

Form 301

Court File No.

FEDERAL COURT

BETWEEN:

MAUREEN MILLER and GERVAIS MILLER

Applicants

- and -

THE ATTORNEY GENERAL OF CANADA,
representing His Majesty the King in Right of Canada

Respondent

Application Under Rule 301

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicants. The relief claimed by the applicants appears below.

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 applicants. The applicants request that this application be heard at Halifax, Nova Scotia.

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 file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicants' solicitor or, if the applicants are self-represented, on the applicants, 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.

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F I L E D	FEDERAL COURT COUR FÉDÉRALE March 13, 2023 13 mars 2023 Michael Kowalchuk	D É P O S É
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Date: _____

Issued by: _____

Address of local office: 1720-1801 Hollis Street
Halifax, NS B3J 3N4

TO: **HIS MAJESTY THE KING**
C/O THE ATTORNEY GENERAL OF CANADA
284 Wellington Street
Ottawa ON K1A 0H8

APPLICATION

1. This is an application for judicial review in respect of a decision by the Royal Canadian Mounted Police (RCMP), dated September 2, 2022, under section 41 of the *Access to Information Act*, RSC 1985, c A-1 (the “Act”).

Background

2. On May 4, 1990, 17-year-old Clayton Miller attended a party at the Colliery Lands Park, in an area known as “The Nest”, in New Waterford, Nova Scotia. Sometime before 10:00 p.m., at least six members of the New Waterford Police raided the party, arresting ten people in total. Over 36 hours later, on Sunday May 6, 1990, Clayton’s body was found face down, in a shallow stream by The Nest.
3. In January 1991, the Solicitor General of Nova Scotia ordered the RCMP to investigate the death of Clayton Miller.
4. On May 1, 1992, Mr. and Mrs. Miller sent an access to information request to Nova Scotia Information Access and Privacy, asking for statements taken by the RCMP prior to the January 1991 investigation. This request was forwarded by Nova Scotia Information Access and Privacy to the RCMP on May 5, 1992.
5. On May 29, 1992, Mr. Miller received a letter from the RCMP in response to the May 1, 1992 access to information request, stating that the RCMP would not release the information pertaining to RCMP investigations.
6. On September 23, 1993, the RCMP again wrote Mrs. Miller in response to the May 1, 1992 access to information request, stating that information pertaining to the RCMP investigation would not be released until 20 years following Clayton Miller’s death. Because of this letter, Mr. and Mrs. Miller waited twenty years to file another access to information request to the RCMP.
7. On June 18, 2010, Mr. and Mrs. Miller submitted an access to information request to Nova Scotia Information Access and Privacy, asking for statements taken by the RCMP prior to the

January 1991 investigation. This request was forwarded by Nova Scotia Information Access and Privacy to the RCMP on May 5, 1992 (the “First ATI Request”) for:

Statements/Video/Audio of Police and/or RCMP questioning/interviewing Dale MacKinnon, Willie MacNeil, Donald (Duckie) MacNeil (now in prison), all/any people questioned regarding my son, Clayton’s death (including polygraph results).

All video surveillance of New Waterford Police Station Cells for May 4, 2000 and May 5, 2000.

All pictures and/or video taken at the Nest Area when/or after discovery of my son’s body.

All pictures and/or video taken during exhumation and re-autopsy of my son’s body before on December 27, 1993.

All medical/forensic correspondence to and from doctors and officials (including local police, RCMP, Government/and Officials).

All and any information pertaining to Clayton’s clothes and personal possessions when in the hands of the above.

All and any reports/results (in any form) resulting from questioning and/or investigating.

All and any audio recordings (taken by the Cecchetto family) of alleged call/s from my husband.

Audio interview of David (Bree) Cadden with RCMP.

In reference and as requested, we have researched and listed the following locations for the above material:

- RCMP H Division, Halifax, NS
- RCMP Reserve Detachment, Sydney-Glace Bay Highway NS
- RCMP Sydney Detachment, Alexandra St., Sydney, NS (note: at time of this detachment being closed, I phoned Staff Sgt. Bill Fogarty, in charge of Clayton’s file, at that detachment to inquire as to where Clayton’s information/case file would go; he informed me it would be sent to H Division in Halifax.)
- CBRP Department, Sydney, NS (as instructed to me by Jean Gignon of H Division in Halifax.)

