

Date: 20070913

Docket: T-1905-06

Citation: 2007 FC 901

Ottawa, Ontario, September 13, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] The respondent made a motion to strike the notice of application. The applicant made a further motion for an order directing the Chair to produce the certified tribunal record. Pursuant to Rule 8, the respondent made a motion for an extension of time to produce the certified tribunal record.

[2] With respect to the motion to strike the notice of application, the respondent seeks the following relief:

1. an order striking out the applicant's notice of application;
2. an order dismissing the applicant's application for judicial review; and
3. costs of this motion payable by the applicant to the respondent fixed in the amount of \$1,000.00

[3] With respect to the motion for an order directing the Chair to produce the certified tribunal record, the applicant seeks:

1. an order directing the Chair to serve and file a response within twenty days of the order of this Court; and
2. costs.

[4] With respect to the motion for an extension of time to produce the certified tribunal record, the respondent seeks:

1. an order allowing the respondent's motion to extend the time to file the certified tribunal record until after the hearing and the determination of the motion to strike; and
2. costs of the motion.

Background

[5] Mr. Ian Bush died on October 29, 2005, from a gunshot wound to the back of his head. The wound was inflicted while he was in the custody of the Royal Canadian Mounted Police (RCMP), at the Houston RCMP detachment in British Columbia. On November 7, 2005, Jason Gratl filed a complaint with the Commission for Public Complaints Against the RCMP (the Commission) on behalf of the British Columbia Civil Liberties Association (BCCLA or the applicant), alleging that members of the RCMP had unnecessarily used excessive force in the death of Mr. Bush.

[6] On December 8, 2005, the RCMP advised that the applicant's complaint would not be investigated prior to the completion of an investigation by the RCMP. The matter was therefore held in abeyance. The applicant sought review of this decision and on June 19, 2006, the Chair of the Commission concluded that the RCMP did not have the jurisdiction to hold the matter in abeyance. The Chair also referred the matter for appropriate disposition. On July 5, 2006, the RCMP advised the applicant that its complaint had been terminated. The RCMP advised that their investigation was being reviewed by the New Westminster Police Department, and that the resulting report would be provided to the crown prosecutor's office and/or the Chief Coroner of British Columbia. As a result, investigation of the applicant's complaint was neither necessary nor practicable.

[7] The applicant objected to the termination of its complaint, and requested a review of the decision by the Commission. On September 26, 2006, the Chair determined that the decision to terminate the complaint was reasonable. However, the Chair initiated his own complaint regarding

the matter on September 28, 2006, pursuant to subsection 45.37(1) of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (the Act). The Chair was satisfied that there were reasonable grounds to investigate the circumstances surrounding the death of Mr. Bush. On September 29, 2006, the applicant lodged a second complaint into the death of Mr. Bush. The RCMP investigation into the second complaint was terminated on December 4, 2006, pursuant to paragraph 45.36(5)(c) of the Act, because it was not necessary or reasonably practicable in light of the Chair's complaint into the same matter.

[8] On October 30, 2006, the applicant sought judicial review of the Chair's decision that the termination of its first complaint was reasonable. In its notice of application, the applicant made a request pursuant to Rule 317 of the *Federal Courts Rules*, S.O.R./98-106, for the Chair to send a certified copy of any documents referred to in the decision upholding the termination of the first complaint. By order of Prothonotary Lafrenière, dated November 17, 2006, service of the notice of application was deemed effective on November 14, 2005. The Chair was ordered to serve and file a certified copy of the requested material by December 5, 2006.

[9] The respondent filed a motion to strike the notice of application on December 4, 2006. The applicant filed a motion on December 15, 2006 to compel the production of the certified tribunal record (among other requests), which the Chair had declined to provide pending the adjudication of the respondent's motion to strike. The applicant filed an amended notice of motion on January 15, 2007, which limited the content of the motion to the production of the certified tribunal record, as the respondent had abandoned arguments relating to the time within which the application for

judicial review was filed. The respondent also filed a motion on January 9, 2006, seeking an extension of time to produce the certified tribunal record.

Issues

[10] The following issues were submitted for consideration:

1. Is the application for judicial review moot?
2. If the application for judicial review is moot, should the Court exercise its discretion and hear the application for judicial review?
3. If the application for judicial review is not moot, is the respondent required to produce the certified tribunal record?
4. If the respondent is required to produce the certified tribunal record, when should the tribunal record be delivered?

I. Motion to Strike Notice of Application

[11] The respondent submitted that the application for judicial review was moot and that the Court should not exercise its discretion to hear the application given the circumstances of the case. In *David Bull Laboratories (Canada) v. Pharmacia Inc.*, [1995] 1 F.C. 588, (1994) 176 N.R. 48 (C.A.), the Court held that it may strike out and dismiss an application for judicial review by way of preliminary motion where the application is bereft of any possibility of success.

[12] The respondent submitted that should the application for judicial review be granted, it would be referred back to the Chair for redetermination. The redetermination would be regarding whether the decision by the RCMP to terminate the complaint was reasonable. It was submitted that the Chair's subsequent decision would be made in light of its own complaint. As a result, no live dispute remained (see *Ismail v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1679, [2005] F.C.J. No. 2075).

[13] The respondent noted that pursuant to subsection 45.37(1) of the Act, the Chair acts as a member of the public when initiating a complaint and the complaint is then directed for investigation by the RCMP. It was submitted that there was no advantage to the applicant in filing its own complaint as compared to the Chair's, and no benefit would be gained should the application for judicial review be granted. The respondent noted that once a complaint was filed, the Act did not provide any statutory rights for the complainant to participate in its investigation.

[14] The respondent submitted that the applicant wanted an investigation into the conduct of RCMP officers allegedly involved in the death of Mr. Bush, and that the Chair's complaint would accomplish this goal. It was submitted that the Chair's complaint was broader than the applicant's complaint. The respondent submitted that there was no live controversy between the parties, as the investigation into Mr. Bush's death was ongoing (see *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v. Canada (Attorney General)* (2005), 141 A.C.W.S. (3d) 1, 2005 FC 1027). It was submitted that there was no purpose in hearing this application for judicial review,

since the applicant was seeking the same relief from the Court as was being granted by the Chair when he initiated his own complaint.

[15] The respondent submitted that the application for judicial review was moot, but acknowledged that the Court had jurisdiction to hear a moot case (see *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, (1989) 57 D.L.R. (4th) 231). The following test for determining whether the Court should hear a moot case was set out in *Borowski*: (1) the presence of an adversarial context; (2) the concern for judicial economy; and (3) the need for the Court to be sensitive to its role as the adjudicative branch in our political framework.

[16] The respondent submitted that there was no adversarial context between the applicant and the Chair, as both wanted an investigation into the death of Mr. Bush. There was also no uncertainty as to whether or not an investigation into the death would occur, as it was occurring. It was submitted that it was futile to apply scarce judicial resources to a hearing that would not resolve anything. Finally, it was submitted that the applicant would not suffer any injustice if the application was struck and the Court refused to exercise its discretion, since the Chair had initiated his own complaint

Applicant's Submissions

[17] The applicant submitted that the Court's jurisdiction to dismiss a notice of application summarily was narrow and should only be exercised where an application had no possibility of

success (see *David Bull Laboratories* above). It was submitted that a notice of application should not be struck where the respondent merely raises a debatable issue. The applicant submitted that the doctrine of mootness was applicable in situations which addressed hypothetical questions. It was submitted that allegations of mootness were determined through a two-step analysis (see *Borowski* above):

1. Has the required tangible dispute disappeared and the issues become academic (the live controversy test)?
2. If so, should the Court exercise its discretion to hear the case even though it may have become moot?

