Federal Court  Cour fédérale

Date: 20151214

Docket: T-1170-14

Citation: 2015 FC 1383

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 14, 2015

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

PHILIPPE BEAUREGARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, the applicant is seeking to set aside the decision of the Director General (DG) of the Canadian Police College (CPC) dated April 9, 2014, confirming his dismissal from the CPC. In addition to asking this Court to order that he be readmitted, the applicant is seeking to erase any trace of the dismissal in the CPC records.

I. Background

[2] The CPC provides advanced and specialized police training and development. The applicant is an officer in the Service de police de la Ville de Lévis (SPVL) with more than 25 years of experience.

[3] In August 2013, the applicant was taking a forensic identification course given by the CPC. The applicant had already taken the training in 2008, but had not passed it.

[4] According to a report signed on August 30, 2013, by Sergeant Lelièvre, a Royal Canadian Mounted Police (RCMP) officer at the CPC, Sergeant Lelièvre was approached on August 28, 2013, at 8:00 a.m., by one of the female participants in the course. The report alleges that she had tried to [TRANSLATION] "obtain advice on [the applicant's] behaviour" and that she had explained to Sergeant Lelièvre [TRANSLATION] "that generally [the applicant] had been constantly disrespectful and inappropriate towards the women in the forensic identification training participant group". The report also alleges, in particular, that the female participant believed that it would be advisable for the CPC to avoid situations where a particular female sergeant would need to provide coaching to the applicant on the basis that the applicant had made comments that he was quite frustrated with her.

[5] Following that meeting, Sergeant Lelièvre contacted Staff Sergeant Séguin and gave him that information. Staff Sergeant Séguin instructed Sergeant Lelièvre to obtain the necessary information to assess whether the CPC should intervene.

[6] Sergeant Lelièvre stated in his report that he individually met with seven people who had participated in the training to obtain their account of the facts. He met with the first participant at 9:52 a.m. and she was actually the person who had spoken to him at 8:00 a.m. that same morning. The six other people were met with at 10:25 a.m., 10:35 a.m., 10:49 a.m., 11:02 a.m., 11:20 a.m. and 11:29 a.m. Generally, according to Sergeant Lelièvre's report, the people he met with for the most part made similar comments about the applicant's conduct and also stated that the applicant was disruptive during the training.

[7] At 11:45 a.m., Sergeant Lelièvre shared the information with Staff Sergeant Séguin. Staff Sergeant Séguin then instructed him to report directly to the Director of Police Sciences Training, Superintendent White, and to address her recommendations. At noon, Sergeant Lelièvre shared the content of the interviews with Superintendent White, and she informed him that the sanction to implement would be to dismiss the applicant immediately.

[8] The next morning, Sergeant Lelièvre spoke with the RCMP chief psychologist via telephone to assess the risk related to the applicant's possible reaction to his dismissal. She recommended that he develop a strategy with the SPVL because the SPVL would be able to offer additional guidance to the applicant. At 2:40 p.m. that same day, Sergeant Lelièvre informed the SPVL of the decision to dismiss the applicant and he asked the SPVL to be present when they announced it to the applicant.

[9] On August 30, 2013, at 10:50 a.m., the applicant was taken to the basement of a building by Sergeant Lelièvre and Staff Sergeant Séguin. In the presence of an SPVL manager and an

SPVL union representative, the applicant was given an undated letter (letter of August 30, 2013) informing him of his immediate dismissal from the CPC. That letter, signed by Superintendent White, reads as follows:

> [TRANSLATION]
>
> Officer Philippe Beauregard,
>
> After careful consideration of the allegations of your inappropriate behaviour, I have decided to order your immediate dismissal from the Canadian Police College.
>
> This decision is in accordance with the responsibilities of the Director, Police Sciences Training, as stated in the Canadian Police College Participant Code of Conduct.
>
> You harassed several training participants at the Canadian Police College, engaged in disorderly conduct as described in the Participant Code of Conduct and you also acted in an abusive and disrespectful manner towards others.
>
> The decision is effective immediately; a copy of the Participant Code of Conduct is attached to this notice of expulsion.
>
> Any review requests must be sent to the Director General of the Canadian Police College.

[10] During that meeting, the applicant asked what exactly he was being accused of and who had filed a complaint against him. He was told that [TRANSLATION] "it was under investigation". The applicant then left the room without any other explanation and without having had the chance to offer an explanation.

