
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 the Criminal Trial Lawyers' Association (the "Appellant") concerning complaints against Cst. S. Carter (No. 1991), Cst. D. Radmanovich (No. 2255), Det. D. Pelech (No. 1359) and S/Sgt. D. Fenrich (No. 783) (the "Respondents") of the Edmonton Police Service (the "EPS").

JUDGMENT OF THE BOARD

(Phillips/Lawson/Rolfe)

OVERVIEW

[1] This matter arises out of an E-mail sent by Respondent Carter of the EPS to various members of the EPS over a three year period. Respondent Carter was issued an Official Warning, as was Respondent Radmanovich, for violating the EPS computer policy. Charges against their supervisors, Respondents Pelech and Fenrich were found to be "Not Sustained". The Appellant, Criminal Trial Lawyers' Association (the "CTLA"), appeals those findings to the Law Enforcement Review Board (the "Board")

FACTS

[2] After considering all the evidence before it, the Board finds the facts of this case to be as follows: Sometime in or around October of 2002, Respondent Carter drafted a document (the "E-mail") that he

entitled "*Mr. SOCKO'S Ten Principles of Downtown Policing. (Alternatively known as Mr. SOCKO'S "Downtown Way")*". Respondent Carter then sent this E-mail via the EPS internal system to various persons, predominately sworn members of the EPS, 19 times in 2002, twice in 2003 and one time each in 2004 and 2005.

[3] In 2005, the E-mail came to the attention of Supt. Grue of the EPS via an unsworn member. The existence of the E-mail was leaked to the public shortly thereafter. The EPS conducted an investigation of various members' e-mail accounts. Notice of Service Investigations were given to Respondents Carter and Radmanovich for violating EPS computer policy; specifically, for forwarding a non-work related e-mail with EPS computers. Notice of Service Investigations were also sent to Respondents Pelech and Fenrich alleging a failure to supervise a subordinate.

[4] The contents of the E-mail were as follows:

"Mr SOCKO'S Ten Principles of Downtown Policing. (Alternatively known as MR SOCKO'S "Downtown Way")

- 1) *All the best "Investigations" end in a brawl.*
- 2) *The key to a successful partnership is to have crime on one another.*
- 3) *An "Aboriginal" is actually just an Indian.*
- 4) *D58 is more than just transportation and should always be referred to as the "Mobile Native Friendship Centre."*
- 5) *Operating the D58 is the most noble job in the department. Ensure all subjects you deal with in the M.N.F.C. address you as "Ambassador."*
- 6) *The Gaming and Liquor Act is the supreme document which governs us all.*
- 7) *Every arrest should be followed by a vague, yet wordy report.*
- 8) *In order to color an otherwise boring police report, repeatedly use words like "Tranny", "Whore", and "Ass-Fucked", even if they have (sic) nothing to do with the investigation.*
- 9) *PCU is for stuff you already have.*
- 10) *Tom ENGEL is SATAN."*

The last point, number 10, was altered in the later E-mails to read:

"10) Always remind complainants that they are under no obligation to complain of anything. Be sure and tell them if they don't complain, it'll be just like it never happened."

All four of the Respondents provided written responses to the Notice of Service Investigations. The Board will discuss specific facts related to each Respondent police officer as part of its reasons for decision about that officer.

DECISION AND REASONS

Constable Carter

[5] In his response to the Notice of Service Investigation, Respondent Carter acknowledged sending the E-mail, took full responsibility for it and offered an explanation. He stated that the explanation was not to excuse or justify the E-mail, but rather to indicate that he acknowledged his wrongdoing and to put the E-mail in context. Respondent Carter indicated that he had intended the E-mail to be satirical humour, and that he intended to make light of a number of issues in policing. He stated that he did not intend to offend nor did he harbour any ill will or malice towards any person or group of persons. He went on to state:

"I deeply and sincerely regret that I may have painted myself or any other member of the service in a negative light. To distribute the item was uncharacteristically poor and rare lapse in judgement. That it had the potential to offend someone should have been obvious to me."

