

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 J.P. and M. C. (the "Appellants") concerning complaints against Sgt. S. Bach (No. 1492) and Det. J. Tedeschini (No. 1867) (the "Respondents") of the Edmonton Police Service (the "EPS").

JUDGMENT OF THE BOARD

(Callihoo/Parish)

To protect the identity of a minor child, the Board has used initials for the two Appellants and other interested parties.

MATTERS BEING APPEALED

[1] The Appellants appeal the decision of the Chief of Police made November 18, 2004. The Chief dismissed the Appellants' complaint without a hearing and concluded as "Not Justified" all concerns raised by the Appellants regarding the conduct of the Respondents during an investigation conducted from April 2003 until August 22, 2003.

[2] The alleged misconduct addressed by the Chief of Police were, with regard to Respondent Bach:

- Misleading J.P. (in a relationship with M.C. at the time in question) as to the circumstances of interviews held on April 10, 2003 and April 22, 2003;

- Malicious, biased and negligent conduct in failing to investigate matters brought to her attention by M.C. (M.C. is the mother of J.G.);
- Failing to ascertain the truthfulness of allegations against J.P. in the light of information provided by M.C.;
- Malicious action in deceiving M.C. and B.G. (B.G. is the father of J.G.) by saying J.P. had failed a polygraph examination.

[3] The alleged misconduct addressed by the Chief of Police were, with regard to Respondent Tedeschini were:

- Detaining J.P. against his will at the polygraph examination;
- Misleading J.P. as to the purpose of the polygraph examination.

[4] Following the decision of the Chief of Police, the Appellants appealed to the Law Enforcement Review Board (the "Board") on the following grounds with regard to Respondent Bach:

1. She carried out an improper investigation contrary to s. 5(1)(e) and s. 5(1)(h) of the *Police Service Regulation* in that she failed to conduct an objective and impartial investigation of this matter, and her investigation was tainted by a "confirmatory bias" or "tunnel vision". Respondent Bach began her investigation with the assumption that abuse had occurred and, rather than investigate the validity of the allegations or exculpatory evidence available to her, she directed her efforts entirely on gathering evidence to confirm that abuse had occurred.
2. She misled M.C. as to the results of J.P.'s polygraph examination and, in any event disclosed information or opinions to M.C. that she was obliged to keep in confidence contrary to s. 5(1)(a) and s. 5(1)(e) of the *Police Service Regulation*.
3. She disclosed confidential information or allegations about J.P. to B.G. contrary to s. 5(1)(a), s. 5(1)(e) and s. 5(1)(g) of the *Police Service Regulation* [applies only to the alleged disclosure of the results of the polygraph procedure].
4. She misled J.P. as to the potential use of a polygraph examination in civil proceedings, contrary to s. 5(2)(d)(ii) of the *Police Service Regulation*.
5. She was unduly aggressive and disrespectful in the course of her dealings with J.P. and made unnecessary physical contact with J.P. contrary to s. 5(1)(e) and s. 5(1)(i) of the *Police Service Regulation*.

[5] The Appellants appealed to the Board on the following grounds with regard to Respondent Tedeschini:

1. He engaged in deceit by informing J.P. "that there was no doubt whatsoever in his mind" that J.P. had engaged in the offence being investigated.
2. He was unduly aggressive and disrespectful in the course of his dealings with J.P. contrary to s. 5(1)(e) of the *Police Service Regulation*.
3. He caused J.P. to continue to be interrogated after he had made clear his desire to terminate the interrogation, contrary to s. 5(1)(i) of the *Police Service Regulation*.

[6] The relief sought by the Appellants is for the Board to remit the case for hearing pursuant to s. 20(2)(b)(ii) of the *Police Act*.

PRELIMINARY ISSUE

[7] At the commencement of the hearing the Appellants requested that the Board make an order under s. 20(m) of the *Police Act* that this matter be heard in private as the content of the hearing involved allegations that a child, aged eight years old at the time of the incidents complained of, had been sexually abused. It was submitted that in order to protect the identity of the child a closed hearing would be appropriate. The Respondents consented to the application.

DECISION ON PRELIMINARY ISSUE

[8] Pursuant to s. 20(m) of the *Police Act*, the Board finds it is in the public interest to hold the hearing in private.

REASONS FOR PRELIMINARY DECISION

[9] There is a presumption in favour of an open court system as a fundamental part of a democratic

system of government (*Canadian Broadcasting Corporation v. New Brunswick* [1996] 3 S.C.R. 480). That presumption is given statutory authority in proceedings at the Board by s. 20(l) of the *Police Act* which requires an appeal or inquiry to be held in public. However, s. 20(m) permits the Board to hold a private hearing where it is found to be in the public interest. The Board accepts the submissions of both Appellants and Respondents that an open hearing would publically identify a young child who was at the centre of allegations concerning sexual abuse. Such identification could cause the child difficulties in her day to day life. The public interest in knowledge of this hearing is therefore outweighed by the interests of the child concerned. The Board accordingly ordered that the hearing of this matter was to be in private. To ensure that this protection is continued, the resulting decision of this hearing has identified the Appellants and other interested parties by initials only.

FINDINGS

[10] The Appellants and Respondents had agreed that the Board should only consider events in this matter between early April 2003 and August 23, 2003. The Board acceded to this approach. All of the evidence presented to the Board relates to that time frame.

[11] M.C. is the mother of J.G. who was eight years old in 2003. B.G. is the father of J.G. M.C. and B.G. were involved in a relationship beginning November 1991 and married in 1994. M.C. and B.G. lived in Kamloops, British Columbia. From the account provided to the Board by M.C., it was a difficult relationship involving physical altercations and abuse. In 1997, the couple separated. In May of that year, M.C. was awarded sole custody of J.G. with access granted to B.G. Further difficulties ensued between M.C. and B.G. with incidents of police involvement, the late return of J.G. after scheduled visits and further abuse.

[12] In June 2002, M.C. began a relationship with J.P. As J.G. was visiting B.G. in the summer, J.G. did not meet J.P. until August 2002. In September 2002, M.C. moved with J.P. and J.G. to Edmonton. The Supreme Court of British Columbia ordered on October 17, 2002 that J.G. be permitted to move with her mother.

[13] J.G. visited B.G. over Christmas 2002 and contact continued between them. J.G. visited B.G. again in spring 2003 and told her father, and, subsequently the RCMP in British Columbia, that J.P. had french

kissed her. Respondent Bach of the Child Protection Unit of the EPS contacted M.C. on April 4, 2003 and met with M.C. and J.P. on April 5 to notify them of the allegations. On April 9, M.C. viewed part of the interview between J.G. and Cst. Terry Wing of the RCMP in Maple Ridge, British Columbia in which J.G. made the allegations concerning french kissing by J.P. M.C. wrote a statement in which she disputes the allegations and indicates that she would know if such incidents were occurring in her home.

[14] Respondent Bach then interviewed J.P. on April 10, 2003. The interview was filmed and showed J.P. sitting in a chair in the corner of an interview room with Respondent Bach in front of him in another chair. Respondent Bach informed J.P. of his rights and offered him the opportunity to consult with duty counsel. The interview then proceeded with Respondent Bach asking questions of J.P. about his life, his work and his relationship with J.G. At certain points in the interview, J.P. told Respondent Bach that the situation is about a custody battle and drew her attention to behaviours of B.G. Respondent Bach stated in response that she is concerned about criminal allegations only and not matters relating to the civil issues. During this interview, Respondent Bach also raised the possibility of J.P. taking part in a polygraph examination and described this tool as a "truth verifier".

[15] Following this interview, Respondent Bach continued to investigate issues arising out of the interview including the employment status of J.P., the registration of his driving license and the history of his divorce from D.B. with whom he had three children. On April 16, 2003, Respondent Bach told M.C. that she had contacted D.B. who had said that when she and J.P. were together, J.P. had tried to french kiss her eleven year old sister "A". Respondent Bach contacted "A", who confirmed the story and provide a written statement.

