
LAW ENFORCEMENT REVIEW BOARD

IN THE MATTER OF the Police Act, R.S.A. 2000, c.P-17, and the Police Service Regulation.

AND IN THE MATTER OF the Appeal of P. Oommen (the "Appellant") concerning complaints against Cst. C. Buerger (No. 2055) (the "Respondent") of the Edmonton Police Service (the "EPS").

JUDGMENT OF THE BOARD

(Parish/Mackenzie/Goresht)

THE COMPLAINT

[1] The Appellant filed an appeal from a decision of the Acting Chief of the EPS (the "Chief") made June 10, 2008. Following a Service Investigation, the Chief made a determination that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a Disciplinary Hearing against the Respondent. Pursuant to section 47(4) of the *Police Act* (the "Act"), the Appellant's complaint was dismissed.

[2] The Chief also noted in his June 10, 2008, letter to the Appellant that the allegation of being harassed and intimidated could not be corroborated.

THE EVIDENCE

[3] The Appellant was not represented by counsel at the hearing. The Board heard *viva voce* evidence from the Appellant, the Respondent and a number of witnesses called by the Appellant.

Appellant's Evidence

[4] The Appellant testified that he lived in a Capital Region Housing Corporation (the "CRHC") building in Edmonton. Numerous caretakers had come and gone, including the previous caretaker, Ray Hrynchuk, who was terminally ill and hospitalized in early 2007. The Appellant noted that two tenants, namely Don Raymond and Jeff "Doe" had either been given master keys by this caretaker, or had access to the master key. The Appellant did not know Jeff's last name, but he knew his apartment number in the complex.

[5] On the night of March 18, 2007, the Appellant stated that he was the victim of an incident of racial hatred when music was pumped into his room. As a result of this incident the Appellant felt that he was having a heart attack. He intended to travel to hospital after he had showered. However, he became anxious after he tried to open his door and it felt as though it were being held shut. He called an ambulance and was taken to hospital. He believes there was a theft of \$1,450 and his father's ring from his briefcase while he was absent from his apartment. The Appellant stated that he notified the police of the theft and of the harassment upon his return from the hospital on March 19, 2007. He spoke to a Sgt. Kruse at the police station. He also advised the CRHC of the security problems (both in person and by a letter dated March 29, 2007 (exhibit #3)). He asked the relief caretaker, Jim Bobinski, to preserve the tape from the video surveillance camera in the hall outside his apartment.

[6] The Appellant advised that the harassment took the form of loud music, surveillance of his apartment, gadgets and wires dangling in front of his windows, people following him, tapping of his phone line and keeping him hostage in his apartment by holding his door shut. Jeff "Doe" had called the Appellant on March 18, 2007 to tell him to look at him with his girlfriend outside in a van. Jeff "Doe" and others watched his apartment from the parking lot. The Appellant believes that Jeff "Doe" was the ringleader and the person who stole the money and ring.

[7] The Appellant called TELUS with regard to the tapping of his phone. TELUS told him that it was not possible for this to happen.

[8] The Respondent was assigned to investigate the complaint and on April 11, 2007. He and the Appellant met for 90 minutes at the McDougall Community Police Station. The Appellant followed up with two letters to the Respondent, dated April 19, 2007 (Exhibit #4) and April 23, 2007 (Exhibit #6), offering assistance regarding potential tenant interviews, a description of his father's ring and detailing a number of questions. The Appellant stated that he felt the Respondent downplayed the harassment complaint and did not thoroughly investigate the theft complaint.

[9] The Appellant found it difficult to get in touch with the Respondent. He spoke to him in October 2007 and asked if he had the video surveillance tapes. The Respondent said that he did not and that he needed more evidence to be able to proceed with the matter.

[10] Following his letters of complaint concerning the conduct of the Respondent, the Appellant spoke with Maurice Perrault of the Professional Standards Branch regarding his concerns that the original complaint was not adequately investigated. Mr. Perrault did not find any shortcomings. On February 21, 2008, based on the allegation of misconduct, the file was reclassified as a Complaint of Conduct and was assigned to Acting Detective Jana Tabaka, who completed a Service Investigation.

