

Federal Court



Cour fédérale

**Date: 20211027**

**Docket: 21-T-47**

**Citation: 2021 FC 1148**

**Ottawa, Ontario, October 27, 2021**

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

**BETWEEN:**

**CHERYL MCLEAN  
DOUGLAS MCLEAN**

**Applicants**

**and**

**MICHELAINÉ LAHAIE, CHAIRPERSON OF THE CIVILIAN REVIEW  
AND COMPLAINTS COMMISSION FOR THE ROYAL CANADIAN  
MOUNTED POLICE, BRENDA LUCKI, COMMISSIONER FOR THE  
ROYAL CANADIAN MOUNTED POLICE, STAFF SERGEANT DARREN  
WOUTERS, STAFF SERGEANT DEON MARQUIS, SERGEANT  
RICHARD TONGE, CORPORAL KYLE WYONZEK, AND THE  
ATTORNEY GENERAL OF CANADA**

**Respondents**

**ORDER AND REASONS**

I. **Overview**

[1] The Applicants, Cheryl McLean and Douglas McLean, bring this motion under Rule 369 of the *Federal Court Rules*, SOR/98-106 (the “*Rules*”) for an Order to extend the time within which to file and serve an Application for Judicial Review.

[2] The Applicants seek review of the Final Report (the “Final Report”) of the Civilian Review and Complaints Commission (the “CRCC”) on the Applicants’ complaints against members of the Royal Canadian Mounted Police (the “RCMP”), as well as a review of the RCMP Commissioner’s response to the CRCC’s Interim Report on the Applicants’ complaints (the “Commissioner’s Response”). The Applicants seek to have the decisions of the CRCC and RCMP Commissioner quashed, and an order of *mandamus* issued directing the CRCC to recommend that the Commissioner institute conduct measures and/or conduct hearings for the RCMP members named as Respondents to this Motion.

[3] For the reasons that follow, I find that the Applicants’ Motion does not satisfy the requirements to obtain an extension of time, as set out in the jurisprudence. The extension of time is therefore dismissed.

II. **Facts**

[4] On June 8, 2015, the Applicants submitted complaints regarding the conduct of members of the RCMP through the complaints process set out in the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 (“*RCMP Act*”). On March 13, 2017, the majority of the Applicants’

complaints were dismissed. On May 11, 2017, the Applicants sought review of the matter by the CCRC.

[5] On December 29, 2017, the CCRC prepared an Interim Report as part of its review pursuant to the *RCMP Act*. The Interim Report was provided to the RCMP Commissioner, who prepared the Commissioner's Response and provided it to the CRCC. On April 15, 2021, the CRCC issued the Final Report.

[6] The Final Report was emailed to the Applicants' counsel on April 21, 2021. According to the Applicants' submissions, the email was first opened by the Applicants' counsel on May 12, 2021 and forwarded to the attention of his associate (the "Associate") on May 12, 2021. On May 13, 2021, a copy of the Final Report was printed and provided to the Associate. The Associate erroneously believed the Final Report had been received on May 13, 2021 and calculated the deadline to file a judicial review application based on that date.

[7] An Application for Judicial Review of the decision was filed on June 11, 2021, yet was subsequently discontinued following discussions with counsel for the Respondents.

[8] On October 1, 2021, the Applicants filed this Motion for an extension of time to file their Application for Judicial Review.

III. **Issue**

[9] Whether the Applicants should be granted an extension of time to file their Application for Judicial Review of the Final Report and the Commissioner's Response.

IV. **Analysis**

[10] Pursuant to subsection 18.1 (2) of the *Federal Courts Act*, RSC 1985, c F-7, an application for judicial review shall be made within 30 days after the decision or order was first communicated to the party. An applicant must obtain leave to commence an application beyond the 30-day time limit, or the application will be time-barred (*Meeches v Assiniboine*, 2017 FCA 123 at para 41).

[11] Rule 8 of the *Rules* permits the Court, on a motion, to extend a period fixed by the *Rules*. Such a motion may be brought before or after the end of the period sought to be extended.

[12] The Federal Court of Appeal in *Thompson v Canada (Attorney General)*, 2018 FCA 212 ("*Thompson*"), at paragraph 5, outlined the four factors that must be considered when determining whether an extension of time should be granted:

- 1) Did the moving party have a continuing intention to pursue the judicial review application?
- 2) Is there some potential merit to the application for judicial review?

- 3) Does the moving party have a reasonable explanation for the delay?
- 4) Is there prejudice to the other party from the delay?

[13] It is not necessary to satisfy each of the four criteria. Instead, this Court must consider each factor and decide whether, on balance, the interests of justice would be served in granting the extension of time (*Thompson* at para 6).

[14] With regards to the first factor, the Applicants submit that their actions demonstrate a continuing intent to pursue the Judicial Review Application as steps were taken immediately to coordinate with counsel for the Respondent upon learning of the mistake that led to the delay. However, I find the Applicants have not adduced evidence of a continued intention to pursue the Judicial Review Application, including the lack of an explanation for the initial delay of counsel upon receipt of the Final Report.

[15] With respect to the second factor, I find that several deficiencies with the Application for Judicial Review go against its overall potential merit. These include a lack of evidence to support the grounds for review, the unavailability of the order of *mandamus* sought, and the breach of Rule 302 of the *Rules*, which limits an application for judicial review to a single order.

[16] Third, while the Applicants' submissions recognize that the delay in filing the proposed application for judicial review was caused by counsel's inadvertence, which has been admitted and attended to, the Applicants do not account for the delay that occurred between when the Final Report was emailed to the Applicants' counsel on April 21, 2021 and when the email was

opened on May 12, 2021. The proposed Application for Judicial Review was initially filed on June 11, 2021, which was 22 days past the 30-day limitation period. I agree with the Respondents' submission that the Applicants have only offered an explanation for a portion of the delay in the form of an error by counsel and find that the Applicants have not provided a reasonable explanation for the overall delay.

[17] Finally, without a reasonable explanation for the delay, granting an extension of time would result in prejudice to the Respondents (*Collins v Canada (Attorney General)*, 2010 FC 949 at para 6).

V. **Conclusion**

[18] I note that the Applicants' written submissions are rather convoluted, containing several typographical errors, thus rendering it difficult to decipher what the Applicants are asking of this Court on this Motion. For instance, the Applicants reference both the Final Report and the Commissioner's Response in their written submissions. As such, it is unclear whether the Applicants' seek judicial review of the Final Report, the Commissioner's Response, or both.

[19] Nevertheless, I find that the Applicants have failed to provide reasonable justification for the entire period of the delay and that the underlying application is faulty on its potential merits. I therefore find that the Applicants' Motion does not satisfy the requirements to obtain an extension of time under the applicable criteria set out in *Thompson*.

**ORDER in 21-T-47**

**THIS COURT ORDERS** that the Applicants' motion for an extension of time is dismissed with costs.

"Shirzad A."

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Judge

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

**DOCKET:** 21-T-47

**STYLE OF CAUSE:** CHERYL MCLEAN AND DOUGLAS MCLEAN v  
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**MOTION PURSUANT TO RULE 369 OF THE *FEDERAL COURT RULES*  
DATED OCTOBER 1, 2021**

**ORDER AND REASONS:** AHMED J.

**DATED:** OCTOBER 27, 2021

**WRITTEN SUBMISSIONS BY:**

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Samantha E. Labahn

FOR THE APPLICANTS

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