
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 John Andrews (the “Appellant”) concerning complaints against Cst. R. Druar (No. 2240) (the “Respondent”) of the Edmonton Police Service (the “EPS”).

JUDGMENT OF THE BOARD

(Phillips/Mackenzie/Rolfe)

THE COMPLAINT

[1] The Appellant filed an appeal from a decision of the Chief of the EPS. The Chief made a determination after a Disciplinary Hearing was held, that the charges of Insubordination and Discreditable Conduct against the Respondent were “not proven”.

[2] The Appellant filed his original letter of complaint to the EPS on July 27, 2006. The Chief forwarded his decision to the Appellant on June 23, 2008, and attached a transcript of the decision of the Presiding Officer from the Disciplinary Hearing. The Appellant filed a Notice of Appeal with the Law Enforcement Review Board (the “Board”) on July 21, 2008.

THE EVIDENCE

[3] The Appellant was not represented by counsel at the hearing. The Chair acknowledged this challenge and gave the Appellant considerable latitude in presenting evidence and questioning.

[4] As well as hearing *viva voce* evidence from the Appellant and the Respondent, the Board relied on a Binder of Agreed Facts and Exhibits which was entered into evidence. Included with the exhibits were: the Disciplinary Hearing report, dated May 5, 2008; a transcript of the interview between the Appellant and Cst. Sinclair; a transcript of the call from the Appellant to 911; a transcript of the interview between Det. Hilton and the Appellant (the Board had an opportunity to review the audio of the interview and could find no significant discrepancies between the written and verbal information); and a copy of the "Final Report" of the Professional Standard's Branch investigation into the complaint of the Appellant against the Respondent.

[5] The incident giving rise to the Appellant's complaint occurred on May 25, 2006, at approximately 4:45 p.m., at the rear of the Appellant's property. The general area of 118 Avenue and 80th Street was targeted by EPS for drug houses and drug dealing. On the day in question, the Respondent was working a plain-clothes assignment with an EPS team. The Respondent was tasked with the interception of vehicles coming or going from a target location in the area ("the target house"), which was close in location to the Appellant's house. The Appellant had posted a "private property – no parking – no trespassing" sign at the rear of his yard. When the Respondent parked his unmarked police vehicle on the Appellant's rear property, the Appellant exited his house to determine who was parked in his yard.

[6] It is at this juncture where the evidence of the Appellant and the Respondent becomes contradictory and inconsistent.

Testimony of the Appellant

[7] The Appellant testified that he exited his house when he saw a car parked on his property. He stated the area had problems with prostitutes and drug dealers. He asked the unidentified man in the alley

to move his car. The man stated he was a cop. However, the Appellant did not believe him and asked for identification. He stated the Respondent was yelling, rude and out of control. The Appellant stated the Respondent lifted his jacket and showed a gun. The Appellant said he was shocked.

[8] The Appellant disputed statements made by the Respondent, including: that he had been shown the officer's identification badge which was on a cord around his neck; that the Respondent carried a flashlight and radio; and the color of the jacket worn by the Respondent. He indicated that the Respondent was yelling and told him to call the police department for verification of who he was, and that the Respondent did so in a manner that was "kind of like, screw off".

[9] Under cross examination the Appellant was asked by counsel for the Respondent if he agreed that the transcript of what he testified to at the Disciplinary Hearing was accurate. He stated it was. Counsel for the Respondent asked why there had been no mention in the 911 call that the officer was out of control, and noted that the first time the words "temper tantrum, fitty, wild and out of control" had been used, was in the interview with Det. Hilton. The Appellant did not dispute these observations.

[10] Counsel asked the Appellant why he had contacted the Sun Newspaper the same day the event occurred. The Appellant stated his view, which is that no one should have to put up with this [treatment by the police], and that, by bringing the media in, he made sure the police couldn't brush it off.

[11] The Appellant also stated that the police were trying to paint him in a bad light, and that the tape of the 911 call had been edited by the police.

Testimony of the Respondent

[12] The Respondent testified that on the day of the incident he had been working with a team of EPS officers on an undercover "buy and bust" in the area. A search warrant was issued for the target house, and it was the Respondent's responsibility to secure the perimeter. A green van left the target house, and it was stopped by a marked police car in the alley behind the Appellant's home. The occupants were arrested and taken to the police station by a uniformed officer. The Respondent stayed with the van, and

searched and inventoried it. While waiting for a tow truck to remove the green van, the Respondent backed his unmarked police car onto the Appellant's property. The Respondent testified that the flashing light on the dashboard of his unmarked car was left on.

[13] The Respondent stated that the Appellant was standing in his back yard, behind the fence, and that the Appellant swore at him and yelled at him to move his vehicle. In response to the Appellant's demand for "show me some fucking identification", the Respondent stated he showed the Appellant his badge, his flashlight and radio and finally his gun. He warned the Appellant to stay in his back yard, and he told the Appellant that if he exited his back yard, he could be arrested.

[14] The Respondent was asked by his counsel if he was specifically asked for his name or registration number. He stated that he was asked for identification that he was a cop or police officer. The Respondent testified that, therefore, he thought he had complied with the request by showing the Appellant his badge, flashlight, radio and gun. If he had been requested to give his name and badge number, the Respondent testified that he would have done so.

[15] The Board also heard from witnesses Cst. Sinclair and Det. Hasham. Cst. Sinclair was the supervising officer on duty when the incident occurred, and he spoke with the Appellant on May 26, 2006, after being advised of the Appellant's concerns. He advised he wanted to resolve the dispute.

[16] Det. Hasham, the Internal Affairs investigator, went to the Appellant's property on November 14, 2006. He viewed the property and spoke with the Appellant when he emerged from the back of the house and approached the back fence. The Appellant was wearing a full facial balaclava, and he did not remove it during the conversation between the Appellant and Det. Hasham. Det. Hasham stated he tried to make the Appellant comfortable, and gave him his identification and business card. He noted the Appellant's demeanor as "not baseline behaviour".

