

CANADA / JUDGMENT

Utano v. Canada (Public Safety)

2026 FC 522

COURT

Federal Court

DECIDED

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Toronto, Ontario, April 20, 2026

PRESENT: Madam Justice Go

BETWEEN:

ANTONIO UTANO

Applicant

and

THE MINISTER OF PUBLIC SAFETY OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] Mr. Antonio Utano [Applicant], a public servant, was employed as the Executive Director and then Acting Director General in the Border Technology and Innovation Directory [BTID] of the Canada Border Services Agency [CBSA] between 2018 and 2023. The Applicant left CBSA in April 2023 to take on a Director General's position with the Canada Revenue Agency.

[2] The CBSA conducted an internal professional standards investigation into the Applicant. In April 2025, the CBSA prepared a draft Professional Standards Investigation Report [Draft PSI Report] with findings regarding several misconduct allegations against the Applicant.

[3] The Applicant filed a grievance under the Federal Public Sector Labour Relations Act, SC 2003, c 22, s 2 [FPSLRA] challenging both the investigation process and the Draft PSI report, alleging procedural unfairness, reasonable apprehension of bias, structural conflict of interest, institutional interference, deficient disclosure, and improper credibility determinations.

[4] On July 30, 2025, the CBSA issued a “Reply to Grievance” dismissing the Applicant's grievance [Decision]. The Decision was issued under the name of Holly Flowers Code, Vice-President, Human Resources Branch of the CBSA [grievance decision-maker]. The Decision concluded that the investigation complied with relevant policies and found no conflict of interest or procedural fairness issues.

[5] The Applicant seeks judicial review of the Decision. He submits that the CBSA failed to grapple with central issues raised in his grievance and erred in law by failing to meaningfully address his allegations contained therein. As for the remedy, the Applicant asks the Court to remit this grievance with specific instructions that it be reconsidered by a differently constituted and institutionally independent decision-maker.

[6] The circumstances of this judicial review application are materially connected with and closely parallel those in the matter of Mr. Cameron MacDonald, a former CBSA employee who also filed a judicial review application with the Court. These two cases arise from overlapping facts, events, and administrative processes within the CBSA. The Court heard both matters at the same time over the course of two days.

[7] For the reasons set out below, I find the Applicant fails to discharge his burden of demonstrating that the Decision was unreasonable. I therefore dismiss the application.

[8] I wish to emphasize that my decision does not speak to the merits of the CBSA's allegations against the Applicant, nor the reasonableness of the Draft PSI Report itself. My only task is to review the reasonableness of the Decision dismissing the Applicant's grievance against the CBSA investigation process conducted to date; no more, no less. The Applicant will have further opportunities to challenge the CBSA's investigation, including the final Professional Standards Investigation Report [Final PSI Report] that may or may not lead to further actions

taken against the Applicant by his current employer.

II. Background [9] This is not the first time the Applicant and Mr. MacDonald came to the Court seeking to review and/or halt the CBSA's investigation into the allegations of professional misconduct against them. Their previous attempt to challenge the CBSA's investigation was dismissed by Justice Zinn in *Utano v Canada (Public Safety)*, 2024 FC 805 [Utano], on the basis that it was premature given an available grievance process they had yet to exhaust.

[10] Further, prior to the hearing of this judicial review application, Mr. MacDonald brought an interlocutory motion seeking an order preventing the Respondent from distributing or disseminating the Draft PSI Report until the disposition of this judicial review application. Justice Brown granted Mr. MacDonald's motion in *MacDonald v Canada (Public Safety)*, 2025 FC 1202 [MacDonald].

[11] In *Utano* at paras 5-16, Justice Zinn provided a high-level summary of the background of the CBSA investigation. Below, I rely in part on Justice Zinn's summary with some revisions based on my own understanding of the facts and the parties' positions. I also include additional details of events that have transpired since Justice Zinn's decision was released.

[12] As a starting point, I note, as Justice Brown did in para 3 of *MacDonald*: "The underlying facts in this case are heavily contested. The parties dispute the timeline, purpose, merits, and procedural fairness of [the CBSA investigation] and the [Draft PSI Report]." For the most part, I keep only to the facts that the parties agree on and that are not subject to the Confidentiality Order issued by Associate Judge Molgat on May 8, 2025.

[13] The Applicant and Mr. MacDonald previously worked together at the CBSA in the BTID. Mr. MacDonald was the Director General until he left CBSA in 2018 to take up the position as an Assistant Deputy Minister at Health Canada. While at the CBSA, the Applicant and Mr. MacDonald were responsible for the initial execution and technical delivery of the ArriveCAN travel application [ArriveCAN]. This app was developed by the CBSA to address deficiencies with the paper application process for entry into Canada that came to a head during the COVID-19 pandemic. ArriveCAN has fallen under significant public scrutiny due to allegations of significant breaches of standard procurement practices and overspending.

[14] The parties agree that the CBSA's investigation into the Applicant and Mr. MacDonald stems from a complaint the CBSA received from Botler AI, an external Montreal-based company. The Applicant and Mr. MacDonald were first introduced to Botler AI while working on a feasibility study for an artificial intelligence-based application for harassment complaints at CBSA. On November 16, 2022, Botler AI sent a report to CBSA titled "Botler – Canada Border Services Agency GoC Pathfinder Pilot" [Pathfinder Report], alleging serious misconduct within the CBSA and the wider Government of Canada. Botler AI offered to share its findings with the CBSA in exchange for a contract. On November 24, 2022, Botler AI provided CBSA with a document that it authored titled, "CBSA Preliminary Misconduct Report," together with accompanying exhibits.

- [15] In response to Botler AI's complaint, CBSA initiated its internal investigation of the Applicant and Mr. MacDonald. Mr. Michel Lafleur, the Executive Director of the Professional Integrity Division [PID] led the investigation. Mr. Lafleur's direct supervisor is Mr. Pierre Lessard, the Chief Security Officer [CSO] and Director General [DG] of Security and Professional Standards Directorate at the CBSA.
- [16] The PID prepared a Preliminary Statement of Facts [PSF] relating to the Applicant, and another PSF relating to Mr. MacDonald, dated December 19 and 18, 2023 respectively: Utano at para 12.
- [17] The PSFs were released to the current employers of the Applicant and Mr. MacDonald on December 19, 2023. Shortly thereafter, in January 2024, the Applicant and Mr. MacDonald had their security clearances revoked and they were placed on unpaid suspension from their respective roles. It is undisputed that their suspensions were a direct result of the dissemination of the PSFs from the CBSA to their current employers. The Applicant and Mr. MacDonald grieved these decisions with their employers.
- [18] According to the CBSA, due to the allegations of criminal wrongdoings, the CBSA formally referred the matter to the Royal Canadian Mounted Police [RCMP] in January 2023. While the parties agree that the CBSA made limited progress on its administrative investigation between January and October 2023, they disagree on whether the RCMP requested the CBSA to halt its own investigation after the referral was made.
- [19] Between April and July 2023, the CBSA sought guidance from Public Services and Procurement Canada [PSPC] in the form of procurement expertise that could assist the CBSA in conducting a procurement assessment in support of the ongoing review.
- [20] In September 2023, the CBSA seconded a procurement expert, Mr. Richard Deneault, from PSPC to review one specific task authorization involving Botler AI.
- [21] On October 4, 2023, Botler AI's allegations were made public by the Globe and Mail. The CBSA leadership were called to testify before Standing Committee on Government Operations and Estimates [OGGO]. OGGO also called the Applicant and Mr. MacDonald to testify.
- [22] On October 26, 2023, Mr. Deneault provided his report [Deneault Report] to Mr. Lafleur. Revisions were made to the October 26 version of the Deneault Report on October 27, and additional revisions were made on October 31, 2023. As I will elaborate further, the Applicant now takes the position that the version of the Deneault Report dated October 26, 2023 was final and that it was revised at Mr. Lafleur's direction with input from legal counsel, indicating the institutional interference that plagued the CBSA investigation into the Applicant.

