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Court File No.

FEDERAL COURT – TRIAL DIVISION

CONSTABLE ASHLEY GOODYER, REGIMENTAL NUMBER 61089

APPLICANT

AND:

THE ATTORNEY-GENERAL OF CANADA

RESPONDENT

**APPLICATION FOR JUDICIAL REVIEW UNDER SECTION 18(1)
OF THE *FEDERAL COURT ACT*, AND RULES 300 TO 309 INCLUSIVE, OF THE
FEDERAL COURT RULES, AND SECTION 45.16(7) OF THE *ROYAL CANADIAN
MOUNTED POLICE ACT*, R.S.C 1985, c R-10**

Form 301 – NOTICE OF APPLICATION

TO THE RESPONDENT: **THE ATTORNEY-GENERAL OF CANADA**

c/o: Prairie Regional Office - Edmonton
Department of Justice Canada
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, Alberta
T5H 0E7

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court, Suite 530, Scotia 1, 10060 Jasper Avenue, Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date):

Issued by: _____
(Registry Officer)

Address of local office: _____

TO: THE ATTORNEY GENERAL OF CANADA

c/o: Prairie Regional Office - Edmonton
Department of Justice Canada
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, Alberta
T5H 0E7

APPLICATION:

This is an application for judicial review in respect of the Decision of the Commissioner [of the] Royal Canadian Mounted Police [Brenda Lucki] dated May 5, 2022, in the matter of an Appeal of an Adjudication Board decision pursuant to s. 45.11(1)(b) of the *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10, as amended, (Conduct Authority), between Constable Ashley Goodyer Regimental Number 61089 and Commanding Officer “E” Division, Royal Canadian Mounted Police, wherein, the Commissioner:

Dismissed the appeal, and, excepting the Board’s imposing of a 20-day forfeiture of pay with respect to Allegation 1, upheld the *Record of Decisions of [the] Conduct Board, Assistant Commissioner Craig S. MacMillan* (the “Board”) at both the Allegation stage, undated, and the Conduct Measures Stage, (decision) dated, August 24, 2018;

The initial aforementioned Board decision finding that Constable Ashley Goodyer had contravened sections 3.3 and 8.1 of the RCMP *Code of Conduct, Royal Canadian Mounted Police Regulations 2014, SOR/20114-281* – with Constable Ashley Goodyer having admitted to Allegations 3,4, and 5, with the Board determining that Allegation 1 was established, whereas allegation 2 was not;

With the subsequent Board decision on Conduct Measures ordering a 20-day forfeiture of pay with respect to Allegation 1, and further ordering that Constable Goodyer also resign within 14 days or be dismissed, with respect to Allegations 3, 4, and 5.

The Date and Details of the Decision and matters with respect to which Judicial Review is sought being:

1. Whether the Decision of the Commissioner [of the] Royal Canadian Mounted Police [Brenda Lucki] dated May 5, 2022, confirming *Record of Decision, Conduct Board, Craig MacMillan Decision* dated, August 24, 2018, confirming that Allegation 1 was established, while rescinding the Board’s imposition of a 20-days forfeiture of pay, and ordering that the measure imposed for Allegation 1 form part of the “global sanction of dismissal originally imposed by the Board”;

was correct and/or appropriate; and,

2. Whether the Decision of the Commissioner [of the] Royal Canadian Mounted Police [Brenda Lucki] dated May 5, 2022, confirming the *Record of Decision, Conduct Board, Craig MacMillan Decision* dated, August 24, 2018, and the Board's finding that Allegations 3, 4, and 5 were established, and ordering that Constable Ashley Goodyer resign from the RCMP within 14 days or be dismissed,

was appropriate.

