

Federal Court



Cour fédérale

Date: 20090528

Docket: T-719-08

Citation: 2009 FC 541

Ottawa, Ontario, May 28, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GILBERT L'ÉCUYER

Applicant

and

HER MAJESTY THE QUEEN

Respondent

AMENDED REASONS FOR JUDGMENT AND JUDGMENT

(inadvertent clerical errors in paragraphs 33 and 42 regarding the acronym for the Act)

I. Preliminary comments

[1] The objectives of the *Royal Canadian Mounted Police Act*, R.S., 1985, c. R-10 (RCMPA), relating to public complaints against the Royal Canadian Mounted Police (RCMP) are numerous and reflect ethical and social considerations that may affect the fundamental rights of citizens. The Royal Canadian Mounted Police Public Complaints Commission (Commission) is responsible for protecting the public by denouncing potentially negligent or abusive actions by the RCMP and reporting to the Minister of Public Safety and Emergency Preparedness. In this context, its role is to protect not only individuals but also the image and integrity of the judicial system and the public

image of this police force. The Commission seeks, *inter alia*, to strike a balance when it comes to the right of citizens who are dissatisfied with the way they are treated when in contact with the RCMP. In this context, it must be concluded that the legislative provisions in question have polycentric objectives (*Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at paragraph 36).

II. Nature of the legal proceedings

[2] This is an application for judicial review of the decision made on October 4, 2007 by the Commission Chairman concerning a complaint against the RCMP.

III. Facts

[3] The applicant, Gilbert L'Écuyer, a 66-year-old retiree, stayed in several European countries from February 16 to September 11, 2006. While he was in Europe, he sincerely believed that he was under surveillance by the police authorities in various European countries. He alleges that, in Bulgaria and Spain, this surveillance involved harassment and defamation. He contacted the police in the countries involved to obtain information about this, but they told him that he was not under surveillance. Believing that the surveillance was being conducted by the Canadian police authorities who had a file on him, Mr. L'Écuyer contacted the RCMP in the summer of 2006 by telephone and e-mail. He asked the RCMP to begin an internal investigation to determine whether it had a file containing incriminating information about him that had been distributed to police forces in other countries.

[4] On August 16, 2006, the RCMP acknowledged receipt of the request through Corporal Robert Beaulieu, an investigator in the Federal Investigation Section. Corporal Beaulieu checked the computer databases. He also spoke with Mr. L'Écuyer for about 30 minutes on

September 5, 2006. During that telephone call, Mr. L'Écuyer could not provide any concrete evidence to confirm his allegations. Since Mr. L'Écuyer wanted to know what kind of information the Canadian authorities had sent Interpol, Corporal Beaulieu determined that his complaint was not within the RCMP's mandate. He told Mr. L'Écuyer that he had decided not to investigate further, but he nonetheless suggested making a request to the Access to Information and Privacy Division (Access Division). He also referred Mr. L'Écuyer to the Montréal police department and explained to him that he had to make an access to information request for each of the countries involved.

[5] In a letter dated September 19, 2006, Corporal Beaulieu confirmed that Mr. L'Écuyer's request for assistance was a request for access [TRANSLATION] "to information from foreign authorities and federal agencies" (applicant's record, tab 2, at page 47). As follow-up, Corporal Beaulieu suggested that Mr. L'Écuyer visit the website of the Treasury Board of Canada to find the access to information request form. He also advised him to contact the municipal police when he returned to Canada.

[6] Based on the suggestion made by Corporal Beaulieu on October 27, 2006, Mr. L'Écuyer contacted the Access Division for [TRANSLATION] "all information concerning me at C Division, in Ottawa and at Interpol". In a letter dated November 30, 2006, Sergeant Jeff Hurry of the Access Division told Mr. L'Écuyer that neither the RCMP nor Interpol had information about him, except possibly a file that had apparently been transferred to Library and Archives Canada.

[7] Lisa Perry, an analyst with Library and Archives Canada, notified Mr. L'Écuyer in a letter dated January 4, 2007 that Archives had no records relating to the file identified by the Access Division. According to Mr. L'Écuyer, Ms. Perry stated in a telephone conversation that the file identified by the Access Division might concern another individual with the same name.

[8] After taking the above steps, Mr. L'Écuyer applied to the Office of the Privacy Commissioner of Canada on February 7, 2007 for access to the file at Library and Archives Canada. On October 28, 2008, , Library and Archives Canada replied as follows:

[TRANSLATION]

. . . the information we have examined containing the name "Gilbert L'Écuyer" does not concern you. Moreover, we have determined that the individual identified in the records created by the Royal Canadian Mounted Police is not you based on the individual's date of birth, which is, of course, different from yours, and an address that is not on the list you gave us.

