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RCMP

Related Subjects: Practice, Administrative Law

Application for two orders of *mandamus* compelling Royal Canadian Mounted Police External Review Committee (ERC) to complete its review of applicants' respective appeals from disciplinary decisions or internal harassment complaints decisions — Specifically, applicants seeking to have *mandamus* compelling ERC to: (1) complete review of respective appeals within 30 calendar days of Court's decision; (2) publish, report on its service standards applicable to every file before ERC — Applicants, members of Royal Canadian Mounted Police (RCMP), filed appeals of decisions at issue to ERC; have yet to receive any resolution despite having made demands for performance, years after filing their respective appeals — ERC is independent, quasi-judicial tribunal established under Part II of *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 (Act) — Is headed by Chairperson — Attorney General of Canada (AG) representing RCMP — Applicants not establishing meeting all of requisite criteria to entitle them to relief sought — ERC contributing to RCMP's decision making regarding certain labour-related grievances, appeals by way of providing non-binding findings, recommendations (F&R) to RCMP Commissioner — In 2014, ERC's mandate expanded following amendments to Act — Applicants filing appeals before 2020; have all been waiting for ERC to issue F&Rs on their appeals, have all made at least one demand for performance to ERC — Main issues were whether applicants meeting test for *mandamus* to compel ERC to issue its F&Rs on their appeals within 30 days of order by Court; whether applicants meeting test for *mandamus* to compel ERC to publish its service standards — Federal Court can issue writ of *mandamus* pursuant to *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 18(1)(a) — Order of *mandamus* is discretionary remedy Court may issue to compel performance of statutory duty owed to applicant — Legal test for *mandamus* set out in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742(C.A.), which comprises eight compulsory criteria — Test requiring in particular that there be public duty to act; duty owed to applicant, clear right to performance of that duty — In present case, applicants meeting four of eight *Apotex* criteria, namely: ERC has public duty to act; duty is owed to applicants; duty is not discretionary; no other adequate remedy available to applicants — Parties disagreed on whether third criterion of *Apotex* test met, i.e. clear right to performance of duty owed to applicants — Third criterion of *Apotex* must be satisfied by demonstrating that delay is unreasonable, causing significant prejudice — Delays, in context of present application, were not *prima facie* refusal to act — Evidence attributed delays to increased caseload combined with staffing, administrative shortages — Language in Act, ss. 28, 28.1 not establishing expectation of ERC to issue F&Rs in timely manner — Section 28.1 requiring ERC to establish its own time limits, publish such time limits, specify when time limits not applying — While ERC system not perfect, having reviewed relevant statutory provisions, 2014 expansion of ERC's mandate, resulting caseload increase, ERC's prioritization system, and ranking of applicants' appeals within that prioritization system, applicants failed to establish ERC's delay in resolving their appeals was longer than what nature of process required, *prima facie* — Moreover, ERC provided satisfactory justification for delay, was actively addressing backlog — While applicants may disagree with ERC's prioritization system that puts their appeals among lowest priority, not establishing that ERC did not provide satisfactory justification for delay in dealing with their appeals — Main prejudice applicants raising with respect to identified appeals was prolonged delay in processing — While applicants raised specific examples of prejudice, most of them related to applicants who were no longer part of

application — Without discounting impact long wait time for ERC process to complete having on applicants, applicants failed to establish existence of significant prejudice as required by case law — Since applicants failed to meet third criterion of *Apotex* test, applicants therefore failed to meet all requisite requirements for *mandamus* request — Nevertheless, remainder of *Apotex* test criteria dealt with as it applied to application — ERC Chair right in submitting remedy applicants sought had no practical value or effect given that order ERC cannot possibly comply with such an order (given backlog, budgetary and human resources constraints) — Balance of convenience not favouring issuing *mandamus* order in present case — Since applicants not meeting test for *mandamus* compelling ERC to publish its service standards, *mandamus* orders sought by applicants thus not issued — Application dismissed.

BEDARD V. CANADA (ATTORNEY GENERAL), T-1576-22, 2024 FC 570, Go J., reasons for judgment dated April 10, 2024, 33 + 4 pp.)