

LAW ENFORCEMENT REVIEW BOARD

IN THE MATTER OF the Police Act, R.S.A. 2000, c.P-17 (the "*Act*")

AND IN THE MATTER OF the Appeal of Dr. and Mrs. Yakymovych (the "*Appellants*") concerning a Preliminary Application on the characterization by the Chief of Police (the "*Chief*") of the Edmonton Police Service (the "*EPS*") of the *Appellants'* Complaint as a complaint of "*service*".

JUDGMENT OF THE BOARD

(Black/Phillips)

ISSUE

[1] The issue before the Board is the characterization by the Chief of the *Appellants'* complaint. The Chief characterized the *Appellants'* complaint as a complaint of service, not as a complaint about the actions of a police officer.

BACKGROUND

[2] The *Appellants*, Dr. and Mrs. Yakymovych, made a complaint on February 28, 2008 relating to the investigation of their daughter's death. The characterization of this complaint by the EPS Chief of Police is the subject of this appeal.

[3] The complaint framework provided in the *Act* directs all complaints to the Chief. The Chief is required by Section 43 of the *Act* to do an initial determination of whether the complaint is about policies or services provided by the police service (“a policies or services complaint”), or about the actions of a police officer or officers (“an officer complaint”). The determination by the Chief places the complaint into one of two different review processes, or “streams”. Each stream has a different internal review or investigation process, and each stream has a different appeal process and entity.

[4] When the complaint is a policies or services complaint, the Chief must review it, and may dispose of it pursuant to Section 44(2)(a) of the *Act*. This is what the Chief did in this case. As a general rule, any appeal of the disposition by the Chief of a policies or services complaint is referred to the police commission. This process is consistent with the commission’s responsibility set out in Section 31 of the *Act* and in particular with the commission’s responsibility for the establishment of policies providing for efficient and effective policing.

[5] When the complaint relates to actions of a police officer, Sections 45-48 of the *Act* apply. In the officer complaint stream, the Chief is responsible to ensure that the complaint is investigated, and then may take a number of actions in relation to the behaviour of the police officers named or identified in the complaint. These range from dismissal of the complaint, to a finding of guilt following a hearing by the police service. From the Chief’s decision, either the complainant or the police officer may appeal to this Board.

[6] This Board has previously ruled that the Board has jurisdiction to review the initial characterization of the complaint by the Chief, and whether the Chief properly characterized the complaint as a policies or services complaint, or an officer complaint: *Daniels*, Judgment No. 032-2001 and *Fish*, Judgment No. 011R-2009. In the *Fish* decision, the Board also held that the principle of *stare decisis* applies to decisions by this Board. Neither of these decisions has been appealed to the Court of Appeal. Consequently, the Board in this case has jurisdiction to review the Chief’s characterization of the complaint the Appellants made in writing on February 27, 2008 relating to their daughter Olesya’s, death on April 7, 2007.

[7] The Appellants' complaint was set out in a twelve page letter. It recites their understanding of their daughter's death, provides their recollection of a visit with them on June 5, 2007 by two named officers from the EPS, and expresses questions and concerns about the officers' explanation of the circumstances of their daughter's death. The Appellants' thought the officers' conclusions were incorrect and ill-informed and they identified what they felt were oversights in the investigation. In addition, the Appellants noted that there were two outstanding items which had not been dealt with by the officers, namely, their request for a copy of the medical examiner's report and the return to them of Olesya's cell phone .

[8] On May 26, 2009, the Chief responded to the Appellants' complaint indicating he had had the complaint reviewed. The Chief in that letter noted that the Appellants did not allege misconduct by any EPS member. The Chief had therefore determined that the Appellants' complaint was a complaint about service, and he said that he had concluded no further action was required. The Appellants were told they could appeal the Chief's disposition of their complaint to the Edmonton Police Commission.

[9] The Appellants instead appealed to the Board, and indicated in a letter to the Board dated June 23, 2009 that their complaint was not one of service, but was instead an allegation of neglect of duty by the two officers. The Board asked for written submissions from the Appellants and the Chief , and received the last of these submissions on October 5, 2009.

DECISION

[10] After reviewing the submissions and considering the provisions of the *Act*, the Board concludes the characterization by the Chief of the complaint as a complaint of service was, in this case, neither reasonable nor correct.

