Federal Court  Cour fédérale

Date: 20240920

Docket: T-869-22

Citation: 2024 FC 1469

Ottawa, Ontario, September 20, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

MANIGEH SABOK SIR

Applicant

and

ROYAL CANADIAN MOUNTED POLICE

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Manigeh Sabok Sir, appeals the decision of Prothonotary (now referred to as "Associate Judge") Aalto that struck her application ("the Application") under section 41 of the *Privacy Act*, RSC 1985, c P-21 ("the *Act*"), on the basis that it was moot and premature.

[2] The Applicant had applied for records from the Royal Canadian Mounted Police ("RCMP") relating to her arrest and detention in December 2020. The RCMP failed to meet its deadline for responding to this request. The Office of the Privacy Commissioner ("OPC") upheld

the Applicant's complaint about the RCMP's failure to respond. She then filed an application in this Court seeking to force the RCMP to hand over the requested documents.

[3] Before the Application was heard, the RCMP sent the Applicant two compact discs ("CDs") containing the requested documents, subject to certain redactions. The RCMP then moved to dismiss the Application, arguing it was now moot. The Respondent also argued that the Application was premature to the extent that the Applicant disagreed with the content of the disclosure, because she had not filed a complaint about that with the OPC.

[4] Associate Judge Aalto struck the Application without leave to amend, finding that it was moot because the Applicant had received the documents she had requested. In addition, Associate Judge Aalto found that the Application was premature because she had failed to file a complaint with the OPC about the content of the disclosure. Associate Judge Aalto ordered the Applicant to pay costs to the Respondent. He also made certain ancillary orders, including that the Applicant shall only communicate with the Registry in Edmonton, that such communication shall be in writing or by email, and that she must serve all communication on Respondent's counsel by email (rather than bypassing counsel and communicating with the Respondent directly).

[5] The Applicant appeals this decision. For the reasons that follow, I find that the appeal should be granted in part. The order regarding costs is set aside because the Respondent did not seek its costs on the motion to strike and the Applicant was never advised that a cost award might be made against her. All of the other grounds of appeal are dismissed.

I. Background

[6] On January 22, 2021, the Applicant requested records from the RCMP relating to her arrest and detention in British Columbia in December 2020, as well as records relating to a complaint she had made to the RCMP. The RCMP requested an extension of time to respond to the request, which meant that its response deadline was March 23, 2021. It did not meet that deadline.

[7] On December 20, 2021, the Applicant submitted a complaint to the OPC that the RCMP had failed to respond to her request for documents. On March 14, 2022, the OPC found that her complaint was well founded because the RCMP's failure to respond to the Applicant's request in a timely way amounted to a deemed refusal.

[8] On April 26, 2022, the Applicant filed her application for judicial review in this Court, challenging the deemed refusal under section 41 of the *Act*. On May 26, 2022, the Respondent provided a response to the Applicant's request (this is disputed by the Applicant, as discussed below). The letter accompanying the disclosure stated:

> Based on the information provided, a search for records was conducted in Cranbrook and Creston British Columbia. Please note that all the information reviewed qualified for exemption pursuant to subparagraph 22(1)(a)(i) and 22(1)(a)(ii) of the *Act*. We have, however, exercised the discretionary powers provided by the *Act* and have released some of the information. Enclosed is a copy of all the information to which you are entitled.
>
> Please be advised that you are entitled to lodge a complaint with the Privacy Commissioner concerning the processing of your request…

[9] In June 2022, the Respondent filed a motion to strike the Application, arguing that the matter was now moot because it had responded to the Applicant's request as required by the *Act*. The Applicant opposed this motion, and also filed several motions of her own. It is not necessary to discuss the Applicant's motions in detail at this stage; certain portions of this material are relevant for the purposes of this appeal and these are discussed below.

[10] The Applicant's Motion Record in response to the Respondent's motion to strike dealt with a number of procedural questions, including the Applicant's claim that she was never served with the Respondent's Notice of Appearance. The Applicant also claimed that counsel for the Respondent should not be allowed to act for the RCMP in this matter, because she represented the Crown in other litigation launched by the Applicant (Court File No.: T-1342-16) and was therefore in a conflict of interest. Based on these grounds, the Applicant argued that she should not be required to respond to the motion to strike.

[11] Towards the end of her written submissions on the motion to strike, the Applicant stated that if the Court determined she had to respond to the motion, despite the issues she had raised, "then the Applicant will submit a response to the issues in [the Respondent's] motion record."

