Federal Court  Cour fédérale

Date: 20161201

Docket: T-1197-16

Citation: 2016 FC 1331

Ottawa, Ontario, December 1, 2016

PRESENT: The Honourable Justice Mosley

BETWEEN:

MARCO CALANDRINI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The applicant, Marco Calandrini, filed an application for judicial review of the decision of Assistant Commissioner (A/Commr.) Craig MacMillan of the Royal Canadian Mounted Police [RCMP] acting as the Review Authority. This motion is seeking an order directing the respondent to transmit unredacted and unedited documents contained within the Certified Tribunal Record [CTR] as well as to provide the applicant with additional documents pursuant to Rules 317 and 318 of the *Federal Court Rules*, SOR/98-106.

I. BACKGROUND

[2] The applicant is a civilian member of the RCMP formerly employed at the Canadian Police College. Between August 31, 2012 and October 29, 2013, sexual misconduct allegations were made against him for actions involving a male co-worker.

[3] In December 2014, the RCMP initiated a conduct investigation into these allegations under subsection 40(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMP Act]. The Ottawa Police Service also conducted a criminal investigation but, on February 25, 2015, decided not to lay criminal charges.

[4] On September 10, 2015, Chief Superintendent (C/Supt.) Marty Chesser, Commanding Officer of National Headquarters and a Conduct Authority as defined under subsection 2(3) of the RCMP Act, held a conduct meeting with Mr. Calandrini. C/Supt. Chesser informed Mr. Calandrini that all three allegations against him were substantiated. On October 5, 2015, C/Supt. Chesser imposed a conduct measure on Mr. Calandrini of 15 days' pay (5 days per allegation, 120 hours in total) under subsection 42(1) of the RCMP Act for the findings of sexual misconduct. Mr. Calandrini has satisfied this financial penalty.

[5] On January 7, 2016, A/Commr. MacMillan, acting as Review Authority under subsection 9(1) of the *Commissioner's Standing Orders – Conduct*, SOR/2014-291 [CSO – Conduct], became aware of the findings of misconduct and the imposed conduct measure. The following day, he requested a review of the conduct measure imposed on the applicant.

[6] From January 18 to February 17, 2016, A/Commr. MacMillan was out of the office for personal reasons. Between February 18 and February 26, 2016, CBC News published a series of reports regarding alleged improprieties at the Canadian Police College and identified Mr. Calandrini as one of the alleged perpetrators.

[7] On February 19, 2016, A/Commr. MacMillan decided to proceed with a review under subsection 9(2) of the CSO – Conduct. That provision allows a Review Authority to "review a decision to determine if a finding is clearly unreasonable or a conduct measure is clearly disproportionate to the nature and circumstances of the contravention".

[8] On March 1, 2016, A/Commr. MacMillan sought a retroactive extension of time to initiate a conduct hearing against the applicant. The prescribed one-year limitation period had expired on November 25, 2015. On May 12, 2016, Chief Superintendent Raj Gill granted the extension under subsection 47.4(1) of the RCMP Act. That decision is also the subject of an application for judicial review in Federal Court file T-891-16, which will be heard at the same time as this matter.

[9] On May 30, 2016, A/Commr. MacMillan determined that the penalty ordered against the applicant was "clearly disproportionate" to his behaviour. He determined that it was in the public interest to rescind the conduct measure under paragraph 9(3)(c) of the CSO – Conduct and to initiate a conduct hearing per subsection 41(1) of the RCMP Act. The decision to rescind the conduct measure and initiate a hearing, served on the applicant on June 27, 2016, is the underlying decision under review to which this motion relates.

[10] In his Notice of Application for Judicial Review, the applicant sought disclosure pursuant to Rule 317 of certified copies of:

> [A]ll documents, notes and correspondence relating to the May 30, 2016, decision of the Review Authority, A/Commr. MacMillan, rescinding the conduct measures previously imposed against CM Calandrini on October 5, 2015, and directing that a conduct hearing be initiated against him pursuant to section 41(1) of the *RCMP Act*.

[11] On August 17, 2016, in response to the Rule 317 request, the respondent wrote to CM Calandrini and to the Federal Court Administrator transmitting the CTR. In that letter, the respondent advised of its objection, under Rule 318(2) of the *Federal Court Rules*, to the transmission of six sets of emails in the CTR which had been redacted in black. The respondent claimed solicitor-client privilege and privilege pursuant to subsection 47.1(2) of the RCMP Act over these emails. In subsequent correspondence, the respondent also asserted privilege based on "deliberative secrecy".

