

Federal Court



Cour fédérale

Date: 20120612

Docket: T-966-11

Citation: 2012 FC 707

Ottawa, Ontario, this 12th day of June 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

DERRICK HOLDENRIED

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT
**(Filed pursuant to section 51 of the *Federal Courts Act*,
R.S.C. 1985, c. F-7)**

[1] These reasons are filed pursuant to section 51 of the *Federal Courts Act* in support of the judgment rendered on the bench, on May 9, 2012, dismissing this application for judicial review, with costs.

[2] On June 10, 2011, Constable Derrick Holdenried (the “applicant”) filed the present application for judicial review, under sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985,

c. F-7, of Assistant Commissioner of the Royal Canadian Mounted Police Daniel Dubeau's (the "Assistant Commissioner") decision recommending the applicant's stoppage of pay and allowances pursuant to subsection 22(3) of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (the "RCMP Act") and the *R.C.M.P. Stoppage of Pay and Allowances Regulations*, SOR/84-886 (the "Stoppage of Pay Regulations").

* * * * *

[3] From May 1, 2010 to December 4, 2010, the applicant, a Royal Canadian Mounted Police ("RCMP") Constable, was stationed at the Burnaby detachment in British Columbia. During this time, on multiple occasions, the applicant had taken money from inside the desk or jacket of other RCMP members. These thefts all occurred inside the community police station.

[4] Around November-December 2010, an investigation began, believing the applicant to be conducting himself in a disgraceful manner which could bring discredit on the Force, contrary to subsection 39(1) of the *Royal Canadian Mounted Police Regulations*, SOR/88-361 (the "RCMP Regulations"). On November 8, 2010 and December 4, 2010, the applicant was caught stealing on tape.

[5] On December 8, 2010, the applicant received a Briefing Note informing him of a Code of Conduct investigation and of allegations of stealing that were made against him. The applicant was interviewed with regards to his alleged misconduct. At this time, the applicant admitted to taking money without consent a total of twenty to twenty-five times within the community police station.

[6] On December 20, 2010, the RCMP Commanding Officer (the “Commanding Officer”) was briefed on the allegations against the applicant and decided to suspend him with pay. On December 22, 2010, the applicant received a Notice of Suspension, informing him that the Commanding Officer recommended that the applicant be suspended for his alleged misconduct, being believed to remove money from other members within the police station, alleging four specific incidents of disgraceful conduct contrary to subsection 39(1) of the *RCMP Regulations*, specifically on November 18, 2010; December 2, 2010; December 4, 2010; and between May and November 2010. On December 23, 2010, the Commanding Officer issued a Notice of Intent to recommend the stoppage of pay and allowances to the applicant during his suspension.

[7] This Notice of Intent was received by the applicant on December 30, 2010 and outlined the criteria for suspension without pay as “clear involvement”, “seriousness” of the conduct and “timeliness”. These factors were met, in the Commanding Officer’s opinion, for the applicant was caught on tape stealing, admitted to stealing during his interview and could provide no reasonable explanation for his conduct. Thereby, the applicant was breaching RCMP values such as honesty, integrity, trustworthiness and incorruptibility. Thus, the preventive measure of suspension without pay was necessary, in the Commanding Officer’s opinion, to maintain the RCMP’s institutional credibility and maintain public confidence. The applicant was entitled to file a response in regard to this Notice of Intent.

[8] On February 2, 2011, in response, the applicant explained that the Commanding Officer failed to consider his medical disability, which was a serious mitigating factor against imposing a suspension without pay. Thereby, failing to consider his disability, the Commanding Officer acted

in a discriminatory manner contrary to section 7 of the *Canadian Human Rights Act*, R.S.C. 1985 c. H-6. The applicant also alleged that an indefinite suspension without a finding of fault was contrary to law.