[12] In other motions filed by the Applicant around the same time, she provided the substance of her response to the Respondent's mootness argument, namely that her Application was not moot because she had been unable to retrieve the material from the two CDs which the RCMP had provided. This is explained in the following extract from an affidavit provided by the

Applicant in connection with her motion for leave to file further affidavits in response to the Respondent's motion. This was cited by Associate Judge Aalto in his reasons:

> 1. I have not received a a (*sic*) reply to my *Privacy Act* request from the Respondent until the present day; although I have tried to read the 2 CDs, which were provided by the Respondent, at numerous places with computer access in Darmstadt and Frankfurt, Germany and also at several private persons' computers, the alleged information could not be retrieved until the present day.

[13] Associate Judge Aalto found that the Application was moot because the Applicant admitted that she had been able to retrieve the information from the CDs. He appears to refer to the final portion of the statement cited above (i.e., "the alleged information could not be retrieved until the present day") and also refers to correspondence the Applicant sent to the Court dated August 18, 2022. That correspondence deals with several concerns expressed by the Applicant. In regard to the mootness argument, it appears that Associate Judge Aalto was referring to the Applicant's statement that the Respondent "had neither provided the from (*sic*) the Applicant requested information over the *Privacy Act* until the present day…"

[14] In the decision under appeal, Associate Judge Aalto cited the Federal Court of Appeal decision in *Statham v Canadian Broadcasting Corporation*, 2010 FCA 315 [*Statham*], which set out the three prerequisites for an application to this Court relating to the disclosure of records:

a) the applicant must have been refused access to a requested record;

b) the applicant must have complained to the Office of the Information Commissioner; and

c) the applicant must have received a report of the Commissioner.

[15] In this case, Associate Judge Aalto found there was “no continuing refusal to disclose as the Applicant has the records.” He went on to consider whether to exercise his discretion to hear the case on the basis that there was a good reason to continue with the matter, finding that there was no reason to allow the Application to proceed, because there was no adversarial context, hearing the matter would constitute a waste of judicial resources and the hearing would have no practical effect on the rights of the parties since there was no remedy available (as the only order available to the Court under section 41 was to order disclosure, which had already occurred).

[16] In addition, Associate Judge Aalto found that the Application should also be struck because the Applicant had not pursued all available remedies and was therefore premature, citing *Blank v Canada,* 2016 FCA 189 at para 30. The Respondent had argued that to the extent the Applicant’s concerns related to the adequacy of the response to her request, she needed to file a complaint with the OPC before this Court would have jurisdiction to consider her concerns. Associate Judge Aalto agreed with that submission.

[17] Finally, Associate Judge Aalto ordered the Applicant to pay costs to the Respondent in the amount of $2,500.00, payable forthwith, on the basis that the Applicant’s conduct during the course of the proceeding amounted to an abuse of the Court’s process. He also ordered that any future filings by the Applicant be made in the Edmonton Registry office, noting that the Applicant had filed certain materials in other offices after she was unsuccessful in doing so in Edmonton.

[18] The Applicant appeals this decision, under Rule 51 of the *Federal Courts Rules* ("Rules"), SOR/98-106.

II. Issues and Standard of Review

[19] The Applicant repeats a number of claims and concerns she had raised previously concerning several different matters. I will briefly discuss certain of these points at the end of these reasons. The relevant legal issues raised by the Applicant on this appeal can be grouped into the following four questions:

1. Did the Chief Justice's Order putting this proceeding into case management overturn or override the Order striking the Application?

2. Was it an error to rule on the motion to strike before dealing with the Applicant's claim that Respondent's counsel was in a conflict of interest?

3. Was it an error to rule that the Application is moot given the evidence that the Applicant has never been able to retrieve the information from the CDs?

4. Was the cost award against the Applicant justified, in the circumstances of this case?

[20] No standard of review applies to the first issue. The Chief Justice's Order was issued after the date of the decision under appeal and thus it must be dealt with as a new matter.

[21] The other issues raise questions of mixed fact and law, which are subject to review on the standard of "palpable and overriding error": *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 FCR 331; *Housen v Nikolaisen*, 2002 SCC 33. This is a highly deferential standard, which has been described in a variety of ways: see *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 FCR 344. A frequently-cited description was set out in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46 (cited with approval in *Benhaim v St-Germain*, 2016 SCC 48, [2016] 2 SCR 352 at para 38):

> Palpable and overriding error is a highly deferential standard of review…"Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

[22] This is the standard that applies to the final three issues in this matter.

