against the Respondent were withdrawn throughout the process, and ultimately, only Allegation 1 remained.

Appointment of Conduct Board

[39] On January 6, 2020, the Designated Officer appointed the Conduct Board.

iii. Conduct Hearing

[40] On January 29, 2020, the Appellant issued a Notice of Conduct Hearing.

Respondent, through Member Representative (MR), requests a stay of proceedings

[41] On August 11, 2020, the MR sought the Board's "permission to file a motion alleging abuse of process and unreasonable delay."

[42] In filing the motion, the MR explained that despite the Respondent's opposition, the Appellant joined all of allegations together, which caused significant delays, and led to the requests for the extensions of time.

[43] On August 23, 2020, the Conduct Authority Representative (CAR) filed a response to the motion, outlining objections to the request for a stay of proceedings.

iv. Conduct Board Decision

[44] On September 16, 2020, the Board rendered a decision (Appeal, pp 7-28), finding that the "matter was initiated out of time" and that the Board lacked jurisdiction "to hear it" (Appeal, p 28). In the result, the Board dismissed Allegation 1.

[45] At the outset, the Board considered his authority to hear the Respondent's motion (Appeal, pp 14-20). The Board found that he had "the authority, and indeed the responsibility, to entertain the motion and to review the decisions of the Delegated Officer in order to ensure the extensions were reasonably granted" (Appeal, p 20).

[46] The Board, citing section 17 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014- 291 (*CSO (Conduct)*), confirmed that a motion may be brought before a conduct board at any stage, and clarified that although a conduct board must hear the motion, the conduct board may decline jurisdiction and explain the reasons for doing so.

[47] In support, the Board also cited the case of *Calandrini v Canada (Attorney General)*, 2018 FC 52 (Appeal, p 17):

> [15] My interpretation of this decision is that the Federal Court confirmed the conduct board's responsibility to decide "on the procedures that were followed" in the conduct proceeding that brought the matter before it. This includes the interlocutory decision of a delegated officer to extend the prescription period under subsection 41(2) of the *RCMP Act*. The Federal Court of Appeal confirmed that authority in its brief reasons in 2019 FCA 73 (CanLii).
>
> [16] That result is consistent with a conduct board's obligation to ensure it has jurisdiction to hear the allegations against a subject member. This includes ensuring that the conduct hearing was initiated in time. The

> extension of the limitation period by a delegated officer under subsection 47.4(1) of the *RCMP Act* is essentially an extension of the jurisdiction of the conduct board to hear the matter that otherwise would have been initiated out of time. A conduct board must be able to ensure that the extension of its jurisdiction is valid. Refusing to entertain a motion casting doubt on the validity of that decision would be an abdication of the conduct board's responsibility to ensure it has jurisdiction to hear the matter.

[48] In addition, the Board explained that a "conduct board cannot simply opt out of considering such a motion in relation to a discretionary decision that seriously impacted a member's legal rights in the course of the same proceeding against them" (Appeal, p 18).

[49] The Board considered the argument that the decisions of the Delegated Officer were unreasonable, on the basis that the Delegated Officer "made inconsistent findings and also acknowledged that there was no reasonable explanation for much of the delay in mandating and completing the investigation", yet granted the extensions anyway (Appeal, p 20). The Board agreed with this argument, finding that there were "significant problems with the Delegated Officer's decisions, which are not defensible" (Appeal, p 20).

[50] The Board focused his analysis "on the granting of the first extension", but explained that "the comments are equally applicable to the second" (Appeal, p 23).

[51] The Board noted "important details", "in relation to the delay in this matter" (Appeal, p 22), emphasizing that "it took the original conduct authority six months to mandate a Code of Conduct investigation" into Ms. L's complaint, including "a delay of over three months after ["]H" Division PRU became aware of that complaint" (Appeal, p 23). The Board pointed out that the Delegated Officer found both periods of delay were unreasonable. In addition, the Board noted that the "decision to combine" the investigations into Ms. L's complaint (Allegation 1) and the events […] (Allegations 2 to 4), "further significantly delayed the completion of the investigation into Allegation 1" (Appeal, p 23). The Board took exception to the Delegated Officer's conclusion that "a reasonable explanation for the delay exists" (Appeal, p 23). In the Board's view, "[t]he Delegated Officer's assumption that it was necessary to investigate all of the allegations together was unsupported by the material before him", and a "lack of full and frank disclosure influenced the Delegated Officer's decision to extend the limitation period"

(Appeal, p 24). The Board also found that the Delegated Officer's decision contained "mistaken assumptions", "which were fuelled by inaccuracies and omissions in the Respondent's Request" (Appeal, p 25).

[52] Moreover, the Board found that the Delegated Officer "clearly and correctly concluded that there was no reasonable explanation for the delay in mandating the investigation", and that there was "no reasonable basis for his ultimate finding" that a reasonable explanation existed for the delay (Appeal, p 25).

[53] The Board, citing the case of *R v Grant*, 2009 SCC 32 (*Grant*), noted that "the public interest criterion also requires an assessment of the seriousness of the allegation" (Appeal, p 26). The Board explained that although the Respondent's actions, as particularized in the sole remaining allegation, "may have crossed the line", this would not have resulted in her dismissal, and that "[b]ut for the delay in mandating the Code of Conduct investigation and the addition of the allegations arising from the […] incident, it would not have resulted in the initiation of a conduct hearing" (Appeal, p 27).

