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Court File No. _____

FEDERAL COURT

BETWEEN:

DAMON ATWOOD

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER S. 18.1 OF THE *FEDERAL COURTS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at **Edmonton, Alberta.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by _____

TO: **A. François Daigle**
Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

APPLICATION

This is an application for judicial review of the decision of Rakhi Dhawan (the “Refusal”), in her capacity as Director of the Office for the Coordination of Grievances and Appeals (“OCGA”), to refuse the Applicant and others access to past decisions rendered by the Royal Canadian Mounted Police (“RCMP”)’s grievance adjudicators (the “Decision Records”). The Decision Records were made pursuant to the *Royal Canadian Mounted Police Act*, RSC 1985 c R-10 (the “*RCMP Act*”) and the *Commissioner’s Standing Orders (Grievances and Appeals)*, SOR/2014-289 (the “*CSO’s*”). The Refusal was initially made on September 16, 2021, and communicated to the Applicant that same day; however, the Refusal is ongoing and has occurred as recently as January 24, 2022.

The Refusal constitutes a course of conduct that is prejudicial and detrimental to the Applicant and other members of the RCMP.

THE APPLICANT SEEKS:

1. an Order that the RCMP immediately undertake to provide members of the RCMP with access to all Decision Records in an anonymized format, and furthermore to release said Decision Records upon request to members engaged in grievance procedures under the *RCMP Act*;
2. in the alternative, a Declaration that the portions of the RCMP’s Administrative Manual, which operate to exclude decisions, acts, or omissions of the OCGA from the grievance procedures contained within the *RCMP Act* and *CSO’s*, to be *ultra vires* and of no force and effect; and
3. an Order of *mandamus* compelling the RCMP adjudicators, exercising delegated authority of the Commissioner of the RCMP, to render their decision on standing in the Applicant’s

grievance file, as outlined in this application, no later than thirty (30) calendar days from the date of this Court's order;

4. in any event, the costs of this Application; and
5. such further and other relief as this Honourable Court deems just.

THE GROUNDS OF THE APPLICATION ARE:

1. The Applicant, Corporal Damon Atwood, is a current member of the RCMP.
2. This application concerns the Refusal of the RCMP to allow the Applicant, and other members of the RCMP, access to Decision Records.
3. The RCMP's internal grievance process is established under section 31 of the *RCMP Act*. The process allows for two levels of adjudicator review: (1) Initial Level; and (2) Final Level.
4. A grievance is first presented at the Initial Level. If the grievor disagrees with the Level 1 adjudicator's decision, they can present their grievance at the Final Level, where a Level 2 adjudicator will review the Level 1 decision. Level 2 adjudicators possess the same powers and authorities of Level 1 adjudicators. Once a decision is made at either level, a copy of it is provided to the grievor and respondent.
5. The OCGA maintains unilateral control over all Decision Records and will not provide them to any other parties; neither upon request in preparation for filing a grievance, nor pursuant to the access to information provisions contained within section 31(4) of the *RCMP Act*.
6. The RCMP punishes members who share Decision Records. As recently as 2021, the RCMP disciplined a member of for sharing a Decision Record with another RCMP member.

7. The Applicant has nine (9) grievances pending with the OCGA. These grievances are in various stages of the process, with some awaiting decisions from adjudicators and others still pending submissions on various issues.
8. On September 16, 2021, the Applicant requested the Respondent provide the last ten Decision Records, at both the Initial and Final Level, related to a specific grievance topic. These Decision Records were intended to assist the Applicant in knowing the case to be met for an ongoing grievance.
9. On September 17, 2021, the Respondent stated that Decision Records were not public documents and could not be shared. The Applicant complained that this was contrary to the open court principle and again requested the Decision Records.
10. On September 22, 2021, the Respondent again refused by stating Decision Records were prohibited from disclosure due to the *Access to Information Act* and *Privacy Act*.
11. On October 4, 2021, the Applicant filed a grievance (the “Grievance”) contesting the Refusal under the grievance procedures laid out in the *RCMP Act* and *CSO’s*.
12. On October 15, 2021, the Respondent raised the issue of the Applicant’s standing in the Grievance. The Respondent relied upon a portion of the RCMP’s Administrative Manual which states:

“AM. II. 3.3. 1. 29. No decision, act, or omission made in good faith by a person acting as an adjudicator, OCGA case manager, or officer in charge of the OCGA may be the subject of a harassment complaint or a grievance.”

(the “Policy”)
13. Between November 2 and December 8, 2021, submissions on the issue of standing and the Policy were completed by both the Applicant and Respondent.
14. On December 29, 2021, the Applicant received four Decision Records pursuant to a request the Applicant had made under the *Access to Information Act*.