III. Analysis

[23] Three of the four issues raised by the Applicant can be dealt with relatively quickly, and these will be discussed next. I will then turn to the question of whether the finding that the Application is moot and premature constitutes a palpable and overriding error. Finally, I will comment on some of the Applicant's other submissions regarding the ancillary orders.

A. *The Case Management Order*

[24] The Applicant claims that the Chief Justice's Order placing this matter into case management had the effect of reversing or overriding the Order striking her Application (the Order under appeal). She argues that the Order under appeal was issued on September 23, 2022, while the Chief Justice's Order placing the matter into case management was made on September 28, 2022. The Applicant notes, in particular, the specific wording of the Chief Justice's Order: "This proceeding shall continue as a specially managed proceeding." She argues that this must mean that the Order striking her application no longer applies.

[25] The Applicant submits that the Chief Justice's Order was made in response to various complaints she had expressed about the handling of her application, including the failure of the Respondent to file a Notice of Appearance, and her claim that Associate Judge Ring should not have dealt with this application after having ruled against her in another matter. She claims that in response to these arguments, the Chief Justice's Order placing the matter into case management must have overtaken and implicitly reversed the Order of Associate Judge Aalto finding her Application to be moot.

[26] I disagree.

[27] The Order of the Chief Justice was made pursuant to Rules 47 and 384. Rule 47 enables a Judge or Associate Judge to exercise discretionary powers to act on their own motion in certain circumstances: *Mazhero v Fox*, 2014 FCA 226 at para 9; see also *In re motion for*

reconsideration of the Court's Order in Peshdary v AGC (2018), 2020 FC 137 at para 17. This means that the Chief Justice did not need to wait for a party to bring a motion seeking case management. In exercise of his discretion, and guided by the general principle stated in Rule 3 that the Rules should be interpreted an applied "so as to secure the just, most expeditious and least expensive outcome…", the Chief Justice decided that this matter should be put into case management, as authorized by Rule 384: see *Penney v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FC 877 at para 5.

[28] The Chief Justice's Order was a purely procedural step, and did not have the effect of overturning or overriding the Order under appeal. That Order remains valid unless and until it is overturned (in whole or in part) on appeal. The Applicant has long been aware of this. She wrote to the Court on September 29, 2022, raising the question of the impact of the Case Management Order. By written Direction dated October 6, 2022, issued by Justice McVeigh (acting as Case Management Judge pursuant to the Order of the Chief Justice), the parties were advised that the Order of Associate Judge Aalto "is in force and effect." The Direction explained that the Case Management Order had been issued in anticipation of the Applicant's appeal of that Order.

[29] I therefore reject the Applicant's argument that the Chief Justice's Order placing this matter into case management had any substantive impact on the Order of Associate Judge Aalto striking her Application as moot and premature.

B. *The Alleged Conflict of Interest*

[30] The Applicant has made submissions at various stages in this proceeding to the effect that counsel for the Respondent should not be permitted to represent the RCMP because she acted for the RCMP (and the Canada Border Services Agency) in another matter brought by the Applicant (Court File No.: T-1462-16). The Applicant claimed that this other proceeding was still active because she had filed an Application for Leave to Appeal to the Supreme Court of Canada (SCC File No.: 40811) (which was subsequently dismissed on February 9, 2023). The Applicant argued that because Respondent's counsel would have access to sensitive or confidential information from the other file that she could use in the current proceeding, the Court should rule that she could not represent the Respondent in this matter.

[31] I categorically reject this argument. The Applicant has cast unfounded aspersions on counsel for the Respondent with no justification. She has persisted in raising these claims by letter, or in written submissions, rather than bringing a formal motion. In doing so, the Applicant has failed to follow the guidance provided by the Court as to the proper procedure to follow if she wanted to pursue this claim. Worse, the Applicant has failed to offer a scintilla of evidence to back up her very serious allegations.

[32] The Respondent is entitled to its counsel of choice, unless there is some substantial impediment to that individual acting in a particular matter. The fact that counsel has acted for the Respondent in another matter brought by the Applicant is not, in itself, a basis for alleging conflict of interest. There is no basis for any claim of conflict of interest.

