

Federal Court



Cour fédérale

Date: 20241022

Docket: T-1503-23

Citation: 2024 FC 1660

Ottawa, Ontario, October 22, 2024

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

CAROLINE O'DRISCOLL

Applicant

and

**ROYAL CANADIAN MOUNTED POLICE
COMMISSIONER MICHAEL DUHEME
AND ATTORNEY GENERAL OF CANADA**

Respondents

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review pursuant to subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c. F-7 [Act], of an alleged decision of Michael Duheme, formerly Interim Commissioner of the Royal Canadian Mounted Police [RCMP], now the RCMP Commissioner [Commissioner], “to not address the ongoing systemic misconduct of the RCMP,” as authorized under section 5(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10 [RCMP Act].

The alleged decision relates to complaints filed by the Applicant and her sister, Jacqueline O'Driscoll Zak, with the Civilian Review and Complaints Commission [CRCC] for the RCMP.

[2] The Applicant characterizes the Commissioner's "decision" as discretionary administrative action that is subject to judicial review because it has and continues to affect the legal rights and be prejudicial to various individuals, including the Applicant and her family.

[3] The Respondents disagree. They submit that the Commissioner did not make any reviewable decision, nor engage in administrative action that affects the Applicant's rights or imposes legal consequences.

[4] As explained below, I find that there are no grounds to intervene because the application does not raise a justiciable issue.

I. The Applicant's Evidence

[5] The application was initially supported by the Applicant's affidavit dated August 18, 2023. However, three days before the hearing of the application, the Applicant brought a motion seeking leave to file an additional affidavit dated June 5, 2024 pursuant to Rule 312 of the *Federal Courts Rules*, SOR/98-106. The Respondents opposed the introduction of the new and voluminous affidavit.

[6] While I considered the Respondents' objections regarding timeliness of the motion and relevance of the materials to be well founded, I thought it best to admit the additional affidavit at the hearing to avoid any further delay in the proceeding.

[7] The parties were advised, however, that little to no weight would be given to evidence that was stated to be based on information and belief, without stating the sources or setting forth the grounds of belief, and that I would disregard any evidence that post-dated the alleged decision of the Commissioner.

II. Background

[8] I found it difficult to piece together a chronology of events that gave rise to the present application from the Applicant's disjointed affidavits that mixed random and selective facts, hearsay, allegations and submissions.

[9] From what I can discern, back in 2019, the Applicant's sister, Ms. Zak, became embroiled in divorce proceedings commenced by her then husband, Colin Zak in the Court of King's Bench of Alberta [ABKB]. What followed was an acrimonious and long-standing dispute over custody, access and parental rights.

[10] The Applicant, a lawyer by profession, claims that Mr. Zak made numerous false allegations against Ms. Zak and her family members in his submissions to the ABKB and his reports to the RCMP. Ms. Zak, or the Applicant, in turn made multiple allegations of domestic

and child abuse against Mr. Zak in relation to his two daughters [Zak's Children], who are the Applicant's nieces.

[11] In February 2021, the Applicant requested that the RCMP's conduct in relation to the domestic situation be reviewed and investigated and submitted two complaints to the CRCC. The complaints themselves are not before me. According to the Applicant, the first complaint alleged improper investigation and conduct of relevant files by eleven RCMP officers at the RCMP detachment in Cochrane, Alberta relating to safety risks and abuse by Mr. Zak. The second complaint is said to allege a lack of response by the Domestic Violence unit of the RCMP detachment in Airdrie, Alberta with respect to a report of child abuse of the younger child after unsupervised time with Mr. Zak.

[12] On March 12, 2021, Zak's Children went missing. They were located by the RCMP approximately one month later. The Applicant along with her father and Ms. Zak were subsequently arrested in relation to their abduction.

[13] On April 21, 2021, the RCMP's internal Office of Investigative Standards and Practices [OISP] undertook a review of the Applicant's allegations.

[14] The CRCC advised the Applicant on April 22, 2021 that she had provided sufficient details to proceed with a public complaint [Public Complaint]. However, prior to processing the complaint, the CRCC required written confirmation from Ms. Zak that she wished to be a co-complainant with Applicant on the file or, alternatively, that Ms. Zak would like to be a co-

complainant with the Applicant acting as her advocate. It is unclear whether the Applicant responded to the CRCC's request.

[15] On June 7, 8 and 9, 2021, the OISP Review Team presented their interim findings and recommendations to various members of the RCMP.