[6] Before the Board, Respondent Carter was asked his motivation for creating the E-mail. He stated that several factors had led to the E-mail. One was a document that had circulated through the EPS entitled "The Downtown Way". The Board was not provided with a copy of this document, but Respondent Carter testified that the gist of the document was to poke fun at those police officers who worked in the Downtown District as being aggressive, belligerent thugs who did not investigate crimes in a thorough professional manner. He also testified that this seemed to be a general perception of downtown policing within the EPS, citing the example of negative feedback from co-workers when he requested a transfer from South Division to the Downtown Division. Respondent Carter stated that his experience in the Downtown Division was completely contrary to that perception, however, and he wrote the E-mail as a satirical response to that perception. He stated that the E-mail was in the nature of gallows or black humour but that he also hoped it would spark discussion of the issues set out in the E-mail.

[7] Respondent Carter was taken line by line through the E-mail by both his counsel and counsel for the Appellant.

[8] At the hearing of this matter, both at his initial testimony and upon recall, Respondent Carter presented as being contrite and as now understanding that the E-mail was capable of being misconstrued and of being offensive to others. He stated that he now realized that it was "stupid and dumb" to have written and sent the E-mail.

[9] In April of 2007, Respondent Carter attended a meeting between senior staff of the EPS and various representatives of the Aboriginal community in Edmonton. He testified that at the meeting, he explained the purpose of the E-mail and that he apologized for any offense or hurt that he had caused. He stated that the members of the Aboriginal community present accepted his explanation and apology and that by the end of the meeting there was reconciliation between he and the other attendees.

[10] Evidence was led by the Appellant from an attendee at the meeting in April of 2007. That witness indicated that the impression he had been left with at the meeting was that the E-mail had been sent one time by Respondent Carter to a few friends and that thereafter it had been disseminated by those people to other recipients. He expressed some shock to having learned that in fact Respondent Carter had forwarded the E-mail on a number of occasions over several years to 20+ people. However, the Board found the testimony of the witness about that meeting to be vague, due no doubt to the passage of time. In the Board's view, this witness' testimony fell short of directly contradicting Respondent Carter's evidence regarding the meeting and the fact that his apology had been accepted by all those in attendance.

[11] The Board finds that Respondent Carter was being honest when he testified that the E-mail was intended as gallows humour and to provoke discussion on a number of issues in policing. The Board does not find the intent of the E-mail to have been based upon racism or to injure or mock any particular community or person.

[12] That the E-mail is offensive is beyond question. Respondent Carter agreed with this characterization, as did other members of the EPS. However, this does not mean that Respondent Carter

is racist nor does it mean that racism is inherent in the EPS. The Board is not so naïve as to assume that this means there is no racism in the EPS, nor for that matter is the EPS naïve about this issue. The EPS adduced voluminous testimony regarding the steps it takes to weed out anyone with racist leanings and the ongoing programs and policies put in place to prevent any discriminatory practices.

[13] The Board finds that the E-mail written and sent by Respondent Carter was an attempt at humour gone wrong. It finds that Respondent Carter was motivated not by an intention to express racist or discriminatory viewpoints but to vent his frustration at a system he felt had gone wrong and to try to spark some discussion as to how to fix that system.

[14] The Board feels that in all the circumstances, Respondent Carter now understands the error of his ways. While the sanction levied by the Chief of Police was an Official Warning, the Board finds that Respondent Carter has also been subjected to an "unofficial sanction" by having to live through the controversy caused and the condemnation from various groups and the public at large. The Board finds that by attending the meeting in April of 2007, Respondent Carter also demonstrated a willingness to admit his wrongdoing and his contrition for same. The Board confirms the decision of the Chief of Police and finds that no further action with respect to Respondent Carter is necessary.

Constable Radmanovich

[15] In contrast to Respondent Carter, Respondent Radmanovich, in his written response, took issue with the E-mail being characterized as being offensive, and he stated:

"The e-mail of entitled MR. SOCKO is not racist, intentionally degrading or hurtful to anyone. I took Mr. SOCKO to be comedic, funny and a dramatic interpretation of Downtown policing by poking fun at some of the daily events Downtown policemen and women deal with daily...The e-mail of Mr. SOCKO is just that – a comedic e-mail perpetrated to make us laugh, which I did, and also I did forward the e-mail but only to myself..."

Respondent Radmanovich reiterated this position at the hearing of this matter.

