

**FEDERAL COURT**

BETWEEN:

**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

---

**MOTION RECORD OF THE PROPOSED INTERVENER: CRCC**

**MOTION FOR LEAVE TO INTERVENE BROUGHT BY THE CIVILIAN  
REVIEW AND COMPLAINTS COMMISSION FOR THE ROYAL CANADIAN  
MOUNTED POLICE (CRCC)**

---

**Lesley McCoy (LSO #37637P)**

**Civilian Review and Complaints Commission for the Royal Canadian  
Mounted Police**

Tel: 343-548-6405

Fax: 613-952-8045

Email: [Lesley.McCoy@crcc-ccetp.gc.ca](mailto:Lesley.McCoy@crcc-ccetp.gc.ca)

Solicitor for the Intervener

TO: **Paul Champ / Jessica Magonet**  
**Champ & Associates**  
**Barristers & Solicitors**  
43 Florence Street  
Ottawa, ON K2P 0W6  
Tel: 613-237-4740  
Fax: 613-232-2680  
Email: pchamp@champlaw.ca  
Solicitors for the Applicant

AND TO: **Brenda Lucki**  
**Commissioner**  
**Royal Canadian Mounted Police**  
73 Leikin Drive, Building M8, Room 512D  
Ottawa, ON K1A 0R2

AND TO: **Nathalie G. Drouin**  
**Deputy Attorney General of Canada**  
284 Wellington Street  
Ottawa, ON K1A 0H8  
Tel: (613) 957-4998  
Fax: (613) 941-2279  
Solicitor for the Respondent

AND TO: **Michael Farnsworth**  
**Minister of Public Safety and Solicitor General for British**  
**Columbia**  
PO Box 9290, Stn Prov Govt  
Victoria, BC V8W 9J7  
Tel: 250-356-0149  
Fax: 250-387-6224

**FEDERAL COURT**

BETWEEN:

**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

---

**MOTION RECORD  
INDEX**

---

<b>TAB</b>	<b>DOCUMENT</b>
A.	Notice of Motion
B.	Affidavit of Nika Joncas-Bourget, sworn November 18, 2020
C.	Written representations of the proposed intervener, CRCC

**FEDERAL COURT**

BETWEEN:

**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 MOTION  
MOTION FOR LEAVE TO INTERVENE UNDER RULE 109(1) OF THE  
*FEDERAL COURTS RULES***

---

**TAKE NOTICE THAT the CIVILIAN REVIEW AND COMPLAINTS  
COMMISSION FOR THE ROYAL CANADIAN MOUNTED POLICE  
("CRCC") will make a motion to the Court in writing under Rules 109 and  
369 of the *Federal Courts Rules*.**

**THE MOTION IS FOR an Order that:**

1. The CRCC is granted leave to intervene in the proceeding, pursuant to Rule 109 of the *Federal Courts Rules*;
2. The CRCC is entitled to receive all materials filed in this application;

3. The CRCC may file a memorandum of fact and law, in accordance with the prescriptions set out in the *Federal Courts Rules*;

4. The CRCC shall be allowed to present oral arguments at the hearing of this application, with the time for oral arguments to be determined by the Court;

5. The CRCC shall seek no costs in respect of this application, and shall have no costs awarded against it; and

6. The style of cause shall be changed to add the CRCC as an intervener, and hereafter all documents shall be filed under the amended style of cause.

#### **THE GROUNDS FOR THE MOTION ARE**

7. The CRCC has a genuine interest in the application and is directly affected by it;

8. The CRCC can make a unique, important, and useful contribution to the application;

9. The CRCC's participation in the application is in the interests of justice;
10. The CRCC will not unnecessarily delay the application or submit duplicate material;
11. If granted leave to intervene, the CRCC will abide by any schedule set out by this Court for the delivery of materials; and
12. If granted leave to intervene, the CRCC will seek no costs and would ask that no costs be awarded against it.

**THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:**

13. The affidavit of Nika Joncas-Bourget, Director and General Counsel, Reviews, Civilian Review and Complaints Commission for the Royal Canadian Mounted Police; and
14. Such further materials as counsel may advise and this Honourable Court may allow.

November 19, 2020



---

**Lesley McCoy**  
**Civilian Review and Complaints Commission for the Royal Canadian Mounted Police**

Tel: 343-548-6405

Fax: 613-952-8045

Email: Lesley.McCoy@crcc-ccetp.gc.ca

Solicitor for the Intervener

TO: **Paul Champ / Jessica Magonet**  
**Champ & Associates**  
**Barristers & Solicitors**  
43 Florence Street  
Ottawa, ON K2P 0W6  
Tel: 613-237-4740  
Fax: 613-232-2680  
Email: pchamp@champlaw.ca  
Solicitors for the Applicant

AND TO: **Brenda Lucki**  
**Commissioner**  
**Royal Canadian Mounted Police**  
73 Leikin Drive, Building M8, Room 512D  
Ottawa, ON K1A 0R2