(Motion record for filing of additional documents, at page 10)

[9] During that period, Mr. L'Écuyer was in contact with the International Criminal Police Organization (Interpol) in Lyons, France. The Secretariat of the Commission for the Control of Interpol's Files notified Mr. L'Écuyer that Interpol's National Central Bureau (NCB) in Russia and Spain had no information about him (applicant's record (AR), tab 5, letters of December 6, 2006 and April 16, 2007). The NCB in Bulgaria did not authorize Interpol to disclose to Mr. L'Écuyer whether it had information about him in its files. It seems that Interpol did not make inquiries of the NCB in the Bahamas further to Mr. L'Écuyer's request.

[10] On January 29, 2007, Mr. L'Écuyer filed a complaint against Corporal Beaulieu with the Commission. In the complaint, he stated that Corporal Beaulieu had neglected his duty by conducting an inadequate investigation. The Commission sent his complaint to the Commissioner of the RCMP (Commissioner) so he could try to dispose of it informally or investigate. Following an investigation, Mr. L'Écuyer's complaint was dismissed on May 28, 2007 on the ground, *inter alia*, that he had been sent the available information on the status of his file at the RCMP and Interpol

and that the RCMP's mandate did not make it responsible for checking with other police authorities whether they had files on an individual's activities.

[11] On June 12, 2007, Mr. L'Écuyer appealed the Commissioner's decision to the Commission. During its investigation, the Commission refused to disclose certain personal information to Mr. L'Écuyer, namely the content of the file archived at Library and Archives Canada, pursuant to sections 12(1), 22(1)(b) and 26 of the *Privacy Act*, R.S.C. 1985, c. P-21 (PA).

[12] Mr. L'Écuyer made a request to the Office of the Privacy Commissioner, which explained to him that the sections of the PA give individuals the right to obtain personal information about themselves held by a government institution, but not personal information about other individuals. The Office of the Privacy Commissioner noted that the information not provided did not concern him. It was therefore of the opinion that Mr. L'Écuyer had all the personal information to which he was entitled under the PA and that the Commission had not denied him a right of access under that Act.

Decision under review

[13] In his final report dated October 4, 2007, the Commission Chairman reached the same conclusions as the Commissioner: (1) Corporal Beaulieu had not neglected his duty in investigating Mr. L'Écuyer's complaint; and (2) Corporal Beaulieu had made the necessary recommendations to help Mr. L'Écuyer find out whether a file existed.

[14] The following is an excerpt from the Commission Chairman's reasoning:

[TRANSLATION]

In my opinion, the arguments made by Mr. L'Écuyer to support his theory are illogical. He refers to a range of routine events that occurred during his trip abroad

and that, in my opinion, are unrelated to one another. He thought that police forces both in Canada and abroad had a file on him, but in fact no such file exists. He took the necessary steps to determine whether such a file existed by submitting access to information requests to various police agencies, which confirmed to him that no file exists. Mr. L'Écuyer learned that no file exists thanks to Corporal Beaulieu's recommendations. Moreover, I believe that the RCMP had enough information to determine that the complaint was not supported by convincing and concrete evidence. In conducting my own analysis of the evidence submitted by Mr. L'Écuyer, I have reached the same conclusion as the RCMP. It should be noted that the agencies dealing with the access to information requests all categorically stated that there was no file on Mr. L'Écuyer. In conclusion, there is no evidence showing that the police in Canada put together a file against Mr. L'Écuyer or that information about Mr. L'Écuyer was sent to Interpol or foreign police forces.

(AR, tab 4, at page 77)

Commission's role and operation

[15] The Commission is an independent federal agency created to impartially review public complaints about the conduct of the RCMP.

[16] The Commission was established pursuant to Parts VI and VII of the RCMPA and has the powers conferred on it by the RCMPA.

[17] The RCMP is a police force for Canada that provides federal police services throughout the country and whose duties are described in section 18 of the RCMPA.

[18] The Commission has the power to receive complaints from any member of the public concerning the RCMP's conduct in the performance of any of its duties or functions (subsection 45.35(1)).

[19] Every complaint is sent first to the Commissioner of the RCMP (subsection 45.35(3)) and must be investigated if it cannot be disposed of informally (subsection 45.36(4)).

[20] The Commissioner sends the complainant the results of the investigation (section 45.4).

[21] A complainant who is not satisfied with the disposition of the complaint may refer the complaint to the Commission for review (subsection 45.41(1)).

[22] The Commission Chairman reviews the complaint based on the documents furnished by the Commissioner (paragraph 45.41(2)(b)).

[23] Where, after reviewing the complaint, the Commission Chairman is satisfied with the disposition of the complaint by the Commissioner, the Commission Chairman must send a report to the Minister and the complainant (subsection 45.42(2)).

[24] Conversely, where the Commission Chairman is not satisfied, he may send his findings and recommendations to the Commissioner and the Minister, request the RCMP to conduct a further investigation into the complaint if it is not satisfied with the first investigation, investigate the complaint further or institute a hearing to inquire into the complaint (subsection 45.42(3)).

Application to the factual context of the applicant's complaint

[25] On January 29, 2007, Mr. L'Écuyer made a complaint to the Commissioner of the RCMP against Corporal Beaulieu under paragraph 45.35(1)(b) of the RCMPA.

[26] In his complaint, Mr. L'Écuyer alleged that Corporal Beaulieu had:

- a. been negligent by not acting on repeated requests for assistance;
- b. made errors by providing incorrect information;

- c. acted in bad faith by not interceding with the Interpol secretariat or foreign police forces to determine whether they had information about him;
- d. misled the police forces in various countries by sending false or incorrect information about him;
- e. refused to investigate allegations of public mischief that were circulating about him.

[27] As required by subsection 45.36(4) of the RCMPA, the Commissioner investigated the merits of the items raised by Mr. L'Écuyer in his complaint.

[28] On March 1, 2007, Mr. L'Écuyer was informed that Sergeant Rolland Gallant had been assigned to conduct the investigation.

[29] On May 28, 2007, Inspector Saverio Orlando notified Mr. L'Écuyer that his complaint had been dismissed. On June 12, 2007, Mr. L'Écuyer applied to the Commission pursuant to subsection 45.41(1).

[30] On October 1, 2007, the Commission Chairman prepared a report in accordance with subsection 42.42(1) of the RCMPA in which he concluded that the decision made by the Commissioner of the RCMP was correct.

[31] In assessing the lawfulness of the Commission Chairman's decision, this Court must take account of the RCMP's mandate, the grounds for the complaint, the evidence submitted to the Commissioner and the Commission and the actions of Corporal Beaulieu.

[32] The RCMP's mandate as set out in section 18 of the RCMPA is as follows:

Duties

18. It is the duty of members who are peace officers, subject to the orders of the Commissioner,

(a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;

(b) to execute all warrants, and perform all duties and services in relation thereto, that may, under this Act or the laws of Canada or the laws in force in any province, be lawfully executed and performed by peace officers;

(c) to perform all duties that may be lawfully performed by peace officers in relation to the escort and conveyance of convicts and other persons in custody to or from any courts, places of punishment or confinement, asylums or other places; and

Obligations

18. Sous réserve des ordres du commissaire, les membres qui ont qualité d'agent de la paix sont tenus:

a) de remplir toutes les fonctions des agents de la paix en ce qui concerne le maintien de la paix, la prévention du crime et des infractions aux lois fédérales et à celles en vigueur dans la province où ils peuvent être employés, ainsi que l'arrestation des criminels, des contrevenants et des autres personnes pouvant être légalement mises sous garde;

b) d'exécuter tous les mandats — ainsi que les obligations et services s'y rattachant — qui peuvent, aux termes de la présente loi, des autres lois fédérales ou de celles en vigueur dans une province, légalement l'être par des agents de la paix;

c) de remplir toutes les fonctions qui peuvent être légalement exercées par des agents de la paix en matière d'escorte ou de transfèrement de condamnés, ou d'autres personnes sous garde, à destination ou à partir de quelque lieu que ce soit: tribunal, asile, lieu de punition ou de détention, ou autre;

(d) to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner.	d) d'exercer les autres attributions déterminées par le gouverneur en conseil ou le commissaire.
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[33] The *Access to Information Act*, R.S. 1985, c. A-1 establishes the rights and duties that exist with respect to access to information in records under the control of a government institution:

Purpose

2. (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

Objet

2. (1) La présente loi a pour objet d'élargir l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptibles de recours indépendants du pouvoir exécutif.

Complementary procedures

(2) This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public

Étoffement des modalités d'accès

(2) La présente loi vise à compléter les modalités d'accès aux documents de l'administration fédérale; elle ne vise pas à restreindre l'accès aux renseignements que les institutions fédérales mettent normalement à la disposition du grand public.

Right to access to records

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is

Droit d'accès

4. (1) Sous réserve des autres dispositions de la présente loi mais nonobstant toute autre loi fédérale, ont droit à l'accès aux documents relevant d'une

institution fédérale et peuvent se les faire communiquer sur demande:

(a) a Canadian citizen, or

a) les citoyens canadiens;

(b) a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act,

b) les résidents permanents au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés.

has a right to and shall, on request, be given access to any record under the control of a government institution.

IV. Issues

- [34] (1) Did the Commission err in concluding that Corporal Beaulieu had not neglected his duty?
- (2) Did the Commission err in requiring convincing and concrete evidence before it could find that Mr. L'Écuyer was entitled to the RCMP's assistance with the Interpol secretariat?
- (3) Did the Commission err in finding that there was no evidence that the RCMP had sent false or incorrect information about Mr. L'Écuyer to police forces in various countries?

