

Federal Court



Cour fédérale

Date: 20211109

Docket: T-133-21

Citation: 2021 FC 1208

Ottawa, Ontario, November 9, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

GEOFF QUIBELL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Geoff Quibell is a Corporal with the Royal Canadian Mounted Police [RCMP]. He seeks judicial review of a decision by the Director General, Workplace Responsibility Branch [DG] to refuse a request for an extension of time in which to proceed with a Code of Conduct investigation. Despite the expiration of the one year limitation period for convening a conduct hearing or imposing conduct measures, the DG required the Conduct Authority [CA] to continue

the investigation and render a decision regarding two allegations of misconduct against Cpl. Quibell.

[2] The allegations of misconduct stem from the possible misuse of Cpl. Quibell's Blackberry mobile device. On November 6, 2019, Cpl. Quibell's wife informed an RCMP officer that she had discovered inappropriate images and messages on his Blackberry. The officer informed a detachment inspector, who took no action because she considered this to be a personal matter rather than a professional one.

[3] Cpl. Quibell's wife then submitted a complaint to the Civilian Review and Complaints Commission for the RCMP [CRCC]. The CRCC issued its report in October 2020, finding that Cpl. Quibell had sent inappropriate images and messages using a mobile device that had been issued to him by the RCMP. Only then did the CA initiate a Code of Conduct investigation into Cpl. Quibell's behaviour.

[4] The *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMP Act] prescribes a one year limitation period for initiating a conduct hearing or imposing conduct measures (ss 41(2), 42(2)). The parties disagree on whether the limitation periods in ss 41(2) and 42(2) preclude an investigation under s 40(1), for which no limitation period is explicitly stated in the legislation.

[5] In Cpl. Quibell's case, the one year period for initiating a conduct hearing or imposing conduct measures expired on November 6, 2020. The CA requested an extension of time

pursuant to s 47.4(1) of the RCMP Act, but this was refused. The DG nevertheless directed the CA to continue the investigation and render a decision respecting the allegations of misconduct:

Since I have denied the request in this application, the [CA] is prevented from imposing conduct measures or initiating a conduct hearing in respect of these two allegations. However, a determination as to whether or not misconduct occurred is still required. Therefore, the [CA] must continue the process for this matter in accordance with legislation and policy. Specifically, the [CA] must continue to follow the conduct process, including a conduct meeting if there is a *prima facie* finding, and culminating in a written final Record of Decision determining whether the alleged contravention of the Code of Conduct is established or not established, on a balance of probabilities. If established, no conduct measures can be imposed for this allegation.

[6] For the reasons that follow, the application for judicial review must be dismissed because it is premature.

II. Issue

[7] The Attorney General of Canada [AGC] takes the position that the application for judicial review is premature. This issue is determinative.

III. Analysis

[8] Absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted. The general principle of non-interference with ongoing administrative processes is

vigorously enforced, as shown by the narrowness of the “exceptional circumstances” exception. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted (*Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30-33).

[9] The AGC notes that the CA has yet to complete its investigation into Cpl. Quibell’s conduct. The DG’s determination that the investigation should proceed is therefore an interlocutory decision within an ongoing administrative process. If Cpl. Quibell is dissatisfied with the outcome of the CA’s investigation, he may pursue an appeal in accordance with s 45.11(3)(a) of the RCMP Act.

[10] Cpl. Quibell does not suggest there are any exceptional circumstances to justify a departure from the normal rule against judicial interference with ongoing administrative processes. Instead, he maintains that the DG’s decision respecting the CA’s request for an extension of time is a final determination that is not subject to appeal. I disagree.

[11] The DG’s decision was made pursuant to s 47.4(1) of the RCMP Act, which provides as follows:

47.4(1) If the Commissioner is satisfied that the circumstances justify an extension, the Commissioner may, on motion by the Commissioner or on

47.4 (1) Le commissaire, s’il est convaincu que les circonstances le justifient, peut, de sa propre initiative ou sur demande à cet effet, après en avoir dûment avisé

application, and after giving due notice to any member affected by the extension, extend the time limited by any of subsections 31(2), 41(2), 42(2) and 44(1), for the doing of any act described in that subsection and specify terms and conditions in connection with the extension.

les membres intéressés, proroger les délais prévus aux paragraphes 31(2), 41(2), 42(2) et 44(1) pour l'accomplissement d'un acte; il peut également spécifier les conditions applicables à cet égard.

[12] Appeal rights are set out in s 45.11 of the RCMP Act:

45.11(3) A member who is the subject of a conduct authority's decision may, within the time provided for in the rules, appeal the decision to the Commissioner in respect of

(a) any finding that an allegation of a contravention of a provision of the Code of Conduct by the member is established; or

(b) any conduct measure imposed in consequence of a finding that an allegation referred to in paragraph (a) is established.

45.11 (3) Tout membre dont la conduite fait l'objet d'une décision de l'autorité disciplinaire peut, dans les délais prévus dans les règles, faire appel de la décision devant le commissaire:

(a) soit en ce qui concerne la conclusion selon laquelle est établie une contravention alléguée à une disposition du code de déontologie;

(b) soit en ce qui concerne toute mesure disciplinaire imposée après la conclusion visée à l'alinéa a).