AND TO: **Nathalie G. Drouin**  
**Deputy Attorney General of Canada**  
284 Wellington Street  
Ottawa, ON K1A 0H8  
Tel: (613) 957-4998  
Fax: (613) 941-2279  
Solicitor for the Respondent

AND TO: **Michael Farnsworth**  
**Minister of Public Safety and Solicitor General for British**  
**Columbia**  
PO Box 9290, Stn Prov Govt  
Victoria, BC V8W 9J7  
Tel: 250-356-0149  
Fax: 250-387-6224



**FEDERAL COURT**

BETWEEN:

**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

---

**AFFIDAVIT OF NIKA JONCAS-BOURGET**

---

I, Nika Joncas-Bourget, Director and General Counsel, Reviews, of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC) make oath and say:

1. The CRCC is a civilian review body that is independent from the Royal Canadian Mounted Police (RCMP). The CRCC was created by, and derives its duties and powers from, the *Royal Canadian Mounted Police Act* (RCMP Act).

2. The CRCC seeks leave to intervene in this Application because, as the body responsible for conducting the investigation and issuing the interim and final reports concerning the public complaint at the heart of this dispute, the CRCC has a genuine interest in the matter before the Court.

3. The CRCC will also bring specialized knowledge, insights, and a comprehensive factual background to the Application to assist the parties and the Court.

4. Every year, the CRCC and the RCMP receive thousands of complaints about the RCMP. In the 2019-2020 fiscal year, the public lodged 3,641 complaints. Over 2,300 of those complaints met the criteria for complaints set out at section 45.53 of the RCMP Act.

5. Depending on the circumstances of a case, the CRCC has the responsibility of investigating or independently reviewing public complaints against the RCMP.

6. The Applicant's public complaint was investigated by the CRCC as a public interest investigation under section 45.66(1) of the RCMP Act. It is referred to as a public interest investigation because such an investigation is conducted when the CRCC's Chairperson is of the opinion that it is in the public interest for the CRCC to investigate the complaint, instead of turning it

over to the RCMP for investigation pursuant to the typical process for the investigation of public complaints prescribed by section 45.6(1) of the RCMP Act. In broad terms, a public interest investigation is an independent investigation using the CRCC's resources so that the CRCC may make factual findings and recommendations after considering the relevant evidence, law, and policy.

7. In other circumstances, the CRCC reviews public complaints under section 45.71(1) of the RCMP Act after the RCMP has investigated the public complaint and delivered a report. This entails an independent review of the evidentiary record, as well as a review of the RCMP's report after considering the relevant law and policy.

8. Under the RCMP Act, the CRCC prepares a report after every review or investigation, and delivers each report to the RCMP Commissioner. In the 2019-2020 fiscal year, the CRCC issued 394 reports.

9. Many of the CRCC's reports are "satisfied reports" indicating that the CRCC is satisfied with the RCMP's report in the complaint. These reports require no response from the RCMP Commissioner.

10. However, when the CRCC concludes an investigation or where the CRCC is not satisfied with a report issued by the RCMP, the CRCC must prepare an "interim report" that sets out the CRCC's factual findings about the

N.S.B.



complaint and any recommendations for change. Examples of the CRCC's recommendations include changes to the RCMP's training or policies.

11. Under the RCMP Act, the RCMP Commissioner must provide a response to each interim report setting out any action that the RCMP has taken or will take regarding the public complaint. If the RCMP Commissioner does not intend to act on any of the CRCC's findings or recommendations, the RCMP Commissioner must provide the reasons for not doing so in the RCMP Commissioner's response.

12. As stated in the Notice of Application to the Federal Court, the RCMP Act states that, in the case of a public interest investigation, the RCMP Commissioner must provide a response to the CRCC's interim report "as soon as feasible," but otherwise there is no statutory timeline for a response.

13. Once the CRCC receives the RCMP Commissioner's response, the CRCC must consider the RCMP Commissioner's response and then prepare a final report setting out any findings and recommendations with respect to the complaint that the Commission sees fit. The CRCC then provides the final report to the RCMP Commissioner and the parties to the complaint, as well as other individuals specified in the RCMP Act.

14. The RCMP Act is silent about whether the CRCC has the jurisdiction to release an interim report to the parties before the CRCC has received the

N.F.D.

RCMP Commissioner's response. As such, the CRCC's general practice is not to release the interim report before receiving the response, although in rare cases of high public interest it has occasionally released the interim report in advance. Once the CRCC has prepared its final report, the CRCC includes the interim report and the Commissioner's response as appendices to the final report.

15. The wording of the RCMP Act sets out a process whereby the RCMP Commissioner's response is received and considered by the CRCC before the CRCC issues its final report.

16. The CRCC received the Applicant's public complaint on February 6, 2014, about the RCMP's activities in relation to monitoring protests and demonstrations surrounding National Energy Board hearings into the Northern Gateway Project pipeline, as well as protests and demonstrations within the larger context of the Indigenous-led "Idle No More" movement.

