
LAW ENFORCEMENT REVIEW BOARD

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

AND IN THE MATTER OF the Appeals of Erin Crosilla (the "*Crosilla Appeal*") and Edward Lee (the "*Lee Appeal*") in relation to preliminary application concerning proposed evidence in the matters under appeal.

JUDGMENT OF THE BOARD

(Phillips/Ryan)

THE APPLICATION

[1] This decision relates to applications from two separate appeals that arise from similar issues and circumstances.

[2] Both Appellants filed complaints against police officers of the Edmonton Police Service (the "EPS"). The investigating officer requested that the Appellants participate in an interview in order to gain further information for the Chief. Both Appellants and some witnesses declined to participate in the interviews, for different reasons.

[3] Both Appellants now wish to testify at the Appeal Hearing, and to have witnesses testify, providing information that may or may not have been before the Chief when he rendered his decisions, ultimately dismissing both complaints.

[4] Counsel for the Chief of Police (the "Chief") of the EPS, Cst. Jason Belland and Cst. Tracy Deluca (Respondents in the Crosilla appeal) and Cst. Robin Piquette and Cst. Teri Jacobs (Respondents in the Lee appeal) (jointly "the Respondents") object to the introduction of any new evidence submitted by these witnesses. Counsel claims the witnesses had the opportunity to introduce all of their issues and evidence during the interview, but since they declined to do so, they should be prohibited from introducing new evidence at the appeal hearing.

ISSUES

[5] Counsel for the Respondents provided written and oral submissions to the Board, taking the position that the Board should exercise its power under Section 20(1)(g) to refuse to receive the evidence of the uncooperative complainants and the uncooperative witnesses, which evidence was available but intentionally withheld from the Chief's consideration in rendering the dispositions now under appeal.

[6] Counsel for the Appellants provided written and oral submissions, opposing the Respondents' position, and stating that the Board ought to allow the Appellants and their proposed witnesses to testify fully about their complaints.

RELEVANT FACTS

[7] At the outset, the Board notes that neither the Appellants nor the Respondents provided oral testimony in this preliminary application. Accordingly, none of the "facts" set out below have been provided under oath or subject to cross-examination. The Board has accepted these "facts" for the purpose of determining this preliminary matter, but leaves open, for the panel hearing the appeal on the merits, any factual findings based on evidence provided under oath. Based on the written and oral submissions of the parties, the Board considers the following facts relevant to this application:

- In response to a letter of complaint authored by Ms. Crosilla's legal counsel, dated May 30, 2008, alleging violations of the *Act* by the Respondent Officers, the investigating officer

requested that Ms. Crosilla and her witnesses, Jody Morrison and Britney Hopley, attend an interview.

- In response to a similar letter of complaint authored by Mr. Lee, dated March 10, 2008, the investigating officer requested that Mr. Lee attend an interview, and provide names of witnesses to the alleged incident.
- With respect to both Appellants, the investigator deemed the interview necessary, based on the seriousness and nature of the complaints against the Respondent Officers, pursuant to Professional Standards Branch EPS policy. In persisting in his request to interview the complainants and various witnesses, the investigating officer made it clear that the interview was necessary to ensure a timely, thorough, and fair investigation process.
- Requests were also made of Ms. Crosilla that she provide a Consent to Release Medical Information to verify allegations regarding her injuries. Medical notes were made available only on appeal in second stage disclosure, and they were illegible.
- Since Ms. Crosilla was facing criminal charges and the possibility of imprisonment for six months on each of three charges of assaulting a peace officer in relation to the incident in question, Ms. Crosilla's legal counsel advised her not to participate in the interview until after her charges were resolved. Ms. Crosilla's legal counsel submitted a letter to the investigating officer indicating such, inviting the investigating officer to direct requests to legal counsel for any additional information.
- The investigating officer also persisted in requesting of the witnesses that they provide written statements and participate in an interview, which they declined. The investigating officer was under the impression that Ms. Crosilla's witnesses declined to be interviewed on the advice of counsel; however, counsel indicated to the Board at this preliminary application that she had not communicated with those witnesses in this regard.
- Mr. Lee, through his legal counsel, declined to be personally interviewed by the investigating officer, and his legal counsel invited the investigating officer to direct requests for any additional information to her directly.
- The investigating officer responded by requesting the names of any witnesses that could assist with the investigation, and the investigating officer was provided with names of witnesses to the incident.
- The witnesses to Mr. Lee's incident provided written statements and were interviewed by the investigating officer.
- Despite further requests, Mr. Lee declined to be personally interviewed by the investigating officer. Mr. Lee's legal counsel responded that since Mr. Lee had submitted a very detailed statement regarding the events giving rise to his complaint, Mr. Lee would not be produced for

an interview unless the investigating officer could provide a reasonable explanation as to why an interview was required.

