Federal Court  Cour fédérale

Date: 20240410

Docket: T-1576-22

Citation: 2024 FC 570

Toronto, Ontario, April 10, 2024

PRESENT: Madam Justice Go

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 HARLAND VENEMA

Applicants

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

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are members of the Royal Canadian Mounted Police [RCMP] who filed appeals of internal harassment complaint decisions or disciplinary decisions to the RCMP External Review Committee [ERC] and have yet to receive any resolution despite having made demands for performance, years after the filing of their respective appeals.

[2] The ERC is an independent, quasi-judicial tribunal established under Part II of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*]. The ERC is headed by a Chairperson [ERC Chair].

[3] The Applicants seek two orders of *mandamus* to compel the ERC to: (1) complete its review of their respective appeals within 30 calendar days of the Court's decision and (2) publish and report on its service standards applicable to every file before the ERC. The Applicants also seek costs for this writ of *mandamus* application. The Attorney General of Canada [AG] represents the RCMP.

[4] By an order dated June 14, 2023, Associate Judge Duchesne joined the ERC Chair as a respondent, as the performance sought to be compelled by the Applicants is performable only by the ERC Chairperson, pursuant to paragraph 34(3)(a) of the *RCMP Act*.

[5] For the reasons set out below, I dismiss the application. While I acknowledge the Applicants' frustration with the delay in the ERC appeal process, I find the Applicants have not established they meet all of the requisite criteria to entitle them to the relief sought.

II. Background Facts

A. *The Legislative Framework and Structure of the ERC*

[6] The ERC contributes to the RCMP's decision-making regarding certain labour-related grievances and appeals by way of providing a non-binding findings and recommendations [F&R] to the RCMP Commissioner. The relevant provisions are reproduced under "Appendix A."

[7] Briefly, the ERC review process rolls out as follows. A member of the RCMP who is dissatisfied with an internal RCMP decision that is referable to the ERC may initiate an appeal by filing a Statement of Appeal with the RCMP's Office for the Coordination of Grievances and Appeals [OCGA], which acts as an intermediary between the parties and the ERC. The OCGA then collects the relevant materials in relation to the appeal. Next, the OCGA refers the matter to the ERC. The ERC then pre-screens and determines the matter's level of priority based on the date of referral and urgency, followed by an analysis and file review. Last, the ERC drafts and publishes its F&Rs and the OCGA communicates the ERC's results to the parties. The RCMP Commissioner may, but is not required to, follow the ERC's F&Rs. If the RCMP Commissioner chooses not to follow the ERC's F&Rs, they must provide reasons for doing so.

(i) Expansion of the ERC's mandate in 2014 and the resulting backlog

[8] The ERC's mandate was expanded following amendments to the *RCMP Act* in 2014 under the *Enhancing Royal Canadian Mounted Police Accountability Act*, SC 2013, c 18 [2014 Amendments]. The 2014 Amendments expanded the scope of matters that are referable to the ERC.

[9] Under its former provisions [Legacy Provisions], there were three groups of cases which were referable to the ERC [Legacy Cases]:

a. A second-level review of grievances related to (a) the RCMP's interpretation and application of government policies; (b) the stoppage of pay and allowances; (c) the RCMP's interpretation of certain directives; and (d) administrative discharge on certain grounds.

b. Appeals of formal disciplinary decisions by adjudication boards.

c. Appeals of discharge and demotion decisions by the RCMP.

[10] Now, under section 45.15 of the *RCMP Act*, the RCMP Commissioner is required to refer the following matters to the ERC: (a) a financial penalty of more than one day of an RCMP member's pay; (b) a demotion; (c) a direction to resign; (d) a recommendation for dismissal; or (e) a dismissal.

[11] According to subsection 45.15(3), an RCMP member may request to opt out from the ERC referral process. However, the ultimate discretion remains with the RCMP Commissioner who can still refer a matter to the ERC even where the RCMP member requests otherwise.

[12] Section 17 of the *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281, also mandates the ERC to review certain types of appeals, these are: (a) harassment complaints;

(b) revocation of an appointment; (c) discharge or demotion; (d) discharge or demotion on grounds of disability, absence or leaving duty without authorization, or conflict of interest; and (e) stoppage of pay and allowances.

[13] The ERC also continues to receive Legacy Cases.

B. *ERC Service Standards*

[14] Section 28.1 of the *RCMP Act* requires the ERC to establish and publish its service standards. The ERC's service standards are meant to outline the time required for the ERC to review appeals and grievances referred to it. The ERC is also required to report to Parliament, annually, on its performance in relation to the service standards, per subsection 30(1) of the *RCMP Act*.

C. *The Applicants' Appeals*

[15] The Applicants' appeals involve either internal harassment complaints decisions or disciplinary decisions. All of the Applicants filed their appeals before 2020. They have all been waiting for the ERC to issue F&Rs on their appeal, and they have all made at least one demand for performance to the ERC. The Court does not have much detail about the Applicants' appeals, other than their initial statement of appeal, which is included in the Procedural Record. In addition, the Procedural Record and the Applicants' Record provide the Court with some correspondence between the Applicants, the OCGA and the ERC, as well as the ERC and the OCGA.

III. Preliminary Issues

[16] This application initially concerned thirty-five outstanding matters from twenty-six Applicants.

[17] By the time of the filing of the records, the ERC issued several F&Rs with respect to some of the matters, one matter has become moot, and one applicant withdrew their appeal. By the time of the hearing of this application, the ERC has issued several more F&Rs.

[18] As a result, as per the parties' agreement, I order the following names be removed from the Style of Cause as these applicants' appeals have been dealt with by the ERC: Aaron Geary, Nicole Bonneville, Katheryn Butler, Stephanie Ann Dewitt, Jagdeep Gill, Thomas Kalis, Daniel Kohl, Nicolas Morden, Mélanie Roy, and Tom Oxner.