[11] Later that afternoon, the SPVL manager asked Sergeant Lelièvre to specify whether the SPVL could appeal the decision or the sanctions imposed on the applicant. Sergeant Lelièvre told him that he would have to contact the DG of the CPC.

[12] Upon returning to Lévis, the applicant informed the CPC authorities of his willingness to appeal the decision.

[13] On September 3, 2013, Staff Sergeant Séguin completed a summary of the case concerning the applicant. It was noted that, in particular (1) the applicant had failed the training in 2008; (2) the applicant had not completed the pre-course training that was sent to participants in June 2013; and, (3) the applicant had overreacted to an innocent situation that had occurred on August 22, 2013, taking up class time as a result. His involvement in the events on August 28 and 30, 2013, that led to his dismissal from the CPC was also noted.

[14] Despite the applicant's dismissal, the CPC investigation continued from September 3 to 9, 2013. During that period, Sergeant Lelièvre met with people who had participated in the training but who he did not meet with on August 28, 2013.

[15] On September 18, 2013, through counsel, the applicant sent a letter to the CPC stating that he found the CPC decision arbitrary and illegal on the basis of serious violations of his fundamental rights and breaches to procedural fairness. He required all details concerning the allegations of misconduct as well as the setting aside of the penalty and his immediate readmittance to the CPC.

[16] The requested information was not received, and counsel for the applicant thus sent a new letter to the CPC on October 22, 2013. The CPC investigation report, redacted to protect the participants' names, was received by the applicant in mid-November 2013.

[17] On December 10, 2013, the DG of the CPC, Assistant Commissioner Corley, under the signature of Superintendent White, informed counsel for the applicant that the CPC was reviewing the applicant's appeal. The letter also requested that the applicant's written submissions be sent to the CPC by January 6, 2014. They were sent to the CPC on January 16, 2014.

[18] On April 9, 2014, the DG of the CPC, Superintendent O'Connell, dismissed the applicant's appeal. This is the judicial review of that decision.

II. Impugned decision

[19] In his letter dated April 9, 2014, the DG of the CPC first specified that he had reviewed the file. He then provided a chronology of some of the events underlying his decision. Namely, he mentioned the following: (1) in August 2013, the applicant allegedly violated the CPC Code of Conduct and an investigation was conducted by CPC staff RCMP officers; (2) on August 29, 2013, upon the termination of the investigation, the SPVL was informed that the applicant's conduct had breached the CPC Code of Conduct and that the applicant would be dismissed; and, (3) on August 30, 2013, staff from the CPC, the SPVL and the police union submitted a dismissal letter to the applicant, who was then returned to his police service.

[20] The DG of the CPC stated that the dismissal process took into account the facts of the case, the impact on CPC staff and the applicant's colleagues, as well as the well-being of the officer concerned. He stated that he was satisfied that the staff had acted in the best interests of everyone involved and that he had taken the appropriate action. He also added that the

dismissal process was carried out in collaboration with members of the SPVL, who went to Ottawa to assist CPC staff.

[21] The DG of the CPC continued, stating that on September 23, 2013, the CPC received a letter from a lawyer requesting that the applicant be readmitted to the forensic identification program. He stated that on October 3, 2013, a letter and investigation reports were communicated to the SPVL and to the applicant and that that information included the investigatory action taken and a description of the allegations. He specified that only the names of the persons interviewed had been redacted.

[22] On page 2 of the letter, the DG of the CPC explained that in accordance with CPC Directive A08 on academic appeals, a participant has the right to formally appeal decisions concerning his or her performance in a course of study. Under CPC Directive A10, the DG of the CPC can change the decision made by the Director of Police Sciences Training.

[23] The DG of the CPC reiterated that he reviewed the circumstances of the case and found that no change to the sanction imposed or to the applicant's education was necessary. He stated that the applicant's conduct was investigated and that it was found that it breached the Code of Conduct and that the appropriate sanction was imposed given the nature of the offence. The decision also informed the applicant that the allegations and the resulting investigation were communicated to the SPVL and that if further investigation was necessary, it would be conducted by the SPVL given that the CPC had no legal power over the applicant.

III. Issues

[24] The issues raised in this case are as follows:

A. What are the appropriate standards of review in this case?

B. Does the decision under review violate the applicable guarantees of procedural fairness?

C. In the event that the decision respects the applicable guarantees of procedural fairness, is the decision reasonable?

IV. Analysis

A. *Appropriate standards of review in this case*

[25] The applicant alleges that the CPC decision-making process and decision did not respect the principles of natural justice or the rules of procedural fairness, which means that they are invalid. Second, the applicant argues that the CPC did not base its decision on objective facts, but on erroneous findings of fact made in a perverse or capricious manner.