8. On June 29, 2010, Mrs. Miller received a letter from RCMP Sgt. Kent Swim acknowledging receipt of the First ATI Request and providing the RCMP file number A-2022-02093 (GA-3951-3-03266/10) (the “RCMP File A-2022-02093”).
9. Shortly thereafter, Mrs. Miller received a phone call from RCMP officer Shauna MacIntyre stating that Mrs. Miller could go to H Division in Halifax and read the documents in response

to the First ATI Request. Mrs. Miller informed Officer MacIntyre that she wanted her own copy of the requested files.

10. After approximately one year without receiving a response from the RCMP, Mr. and Mrs. Miller contacted the law firm Wagners to request legal assistance with the First ATI Request and investigation of the death of their son. Shortly thereafter, Wagners informed the RCMP that Wagners was now representing Mr. and Mrs. Miller and to direct all future correspondence to Wagners.
11. On November 4, 2011, Wagners sent a letter to the RCMP inquiring into the status of the First ATI Request. Following this update request, Mrs. Miller received a telephone call from RCMP officer Allan Hearn stating that he wanted to meet with Mrs. Miller at H division in Halifax to go over what Mrs. Miller would be receiving in response to the First ATI Request.
12. On February 15, 2012, Wagners filed a complaint with the OIC pursuant to subsections 30(1)(a) and 30(2) of the Act regarding the First ATI Request and lack of response from the RCMP (the “OIC Complaint”).
13. Shortly thereafter, the OIC confirmed receipt of the OIC Complaint and provided OIC file number 3212-00822 (the “OIC File 3212-00822”) for its investigation of the RCMP’s response to the First ATI Request.
14. In the summer of 2012, Mrs. Miller and Mr. Wagner met with Officer Hearn in Halifax regarding the First ATI Request. Mrs. Miller recalls Officer Hearn stating that she would receive documents similar to the example documentation reviewed with her and Mr. Wagner at that meeting.
15. On August 1, 2012, the RCMP provided the first disclosure of information to Wagners in response to the First ATI Request (the “First Disclosure”). The First Disclosure did not contain what Officer Hearn had shown Mrs. Miller and Mr. Wagner during their meeting. Rather, the First Disclosure contained limited information, redactions without indicating the subsections of the Act they were exempted under, and included a large number of documents which stated “duplicate copies” at the top with the rest of the page blank.

16. On August 22, 2012, the OIC informed Wagners that Wagners had now received a copy of all the information to which Wagners was entitled and that some of the information was exempted under subsections 13(1)(c), 13(1)(d), 16(1)(a)(i), 16(1)(b), 19(1), and 23 of the Act.
17. On September 19, 2012, Wagners responded to the OIC August 22, 2012 correspondence regarding the First Disclosure. Wagners listed the following information as not having been received pursuant to the First ATI Request:

Statements/Video/Audio of Police and/or RCMP questioning/interviewing Dale MacKinnon, Willie MacNeil, Donald (Duckie) MacNeil, all/any people questioned regarding my son, Clayton's death (including polygraph results).

All video surveillance of New Waterford Police Station Cells for May 4, 2000 and May 5, 2000.

All pictures and/or video taken during exhumation and re-autopsy of my son's body before on December 27, 1993.

All medical/forensic correspondence to and from doctors and officials (including local police, RCMP, Government/and Officials).

All and any information pertaining to Clayton's clothes and personal possessions when in the hands of the above.

All and any reports/results (in any form) resulting from questioning and/or investigating.

All and any audio recordings (taken by the Cecchetto family) of alleged call/s from my husband.

Audio interview of David (Bree) Cadden with RCMP.

Wagners also requested that the above items be provided or affirmed as exempted under subsections 13(1)(c), 13(1)(d), 16(1)(a)(i), 16(1)(b), 19(1), and 23 of the Act.

18. On August 5, 2015, the RCMP provided a second disclosure of information to Wagners in response to the First ATI Request (the "Second Disclosure"). This Second Disclosure was also heavily redacted and did not indicate under which sections of the Act information was exempted.
19. On April 12, 2016, Wagners wrote to the RCMP asking to advise whether the negatives, and paraffin blocks and slides from Clayton's autopsy were in the RCMP Halifax District's

possession at that time or at any time previously. Wagners also requested that the RCMP send Wagners a copy of any and all documentation the RCMP may have had regarding the paraffin blocks and slides from Clayton's autopsy.

20. On May 4, 2016, the Department of Justice wrote on behalf of the RCMP, informing Wagners that the Halifax District RCMP had gone through their files and did not find any exhibits, exhibit reports, or negatives. Two documents that referred to slides were attached to this correspondence.
21. On April 16, 2016, Christian Picard of the OIC wrote Wagners, informing them that while the RCMP in Nova Scotia had some colour pictures of the autopsy, pictures are usually considered exhibits and to access the originals Wagners may need to have a court order or have a subpoena issued. Mr. Picard also noted that he was still waiting on a response from the RCMP regarding the paraffin blocks and slides from Clayton's autopsy. Given this information, Mr. Picard asked if Wagners would consider the complaint as settled and that any additional information could be obtained through a new access request.
22. On April 22, 2016, Wagners wrote Mr. Picard requesting to wait for the response from the RCMP regarding the paraffin blocks and slides before considering if the complaint was settled.
23. On April 22, 2016, Mr. Picard informed Wagners that the RCMP confirmed they do not have paraffin blocks and slides from Clayton's autopsy. Mr. Picard again requested that the complaint be considered closed.
24. On July 6, 2016, Wagners informed Mr. Picard that Wagners did not agree to conclude the complaint as settled.
25. On September 11, 2016, the RCMP provided a third disclosure of information to Wagners in response to the First ATI Request. This disclosure included 13 pages with the basis for the redactions not being indicated. In the covering letter, the RCMP states that "[t]his completes our review process of the requested records."

26. On February 26, 2019, Mr. Picard again requested that Wagners consider the investigation for the complaint as settled, reiterating that Mr. and Mrs. Miller can make new requests at any time.
27. On April 23, 2019, Wagners informed Mr. Picard that they would seek instructions from Mr. and Mrs. Miller regarding the complaint.
28. On July 4, 2019, Yves Marineau, taking over from Mr. Picard, again requested that Wagners consider the investigation file regarding the complaint as settled, and for Wagners to provide final representations, if any.
29. On July 23, 2019, Wagners wrote Mr. Marineau, stating that Wagners did not consider the complaint concluded and requested clarity on what was meant by “final representations”.
30. On July 23, 2019, Mr. Marineau wrote Wagners that the OIC had completed its investigation. Therefore, pursuant to section 35 of the Act, the OIC offered Wagners the opportunity to provide the OIC with any additional and final representations or comments Wagners may have before the OIC finalized its investigation and provides its report of findings.
31. On August 19, 2019, Wagners wrote the OIC, informing it that Wagners did not consider the matter concluded or settled and did not consent to the conclusion of the complaint because of continued investigations into the matter by the Nova Scotia Serious Incident Response Team.
32. In a letter from the RCMP dated September 2, 2022, received by Wagners September 12, 2022, the RCMP provided a fourth disclosure of information in response to the First ATI Request, noting that some information was exempted pursuant to subsections 13(1)(c), 13(1)(d), 16(1)(b), and 19(1) of the Act. This same letter stated that the RCMP had now provided a copy of all the original records to which Mr. and Mrs. Miller were entitled regarding the First ATI Request (“RCMP Final Report”).
33. On September 12, 2022, Wagners received an email from Katarina Kovačević with the OIC regarding the complaint, requesting confirmation that Wagners had received the additional disclosure from the RCMP regarding the First ATI Request and asking if Wagners agreed that the complaint be concluded as resolved.