[18] The applicant noted that its public complaint had been terminated, and that the Chair had initiated his own complaint. It was submitted that the Act did not provide that once the Chair initiated a complaint, a prior public complaint on the same subject was redundant. The applicant submitted that the Act contemplated meaningful participation by the public in the complaint process. The applicant submitted that it had contributed to the complaint process in the past and would provide valuable input into the complaint with respect to Mr. Bush's death. It was noted that the applicant launched its complaint eleven months before the Chair initiated his own complaint.

[19] The applicant noted that the date upon which the Chair became satisfied with the RCMP's termination of the public complaint, the Chair was also satisfied that there were grounds to investigate the matter and initiated his own complaint. It was submitted that if the applicant's complaint was wrongly terminated and was remitted for redetermination by the Chair, a possible

outcome would be the initiation of a hearing in which the applicant would have full party status (see paragraph 45.42(3)(c) and subsection 45.45(15) of the Act). In addition, further investigation could take place and the Act did not prevent a public complaint from running parallel to a complaint initiated by the Chair.

[20] The applicant submitted that there remained a live controversy and the determination of the lawfulness of the Chair's decision was not hypothetical, as it had consequences for the rights of the applicant. It was submitted that the matter was not moot and should proceed to a hearing on the merits. The applicant submitted that an adversarial context existed since the applicant's rights were at stake and it could potentially be denied further participatory rights under the Act.

[21] The respondent had argued that a complainant had no participatory rights under the Act in the investigation of a public complaint. The applicant submitted that questions of procedural rights under the Act were matters that touched upon the merits of the notice of application. The applicant did not accept that it had no rights under the Act other than to make a complaint. In addition, it was submitted that no concerns arose regarding judicial economy or the proper law making function of the Court.

Analysis and Decision

[22] **Issue 1**

Is the application for judicial review moot?

The Supreme Court of Canada in *Borowski* above, at paragraphs 15 and 16 stated:

15. The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

16. The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

[23] With respect to striking an application for judicial review, the Federal Court of Appeal stated in *David Bull Laboratories* above, at paragraph 15:

For these reasons we are satisfied that the Trial Judge properly declined to make an order striking out, under Rule 419 or by means of the "gap" rule, as if this were an action. This is not to say that there is no jurisdiction in this Court either inherent or through Rule 5 by analogy to other rules, to dismiss in summary manner a notice of motion which is so clearly improper as to be bereft of any possibility

of success. Such cases must be very exceptional and cannot include cases such as the present where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion.

[24] If the initiation of a complaint by the Chair automatically justified the ending of an earlier public complaint, this would lead to the consequence that the Chair could quash or end a public complaint thereby denying the public complainant the procedural entitlements set out in the Act. The Act does not rule out the possibility of parallel complaints. I do not believe a motion to strike for mootness is the proper form for determining the issues.

[25] I would therefore deny the motion to strike the application for judicial review for mootness as the test for striking the application on the basis of mootness is not met.

[26] **Issue 2**

If the application for judicial review is moot, should the Court exercise its discretion and hear the application for judicial review?

As I found the application for judicial review was not moot, I need not deal with this issue.

[27] **Issue 3**

If the application for judicial review is not moot, is the respondent required to produce the certified tribunal record?

Prothonotary Lafrenière ordered the record to be filed by December 5, 2006, but as a result of the motion to strike the notice of application, the record was not filed. No motion has been filed

to stay the filing of the certified tribunal record until this motion to strike was decided. Thus, I am of the view that the certified tribunal record should be filed.

[28] **Issue 4**

If the respondent is required to produce the certified tribunal record, when should the tribunal record be delivered?

I am of the opinion that the certified tribunal record should be filed within 20 days of the filing of this order. There is no disagreement between the parties on this time limit.

[29] The parties also requested a timeline for filing of affidavits and other documents. It would seem to me that the filings could be filed within the time limits set out in the Rules with the commencement point being the date of the receipt of the certified tribunal record. If the parties require further directions with respect to this matter, they may request me to make further directions.