[9] The applicant explained that after responding to a grotesque suicide call in March 2010, he suffered from post-traumatic stress disorder which influenced his behavior, as explained by his psychologist Doctor Hancock in his medical report dated January 27, 2011.

[10] On February 18, 2011, the Commanding Officer maintained his recommendation of suspension without pay. On April 18, 2011, the Commanding Officer's recommendation and the supporting documents were sent for review by the Assistant Commissioner. The Assistant Commissioner considered the evidence submitted by the Commanding Officer and the applicant, in addition to the requirements of Part XII.5 of the *RCMP Administration Manual* ("the *Manual*"). The requirements of the *Manual* being met, on May 13, 2011, the Assistant Commissioner supported the Commanding Officer's recommendation and recommended the applicant's pay and allowances be stopped; and issued an order of stoppage of all pay and allowances effective this date pursuant to subsection 22(3) of the *RCMP Act* and section 2 of the *Stoppage of Pay Regulations*.

* * * * *

[11] The relevant legislation is annexed hereto for convenience.

[12] The present application for judicial review raises the following crucial preliminary issue:

Should this Court decline to hear the present application for judicial review because the applicant did not exhaust the means of relief available to him under the *RCMP Act*, not having utilized the grievance mechanisms available to him?

[13] The respondent argues at the outset that this Court should decline to exercise its jurisdiction and hear the present application for judicial review because the applicant never properly availed himself of the remedies available to him under the grievance procedure provided for under section 31 of the *RCMP Act*. This grievance process would allow the applicant to fully present his case and seek a broader range of remedies. And if the grievance was ultimately denied, the applicant could then seek judicial review. The respondent explains that this Court should decline to exercise its jurisdiction where the grievance procedure is an adequate alternative remedy, albeit not a perfect remedy. I agree.

[14] Actually, in June 2011, at the same time that the applicant filed the present application for judicial review, the applicant also filed a grievance with the decision presently the object of this judicial review, specifically the Assistant Commissioner's decision suspending the applicant without pay and allowances. While this decision has been submitted to the level I grievance adjudicator in December 2011, a decision has yet to be rendered.

[15] It appears therefore that the applicant has yet to fully avail himself of the grievance procedure afforded to him under the *RCMP Act*. Section 31 of the *RCMP Act*, being a catch-all provision, allowed the applicant to file a grievance against the Assistant Commissioner's decision and could ultimately have entitled him to a hearing before the Royal Canadian Mounted Police

External Review Committee (see sections 32 and 33 of the *RCMP Act* and *Phillips v. Harrison*, 2000 MBCA 150 at para 21).

[16] The question is whether this alternative remedy is adequate (*Froom v. Minister of Justice*, 2004 FCA 352 at para 12; *Bruno v. Attorney General*, 2006 FC 462 at para 23). As stated by the Supreme Court of Canada in *Vaughan v. Canada*, 2005 SCC 11, [2005] 1 S.C.R. 146 at paragraph 39:

. . . where Parliament has clearly created a scheme for dealing with labour disputes, . . . courts should not jeopardize the comprehensive dispute resolution process contained in the legislation by permitting routine access to courts. While the absence of independent third-party adjudication may in certain circumstances impact on the court's exercise of its residual discretion (as in the whistle-blower cases) the general rule of deference in matters arising out of labour relations should prevail.

[17] The applicant claims that this grievance mechanism is inadequate and his application for judicial review should proceed. Firstly, he claims adjudication can take many years, which he argues is a factor to consider in determining whether this Court should nonetheless hear the application for judicial review, relying on *Royal Canadian Mounted Police v. Attorney General*, 2007 FC 564, 313 F.T.R. 183 [*RCMP*]. However, in this case, while Justice Danièle Tremblay-Lamer did state that the fact that the length of the grievance process was a relevant factor, she specified that such a process is not “suitable for resolving a discrete preliminary dispute over jurisdiction” (at para 28). We are not dealing with a preliminary dispute over jurisdiction and thus Justice Tremblay-Lamer's comments are of limited utility.