V. Analysis

Standard of review

[35] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, the Supreme Court of Canada reiterated the four contextual criteria used in the pragmatic and functional approach to determining the standard for reviewing an administrative decision:

- a. the presence of a privative clause or right of appeal;

- b. the relative expertise of the tribunal (or administrative body) with regard to the question at issue;
- c. the objective of the statute;
- d. the nature of the problem.

[36] The Commission's work consists almost exclusively in assessing the facts submitted in relation to a complaint and the facts gathered in the investigation process. It is recognized that courts sitting on appeal or judicial review must show great deference to the decision-making authority's assessment of the facts (*Dunsmuir*, above; *Pushpanathan*, above; *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33).

(1) Did the Commission err in concluding that Corporal Beaulieu had not neglected his duty?

[37] After examining all the documents in the record, this Court finds that the Commission Chairman's decision is reasonable.

[38] Corporal Beaulieu conducted checks based on the information provided by Mr. L'Écuyer. He determined that Mr. L'Écuyer's requests were for access to information, and he therefore directed him to the access to information form and the Access Division so he could have access to his personal file, if such a file existed.

[39] Sergeant Hurry from the Access Division did a record search at the RCMP's C Division (Quebec region) and Interpol but found no information concerning Mr. L'Écuyer. Sergeant Hurry also did a record search at A Division (Ottawa region) and found a file that had apparently been transferred to Library and Archives Canada.

[40] Mr. L'Écuyer contacted Library and Archives Canada to access the file mentioned by Sergeant Hurry in his letter. Library and Archives Canada told Mr. L'Écuyer that it did not have any records relating to the file identified by the Access Division. Mr. L'Écuyer was not satisfied and applied to the Office of the Privacy Commissioner for access to the file in question. This time, Library and Archives Canada replied that the information containing the name "Gilbert L'Écuyer" did not concern Mr. L'Écuyer but rather another individual with the same name. Since the file contained personal information about another individual, Mr. L'Écuyer could not access it, in accordance with the PA. This decision of the Office of the Privacy Commissioner is not at issue before this Court.

[41] Even if Mr. L'Écuyer is not convinced that all of the Interpol records were searched, the evidence shows that Corporal Beaulieu and the RCMP did everything in their power to respond to his request.

(2) Did the Commission err in requiring convincing and concrete evidence before it could find that Mr. L'Écuyer was entitled to the RCMP's assistance with the Interpol secretariat?

[42] Mr. L'Écuyer argues that the Commission erred in requiring convincing and concrete evidence before it could find that he was entitled to the RCMP's assistance with the Interpol secretariat. He cites subsection 4(1) of the *Access to Information Act* and Interpol's *Rules on the Control of Information and Access to Interpol's Files*, which concern the right to access information, which Interpol interprets differently.

[43] As can be seen from section 18 of the RCMPA, it is not part of the RCMP's mandate or the duties imposed on Corporal Beaulieu as a member of the RCMP to make inquiries of foreign police forces to determine whether a Canadian citizen is under police investigation. Among other reasons

for this, the RCMP's primary mandate is crime prevention. Mr. L'Écuyer did not provide any evidence that he had been harassed or that he was under surveillance. He provided only his observations and impressions and, even if the facts he describes are true, none of them indicates an event that violated his rights (see the allegations concerning incidents in 2006 that were submitted into evidence - AR, tab 1, at pages 21-41).

[44] In this case, Corporal Beaulieu reasonably concluded that Mr. L'Écuyer's request was an access to information request and not a criminal investigation. Corporal Beaulieu fulfilled his duties by directing Mr. L'Écuyer to the resources he could use to obtain the information he wanted.

(3) Did the Commission err in finding that there was no evidence that the RCMP had sent false or incorrect information about Mr. L'Écuyer to police forces in various countries?

[45] Mr. L'Écuyer argues that the RCMP sent false or incorrect information about him to police forces in various countries and that Corporal Beaulieu refused to investigate allegations of public mischief that were circulating about him.

[46] Once again, Mr. L'Écuyer has no evidence that could lead to further investigation. Even if Library and Archives Canada has a file on another individual with the same name, there is no indication that the RCMP confused Mr. L'Écuyer with that individual or that the file was sent abroad.

VI. Conclusion

[47] The Commission did not err in stating that Corporal Beaulieu had not neglected his duty. Moreover, without concrete evidence, Mr. L'Écuyer was not entitled to the RCMP's assistance with Interpol. Finally, there is no evidence that the RCMP sent false or incorrect information about him to police forces in various countries.

[48] The Commission Chairman's decision is reasonable, and the application for judicial review is therefore dismissed.

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review be dismissed with costs.

“Michel M.J. Shore”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-719-08

STYLE OF CAUSE: GILBERT L'ÉCUYER
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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 19, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: May 28, 2009

APPEARANCES:

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