

Federal Court



Cour fédérale

**Date: 20131008**

**Docket: T-1000-13**

**Citation: 2013 FC 1018**

**Ottawa, Ontario, October 8, 2013**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MIRJANA LAKIC**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Ms. Lactic seeks to set aside a decision of the Investigations Branch of the Public Service Commission [Investigations Branch], dated May 23, 2013, whereby it declined to exercise its discretion to investigate her complaint regarding the appointment process for a position with the Royal Canadian Mounted Police [RCMP] as an Administrative Support Clerk.

[2] Her complaint had two aspects, which need only be summarized in a most general manner. First, she alleged that she had been offered the job orally, only to have that offer withdrawn due to a

“mistake” and second, that prospective government employers falsely used her alleged failure to have been security cleared as justification for not hiring her.

[3] The reason the Investigations Branch provided for its refusal to process her complaint rested on her delay in making her complaint:

Please be advised that according to the [PSC’s *Policy on Considerations For Investigations Conducted Under the New Public Service Employment Act (PSEA) by the PSC Relating to External Appointments, Non-delegated Internal Appointments and Appointments Involving Political Influence or Fraud*] [the Policy], the decision to investigate or not is discretionary and will be determined on a case by case basis. In deciding whether or not to investigate, the Investigations Branch may take into account whether the matter has come to our attention within six months of the appointment being made or proposed.

The RCMP indicates that the pool of qualified candidates for the above-referenced appointment process expired on March 31, 2011 with the last letter of offer issued before that date. The matter raised concerning advertised external appointment process 2008-RCMP-EA-HRHQ-NCR-044 took place in September 2010. However, you contacted the PSC in February 2013. As the above matter was referred to the Investigations Branch more than two years following the situation, we will not proceed further with the information received. Accordingly, we have closed our file on this matter.

As for your concerns surrounding your security clearance, please note that the Investigations Branch has no jurisdiction over this matter.

[4] The facts upon which the Investigations Branch rested its decision are confirmed in the record before the Court and are not disputed by Ms. Latic. Further, its finding that it has no jurisdiction relating to the security clearance issues is not questioned.

[5] Ms. Latic represented herself in this proceeding. I summarize the relevant issues for the Court as:

1. whether she was denied procedural fairness in not having been informed that delay was a live issue that might result in her complaint not being considered; and
2. whether the decision of the Investigations Branch was reasonable, based on the record before it.

### **Procedural Fairness**

[6] The fact that a decision is administrative and affects the “rights, privileges or interests of an individual” is sufficient to trigger the application of a duty of fairness: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 20.

[7] It has been found that the Investigations Branch owes a duty of fairness on the lower end of the spectrum: *Baragar v Canada (Attorney General)*, 2008 FC 841 [*Baragar*]. In *Baragar*, Justice Barnes ultimately found that the duty of fairness imposed on the Investigations Branch was not breached on the facts of that case, in part because the applicant had ongoing communications with the Investigations Branch and at one point, “reformulated” her concerns in a lengthy written submission.”

[8] In this case, Ms. Latic was not in continual communication with the Investigations Branch after she submitted her complaint, except to approve a request for her consent to communicate with the RCMP regarding her file.

[9] The respondent submits that Ms. Latic was put on notice that she would have to address the delay in bringing the claim because the Investigations Branch sent her a copy of the Policy on February 28, 2013, and indicated that it would review her complaint on the basis of that Policy. Although Ms. Latic was never directly asked for submissions on the issue of the delay, I accept the respondent's submission that in light of the Policy and the extensive delay in filing the complaint, Ms. Latic knew or ought reasonably to have known that this would be an issue, and she had every opportunity to offer some evidence or submission as to why, notwithstanding that delay, her complaint ought to be considered. She offered no such evidence.

[10] Therefore, I find that the Investigations Branch met its duty of fairness, at the level required, in providing the applicant with a copy of the Policy and advising her that her complaint would be dealt with in accordance with that document. Upon reading the Policy, Ms. Latic would know that the delay was a relevant issue, and she was not prevented from making any relevant submissions in that regard.

### **Reasonableness of the Decision**

[11] I find that the decision of the Investigations Branch not to proceed further with the complaint due to its untimely filing was a reasonable decision.

[12] The posting for the CR-04 position closed on March 31, 2011. Ms. Latic presented her complaint on February 23, 2013. It is clear from the record that Ms. Latic spent some time navigating bureaucracy and determining to whom to address her claim. However, even giving Ms.

Lakic the benefit of the most lenient timeline of events, the record shows that she still waited nearly a year and a half after the final position was filled to take action.

[13] The Investigations Branch does have discretion to ignore the six month limitation and investigate a late complaint; however, that decision is highly discretionary and Ms. Lakic did not offer any reason for her delay. Even if admissible, Ms. Lakic provided no explanation in her affidavit, her record, or her factum as to why she delayed bringing her claim to the Investigations Branch. With no explanation provided, and acting within its own Policy, the decision of the Investigations Branch not to investigate is reasonable.

[14] Although the respondent initially sought its costs if successful, counsel informed the Court at the hearing that it was abandoning that claim.

[15] Accordingly, this application must be dismissed; however, in the circumstances, without costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed, without costs.

"Russel W. Zinn"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1000-13  
**STYLE OF CAUSE:** MIRJANA LAKIC v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 1, 2013

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

**DATED:** OCTOBER 8, 2013

**APPEARANCES:**

Mirjana Lakic

APPLICANT  
ON HER OWN BEHALF

David Aaron

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

SELF-REPRESENTED APPLICANT

WILLIAM F. PENTNEY  
Deputy Attorney General of Canada  
Ottawa, Ontario

FOR THE RESPONDENT