[18] The applicant further claims that the grievance mechanism is inadequate because he is raising jurisdictional arguments which are beyond the Assistant Commissioner's expertise, relying again on the *RCMP* case, above. Once again, this case can be distinguished, seeing as it was not in the same context. The applicant also relies on *Secord v. Saint John (City) Board of Police Commissioners*, 2006 NBQB 65 [*Secord*] to support his position that where a jurisdictional issue is raised, this Court should exercise its discretion and hear the judicial review, despite the availability of alternative grievance mechanisms available. While this is true, the Court in *Secord* went on to specify that the Court should go on to consider other relevant factors, "including an examination of the adequate alternate remedy and the nature of the question to determine whether the inconvenience of proceeding through the statutorily prescribed scheme outweighs the benefits of such" (at para 43). Thus, the existence of a jurisdictional issue being raised in the present application for judicial review, which the applicant argues is not a true question, is not determinative of whether or not this Court should exercise its discretion.

[19] It is only in exceptional cases that courts should exercise their discretion, despite the existence of a comprehensive statutory grievance scheme. For example, where the integrity of the grievance procedure has been compromised, courts should exercise their discretion and hear the application for judicial review (*Lebrasseur v. Her Majesty the Queen*, 2007 FCA 330 at para 18). However, this is not such a case where the integrity of the grievance process has been compromised. The grievance process outlined in Part III of the *RCMP Act* has been recognized as a comprehensive scheme providing effective redress in cases other than those concerning harassment (*Marshall v. Attorney General of Canada*, 2008 SKQB 113 at para 11; *The Attorney General of Canada v. Smith*, 2007 NBCA 58 at para 3; *Merrifield v. Canada (Attorney General)*, 2009 ONCA 127 at

para 10). As such, “where a grievance procedure, as prescribed in a statute, constitutes an adequate alternate remedy, it ought to be completely followed before turning to the Courts” (*Sauve v. Her Majesty the Queen* (1998), 157 F.T.R. 91 at para 20).

[20] The grievance process against decisions concerning RCMP stoppage of pay and allowances is well described in the affidavit of Kathleen Li, Case Manager/Grievance Reviewer with the RCMP of the City of Vancouver, British Columbia:

4. Grievances concerning suspensions without pay and allowances (“SWOP”) pursuant to the *RCMP Stoppage of Pay and Allowances Regulations* follow a process that is distinct from the process outlined above. Such grievances are prioritized by the Pacific Region Office for Co-ordination of Grievances. Phase I of the usual grievance process is not mandatory and grievances of SWOP decisions generally proceed directly to Phase II. The Level I adjudicator for SWOP grievances is a Deputy Commissioner of the RCMP.

5. If a SWOP grievance is denied by the Level I adjudicator, the grievor may appeal to the second and final level in the grievance process, the Commissioner, who, before considering the grievance, will refer the grievance to the External Review Committee pursuant to section 33(1) of the *RCMP Act*.

6. If a SWOP grievance is upheld by the Level I adjudicator and the grievor is satisfied with the remedy, the file is concluded at that point. It is not referred to the External Review Committee or the Commissioner.

[21] In her affidavit, Ms. Li further describes the chronology of the steps taken to date in the applicant’s grievance and concludes as follows:

8. The Level I Adjudicator has yet to make a decision on the Grievance. While I cannot state when the Adjudicator will render her decision, based on my experience, Mr. Holdenried’s Grievance has proceeded efficiently.

[22] I am satisfied therefore, that the grievance procedure afforded to the applicant is an adequate alternative remedy which the applicant has yet to fully avail himself of, before coming to this Court as he did.

* * * * *

[23] In the circumstances, the application for judicial review is premature and must be dismissed, with costs.

JUDGMENT

The application for judicial review is dismissed, with costs.

