Federal Court of Appeal  Cour d'appel fédérale

Date: 20210415

Docket: A-294-19

Citation: 2021 FCA 73

CORAM: **NADON J.A.**
RIVOALEN J.A.
LEBLANC J.A.

BETWEEN:

CPL. IAN SMITH

Appellant

and

ATTORNEY GENERAL DU CANADA

Respondent

and

NATIONAL POLICE FEDERATION

Intervener

Heard by online video conference hosted by the Registry

on March 26, 2021.

Judgment delivered at Ottawa, Ontario, on April 15, 2021.

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: NADON J.A.
LEBLANC J.A.

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REASONS FOR JUDGMENT

RIVOALEN J.A.

I. Introduction

[1] The appellant appeals from the judgment of the Federal Court (*per* Favel J.); (2019 FC 770) (the Federal Court Decision). The appellant submits that the Federal Court erred in law when it dismissed his application for judicial review.

[2] This appeal touches on the interpretation of subsection 33(1) of the *Commissioner's Standing Orders (Grievances and Appeals),* S.O.R./2014-289 (the CSOs) and whether a conduct adjudicator reasonably interpreted that provision to prescribe patent unreasonableness as the applicable standard of review in administrative appeals from decisions of a conduct authority. The legislative framework setting out the administrative regime surrounding the conduct of members of the Royal Canadian Mounted Police (the RCMP) includes certain portions of Part IV of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (the RCMP Act).

[3] The relevant provisions of Part IV of the RCMP Act for the purposes of this appeal are sections 39.1 and 45.11. Section 39.1 describes the broad authority granted to the Commissioner of the Royal Canadian Mounted Police (the Commissioner) to make rules with respect to conduct measures, other than dismissal or recommendation for dismissal, that may be taken against members of the RCMP who have contravened provisions of the Code of Conduct. It also provides the Commissioner the authority to create rules respecting the practice and procedure for appeals under Part IV of the RCMP Act.

[4] Subsection 45.11(1) provides for an appeal from a conduct authority’s decision to the Commissioner in respect of any finding that an allegation of a contravention of a provision of the

Code of Conduct is established or not established. Subsection 45.11(4) sets out that an appeal to the Commissioner lies on any ground of appeal.

[5] The CSOs govern the conduct of disciplinary hearings and appeals from such hearings for members of the RCMP, as permitted by section 39.1 of the RCMP Act. Specifically, subsection 33(1) of the CSOs reads:

Decision of Commissioner	**Décision du commissaire**
33(1) The Commissioner, when rendering a decision as to the disposition of the appeal, must consider whether the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or is *clearly unreasonable.*	**33(1)** Lorsqu'il rend une décision sur la disposition d'un appel, le commissaire évalue si la décision qui fait l'objet de l'appel contrevient aux principes d'équité procédurale, est entachée d'une erreur de droit ou est *manifestement déraisonnable*.
[My emphasis].	[Mon soulignement].

[6] The appellant was a member of the RCMP. While employed there, a conduct authority found that he contravened section 4.2 of the Code of Conduct. The appellant appealed the conduct authority's decision (the Level I Decision) to the Commissioner's delegate, a conduct adjudicator, pursuant to section 45.11 of the RCMP Act.

[7] In the Conduct Adjudicator Decision ACMT File No. 2015335434 (the Conduct Adjudicator's Decision or Level II Decision), the conduct adjudicator focused on subsection 33(1) of the CSOs and determined that there was no breach of procedural fairness, nor was there any error of law in the Level I Decision. On whether the Level I Decision was "clearly

unreasonable", the conduct adjudicator determined that "clearly unreasonable" could be interpreted as the standard of patent unreasonableness as the legislature "unambiguously articulate[d] an intention to specify the applicable and higher standard of review". In addition, the term "*manifestement*" appears in the French version (Level II Decision, paras. 96-97, referring to *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 51 [*Khosa*]). After reviewing case law from the Supreme Court regarding this standard, the conduct adjudicator concluded that the term "clearly unreasonable" would be understood as "patently unreasonable" in this case. Ultimately, he concluded the appellant failed to establish on a balance of probabilities that the allegations against him lacked rationality, reason or accordance with good sense, or that the evidence was incapable of supporting the findings or decision (Level II Decision, paras. 98-102).

