

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 32
Date: September 29, 2022
File No.: T2248/0318

Between:

Ryan Letnes

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Marie Langlois

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I. REASONS

[1] Considering the Ruling that the Tribunal decided on April 26, 2022 (2022 CHRT 14);

[2] Considering that by that decision, the Tribunal ordered the RCMP to :

- provide a revised list of privileged documents including the title, date, author, recipient for the solicitor/client privilege documents;
- provide a revised list of privileged documents including the title, date, author, recipient, carbon copied for the documents with a litigation privilege and a blended solicitor/client and litigation privilege;
- provide these lists at the latest May 6, 2022, or at a later date with the authorization of the Tribunal;

[3] Considering that on May 6, 2022, the RCMP provided a revised Privileged List of Documents and informed the Tribunal that for 39 documents, inquiries were made into obtaining better copies of the documents in order to fulfill the order given by the Tribunal on April 26, 2022;

[4] Considering that on May 9, 2022, Mr. Letnes filed another motion “to compel affidavit regarding claims of privilege” challenging 55 records with exclusively claims of solicitor-client privilege, 87 records of blended solicitor-client/litigation privilege and 589 records with exclusively litigation privilege. He also asks the Tribunal to order the RCMP to file a detailed affidavit explaining how each record attracts the claimed privilege;

[5] Considering that on June 10, 2022, the Human Right Commission informed the Tribunal that it takes no position on the motion;

[6] Considering that on June 10, 2022, the RCMP informed the Tribunal that it opposes Mr. Letnes’s request for a detailed affidavit. The RCMP nevertheless indicated it would review its List of Privileged Documents and provide an Amended List of Privileged Documents;

[7] Considering that on June 13, 2022, Mr. Letnes provided written representations in reply to the RCMP's position from June 10, 2022;

[8] Considering that on September 15, 2022, the RCMP provided its Fifth Amended List of Documents and a revised Privileged List of Documents including a new category of privilege identified as *RCMP Act Privilege* and its position on 2 documents where Mr. Letnes stated in a correspondence with the RCMP that they were redacted at the source;

[9] Considering that Mr. Letnes, in a correspondence from September 16, 2022, maintains his request to Compel Affidavit regarding Claims of Privilege. He contests the new category of privilege called *RCMP Act privilege* and the 39 records in this category. He maintains that 441 records with privilege claims in issue. He adds that in the Fifth Amended List of Documents (the non privilege documents) there are 8 records that appear redacted. As for the 2 documents mentioned as having been redacted at the source, he will address the issue in "an anticipated motion regarding the veracity, authenticity, and reliability of the Respondent's global approach to records in this case."

[10] The Tribunal concludes that items listed in the Amended Privileged List of Documents provided by the RCMP on September 15, 2022, are sufficiently identified and satisfy the order given in the April 16, 2022 Ruling. Indeed, not only the date, the title, the author, the recipient, the people or the organization that was copied, and the identification of the privilege are clearly identified, but the RCMP detailed the type of document as either an email, a note, a handwritten note, a document, a chart/table, a briefing, a spreadsheet, a memorandum, a decision, a letter, a form, or a transit slip. This is detailed information that corresponds to what is reasonably necessary to identify the privilege and to challenge it if necessary.

[11] Therefore, there is no need for a more detailed affidavit.

[12] As for the category of RCMP Act Privilege, in order to make a decision on the privilege itself, the RCPM will be permitted to file an argument within 30 days of the present decision; the Commission and Mr. Letnes will have 2 weeks after receiving the argument from RCMP to provide their written arguments and the RCMP will have a week after receiving the Commission and Mr. Letnes written arguments to reply.

[13] As for the 441 documents that are challenged by Mr. Letnes, the Tribunal concludes that it needs to view some of the documents in order to make an informed decision on the justification of the claimed privilege. But, considering the proportionality principle, the Tribunal does not need at this step of the inquiry to view each of the 441 documents in issue.

[14] Indeed, the Supreme Court of Canada has determined in *M(A) v Ryan*, [1997] 1 S.C.R. 157 that a flexible approach is required in determining which documents should be reviewed in order to determine if the claimed privilege apply:

VI. Procedure for Ascertaining Privilege

39 In order to determine whether privilege should be accorded to a particular document or class of documents and, if so, what conditions should attach, the judge must consider the circumstances of the privilege alleged, the documents, and the case. While it is not essential in a civil case such as this that the judge examine every document, the court may do so if necessary to the inquiry. On the other hand, a judge does not necessarily err by proceeding on affidavit material indicating the nature of the information and its expected relevance without inspecting each document individually. The requirement that the Court minutely examine numerous or lengthy documents may prove time-consuming, expensive and delay the resolution of the litigation. Where necessary to the proper determination of the claim for privilege, it must be undertaken. But I would not lay down an absolute rule that as a matter of law, the judge must personally inspect every document at issue in every case. Where the judge is satisfied on reasonable grounds that the interests at stake can properly be balanced without individual examination of each document, failure to do so does not constitute error of law.

[15] The Tribunal reminds the parties that the process of challenging a privilege claim cannot amount to a fishing expedition. If in fact the sampling of documents by the Tribunal shows that the privilege claims are well-founded, continuing to review the remaining documents for whether they should be disclosed is in essence a fishing expedition. Further, there is precedent for denying disclosure where the delay and burden are not justified. And although this is specifically a motion for challenging privilege, it is at its core a request for disclosure of documents.

[16] As decided by the Tribunal in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 at para. 7, a “request for disclosure must not be speculative or amount to a “fishing expedition”.” The Tribunal’s view stated in that decision at para. 7 is “that in the search for

truth and despite the arguable relevance of evidence, the Tribunal may exercise its discretion to deny a motion for disclosure, so long as the requirements of natural justice and the *Rules* are respected, in order to ensure the informal and expeditious conduct of the inquiry.”

[17] Therefore, as a first step the Tribunal asks Mr. Letnes to identify 20 documents that the RCMP will provide confidentially exclusively to the Tribunal. These documents will be kept confidential and will not be part of the Tribunal’s records or evidence. The parties will then be allowed to file specific submissions on each particular document. Once received, then the Tribunal will review each of the 20 documents and render a specific decision on the privilege claimed.

[18] If all the 20 specific claims chosen by Mr. Letnes are justified, the Tribunal will not review any other document and will reject Mr. Letnes’s entire motion. If it is not the case, then the process will continue with more instructions from the Tribunal.

[19] As for the anticipation of another motion from Mr. Letnes to contest “the veracity, authenticity, and reliability of the Respondent’s global approach to records”, the Tribunal reminds the parties that all these motions will have the effect of postponing the hearing and the real litigation in the present case.

[20] A recent decision rendered by the Supreme Court of Canada, *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 states, at para. 46, that decisions by administrative decision makers need to be rendered promptly and efficiently. It adds that inordinate delay in administrative proceedings is contrary to the interests of society and undermines a key purpose for which administrative tribunals were created, i.e expeditious and efficient decision making.

[21] In *Chen v. Workplace Safety and Insurance Appeals Tribunal*, 2020 ONSC 6287 at para 12, the Ontario Divisional Court mentions the inevitable delays from bringing additional procedural motions and failing to work out issues with opposing counsel.

[22] The present Tribunal adds that proceedings before it shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure

allow, according to section 48.9(1) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. The *Canadian Human Rights Tribunal Rules of Procedures* SOR/2021-137 also refers to informal, expeditious and fair principles

[23] The Tribunal does not have unlimited resources when deciding every issue that could arise in an inquiry. The rules of natural justice and procedural fairness will always prevail, but the Tribunal must take into account the principle of proportionality and its limited resources.

[24] As the Supreme Court of Canada states in *Hryniak v. Mauldin*, [2014] 1 S.C.R., at para. 28 “The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure”.

[25] In a very recent decision, *Temate v. PHAC*, 2022 CHRT 31, at para. 11, the Tribunal states that it has always been guided by this important proportionality principle. This principle is considered by the Courts as a touchstone to access to justice.

[26] Therefore, the Tribunal encourages Mr. Letnes to carefully weigh whether the delay and resources required to bring future motions outweigh the likely benefits. The Tribunal may decline to deal with future motions if they are not an appropriate means of advancing the resolution of the complaint.

II. ORDER

[27] For those reasons, the Tribunal

- **ALLOWS** the RCMP to file an argument on the applicability of the RCMP Act privilege in the current proceedings within 30 days of the present decision; the Commission and Mr. Letnes, will have 2 weeks after receiving the argument from RCMP to provide their written arguments and the RCMP will have a week after receiving the Commission and Mr. Letnes written arguments to reply;

- ORDERS Mr. Letnes to identify a maximum of 20 documents from the Amended List of Privilege documents for the review of the Tribunal within 30 days of the present decision and provide the 20 documents list to the Tribunal and the other parties;
- ALLOWS Mr. Letnes to file specific submissions on each particular document within 30 days of the present decision; the RCMP and the Commission will have 2 weeks after receiving the argument from Mr Letnes to file their specific submissions on each particular document and Mr Letnes will have a week after receiving the RCMP and the Commission written arguments to reply;
- ORDERS RCMP to provide those documents, unredacted, exclusively to the Tribunal in a manner to protect their confidentiality within 2 weeks after the documents have been identified by Mr. Letnes;
- ORDERS that the Tribunal will not include these documents in the official record.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
September 29, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2248/0318

Style of Cause: Ryan Letnes v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: September 29, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Ryan Letnes, for the Complainant

Christine Singh and Aby Diagne, for the Canadian Human Rights Commission

Graham Stark, for the Respondent