“Yvon Pinard”

Judge

ANNEX

Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10:

5. (1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, who, under the direction of the Minister, has the control and management of the Force and all matters connected therewith.

(2) The Commissioner may delegate to any member any of the Commissioner's powers, duties or functions under this Act, except the power to delegate under this subsection, the power to make rules under this Act and the powers, duties or functions under section 32 (in relation to any type of grievance prescribed pursuant to subsection 33(4)), subsections 42(4) and 43(1), section 45.16, subsection 45.19(5), section 45.26 and subsections 45.46(1) and (2).

12.1 Every member who has contravened, is found contravening or is suspected of contravening the Code of Conduct or an Act of Parliament or of the legislature of a province may be suspended from duty by the Commissioner.

22. (3) The Treasury Board may make regulations respecting the stoppage of pay and allowances of members who are suspended from duty.

25. (1) There is hereby established a committee, to be known as the Royal Canadian Mounted Police External Review Committee, consisting of a Chairman, a Vice-Chairman and not more than three other members, to be appointed by order of the Governor in Council.

5. (1) Le gouverneur en conseil peut nommer un officier, appelé commissaire de la Gendarmerie royale du Canada, qui, sous la direction du ministre, a pleine autorité sur la Gendarmerie et tout ce qui s'y rapporte.

(2) Le commissaire peut déléguer à tout membre les pouvoirs ou fonctions que lui attribue la présente loi, à l'exception du pouvoir de délégation que lui accorde le présent paragraphe, du pouvoir que lui accorde la présente loi d'établir des règles et des pouvoirs et fonctions visés à l'article 32 (relativement à toute catégorie de griefs visée dans un règlement pris en application du paragraphe 33(4)), aux paragraphes 42(4) et 43(1), à l'article 45.16, au paragraphe 45.19(5), à l'article 45.26 et aux paragraphes 45.46(1) et (2).

12.1 Le commissaire peut suspendre tout membre qui a contrevenu, contrevient ou qui est soupçonné de contrevenir au code de déontologie ou à une loi fédérale ou provinciale.

22. (3) Le Conseil du Trésor peut prendre des règlements régissant la cessation de la solde et des indemnités des membres suspendus de leurs fonctions.

25. (1) Est constitué le Comité externe d'examen de la Gendarmerie royale du Canada, composé d'au plus cinq membres, dont le président et un vice-président, nommés par décret du gouverneur en conseil.

(5) No member of the Force is eligible to be appointed or to continue as a member of the Committee.

31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

32. (1) The Commissioner constitutes the final level in the grievance process and the Commissioner's decision in respect of any grievance is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court.

33. (1) Before the Commissioner considers a grievance of a type prescribed pursuant to subsection (4), the Commissioner shall refer the grievance to the Committee.

(2) Notwithstanding subsection (1), a member presenting a grievance to the Commissioner may request the Commissioner not to refer the grievance to the Committee and, on such a request, the Commissioner may either not refer the grievance to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the grievance to the Committee.

(3) Where the Commissioner refers a grievance to the Committee pursuant to this section, the Commissioner shall furnish the Committee Chairman with a copy of

(5) Un membre de la Gendarmerie ne peut faire partie du Comité.

31. (1) Sous réserve des paragraphes (2) et (3), un membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue à la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour corriger ce préjudice.

32. (1) Le commissaire constitue le dernier niveau de la procédure applicable aux griefs; sa décision est définitive et exécutoire et, sous réserve du contrôle judiciaire prévu par la *Loi sur les Cours fédérales*, n'est pas susceptible d'appel ou de révision en justice.

33. (1) Avant d'étudier un grief d'une catégorie visée par règlement pris en vertu du paragraphe (4), le commissaire le renvoie devant le Comité.

(2) Par dérogation au paragraphe (1), le membre qui présente un grief au commissaire peut lui demander de ne pas le renvoyer devant le Comité; le commissaire peut accéder à cette demande, ou la rejeter s'il estime plus indiqué un renvoi devant le Comité.