[19] I pause to note that the parties also refer to another RCMP member whose appeal was dealt with by the ERC, and whose complaint was contained in the record. However, the name of this RCMP member does not appear to have been included in the application to begin with. As such, I need not make an order to remove their name from the Style of Cause.

[20] Thus, as of the date of the hearing, sixteen Applicants remain in this application. A few of the remaining Applicants filed more than one appeal to the ERC. In total, there are twenty-two appeals pending at the ERC. Of which, nine involve conduct decisions with a financial penalty, while the rest involve appeals of investigated harassment complaints.

IV. Issues and Standard of Review

[21] The main issues in this application are as follows:

a. Did the Applicants meet the test for *mandamus* to compel the ERC to issue its F&Rs on their appeals within 30 days of the Court's Order?

b. Did the Applicants meet the test for *mandamus* to compel the ERC to publish its service standards?

[22] The Applicants submit that a *mandamus* application does not trigger a standard of review analysis because the Court is not reviewing an administrative decision, and cite the Federal Court of Appeal's [FCA] decision in *Hong v Attorney General (Canada)*, 2019 FCA 241 [*Hong*] at paras 12-15, to argue that a reviewing court should not engage in a standard of review analysis on a *mandamus* application. The cited paragraphs lay out the standard of review pre-*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and note that on a *mandamus* judicial review, "the outcome of the judicial review would be the same regardless of the standard of review that is applied:" *Hong* at para 14.

[23] The Respondents do not take a position on the standard of review.

[24] I agree with the Applicants that the issue of standard of review is not relevant to this matter, as a writ of *mandamus* does not require a determination of the applicable standard of review: *Callaghan v Canada (Chief Electoral Officer)*, 2010 FC 43 at para 64 and *Samideh v Canada (Citizenship and Immigration)*, 2023 FC 854 at para 22.

V. Analysis

A. *The Criteria for a Writ of Mandamus*

[25] The Court can issue a writ of *mandamus* pursuant to paragraph 18(1)(a) of the *Federal Courts Act*, RSC, 1985, c F-7. An order of *mandamus* is a discretionary remedy the Court may issue to compel the performance of a statutory duty owed to the applicant. The test for *mandamus* requires careful consideration of the statutory, regulatory, or other public obligation at issue to determine whether the factual circumstances require compelling the decision-maker to meet its obligation owed to the applicant: *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 76.

[26] The parties agree the legal test for *mandamus*, as set out in *Apotex Inc. v Canada (Attorney General)* (C.A.), 1993 CanLII 3004 (FCA), [1994] 1 FC 742 [*Apotex*] at 766-769, is applicable to this application. The *Apotex* test is set out as follows:

1. There must be a public duty to act;
2. The duty is owed to the Applicant;
3. There is a clear right to performance of that duty:
    i. The applicant has satisfied all conditions precedent giving rise to the duty;
    ii. There was (1) a prior demand for performance of the duty; (2) a reasonable time to comply with the demand unless refused outright; and (3) a subsequent refusal which can be either expressed or implied (e.g., unreasonable delay);
4. Where the duty sought to be enforced is discretionary, the following rules apply;
    i. In exercising a discretion, the decision-maker must not act in a manner which can be characterized as “unfair,” “oppressive,” or demonstrate “flagrant impropriety,” or “bad faith;”

ii. *Mandamus* is unavailable if the decision-maker's discretion is characterized as being "unqualified," "absolute," "permissive" or "unfettered;"

iii. In the exercise of a "fettered" discretion, the decision-maker must act upon "relevant," as opposed to "irrelevant," considerations;

iv. *Mandamus* is unavailable to compel the exercise of a "fettered discretion" in a particular way; and

v. *Mandamus* is only available when the decision-maker's discretion is "spent," i.e., the applicant has a vested right to the performance of the duty;

5. No other adequate remedy is available to the applicant;

6. The order sought will be of some practical value or effect;

7. The Court in the exercise of its discretion finds no equitable bar to the relief sought; and

8. The balance of convenience favours issuing the *mandamus* order.

[27] For the Applicants to succeed on this *mandamus* application, all eight *Apotex* criteria must be met: *Gagnon v Canada (Attorney General)*, 2019 FC 1661 at para 37.

[28] In this case, the Respondents do not dispute that the Applicants have met the first, second, fourth, and fifth criteria of the *Apotex* test. That is, the parties agree that the ERC has a public duty to act, the duty is owed to the Applicants, the duty is not discretionary, and there is no other adequate remedy available to the Applicants.

[29] However, the parties disagree on whether there is a clear right to the performance of the duty owed to the Applicants under criterion three of the *Apotex* test.

[30] To satisfy this criterion, the Applicants must demonstrate, first, that the delay is unreasonable. The Court in *Conille v Canada (Minister of Citizenship and Immigration)* (T.D.),

1998 CanLII 9097 (FC), [1999] 2 FC 33 [*Conille*] at 43, put forth the criteria for unreasonable delay as follows:

> a. The delay in question has been longer than the nature of the process required, *prima facie*;
>
> b. The applicant is not responsible for the delay; and
>
> c. The authority responsible for the delay has not provided satisfactory justification.

[31] The reasonableness of delay depends on the facts of a given case, the jurisprudence is only helpful in quantifying what constitutes an unreasonable delay insofar as it provides broad, guiding parameters: *Tameh v Canada (Public Safety and Emergency Preparedness),* 2017 FC 288 at para 52 and *Dragan v Canada (Minister of Citizenship and Immigration)* (T.D.), 2003 FCT 211, [2003] 4 FC 189 [*Dragan*] at paras 55-56.

[32] In addition to establishing the delay is unreasonable, the Applicants must demonstrate there is "significant prejudice" caused by the delay: *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 [*Vaziri*] at para 52 citing *Blencoe v British Columbia (Human Rights Commission),* 2000 SCC 44 [*Blencoe*] at para 101, *Chen v Canada (Citizenship and Immigration)*, 2023 FC 885 [*Chen*] at para 16, and *Dragan* at para 56.