[11] The Appellant called Det. Tabaka as a witness. Det. Tabaka stated she advised the Appellant, in February 2008, that she had been assigned to the case. She reviewed the files, investigative reports, interviews, phone calls and letters. She spoke with the Respondent who provided a voluntary statement (Exhibit #11). Det. Tabaka confirmed that the videotapes of the night in question were no longer available, and that the Respondent had interviewed a number of residents in the building. Based on her investigation, she determined there was insufficient evidence against the Respondent to proceed with a Disciplinary Hearing, and advised the Chief of such.

[12] Don Raymond was called as a witness for the Appellant. Mr. Raymond has been a tenant in the

building for approximately 5 years and had been given a master key by the caretaker, Ray Hrynychuk, some time in March 2007. Don Raymond thought he was the only person with a master key, but he noted that Jeff "Doe" had access to the caretaker's suite. Mr. Raymond testified that he had no knowledge of harassment of the Appellant in the residence.

[13] The Appellant called Jim Bobinski to testify. Mr. Bobinski was the CRHC relief caretaker, who spent approximately one hour a day at the apartment complex from March to August 2007. He did not remember much of events in March 2007, noting that he would talk with many people every day, and he did not take calls in the evening. He did not believe there would be more than one set of master keys.

[14] Thomas Areekadan, a 15-year acquaintance of the Appellant stated that he phoned the Appellant on March 18, 2007 to see how he was doing. The Appellant advised Mr Areekadan of the harassment, the chest pains and that he was going to the hospital. He noted that there appeared to be someone else talking on the line using mocking, bad language, including "mother f paki". Mr. Areekadan wanted to ensure that everything was fine, and he came to the Appellant's apartment about 11 p.m. Mr. Areekadan testified that from the back alley he looked up to the Appellants' apartment window and could see the lights on and the curtains open. He saw someone in the apartment, perhaps a man and/or a woman. When he walked to the front of the building someone told him that the Appellant had been taken in an ambulance. In cross examination Mr. Areekadan said that from the back alley, he saw a man in the Appellant's apartment.

[15] Mr. Areekadan called the Appellant the next day and was advised that \$1,500 had been taken from the apartment.

[16] Mr. Areekadan stated he had been contacted by the Respondent following which he gave a written statement dated April 18, 2007 (exhibit #7). At that time Mr. Areekadan stated he saw two people inside the apartment but did not give any description of the individuals. In July 2007, he called the Respondent and left a voice message advising that he had recognized a man who he believed was the person in the apartment the night of March 18, but his call was not returned.

[17] The Appellant called Mr. M. Leathwood as a witness. Mr. Leathwood was the Director of Property

Development of CRHC from 2003 to 2007, and CEO from September 2007 to December 2008. He advised that he had met with the Appellant on March 23, 2007 in the parking lot of the CRCH building the Appellant lived in. They talked about deficiencies with the building and how the Appellant was treated as a tenant. He advised that the Appellant's letter of March 29, 2007 sent to CRHC would have been referred to the Director of Property Management, the operations side of the organization. Any contact with Joe Dosramos, who had been hired by CRHC to look into security issues, would not have come to his attention because Mr. Dosramos did not report to him. He also stated that the security tapes were run on a loop, and when he followed up on the tape, he was advised that it had been wiped clean.

Appellant's Proposed Witnesses

[18] The Appellant indicated to the Board that he wished to call three further witnesses, Doris Hosein, Marc Leduc and Harleigh MacDonald. Ms. Hosein would give evidence relating to the lack of security at the building. Mr. Leduc was another tenant in the building who could speak to who held the keys of the building. Mr. MacDonald had also been a victim of Jeff "Doe" who had "ratted " on him. The Appellant also noted the witness Joe Dosramos had not picked up a Notice to Attend from the Board office, but made no further submissions in relation to that witness.

[19] The Respondent objected to the witnesses as being irrelevant to the proceedings. The issues of who held keys and the security of the building were not relevant to the issue of alleged misconduct by the Respondent. Mr. MacDonald was not a resident of the building.

Decision about Proposed Witnesses

[20] The Board recognized that it was difficult for the Appellant to separate out the results of the criminal investigation with the issue of whether the Respondent's conduct constituted misconduct. However, the Board was required to assess the Appellant's proposed evidence in light of the allegations, and cannot itself re-do the Respondent's investigation of the Appellant's original allegations of criminal conduct. It is in this context that the Board made its decision about the Appellant's proposed witnesses.