[33] As to the Applicant's failure to follow the proper procedure, the following sequence of events is telling. The Respondent's counsel served and filed a Notice of Appearance on May 4, 2022. The following day the Applicant wrote a letter to the Court, expressing her surprise that Respondent's counsel was acting for the RCMP in this matter and claiming that she should not be allowed to represent the Respondent because she was in a conflict of interest. On May 9, 2022, Associate Judge Coughlan issued a Direction reminding the Applicant "that any concerns of the nature raised in the May 5, 2022, correspondence may be addressed formally, on motion with proper service upon the Respondent and not by informal, ex parte communications with the Court."

[34] The Applicant has failed to follow this guidance, or to bring forward any substantive evidence to back up her claim of conflict of interest. She has not specified any confidential information that Respondent's counsel possesses that would justify any finding of conflict of interest. The two proceedings are distinct; although both matters involve claims against the RCMP, they relate to different locations and time frames.

[35] Simply put, I can find no basis to support any claim that Respondent's counsel is in a conflict of interest. The Applicant's argument that Associate Judge Aalto erred by failing to deal with the conflict of interest claim before he ruled on the motion to strike has no basis in law or in fact. I reject it.

C. *The Costs Award*

[36] Associate Judge Aalto ordered the Applicant to pay costs to the Respondent in the amount of $2,500.00, payable forthwith. This followed his discussion of the conduct of the Applicant in the course of this litigation, which he found to be abusive, including her repeated objections to service of documents by email and insistence upon personal service of her representative in Prince Albert, Saskatchewan, despite her use of email in her exchanges with the Court and the Respondent.

[37] Associate Judge Aalto also found that when the Applicant "encounters her documents not being filed in one Registry Office of the Court, she tries to do so through another office of the Court." He stated that this conduct was "particularly egregious" given the Direction issued by Associate Judge Ring which stated explicitly that once the motion to strike was served and filed, no other motions are allowed, except in response to the motion to strike.

[38] In regard to the Applicant's repeated objections to service of documents by email in the absence of her consent to that form of service, Associate Judge Aalto noted that the Court's *Practice Direction COVID-19: Update #7* (January 18, 2021) states that parties who have provided an electronic address on a document submitted to the Court were deemed to have consented to service by email. In this case, the Applicant provided her email address on her Notice of Application instituting this proceeding, and therefore had no basis to object to service by that means. In any event, she had evidently received the Respondent's motion to strike and

had responded to it. In light of that, Associate Judge Aalto found that "(h)er complaints that she has not been served are entirely without merit."

[39] At an earlier point in the decision, Associate Judge Aalto noted that the Applicant was "no stranger to litigation in this Court," referring to her prior claim in Court File No.: T-1342-16 as well as her appeal to the Federal Court of Appeal in Court File No.: A-59-21. He noted that several cost awards had been made against the Applicant, totalling $7,200.00 as of the date of his decision. These awards remained unpaid, as did the Order for security for costs that was granted since the Applicant lives in Germany and has no assets in Canada. In the course of that discussion, Associate Judge Aalto described the Applicant's conduct in the following way:

> Notably, the order of Chief Justice Noël dismissing the appeal and thereby the action, observed that notwithstanding an Order of the Federal Court of Appeal prohibiting the Applicant (Appellant) from bringing any further proceedings or motions in the appeal until the security for costs was paid, the Applicant presented more than 14 motions and letters of request. That is a pattern of conduct that the Applicant is following on this application.

[40] Based on all of this, Associate Judge Aalto stated the following: "In all, the Court must send a strong message to those that misuse and abuse the Court. A costs award of $2,500.00, the amount the Applicant was seeking in her motions, is appropriate in all of the circumstances."

[41] The Applicant argues that Associate Judge Aalto erred in finding her proceeding to be abusive, pointing to the Chief Justice's Case Management Order as proof that her claim is meritorious. In addition, she notes that the Respondent did not seek its costs on the motion, and therefore none should have been awarded.

[42] On this point, the Respondent argues that costs are highly discretionary and may be awarded against self-represented litigants. The ability to pay is not a factor in assessing costs. The Respondent contends that the Applicant had ample opportunity to oppose a cost award in response to the motion to strike, noting that she is very familiar with the potential for a cost award to be made against her, based on her previous litigation history.

[43] It is trite law that cost awards are highly discretionary, with a wide range of factors that can be taken into account in deciding whether a cost award is justified and in fixing the amount: *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6, [2013] 1 SCR 87. To succeed in appealing a cost award, a party must demonstrate a palpable and overriding error.