[16] By letter dated January 12, 2022, the RCMP advised the Applicant that the National Public Complaints Directorate had made a decision to hold the Public Complaint in abeyance pending conclusion of court matters related to the complaint.

[17] On May 22, 2023, the Applicant sent a lengthy email to the Commissioner requesting "response and clarification" to approximately 20 questions regarding the review and investigation she was seeking of the RCMP, and expressing concern about the OISP review. The Applicant copied 23 other individuals, including the Prime Minister of Canada, the Minister of Justice, the Minister of Public Safety, and the Premier of Alberta.

[18] On June 19, 2023, the Applicant sent a further email to the Commissioner [the June 19 Email]. The email reads in part as follows:

Since you have failed to provide any transparency as to your response to my request, as well as the timing of your decision to respond or not to respond, unless I receive written notice to the contrary from you by June 23, 2023, for the purposes of judicial review time limitations and so that I may seek guidance on what other legal options are available to compel the RCMP to address its ongoing and potentially unlawful misconduct in this matter I note my understanding and acknowledgement of your non-response as follows:

The non-response of the RCMP Commissioner and RCMP to my requests for response regarding the ongoing conduct of the RCMP relating to my CRCC Public Complaint and matters relating to same is recognized as confirmation and evidence that, as of June 19, 2023, the RCMP Commissioner and/or the RCMP have made the reviewable decision to not address the ongoing conduct of the RCMP relating to my CRCC Public Complaint and matters relating to same. [Original emphasis]

[19] On June 30, 2023, the Applicant received a letter from James Elford, counsel with the Department of Justice [the June 30 Letter]. Mr. Elford confirmed receipt of the June 19 Email and repeated information that he first conveyed to the Applicant in a letter dated April 19, 2023, informing the Applicant to correspond with him directly on inquiries relating to the RCMP review and investigation.

[20] The Applicant commenced the present proceeding on July 19, 2023, citing the Commissioner's lack of response to her June 19 Email as inaction that is subject to judicial review.

[21] The Applicant initially requested various heads of relief, including declarations, orders in the nature of *mandamus*, *certiorari* and prohibition and various orders for the payment of legal fees, expenses, loss of income and disbursements. The relief has since been whittled down to: (a) a declaration that the Commissioner breached his duty under s. 5(1) of the *RCMP Act*, (b) an order setting aside the alleged decision, and (c) an order in the nature of *mandamus* "directing the RCMP Commissioner and Force to immediately address and investigate" alleged RCMP misconduct.

[22] Of note, the Applicant alleged in another proceeding before this Court (Docket T-270-23) that the Respondents failed to provide her with a report on the Public Complaint pursuant to s. 45.64 of the *RCMP Act*. On April 8, 2024, Associate Judge Kathleen Ring struck the application on the basis that it was moot, the Applicant having already received the report in question. She also concluded that the order of *mandamus* sought by the Applicant was bereft of any possibility of success.

III. Analysis

A. *Was a reviewable decision made by the Commissioner within the meaning of ss. 18.1(1) of the Federal Courts Act, RSC 1985, c F-7?*

[23] Judicial review is available for a broad range of public matters and conduct: *Tait v Canada (Royal Canadian Mounted Police)*, 2024 FC 217 at para 31; *Democracy Watch v Canada (Attorney General)*, 2021 FCA 133 at para 29 [*Democracy Watch*].

[24] The Applicant submits that the Commissioner's lack of response to her June 19 Email is a justiciable decision affecting her rights to procedural fairness as it relates to the Public Complaint. I disagree. A matter that does not affect a party's legal rights, impose legal obligations or cause prejudicial effects is not subject to review by this Court: *Democracy Watch* at paras 29, 36.

[25] The thrust of the Applicant's submission is that nothing was being done to address her complaints. However, that is simply not the case here, as borne out by the evidence before me.

[26] RCMP Assistant Commissioner Alfredo Bangloy notified the Applicant on April 19, 2023 that the Professional Standards Unit at the Wood Buffalo Detachment was reviewing her file and would issue a final report pursuant to the *RCMP Act* s. 45.64 once the investigation was complete. Mr. Bangloy reminded the Applicant of the availability of independent review by the CRCC pursuant to the *RCMP Act* ss. 45.7(1) should she be unsatisfied with the handling of the report. On that same day, Mr. Elford wrote a letter to address the Applicant's ongoing requests about the RCMP report. Mr. Elford provided his contact information for related concerns. He also inquired about the Applicant's authority to request documents that appeared to relate to her sister's ABKB proceedings. The Applicant did not respond.