17. The CRCC commenced an investigation into the Applicant's complaint on February 20, 2014.

18. On June 23, 2017, the CRCC delivered its interim report to the RCMP Commissioner, making 18 findings and 7 recommendations.

19. The CRCC has been waiting for the RCMP Commissioner's response

N.Y.P.

for nearly three and a half years, as of the date of this Affidavit.

20. The CRCC has repeatedly expressed its serious concerns with the RCMP Commissioner and the RCMP National Public Complaints Directorate about the delays in this and other outstanding cases.

21. On January 4, 2019, I wrote to the Director of the RCMP National Public Complaints Directorate and I asked him if the CRCC could expect to receive the RCMP Commissioner's response within the next 90 days.

22. On January 9, 2019, the Director of the RCMP National Public Complaints Directorate replied to say that the RCMP Commissioner's response would not be completed in the next 90 days.

23. On April 15, 2019, I wrote to the Director of the RCMP National Public Complaints Directorate, again seeking an update on the status of the RCMP Commissioner's response. I noted my concern about the delay and stated that I wished to provide legal counsel for the Applicant with some assurance that the matter would be concluded in the near future. I received no reply.

24. On May 29, 2019, I wrote to the Director of the RCMP National Public Complaints Directorate, again seeking an update on the status of the RCMP Commissioner's response.

25. On June 10, 2019, the Director of the RCMP National Public Complaints Directorate informed me that, despite his efforts to address the

*N.S.P.*



backlog of other outstanding interim reports, resourcing issues and competing priorities meant it was not possible at that time “to even approximate a date by which the ... Commissioner’s Response will be completed.”

26. On December 11, 2019, the CRCC Chairperson and the RCMP Commissioner signed a Memorandum of Understanding in which the RCMP Commissioner committed to providing responses to the CRCC’s interim reports within six months of being provided the CRCC’s interim report.

27. On June 23, 2020, legal counsel for the Applicant wrote to the CRCC Chairperson to express his serious concerns about the delay to his client’s public complaint. He noted that the CRCC’s interim report had been given to the RCMP Commissioner three years earlier.

28. Legal counsel for the Applicant argued that the “interminable delay” undermined the credibility of the CRCC and its ability to fulfill its function of ensuring accountability of the RCMP and fostering public trust and confidence in the RCMP. He asked the CRCC Chairperson to consider releasing the interim report for the Applicant’s public complaint in light of the RCMP Commissioner’s “interminable, extreme, and inexplicable” delay in providing a response.

29. On June 29, 2020, I wrote to the Director of the RCMP National Public Complaints Directorate to seek an update. I expressed my concerns about

*N.J.P.*

the troubling delay in this matter and I asked him when the CRCC would receive the RCMP Commissioner's response.

30. On June 29, 2020, the Director of the RCMP National Public Complaints Directorate informed me that the decision to prioritize the RCMP Commissioner's response to other outstanding interim reports meant that few resources were available for work on the Applicant's matter.

31. In his reply, the Director of the RCMP National Public Complaints Directorate anticipated that the other priority responses would be completed "this fall," and that the Applicant's public complaint would be addressed "after that."

32. On July 8, 2020, the CRCC Chairperson wrote to the RCMP Commissioner regarding the outstanding response. The CRCC Chairperson informed the RCMP Commissioner that, in 90 days, the CRCC intended to take one of two actions.

33. The CRCC Chairperson informed the RCMP Commissioner that, if the CRCC received the RCMP Commissioner's response before October 6, 2020, the CRCC would prepare a final report as normal.

34. However, the CRCC Chairperson informed the RCMP Commissioner that if the CRCC had not received the RCMP Commissioner's response by

N.S.P.



October 6, 2020, the CRCC would take the extraordinary step of releasing the interim report to the Applicant.

35. On August 7, 2020, the RCMP Commissioner wrote to the CRCC Chairperson and acknowledged that the delay in providing a response "has not been ideal." The RCMP Commissioner stated that she was committed to eliminating the backlog of responses.

36. While the RCMP Commissioner did not believe that the CRCC had the jurisdiction to release the interim report without first receiving the RCMP Commissioner's response, she stated that she directed her staff to prioritize its work so that she could provide a response within the timeframe set out by the CRCC Chairperson.

37. On September 24, 2020, legal counsel for the Applicant wrote to the RCMP Commissioner to inform her that the delay to that point was "inexcusable" and he stated that he believed that the RCMP Commissioner had failed to provide her response "as soon as feasible."

38. Legal counsel for the Applicant informed the RCMP Commissioner that, if the response had not been provided to the CRCC by November 7, 2020, he would seek instructions from his client to commence an application to this Court for a writ of *mandamus* to compel the RCMP Commissioner to discharge her duty to provide the response.

N.J.-D.

39. On October 4, 2020, the Director of the RCMP National Public Complaints Directorate informed the CRCC that the RCMP Commissioner's response would not be ready for October 6, 2020, as planned.