[44] In this case, I am satisfied that the cost award should be set aside, solely on the basis that the Respondent stated it was not seeking its costs on the motion to strike, and no notice was given to the Applicant that costs were being considered. The Applicant was therefore not provided adequate notice that a cost award might be made against her. As a general rule, costs should not be awarded where none are requested: *Chen v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 [*Chen*] at para 60, citing *Exeter v Canada (Attorney General)*, 2013 FCA 134 [*Exeter*]; see also *Haynes v Canada (Attorney General)*, 2023 FCA 244 at para 5. The rationale behind this rule was explained in *Chen* at para 60, citing *Exeter*:

> The idea behind this general prohibition is that awarding costs in these circumstances would be a breach of the duty of fairness as it would "subject the party against whom they are awarded to a liability when the party had had no notice or an opportunity to respond" (*Exeter* at para 12).

[45] The Respondent correctly points out that the Applicant was not a stranger to litigation and knew that costs might be awarded against her. However, absent some indication from the Respondent or the Court that a cost award was being contemplated on the motion to strike, the Applicant cannot be held to have reasonably anticipated that a cost award might be made in this particular proceeding. I will therefore quash and set aside that aspect of the decision under appeal.

[46] One further comment must be added on this point. I emphasize as forcefully as possible that my decision on this point should not be understood as condoning the Applicant's conduct during the course of this litigation, or her failure to pay security for costs as well as prior cost awards that have been made against her. I agree with much of what Associate Judge Aalto said on this matter, and in other circumstances such conduct might well justify an award of costs, indeed costs at a higher level than usual: see *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, [2003] 3 SCR 371 at para 25; *Gordon v Canada*, 2019 FC 1348 at para 17.

[47] Having dealt with the first three issues, what remains is the main question on this appeal: mootness and prematurity.

D. *Was it a Palpable and Overriding Error to Find the Application was Moot and Premature?*

[48] The crux of the Applicant's argument on this point is that she was never able to retrieve the information on the two CDs sent to her by the RCMP, and therefore her Application was not moot or premature. She submits that the RCMP has never actually provided the requested information in a format that she can access, and therefore it was an error for Associate Judge Aalto to find that her Application was moot. For similar reasons, she claims that her Application is not premature.

[49] The sequence of events relevant to this question as demonstrated in the record includes the following key exchanges:

- May 26, 2022:RCMP writes to Applicant, enclosing two CDs with the requested information, subject to certain redactions;

- June 13, 2022:Applicant emails RCMP advising that her representative in Saskatchewan received the CDs but was unable to retrieve the information on public access computers located in Prince Albert, Saskatchewan;

- June 27, 2022: Applicant sends follow up to Respondent advising that her representative mailed the CDs to Germany and that she also cannot read these CDs on her computer. She outlines that she went to the public library and "two computer specialized facilities", but was still not able to read the CDs. She requests that the Respondent send the files via email or fax;

- August 9, 2022: Respondent's counsel emails Applicant to confirm that she is able to retrieve information from a USB storage device, so that Respondent can re-send the disclosure package by that means;

- August 9, 2022: Applicant replies that she does not mind what format the disclosure is sent in, as long as it is readable. She asks that if the disclosure is sent as a hardcopy that it be mailed to her German address;

- August 10, 2022: Respondent requests that Applicant provide her German mailing address so that the USB can be mailed to that address;

- August 11, 2022: Applicant sends her mailing address to RCMP's ATIP email and writes to Respondent's counsel confirming that she did so.

[50] There is no information in the record about any further exchange, or any confirmation from the RCMP that it sent the information to the Applicant on a USB or in a hard copy. The Applicant's affidavit on the appeal states that she never received the USB containing the information, while the Respondent's record is silent on this point.

[51] The Applicant argues that Associate Judge Aalto erred in finding her Application to be moot, because she has never received the information she requested. Although the Applicant's record in response to the motion to strike did not contain evidence or arguments on this point, she had filed other motions during the same period and these were cited, and to some extent

relied on, by Associate Judge Aalto in his decision, so it is clear that both the Respondent and the Court were aware of the Applicant's position that she was unable to retrieve the information.