[27] In the June 19 Email, the Applicant sought to impose a 4-day deadline on the Commissioner to reply to her extensive inquiries. She seeks to frame the failure by the Commissioner to respond within the short deadline as a refusal on his part. However, the Applicant had no right to impose a deadline on the Commissioner. Moreover, the Commissioner had no legal obligation to respond within the unilateral, arbitrary and extremely short deadline.

[28] On the record before me, I am satisfied that no decision was made, one way or the other, by the Commissioner in June 2023 regarding the Applicant's inquiries. Nor did the Commissioner engage in any administrative action following receipt of the June 19 Email that affected the Applicant's rights or carried legal consequences. Without a "decision," there is no basis for an application for judicial review.

[29] In any event, the Applicant was not being ignored. Mr. Elford's June 30 Letter acknowledged the Applicant's June 19 Email on behalf of the Commissioner and, again, directed the Applicant to address all related correspondence to his attention. Mr. Elford reminded the Applicant of recourse pursuant to the *RCMP Act* ss. 45.7(1) should the Applicant be unsatisfied with RCMP conduct of internal review, and, again, raised questions about the Applicant's authority to request documents that do not relate to her personally.

[30] The Applicant argues that the Court has the authority to judicially review the Commissioner's conduct. She submits that but for the Court's oversight, systemic misconduct of the RCMP would be exempt from the law, thereby undermining the integrity of the Court and the judicial system. I disagree.

[31] In *Democracy Watch*, the applicant similarly argued that the Conflict of Interest and Ethics Commissioner's inaction against eight public office holders permits potential wrongdoing and causes "harm to public confidence and trust in the integrity of government decision-making": at para 26. Notably, the applicant in *Democracy Watch* would have required public standing for this argument to succeed. Yet, the Court of Appeal dismissed the applicant's argument on other grounds, determining that the inaction in question did not affect rights, impose legal obligations or caused prejudicial effects as alleged and was therefore not subject to judicial review under the *Act*: at para 44.

[32] The Applicant engaged the RCMP's public complaint process and was entitled to a report pursuant to s. 45.64 of the *RCMP Act*, which she has now received. She can refer her complaint

to the CRCC for review if she is not satisfied with the decision pursuant to s. 45.7. This is the appropriate administrative process for the Applicant to seek recourse under the *RCMP Act*.

B. *Is an order of mandamus appropriate?*

[33] The Applicant requests an order of *mandamus* directing the Commissioner and the RCMP to address and investigate alleged misconduct by various RCMP officers.

[34] A *mandamus* order is premised upon a decision-maker's failure or refusal to act. As explained above, the Commissioner's conduct cannot be characterized as a refusal to act. The Commissioner did not owe the Applicant a legal duty to respond to her email communications and the Applicant has no corresponding right to have her requests answered directly by the Commissioner.

[35] Even if there was refusal, the Applicant still has not met the legal test outlined in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (FCA), [*Apotex Inc.*] aff'd [1994] 3 SCR 1100. The Applicant was required to establish that the Commissioner owed her a public legal duty to act and that the Applicant has a clear right to the Commissioner's performance of that duty. The Applicant has failed on this score.

IV. Conclusion

[36] For the above reasons, this application is dismissed.

[37] The Respondents request that they be awarded costs in the lump sum of \$3,500, based on \$3,060 in fees and disbursements calculated in accordance with Column III of Tariff B and an additional amount of \$440 due to the late motion filed by the Applicant. Given they have ultimately been entirely successful in responding to the Applicant's application and motions, I see no reason to deviate from the general rule that costs should follow the event: *Canadian Pacific Railway Company v Canada*, 2022 FC 392 at para 23.

[38] Considering the factors set out in Rule 400(3), and in particular subsections (a), (g) and (i), I consider the amount requested by the Respondents to be both reasonable and justified.

JUDGMENT IN T-1503-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. Costs of the application, hereby fixed in the amount of \$3,500.00, inclusive of disbursement and taxes, shall be paid by the Applicant to the Respondents.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1503-23

STYLE OF CAUSE: CAROLINE O'DRISCOLL v ROYAL CANADIAN
MOUNTED POLICE COMMISSIONER MICHAEL
DUHEME AND ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JUNE 12, 2024

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: OCTOBER 22, 2024

APPEARANCES:

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FOR THE APPLICANT
(ON HER OWN BEHALF)

Cameron G. Regehr

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS