

Federal Court



Cour fédérale

Date: 20241126

Docket: T-321-22

Citation: 2024 FC 1890

Toronto, Ontario, November 26, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

DAMON ATWOOD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Damon Atwood, is a member of the Royal Canadian Mounted Police (RCMP). He seeks a declaration that the open court principle applies to the grievance process under Part III of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [*RCMP Act*].

[2] The RCMP grievance process is governed by Part III of the *RCMP Act*, the *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281 and the *Commissioner's Standing*

Order (Grievance and Appeals), SOR/2014-289. The grievance process is administered internally.

[3] RCMP grievance decisions are not published and Mr. Atwood believes that the available avenues for accessing past decisions are inadequate. He commenced this application after he tried to obtain copies of decisions made in other RCMP members' grievances through the RCMP's Office for the Coordination of Grievances and Appeals (OCGA).

[4] In September 2021, Mr. Atwood sent an email to the OCGA asking for copies of "the last ten written adjudicator decisions" related to a specific grievance topic, at the initial and final levels (20 decisions in total).

[5] According to subsection 31(4) of the *RCMP Act*, an RCMP member who presents a grievance is entitled, subject to certain limitations, to disclosure of written or documentary information under the RCMP's control that is relevant to the member's grievance and reasonably required to properly present it. The disclosure obligation and limitations are explained in the *National Guidebook – Grievance Procedures* [*National Guidebook*]. The *National Guidebook* also sets out the OCGA's responsibilities, which include receiving grievances, instructing parties of their responsibilities, responding to process-related questions, and liaising with the adjudicator's office.

[6] While grievance participants may be entitled to receive past adjudicator decisions as part of the RCMP's disclosure obligation, Mr. Atwood's request for adjudicator decisions was made

outside of a grievance process—his request was not related to a grievance and he was not seeking access to the decisions based on a disclosure requirement. The OCGA refused Mr. Atwood’s request on the basis that adjudicator decisions in other RCMP members’ grievances are not public and their release is subject to the restrictions in sections 7 and 8 of the *Privacy Act*, RSC, 1985, c P-21. The OCGA also advised that its role was to provide instruction to parties about the grievance and appeal process, not to provide disclosure. Disclosure is provided by the respondent to a grievance, not the OCGA.

[7] Mr. Atwood filed a grievance to contest the OCGA’s decision. As a preliminary issue, an initial level adjudicator had to decide whether Mr. Atwood lacked standing to bring the grievance, on the basis that the OCGA’s refusal was not subject to the grievance process.

[8] While his grievance against the OCGA was pending, Mr. Atwood filed the notice of application commencing this proceeding. The request for relief included an order of *mandamus* compelling the adjudicator to decide the issue of standing within 30 days, and a declaration that the legislation and policies that operated to exclude OCGA decisions from the grievance process be declared *ultra vires* and of no force and effect.

[9] The respondent moved to strike the notice of application on the basis that Mr. Atwood had commenced the application before exhausting all adequate available remedies. The motion was ultimately dismissed because the grievance process could not afford Mr. Atwood an effective alternative remedy: *Atwood v Canada (Attorney General)*, 2022 FC 1202 at para 13 [Atwood]. The grievance adjudicator was only empowered to determine whether a decision was

consistent with the applicable policy, and the OCGA's decision was consistent RCMP policy; the adjudicator would have no power to determine that a policy is invalid: *Atwood* at paras 4, 8-9.

[10] Mr. Atwood also tried to obtain adjudicator decisions through another avenue. In September 2021, he made a request to the RCMP's Access to Information and Privacy [ATIP] office under the *Access to Information Act*, RSC, 1985, c A-1 [AIA]. Initially, he sought approximately 2000 adjudicator decisions. When the ATIP office expressed concerns about the scope of the request, Mr. Atwood agreed to narrow the request to four decisions. The narrower request was granted—Mr. Atwood received four decisions with some information redacted. However, the RCMP's ATIP unit took the position that the decisions were exempt from disclosure and were being released under the discretionary powers of the AIA. Mr. Atwood was concerned with this response, as it meant that the ATIP process would provide no certainty in terms of his ability to access adjudicator decisions in the future. Mr. Atwood commenced an application to challenge the ATIP decision (Court file no. T-349-24). He discontinued the application in June 2024.