- Mr. Lee's legal counsel also inquired as to why the investigator was insisting on an interview of Mr. Lee, noting it appeared there were different investigative standards applied to civilians and police members.
- The investigating officer replied to both Appellants that the investigations would proceed and be concluded, if necessary, in the absence of information provided, and in Mr. Lee's case based solely on his complaint letter, despite the fact that his witnesses had submitted to an interview.
- The Chief issued his disposition of the Crosilla complaint on November 25, 2008 and of the Lee complaint on January 29, 2009, in both cases dismissing all complaints against the Respondent Officers on the basis that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a Disciplinary Hearing.

SUBMISSIONS

Respondents' Position

[8] Counsel for the Respondents made the following submissions in support of their position that it is contrary to the *Act* and in breach of the principles of fairness to permit the Appellants to rely on certain *viva voce* evidence when the Appellants and certain witnesses failed to submit to interviews as part of the Chief's investigation.

- The reasons provided by the Appellants for declining to be interviewed by the investigating officer, that Ms. Crosilla was facing criminal jeopardy (with a trial scheduled at least a year and half in the future), and that Mr. Lee's complaint contained sufficient detail to negate the need for an interview, are not mitigating reasons to decline an interview. To allow new evidence of those who refused to cooperate during the initial investigation is contrary to the legislative purpose of the *Act* and the ends of natural justice and procedural fairness, and should be considered an abuse of process.
- Since the *Act* obliges the Chief to carry out a thorough and timely investigation, Professional Standards Branch policy must be respected and adhered to by all parties. It is trite law that such policy cannot be ignored simply because legislation does not specifically delineate how the Chief will best carry out his investigative mandate.

- Given the nature and seriousness of the complaints, it was simply not practical or timely for the investigator to enter into a series of back and forth e-mail exchanges with the Appellants' legal counsel to tease out investigative details that could have been discovered through an interview.
- While the Respondent Officers were not required to participate in an interview at the time of Mr. Lee's complaint, that they actually did negates any suggestion of a double standard and unfair process, and therefore lends no justification to Mr. Lee's choice to decline to be interviewed.
- Since Ms. Crosilla elected not to provide medical disclosure to the investigating officer at the first instance, fairness and due process preclude her from doing so now.
- It is clear from the legislation and previous jurisprudence that the Board is permitted, in certain circumstances, to consider evidence beyond what was presented to the Chief. The legislation and jurisprudence qualifies what evidence should be permitted as follows:

Section 20(1)(f) allows the Board discretionary power to admit evidence where it is determined to be relevant to the issues on appeal. Subsequent amendments and jurisprudence confirm that the Board is not bound by the strict rules typically applicable in judicial proceedings. However, the principles of due diligence and natural justice apply, and the Appellants' failure to cooperate at the first instance in the interview precludes them from now introducing evidence.

- a. The purpose of Section 20(1)(f) in allowing the Board discretion to accept any relevant evidence is to assist the average citizen, who is not experienced in matters of litigation and administrative process. Since the Appellants have demonstrated a sophisticated understanding of the investigation and evidentiary process, and made a deliberate choice not to cooperate in the investigation by submitting to an interview, they are precluded from submitting such evidence now.
- b. The Board's power to receive new evidence, not available at the first instance, allows it to search for the right answer. However, since it is clear that Ms. Crosilla deliberately held back information, despite several attempts by the investigator to search for the right answer by way of an interview, Ms. Crosilla should not be allowed to introduce evidence at the appeal hearing that she held back in the first instance, either personally or through her witnesses.
- c. While Board precedent confirms no obligation to participate in an interview, it also acknowledges that failure to do so hampers the police investigation and obliges the police service to then act solely on the basis of the written complaint. In this regard, the complainant who declines an interview is deemed

an uncooperative citizen and should be estopped from complaining about the breadth of the subsequent investigation. Further, the Chief of Police cannot be expected to extricate from a complaint letter other than what is reasonable.¹