[16] On April 22, 2003, J.P. attended for another interview with Respondent Bach. The interview was filmed and showed J.P. sitting in a chair in a corner of the room with Respondent Bach in front of him. Respondent Bach cautioned J.P., informed him he is a suspect in a criminal investigation, went over his Charter rights and let him know that he can consult counsel at any time. In this interview, J.P. raised the issue that a written statement by B.G.'s girlfriend K.P., stated that J.G. showed some disturbing behaviour in June 2002. In the statement K.P. said that J.G. when questioned, told her that J.P. had shown her such behaviour. J.P. pointed out to Respondent Bach that he did not meet J.G. until August 2002. Respondent Bach replied that she had not read the statement and that was part of the civil issues. Respondent Bach

went on to question J.P. about inconsistencies from the last interview, about the incident with "A" and his relationship with J.G.

[17] At the end of the interview, Respondent Bach raised the polygraph again and stated that her partner used a polygraph in a similar case where it was useful.

[18] During this time of this criminal investigation B.G. had not returned J.G. to M.C. as had previously been arranged. She had been due to return on April 6, 2003. On April 9, 2003, B.G. obtained an interim custody order. The custody matter was scheduled to be heard at a later date in 2003.

[19] J.P. agreed to do a polygraph examination. On May 14, 2003, J.P. attended for the polygraph examination which was conducted by Respondent Tedeschini. The examination was filmed and showed Respondent Tedeschini explaining the process to J.P. and advising him that he is free to leave at any time. The test was conducted and Respondent Tedeschini reported to J.P. that in his opinion he was being deceptive during the test. During the interrogation that followed, J.P. indicated to Respondent Tedeschini several times that he has to leave to get to work.

[20] Following the polygraph examination, M.C. contacted Respondent Bach for an update indicating that J.P. had related to her that he had passed the test. Respondent Bach said this was not true and M.C. needed to talk about this with J.P.

[21] In June 2003, M.C. let Respondent Bach know that during a recent visit with her daughter, J.G. had suggested she was going to recant her story. Respondent Bach arranged to have J.G. interviewed again by the RCMP. This was carried out on July 3, 2003, at which time J.G. made more serious allegations against J.P. Respondent Bach was away during July and upon her return in August she reviewed the file including a medical report from BC Children's Hospital dated July 30, 2003. The physician's report confirmed no physical evidence of sexual abuse.

[22] Respondent Bach contacted M.C. and J.P. to let them know of the new allegations. On August 22, 2003, M.C. and J.P. signed the letter of complaint against Respondents Tedeschini and Bach.

ISSUES FOR THE BOARD

[23] This matter was determined by the Chief of Police without a hearing. The Board, therefore, heard this matter in accordance with s. 20(2)(b) of the *Police Act* and must assess the evidence before it and determine whether there is a reasonable prospect of establishing the facts necessary to prove that disciplinary offences were committed. If so, the matter can be remitted to the Chief of Police for a hearing. The *Unrau* case (LERB Judgment No. 003-2006) sets out that the standard to be applied by the Board in determining whether there are sufficient grounds to remit the case is “more than a *prima facie* case but less than a likelihood of conviction”.

BOARD’S DECISION AND REASONS

Respondent Bach

1. Allegation of improper investigation contrary to s. 5(1)(e) and s. 5(1)(h) of the *Police Service Regulation* in that she failed to conduct an objective and impartial investigation of this matter, and her investigation was tainted by a “confirmatory bias” or “tunnel vision”. She began her investigation with the assumption that abuse had occurred and, rather than investigate the validity of the allegations or exculpatory evidence available to her, she directed her efforts entirely on gathering evidence to confirm that abuse had occurred.

[24] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence under s. 5(1)(e) or s. 5(1)(h) of the *Police Service Regulation* and affirms the decision made by the Chief of Police.

[25] In reaching this conclusion, the Board has considered the words of the Supreme Court of Canada in *Hill v. Hamilton Wentworth Regional Police Services Board 2007 SCC 41* (at para. 73) in discussing civil liability for negligent policing.

“Like other professionals police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other

than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made- circumstances that may include urgency and deficiencies of information."