[52] As noted earlier, Associate Judge Aalto found that the Applicant had conceded that she had, in fact, been able to obtain access to the information on the CDs. This finding is apparently based on her statement that she had not received a reply to her request under the *Act* and "the alleged information could not be retrieved until the present day." I acknowledge that one way of understanding this phraseology is that the Applicant was only able to access the information on the CDs on the day she swore her affidavit. Another interpretation is that the Applicant has never been able to retrieve the information, up to and including the day she swore her affidavit. In my view, the latter view is more plausible and consistent with the weight of the evidence. Associate Judge Aalto's finding that the Applicant's statement amounted to an "admission," with respect, runs counter to the rest of the evidence from the Applicant and her representative.

[53] Based on the foregoing, I cannot accept Associate Judge Aalto's strained and implausible interpretation of the Applicant's evidence. This finding cannot stand. That is not, however, the end of the story on this issue. The question remains whether it was a palpable and overriding error for Associate Judge Aalto to find that the Respondent did not – as a matter of substance – refuse to provide the information requested by the Applicant. If not, the finding that the Application is moot and premature cannot be disturbed.

[54] In *X v Minister of National Defence*, [1991] 1 FC 670, [1990] FCJ No 1081 [*X v DND*], at para 13, the Court stated that "unless there is a genuine and continuing refusal to disclose… no

remedy can be granted by this Court." As discussed in *Lambert v Canada (Canadian Heritage)*, 2022 FC 553 at para 40, the Federal Court of Appeal found in *Canada (Information Commissioner) v Canada (National Defence)*, 2015 FCA 56 [*OIC v DND*] at para 57 that the decision in *X v DND* should not be followed insofar as it found that the Court lacked jurisdiction to hear an application where there had been a deemed refusal.

[55] However, there is a wealth of subsequent jurisprudence from the Federal Court of Appeal and this Court confirming the requirement for an ongoing and genuine refusal as a pre-condition for the Court's jurisdiction to consider an application under section 41: see, for example, *OIC v DND* at para 73; *Constantinescu v Canada (Correctional Service)*, 2021 FC 234 [*Constantinescu*] at para 58.

[56] In this case, three main points emerge from the sequence of events relating to the Respondent's response to the Applicant's request for information under the *Act*. First, the Applicant had advised the Respondent that she had been unable to retrieve the information from the CDs that were sent to her, and that she was open to receiving the requested information by any means that would allow her to actually access it. Second, the Respondent had offered to provide the information to her on a USB, and had asked for her mailing address in Germany, so that it could send the USB to her directly. Third, there is no evidence that the USB was ever sent to the Applicant (the Respondent's record is, unfortunately, silent on this point), and her affidavit in this proceeding states she has never received it. The question that arises from all of this is whether this is a case where there has been a "refusal" to provide the information.

[57] As discussed above, there is ample case law confirming that one pre-condition to this Court's consideration of an application under section 41 of the *Act* is that the government department has refused to provide the information requested: see the discussion in *Constantinescu*. If the government department has provided information in response to the request under the *Act*, many prior cases have found that applications under section 41 are thereby rendered moot: see *OIC v DND*; *Khan v Canada (Citizenship and Immigration)*, 2021 FC 995; *Burlacu v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1290. This includes situations where the applicant is dissatisfied with the contents of the disclosure, for example where information has been withheld on the basis of a claimed exemption under the *Act*.

[58] In *Sandiford v Canada (Attorney General)*, 2023 FC 1711 [*Sandiford*], Justice Rochester (now Rochester J.A.) found that an application under section 41 of the *Act* was moot because the Respondent had provided a response to the request after the application was filed. It should be noted that in that case, Mr. Sandiford was not satisfied with the release because all of the information he had requested was exempted from release by virtue of sections 26 and 27 of the *Act*. The Respondent argued that the application was moot, and if Mr. Sandiford had an objection to the exemptions that were claimed he had to file a new complaint with the OPC before the Court could deal with that question.

[59] Following a review of the applicable jurisprudence, Rochester J.A. agreed with the Respondent's position. She found that Mr. Sandiford's complaint had been "premised on there being no response from the [Respondent]… but the refusal to respond has now been remedied." (at para 20). Rochester J.A. stated: "No matter how imperfect and incomplete the [Respondent's]

Response may appear to Mr. Sandiford, it is not open to the Court to consider that matter now that it is moot" (citing *Sheldon v Canada (Health)*, 2015 FC 1385 at paras 21, 25; *Khan v Canada (Citizenship and Immigration)*, 2021 FC 995 at paras 27-30; see also *Cumming v Canada (Royal Mounted Police)*, 2020 FC 271 [*Cumming*] at para 27).