[16] While the Board has some concerns about Respondent Radmanovich's view of the content of the

E-mail, the offence he was charged with, and punished for, related to the forwarding of the E-mail to his home e-mail. Respondent Radmanovich testified that he did not forward the E-mail from his home e-mail to anyone and no evidence was presented to contradict this. In the circumstances, the Board feels that the penalty levied against Respondent Radmanovich for a one time sending of an offensive E-mail using the EPS system was appropriate. Accordingly, the Board confirms the decision by the Chief of Police to give Respondent Radmanovich an Official Warning.

Sergeant Pelech

[17] Respondent Pelech testified that he discussed the situation with Respondent Carter and told him not to send the E-mail again. However his memory was spotty, though again the Board acknowledges that there has been a significant passage of time.

[18] It was concerning to the Board that Respondent Pelech, among others, seemed to feel that the wrong committed by Respondent Carter was the sending of the E-mail. Little if any attention was directed to the actual composition of the E-mail. The Board recognizes that the offences that Respondent Carter was subject to related to the sending of the E-mail, not the content. However, Respondent Pelech was careful to indicate in his testimony that, based upon his observations of Respondent Carter before and after the E-mail was initially sent, he did not have any concerns about Respondent Carter harbouring any racist tendencies or treating one member of the public differently than another. He stated that he kept a close eye on Respondent Carter after receiving the E-mail, and that he saw nothing untoward. He did concede on cross examination that a subordinate officer was not likely to do so when he knew that a superior was watching.

[19] Respondent Pelech testified that he did not escalate matters with respect to the E-mail beyond having a discussion with Respondent Carter about it because he did not feel that it was a serious matter. Again, this was based upon his knowledge of, and experience with, Respondent Carter. He indicated that he felt that Respondent Carter had understood the message he conveyed and that this would be the end of the matter.

[20] While the Board has some concerns about Respondent Pelech's lack of concern about the

contents of the email, it also acknowledges that some leeway must be given to superior officers in terms of discipline and how to best correct their staff. As such, the Board confirms the decision of the Chief of Police to dismiss any allegations against Respondent Pelech.

Staff Sergeant Fenrich

[21] Respondent Fenrich was the superior officer to Respondents Carter, Radmanovich and Pelech. He testified that upon his receipt of the E-mail he was concerned, and that he discussed the matter with Respondent Pelech. He testified that he was assured by Respondent Pelech that he had addressed the matter with Respondent Carter and that there would be no repeat and that Respondent Carter understood the error of his ways.

[22] Respondent Fenrich testified that he gave his Sergeants leeway in how they chose to deal with disciplinary matters involving their staff. The Board accepts Respondent Fenrich's explanation. Accordingly, the Board holds that Respondent Fenrich acted appropriately. He raised a concern about the E-mail with Respondent Carter's supervising Sergeant and was assured that the matter had been dealt with appropriately. The Board finds that Respondent Fenrich acted appropriately and was entitled to rely upon his Sergeant in this regard. The Board confirms the decision of the Chief of Police to dismiss any possible charge against Respondent Fenrich.

COMMENTS

[23] Despite the above decision, the Board feels it necessary to offer a number of comments regarding the E-mail, how it was investigated by the EPS and how the EPS handled the entire affair. As the Board noted in para. 62 of *Boulanger* (Board Judgment No. 021-2006) where it stated:

"The Board has given very careful consideration to the issues presented to it in these preliminary applications and to the consequences which would flow from the various arguments made in them. It has done so recognizing the challenges of striking the proper balance between the rights of members of the public and police officers engaged in a dispute arising from interactions between them, the rights and responsibilities of chiefs of

police to maintain discipline within their respective services, the importance of treating all participants fairly and equitably, the impact of disciplinary proceedings on officer morale (both individual and collective), and the public interest in ensuring that the disciplinary process promotes transparency, accountability and confidence."

The Tenor of the E-mail

[24] The Board is concerned that when news of the E-mail first reached the public, the concern of the EPS was more about the fact that it had been sent as opposed to the fact that it had been written and conceivably represented the viewpoint of a member of the EPS. It appeared that for some of those who testified before the Board the real issue was the fact that Respondent Carter sent the E-mail. Comments regarding how stupid it was to send the E-mail via the EPS system abounded. In the Board's view, this is unacceptable. The Board recognizes that the disciplinary charges focused upon just that, *i.e.* the sending or forwarding of the E-mail. However, the Board remains very concerned about the failure – on the part of at least some sworn EPS members – to recognize that such an E-mail should not have been written in the first place. It would appear that the EPS has some way to go in the regard, and the Board encourages EPS to continue with those programs and policies to prevent discriminatory practices by members.