(3) En cas de renvoi d'un grief devant le Comité conformément au présent article, le commissaire transmet au président du Comité une copie :

a) des argumentations écrites faites à chaque niveau de la procédure applicable aux griefs par le membre qui présente le grief;

- (a) the written submissions made at each level in the grievance process by the member presenting the grievance;
- (b) the decisions rendered at each level in the grievance process in respect of the grievance; and
- (c) the written or documentary information under the control of the Force and relevant to the grievance.

(4) The Governor in Council may make regulations prescribing for the purposes of subsection (1) the types of grievances that are to be referred to the Committee.

34. (1) The Committee Chairman shall review every grievance referred to the Committee pursuant to section 33.

40. (1) Where it appears to an officer or to a member in command of a detachment that a member under the command of the officer or member has contravened the Code of Conduct, the officer or member shall make or cause to be made such investigation as the officer or member considers necessary to enable the officer or member to determine whether that member has contravened or is contravening the Code of Conduct.

(2) In any investigation under subsection (1), no member shall be excused from answering any question relating to the matter being investigated when required to do so by the officer or other member conducting the investigation on the ground that the answer to the question may tend to criminate the member or subject the member to any proceeding or penalty.

(3) No answer or statement made in response to a question described in subsection (2) shall be used or receivable in any criminal, civil or administrative proceedings, other than a

- b) des décisions rendues à chaque niveau de cette procédure;
- c) de la documentation pertinente placée sous la responsabilité de la Gendarmerie.

(4) Le gouverneur en conseil peut, par règlement, prescrire, pour l'application du paragraphe (1), les catégories de griefs qui doivent faire l'objet d'un renvoi devant le Comité.

34. (1) Le président du Comité examine tous les griefs qui sont renvoyés devant le Comité conformément à l'article 33.

40. (1) Lorsqu'il apparaît à un officier ou à un membre commandant un détachement qu'un membre sous ses ordres a contrevenu au code de déontologie, il tient ou fait tenir l'enquête qu'il estime nécessaire pour lui permettre d'établir s'il y a réellement contravention.

(2) Au cours d'une enquête tenue en vertu du paragraphe (1), un membre n'est pas dispensé de répondre aux questions portant sur l'objet de l'enquête lorsque l'officier ou l'autre membre menant l'enquête l'exigent, au motif que sa réponse peut l'incriminer ou l'exposer à des poursuites ou à une peine.

(3) Les réponses ou déclarations faites à la suite des questions visées au paragraphe (2) ne peuvent être utilisées ni ne sont recevables dans des poursuites pénales, civiles ou administratives sauf au cours d'une audience tenue en vertu de l'article 45.1 portant sur l'allégation selon laquelle le membre a fait une telle réponse ou déclaration, qu'il savait fausse, dans l'intention de tromper.

hearing under section 45.1 into an allegation that with intent to mislead the member gave the answer or statement knowing it to be false.

41. (1) Subject to this section, the following informal disciplinary action may be taken in respect of a contravention of the Code of Conduct, namely,

- (a) counselling;
- (b) recommendation for special training;
- (c) recommendation for professional counselling;
- (d) recommendation for transfer;
- (e) direction to work under close supervision;
- (f) subject to such conditions as the Commissioner may, by rule, prescribe, forfeiture of regular time off for any period not exceeding one work day; and
- (g) reprimand.

42. (1) Any member against whom informal disciplinary action referred to in any of paragraphs 41(1)(e) to (g) is taken may appeal that action at each of the levels, up to and including the final level, in the appeal process provided for by this section.

43. (1) Subject to subsections (7) and (8), where it appears to an appropriate officer that a member has contravened the Code of Conduct and the appropriate officer is of the opinion that, having regard to the gravity of the contravention and to the surrounding circumstances, informal disciplinary action under section 41 would not be sufficient if the contravention were established, the appropriate officer shall initiate a hearing into the alleged contravention and notify the officer designated by the Commissioner for the purposes of this section of that decision.

