



Court File No. T- 1347-20

FEDERAL COURT

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ROYAL CANADIAN MOUNTED POLICE COMMISSIONER BRENDA LUCKI,
ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL
Respondents

NOTICE OF APPLICATION

Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

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 in Ottawa.

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

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

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

November 9, 2020

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 NOV 09 2020 A.D. 20____

Dated this _____ day of NOV 09 2020 20____

ORIGINAL SIGNED BY
MARC MEDAS
ORIGINAL SIGNÉ PAR

Issued by: _____
(Registry Officer)

Federal Court of Canada
Thomas D'Arcy McGee Building
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~~_____~~
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APPLICATION

The Applicant, the British Columbia Civil Liberties Association (“BCCLA”), submitted a complaint in 2014 to the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (“CRCC”) alleging that members of the Royal Canadian Mounted Police (“RCMP”) had illegally monitored environmentalists and violated their constitutional rights. More than six years later, the CRCC has still not issued a final report setting out its findings and recommendations with respect to this complaint. It has not done so because the RCMP Commissioner has failed to provide a written response to the CRCC’s interim report that she received in June 2017. The RCMP Commissioner has a statutory duty under s. 45.76(2) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (“RCMP Act”) to provide a written response to a CRCC interim “as soon as feasible”. Under the *RCMP Act*, the CRCC cannot issue a final report until it receives this written response. The Applicant seeks a declaration that the RCMP Commissioner has breached her duty under s. 45.76(2) of the *RCMP Act* and a writ of *mandamus* directing the RCMP Commissioner to provide her written response within ten days of the Court’s order.

The Applicant submitted its complaint to the CRCC under s. 45.53(1) of the *RCMP Act* on February 6, 2014. The complaint alleged the RCMP had improperly monitored and collected information about Canadian citizens and groups engaging in peaceful and lawful expressive activities (namely, opposition to the planned Northern Gateway pipeline and attending National Energy Board hearings) and unlawfully shared that information with other government bodies and private sector actors. The Applicant claimed the RCMP’s activities violated ss. 2(b), 2(c), 2(d), and 8 of the *Canadian Charter of Rights and Freedoms*.

The CRCC Chairperson initiated a public interest investigation pursuant to s. 45.66(1) of the *RCMP Act*.

Once a public interest investigation is complete, s. 45.76(1) of the *RCMP Act* requires the CRCC to send an interim report setting out any findings and recommendations to

the Minister of Public Safety and Emergency Preparedness (“Minister”) and the RCMP Commissioner. Under s. 45.76(2), the RCMP Commissioner must provide a written response to the interim report “as soon as feasible.” Under s. 45.76(3), the CRCC may only issue its final report after receiving and considering the RCMP Commissioner’s written response. The complainant does not receive a copy of the interim report but does receive the final report. Under the Act, a copy of the final report is also sent to the provincial minister responsible for policing in the province in which the conduct complained of took place.

In August 2018, the Applicant was informed by the CRCC that it had sent a copy of the interim report to the Minister and the RCMP Commissioner on June 23, 2017 and had not received a response.

Over the last two years, the Applicant’s legal counsel has sent many letters to the CRCC and the RCMP Commissioner expressing concerns about the delays in responding to its complaint and asking when the RCMP Commissioner would respond to the interim report. The CRCC has also expressed concerns about the RCMP Commissioner’s ongoing failure to respond to the interim report.

In December 2019, the CRCC and the RCMP concluded a Memorandum of Understanding (“MOU”) providing an express timeline that requires the RCMP Commissioner to respond to a CRCC interim report within six months.

On June 23, 2020, the Applicant’s legal counsel wrote to the RCMP Commissioner, citing her statutory duty to respond to the interim report and the MOU setting out a six month timeline. The letter confirmed that the Applicant’s position was that the Commissioner had already breached her duty under the *RCMP Act* to provide a written response to the CRCC “as soon as feasible”.

On August 7, 2020, the RCMP Commissioner responded to the Applicant. In her letter, she stated that the time taken to respond “has not been ideal.” She further advised: “I committed to the CRCC Chairperson that I would try to provide her with my response to the interim report within 90 days.”

On September 24, 2020, the Applicant's legal counsel wrote the RCMP Commissioner advising that it would be seeking instructions to commence an application for mandamus to compel her to discharge her duty to submit a written response in the event that this response was not provided to the CRCC by November 7, 2020.