[54] Ultimately, the Board found the Delegated Officer's decision to extend the prescription period to be unreasonable and as a result, the Board did not have the jurisdiction to hear the case (Appeal, p 28).

[55] In her Statement of Appeal, the Appellant indicated that she received the Board's decision on September 22, 2020 (Appeal, p 4).

THE APPEAL

[56] On September 29, 2020, the Appellant, through the CAR, presented Form 6437 – *Statement of Appeal* to the OCGA (Appeal, pp 3-5).

[57] The Appellant claimed that the Board's decision was reached in a manner that contravened the principles of procedural fairness, was based on an error of law, and is clearly unreasonable (Appeal, p 4). She stated, in part, that the Board's decision to direct a stay of proceedings "was both unreasonable and an error in law based upon the totality of the

evidentiary record" (Appeal, p 4). She added that she "will be making additional arguments in written submissions" (Appeal, p 4).

[58] As redress, the Appellant requests that "a new conduct hearing be held to hear the [C]ode of [C]onduct allegation before a differently constituted Conduct Board" (Appeal, p 5).

Appellant submissions

[59] The Appellant, through the CAR, filed her appeal submission on December 9, 2020 (Appeal, pp 49-59). In addition, she provides attachments, including various authorities, in support of her position (Appeal, pp 60-291).

[60] In her appeal submission, the Appellant contends that the Board erred by not requesting submissions from the MR "on the issue of jurisdiction", "completely disregarding […] the articulated correct appeal mechanism", and suggesting that the Respondent's procedural rights "were impacted" (Appeal, p 50). In addition, the Appellant argues that the Board erred in law and "acted unreasonably" by finding that it had the authority to consider the motion, and erred by "improperly allowing the potential sanction outcome" in relation to Allegation 1 to "influence" the Board's "overall thought process and conclusion" (Appeal, p 50). In the Appellant's view, the Board's decision was "unsupported given a fatal flaw in the logic underpinning" the rationale for the decision (Appeal, p 50).

[61] The Appellant outlines the applicable standard of review. Turning to the grounds of appeal, the Appellant submits that the Board's "failure" to request "the further production of information/submissions" on the appeal mechanism, as well as the "central issue of whether the [Board] even possessed the authority to review the decisions of Time 1 and Time 2", was an error (Appeal, p 52).

[62] In addition, the Appellant submits that the Board's "disregard of the appeal mechanism […] is unreasonable" (Appeal, p 53). She argues that the Board "greatly overstepped his powers and acted in an unreasonable manner by outright ignoring the appropriate appeal mechanism" (Appeal, p 53). Citing paragraph 24.1(3)(d) of the *RCMP Act*, the Appellant argues that a conduct board does not have the authority to make "every manner" of inquiry that the board

deems necessary, and adds that this was "completely overlooked" by the Board, resulting in "a manifest and determinative error" (Appeal, p 53).

[63] The Appellant argues that the Board went "out" and created "his own authority to conduct a review" (Appeal, p 53). The Appellant relies on the Supreme Court of Canada decision in *Vavilov* to contend that the Board ignored the need for "actual written legislation […] to justify a course of action taken by a conduct board that acquires its authority by way of statute" (Appeal, p 53). The Appellant adds that the Board's confirmation, that its actions "in reviewing Time 1 and Time 2 were not foundationally rooted in an express statutory authority", "should have ended the process" (Appeal, p 54). The Appellant submits that the Board "erred in law by failing to provide any statutory authority" to support its position that it possessed the authority "to review the Delegated Officer's decision" (Appeal, p 54). In the Appellant's view, the Board should have acknowledged "a lack of statutory authority to act", and declined to hear the motion (Appeal, p 54). She adds that the Board's interpretation of *Calandrini* was "incorrect and amounts to a demonstrative and manifest error" (Appeal, p 54).

[64] In addition, the Appellant refers to a general direction that I provided, in my capacity as the Director General of the Recourse Services Branch, to the OCGA, in support of her argument that a conduct board's powers "do not include the jurisdiction" to rule on a delegated decision maker's decision "to authorize an extension of time pursuant to subsection 47.4(1) of the *RCMP Act*" (Appeal, pp 55-56). The Appellant submits that the Board "not only acted without authority but also in clear contradiction of the direction of the Director General of Recourse Services Branch" (Appeal, p 56). For reasons I will explain later in my analysis, I disagree with the Appellant's interpretation of the direction that I provided to the OCGA in October 2018.

[65] The Appellant takes exception to what she describes as the Board's erroneous application of "contraposition to suggest that simply because as a conduct board he was not provided with written authority to act in the *CSO (Conduct)* rules of procedure", this did not mean that the Board did not have the required authority (Appeal, p 56).

[66] In addition, the Appellant argues that the Board's attempt to justify the outcome of its decision, "by re-classifying the entire issue as a section 17 *CSO (Conduct)* motion", was "also an

error" (Appeal, p 56). She takes issue with the fact that the Board did not provide reasons as to why the conduct board in *Solesme* was "incorrect for taking an opposite position on the applicability of section 17" (Appeal, p 56).

