



FEDERAL COURT

Court File No.

T-1295-07

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

PAUL KENNEDY, COMMISSION CHAIRMAN OF THE ROYAL CANADIAN  
MOUNTED POLICE PUBLIC COMPLAINTS COMMISSION,  
THE ROYAL CANADIAN MOUNTED POLICE PUBLIC COMPLAINTS  
COMMISSION, THE ROYAL CANADIAN MOUNTED POLICE,  
ATTORNEY GENERAL OF CANADA AND GIULIANO ZACCARDELLI  
Respondents

**NOTICE OF APPLICATION**

(Application under S. 18.1 *Federal Courts Act*, R.S.C. 1985, c.F.7)

**TO THE RESPONDENTS:**

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

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 180 Queen Street West, Suite 200, Toronto, Ontario, M5V 3L6.

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 prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where 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.

**Christine McCullough**  
Registry Officer  
Agent du greffe

July 13, 2007

Issued by: \_\_\_\_\_

«Registry Officer»

Address of 180 Queen Street West  
local office: Suite 200  
Toronto, ON M5V 3L6

**TO: PAUL KENNEDY, COMMISSION CHAIRMAN OF THE ROYAL  
CANADIAN MOUNTED POLICE PUBLIC COMPLAINTS  
COMMISSION  
60 Queen Street, 3<sup>rd</sup> Floor  
Ottawa, ON K1P 5Y7**

**AND TO: THE ROYAL CANADIAN MOUNTED POLICE PUBLIC  
COMPLAINTS COMMISSION  
60 Queen Street, 3<sup>rd</sup> Floor  
Ottawa, ON K1P 5Y7**

**AND TO: THE ROYAL CANADIAN MOUNTED POLICE  
1200 Vanier Parkway  
Ottawa, ON K1A 0R2**

**AND TO: ATTORNEY GENERAL OF CANADA  
393 University Avenue, 10<sup>th</sup> Floor  
Toronto, ON M5G 1E6**

**AND TO: GIULIANO ZACCARDELLI  
9487 Rue De Saint-Firmin  
Montreal, QC H1Z 2M4**

## APPLICATION

1. This is an application for judicial review of the decision of the respondent, Paul Kennedy, the Commission Chairman of the Royal Canadian Mounted Police Public Complaints Commission (the "Commission Chairman"), to not review or defer reviewing the applicant's (the "BCCLA") complaint:

- (a) that the respondent, Giuliano Zaccardelli ("Zaccardelli" or "Commissioner Zaccardelli"), and other members of the respondent, the Royal Canadian Mounted Police (the "RCMP"), engaged in communications, verbal or written, with members of any political party of Canada with respect to the RCMP's investigation into allegations involving the government's income trust review, except to the extent that such communications were with people who were legitimate persons of interest, witnesses or otherwise relevant to the original investigation; and
- (b) that such communications, whether due to intent or effect, had an impact on the manner in which the RCMP investigated the allegations or how the RCMP communicated with Member of Parliament, Judy Wasylycia-Leis or the general public about their investigation such that the RCMP's independence and political neutrality was unnecessarily compromised.

2. The decision was communicated to the BCCLA in a letter dated June 15, 2007 and received by it on June 21, 2007.

3. The BCCLA makes an application for:

- (a) A declaration that the decision by the Commission Chairman referred to above is in excess of his jurisdiction, or he did not have the jurisdiction to make such a decision,

or is in breach of his statutory duty to review every complaint referred to the respondent, the Royal Canadian Mounted Police Public Complaints Commission (the "Commission"), pursuant to subsection 45.41(1) of the *Royal Canadian Mounted Police Act* (the "*RCMP Act*").

