
CANADA / JUDGMENT

Toro v. Canada (Attorney General)

2020 BCSC 1513

COURT

Supreme Court of British Columbia

DECIDED

9 October 2020

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2020 BCSC 1513 Toro v. Canada (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Toro v. Canada (Attorney General),

2020 BCSC 1513

Date: 20201009

Docket: S200743

Registry: Vancouver

Between:

Annette Toro

Petitioner

And

The Attorney General of Canada

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

In Chambers

Counsel for the Petitioner:

G. Orris, Q.C.

Counsel for the Respondent:

D. Kwan

Place and Date of Hearing:

Vancouver, B.C.

September 15, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 9, 2020

Overview

- [1] The petitioner, Ms. Toro, seeks an order that the RCMP deliver immediately all documents, as defined in the Supreme Court Civil Rules, B.C. Reg. 168/2009, including all handwritten notes of all investigating officers in possession or control of RCMP investigation files 2015-17048 and 2017-21488, as well as the costs of this application.
- [2] The investigations referenced above relate to the deaths of Ms. Toro's two sons while they were in or around the residence of their father in Kelowna, B.C. during 2015 and 2017. The sons were 13 and 18 years old at the time of their passing. Their deaths were investigated by the RCMP and both were ruled as suicides. Ms. Toro seeks details of the circumstances of the deaths as recorded in the investigation files of the Kelowna detachment of the RCMP.

Background Facts

- [3] Ms. Toro and her former husband, Thomas Alan Budd, separated in 2008.
- [4] On March 17, 2008, an order was granted in this court for joint custody of their sons to the parties with the primary residence of the sons to be with Ms. Toro.
- [5] A subsequent order was granted on August 6, 2010 in which the order of March 17, 2008 respecting joint custody and primary residence of their sons was not altered.
- [6] In 2015 and 2017 their two sons passed away at Mr. Budd's home.
- [7] On July 31, 2017 counsel for Ms. Toro wrote to the Kelowna detachment of the RCMP on behalf of Ms. Toro seeking details of the deaths and how the deaths occurred. Similar correspondence was sent by counsel to the Regional Coroner of the B.C. Coroner's Office in Kelowna.
- [8] In response to the above inquiries, counsel for Ms. Toro received a "brief synopsis" of the Kelowna files of the RCMP which were subject to third party redaction in accordance with s. 8 of the Privacy Act.

- [9] Correspondence between counsel for Ms. Toro and the RCMP in which counsel sought the complete police investigation "so we can be satisfied that the conclusion reached by the police and perhaps the Coroner, was supported by the evidence found during the investigation" and referenced specific statements in the synopsis supporting the request.
- [10] In response, on January 4, 2018, counsel was advised by the RCMP directing counsel "to make a Formal Information request to ATIP for processing under the Access to Information Act and/or Privacy Act."
- [11] Subsequently, counsel submitted an Access to Information Request to the RCMP Access to Information and Privacy Coordinator in Ottawa enclosing copies of the previous correspondence with the RCMP.
- [12] The Access to Information and Privacy Branch ("ATIP") replied on February 6, 2018 and advised "We are undertaking the necessary search of our records" and that Ms. Toro was entitled to lodge a complaint concerning the processing of the request within 60 days "after you become aware that grounds for a complaint exist".
- [13] By July 2018, a response had not been received from the ATIP which resulted in counsel again seeking a response on at least two occasions which led to an email from the Information Commissioner of Canada stating:

Dear Mr. Orris,

I have reviewed your request and your RCMP ATIP file number is A-__. Our office is experiencing a large volume of requests resulting in lengthy delays in processing. Your file is currently with our Processing unit. Once they have obtained the records relevant to your request it will be assigned and reviewed by one of our Disclosure Teams where a response will be sent to you. We cannot provide you with a timeline as to when it will be sent as there are other files in the queue that may have an impact on when your request is finalized.

Please note, it is the right for any[one] who is requesting information from an ATIP office to file a complaint in relation [to] their request. . . .

- [14] By December 2018, neither counsel nor Ms. Toro had received a response to their request resulting in counsel sending a letter to the Commissioner on December 12, 2018, which reviewed the correspondence to that date and stated a complaint as a result of significant delay and insufficient information from the Kelowna detachment of the RCMP. The request was once again sent on an urgent basis.
- [15] In January 2019, an Intake Officer responded to counsel's delay complaint and advised "Once your complaint is assigned, you will be contacted by the investigator".

[16] Without further information having been received by counsel or Ms. Toro, on May 21, 2019, counsel received a letter from Superintendent Haye of the RCMP ATIP, which was stated to be the response to the request under the Access to Information Act received by the RCMP on February 5, 2018. The letter of May 21, 2019 also stated:

Based upon the information provided, a search for records was conducted in Kelowna, British Columbia. Please note that all the information reviewed qualifies for exemption pursuant to subparagraphs 16(1)(a)(i) and 16(1)(a)(ii) of the Act. We have, however, exercised the discretionary powers provided by the Act and have released some of the information. Enclosed is copy of all the information to which you are entitled...

[17] The letter of May 21, 2019 included a compact disc described in an affidavit of an employee of counsel as follows:

a) Enclosed with the above noted letter was a CD which contained all the correspondence exchanged between our office and the RCMP Access to Information Privacy Coordinator and a selection of General Occurrence Reports which had the name of the reporting officer with scant narrative.

[18] The contents of the CD were attached in hard copy in the said affidavit and do contain in few cases a description of the scene where the bodies were located, however, they were heavily redacted and contained little information regarding the investigations.