- [23] On October 27, 2023, the Applicant and Mr. MacDonald informed the CBSA via email that they planned to appear before OGGO and give testimony that contradicted the testimonies given by their former CBSA superiors on October 24, 2023. The Applicant and Mr. MacDonald provided testimony on the development and implementation of ArriveCAN to OGGO on November 7, 2023.
- [24] On October 30, 2023, the PID launched “Project Helios” to investigate the CBSA procurement procedures. On November 17, 2023, the PID issued a revised mandate that formally moved the investigation from a preliminary to an investigation phase, pursuant to the CBSA Policy on Administrative Investigations into Alleged or Suspected Employee Misconduct [CBSA Policy]. Both the Applicant and Mr. MacDonald received formal notifications of the investigation, and a general overview of the allegations made against them on November 27, 2023.
- [25] Upon their request, the OGGO and the Auditor General of Canada received copies of the PSFs on January 29, 2024. It is pursuant to this request that the CBSA simultaneously provided the Applicant and Mr. MacDonald with a public or redacted copy of the PSFs, including all exhibits and supporting documentation referenced therein. Mr. MacDonald later received an un-redacted version of his PSF on February 9, 2024. There is conflicting account on whether the Applicant has received an un-redacted version of his PSF, and the record before the Court only contains a redacted version of the PSF with respect to the Applicant.
- [26] The Applicant and Mr. MacDonald filed Access to Information and Privacy [ATIP] requests under the Access to Information Act, RSC 1985, c A-1 to obtain relevant materials that they believe CBSA has withheld from them.
- [27] By the time the Decision was made, the Applicant and Mr. MacDonald had received over 13,000 pages of documents through their ATIP requests. They received further documents after the Decision was issued, a point to which I shall return later in my analysis. According to the Applicant and Mr. MacDonald, the CBSA has yet to respond fully to their ATIP requests.
- [28] In February 2024, the Applicant filed complaints with the Public Sector Integrity Commissioner [Integrity Commissioner] seeking a review of CBSA’s conduct and alleging reprisal. On March 11, 2024, the Integrity Commissioner confirmed there is sufficient information to investigate whether CBSA’s conduct, including the creation of the PSFs, amounts to retaliation. It is unclear from the record whether Mr. MacDonald filed such a complaint to the Integrity Commissioner.
- [29] Over the course of its investigation, the CBSA reached out to the Applicant and Mr. MacDonald to schedule an interview. In response, the Applicant and Mr. MacDonald sought further disclosures from the CBSA. Eventually, the CBSA gave the Applicant and Mr. MacDonald deadlines to respond, warning that the investigation would otherwise proceed without their input. As the Applicant and Mr. MacDonald were on medical leave, the CBSA

advised that medical accommodations could be made, should they request with corresponding evidence.

- [30] The Applicant participated in interviews with the PID on December 3, and 4, 2024.
- [31] On April 11, 2025, the CBSA released the Draft PSI Report, including supporting exhibits, to the Applicant and invited the Applicant to review it for corrections regarding his evidence only. The Applicant submitted his comments regarding the Draft PSI Report on May 27, 2025.
- [32] On May 12, 2025, the Applicant submitted his grievance challenging both the CBSA's investigation process and the Draft PSI Report.
- [33] On June 13, 2025, the CBSA provided the Applicant with an opportunity to consult on his grievance where he could present details of his grievance via written submissions or a virtual meeting.
- [34] On July 4, 2025, the Applicant provided written submissions for the purpose of this consultation, where he supplemented more details regarding his grievance allegations. In his grievance consultation presentation, the Applicant alleged that the investigation process was procedurally unfair, based on incomplete and selective facts, tainted by conflict of interest and reasonable apprehension of bias, and interfered by senior management. He alleged the Draft PSI Report drew unreasonable conclusions from the evidence and twisted facts into predetermined conclusions. He grieved Mr. Lafleur for withholding evidence and failing to disclose significant evidence to him and in so doing, denying him an opportunity to respond to relevant evidence. Finally, the Applicant grieved the CBSA's decision to disseminate the Draft PSI Report with his current employer and other entities.
- [35] In the Decision, the CBSA found the investigation and the report have been conducted and produced in a manner in compliance with the CBSA's policies. They noted various steps taken by the PID to ensure the Applicant's right to procedural fairness. The CBSA denied the proposition that Mr. Lafleur was prejudiced in his involvement in the investigation or that he acted outside the regular scope of his duties. The Decision rejected the Applicant's assertion that the investigation was a retaliatory measure resulting from his testimony to Parliament. The Decision also stated that the Draft PSI Report was not shared with other stakeholders or entities; however, pertinent stakeholders within the federal public service may be engaged upon completion of the Final PSI Report..
- [36] The CBSA also produced a document titled "Final Level Grievance Précis" dated July 29, 2025 [Précis]. It is an internal briefing note that provided analysis and a recommendation regarding the Applicant's grievance. In judicial reviews involving grievances pursuant to the FPSLRA, the Court has found that reasons for a grievance decision include what was stated in the decision as well as the contents of the grievance précis: *Andruszkiewicz v Canada* (Attorney General), 2023 FC 528 [Andruszkiewicz] at para 39; citing *Veillette v Canada* (Revenue Agency), 2020 FC 544 at para 27.

III. Preliminary Issues [37] As a preliminary issue, the Respondent submits that the affidavits filed by the Applicant are improper and that the Court should strike or disregard significant portions of the affidavit evidence and the exhibits.

