

Court File No. A-

FEDERAL COURT OF APPEAL

BETWEEN:

CATHERINE BEDARD, ROBERT BENISON, PHILIPPE BERTRAND, OLIVIER BROUILLARD, YANNICK COULOMBE, ERIC DEMERS, WARREN HUDYM, ERIC HUMBER, TARA MCDONALD, EDWARD PRETO, RANJIT SINGH SEEHRA, JAMES SMITH, JACQUELINE SPENCE, LICIO SOARES, BRUCE TROTZUK and HARDLAND VENEMA

Appellants

- and -

ROYAL CANADIAN MOUNTED POLICE EXTERNAL REVIEW COMMITTEE, THE CHAIRPERSON OF THE ROYAL CANADIAN MOUNTED POLICE EXTERNAL REVIEW COMMITTEE and THE ATTORNEY GENERAL OF CANADA

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at *Ottawa*.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

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 APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by _____

TO:

CONWAY BAXTER WILSON LLP

400-411 Roosevelt Avenue

Ottawa, ON K2A 3X9

Tel: 613-691-0368 / 613-691-0369

Per: David Taylor

Email: dtaylor@conwaylitigation.ca

Per: Sean Grassie

Email: sgrassie@conwaylitigation.ca

Counsel for the Respondent,

Royal Canadian Mounted Police External Review Committee

AND TO:

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

Treasury Board Secretariat Legal Services

219 Laurier Ave West, 6th Floor

Ottawa, ON K1A 0R5

Per: Chris Hutchison

Tel: 613-907-5183

Email: chris.hutchison@justice.gc.ca

Per: Laetitia B. Auguste

Tel: 613-853-7867

Email: laetitia.auguste@justice.gc.ca

Counsel for the Respondent,
Attorney General of Canada

APPEAL

THE APPELLANTS APPEAL to the Federal Court of Appeal from the Judgement of Madam Justice Go (“Application Judge”) dated April 10, 2024, dismissing the Appellants’ Application for an Order of *mandamus*, compelling the Royal Canadian Mounted Police’s External Review Committee to render their findings and recommendations in the Appellant’s matters, pursuant to the *Royal Canadian Mounted Police Act*, RSC 1985 c R-10 (“*RCMP Act*”) and the *Commissioner’s Standing Orders (Grievances and Appeals)*, SOR/2014-289.

THE APPELLANTS ASK that:

1. This Court to allow the appeal;
2. The Judgement of the Application Judge be overturned;
3. The Court grant an Order of *mandamus* compelling the Royal Canadian Mounted Police External Review Committee and the Chairperson of the Royal Canadian Mounted Police External Review Committee (together, the “ERC”) to render their recommendations in the Appellants’ files, no later than thirty (30) calendar days from the date of this Court’s Order;
4. The Court grant an Order of *mandamus* compelling the ERC to publish and meet its service standards pursuant to subsection 28.1 of the *RCMP Act*;
5. The Court award costs of this Appeal to the Appellants; and
6. Such further and other relief as this Honourable Court deems just.

THE GROUNDS OF THE APPEAL are as follows:

Background

7. The Appellants are current or retired members of the Royal Canadian Mounted Police (“RCMP”), who have active appeal files with the ERC. They are all waiting for the ERC to issue recommendations in their matters.
8. This Appeal concerns the timeliness of the ERC’s appeal review process, and more specifically, the timeliness of issuing its recommendations.

The External Review Committee

9. The ERC is an administrative tribunal that conducts impartial case reviews and issues findings and recommendations for appeal decisions in certain RCMP employment and labour relations matters.
10. Section 45.15 of the *RCMP Act* states that before considering an appeal, the appeal shall be transmitted to the ERC by the RCMP’s Commissioner if it relates to any of the following conduct measures, or to any finding that resulted in its imposition of a:
 - a. Financial penalty of more than one day of the member’s pay;
 - b. Demotion;
 - c. Direction to resign;
 - d. Recommendation for dismissal; or,
 - e. Dismissal.
11. Further, pursuant to s. 17 of the *Royal Canadian Mounted Police Regulations*, before considering an appeal, the Adjudicator seized of the appeal must refer the following types of appeals to the ERC:

