



## ALBERTA LAW ENFORCEMENT REVIEW BOARD

Citation: *AB v Edmonton (Police Service)*, 2014 ABLERB 056

Date: 20141117

**Appellant:** AB<sup>1</sup>  
**Respondent:** Chief of Police, Edmonton Police Service  
**Officers:** Det. R. Going (No. 1995)  
**Panel Members:** Ellen-Anne O'Donnell, Archie Arcand, Patricia Mackenzie

**Summary:** The appellant, the mother of PB, and SN, the father of PB, were in an ongoing dispute over access to their daughter. Due to frequent police involvement, including relating to access exchanges, the respondent was tasked with being the EPS's main contact with the parties. The appellant took PB to visit her mother in the US. While she was in the US, SN contacted the CBSA expressing his concern that his daughter had illegally been taken across the border and gave them the respondent's contact information. CBSA in turn had contact with the respondent. On her return to Canada, the appellant was stopped at the border for a period. The appellant lodged a complaint with EPS against the respondent, alleging that she (the respondent) had contacted CBSA and informed them that the appellant had abducted her daughter, and also that she failed to lay charges against SN 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 affirms the decision of the Chief as reasonable.

**Authorities Considered:** *Dunsmuir v New Brunswick*, [2008] 1 SCR 190; *Pelech v Law Enforcement Review Board*, 2010 ABCA 400; *Newton v Criminal Trial Lawyers' Association*, 2010 ABCA 399; *Land v Law Enforcement Review Board*, 2013 ABCA 435; *Penner*, Board Decision 016-2006; *Bergmann v Neumeier*, 2013 CanLII 48827 (AB LERB); *Hill v Hamilton-Wentworth Regional Police Services Board*, [2007] 3 SCR 129.

**Legislation Considered:** *Police Act*, RSA 2000, c P-17; *Police Service Regulation*, Alta Reg 356/1990

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### INTRODUCTION

[1] The appellant, the mother of PB, and SN, the father of PB, were in an ongoing dispute over access to their daughter. Due to frequent police involvement, including relating to access exchanges, the respondent was tasked with being the main contact with the parties on behalf of the Edmonton Police Service ("EPS").

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<sup>1</sup> The appellant's identity has been obscured to protect a minor.

[2] On July 1, 2012, the appellant travelled to the US with her family, including PB, the biological daughter of SN. SN contacted the Canadian Border Services Authority (“CBSA”) and informed them he believed PB was not to be taken out of the country and that he feared she would not be returned. He gave the CBSA the respondent’s contact information. The CBSA left a telephone message for the respondent. The respondent returned their call and informed CBSA of the ongoing dispute between the parents, and suggested that if either parent attempted to cross the border with the child, the paperwork related to the child should be closely examined.

[3] When returning to Canada, the appellant was stopped at the border and questioned by a CBSA officer and her vehicle was searched, causing a delay of over an hour. She provided them with the necessary documents and information concerning her guardianship of PB. The CBSA officer advised the appellant that they had received a tip from SN that the appellant had abducted the daughter and feared she would not be returned to Canada.

[4] Upon her return to Edmonton, the appellant made inquiries, including a *Freedom of Information and Protection of Privacy Act* (“FOIPPA”) request, which showed that the respondent had been in touch with the CBSA. The respondent’s name and contact information was on the CBSA “look out” sheet which also stated that “the child may have been abducted”.<sup>2</sup> From this document the appellant formed the belief that the respondent had reported the child as abducted, resulting in her delay at the Canadian Border upon re-entry into Canada.

[5] The appellant was further concerned that SN had not been investigated and charged for breaching the peace bond against him, by calling the CBSA and falsely claiming their child was being abducted. She was also concerned about why the respondent had been involved with CBSA concerning PB. She believed that the respondent had called CBSA and reported PB missing and wondered why, if that was the case, she had not initiated an Amber Alert or attempted to reach her. She further complained that the EPS had assigned the respondent to her case for the purpose of having her ‘go away’, instead of properly dealing with her ongoing concerns with SN.

[6] The appellant filed a complaint against the respondent alleging the following misconducts, which the Chief caused to be investigated pursuant to s 5 of the *Police Service Regulation* (“PSR”):

- Discreditable conduct in that the respondent had called CBSA and reported that the appellant had abducted her daughter;

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<sup>2</sup> Record, p 161.