- d. Section 20(1)(g) makes a clear distinction between receiving and refusing new evidence based on whether such evidence was previously available to the Chief. Prior jurisprudence on this issue holds that “the prohibition against allowing new evidence is founded on the principles of fairness and efficiency. It is appropriate to limit an unsuccessful litigant’s right to bring in new evidence in subsequent proceedings dealing with the same subject matter when that party could have presented the evidence at earlier proceedings and chose not to do so.”²
- e. *R. v. Levesque*, 2000 SCC 47, is persuasive, despite having a standard different from that of this administrative process: “evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases.” Since an administrative hearing is more akin to the civil law process, the more stringent application of the principle ought to be applied. Further, Board members should be mindful that the duty of fairness is flexible and variable depending upon the context of the case. This context, in the *Crosilla* and *Lee* cases, centres upon the fundamental authority of the Chief to investigate the complaint thoroughly and to arrive at a reasonable decision on the merits at the investigation stage; the investigation should not be done at the subsequent appeal stage.
- The statutory scheme provides for the implicit authority of the Professional Standards Branch to expect a citizen to cooperate in the investigation process, which includes an interview. Given that the Respondent Officers’ profession and employment may be in jeopardy, a very high standard of fairness should preclude the introduction of evidence from uncooperative witnesses.
 - The policy of the complainants’ law firm, submitted to the EPS via e-mail attachment, reveals a culpable and deliberate decision of counsel on behalf of the complainants to refuse to cooperate when an investigating officer requests an interview, demonstrating a failure by counsel in due diligence and a lack of respect for the high standard of fairness required given the context involving the Respondent Officers. As such, the Appellants should be precluded from now introducing evidence.
 - There is no authority in the administrative process to postpone investigations in contemplation of a complainant’s criminal jeopardy; therefore, a complainant’s criminal jeopardy cannot preempt the investigation process. Other safeguards are available to ensure a complainant’s

¹ *Hilford v. Gallant* (1997), *Wozney v. Kent* (LERB No. 043-99)

² *C.T.L.A. v. Boulanger* (LERB 021-2006)

criminal jeopardy is not compromised.

- Given the failure of the Appellants to cooperate in the investigation process, the Respondent Officers have suffered prejudice as they do not know the full extent of allegations made and have not received full disclosure to properly challenge the accusations levied against them.
- Permitting the complainants to “lie in the weeds” with their best evidence, choosing to withhold it until the appeal stage, is counter to the objectives of transparency in police discipline and contrary to long established principles underlying the duty of disclosure in criminal, civil and administrative proceedings. The opportunity to cross-examine the complainant or witness at the appeal hearing will not cure the prejudice to the officer whose employment and personal and professional reputation is at risk.

Appellants’ Position

[9] Counsel for the Appellants made the following submissions to the Board:

- The request to participate in an “in-person” interview was arbitrary and unreasonable, given that Ms. Crosilla was facing criminal jeopardy and that Mr. Lee had submitted an extremely detailed complaint. Further, no reasonable explanation was provided as to why an interview was required.
- The complainants should not lose the right afforded them under the *Act* to present their case in a de novo hearing before the Board, simply because they declined an interview with the investigating officer. The Board has discretion to receive any evidence under Section 20(2)(b) that is relevant, and the introduction of the proposed evidence is relevant.
- Both Appellants had legitimate reasons for not participating in the interview. They were not “uncooperative” complainants, nor did they intentionally withhold evidence from the Chief’s consideration. Counsel made it very clear that Mr. Lee would cooperate with all other aspects of the investigation. It was intimidating for him to go to the interview, he was working and would lose an afternoon of work, and he would have had to pay counsel to attend with him, given his current distrust of the police. Mr. Lee demonstrated cooperation by asking to be provided with further questions in writing, and by giving names of witnesses, who were interviewed.
- In Ms. Crosilla’s case, civilian witnesses provided the explanation that they were acting on advice of counsel regarding Ms. Crosilla’s criminal jeopardy; however, counsel clarified that she had not had any communication with these witnesses. Nonetheless, the Board is entitled to hear from these witnesses in a de novo hearing, as their testimony is relevant to the appeal hearing.