[11] The Appellants raised several specific concerns in their letter of complaint. To view these concerns as relating to services provided by the EPS as opposed to concerns attributable to actions of Detective Martin and Detective Robertson unreasonably and incorrectly de-personalized the complaints.

[12] The *Act* does not define “services” or “actions of a police officer”. Accordingly, the meaning of these words must be derived from the context in which the words are used in the legislation. In one sense every action of a police officer is an example of police service, if “service” is interpreted in the broader sense of “doing police work” or “an instance or act of serving” by the police. In order for a complaint to relate to “services provided by the police service”, in the Board’s view, the complaint must be of a nature that, either officer X or officer Y, each in the same circumstance, would have done substantially the same thing or reacted in substantially the same way, as a result of policy or because of the general manner in which policing is provided by that police service. A complaint about “actions” of a police officer, by contrast, is not a generic complaint; it is a complaint about the way a particular police officer dealt with a particular matter.

[13] This interpretation is supported by the common-sense meaning of the different words, “policy or services”, which generally suggests organization-wide concerns, versus “actions of a police officer”, which generally suggests specific actions of a specific police officer. The interpretation is also supported by the two quite different streams for processing the two different types of complaints, and the jurisdiction of the two appeal bodies for each type of complaint. The police commission has responsibility over police service policy, but not individual police officers (see Section 31(3) of the *Act*). This Board, on the other hand, has jurisdiction to hear appeals about decisions about the actions of individual police officer or officers.

[14] In light of the legislative framework that sets out the two distinct streams for dealing with public complaints, the Board concludes that policies or services complaints must involve a higher-level, or administrative aspect, rather than a complaint about a particular interpretation or conclusion of a detective in a particular investigation.

[15] In this case, the Appellants’ letter set out specific and detailed concerns about the conclusions reached by the two officers. The Appellants indicated that they thought the officers ignored essential information and overlooked some facts. They also took issue with the non-responsiveness of the officers on two specific matters about which the Appellants had asked for follow-up. The Appellants’ complaint related not generally to “services provided by the police service” but to the “actions (or inactions) of (two) police officers”.

[16] The Chief of the EPS submits that it is reasonable and correct for the Chief to conclude that the Appellants were dissatisfied with the quality of the investigation and therefore to characterize the complaint as a policy or services complaint. In the Board's view, the Chief is correct in describing the Appellants' complaint as being a complaint about the quality of the investigation. However, the Board strongly disagrees that – having made this determination – the Chief can then reasonably or correctly conclude that, therefore, the complaint is a policies or services complaint. The Board asks: who was responsible for the quality of the investigation other than the two detectives who met with the Appellants? Actions of a police officer result in or are reflected in the investigation. The suggestion by the EPS that the Appellants were not complaining about the officers, but rather expressing dissatisfaction with the investigation, is, in the Board's view, a distinction without a difference. In either case, the complaint is about the action of two named police officers.

[17] Accordingly, the Board finds that the Chief improperly characterized the Appellants' complaint as a policies or services complaint. The complaint, properly characterized, is about the actions of two named police officers.

[18] In coming to this conclusion, the Board makes no comment about the appropriateness of the actions of the two police officers named in the complaint. The Board's decision is specifically limited to its conclusions that the Chief improperly characterized the Appellants' complaint.

[19] Having said that, the Board makes one further comment in these circumstances. Again, without having drawn any conclusions about the possible results of an investigation of the Appellants' complaint, the Board is mindful of Section 7(1) of the *Police Service Regulation* (the "PSR"). Depending upon the results of the investigation of the Appellants' complaint, Section 7(1) of the *PSR* may limit the steps the Chief can take, if the Chief's investigation would otherwise result in charges against either of the two police officers. However, the Board's view is that both the Appellants and the police officers will benefit from a proper investigation of this complaint.

[20] The Board accordingly returns this matter to the Chief of Police for an investigation of the Appellants' complaint as a conduct or action complaint against Detectives Martin and Robertson.

A handwritten signature in black ink that reads "Linda Black". The signature is written in a cursive, flowing style.

Linda Black Q.C.
Acting Chair

DATED at the City of Edmonton,
in the Province of Alberta, this
22nd day of March, 2010.

cc: Board Counsel
Tom Engel, Counsel for the Appellants
Mark Unchulenko, Counsel for the Chief of Police