ARGUMENTS

[17] The Appellant argued that it was in the public interest to ensure that public complaints against a police officer are investigated properly. Common sense would indicate that a lethal weapon is not a form of identification under any circumstances, and therefore the Respondent showing his gun constituted Discreditable Conduct. The Appellant also argued that not following police directives or policy regarding presenting identification, when asked to do so, was Insubordination. The Appellant argued that when a person asks for identification, a reasonable person would understand that a name and badge number was being requested, and that showing any kind of equipment was not adequate identification.

[18] The Appellant stated that he has a strong personality, and that when he did not back down in response to the Respondent's bullying, the Respondent didn't know how to react. He believes the Respondent panicked, and made up a story to cover up his own wrongdoing. The Appellant questioned whether the Respondent had a radio, and asked: why didn't the Respondent push a button and call for back up, or have dispatch record everything that was happening, if he had a radio?

[19] The Appellant believes that the police are trying to portray him in a bad light, for example, by using terms such as "non-baseline behavior" and describing him as "particularly upset".

[20] Counsel for the Respondent argued that the decision of the Presiding Officer from the Disciplinary Hearing presented a thorough review of the testimony, factual findings and credibility of the witnesses. Based on two divergent stories, the Presiding Officer had to decide what occurred, and found that on a balance of probabilities that neither Insubordination nor Discreditable Conduct were proven. Counsel referenced direct quotes from both parties taken from the disciplinary hearing, and noted inconsistencies in the Appellant's testimony.

[21] Counsel argued that the Respondent testified in a calm collected fashion. His explanations made sense as to what he was trying to do, which was to identify himself as a police officer, not to identify himself as a specific individual.

DECISION AND REASONS

[22] The Board confirms the disposition of the chief, that the charges of Insubordination and Discreditable Conduct against the Respondent are “not proven”.

[23] The testimony given by the Appellant and by the Respondent was inconsistent. The Board reviewed the transcript of the Disciplinary Hearing which included many lengthy verbatim statements made by both the Appellant and Respondent, as well as verbatim transcripts of the Appellant’s 911 call, and of interviews between the Appellant and both Cst. Sinclair and Det. Hilton. As stated in the Decision of the Presiding Officer at the Disciplinary Hearing, the “complaint either lives or dies by what the two parties have said ... they have the right to have their stories told in their own words”. Their words are contradictory regarding what was said, when it was said and the demeanor of the parties.

[24] Regarding the charge of Insubordination, the Board notes that the policy regarding identification of police officers is clear. In Part 11, Chapter C, Section 1 of the Policy and Procedure Manual of the Edmonton Police Service, it reads:

“(H) In order to improve the contact between members and the public, policy regarding identification of EPS members has been amended. Uniformed or plainclothes members working in the regular commission of their duties are to provide either their complete name or register number when requested to do so by a citizen. This does not apply to members working undercover.”

[25] Regardless of what transpired in the Appellant’s rear yard, it is clear that the Respondent did not provide his name and badge number when identification was demanded. The Respondent stated that he believed the Appellant merely wanted him to identify that he was a police officer, or, to use the Appellant’s word, a “cop”. The Board notes that even though the Appellant may not have specifically asked for the Respondent’s name and number, the Respondent ought to have provided it. However, given the testimony regarding the demeanor of the Appellant, there may have been reasons for the Respondent to disengage as quickly as possible. Technically the Respondent did fail to identify himself, but the Board is not of the view that this failure in these particular circumstances would amount to Insubordination. Further, the Board

believes there is insufficient evidence about any other aspect of this complaint that, on a balance of probabilities, could prove the charge of Insubordination.

[26] The Board did not hear any compelling evidence that supported allegations of Discreditable Conduct, specifically regarding the Respondent's showing the Appellant his handgun, or the Respondent using inappropriate language. The Board can understand that the Appellant may have been intimidated or threatened by seeing the gun on the Respondent's belt, however it was not drawn, and the Board finds that the action was taken to demonstrate that the Respondent was a police officer. The allegations of swearing and aggressive behavior come from both the Appellant and the Respondent, and given the conflicting recollection of events, the Board concludes that no credible evidence was presented by the Appellant to sustain this charge.

[27] In these circumstances, the Board confirms the Chief's decision about both charges against the Respondent.

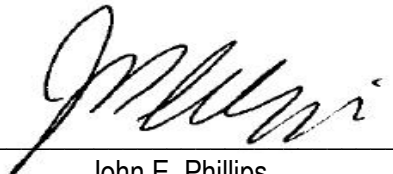
COMMENTS

[28] The Board is inclined to believe that the Appellant honestly thinks he was doing the right thing, in standing up for the public process of policing the police. The Board is also impressed with the Respondent, and believes that he is a good police officer. However, the Board finds that neither the Appellant nor the Respondent are faultless. This gives rise to the Board's support for dispute resolution.

[29] On this collateral issue, the Board notes that an effective process of mediation might have resolved the issue under appeal. In previous decisions, the Board has noted that mediation should have been used to resolve disputes. The Board continues to encourage the EPS to consider using mediation in comparable situations in the future. The Board also encourages the EPS to follow a policy of promoting mediation as an effective dispute resolution approach to improve and develop its connection with the citizens of Edmonton.

[30] The Board wishes to re-iterate that EPS policy must be followed, and when citizens request identification, the officer's name or badge number should be given.

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



John E. Phillips
Chair

DATED at the City of Edmonton,
in the Province of Alberta, this
30th day of April, 2010.

cc: Board Counsel
Heather Steinke, Counsel for the Respondents