[33] In *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*], the Supreme Court of Canada [SCC] confirmed the three-part test for abuse of process, which it previously set out in *Blencoe*. The first step is to determine whether the delay is inordinate. This requires contextualizing the administrative proceeding, including the nature and purpose of the proceeding, the length and causes of delay, and the complexity of the facts and issues in the case:

Abrametz at paras 50-51. The SCC emphasized that "a lengthy delay is not per se inordinate" and "may be justifiable when considered in context:" *Abrametz* at para 59. Further, the SCC explicitly rejected the call to "*Jordanize*" *Blencoe* in order to address delay in administrative proceedings: *Abrametz* at paras 45-48.

[34] The Respondents dispute that the ERC's delay in issuing its F&Rs for the Applicants' appeals is so unreasonable and significantly prejudicial to the Applicants that it justifies compelling the ERC to act. The Applicants, on the other hand, assert that the delay is unreasonable. The Applicants also appear to dispute whether *Blencoe* and *Abrametz* require them to demonstrate significant prejudice and what constitutes significant prejudice.

[35] Given the point of contention in this case centres around the issue of delay, and given there is no question that the Applicants are not responsible for the delay, I have reformulated the questions before me as follows:

a. Has the delay in question been longer than the nature of the process required, *prima facie*;

b. Has the ERC provided a satisfactory justification for the delay;

c. Is there a requirement that the Applicants demonstrate significant prejudice, and if so, have the Applicants demonstrated significant prejudice caused by the delay;

d. Will the order sought be of some practical value or effect;

e. Does the balance of convenience favour issuing the *mandamus* order, and in this context, is there any equitable bar to the relief sought; and

f. Did the Applicants meet the test for *mandamus* to compel the ERC to publish its service standards?

B. *Has the delay in question been longer than the nature of the process required, prima facie?*

[36] The Applicants submit that while the ERC does not have a prescribed timeline by which it is required to issue F&Rs, various legislative instruments and policies establish that the ERC is required to deal with referred matters expeditiously. The legislative requirements the Applicants point to include the ERC's service standards, quick internal timelines, the mandatory nature of the ERC, and labour law principles.

[37] First, the Applicants submit that the language in sections 28 and 28.1 of the *RCMP Act*, which address the ERC's duties and service standards (specifically, the words "shall" and "is to deal" in sections 28 and 28.1, respectively) clearly establish that setting timelines is not an aspirational requirement, rather an expectation of the ERC to issue F&Rs in a timely manner. Similarly, they argue that the timeline required to initiate an appeal—14 days after an RCMP member receives a decision—is indicative of the ERC's requirement to also adhere to a quick timeframe.

[38] Second, the Applicants argue the referral of their matters to the ERC was "not truly voluntary" as they had little time to decide whether to opt for an ERC review or go straight to an appeal. The Applicants submit they would not have known it would take this long for the ERC to issue F&Rs, which they argue is unfair and unreasonable.

[39] Third, the Applicants point to labour law principles and submit that the RCMP's internal appeal system shares several characteristics with the traditional labour regime. They rely on the

SCC's decision in *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 [*Horrocks*] at para 21. In *Horrocks*, while addressing dispute resolution procedures in the context of collective agreements, the SCC noted provincial labour statutes have the shared objective of resolving disputes quickly, economically, and with minimal disruption to the parties. The Applicants concede this decision is on collective agreement grievances, however, they insist the same principles apply to RCMP appeals because RCMP members' only protection against a final decision of the RCMP Commissioner is by applying for judicial review, "where their employer is afforded deference in its decisions." The Applicants also point out they do not have bargaining agents, which creates a power imbalance that is exacerbated by "an employer simply refusing to provide a timely appeal process."

[40] At the hearing, the Applicants emphasized that the ERC process is an "internal" process and is not independent from the government. The Applicants describe the ERC process as a "pit stop," whose recommendations are non-binding, as ultimately the employer makes the final decisions. The Applicants also pointed to the ERC's own publication indicating that the ERC's raison d'être is to promote fair and equitable labour relations as support for their position.

[41] I do not find these submissions persuasive. That the ERC has a mandate to deal with internal RCMP decisions does not transform the ERC process into a collective bargaining process governed by labour law. As the Applicants note, their appeals are not subject to the grievance process under their collective bargaining agreement.

[42] The paragraph the Applicants cite in *Horrocks* dealt specifically with the issue of exclusive arbitral jurisdiction in the context of resolving disputes arising from the collective bargaining process. As such, I do not find the jurisprudence in labour law applicable to the case at hand.

[43] More importantly, I am not persuaded that the delays, in the context of this application, are a *prima facie* refusal to act. As the Respondents submit, and I agree, the evidence attributes the delays to increased caseload combined with staffing and administrative shortages.

[44] In support of his position, the ERC Chair filed an affidavit of Jonathan Haig, Manager, Registry Operations of the ERC [Haig Affidavit]. According to the Haig Affidavit, the volume of cases referred to the ERC has increased by 530% since 2014—in the 2014-2015 fiscal year, the ERC's caseload was at 64; by the end of 2021-2022, that number sat at 402 matters.

[45] As noted in the Haig Affidavit, the ERC attributes two reasons for this increase in volume. First, the 2014 Amendments have expanded the scope of RCMP disciplinary decisions referable to the ERC. In comparison, under the Legacy Provisions, referable cases regarding disciplinary decisions were limited to matters that were serious enough to fall under the jurisdiction of an RCMP adjudication board. Second, there has been a substantial increase in harassment-related appeals as harassment complaints are now subject to mandatory ERC review.