[26] Having considered the evidence presented about the course of the investigation from early April 2003 to August 22, 2003, the Board finds that Respondent Bach did not have tunnel vision or a confirmatory bias such that she could be said to be guilty of bringing discredit on the reputation of the police service, or neglect of duty. Respondent Bach was investigating an allegation of sexual abuse of a child in circumstances where the accused was the partner of the child's mother. Further events occurred in the midst of an extremely acrimonious custody dispute where she did not have direct access to the complainant and was sharing the investigation long distance with another police service. In these circumstances, the Board finds that the actions taken by Respondent Bach fell within the range of reasonableness and would not support a conviction for the disciplinary offences alleged.

[27] The Appellants raised specific instances of areas not sufficiently investigated by Respondent Bach. Respondent Bach gave evidence that she was well aware of the specific items mentioned by the Appellants such as the possibility of J.G. having been coached, the allegations by K.P. of incidents occurring before J.P. had met J.G., the recantation by J.G. and the efforts of B.G. to take custody of J.G. before March 2003. The Board accepts that these were items considered by Respondent Bach as she carried out her inquiries. Respondent Bach did not share all her thoughts on these matters with the Appellants. However, the Board finds that Respondent Bach had no obligation to share all her thoughts with the Appellant in her role as investigating officer.

[28] Respondent Bach had made her own judgments on these issues both from her own experience in similar cases and from her investigation in this case. She had formed an opinion on the case taking these and other items into account. She had also made decisions on what areas to investigate further or not, such as interviewing M.C. about the lack of opportunity for J.P. to have committed the alleged offences. Given that she had a statement from M.C. to that effect, plus repeated oral statements from M.C. to the same effect, it is hard to see what a further interview might have changed in that regard.

[29] In addition, Respondent Bach was consulting with a Crown Prosecutor, and although not required, was preparing to take advice from the Prosecutor concerning proceeding with formal charges. This is entirely the course of action that might be expected in a case with a background of an ongoing custody dispute, yet with some factors suggesting to the officer that the credibility of the alleged offender was in doubt.

[30] The Board finds that Respondent Bach did not act with bias against J.P. when she began the investigation and any suspicions that she later developed as to his credibility were understandable given the nature of the investigations she carried out. In considering the period from early April 2003 to August 22, 2003, the Board does not find Respondent Bach conducted herself in a way that could be characterized as discreditable conduct or neglect of duty.

2. **Allegation that she misled M.C. as to the results of J.P.'s polygraph examination and, in any event disclosed information or opinions to M.C. that she was obliged to keep in confidence contrary to s. 5(1)(a) and s. 5(1)(e) of the Police Service Regulation.**

[31] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence under s. 5(1)(a) or s. 5(1)(e) of the *Police Service Regulation* and affirms the decision of the Chief of Police.

[32] The Appellants withdrew the allegation that Respondent Bach misled M.C. as to the results of J.P.'s polygraph examination based on evidence adduced at the hearing. The Board therefore confines its comments to the allegation of disclosing information to M.C. that she was allegedly obliged to keep in confidence, namely the opinion of Respondent Tedeschini as to the results of the polygraph test on J.P.

[33] The EPS provides little guidance to its members regarding an obligation to warn potentially affected parties of dangers they might face. Individual officers are left to rely on their own discretion as to when circumstances might require that they release information to members of the public. In a situation where there is a possible risk to a child there is a difficult choice to be made. The risk to the child has to be weighed against the rights of someone under investigation, but not charged not to have potentially life altering information disclosed to others. This is a particularly difficult balancing act when the allegations relate to sexual abuse and when information has not been tested in a court of law, given that a suggestion

that a person might be implicated in sexual abuse of a child can carry far reaching consequences into his or her life.

[34] The line between what is appropriate to disclose in such circumstances and what is not appropriate is a very fine one. Even though what was related in this instance was the opinion of Respondent Tedeschini, the substance of the information was concerned with information about J.P.