[67] The Appellant "wholly disagrees" with the Board's "statement" that the conduct authority did not provide any statutory authority to substantiate the position that an appeal of the Delegated Officer's decision must be made at the conclusion of the conduct hearing (Appeal, p 56).

[68] The Appellant submits that the Board's "reliance" on section 37 of the *CSO (Grievances and Appeals)*, "to provide authority to review the proceedings", was an "error", and "neither reasonable nor correct" (Appeal, p 57).

[69] In addition, the Appellant argues that the Board erred by suggesting that the Respondent's procedural rights were "impacted" (Appeal, p 57). In the Appellant's view, the procedural fairness owed to the Respondent was met.

[70] The Appellant, citing *Solesme*, took exception to what she described as the Board's "determination" to "stretch" its authority, leading to "an unnecessarily confrontational approach to Time 1 and Time 2 before a hearing on the merits of the Allegation has even commenced" (Appeal, p 58). In the Appellant's view, this was "both unreasonable and incorrect" (Appeal, p 58).

[71] The Appellant argues that the Board erred by allowing a potential sanction to influence the outcome of its decision. Specifically, the Appellant argues that the Board not only lacked jurisdiction to hear the motion, but also, chose to "ignore" the objective of preserving high standards of conduct by RCMP members (Appeal, p 58). The Appellant takes exception to the fact that the Board made no reference to Ms. L's "right to have her complaint against a senior member of the RCMP properly heard" (Appeal, p 58). In the Appellant's view, it was unreasonable for the Board "to not equally take into consideration the perspective of the victim" (Appeal, p 58).

[72] The Appellant argues that the Board's decision "suffers from a fatal flaw in logic on the issue of jurisdiction" (Appeal, p 58). The Appellant states that the Board's decision "relies upon a flawed foundation" that is not addressed in the decision, and argues that this "constitutes a manifest and determinative error" (Appeal, p 59).

[73] The Appellant requests a new hearing before a different conduct board (Appeal, p 59).

Respondent submissions

[74] The Respondent, through counsel, filed her submission on January 13, 2021 (Appeal, pp 302- 312), including various authorities in support of her position (Appeal, pp 313-371).

[75] The Respondent argues that the Board's finding, "that justice would not be served by allowing the time extensions", was reasonable (Appeal, p 304).

[76] The Respondent outlines the standard of review. She goes on to submit that the Board "did not render an incorrect decision by following the same reasoning as the Federal Court in *Calandrini*" (Appeal, p 307).

[77] She adds that "this tribunal must follow *Calandrini* instead of *Solesme*" (Appeal, p 307).

[78] Moreover, the Respondent submits that the Appellant's argument, that the Board cannot review the Delegated Officer's decision in the absence of "express statutory authority", is "without merit" (Appeal, p 307). The Respondent disagrees with the Appellant's view that the Board was creating its own provisions. In her view, the Board had "conducted a careful review of the *RCMP Act* and the *CSO (Grievances and Appeals)* before concluding that it had the jurisdiction to review the Delegated Officer's Decision" (Appeal, pp 307-308).

[79] The Respondent disagrees with the view that the Board disregarded the appropriate appeal mechanism. In the Respondent's view, the Board canvassed "whether the appeal mechanism set out in section 45.11 was applicable to the circumstances" (Appeal, p 308).

[80] In addition, the Respondent insists that the Appellant's argument that the Board had "erred by not requesting submissions" on the issue of jurisdiction, from the Respondent, was

"without merit" (Appeal, p 308). In the Respondent's view, the Board was "under no obligation to do so" (Appeal, p 308).

[81] The Respondent states that the Board's finding that it had the authority to review the decision to grant two extensions of time, and its decision to dismiss Allegation 1 if the extension of time was unreasonable, were correct (Appeal, p 309).

[82] The Respondent points out that the Board's "primary criticism" of the Delegated Officer's decision was that "there was no reasonable explanation for the delay" (Appeal, p 309). In relation to the delay caused by the decision to combine the two investigations, the Respondent argued that the Appellant's rationale was based on a false pretense, as the facts of Allegations 2-4 were "completely unrelated" to the facts of Allegation 1 (Appeal, p 310). She adds that the Board found that the Delegated Officer's conclusion, of a […] to justify combining those allegations, was baseless (Appeal, p 310).

[83] With respect to the Board's consideration of the sanction outcome, the Respondent argues that the Board "did not err by considering the possible penalty as an aspect of the prejudice to the member", and adds that "the public interest did not weigh in favour of the Delegated Officer extending the timelines" (Appeal, p 310).

[84] In relation to the Appellant's argument that the Board had erred by suggesting that the Respondent's procedural fairness rights were impacted, the Respondent disagrees, by explaining that the Board decision was not discussing her procedural rights. In the Respondent's view, the Board's "brief reference" to procedural fairness was nothing more than a general statement that conduct boards must ensure that procedural fairness is "generally upheld", and it did not constitute an error, "let alone a manifest and determinative one" (Appeal, p 311).