- [38] The Applicant first swore an affidavit on October 21, 2025 [First Affidavit], with several exhibits attached, amounting to 188 pages. The Applicant then brought a motion seeking to file a supplemental affidavit sworn on November 28, 2025 and attaching as exhibits, the ATIP request submitted by Mr. MacDonald to the CBSA on February 24, 2024 and a number of documents received by Mr. MacDonald on October 24, 2025.
- [39] By an order dated February 6, 2026, Associate Judge Molgat ordered portions of the Applicant's supplemental affidavit to be struck and granted him leave to serve and file a revised supplemental affidavit. In making that order, Associate Judge Molgat agreed with the Respondent that significant portions of the Applicant's supplemental affidavit consist of "impermissible opinion, argument, conjecture and conclusions" and that the opinions contained herein "plainly exceed the exception for laypersons and are not based on facts within the personal knowledge" of the Applicant. Associate Judge Molgat further noted that the remaining evidence that was not available at the time the Applicant served his First Affidavit "may be of assistance to the Court in the sense that it is relevant to the issues to be determined and may potentially affect the result." As such, Associate Judge granted the Applicant leave to file a supplemental affidavit, omitting the portions that are struck out, by no later than February 10, 2026.
- [40] The Applicant subsequently swore another supplemental affidavit on February 10, 2026 [Supplemental Affidavit]. Once again, the Applicant attached as exhibits to the Supplemental Affidavit the ATIP request Mr. MacDonald submitted on February 24, 2024, and the documents Mr. MacDonald received on October 24, 2025 pursuant to the said ATIP request.
- [41] In his affidavits, the Applicant also stated that he has reviewed and confirmed that he adopts Mr. MacDonald's affidavit sworn on October 21, 2025 and supplemental affidavit sworn on February 10, 2026 [MacDonald Supplemental Affidavit]. To the extent that the Mr. MacDonald's affidavits address matters common to both proceedings, the Applicant affirmed that those statements are true and accurate to the best of his knowledge and belief.
- [42] The Respondent challenges the admissibility of the Applicant's affidavit evidence on several grounds.
- [43] First and foremost, the Respondent submits that the substance of the Applicant's affidavits, and nearly all the documents attached as exhibits, were not before the grievance decision-maker and expand the evidentiary record beyond what is proper on judicial review. Citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [Access Copyright] at paras 18-19, the Respondent argues the Court is not a forum for fact-finding based on new evidence that the Applicant claims is relevant to the merits of his grievance, as this invades the role of the grievance decision-maker.

- [44] Second, the Respondent argues the Applicant's evidence does not fall into any of the exceptions to the general rule against receiving evidence on judicial review. Moreover, the Applicant has not raised natural justice concerns in the grievance proceeding itself, regarding which additional evidence may be admissible: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 24 and *Lin v Uber Canada Inc.*, 2025 FCA 183 at paras 36-37.
- [45] Third, the Respondent argues that much of the evidence adduced in the affidavits were not within the Applicant's personal knowledge and several exhibits attached were documents prepared without the Applicant's involvement. Thus, those portions of the affidavit evidence are improper, based on the common law rule against hearsay: Federal Court Rules (SOR/98-106) [Rules], Rule 81(1); *Duyvenbode v Canada (Attorney General)*, 2009 FCA 120 at para 2; *Rainy River First Nations v Bombay*, 2022 FC 1434 at paras 31-32. Of note, the Respondent contests the Applicant's adoption of Mr. MacDonald's affidavits as his evidence is not within the Applicant's personal knowledge.
- [46] Fourth, the Respondent submits the Applicant has adduced evidence that is irrelevant to the application or the issues he raised, by opining at length about the history of Botler AI's involvement with the CBSA.
- [47] For the most part, I agree with the Respondent and I find significant portions of the Applicant's affidavit evidence inadmissible.
- [48] As Associate Judge Molgat pointed out in her decision, the Court on judicial review has only limited powers to review the decision of the administrative decision-maker and cannot allow itself to become a forum for fact-finding on the merits. Thus, evidence that was not before the grievance decision-maker that goes to the merits of the matter before her is, with certain limited exceptions, inadmissible: *Access Copyright* at para 19.
- [49] There are three recognized exceptions to this rule: (i) evidence that provides general background information to assist the court in understanding the issues relevant to the judicial review; (ii) evidence that is necessary to bring to the attention of the judicial reviewing court of procedural defects that cannot be found in the evidentiary record of the decision-maker so that the court can fulfil its role in reviewing for procedural unfairness; or (iii) evidence that highlights the complete absence of evidence before the decision-maker when it made a particular finding: *Access Copyright* at para 20.
- [50] The Applicant submits that his affidavit evidence falls under the three exceptions. However, he only addresses one of the exceptions by arguing that his grievance expressly alleges procedural fairness issues, and the Court is not confined to the evidentiary record before the decision-maker when procedural fairness is squarely in issue: *Brown v Canada (Attorney General)*, 2024 FC 1884 at para 41.
- [51] Additionally, the Applicant asserts that some of the evidence was nonetheless accessible to the investigator who is responsible for providing such information for any resulting administrative process including grievances. In support of his argument, the Applicant

points to the “CBSA Guidance on Administrative Investigations into Alleged or Suspected Employee Misconduct” [CBSA Investigations Guidance]. Under the heading “PSI File Management,” the CBSA Investigations Guidance noted that the investigator “will ensure that all the relevant documents are maintained in the PSI file, in particular, the mandate, the investigation plan (Tier 3), the notifications, the final report and any evidence that directly supports or refutes the allegations being investigated.” The CBSA Investigations Guidance continues: “The Investigator or PID Management are responsible for providing any information held in the PSI file that may be required for any resulting administrative or disciplinary processes, including grievances, tribunal or court hearings.”

- [52] The Applicant submits that the post-Decision disclosures confirm that the record before the grievance decision-maker was incomplete, not by the fault of the Applicant, but by the fault of the CBSA. The Applicant highlights several documents in particular that were never released to the Applicant, namely the Pathfinder Report and several iterations of the Deneault Report, the latter of which were obtained by the Applicant through an ATIP request after the Decision was issued. The Applicant submits the Pathfinder report was material as it was the genesis of the CBSA’s interest in investigating the Applicant, and the various revisions to the Deneault Report are evidence of the institutional influence the Applicant alleged.
- [53] Noting that procedural fairness is one of the pillars of the legal system, the Applicant submits that while the Respondent relies on the CBSA Investigations Guidance to argue the Decision was reasonable, the Respondent fails to comply with their own guidelines. If the basis of the Respondent’s argument is that the grievance decision-maker made a reasonable decision because she worked with everything that was put before her, then the CBSA is obligated to ensure that all the relevant documents were put before the grievance decision-maker.
- [54] I find most of the Applicant’s arguments unpersuasive.
- [55] As the Respondent points out, the Applicant does not raise procedural fairness issues arising from the grievance process. Bearing in mind that the Applicant is challenging the Decision only on the ground of reasonableness, it is difficult to square the Applicant’s argument for putting forward thousands of pages of documents in evidence before the Court, when he could have put the bulk of the documents before the grievance decision-maker but did not do so for reasons that were not indicated in either the grievance submission, nor in the Applicant’s submission before the Court.
- [56] By attacking the Decision on the ground of reasonableness only, I find the Applicant’s new evidence in general does not fall within the exception that allows the Court to review procedural defects that cannot be found in the evidentiary record of the decision-maker in order to fulfil the Court’s role in reviewing for procedural unfairness: Access Copyright at para 20.