[35] However, the circumstances in which this disclosure to M.C. came about are important. M.C. had called Respondent Bach on May 14, 2003 for an update on the file. M.C. stated in evidence that she told Respondent Bach that J.P. had said he had passed the polygraph test on the basis it was truthful with some inconsistencies. Respondent Bach told M.C. that if she continued to believe J.P. there was nothing Respondent Bach could do.

[36] Respondent Bach stated in evidence that she had noted that M.C. had said J.P. was one hundred percent honest and he had passed the polygraph. Respondent Bach had told her that was not the case and she needed to discuss the results with J.P.

[37] Respondent Bach gave evidence that she was concerned that M.C. was blind as to the possibility that J.P. might have committed an offence and that J.G. could be at risk if she returned to the home with M.C. and J.P. Respondent Bach also testified that it was practice within the Child Protection Unit to keep custodial parents informed about facts related to the safety of a child.

[38] Taking all these factors into account, the Board is satisfied that the evidence would not support a reasonable conviction of a disciplinary offence of breach of confidence or discreditable conduct. Respondent Bach responded to the comments of M.C. concerning the results of the polygraph, particularly that J.P. had already- and importantly, incorrectly, told M.C. what the results were, even though what he said was not correct. The Board finds it reasonable in these circumstances for Respondent Bach to tell M.C. that this information provided by J.P. was not correct, particularly given that M.C. was a custodial parent.

3. **Allegation that she disclosed confidential information or allegations about J.P. to B.G. contrary to s. 5(1)(a), s. 5(1)(e) and s. 5(1)(g) of the Police Service Regulation [applies only to the alleged disclosure of the results of the polygraph procedure].**

[39] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence under s. 5(1)(a), s. 5(1)(e), or s. 5(1)(g) of the *Police Service Regulation* and affirms the decision of the Chief of Police.

[40] The information before the Board on this allegation is that during a telephone conversation between Respondent Bach and J.P. on April 9, 2003, Respondent Bach said that B.G. had told her J.P. had passed the test. Respondent Bach said that she told B.G. the test was inconclusive. In evidence Respondent Bach stated that she discussed the polygraph with B.G. on May 22, 2003 as he was the interim custodial parent. In cross examination Respondent Bach referred to her notes at Exhibit 12, page 19 which records that she spoke to B.G. on May 22, 2003 but has no reference to exactly what was said about the polygraph test.

[41] The Board finds that some conversation took place between Respondent Bach and B.G. on May 22, 2003 concerning the results of J.P.'s polygraph test, but there is little evidence as to how the issue was raised or exactly what was said. It seems likely that Respondent Bach did tell B.G. that the test was inconclusive as transcribed from the recorded conversation between J.P. and Respondent Bach. In the absence of an EPS policy, Respondent Bach had to make her own judgment about releasing information and the Board finds it was not improper to share this information with a parent of the child at the centre of the allegations. The Board accepts that this was also in line with the policy of the Child Protection Unit.

[42] The Board finds that in these circumstances this was not conduct that could result in a conviction for a disciplinary offence of breach of confidence, discreditable conduct or insubordination.

4. **Allegation that she misled J.P. as to the potential use of a polygraph examination in civil proceedings, contrary to s. 5(1)(d)(ii) of the *Police Service Regulation*.**

[43] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence under

s. 5(2)(d)(ii) of the *Police Service Regulation*, and affirms the decision of the Chief of Police.

[44] Section 5(2)(d) of the *Police Service Regulation* defines "deceit" as:

- (i) *willfully or negligently making or signing a false, misleading or inaccurate statement or entry in an official document or record;*
- (ii) *willfully or negligently making or signing a false, misleading or inaccurate statement pertaining to the police officer's official duties;*
- (iii) *without to a lawful excuse,*
 - (A) *destroying, mutilating or concealing an official document or record, or*
 - (B) *altering or erasing an entry in an official document or record;*

[45] The Respondents submit that the description of deceit in s. 5(2)(d)(i) and (ii) of the *Police Service Regulation* refers to statements made or signed in an official document or record only and does not extend to verbal representations. The Board finds that s. 5(2)(d)(ii) does extend to verbal statements. Subsection 5(2)(d)(ii) is not limited by reference to "official documents or records" in the same way that s. 5(2)(d)(i) and s. 5(2)(d)(iii) are and must therefore be given a wider interpretation.

