



[2022] 2 F.C.R. D-25

CROWN

Related subject: RCMP

Judicial review of Minister of Public Safety and Emergency Preparedness's decision denying applicant's request for indemnification under Treasury Board's "Policy on Legal Assistance and Indemnification" (Policy) — Applicant former member of Royal Canadian Mounted Police — In 2009, RCMP received information that applicant involved in relationship with protected witness, prompting investigation — In 2019, applicant pled guilty to breach of trust, obstruction of justice — Policy providing legal assistance, indemnification for Crown servants subject to legal claims arising in relation to their employment — Applicant's first request for Legal Assistance at Public Expense (LAPE) approved in 2010 for initial consultation phase of criminal proceedings — In 2012, applicant applied for LAPE for trial phase of criminal charges — This request denied by RCMP — Adjudicator refused authorization to reinstate LAPE — In 2018, applicant submitting invoices for legal services exceeding \$50,000.00 — RCMP requesting decision from Minister on further LAPE request by applicant, stating not in public interest to approve LAPE — Applicant found not to meet eligibility criteria of Policy — Main issue whether LAPE consideration process fair — Failure of RCMP to forward all materials applicant submitted, as part of trial phase LAPE application, to Minister breach of procedural fairness — Policy stating, *inter alia*, administrative decision maker responsible for "[e]nsuring timely responses to Crown servants who are requesting legal assistance or indemnification under this policy, and for ensuring that claims or threats of suits are acted upon quickly" (emphasis added) — Questions of inordinate delay engaging doctrine of abuse of process — Timeliness of response not requiring in depth consideration of whether decision "made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context" — Either timely response was received, or it was not — Ensuring decision maker had full record of materials regarding LAPE application in order to make fully informed decision basic requirement to ensure fairness of decision-making process — Grievance process taking nearly five years — LAPE request took over seven years to reach appropriate decision maker, i.e. Minister — RCMP not appropriate decision maker in 2012, when trial funding LAPE application originally denied — No doubt seven-year delay in getting LAPE application before appropriate decision maker inordinate — Most prejudicial to applicant was that request not submitted to Minister for approval until after applicant pled guilty — Nowhere in Policy does it indicate that decision maker should await outcome of proceedings before making LAPE funding decision — RCMP, Minister's reliance on applicant's guilty plea to justify that he did not meet Policy objectives for LAPE funding procedurally unfair — Delay contrary to Policy, put applicant in legal jeopardy — Certified Tribunal Record demonstrating that some documents, such as psychological reports to understand applicant's state of mind at the relevant time of the criminal proceedings, not forwarded to Minister — RCMP had obligation pursuant to Policy to forward to Minister all information submitted by applicant in relation to LAPE application — Failure of RCMP to forward all materials breach of procedural fairness — Decision quashed, applicant's LAPE application remitted to Minister for redetermination — Application allowed.

BRASSINGTON V. CANADA (ATTORNEY GENERAL) (T-1785-19, 2023 FC 695, McDonald J., reasons for judgment dated May 18, 2023, 28 pp.)