[46] In addition, the Haig Affidavit highlights the budgetary and human resources constraints that the ERC has faced. While the volume of cases referred to the ERC increased dramatically

following the 2014 Amendments, its budget and staffing levels did not increase until 2020. The increased budget allowed the ERC to grow its Legal Services team over time to 17 counsel, as of the date of this hearing. However, it takes time and resources to train new counsel to do their work properly and effectively.

[47] According to the Haig Affidavit, among the strategies the ERC has adopted to address the backlog is a prioritization system, governing the order in which the ERC reviews cases. There are two factors that guide the priority system: (1) the date the ERC received the completed file from the RCMP and (2) the nature and severity of the RCMP decision under review. As Mr. Haig elaborates in a further affidavit [Second Haig Affidavit], this severity ranking is as follows:

1. Discharge or dismissal without pay
2. Stoppage of pay and allowances (current legislation)
3. Dismissal of harassment complaint without investigation
4. Stoppage of pay and allowances (Legacy Provisions)
5. Discharge or dismissal with pay
6. Dismissal of harassment complaint involving allegations of a racial and/or sexual nature following an investigation
7. Demotion (current legislation)
8. Demotion (Legacy Provisions)
9. Dismissal of harassment complaint following an investigation
10. Financial penalty of more than 10 days' pay or $2000
11. Financial penalty of less than 10 days pay or $2000

[48] The Haig Affidavit further points out that, based on the ERC's priority system, most of the appeals at issue in this *mandamus* application, although important to the members affected,

involve lower priority subject matter. Fourteen of the initial 35 appeals involved conduct decisions imposing a financial penalty. A further 14 of the initial 35 appeals involved dismissals of investigated harassment complaints. Only two of the initial 35 appeals involved dismissals under the current legislative scheme. But, as both of these two were deemed high priority cases, the ERC issued its F&Rs in both appeals prior to the filing of the Notice of Application for Judicial Review, and indeed these two members are no longer part of the application for *mandamus*.

[49] As noted above, several more members have had their names removed from the Style of Cause after the ERC issued its F&Rs in their appeals, including three high priority appeals involving uninvestigated harassment complaints.

[50] Of the remaining Applicants, all of their matters fall within the lowest three priorities in the ERC's prioritization system.

[51] As the jurisprudence on administrative law confirms, unlike in the labour law context where there is a strict statutory timeline, the Court needs to consider a list of non-exhaustive contextual factors in order to determine whether delay is inordinate: *Abrametz* at para 51.

[52] In *Jia v Canada (Citizenship and Immigration)*, 2014 FC 596 [*Jia*], Justice Gleason observed that when evaluating whether delay in processing a visa application is unreasonable, the Court must have regard to all pertinent circumstances, including the volume of applications received and the priorities and targets set out by the decision-maker. Justice Gleason found this

was so in the case before her: *Jia* at paras 89-90. I reach the same conclusion in the case before me. I reject the Applicants' argument that *Jia* involved a large number of applications and there is no such evidence in the record; the evidence as contained in all three Haig affidavits indicate otherwise.

[53] I also disagree with the Applicants that the language in sections 28 and 28.1 of the *RCMP Act* establish an expectation of the ERC to issue F&Rs in a timely manner.

[54] For ease of reference, section 28.1 is reproduced below:

Service standards respecting time limits	**Normes de service régissant les délais**
28.1 The Committee 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.	**28.1** Le Comité établit et rend publiques des normes de service concernant les délais pour le traitement des griefs et des dossiers d'appels qui font l'objet d'un renvoi devant lui et prévoyant les circonstances dans lesquelles ces délais ne s'appliquent pas ou peuvent être prorogés.

[55] Putting aside for a moment whether section 28.1 mandates the ERC to establish service standards for all matters, I find this section does not mandate any specific timeline within which the ERC must deal with grievances and appeal matters that are referred to it. Rather, the section requires the ERC to establish its own time limits and publish such time limits, as well as to specify when time limits do not apply.

[56] The ERC Chair submits, and I agree, the approach to "*Jordanize*" criminal proceedings does not apply in the administrative law context: *Abrametz* at para 45-48. In the absence of any

legislatively mandated timelines, the Applicants' argument is an approach the SCC specifically rejected.

[57] The Applicants made a further argument at the hearing, noting that it should not take that much time for the ERC to conduct its review of the Applicants' appeals, as it is simply reviewing the record the OCGA submitted and the Applicants' written submissions that come with strict page limits. I reject this argument. There is insufficient information before me with respect to the complexity of the appeals involved. Moreover, if these appeals are indeed important to the Applicants, one would hope that the ERC does not sacrifice the thoroughness of its review for the sake of expediency.

[58] I am however cognizant of the fact that some of the Applicants have waited for many years for the ERC to issue F&Rs, and that changes to date have not resolved many of the backlog issues. I further note that at the hearing, Applicants' counsel questioned many of the steps the ERC took after it received additional permanent funding, such as its decision to hire lawyers instead of human resources investigators, and not to make a stronger case for more funding from the Canadian Government. Counsel for the Applicants also made substantive arguments with what they characterize as a lack of commitment on the part of the Canadian Government to address such critical issues as sexual harassment within the RCMP. Counsel argued forcefully that the Canadian Government caused the delay by creating an exclusive labour regime that all the Applicants are subject to, while intentionally keeping the regime underfunded to render it ineffective.

[59] I need not comment on the Applicants' critique of the policy choice on the part of the Canadian Government, as these criticisms are not relevant to my analysis. The Applicants are not seeking a challenge to the creation of the ERC itself, nor are the Applicants bringing an application to compel the government to increase its budgetary allocations to the ERC. My task is to review the regime as created, in order to decide whether the delay in question has been longer than the nature of the process required, *prima facie*.

[60] No doubt, the ERC system is not perfect. The backlog of the pre-April 2022 cases persists, and those at the lower end of the priority list are still waiting for their appeals to be addressed. However, having reviewed the relevant statutory provisions, the 2014 expansion of the ERC's mandate and resulting caseload increase, the ERC's prioritization system, and the ranking of the Applicants' appeals within that prioritization system, I find the Applicants have failed to establish the ERC's delay in resolving their appeals has been longer than the nature of the process required, *prima facie*.