[46] The issue for the Board to determine is whether the statement made by Respondent Bach to J.P. concerning the use that Det. McVeigh made of polygraph results in civil court could amount to the offence of deceit. The Appellants contend that Respondent Bach made the statement with reckless disregard as to whether it was true or not with the purpose of persuading J.P. to take the polygraph test. The Respondents submit that Respondent Bach made a qualified statement that would not be covered by the definition of deceit.

[47] The courts have in various instances sanctioned the use of police trickery during investigations. (e.g. *R v. Oikle* [2000] S.C.J. No. 38). Trickery will involve an element of deceit and the courts have found in certain cases that the use of deceit is acceptable. Given the sanction of some forms of police deception the Board finds that s. 5(2)(d)(ii) must contemplate deceit in circumstances beyond acceptable police trickery. Some assistance can be found in *R. v. Oikle* as to when conduct goes beyond trickery and becomes something more objectionable. At paragraph 67, Iacobucci J. refers to the "shocks the

community" rule and states that "*There may be situations in which police trickery, though neither violating the right to silence nor undermining voluntariness per se, is so appalling as to shock the community*".

[48] Respondent Bach was attempting to persuade J.P. to take the polygraph test. The statement regarding the use of polygraph evidence in civil proceedings might or might not have been an attempt at trickery, but in the view of the Board falls short of conduct that could be said to be so appalling it would shock the community such that it could constitute the offence of deceit. The statement was made in an equivocal manner, followed by a comment that J.P. could obtain legal advice on the issue if he chose. In these circumstances, the Board is not satisfied that there would be a reasonable prospect of conviction of a disciplinary offence under s. 5(2)(d)(ii) of the *Police Service Regulation*.

5. Allegation that she was unduly aggressive and disrespectful in the course of her dealings with J.P. and made unnecessary physical contact with J.P. contrary to s. 5(1)(e) and s. 5(1)(i) of the *Police Service Regulation*.

[49] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence under s. 5(1)(e) or s. 5(1)(i) of the *Police Service Regulation* and affirms the decision of the Chief of Police.

[50] The Appellants contend that Respondent Bach used deceit in her investigating techniques and unfairly interrogated J.P. in using the Reid Technique of questioning. Neither the Appellants nor the Respondents called any expert evidence about interrogation techniques. The only evidence about interrogation techniques was provided by Respondents Bach and Tedeschini and the Board's viewing of the two filmed interviews between Respondent Bach and J.P.

[51] The technique used by Respondent Bach, more particularly in the interview on April 22, 2003, was certainly a particular style of interrogation but the Board did not find it to be unduly aggressive or disrespectful. The Board concurs with the Respondents submission that J.P. was informed of his rights at appropriate moments, was not deliberately touched, was not threatened and was not verbally abused with insulting language. The Board notes also that J.P. was given the opportunity to ask and answer questions throughout the interview, did not get up from his chair that he complained was so uncomfortable when Respondent Bach left the room, and repeatedly told Respondent Bach that he respected her and that she

had conducted a good interview.

[52] The Board watched both the interviews carefully and was unable to discern any moment of physical contact between Respondent Bach and J.P. The Board is satisfied that if physical contact did happen it was accidental on the part of either Respondent Bach or J.P.

[53] In summary, the Board does not find on the evidence that there is a reasonable prospect that Respondent Bach could be found guilty of discreditable conduct or unlawful or unnecessary exercise of authority for the way in which she dealt with J.P.

Respondent Tedeschini

- 1. Allegation that he engaged in deceit by informing J.P. "that there was no doubt whatsoever in his mind" that J.P. had engaged in the offence being investigated.**

[54] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence of deceit under s. 5(1)(d) of the *Police Service Regulation* and affirms the decision of the Chief of Police.