- a. An appeal by a complainant of a written decision referred to in subsection 6(1) and paragraph 6(2)(b) of the *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)*;
- b. An appeal of a written decision revoking the appointment of a member under section 9.2 of the *RCMP Act*;
- c. An appeal of a written decision discharging or demoting a member under paragraph 20.2(1)(e) of the *RCMP Act*;
- d. An appeal of a written decision discharging or demoting a member under paragraph 20.2(1)(g) of the *RCMP Act* on the following grounds:
 - i. Disability, as defined in the *Canadian Human Rights Act*;
 - ii. Being absent from duty without authorization or having left an assigned duty without authorization;
 - iii. Conflict of interest; and,
 - iv. An appeal of a written decision ordering stoppage of a member's pay and allowances under paragraph 22(2)(b) of the *RCMP Act*.

Procedure for ERC files

- 12. The Office of the Coordination of Grievances and Appeals ("OCGA"), namely the office responsible for the coordination of administrative matters relating to RCMP grievance and appeals ("Referable Matters"), transmits referable matters to the ERC.
- 13. The OCGA transmits Referable Matters to the ERC once the grievance or appeal has been perfected. Once the ERC receives Referable Matters, it issues recommendations then sends same to the Commissioner for a decision.

14. Subsection 28.1 of the *RCMP Act* provides that:

The Committee [the ERC] shall establish, and make public, service standards respecting the time limits within which it is to deal with grievances and appeal cases that are referred to it and specifying the circumstances under which those time limits do not apply or the circumstances under which they may be extended [emphasis added].

The ERC has not met its obligation to publish, or follow, its own service standards.

15. There is a public legal duty on the part of the ERC to render their recommendations.

16. The Appellants have no other remedy to compel the ERC to render their recommendations.

The Appellants are not responsible for the delays, and the ERC has not provided a satisfactory explanation for the delays.

17. Sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

18. Sections 25, 26, 27(2), 27(3), 28, 28.1, 29, 45.1 of the *RCMP Act*, RSC 1985, c R-10.

19. The *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289, the *RCMP External Review Committee Rules of Practice and Procedure*, SOR/88-313, and the *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281.

The Appellants' files

20. All of the Appellants' appeals have been fully perfected: their submissions have been filed, the Respondent has filed its responding submissions, the appeal files have been transmitted to the ERC, and are now waiting on a decision.

21. The Appellants' appeals pertain to important matters, such as Code of Conduct issues, discharges, and workplace harassment.

22. The Appellants made demands for performance to the ERC, that the ERC issue its recommendations. To date, the ERC has not issued recommendations on the Appellants' files.

23. The Application Judge dismissed the Application for an order of *mandamus* on April 10, 2024.

Grounds of Appeal

24. The Application Judge erred in law by and/or made a palpable and overriding error by concluding that jurisprudence in labour law does not apply to this matter. This finding is subject to the correctness standard of review.

25. The Application Judge erred in law and/or made a palpable and overriding error by concluding that delay in and of itself is insufficient to establish prejudice in this matter. This mixed question of fact and law attracts the palpable and overriding error standard of review for questions of fact and the correctness standard of review for extricable questions of law.

26. The Application Judge made a palpable and overriding error by failing to consider the individual circumstances and prejudice of each Appellant given the extremely delay in receiving their recommendation and nature of the matters in their file.

27. The Appellants propose this Appeal be heard in Ottawa, Ontario.

Date: May 10, 2024



Nelligan O'Brien Payne LLP
Barristers & Solicitors
50 O'Connor Street, Suite 300
Ottawa, ON K1P 6L2

Andrew Montague-Reinholdt / Denise Deschênes
Tel: 613-231-8244 / 613-231-8248
Fax: 613-238-2098
andrew.montague-reinholdt@nelliganlaw.ca /
denise.deschenes@nelliganlaw.ca

Solicitors for the Appellants