34. On September 22, 2022, Wagners responded to Ms. Kovačević, acknowledging receipt of the supplementary release of information provided September 2, 2022. Wagners also informed Ms. Kovačević they were currently reviewing the received material and asked that the complaint remain open until such review was concluded.
35. On October 25, 2022, Wagners received a second email from Ms. Kovačević requesting if Wagners had concluded their review of the September 2, 2022 supplementary release of information and if the complaint could be concluded as resolved.
36. On November 8, 2022, Wagners received a third email from Ms. Kovačević requesting if Wagners had concluded their review of the September 2, 2022 supplementary release of information and if the complaint could be concluded as resolved.
37. On November 8, 2022, Wagners wrote Ms. Kovačević that Wagners was continuing their review of the records and requested that the complaint remain open.
38. On November 9, 2022, Wagners requested that Ms. Kovačević at the OIC file an exemption complaint with the OIC on Wagners' behalf regarding the September 2, 2022 production of documents by the RCMP.
39. On November 23, 2022, Ms. Kovačević emailed Wagners, stating that she was instructed to "continue investigating the remaining redactions in the old file 3212-00822." Ms. Kovačević stated that "[a]s no new records were processed by the RCMP, the OIC cannot register your new complaint following the supplementary release issued by the RCMP".
40. To Wagners' knowledge, the OIC did not accept or further investigate the November 9, 2022 complaint.
41. On November 24, 2022, Wagners had a telephone conversation with Ms. Kovačević. Ms. Kovačević requested Wagners to define the focus of the complaint, specifically, what documents or type of documents they were looking for, noting that she had not gone through all the records sent in the September 2, 2022 supplementary release of information. Ms. Kovačević requested that Wagners tell the OIC what to investigate, what was still problematic in the released documents, and why Mr. and Mrs. Miller were still not satisfied.

42. On December 8, 2022, Wagners replied to Ms. Kovačević asking for “a complete review of the redactions applied by the RCMP to the documents on file for confirmation that all redactions were appropriately applied. If it is discovered redactions were inappropriately applied to a record, we ask that said record be produced unredacted.”
43. On December 22, 2022, Wagners received an email from Ms. Kovačević stating she had “completed a review of the information which remains withheld following the September 2022 supplementary release. Upon my review, I determined that further information should be released on one page. The RCMP agreed to release said information and proceeded with issuing a second supplementary release today.” Ms. Kovačević also stated: “[c]onsequently, I am now of the view that the information which remains withheld in the records meets the requirements of the exemptions claimed. I will recommend that this complaint be concluded as well founded.”
44. On that same date, the RCMP provided a fifth disclosure of information to Wagners in response to the First ATI Request. This disclosure consisted of one page with redactions pursuant to subsection 16(1)(b) of the Act.
45. On January 25, 2023, the OIC provided Wagners with the final report for OIC File 3212-00822 (“OIC Final Report”), in which the OIC concluded that:
- a. the complaint by Wagners to the OIC regarding the RCMP’s response to the First ATI Request had been well founded;
 - b. the RCMP had now conducted a reasonable search for records in response to the First ATI Request;
 - c. the information withheld/exempt on pages 2911-2918, 2920-2931, 2948, and 2949 of the records met the requirements of subsection 13(1) without the need to examine discretion;
 - d. the RCMP’s exercise of discretion was reasonable regarding to withhold/exempt page 1981 of the records pursuant to subsection 16(1)(b); and
 - e. the information throughout the records withheld/exempt pursuant to subsection 19(1) met the requirements of the exemption without the need to examine discretion.

Second Access to Information Request

46. On November 19, 2019, Wagners submitted a second access to information request to RCMP for production of complete, unredacted and unedited copies of the following, held with the Halifax, Reserve Mines, and Sydney, Nova Scotia detachments as well as the Ottawa, Ontario detachment (the “Second ATI Request”):

All records including reports, photographs, photographic negatives, X-rays and X-ray negatives;
The original autopsy transcript regarding Clayton Miller.

All videos and/or recordings taken by RCMP associated with Clayton Miller’s case, including but not limited to statements provided by witnesses, including but not limited to Daniel (Danny) Perfect.

47. On December 5, 2019, the RCMP confirmed receipt of the Second ATI Request, providing RCMP file number A-2019-08871(GA-3951-3-03266/10) (the “RCMP File A-2019-08871”).

48. On March 1, 2021, the RCMP indicated that it was unable to locate records requested in the Second ATI Request.

49. On April 1, 2021, Wagners filed a complaint to the OIC regarding the Second ATI Request pursuant to subsections 30(1)(a) and 30(2) of the Act.