[55] The Board refers to the reasons given in paragraphs 44-46 above in relation to the allegation of deceit against Respondent Bach and adopts the same reasoning with regard to the allegations against Respondent Tedeschini. The statement by Respondent Tedeschini was made during the course of the interrogation that employed aspects of police trickery similar to those sanctioned by the court in *R v. Oikle*. In the view of the Board, there was nothing about the statement that elevated it to a status beyond acceptable forms of investigation by the police, or that was so appalling it would shock the community. In these circumstances, the Board is not satisfied that there would be a reasonable prospect of conviction of a disciplinary offence under s. 5(1)(d) of the *Police Service Regulation*.

- 2. Allegation that he was unduly aggressive and disrespectful in the course of his dealings with J.P. contrary to s. 5(1)(e) of the *Police Service Regulation*.**

[56] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence

under s. 5(1)(e) of the *Police Service Regulation* and affirms the decision of the Chief of Police.

[57] The Board had the opportunity to view the recording of the polygraph interview which formed the majority of the interaction between Respondent Tedeschini and J.P. In the first phases of the interview, before and during the polygraph test, Respondent Tedeschini acted appropriately in the context of the proceedings. Respondent Tedeschini carefully explained the test to J.P. It was made clear to J.P. that the test was voluntary and he was informed of his rights. Respondent Tedeschini did not raise his voice and took care to repeat instructions several times.

[58] In the post polygraph test phase of the interview, Respondent Tedeschini was using what was described to the Board as the Reid Technique to interrogate J.P. This is the same technique used by Respondent Bach in the earlier interview, but used somewhat more intensely by Respondent Tedeschini. To a lay person the style of questioning could appear startling and even counterproductive, but the Board is satisfied from viewing the interview that the conduct of Respondent Tedeschini was within the scope of acceptable police conduct in the interrogation of J.P.

[59] The focus of the Board has to be on the conduct of the police officer rather than the effect the conduct has on the complainant, but it is worth noting that throughout the interview J.P. did not appear to be unduly distressed and continued to answer questions and tell Respondent Tedeschini how much he respected him. In these circumstances, the Board is not satisfied that there is any reasonable prospect of a conviction under s. 5(1)(e) of the *Police Service Regulation*.

3. Allegation that he caused J.P. to continue to be interrogated after J.P. had made clear his desire to terminate the interrogation, contrary to s. 5(1)(i) of the *Police Service Regulation*.

[60] The Board finds that there is not a reasonable prospect of conviction of a disciplinary offence under s. 5(1)(i) of the *Police Service Regulation* and affirms the decision of the Chief of Police.

[61] The Appellants contend that Respondent Tedeschini could be found guilty of the offence of unlawful or unnecessary exercise of authority, because he did not permit J.P. to leave the room and he did not end the interrogation when J.P. indicated he needed to leave. Having viewed the relevant exchange between Respondent Tedeschini and J.P., the Board does not agree that this could constitute such a

finding against Respondent Tedeschini.

[62] When J.P. first mentioned that he had to be at work, he made no movement to stand and leave. Respondent Tedeschini told him that he could leave, but J.P. did not react other than to continue the conversation. At the point when J.P. did get up to leave some twenty five minutes later, the situation was no different than when he first mentioned he had to leave. Respondent Tedeschini was still positioned between J.P. and the door and in the intervening period had told J.P. he could leave three more times. It is likely that Respondent Tedeschini was content to continue with the interview as long as J.P. did not leave, but J.P. could have left at 12:25 in the same way that he finally left at approximately 12:50. In the opinion of the Board, the conduct of Respondent Tedeschini falls short of what could be described as unlawful or unnecessary exercise of authority. In these circumstances, the Board is not satisfied that there is any reasonable prospect of a conviction under s. 5(1)(i) of the *Police Service Regulation*.

CONCLUSION

The decision of the Chief of Police is affirmed in relation to all allegations against both Respondents. The appeal is dismissed.



Dennis Callihoo
Acting Chair

DATED at the City of Edmonton,
in the Province of Alberta, this
9th day of February, 2010.

cc: Board Counsel
E. Norheim, Counsel for the Appellants
K. Feth, Counsel for the Respondents