[26] The respondent noted in his memorandum that there is no case law dealing specifically with the applicable standard of review for decisions made pursuant to the CPC Directive A10.

He is of the opinion, however, that the analysis of the legislative context concerned as well as the existence of a discrete and special administrative regime in which the decision-maker has special expertise point to a standard of reasonableness.

[27] It is settled law that natural justice and procedural fairness issues are reviewable on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502 (Khela); *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339).

[28] Furthermore, questions of fact or questions of mixed fact and law are reviewed on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190).

[29] Considering my finding with respect to a breach of procedural fairness, it is unnecessary for me to rule on the applicable standard for decisions of the DG of the CPC rendered pursuant to Directive A10 regarding appeals.

B. *Breach of the principles of procedural fairness*

[30] First, the applicant alleges that the Director of Police Sciences Training, Superintendent White, did not give him the opportunity to react to the allegations of misconduct against him. He also criticizes her for not specifying the basis for the accusations and the sanctions imposed in the letter dated August 30, 2013, and for failing to explain her decision.

The applicant feels that his right to appeal thus became illusory because he was not being informed, as set out by Directive A10.

[31] Second, the applicant claims that the decision rendered by the DG of the CPC on April 9, 2014, violated the second paragraph of section vii of Directive A10, which states that the [TRANSLATION] "Director General must provide a written account of his/her decisions to the participant and an explanation of how they were reached".

[32] The respondent recognized from the outset that the initial decision made by Superintendent White was rendered in breach of the applicable principles of procedural fairness. He claims, however, that the decision made at a later date by the DG of the CPC was reasonable because it was rendered following an appeal process during which the applicant had the opportunity to give his version of the facts and respond to the allegations against him.

[33] It is appropriate to first establish the extent of the applicable guarantees of procedural fairness in this case.

[34] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 22 (Baker), the Supreme Court of Canada pointed out that although "the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances". Furthermore, it noted "that the purpose of the participatory rights contained within the duty of procedural

fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker".

[35] At the same time, the Supreme Court of Canada identified factors that affect the content of the duty of fairness, that is: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme and the "terms of the statute pursuant to which the body operates"; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and, (5) the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances (see *Baker*, at paras 23 to 27).

[36] In this case, the extent of the guarantees of procedural fairness is in large part defined by the terms of Directive A10, entitled [TRANSLATION] "Participant Code of Conduct", which participants are subjected to in CPC courses and which govern the CPC in its decision-making. The Directive acknowledges at the outset in its preamble that CPC is an educational institution which strives to meet the needs and to respect the rights of individual participants. More specifically, Directive A10 defines the conduct that may be subject to disciplinary action as well as the sanctions that may be imposed based on the alleged misconduct. Directive A10 also

states the responsibilities of the different players involved in CPC training activities. In addition to establishing an informal resolution mechanism, the section states the following, in particular:

> [TRANSLATION]
>
> *v. Director, Police Sciences Training*
>
> The Director will review the allegations of misconduct presented to him/her, provide the participant with an opportunity to respond, and then render a decision.
>
> If the Director decides that the participant has misbehaved, he or she will assign one or more of the sanctions outlined in this policy. The sanction must be proportional to the seriousness of the misconduct.
>
> If the sanction entails returning the participant to his or her employer, the Director will inform the employer outlining the nature of the misconduct. For all other sanctions, the Director, after assessing the seriousness of the misconduct, may elect to inform the participant's employer of the misconduct and sanction.
>
> The Director must inform the participant in writing of the outcome of the adjudication, including any prescribed sanctions. He or she must also include a written explanation of his or her decision and notification that the participant has the right to appeal the decision to the Director General of the CPC.
>
> If the misconduct is deemed to be exceptionally serious, the Executive Director may direct that the participant be returned to his or her employer immediately. Otherwise, no sanctions will be applied until the two-day appeal period has expired or the Director General has rendered a decision on a participant's appeal.

[37] Directive A10 also sets out participants' right to appeal decisions of the Director, Police Sciences Training, to the DG of the CPC. The only grounds, however, justifying an appeal are the unreasonable or biased nature of the decisions with respect to the participant's culpability or the sanction being assigned. In such a case, participants receive a copy of Directive A10 with

the written notice specifying the basis of the accusation, how they can present their point of view and the possible outcome.