40. The Director of the RCMP National Public Complaints Directorate referred to the September 24 letter from legal counsel for the Applicant, and he stated that his hope was to have the RCMP Commissioner's response ready before the November 7 deadline. He indicated that the RCMP had been staffing new advisors to help prepare the RCMP Commissioner's responses. He stated that he hoped the CRCC would not take any action before that time.

41. On November 6, 2020, I wrote to the Director of the RCMP National Public Complaints Directorate to ask whether the CRCC would be receiving the RCMP Commissioner's response by the end of the day, as November 7, 2020, was not a business day.

42. On November 6, 2020, the Director of the RCMP National Public Complaints Directorate informed me that the preparation of the RCMP Commissioner's response had taken longer than anticipated due to internal discussions.

43. In his response, the Director of the RCMP National Public Complaints

N.F.B.

Directorate stated that he expected to have the RCMP Commissioner's response ready no later than November 20, 2020.

44. On November 9, 2020, the British Columbia Civil Liberties Association filed its Notice of Application in this matter.

45. The unreasonable delay of the RCMP Commissioner's response thwarts the CRCC in carrying out its mandate. The delay also undermines the legitimacy, fairness, and efficacy of the public complaint process. Both the complainants and the RCMP members who are the subjects of the complaint must live with the stress and uncertainty of an unresolved complaint.

46. Additionally, any remedial action (such as training or policy changes) that the CRCC Chairperson recommends must also wait. This means that important lessons and systemic changes may wait for months or years past the time when they would be most useful and relevant.

47. The CRCC also seeks leave to intervene because the outstanding issue to be decided is of great importance to the CRCC and the public complaint process as a whole.

48. As of March 31, 2020, a total of 174 interim reports were awaiting a response from the RCMP Commissioner. The average time that a report had been waiting for a response was 538 calendar days, or 17 months.

N.g.b



49. At present, the CRCC has a total of 148 interim reports awaiting a response from the RCMP Commissioner. This includes 134 outstanding interim reports that have been awaiting responses from the RCMP Commissioner for more than six months. In 119 of those cases the CRCC has been awaiting a response for at least one year. In one case, the CRCC has been awaiting a response for over four years. The RCMP has not responded to any reports within the time mandated in the Memorandum of Understanding.

50. As with the interim report in the Applicant's public complaint, the CRCC has repeatedly expressed its serious concerns about the large and growing backlog of outstanding interim reports.

51. In the CRCC's 2019-2020 Annual Report, the CRCC Chairperson took the significant step of publicly discussing this issue, expressing her dismay about the length of time that it takes for the RCMP Commissioner to provide a response to CRCC interim reports.

52. The CRCC Chairperson wrote that this issue was of significant concern, and that Canadians have a right to know if the Commission's findings and recommendations have been accepted and indeed, if RCMP policies, procedures and training have been adjusted as a result. The CRCC Chairperson remarked that "[t]he old adage that justice delayed is justice denied is highly relevant in this situation."

N.S.D

53. The present dispute between the parties reflects a serious, ongoing issue that must be adjudicated on its merits – that is, the duty of the RCMP Commissioner to provide a response to the CRCC's interim reports "as soon as feasible."

54. To the best of my knowledge, this provision of the RCMP Act has never been judicially considered.

55. At present, the ambiguity of this issue means that the only recourse that the CRCC, a complainant, or RCMP member whose conduct is the subject of the complaint, has to a delay in receiving a response from the RCMP Commissioner is to apply to this Court for *mandamus*.

56. As such, the CRCC seeks leave to intervene in order to inform the Court of the facts and other considerations that are relevant to the Court's decision on the meaning and limits of the words "as soon as feasible" for the purposes of the RCMP Act so that the Court may provide guidance.

57. I make this affidavit in support of the CRCC's motion for leave to intervene in the proceeding commenced by the Applicant in its Notice of Application dated November 9, 2020, and for no improper purpose.

N.J.B.

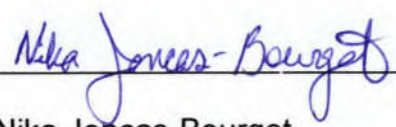
SWORN OR SOLEMNLY AFFIRMED )  
remotely by Nika Joncas-Bourget, )  
stated as being located in the City of )  
Ottawa, in the Province of Ontario, )  
before me at the City of Ottawa, )  
in the Province of Ontario, )  
this 18<sup>th</sup> day of November, 2020, )  
in accordance with O. Reg 431/20, )  
*Administering Oath or Declaration* )  
*Remotely* )

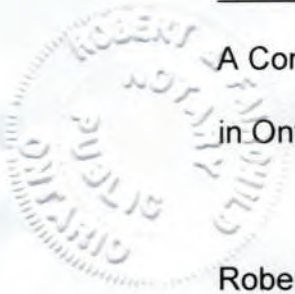
  
\_\_\_\_\_ )

A Commissioner for Taking Affidavits )  
in Ontario )

Robert Bruce Fairchild, )  
Barrister and Solicitor )

My Commission does not expire )

  
\_\_\_\_\_ )  
Nika Joncas-Bourget



**FEDERAL COURT**

BETWEEN:

**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

---

**WRITTEN REPRESENTATIONS OF THE PROPOSED INTERVENER, THE  
CIVILIAN REVIEW AND COMPLAINTS COMMISSION FOR THE ROYAL  
CANADIAN MOUNTED POLICE (CRCC)**

**Motion for Leave to Intervene**

---

**OVERVIEW**

1. The proposed intervener, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC), is an independent civilian review body that investigates and reviews public complaints about the Royal Canadian Mounted Police (RCMP).