[85] With respect to the Appellant's argument that the Board had erred by not properly addressing a fatal flaw in the logic behind its reasoning, the Respondent argues that this argument was not put before the Board, and on that basis, the Appellant "should not be permitted to raise the issue for the first time on appeal" (Appeal, p 311). She also notes that, in her view, the Appellant's argument on this point is both "illogical" and "unsupported" by case law.

[86] In addition, the Respondent explains some underlying facts. In her view, if the details of certain allegations are made public, her "personal life" will "suffer serious harm" (Appeal, p 311). She therefore requests that this decision be "anonymized" by referring to her as either "A.B" or the "Subject Member" (Appeal, p 311). She notes that she has filed a grievance in relation to the Board's "refusal to anonymize its decision", "based on its position that the Respondent should have requested such a measure before the close of the proceedings, and not on the merits of whether anonymization would be appropriate" (Appeal, pp 311-312). She adds that "[a] failure to anonymize this decision may prejudice the ongoing grievance process" (Appeal, p 312).

[87] The Respondent requests that the appeal be dismissed and that the Board's decision be confirmed.

Appellant rebuttal

[88] The Appellant, through the CAR, filed her rebuttal along with supporting documentation, on January 20, 2021 (Appeal, pp 374-379, 380-449).

[89] According to the Appellant, the Board's "failure to recognize a lack of jurisdiction to review both extension of time authorizations" demonstrates that the Board "acted in a clearly unreasonable manner" (Appeal, p 375).

[90] Further, the Appellant argues that the Board "committed a manifest and determinative error with respect to the interpretation of paragraph 61 of *Calandrini*" (Appeal, p 375). In the Appellant's view, the Federal Court "never conferred […] lawful authority" upon the Board "to review the interlocutory decisions of the Delegated Officer to extend the prescription period" (Appeal, p 375). The Appellant argues that the Board "misinterpreted the words of Justice Mosley at paragraph 61 and adopted an untenable position" (Appeal, p 376).

[91] The Appellant reiterates that "an appeal can only be made pursuant to subsection 45.11 of the *RCMP Act* after a final decision is made by the conduct board", and argues that the Board "erred by circumventing this process" (Appeal, p 376).

[92] Further, the Appellant argues that "[t]he right of appeal of an extension of time decision is properly articulated within the wording of subsection 45.11 of the *RCMP Act* following the final decision of the [conduct board] on the merits of the actual allegation" (Appeal, p 377).

[93] The Appellant submits that the Board "did not rely upon s. 13(4) of the *CSO (Conduct)* as the authority to review the Delegated Officer's decision to extend a limitation period", and committed a manifest and determinative error by relying on section 37 of the *CSO (Grievances and Appeals)* and subsection 32(1) of the *CSO (Conduct)*, "because they were reasonably close enough to the [Board]'s desired course of action" (Appeal, p 377).

[94] The Appellant is adamant that a review "of the reasonableness of the [Board]'s decision to create its own authority, and also, a complete disregard of the appeal mechanism as set out in subsection 45.11 of the *RCMP Act*", is necessary (Appeal, p 377).

[95] The Appellant disputes the Respondent's argument that the "Delegated Officer established its own appeal mechanism pursuant to subsection 45.11 of the *RCMP Act*" (Appeal, p 377). The Appellant argues that the Delegated Officer "appropriately followed the clear direction of the Director General Recourse Appeals and Review Branch dated 2018-10-31" (Appeal, p 377).

[96] On the issue of jurisdiction, the Appellant maintains that she was "forced to engage in speculation", due to what she describes as the Board's error to not seek submissions from the original MR (Appeal, p 377).

[97] The Appellant reiterates that the Board "lacked any jurisdiction" to conduct the review, and that Allegation 1 "should never have been stayed" (Appeal, p 378).

[98] In addition, the Appellant argues that the Respondent, like the Board, has "adopted", "without justification", "a trivialized view of [Ms. L's] right to have her matter heard" (Appeal, p 378). In the Appellant's view, the "unjustified stay of proceedings have resulted in a total disregard of […] ensuring that the police, as public office holders, are held accountable for their professional misdeeds", and that it also "failed to account for the complete lack of justice for [Ms. L]" (Appeal, p 378).

[99] Further, the Appellant submits that her procedural rights "were unfairly breached" by the Board's "failure" to "seek submissions from the MR on the jurisdictional issue" (Appeal, p 378). The Appellant submits that the Board's "unjustified extension" of its authority, "far beyond what is actually granted by way of statute", was also a breach of the Appellant's procedural rights (Appeal, p 378). In the Appellant's view, the Board's decision had "needlessly created an overly formalistic, legalistic and adversarial approach" (Appeal, p 378).

[100] In relation to the Respondent's argument that the Appellant had raised the new issue of the fatal flaw in the logic of the Board's decision, the Appellant describes this as wrong (Appeal, p 379).

[101] The Appellant submits that the Respondent was "provided with a fulsome opportunity to address the Appellant's submission" (Appeal, p 379).

[102] The Appellant takes no position on the Respondent's request that the decision be anonymized (Appeal, p 379).

[103] The Appellant reiterates her argument that the Board's decision is "untenable", and repeats her request for a new hearing before a different conduct board (Appeal, p 379).