- (b) An order setting aside the decision by the Commission Chairman on the basis that it is in excess of his jurisdiction, or is not within his jurisdiction, or is in breach of his statutory duty under subsection 45.41(1) *RCMP Act* to review every complaint referred to the Commission.
- (c) An order requiring the Commission Chairman to review the BCCLA's complaint.
- (d) An order requiring the Commission Chairman to investigate the complaint further and institute a hearing to inquire into the applicant's complaint pursuant to subsection 45.42(3)(c) *RCMP Act*.
- (e) Costs of this application.
- (f) Such further and other relief as may seem just and necessary to this court.

**THE GROUNDS FOR THE APPLICATION ARE:**

**(i) The Parties**

4. The BCCLA is a non-profit, non-partisan advocacy group incorporated on February 27, 1963, pursuant to the *British Columbia Society Act*, with its registered office at 550 – 1188 West Georgia Street, Vancouver, British Columbia. The objects of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights. The BCCLA speaks out on the principles which promote individual rights and freedoms,

including freedom of thought, belief, conscience, religion, opinion and expression, equality rights, and autonomy rights generally.

5. The Commission is established pursuant to subsection 45.29(1) *RCMP Act*. It carries out such functions and duties as are assigned to it by the *RCMP Act*, such as to investigate complaints by the public concerning the conduct, in the performance of any duty or function under the *RCMP Act*, of any member or other person appointed or employed under the authority of the *RCMP Act*.

6. The Commission Chairman is the chief executive officer of the Commission and has supervision over and direction of work and staff of the Commission.

7. The RCMP is the police force for Canada established or continued under the *RCMP Act*.

8. Giuliano Zaccardelli is the former Commissioner of the RCMP, who resigned from this position on or about December 6, 2006.

**(ii) The Facts**

9. On or about November 28, 2005, Commissioner Zaccardelli received a letter of complaint from New Democratic Party Member of Parliament, Judy Wasylycia-Leis, in reference "to the illegal transfer of information" concerning the announcement by the federal government of changes to the taxation of Canadian corporate dividends and income trusts. Ms. Wasylycia-Leis requested that the RCMP Integrated Market Enforcement Team determine if an investigation was appropriate because of suspicious market activity prior to the public announcement.

10. In a letter dated December 23, 2005 to Ms. Wasylycia-Leis, Commissioner Zaccardelli replied that "the RCMP will be commencing a criminal investigation".

11. On December 28, 2005, the RCMP issued a press release to the public that it had "completed its initial review of the allegation by Ms. Wasylycia-Leis regarding a possible breach of security or illegal transfer of information in advance of the federal government's announcement of changes to the taxation of Canadian corporate dividends and Income Trusts of November 23, 2005". The press release also stated: "Given the seriousness of the allegations, the RCMP is now undertaking a criminal investigation of this matter".

12. At the time Commissioner Zaccardelli wrote the letter and the RCMP issued the press release, Canada was in the midst of a federal election campaign.

13. By letter dated March 10, 2006, addressed to Commissioner Zaccardelli, the BCCLA advised, *inter alia*:

- (a) that it was concerned by Commissioner Zaccardelli's decision to notify Ms. Wasylycia-Leis by letter that the RCMP was undertaking a criminal investigation into the possible leak of information regarding the Liberal government's income trust review;
- (b) that the letter was followed by the announcement in an RCMP press release dated December 28, 2005, confirming that the RCMP was undertaking a criminal investigation into the matter;
- (c) that the information became the focus of intense national media scrutiny during the federal election campaign; and
- (d) that it was reasonably foreseeable that the letter to Ms. Wasylycia-Leis would be used for partisan political purposes.

14. By letter dated May 3, 2006, Denis Constant, Chief Superintendent Financial Crime of the RCMP, replied to the BCCLA's letter stating, *inter alia*:

Firstly, with regard to confirming a criminal investigation to the general public, we have been traditionally guided by the Privacy Act. For example, we might be inclined to issue a public warning (in the form of a press release) should we determine that the situation warrants such and that the public interest in disclosure clearly outweighs any invasion of privacy that could result.