[13] Because the DG's decision respecting the CA's request for an extension of time was made pursuant to s 47.4 of the RCMP Act, Cpl. Quibell argues that the DG was acting as the Commissioner's delegate. The decision was not made by the CA, and therefore there is no appeal under s 45.11 of the RCMP Act. Even if Cpl. Quibell can appeal the outcome of the conduct

investigation to the Commissioner, the appeal will effectively be to the same decision-maker who determined that the investigation must proceed.

[14] Justice Richard Mosley considered this question in *Calandrini v Canada (Attorney General)*, 2018 FC 52 [*Calandrini*]. That case concerned an investigation into three alleged violations of the Code of Conduct, and the imposition of conduct measures by the CA. A review authority subsequently determined that the conduct measures were disproportionate to the nature and circumstances of the contraventions, and that a conduct board hearing was required. The applicant challenged the decision of the Commissioner's delegate to grant the extension of time under s 47.4(1) of the RCMP Act (*Calandrini* at paras 5-6).

[15] The positions of the parties in *Calandrini* were similar to those taken by the parties here. The AGC argued that the application was premature, as the internal administrative process had not been exhausted. If the applicant were unsuccessful, he could appeal the conduct board's decision pursuant to s 45.11(1) of the RCMP Act and the Commissioner's *Standing Orders – Grievances and Appeals*, SOR/2014-289. Judicial review was only appropriate after the internal administrative process had run its course (*Calandrini* at para 57).

[16] The applicant in *Calandrini* argued that the decision concerning the limitation period was final and binding, except for judicial review under the *Federal Courts Act*, RSC 1985, c F-7. There was no ongoing administrative process when the extension decision was made, as the time period had expired, and thus all internal remedies had been exhausted. Moreover, it was a decision by the Commissioner's delegate and any appeal of the conduct board's decision would

be to the Commissioner who had determined, through his delegate, that an extension was warranted (*Calandrini* at para 58).

[17] Justice Mosley held as follows (*Calandrini* at para 61):

It is premature to predict what the conduct board's ultimate decision will be on the procedures that were followed or the merits of the alleged contraventions; or that of the Commissioner on appeal. The disciplinary scheme should be allowed to run its course. The decision to grant an extension does not bind future decisions by the Commissioner. It is worth noting that the Commissioner who would consider any appeal is not the same Commissioner who was in office when these decisions were made. The conduct board may make findings favourable to the Applicant and those findings may be upheld by the Commissioner. If the Applicant succeeds in the result, the Applicant would have no need to be before this Court seeking redress.

[18] The same considerations apply here. It is premature to predict what the CA's ultimate decision will be on the merits of the alleged contraventions, or what the Commissioner may decide on any appeal. The decision of the DG to require an investigation does not bind future decisions by the Commissioner, who will in any event not be the same person as the DG. The CA may make findings favourable to Cpl. Quibell, as may the Commissioner on any appeal. If Cpl. Quibell succeeds in the result, he will have no need to seek redress from this Court. The disciplinary scheme should be allowed to run its course.

[19] In *Calandrini*, Justice Mosley acknowledged that his finding of prematurity was sufficient to dispose of the application. He nevertheless exercised his discretion to assess the reasonableness of the decision respecting the extension of time (*Calandrini* at para 84). I am not persuaded that I should do the same here.

[20] The issues raised in *Calandrini* were complex and inter-connected. There were two applications for judicial review. The questions before the Court included the applicable standard of review, whether the applications were premature, whether the decision to grant the extension of time was statute-barred and, if not, whether the decision was reasonable. A Code of Conduct investigation had been completed, and conduct measures had been imposed by the CA. However, a review authority subsequently determined that the conduct measures were disproportionate, and that a conduct board hearing was required.

[21] This may be contrasted with the case currently before the Court. The conduct investigation concerning Cpl. Quibell is at the earliest stages. There has been no finding of misconduct, and there may never be one. Cpl. Quibell acknowledges that there are no exceptional circumstances to justify a departure from the normal rule against judicial interference with ongoing administrative processes.

[22] Furthermore, counsel for Cpl. Quibell informed the Court that the legal issue raised in this proceeding also arises in *Lewis v Canada (Attorney General)*, Court File No T-767-20, currently under reserve. It is therefore likely that the question regarding the scope of the one year limitation period will be resolved by this Court before the ongoing administrative processes involving Cpl. Quibell are completed, or the available, effective remedies are exhausted.

[23] In the event the CA determines that the alleged contraventions of the Code of Conduct are established, Cpl. Quibell may appeal to the Commissioner. The Commissioner is not bound by the manner in which the DG decided the request for an extension of time. If the

Commissioner rejects an appeal by Cpl. Quibell, including on the ground that the investigation was duly authorized under s 47.4(1) of the RCMP Act, then Cpl. Quibell may seek redress in this Court at that time.

IV. Conclusion

[24] The application for judicial review is dismissed on the ground that it is premature. This is without prejudice to Cpl. Quibell's right to argue before the Commissioner, or in a future application for judicial review, that the decision of the DG to require the CA to continue the Code of Conduct investigation and render a decision was statute-barred.

[25] Because I have not addressed the merits of Cpl. Quibell's challenge to the ongoing Code of Conduct investigation, I exercise my discretion not to award costs against him.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed on the ground that it is premature.

2. No costs are awarded.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-133-21

STYLE OF CAUSE: GEOFF QUIBELL v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: BY VIDEOCONFERENCE IN OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 15, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: NOVEMBER 9, 2021

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