The applicant makes application for the following relief:

The at the Conduct Measures ordered by the Board in its *Record of Decision, Conduct Board, Craig MacMillan Decision* dated, August 24, 2018, with respect to Allegations 3, 4, and 5, and confirmed by the Commissioner in her Decision dated May 5, 2022, i.e., that the Applicant resign within 14 days or be dismissed, be quashed and set aside;

That the finding that Allegation 1 was established, as set out in the undated *Record of Decision, Conduct Board, Craig MacMillan*, and confirmed by the Commissioner of the RCMP in the Decision dated May 5, 2022, be quashed; and,

That the conduct measures set out in the *Record of Decision, Craig MacMillan* dated, August 24, 2018 with respect to Allegation 1, and the Commissioner's order rescinding the Board's imposition of a 20-days forfeiture of pay, and ordering that the measure imposed for Allegation 1 instead form part of the "global sanction of dismissal originally imposed by the Board", be quashed, and set aside; and/or;

Any other relief over which this Honourable Court has jurisdiction, and deems just and appropriate;

The grounds for the Application are:

1. In reaching its Decision and confirming that (or those) of the Adjudication Board (the “Board”) the Commissioner of the Royal Canadian Mounted Police (“Commissioner”) acted without jurisdiction or beyond its jurisdiction; and/or,
2. In reaching its Decision and confirming that (or those) of the Board, the Commissioner failed to observe principles of natural justice; and/or,
3. In reaching its decision and confirming that (or those) of the Board, the Commissioner failed to observe principles of procedural fairness; and/or,
4. In reaching its decision and confirming that (or those) of the Board, the Commissioner of the R.C.M.P. failed to consider and weigh all of the relevant evidence and information before it, and thereby made critical factual findings in a perverse and capricious manner.

The further grounds for the Application are:

With Respect to Allegations 1, 3, 4, and 5

- (a) The Adjudication Board, and the Commissioner of the RCMP, in confirming the Decision of the Adjudication Board, failed to observe procedural fairness in neglecting to follow parts of the prescribed procedure under the *RCMP Act*, and *Regulations*, including those requiring that the Board hold a hearing when dismissal was being sought;
- (b) The Commissioner of the RCMP, in confirming the Decision of the Adjudication Board, failed to address the fact that the Conduct proceedings took an extraordinary amount of time (just under 4 years, and 6 years from the dates set out in the particulars of the Allegations), yet placed tight timelines and restrictions upon the Applicant in terms of submissions (including the OCGA requiring one submission to be filed on New Year’s Eve), whereas the time lines followed by the Decision Makers (and the representatives of the OCGA) appeared arbitrary and/or protracted;

With Respect to Allegation 1

- (a) The Board, and the Commissioner in confirming the Decision of the Board, failed to observe that several allegations were pursued beyond the limitation period in s. 41(2) of the *RCMP Act*, the particulars of Allegation 1 stating that, “between November 12, 2016, and

November 23, 2016 . . . Constable Ashley Goodyer failed to carry out lawful orders and directions, contrary to section 3.3 of the Code of Conduct . . . ,” with the *Conduct Investigation Mandate Letter* in the CARD disclosing that Superintendent Brad Mueller was aware of the *Notice of Code of Conduct Investigation* being initiated on November 28, 2016, and the related *Notice of Conduct Hearing* being dated December 21, 2017.

With Respect to Allegations 3, 4, and 5

(a) The Commissioner, in confirming the Decisions of the Board, breached principles of procedural fairness by endorsing an ‘e-mail hearing’; and/or further erred in determining that the onus was upon the Applicant to ensure that the Board complied with the public hearing provisions of the RCMP Act and related enactments; (including to resolve key issues of credibility).