[60] Applying the guidance from the case law to the facts of this case, and after much reflection, I have concluded that this is not a situation where there has been a "genuine and continuing" refusal to disclose information. Therefore, there is no basis to disturb the finding that the Application is moot.

[61] The Applicant has clearly received the letter from the RCMP together with the CDs. Her complaint relates to the form or format of the disclosure, on the basis that she states she was unable to retrieve the information from the CDs. The Respondent, on the evidence before me, did not "refuse" to provide her the information she has requested – subject to certain redactions. Instead, the record shows that the RCMP provided it to her on CDs, and then offered to provide the information to the Applicant in another format that she can access. On the record before me, it is not clear whether this has happened, but that does not transform this case back into a situation where there has been a refusal to disclose.

[62] On this point, a few comments are pertinent. First, CDs are a commonly-used format for sharing large volumes of information. The information on a CD can usually be retrieved using software that is generally available. Second, USBs are also a common form of storing large amounts of information, and they too are generally readable using commonly available software

(although not all computers will have a port into which they can be inserted). The main point of all of this is that the RCMP did not resort to some exotic or esoteric means of delivering the information to the Applicant, in an effort to evade responding to her request.

[63] I hasten to add that my finding might have been different had there been evidence tending to show that the government department's actions were tainted by the appearance of bad faith amounting to a refusal in substance if not in form. For example, if a department had sought to frustrate an application to the Court by repeatedly sending a response containing deliberately manipulated copies that render them unreadable, or if the material was otherwise inaccessible for some reason, its conduct might well be found to amount to a continuing refusal. There is no suggestion of that in this case, and the message from Respondent's counsel to the Applicant offering to send her the information in another format so that she can access it speaks to a good-faith willingness to respond to her request.

[64] On balance, I find that this case is closer to the situation in *Sandiford* than to a true "refusal". Recall that in *Sandiford* the documents that were disclosed appear to have been completely redacted; Mr. Sandiford did not gain access to any of the substance of what he had requested. Yet, the Court treated the case as one where disclosure had been made, and the continuing objection related to the contents of the record. Although these are not identical facts to the case before me, I find the example to be telling. In this case, the Applicant claims that there has been a continuing refusal because she could not gain access to the substance of the disclosure. But the RCMP sent her the requested material and offered to provide it in another format when advised that the Applicant could not retrieve the information from the CDs. Like

Sandiford, this strikes me as an objection to the form or format of the disclosure rather than a continuing and genuine refusal to provide the requested information.

[65] My conclusion on this point is bolstered by the fact that the Applicant's complaint to the OPC was about the Respondent's deemed refusal to respond. It did not address the form or format of the response, or her inability to retrieve the information that was provided. That question has never been investigated by the OPC, and such a complaint and investigation is necessary before this Court can examine an application under section 41 of the *Act*: see *Canada (Public Safety and Emergency Preparedness) v Gregory*, 2021 FCA 33 [*Gregory*] at para 8.

[66] The Applicant says that her application is not moot because there remains an adversarial context and there is a remedy available to the Court, namely ordering the Respondent to provide the requested information. She cites the decision in *Rounthwaite v Canada (Environment)*, 2007 FC 921. I am not persuaded. Decisions on mootness are highly discretionary and fact-dependent; each case will turn on its own particular facts and circumstances. In this case, for the reasons explained above, there is no longer an adversarial context in relation to the gravamen of the Applicant's complaint to the OPC and her Application to this Court – which solely related to the RCMP's refusal to provide the information. In light of that, there is no practical remedy available to the Court, since there would be no purpose in ordering the RCMP to do again that which it has already done – namely to provide the information to the Applicant.

[67] Based on the analysis set out above, I am not persuaded that the finding that the Application is moot amounts to a palpable and overriding error. While I do not subscribe to

certain elements of the analysis of Associate Judge Aalto, in substance I agree with his conclusion. This is not a case where there has been an ongoing refusal to respond to the Applicant's request. Because this is not a situation where there has been an ongoing and genuine refusal to respond to the Applicant's request for information, there can be no basis to disturb the finding that her Application to this Court is moot.

