

Date: 20080114

Docket: T-1295-07

Citation: 2008 FC 49

Toronto, Ontario, January 14, 2008

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

and

**PAUL KENNEDY, COMMISSION CHAIRMAN OF THE ROYAL CANADIAN
MOUNTED POLICE PUBLIC COMPLAINTS COMMISSION, THE ROYAL
CANADIAN MOUNTED POLICE PUBLIC COMPLAINTS COMMISSION,
THE ROYAL CANADIAN MOUNTED POLICE, ATTORNEY GENERAL OF
CANADA AND GIULIANO ZACCARDELLI**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review arose from a decision made by the Director General of the Commission for Public Complaints against the Royal Canadian Mounted Police (the Commission) on June 15, 2007 (the Decision).

[2] The Decision was made in response to the Applicant's request of May 15, 2007 asking the Commission to review the decision by the Royal Canadian Mounted Police (the RCMP) to

terminate its investigation of a complaint the Applicant had filed with it on November 23, 2006 (the Applicant's Complaint).

[3] In his Decision, the Director General said:

There is a high degree of congruence between the subject matter of your complaint and that of the Chair, and identical relevant materials will likely form the basis of both the Commission's review of the disposition of your complaint and its mandatory review of the disposition of the Chair's complaint. In light of the foregoing and in hopes of greater expediency, the Commission will proceed with your review following the RCMP's disposition of the Chair-initiated complaint.

[4] The Chair of the Commission had initiated his complaint on February 1, 2007 (the Commission's Complaint), and, as the Decision shows, the Commission believed it was sensible to defer its review of the Applicant's Complaint until the RCMP reported the results of its investigation of the Commission's Complaint.

[5] In preparing for the hearing of this application the Court noted that it had no information about the status of the RCMP's investigation of the Commission's Complaint. Accordingly, on January 9, 2008, the Court directed counsel for the Respondents to file an affidavit from the RCMP providing an update on the status of the RCMP's investigation and indicating when the RCMP expected to conclude the investigation.

[6] The Respondents filed the affidavit of the investigator, Sergeant Lise Noiseux, dated January 11, 2008 at the opening of the hearing. She stated she had completed the investigation of

the Commission's Complaint and that a report would be sent to the Commission on or before January 31, 2008.

[7] Against this background the Applicant asked for an order:

- i) Setting aside the Decision and requiring the Commission to immediately begin its review of the Applicant's Complaint.
- ii) Requiring the Commission to conduct a public hearing as part of its review of the Applicant's Complaint.

I. Issue 1 – The Deferral

[8] The Commission has undertaken to review the Applicant's Complaint once it has a report from the RCMP on the Commission's Complaint. It is now certain that this report will be in the Commission's hands by the end of this month. Under these circumstances the point is, for all practical purposes, moot and an order will not be made.

II. Issue 2 – The Public Hearing

[9] This request is premature because the Commission has not yet decided whether or not to hold a public hearing as part of its review of the Applicant's Complaint.

III. Conclusion

[10] For these reasons, the parties were advised during the hearing that this application would be dismissed, and that each party would bear its own costs.

JUDGMENT

UPON reviewing the material filed;

AND UPON hearing the submissions of counsel for the Applicant in Toronto on Monday,
January 14, 2008;

AND UPON determining that it was not necessary to hear from counsel for the Respondent
except on the issue of costs;

NOW THIS COURT ORDERS AND ADJUDGES that, for the reasons given above, this
application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1295-07

STYLE OF CAUSE: BRITISH COLUMBIA CIVIL LIBERTIES
ASSOCIATION v. PAUL KENNEDY, COMMISSION
CHAIRMAN OF THE ROYAL CANADIAN
MOUNTED POLICE PUBLIC COMPLAINTS
COMMISSION, THE ROYAL CANADIAN
MOUNTED POLICE PUBLIC COMPLAINTS
COMMISSION, THE ROYAL CANADIAN
MOUNTED POLICE, ATTORNEY GENERAL OF
CANADA AND GIULIANO ZACCARDELLI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 14, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** SIMPSON J.

DATED: JANUARY 14, 2008

APPEARANCES:

George S. Glezos
Kirk F. Stevens FOR THE APPLICANT

Patrick Bendin FOR THE RESPONDENTS

SOLICITORS OF RECORD:

LERNERS LLP
Barristers & Solicitors
Toronto, Ontario FOR THE APPLICANT

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