C. *Has the ERC provided a satisfactory justification for the delay?*

[61] Even if I am wrong, and the delay in addressing the Applicants' appeals has been longer than the nature of the process required, I find the ERC has provided a satisfactory justification for the delay, contrary to the Applicants' submission.

[62] The Applicants argue the ERC's explanation of a backlog and increased caseload is insufficient, given the "extreme delays." Citing *Dragan*, the Applicants submit the Court has confirmed that this is not a valid justification for delay.

[63] I reject the Applicants' arguments.

[64] To start, I find *Dragan* does not assist the Applicants. The Court in *Dragan* considered the respondent's explanation of limited resources and increased caseload for the delay in processing permanent residence applications, and found that in other decisions, such a justification had been rejected: *Dragan* at para 58. However, the Court in *Dragan* did not reject the respondent's justification simply because it found the explanation in and of itself invalid. Rather, the Court considered the respondent's explanation alongside its statutory duty and implied commitment to assess its backlog. The Court also looked at factually similar *mandamus* decisions to develop an understanding of what would constitute a reasonable length of delay. It observed that while jurisprudence can provide guidance, each case turns on its own facts and needs to consider resulting prejudice: *Dragan* at paras 55-56.

[65] While the circumstances may be different, such evidence of caseload volume has been accepted as justified delay: *Jia* at para 90; *Vaziri* at para 57; and *Abrametz* at para 64.

[66] I note the Applicants' submission that *Jia* is distinguishable because would-be immigrants have no right to force the Minister of Citizenship and Immigration [Minister] to set any quota, whereas in this case, the ERC does not have the right to set a quota on the number of appeals it addresses. I do not find this distinction relevant here. The issue of quota in *Jia* was raised in the context of determining whether the Minister owed the applicants a duty to act. In the matter herein, the Respondents concede that such a duty exists.

[67] In addition, I agree with the ERC Chair that there is a reasonable justification for the delay and that it is actively addressing the backlog. As noted above, there was a significant increase in caseload complicated by the complex nature of file reviews. As per the Haig Affidavit, the ERC Chair submits that it has implemented a mechanism to effectively address the backlog, including setting up a priority system and hiring more staff to match the caseload increase when it received funding in mid-2020. The ERC Chair submits its evidence demonstrates that its productivity has increased by 3-fold and that in 2022-2023 it completed 84 matters, the greatest number yet.

[68] Right before the hearing, the ERC Chair provided yet another affidavit sworn by Mr. Haig [Third Haig Affidavit]. In it, Mr. Haig reported that while on July 4, 2023, when the Second Haig Affidavit was filed, the number of outstanding cases before the ERC was 335, as of the date of the Third Haig Affidavit, there are 283 outstanding cases before the ERC. The Third Haig Affidavit also explained that of those 283 total cases currently before the ERC, 263 are appeals that were commenced prior to April 1, 2022, and as such are not subject to the F&R Service Standard, which requires the ERC to issue F&Rs in 75% of files referred after April 1, 2022 within 12 months.

[69] The Third Haig Affidavit further stated that the ERC has received a total of 48 appeals since April 1, 2022; 28 of those matters are complete, with 25 of those 28 (89.3%) having been completed within the 12-month F&R Service Standard, while 18 of the remaining appeals are still within the 12-month period.

[70] The Applicants, on the other hand, point out that the ERC continues to have a "math problem." Even with these numbers, the Applicants argue, the ERC will take many more years before it clears away its entire backlog.

[71] At the end of the day, whether or not the ERC is diligently working toward clearing all backlog cases, as the ERC Chair claims, the evidence does establish the ERC is addressing the backlog in a "methodical and principled manner." While the Applicants may disagree with the ERC's prioritization system that puts their appeals among the lowest priority, the Applicants have not established that the ERC has not provided a satisfactory justification for the delay in dealing with their appeals. Indeed, it was based in part on this prioritization system that some of the RCMP members who were part of the initial application have seen their appeals dealt with by the ERC.

[72] Moreover, as shown in the Third Haig Affidavit, there has been a further reduction in the backlog since the filing of the Second Haig Affidavit. While the Applicants may understandably want the backlog to be cleared faster, the evidence before me indicates that the ERC is working towards clearing the backlog.

D. *Is there a requirement that the Applicants demonstrate significant prejudice, and if so, have the Applicants demonstrated significant prejudice caused by the delay?*

[73] In their written submission, the Applicants identify eight RCMP members whom they claim have been prejudiced by ERC's delay. In sum, the main prejudice they raise with respect to the identified appeals is the prolonged delay in processing. The Applicants submit that while

they were expected to respond to the ERC's request for missing documents within a very short timeframe, the OCGA's own response took significantly longer.

[74] The Applicants also raise a few specific examples of prejudice, but most of them relate to Applicants who are no longer part of this application.

[75] Of the members whose matters remain part of this application, the Applicants cite Eric Humber who alleged the investigator of his harassment complaint was biased. The Applicants also provide an affidavit from Edward Preto who explained in his demand letter that the continued delay and uncertainly was having a significant impact on him.

[76] The Applicants also note that those appealing disciplinary decisions "continue to face the consequences of conduct measures;" will not receive financial interest even if they are ultimately "vindicated;" and maybe required to file a *McNeil* disclosure (the requirement of police to disclose to the prosecuting Crown, as first party disclosure material, findings of serious misconduct by police officers involved in the investigation of the accused).

[77] Last, the Applicants submit the ERC, itself, admitted to prejudicing them because on its website, it acknowledged that the delays have rendered some matters moot or resulted in the resolution of certain harassment complaints with an apology only.