41. (1) Sous réserve des autres dispositions du présent article, peuvent être imposées, pour une contravention au code de déontologie, les mesures disciplinaires simples suivantes :

- a) conseiller le contrevenant;
- b) recommander de lui faire suivre une formation spéciale;
- c) recommander de le faire bénéficier des conseils d'un spécialiste;
- d) recommander sa mutation;
- e) le soumettre à une stricte surveillance pendant son travail;
- f) le priver de son congé hebdomadaire pour une période ne dépassant pas un jour de travail, sous réserve des conditions que peut prescrire le commissaire par règle;
- g) lui donner un avertissement.

42. (1) Tout membre soumis à une mesure disciplinaire simple visée aux alinéas 41(1)e) à g) peut interjeter appel de la mesure à chacun des niveaux de la procédure d'appel prévue au présent article.

43. (1) Sous réserve des paragraphes (7) et (8), lorsqu'il apparaît à un officier compétent qu'un membre a contrevenu au code de déontologie et qu'eu égard à la gravité de la contravention et aux circonstances, les mesures disciplinaires simples visées à l'article 41 ne seraient pas suffisantes si la contravention était établie, il convoque une audience pour enquêter sur la contravention présumée et fait part de sa décision à l'officier désigné par le commissaire pour l'application du présent article.

45.12 (1) After considering the evidence submitted at the hearing, the adjudication board shall decide whether or not each allegation of contravention of the Code of Conduct contained in the notice of the hearing is established on a balance of probabilities.

(3) Where an adjudication board decides that an allegation of contravention of the Code of Conduct by a member is established, the board shall impose any one or more of the following sanctions on the member, namely,

- (a) recommendation for dismissal from the Force, if the member is an officer, or dismissal from the Force, if the member is not an officer;
- (b) direction to resign from the Force and, in default of resigning within fourteen days after being directed to do so, recommendation for dismissal from the Force, if the member is an officer, or dismissal from the Force, if the member is not an officer;
- (c) recommendation for demotion, if the member is an officer, or demotion, if the member is not an officer; or
- (d) forfeiture of pay for a period not exceeding ten work days.

45.12 (1) Le comité d'arbitrage décide si les éléments de preuve produits à l'audience établissent selon la prépondérance des probabilités chacune des contraventions alléguées au code de déontologie énoncées dans l'avis d'audience.

(3) Si le comité d'arbitrage décide qu'un membre a contrevenu au code de déontologie, il lui impose une ou plusieurs des peines suivantes :

- a) recommander que le membre soit congédié de la Gendarmerie, s'il est officier, ou, s'il ne l'est pas, le congédier de la Gendarmerie;
- b) ordonner au membre de démissionner de la Gendarmerie, et si ce dernier ne s'exécute pas dans les quatorze jours suivants, prendre à son égard la mesure visée à l'alinéa a);
- c) recommander la rétrogradation du membre, s'il est officier, ou, s'il ne l'est pas, le rétrograder;
- d) imposer la confiscation de la solde pour une période maximale de dix jours de travail.

Royal Canadian Mounted Police Regulations, 1988, SOR/88-361:

36. For the purposes of subsection 33(4) of the Act, the types of grievances that are to be referred to the External Review Committee are grievances relating to

- (a) the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members;
- (b) the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the Act;
- (c) the Force's interpretation and application of

36. Pour l'application du paragraphe 33(4) de la Loi, les catégories de griefs qui doivent faire l'objet d'un renvoi devant le Comité externe d'examen sont les suivants :