[8] In the alternative, the conduct adjudicator held that although he found no breach of procedural fairness, no error of law, and that the decision was not clearly unreasonable, should he be wrong in those findings and conclusions, pursuant to paragraph 45.16(2)(*b*) of the RCMP Act, he would have made the determination that the appellant contravened the Code of Conduct. The conduct adjudicator dismissed the appeal (Level II Decision, paras. 110-115).

[9] On judicial review, the Federal Court found that the Conduct Adjudicator's Decision was reasonable. The Federal Court held that the conduct adjudicator reasonably interpreted the administrative appellate standard of review applicable under subsection 33(1) of the CSOs as meaning patent unreasonableness. The Federal Court relied on a decision from its Court in *Kalkat v. Canada (Attorney General)*, 2017 FC 794 [*Kalkat*] at paragraph 62 and outlined the

"extensive analysis" the conduct adjudicator took in order to arrive at that conclusion (Federal Court Decision, paras. 36-38).

[10] Before this Court, the appellant appeals on the limited grounds that the Federal Court erred in law when it found that it was reasonable for the conduct adjudicator to interpret subsection 33(1) of the CSOs as requiring a standard of review of patent unreasonableness. The appellant does not challenge the *vires* of subsection 33(1) of the CSOs, nor does he challenge any of the factual findings. His is a purely legal argument. During his reply submissions, counsel for the appellant confirmed that his client is no longer a member of the RCMP, but that he may nonetheless be affected by the Level II Decision in the future, referring to the disclosure of misconduct obligation as set out in *R. v. McNeil*, 2009 SCC 3, [2009] 1 S.C.R. 66.

[11] The appellant asks this Court to order a new appeal hearing before an RCMP conduct adjudicator, with the direction that it may not apply a standard of patent unreasonableness.

[12] For the following reasons, I would dismiss this appeal.

II. ISSUES

[13] The questions to be answered on this appeal are:

A. *Did the Federal Court identify the appropriate standard of review when it reviewed the Level II Decision?*

B. *Did the Federal Court properly apply the standard of review in determining that the Conduct Adjudicator's use of patent unreasonableness was reasonable?*

III. THIS COURT'S STANDARD OF REVIEW

[14] This Court must decide whether the Federal Court identified the appropriate standard of review, and subsequently applied it correctly (*Agraira v. Canada*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45 [*Agraira*]). As a result, this Court must step into the shoes of the Federal Court, and effectively focus on the Conduct Adjudicator's Decision (*Agraira* at para. 46, referring to *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 at para. 247).

IV. ANALYSIS

A. *Did the Federal Court identify the appropriate standard of review when it reviewed the Level II Decision?*

(1) Appellant's Submissions

[15] The appellant advances several arguments to the effect that the Federal Court erred in law because it did not identify the appropriate standard of review. He asks this Court to affirm that correctness is the appropriate standard of judicial review in cases where an administrative decision-maker selects the standard of patent unreasonableness for "appellate" review.

[16] In describing patent unreasonableness, the appellant defines the standard as "requir[ing] a reviewing court to excuse the irrationality of an administrative decision if the irrationality is not immediately obvious and is identifiable only on a probing analysis" (Appellant's Memorandum of Fact and Law, para. 35; see also *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 at paras. 52-53; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at

para. 40 [*Dunsmuir*]). He submits that this extreme deference is why *Dunsmuir* and subsequent case law have found the standard to be at odds with the court's rule of law obligation to ensure transparency, justifiability, and intelligibility in administrative decision-making (referring to *Dunsmuir* at para. 47; *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 S.C.R. 83 at para. 140). Absent explicit legislative endorsement, as recognized in *Khosa*, the appellant submits this standard remains presumptively contrary to Canadian law.

[17] The Federal Court Decision was rendered before the Supreme Court released its decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 [*Vavilov*]. The appellant argues that *Vavilov* establishes a new analysis, and whether an administrative decision-maker may use the patent unreasonableness standard when determining a statutory appeal remains a general question of law of broad application warranting the correctness standard (*Vavilov* at para. 59). It requires a "single determinative answer" as it may affect rights in settings beyond the particular administrative context, and the Court's role in preserving the rule of law supports the need to take a strong and clear position on the extension of this presumptively prohibited standard in Canadian law (*Vavilov* at paras. 53, 59-62).