[78] The ERC Chair submits, and I agree, that the Applicants' arguments fail to engage with the Court's jurisprudence on administrative delay in the *mandamus* context: *Chen* at paras 15-16; *Vaziri* at para 52; and *Blencoe* at para 101.

[79] As the SCC stated in *Blencoe*, "delay, without more, will not warrant a stay of proceedings as an abuse of process at common law. Staying proceedings for the mere passage of time would be tantamount to imposing a judicially created limitation period:" *Blencoe* at para 101. In *Abrametz*, the SCC reiterated the notion that delay alone is insufficient to ground an abuse of process claim and that the delay must have directly caused significant prejudice: *Abrametz* at para 43. The Applicants' claim that delay *per se* amounts to prejudice must, therefore, be rejected.

[80] Moreover, prejudice is a question of fact. The Applicants must show the prejudice is attributable to the delay itself, a causation requirement: *Abrametz* at para 68.

[81] In *Abrametz*, at para 69, the SCC provided examples of significant prejudice:

> Prejudice is a question of fact. Examples include significant psychological harm, stigma attached to the individual's reputation, disruption to family life, loss of work or business opportunities, as well as extended and intrusive media attention, especially given technological developments, the speed at which information can travel today and how easy it is to access.

[82] The examples of prejudice the Applicants cite stem from the underlying administrative decision itself and are not exacerbated by the delay: *Abrametz* at paras 67-69.

[83] I also find the Applicants' assertion of prejudice is unsupported by evidence. For example, the Applicants offer no proof of financial entitlements to corroborate their allegation of financial harm, especially given that the financial penalty imposed on the impacted Applicants were on the lower end of the severity scale. With respect to the *McNeil* disclosure, the Applicants have not provided any evidence as to which of the Applicants may be called as a witness and may be subject to this requirement.

[84] At the hearing, the Applicants argued that they did not want to overburden the Court with papers in order to establish prejudice. The Applicants also submitted that *Abrametz* and *Blencoe* dealt with abuse of process to stay a proceeding, as opposed to *mandamus* applications, and can thus be distinguished. I find both of these arguments lack merit. To start, the SCC's instructions with respect to prejudice in *Blencoe* has been applied to *mandamus* proceedings. Second, the Applicants carry the onus of establishing prejudice, as they are the ones seeking a highly discretionary remedy from the Court.

[85] While I do not wish to discount the impact on the Applicants caused by the long wait time for the ERC process to complete, I find the Applicants have not established the existence of significant prejudice as required by the jurisprudence.

E. *Will the order sought be of some practical value or effect?*

[86] Having found that the Applicants have failed to meet the third criterion of the *Apotex* test, the Applicants have thus failed to meet all the requisite requirements for a *mandamus* request.

Nevertheless, I will deal with the remainder of the *Apotex* test as it applies to the application before me.

[87] The ERC Chair submits the remedy the Applicants seek has no practical value or effect, as an order that the ERC cannot possibly comply with can have no practical value.

[88] The ERC Chair points to the complexity of the ERC's review process, the number of documents the ERC needs to review, the need for deep engagement with the case record, cogent legal research and analyses, and a thorough editing process. The ERC Chair reminds the Court that he is solely responsible for issuing each set of F&Rs.

[89] The ERC Chair submits that the impossibility of the Applicants' request is borne out on the statistical record, as it would require the ERC to increase its productivity by 430%.

[90] The Applicants do not address this issue directly. At the hearing, the Applicants submitted that there are options available to the ERC to address this problem but that they will not do it on their own. The Applicants argued that an order from this Court is required to make the government take steps to address this chronic issue.

[91] The Applicants appear to suggest that, if the Court orders a *mandamus*, somehow the Government of Canada and the RCMP would then step up and find a way to clear the backlog. However, a *mandamus* order, if issued, would compel the ERC Chair to comply, with or without additional funding from the government. I pause here to note that, even in the many immigration

cases that the Applicants rely on, and where a *mandamus* order is made, the Court normally prescribes a longer timeframe for the responsible minister to comply with the order.

[92] Also, unlike many of the immigration matters in which *mandamus* is sought, the Court in this case has little information about each of the Applicants' appeal and has no way of assessing whether the appeal in question can in fact be processed within 30 days.

[93] For these reasons, I find that the relief the Applicants seek has no practical value or effect.

F. *Does the balance of convenience favour issuing the mandamus order?*

[94] The ERC Chair suggests that if the *mandamus* order is granted, the Applicants would effectively leap-frog the queue ahead of non-Applicant RCMP members whose matters may be of higher priority than that of the Applicants'. The ERC Chair cites *Jia*, among other cases, for the proposition.

[95] I agree.

[96] As Justice Gleason noted in *Jia*:

> [103] …*mandamus* is an equitable remedy; the Court must therefore be satisfied that it is equitable in the circumstances to make the requested order as the Court of Appeal held in the *Apotex* case. Here, it would not be equitable to grant the requested relief—even if there had been a basis for doing so—as such relief would leap-frog the applicants over other IIP applicants, who have not made applications to the Court….

[97] I note that the Haig Affidavit claims the outstanding matters before this Court represent only 8.5% of its overall backlog. Further, as noted above, all of these matters fall within the three lowest priorities. I agree with the ERC Chair that, granting the *mandamus* would require the ERC to disregard other files in order to comply with the Court's order. As a result, members facing more severe sanctions could be leap-frogged by the Applicants.

[98] The Applicants argue they are not leap-frogging the queue as the issue rests with the government, and the RCMP Commissioner, who they submit is given significant leeway to direct the OCGA, to properly fund and staff the delay the government created. Yet, the mandamus that Applicants are seeking cannot compel the government or the RCMP Commissioner to act.

[99] I acknowledge the Applicants' contention that the F&R Service Standard is, in fact, a type of leap-frogging as it expedites new files at the expense of older ones. However, as noted in the Second Haig Affidavit, the ERC's prioritization system is based on a combination of factors and not solely on the age of the file. Indeed, as noted above, several of the Applicants originally named in the application have had their appeals prioritized in accordance with the ERC prioritization system.