On October 13, 2020, the RCMP Commissioner responded and stated: "I fully intend to provide the CRCC Chairperson my response to the interim report by November 7, 2020." The RCMP Commissioner failed to meet this further simple commitment.

Section 45.76(2) of the *RCMP Act* imposes a statutory duty on the RCMP Commissioner to provide a written response to the interim report "as soon as feasible". The RCMP Commissioner has clearly breached this duty in this case as she has failed to respond to the interim report she received over three years ago. This delay far exceeds the six month timeline set out in the MOU, as well as the average response time of 17 months. The RCMP Commissioner should not be allowed to frustrate the statutory complaint process simply by sitting on a report for years on end.

The RCMP Commissioner's obstruction of the CRCC complaint process also infringes the Applicant's rights to freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms*. Access to government information is a derivative right protected by s. 2(b) of the *Charter*.

In the 2019-2020 CRCC Annual Report, the CRCC Chairperson expressed serious concerns about the systemic failure of the RCMP Commissioner to respond to interim reports in a timely manner. This case exemplifies these serious and systemic delays. It is crucial for the RCMP Commissioner to fulfil her duty under s. 45.76(2) of the *RCMP Act*. Her failure to do so in this case is a denial of the BCCLA's constitutional rights and undermines public confidence in the CRCC complaint process. This unconscionable delay is all the more serious when the allegations in the underlying complaint concern fundamental rights and freedoms protected by the Canadian Constitution.

The Applicants make application for:

- (a) A declaration that the RCMP Commissioner has breached her duty under s. 45.76(2) of the *RCMP Act* to submit her written response to the CRCC interim report "as soon as feasible";
- (b) A declaration that the extensive and unconscionable delay in receiving the CRCC report has interfered with the Applicant's ability to received and speak about important matters of public concern, including the activities of the RCMP, and this has violated the Applicant's freedom of expression and s. 2(b) of the *Charter of Rights and Freedoms*;
- (c) A writ of *mandamus* requiring the RCMP Commissioner to submit a written response to the interim report within 14 days of the Court's order;
- (d) The costs of this Application; and
- (e) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) The Applicant filed a public complaint under the *RCMP Act* on February 6, 2014 and the Chairperson of the Civilian Review and Complaints Commission initiated a public interest investigation into that complaint;
- (b) The CRCC completed its interim investigation report and provided it to the RCMP Commissioner on or about June 23, 2017;
- (c) Under the *RCMP Act*, the CRCC cannot provide a copy of the final report of

its investigation to the Applicant and the provincial minister responsible for policing in the relevant province until the RCMP Commissioner has provided a written response to the interim report;

- (d) The RCMP Commissioner has a statutory duty under s. 45.76(2) of the RCMP Act to provide a written response to the CRCC interim report “as soon as feasible”;
- (e) The RCMP Commissioner has committed several times to completing her written response to the interim report prior to the date of this application, generally through the December 2019 MOU signed with the CRCC, and through specific letters to the Applicant’s counsel;
- (f) The Applicant has informed the RCMP Commissioner of the expected performance of her statutory duty, and afforded the Commissioner a reasonable time to comply;
- (g) The time period that has elapsed for the RCMP Commissioner to complete her written response is grossly unreasonable and undermines confidence in the proper functioning of the public complaint process under Part VII of the *RCMP Act*;
- (h) Absent truly exceptional circumstances, “as soon as feasible” under s. 45.76(2) of the RCMP Act should mean no longer than three to six months;
- (i) The RCMP Commissioner has demonstrated serious and systemic delays in properly responding to interim reports from the CRCC;
- (j) The Applicant is Canada’s oldest civil liberties organization, and an important part of its mandate includes ensuring public accountability for police misconduct;

- (k) The Applicant has serious concerns that the RCMP was illegally monitoring and sharing information about environmentalists who were opposed to the Northern Gateway pipeline project, and wishes to rely on the CRCC final report to express its views and opinions about the activities of the RCMP;
- (l) The unconscionable delay in receiving the CRCC's final report has interfered with the Applicant's ability to speak about these important matters of public concern;
- (m) Subsections 45.53(1) and 45.76(2) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10;
- (n) Section 2(b) of the *Canadian Charter of Rights and Freedoms*; and
- (o) Sections 18(1) and 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7.

The application will be supported by the following material:

- (a) The Affidavit of Harsha Walia, or some other employee of the Applicant; and
- (b) Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: November 9, 2020



Paul Champ / Jessica Magonet

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