[30] The British Columbia Civil Liberties Association shall have its costs of the motions.

JUDGMENT

[31] **IT IS ORDERED that:**

1. The respondent's motion to strike the notice of application is dismissed.
2. The tribunal shall file and serve the certified tribunal record within 20 days of the date of filing this order.
3. The timeline for filing the remaining documents shall be the number of days allowed by the *Federal Courts Rules* above, with the commencement date being the date of the filing of the certified tribunal record.
4. The British Columbia Civil Liberties Association shall have its costs of the motions.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Federal Courts Act*, R.S.C. 1985, c. F-7.:

18.4(1) Subject to subsection (2), an application or reference to the Federal Court under any of sections 18.1 to 18.3 shall be heard and determined without delay and in a summary way.	18.4(1) Sous réserve du paragraphe (2), la Cour fédérale statue à bref délai et selon une procédure sommaire sur les demandes et les renvois qui lui sont présentés dans le cadre des articles 18.1 à 18.3.
...	...

The *Federal Courts Rules*, S.O.R./98-106 :

35.(1) Subject to rule 298 and paragraph 385(1)(b), motions that can conveniently be heard at the General Sittings of the Federal Court may be made returnable accordingly.	35.(1) Sous réserve de la règle 298 et de l'alinéa 385(1)b), les requêtes qui peuvent être commodément entendues à une séance générale de la Cour fédérale peuvent être présentées à une telle séance.
(2) A request may be made informally to the Judicial Administrator of the Federal Court of Appeal or the Federal Court, as the case may be, for an appointment of a special time and place	(2) Une demande d'audience peut être faite, sans formalité, à l'administrateur judiciaire de la Cour d'appel fédérale ou de la Cour fédérale, selon le cas, pour fixer les date, heure et lieu:
...	...
(b) for sittings of a judge of the Federal Court or of a prothonotary to hear a motion that is likely to be lengthy or a motion to be heard other than at	b) de l'audition, par un juge de la Cour fédérale ou un protonotaire, d'une requête qui sera vraisemblablement de longue durée ou qu'il est

General Sittings.

indiqué d'entendre à un autre moment que pendant une séance générale.

...

...

58.(1) A party may by motion challenge any step taken by another party for non-compliance with these Rules.

58.(1) Une partie peut, par requête, contester toute mesure prise par une autre partie en invoquant l'inobservation d'une disposition des présentes règles.

(2) A motion under subsection (1) shall be brought as soon as practicable after the moving party obtains knowledge of the irregularity.

(2) La partie doit présenter sa requête aux termes du paragraphe (1) le plus tôt possible après avoir pris connaissance de l'irrégularité.

59. Subject to rule 57, where, on a motion brought under rule 58, the Court finds that a party has not complied with these Rules, the Court may, by order,

59. Sous réserve de la règle 57, si la Cour, sur requête présentée en vertu de la règle 58, conclut à l'inobservation des présentes règles par une partie, elle peut, par ordonnance:

(a) dismiss the motion, where the motion was not brought within a sufficient time after the moving party became aware of the irregularity to avoid prejudice to the respondent in the motion;

a) rejeter la requête dans le cas où le requérant ne l'a pas présentée dans un délai suffisant — après avoir pris connaissance de l'irrégularité — pour éviter tout préjudice à l'intimé;

(b) grant any amendments required to address the irregularity; or

b) autoriser les modifications nécessaires pour corriger l'irrégularité;

(c) set aside the proceeding, in whole or in part.

c) annuler l'instance en tout ou en partie.

60. At any time before judgment is given in a proceeding, the Court may draw the attention of a party to any

60. La Cour peut, à tout moment avant de rendre jugement dans une instance, signaler à une partie les lacunes

gap in the proof of its case or to any non-compliance with these Rules and permit the party to remedy it on such conditions as the Court considers just.