- Neglect of duty in that the respondent believed the appellant had abducted PB, but did not initiate an Amber Alert or attempt to contact the appellant;
- Neglect of duty in that the respondent failed to charge SN with breaching the peace bond; and
- Complaint of service as the appellant alleged that EPS assigned the respondent to her case “to make her go away” and not to assist in her in dealing with her ongoing issues with SN.<sup>3</sup>

[7] On reviewing the evidence in the record, the Chief dismissed the complaint, concluding that insufficient evidence existed to reasonably support a conviction on any of the allegations at a disciplinary hearing. For the reasons given below, the Board affirms the decision of the Chief as reasonable.

[8] In her notice of appeal, the appellant alleged that the Chief improperly characterized her complaints, that the investigation was inadequate, and that the outcome was unreasonable. She sought a re-investigation of her complaint with the proper characterizations.

[9] In her notice of appeal, the appellant appealed the finding on Allegation # 4, a complaint of service, which does not fall within the jurisdiction of Board. It may only be appealed to the Edmonton Police Commission, as mandated by the *Police Act* (“Act”).<sup>4</sup>

[10] The appellant abandoned the appeal with respect to the alleged failure of the respondent to issue an Amber Alert, acknowledging that she did not have the authority to do so.

## ISSUES

[11] The issues before the Board are:

1. Did the Chief adequately characterize and investigate the complaints?
2. Was the Chief’s disposition of the complaint reasonable?

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<sup>3</sup> Appellant’s written submission, p 4.

<sup>4</sup> Act, s 44(1) Where a complaint is a complaint as to the policies of or services provided by a police service, the chief of police shall review the matter, and either “take whatever action the chief considers appropriate, if any”, or “refer the matter to the commission for it to take whatever action it considers appropriate”.

## DISCUSSION

### ***Standard of review***

[12] The Alberta Court of Appeal has established that the standard the Board is to apply to review a decision reached by the Chief is one of reasonableness.<sup>5</sup> This requires the Board to determine whether the outcome was within the range of reasonable, acceptable outcomes based on the facts and law. Only if the outcome was not reasonable can the Board intervene. A reasonableness review also involves looking for intelligibility, transparency, and justification in the decision under review.<sup>6</sup>

[13] Where a police chief dismisses a complaint, as here, on the basis that there is no reasonable prospect of conviction, the Board must, in reviewing for reasonableness, determine whether the Chief reasonably concluded that there was not enough evidence that a reasonable and properly instructed person could convict at a disciplinary hearing.<sup>7</sup>

### ***Did the Chief adequately characterize the complaints?***

[14] The appellant submitted the Board has the authority to return the matter to the Chief for a more thorough investigation and cited para 22 of *Penner*<sup>8</sup> as the authority for doing so.

[15] The appellant further argued that as a result of the incomplete investigation, the Chief truncated and mischaracterized the appellant's complaint detailed in her letter of March 26, 2013.

[16] The appellant alleged that the manner in which the Chief characterized the initial complaints, into three areas of investigation and a complaint of service, "truncated" the complaints.<sup>9</sup> The Chief characterized the complaints as follows:

1. Discreditable conduct in that it was alleged the respondent called the CBSA to report that the appellant had abducted the child;
2. Neglect of duty, in that if the respondent believed that the appellant had abducted the child, why did she not initiate an Amber Alert;

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<sup>5</sup> *Pelech v Law Enforcement Review Board*, 2010 ABCA 400; *Newton v Criminal Trial Lawyers' Association*, 2010 ABCA 399.

<sup>6</sup> *Lloyd v Edmonton (Police Service)*, 2014 ABLERB 14 (CanLII) [*Lloyd*].

<sup>7</sup> *Lloyd and Land v Law Enforcement Review Board*, 2013 ABCA 435 [*Land*].

<sup>8</sup> Board Decision 016-2006.

<sup>9</sup> The term "truncated" was used by the appellant to suggest the Chief had narrowed down her allegations in order to limit their scope, and that therefore the investigation and findings did not cover the entirety of her complaint.