The Investigation

[25] The Board has three serious concerns about the EPS investigation of this matter. First, the evidence before the Board suggests that the EPS, from the outset, was inappropriately preoccupied with "keeping a lid on" the public knowledge of the email and its contents. Secondly, the Board is concerned that the investigation of this incident was incomplete. Finally, the Board is concerned that EPS does not seem to have considered the possible impact of the fact that Cst. Carter sent the email via the EPS computer system after having been warned against doing so.

[26] Once the E-mail surfaced in public, the EPS conducted an investigation. Det. Briscoe was assigned to investigate the matter. The EPS knew that the E-mail had originated out of the Downtown Division and Det. Briscoe was able to narrow the focus of his investigation to four members in Squad C-2. As a result of going through the E-mails in the various e-mail boxes, Det. Briscoe issued Notice of Service

Investigations to Respondents Carter and Radmanovich as well as their superiors, Respondents Pelech and Fenrich.

[27] Regarding the Board's first area of concern, the Board reviewed many email messages, and heard testimony about Det. Briscoe's investigation. The Board is concerned that it could appear that the sole concern of the EPS was to try to hide the fact that the E-mail had ever existed or been sent. Comments were made in various emails about trying to keep the lid on things and what the potential fallout would be if the E-mail was ever released to the public. Such a stance would without question be directly opposed to Det. Briscoe's testimony. Det. Briscoe stated that to have a fair, objective police investigation, police investigators must focus on the truth, and cannot be concerned with the effect of an incident on the reputation of the officer being investigated or of the reputation of the police service itself. Email messages about "keeping a lid on things" only foster and encourage a perception that the police try to cover up misbehaviour.

[28] Secondly, Det. Briscoe was also tasked with following the E-mail through those it had been forwarded to, to determine whether it has been forwarded by other members of the EPS. This does not appear to have been done. Det. Briscoe acknowledged the shortcomings of his investigation in terms of following up as to whether the recipients of the E-mail might have forwarded them. The Board was not provided with an explanation about why the investigation by Det. Briscoe was discontinued. Again, the Board is concerned that the failure to complete an assigned investigation can negatively affect the public perception of the police service.

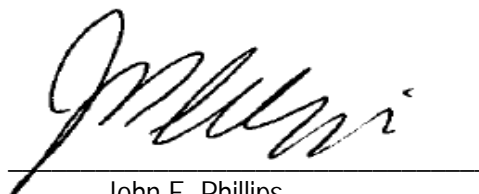
[29] Regarding the Board's third concern, neither Det. Briscoe nor anyone else in the EPS felt it necessary at the time to look into the question of whether Respondent Carter should face further charges relating to sending the E-mail after he had purportedly been told to stop doing so by Respondent Pelech.

[30] In the Board's view, this matter was poorly handled by the EPS. Indeed, given the facts and the context of the email, a transparent approach would likely have demonstrated that the E-mail was not as serious as the speculation, conjecture and rumour would inevitably build it up to be. Further, in the Board's view, the EPS should have organized the meeting with aboriginal groups sooner to show them the E-mail,

to demonstrate the context in which it was written, and to permit Respondent Carter to provide the explanation and the apology and receive the forgiveness that he eventually did. The Board expresses the hope that the EPS has learned from this Incident and if there are any future such occurrences that it will handle the matter in a more open and transparent fashion.

APPLICATION TO RE-OPEN THE HEARING

On December 18, 2009, Mr. Engel applied to the Board to re-open the hearing, on the basis that there was new evidence that would be introduced through the testimony of an individual. That individual was not called at the hearing of this appeal as counsel for the Appellant assumed the proposed witness would not talk to him. This application was opposed by counsel for the Respondents and counsel for the Chief. The Board held that the hearing would not be re-opened. As the proposed new witness would have been available to testify at the hearing had he been contacted with such a request, the request had not been made. This was held to fall short of being new evidence not available previously. This was communicated to all counsel on December 22, 2009.



John E. Phillips
Chair

DATED at the City of Edmonton,
in the Province of Alberta, this
6th day of May, 2010.

cc: Board Counsel
Tom Engel, Counsel for the Appellant
Rob Abells, Counsel for the Respondents
Katrina Haymond, Counsel for the Chief