

Federal Court



Cour fédérale

**Date: 20251126**

**Docket: T-2582-24**

**Citation: 2025 FC 1871**

**Toronto Ontario, November 26, 2025**

**PRESENT: Mr. Justice Brouwer**

**BETWEEN:**

**BRIAN HEIDEMAN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Cpl. Brian Heideman is a member of the Royal Canadian Mounted Police [RCMP]. At the time of the events at issue he was constable with the RCMP's North Okanagan Traffic Service Team in British Columbia (his "home unit"), but he also worked part-time as a member of the RCMP's Southeast District Emergency Response Team [ERT]. The ERT is a specialized RCMP team dealing with high-risk situations. Cpl. Heideman was removed from that team for reasons that he says were improper, so he brought a workplace grievance pursuant to section 31 of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*], which was ultimately dismissed. He seeks judicial review of the final grievance decision. For the reasons below, I find that the decision was unreasonable and must be set aside.

## I. Background

[2] The event underlying Cpl. Heideman's removal from his ERT role is an overtime pay claim that he made for a January 25 and 26, 2019, deployment to an ERT operation in Kamloops. At the time of his deployment, Cpl. Heideman had been scheduled to work a shift with his home unit; however, following the deployment he asked one of his ERT team leaders if he could make a retroactive change to his home unit schedule that would enable him to claim overtime for the ERT deployment. His ERT team leader agreed, so Cpl. Heideman made the request to his home unit supervisor, who confirmed that it was "no problem" to make the change.

[3] A week later, Cpl. Heideman's ERT team leader contacted him again and advised of his understanding that the overtime claim was not actually permitted by RCMP policy. According to the ERT team leader, he passed on an order from the Critical Incident Commander, Insp. Perry Smith, not to proceed with the claim; Cpl. Heideman, however, denies receiving any such order or direction and asserts that his ERT team leader merely expressed uncertainty about the policy. Cpl. Heideman therefore sought further advice from a sergeant who had previously served as a staff relations representative. The sergeant told Cpl. Heideman that the practice was common and did not violate RCMP policy, and he also reached out to Cpl. Heideman's ERT team leaders, Insp. Smith, and others in management to confirm as much. Cpl. Heideman's home unit supervisor likewise confirmed it was common practice. Cpl. Heideman therefore proceeded with his overtime claim.

[4] On July 4, 2019, Cpl. Heideman received notice that he was under disciplinary investigation. Insp. Smith accused Cpl. Heideman of deliberately falsifying information in

relation to his request for payment for overtime expenses to which he was not actually entitled, contrary to section 8.1 of the Code of Conduct of the RCMP (*Royal Canadian Mounted Police Regulations*, SOR/2014-281, Schedule) [Code of Conduct]. Cpl. Heideman was stripped of his ERT gear in front of his team as they were preparing for a training exercise and was removed from his part-time ERT duties pending completion of the investigation.

[5] He was cleared four months later. The investigator (known as a “conduct authority”) found that although “the ethics surrounding the practice are fundamentally questionable” there was no RCMP policy expressly prohibiting Cpl. Heideman from changing his schedule retroactively to claim overtime pay. The investigator warned, however, that as a member of the RCMP Cpl. Heideman was: “expected to act at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law, or in this case policy.”

[6] Having been cleared of the misconduct accusation Cpl. Heideman requested reinstatement to his part-time role with the ERT. Insp. Smith refused his request, however, on the basis that that Cpl. Heideman had failed to follow his order, as allegedly conveyed by the ERT team leader, not to make the overtime claim, as well as performance issues that “did not get fully addressed” before he was removed from the ERT.

[7] Cpl. Heideman filed a grievance challenging his removal from his part-time ERT role. He alleged that:

(a) Insp. Smith did not have sufficient grounds to remove Cpl. Heideman from the ERT because the allegation of misconduct regarding his overtime claim had already been investigated and dismissed;

(b) The performance concerns relied on by Insp. Smith were not significant enough to justify removal from the ERT, and Insp. Smith did not follow RCMP performance management policy; and

(c) Insp. Smith's decision to remove Cpl. Heideman from the ERT constituted disguised discipline for the previously investigated overtime claim and was barred by issue estoppel.