2. This case raises an important issue of public interest about the length of time that the RCMP Commissioner can reasonably take to deliver a response to the CRCC's interim reports following a public interest investigation or review, as she is required to by the *Royal Canadian Mounted Police Act* (RCMP Act). This issue is not only important to the parties in this case, but it is critical to the work and legitimacy of the CRCC. Furthermore, it affects all of the complainants, and the RCMP members who are the subjects of those complaints, in any case where the CRCC has made adverse findings and remedial recommendations.

3. If granted leave to intervene, the CRCC will assist this Court by making submissions about the appropriate judicial interpretation of the meaning and limits of the words "as soon as feasible" in the RCMP Act, and the impact of the RCMP's systemic delays on the CRCC's mandate both in this case and in the 147 other cases of overdue RCMP Commissioner responses.

4. In making these arguments, the CRCC will offer insights based on its intricate understanding of the public complaint process set out in the RCMP Act and based on the CRCC's daily operations and internal statistics as the administrative body with extensive specialized expertise in this area. The CRCC will also offer insights based on its negotiation of and experience with the Memorandum of Understanding cited by the Applicant, the procedural background of the Public Interest Investigation at the heart of this dispute, as well as the CRCC's experience in other cases.



5. The CRCC submits that its insights and perspective in this case are unique and that it not only has a genuine interest in this case but that it will be directly affected by any decision that this Court makes.

6. Consequently, the CRCC requests that its motion for leave to intervene be granted.

### **PART I – FACTS**

7. The CRCC is an agency of the government of Canada, distinct and independent from the RCMP, created and mandated by Parts VI to VII.2 of the RCMP Act. It was created by Parliament in 1988.

8. The principal mandate of the CRCC is to receive complaints from the public about the conduct of RCMP members, to conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints, and to initiate complaints and investigations into RCMP conduct when it is in the public interest to do so.

9. Every year, the CRCC and the RCMP receive thousands of complaints about the RCMP. In the 2019-2020 fiscal year, the public filed 3,641 complaints. Over 2,300 of those complaints met the criteria for complaints set out at section 45.53 of the RCMP Act.

*Affidavit of Nika Joncas-Bourget, made November 18, 2020 (“Joncas-Bourget Affidavit”), at para. 4.*

10. Depending on the circumstances of a case, the CRCC has the responsibility of investigating or independently reviewing public complaints against the RCMP.

11. In many cases, the CRCC reviews public complaints under section 45.71(1) of the RCMP Act after the RCMP has investigated the public complaint and delivered a report. This entails an independent review of the evidentiary record, as well as a review of the RCMP’s report after considering the relevant law and policy.

*Joncas-Bourget Affidavit, at para. 7.*

12. In the other cases, the CRCC investigates the complaint as a public interest investigation under section 45.66(1) of the RCMP Act. It is referred to as a public interest investigation because it is conducted when the CRCC’s Chairperson is of the opinion that it is in the public interest for the CRCC to investigate the complaint, instead of turning it over to the RCMP for investigation pursuant to the typical process for the investigation of public complaints prescribed by section 45.6(1) of the RCMP Act.

13. In broad terms, a public interest investigation is an independent investigation using the CRCC’s resources so that the CRCC may make

factual findings and recommendations after considering the relevant evidence, law, and policy.

*Joncas-Bourget Affidavit, at para. 6.*

14. After every review or investigation, the CRCC issues a report. In the 2019-2020 fiscal year, the CRCC issued 394 reports.

*Joncas-Bourget Affidavit, at para. 8.*

15. Under the RCMP Act, when the CRCC concludes an investigation or where the CRCC is not satisfied with a report issued by the RCMP, the CRCC must prepare a report (“interim report”) and deliver it to the RCMP Commissioner. The interim report sets out the CRCC’s factual findings about the complaint and any recommendations. Examples of the CRCC’s recommendations include changes to the RCMP’s training or policies.

*Joncas-Bourget Affidavit, at para. 10.*

16. Under the RCMP Act, the RCMP Commissioner must provide a response to each interim report setting out any action that the RCMP has taken or will take regarding the public complaint. If the RCMP Commissioner does not intend to act on any of the CRCC’s findings or recommendations, the RCMP Commissioner must provide the reasons for not doing so in the RCMP Commissioner’s response.

*Joncas-Bourget Affidavit, at para. 11.*

17. The RCMP Act states that the RCMP Commissioner must provide a response to the CRCC's interim report "as soon as feasible," but otherwise there is no statutory timeline for a response.