- a) les griefs relatifs à l'interprétation et à l'application, par la Gendarmerie, des politiques gouvernementales visant les ministères qui ont été étendues aux membres;
- b) les griefs relatifs à la cessation, en application du paragraphe 22(3) de la Loi, de la solde et des allocations des membres;

the *Isolated Posts Directive*;
(d) the Force's interpretation and application of the *R.C.M.P. Relocation Directive*; and
(e) administrative discharge for grounds specified in paragraph 19(a), (f) or (i).

c) les griefs relatifs à l'interprétation et à l'application, par la Gendarmerie, de la *Directive sur les postes isolés*;
d) les griefs relatifs à l'interprétation et à l'application, par la Gendarmerie, de la *Directive de la Gendarmerie sur la réinstallation*;
e) les griefs relatifs au renvoi par mesure administrative pour les motifs visés aux alinéas 19a), f) ou i).

37. Sections 38 to 58.7 constitute the Code of Conduct governing the conduct of members.

37. Les articles 38 à 58.7 constituent le code de déontologie régissant la conduite des membres.

39. (1) A member shall not engage in any disgraceful or disorderly act or conduct that could bring discredit on the Force.

39. (1) Le membre ne peut agir ni se comporter d'une façon scandaleuse ou désordonnée qui jetterait le discrédit sur la Gendarmerie.

(2) Without restricting the generality of the foregoing, an act or a conduct of a member is a disgraceful act or conduct where the act or conduct

(2) Le membre agit ou se comporte de façon scandaleuse lorsque, notamment :

(a) is prejudicial to the impartial performance of the member's duties; or

a) ses actes ou son comportement l'empêchent de remplir ses fonctions avec impartialité;

(b) results in a finding that the member is guilty of an indictable offence or an offence punishable on summary conviction under an Act of Parliament or of the legislature of a province.

b) à cause de ses actes ou de son comportement, il est trouvé coupable d'un acte criminel ou d'une infraction punissable par procédure sommaire tombant sous le coup d'une loi fédérale ou provinciale.

R.C.M.P. Stoppage of Pay and Allowances Regulations, SOR/84-886:

The Treasury Board, on the recommendation of the Solicitor General, pursuant to subsection 22(3) of the *Royal Canadian Mounted Police Act*, hereby makes the annexed *Regulations respecting the stoppage of pay and allowances of members of the Royal Canadian*

Sur la recommandation du Solliciteur général et conformément au paragraphe 22(3) de la *Loi sur la Gendarmerie royale du Canada*, le Conseil du Trésor édicte par la présente le *Règlement ci-joint relatif à la cessation de la solde et des allocations des*

Mounted Police who are suspended from duty.

membres de la Gendarmerie royale du Canada suspendus de leurs fonctions.

2. The Commissioner, a Deputy Commissioner or an Assistant Commissioner may order the stoppage of pay and allowances of a member who is suspended from duty pursuant to section 13.1 of the *Royal Canadian Mounted Police Act*.

2. Le Commissaire, un sous-commissaire ou un commissaire adjoint peut ordonner la cessation du versement de la solde et des allocations d'un membre qui est suspendu de ses fonctions en vertu de l'article 13.1 de la *Loi sur la Gendarmerie royale du Canada*.

Canadian Human Rights Act, R.S.C. 1985, c. H-6:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted.

3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

7. It is a discriminatory practice, directly or indirectly,
(a) to refuse to employ or continue to employ any individual, or
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
a) de refuser d'employer ou de continuer d'employer un individu;
b) de le défavoriser en cours d'emploi.

Federal Courts Act, R.S.C. 1985, c. F-7:

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

(2) An application for judicial review in respect of a decision or an order of a federal

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la

board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

(3) On an application for judicial review, the Federal Court may

- (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
- (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, by reasons of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law.

première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

- a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
- b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

- a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;
- b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;
- c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
- d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
- e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;
- f) a agi de toute autre façon contraire à la loi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-996-11

STYLE OF CAUSE: DERRICK HOLDENRIED v. ATTORNEY GENERAL OF CANADA

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APPEARANCES:

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