(b) The Adjudication Board, and the Commissioner of the RCMP in confirming the Board’s decision, failed to objectively weigh all relevant evidence, including the statements/letters of Corporals Blair Wood and Wayne Chung - which, on their face, clearly called into question the credibility and motivations behind of Staff Sergeant Daly’s letter relied upon by the CAR; this evidence being critical to crafting appropriate conduct measures, including whether the impugned conduct impacted operations;

(c) The Adjudication Board, and the Commissioner of the RCMP in confirming the Board’s decision, failed to objectively resolve credibility issues arising from the affair between the two members of ‘E’ Division articulated in the letter of Wayne Chung; the Board instead finding (in part) that how it was handled by Staff Sergeant Daly, and any (negative) impact on morale (something Staff Sergeant Daly attributed solely to the Applicant), was not important and that this “[did] not need to be resolved or [was] of little value,” because it constituted “personal information unrelated to the allegations,” (as advanced by the CAR);

(d) The Board, and the Commissioner in confirming the Board’s decision, failed to objectively weigh the evidence, including the statements/letters of Corporals Blair Wood and Wayne Chung, but instead found, on the basis of no related information or evidence, that these members were ‘trying to discredit Staff Sergeant Daly;’ this, in a context where accountability for dishonesty formed the basis for the Conduct Board proceedings;

(e) The Board, and the Commissioner of the RCMP in confirming the Board's decision, took a 'no tolerance' approach to deceit, i.e., the Board repeatedly stating that, 'you never lie to a supervisor whether its personal or otherwise', thereby taking an approach that rejected the RCMP's *Conduct Measures Guidebook* and related policies which clearly distinguished between operational and non-operational contexts when lying to a supervisor;

(f) The Board, and the Commissioner in confirming the Board's decision, failed to objectively weigh the relevant aggravating and mitigating factors, instead placing the Applicant's misconduct on the most egregious end of the culpability spectrum in terms of appropriate measures, and not observing the principles relevant to parity of measures; again, in direct misalignment with the principles underlying the 'new conduct regime';

(g) The Board, and the Commissioner in confirming the Board's Decisions, applied the principles guiding Conduct hearings and the imposition of measures selectively, the Board citing from 'The Conduct Board Guidebook' and related principles so as to justify its expedited approach in its initial Decision on the Allegations, yet classifying the guidelines and principles relied upon by the MR2, as set out on the *Conduct Measures Guidebook* and related sources, as 'just guidelines' in its August 24, 2018 Decision.

And further take Notice that the Applicant will be relying upon the following statutory provisions and rules:

Federal Courts Act, RSC 1985, c. F-7, s. 18.1

Federal Court Rules, ss. 300-309;

Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10, particularly Part IV (Conduct), including (but not restricted to) s. 41(1), and (2) (notice; limitation period re investigation); s. 43(2) (Notice of Conduct hearing); s. 45.1(2); (public hearing); s. 45.11(5) (appeal to Commissioner on any ground);

Commissioner's Standing Orders (Conduct) SOR/2014-291, particularly the *Conduct Board Rules of Procedure*, including, s. 15(2), ("Board members"); s. 15(3) (admission or denial) s. 18

(list of witnesses within 30 days), s. 24(2) (parity), s. 26(a), (b); (record of hearing and notice; date, time, place of hearing);

Code of Conduct, Royal Canadian Mounted Police Regulations 2014, SOR/20114-281, especially Part 3 (Conduct), and the *Schedule*.

Code of Conduct of the Royal Canadian Mounted Police, Annotated Version, 2014, especially s. 8.1

Conduct Measures Guidebook November 2014, especially, Principles, s. 32 (lying to supervisor, non-operational); and s. 33 (lying to supervisor operational).

'*Conduct Board Guidebook*' as cited at p. 14 of the Board's (undated) *Record of Decision* (Allegation stage).