*Joncas-Bourget Affidavit, at para. 12.*

18. Once the CRCC receives the RCMP Commissioner's response, the CRCC must consider the RCMP Commissioner's response and then prepare a final report setting out any findings and recommendations with respect to the complaint that the Commission sees fit. The CRCC then provides the final report to the RCMP Commissioner and the parties to the complaint, as well as other individuals specified in the RCMP Act.

*Joncas-Bourget Affidavit, at para. 13.*

19. The RCMP Act is silent about whether the CRCC has the jurisdiction to release an interim report to the parties before the CRCC has received the RCMP Commissioner's response. As such, the CRCC's general practice is not to release the interim report before receiving the response, although in rare cases of high public interest it has occasionally released the interim report in advance. Once the CRCC has prepared its final report, the CRCC includes the interim report and the Commissioner's response as appendices to the final report.

*Joncas-Bourget Affidavit, at para. 14.*

20. On December 11, 2019, the CRCC Chairperson and the RCMP Commissioner signed a Memorandum of Understanding in which the RCMP Commissioner committed to providing responses to the CRCC's interim reports within six months of being provided the CRCC's interim report.

*Joncas-Bourget Affidavit, at para. 26.*

21. As of November 17, 2020, a total of 148 interim reports were awaiting a response from the RCMP Commissioner, and 134 of those reports had been awaiting a response for more than six months. The oldest outstanding interim report is more than four years old. The RCMP has not responded to any reports within the time mandated in the Memorandum of Understanding.

*Joncas-Bourget Affidavit, at para. 49.*

22. The CRCC received the Applicant's complaint on February 6, 2014, about the RCMP's activities in relation to monitoring protests and demonstrations surrounding National Energy Board hearings into the Northern Gateway Project pipeline, as well as protests and demonstrations within the larger context of the Indigenous-led "Idle No More" movement.

*Joncas-Bourget Affidavit, at para. 16.*

23. The CRCC commenced a public interest investigation on February 20, 2014. On June 23, 2017, the CRCC delivered its interim report to the RCMP Commissioner, making 18 findings and 7 recommendations.

*Joncas-Bourget Affidavit, at paras. 17-18.*

24. The CRCC has repeatedly expressed its serious concerns with the RCMP Commissioner and the RCMP's National Public Complaints Directorate (NPCD) about the delays in this and other outstanding cases.

*Joncas-Bourget Affidavit, at para. 20.*

25. The RCMP NPCD essentially explained its ongoing delays as being caused by competing priorities and a lack of resources.

*Joncas-Bourget Affidavit, at paras. 22, 25, 30, 31, 36, and 40.*

## **PART II – ISSUES**

26. The issues raised on this motion are whether the CRCC should be granted leave to intervene in this application and, if leave is granted, the terms governing the CRCC's intervention.

## **PART III – Submissions**

### **A. The legal test for intervention**

27. Rule 109 of the *Federal Courts Rules*<sup>1</sup> provides that an intervener must (a) describe how it wishes to participate in the proceeding, and; (b) how that

---

<sup>1</sup> SOR/98-106.

participation will assist the determination of a factual or legal issue related to the proceeding. Rule 109 also provides that the Court shall give direction on the service of documents and the role of the intervener, should leave be granted.

28. The controlling test for intervention applications before this Court was set out by the Trial Division of the Federal Court in *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*,<sup>2</sup> and confirmed by the Federal Court of Appeal in *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*,<sup>3</sup> as affirmed in *Sport Maska Inc. v Bauer Hockey Corp*<sup>4</sup>. This test was also particularized in *Canada (Attorney General) v Pictou Landing First Nation*<sup>5</sup>. In essence, the prevailing approach sets out a list of flexible criteria that must be contextualized by the facts of the particular intervener application. The general criteria, including those discussed in *Pictou*, provide the Court a variety of contextual factors to consider. These factors are not exhaustive and the Court may ascribe weight to each individual factor as is appropriate in the particular case.<sup>6</sup> It is also not necessary that all of the factors have to be satisfied for the Court to grant intervener status.

29. The factors include whether:

i. The proposed intervener is directly affected by the outcome,

---

<sup>2</sup> [1990] 1 FC 74, 1989 CarswellNat 594.

<sup>3</sup> [1990] 1 FC 90, 1989 CarswellNat 600F.

<sup>4</sup> 2016 FCA 44.

<sup>5</sup> 2014 FCA 21.

<sup>6</sup> *Sport Maska, supra*, at para 41.

- ii. There is a justiciable issue and a veritable public interest,
- iii. There is an apparent lack of any other reasonable or efficient means to submit the question to the Court,
- iv. The position of the proposed intervener cannot be adequately defended by one of the parties to the case,
- v. The interests of justice are better served by the intervention of the proposed third party,
- vi. The Court will be unable to hear and decide the cause on its merits without the proposed intervener,
- vii. The intervener has complied with the specific procedural requirements of Rule 109(2), and
- viii. The intervener will make a contribution consistent with the just, most expeditious, and least expensive determination of the proceeding.