50. On April 16, 2021, the OIC acknowledged Wagners’ complaint dated April 1, 2021, under the Act regarding the Second ATI Request and provided OIC file number 5820-04503 (the “OIC File 5820-04503”).

51. On January 6, 2022, the OIC stated that OIC File 5820-04503 was a ‘reasonable search’ complaint.

52. The final report has not yet been provided by the OIC for OIC File 5820-04503. As such, Mr. and Mrs. Miller have an outstanding ‘reasonable search’ complaint with the OIC regarding the Second ATI Request and OIC File 5820-04503. Mr. and Mrs. Miller await the outcome of OIC File 55820-04503 before considering an application for judicial review regarding the reasonableness of the searches.

The Relief Requested

53. Further to the RCMP Final Report and the OIC Final Report, the Applicants make application for an order that the RCMP: (i) remove inappropriate redactions of documentation; and (ii) provide inappropriately withheld/exempted documents of the H Division, Reserve Detachment Sydney-Glace Bay, and Sydney RCMP concerning the death of their son, Clayton Miller, on May 5, 1990, based on redactions or exemptions under subsections 13(1), 16(1)(b), and 19(1) of the Act.

The Grounds for the Application

54. Subsection 41(1) of the Act provides that a person who makes a complaint described in subsection 30(1)(a) and who receives a final report of the OIC under subsection 37(2) in respect of the complaint, may apply to the Court for a review of the matter that is the subject of the complaint.

55. The subject of the complaint in this matter are the redactions, withholding, and exemptions of documents and information in the RCMP's response to the First ATI Request, including all five disclosures of information by the RCMP (the "RCMP's ATI Response").

56. Subsection 48(1) of the Act provides that in a proceeding under subsection 41(1), the burden of establishing that the head of a government institution is authorized to refuse disclosure of a record is on the government institution, not the requester, regardless of the grounds for refusal. Mr. and Mrs. Miller contend that the RCMP has not met that burden regarding the redactions and exemptions of documents provided in the RCMP's ATI Response.

57. Subsection 13(1) of the Act states:

Information obtained in confidence

13 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains information that was obtained in confidence from

- (a) the government of a foreign state or an institution thereof;
- (b) an international organization of states or an institution thereof;
- (c) the government of a province or an institution thereof;

(d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government; or

(e) an aboriginal government.

58. Subsection 13(1) of the Act is a mandatory exemption and therefore such factual determinations should be assessed on a correctness standard.

59. Subsection 13(2) of the Act states:

Where disclosure authorized

(2) The head of a government institution may disclose any record requested under this Part that contains information described in subsection (1) if the government, organization or institution from which the information was obtained

(a) consents to the disclosure; or

(b) makes the information public.

60. Subsection 13(2) of the Act places an onus on the RCMP to make efforts to obtain consent to release the information from the third party who provided it in confidence and provided the Court with evidence of an established protocol regarding the release of information obtained in confidence. The implementation of such a protocol involves an exercise of discretion which must be exercised reasonably in the context of the factual circumstances involved and is reviewable on the standard of reasonableness.

61. There is no evidence or indication that the RCMP made any efforts to obtain consent to release the information obtained in confidence from a government third party who provided it, prior to redacting significant portions of the RCMP's Response to ATI Request. Nor is there evidence or indication that the RCMP made an established protocol regarding the release of information obtained in confidence.

62. With respect to the grounds for judicial review under section 13 of the Act, Mr. and Mrs. Miller allege that in the RCMP's ATI Response, the RCMP

- a. erred in law in not meeting the proper conditions for redactions and/or exemptions of information obtained in confidence in the RCMP's ATI Response under subsection 13(1) of the Act;

- b. erred in law by providing documentation with redactions that were overly broad in scope in the RCMP's ATI Response under subsection 13(1) of the Act;
- c. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it in its procedure to obtain consent from the third party who provided the requested information in confidence that was ultimately redacted or exempted in the RCMP's ATI Response under subsection 13(2) of the Act; and
- d. in the alternative, if consent from the third party who provided the requested information in confidence was obtained, the RCMP did not reasonably exercise its discretion in the RCMP's ATI Response under subsection 13(2) of the Act.