[68] No question was raised about Associate Judge Aalto's analysis of the second step of the mootness test, whether to allow the matter to proceed despite the fact that it is moot. I can find no basis to disturb his findings on that point. There is no longer a genuine ongoing controversy between the parties about the Respondent's refusal to respond to the Applicant's request. The case does not concern any wider matters of public interest or importance. And considerations of judicial economy support the decision to bring this proceeding to an end.

[69] For all of these reasons, I can find no basis to overturn the finding that the Application under section 41 of the *Act* is moot.

[70] There is also no basis to question the finding that the Application is premature. At this stage, the Applicant's concerns no longer relate to a refusal to provide information; rather, her issues relate to the form or format of the response. However, she has not complained to the OPC about that matter, and it has therefore not been able to investigate the question. Without such a complaint and investigation on that point, the Court cannot deal with the Applicant's concerns regarding the form or format of the response: see *Gregory*; *Blank v Canada (Justice)*,

2016 FCA 189; *Sandiford* at paras 18-20; *Cumming* at para 33; *Khoury v Canada (Employment and Social Development)*, 2022 FC 101.

[71] Before leaving this point, I would simply note that the question of whether the information can be provided on a USB key, or in hard copy, is the sort of issue that cries out for a practical solution rather than occupying further time of the OPC or this Court.

E. *The Ancillary Orders*

[72] In her memorandum of fact and law on the appeal, the Applicant objects to the ancillary order that she file her materials only in the Edmonton registry. She says that as a self-represented litigant living in Germany, it is most convenient for her to file in the Halifax regional office as the time zone there is closest to the one where she lives.

[73] Given the conduct of the Applicant during the course of this litigation, combined with her behaviour as recounted by the Court of Appeal in previous litigation (cited above), I can find no basis to interfere with this aspect of Associate Judge Aalto's Order. The Applicant has brought this restriction on herself by repeatedly filing a flurry of motions and procedures rather than pursuing her claim in a more orderly manner, and she has also tried to file materials in other offices after being turned down in Edmonton. The Court can and must take the necessary steps to control its own procedures, and to try to ensure that matters move forward as expeditiously and efficiently as possible. This element of the Order seeks to do precisely that. It shall remain in force. The Applicant must only file material relating to this case in this Court through the

Edmonton regional office, and must comply with the other elements of the Order issued by Associate Judge Aalto.

IV. Conclusion

[74] For the reasons set out above, I will allow the appeal, but only in relation to the cost award. All other grounds of appeal are dismissed.

[75] Both sides asked for costs on the appeal. In light of the divided outcome, and considering the factors set out in Rule 400 as applied to the very particular circumstances of this case, I will exercise my discretion to refuse to award costs to either side.

[76] A few concluding remarks. This appeal should never have reached its conclusion. The Applicant was fully within her rights to file her application, given the delay in responding to her request. However, after the RCMP sent the letter to the Applicant with the CDs, her complaint about the refusal to respond to her *Privacy Act* request descended into a squabble about the form and format of the disclosure. The RCMP offered to send the Applicant the information on a USB stick so that she could access it, but the evidence does not show that was ever done. The Respondent also did not file any evidence about the format of the information on the CDs – which could have assisted the Court in assessing the Applicant's claim that she was unable to retrieve it.

[77] In my view, the parties should have resolved this matter between themselves, without continuing to seek a ruling from this Court. If only one side had been responsible for needlessly prolonging this dispute, I might well have awarded costs against them. In this case, however, I find that both sides should bear their own costs. The Applicant persisted in her appeal rather than seeking a practical resolution to her difficulties in accessing the material on the CDs. For its part, the Respondent did not provide evidence that it had taken the steps it promised either by sending the information on a USB or in some other format. Both sides bear some responsibility for needlessly prolonging this matter, and so each shall bear their own costs.

JUDGMENT in T-869-22

THIS COURT'S JUDGMENT is that

1. The appeal is allowed, in part.

2. The Order that the Applicant pay costs to the Respondent in the amount of $2,500.00 is hereby quashed and set aside.

3. In all other respects, the appeal is dismissed.

4. No costs are awarded. Each party shall bear its own costs.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-869-22
STYLE OF CAUSE:	MANIGEH SABOK SIR v ROYAL CANADIAN MOUNTED POLICE

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

JUDGMENT AND REASONS:	PENTNEY J.
DATED:	SEPTEMBER 20, 2024

WRITTEN REPRESENTATIONS BY:

Manigeh Sabok Sir	ON HER OWN BEHALF
Jennifer Lee	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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