[100] The Applicants also argue that the ERC has a public role and that having such a long delay in the ERC process undermines the public trust in the Government of Canada to deal with harassment and conduct matters. I am not persuaded by this argument. As the Respondents point out, the Applicants are not bringing a representative application on behalf of all RCMP members who are waiting for their F&Rs from the ERC. The application, while no doubt important to the

Applicants, concerns only their appeals and no one else's. Instead, I agree with the AG that a mandamus order would undermine the priority system and delay issuing F&Rs for more pressing appeals.

[101] As such, I find the balance of convenience does not favour issuing the *mandamus* order.

G. *Did the Applicants meet the test for mandamus to compel the ERC to publish its service standards?*

[102] The Applicants submit the only service standard the ERC has issued to address the delay in the issuance of F&Rs is the F&R Service Standard—publishing F&Rs on 75% of matters within 12 months post-referral. The Applicants further submit the ERC "explicitly excluded" their appeals because the F&R Service Standard took effect after their appeals were perfected. The Applicants argue the ERC is not abiding by its duty to publish and meet its service standards on Legacy Cases, which on its own should require this Court to issue a *mandamus* order.

[103] The Applicants submit "nothing in the RCMP Act states that the ERC can self-select which performance data to report on," and that the ERC is required to publish and report on service standards for all matters. The Applicants also allege the ERC has not posted any information about whether it has met its service standards in its annual reports for 2020-2021 and 2021-2022.

[104] The Applicants argue that a purposive reading of section 28.1 must be taken in conjunction with subsection 30(1) that requires the ERC to file reports to the government. The

Applicants further submit that there are broader public interests to have service standards apply to all the cases that are referred to the ERC, not only a subset.

[105] At the hearing, the Applicants argued on the one hand, the 75% F&R Service Standard paints a much rosier picture of how the ERC operates and does not disclose all the inefficiencies, and on the other, such a standard is not a reasonable interpretation of section 28.1, which requires the ERC to meet more than a 75% service standard.

[106] I reject all of the Applicants' submissions, for the following reasons.

[107] Pursuant to section 28.1 of the *RCMP Act*, the ERC has committed to two services standards thus far, the Pre-Screening Service Standard and the F&R Service Standard.

[108] The ERC's first service standard is to pre-screen 85% of all files referred to the ERC within 30 days of receipt. This service standard took effect in April 2020. According to the ERC's 2021-2022 Annual Report, titled "Adapting to New Realities, moving forward!" the ERC met this target; it pre-screened 82% and 98% of all files in 2020-2021 and 2021-2022, respectively. Thus, contrary to the Applicants' contention, the ERC does post information on its service standards.

[109] The ERC also committed to issuing F&Rs in 75% of files referred to the ERC within 12 months of receipt. This service standard took effect on April 1, 2022. This is the service standard that the ERC claims is not applicable to the Applicants' appeals. At the hearing, the ERC Chair

asserted that he did not report on this standard in the 2022-2023 annual report because of the timing. I note this information is not in the record before me. However, whether or not the ERC Chair has failed to report on a service standard that has only taken effect in less than two years, the Applicants' request must still be denied for the following reasons.

[110] First, I find the Applicants have misapprehended the language of the *RCMP Act* by asserting that the ERC does not have discretion to decide which files form part of its service standards. The fact that section 28.1 allows for the ERC to specify circumstances under which time limits do not apply, suggests that it gives it the full discretion to specify which files are subject to its service standards and which are not. As such, I agree with the ERC Chair that he has the discretion to decide when to issue service standards, and the type of service standards he issue.

[111] Second, I agree with the ERC Chair that the Applicants' arguments on the issue of service standards are not grounded in any of the *Apotex* criteria.

[112] In particular, the duty to publish and report on service standards is ultimately owed to Parliament and the Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs, and not to the Applicants personally. A duty owed to the general public flowing from statutory responsibilities cannot give rise to a *mandamus* remedy in favour of a particular individual: *Canadian Union of Public Employees v Canada (Minister of Health)*, 2004 FC 1334 at paras 41-43.

[113] Finally, it is unclear what the Court could order the ERC to do with respect to the service standards. As the evidence before me confirms, the ERC's mandate covers a wide range of matters with varying importance in terms of the nature of the case (e.g. harassment vs. non-harassment cases) and severity of consequences (e.g. a penalty of one day pay vs. dismissal). It would be inappropriate for the Court to direct the ERC to adopt a specific service standard or standards to cover all possible cases and mandating them to deal with these various cases within a specific timeline. Viewed in that light, the Applicants' demand that the ERC "publish and report on its service standards applicable to every file before the ERC" is so broad as to render it practically meaningless.

[114] For all of these reasons, I dismiss the application and decline to issue the *mandamus* orders sought by the Applicants.

[115] I do not find this to be an appropriate case to order costs.

VI. Conclusion

[116] The application for judicial review is dismissed.

JUDGMENT in T-1576-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no order as to costs.