[12] The applicant disputed the objections made by the respondent in correspondence dated August 23, 2016. The applicant advised the respondent that a review of the CTR established that additional documentation was before the decision-maker or should have been before the decision-maker, and requested that this documentation be produced in the judicial review proceedings. These documents were described as:

- "Binder of information" referred to in email correspondence from A/Commr. MacMillan to C/Supt. Michael O'Reilly, dated February 19, 2016, referred to at page 135 of the CTR; and,
- The "inquiry from the Commissioner" referred to in email correspondence from A/Commr. MacMillan to C/Supt.

Michael O'Reilly, dated February 19, 2016, referred to at page 136 of the CTR.

[13] With respect to producing this additional documentation, the respondent took the position that these documents were not before the decision-maker, A/Commr. MacMillan, when he rendered his decision to rescind the conduct measures and initiate a hearing.

[14] After this motion was brought and prior to the hearing on October 19, 2016, the respondent advised the applicant and the Court that it was no longer asserting claims of privilege based on subsection 47.1(2) of the RCMP Act, solicitor-client privilege, nor deliberative secret to support any redactions within the following documents:

A. Email from Craig MacMillan to Stephen Foster dated February 22, 2016 (CTR, p. 138);

B. Emails between Craig MacMillan and Gregory Rose (copied to Kelly Jobson and Stephen Foster) dated February 22, 29 and March 1, 2016 (CTR, pp. 139-143); and

C. Emails between Stephen Foster, Gregory Rose, and Craig MacMillan dated March 7, April 1, and May 12, 2016 (CTR, pp. 163-165, 185-188, 209).

[15] These emails have been transmitted to the applicant and are no longer in dispute in this motion. However, a redacted email from Josianne Phenix to David Falls dated February 10, 2016 remains in dispute. As produced in the CTR, that email bears the notation:

> Document received by A/Commr MacMillan redacted in package.
> Contents of email unknown.

[16] At the hearing of this motion, it was clarified that the applicant was not seeking the entire "Binder of information" referred to in email correspondence from A/Commr. MacMillan to C/Supt. Michael O'Reilly but rather a missing page relating to his own case. That page was produced by the respondent following the hearing.

II. ISSUES

[17] Given the production of the additional material the only issues which appear to remain are the following:

A. Whether additional documents relating to "inquire from the Commissioner" must be produced; and

B. Should an unredacted version of the email from Josianne Phenix to David Falls dated February 10, 2016 be produced?

III. ANALYSIS

A. *Whether additional documents relating to "inquiry from the Commissioner" must be produced.*

[18] As noted above, the reference to the "inquiry from the Commissioner" appears in email correspondence from A/Commr. MacMillan to C/Supt. Michael O'Reilly, dated February 19, 2016. In that email, A/Commr MacMillan states that while he was away from the office on

personal leave, on or about February 10, 2016 he became aware that, as the result of an email to the Commissioner, the latter was inquiring about the matter involving the applicant. A/Commr MacMillan goes on to say that upon his return to work he briefly attended a meeting at the Commissioner's office regarding this matter and explained the procedure he was following. He states that he had not read the email sent to the Commissioner.

[19] It is trite law that only information that is relevant to the underlying judicial review application must be produced under Rule 317. Relevance is to be determined by reference to the grounds of review set out in the originating Notice of Application and the applicant's supporting affidavit: *Canada (Human Rights Commission) v Pathak,* [1995] 2 FC 455 (FC), 180 NR (C.A.) at para 10; leave to appeal to the Supreme Court of Canada refused (1995), 198 NR 237n [*Pathak*].

[20] A copy of any relevant statutory provisions referred to in these reasons is attached as an appendix.

[21] In this instance, the applicant did not raise any issue relating to the "inquiry from the Commissioner" in his Notice of Application. He named procedural fairness as a ground of review in the Notice but only in relation to the alleged failure of A/Commr. MacMillan, as Review Authority, to provide any or sufficient reasons to substantiate his decision.