- With regard to the very high standard of procedural fairness that is required when a police officer's employment is at stake and concerns about the possibility of suspension, the Board has no jurisdiction to punish an officer, to suspend or terminate or otherwise make any findings at a "stage one hearing" that could impact on the officer's future employment. There is no prejudice to the Respondent Officers to allow relevant evidence at the de novo hearing of the initial appeal.
- Section 20(1)(g) is not applicable to Mr. Lee's case, since he would not be introducing new evidence, but rather giving viva voce evidence regarding information already in his complaint. The Respondent has not pointed to any way in which this investigation was prejudiced as a result of the failure of Mr. Lee to attend an interview to repeat what was in his statement. The Board should not be precluded from hearing Mr. Lee tell his story in person, simply because the Chief did not have any other questions for him.
- The Professional Standards Branch policy is not a fair policy as it indirectly creates a requirement that is specifically not required by the legislation that complainants participate in an interview. To create a consequence, in the face of criminal jeopardy or a highly detailed written complaint, that precludes the complainants from telling their side of the story to the Board at an appeal hearing, particularly when there has been no hearing by the Chief, goes against the purpose of the *Act* and is contrary the ends of natural justice and procedural fairness.
- Since there is no legislative requirement to participate in an interview, it is not surprising that there is no exception "carved out in the legislation" for a person facing criminal jeopardy to request an adjournment of the investigation.
- Section 7 of the *Police Service Regulation* (the "PSR"), notwithstanding time limits, allows a police commission, if it is of the opinion that circumstances warrant, to extend any one or more of the time limits. It is the responsibility of the investigating officer to request an extension. Ms. Crosilla made it clear she needed an extension due to her criminal jeopardy. More recently, the Chief has been attempting to indirectly force complainants to participate in the interview process by informing them that "failure to participate in the interview process will be a factor that the commission will consider in deciding whether to extend the time for proceeding under Section 7 of the PSR." This is contrary to the ends of natural justice and procedural fairness.
- There are currently a number of appeals before the Board in which the complaint has been dismissed based on the Commission's refusal to extend the deadline for an extension under Section 7 of the PSR. The request for an extension is done through a secret process in which the complainant is given no notice, no knowledge of the representations that are being made to the Commission, and no knowledge of reasons for the decision. The Chief has argued that the Board has no jurisdiction to review these decisions. The Chief does not have the jurisdiction to, in essence, override the *Act* in limiting the ability of the Board to hear evidence based on the complainant's election, given legitimate reasons, to decline an interview.
- The "fresh evidence" rule in criminal sentencing appeals is very different from the standard

used in the review of a Chief's decision, particularly where the Chief held no hearing. The Board is conducting a de novo hearing, and the level of deference to the Chief at a stage one hearing is low. By contrast, the standard of review in a criminal sentencing appeals is high. It is not a de novo hearing and therefore only in exceptional cases will new evidence be permitted.

- The Professional Standard Branch policy in place at the time suggested unfairness in the interview process, inasmuch as it was only the complainant who was obliged to be interviewed. As the complainants had no reasonable expectations that the officers in question would be interviewed, it was reasonable for Mr. Lee to conclude he was not being uncooperative" if he elected not to be interviewed, particularly since there is no requirement in the legislation to do so.
- When a police officer is facing criminal jeopardy as a result of a complaint, the investigation does not proceed until that criminal jeopardy is resolved. This is an unfair double standard. Denying the complainant the ability to introduce evidence at the "de novo" hearing, when Respondent Officers are allowed to remain silent further cultivates and condones a process of unfairness, contrary to the ends of the legislation and natural justice.
- Declining to be interviewed had nothing to do with particular legal counsel policy, but rather was the result of Ms. Crosilla facing criminal jeopardy and Mr. Lee submitting a sufficiently detailed complaint to allow the investigation to thoroughly proceed without need of an interview. Law firm policy is therefore not relevant to this application.

DECISIONS AND REASONS

[10] The Board hereby exercises its discretion under Section 20(1)(f) and (g) of the *Act* to allow the Appellants and their witnesses to testify at the respective appeal hearings.

[11] The general rule is that the Board may accept any evidence it considers relevant to the matter being heard. This is a very broad grant of discretion. In addition, the Board is granted a specific discretion to receive, or refuse to receive, "new evidence". The relevant provisions of the *Act* say:

(f) the Board may accept any evidence that the Board considers to be relevant to the determination of the issues and is not bound by the rules of law respective evidence applicable to judicial proceedings;

(g) in the case where the Board is conducting an appeal, the Board may

- (i) receive new evidence that was not available, or
- (ii) refuse to receive new evidence if, in the opinion of the Board, that evidence was available but not presented, when the matter was initially heard or considered..."