30. The CRCC submits that it meets the requirements to intervene.

## **B. The CRCC meets the requirements to intervene**

### **i. The CRCC is directly affected by the outcome**

31. As *Pictou* makes clear, the purpose of requiring that a proposed intervener have a genuine or direct interest in the matter before the Court is so that “the Court can be assured that the proposed intervener has the necessary knowledge, skills and resources and will dedicate them to the



matter before the Court.”<sup>7</sup>

32. It is indisputable that the CRCC has a direct interest in receiving timely replies from the RCMP Commissioner. The CRCC is bound by statute to wait for the RCMP Commissioner’s response before the CRCC can issue its final report with respect to reviews and public interest investigations.

33. The RCMP Commissioner must provide their response “as soon as feasible”, as set out in s. 45.76(2) of the RCMP Act. However, this provision (nor its companion provision at s. 45.72(1) of the RCMP Act) has not been judicially interpreted. Currently, 148 CRCC reports are waiting for the RCMP Commissioner’s Response, with the oldest being over four years old. The Commissioner’s Response in the present case has been pending for nearly three and a half years.

34. These delays have thwarted the CRCC’s efficient exercise of its duties and has stymied the civilian review and oversight of the RCMP.

35. The Court’s interpretation of “as soon as feasible” in the present application will doubtlessly affect not only the Applicant’s matter, but also interim reports in matters currently before the CRCC as well as those yet to come. As such, the CRCC not only has a genuine and direct interest in the

---

<sup>7</sup> *Pictou*, *supra* at para 11 & 15.

matter before the Court but will be directly affected by any decision of the Court.

**ii. There is a justiciable issue and a veritable public interest**

36. The CRCC proposes that the central question to this application is the judicial interpretation of the meaning and limits of the term “as soon as feasible” as set out in the RCMP Act.

37. This is a justiciable issue that has a strong public interest. The public complaint process is intended to be efficient, transparent, fair and remedial in nature, but the current systemic delays frustrate this process and risk denying the public effective recourse.

38. Here, the Applicant and public as a whole demand effective and timely civilian review and oversight of the RCMP. Currently, the absence of clarity on the meaning of “as soon as feasible” has allowed a situation whereby the RCMP Commissioner may delay civilian review and oversight by years.

39. The CRCC’s position is that the words “as soon as feasible” are not meant to be wholly open-ended or excessively permissive – that is, they entail a sense of importance and priority in the circumstances, even allowing for the other goals and resource demands inherent to a large organization. The CRCC’s position is that the RCMP Commissioner has breached her duty to provide a timely response in the Applicant’s particular case – as well as

systemically. The CRCC will advance evidence and submissions about this particular delay as well as the systemic nature of the delays more broadly, and how all such delays have impacted the CRCC's work.

**iii. There is an apparent lack of any other reasonable or efficient means to submit the question to the Court**

40. While the Notice of Application to this Court states that the RCMP Commissioner has breached her statutory duty to provide a response to the CRCC's Interim Report in the Applicant's public complaint "as soon as feasible," the position of the CRCC is that the question requires the Court to examine the reasonable limits entailed by the statutory language in question and that this exercise requires the CRCC's evidence and expertise.

**iv. The position of the CRCC cannot be adequately defended by one of the parties to the case**

41. The fourth and central requirement for leave to intervene is essentially that the proposed intervener will "advance different and valuable insights and perspectives that will actually further the Court's determination of the matter." This requirement speaks to whether the existing parties would effectively advance the position of the proposed intervener.<sup>8</sup> This Court has held that, even where a proposed intervener addresses issues already touched upon by

---

<sup>8</sup> *Rothmans, Benson & Hedges Inc.*, *supra*.

the primary parties, the Court may nevertheless be assisted by further exploration of those issues through that intervention.<sup>9</sup>

42. If granted leave to intervene, the CRCC would provide an important and unique perspective and approach to the issues raised in this application. While the Applicant may explore the impacts that the RCMP Commissioner's delay has imparted in their specific case, the CRCC will also be able to enlarge that discussion and also speak to larger, systemic issues of the RCMP's habitual delays that relate to a judicial examination of the term "as soon as feasible" – without attempting to raise issues beyond those engaged by the application before the Court.

43. The CRCC's intricate understanding of the public complaint process set out in the RCMP Act, including its understanding of the background and terms of the Memorandum of Understanding cited by the Applicant, offer different and valuable insights that will assist the Court.

**v. The interests of justice are better served by the intervention of the CRCC**

44. Central to this analysis is the question of whether the matter in which leave to intervene is sought "has assumed such a public, important and

---

<sup>9</sup> *Pictou, supra.* at paras 11, 16, 23 & 27.

complex dimension that the Court needs to be exposed to perspectives beyond those” of the immediate parties, such that the intervention should be permitted in the interests of justice.<sup>10</sup>

45. As the evidence of the CRCC makes clear, the public makes thousands of public complaints each year and the CRCC issues hundreds of reports. There are presently 148 outstanding Interim Reports awaiting a response from the RCMP Commissioner. Despite a December 2019 Memorandum of Understanding between the CRCC and the RCMP affirming that the RCMP Commissioner will provide a response to the CRCC’s Interim Reports within six months, there has been little change to status quo.