[22] The applicant argues that he only became aware of the inquiry upon delivery of the email correspondence from A/Commr. MacMillan to C/Supt. Michael O'Reilly, dated February 19,

2016, as part of the CTR. He says that this email suggests that there may be evidence that the Commissioner fettered the discretion of the Review Authority to rescind the conduct measures and initiate a conduct hearing. The applicant is not interested in the email to the Commissioner from a civilian member but rather in any communication from the Commissioner to A/Commr. MacMillan.

[23] Further to questions from the Court at the hearing of this motion, counsel for the respondent provided a statement from the A/Commr:

> I can advise that the C'r (Commissioner) has never communicated orally or in writing any direction to me regarding the exercise of the s.9 authority regarding this matter.

[24] This statement is not before the Court in the form of affidavit evidence but in a letter to the Court and to opposing counsel from the respondent's counsel. In that respect, it has no evidentiary value. Should the respondent wish to adduce evidence on this topic for the judicial review application, an affidavit will be required.

[25] The limitation in Rule 317 is related to the principle that a judicial review must be decided on the basis of the information in the decision maker's possession at the time the decision was made: *Access to Information Agency Inc v Canada (Transport)*, 2007 FCA 224, [2007] FCJ No 814 at para 7 [*Access to Information*]; see also *Canada (Public Sector Integrity Commissioner) v Canada*, 2014 FCA 270, [2014] FCJ No 1167 at para 4 [*Public Sector Integrity Commissioner*]; *Ochapawace First Nation v Canada (Attorney General)*, 2007 FC 920, [2007] FCJ No 1195 at para 19; aff'd 2009 FCA 124 [*Ochapawace*].

[26] As Justice Pelletier noted in *Access to Information*, above, at paragraph 17, Rule 317 does not serve the same purpose as documentary discovery in an action. He elaborated at paragraph 21:

> …The purpose of the rule is to limit discovery to documents which were in the hands of the decision-maker when the decision was made and which were not in the possession of the person making the request and to require that the requested documents be described in a precise manner. When dealing with a judicial review, it is not just a matter of requesting the disclosure of any document that could be relevant in the hopes of later establishing relevance. Such a procedure is entirely inconsistent with the summary nature of judicial review. If the circumstances are such that it is necessary to broaden the scope of discovery, the party demanding more complete disclosure has the burden of advancing the evidence justifying the request. It is this final element that is completely lacking in this case.

[27] There are exceptions to this principle. Materials that were not before the decision-maker may be considered relevant if there is an allegation that the decision-maker breached procedural fairness, committed jurisdictional error or where there is an allegation of a reasonable apprehension of bias*: Gagliano v Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities – Gomery Commission),* 2006 FC 720, [2006] FCJ No 917 at para 50 [*Gagliano*]; *Canadian National Railway Co v Louis Dreyfus Commodities Ltd.*, 2016 FC 101, [2016] FCJ No 71 at para 27 [*Canadian National Railway*]; *Bernard v Professional Institute of the Public Service of Canada,* 2015 FCA 263, [2015] FCJ No 1396 at paras 14-28 [*Bernard*].

[28] To be successful in obtaining disclosure of material that was not before the decision-maker at the time the decision was made, the applicant must raise a ground of review that would allow the Court to consider evidence that was not before the decision-maker, and then demonstrate that this ground of review has a factual basis supported by appropriate evidence:

Canadian National Railway Co, above, at para 27; *Public Sector Integrity Commissioner,* above, at para 4.

[29] Documents that were not before the tribunal when it made its decision may be ordered to be produced if they are found to be relevant to the judicial review application: *Canadian Broadcasting Corp v Paul,* 2001 FCA 93, [2001] FCJ No 542 at paras 63-67 [*Paul*]. In *Paul,* the Court of Appeal held that it was appropriate to consider additional documents which were relevant to the allegation that a report submitted to the Canadian Human Rights Tribunal was biased and incomplete.

[30] In this matter, there is no evidence of the existence of any communication between the Commissioner and the Review Authority beyond the vague allusion in A/Commr. MacMillan's email to having become aware of the Commissioner's inquiry. That inquiry related to an email from a civilian staff member that is not in evidence.

[31] I agree with the respondent that what the applicant is now asking for would amount to a request for discovery of the RCMP at large and is beyond the scope of Rule 317. There is no evidence of any written or oral communication beyond that described in the February 19, 2016 email.