[18] The appellant submits that if the RCMP administrative decision-makers can choose the patent unreasonableness standard when hearing an appeal, they circumvent a full analysis on a statutory appeal and open the door for "*any* administrative body [to] alter the scope of an appellant's statutory appeal rights by unilaterally establishing an alternative administrative

appeal standard to the legislature's presumably intended *Housen* standard" (Appellant's Memorandum of Fact and Law, para. 46 (emphasis in original)).

[19] The appellant submits the "close parallel" between patent unreasonableness and questions of procedural fairness further warrants the correctness standard. For instance, the same basic considerations in choosing the former, apply to choosing the latter. In turn, procedural fairness rights are to be considered when choosing the appropriate appellate standard of review. The appellant suggests that by choosing patent unreasonableness, a decision-maker precludes itself from fully examining the matter before it, thus effectively violating the procedural fairness dictum of *audi alteram partem* (referring to *Cenelia v. Canada (Citizenship and Immigration)*, 2018 FC 942 at para. 20, citing *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121).

[20] Finally, the appellant reviews this Court's decision in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, [2016] 4 F.C.R. 157 [*Huruglica*] and questions whether this decision remains good law in light of *Vavilov*. The appellant argues that *Huruglica* is not binding on this Court and is readily distinguishable from the matter at hand.

(2) Analysis

[21] I cannot accept any of the appellant's submissions regarding the Federal Court's alleged error in selecting reasonableness as the appropriate standard when it reviewed the Level II Decision.

[22] I do not consider that the question in this case is a general question of law of central importance to the legal system as a whole. In *Vavilov*, the Supreme Court describes the underlying rationale for correctness review in specific cases and provides examples of issues both warranting correctness, and not warranting correctness (see *Vavilov* at paras. 53, 58-62). In reviewing the Supreme Court's comments in *Vavilov*, it is difficult to conclude that the issue here is of "'fundamental importance and broad applicability', with significant legal consequences for the justice system as a whole or for other institutions of government". In my opinion, whether the Commissioner may use the patent unreasonableness standard when determining a statutory administrative appeal under the RCMP Act is not "necessary for the proper functioning of the justice system" and does not require a single determinate answer (*Vavilov* at paras. 59, 62).

[23] Here, the interpretation of subsection 33(1) of the CSOs is a narrow issue of statutory interpretation and the application of rights under a specific statutory regime and is "therefore confined within the walls of the administrative appeal process within which it operates" (Respondent's Memorandum of Fact and Law, para. 71). In my view, the appellant has not rebutted the presumption of reasonableness in this case.

[24] Further, I have not been persuaded that using the term "appeal" at section 45.11 of the RCMP Act in relation to administrative appeals automatically signals the standard of review required of an appellate court when it reviews a decision from a lower court, as articulated in *Housen v. Nikolaisen,* 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*]. Here, for a purely administrative process, the legislator specifically empowered the Commissioner through section 39.1 of the RCMP Act to set her practices and procedures regarding matters of RCMP conduct.

The Commissioner has done so through subsection 33(1) of the CSOs. While the CSOs may be considered subordinate legislation, their *vires* has not been challenged and I have not been convinced that the conduct adjudicator's use of "clearly unreasonable" or "*manifestement déraisonnable*" is an error of law.

[25] Turning to the appellant's argument regarding the "close parallel" between patent unreasonableness and questions of procedural fairness, I find it unconvincing, particularly as the case law relied upon does not support his position as presented. Rather, the case law supports the assertion that the correctness standard applies to issues of procedural fairness, including violations of the *audi alteram partem* rule; not that patent unreasonableness violates such a rule.

[26] Finally, this Court's decision in *Huruglica* remains sound, as I will discuss later on in these reasons.

[27] On the first question to be answered with respect to this appeal, I am of the view that the Federal Court correctly identified reasonableness as the appropriate standard of review of the Level II Decision.

B. *Did the Federal Court properly apply the standard of review in determining that the Conduct Adjudicator's use of patent unreasonableness was reasonable?*

(1) Appellant's Submissions

[28] Turning to the second question, the appellant asks this Court to find that administrative decision-makers exercising statutory "appellate" functions may not conduct patent unreasonableness review absent express and unequivocal legislation.