[38] Directive A10 also stipulates the obligations of the DG of the CPC with respect to the participate who is appealing the decision:

> [TRANSLATION]
>
> *vii. Director General*
>
> The Director General may nullify or vary decisions made during the initial adjudication by the Director, Police Sciences Training. Varying a sanction may include both reducing and increasing the severity or number of sanctions.
>
> The Director General must provide a written account of his/her decisions to the participant and an explanation of how they were reached.
>
> If the Director General's deliberations lead to the application of a new sanction, he or she will delegate the application of the sanction and, if required, inform the participant's employer.

[39] Considering that Directive A10 set out a procedure, it was therefore legitimate for the applicant to expect that procedure to be followed.

[40] Moreover, in my analysis of the extent of the guarantees of procedural fairness, I must also consider the importance of the decision and its repercussions on the applicant according to the factors listed by the Supreme Court of Canada in *Baker*, above.

[41] In his memorandum, the applicant raised the following consequences of the CPC's decision to dismiss him from the training: (1) immediate humiliation and humiliation upon his

return to work; (2) privacy breach; (3) loss of reputation and dignity; (4) possible questioning of his ability to continue his responsibilities as a technician in identification services with his employer; (5) possible questioning of his ability to testify before the courts, in application of *R v McNeil*, 2009 SCC 3; and, (6) inability to complete the training within the time limit.

[42] Even if, according to the respondent, some of those possible consequences are based on potential measures that could hypothetically be taken by the applicant's employer, I nevertheless agree with the applicant that the decision made by the CPC has significant consequences for him. Although the decision in question concerns only the dismissal of the applicant from the training given by the CPC, it remains that the reasons raised in support of the dismissal are based on serious allegations that affect the applicant's reputation on a personal level and on a professional level. In my opinion, the applicant was entitled to expect to be able to respond to the allegations against him in an informed manner. I also note that the importance of the professional consequences for the applicant were acknowledged by Sergeant Lelièvre in his conversation on August 29, 2013, with the RCMP chief psychologist.

[43] My review of this case has demonstrated that several elements from Directive A10 were not followed in the initial decision, which breaches the applicant's rights to procedural fairness.

[44] First, the Police Sciences Training Director, Superintendent White, was responsible for reviewing the allegations of misconduct before her, for providing the applicant with the opportunity to react, and then for making a decision. However, the record shows that she did not review the file or give the applicant the opportunity to respond to the serious allegations

against him. Her decision to impose the most severe sanction on the applicant, that is, his immediate dismissal for [TRANSLATION] "exceptionally serious" situations, was made after a short discussion with Sergeant Lelièvre, during which he told her about the seven meetings he had had in the preceding two hours that had on average lasted approximately 15 minutes. At no point was the applicant met with to shed light on the allegations against him, and when the applicant tried to obtain further details on the nature of the allegations during the meeting on August 30, 2013, he was told that the case was under investigation.

[45] Second, the letter dated August 30, 2013, violated both the letter and the spirit of Directive A10. The Directive states that the Police Sciences Training Director [TRANSLATION] "must inform the participant in writing of the outcome of the adjudication, including any prescribed sanctions" and [TRANSLATION] "must also include a written explanation of his or her decision and notification that the participant has the right to appeal the decision to the [DG] of the CPC". However, the letter given to the applicant on August 30, 2013, contained only vague and unspecific allegations of conduct. It did not refer to any situation, action, comment or other details making it possible for the applicant to understand the allegations against him. Also, concerning the allegation that the applicant engaged in disorderly conduct, as described in the Code of Conduct, the applicant was entitled to expect the conduct in question to be identified or specified given that the Code of Conduct provides a list of behaviours that are considered inappropriate or disorderly.

[46] The respondent recognized in his memorandum that the initial decision by Superintendent White was rendered in breach of the principles of procedural fairness. He

argues, however, that the failure to respect the applicant's rights did not carry any consequence by reason of the applicant's appeal. He claims that the applicant was provided with all of the statements from the witnesses who met with Sergeant Lelièvre and that he had had the opportunity to argue his position in respect of the facts and law in response to those statements and the decision of August 30, 2013. In support of his argument, the respondent relied on, in particular, *McBride v. Canada*, 2011 FC 1019 (McBride) and *Canada (Attorney General) v Rifai*, 2015 FCA 145 (Rifai). In those cases, the Federal Court of Appeal found that the breaches of procedural fairness in the initial handling of a military grievance were cured at the subsequent stage before the Chief of the Defence Staff, as the Chief of the Defence Staff has the power to render a decision *de novo*.