317.(1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

(2) An applicant may include a request under subsection (1) in its notice of application.

(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties.

318.(1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

que comporte sa preuve ou les règles qui n'ont pas été observées, le cas échéant, et lui permettre d'y remédier selon les modalités qu'elle juge équitables.

317. (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.

(3) Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.

318.(1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet:

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

(b) where the material cannot be reproduced, the original material to the Registry.

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

The Royal Canadian Mounted Police Public Complaints Commission Rules of Practice, S.O.R./97-

17:

7.(1) A party or interested person may, in writing, request that any other party or interested person produce, forthwith, any of the following:

7.(1) Une partie ou une personne intéressée peut présenter une demande écrite à une autre partie ou personne intéressée afin que celle-ci produise sans délai, selon le cas:

(a) any pertinent record that is in the person's possession or control; and

a) une pièce pertinente en sa possession ou sous sa responsabilité;

- | | |
|---|--|
| (b) a full and adequate reply to the request, where the request is for information. | b) une réponse satisfaisante et complète, s'il s'agit d'une demande d'information. |
| (2) A request referred to in subsection (1) shall | (2) La demande visée au paragraphe (1): |
| (a) be addressed to a party or interested person; | a) est adressée à la partie ou à la personne intéressée; |
| (b) be delivered or, where the Commission requires that the request be served, served within the period established by the Commission; and | b) est transmise ou, lorsque la Commission l'exige, signifiée dans le délai fixé par elle; |
| (c) be filed in accordance with subsection 5(1) and delivered to the other parties or interested persons. | c) déposées conformément au paragraphe 5(1) et transmises aux autres parties et aux autres personnes intéressées. |
| (3) In the case of a request for information, each item of information that is requested shall be numbered consecutively. | (3) Dans le cas d'une demande d'information, les renseignements demandés sont numérotés de façon consécutive. |
| 14.(1) A party or interested person, on request, may obtain a summons in Form 1 set out in the schedule issued by the Commission and sealed with the Commission's seal. | 14.(1) Une partie ou une personne intéressée peut, sur demande, obtenir de la Commission une assignation à comparaître marquée de son sceau et établie selon la formule 1 figurant à l'annexe. |
| (2) A summons referred to in subsection (1) shall be completed by the party or interested person on behalf of whom it is issued or the counsel for that party or interested person and shall contain the information required by Form | (2) L'assignation à comparaître visée au paragraphe (1) est remplie par la partie ou la personne intéressée qui en fait la demande ou par leur avocat et doit contenir les renseignements exigés par la formule 1. |

1.

(3) Notwithstanding subsection (2), any party or interested person requiring the attendance of a witness during the hearing may forward the name and address of the proposed witness to the Registrar at least seven days before the witness is required to appear at the hearing, so that the Commission may issue a summons to that witness.

16.(1) A party or interested person may bring before the Commission, in writing or orally, any issue that arises during the proceedings.

(2) A motion shall contain a clear and concise statement of the facts, the order sought and the grounds therefor.

(3) A written motion shall be filed with the Registrar or, during the hearing, with the hearing process officer and shall be served on the parties and the interested persons to the proceedings.

(4) A motion may be made orally during the hearing in accordance with the procedure established by the Commission.

(5) A motion may be disposed of by the Commission in writing or orally.

22. During normal business

(3) Malgré le paragraphe (2), une partie ou une personne intéressée qui requiert la comparution d'un témoin à une audience peut transmettre au greffier les nom et adresse du témoin au moins 7 jours avant que celui-ci soit tenu de comparaître à l'audience afin que la Commission lui délivre une assignation à comparaître.

16.(1) Toute partie ou personne intéressée peut soumettre à la Commission, par écrit ou verbalement, une question qui survient durant les procédures.

(2) La requête renferme un énoncé clair et précis des faits et de l'ordonnance demandée ainsi que des motifs à l'appui.