[21] First, although the Board had concerns about the relevancy of the evidence of Ms. Hosein, she was already present in the Board offices at the time of the hearing and the Board therefore decided to hear her evidence. Regarding the proposed testimony of Mr. Leduc and Mr. MacDonald, the Board found that the evidence was not relevant to the issue of alleged misconduct by the Respondent. The issue concerning the keys had been covered by witnesses that the Board had already heard. The Board understood the point alleged by the Appellant that the keys were at times held by people other than the official manager. From the information provided by the Appellant as to the evidence Mr. Leduc would give, it appeared nothing further would be added by hearing this evidence. Finally, the evidence of Mr. MacDonald and his experience that Jeff "Doe" had "ratted" on him, would not assist in determining whether the Respondent had committed an offence of misconduct in not properly investigating the circumstances of the Appellant's complaints.

Further Evidence on behalf of the Appellant

[22] Doris Hosein was called as a witness for the Appellant. She had lived at the residence since 2005, but did not know the Appellant. She was not aware of any problems on the night of March 18, nor had she experienced any discrimination at the residence. She noted that there had been a number of caretakers, and that Don Raymond had done work at the residence when the caretaker, Ray Hrynchuk, became ill.

Respondent's Evidence

[23] The Respondent testified that he was a 12 year veteran with the EPS and at the time of the incident, he was a foot patrol officer in the McDougall area. The Appellant's building is a walk-up apartment in a lower income area and is, in his opinion, an oasis based on the quality of the facility.

[24] The Respondent was called by a detective and asked to look into complaints made by the Appellant. He stated that he had a 90 minute meeting with the Appellant on April 11, 2007, at the McDougall Community Police Station, and reviewed the eight points that had been detailed in the Appellant's March 29, 2007 letter sent to the CRHC and copied to the Chief (exhibit #3). The eight points dealt with alleged conduct by Jeff, another tenant in the building.

[25] The Respondent discussed with the Appellant the allegation that Jeff had held his door shut and the Appellant agreed that this was not endangerment of life as he had alleged. The only evidence that the Appellant had concerning audio or video surveillance of his apartment was the fact that Jeff had a lot of stereo equipment in his apartment. The Appellant gave no details about an alleged illegal entry into his apartment, or following his car. The Respondent stated that the Appellant did not give specific details regarding derogatory racial slurs, the illegal surveillance of his apartment, or that Jeff "Doe" had a master key. Similarly, the Appellant did not mention the surveillance camera in the hall outside his apartment. The Respondent testified that he noticed the surveillance camera on a subsequent visit to the building, with no prompting by the Appellant.

[26] In addition the Respondent testified that, before the hearing of this appeal, he had never heard Mr. Areekadan's allegations about others being present on the phone call between the Appellant and Mr. Areekadan on March 18, 2007. Likewise, the Respondent testified that he did not recall the Appellant telling him on April 11, 2007 that the possession of the master keys was an issue, or that that the Appellant had made any reports to the police when he returned from the hospital.

[27] The Respondent stated that he took conscious steps not to let the Appellant direct the investigation, although the Appellant wanted him to do many things, such as provide lists of tenants names, investigate matters relating to the CHRC and interview Ray Hrynychuk in hospital. The Respondent made it clear to the Appellant that he was not going to interview Ray Hrynychuk in hospital. The Appellant also named a number of tenants in the building who he felt should be investigated regarding the harassment and theft allegations.

[28] The Respondent noted there appeared to be two issues, the break and enter and a conspiracy involving harassment. With regard to the latter the Respondent did not want to escalate any potential harassment, but noted that he needed more information because nothing the Appellant described would constitute a criminal act. However, he did want to provide the Appellant with a greater sense of security and he asked the Appellant to keep a log of any harassing behaviors he encountered with residents. He felt that the break and enter complaint and the theft was more tangible, and something he could investigate,

although he was concerned about the time lapse between the time of the theft and the time of complaint, and the fact that nothing else in the apartment had been moved.

[29] The Respondent testified that between April 11 and 19, 2007 he knocked on doors in the apartment complex and spoke to individuals at the front door. He did not record the specific times or names of individuals interviewed because nothing seemed significant. He did not hear other concerns or complaints about harassment, nor did he receive any corroboration of harassment in the complex. He knocked on Jeff "Doe's" door but there wasn't any answer. When talking with people, his primary concern was not to reveal any specific details of the incident that may have identified the Appellant. This approach was discussed with the Appellant on April 11, 2007. The approach was intended to end any harassment by soft questioning and police presence.