[11] Mr. Atwood is unsatisfied with the responses to his requests for adjudicator decisions and believes there should be open access to such decisions. He asks this Court to decide: (i) whether the open court principle applies to the RCMP grievance process; (ii) whether the OCGA's refusal to provide copies of past adjudicator decisions was incorrect or unreasonable; and (iii) the appropriate remedy. While Mr. Atwood frames three issues, they all hinge on his argument that the open court principle applies to the RCMP grievance process. The sole remedy Mr. Atwood seeks is a declaration that the open court principle applies to the RCMP grievance process.

[12] Mr. Atwood states he has filed grievances under the *RCMP Act* personally, acted as an assistant in other members' grievances, and provided guidance on the grievance process to members. Mr. Atwood states that, while this application stems from his experiences with the RCMP's grievance process, at a fundamental level the issues are about ensuring fairness, transparency, and accountability in the RCMP's grievance process. He states he knows of an RCMP member who was disciplined for sharing a grievance decision and the declaration he seeks is necessary to prevent unjust prosecution of RCMP members, bolster judicial efficiency, enhance procedural fairness, and increase public scrutiny for greater accountability.

[13] While Mr. Atwood takes the position that the OCGA's refusal to provide adjudicator decisions in response to his September 2021 email was incorrect and unreasonable, he does not ask for an order overturning the refusal and he does not want the matter to be remitted to the OCGA for reconsideration. This is because Mr. Atwood expects that a reconsideration decision would not address the heart of his complaint—namely, the RCMP's policies that limit access to adjudicator decisions, which the OCGA applied when it refused his requests for past adjudicator decisions. For this reason, Mr. Atwood seeks a declaration that the open court principle applies to the RCMP's grievance process and costs of this application. He hopes that the declaration will compel the RCMP to provide access to adjudicator decisions beyond the access that is tied to the RCMP's disclosure obligations in an active grievance, and beyond the access that is available through an ATIP request.

[14] The respondent submits that Mr. Atwood's request for declaratory relief is fundamentally flawed, for two reasons. First, Mr. Atwood is no longer pursuing any of the relief sought in his

notice of application and the sole issue he now advances is fundamentally different from the pleaded issues, contrary to Rule 301 of the *Federal Courts Rules*, SOR 98/106. Second, the declaration Mr. Atwood seeks is a discretionary remedy that should not be granted because it would not settle a justiciable live controversy, it is of jurisprudential interest only, and there are adequate alternative statutory remedies for RCMP members seeking access to grievance decisions. The respondent submits the application should be dismissed based on these flaws alone, without deciding the question that Mr. Atwood asks this Court to decide.

[15] I agree with the respondent. The above-noted flaws with Mr. Atwood's application are determinative, and the application is dismissed on this basis.

II. Analysis

[16] Beginning with Rule 301, the respondent submits the relief Mr. Atwood is seeking is wholly different from the relief he sought in the notice of application. The respondent contends he is prejudiced by the late, substantial change in the nature and focus of this application and Mr. Atwood should not be permitted to pursue what is effectively a new application.

[17] Mr. Atwood argues that the relief and issues pleaded in the notice of application would necessarily require the Court to determine whether the open court principle applies, and his failure to specifically request a declaration is not fatal. He contends there was no prejudice to the respondent since the grounds pleaded in the notice of application did not change and the respondent was able to respond in written submissions. Mr. Atwood submits his request for declaratory relief is necessarily ancillary to the pleaded relief and falls within his request for

“such further and other relief as this Honourable Court deems just”: *Native Women’s Assn of Canada v Canada*, [1994] 3 SCR 627 at 647-648, 1994 CanLII 27 (SCC).

[18] I agree with the respondent that Mr. Atwood is effectively pursuing a different application than the one that was pleaded.