- [57] While the Applicant raised the issue of incomplete disclosure in his grievance, he never argued in his grievance submission that the CBSA failed to comply with the CBSA Investigations Guidance or that the CBSA had an obligation to put all the relevant documents before the grievance decision-maker. Before this Court, the Applicant raised these arguments for the first time at the hearing in his oral submission in reply.
- [58] Moreover, other than naming the Pathfinder Report and the various revisions to the Deneault Report, the Applicant does not even attempt to explain how any of the new evidence would have changed the outcome of the grievance, let alone how they may allow the Court to review procedural defects, if any, in the grievance process. In any event, the Applicant indeed obtained a copy of the Pathfinder Report at some point before the Decision was issued.
- [59] I therefore find, with some exceptions, that all the documents that the Applicant obtained before the Decision was issued and chose not to put before the grievance decision-maker inadmissible.
- [60] I also decline to admit all impermissible opinions, arguments, conjectures and conclusions, as well as any evidence not based on facts within the personal knowledge of the Applicant, along with any document prepared without the Applicant's involvement.
- [61] However, I allow certain documents the Applicant obtained after the Decision was released and attached as exhibits of the Supplemental Affidavit, namely the different iterations of Deneault Report. Some of these documents were also included in the MacDonald Supplemental Affidavit.
- [62] In the Supplemental Affidavit at para 6, the Applicant declares, when referring to the various iterations of the Deneault Report: "These documents were always within the CBSA's possession and control, whether it was during the investigation, during my grievance, or when I swore my affidavit on October 21, 2025. Their release more than 600 days later prevented me from placing evidence before the grievance decision maker to consider in reaching a decision or to include in my affidavit."
- [63] In *Andruszkiewicz*, Justice Little sets out the test for admissibility of new evidence in a judicial review at para 27:

The test for admission of new evidence under Rule 312 of the Federal Courts Rules starts with a determination of whether the evidence is admissible on the application for judicial review and whether the evidence is relevant to an issue properly before the Court: *Forest Ethics*, at paras 4 and 6. Under Rule 312, the Court will also have regard to whether it is in the "interests of justice" to admit the new evidence, including whether it (i) will assist the Court, (ii) will cause substantial or serious prejudice to the respondent, and (iii) was available when the applicant filed the materials for the judicial review application or could have been discovered with the exercise of due diligence: *Tsleil-Waututh Nation*, at para 11. See also *McClintock's Ski School & Pro Shop Inc. v Canada (Attorney General)*, 2021 FC 471, at paras 38-39. In considering whether the evidence

will assist the Court, the evidence must be sufficiently probative that it could affect the result: Holy Alpha and Omega Church of Toronto v Canada (Attorney General), 2009 FCA 101, at paras 2 and 11.

[Emphasis added.]

[64] Applying the same principles, I consider whether the evidence in question is “sufficiently probative that it could affect the result.”

[65] In his written memorandum of fact and law in support of the judicial review application, the Applicant made the following argument with respect to the Deneault Report under the heading “Failure to Grapple with Disclosure Deficiencies:”

88. The grievance alleged that material documents were not disclosed during the investigation, including underlying witness materials and relevant documentary evidence.

89. Subsequent disclosures included the [Pathfinder Report], the Preliminary Misconduct Report, and an earlier version of Mr. Deneault’s procurement review, documents not available during the investigation or grievance process.

90. The grievance decision does not assess whether the investigative record was complete or whether the Applicant was provided a meaningful opportunity to respond to all material evidence.

91. A decision cannot be reasonable where it presumes the integrity of the investitive record without addressing whether relevant materials were withheld.

92. The absence of analysis on disclosure integrity is a material omission.

[66] At the hearing before me, the Applicant revised their position about the Deneault Report. Rather than describing the October 26, 2023 report as an “earlier version” as he did in his written memorandum of argument, the Applicant argued the October 26, 2023 version was Mr. Deneault’s “final report.” Moreover, the Applicant submitted that the Deneault Report was “materially altered” due to the request by the CBSA and that the alteration materially changed the nature of the report.

[67] Among other things, the Applicant submitted orally that the October 26, 2023 version of the Denault Report was an overview of the procurement process, and while it did mention the Mr. MacDonald briefly, it did not mention the Applicant at all. The Applicant argued the October 26, 2023 version reflected an institutional emphasis, as opposed to a focus on the individuals involved in the procurement process. The Applicant took the Court through the timeline of the emails contained in the MacDonald Supplemental Affidavit to suggest that it was Mr. Lafleur who edited the Deneault Report and that the track changes show Mr. Lafleur’s removal of any reference to Ms. Erin O’Gorman, CBSA President. The Applicant argued that the changes made on October 30, 2023 repeatedly named Mr. MacDonald and introduced the Applicant for the first time, while suggesting impropriety on both of their parts. The Applicant also noted that the CBSA launched “Project Helios” on October 30, 2023,

which suggests that the investigation was not neutral, given it was run by Mr. Lafleur, who also coordinated the procurement assessment.

[68] The Respondent argues that the new evidence the Applicant seeks to admit does not meet the threshold of demonstrating sufficient probative value that could affect the outcome of the case.

[69] For reasons set out later in my decision, I ultimately agree with the Respondent that the new evidence could not have affected the outcome of the case. As a preliminary matter, however, I will allow the evidence in because it was not before the grievance decision-maker, and the Applicant could not have produced it because he only obtained it after the Decision was released. Moreover, on its face, the evidence was relevant to the Applicant's grievance submission with respect to institutional bias and conflict of interest.

[70] For all the reasons cited above, I find the following evidence inadmissible and will disregard the evidence:

a)First Affidavit:

Paragraphs 4-5, 9-18, 20, 22-25, 31, 34 (first sentence), 35, 36 (last sentence), 37-40, 41 (second sentence), 42, 44-45, 47 (except the first sentence), 48-52, 65-69, 79-81, 84, 89 (except the first sentence), 90-94, 98, 104, 111-118, 121, 123, 128, 132, 137-141, 143, 146, 149-155, 145 (error in paragraph numbering, First Affidavit at page 33);

Exhibits A, B (pp.42-43, 48-51, 58-61), C-F, L-M, Q-S, V-W;

b)Supplemental Affidavit:

Paragraphs 12-14, 16-17; and

Exhibits F-H.

IV. Issues and Standard of Review [71] In his written submission, the Applicant raises five issues to challenge the reasonableness of the Decision. In his oral argument, counsel for the Applicant made eleven overlapping arguments. Some of the counsel's arguments are related to the reasonableness of the Draft PSI Report, which is not the subject under review. During the hearing, counsel also improperly raised some new issues that were never put before the grievance decision-maker nor in his written submission before the Court.

[72] I will focus my analysis on issues that fall properly within the scope of the judicial review. I have summarized and reframed the Applicant's issues as follows:

The Decision was conclusionary and did not grapple with the Applicant's arguments with respect to institutional bias and interference;

The Decision failed to address the Applicant's argument on procedural fairness;

The Decision did not meaningfully address the Applicant's disclosure arguments; and

The Decision failed to address the issue that the PSF was transmitted before the Applicant had an opportunity to respond.

[73] The parties agree the standard of review for the decision is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 [Vavilov]. Under the Vavilov framework, the Court should assess whether the decision bears the requisite hallmarks of justification, transparency and intelligibility: Vavilov at para 99. The Applicant carries the onus of demonstrating that the Decision was unreasonable: Vavilov at para 100.