(3) La requête écrite est déposée auprès du greffier ou, durant l'audience, auprès de l'agent d'audience et est signifiée à toutes les parties et les personnes intéressées.

(4) Lors de l'audience, la requête peut être communiquée verbalement suivant la procédure établie par la Commission.

(5) La Commission peut se prononcer sur la requête par écrit ou verbalement.

22. Durant les heures normales

hours, the Commission shall make available to the parties and interested persons records filed in the course of the proceedings, other than a hearing in private, and shall permit the persons to make copies thereof.

de travail, la Commission met à la disposition des parties et des personnes intéressées toute pièce déposée dans le cadre des procédures, autre qu'une audience à huis clos, et leur permet d'en faire copie.

The Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10:

45.35(1) Any member of the public having a complaint concerning the conduct, in the performance of any duty or function under this Act or the Witness Protection Program Act, of any member or other person appointed or employed under the authority of this Act may, whether or not that member of the public is affected by the subject-matter of the complaint, make a complaint to

45.35(1) Tout membre du public qui a un sujet de plainte concernant la conduite, dans l'exercice de fonctions prévues à la présente loi ou à la Loi sur le programme de protection des témoins, d'un membre ou de toute autre personne nommée ou employée sous le régime de la présente loi peut, qu'il en ait ou non subi un préjudice, déposer une plainte auprès, selon le cas:

(a) the Commission;

a) de la Commission;

(b) any member or other person appointed or employed under the authority of this Act; or

b) d'un membre ou de toute autre personne nommée ou employée sous le régime de la présente loi;

(c) the provincial authority in the province in which the subject-matter of the complaint arose that is responsible for the receipt and investigation of complaints by the public against police.

c) de l'autorité provinciale dans la province d'origine du sujet de plainte, compétente pour recevoir des plaintes et faire enquête.

45.36(1) The Commissioner

45.36(1) Le commissaire doit

shall consider whether a complaint under subsection 45.35(1) can be disposed of informally and, with the consent of the complainant and the member or other person whose conduct is the subject-matter of the complaint, may attempt to so dispose of the complaint.

...

(4) Where a complaint is not disposed of informally, the complaint shall be investigated by the Force in accordance with rules made pursuant to section 45.38.

(5) Notwithstanding any other provision of this Part, the Commissioner may direct that no investigation of a complaint under subsection 45.35(1) be commenced or that an investigation of such a complaint be terminated if, in the Commissioner's opinion,

(a) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided under any other Act of Parliament;

(b) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(c) having regard to all the circumstances, investigation or further investigation is not

considérer si la plainte peut être réglée à l'amiable et, moyennant le consentement du plaignant et du membre ou de la personne visés par la plainte, il peut tenter de la régler ainsi.

...

(4) À défaut d'un tel règlement, la plainte fait l'objet d'une enquête par la Gendarmerie selon les règles établies en vertu de l'article 45.38.

(5) Par dérogation aux autres dispositions de la présente partie, le commissaire peut refuser qu'une plainte fasse l'objet d'une enquête ou ordonner de mettre fin à une enquête déjà commencée si, à son avis:

a) il est préférable de recourir, au moins initialement, à une procédure prévue par une autre loi fédérale;

b) la plainte est futile ou vexatoire ou a été portée de mauvaise foi;

c) compte tenu des circonstances, il n'est pas nécessaire ou raisonnablement

necessary or reasonably practicable.

praticable de procéder à une enquête ou de poursuivre l'enquête déjà commencée.

45.37(1) Where the Commission Chairman is satisfied that there are reasonable grounds to investigate the conduct, in the performance of any duty or function under this Act, of any member or other person appointed or employed under the authority of this Act, the Commission Chairman may initiate a complaint in relation thereto and where the Commission Chairman does so, unless the context otherwise requires, a reference hereafter in this Part to a complainant includes a reference to the Commission Chairman.