[12] At issue in these applications is the interpretation of the provisions related to "new evidence". In *Boulangier*, Board Judgment No. 021-2006, cited by the Respondents, a different panel of the Board interpreted the provision related to "new evidence". In that case, the Board stated, at para. 59:

"...The Board reads section 20(g) as being discretionary. The Interpretation Act provides that the word "may" is to be construed as permissive and empowering. If the section read that "the Board when conducting an appeal, shall refuse evidence that was available but not presented at the initial hearing", the Board agrees that the subsection is would [sic] limit its ability to consider such evidence. The wording of the Act, however, gives the Board discretion as to evidence it may receive or may refuse, permitting it to refuse to allow such evidence but not prohibiting it from doing so."

[13] The Board agrees with the application of the *Boulangier* decision in this case. Accordingly, the Board in this application will exercise its discretion, recognizing that it is neither required to accept new evidence nor prohibited from accepting new evidence. Importantly, the Board also notes that Section 20(1)(g)(ii) uses the words "evidence", and "presented" and "heard or considered" – words that appear to be directed to evidence presented at a hearing, rather than information provided to an investigating officer, though this is not conclusive.

[14] Two questions arise in these applications. First, is the evidence proposed to be provided by the Appellants and their witnesses "evidence" that was not "presented" when the matter was "heard or considered" by the Chief? Secondly, if so, ought the Board to exercise its discretion to "receive new evidence"?

[15] With respect to the first question in the circumstances of these two appeals, the Board is not convinced that the proposed evidence comes within the purview of Section 20(1)(g) of the *Act*. The Board's view is that it is premature to conclude that all of the evidence to be introduced by the Appellants and their witnesses amounts to "new evidence" that was not presented to or considered by the Chief. Both

complaints, and particularly so in the Lee appeal, contain detailed statements, so not all of the proposed testimony by the Appellants would appear to be new evidence just because follow-up interviews were not held. To the extent that the testimony of the Appellants and their witnesses is not “new evidence”, that testimony will be accepted by the Board in the normal manner.

[16] In response to the second question, the Board’s view is that allowing the Appellants and their witnesses to testify at the Board’s *de novo* hearing is not contrary to the *Act* and will better meet the Board’s mandate of finding the right answer, while maintaining oversight and ensuring a fair hearing process. Transparency in the process of police discipline is a vital component to ensure and maintain a connection to, and the support of, the public to its police services. Accordingly, to the extent the evidence of the Appellants and their witnesses is, in fact, “new evidence”, the Board exercises its discretion to hear it.

[17] The Board agrees with the observations of the panel in the *Boulanger* appeal, where the panel states at para. 61:

“[61] The CTLA, as is the case with any non-officer appellants before the Board, has not previously had any opportunity to present any evidence in the proceedings which commenced with its complaint. It now has a statutory right to advance its own case on appeal. This is not akin to a situation where a prosecutor is attempting to take a second “kick at the cat” by calling evidence that was available but which he or she chose not to call at trial. The Legislature presumably recognized that there may not be much of an incentive for a presenting officer to appeal an acquittal of a fellow officer and so did not provide for that in the Act. Instead, in the interests of transparency and public confidence, the public complaint or affected officer who is not satisfied with the decision of the presiding officer may appeal that decision. This is consistent with the mandate of the Board to ensure that police services properly govern themselves. This is an important factor when the Board is considering whether to exercise its discretion to refuse or receive new evidence. In these circumstances the Board, subject to dealing with specific objections in relation to specific pieces of evidence during a hearing, is disinclined to refuse to allow new evidence if is relevant and the other party or parties have been provided with adequate disclosure and notice of the intention to call such evidence.”

[18] The Board also agrees with the panel in the *Boulanger* appeal, insofar as it concluded that the allowing of “new evidence” was subject to “specific objections in relation to specific pieces of evidence” during the hearing. Finally, the Board notes that, while it will hear the evidence of the Appellants and their

witnesses, in these circumstances where the investigator did not have access to a contemporaneous description of the incidents in question, the Board may take the circumstances into account in determining the weight to apply to that evidence, or whether to rely on that evidence in the final decision on each appeal.

[19] In the Board's view, an important factor to consider in determining whether what weight to apply to new evidence presented at the appeal is whether the investigating officer had any other avenue to accommodate the legislation's purpose, while still allowing the complainant to decline an interview. The reasonableness of the complainant's decision to decline an interview with the investigator must also be considered by the Board. The Board has heard submissions, but no evidence, about why these two Appellants declined to participate in an interview by the investigating officer, and therefore the Appellants' rationales have not been tested by examination and cross-examination.