Review of the Record by the Parties

[104] Once the OCGA had prepared the appeal package, the Parties were provided a copy for review. The Parties, through their representatives, confirmed that the Record was complete (Appeal, pp 451-453).

MANDATE

[105] Subsection 33(1) of the *CSO (Grievances and Appeals)* requires me to consider whether the decision under appeal:

- contravenes the principles of procedural fairness,
- was based on an error of law, or

- is clearly unreasonable.

Applicable standard of review

[106] The Supreme Court of Canada (SCC) re-examined the standard of review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), in which the Court confirmed that legislated standards of review should be respected (paras 34-35). Accordingly, I am prepared to review any breach of procedural fairness on the standard of correctness, and no deference will be given. I note that when an error of law has been found, the appropriate legal test may 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).

[107] In contrast, the question of whether a decision is clearly unreasonable as a result of an alleged error of fact (or mixed fact and law) requires significant deference be accorded to the original decision maker.

[108] In *Kalkat*, the Federal Court considered the term "clearly unreasonable" as it is set out in subsection 33(1) of the *CSO (Grievances and Appeals)*:

> [62] Therefore, given the express language that the decision must be "clearly unreasonable" and the French translation of the term [*manifestement déraisonnable*], I conclude that the Delegate did not err. Interpreting the "clearly unreasonable" standard as being equivalent to the "patently unreasonable" standard is reasonable in the context of the legislative and policy scheme. This means that the Delegate must defer to a finding of the Conduct Authority where he finds the evidence merely to be insufficient to support the finding (*British Columbia Workers' Compensation Appeal Tribunal) v Fraser Health Authority*, 2016 SCC 25).

[109] In *Smith v Canada (Attorney General)*, 2019 FC 770, a similar finding was considered and adopted:

> [38] The Adjudicator undertook an extensive analysis in order to arrive at the conclusion that the standard of patent unreasonableness applies to the Conduct Authority Decision. This analysis included a review of relevant case law, the meaning of the word "clearly", and the French text of subsection 33(1). The Adjudicator's conclusion that the applicable standard

> of review was patent unreasonableness is justifiable, transparent, and intelligible. The Court agrees that this was a reasonable conclusion.

[110] The Federal Court of Appeal, 2021 FCA 73, subsequently dismissed the appeal, stating, *inter alia*:

> [43] First, I find it interesting that the appellant and the intervener failed to properly address the French version of subsection 33(1) and why the [appeal] Decision is unreasonable in light of it. The French text uses the terms "manifestement déraisonnable" which translate to "patently unreasonable", and have been interpreted as such in the Supreme Court jurisprudence. Based on the modern approach to statutory interpretation, the conduct adjudicator's analysis demonstrates that subsection 33(1) was reasonably interpreted to require patent unreasonableness.

See also, *Zak v Canada (Attorney General)*, 2021 FCA 80.

[111] In *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748, at para 57, the SCC explained that a decision is patently unreasonable if the "defect is apparent on the face of the tribunal's reasons", in other words, it is "openly, evidently, clearly" wrong. Later, the SCC stated in *Law Society of New Brunswick v Ryan*, 2003 SCC 20, at para 52, that a patently unreasonable decision is one that is "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand."

[112] As a result, questions of fact or mixed fact and law are entitled to significant deference, and only the presence of a manifest and determinative error would lead to a conclusion that a decision is clearly unreasonable.

ANALYSIS

[113] The Appellant argues that the Board erred by finding that it had the authority to "to review the Delegated Officer's decision" (Appeal, p 54). The Appellant contends that the Board's decision constituted an unreasonable "disregard of the appeal mechanism" and led to the Board overstepping its powers (Appeal, p 53). She adds that the Board's interpretation of *Calandrini* was "incorrect and amounts to a demonstrative and manifest error" (Appeal, p 54). The Appellant challenges the Board's decision on the basis that it contravened the applicable principles of procedural fairness, was based on an error of law, and is clearly unreasonable.

[114] I will examine the Appellant's arguments in relation to each ground of appeal.

1. Was the Board's decision procedurally unfair?

[115] In her Statement of Appeal, the Appellant indicated that the Board's decision contravened the principles of procedural fairness.

[116] Procedural fairness is made up of two broad rights, as explained by the RCMP External Review Committee (ERC) in G-568, which the former Commissioner endorsed on January 20, 2015:

> Procedural fairness is a common law principle that has come to be seen as the "bedrock of administrative law". It comprises two broad rights: the right to be heard and the right to an impartial decision-maker [see David J. Mullan. *Essentials of Canadian Law: Administrative Law* (Toronto: Irwin Law, 2001) 4, 232]. Where procedural fairness is found to have been denied, a decision will be deemed invalid unless the substance of a claim "would otherwise be hopeless" [see *Cardinal v. Director of Kent Institution* [1985] 2 S.C.R. 643; *Kinsey v. Canada (Attorney General)*, 2007 FC 543; *Mobil Oil Canada v. Canada Newfoundland Offshore Petroleum Board* [1994] 1 S.C.R. 202; and *Stenhouse v. Canada (Attorney General)* [2004] FC 375].

[117] Breaches of procedural fairness will normally render a decision invalid; the usual remedy is to order new proceedings, with the exception where the circumstances will inevitably lead to the same outcome (*Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, at paras 51-54; *Renaud v Canada (Attorney General)*, 2013 FCA 266, at para 5).