15. On December 30, 2021, the Applicant contacted the Respondent and requested informal resolution discussions given Decision Records had been disclosed under the *Access to Information Act*. The Respondent refused.
16. On December 30, 2021, the OCGA prepared the Grievance record for review by an adjudicator on the issue of standing and the Policy.
17. On January 11, 2022, the Applicant requested Decision Records from the OCGA regarding the application and interpretation of the Policy (the “Disclosure Request”). This request was made during a separate grievance wherein the OCGA had again raised standing pursuant to the Policy. The Applicant’s request in this instance was pursuant to the access to information provisions of the RCMP’s grievance procedure.
18. On January 12, 2022, the Applicant contacted the Respondent to discuss this Honourable Court’s findings in *Dhaliwal v. Canada*, 2021 FC 1480, which outlined the expectation that administrative decision makers within the RCMP’s grievance process make decisions that are generally consistent. The Applicant sought informal resolution discussions; the Respondent refused.
19. On January 13, 2022, the OCGA contacted the Applicant and stated that informal resolution discussions could not occur until the Grievance issue of standing had been addressed. The OCGA also stated that, due to a backlog of grievances, there would be a waiting period for a decision on standing. The OCGA did not offer a timeline for the duration of this delay.
20. On January 18, 2022, an RCMP adjudicator issued a direction (the “Direction”) to another member of the RCMP, not the Applicant, in which the Policy was addressed. In the Direction, the adjudicator stated his authority was limited to determining whether a decision, act, or omission was consistent with policy; no provisions existed to determine whether a given policy

was invalid. The Applicant was provided the Direction by the other member of the RCMP in February, 2022.

21. On January 19, 2022, the Respondent advised they would not provide the Decision Records as requested in the Disclosure Request. The Respondent stated disclosure was prohibited by sections 7 and 8 of the *Privacy Act*.
22. Submissions were obtained by the OCGA on the collateral issue of the Disclosure Request. The OCGA prepared the record, which was submitted for review by an Initial Level adjudicator on February 11, 2022.
23. On January 20, 2022, the Applicant sent a demand to the OCGA requesting a decision be rendered on the Grievance issue of standing within thirty days. The OCGA responded, stating a timeline for a decision was not available.
24. The Refusal is contrary to the common law principle of open court and contrary to section 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
25. The Refusal significantly impacts on procedural fairness within the *RCMP Act* grievance process, in which the Respondent maintains unilateral control over, and access to, all previous Decision Records. Members of the RCMP are unable to assess the case to be met for the purpose of their grievances; they are not being provided with access to decisions demonstrating how policies are being interpreted or applied and are unable to put Decision Records bearing similar circumstances before adjudicators.
26. The Applicant has no other adequate remedy to contest the Refusal, nor to compel the Grievance adjudicator to render a decision on the Grievance matter of standing. The Respondent has taken the position the Refusal cannot be contested via internal grievance procedures. Although the

Applicant has grieved this contention, the existence of the recent Direction makes the outcome of that process inevitable.

27. The RCMP's Administrative Manual lacks the authority to limit the statutory rights of RCMP members to the grievance procedures set out under section 31 of the *RCMP Act* and is *ultra vires*.
28. There is a public legal duty on the part of grievance adjudicators to render decisions, as well as a responsibility under the *RCMP Act* to render a decision as soon as feasible
29. In recent submissions before this Honourable Court, the Respondent has stated that the average response time for a decision on the merits of a grievance, at the Initial Level, was an average of 824 days in 2020.
30. Even were the Grievance issue of standing to be decided in a timely manner, and the submissions on merits placed before an adjudicator today, a decision on the Grievance of the Refusal would not be expected until May of 2024. The Applicant is not responsible for these delays and the OCGA has not provided a satisfactory explanation for them.
31. Further delay in resolving the Refusal is prejudicial and detrimental to the Applicant, and other members of the RCMP, whose submissions rely on and would be supported by these Decision Records. Members of the RCMP are also subject to unwarranted discipline for sharing Decision Records, which should be available to them by default.
32. Such further and other grounds as counsel may advise and this Honourable Court permit.

LEGISLATION:

The Applicant pleads and relies upon, among other things:

1. *Federal Courts Act*, RSC 1985, c F-7 (the "Federal Courts Act");

2. *Royal Canadian Mounted Police Act*, RSC 1985, c R-10;
3. *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281;
4. *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289;
5. *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;
6. all other comparable and relevant acts and regulations in Canada.

SUPPORTING MATERIAL:

The Application will be supported by the following material:

1. The affidavit of Damon Atwood; and
2. Such other material as the Applicant may advise and this Honourable Court permit.

REQUEST FOR MATERIAL:

The Applicant requests that the Respondent send a certified copy of the material that is in its possession and relevant to the decision under review to the Applicant and to the Registry, pursuant to Rules 317 and 318 of the *Federal Courts Rules*.

Dated: February 21, 2022

Damon Atwood

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