[47] The applicant argues that his right of appeal became illusory because he was not [TRANSLATION] "informed as such" as set out in Directive A10. He also submits that the decision of April 9, 2014, is only a chronology of events, and is neither a written account of the decisions of the DG of the CPC, or an explanation of how the decisions were reached, in breach of section vii, paragraph 2 of Directive A10.

[48] It is therefore necessary to determine whether the breaches to the principles of procedural fairness in the initial decision were cured in the applicant's appeal.

[49] In *Schmidt v Canada (Attorney General)*, 2011 FC 356 at paras 16-20, Justice Barnes pointed out that the question of whether an administrative appeal may cure procedural lapses or unfairness arising in a subordinate adjudication has been judicially considered on a number of

occasions. In this regard, he relied on an excerpt from the decision rendered by the British Columbia Court of Appeal in *Taiga Works Wilderness Equipment Ltd v British Columbia (Director of Employment Standards)*, 2010 BCCA 97 at paras 36 to 38, 3 BCLR (5th) 103. For the purposes of this case, I am of the opinion that it is useful to reproduce it here:

> 36 The above review of the jurisprudence demonstrates that *Cardinal* does not stand for the broad proposition put forward by the employer that an appellate tribunal has no power to cure breaches of the rules of natural justice and procedural fairness. It is apparent from *Supermarchés Jean Labrecque Inc.* and *Mobil Oil* that the Supreme Court of Canada accepted that *Harelkin* (and *King*) and *Cardinal* can stand side by side. The fact that the Supreme Court of Canada mentioned both *Harelkin* and *Cardinal* with approval means that *Cardinal* cannot be taken to have overruled the proposition established by *Harelkin* (and King) that a breach of the rules of natural justice or procedural fairness can be cured by an appellate tribunal in appropriate circumstances.
>
> 37 I think it is fair to say that *Cardinal* stands for the proposition that a breach of the rules of natural justice or procedural fairness cannot be overlooked on the basis that the reviewing court or appellate tribunal is of the view the result would have been the same had no breach occurred. As demonstrated by the post-*Cardinal* authorities to which I have referred, *Harelkin* and *King* continue to stand for the proposition that appellate tribunals can, in appropriate circumstances, cure breaches of natural justice or procedural fairness by an underlying tribunal. The question then becomes how one should determine whether such breaches have been properly cured.
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> 38 As did Huddart J.A. in *International Union of Operating Engineers* and Berger J.A. in *Stewart*, I prefer the approach advocated by de Smith, Woolf and Jowell in *Judicial Review of Administrative Action*. One should review the proceedings before the initial tribunal and the appellate tribunal, and determine whether the procedure as a whole satisfies the requirements of fairness. One should consider all of the circumstances, including the factors listed by de Smith, Woolf and Jowell.

[50] In his decision, Justice Barnes listed the five factors identified by authors De Smith, Woolf and Jowell in *Judicial Review of Administrative Action*, 5th edition (London: Sweet &

Maxwell, 1995), that is: (1) the gravity of the error committed at first instance; (2) the likelihood that the prejudicial effects of the error may also have permeated the rehearing; (3) the seriousness of the consequences for the individual; (4) the width of the powers of the appellate body; and, (5) whether the appellate decision is reached only on the basis of the material before the original decision-maker or by way of a rehearing *de novo*.

[51] In light of these five factors, for the following reasons, I find that the appeal in this case did not cure the breaches that occurred in the initial decision.

[52] Concerning the first factor, that is, the gravity of the error committed at first instance, there is no doubt that the error is grave. The right to be informed of the allegations and the right to respond to them are fundamental rights. In both cases, the applicant's rights were violated and the respondent acknowledges this.

[53] I will address the second factor last.

[54] Regarding the third factor, that is, the seriousness of the consequence for the individual, for the reasons already given, I agree with the applicant that the decision is not without serious consequences in his personal and professional life.

[55] Regarding the fourth and fifth factors, I am of the view that the applicant did not benefit from an appeal *de novo* as was the case in *McBride* and *Rifai*. In a proceeding *de novo*, the case is to be decided only on the new record and without regard to the prior decision (*Canada*

(Minister of Citizenship and Immigration) v. Thanabalasingham, 2004 FCA 4, at para 6). Directive A10 expressly states that such appeals may be made only on the grounds that the [TRANSLATION] "decisions concerning his/her culpability or the sanction being assigned were unreasonable or biased". Furthermore, there is no mention that the DG of the CPC has to render a new decision on the entire record and on the basis of the submissions by the parties without regard to the prior decision.

