

Federal Court



Cour fédérale

Date: 20200225

Docket: T-522-19

Citation: 2020 FC 297

Ottawa, Ontario, February 25, 2020

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

KONSTANTINOS XANTHOPOULOS

Applicant

And

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Applicant, Konstantinos Xanthopoulos, brings this motion in writing seeking the disclosure of records from the Royal Canadian Mounted Police [RCMP]. The motion was filed in response to a motion by the Attorney General of Canada seeking to strike out the underlying application for judicial review on the ground that Mr. Xanthopoulos has not exhausted his right of appeal under the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10. That application challenges a decision of an RCMP Conduct Board on March 21, 2019 dismissing

Mr. Xanthopoulos from the force for discreditable conduct. Four days later and without exercising his statutory right of appeal, he applied for judicial review.

[2] It is common ground that a right of appeal is available to Mr. Xanthopoulos. He argues, however, that he should be exempted from that internal process because it is excessively slow. In the result, he says that this Court should entertain his application and order the production of documents that are “essential” to proving that his internal right of appeal is too slow to afford fair and adequate recourse. The records and calculations he seeks are the following:

*From the Office of the Coordination of Grievances and Appeals
(OCGA)*

- a. A breakdown of “complex” files pending decisions on either preliminary or collateral issues including the date each appeal was submitted to the OCGA;
- b. A breakdown of “complex” files where decisions were made on either preliminary or collateral issues but not yet referred to the ERC (including the date each appeal was submitted to the OCGA);
- c. A breakdown of “complex” files awaiting assignment to a Recourse Case Manager (including the date each appeal was submitted to the OCGA);
- d. The total number of “complex” files currently under the control of the OCGA broken down by fiscal year of submission to the OCGA;
- e. Full copies of each “complex” file that was decided at the Final Level of Appeal.
- f. A record detailing the total number of “on duty” case managers and adjudicators with a personnel breakdown by current caseload, caseload capacity and average performance markers establishing the following:
 - i. The average time from appeal/grievance intake to case manager assignment;

- ii. The average time from appeal/grievance case manager assignment to compilation of the material;
- iii. The average time from appeal/grievance record compilation to resolution on preliminary and collateral issues; and
- iv. The average time from the resolution of preliminary and collateral issues to referral to the ERC.

From the External Review Committee (ERC)

- g. Copies of all “complex” files with completed ERC assessment/recommendations;
- h. The number of “complex” files referred to the ERC during the 2017/18, 2018/19 and current fiscal years;
- i. The total number of “complex” files pending review by the ERC; and
- j. The anticipated delay in ERC review/assessment/recommendation for “complex” files itemized by fiscal year of referral to the ERC.

[3] I am not satisfied on the record presented that the information Mr. Xanthopoulos seeks is necessary or relevant to the fair adjudication of the Attorney General’s motion to strike.

[4] Firstly, the evidence Mr. Xanthopoulos demands about average timelines to complete complex appeals is no more relevant to the Attorney General’s pending motion than the publicly available information that was held to be insufficient in *Picard v Canada (Attorney General), et al*, 2019 CanLII 97266 (FC) (Court File T-1803-18). What the Court needed in that case was evidence of an indicated timeline for the disposition of Mr. Picard’s appeal. Here, Mr. Xanthopoulos failed to initiate an appeal based on an assumption that the process would be

unduly delayed. The Court should not be asked to presume that an appeal would have been flawed or that Mr. Xanthopoulos could not have done anything to advance his case to a timely conclusion.

[5] I also agree with the Attorney General that the information requested is overbroad and of unproven relevance. Quite apart from the admonition in *Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204 at para 15, [2009] FCJ No 725 (QL), that judicial review is a summary process that should not be unduly bogged down by demands for document discovery, there is also no obligation to compile data for the opposite party. I accept that there will be exceptional situations that call for third-party disclosure, but such situations also demand exceptional justification. That is lacking in this case. Average timelines do not prove that any and all appeals are bound to be unduly delayed. If Mr. Xanthopoulos had actually brought an appeal that, through no fault of his, became bogged down and was in fact delayed, the case for obtaining judicial review might have been compelling. In this situation, however, the delay is not based on his actual experience, but rather on a worst-case presumed experience.

[6] For the foregoing reasons, this motion is dismissed.

ORDER in T-522-19

THIS COURT ORDERS that this motion is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-522-19

STYLE OF CAUSE: KONSTANTINOS XANTHOPOULOS v
ATTORNEY GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: BARNES J.

DATED: FEBRUARY 25, 2020

WRITTEN REPRESENTATIONS BY:

Konstantinos Xanthopoulos

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Susanne Pereira
Courtenay Landsiedel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

FOR THE APPLICANT

Attorney General of Canada
Vancouver, BC

FOR THE RESPONDENT