[29] The appellant takes the position that it was unreasonable for the conduct adjudicator to extend the patent unreasonableness standard to the appeal of the Level I Decision. The appellant submits that the conduct adjudicator interpreted subsection 33(1) of the CSOs in a manner inconsistent with the modern approach to statutory interpretation.

[30] On the statutory interpretation of subsection 33(1) of the CSOs, the appellant submits that a reading of the language used in the subsection reveals that its intent to create a standard of review is not "plain". Contrary to the conduct adjudicator's finding, the appellant argues that in its ordinary and grammatical sense, whether a decision is "clearly unreasonable" does not imply the application of patent unreasonableness. Neither does the use of the word "must" mean "must only", as erroneously interpreted by the conduct adjudicator.

[31] The appellant argues that a plain reading of subsection 33(1) of the CSOs does not establish any standard of review at all; it only creates a duty for the conduct adjudicator to consider three grounds of review in making a decision regarding an appeal. The conduct adjudicator's interpretation reads the provision "as containing a hodgepodge of intermingled standards and grounds", even though standards and grounds should be interpreted as distinct,

which renders the interpretation unreasonable (Appellant's Memorandum of Fact and Law, para. 76). Moreover, if the subsection is read to limit the grounds of review, it is directly contrary to subsection 45.11(4) of the paramount statute, which specifies that all members subject to Code of Conduct discipline under Part IV of the RCMP Act maintain a right to appeal on "any ground of appeal". Any interpretation of the CSOs and the RCMP Act must keep in mind that members are afforded few employment rights and their statutory right of appeal is a critical protection against arbitrary action.

[32] The appellant acknowledges that a standard of patent unreasonableness can be imposed if the legislator unequivocally expresses its intention to do. Here, the appellant submits, no such clear intention is demonstrated in subsection 33(1) of the CSOs. Notably, the CSOs were established in 2014, after the standard was "presumed a dead doctrine absent statutory requirement". The drafters could have used the word "patently" instead of "clearly". However, as they did not, they should be presumed not to have done so intentionally (referring to *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471 at para. 45).

[33] Further, the appellant submits that appellate review should not be conflated with judicial review, and there are no limitations or qualifications on the right of appeal in the RCMP Act suggesting otherwise. Rather, a right to appeal normally implies a right to challenge an unreasonable decision, not the extreme deference required under patent unreasonableness review (see also *Vavilov* at paras. 30-31, 44-45).

[34] In conclusion, the appellant submits that the Federal Court erred when it found that it was reasonable for the conduct adjudicator to use patent unreasonableness as the standard of review on the appeal of the Level I Decision.

(2) Intervener's Submissions

[35] The intervener in this appeal, the National Police Federation, made submissions solely on the administrative standard of review. In this context, it reminds the Court that the phrase "contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable" from the text of subsection 33(1) of the CSOs is found in other subsections of the same CSOs, specifically 18(2) and 47(3). The term "clearly unreasonable" is also repeated in section 9 of another regulation, the *Commissioner's Standing Orders (Conduct),* S.O.R./2014-291. In short, the text repeats itself across different types of appeals involving internal disputes within the RCMP, such as its internal grievance regime, an appeal about a disciplinary matter (as is the case here) and a residual category of appeals. Consequently, the intervener suggests that this Court's decision will be wide-reaching for RCMP members, and should this Court consider pragmatic factors, it should recognize that these regimes do not involve a typical tribunal structure, but rather one manager reviewing another manager's decision, with no advantage of relative expertise between the two levels of decision.

[36] The intervener submits that this Court should continue to follow the predominant approach of statutory interpretation, as set out in *Huruglica*, and notes that it is most consistent with the emphasis on legislative choice and intent as described in *Vavilov* (see also *Vavilov* at paras. 32-33).