[19] Rule 301 requires that a notice of application set out a precise statement of the relief sought, and a complete and concise statement of the grounds intended to be argued. A complete statement of grounds means all the legal bases and material facts that, if taken as true, will support granting the relief sought, and a concise statement of grounds must include the material facts necessary to show that the Court can and should grant the relief sought: *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at paras 39-40. The Court should not consider grounds that have not been raised in a notice of application: *Boubala v Khwaja*, 2023 FC 658 at paras 27-28 [*Boubala*]. Subject to limited exceptions, Rule 301 is mandatory: *Boubala* at para 28, citing *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 38 [*Iris*].

[20] The notice of application seeks three main forms of relief: (i) an order that the RCMP immediately undertake to provide RCMP members with access to all grievance decisions in an anonymized format, and to release the decisions upon request to members engaged in a grievance; (ii) in the alternative, a declaration that the RCMP’s policies that operate to exclude OCGA decisions from the grievance process are *ultra vires* and of no force and effect; and (iii) an order of *mandamus* that would compel RCMP adjudicators to issue a decision on standing in

Mr. Atwood's grievance of the OCGA's decision, within 30 days. Mr. Atwood no longer seeks any of this relief. Now, the sole relief he seeks is a declaration that the open court principle applies to the RCMP's grievance process.

[21] I agree with the respondent that the remedy Mr. Atwood now seeks is different from any remedy sought in the notice of application. What started out as an application concerned with Mr. Atwood's and other RCMP members' access to decisions, and his own grievance against the OCGA regarding such access, has effectively been replaced with a request to decide a legal question in the abstract. While the notice of application pleads that Mr. Atwood requested 20 decisions from the OCGA "in order to assist [him] in knowing the case to be met for an ongoing grievance" and alleges that the OCGA's refusal to provide those decisions was contrary to the open court principle, in my view this pleading is insufficient to support what is now a request for a broad declaration that the open court principle applies to the RCMP grievance process generally.

[22] I do not agree with Mr. Atwood that the declaration he now seeks is ancillary relief captured by the basket clause in the notice of application requesting such further and other relief as the Court deems just. The declaration Mr. Atwood seeks is not ancillary to the pleaded relief or grounds. It would not have been necessary, or appropriate, for the Court to issue a broad declaration that the open court principle applies to the RCMP's grievance process in deciding the issues that Mr. Atwood raised in the notice of application, or in deciding whether to grant the relief he requested in his pleading. I find that the declaratory relief Mr. Atwood now seeks and

the grounds he relies on in support of that relief were not adequately raised in the notice of application, and they are not properly before the Court.

[23] There is room for the Court to exercise discretion in applying the requirements of Rule 301 where: relevant matters have arisen after the notice of application was filed; the new issues have merit, are related to those set out in the notice, and are supported by the evidentiary record; the respondent would not be prejudiced; and no undue delay would result: *Iris* at para 42. However, I am not satisfied that any of these factors favours Mr. Atwood, so as to warrant the exercise of the Court's discretion to consider issues that have not been properly raised and pleaded. I note that Mr. Atwood contemplated seeking leave to amend, but he never brought a motion.

[24] While the failure to comply with Rule 301 provides a sufficient basis to dismiss the application, I agree with the respondent that there is a second reason why this Court should dismiss the application. Mr. Atwood has not demonstrated that the Court should entertain his request for a declaration that the open court principle applies to the RCMP's grievance process.

[25] The Court may, in its discretion, grant declaratory relief under sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*FC Act*] where: (i) the court has jurisdiction to hear the issue; (ii) the dispute before the court is real and not theoretical; (iii) the party raising the issue has a genuine interest in its resolution; and (iv) the respondent has an interest in opposing the declaration sought: *Ewert v Canada*, 2018 SCC 30 at para 81 [*Ewert*]. Declaratory relief should

normally be declined where there exists an adequate alternative statutory mechanism to resolve the dispute or to protect the rights in question: *Ewert* at para 83.

[26] Mr. Atwood submits this application for judicial review satisfies all four criteria and declaratory relief is a suitable remedy. He argues that (i) this Court has jurisdiction over the matter through section 18.1 of the *FC Act*, (ii) the dispute is real and ongoing, (iii) he is a member of the RCMP with a genuine interest in the dispute's resolution, and (iv) the respondent is the appropriate party to challenge the declaration sought. Additionally, Mr. Atwood states that in *Atwood*, this Court found he has no adequate alternative remedy.