B. *Should an unredacted version of the email from Josianne Phenix to David Falls dated February 10, 2016 be produced?*

[32] As noted above, the applicant contends in his Notice of Application that A/Commr. MacMillan's decision is unreasonable because of a lack of reasons or sufficiency of reasons. At first impression, it was not clear to me how the Phenix email could be relevant to determining the sufficiency of the Review Authority's reasons when the decision was not informed by the content of the email. The Supreme Court has set a threshold in assessing the sufficiency of a decision-maker's reasons: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] SCJ No 61 at paras 16-18. It remains open to the applicant to argue on judicial review that the reasons do not meet that threshold but he could do that without reference to the advice provided to the Conduct Authority.

[33] The applicant submits that this email is relevant to the underlying judicial review because he believes that it likely sets out precedents as well as the reasons and rationale for the Conduct Authority's determination that 15 days' forfeiture of pay was an appropriate penalty. That would be relevant, he contends, to the determination of whether the conduct measures imposed were "clearly disproportionate to the nature and circumstances of the contraventions" and should have been before the Review Authority as the decision maker. He also wants to have an unredacted version of this email before the Court on judicial review to assist in determining whether the Review Authority provided sufficient reasons for its decision. The Notice of Decision simply concludes:

> Take notice that in accordance with paragraph 9(3)(c) of the CSO, I find that the Measures are clearly disproportionate to the nature and circumstances of the Contraventions, and it is in the public interest to rescind the Measures and initiate a hearing in accordance with subsection 41(1) of the RCMP Act.

[34] The applicant contends that any privilege that would otherwise be associated with this correspondence is explicitly waived due to the following note from Josianne Phenix in the email:

> As you may know, the communication between conduct authorities and conduct authority representatives (CAR) are privileged. I sought and obtained the authorization from the CO to share the information he received from the CAR (Denys Morel) in this matter.

[35] Assuming that the content of the Phenix email contains the information which the applicant believes it does, there is some merit to the argument that it may be relevant to the determination of the judicial review application. Any information about precedents relating to conduct measures in other cases, for example, may be relevant to a determination of whether the original finding is "clearly unreasonable" or "clearly disproportionate". While the email was apparently not read by A/Commr. MacMillan, he would have, in the course of conducting the review, presumably considered the rationale for the conduct measure that was imposed.

[36] The content of this email was prepared by a Conduct Authority Representative, who is a lawyer at the Conduct Authority Representative Directorate (CARD). If the lawyer provided the Conduct Authority advice on the appropriate conduct measure range, that advice would be a privileged communication subject to any waiver of the privilege. The content of the email was shared with David Falls, and copied to two others, for the purposes of determining whether to recommend a review under section 9 of the CSO – Conduct.

[37] The respondent submits that the statutory privilege provided by subsection 47.1(2) of the RCMP Act, or solicitor-client privilege, would attach to the redacted content in the Phenix email.

[38] Subsection 47.1(2) reads as follows:

> If a member or conduct authority is represented or assisted by another person, communications passing in confidence between them in relation to the grievance, proceeding or appeal are, for the purposes of this Act, privileged as they were communications passing in professional confidence between the member or the conduct authority and their legal counsel.

[39] The applicant argues that subsection 47.1(2) does not apply to the Phenix email because the statutory privilege attaches only to communications made in relation to a grievance, a proceeding or an appeal. The applicant submits that the decision of the Review Authority to rescind previously imposed conduct measures does not fall within any of those three categories. Moreover, the applicant argues, even if the communication did fall into either one of the three categories, there was an express waiver of any privilege attaching to the content of the email when C/Supt. Chesser authorized its disclosure to third parties.

[40] The redacted communication at issue was in relation to a grievance that was brought forth by the civilian member who complained about the applicant's behavior. The allegations were investigated and ultimately substantiated by the conduct authority. It seems to me that at least part of this process would have been completed under paragraph 47.1(1)(a) (i.e. presentation of a grievance) of the RCMP Act. Throughout this process, the conduct authority was provided with advice by a member of CARD. Such advice, at first impression and without deciding the matter, would be privileged under subsection 47.1(2).

[41] For solicitor client privilege to apply to a communication, it must be: (1) made between a lawyer and a client; (2) entail the seeking or giving of legal advice; and (3) intended to be kept

confidential by the client: *Solosky v The Queen*, [1980] 1 SCR 821 at 837. It is not clear from the record on this motion whether the content of the Phenix email contains legal advice that would be protected under solicitor-client privilege but that is a reasonable inference on the facts before the Court.