[30] Initially the Respondent had considered requesting a bug sweep of the Appellant's apartment and had discussed that with the Appellant. Later the Respondent decided that would not be a good use of police resources. The Respondent testified that he may not have communicated his final decision to the Appellant.

[31] The Respondent focused on the break and enter investigation. He spoke with Mr. Areekadan. Mr. Areekadan could not give a description of the individual or individuals he had seen on the night of March 18, 2007, from his position on the ground level, looking up to the Appellant's apartment. The Respondent wondered if they might have been police or ambulance personnel and followed up with the Division Intelligence Office to determine if officers had been at the scene that night, but again he could not get any information. On approximately April 17 or 18, 2007 he called the video surveillance company to determine if a videotape was recoverable for March 18, 2007. On April 19, 2007 the Respondent met the Appellant at the Appellant's apartment and they drove around the area together.

[32] In response to a question about why he did not check up on the report made by the Appellant at the police station on March 19, 2007 the Respondent replied that he heard for the first time at the hearing that such a report had been made. The Respondent testified that the Appellant did not tell him that he had made a police report on March 19, 2007.

[33] The Respondent went on a course for two weeks. Approximately one month later, the Respondent confirmed that there was no information available from the videotape about the events of March 18, 2007. The Respondent stated he did not receive any messages from Mr. Areekadan in July 2007 advising he could now identify the person in the apartment on the night of March 18, 2007, and that he first heard that information at the hearing. His last discussion with the Appellant was on October 8, 2007 when the Appellant was concerned about the Respondent's relationship with Ray Hymchuk and how it had influenced how the investigation had been done.

[34] With no video or witnesses to corroborate either the harassment or the theft, and with a long time gap between the alleged date of the theft and the date of complaint, the Respondent elected not to continue the investigation.

[35] Counsel for the Respondent introduced the EPS policy regarding "Managing Criminal Investigations" (Exhibit #12) which provides guidance as to how far an officer should go to solve a crime. Cases that have inadequate leads are subject to early case closure and held in a pending status. The Respondent testified that this is what occurred in this case.

[36] During cross examination, the Appellant challenged a number of the statements made by the Respondent, including when he reported the break and enter, when the video surveillance camera was brought to the Respondent's attention and who had master keys. The Appellant questioned the veracity of the Respondent's notes, when they had been written, and why he did not interview specific suspects.

ARGUMENT

Appellant

[37] The Appellant reviewed the events which occurred over a four day period at the apartment complex, beginning on March 18, 2007. The Appellant said he was consumed with fear based on harassment, led by Jeff "Doe", who he referred to as the "puppet master". He complained to both the police and CRHC but nothing was done; no one cared. He noted that he had information that the videotape was

not a loop but a CD, and with digital technology it should be recoverable.

[38] The Appellant argued that had the Respondent taken preliminary steps in the investigation, interviewed the suspects he identified, and checked the police databases, he would have had success. He contends the Respondent “cooked up” his notes to prove he had done an exhaustive investigation. The Appellant believes that CRHC would intimidate any tenants who would back up his complaints, and that Joe Dosramos of CHRC did not do an extensive investigation. The investigations by Perrault and Tabaka of the EPS just repeated reports from the line of command.

Respondent

[39] Counsel for the Respondent argued that the most appropriate offences to the allegations of the Appellant under the *Police Service Regulation* (the “PSR”) are section 5(2)(h)(i) and (iv), both relating to neglect of duty. The Respondent did diligently complete the investigation. Counsel agreed that, while some complaints have merit, others, despite the citizen complaint, do not. Sometimes a citizen’s expectations are unrealistic; they often do not understand legal boundaries or standards.

[40] A crime may have occurred, but without evidence, an indefinite amount of time and resources could not be assigned to the case. Officers must make an assessment regarding the solvability factor. Counsel argued the Respondent did investigate the allegations. Counsel said the Board needs to consider what the Respondent had before him - namely outrageous claims, with no detail or specificity, and no witnesses. The Respondent tried to separate the theft, a crime he could investigate, from the harassment because there was no proof of racism.