V. Analysis A. Was the Decision conclusionary and did it fail to grapple with the Applicant's arguments with respect to institutional bias and interference? [74] The Applicant grieved actual or apparent conflict of interest and a reasonable apprehension of bias coupled with there being an institutional conflict of interest.

[75] He first raised that Mr. Lafleur, the principal investigator, and Mr. Lessard, his superior overseeing the investigation, both report to President O'Gorman and have a personal interest in the outcome of the investigation as it could reflect negatively on all three individuals. He further argued that the subject matter under investigation, which concerns systemic procurement practices and decisions made and endorsed by CBSA senior management, cannot be impartially scrutinized by Mr. Lafleur, who had inherent conflict interest due to his duties of loyalty to the CBSA's executive leadership.

[76] The Applicant then raised the conflict of interest arising from President O'Gorman overseeing the investigation while being subject to public scrutiny relating to the matters under investigation. Since Mr. Lafleur directly reported to President O'Gorman with respect to the investigation, the Applicant argued that it was inappropriate for the CBSA leadership to oversee the investigation or have authority over the investigator.

[77] Finally, the Applicant pointed out that Mr. Lafleur and Mr. Lessard both held senior leadership positions within the PID during the period of the CBSA's alleged systemic procurement failures. He made other allegations to suggest that their findings regarding the procurement decision must be viewed in light of their personal interest.

[78] In his written memorandum of law and arguments, the Applicant points to the revisions to the Deneault Report as evidence that could give rise to a reasonable apprehension, and argues that the grievance decision-maker failed to analyze it.

[79] Before the Court, the Applicant reiterates many of his allegations and submits that the Decision failed to grapple with his submissions on institutional bias and interference.

[80] At the hearing before me, the Applicant pointed to paragraphs in the Decision finding that the investigation process is in keeping with the CBSA Policy and that the Applicant has had the opportunity to be informed of the allegations. The Applicant submitted these were only conclusions, not reasons.

- [81] The Applicant further argued that the Decision erred by looking narrowly at the question of whether the investigator had a personal conflict, as opposed to examining the broader structural bias in the context of this case.
- [82] The Applicant added that the Decision's reliance on the institutional mandate did not resolve fairness concerns raised in the grievance. The Applicant has never suggested that the CBSA lacks the authority to conduct internal investigation. Rather, based on the record, the Applicant submits that the structure and conduct of investigation raised concerns about the impartiality of the process. The Decision dealt only with the jurisdictional question, but not the allegation of institutional bias.
- [83] I disagree with the Applicant. Contrary to the Applicant's submission, both the Decision and the Précis reasonably addressed the Applicant's concerns on institutional bias.
- [84] Starting with the Decision, the grievance decision-maker noted:

As the Executive Director of PID, and as part of his mandate, Mr. Lafleur is entrusted to conduct administrative investigations throughout the [CBSA] involving allegations of employee misconduct and to ensure that all aspects of this process are conducted in an objective, thorough and accurate manner. Mr. Lafleur did not have a conflict of interest as it relates to the specific allegations or the individuals involved in the administrative investigation that formed the basis of your grievance. As such, I cannot agree that Mr. Lafleur was prejudiced in his involvement in the administrative investigation or that he acted outside of the regular scope of his duties.

- [85] The Decision also responded directly to the Applicant's allegations of institutional bias, and the retaliatory nature of the investigation:

Further, contrary to your allegation, the investigation was not a retaliatory measure resulting from your testimony to Parliament on November 7, 2023. The investigation was initiated in the fall of 2022 but you were not formally notified at the time because of concerns about impacts on the parallel Royal Canadian Mounted Police [RCMP] investigation. The CBSA decided to move to the formal phase of the investigation and provide you with notice of such after the October 4, 2023 article in the Globe and Mail made the issues public; concerns about potentially tainting the parallel RCMP investigation therefore abated. This was all decided prior to your testimony before the Parliamentary committee even if formal notice was provided to you on November 27, 2023. Additionally, I find that the investigation process and draft report were not tainted by internal interference from CBSA senior leadership.

- [86] The Précis provided additional reasons for rejecting the Applicant's allegations of institutional bias and interference into the investigation process. The Précis set out the delegated authority for the investigation process as follows:

As per the [CBSA Policy], administrative investigations into alleged misconduct are conducted to support management decisions that may be required to render disciplinary measures under the authority of paragraph 12(1)(c) of the Financial Administration Act. As per the [CBSA Policy], the President of the CBSA has delegated:

“the [CSO] and [DG], Security and Professional Standards Directorate (SPSD), with the responsibility of ensuring that when significant issues arise regarding policy compliance, suspected criminal activity, national security concerns or other security issues, that they are assessed, investigated, documented, acted on and reported to the deputy head or their delegate and, as required, to the appropriate law enforcement authority and/or security intelligence agency, and cooperating as required, in any resulting criminal or other investigation.”

By way of the [CBSA Policy], the CSO and DG SPSPD is accountable for the management of the administrative investigation functions into allegations of employee misconduct and is responsible for providing strategic direction, guidance, and oversight of the administrative investigations program for the [CBSA].

In addition to the CSO, the Executive Director of PID, thus Mr. Lafleur, has specific responsibilities as per the Policy, which include implementing the PSI program. Notably, this involves conducting administrative investigations into allegations of employee misconduct and ensuring all aspects of the administrative investigation are conducted in an objective, thorough and accurate manner.

The Human Resources authorities that the [CBSA] is exercising in accordance with the FAA, as it relates to the conduct of their administrative investigations program, is important in the context of this grievance as Mr. MacDonald's overarching concerns seek to alter how these authorities have consistently been exercised and enforced across the [CBSA].

- [87] The Précis went on to discuss in further details the Applicant's allegations of conflict of interest as well as his procedural fairness argument stating that there is a conflict of interest involving Mr. Lafleur given his senior executive position within the CBSA.
- [88] The Précis noted that the CBSA “has the authority to conduct its own administrative investigations; it has a [CBSA Policy] that governs the conduct of such processes, and responsibilities are clearly established. The [CBSA Policy] further speaks to its mandate to review any material policy violations and the allegations in question in this matter are exactly that. Contrary to what Mr. Utano has presented, there is no requirement nor would it be practical to have an independent third-party review all such matters when the [CBSA] has a workforce dedicated to the conduct of internal investigations.”
- [89] The Précis also noted that the CBSA contacted the PSPC in January of 2023 as the Government of Canada's ultimate contracting authority, and was informed that CBSA is expected to conduct their own investigation into procurement concerns, recognizing that the CBSA had its own internal investigations unit.