[27] Mr. Atwood submits declaratory relief will have practical effects. As noted above, Mr. Atwood contends that the requested declaration will (i) prevent RCMP members from being unjustly prosecuted under the *RCMP Act* for sharing grievance decisions, (ii) improve judicial economy and procedural fairness, in this Court and in the grievance process, and (iii) enhance fairness and accountability in an organization responsible for enforcing Canada's laws.

[28] The respondent contends the declaration Mr. Atwood seeks is purely of jurisprudential interest and will not resolve any live controversy that involves him. Mr. Atwood does not ask for an order that would quash the OCGA's refusal to provide the 20 requested grievance decisions (or any other refusal to provide decisions) and he does not seek to compel the OCGA to provide grievance decisions. The practical effects Mr. Atwood claims his requested declaration will have—preventing unjust prosecutions, improving judicial economy and procedural fairness, and enhancing fairness and accountability—are vague assertions about possible benefits that do not

relate to any dispute between him and the RCMP. Mr. Atwood is not subject to a conduct process, and the alleged practical effects only serve to show that he is not seeking to resolve any justiciable live controversy. Rather, the respondent submits Mr. Atwood is seeking a means to impose his preferred approach on how the RCMP makes grievance decisions available, without specifying how the RCMP should respond to the declaration he seeks or what effect the declaration will have on RCMP policies.

[29] The respondent adds that the lack of a practical impact on Mr. Atwood raises a question of whether he remains “directly affected by the matter in respect of which the relief is sought” on judicial review, as required by section 18.1(1) of the *FC Act*. If there is a true dispute that relates to RCMP members’ ability to access prior grievance decisions through the ATIP process or the grievance process, the respondent contends the Court should address the issue by way of a judicial review proceeding with a proper factual matrix, where the relief requested will have practical utility for an individual who is directly affected.

[30] The respondent also argues that declaratory relief is not appropriate because Mr. Atwood has alternative statutory remedies to access grievance decisions—through the ATIP process or through disclosure in the context of an actual grievance. The respondent argues that these alternatives provide a better remedy than a declaration, since the declaration Mr. Atwood seeks does not require the RCMP to disclose grievance decisions in any particular way or mandate any practical effect.

[31] I substantially agree with the respondent’s submissions.

[32] The Supreme Court of Canada has held that a declaration can only be granted if it will have practical utility, that is, if it will settle a “live controversy” between the parties: *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para 11. I agree with the respondent that Mr. Atwood has not shown that the declaration he seeks will settle a live controversy. As noted above, Mr. Atwood’s request to the OCGA was made outside of the grievance process. His goal was to “determine how adjudicators were interpreting and applying policy” to assist in writing submissions, as well as to “determine in some cases whether it would be worthwhile to pursue a grievance”. Mr. Atwood does not have a real and ongoing dispute with the RCMP that would be resolved by granting the declaration, and even assuming he has standing to represent the interests of other RCMP members, he has not shown how the declaration would resolve any active dispute involving such members.

[33] Furthermore, I agree with the respondent that Mr. Atwood seeks an answer to a question of jurisprudential interest that is untethered to a concrete, practical result. As the respondent points out, Mr. Atwood seems to assume that a declaration that the open court principle applies to the RCMP’s grievance process will result in a mechanism for searching and retrieving grievance decisions. When he started this application, he requested an order that would give RCMP members wider access to decisions in the context of a grievance. However, Mr. Atwood no longer seeks such an order, and the declaration he now seeks is not limited to his original concerns with the availability of grievance decisions. Mr. Atwood now seeks a declaration that the open court principle applies to the grievance process laid out in Part III of the *RCMP Act*. He contends that confirming the open court principle applies is “the first step”, and how it should apply is a separate issue. He states he does not wish to dictate how the RCMP should implement

the open court principle, but it is important to declare that it applies so the RCMP can start to take steps and formulate how it wishes to respond.