[118] In her appeal submission, the Appellant does not provide any arguments on how her right to be heard or right to an impartial decision maker was not met.

[119] That said, the Appellant seems to take exception to the process used by the Board in reaching the impugned decision. Specifically, the Appellant argues that the Board erred by "improperly" allowing a potential sanction, in relation to Allegation 1, to "influence" its "overall thought process", the outcome of its decision, and its conclusions (Appeal, p 50). She adds that the Board intentionally ignored the need to preserve high standards of conduct within the RCMP (Appeal, p 58). In addition, she takes exception to the fact that the Board did not refer to Ms. L's

"right to have her complaint against a senior member of the RCMP properly heard" (Appeal, p 58). In the Appellant's view, the Board acted unreasonably by failing to "equally" consider the perspective of the victim, Ms. L (Appeal, p 58).

[120] In my view, the Board did consider the victim when assessing public interest (Appeal, p 26) which led to the Board briefly referring to the potential sanction for Allegation 1. The Appellant would be hard pressed to convince me that this passing comment somehow fatally undermines the "overall thought process." The Board's statement that, but for certain delays, "[t]he Allegation would have remained with a lower level conduct authority and would have resulted in remedial or corrective conduct measures only", is not so outlandish as to render the decision clearly unreasonable. Even the Appellant conceded that Allegation 1, if established, would not warrant dismissal. While nothing turns on this, I accept that dismissal would have been an absolute stretch, however, unlike the Board, I would not discount the potential for serious conduct measures to have resulted based on the evidence and the circumstances, in particular, the deliberate campaign against Ms. L orchestrated by the Respondent. Just the same, I do not find that the Board's assessment of the pertinent factors somehow constitutes a reviewable error.

[121] I am satisfied that the Board's decision was rendered in a procedurally fair manner. The Appellant's right to be heard was respected, and neither the Board, nor the process of deliberation, gave rise to a reasonable apprehension of bias.

2. Was the Board's decision based on an error of law?

[122] The CAR, on behalf of the Appellant, argues, in numerous ways, that the Board erred in law by assuming jurisdiction to consider the motion, including: acting without an express statutory grant of such authority (Appeal, p 53); rejecting the statutory appeal mechanism set out in section 45.11 of the *RCMP Act* (Appeal, pp 50, 52-53); ignoring that subsection 45(2) excludes paragraph 24.1(3)(d) of the *RCMP Act* (Appeal, p 53); misinterpreting the Federal Court decision in *Calandrini* (Appeal, p 54); misapplying section 17 of the *CSO (Grievances and Appeals)* (Appeal, p 56); inappropriately relying on section 37 of the *CSO (Grievances and*

Appeals) (Appeal, p 57); and, failing to request submissions from the MR "on the issue of jurisdiction" (Appeal, p 58).

[123] For clarity, 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 (see, for example, *Housen v Nikolaisen*, [2002] 2 SCR 235, at para 36). Stated another way, "[a] question which seeks to determine the proper interpretation of a legal requirement [or statutory provision] rather than the manner in which the requirement is applied to the particular facts is a question of law" (Robert Macaulay & James Sprague, *Practice and Procedure before Administrative Tribunals*, looseleaf (Toronto: Thompson Reuters, 2017), vol 3, at 28-336, n 236).

[124] I am not persuaded by the Appellant's arguments. For reasons I will explain, in my view, the Board had the authority to consider the motion, plain and simple.

[125] First, section 17 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291 (*CSO (Conduct)*), confirms that a motion may be brought before a conduct board at any stage. As I clarified recently in another similar conduct appeal (2019335744), there are four situations where the conduct board is obligated to summarily reject a motion, and all relate to specified decisions arising from the conduct process set out in section 32 of the *CSO (Conduct)* that provides for an appeal under Part 3 of the *CSO (Grievances and Appeals)*: temporary reassignment; suspension under section 12 of the *RCMP Act*; stoppage of pay and allowances under paragraph 22(2)(b) of the *RCMP Act*; and denial or discontinuation of representation.

[126] Second, subsection 13(4) of the *CSO (Conduct)* provides broad discretion to conduct boards:

> If any matter arises in the proceedings that is not otherwise provided for in the Act, the Regulations or these Standing Orders, the conduct board may give any direction that it considers appropriate.

[127] For completeness, I note that the exercise of this discretion must reflect the exigencies of subsection 46(2) of the *RCMP Act*:

> All proceedings before a [conduct] board shall be dealt with by the board as informally and expeditiously as the circumstances and considerations of fairness permit.

See also, subsection 13(1) of the *CSO (Conduct)*.

[128] Third, subsection 45(2) of the *RCMP Act* expressly grants further powers to conduct boards:

> A conduct board has, in relation to the case before it, the powers conferred on a board of inquiry, in relation to the matter before it, by paragraphs 24.1(3)(a) to (c) [ie, summon witnesses, administer oaths, and receive and admit evidence even if it would not be admissible in a court of law].