This application will be supported by the following material:

1. The Notice of Investigation, and the Notice of Conduct Board Hearing, as issued pursuant to the *Royal Canadian Mounted Police Act* and *Regulations (supra)*;
2. The *Record of Decision [of the] Conduct Board*, Commissioner Craig S. MacMillan in the matter of Commander of "E " Division (Conduct Authority) and Constable Ashley Goodyer Regimental Number 61089, (on Allegations), undated;
3. The *Record of Decision [of the] Conduct Board*, Commissioner Craig S. MacMillan in the matter of Commander of "E " Division (Conduct Authority) and Constable Ashley Goodyer Regimental Number 61089, (on Conduct Measures) dated, August 24, 2018;
4. The Notice(s) of Appeal to the Commissioner made pursuant to of the *R.C.M.P Act*;
5. The OCGA's 'Record of Proceedings' (as requested in the final paragraph of this application) being comprised of over 6400 pages (presumably, what the Commissioner refers to in the May 5, 2022 Decision as "the materials), *including but not restricted to*:
 - (a) The e-mails between the MR1 and the Conduct Board, and the MR2, (and the CAR) as the as to the procedural aspect of the proceedings, including the hearing;
 - (b) The written Submissions and Rebuttals of the Member Representative ("MR2") as requested and provided to the Board at the Conduct Measures Stage;

(Including the statements (letters) of Corporal Blair Wood and Corporal Wayne Chung, and the records pertaining to the ‘10-33’, and the records pertaining to the ‘10-04’);

(c) The Appellant Representative’s (“AR’s”) written submissions and rebuttals provided to the OCGA for presentation to the ERC and the Commissioner;

(d) The Decision of Art Pittman, dated May 1, 2019, being a *Direction from Conduct Appeal Adjudicator on Preliminary Issue of Standing*;

(e) The e-mail from Phil Leblanc of the OCGA sent to the AR on the 17th of May 2019, erroneously stating that,

. . . the Adjudicator rendered a decision on [the] preliminary issue of standing of the appeal. The decision is final and binding on the appellant and respondent. The decision is attached with this email. The decision disposes of the appeal, which puts an end to the RCMP appeals process. The RCMP appeals process has now been exhausted.

6. The *Summary of Findings and Recommendations* of the External Review Committee (“ERC”) indicating the Appeal was time barred; and refusing to address the Submissions on the Merits;

7. The Decision of the Commissioner’s Representative, Steven Dunn, Adjudicator, dated 2021-06-23, declining to follow the ERC’s recommendation that the Appeal was time barred, granting a retroactive time Extension, and asking whether the Appellant would like the matter re-referred to the ERC on the merits, or directly (to save time) to the Commissioner.

8. The e-mails relating to whether the Appellant wished the ERC or Commissioner to rule on the merits of the Appeal;

9. The *Summary of Findings and Recommendations* of the ERC dated November 23, 2021, recommending that the Appeal be partially allowed on the 20-day forfeiture of pay, but otherwise dismissed;

10. The *Decision of the Commissioner [of the] Royal Canadian Mounted Police* in the matter of an Appeal of an Adjudication Board decision pursuant to s. 45.11(1)(b) of the Royal Canadian Mounted Police Act, RSC 1985, c. R-10, as amended, Conduct Authority), between Constable

Ashley Goodyer Regimental Number 61089 and Commanding Officer “E” Division, Royal Canadian Mounted Police, dated May 5, 2022.

The applicant requests that the Commissioner send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the RCMP to the applicant and to the Registry:

The ‘Record of Proceedings’ that was sent to the AR at the final stage of the appeal submissions; which record being comprised of the all of the e-mails, written submissions, and all communications between the Board, the CAR, and the MR2; and then, at the appeal stage, all communications and submissions between the OCGA and counsel; which, (due to repetition), is comprised of over 6400 unnumbered pages), the original digital copy that was sent to the AR several years prior being unrecoverable; for clarification, this record appears to be referred to by the Commissioner in the May 5, 2022 decision, as “the Materials”; (an electronic copy on USB stick is preferred); the original digital copy that was sent to the AR now being corrupt and/or unreadable;

And,

A copy of the Notice of Place, time and location for the Conduct Hearing, as contemplated in s. 26(b), *Commissioner’s Standing Orders (Conduct)* SOR/2014-291.

Dated at Leduc County, Alberta, this 6th day of June, 2022.



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