

e-document		T-2533-22-ID 1	
F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É	
November 30, 2022 30 novembre 2022			
Stacey Stark			
EDM		1	

Court File No.

FEDERAL COURT – TRIAL DIVISION

SERGEANT WILLIAM TURNER, REGIMENTAL NUMBER 68215

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 Delegate of the Commissioner [of the] Royal Canadian Mounted Police, Steven Dunn, dated October 21, 2022, which was served on the Applicant by way of registered mail on November 22, 2022, in the matter of an Appeal of a Conduct Board decision rendered pursuant to s. 45.11(1)(b) of the *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10, as amended, (Conduct Authority), between Sergeant Will Turner, Regimental Number 68215 and Commanding Officer “E” Division, Royal Canadian Mounted Police, wherein, the Commissioner:

Followed the Recommendation of the ERC, set out in the July 7, 2022 Decision of Charles Randall Smith, and upheld the November 30, 2017, Conduct Board Decision of Mr. Kevin Harrison in the matter of *Commanding Officer, “E” Division Conduct Authority and Sergeant William Turner, Regimental Number 47786* (“Board’s Decision”), on both the Allegations, and the Conduct Measures imposed.

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

The Decision of the Delegate of the Commissioner [of the] Royal Canadian Mounted Police, Steven Dunn, dated October 21, 2022,

following the ERC recommendation set out in the July 7, 2022, Decision of Charles Randall Smith,

and confirming the Conduct Board’s Decision of November 30, 2017,

that Allegations 1 and 2 were established; and that the appropriate conduct measures were that Sergeant William Turner resign from the RCMP within 14 days, or be dismissed.

The applicant makes application for the following relief:

That the finding that Allegations 1 and 2 were established, as articulated by the Conduct Board and confirmed by the Commissioner of the RCMP, be quashed and/or set aside; and,

That the Conduct Measures ordered by the Board with respect to Allegations 1, and 2, and

confirmed by the Commissioner in the October 21, 2022 Decision of Steven Dunn; being that the Applicant resign within 14 days or be dismissed, be quashed and/or 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 Board, the Commissioner failed to observe principles of natural justice; and/or,
2. In reaching its decision and confirming that (or those) of the Board, the Commissioner failed to observe principles of procedural fairness; and/or,
3. In reaching its decision and confirming that (or those) of the Board, the Commissioner of the R.C.M.P. failed to objectively weigh the relevant evidence and information before it; including failing to exclude hearsay; thereby failing to observe the basic rules of evidence, and making critical findings of fact in a perverse and capricious manner.

The further grounds for the Application are:

(a) The Conduct Board, and the Commissioner of the RCMP, in confirming the Decision of the (second) Conduct Board, failed to provide any remedy for what the 'Initial' Board held was a clearly established *Charter Breach*, based upon an unreasonable, and prejudicial delay; which delay, the (second) Board explicitly attributed to the RCMP changing the Conduct Board, and the fact that the allegations fell within the time frame wherein the RCMP was transitioning from its 'old discipline regime' to the 'new conduct' regime; (by way of present context, the RCMP process has now been 'exhausted' after these proceedings have taken approximately 8 years; with Chairperson Charles Randall Smith offering only a 'sincere apology' for the further delay in processing the appeal attributable to the ERC at the outset of the ERC's July 7, 2022 *Recommendation*).

(b) The Conduct Board, and the Commissioner of the RCMP, in confirming the Decision of the (second) Conduct Board, failed to apply the proper legal principles with respect to the standard of proof required to establish the allegations; more specifically, the Board, and the Commissioner of

the RCMP in confirming the Board's decision, erred in finding that the particulars of the Allegations need not actually be proven; the particulars of the Allegations instead characterized as 'contextual' by the Board, and as something only to be considered at the measures stage;

(c) The Conduct Board, and the Commissioner of the RCMP, in confirming the Decision of the Board, failed to objectively resolve credibility issues arising from the conflicting evidence of the Applicant and Ms. A; including the implications of the Board being explicitly 'troubled' by finding that Ms. A was influenced by investigators who he essentially found, 'put words in her mouth.'

(d) The Conduct Board, and the Commissioner of the RCMP, in confirming the Decision of the Board, erred in relying upon evidence that was not properly before the Board at both the merits and measures stages of the hearing. This included the fact that The Board, and the Commissioner of the RCMP, in confirming the Board's decision, relied upon hearsay in making critical factual findings; and further, upon speculation, in finding that the relationship between the RCMP and the City was negatively impacted by the Applicant's misconduct when there was no evidence before the Board on which to make that finding.

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); and also, the 'old regime' provisions;

Commissioner's Standing Orders (Conduct) SOR/2014-291, particularly the *Conduct Board Rules of Procedure*;

Code of Conduct, Royal Canadian Mounted Police Regulations 2014, SOR/2014-281, 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;

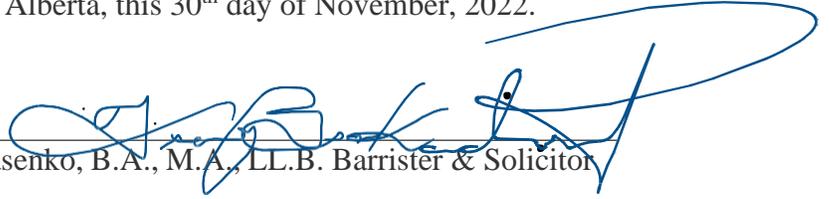
This application will be supported by the following material:

1. The Affidavit of William Turner;
2. The Decision of the Commissioner, being the *Conduct Appeal Decision*, of Adjudicator, Steven Dunn, dated October 21, 2022;
3. The *Recommendation* of the ERC, as set out in the Decision of Charles Randall Smith, dated July 7, 2022;
4. The OCGA’s ‘Record of Proceedings’, being the *Certified Tribunal Record* (as requested in the final paragraph of this application), which is anticipated to contain, at least, the documents listed below.
 - (a) The Notice of Conduct Board Hearing, as issued pursuant to the *Royal Canadian Mounted Police Act and Regulations (supra)*; and proof of service;
 - (b) The Initial Board’s February 6, 2017, Decision on the Motion for a Stay of Proceedings;
 - (c) The transcript of the Hearing from November 28 to 30th, 2018, and the oral decisions of the Board given at the conclusion of that hearing;
 - (d) The Decision(s) of Adjudicator(s) on procedural issues;
 - (e) The Notice of Appeal to the Commissioner made pursuant to the *R.C.M.P Act*.

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’ comprising the *CTR*, or the complete record of materials that were before the ERC and the Commissioner at the Appeal Stage of these proceedings.

Dated at Leduc County, Alberta, this 30th day of November, 2022.



Tracy L. Benkendorf-Pasenko, B.A., M.A., LL.B. Barrister & Solicitor
23060 Hwy 623
Leduc County, AB T0B 3M3
(780) 433-4333
tlpasenko@gmail.com

Counsel for the Applicant, William Turner