45.37(1) Le président de la Commission peut porter plainte contre un membre ou toute autre personne nommée ou employée sous le régime de la présente loi, s'il est fondé à croire qu'il faudrait enquêter sur la conduite, dans l'exercice de fonctions prévues à la présente loi, de ce membre ou de cette personne. En pareil cas, sauf si le contexte s'y oppose, le mot « plaignant », employé ci-après dans la présente partie, s'entend en outre du président de la Commission.

...

...

(4) A complaint under subsection (1) shall be investigated by the Force in accordance with rules made pursuant to section 45.38.

(4) Une plainte portée en vertu du paragraphe (1) fait l'objet d'une enquête menée par la Gendarmerie selon les règles établies en vertu de l'article 45.38.

45.41(1) A complainant under subsection 45.35(1) who is not satisfied with the disposition of the complaint by the Force or with a direction under subsection 45.36(5) in respect of the complaint may refer the complaint in writing to the Commission for review.

45.41(1) Le plaignant visé au paragraphe 45.35(1) qui n'est pas satisfait du règlement de sa plainte par la Gendarmerie ou de la décision rendue en vertu du paragraphe 45.36(5) à l'égard de sa plainte peut renvoyer par écrit sa plainte devant la Commission pour examen.

(2) Where a complainant refers

(2) En cas de renvoi devant la

a complaint to the Commission pursuant to subsection (1),	Commission conformément au paragraphe (1):
(a) the Commission Chairman shall furnish the Commissioner with a copy of the complaint; and	a) le président de la Commission transmet au commissaire une copie de la plainte;
(b) the Commissioner shall furnish the Commission Chairman with the notice under subsection 45.36(6) or the report under section 45.4 in respect of the complaint, as the case may be, and such other materials under the control of the Force as are relevant to the complaint.	b) le commissaire transmet au président de la Commission l'avis visé au paragraphe 45.36(6) ou le rapport visé à l'article 45.4 relativement à la plainte, ainsi que tout autre document pertinent placé sous la responsabilité de la Gendarmerie.
45.42 . . .	45.42 . . .
(3) Where, after reviewing a complaint, the Commission Chairman is not satisfied with the disposition of the complaint by the Force or considers that further inquiry is warranted, the Commission Chairman may	(3) Après examen de la plainte, le président de la Commission, s'il n'est pas satisfait de la décision de la Gendarmerie ou s'il est d'avis qu'une enquête plus approfondie est justifiée, peut:
(a) prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit;	a) soit établir et transmettre au ministre et au commissaire un rapport écrit énonçant les conclusions et les recommandations qu'il estime indiquées;
(b) request the Commissioner to conduct a further investigation into the complaint; or	b) soit demander au commissaire de tenir une enquête plus approfondie sur la plainte;
(c) investigate the complaint	c) soit tenir une enquête plus

further or institute a hearing to inquire into the complaint.

approfondie ou convoquer une audience pour enquêter sur la plainte.

45.43 . . .

45.43 . . .

(3) On completion of an investigation under paragraph 45.42(3)(c) or subsection (1), the Commission Chairman shall prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit unless the Commission Chairman has instituted, or intends to institute, a hearing to inquire into the complaint under that paragraph or subsection.

(3) Au terme de l'enquête prévue à l'alinéa 45.42(3)c) ou au paragraphe (1), le président de la Commission établit et transmet au ministre et au commissaire un rapport écrit énonçant les conclusions et les recommandations qu'il estime indiquées, à moins qu'il n'ait déjà convoqué une audience, ou se propose de le faire, pour faire enquête en vertu de cet alinéa ou paragraphe.

45.45 . . .

45.45 . . .

(5) The parties and any other person who satisfies the Commission that the person has a substantial and direct interest in a complaint before the Commission shall be afforded a full and ample opportunity, in person or by counsel, to present evidence, to cross-examine witnesses and to make representations at the hearing.