[129] On this point, I disagree with the Appellant that the exclusion of paragraph 24.1(3)(d) ("to make such examination of records and such inquiries as the board deems necessary") from subsection 45(2) somehow operates to limit a conduct board from reviewing an extension decision by the Delegated Officer. After all, subsection 15(5) of the *CSO (Conduct)* seemingly grants even greater power than paragraph 24.1(3)(d):

> A conduct board may order a person to provide any further information or documents that the board requires to perform its role under subsection 45(1) of the Act.

[130] Fourth, the Federal Court in *Calandrini*, at para 61, acknowledged the jurisdiction of a conduct board to examine "the procedures that were followed" in the conduct proceedings, in addition to the power of the Commissioner (or delegate) to consider those same issues on appeal. As the Board pointed out, the Federal Court of Appeal (2019 FCA 73) confirmed the Federal Court decision (Appeal, p 17). What's more, counsel for the Respondent astutely emphasizes (Appeal, pp 306-307) that the position taken by the Attorney General before Federal Court soundly contradicts the Appellant's argument (*Calandrini*, at para 57):

> The Respondent [Canada (Attorney General)] argues that the application is premature as the internal administrative process has not been exhausted and **the conduct board can determine whether the extension should have been granted**, whether the review authority's decision was reasonable and if so, whether more serious measures are warranted. […]
>
> [Emphasis added.]

[131] Lastly, on the subject of appeal, the Appellant contends that my general direction issued to the OCGA on October 31, 2018, confirms that the sole avenue to challenge an extension decision by the Delegated Officer is to include relevant arguments in an appeal under section 45.11 of the *RCMP Act* upon receiving the conduct decision. While it is true that subsection 45.11(4) stipulates that "[a]n appeal lies to the Commissioner on any ground of appeal", neither that provision nor my general direction precludes a member from challenging an extension decision as a motion before a conduct board. The general direction simply confirms that in order to present an appeal under section 45.11, a subject member must first receive a decision with a finding concerning a contravention of the Code of Conduct. An extension decision by the Delegated Officer does not meet this condition precedent. Should a motion challenging an extension decision be unsuccessful at the conduct hearing, the member can still incorporate those arguments later as a ground of appeal.

[132] In a situation where a member chooses to include a statement in the written conduct meeting submissions explaining why the extension decision cannot stand with a view of preserving potential appeal arguments, they should bear in mind that the conduct authority sought the extension in the first place, and is certain to remain steadfast in their belief about justification and validity. Conduct meetings are not quasi-judicial hearings, but rather, by design, discussions, intended to be as informal as fairness permits, between a designated manager and subject member about allegations of misconduct and potential conduct measures. Accordingly, vigorously arguing the reasonableness of the extension decision at the conduct meeting would inevitably be an exercise in futility and detract from the crucial allegation(s) conversation.

[133] Moreover, as I pointed out in conduct appeal (2019335744), subsection 45.11(4) seemingly allows a challenge of the extension decision in the absence of any reference at the conduct meeting, especially given that both parties would have previously presented their arguments for and against the extension to the Delegated Officer and those documents, along with the impugned extension decision, would form part of the appeal record. In essence, the notion that conduct authorities could be required to justify the granting of an extension by the Delegated Officer (that they themselves requested) during the course of the ensuing conduct meeting verges on nonsensical given the very context and process that led to the extension

decision. This reality, of course, is in stark contrast to the quasi-judicial setting of a conduct hearing.

[134] Having addressed the issue of authority, a word on the standard of review is needed. When considering a motion challenging the decision of the Delegated Officer to grant an extension to the prescription period, a conduct board is not reviewing the extension decision as an appeal adjudicator, but rather as a conduct board. Accordingly, the statutory standard of review set out in subsection 33(1) of the *CSO (Grievances and Appeals)*, clearly unreasonable, is not applicable. Rather, the common law, and less deferential, standard of reasonableness applies. I note that the Board applied the reasonableness standard in this case (Appeal, pp 11, 20 and 27)

[135] In sum, I am satisfied that the Board had the power to consider the motion and applied the appropriate standard of review. The question remaining is whether the Board's decision is "clearly irrational" and "evidently not in accordance with reason"? As I will next explain, I find the answer is no, and I will therefore not interfere.

3. Was the Board's decision clearly unreasonable?

[136] The Appellant maintains that the Board's decision was clearly unreasonable, but with few exceptions, relies on the same jurisdictional arguments that I have already rejected. To his credit, the CAR did not even attempt to defend the poor management of the Code of Conduct process displayed here, including the delays and negligence of […], the misguided tactical investigation choices, or even the extension decisions.

[137] In considering whether a conduct board's decision is clearly unreasonable, I note that it is insufficient for an appellant to identify a mistake in the impugned decision or simply disagree with the decision maker's opinions or interpretation of the facts. The applicable standard of review requires an appellant to demonstrate that the outcome of the decision would not be possible if the mistake had not been made. A decision will not be considered "clearly unreasonable" if, after mistakes are taken into account, the outcome of the decision is still plausible.