- [90] The Précis went on to note that the Court in *Utano* did not intervene as it found insufficient evidence of procedural fairness breaches or conflict of interest. While noting the investigation was still ongoing at the time, the Précis observed that the allegations within were the same and have not changed.
- [91] Thus, contrary to the Applicant's argument, not only did the Decision grapple with the Applicant's allegations of institutional bias and interference, it also did not narrowly focus on the issue of conflict of interest of the investigator only. The above quoted passages in the Précis demonstrate that the grievance decision-maker acknowledged the Applicant's concerns and responded to his submissions by reviewing the CBSA Policy as well as a decision of this Court.
- [92] I also consider the case law the Respondent submits with respect to the issue of reasonable apprehension of bias in considering whether the grievance decision-maker's conclusion falls within the relevant legal constraint.
- [93] In *Austin v Ontario Racing Commission*, 2007 ONCA 587 [Austin], the Court of Appeal of Ontario rejected the applicant's claim that a reasonable apprehension of bias was created when, on an appeal by way of hearing de novo from the decision of an administrative discipline hearing, the appeal tribunal allows a judge who was a member of the panel that heard the matter at first instance to testify. The Court of Appeal of Ontario noted in *Austin* at para 37:
- [37] Determining whether a reasonable apprehension of bias exists is highly dependent on the factual circumstances. This is particularly true with respect to administrative tribunals which are based on unique statutory schemes and normative contexts. It is assessed by taking into account the statutory regime that exists as well as all of the facts and circumstances surrounding the hearing and the individuals making up the panel.
- [94] Further, as the Respondent points out, the case law from this Court also confirmed that an investigator is presumed to be unbiased and the standard of impartiality required is less than that of the courts: *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 54; *Burlacu v Canada (Attorney General)*, 2021 FC 339 [Burlacu] at paras 27-28; *Jagadeesh v Canadian Imperial Bank of Commerce*, 2024 FCA 172 at para 70.
- [95] Bearing in mind, once again, the Applicant is challenging the reasonableness of the grievance decision-maker's assessment of his bias allegations against the investigation process, I agree with the Respondent that that the Decision is justified given the relevant legal constraints in this case. While the Applicant may disagree with the grievance decision-maker's analysis and conclusion on the issue of institutional basis, he fails to demonstrate that his submissions were ignored.

B. Did the Decision fail to address the Applicant's argument on procedural fairness? [96] The Applicant grieved the unfairness of the interview process as he was only presented with selected portions of relevant evidence during his interview with the CBSA in a manner that was both unfair and prejudicial.

[97] The Applicant also grieved the delay in timely notice of the investigation mandate. In his written memorandum of law and arguments, the Applicant submits that the Decision contain no analysis of whether withholding the existence of a formal investigation from the Applicant was compatible with procedural fairness. He argues that this was a central fairness submission and the failure to analyze this concern renders the decision unreasonable.

[98] In his oral submissions, counsel for the Applicant added several more arguments.

[99] First, counsel submitted that the Decision equated "communications" with meaningful opportunities to respond; it did not answer the question whether the opportunity given to the Applicant to respond to the allegations was real and meaningful. The Applicant took it upon himself to respond, paragraph by paragraph, to all the allegations that were raised in the PSF. The Applicant also took it upon himself to provide fulsome responses to the Draft PSI Report, even though the investigator restricted the Applicant to only commenting on factual errors or omissions with respect to his own evidence.

[100] Second, counsel pointed to Justice Brown's findings in MacDonald as support for his position. At paragraphs 76 and 88 of the decision, Justice Brown found the restriction on the Applicant's ability to comment to be a serious issue and accepted that the Applicant will suffer irreparable harm from the disclosure of the Draft PSI Report due to serious damage to his professional reputation. Counsel submitted that the Decision simply asserted the Applicant was able to respond to the allegations. However, when a confined right to respond as described in the record is placed beside that assertion, the inadequacy of the reasoning becomes clear.

[101] Third, counsel submitted that the procedural fairness requirements in this case are high because if the Decision is allowed to stand, it will directly impact on the Applicant's rights for two reasons. First, this Court has already found the release of the Draft PSI Report could cause irreparable harm to the Applicant. The release of the Final PSI Report will only cause further harm. Second, the fact that the concept of procedural fairness is variable does not mean the requirement is eliminated. In the context of this case, the requirements are higher because of the previous action taken against the Applicant when the PSF was released. Once the Draft PSI Report is finalized, the Applicant will be subject to even more serious adverse action.

[102] I am not convinced by the Applicant's arguments.

- [103] I begin by noting that, other than MacDonald, which dealt with the Applicant's interlocutory motion to stop the CBSA from disseminating the Draft PSI Report, the Applicant does not point to any case law to support his argument. In any event, I agree with the Respondent that in MacDonald, Justice Brown made no findings confirming that the Applicant's right to procedural fairness has been breached. Rather, he determined that the Applicant has raised an issue that is neither frivolous nor vexatious, a much lower threshold than what is required to determine if the Decision was reasonable. Justice Brown's finding of irreparable harm was made in that same context, which was subject to a completely different legal test.
- [104] As the Respondent submits, and I agree, applicants are owed a lower duty of procedural fairness in the context of workplace investigations: *George v Canada (Attorney General)*, 2007 FC 564, sub nom. *Canada (Deputy Commissioner, Royal Canadian Mounted Police) v Canada (Commissioner, Royal Canadian Mounted Police)*, [2008] 1 F.C.R. 752 [George] at para 87; *Vavilov* at para 133.
- [105] As Justice Little succinctly summarized the concept of procedural fairness in *Andruszkiewicz*:
- [90] The key questions on procedural fairness involve "fairness" in the sense understood by Canadian law, according to well-developed and understood principles. Those principles include the right to have a meaningful opportunity to be heard through some level of participation in the process (as the case law and the context require). The legal standard is not "fairness" in an abstract sense (such as what the Court believes was right or wrong), nor is it what would have been advantageous to any one of the complainant/applicant, the respondents or the employer. As will become clearer below, arguments about procedural unfairness do not permit the Court to assume the function of the investigator by revisiting all of the process choices made by the investigator, determining whether the Court would have done the same thing in the same circumstances, and then substituting the Court's view for the investigator's. Procedural fairness is also not about a disagreement with how the investigator weighed the evidence.
- [106] As well, in *George*, the Court noted at para 87 that "the decisions to investigate allegations and to suspend an officer with pay pending that investigation are not final disciplinary decisions; rather they are essentially preliminary non-judicial decisions. Generally speaking, decisions of a preliminary nature will not trigger a fairness duty: *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (SCC), [1990] 1 S.C.R. 653, at para 26." The Court went on to state that "[e]ven in cases where preliminary decisions do trigger a duty to act fairly, such as in formal inquiries where personal reputations are at stake, the individuals implicated will not be entitled to full trial-like procedural protections during this pre-trial fact finding stage [citation omitted]." The Court concluded that procedural fairness requirements in the context of a suspension with pay pending an administrative investigation are lower than those triggered by disciplinary proceedings which would follow an adverse investigation.