[56] Furthermore, in his letter of April 9, 2014, the DG of the CPC wrote that the applicant's conduct [TRANSLATION] "was investigated", that it was [TRANSLATION] "found that it breached the Code of Conduct" and that [TRANSLATION] "the appropriate sanction was imposed given the nature of the offence". The DG of the CPC also stated that if [TRANSLATION] "further investigation was necessary", it would be conducted by the SPVL. However, those comments suggest to me that the DG did not review the basis of the allegations against the applicant.

[57] Finally, concerning the second factor, that is, the likelihood that the prejudicial effects of the error may also have permeated the rehearing, I find that the decision on appeal was also rendered in violation of the applicant's rights to procedural fairness.

[58] I acknowledge that in his appeal, the applicant received a redacted copy of the report prepared by Sergeant Lelièvre. That report contains a summary of the statements gathered. I also recognize that the applicant had the opportunity to transmit to the DG of the CPC the arguments he intended to make.

[59] However, the DG of the CPC was required to provide the applicant with a written account of his decision and an explanation of how it was reached. However, even though the DG of the CPC stated that he reviewed the file, his letter dated April 9, 2014, is in large part a vague chronology of certain procedural events. The Code of Conduct violations were not specified and there were barely any explanations of how his decision was reached. The letter states that the dismissal process considered the facts of the case, the impact on CPC staff and the applicant's colleagues, and the applicant's well-being. It fails to specify facts or circumstances and does not provide a definition of "well-being". Although the DG of the CPC stated that he reviewed the circumstances of the case and found that no change to the sanction imposed or to the applicant's education was required, he did not specify what those circumstances were.

[60] I also note that the decision of April 9, 2014, does not address the breaches of procedural fairness that were committed at the time of the initial decision and does not mention the applicant's arguments that were submitted to the DG of the CPC on January 16, 2014.

[61] I acknowledge that it is settled law that a decision-maker is not required to make an explicit finding on each constituent element (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), 2011 SCC 62 at para 16, [2011] 3 SCR 708). However, the particular circumstances in this case surrounding the transmission of the material in accordance with rules 317 and 318 of the *Federal Courts Rules* suggest that the DG of the CPC possibly failed to consider the applicant's arguments in determining the appeal. The record demonstrates that when the DG of the CPC initially transmitted to this Court, on August 28, 2014, all of the material on which he relied to reach his decision, the applicant's

written arguments dated January 16, 2014, were not included. It was only in an amendment to the certified record on September 25, 2014, that the arguments were included.

[62] Finally, procedural fairness requires that decisions be made by an impartial decision-maker (*Baker*, at para 45). The record shows that on December 10, 2013, Superintendent White signed a letter on behalf of the DG of the CPC at the time, Assistant Commissioner Corley, that was addressed to counsel for the applicant and which stated that the CPC was reviewing the applicant's appeal from the decision rendered on August 30, 2013. However, Superintendent White's signature raises questions about the role that she may have played in the appeal process.

[63] In light of the foregoing, I find that the breaches to procedural fairness were not cured.

[64] Reiterating what the Supreme Court of Canada stated in *Khela*, above, at para 80, it is unnecessary to determine whether the decision dated April 9, 2014, was unlawful on the basis of unreasonableness. The decision was unlawful because it was procedurally unfair.

[65] For these reasons, I am of the opinion that the application for judicial review should be allowed, that the decision of the DG of the CPC dated April 9, 2014, should be set aside, and that it is appropriate to order that the applicant's matter be referred back to the DG of the CPC to be examined and determined in accordance with these reasons and Directive A10 as well as respecting the applicable principles of procedural fairness stated by the Supreme Court of Canada.

JUDGMENT

THIS COURT'S JUDGMENT is that:

(1) The application for judicial review is allowed;

(2) The decision of the Director General of the Canadian Police College dated April 9, 2014, is set aside;

(3) It is ordered that the applicant's matter be referred back to the Director General of the Canadian Police College to be examined and determined in accordance with these reasons and Directive A10 as well as respecting the applicable principles of procedural fairness stated by the Supreme Court of Canada;

(4) With costs to the applicant in the amount of $3,000.00.

"Sylvie E. Roussel"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1170-14
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