[37] The intervener submits that, in this case specifically, the rules of statutory interpretation dictate that the appellate standard, as articulated in *Housen*, should be preferred. Consequently, the conduct adjudicator erred by applying the patent unreasonableness standard of review. In applying this approach, the intervener submits that the statutory interpretation requires emphasis on the CSOs' enabling statute, the RCMP Act. On the one hand, the Court may accept the appellant's proposition to reconcile the CSOs with section 45.11 of the RCMP Act by reading subsection 33(1) of the CSOs as setting out a non-exhaustive list of categories of appeal, as opposed to the standard. On the other hand, if it does not and considers the CSOs to set out the standard, then this Court must determine whether patent unreasonableness is consistent with section 45.11, which the intervener submits it is not because of the use of "appeal" which signals the application of the appellate standard (*Vavilov* at para. 33).

[38] Regarding *Huruglica*, the intervener points to paragraph 50 of the decision where subsection 33(1) of the CSOs is cited as an example of the legislator's clear intention to apply the standard of reasonableness in an administrative appeal. While it notes that the Court should not feel bound by this paragraph and that it is *obiter*, it also specifies that it repudiates the conduct adjudicator's decision to adopt patent unreasonableness.

[39] During oral submissions, the intervener added a concern regarding "deference stacking". Here, the Commissioner is the final administrative decision-maker and she promulgated the CSOs. By doing so, the intervener suggests that the result of regulating a standard of review, as opposed to legislating it, means the executive branch of government has further immunized itself

from judicial scrutiny. The intervener submits that this has the effect of the executive branch bypassing the legislative branch, hence, "deference stacking".

(3) Analysis

[40] Once again, I cannot accept the submissions made by the appellant or the intervener.

[41] Under the *Vavilov* framework, "[t]he burden is on the party challenging the decision to show that it is unreasonable" and "[w]here reasonableness is the applicable standard on a question of statutory interpretation, the reviewing court does not undertake a *de novo* analysis of the question or 'ask itself what the correct decision would have been'" (*Vavilov* at paras. 100, 116).

[42] I am of the view that the appellant and the intervener have failed to demonstrate how the conduct adjudicator's interpretation of subsection 33(1) is unreasonable.

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

[44] Second, the appellant's suggested distinction between "must" and "must only" is without merit as "must" is widely accepted as a mandatory term and his interpretation removes all meaning from the word. Also, the appellant's suggestion that "clearly unreasonable" is a ground of appeal, as opposed to a standard, is without basis as it fails to explain why it is unreasonable to interpret it as a standard and offers no explanation as to its meaning or application as a ground.

[45] More importantly, *Vavilov* does not apply to standards of review within administrative processes that have been set through legislation, and thus in my view does not affect the statutory interpretation of the CSOs. As such, the appellant's position incorrectly interprets *Vavilov* as restricting Parliament's legislative power. Likewise, the intervener's suggestion that there is a conflict between section 45.11 of the RCMP Act and the CSOs because the regulation cannot have a different standard also misapplies *Vavilov*. As this case deals with the internal administrative appeal process, *Vavilov*'s requirement for the term "appeal" to require the appellate standard does not apply.

[46] In any event, in the absence of a challenge to the *vires* of subsection 33(1) of the CSOs, as I mentioned in paragraph [24] above, I reject the premise suggesting that Parliament did not delegate the power to set a standard of review on conduct matters to the Commissioner through her CSOs.

[47] In my view, the appellant incorrectly conflates the judicial standard of review with the standard of review set out in the administrative appeal regime. As we are reminded at paragraph 47 of *Huruglica*:

> The principles which guided and shaped the role of courts on judicial review of decisions made by administrative decision-makers (as set out in *Dunsmuir* at paras. 27-33) have no application here. Indeed, the role and organization of various levels of administrative decision-makers do not put into play the tension between the legislative intent to confer jurisdiction on administrative decision-makers and the constitutional imperative of preserving the rule of law.

[48] The intention of the legislature as revealed by statutory interpretation ultimately determines what standard of review an appellate administrative tribunal should apply. The argument of "deference stacking" has no merit here. In the RCMP Act, Parliament intended the Commissioner to be the final administrative-decision maker, with the authority to set all practices and procedures on conduct matters. Members of the RCMP who are not satisfied with the administrative decision have recourse to the Federal Court, and to this Court, on judicial review.

[49] As was found by this Court at paragraph 46 in *Huruglica*: "the determination of the role of a specialized administrative appeal body is purely and essentially a question of statutory interpretation, because the legislator can design any type of multilevel administrative framework to fit any particular context." While that case is distinguishable on certain fronts, the principles set out by this Court remain, in my opinion, relevant post-*Vavilov*.

[50] Based on paragraphs 46 to 48 of *Huruglica*, it seems tenable that neither the standards of judicial review, nor appellate review, should be presumed when it comes to administrative appeals. In line with the approach supporting legislative intent and statutory interpretation, it all depends on whether the conduct adjudicator reasonably interpreted subsection 33(1) of the CSOs.

[51] That said, the intervener rightfully points out that this Court also commented in *obiter* on the standard of reasonableness and subsection 33(1) of the CSOs at paragraph 50 of *Huruglica*:

> To be clear, I am not saying that the standard of reasonableness will never apply in appeals to administrative appeal bodies. In fact, there are examples where the legislator clearly expresses an intention that such a standard be applied: see, for example, subsection 18(2) and section 33 of the *Commissioner's Standing Orders (Grievances and Appeals)* Regulation, SOR/2014-289…

[52] I agree with the intervener that these comments were clearly *obiter*. Moreover, Manson J. addressed this issue at paragraphs 60 and 63 of *Kalkat,* noting that the matters before the Court on *Huruglica* concerned the framework for the Refugee Appeal Division's review of a Refugee Protection Division decision; the Court was not commenting on the appropriateness of a patent unreasonableness standard.

[53] In summary, the appellant has not convinced me that there is any irrationality in the Level II Decision's chain of analysis, that it fails to provide transparent reasoning, or that it contains logical fallacies (*Vavilov* at paras. 103-104). The conduct adjudicator addressed the possibility of a legislative carve out as confirmed in *Khosa* (Level II Decision at para. 96) and provided an analysis of the provision in question (Level II Decision, paras. 97-102). While the conduct adjudicator's statutory interpretation exercise may have benefitted from more analysis, it sufficiently considered the text, context and purpose of the provision (*Vavilov* at para. 118). It is well established that reviewing courts must remain acutely aware that "'[a]dministrative justice' will not always look like 'judicial justice'", and while demonstrated expertise is no longer relevant in establishing the applicable standard of review, it remains important in understanding an administrative decision-maker's reasons (*Vavilov* at paras. 92-93).

[54] In my view, the appellant has not met the burden of demonstrating that the Level II Decision is unreasonable. The review by the conduct adjudicator is not a hearing *de novo*, but a review on the record that was before the conduct authority. The conduct adjudicator analysed subsection 33(1) of the CSOs in a way that was justifiable, transparent and intelligible; his conclusion is reasonable. In the alternative, he confirmed that upon his review of the record before the conduct authority, he too would have found the appellant to have contravened the Code of Conduct. The appellant did not challenge the reasonableness of the factual findings made by the conduct authority or the manner in which they were reported by the conduct adjudicator.

[55] On a final note, if I were to accept the submissions of the appellant and intervener, which I do not, the "appellate" standard of review of factual findings, or findings of mixed fact and law, is palpable and overriding error. As has been previously stated by this Court, this is a highly deferential standard that would be a difficult hurdle to overcome (see *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46). It is not clear to me how this standard of review - or the deferential standard of reasonableness for that matter - could benefit the appellant in this case.

[56] I would therefore conclude that the Federal Court properly applied the standard of review in determining that the Conduct Adjudicator's Decision reasonably interpreted the terms "clearly unreasonable" in section 33(1) of the CSOs as meaning "patent unreasonableness".

V. CONCLUSION

[57] For the foregoing reasons, I would dismiss this appeal. In keeping with the agreement reached between the parties, I would award costs of $2,500 against the appellant, and no costs against the intervener.

"Marianne Rivoalen"
J.A.

“I agree.
M. Nadon J.A.”

“I agree.
René LeBlanc J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-294-19
STYLE OF CAUSE:	CPL. IAN SMITH v. ATTORNEY GENERAL DU CANADA AND NATIONAL POLICE FEDERATION
PLACE OF HEARING:	BY ONLINE VIDEOCONFERENCE
DATE OF HEARING:	MARCH 26, 2021
REASONS FOR JUDGMENT BY:	RIVOALEN J.A.
CONCURRED IN BY:	NADON J.A. LEBLANC J.A.
DATED:	APRIL 15, 2021

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