- [107] As the Court further remarked in *George*, at para 87: “the lower procedural fairness requirement at the preliminary stage is not a license to treat people unfairly; rather it is necessary to allow investigators the chance to do their job and it is corollary to the higher standard to be applied to any subsequent proceedings[.]”
- [108] In this case, I note that the Applicant opted to grieve the CBSA’s investigation process before the Final PSI Report is issued. Even if the Applicant could face adverse action after the Final PSI Report is issued, the Court in *George* confirms that the lower procedural fairness requirements still apply at this stage.
- [109] More importantly, I find that the grievance decision-maker responded to the Applicant’s argument appropriately and provided reasons in the Decision and the Précis that meet the requisite elements of transparency, intelligibility and transparency: *Vavilov* at para 86.
- [110] In addition to the passages I quoted above under the first issue raised by the Applicant, some of which are also relevant in my consideration of the procedural fairness argument, I note that both the Decision and the Précis specifically addressed the Applicant’s submission on procedural fairness.
- [111] In the Decision, the grievance decision-maker noted as follows:
- I am satisfied that you were informed of the allegations that were raised against you, and that throughout the course of the investigation you have had the opportunity to seek representation and to respond to these allegations. I note that the [PID] has maintained consistent communication with you and your legal representation between November of 2023 and April 11, 2025, when the [Draft PSI Report] was communicated to you for your review. I am satisfied that these steps, including those undertaken by Mr. Lafleur in his role as Executive Director of PID, served to ensure your right to procedural fairness.
- [112] The Précis elaborated further on this point, noting that Justice Zinn in *Utano* found insufficient evidence of procedural fairness breaches. In addition, the Précis referenced matters that have appeared before the Federal Public Sector Labour Relations and Employment Board involving “overt procedural fairness concerns in the conduct of administrative investigations.” It also acknowledged that procedural fairness “is extensively recognized in employment matters” and referred to *Baker v Canada (Minister of Immigration and Citizenship)*, 2 SCR 817 to note that among the procedural rights mandated by the duty of fairness is the “opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision maker.”
- [113] The Précis eventually concluded based on the case law and the investigation mandate for the subject process, that “the elements of procedural fairness have been exercised throughout the administrative investigation.” The Précis also cited the procedural steps the PID took in the investigation to conclude that the Applicant had an opportunity to respond to the allegations against him.

- [114] While the Applicant argues that the Decision unreasonably equated communications with opportunities to respond, this argument fails when the Decision is read in conjunction with the Précis.
- [115] Ultimately, the grievance decision-maker ought to have determined whether the Applicant knew the case to meet and had a meaningful opportunity to be heard. The grievance decision-maker properly considered this question and reasonably found it in the affirmative. The Applicant's arguments fail to raise any reviewable error.
- [116] While I acknowledge the Applicant's argument that he may face certain adverse consequences due to the release of the Final PSI Report, I note that the Final PSI Report is not in evidence before me as the Applicant opted to file a grievance before the Final PSI Report is released. Moreover, based on the Respondent's evidence by way of an affidavit of Garrett Hisko, a manager in Corporate Labour Relations at the CBSA, there are other administrative processes that need to take place before any further decision can be made. As a starting point, the Applicant's current employer will have to engage in a separate administrative process and may conduct its own investigation into the alleged misconduct and/or security violations. The Applicant will have an opportunity to respond to the allegations contained in the Final PSI Report, and will be afforded the opportunity to contest any disciplinary and/or administrative measures, should they be made.
- [117] In addition, based on the record before me, the Integrity Commissioner may still pursue an investigation as to whether the creation of the PSFs against the Applicant may be retaliatory in nature. Such an investigation may assist the Applicant with his challenge, if any, to the Final PSI Report.
- [118] Finally, I will briefly address the Applicant's argument that Justice Brown agreed with him that the CBSA acted contrary to the Treasury Board Secretariat Handbook on Administrative Investigations into Misconduct [Treasury Board Handbook] and the CBSA Investigations Guidance. With respect, Justice Brown did not make such findings in MacDonald. He agreed with the Applicant that the Treasury Board Handbook should be admissible as evidence at paragraph 40; and later at paragraph 76, he referred to the Treasury Board Handbook as part of the reasons for finding a serious issue with respect to the Applicant's interlocutory motion.
- [119] There is nothing in the record before me to suggest that the Treasury Board Handbook applies to the CBSA's internal administrative investigations. The Applicant is asking the Court to apply the Treasury Board Handbook without first establishing its application to the case at hand, which is simply not proper.

C. Did the Decision fail to meaningfully address the Applicant's disclosure arguments? [120] The Applicant also grieved the incomplete disclosure of evidence in the investigative process, which he attempted to overcome by relying on ATIP requests.

- [121] In his written memorandum of law and arguments, the Applicant argues that, during the interview with the investigator, the Applicant was not disclosed of witness statements, thus he was not provided an opportunity to respond to them including the Pathfinder Report and the earlier version of the Deneault Report. The Applicant submits the Decision did not address whether the investigative record was complete or whether the Applicant was provided a meaningful opportunity to respond to all material evidence.
- [122] The Applicant cites no case law in his written submission.
- [123] At the hearing before the Court, once again, counsel for the Applicant made new arguments. Counsel argued that the Decision did not meaningfully address the Applicant's disclosure complaint. While the Decision asserted that the Applicant has meaningful opportunity to respond, it did not address the Applicant's specific allegations about the disclosure defects.
- [124] Counsel focused on two sets of documents specifically: First, the Pathfinder Report that was authored and submitted in 2022 which was delivered to the Applicant anonymously and was never produced by the CBSA. Second, the various versions of the Deneault Report that the Applicant argues contain material revisions in order to justify the specific allegations against the Applicant were not disclosed until after the Decision was made. Counsel submitted that these documents were always within the CBSA's control, and that these relevant materials held by the CBSA had not been disclosed at all. Counsel further argued that these documents supported the Applicant's assertion of institutional interference and bias in the investigations. Counsel submitted that the Decision could not have addressed the non-disclosure of the documents given they were not disclosed to the Applicant until after the Decision was issued.
- [125] To counter the Applicant's arguments with regard to the Deneault Report, the Respondent submitted an affidavit affirmed by Mr. Richard Deneault on December 17, 2025. In his affidavit, Mr. Deneault directly addressed the allegations of the Applicant and Mr. MacDonald that his report was modified without his authorization. "This is not true," Mr. Deneault declared. He went on to confirm that he "reviewed and approved all versions of the report." He also explained that the first draft of his report was prepared on October 11, 2023 and circulated for comments, and further details were prepared and circulated on October 26, 2023. He finished his assignment with CBSA on October 27, 2023. On October 31, 2023, he was contacted by Mr. Lafleur and asked to review further comments and suggested revisions to the report. Throughout, Mr. Deneault reviewed all comments, including some comments from counsel which he understood to be protected by solicitor-client privilege, and approved all changes to the report.
- [126] Mr. Denault also declared at para 3 of his affidavit: "In my experience working with the Government of Canada, a process of review and editing such as this is a normal practice. I approved the final version of the report which was circulated on October 31st and further amended on November 1 to correct typographical errors. Other than deleting one specific

finding of procurement misconduct from the draft report that, upon reconsideration, I was satisfied should not be included, none of the changes to the various drafts affected the substance of my review of the Task Authorization, or of the conclusions I reached in my report.”