[42] Section 29 of the CSO – Conduct defines a "Conduct Authority Representative" (CAR) as a "person who is authorized by the Director of the Conduct Authority Representative Directorate to provide representation or assistance to a conduct authority". Further, section 29 defines "representation" as the "act of representing a subject member or conduct authority, including providing legal advice, litigation or advocacy for the purpose of these Standing Orders" [Emphasis added].

[43] Express waiver of a privilege will occur when the holder knows of the existence of the privilege and voluntarily evinces an intention to waive it: *R v Youvarajah*, 2011 ONCA 654, [2011] OJ No 4610 at para 146. The unredacted content of the Phenix email indicates that C/Supt. Chesser was aware of the existence of the privilege as authorization was sought from him to share it. In authorizing the sharing of that communication with a third party, it is arguable that C/Supt. Chesser voluntarily waived the privilege.

[44] The opposing argument is that as the sharing of the communication was internal to the RCMP conduct authorities and advisors, the "common interest" or "joint interest" exception to waiver would apply to the communications. As such, the communication would remain privileged to the outside world even though it was disclosed to a third party. For those exceptions

to apply, the parties (in this case the CO, the holder of privilege, and the third party, being Dave Falls) would have to share a common goal: see David M. Paciocco and Lee Stuesser, *The Law of Evidence*, 7th ed (Toronto: Irwin Law, 2015) at p 239.

[45] I advised the parties at the hearing that I would consider whether I would require production of the content of the email in unredacted form for the Court's review and invite further submissions on whether the content was or was not privileged. Having considered the matter further, it seems to me that the question of privilege would best be determined on the hearing of the judicial review application with the benefit of full argument with supporting evidence and authorities from the parties. For that reason, I will order that an unredacted and unedited version of the email be provided under seal to the Court to be opened only by the Application Judge unless any claims of privilege respecting the content are abandoned by the respondent prior to the hearing. It will remain open to the respondent to present evidence and argument in support of any privilege claim it may wish to assert respecting the content of the email and to the applicant to contest such claim.

IV. COSTS

[46] The applicant has been largely successful and deserves his costs. The filing of the motion resulted in the production of further material. On October 14, 2016, four days prior to the motion hearing, the respondent transmitted most of the documents at issue in the motion and withdrew privilege claims initially asserted. I have found that a further document will need to be produced in unredacted but sealed form subject to a ruling as to its admissibility at the hearing of the underlying application.

[47] The applicant initially sought costs on a substantial indemnity basis. At the hearing, counsel acknowledged that there were no precedents in support of awarding solicitor-client costs in the absence of "reprehensible, scandalous or outrageous conduct": see for example *Louis Vuitton Malletier S.A. v. Yang,* 2007 FC 1179, [2007] FCJ No 1528 at paras 54-60; and *Dimplex North America Ltd v CFM Corp,* 2006 FC 1403, [2006] FCJ No 1762 at para 8. The default position as I stated in *Dimplex,* is Column III of the table to Tariff B. Here I think the costs should fall in the middle of that column.

ORDER

THIS COURT ORDERS that:

1. The Motion is granted in part;

2. The Respondent is not required to produce additional documents relating to "the inquiry from the Commissioner";

3. In accordance with the reasons provided, if the Respondent chooses to maintain a claim of privilege respecting the email from Josianne Phenix to David Falls dated February 10, 2016, the Respondent shall file with the Registry of the Court an unredacted and unedited copy of the email under seal to be opened only by the Judge assigned to hear the underlying Application for Judicial Review;

4. Subject to any findings that the Application Judge may make regarding the relevance and admissibility of the email including any claim of privilege, it shall form part of the Certified Tribunal Record before the Court; and

5. As the Applicant has largely been successful, he shall have his costs for this motion assessed at the middle of Column III of the table to Tariff B.

"Richard G. Mosley"
Judge

APPENDIX

Relevant provisions of the *Federal Court Rules* / Dispositions pertinentes des *Régles des Cours fédérales*

Material from tribunal

317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

Matériel en la possession de l'office fédéral

317 (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

Request in notice of application

(2) An applicant may include a request under subsection (1) in its notice of application.

Demande inclue dans l'avis de demande

(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.

Material to be transmitted

318 (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the Registry.