[8] As a remedy Cpl. Heideman sought immediate reinstatement to the ERT, as well as lost overtime and operational readiness pay for the period starting December 20, 2019.

[9] The RCMP's grievance procedures are established by the *Commissioner's Standing Orders (Grievances and Appeals)* (SOR/2014-289, Part 1 [CSOGA]). At the first stage grievances are placed before an Initial Level Adjudicator [ILA] who has the power to decide all matters related to the grievance. Once a decision has been issued by the ILA, a grievor may refer the grievance and decision for review by a Final Level Adjudicator [FLA], who is empowered to assess whether the ILA's decision contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable [CGOSA, s 47(3)]. The FLA's decision may be subject to judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[10] Cpl. Heideman's grievance was dismissed by the ILA. The ILA found that removal from a part-time, secondary, volunteer position is neither a discharge nor a demotion, which are subject to strict procedural guarantees, but is more like an intrafunctional transfer, in respect of which managers have significant latitude. As such, the ILA found that Cpl. Heideman's removal from ERT duties did not breach policy and was justified by the need for management to have "complete faith" in ERT members given the nature of the role.

[11] The ILA found, moreover, that because the performance concerns were minor, they did not require adherence to the performance management policy.

[12] Finally, the ILA rejected Cpl. Heideman's allegation of disguised discipline as unsupported by evidence and found issue estoppel inapplicable because the issues were different: the misconduct allegation resolved by the investigator was that Cpl. Heideman had "deliberately falsif[ied] information in relation to a request for payment for expenses," whereas his removal from ERT responsibilities was based on a variety of other issues, including "a number of performance concerns" and a loss of faith in his "ethical decision-making."

[13] Cpl. Heideman referred this decision to the final level of the grievance process, arguing that he had been denied procedural fairness by the ILA; that the ILA had erred in law in concluding that the relevant legal principles gave Insp. Smith significant latitude to remove Cpl. Heideman from the ERT; and that the ILA's findings regarding disguised discipline and issue estoppel were unreasonable.

A. *Decision under review*

[14] The FLA confirmed the ILA's findings and dismissed the grievance under subsection 18(1)(a) of the CSOGA, finding Cpl. Heideman had failed to demonstrate that the initial level decision contravened the applicable principles of procedural fairness, was based on an error of law or was clearly unreasonable (as required by subsection 18(2) of the CSOGA).

[15] The FLA confirmed the ILA's finding that Insp. Smith had the authority to remove Cpl. Heideman from the ERT as a matter of managerial discretion and found no evidence to support Cpl. Heideman's allegation that his removal was an act of retaliation or disguised discipline. The FLA also agreed with the ILA that the doctrine of issue estoppel did not bar Insp. Smith from removing Cpl. Heideman because his reasons for removal (primarily the failure to obey an order not to proceed with the overtime claim) were different from the issue addressed in the conduct proceedings (improperly claiming overtime pay based on a retroactive schedule change). The FLA explained:

[84]...While his actions did not breach the code of conduct, it clearly caused a breach of trust that he would follow his ERT supervisor's direction. The Grievor ought to have taken his new information/opinion to his ERT supervisors and attempted to resolve the differences prior to submitting his overtime claims and not went behind their backs.

[85] I can understand how the initial level adjudicator was able to accept that the Grievor had been removed by the Respondent due to a lack of trust to follow directions implicitly. This was also compounded with the minor performance issues within a specialized team that deals with high risk situations.

[86] I find there is no evidence in the Record that this was a case of retaliation or disguised discipline.

[16] Cpl. Heideman seeks judicial review of the FLA decision. He maintains that as of the filing his affidavit in this matter the value of his lost overtime and operational readiness pay had risen to \$537,065.63.

## II. Issues and standard of review

[17] Cpl. Heideman asserts that the FLA decision is unreasonable. In particular, he challenges the FLA's findings that (a) Insp. Smith had the legal authority to unilaterally remove Cpl. Heideman from the ERT in the circumstances; and (b) there was no evidence on the record of disguised discipline.