15. By letter dated July 12, 2006, and amended by letter dated July 17, 2006, the BCCLA made a complaint to the Commission pursuant to section 45.35(1) *RCMP Act* to complain about the conduct of Commissioner Zaccardelli and unknown members of the RCMP (the "first complaint"). In particular, the BCCLA alleged that Commissioner Zaccardelli and unknown members of the RCMP:

- (a) made an inappropriate decision to notify and release a letter to Member of Parliament Judy Wasylycia-Leis that the RCMP was upgrading her complaint and undertaking a criminal investigation into her complaint;
- (b) made an arbitrary decision to publicly confirm, in a press release dated December 28, 2005, the existence of a criminal investigation into the possible leak of information regarding the government's income trust review in November 2005:
  - (i) in the absence of policy guidelines;
  - (ii) in an effort to influence partisan politics or without regard for the reasonably foreseeable

consequences of the public announcement of a criminal investigation thereby compromising and undermining public confidence in the independence of the RCMP;

- (iii) in a situation that did not warrant such disclosure; and
  - (iv) in a situation that was not demonstrably in the public interest (reference to para. 2 in Mr. Constant's May 3, 2006 letter to the BCCLA);
- (c) did not conduct an investigation in spite of an announcement to that effect; or
- (d) conducted an inadequate investigation.

16. On November 23, 2006, the BCCLA made a second complaint (the "second complaint") against Commissioner Zaccardelli and unknown members of the RCMP. In particular:

- (a) the BCCLA complained that the above members of the RCMP engaged in communications, verbal or written, with members of any political party of Canada with respect to the RCMP's investigation into allegations involving the government's income trust review, except to the extent that such communications were with people who were legitimate persons of interest, witnesses or otherwise relevant to the original investigation; and
- (b) the BCCLA alleged that such communications, whether due to intent or effect, had an impact on the manner in which the RCMP investigated the allegations or how the RCMP communicated with Member of Parliament Judy Wasylycia-



Leis or the general public about their investigation such that the RCMP's independence and political neutrality was unnecessarily compromised.

17. By letter dated January 9, 2007, the Deputy Commission of Human Resources of the RCMP provided a final report to the BCCLA with respect to its first complaint. The report concluded that Commissioner Zaccardelli's letter to Ms. Wasylycia-Leis and the press release were appropriate.

18. On February 1 and 5, 2007, the BCCLA referred its first complaint to the Commission for review under section 45.41 *RCMP Act*. In its request for review, the BCCLA asserted, *inter alia*:

- (a) The RCMP's decision to advise an opposition Member of Parliament of the existence of a politically sensitive criminal investigation during a federal election was unnecessary and inconsistent with the democratic imperative that the executive branch of government have no influence on the electoral process.
- (b) Political interference by the RCMP may compromise and undermine public confidence in both the independence of the national police force and the integrity of the electoral process.
- (c) A public inquiry was the only process that would provide answers to the public.

19. By letter dated February 12, 2007, the Commission informed the BCCLA that, on February 1, 2007, the Commission Chairman had initiated his own complaint into the RCMP's public disclosure that it would be commencing a criminal investigation in relation to a possible breach of security or illegal transfer of information in advance of the federal government's announcement of changes to the taxation of Canadian corporate dividends and income trusts.

The Commission also advised that the Commission Chairman would be examining the additional disclosure contained in the RCMP press release dated December 28, 2005

20. By letter dated March 30, 2007, the BCCLA clarified its second complaint as follows:

The basis for our complaint is the BCCLA's concern that, to the extent that any member of the RCMP had a discussion with anyone connected with a political party about the RCMP's investigation into the income trust review that was not otherwise a legitimate part of that investigation, RCMP communications regarding the income trust review were improper and may have compromised the RCMP's independence and political neutrality independent of the political process. That should be the focus of your investigation.