Documents à transmettre

318 (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Objection by tribunal

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

Opposition de l'office fédéral

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

Relevant provisions of the *Royal Canadian Mounted Police Act* / Dispositions pertinentes de la *Loi sur la Gendarmerie royale du Canada*

Representation

47.1 (1) Subject to any rules made under subsection (3) a member or a conduct authority may be represented or assisted by any person in any

(a) presentation of a grievance under Part III;

(b) proceeding before a board; or

(c) appeal under subsection 45.11(1) or (3).

Privilege

(2) If a member or conduct authority is represented or assisted by another person, communications passing in confidence between them in relation to the grievance, proceeding or appeal are, for the purposes of this Act, privileged as if they were communications passing in professional confidence between the member or the conduct authority and their legal counsel.

Représentation

47.1 (1) Sous réserve des règles établies conformément au paragraphe (3), toute personne peut représenter ou assister un membre ou une autorité disciplinaire :

a) lors de la présentation d'un grief sous le régime de la partie III;

b) lors des procédures tenues devant une commission;

c) lors d'un appel interjeté en vertu des paragraphes 45.11(1) ou (3).

Secret professionnel

(2) Lorsqu'un membre ou une autorité disciplinaire se fait représenter ou assister par une autre personne, les communications confidentielles qu'ils échangent relativement au grief, aux procédures ou à l'appel sont, pour l'application de la présente loi, protégées comme si elles étaient des communications confidentielles échangées entre le membre ou l'autorité disciplinaire et son conseiller juridique.

Relevant provisions of the *Commissioner's Standing Orders – Conduct* / Disposition pertinentes des *Consignes du commissaire - Déontologie*

Designation of review authority

9 (1) The Commissioner may designate a person to be a review authority in respect of decisions made by conduct authorities and as the conduct authority in respect of the subject member for any decision that the review authority decides to review.

Reason for review

(2) A review authority may, on their own initiative, review a decision to determine if a

Désignation d'une autorité de révision

9 (1) Le commissaire peut désigner une personne à titre d'autorité de révision à l'égard des décisions rendues par toute autorité disciplinaire. Lorsqu'elle révise une décision, l'autorité de révision est désignée à titre d'autorité disciplinaire du membre visé.

Objet de la révision

(2) L'autorité de révision peut, de son propre chef, réviser une décision pour établir si une

finding is clearly unreasonable or a conduct measure is clearly disproportionate to the nature and circumstances of the contravention.

Power of review authority

(3) If the review authority makes the determination that a finding is clearly unreasonable or a conduct measure is clearly disproportionate and if it is in the public interest to do so, the review authority may

(a) rescind any finding made by the conduct authority that the subject member has not contravened the Code of Conduct, substitute for that finding a finding that the subject member has contravened the Code of Conduct and impose any one or more of the conduct measures referred to in subsection 5(1) that is proportionate to the nature and circumstances of the contravention;

(b) rescind or amend any conduct measure imposed by the conduct authority, or substitute any one or more of the measures referred to in subsection 5(1) that is proportionate to the nature and circumstances of the contravention; or

(c) rescind any conduct measure imposed by the conduct authority and initiate a hearing in accordance with subsection 41(1) of the Act.

conclusion est manifestement déraisonnable ou si les mesures disciplinaires sont vraisemblablement disproportionnées avec la nature et les circonstances de la contravention.

Pouvoir de l'autorité de révision

(3) Lorsqu'elle établit qu'une conclusion est manifestement déraisonnable ou qu'une mesure disciplinaire est vraisemblablement disproportionnée et qu'il est dans l'intérêt public de le faire, elle peut :

a) annuler la conclusion de l'autorité disciplinaire selon laquelle le membre visé n'a pas contrevenu au code de déontologie, y substituer une conclusion voulant qu'il ait contrevenu au code de déontologie et lui imposer une ou plusieurs des mesures disciplinaires mentionnées au paragraphe 5(1) qui sont proportionnées à la nature et aux circonstances de la contravention;

b) annuler ou modifier toute mesure disciplinaire imposée par l'autorité disciplinaire, ou y substituer une ou plusieurs des mesures disciplinaires mentionnées au paragraphe 5(1) qui sont proportionnées à la nature et aux circonstances de la contravention;

c) annuler toute mesure disciplinaire imposée par l'autorité disciplinaire et convoquer une audience conformément au paragraphe 41(1) de la Loi.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1197-16
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DATED:	DECEMBER 1, 2016

APPEARANCES:

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