[20] In these two appeals, until such time as the Board is able to hear the evidence, it is hard-pressed to determine whether the information is actually new evidence or simply viva voce presentation of already-provided information, whether the investigating officer could have discovered evidence through other means, or whether each Appellant's decision to decline to participate in the interview was a reasonable decision.

[21] Similarly, although Ms. Crosilla's witnesses, Jody Morrison and Britney Hopley, refused to submit any written documentation to the investigator, or to participate in an interview, the Appellant Crosilla has submitted that they did so believing that such participation would compromise Ms. Crosilla's criminal jeopardy. Their reasons, and the reasonableness of their belief, can be more realistically determined through their testimony at the hearing. In addition, their testimony and subsequent cross-examination may further inform the Board regarding the investigation process and the decision of the Chief, despite their failure to participate in an interview with the investigating officer. The reasonableness of each of these witnesses to decline to participate in the investigation of Ms. Crosilla's complaint by the investigating officer will go to what weight, if any, should be given to their testimony.

[22] The Board concludes that allowing the Appellants and named witnesses to testify at the appeal will

not prejudice the Respondent Officers, providing they have timely and full disclosure of the nature and content of the testimony prior to the hearing.

[23] Similarly, since the Board is not currently aware of what medical testimony is to be introduced, it is premature to conclude that it was something that was available and withheld from the Chief, and if so, whether it was reasonably withheld. The Board is also not aware of whether such information could have been made available to the Chief through alternative means during the investigation process. As Ms. Crosilla's complaint letter references an injury, the Board will allow written medical evidence to be tendered, along with medical witnesses if necessary, which can better inform the Board. Certainly in this regard, the Board agrees with the Respondents that the complainants must provide better medical disclosure than what has been provided. The Respondent police officers have the right not to be taken by surprise at the *de novo* appeal hearing.

[24] Accordingly, the Board, in its discretion under Section 20(1)f of the *Act*, is therefore prepared to allow in its *de novo* hearing testimony, including possible fresh evidence, that would be relevant to the complaint letters, including medical evidence, to corroborate or further inform the Board with respect to the events in question, the adequacy of the investigation, and the disposition of the Chief.

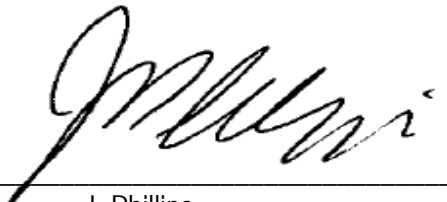
[25] The Board agrees with the Appellants that complainants and their witnesses are not legally obliged to participate in an interview with an investigating officer, and the Board accordingly concludes that the EPS Professional Standards Branch policy is merely a guideline to be applied on a case by case basis. This EPS policy cannot have the result of interfering with the Board's oversight mandate, and its discretion to allow the complainants and witnesses an opportunity to testify at a *de novo* hearing. The balancing of these factors must be carried out on a case by case basis.

[26] However, the Board is mindful of the Respondent's underlying concern that complainants could abuse the statutory process by holding back evidence, and only introducing that evidence in the complainants' venue of choice. The Board notes, though, that simply because a complainant declines to submit to an interview with an investigating officer does not necessarily imply that he or she is holding back evidence. Each case must be decided on its own merits. The Board warns against interpreting this

decision as “blessing” any blanket refusal to participate in an interview with a police officer investigating a public complaint. The opportunity for a public complaint to have input into the disciplinary process is significantly enhanced by participation in the investigation of his or her complaint (by the complainant and witnesses). A decision to decline to participate must always be reasonable in the circumstances, and each case must be decided within its own context and facts.

CONCLUSION

[27] The Board will hear the testimony of Ms. Crosilla and Mr. Lee, and of Ms. Crosilla’s named witnesses, including medical witnesses. To the extent the Board determines the evidence presented is not “new evidence”, that evidence will be heard and assessed as is any other evidence presented to the Board. To the extent the Board determines that the evidence is “new evidence” (that is, information not provided in the written complaint or to the investigator), the Board will determine the relevancy and weight of each witnesses’ testimony. The Board hereby directs the parties to carry out full disclosure of the nature and content of this evidence as part of the disclosure process, and the Board retains jurisdiction to deal with any difficulties which may arise in the course of this disclosure process.



J. Phillips
Chair

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

cc: Ms. Heather Steinke, Counsel for the Respondents
Ms. Erika Norheim, Counsel for the Appellants