46. The present dispute gives the Court a valuable opportunity to clarify the RCMP Commissioner’s obligations.

47. The public’s confidence in the RCMP public complaint system is weakened by undue delays and a lack of transparency throughout the process. Such delays thwart the CRCC in carrying out its mandate. The delays also undermine the legitimacy, fairness, and efficacy of the public complaint process. Both the complainants and the RCMP members who are the subjects of the complaint must live with the stress and uncertainty of an unresolved complaint. Moreover, proposed recommendations cannot be

---

<sup>10</sup> *Pictou, supra.* at paras 11 & 28.

implemented in a timely manner when faced with such lengthy delays by the RCMP.

48. This case has a significant, important, and complex public dimension in that few individual complainants or RCMP subject members will have the resources or capacity to apply for judicial review in their individual cases if and when those cases languish waiting for a response from the RCMP Commissioner (as in fact many of those cases presently are). The Court's determination in this case will impact the public and the police alike in both present and future public complaints.

**vi. The Court will be unable to hear and decide the cause on its merits without the CRCC**

49. While the immediate dispute between the parties might be disposed of without the CRCC's participation, the CRCC submits that its unique evidence and perspective will be invaluable to the Court in reaching its decision.

**vii. The CRCC has complied with the specific procedural requirements of Rule 109(2)**

50. A proposed intervener must offer detailed and well-particularized evidence under Rule 109(2) that demonstrates how its proposed participation will assist the Court. To satisfy this requirement, the unique perspective and

proposed contribution of the moving party must be related to an issue in the proceeding currently before the Court.<sup>11</sup>

51. The CRCC's motion meets the requirements of Rule 109(2). The motion sets out the CRCC's wish to participate in the proceeding by way of filing a memorandum and presenting oral arguments. The motion further explains that the CRCC's participation will assist the Court's determination of the RCMP Commissioner's duty – namely by assisting the Court in ascertaining the meaning and limits of the term “as soon as feasible” set out in s. 45.76(2) of the RCMP Act.

52. The CRCC's motion demonstrates how the CRCC is prepared to assist the Court. By setting out an outline of its proposed submissions, the Court is not left to speculate what role the CRCC would play.

**viii. The CRCC will make a contribution consistent with the just, most expeditious, and least expensive determination of the proceeding**

53. Broadening the “interests of justice” inquiry above, this Court added a final consideration for intervention applications in *Pictou*: whether the proposed intervention is “inconsistent with the imperatives of Rule 3, namely

---

<sup>11</sup> *Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2015 FCA 34 at para 18 & 19.

securing ‘the just, most expeditious and least expensive determination of every proceeding on its merits’” by avoiding undue delay or complication of the proceedings.

54. The CRCC’s early intervention application in this matter is consistent with a just, expeditious, and least expensive determination of the proceeding. The CRCC’s evidence and submissions will not unduly delay or complicate the proceedings. To determine this proceeding on its merits requires an understanding not only of the immediate dispute between the parties but the RCMP’s systemic and habitual delays. The record before the Court would be impoverished and incomplete without the CRCC’s expertise and experience as a specialized administrative body engaged in the public complaints process and interacting with the RCMP on a daily basis.

#### **PART IV – ORDER SOUGHT**

55. The CRCC respectfully requests an order granting it leave to intervene in this application, pursuant to Rule 109 of the *Federal Courts Rules*.

56. If this Honourable Court determines that leave should be granted, the CRCC respectfully requests permission to file written submissions and the right to present oral argument at the hearing of this application.



57. If this Honourable Court determines that leave should be granted, the CRCC respectfully requests a further order that the intervener may neither seek costs, nor have costs awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 19, 2020



---

**Lesley McCoy**  
**Civilian Review and Complaints Commission for the Royal Canadian Mounted Police**  
Tel: 343-548-6405  
Fax: 613-952-8045  
Email: [Lesley.McCoy@crcc-ccetp.gc.ca](mailto:Lesley.McCoy@crcc-ccetp.gc.ca)  
Solicitor for the Intervener

## PART V – AUTHORITIES CITED

### Case Law

*Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2015 FCA 34, <http://canlii.ca/t/gg97h>

*Canada (Attorney General) v Pictou Landing First Nation*, 2014 FCA 21, <http://canlii.ca/t/q2xq2>

*Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1990] 1 FC 74, 1989 CarswellNat 594.

*Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1990] 1 FC 90, 1989 CarswellNat 600F.

*Sport Maska Inc. v Bauer Hockey Corp*, 2016 FCA 44, <http://canlii.ca/t/gn9h1>

### Legislation

*Federal Courts Rules*, SOR/98-106, <http://canlii.ca/t/80ps>.

*Royal Canadian Mounted Police Act*, RSC 1985, c. R-10, <http://canlii.ca/t/54310>