"Avvy Yao-Yao Go"
Judge

APPENDIX A

Federal Courts Act (R.S.C., 1985, c. F-7)
Loi sur les Cours fédérales (L.R.C. (1985), ch. F-7)

Extraordinary remedies, federal tribunals	**Recours extraordinaires : offices fédéraux**
18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction	**18 (1)** Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :
(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and […]	**a)** décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral; […]

Royal Canadian Mounted Police Act (RSC, 1985, c R-10)
Loi sur la Gendarmerie royale du Canada (LRC (1985), ch R-10)

Royal Canadian Mounted Police External Review Committee **Establishment and Organization of Committee**	**Comité externe d'examen de la Gendarmerie royale du Canada** **Constitution et organisation du Comité**
Committee established	**Constitution du Comité**
25 (1) There is hereby established a committee, to be known as the Royal Canadian Mounted Police External Review Committee, consisting of a Chairperson, a Vice-chairperson and not more than three other members, to be appointed by order of the Governor in Council.	**25 (1)** Est constitué le Comité externe d'examen de la Gendarmerie royale du Canada, composé d'au plus cinq membres, dont le président et un vice-président, nommés par décret du gouverneur en conseil.
[…]	[…]
Duties of Committee	**Fonctions du Comité**
28 (1) The Committee shall carry out such functions and duties as are assigned to it by this Act.	**28 (1)** Le Comité exerce les fonctions que lui attribue la présente loi.
[…]	[…]
Service standards respecting time limits	**Normes de service régissant les délais**

28.1 The Committee 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. […]	**28.1** Le Comité établit et rend publiques des normes de service concernant les délais pour le traitement des griefs et des dossiers d'appels qui font l'objet d'un renvoi devant lui et prévoyant les circonstances dans lesquelles ces délais ne s'appliquent pas ou peuvent être prorogés. […]
Annual report **30 (1)** The Committee Chairperson shall, within three months after the end of each fiscal year, submit to the Minister a report of the activities of the Committee during that year and its recommendations, if any, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it. **Performance in relation to time limits** **(2)** The report must contain information respecting the Committee's performance in relation to the service standards established under section 28.1. […]	**Rapport annuel** **30 (1)** Le président du Comité présente au ministre, dans les trois premiers mois de chaque exercice, le rapport d'activité du Comité pour l'exercice précédent, et y joint ses recommandations, le cas échéant. Le ministre le fait déposer devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception. **Normes de service concernant les délais à respecter** **(2)** Le rapport contient des renseignements concernant le rendement du Comité en ce qui a trait aux normes de service établies en vertu de l'article 28.1. […]
Referral to Committee **45.15 (1)** If an appeal relates to any of the following conduct measures, or to any finding that resulted in its imposition, the Commissioner, before considering the appeal, shall refer the case to the Committee: **(a)** a financial penalty of more than one day of the member's pay; **(b)** a demotion; **(c)** a direction to resign; **(d)** a recommendation for dismissal; or **(e)** a dismissal […]	**Renvoi devant le Comité** **45.15 (1)** Avant d'étudier un appel relatif aux mesures disciplinaires ci-après ou aux conclusions qui les ont justifiées, le commissaire renvoie le dossier devant le Comité : **a)** une pénalité financière qui excède une somme équivalente à une journée de salaire du membre; **b)** la rétrogradation; **c)** l'ordre de démissionner; **d)** une recommandation de congédiement; **e)** le congédiement. […]

Request by member **(3)** Notwithstanding subsection (1), the member whose case is appealed to the Commissioner may request the Commissioner not to refer the case to the Committee and, on such a request, the Commissioner may either not refer the case to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the case to the Committee.	**Demande du membre** **(3)** Par dérogation au paragraphe (1), le membre dont la cause est portée en appel devant le commissaire peut lui demander de ne pas la renvoyer devant le Comité; le commissaire peut accéder à cette demande, ou la rejeter s'il estime plus indiqué un renvoi devant le Comité.

Royal Canadian Mounted Police Regulations, 2014 **(SOR/2014-281)**
Règlement de la Gendarmerie royale du Canada (2014) **(DORS/2014-281)**

Reference to Committee **17** Before an adjudicator, as defined in section 36 of the *Commissioner's Standing Orders (Grievances and Appeals)*, who is seized of any of the following appeals considers the appeal, the adjudicator must, subject to section 50 of those Standing Orders, refer it to the Committee: **(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 Act; **(c)** an appeal of a written decision discharging or demoting a member under paragraph 20.2(1)(e) of the Act; **(d)** an appeal of a written decision discharging or demoting a member under paragraph 20.2(1)(g) of the 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, or	**Renvoi devant le Comité** **17** Sous réserve de l'article 50 des *Consignes du commissaire (griefs et appels)*, avant que l'arbitre, au sens de l'article 36 de ces consignes, saisi de l'un des appels ci-après étudie cet appel, il le renvoie devant le Comité : **a)** dans le cas d'un plaignant, l'appel d'une décision écrite visée au paragraphe 6(1) et à l'alinéa 6(2)b) des *Consignes du commissaire (enquête et règlement des plaintes de harcèlement)*; **b)** l'appel d'une décision écrite révoquant la nomination d'un membre faite en vertu de l'article 9.2 de la Loi; **c)** l'appel d'une décision écrite faite en vertu de l'alinéa 20.2(1)e) de la Loi de licencier ou de rétrograder un membre; **d)** l'appel d'une décision écrite faite en vertu de l'alinéa 20.2(1)g) de la Loi de licencier ou de rétrograder un membre pour l'un des motifs suivants : **(i)** avoir une déficience, au sens de la *Loi canadienne sur les droits de la personne*, **(ii)** s'être absenté sans autorisation de ses fonctions ou avoir abandonné sans autorisation une fonction qui lui a été assignée,

(iii) conflict of interest; **(e)** an appeal of a written decision ordering the stoppage of a member's pay and allowances under paragraph 22(2)(b) of the Act. […]	**(iii)** être en conflit d'intérêts; **e)** l'appel d'une décision écrite ordonnant la cessation du versement de la solde et des indemnités d'un membre en vertu de l'alinéa 22(2)b) de la Loi. […]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1576-22
STYLE OF CAUSE:	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 HARLAND VENEMA v ROYAL CANADIAN MOUNTED POLICE EXTERNAL REVIEW COMMITTEE, THE CHAIRPERSON OF THE ROYAL CANADIAN MOUNTED POLICE EXTERNAL REVIEW COMMITTEE and THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	FEBRUARY 21, 2024
JUDGMENT AND REASONS:	GO J.
DATED:	APRIL 10, 2024

APPEARANCES:

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