[34] In my view, Mr. Atwood is asking the Court to make a declaration without a proper factual matrix or clear understanding of its practical effects and impacts. Decisions are one aspect of the grievance process, but the grievance process also includes other steps such as dispute resolution and hearings. Currently, these steps are not public and it is unclear how they would be affected by the declaration Mr. Atwood seeks. On this record, there is insufficient information regarding how the requested declaration would impact the legislation and policies governing the RCMP's grievance process, what changes would be required, and how they would be made—not only for procedures governing access to decisions but for procedures governing other aspects of the grievance process as well. It would be inappropriate for the Court to answer a question of jurisprudential interest when there is serious uncertainty about the practical effects and impacts. I agree with the respondent that granting a general declaration that the open court principle applies, and leaving it to the RCMP to figure out how to respond, is inconsistent with the purpose of declaratory relief and the purpose of judicial review.

[35] Mr. Atwood argues that the Court in *Atwood* allowed this application to proceed because the grievance process did not afford him an adequate alternative remedy. In my view, the Court's finding in *Atwood* is not directly relevant. In that decision, the Court found that Mr. Atwood's grievance did not afford him an alternative means to challenge the OCGA's decision because it was a "paper tiger" grievance that would likely take more than two years to reach a prescribed negative result: *Atwood* at para 12. However, Mr. Atwood is no longer challenging the OCGA's

decision directly. He now seeks entirely different relief, and it is unclear to me whether and to what extent the declaration he seeks would even affect the OCGA. The OCGA is not an adjudicative tribunal and it is not responsible for disclosure in the grievance process or for providing decisions in response to ATIP requests.

[36] I agree with the respondent that there are more appropriate ways to address concerns that the available avenues for accessing past adjudicator decisions are inadequate. If the limits on accessing grievance decisions create problems such as unjust prosecutions or procedural unfairness, it seems likely that the issues will arise in the context of a dispute involving an RCMP member who has been disciplined or denied procedural fairness in his or her grievance. It seems to me that issues relating to RCMP members' ability to access to grievance decisions can be addressed in a judicial review with a proper factual matrix and a request for relief that will have practical utility for a directly affected individual.

[37] In summary, Mr. Atwood has not persuaded me that the Court should exercise its discretion to grant the declaratory relief that he seeks. I am not satisfied that deciding whether the open court principle applies to the grievance process under Part III of the *RCMP Act* is an appropriate way to address issues he alleges exist with the available avenues for accessing RCMP members' grievance decisions.

III. **Conclusion**

[38] Mr. Atwood seeks declaratory relief based on grounds that are not properly before the Court, and he has not established that the Court should exercise discretion to grant a declaration

that the open court principle applies to the grievance process under Part III of the *RCMP Act*. For both of these reasons, the application is dismissed.

[39] At the hearing, the respondent objected to Mr. Atwood's request to introduce a copy of Appendix C of the RCMP's 2022/23 Annual Report to Parliament on the Administration of the *Access to Information Act* as evidence that the ATIP process does not provide timely access to grievance decisions. While nothing turns on it in light of my decision, in view of the late request and the fact that Appendix C is of marginal relevance to the grounds pleaded in the notice of application, the appendix is not admitted.

[40] The parties asked for an opportunity to make written submissions on costs. If the parties are unable to reach an agreement on costs, the respondent may serve and file cost submissions within 20 days of this decision and Mr. Atwood may serve and file cost submissions within 15 days thereafter. Each party's cost submissions shall not exceed 3 pages, not including any bill of costs.

JUDGMENT IN T-321-22

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. In the event the parties are unable to reach an agreement on costs, costs remain to be determined following written submissions delivered in accordance with this Court's reasons.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-321-22

STYLE OF CAUSE: DAMON ATWOOD v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: APRIL 10, 2024

JUDGMENT AND REASONS: PALLOTTA J.

DATED: NOVEMBER 26, 2024

APPEARANCES:

Damon Atwood

FOR THE APPLICANT
(ON HIS OWN BEHALF)

James Elford

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Edmonton, Alberta

FOR THE RESPONDENT