21. On April 23, 2007, the RCMP advised the BCCLA that it had decided to conclude its investigation of the BCCLA's second complaint without further action.

22. On May 15, 2007, the BCCLA referred its second complaint to the Commission for review pursuant to subsection 45.41(1) *RCMP Act* and requested that the review include a public hearing pursuant to subsection 45.42(3)(c) *RCMP Act*.

23. By letter dated June 15, 2007, the Commission advised the BCCLA that it would proceed with the review of the BCCLA's second complaint following the RCMP's disposition of the complaint initiated by the Commission Chairman.

24. Subsection 45.42(1) *RCMP Act* requires the Commission Chairman to review every complaint referred to the Commission.

25. The Commission Chairman's complaint was made after the resignation of Zaccardelli as Commissioner of the RCMP. The Commission Chairman does not have the jurisdiction to review complaints concerning the conduct of a person who retires or ceases to be appointed under the *RCMP Act* before the initiation of the complaint.

26. The BCCLA's second complaint was made before the resignation of Commissioner Zaccardelli. Therefore, the Commission Chairman has the jurisdiction to review the second complaint made against Commissioner Zaccardelli pursuant to subsection 45.42(1) *RCMP Act*.

27. The RCMP failed to respond to the second complaint of the BCCLA. The BCCLA is now concerned that the same RCMP officers responsible for the investigation of the BCCLA's second complaint are or will be responsible for the investigation of the Commission Chairman's complaint. There is no reason to believe that the investigation of the Commission Chairman's complaint will be conducted in an unbiased, fair and unfettered manner.

28. The only way to ensure that the review by the Commission Chairman of the BCCLA's second complaint is conducted in an unbiased, fair and unfettered manner is to require the Commission Chairman to institute a hearing to inquire into the BCCLA's second complaint pursuant to subsection 45.42(3)(c) *RCMP Act*.

29. The BCCLA relies on sections 18(1)(a) and (b) and 18.1 of the *Federal Courts Act*, Rule 300 *et seq.* of the *Federal Court Rules*, and sections 45.41 and 45.42 *RCMP Act*.

30. The applicant requests a hearing at Toronto.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- (a) The affidavit of Murray Mollard, to be sworn;

- (b) Such further and other material as counsel may advise and this court may permit.

The BCCLA requests the Commission Chairman, the Commission and the RCMP to send a certified copy of the following material that is not in the possession of the BCCLA but is in the possession of the Commission Chairman, the Commission and the RCMP to the BCCLA and to the Registry:

- (a) all documents and materials related to the investigation by the RCMP and the review by the Commission Chairman of the BCCLA's first complaint;
- (b) all documents and materials related to the complaint initiated by the Commission Chairman:
  - (i) into the RCMP's public disclosure that it would be commencing a criminal investigation in relation to a possible breach of security or illegal transfer of information in advance of the federal government's announcement of changes to the taxation of Canadian corporate dividends and income trusts; and
  - (ii) into the disclosure contained in an RCMP press release dated December 28, 2005.

- (c) all documents and materials related to the investigation by the RCMP of the BCCLA's second complaint.

July 13, 2007

*Lerners LLP*

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Solicitors for the Applicant

**FEDERAL COURT**

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**BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**  
Applicant

- and -

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ROYAL CANADIAN MOUNTED POLICE PUBLIC  
COMPLAINTS COMMISSION, THE ROYAL  
CANADIAN MOUNTED POLICE PUBLIC  
COMPLAINTS COMMISSION, THE ROYAL  
CANADIAN MOUNTED POLICE, ATTORNEY  
GENERAL OF CANADA AND GIULIANO  
ZACCARDELLI**

Respondents

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**NOTICE OF APPLICATION**

(Filed this 13th day of July, 2007)

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Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of the  
original issued out of/ filed in the Court on the \_\_\_\_\_  
day of \_\_\_\_\_ 2007 A.D. 20 \_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