[18] To determine whether the decision is reasonable, I must assess the FLA's reasons holistically to determine whether the decision is "based on an internally coherent and rational chain of analysis and [...] is justified in relation to the facts and the law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). This assessment takes its colour from context, which includes the specialized expertise of RCMP internal grievance decision-makers (*Kohl v Canada (Attorney General)*, 2024 FC 45 at para 118, citing *Calandrini v Canada (Attorney General)*, 2018 FC 52 at para 97; *Firsov v Canada (Attorney General)*, 2021 FC 877 at para 38; *Su v Canada (Attorney General)*, 2017 FC 645 at para 42). If the reasons, read holistically with due sensitivity to the administrative regime in which they were given, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis, they must be set aside. At the end of the day, a reviewing court must be satisfied that the decision under review "adds up" (*Vavilov* at paras 103-104).

- A. *The FLA's finding that Insp. Smith had wide latitude to remove Cpl. Heideman from his position is unreasonable*

[19] Noting that part-time ERT positions are not term positions, conditions of employment, or promotions and do not change a member's substantive duties or location, the FLA adopted the ILA's finding that Cpl. Heideman's removal from the ERT was not subject to RCMP policy for administrative discharges and demotions. Instead, the FLA concurred with the ILA that removals from such postings are more appropriately evaluated through RCMP policy on intrafunctional transfers. Viewed in this light, according to the FLA, Insp. Smith had the requisite staffing authority to remove Cpl. Heideman from the ERT as an exercise of managerial discretion, based on his stated concern that Cpl. Heideman could not be trusted to follow directions implicitly. According to the ILA, and confirmed by the FLA, "complete faith" in ERT members is a necessity

[20] Cpl. Heideman argues that it was unreasonable for the FLA to adopt the ILA's analysis and apply the policy for intrafunctional transfers for several reasons. He says the ILA and FLA failed to take into account factors that distinguished Cpl. Heideman's ERT removal from intrafunctional transfers. These include the fact that the RCMP's Career Management Manual defines an intrafunctional transfer as a member's transfer between positions *within* a line officer's area of responsibility, as well as the fact that notwithstanding that removal from the ERT does not constitute a demotion (because there was no change to his position with his home unit), it nevertheless had a very significant impact on Cpl. Heideman: he lost a prestigious position, one that had been his motivation for joining the RCMP in the first place, and he had been deprived of significant income as a result. The evidence indicates, moreover, that Cpl.

Heideman has been unable to secure another ERT role or any other similar position to advance his career aspirations.

[21] There is nothing in the reasons of the FLA or the ILA to show that they considered these clearly relevant facts, which on their face appear to distinguish Cpl. Heideman's ERT removal from the realm of a simple intrafunctional transfer, when determining the applicability of the intrafunctional transfer policy.

[22] While this Court recognizes that RCMP adjudicators have specialized expertise in the evaluation of workplace grievances, which clearly includes identifying, interpreting and applying relevant workplace policies, this expertise does not shield them from reasonableness review. Their decisions must meet the *Vavilov* standard of justification, transparency and intelligibility. The FLA's failure to explain how it came to conclude that the intrafunctional transfer policy applied despite the distinguishing features of Cpl. Heideman's ERT removal renders the decision unreasonable.

[23] Having reached this conclusion, there is no need to address Cpl. Heideman's further, related argument that in selecting and applying the intrafunctional transfer policy the FLA unreasonably failed to apply more relevant considerations including administrative law principles, the *RCMP Act* conduct process, and other relevant RCMP Policies on Performance Management.

B. *The FLA's analysis of the disguised discipline allegation is unreasonable*

[24] Disguised discipline occurs where an action appears on its face to be administrative but in fact serves to impose discipline, i.e. a correction of behaviour (*Hanna v Deputy Head (Department of Indian Affairs and Northern Development)*, 2009 PSLRB 94 at para 29, *Green v Deputy Head (Department of Indian Affairs and Northern Development)*, 2017 PSLREB 17 at paras 260-261, 263-267, both citing *Canada (Attorney General) v Frazee*, 2007 FC 1176). To determine whether disguised discipline has occurred, “adjudicators must look at all the surrounding facts and circumstances” (*Canada (Attorney General) v Grover*, 2007 FC 28 at para 47, *Bergey v Canada (Attorney General)*, 2017 FCA 30 at paras 36-38).