63. Section 16 of the Act states, in part:

Law enforcement and investigations

16 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains

(a) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to

(i) the detection, prevention or suppression of crime,

(ii) the enforcement of any law of Canada or a province, or

(iii) activities suspected of constituting threats to the security of Canada within the meaning of the Canadian Security Intelligence Service Act,

if the record came into existence less than twenty years prior to the request;

(b) information relating to investigative techniques or plans for specific lawful investigations;

(...)

Definition of investigation

(4) For the purposes of paragraphs (1)(b) and (c), investigation means an investigation that

(a) pertains to the administration or enforcement of an Act of Parliament;

(b) is authorized by or pursuant to an Act of Parliament; or

(c) is within a class of investigations specified in the regulations.

64. Subsections 16(1)(b) and 16(4) of the Act provide a discretionary exemption and should be assessed on a reasonableness standard.

65. With respect to the grounds for judicial review under subsection 16(1)(b) of the Act, Mr. and Mrs. Miller allege that in the RCMP's ATI Response, the RCMP:

a. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it in not meeting the proper conditions for redactions or exemptions of information relating to investigative techniques or plans for specific lawful investigations; and

b. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it in that the redactions relating to investigative techniques or plans for specific lawful investigations were overly broad in scope in the RCMP's ATI Response.

66. Section 19 of the Act states:

Personal information

19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information.

Where disclosure authorized

(2) The head of a government institution may disclose any record requested under this Part that contains personal information if

(a) the individual to whom it relates consents to the disclosure;

(b) the information is publicly available; or

(c) the disclosure is in accordance with section 8 of the *Privacy Act*.

67. Subsection 19(1) of the Act is a mandatory exemption and therefore such factual determinations should be assessed on a correctness standard, as described in *Cemerlic v Canada (Solicitor General)*, 2003 FCT 133 at paragraph 9.

68. Subsection 19(2) of the Act places an onus on the RCMP to make efforts to obtain consent to release the information from the third party who provided it and provide the Court with evidence of an established protocol regarding the release of personal information, as described in *Cemerlic v Canada (Solicitor General)*, 2003 FCT 133 at paragraphs 18-21. The implementation of such a protocol involves an exercise of discretion which must be exercised reasonably in the context of the factual circumstances involved and is reviewable on the standard of reasonableness, as discussed in *Cemerlic v Canada (Solicitor General)*, 2003 FCT 133 at paragraph 44.
69. There is no evidence or indication that the RCMP made any efforts to obtain consent to release the personal information from a third party who provided it, prior to redacting significant portions of the RCMP's Response to ATI Request. Nor is there evidence or indication that the RCMP made an established protocol regarding the release of personal information.
70. With respect to the grounds for judicial review under section 19 of the Act, Mr. and Mrs. Miller allege that in the RCMP's ATI Response, the RCMP
- a. erred in law in not meeting the proper conditions for redactions and/or exemptions of personal information in the RCMP's ATI Response under subsection 19(1) of the Act;
 - b. erred in law by providing documentation with redactions that were overly broad in scope in the RCMP's ATI Response under subsection 19(1) of the Act;
 - c. based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it in its procedure to obtain consent from the third party who provided the requested personal information that was ultimately redacted or exempted in the RCMP's ATI Response under subsection 19(2) of the Act; and
 - d. in the alternative, if consent from the third party who provided the requested personal information was obtained, the RCMP did not reasonably exercise its discretion in the RCMP's ATI Response under subsection 19(2) of the Act.

Supporting Material

71. This application will be supported by the following material:

- a. affidavit evidence of Maureen Miller and supporting documents, including the aforementioned correspondence;
- b. affidavit evidence of Richard Crossman and supporting documents, including the aforementioned correspondence, decisions provided to Wagners regarding the RCMP's ATI Response, and the RCMP Final Report and OIC Final Report;
- c. transcript of cross-examinations(s) on affidavit, if any; and
- d. a memorandum of fact and law.

Requested Material from the Respondent

72. The Applicants request the RCMP to send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the RCMP to the Registry:

- a. copies of the unredacted documents in RCMP File A-2022-02093;
- b. all internal and external correspondence regarding RCMP File A-2022-02093; and
- c. the rational and reasoning decisions related to all redactions in RCMP File A-2022-02093.

March 10, 2023



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