(5) Les parties et toute personne qui convainc la Commission qu'elle a un intérêt direct et réel dans la plainte dont celle-ci est saisie doivent avoir toute latitude de présenter des éléments de preuve à l'audience, d'y contre-interroger les témoins et d'y faire des observations, soit personnellement, soit par l'intermédiaire d'un avocat.

. . .

. . .

(11) A hearing to inquire into a complaint shall be held in public, except that the Commission may order the hearing or any part of the

(11) Les audiences sont publiques; toutefois, la Commission peut ordonner le huis clos pendant tout ou partie d'une audience si elle estime

hearing to be held in private if it is of the opinion that during the course of the hearing any of the following information will likely be disclosed, namely,

(a) information the disclosure of which could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities;

(b) information the disclosure of which could reasonably be expected to be injurious to law enforcement; and

(c) information respecting a person's financial or personal affairs where that person's interest or security outweighs the public's interest in the information.

...

(14) On completion of a hearing, the Commission shall prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission sees fit.

(15) In this section and section 45.46, "parties" means the appropriate officer, the member

qu'au cours de celle-ci seront probablement révélés:

a) des renseignements dont la divulgation risquerait vraisemblablement de porter préjudice à la défense du Canada ou d'États alliés ou associés avec le Canada ou à la détection, à la prévention ou à la répression d'activités hostiles ou subversives;

b) des renseignements risquant d'entraver la bonne exécution des lois;

c) des renseignements concernant les ressources pécuniaires ou la vie privée d'une personne dans le cas où l'intérêt ou la sécurité de cette personne l'emporte sur l'intérêt du public dans ces renseignements.

...

(14) Au terme de l'audience, la Commission établit et transmet au ministre et au commissaire un rapport écrit énonçant les conclusions et les recommandations qu'elle estime indiquées.

(15) Au présent article et à l'article 45.46, «partie» s'entend de l'officier

or other person whose conduct is the subject-matter of a complaint and, in the case of a complaint under subsection 45.35(1), the complainant.

compétent, du membre ou de l'autre personne dont la conduite est l'objet de la plainte et, dans le cas d'une plainte en vertu du paragraphe 45.35(1), du plaignant.

45.46(1) On receipt of a report under subsection 45.42(3), 45.43(3) or 45.45(14), the Commissioner shall review the complaint in light of the findings and recommendations set out in the report.

45.46(1) Sur réception du rapport visé aux paragraphes 45.42(3), 45.43(3) ou 45.45(14), le commissaire révisé la plainte à la lumière des conclusions et des recommandations énoncées au rapport.

(2) After reviewing a complaint in accordance with subsection (1), the Commissioner shall notify the Minister and the Commission Chairman in writing of any further action that has been or will be taken with respect to the complaint, and where the Commissioner decides not to act on any findings or recommendations set out in the report, the Commissioner shall include in the notice the reasons for not so acting.

(2) Après révision de la plainte conformément au paragraphe (1), le commissaire avise, par écrit, le ministre et le président de la Commission de toute mesure additionnelle prise ou devant l'être quant à la plainte. S'il choisit de s'écarter des conclusions ou des recommandations énoncées au rapport, il motive son choix dans l'avis.

(3) After considering a notice under subsection (2), the Commission Chairman shall prepare and send to the Minister, the Commissioner and the parties a final report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit.

(3) Après examen de l'avis visé au paragraphe (2), le président de la Commission établit et transmet au ministre, au commissaire et aux parties un rapport écrit final énonçant les conclusions et les recommandations qu'il estime indiquées.

FEDERAL COURT

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ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 29, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: September 13, 2007

APPEARANCES:

Mr. K. Michael Stephens FOR THE APPLICANT
Ms. Jasmine MacAdam

Mr. Alexander Gay FOR THE RESPONDENT
Ms. Agnieszka Zagorskia

SOLICITORS OF RECORD:

Hunter Litigation Chambers Law FOR THE APPLICANT
Corporation
Vancouver, British Columbia

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada