

**ALBERTA  
LAW ENFORCEMENT  
REVIEW BOARD**



---

**2014 ANNUAL REPORT**



ALBERTA  
LAW ENFORCEMENT REVIEW BOARD

---

June 1, 2015

Honourable Kathleen Ganley, MLA  
Minister of Justice and Solicitor General  
Room 403, Legislature Building  
10800 – 97 Avenue  
Edmonton, AB T5K 2B6

Dear Minister:

***2014 Annual Report of the Alberta Law Enforcement Review Board***

It is my honour to submit to you today the Board's latest annual report. The report was originally provided to the Ministry on March 20, 2015, but the election understandably delayed its delivery to the Minister's office.

As required by the *Police Act*, the report covers calendar year 2014 and reports on the number and nature of the appeals and inquiries that the Board held. It also provides summaries our decisions, as the *Police Act* also requires.

Yours sincerely,

David Loukidelis QC  
Chair

Enclosure (2014 Annual Report)

cc: Deputy Minister, Justice and Solicitor General  
Deputy Attorney General, Justice and Solicitor General  
Assistant Deputy Minister, Public Security Division  
Chiefs of Police, Alberta Municipal Police Services and First Nations Police Services  
Alberta Police Commissions

**ALBERTA  
LAW ENFORCEMENT REVIEW BOARD  
2014 ANNUAL REPORT**

**TABLE OF CONTENTS**

	<u><b>Page</b></u>
Message from the Chair.....	i
Introduction .....	1
Board’s Role and Mandate .....	1
Jurisdiction .....	1
• Who Can Appeal to the Board .....	2
• Complaint and Appeal Processes.....	2
• Board Powers .....	3
Board Membership .....	4
• Member Profiles .....	4
Financial .....	8
Statistical Breakdown .....	9
• Table 1 – Nature of Appeals Filed.....	9
• Table 2 – Location of Appeals Filed .....	9
• Table 3 – Summary of Dispositions.....	10
• Table 4 – Summary of Allegations Identified During Appeal Hearings.....	11
Summaries of 2014 Board Decisions .....	12
• Standard of Review.....	12
• Preliminary Applications.....	13
• Section 43(11) Reviews.....	15
• Appeals Allowed in Full or Allowed in Part.....	16
• Appeals Dismissed .....	20
Court of Appeal Decisions .....	32

## **MESSAGE FROM THE CHAIR**

The Law Enforcement Review Board has had another busy year. It was not as busy as 2013 in terms of the number of appeals filed with us, but it was a very active year. We issued a larger than usual number of decisions, for example, and we were very busy with process reforms and other initiatives. Throughout the year, all Board members, and the Board's highly professional staff, worked well together to achieve a number of objectives, with more under way for 2015 and beyond. This message describes only key highlights of 2014.

### ***Timeliness: Challenges and Opportunities***

I must start, however, with what can only be called, from my perspective, a low point. In the autumn of 2013, at a time when the complement of Board members was larger and our work load manageable, we were issuing decisions at around the statutory 60-day requirement. This enticed me into setting performance measures for decision timeliness that, with hindsight, can only be described as over-promising, leading to our under-delivering. This table illustrates the point:

<b>Performance Measures</b>	<b>Target</b>	<b>Achieved</b>
1. Percentage of decisions that are rendered within 60 days after the later of the date of the hearing or receipt of the last written submissions (legislated within the <i>Police Act</i> )	80%	29%
2. Percentage of decisions that are rendered within 75 days after the later of the date of the hearing or receipt of the last written submissions (internal measure)	90%	42%
3. Percentage of decisions that are rendered within 90 days after the later of the date of the hearing or receipt of the last written submissions (internal measure)	95%	51%

The Board issued 69% of its decisions within 120 days after conclusion of an appeal hearing. It is also worth noting that, despite slippage, in 2014 we still issued decisions much more quickly than in 2012 or earlier. In 2013, my first year as Chair, the average time for the Board to issue an appeal decision was 64 days, which was a significant improvement over the 159-day average in 2012. Although our average did increase from 64 days in 2013 to 97 days in 2014, we were still much faster at making decisions than in the past.

Our 2014 timeliness results can be attributed to a number of factors. First, as the statistics reported below show, in 2013 roughly 50% more appeals were filed with us than is usual.

Many of these appeals were heard and decided in 2014, resulting in a higher-than-usual decision-writing workload. The increased workload is reflected in the fact that last year we issued 59 appeal decisions, considerably more than usual. We also issued more decisions in fresh evidence and other applications than usual, and we conducted more initial reviews under s. 19.2 of the *Police Act* than usual. On this account alone, the Board, which during 2014 had nine part-time members, was hard pressed to maintain the previous year's timeliness record.

During 2014 the Board focused heavily on decision quality. This takes time, of course, but the effort has been commented on by stakeholders, and we will continue to put in the time to produce decisions of the best quality we can manage.

It is also worth pointing out that the Board has no backlog of decisions. As the above figures suggest—and as is usually the case with all tribunals and courts—the Board has decisions 'in the hopper', decisions that are in the course of being written and issued. But there is no backlog in the sense of an unusual or unwarranted accumulation of outstanding decisions.

All of this said, I am disappointed that we did not meet the targets I set, which were ambitious, in fact over-ambitious. While hindsight suggests that more realistic targets should have been set, the challenge for the Board moving forward is very clear. We must continue to improve our timeliness in the coming year, and will work hard to do that.

Another issue is how quickly we are able to hear appeals after they are filed. During 2014, the time between an appeal being filed and its being heard stayed static. In 2013, it took an average of 197 days to set an appeal hearing. In 2014, the average was 194 days. To a large extent this is beyond the Board's control. We cannot schedule an appeal hearing until the parties and their lawyers are available, and lawyers are, understandably, often booked for months and months ahead. This sometimes pushes appeal hearing dates further back than everyone might like, but it is the reality.

Another factor that can affect appeal hearing dates is the timeliness with which appeal records are produced by police services. Some police services struggle sometimes to produce the record of proceedings in a timely fashion. This is often because of the volume of materials that must be organized and copied, with multiple copies having to be produced and delivered. The Board cannot complete the initial review required by s. 19.2 of the *Police Act* until it has the record and until that review is completed we cannot set an appeal hearing date. This has an impact, of course, on how quickly we can set appeals down for hearing. While the Board continues to encourage police services to be timely, this is a factor the Board ultimately cannot control. (It has also prompted the electronic records initiative described below.)

Regarding the timeliness of appeal hearing dates, we will pursue two administrative initiatives in 2015. We will soon change our process so that applications to admit new evidence on appeal are heard at the same time as the appeal itself. At present, the Board schedules a date well in advance of the appeal for such applications, and this affects how quickly the appeal is heard. By moving to a single hearing date, we will only have to set one date, and that will be earlier

than what is now the case. The Alberta Court of Appeal also hears applications to admit evidence on appeal at the same time as the appeal itself, so our move to that same approach will not be a surprise to lawyers who appear before the Board.

The second initiative relates to how we calculate the timeliness of appeal hearings. The Board has historically counted the time between receipt of the appeal notice record and the appeal hearing date in calculating the time to appeal. We have started in 2015 to calculate the time between delivery of the record and the appeal hearing date. This change will not eliminate delay, as we will still have to contend with the availability of the parties and their lawyers, but it will more accurately reflect timeliness once the Board has the record, which is the appeal's foundation.

### ***Our Workload During 2014***

As I have already mentioned, during 2014 we experienced a higher-than-usual number of appeals, leading to a commensurate increase in our productivity. In 2014, we received 49 new appeals, which is almost 25% higher than the 2008 to 2011 average of 40 appeals a year. (In 2012 there were 27 new appeals and in 2013 a high of 64.)

The Board heard 47 appeals on the merits and 17 preliminary applications. In 2013, we heard 42 appeals and 15 applications. We issued more decisions in 2014 than in either of the previous two years.

During 2014, we issued 55 appeal decisions on the merits, compared to 35 in 2013 and 40 in 2012. This is roughly a 45% increase. We also issued 48 initial review decisions under s. 19.2 of the *Police Act*, compared to 42 in 2013 and 23 in 2012. Last, we issued 17 decisions on preliminary applications, compared to 15 in each of 2013 and 2012. We achieved this increased output with only 35 sitting days, down from 46 sitting days in 2013 and 42 days in 2012.

### ***Operational Highlights for 2014***

This time last year, I reported on progress with implementing the Board's first-ever rules—guidelines, really—for the conduct of appeals. We held a second consultation with stakeholders last spring and received further helpful comments in the process. The guidelines are now in final form and the Board intends to bring them into force this spring, targeting May 1, 2015.

We have held off on this in order to complete a review of our appeal processes, to ensure that any processes did not affect the guidelines materially. Because I wanted to be sure our processes were efficient, we underwent a business process efficiency review. This was done using government expertise with business process efficiency analysis and design. The review concluded, in late 2014, that our existing appeal processes are already very efficient. A few minor suggestions were made, but these will not affect how we handle appeals.

This review was also undertaken because we intend to acquire an electronic case management system for the Board. At present, we keep track of and manage appeals using desktop tools, primarily Microsoft Excel. This is not efficient for a variety of reasons. It can also cause internal miscommunication. With the results of the process review in hand, we have been exploring options for a case management system, with the leading candidate being a system already licensed to government. This would mean that we can use the system at no extra cost, with only minor expenditures to adapt the software to the Board's needs. Our goal is to have this system in place this year.

In terms of litigation involving Board decisions, during 2014 there were two applications to the Court of Appeal for leave to appeal a Board decision to that Court. Of these, leave was granted in only one matter. As for the outcome of appeals, in 2014 the Court handed down decisions in two full appeals, with the Board's decision being upheld in both of them. In addition, judicial review proceedings were started in relation to one Board decision.

### ***Looking Ahead***

As we move further into 2015, we will work on a number of other fronts. Significantly, I have prepared for consultation a practice direction that will shift appeals to an electronic format for materials. Police services will be required to produce records in PDF format, saving money. This will also, I hope, enable them to produce records more quickly, which will help with our timeliness (and reduce courier and records storage costs for the Board). Further, appeal participants will be required to deliver their written submissions in PDF format (self-represented participants can be excused from this requirement). I believe this move will be broadly supported by stakeholders.

We will also continue to streamline our forms and standard correspondence for appeals, having already reduced the number of standard documents from roughly three dozen to around a dozen. Completion of our internal policy manual for staff will further enhance the efficiency and quality of our administrative work. Lastly, we will complete the revamping of our public-facing information resources, notably plain-language guidance for self-represented appellants. As part of this initiative, we will work with the Ministry of Justice and Solicitor General on improvements to our web presence.

Last year I asked Board members to assess their own performance, using an assessment tool that we created. I then discussed their assessments, in light of my own assessment of their work. Suffice it to say that this process brought home to me, once again, that the Board is made of up very talented and highly dedicated individuals. This was also illustrated last autumn by the appointment of three members, two new members and one returning member. Geeta Bharadia, QC and Brian Gifford are both skilled lawyers, with significant senior administrative law and tribunal experience. Robert Johnson, who rejoins the Board, brings a deep background, not only on the Board, but in corrections and social work. We were therefore very happy to welcome all three at our annual Board meeting in January. I would also like to thank Colleen

Ryan, a member of the Board appointed in 2009, and whose term expired in November, for her conscientious service to the Board.

In closing, I would like to again thank each of my colleagues in the Board office for their continued dedication, hard work and strong support for the Board and its mandate.

March 5, 2015  
Edmonton

A handwritten signature in black ink, appearing to be 'D. Loukidelis', written in a cursive style.

David Loukidelis QC  
Chair

## **INTRODUCTION**

Section 14 of the *Police Act* requires the Board to file a report for each calendar year with the Minister of Justice and Solicitor General. The *Police Act* requires the report to show the number and nature of the appeals and inquiries conducted by the Board and the summaries of the findings made. This report covers the Board's activities during the 2014 calendar year.

Public accountability is a central issue in the handling of complaints against members of professions, including policing. Under the *Police Act*, processes have been established to satisfy the public's interest in the accountability of police officers for their actions. These processes must operate in a context that provides the police with an appropriate level of involvement in the first-instance management of complaint matters. The processes also provide for external review and offer openness and transparency. In the end, both the public and the police must have confidence in the integrity and fairness of the discipline system.

## **BOARD'S ROLE AND MANDATE**

The Board was created in 1973. It is an independent, quasi-judicial tribunal established under Part 2 of the *Police Act* to ensure that complaints involving police conduct matters are adjudicated fairly and impartially. As an appeal body, the Board's primary role is to hear appeals under s. 48 of the *Police Act* from individuals who have filed complaints about the actions of a police officer and who are not satisfied with the disposition of their complaint. The Board's role is to conduct an independent and impartial review of the decisions made by police services about complaints. The Board also hears appeals by police officers resulting from any disciplinary findings, or action taken against them, arising from a complaint.

In addition, the Board may, on its own motion, conduct inquiries respecting complaints. The Board is also required, when the Minister requests it, to conduct inquiries into any matter respecting policing or police services. The Board, for these purposes has the powers of an inquiry commissioner under the *Public Inquiries Act*.

## **JURISDICTION**

The Board's jurisdiction covers municipal police services, including officers employed with First Nations police services in Alberta. It also covers peace officers whose appointments have been cancelled under the *Peace Officer Act*. At this time, the Board has jurisdiction over the following police services:

***Municipal Policing***

Calgary Police Service  
Camrose Police Service  
Edmonton Police Service  
Lacombe Police Service  
Lethbridge Regional Police Service  
Medicine Hat Police Service  
Taber Police Service

***First Nations***

Blood Tribe Police Service  
Lakeshore Regional Police Service  
North Peace Tribal Police Service  
Tsuu T'ina Nation Police Service

***Who Can Appeal to the Board***

**Complainant** – A citizen may appeal the decision of the chief of police about a complaint that individual has made about a police officer's conduct.

**Police Officer** – A police officer may appeal the findings or the penalty imposed against him or her arising from a complaint or from a disciplinary hearing.

**Peace Officer** – A peace officer may appeal the cancellation of her or his appointment, or an employer may appeal the cancellation of its authorization.

***Complaint and Appeal Processes***

Municipal police officers are subject to the discipline process under Part 5 of the *Police Act*. An individual can, in certain circumstances, complain about the conduct of a police officer. The *Police Act* provides that the chief of police is responsible for the investigation and disposition of complaints concerning officer misconduct or policies and services. (Complaints about a chief of police are dealt with by the police commission for that police service.) Once a complaint investigation is completed, the chief may order a disciplinary hearing before a presiding officer, who will hear evidence and decide whether the officer is guilty of misconduct. Such a hearing is a kind of trial, to determine if the officer is guilty of the misconduct alleged. If an officer is found guilty, the presiding officer will impose a penalty, which can range from demotion or suspension to dismissal.

The chief may decide not to send a complaint to a disciplinary hearing if she or he concludes, based on the complaint investigation material, that there is no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing. A complainant may appeal the decision of the chief to dismiss their complaint to the Board.

Once a decision has been made by the chief or presiding officer, the affected individual is advised of the decision in writing and is told about the right to appeal.

To appeal a decision, a notice of appeal must be filed with the Board within 30 days of being advised of the decision.

The chief also may dismiss a complaint if he or she concludes that the conduct complained about is not of a serious nature. The decision of a chief to dismiss a complaint because it is not of a serious nature is a final decision and cannot be appealed to the Board. (Such a decision may be open to challenge through judicial review proceedings in the Court of Queen’s Bench.)

Under the *Police Act*, a party to an appeal can seek to appeal the Board’s decision to the Court of Appeal on a question of law. An application for leave to appeal must be filed with the Court of Appeal within 30 days after the Board’s decision. Leave must be granted by the Court of Appeal before the appeal can proceed. The Court of Appeal grants leave only if a judge of that Court concludes there is a significant question of law to be decided and the appeal has a reasonable prospect of success.

The Board also has jurisdiction over peace officers who have had their appointment as a peace officer cancelled. Peace officers are also subject to a complaint process under the *Peace Officer Act*. A peace officer whose appointment is cancelled may, within 30 days of being advised of the cancellation, appeal the decision to the Board. The Board does not, however, have jurisdiction to hear appeals arising from complaints made under s. 14 of the *Peace Officer Act*. The Director of Law Enforcement within the Ministry of Justice and Solicitor General is responsible for handling those matters.

The Board has no jurisdiction for criminal or other law enforcement matters. The Board does not, for example, have anything to do with the laying of charges, withdrawal of charges laid by police, or appeals from convictions for federal or provincial offences. Nor does the Board have any authority to award monetary damages in relation to police conduct.

The *Police Act* does not apply to members of the RCMP. Complaints regarding the RCMP should be directed to the Civilian Review and Complaints Commission for the RCMP at [www.crcctp.gc.ca](http://www.crcctp.gc.ca) or by calling toll free: 1-800-665-6878.

## **Board Powers**

### *Police Act Appeals*

The Board’s powers are set out in s. 20 of the *Police Act*. These vary depending on whether or not a disciplinary hearing was held. Where a disciplinary hearing has been held, the Board can:

- dismiss or allow the appeal;
- vary the decision being appealed;
- affirm or vary the punishment imposed;
- direct that the matter be re-heard; or
- take any other action it considers proper in the circumstances.

Where the chief has disposed of a complaint without conducting a disciplinary hearing, the Board cannot impose a penalty. The Board's authority allows it to do one of the following:

- affirm the decision of the chief of police;
- direct the chief to conduct a hearing;
- direct the chief to lay a charge under the *Police Service Regulation*;
- direct the chief to have the matter investigated again; or
- take any other action considered proper in the circumstances.

### *Peace Officer Appeals*

Section 21(4) of the *Peace Officer Act* provides that, at the conclusion of an appeal, the Board is to make recommendations to the Minister of Justice and Solicitor General whether the decision under appeal should be confirmed, reversed or varied. The final decision is the Minister's: the Board only makes recommendations regarding peace officer matters.

## **BOARD MEMBERSHIP**

Board members are appointed by Order in Council for a term of up to three years and are eligible to apply for re-appointment. They are paid on a *per diem* basis, in accordance with a published fee schedule set by Cabinet (this was last updated in 2005). Board members are reimbursed for expenses reasonably incurred while conducting Board business, in accordance with government regulations. The Board Chair is also appointed by Order in Council. The maximum length of time a member can serve on the Board is 12 consecutive years.

Board members bring a wealth of professional experience to the Board. A number of them are lawyers, while others come from a variety of professional backgrounds, including social work, child protection services, corrections, health care, business and the volunteer sector. The diversity of their backgrounds helps to ensure a measure of community representation, a key consideration given the Board's public interest mandate to provide civilian oversight of police conduct.

Three members were appointed to the Board in 2014: Geeta Bharadia QC (Calgary), Brian G. Gifford (Edmonton) and Robert Johnson (Calgary). Colleen Ryan, a member since January 1, 2009, completed her term on November 30, 2014.

### ***Board Member Profiles***

***David Loukidelis, QC***, who was appointed Chair of the Board on December 19, 2012, qualified as a lawyer in 1985. From 2010 to 2012 he was Deputy Attorney General of British Columbia. During his time as Deputy Attorney General, Mr. Loukidelis worked on major civil and criminal justice reform initiatives and, as a member of the Deputy Ministers' Technology and Transformation Committee, he contributed to plans to improve delivery of public services through the use of technology. Before becoming Deputy Attorney General, Mr. Loukidelis was British Columbia's Information and Privacy Commissioner from 1999 to 2010 and Registrar of

Lobbyists from 2003 to 2010. As Commissioner, Mr. Loukidelis was responsible for enforcement of the public sector's *Freedom of Information and Protection of Privacy Act* and for regulation of private sector privacy practices under the *Personal Information Protection Act*. As Registrar, he regulated lobbying under the *Lobbyists Registration Act*. He was in private practice from 1988 to 1999. Since the 1980's, Mr. Loukidelis has taught courses in the law faculties of the University of British Columbia, the University of Victoria and Thompson Rivers University. He has also taught at UBC's School of Community and Regional Planning. Mr. Loukidelis obtained his LLB from Osgoode Hall Law School, York University, after which he clerked for a justice of the Supreme Court of Canada. He received a BCL from the University of Oxford and, before studying law, received an MA from the University of Edinburgh after studies at the University of Toronto. Mr. Loukidelis was appointed Queen's Counsel in British Columbia in 2010.

**Joseph (Archie) Arcand** has 30 years of experience with Alberta Family and Social Services. During that time he was the provincial representative during negotiations for a tri-partite agreement between the federal and provincial governments and Band Councils in northern Alberta for the delivery of services to band members. Mr. Arcand also served in numerous capacities on school, recreation and Native Friendship boards.

**Benjamin Ayorech** graduated with a Bachelor of Arts in 1972 from the University of Dar-es-Salaam in Tanzania, majoring in Economics and Management and Administration. Mr. Ayorech had extensive experience in government and business management in Tanzania and Uganda prior to coming to Canada in 1988. He obtained a Management Studies Diploma from Grant MacEwan College in 1992. He has served in many capacities in Edmonton and Calgary, including: Member and Chair for the Council of Canadians of African and Caribbean Heritage from 1992 to 1996; Chair of the Edmonton Police Commission from 1995 to 1998; full-time Board member of the Immigration and Refugee Board of Canada from 1998 to 2006, and currently as a member of the Appeals Commission for Alberta Workers' Compensation. In April 2013 Mr. Ayorech obtained his certificate in Tribunal Administrative Justice from the Foundation of Administrative Justice.

**Geeta Bharadia, QC** graduated from the University of Calgary with an honours degree in political science in 1982 and from McGill University with a law degree in 1989. Ms. Bharadia was a full-time member of the Alberta Human Rights Commission for the last three years, with her term ending October 31, 2014. She was a litigation lawyer with Bennett Jones LLP for several years. In 1995 she was appointed Chairperson of the Canadian Pension Plan Review Tribunal, a position she held for eight years. Ms. Bharadia completed her mediation and collaborative law training in 2000 and since then, she has completed significant advanced education and training in both disciplines, as well as obtaining her training in the interdisciplinary model of collaborative practice and mediation-arbitration. She has actively promoted alternate dispute resolution in Alberta and Canada, focusing on issues related to ethics, accreditation, cross-cultural issues, childrens interests, complicated financial matters and human rights. Ms. Bharadia was the President of the Alberta Family Mediation Society from 2006 to 2008. She has also served on the Board for Collaborative Family Lawyers (Calgary) and Collaborative Family Lawyers (Alberta); appointed as a Dispute Resolution Officer by the

Court of Queen's Bench of Alberta; and was also a mediator for Alberta Justice Family Mediation Services, which provides mediation services for lower income families. In 2012, Ms. Bharadia received the Dr. John Haynes Memorial Award for her outstanding contribution to the field of family mediation in Alberta.

**Christine S. Enns** was admitted to the Alberta Bar in 2002. While in private practice she has represented clients in a wide variety of matters including those before the Labour Relations Board and the Immigration Review Board and has been involved in mediation and judicial dispute resolution. As a Human Rights Officer with the Alberta Human Rights Commission, Ms. Enns conducted investigations into discrimination complaints, negotiated resolutions and made recommendations regarding merit and settlement for use by the Director of the Commission. Prior to becoming a lawyer, Ms. Enns was a professional musician and performed as a flute and piccolo player with the Edmonton Symphony Orchestra between 1991 and 2005. Ms. Enns is currently practicing primarily in the area of intellectual property law.

**Dale Wm. Fedorchuk, QC** is a criminal defence lawyer whose home and office is in Canmore, Alberta. Mr. Fedorchuk graduated from the University of Manitoba with a Bachelor of Arts degree in 1980 and a Bachelor of Laws degree in 1983. Mr. Fedorchuk was called to the Bar in Manitoba in 1984 and practiced civil and criminal litigation in Manitoba until 2001 when he moved to Alberta. Mr. Fedorchuk was called to the Alberta Bar in 2001 and practiced civil litigation and constitutional law in Calgary until December 2006. Mr. Fedorchuk opened a criminal law practice in Canmore in 2007, and provides criminal legal services to clients in Canmore, Banff, Calgary and surrounding areas. He served as Chair of the National Civil Litigation Section of the Canadian Bar Association during the 2001-02 fiscal year, after holding various offices over his five-year tenure on the Executive of the Section. Mr. Fedorchuk has served on a number of Committees for the Manitoba Bar Association and chaired the Civil Litigation Section for six years, the Law Day Committee, the Mid-Winter Planning Committee, and the Manitoba Working Group for the Canadian Bar Association Systems of Justice Task Force. Mr. Fedorchuk has litigated criminal and civil matters in the Provincial Courts, the Court of Queen's Bench and the Court of Appeal in Manitoba and Alberta. He has also argued in the Supreme Court of Canada. Mr. Fedorchuk was appointed Queen's Counsel in Alberta in 2010.

**Brian G. Gifford** graduated with an LLB from the University of Victoria in 1987 and from Osgoode Hall Law School with an LLM in administrative law in 2007. He also obtained a Graduate Diploma in Justice System Administration from York University. Mr. Gifford also has a BA and MSW from Wilfred Laurier University. Before going to law school, Mr. Gifford was a social worker in Alberta, beginning as a counsellor with Mental Health Services in Edmonton where he became Senior Northern Development officer with the Northern Alberta Development Council, and later became Manager with the Ministry of Social Services in Edmonton from 1982 to 84. Mr. Gifford practices law in Edmonton with a focus on administrative law matters. He has acted for the Law Society of Alberta and as counsel for individuals who have been detained under the *Mental Health Act*. Prior to re-entering private practice, Mr. Gifford was the Chair of the Alberta Surface Rights Board and the Land Compensation Board. Before returning to Alberta, Mr. Gifford served as the founding Chair of the BC Employment Assistance Appeal Tribunal which hears appeals relating to employment

(social) assistance in British Columbia, and prior to that, he practiced family law and litigation. Mr. Gifford has been active in continuing legal education over the years. He served as Chair of the Administrative Law Section (North) of the Canadian Bar Association, and was Chair of the Circle of Chair of Administrative Tribunals in British Columbia. Mr. Gifford has also been actively involved in community service over the years, and is currently volunteering as a driver with the Seniors Assisted Transportation Society of Edmonton.

**Robert Johnson** received a Master's of Science in Social Work from the University of Tennessee. He worked for many years as a senior manager in corrections and human services. He has experience participating on governance boards such as the John Howard Society, Youth Volunteer Corps of Canada, Alberta College of Social Workers, Pathways Community Services and the Calgary Regional Board for Persons with Developmental Disabilities. Mr. Johnson is currently a member of the Criminal Injuries Review Board and the Attendance Board (Education). He recently finished an eight-year term as a Community Member, Incident Investigations Branch, Corrections Services Canada. He taught Criminology and Social Work at Mount Royal College for several years. He has completed mediation training through the Legal Education Society of Alberta. While in the United States, he worked with the Knox County Sheriff in a collaborative project involving the Faculties of Law and Social Work in the development and implementation of an alternative prison program in Tennessee.

**Edward Lawson** has practiced law since 1999 and has provided a wide range of legal services in the areas of personal injury, commercial and securities litigation, and in the handling of general civil and criminal matters at a variety of levels of court. Mr. Lawson's current practice is primarily in the area of family law. He also has experience in mediation and judicial review and is a member of the National Legal Committee.

**Patricia Mackenzie** has participated in business, government, on boards and in community organizations. This includes Assistant Vice President, Environment, of Telus Corporation; City of Edmonton Counsellor from 1986 to 1995; Chair of the Alberta Commission on the Future of Learning; and Vice Chair of Alberta Blue Cross. She is a former President of the Alberta Urban Municipalities Association and served on the Federation of Canadian Municipalities where she chaired a number of committees. Ms. Mackenzie holds a designation ICD.D from the Institute of Corporate Directors.

**Ellen-Anne O'Donnell** is an experienced family lawyer and mediator. Her practice encompassed Alternate Dispute Resolution methods including Collaborative Law, mediation and negotiation. She regularly participated in Judicial Dispute Resolutions and arbitration. She is experienced in all levels of the Alberta Courts and was a Dispute Resolution Officer with the Alberta Court of Queen's Bench from 2001 to 2006. Ms. O'Donnell formerly served on the Board of Directors of Hospice Calgary and is a former president of the Board of Directors of the Elizabeth Fry Society.

**Donald A. Sibbald, QC** received his BA, BEd and LLB degrees from York University, the University of Toronto and the University of Western Ontario respectively. Mr. Sibbald has 24 years of legal practice as litigation counsel at a major Calgary law firm. Since 2006, he has provided private mediation and arbitration services as well as serving as a member of several

administrative tribunals including the Surface Rights Board, the Land Compensation Board and the Appeals Commission for Alberta Workers Compensation.

**Gerald Smith** graduated from the University of Saskatchewan with a Bachelor of Commerce degree followed by a Bachelor of Law. He has been practicing law since 1993, primarily in the area of civil litigation. He is currently working with a major insurance company as in-house legal counsel. Mr. Smith has appeared before a number of administrative tribunals at both the municipal and provincial level.

### **FINANCIAL ADMINISTRATION**

Financial management of Board matters is coordinated through the Finance and Planning Division of Alberta Justice and Solicitor General. The Board office is responsible for administering its operating budget and is accountable for Board expenditures through government budgetary and expenditure review. Financial records of the Board are available for public review in the same manner and to the same extent as are other public service expenditure records.

The Board's operating budget corresponds with the government's fiscal year calendar, which is April 1 to March 31. The annual operating budget for the 2013-14 fiscal year was \$799,000. The total expenditures incurred by the Board for 2013-14 fiscal year were \$643,325.

The Board's operating budget for the 2014-15 fiscal year is \$802,000. As of December 31, 2014, the Board expenditures were \$501,310.

## STATISTICAL BREAKDOWN

**Table 1**  
**Nature of Appeals Filed**

<i>Filed By</i>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Unrepresented Appellants	7	37	33
Appellants Represented by Counsel	19	27	16
<b>Total</b>	<b>26</b>	<b>64</b>	<b>49</b>
<b>Breakdown</b>			
Public Complainants	20	52	48
Officer Appeals	5	10	1
Peace Officer Appeals	1	2	0

**Table 2**  
**Location of Appeals Filed**

<i>Location</i>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Calgary	2	9	9
Edmonton	20	49	31
Lethbridge	1	2	3
Medicine Hat	1	0	1
Camrose	1	0	5
Other	1	4	0
<b>Total</b>	<b>26</b>	<b>64</b>	<b>49</b>

**Table 3  
Summary of Dispositions**

<i>Description</i>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Number of Sitting Days	42	46	35
<b>Initial Reviews<sup>1</sup></b>			
Proceed to oral hearing	20	32	38
Proceed on review of record only	3	10	9
Dismiss-frivolous, vexatious, bad faith	0	0	1
<b>Total</b>	<b>23</b>	<b>42</b>	<b>48</b>
<b>Preliminary Applications</b>			
Allowed	3	4	3
Denied	12	11	14
<b>Total</b>	<b>15</b>	<b>15</b>	<b>17</b>
<b>Appeal Dispositions</b>			
Allowed in Full or Allowed in Part:			
Returned for Hearing or Re-investigation	10	3	9
Penalty Varied	2	3	3
<b>Total Allowed</b>	<b>12</b>	<b>6</b>	<b>12</b>
Dismissed:			
Upon Hearing	26	29	37
Lack of Prosecution	0	0	0
Lack of Jurisdiction	3	7	9
s. 43 Review (frivolous, vexatious)	2	0	6
Withdrawn/Abandoned	4	5	8
<b>Total - Dismissed/Withdrawn</b>	<b>35</b>	<b>41</b>	<b>60</b>
<b>Total Appeals Concluded</b>	<b>47</b>	<b>47</b>	<b>72</b>

<sup>1</sup> Section 19.2 of the *Police Act* requires the Board to conduct an initial review of the record within 30 days of receiving an appeal, to determine how the appeal is to be heard or disposed of.

**Table 4**  
**Summary of Allegations Identified During Appeal Hearings**

<i>Type of Alleged Misconduct</i>	<b>2012</b>	<b>2013<sup>1</sup></b>	<b>2014</b>
<b>Unlawful or Unnecessary Exercise of Authority</b>			
Excessive force	23	12	13
Unnecessary exercise of authority (e.g., unlawful arrest, detainment or search)	23	17	21
<b>Total</b>	<b>46</b>	<b>29</b>	<b>34</b>
<b>Discreditable Conduct</b>			
Rude or abusive language	5	6	5
Inappropriate conduct	17	26	17
Differential treatment (prejudice or bias)	3	3	1
<b>Total</b>	<b>25</b>	<b>35</b>	<b>23</b>
<b>Neglect of Duty</b>			
Failure to conduct a proper investigation	10	6	25
Failure to provide assistance (e.g., medical attention)	7	8	1
Failure to provide <i>Charter</i> rights (e.g., advise of right to contact counsel)	0	0	0
<b>Total</b>	<b>17</b>	<b>14</b>	<b>26</b>
<b>Deceit</b>	<b>13</b>	<b>11</b>	<b>16</b>
<b>Corrupt Practice</b>	<b>13</b>	<b>3</b>	<b>5</b>
<b>Insubordination</b>	<b>5</b>	<b>13</b>	<b>4</b>
<b>Breach of Confidence</b>	<b>5</b>	<b>6</b>	<b>2</b>
<b>Improper Use of a Firearm</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Total</b>	<b>112</b>	<b>111</b>	<b>111</b>

<sup>1</sup> Does not include 84 allegations identified in one appeal and which were dismissed.

## **SUMMARIES OF 2014 BOARD DECISIONS**

The following is a summary of the Board decisions issued in 2014. Summaries are not included for appeals that were either abandoned or withdrawn. Board decisions have been depersonalized in appeals involving minor children, disclosure of sensitive information that could invade someone's personal privacy, or to protect recognized privilege.

The following is an index of abbreviations used by the Board when referring to the municipal police services/commissions:

CPC	Calgary Police Commission
CPS	Calgary Police Service
CamPC	Camrose Police Commission
CamPS	Camrose Police Service
EPA	Edmonton Police Association
EPC	Edmonton Police Commission
EPS	Edmonton Police Service
LRPS	Lethbridge Regional Police Service
LRPC	Lethbridge Regional Police Commission
MHPS	Medicine Hat Police Service
TPC	Taber Police Commission
RCMP	Royal Canadian Mounted Police

Board decisions can be found on the following websites:

[http://www.solgps.alberta.ca/boards\\_commissions/law\\_enforcement\\_review\\_board](http://www.solgps.alberta.ca/boards_commissions/law_enforcement_review_board)  
<http://www.canlii.org> (under the Alberta tab, click on Law Enforcement Review Board)

### ***Standard of Review***

Before providing the statutorily required summary of decisions, a description of the standard of review that the Board applies is necessary. From 1973 to 2010, the Board conducted its hearings on what is called a *de novo* basis. This meant that, when the Board heard an appeal, testimony was given by police officers, complainants and witnesses. The Board then made findings of fact of its own.

In 2010, the Court of Appeal held that this decades-long approach was incorrect. The Court held that the Board, as a statutory appeal tribunal, is required to review police discipline decisions based on the record of material before the chief or presiding officer. It held that the Board must review those decisions applying what is known as the standard of reasonableness.

This is a deferential standard of review. Decision-makers such as a chief or presiding officer are given a margin of appreciation within the range of acceptable and rational solutions. In reviewing the material that was before the chief or the presiding officer, the Board will

determine whether the decision falls within a range of acceptable, reasonable outcomes in light of the facts and the law.

The Court also held that the Board has a separate, parallel, independent civilian oversight role. For example, if a complaint investigation was compromised in a way that calls into play the Board's mandate to provide civilian oversight, the Board may intervene and is not required to show deference to the chief. The Court has indicated, however, that this independent role will be triggered only where there is evidence that the investigation or discipline process more broadly was tainted, flawed or grossly inadequate in some way.

### **PRELIMINARY APPLICATIONS**

During the course of an appeal, a party has the opportunity to bring forward an application for the Board's consideration on procedural or jurisdictional issues. Examples of applications that the Board may deal with include, but are not limited to: seeking to admit additional evidence beyond what is found in the record before the chief or presiding officer; seeking disclosure of information that the police service has redacted from the record; and seeking to have the record, or portions thereof, sealed from public access.

The Board generally does not issue public decisions arising from interim applications, but may do so where the decision may have some value as guidance for future cases.

In 2014, public decisions were issued in the following applications:

#### **2014-004 - K. Steele (EPS)**

##### **Application for additional evidence**

The appellant sought to have additional evidence admitted for consideration by the Board in his appeal of the Presiding Officer's decision following a disciplinary hearing. The Board allowed the application in part and admitted several pieces of additional documentary evidence, on the basis that the appellant will argue civilian oversight within the appeal. The Board dismissed the application, in part, for items that, for various reasons (they were not evidence, or were unreliable or prejudicial) had no basis for admission as additional evidence.

#### **2014-007 – K. Kozina (EPS)**

##### **Application for late appeal**

The original complaint involved allegations of excessive use of force against the respondent officers arising out of an arrest. This preliminary application is with respect to the Chief's duty to advise the complainant of the disposition, their right to appeal under s. 47(5) of the *Police Act* ("Act") and the service requirements under s. 58 for dispositions of complaints under the Act. The Chief attempted to serve the appellant by registered mail, however, the disposition was returned to the Edmonton Police Service by Canada Post. No further attempts to notify the appellant were made. The Board determined it had jurisdiction to consider the appellant's appeal, filed almost three years after the date of the Chief's disposition letter, since the Chief's

original attempt to advise the appellant of his disposition and right to appeal was unsuccessful. The 30-day appeal period under s. 20(1) of the Act began when the appellant became aware of the disposition and the appeal was filed within that timeframe.

### **2014-011 – Criminal Trial Lawyers’ Association (EPS)**

#### **Application to Dismiss**

The respondents sought to terminate the appeal on the basis that the Criminal Trial Lawyers’ Association, which filed the notice of appeal, was not the actual complainant, and therefore, could not properly appeal. The Board determined the appeal notice was validly filed. Given the nature of the circumstances as reflected in the record, the appeal will be heard in writing.

### **2014-042 – EF (EPS)**

#### **Application for Redaction**

The appellant complained to the Edmonton Police Service (EPS) that she had been sexually assaulted. Various EPS officers dealt with the appellant over the years and she eventually complained about their investigation. The appellant applied for redaction of her identity from the record before the Board and for the appeal to be heard in private. The Chief and respondent officers opposed the application. The public interest in protecting the identity of the appellant as a sexual assault complainant in the circumstances favors sealing the portions of the record consisting of the appellant’s name and date of birth. The appeal hearing itself will not be closed to the public, but counsel, the respondents and the Board cannot disclose the sealed information at the hearing or otherwise, thus protecting the appellant’s identity.

### **2014-046 – K. Kozina v EPS**

#### **Application for Additional Evidence**

The appellant applied for the admission of evidence in this appeal from the Chief’s 2010 decision to dismiss his complaint without a disciplinary hearing. The respondent Chief and respondent officers acknowledged that further information had come to light, through an Alberta Serious Incident Response Team (ASIRT) investigation, since the complainant’s disposition. The Chief and appellant agreed that the Board should direct the Chief to further investigate the appellant’s complaint. The investigation should consider the contents of ASIRT’s investigation report, by pursuing any reasonable lines of inquiry arising from consideration of that report, and by considering the affidavit and media news story forming part of the appellant’s application for admission of evidence in this appeal. The Board allowed the application and directed the Chief to investigate further.

**SECTION 43(11) REVIEWS****2014-006 – E. Shawesh v EPC**

The appellant hand-delivered a complaint about the Chief to the Edmonton Police Commission (EPC), on the basis that the Chief made the wrong decision in dismissing his separate complaints against other police officers. The EPC dismissed the appellant's complaint against the Chief as being made in bad faith. The Board upheld EPC's decision as the complaint was not properly made, and therefore, had no prospect of success.

**2014-008 - CD v CPC**

The appellant made serious allegations against the respondent, namely inappropriate sexual misconduct involving the appellant's son. The allegations were categorized as discreditable conduct by the Chief and investigated by the RCMP. The Calgary Police Commission (CPC) conducted a review of the allegations of discreditable conduct under s. 43(7) of the *Police Act* (Act) – that the complaints were frivolous, vexatious or made in bad faith. The first allegation was returned to the Chief for investigation. The CPC dismissed the second allegation of discreditable conduct as frivolous under s. 43(12) of the Act. The appellant requested the Board review the decision of the CPC with regard to the second allegation. The Board concurred with the decision of the CPC.

**2014-028 – S. Mullings v CPC**

The appellant complained that the respondent yelled at him during their discussion about his driving and that he told the appellant to go back to his country. The appellant further accused the respondent of discrimination. The Chief investigated the complaint, concluded that there was no merit to it and recommended to the Calgary Police Commission (CPC) that the complaint be dismissed as frivolous. The CPC accepted the Chief's recommendation and dismissed the complaint as frivolous. The Board affirmed the CPC's decision to dismiss the complaint as frivolous.

**2014-030 – S. Mullings v CPC**

The appellant filed a complaint against respondents who were dispatched to investigate a call in relation to a suspected drunk driver. They located the appellant, spoke with him and concluded that he was not intoxicated. The appellant, who had a history of confrontational encounters with the Calgary Police Service, became irate and accused the respondents of racism and being rude to his son. The Chief investigated the complaint, concluded that there was no substance to the complaint and recommended to the Calgary Police Commission (CPC) that the complaint be dismissed as frivolous. The CPC accepted the Chief's recommendation and dismissed the complaint. The Board concluded the CPC reasonably dismissed the complaint as frivolous.

**2014-031R – E. Shawesh v EPC**

The appellant made a complaint about the Chief of Police to the Edmonton Police Commission (EPC) while at the same time, appealing the Chief's decision, on another complaint, to the Board. The EPC dismissed the complaint as frivolous and vexatious. The Board upheld the EPC's decision as the appellant did not articulate any grounds for appeal and that he initiated multiple proceedings at the same time.

**2014-036 – P. Berthelot v LRPC**

The appellant filed a complaint to the Lethbridge Regional Police Service. The Chief recommended to the Lethbridge Regional Police Commission (LRPC) that the appellant's complaint be dismissed as frivolous and vexatious. The LRPC dismissed the complaint; however, they did not provide the appropriate section or reasons for dismissing the complaint under the Police Act (Act). The Board remitted the matter to the LRPC with the direction that the complaint be dealt with in accordance with Part 5 of the Act.

***APPEALS ALLOWED IN FULL OR ALLOWED IN PART*****2014-013 – B. Fish v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority  
Discreditable Conduct**

This appeal is a subsequent appeal filed by the appellant. The incident arises from the 2006 Stanley Cup playoffs where the appellant was taken to the ground and tasered twice for taking photographs after being instructed to stop. The Chief dismissed the complaint on the basis that the identities of a number of officers were unknown. In 2010, the Board returned the complaint to the Chief for re-investigation. The re-investigation identified respondents and the Chief dismissed the complaints that there was insufficient evidence to establish the facts necessary to obtain a conviction against any of the officers. The appellant filed a subsequent appeal. The Board determined the re-investigation was adequate and upheld the Chief's decision to dismiss the complaints against two of the respondents. The Board found the Chief's dismissal of the complaint against another respondent regarding her arrest of the appellant and the language she used unreasonable. The Board directed that a disciplinary hearing be held regarding the allegations of unlawful or unnecessary exercise of authority and discreditable conduct against the respondent.

**2014-018 – Det. B. Allen v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority**

This appeal was referred back to the Board for reconsideration from the Alberta Court of Appeal (ABCA). The Board's earlier decision affirmed the Presiding Officer's decision where the appellant was found guilty of excessive or unnecessary use of authority when the complainant was required to strip off his clothing to be searched for further drugs. The ABCA concluded that

for there to be “reasonable and probable grounds” for a search, there must be a probability of finding drugs. The ABCA clarified that the test is whether it was objectively reasonable to conduct the search. The Board reconsidered the matter and allowed the appeal. The misconduct finding was vacated.

**2014-019 – M. Wagener v Director of Law Enforcement, Justice and Solicitor General, Public Security**

The appellant’s peace officer appointment was cancelled following a number of minor thefts committed by the appellant. On appeal, the appellant argued that his medical condition was not taken into account by the Director of Law Enforcement in rendering his decision, and that the cancellation of his appointment was unfair. The Board recommended to the Minister of Justice and Solicitor General that the appellant be reinstated as a peace officer, in light of the nexus between the medical evidence and the conduct in question, and the appellant’s fitness to resume his duties.

**2014-024 – M. Pettersson v EPS**

**Allegations: Excessive Force  
Discreditable Conduct**

The appellant had committed a break and enter. He alleged the respondent released his police service dog, causing him to be bitten in the face. During the arrest, the appellant was struck to gain his compliance and to handcuff him. The appellant alleged the force used in both incidents was excessive. The Chief dismissed the complaints. The appellant appealed on the grounds that the Chief exceeded his authority by making a determination that the allegations were ‘unproven’, when instead, he should have performed a screening function and directed a hearing. The Board dismissed the appeal in part on the basis that the Chief’s decision was within the range of reasonable outcomes as it pertained to one respondent, and the qualifications and use of the police service dog. The Board returned the matter to the Chief for reconsideration on the degree of force used on the appellant.

**2014-025 – E. Sobieh v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority**

The appellant appealed the Chief’s decision of his complaint against the respondent for his arrest on the doorstep of his residence and for allegedly failing to investigate a proposed alibi. The Board concluded that s. 45(4.1) of the *Police Act* (Act) eliminates the Board’s role to review non-serious complaints disposed of under s. 45(4) of the Act. On this basis, the Board was unable to consider the appeal regarding the investigation of the alibi. However, the appeal regarding the respondent’s conduct during the doorstep arrest was allowed on the basis that the Chief’s disposition was unreasonable, in that he did not consider or explain the lack of consideration given of significant elements of the appellant’s complaint. This portion of the appeal was remitted back to the Chief for further investigation and reconsideration.

The Chief made an application for costs against the appellant or his counsel on the basis that a

previous application regarding redactions was frivolous and vexatious. A cross-application for costs was made by the appellant against the Chief or his counsel, on the basis that the cost application was frivolous and vexatious. The Board determined that it was unable to conclude that the appellant's redactions application was without merit, and dismissed the Chief's application. As there was nothing properly before the Board upon which to determine that the Chief's application for costs was somehow improper, the appellant's costs application was dismissed.

**2014-040 – K. Kolson v EPS****Allegations: Neglect of Duty**

The appellant alleged the respondent was in neglect of duty for failure to lay a charge of public mischief against his neighbour for making serious and false criminal allegations against him. The appellant also alleged that the respondent failed to properly investigate a subsequent complaint against his neighbour for criminal harassment. The Chief concluded there was no reasonable prospect of conviction. The Board directed this matter to be returned to the Chief for reconsideration on whether any of these matters constitute enough evidence before the Chief that, if believed, could lead a reasonable and properly instructed person to convict the respondent at a disciplinary hearing.

**2014-049 – AS and KS v EPS****Allegations: Unlawful or Unnecessary Exercise of Authority  
Insubordination  
Neglect of Duty  
Discreditable Conduct**

A child of appellant AS was in the sole custody of his mother by a court order. The mother reported the child missing. The respondents attended AS's residence and eventually gained access into the residence. They found the child inside the residence and returned him to his mother by court order. Upon the respondents leaving the residence with the child, the appellants arrived and were told by the respondents to back off. The appellants were pushed against a wall, allegedly twisting KS's wrist or arm in the process. The appellants later complained that entry into the residence was unlawful and that the use of force was excessive. They also alleged neglect of duty, deceit and discreditable conduct. In dismissing the complaint without a hearing, the Chief did not exceed his screening function and his decision to dismiss the allegations was reasonable. The Board allowed the appeal regarding the allegation that two of the respondents colluded in preparing their official incident reports, which the appellants complained were almost identical. Both respondents denied this allegation when interviewed by Professional Standards Branch. The investigative report mentioned this issue in passing, but neither the disposition review nor the Chief's decision addressed this issue. The Chief's decision was therefore incomplete and unreasonable to that extent. The Chief was directed to consider the allegation and to make a decision.

**2014-052 – Cst. J. Fermaniuk v EPS**

**Allegations: Breach of Confidence  
Deceit  
Discreditable Conduct**

The appellant, a sworn member of the Edmonton Police Service, alleged the respondent committed a breach of confidence and discreditable conduct for comments he made about the appellant to a civilian, including the release of personal information. The respondent was also investigated for deceit at the request of the Chief, for having allegedly misled a Professional Standards Branch investigator by denying he made the comments, and then later admitting them to an RCMP investigator. The Chief dismissed the complaints as having no reasonable prospect of obtaining a conviction at a disciplinary hearing. The Board dismissed the appeal in part, regarding the deceit allegation, but directed a disciplinary hearing on the allegations of breach of confidence and discreditable conduct.

**2014-055 – MacDonald v CamPS**

**Allegations: Deceit  
Insubordination  
Neglect of Duty**

The Alberta Court of Appeal quashed the Board's earlier decision and remitted this matter back to the Board for reconsideration (*Camrose (Chief of Police) v MacDonald*, 2013 ABCA 422). The appellant had provided false information to the Camrose Police Service (CamPS): first in a conversation with a superior officer and then in written statements. The false information related to particulars of the appellant's attendance at a seminar and conference. He later provided accurate information in another written statement. The appellant pleaded guilty to three counts of deceit, three counts of neglect of duty and two counts of insubordination in relation to his statements, his attendance at the events and his claims for expenses and pay. The appellant was dismissed from the CamPS. The Board concluded the Presiding Officer's decision to dismiss the appellant was not reasonable. Among other things, the Presiding Officer approached dismissal as the automatic, inevitable, penalty for deceit in all cases and gave little to no weight to mitigating evidence. The outcome of dismissal was, viewed overall, not within the range of acceptable outcomes on the facts and law. The appeal was allowed and the penalty varied to a global penalty, for all offences, of a reduction to the lowest seniority within the rank of constable for a period of three years and suspension without pay for 80 hours.

**2014-057 – D. James v EPS**

**Allegations: Excessive Force  
Insubordination  
Unlawful or Unnecessary Exercise of Authority**

The appellant filed a complaint regarding the conduct of the respondents who forcibly arrested him. He further complained that other involved officers failed to make notes as required, and failed to provide him with disclosure. The Chief dismissed the complaints without a hearing. The Board concluded the dismissal of the complaints of unlawful arrest and failure to take

notes was reasonable. However, the Board directed the Chief to conduct a disciplinary hearing on the allegation of unnecessary or excessive use of force.

### **APPEALS DISMISSED**

#### **2014-001 – TB v EPS**

**Allegations: Neglect of Duty  
Discreditable Conduct**

The appellant had been in a consensual personal relationship with BP until BP got married. However, for a brief period after BP's marriage, the appellant continued to send numerous text messages to BP, which he found to be threatening. BP and his wife lodged a complaint of criminal harassment against the appellant, resulting in the police issuing the appellant with a written warning to cease contact with BP and his spouse. Approximately five months later, the appellant contacted BP and his spouse by mailing them a package containing civil documents. This resulted in the appellant's arrest and a charge of criminal harassment. The appellant lodged a complaint with the Chief alleging an insufficient investigation by the respondent officers leading up to her criminal harassment charges. The Board affirmed the Chief's decision was reasonable to dismiss the complaint on the basis that there was no reasonable prospect of conviction.

#### **2014-002 – F. Cerato v CPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority**

At a disciplinary hearing the Presiding Officer dismissed two charges of unlawful or unnecessary exercise of authority against the respondent, arising from the appellant's arrest. In his appeal, the appellant argued in his appeal that he was not provided with satisfactory opportunities to participate in the disciplinary hearing against the respondent and that the police response to his complaint was a "cover-up". The Board found there was no flaw in the disciplinary hearing process or evidence of any other improprieties sufficient to engage civilian oversight. The Board upheld that the Presiding Officer's disposition was reasonable.

#### **2014-003 – S. Boychuk v EPS**

**Allegations: Discreditable Conduct**

This appeal arises from several disputes between the appellant and her neighbors. The appellant complained that she was treated as if she was mentally ill, she was not provided with the investigation notes and she was inappropriately spoken to at the Court House. The Chief found that there was no reasonable prospect of establishing the facts necessary to obtain a conviction against any of the respondents at a disciplinary hearing. The appeal was dismissed on the basis that the Chief's determination was reasonable.

**2014-005 – A v EPS****Allegations: Deceit**

As an acting detective, the appellant drafted and swore an application for a search warrant. After the warrant was acted upon, charges were laid against an individual. The Crown prosecutor became concerned about the accuracy of one paragraph in the warrant application and the appellant was investigated. The appellant acknowledged the misstatement in the warrant application, but testified that it was a simple error, not an intentional falsehood. Having found the appellant guilty of deceit in the warrant application and in statements made to Professional Standards Branch and the Chief, the Presiding Officer dismissed the appellant from the Edmonton Police Service. The Presiding Officer's reasons were transparent, intelligible, and sufficiently laid out his reasoning. Viewed as a whole, the Presiding Officer's decisions on guilt and on penalty were within the range of reasonable, acceptable, outcomes. The Board dismissed the appellant's appeal on both the findings of deceit and the penalty of dismissal.

**Post Note:** The appellant filed an application for judicial review with Court of Queen's Bench to quash the Board's decision. The application for judicial review does not challenge the Board's decision to uphold the findings of misconduct. It seeks only to quash the Board's decision on the appeal from the penalty of dismissal. As of December 31, 2014 this matter remained outstanding.

**2014-009 – M. and C. Cahill v EPS****Allegations: Unlawful or Unnecessary Exercise of Authority  
Neglect of Duty  
Discreditable Conduct**

The appellants complained about the respondents' conduct during the execution of a search warrant at their business. They alleged the respondents made deceitful media statements and unlawfully or unnecessarily exercised their authority by detaining individuals during the search, including one of the appellants who was strip-searched and charges laid against him. The appellants also alleged the respondents negligently investigated the matter and that one respondent was guilty of discreditable conduct as he damaged equipment. The Chief dismissed all complaints on the basis that there was no reasonable prospect of obtaining a conviction at a disciplinary hearing. The Board affirmed the Chief's decision.

**2014-010 – M. and C. Cahill v EPS****Allegations: Deceit**

The respondent, a new member of the Professional Standards Branch, was assigned to investigate an earlier complaint lodged by the appellants, stemming from the execution of search warrants at their place of business. In the process of the complaint investigation, the respondent attempted to interview the appellants through written requests that they contact her for interviews. Counsel for the appellants advised the respondent that interview requests would be arranged through their office and not directly with the appellants. The respondent sent a report to her supervisor informing that she had made a number of requests for interviews and the appellants' counsel had not responded. The supervisor made a request to the Edmonton Police Commission for an extension to conclude the investigation using the respondent's report. The extension was not granted because of the apparent lack of response from the appellants. The appellants complained that the respondent had been deceitful in the information she provided. The Chief dismissed the complaint on the basis that the responsibility for ensuring accurate information rested with the supervisor. The Board affirmed the Chief's decision.

**2014-012 – A. Yousif v CPS****Allegations: Unlawful or Unnecessary Exercise of Authority  
Improper use of a Firearm  
Discreditable Conduct  
Corrupt Practice**

The respondents executed a search warrant on the appellant's home and business. The appellant was arrested; his home and business were searched with money being confiscated. The appellant was never charged. The search conducted on the home and business resulted in damages to restaurant equipment, the alarm system at the business, and to the door and ceiling tiles in the home. The appellant's vehicle was also damaged. The appellant complained that he was injured during the arrest and that the force used was illegal and unnecessary. The appellant also complained that not all of the money seized during the search was returned to him and that he was responsible for repairing the damage police had caused. The Chief dismissed all misconduct allegations on the basis that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing. The Board upheld the Chief's decision as reasonable.

**2014-014 – D. Lloyd v EPS****Allegations: Unlawful or Unnecessary Exercise of Authority  
Inappropriate Use of Force**

This appeal arises from the Board returning the original matter to the Edmonton Police Service (Decision 029-2012) for further investigation. In the second decision, the Chief dismissed the complaint on the basis that there was no reasonable prospect of obtaining a conviction at a disciplinary hearing.

The respondent officers saw the appellant urinating in public. When they called out to the appellant, he ran away. The respondents chased the appellant in their vehicle and eventually caught up with him. When one of the respondents attempted to handcuff the appellant, the other respondent struck him in the head as he perceived the appellant to be resisting. This caused the appellant's head to strike a nearby wall. The respondents later observed a contusion above the appellant's left eye. The appellant, by contrast, said he had twice been slammed up against the wall intentionally, hitting the front and then the back of his head on the wall. The Chief did not stray outside his proper screening function in deciding not to direct a hearing. His decision that there was no reasonable prospect of obtaining a conviction at a disciplinary hearing into the allegation of unlawful or unnecessary exercise of authority was reasonable. The Board upheld the Chief's decision.

**2014-015 – K. and D. Steele v EPS****Allegations: Deceit**

The appellants complained that the respondent had committed deceit during his testimony in the appellant's criminal trial. This allegation was based on statements made by the criminal trial judge regarding the respondent's testimony at trial. The trial judge found the respondent's testimony not credible and rejected his evidence. However, at the disciplinary hearing, where the respondent also testified, a different finding was made, where the Presiding Officer found the respondent officer to be a credible witness. Upon the conclusion of the criminal trial, the appellant made a further complaint to the Edmonton Police Service. When disposing of the complaint, the Chief took into account the results of the Professional Standards Branch investigation and the findings of the disciplinary hearing. The Chief dismissed the appellant's complaint on the basis that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing, and that the investigation did not reveal any conduct or actions of the respondent that would constitute a contravention of the *Police Service Regulation*. The Board upheld the Chief's decision not to direct a disciplinary hearing into the deceit allegation against the respondent.

**2014-016 – RL v EPS****Allegations: Deceit****Neglect of Duty****Discreditable Conduct****Unlawful or Unnecessary Exercise of Authority**

The respondents executed a search warrant at the home of the appellant. Information known to the Edmonton Police Service (EPS) Gang Unit members, the respondents indicated that drugs were sold from the home, that the son of the appellant was in the home and that there might be a gun in the home. The EPS Tactical Section was dispatched to expedite the entry into the home. The front door was broken down, members entered and the appellant was detained and handcuffed. The appellant's daughter was in the home at the time. The son was not in the home at the time. It was determined (or speculated) that the juvenile son may have left prior to entry. No drugs or exhibits were seized as a result of the search warrant. The appellant also informed the respondents that the adult son was incarcerated. Based on evidence presented

and arguments by the parties, the Board dismissed the appeal and affirmed the Chief's decision that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing.

**2014-017 – G. and D. McCallum v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority**

The respondents attended at the appellants' house after reports of what sounded like a gunshot in the neighborhood. They spoke with one of the appellants at the entrance to the house, indicating a desire to enter and search the premises. One of the appellants said police would not say why they wanted to search the house. After some discussion, police entered, searched and found nothing. While inside, one officer picked up a knife that was hanging on a door knob. The other appellant grabbed the knife while it was in the officer's hand and refused to let go when the officer verbally directed him to. The respondent then drew his service pistol and the appellant complied. The appellant alleged that the respondents had illegally entered and searched their house. They also alleged that the respondent's drawing of his pistol was an inappropriate use of his weapon. The Chief's decision to dismiss both complaints without a disciplinary hearing was upheld as reasonable.

**2014-020 – Cst. E. Toy v EPS**

**Allegations: Discreditable Conduct**

In the course of a Board hearing, the appellant approached opposing counsel's table during a lunch break and was observed to be looking at materials on or near the table. The counsel whose materials had been in the appellant's line of sight filed a complaint to the Edmonton Police Service. An investigation was conducted and, ultimately, the appellant was charged with one count of discreditable conduct under s. 5(2)(e) of the *Police Service Regulation* for conduct prejudicial to discipline or likely to bring discredit on the reputation of the police service. After a disciplinary hearing was conducted, the appellant was convicted of discreditable conduct. The Presiding Officer imposed a penalty of 50 hours of suspension without pay. Given the Presiding Officer's findings of fact and the application of the law, the Board concluded that the conviction and the penalty imposed were within the range of reasonable, acceptable outcomes. The appeals on the conviction and sanction were dismissed.

**2014-021 – K. Laquizee v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority**

**Corrupt Practice**

**Insubordination**

The appellant was walking in the early morning hours when he was stopped by the respondents, detained and handcuffed while his belongings were searched. The appellant's description matched that of a suspicious male the respondents had observed 10 minutes earlier. The Chief concluded there was a reasonable prospect of conviction on allegations of unlawful or unnecessary exercise of authority, but determined that the complaint could be appropriately concluded under s. 45(4) of the *Police Act* (Act). He concluded the respondents

were mistaken in their understanding of their authority and that their actions did not appear to be malicious. The Chief also alluded to the fact that the appellant's actions in dealing with the respondents had been lawful, but confrontational. The Board concluded that s. 45(4.1) of the Act eliminates the Board's role to review "non-serious" complaint dispositions under s. 45(4). The appeal from the Chief's summary disposition of the allegations of unlawful or unnecessary exercise of authority was dismissed. The Board dismissed the appeal on the remaining allegations of corrupt practice (alleged damage to the appellant's belongings) and insubordination (alleged failure to follow policy on identification) on the basis that the Chief's decision was reasonable.

**2014-022 – C. Bacon v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority  
Inappropriate Use of Force  
Deceit**

The appellant filed a complaint about the respondent's conduct when he was stopped twice. The appellant alleged he was wrongfully arrested, an unlawful search of his vehicle was conducted and the handcuffs were applied so tight that he was injured. He further alleged that the respondent used profane/abusive language and was deceitful in the preparation of the report and notes. The Chief concluded there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing and dismissed the complaints without a hearing. The Board upheld the Chief's decision as reasonable.

**2014-023 – K. Patel v EPS**

**Allegations: Neglect of Duty**

The appellant filed a complaint that the respondent neglected to investigate and lay charges against his estranged wife for lying and against his business partner for assault and threats. The Chief reviewed the respondent's investigation of the event and determined there was insufficient evidence of neglect of duty. Further, the Chief determined that the respondent's decision not to lay charges was properly founded on a lack of evidence and proper use of the respondent's discretion. The Board dismissed the appeal.

**2014-026 – Criminal Trial Lawyers' Association v EPS**

**Allegations: Discreditable Conduct**

In 2009, the respondents and JH attended an appeal hearing before the Board. Before JH testified at the hearing, one of the respondents invited JH to have coffee with him and the other respondents. JH later told counsel for the Criminal Trial Lawyers' Association (CTLA) that he had not been comfortable with the discussion, including the personal nature of some of the questions the respondents asked him. The CTLA complained about this incident to the Edmonton Police Service, which was investigated. JH declined to file a complaint. The Deputy Chief dismissed the complaint on the basis that there was no reasonable prospect of obtaining a conviction at a disciplinary hearing for discreditable conduct. Without JH's co-operation, and in light of what he told EPS investigators, the Deputy Chief's decision was reasonable.

**2014-027 – T. Brittany v EPS**

**Allegations: Corrupt Practice  
Neglect of Duty**

The appellant alleged the respondent removed cash and a ring from her purse after she had been detained and transported to the hospital. The appellant also alleged the respondent failed to properly investigate her complaint that the items had been stolen. The Chief's decision that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing was reasonable. The Board affirmed the Chief's decision.

**2014-029 – M. Rysiew v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority  
Discreditable Conduct**

The Chief dismissed complaints of discreditable conduct and unlawful or unnecessary exercise of authority against the respondents who attended the appellant's residence regarding a neighbor dispute. Although the appellant alleged the respondents talked loudly to him and were abusive and threatening, the Chief found there was insufficient evidence to support misconduct charges and dismissed the complaint. The Board dismissed the appeal as the Chief's decision was reasonable on the facts before him.

**2014-032 – Cst. S. Berube v EPS**

**Allegations: Discreditable Conduct  
Deceit  
Corrupt Practice**

The appellant was found guilty on nine of 11 counts stemming from three separate disciplinary hearings and arising from three separate incidents. The Presiding Officer imposed a global penalty of dismissal. The appellant argued that dismissal was unreasonable, particularly with respect to the manner in which the Presiding Officer addressed the issue of global penalty; the failure of the Presiding Officer to adequately and appropriately consider the evidence respecting specific aggravating and mitigating factors; and the failure of the Presiding Officer to give due consideration to consistency or parity in disciplinary sanction. The Presiding Officer's reasons were transparent, intelligible and the Board viewed the overall outcome of dismissal as within the range of reasonable and acceptable outcomes.

**2014-033 – M. Warinwa v EPS**

**Allegations: Neglect of Duty**

The Chief initiated a complaint after the appellant wrote to the Mayor, alleging that she had been subjected to harassment, poor treatment and racism by her supervisor, who was a civilian employee of the Edmonton Police Service. The appellant complained that his immediate supervisor, who was the Director of the Human Resources Department and is the respondent in this appeal, was aware of her mistreatment but did nothing to stop it. The appellant was

terminated without adequate explanation. The complaint was investigated as neglect of duty. An investigation was conducted by the RCMP. The Chief dismissed the complaint as lacking sufficient evidence to proceed to hearing. The Board dismissed the appeal finding that the Chief's conclusion of this matter was reasonable.

**2014-034 – K. Patel v EPS**

**Allegations: Neglect of Duty  
Unlawful or Unnecessary Exercise of Authority**

The appellant complained that one of respondents neglected to fully investigate the spousal assaults against him, leading to him being unlawfully arrested and charged. The appellant also complained that the other respondent unlawfully searched his vehicle, took his house keys and tried them on the residence door, removed a garage door opener from the car and gave it to the appellant's spouse. The appellant complained that police had no basis to impose conditions on him in that he was not to attend his place of business. The Chief determined there was insufficient evidence on the allegation of neglect of duty. He also determined that although the respondent did not have legal authority to take the garage door opener from the appellant's car and give it to his spouse, the respondent acted altruistically. The Chief dismissed the complaints against both respondents on the basis that there was no reasonable prospect of obtaining a conviction at a disciplinary hearing. The Board affirmed the Chief's decision and dismissed the appeal.

**2014-035 – KH v EPS**

**Allegations: Discreditable Conduct**

The appellant had applied to become a member of the Edmonton Police Service. His application had been rejected and he contacted the respondent, requesting the reason(s) for being rejected as he was dissatisfied and offended with the alleged reasons provided. The appellant contended that the respondent made discriminatory comments. The Chief reviewed the allegations and dismissed the complaint. The Board affirmed the decision of the Chief.

**2014-037 – S. Carlson v EPS**

**Allegations: Deceit**

The appellant complained that the respondent committed perjury and deceit while testifying at a Board hearing. The alleged perjury and deceit focused on earlier situations where the respondent had allegedly colluded with other officers. The appellant alleged that the Chief's investigation of her complaint was tainted, flawed or otherwise compromised in a manner engaging the Board's civilian oversight mandate. The Board did not intervene on this ground. The Board upheld the Chief's conclusion that there was no reasonable prospect of conviction at a disciplinary hearing.

**2014-038 – K. Rennie v CPS****Allegations: Unlawful or Unnecessary Exercise of Authority**

The appellant advised the Board, by email, on the cusp of her appeal hearing, that she was not able to attend, and although she had many months' notice of the scheduled particulars of her hearing, she requested an adjournment. Reasons were not provided for the adjournment. The Board advised the appellant that she would need to attend before the panel on the scheduled date and request the adjournment. The appellant advised the Board that she was out of the province. The Board sought, but received no submissions from the parties regarding costs. The Board dismissed the appeal and awarded costs of \$200.00 against the appellant.

**2014-039 – T. Sutherland v CPC****Allegations: Neglect of Duty**

The appellant complained to the Calgary Police Commission about the Chief not personally signing letters to the appellant, advising him of the status of his complaint, as required in the *Police Act* (Act). A reasonable observer would conclude, as the Board does, that the appeal lacks an air of reality and substance, and cannot succeed. The appeal was dismissed as frivolous under s. 19.2 of the Act.

**2014-041 – J. Cichon v EPS****Allegations: Neglect of Duty  
Unlawful or Unnecessary Exercise of Authority  
Discreditable Conduct**

The appellant complained that the respondents committed misconduct in the appellant's arrest and during their investigation of alleged domestic violence. The Chief's dismissal of the complaints as having no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing was reasonable. The Board affirmed the Chief's decision.

**2014-043 – E. Sobieh v EPS****Allegations: Neglect of Duty**

The appellant made a 911 call alleging that CF, whom he had a history of disagreements and confrontations with, was following and threatening him. Less than a minute later, CF made another 911 call alleging the appellant was threatening his life. The respondents were dispatched to investigate and after hearing CF's version, concluded there was sufficient evidence to arrest and charge the appellant. The appellant lodged a complaint against the respondents alleging they did not conduct a proper investigation prior to his arrest. The Chief dismissed the complaint without a hearing. The Board affirmed the Chief's decision was reasonable.

**2014-044 - R. Allard-Bourque v EPS**

**Allegations: Neglect of Duty  
Deceit**

In a telephone interview with the appellant, the respondent advised she was calling him to do a “quality assurance check”. The respondent did not advise the appellant that there was a third-party complaint relating to his treatment by police. The appellant filed an appeal alleging deceit and an inadequate investigation. Following an investigation, the Acting Chief dismissed the complaint without a hearing. The Board affirmed the Acting’s Chief’s decision was reasonable and dismissed the appeal.

**2014-045 – Cst. J. Fermaniuk v EPS**

**Allegations: Breach of Confidence  
Neglect of Duty  
Insubordination  
Deceit**

The Chief dismissed the complaint filed by the appellant, a sworn member of the Edmonton Police Service, about the manner in which the three respondents, all Professional Standards Branch (PSB) employees, treated him and investigated his complaint. The appellant alleged breach of confidence, neglect of duty, insubordination and deceit. The Chief’s decision was within the range of reasonable outcomes. While the appellant was justifiably frustrated with the investigative process, during which a series of mis-steps occurred, none of the individual complaints could reasonably be found to constitute misconduct at a disciplinary hearing. Of particular note was that PSB took steps to rectify the appellant’s concerns during the process by re-opening the complaint and investigation against the officer whose actions triggered the original investigation. The appeal was dismissed.

**2014-047 – R. Weber v EPS**

**Allegations: Neglect of Duty**

The appellant alleged the respondent neglected his duty by failing to adequately investigate and charge his former common-law spouse for removing personal belongings from the home they had shared and from his office, as well as for damaging the home. The Chief dismissed the complaint on the basis that the respondent conducted an adequate investigation, such that there was no reasonable prospect of a conviction against the respondent. The Chief’s decision was reasonable and the appeal was dismissed.

**2014-048 – P. Olsen v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority  
Discreditable Conduct  
Neglect of Duty**

The respondents mistakenly identified the appellant as the subject of a public nuisance complaint and approached him on the street. A verbal confrontation arose and the appellant

was arrested. The appellant was released a short time later without being charged. The appellant complained about the manner in which he was perceived and how he was treated. The Chief disposed of the complaint without a hearing. The Board affirmed the Chief's conclusion that the investigation was adequate and upheld the Chief's decision that there was no reasonable prospect of conviction at a disciplinary hearing.

**2014-050 – DL v EPS**

**Allegations: Neglect of Duty  
Corrupt Practice  
Discreditable Conduct  
Unlawful or Unnecessary Exercise of Authority**

The appellant complained about the respondents' actions, or lack thereof, in the appellant's dispute with his estranged spouse. The estranged spouse was concerned for her safety and on the day in question she called one of the respondents, who was off duty at that time. She stated that the appellant was trying to enter the matrimonial home. The respondent advised her to leave the house, called for police assistance and proceeded to the home himself. There had been a car chase between the off-duty respondent and the appellant. The appellant alleged corrupt practice against the off-duty respondent and alleged neglect of duty and other misconducts against him and the other respondents. The Chief determined there was no reasonable prospect of conviction at a disciplinary hearing. The Board concluded the Chief's disposition of the complaints was within the of range reasonable, acceptable outcomes.

**2014-051 – F. Quaidoo v EPS**

**Allegations: Unlawful or Unnecessary Exercise of Authority  
Deceit**

The appellant was found guilty at a disciplinary hearing of unlawful or unnecessary exercise of authority and two counts of deceit. The Presiding Officer dismissed the appellant from the police service. The appellant had no previous record of discipline and had approximately 13 years of service. The Presiding Officer determined that, in light of the deceit and the conclusion that his ability to perform operational policing duties had been significantly compromised, the appellant's dismissal was appropriate. The Board unanimously dismissed the appeal on conviction and the majority of the Board dismissed the appeal on penalty on the basis that the decision to dismiss was reasonable. The minority allowed the penalty appeal on the basis that the Presiding Officer's decision on sanction was not an acceptable and reasonable outcome.

**2014-053 – W. Sullivan v EPS**

**Allegations: Excessive Force  
Unlawful or Unnecessary Exercise of Authority**

The respondents were called to the residence of the appellant and his estranged common-law spouse. After an emergency protection order was served on the appellant, he said he would leave but did not, insisting that he was entitled to take his two children with him. At one point, the appellant took the children into his arms. His manner became uncooperative and police

considered the appellant to be aggressive. Two of the respondents used force on the appellant in order to affect his arrest. The appellant alleged excessive force was used, inappropriate comments were made by the transporting officers (including threats of violence), and he was not provided with medical attention at the station. The Chief's decision to dismiss the allegations against all respondents without a disciplinary hearing was reasonable. The appeal was dismissed.

**2014-054 – FW v EPS****Allegations: Neglect of Duty**

The appellant had a short relationship with TB which resulted in her contracting an infection. The appellant contacted Edmonton Police Service and requested criminal charges (assault) be laid against TB. The respondent investigated and no charges were laid in the matter. The appellant complained that the respondent did not complete a proper investigation into her allegations. The Chief dismissed the complaint of neglect of duty, concluding that there was no reasonable prospect of establishing the facts necessary to obtain a conviction. The Board affirmed the Chief's dismissal as falling within the realm of reasonableness.

**2014-056 – AB v EPS****Allegations: Discreditable Conduct  
Neglect of Duty**

The appellant and the father of their daughter were in an ongoing dispute over access. Due to frequent police involvement, including access exchanges, the respondent was tasked with being the Edmonton Police Service's main contact with the parties. The appellant took the daughter to visit her mother in the United States. While there, the father contacted the Canadian Border Services Agency (CBSA) expressing his concern that his daughter had been illegally taken across the border and provided the respondent's contact information. CBSA in turn contacted the respondent. On the appellant's return to Canada, she was stopped at the border. The appellant filed a complaint against the respondent alleging that she (the respondent) had contacted CBSA and informed them that the appellant had abducted her daughter. The appellant also alleged the respondent failed to lay charges against the father for breaching the peace bond by making false allegations of abduction. The Chief dismissed the complaint as having no reasonable prospect of conviction. The Board affirmed the decision of the Chief as reasonable.

**2014-058 – JR and MR v EPS****Allegations: Unlawful or Unnecessary Exercise of Authority  
Neglect of Duty**

The appellants complained about the manner in which their son was treated by the respondents when he was arrested and detained on allegations of domestic assault, how he was treated in cells, and how a subsequent break and enter complaint regarding his residence was not investigated. The Chief dismissed all three allegations as having no reasonable prospect of a conviction at a disciplinary hearing. The appeal was based on the allegation that

the Professional Standards Branch investigation was inadequate and that some of the Chief's conclusions on some of the issues were unreasonable. The Board determined the investigation was not tainted, flawed or grossly inadequate, and the Chief's decision fell within the range of reasonable outcomes.

### **2014-059 – M. Reilly v EPS**

#### **Allegations: Deceit**

The appellant alleged that the respondents committed deceit by lying during court testimony about the presence of construction workers when they stopped the appellant for speeding in a construction zone. The appellant also alleged the respondents committed deceit by inflating the speed on the ticket issued to him. The Chief's decision not to order a disciplinary hearing, on the basis that there was no reasonable prospect of conviction at a disciplinary hearing, was reasonable and the appeal was dismissed.

### **COURT OF APPEAL DECISIONS**

Section 18 of the *Police Act* provides the right for a party to apply for leave to appeal a Board decision to the Court of Appeal on a question of law. The following matters were disposed of by the Court of Appeal in 2014. Full citations of the Court of Appeal decisions are provided for reference.

#### ***Furlong v Edmonton (Police Service)*, 2014 ABCA 119**

This was the appellant's second appeal to the Court of Appeal (LERB Decision 2013-22). He appealed the decision of a new panel that heard the reconsideration of his appeal. The appellant alleged that the new panel erred in its application of the reasonableness standard by applying an unduly deferential standard of review of the Presiding Officer's decision. The Court upheld the Board's decision concluding there was no reviewable error made by the Board or the Presiding Officer in this matter. The appeal was dismissed.

#### ***Boychuk v Edmonton (Police Service)*, 2014 ABCA 163**

The appellant filed a leave application alleging that the statutory delegate was biased and applied the incorrect standard of review. The Court stated that the appellant's leave application did not meet the required test and leave denied.

#### ***Edmonton (Police Service) v Alberta (Law Enforcement Review Board)*, 2014 ABCA 267**

The EPS Chief appealed the Board's decision in Carlson (LERB Decision 006-2012), identifying the follow issues:

1. Does the *Freedom of Information and Protection of Privacy Act* (FOIPPA) bar use of any portion of the Record as evidence in a collateral matter, absent any successful

application for access made under that legislation?

2. Did the Board err in determining that the appellant's counsel could otherwise use evidence contained in the Record to support his own complaint to the Chief?
3. Did the Board err in determining that the Record would become publicly available at the conclusion of its hearings in the future, when that issue was not properly before the Board?

The Court upheld the Board's decision in *Carlson* that there is an implied undertaking not to use the record produced by a chief for other purposes. It also upheld the ruling in the Board decision on the preliminary application in *Carlson* that the record becomes publicly available at the end of the appeal hearing, subject to any sealing order that might be made, and the *Freedom of Information and Protection of Privacy Act* does not apply to prevent all this.

***Toy v Edmonton (Police Service), 2014 ABCA 383***

The applicant sought leave to the Court of Appeal arising from the Board's decision (LERB Decision *Toy v Edmonton (Police Service), 2014 ABLERB 020*) which affirmed a decision of the Presiding Officer respecting a complaint of discreditable conduct, as well as the penalty disposition by the Presiding Officer, both of which were confirmed by the Board.

Leave to appeal was denied on the issue of discreditable conduct, however, the Court granted leave to appeal on the question of penalty. As of December 31, 2014, this matter remains outstanding.