[25] Here, one of the “facts and circumstances” that needed to be looked at by the FLA was that the basis upon which Cpl. Heideman had been administratively removed from the ERT – his failure to follow a lawful order – had previously been identified by Insp. Smith as a disciplinary matter for consideration by the conduct authority.

[26] That Insp. Smith recognized this as a disciplinary matter is not surprising: failure to obey a lawful order or direction is a breach of section 3.3 of the Code of Conduct, and undisputed evidence filed by Cpl. Heideman establishes that credible allegations of a refusal to follow a lawful order are normally dealt with through the Code of Conduct disciplinary process as set out in Part IV of the *RCMP Act*. Those found to have breached the Code of Conduct may be subject to disciplinary measures as set out in sections 3-5 of the *Commissioner's Standing Orders (Conduct)*, SOR/2014-291, including a range of progressively severe remedial, corrective and serious conduct measures.

[27] For reasons that are not clear, however, despite Insp. Smith flagging an alleged breach of section 3.3 of the Code of Conduct for inclusion in the Mandate Letter, the allegation was left out and no attempt appears to have been made to add the allegation at any point during the investigation. Instead, upon completion of the conduct proceedings, in which Cpl. Heideman was cleared of misconduct, Insp. Smith asserted managerial discretion to simply remove Cpl. Heideman from his ERT role on the basis of the same untested allegation of a failure to follow his order, along with three performance issues that, on their own, were too minor even to warrant being logged.

[28] Though I would not go so far as to call these circumstances a “smoking gun” that proves disguised discipline, as counsel for Cpl. Heideman asserts, I do agree that they at least suggest that Insp. Smith’s decision to remove Cpl. Heideman may have been disciplinary in nature. As such they certainly required consideration by the FLA, and an explanation as to why they fell short of establishing disguised discipline.

[29] Instead, however, the FLA, like the ILA before it, found that there was simply “no evidence” of disguised discipline, and accepted at face value Insp. Smith’s assertion that the reason for removal was his lack of trust that Cpl. Heideman would follow directions – what the Applicant characterizes as “window dressing” that barely conceals the true motive. This was unreasonable.

[30] Even if Cpl. Heideman’s removal from the ERT could reasonably be analogized to an intrafunctional transfer, in respect of which Insp. Smith enjoyed significant managerial

discretion, and even if Insp. Smith's loss of faith in Cpl. Heideman's ability to follow an order were a sufficient basis for his removal under that policy, the question of whether the removal was actually disguised discipline still needed to be reasonably evaluated and the decision justified in relation to all the facts and circumstances.

[31] I therefore find that the FLA's determination regarding disguised discipline is not justified in relation to the facts and the law. The reasoning does not "add up."

C. *Remedy*

[32] As I have found the FLA's decision to be unreasonable, it must be set aside.

[33] The parties seek costs in the cause in the lump sum amount of \$3000. As I am granting the application, costs shall be awarded to Cpl. Heideman in the amount of \$3000.

**JUDGMENT in T-2582-24**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted.
  
2. The decision of the Final Level Adjudicator is set aside and the grievance is remitted for redetermination in accordance with these reasons.
  
3. Costs are awarded to the Applicant in the amount of \$3000.

"Andrew J. Brouwer"

\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2582-24

**STYLE OF CAUSE:** BRIAN HEIDEMAN v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ON

**DATE OF HEARING:** AUGUST 21, 2025

**JUDGMENT AND REASONS:** BROUWER J.

**DATED:** NOVEMBER 26, 2025

**APPEARANCES:**

ANDREW MONTAGUE-REINHOLDT	FOR THE APPLICANT
JEAN-CHARLES GENDRON	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Nelligan O'Brien Payne LLP Barristers & Solicitors Ottawa, Canada	FOR THE APPLICANT
Attorney General of Canada Ottawa, Canada	FOR THE RESPONDENT