DECISION AND REASONS

[41] The Appellant has not particularized any specific offence, but the Board has reviewed the relevant provisions of the *PSR*. Sections 5(2)(h)(i) and (iv) state:

(2) *For the purpose of subsection (1), ...*

(h) "neglect of duty" consists of one or more of the following:

(i) neglecting, without a lawful excuse, to promptly and diligently perform his duties as a police officer; ...[or]

(iv) failing, when knowing where an offender is to be found, to report him or to make reasonable efforts to bring him to justice ...

The Board finds that section 5(2)(h)(i) is the most relevant offence to the Appellant's complaint, which relates to the adequacy of the Respondent's investigation. The Board finds that section 5(2)(h)(iv) is not applicable, because an offender was never identified in this case.

[42] The Board finds that the evidence does not establish a reasonable prospect of conviction of any disciplinary offence under section 5(2)(h)(i) of the *PSR*.

[43] The Board therefore affirms the decision of the Chief made under section 47 of the *Police Act*.

[44] The Board is satisfied that the Appellant was attempting to testify carefully, but is unable to conclude that much of his testimony was relevant. Much of the evidence presented by the Appellant dealt with the issue of the master keys and who had access to them at certain times. It was difficult at times to ascertain whether the Appellant was complaining about the conduct of the housing authority or the conduct of the Respondent. The Appellant argued that the Respondent should have been investigating the issue of the keys more thoroughly. However, the issue of master keys was raised only peripherally by the Appellant in his letter of March 29, 2007 which had set out allegations of criminal conduct against him.

[45] The Board found the evidence of the Respondent to be consistent and reliable. Where there is a discrepancy between the testimony of the Appellant or Mr. Areekadan on the one hand, and the testimony of the Respondent, the Board prefers and relies on the Respondent's evidence.

[46] The Board finds that the information provided to the Respondent by the Appellant and his witnesses may have changed in terms of emphasis and substance at various times, up to and including at the hearing of this appeal.

[47] In finding that there was insufficient evidence to establish a reasonable prospect of conviction under section 5(2)(h)(i) the Board notes the following:

- The Respondent made arrangements to meet with the Appellant on April 11, 2007 and spent a considerable amount of time with the Appellant going over the letter he had written on March 29, 2007.
- The decisions that the Respondent made after that meeting as to how he was going to conduct the investigation were reasonable, based upon what the Appellant had conveyed to him and the lack of evidence to substantiate the complaints.
- Although it would have been preferable if the Respondent had recorded which tenants he spoke to at the building, the Board accepts the Respondent's evidence that he did carry out low key discussions with some tenants to see if he could substantiate any of the facts alleged by the Appellant as to harassment and theft.
- None of the evidence by Mr. Bobinski, Mr. Raymond or Ms. Hosein supported the Appellant's allegations of harassment, which was consistent with the findings of the Respondent following his discussions with tenants in the building.
- The Respondent considered other means by which the allegations of the Appellant could be corroborated. In the case of harassment he considered sweeping for bugs and in the case of theft, obtaining the surveillance recording. The Respondent investigated the viability of each method, finding the bug sweep was not justifiable based upon the evidence and the recording was not available. The Respondent's understanding about the unavailability of the video surveillance recording was corroborated by the testimony of both Det. Tabaka and Mr. Leatherwood.
- The Respondent met with the Appellant on at least one more occasion on April 19, 2007 when they took a tour of the area outside the Appellant's apartment building, by car.
- The Respondent also spoke with Mr. Areekadan and acted on the written statement by Mr. Areekadan that there were people in the apartment by checking to see if ambulance or police personnel had been in the apartment.

[48] The Board notes that the Respondent did not specifically seek out and interview Jeff "Doe". However, the Board accepts the evidence of the Respondent that at his meeting with the Respondent on April 11, 2007 there was little information given to indicate criminal activity by Jeff. Accordingly, the Respondent elected to approach the harassment issue in a low key manner. The Respondent talked with

some tenants for two reasons – first, to see if the allegations could be substantiated, and secondly, to discourage any future harassment and assist the Appellant to have a better sense of security in his home. Given the information provided to the Respondent, the Board finds that this was a reasonable course of action.

[49] The Board is satisfied that the disposition of the Chief of Police must be affirmed. The appeal is dismissed.

A handwritten signature in black ink that reads "L. Parish". The signature is written in a cursive, slightly slanted style.

Lynn Parish
Acting Chair

DATED at the City of Edmonton,
in the Province of Alberta, this
29 day of April, 2010.

cc: Board Counsel
Heather Steinke, Counsel for the Respondent Officer