- [127] I further note that Mr. Deneault’s explanation remains unchanged under cross-examination, during which Mr. Deneault indicated that at the time of his report, he was not aware of the specific allegations that the investigation was looking into, and whether his conclusions supported or undermined any of the allegations. He also confirmed that it was normal for a public servant to receive comments from their boss to whom they report to clarify the wording used in a report. Mr. Deneault also confirmed he had communications with Mr. Lafleur, his boss, about the report, but maintained that all the changes to the report were made either by himself or with his approval.
- [128] Having regard to all the evidence on the record, I am satisfied that while the Deneault Report and its various revisions were not disclosed prior to the Decision, they would not have changed the outcome of the grievance.
- [129] In this regard, I find Justice Norris’ analysis in Burlacu instructive. The applicant in that case, a CBSA employee, grieved a decision by their employer not to investigate into a harassment complaint launched by the applicant. Justice Norris found at para 62 that despite the applicant clearly expressing these concerns about a lack of impartiality in the harassment complaint process, the decision to reject his grievance was completely silent about this issue, which rendered the decision unreasonable. However, Justice Norris ultimately decided to dismiss the application instead of returning the matter for redetermination because he found there was no merit to any of the concerns the applicant raised about a lack of impartiality in the complaint process and consequently, and that no reasonable decision-maker could decide the matter differently: Burlacu at para 64.
- [130] I reach a similar conclusion here, after having considered all the evidence with respect to the Deneault Report. I find Mr. Deneault’s undisputed evidence that all the revisions were done by himself or with his approval undercut the Applicant’s assertion regarding institutional interference.
- [131] Even assuming that the CBSA had an obligation to disclose the various versions of the Denault Report to the Applicant as part of the investigation process, which I reject, the Applicant still fails to demonstrate that the disclosure of the documents could lead to a different outcome for the grievance process.
- [132] This is so, as the Applicant pointed out in oral submission, much of the findings of the November 1, 2023 version of the Deneault Report was reproduced in the PSF. Not only was the PSF before the grievance decision-maker, the Applicant also had the opportunity to provide a detailed paragraph-by-paragraph response to the PSF. This further undermines the Applicant’s argument with respect to disclosure defects.

[133] With respect to the Pathfinder Report, given that the Applicant had access to this report well before the Decision was issued, its non-disclosure by the CBSA does not mean the Applicant did not have the opportunity to provide his position on the evidence. Further, I note the Précis included as background to the Applicant's grievance, the chronology of the events leading to the CBSA investigation into the Applicant. The background chronology acknowledged the event that the Applicant identifies as the genesis of the investigation. The Précis also acknowledged that the Applicant was not satisfied with the level of disclosure, but found that "disclosure in the context of administrative investigations does not constitute an unfettered or unlimited right."

[134] I also agree with the Respondent that the Decision is consistent with the jurisprudence confirming that the level of disclosure in an internal grievance gives the employee the right to be informed of any prejudicial facts, but does not give them access to all information in the decision-maker's possession: *De Santis v Canada (Attorney General)*, 2020 FC 723 at para 30; *Abdi v Canada (Attorney General)*, 2023 FC 746 at paras 53-54. The Applicant's case is one step before the grievance process, in that he is asserting that his right to disclosure was breached in the investigation process that gave rise to his grievance. Yet, without citing any relevant case law, the Applicant insists on disclosure requirements that accompany trial proceedings.

[135] For the same reasons, I also reject the Applicant's argument that the Decision failed to grapple with the fact that the grievance decision-maker was operating on an incomplete record. Without repeating myself, the Decision and the Précis acknowledged the Applicant's concerns with the incomplete record but dismissed it in light of the limited right to disclosure in an investigation process. The Applicant's disagreement with the Decision does not amount to any reviewable error.

D. Did the Decision fail to address the issue that the PSF was transmitted before the Applicant had an opportunity to respond? [136] The Applicant takes issues with the fact that the CBSA transmitted the PSF and the Deneault Report to his current employer without giving him an opportunity to respond.

[137] The Respondent submits that this argument is entirely irrelevant to the question of the fairness of the administrative investigation process and that the PSF was distributed for potential security reasons.

[138] I note that the Applicant did not include this issue in his grievance presentation or submissions. The Applicant only grieved the CBSA's decision to share the Draft PSI Report, which the Decision addressed and dismissed. The Applicant also does not explain how the failure to address the transmission of the PSF undermines the reasonableness of the Decision.

[139] Since the issue was never put before the grievance decision-maker, and the Applicant fails to demonstrate how this issue undermines the reasonableness of the Decision, I find this argument lacks merits.

E. Other Issues [140] As I have noted above, the Applicant raised several other issues at the hearing including the following: First, the Applicant argued during his Reply that the CBSA did not abide by their own guidelines by failing to conduct the investigation into the Applicant within the time period prescribed by the CBSA Investigations Guidance. Second, the Applicant challenged the CBSA's position that they put the investigation in abeyance at the request of the RCMP, noting that there is no evidence on the record supporting that assertion. Third, the Applicant argued that the CBSA initiated three investigations into him and that the Applicant and Mr. MacDonald were not informed of the initial investigations.

[141] I do not find it necessary to address these issues for various reasons. For the first issue, the Applicant improperly raised it for the first time in his Reply submission and did not put it before the grievance decision-maker. For the second and third issues, the Applicant failed to explain how they undermine the reasonableness of the Decision.

VI. Remedy [142] As per subsection 18.1 (3) of the Federal Courts Act, RSC 1985, c. F-7, the Federal Court may issue two types of remedies: the remedy of certiorari and the remedy of mandamus. The Applicant submits that the Court could draw from both remedies and seeks the Court to remit this grievance with specific instructions that it be reconsidered by a differently constituted and institutionally independent decision-maker.

[143] As I find the Applicant fails to raise any reviewable errors to undermine the reasonableness of the Decision, and I conclude that the non-disclosure of the Deneault Report would not change the outcome of the Decision, I must dismiss the judicial review. In any event, I agree with the Applicant has not addressed the eight criteria for the discretionary remedy of mandamus, and I find a directed verdict would not be appropriate for this case.

VII. Costs [144] The Respondent seeks costs against the Applicant. The Respondent submits a bill of cost based on Rule 407 and Tariff B – Column V of the Rules. The Applicant does not make any submissions on costs, other than stating that he leaves it in the Court's discretion.

[145] The Court accepts the Respondent's submission and orders the Applicant to pay the Respondent the sum of \$19,440.00, inclusive.

VIII. Conclusion [146] The application for judicial review is dismissed.

[147] The Applicant shall pay the Respondent \$19,440.00, inclusive.

JUDGMENT in T-1227-25

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

The Applicant shall pay costs to the Respondent in the amount of \$19,440.00 inclusive of taxes and disbursements by 60 days from the date of this decision.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

Docket:

T-1227-25

STYLE OF CAUSE:

ANTONIO UTANO v THE MINISTER OF PUBLIC SAFETY OF CANADA

PLACE OF HEARING:

OTTAWA, ONTARIO

DATE OF HEARING:

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JUDGMENT AND REASONS:

GO J.

DATED:

april 20, 2026

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Prepared on 24 October 2026 · Esheria