[19] Eventually in July 2019, the RCMP advised Ms. Toro that the investigation of the complaint was closed and the complaint was resolved.

Positions of the Parties

[20] The Petition issued by Ms. Toro states the Legal Basis for the orders sought are:

- 1) Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50;
- 2) Police Act, [RSBC 1996] c. 367; and
- 3) The inherent jurisdiction of this Court.

[21] The Attorney General of Canada has filed a Response to Petition as of September 2, 2020 opposing the granting of the orders sought by Ms. Toro.

[22] The Response also stated that "the petition has not cited any authority for the relief sought other than reliance on the inherent jurisdiction of the court". Counsel for the Attorney General emphasized this oversight during submissions on the hearing of the petition.

[23] I summarize portions of the Response to Petition of the Attorney General of Canada on behalf of the RCMP:

- Pursuant to the Privacy Act, R.S.C., 1985, c. P-21, the personal information of individuals obtained in the course of its police investigations cannot be disclosed without consent of the person to whom it relates except as provided for in the Act and there was no evidence of consent of, in particular, Mr. Budd.
- That a response had been provided to the request of Ms. Toro by letter of May 21, 2019.
- Also by letter of May 21, 2019 that the ATIP Branch advised Ms. Toro that all of the information reviewed qualified for exemption from production pursuant to s. 16 of the Access to Information Act, R.S.C., 1985, c. A-1 [ATIA] but ATIP exercised its discretion to provide the information which was provided with the letter, which was the information contained on the CD that was delivered with the letter.
- That Ms. Toro has not lodged a complaint with the Information Commissioner concerning the processing of her request since the letter of May 21, 2019.

[24] The Response then sets out the legal basis for declining to provide the requested information. Included in para. 5 of the Response was a reference to s. 16(1) of the ATIA, namely:

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)

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

[25] The Response also refers to ss. 30 and 31 of the ATIA which require the Information Commissioner to receive and investigate complaints from persons who have been refused access to a record requested under this Part or a part thereof. Under s. 31 a complaint shall be made in writing within 60 days after the day on which the person receives a notice of a refusal under s. 7, or "is given access to all or part of the record or, in any other case, becomes aware that grounds for the complaint exist".

Analysis

[26] Ms. Toro bases her petition on the Crown Liability and Proceedings Act, the Police Act, and the inherent jurisdiction of this Court.

[27] The Crown Liability and Proceedings Act applies to this case only to explain the role of the Attorney General for Canada acting on behalf of the RCMP. There is no claim for relief directed against the Crown.

[28] The Police Act s.14 says that the RCMP are provincial police in British Columbia. The effect of pointing this out is in line with the reasoning of petitioner that also referenced the provincial Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 [FOIPPA] during submissions. Taken together, I believe the intention is to make the RCMP liable under FOIPPA and thus have their information and records made accessible through that mechanism. However, the scope of FOIPPA is set out at s. 3:

Scope of this Act

3 (1) This Act applies to all records in the custody or under the control of a public body []

[29] The definition of 'public body' is found in Schedule 1:

"public body" means

- (a) a ministry of the government of British Columbia,
- (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2, or
- (c) a local public body

but does not include

- (d) the office of a person who is a member or officer of the Legislative Assembly, or
- (e) the Court of Appeal, Supreme Court or Provincial Court;

[30] Upon review of Schedule 2, there is no reference to the RCMP. Instead, as the Attorney General for Canada has pointed out, the RCMP are covered by the federal ATIA and the mechanism available under that Act. Thus, upon review of the FOIPPA and the Police Act together, there is no legal basis for my intervention found in the Police Act.

[31] The last legal base the petitioner offers is the inherent jurisdiction of the Court.

[32] As argued by the Attorney General for Canada on this petition, I accept that the ATIA provides an avenue for Ms. Toro to seek these documents, including an internal appeal process and access to judicial review. The petition before me is not in the form or nature of a judicial review, and I make no conclusion about the suitability of judicial review of the ATIA at this time. However, where there is a specific statutory procedure available, the inherent jurisdiction of the Court can not provide the same remedy.

[33] The letter of May 21, 2019 does not purport to have been a complete refusal of the request for information under s. 7 of the ATIA. The author goes on to state:

I do not mean to imply or suggest that all avenues to obtain the requested information are blocked. For instance, if this information is needed for court purposes then section 8(2)(c) of the Privacy Act allows for personal information to be subpoenaed into court. In the event you decide to proceed via this method a subpoena should be presented to the RCMP Detachment concerned.

[emphasis added]

- [34] The letter of May 21, 2019 closed with an invitation for Ms. Toro or her counsel to contact a Mr. Kerfoot of the RCMP "should you wish to discuss this matter further", inferring the matter was not closed. As the documents were released at the RCMP's discretion, Ms. Toro is presumably able to accept the invitation set out in that letter.
- [35] As the Attorney General for Canada has submitted, it is open to Ms. Toro to make an application under the ATIA seeking the information and documents from the RCMP.
- [36] Following the May 21, 2019 letter, there is no evidence that Ms. Toro or her counsel availed themselves of the internal appeal mechanism laid out in the ATIA, nor that the order sought on this petition is based in judicial review.

Conclusion

- [37] Accordingly, I agree with the submissions made by the Attorney General of Canada that the inherent jurisdiction of this court does not provide authority to grant the order sought. I dismiss this petition with leave to Ms. Toro to apply under the Access to Information Act and the Privacy Act.
- [38] There will be no order respecting costs.

"Jenkins J."

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