[138] The Appellant's only remaining argument linked to the Board's analysis concerns the alleged impropriety of suggesting that the Respondent's procedural rights "were impacted" (Appeal, pp 50, 57). This assertion is completely off-base. Here is what the Board actually had to say (Appeal, p 18):

> [20] Nor does the designated officer have any ability to make the necessary enquiries to determine if the limitation period had expired. There are no provisions within the Act, the CSOs, or policy that would provide him with the authority to do so. That function falls under the conduct board responsibilities to ensure both that it has jurisdiction to hear the matter and **to uphold the appropriate level of procedural fairness owed to a member subject to conduct proceedings**.
>
> [Emphasis added.]

[139] The Board then went on to point out that RCMP conduct policy, Administration Manual, XII.1.19.1.7, directs the Delegated Officer to keep in mind that "[t]he overriding consideration in a request to extend time is to ensure that justice is served between the parties" (Appeal, p 22). Surely, procedural fairness is a valid consideration in this determination.

[140] For completeness and ease of reference, I will set out the Board's conclusion (Appeal, p 27):

> [52] In summary, the Delegated Officer had an allegation before him that involved six months of unexplained and unreasonable delay before the conduct authority mandated the Code of Conduct investigation. It was further delayed by combining the investigation with the one for an unrelated incident that took place months later on a different […]. Once the Delegated Officer's mistaken assumptions, due to the inaccuracies and omissions contained in the Request, are removed, there is no […] that called for the matters to be investigated together. Nor was the Applicant responsible in any way for the unwarranted delay.
>
> [53] Under these circumstances, the Delegated Officer's determination that the overall delay was reasonable, is itself unreasonable. Justice would not be served between the parties by allowing the extension of the limitation period to stand. Therefore, this matter was initiated out of time and I lack jurisdiction to hear it.

[141] The Board reached this conclusion after completing an exhaustive review of the evidence and timelines in the case (Appeal, pp 9-14, 22-27). Upon examination of the Material, I find the

Board showed considerable restraint when referring to the inaccuracies and omissions in the Appellant's extension request submissions. Put bluntly, conduct authorities and the personnel who assist and advise them, must do better than this.

[142] I will conclude with an excerpt from the Board's introductory analysis remarks (Appeal, p 20):

> [29] […] The decision maker enjoys considerable discretion in exercising their responsibilities and their decision is entitled to a significant degree of deference as long as their reasons demonstrate justification, transparency and intelligibility. Unfortunately, in the present case, there are significant problems with the Delegated Officer's decisions, which are not defensible. Extensions of the limitation period simply cannot be justified in the circumstances of this case.

[143] In my view, this finding accurately reflects the extension decisions. I agree that they are marked by inconsistencies, and skewed by the information presented in the requests, but, they do, at least, rightfully acknowledge there was no reasonable explanation for the delay in mandating and completing the investigation (Material, Motion Materials, August Decision, p 8; October Decision, p 9).

[144] In the end, the Appellant has not demonstrated that the Board's decision to stay the conduct proceedings against the Respondent for want of jurisdiction is clearly unreasonable.

Respondent's request for anonymization of this decision

[145] The RCMP publishes all conduct board and resulting appeal decisions on a public website. The Respondent requests that this appeal decision be anonymized in a certain way that she prefers. She says that if the decision is not anonymized, her personal life will be harmed, and cause prejudice in an ongoing grievance challenging the Board's refusal to anonymize his decision because, *inter alia*, she made the request after the decision was issued (Appeal, pp 311-312). I have more to say on the former point, but will address the latter now which I find problematic. First, but for the Respondent's argument, I would not have been aware of the details of the grievance. Second, the Respondent would be content to have me grant her request to anonymize this decision to remove her name and would surely refer to such a development in her

grievance, but insists that failing to grant the request may prejudice her grievance. In my view, this dilemma is of the Respondent's own making by attempting to concurrently litigate the issue here. If she is successful in the grievance, it follows that both the Board decision and this appeal decision would have to be anonymized together or the entire exercise would be all for naught.

[146] In *Southam Inc v Canada (Attorney General)* (1997), 36 OR (3d) 721, an Ontario Superior Court Justice declared a provision of the previous *RCMP Act* that made disciplinary hearings private to be unconstitutional, and noted the importance of public hearings in the police context (1997 CanLII 12193 (ON SC), at p 11):

> Because of the public nature of a peace officer's duties and the broad powers given by law to a peace officer in the execution of those duties, and because formal adjudication board proceedings can affect an R.C.M.P. member's rights so significantly, the public has a very strong interest in such a hearing. The role of the adjudication board is clearly a judicial one.

This evidently extends to the decisions that result from those hearings which is why the RCMP publically posts not only the conduct hearing schedule with subject member names, but also the board and appeal decisions, regardless of outcome.

[147] While I am not prepared to remove the Respondent's name from this appeal decision, I have avoided incorporating certain information because it was not necessary to reference given the scope of the Appellant's appeal arguments and the key issues.

DISPOSITION

[148] The Board had the authority to review the extension decisions, applied the proper standard of review, and did not make any manifest and determinative errors.

[149] Pursuant to paragraph 45.16(1)(a) of the *RCMP Act*, I dismiss the appeal and confirm the Board's decision.

Steve Dunn, Adjudicator Date

Corrigendum

The text of the original decision issued on May 13, 2021, has been corrected by replacing the term "*CSO (Grievances and Appeals)*" with "*CSO (Conduct)*" in paragraph 126.