3. Neglect of duty in that it was alleged SN had reported the child abducted, which was a breach of the peace bond, and that the respondent should have charged SN; and
4. That the EPS had assigned the respondent to make the appellant go away instead of properly dealing with the issues with SN.<sup>10</sup>

[17] The appellant's brief sets out her proposed re-characterization of the complaints. The allegations the Chief should have investigated, according to the appellant, are:

- Det. Going was negligent in investigating the complaint by SN to CBSA;
- Det. Going misled CBSA by either reporting that PB was abducted or missing;
- Det. Going should have known that the complaint by SN was likely false and complained only to cause more problems; and
- Det. Going should have investigated SN's complaint to determine whether it was mischief or a breach of the peace bond.<sup>11</sup>

[18] The Chief is required to characterize the complaints under the various types of misconduct set out in the PSR. The characterizations made by the Chief of the various allegations adequately addressed the substance of the appellant's complaints. The substance of her complaints was then investigated. So long as the substance of the complaint and potential charges are addressed by the Chief, minor omissions or inconsistencies will not reach the threshold of a "tainted, flawed, or grossly inadequate" investigation or a compromised investigation, which is what is required for the Board to intervene.<sup>12</sup>

***Did the Chief adequately investigate the complaint?***

[19] The appellant identified specific concerns with the investigation:

1. EPS's Professional Standards Branch ("PSB") failed to properly question the appellant and the respondent;
2. PSB failed to question CBSA; and

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<sup>10</sup> Record, p 27.

<sup>11</sup> Appellant's submission, p 6, para 33.

<sup>12</sup> *Bergmann v Neumeier*, 2013 CanLII 48827 (AB LERB).

3. PSB failed to obtain important evidence.

[20] The appellant argued that the PSB contact with her was simply telephone interviews, not an in-person interview, and that more questions could have been asked of her. She further claimed that, because the respondent was never interviewed, but simply was requested to provide a statement, this was inadequate. There are numerous questions that should have been asked of the respondent, the appellant argued, including:

- Her awareness of previous false complaints by SN;
- SN's history of assaults;
- What did the respondent actually say to CBSA; and
- Why did she not contact the appellant prior to calling CBSA.

[21] Though the appellant disagreed with the categorizing of the complaint, the appellant nevertheless addressed two of the complaints characterized by the Chief and dropped one complaint concerning the failure to initiate an Amber Alert.

[22] The appellant stated that she was clear in her complaint letter that she was dissatisfied with how the respondent handled the call made to CBSA, and that the appellant may have abducted PB and might not return to Canada. The Chief failed to investigate the reasons why the respondent did not contact the appellant prior to her contacting CBSA. The respondent had the contact telephone numbers for the appellant and she was also well aware of the past difficulties the appellant had with SN. If the respondent had contacted the appellant, she would have been informed of her travel plans and could have passed this information to the CBSA. Because of the incomplete PSB investigation, not interviewing the respondent and not interviewing the CBSA officer who was in contact with the respondent, we do not know the total information given to CBSA by the respondent. The Chief did not, therefore, have all the pertinent information when he made his decision to dismiss this complaint.

[23] The appellant added that SN had a history of harassing her and had assaulted her in the past, resulting in a peace bond. The respondent was assigned as a facilitator and problem solver between the appellant and SN when issues arose between them concerning visits with PB and SN. She knew the history of assault and harassment. The Chief failed to fully investigate the inaction of the respondent in not charging SN with breaching the peace bond, since his call to CBSA was a false allegation and harassment of the appellant. The respondent should have known this and laid the charge. The Chief's decision, given the history of the matter, and the respondent's knowledge of it, was not reasonable.

[24] The appellant also alleged that the Chief failed to consider whether the PSB investigation was adequate in his disposition of the complaint, and that therefore, somehow, this rendered his decision unreasonable. The Board sees no basis in law for the argument that the Chief needs to explicitly address in his disposition whether his own investigation was adequate. His review of the complaint, the investigative steps and findings as set out in his disposition letter, are sufficient for him to make a disposition.

[25] Counsel for the respondent disagreed that the Chief's investigation was not adequate. The allegation that the investigation did not include adequate information from the appellant is not supported by the record. The PSB had three phone interviews with the appellant totalling more than 50 minutes and the appellant submitted a lengthy complaint letter where she itemized her concerns and provided supporting information.

[26] In the respondent's written submission, counsel stated:

... Although the Appellant suggests that PSB failed to properly question her, no specifics are given as to what additional evidence would have been provided or what specific questions the Appellant should have been asked. It is very apparent from the Appellant's written complaint and her discussions with the Detectives that she wanted an investigation in Det. Going's conduct, her contact with CBSA and why charges were not laid against [SN] for breaching the Peace Bond. The investigation did in fact proceed. The Appellant has not articulated what additional information would have been obtained from her either over the phone or in person and in any event, has failed to establish that the investigation was inadequate or compromised in this regard.<sup>13</sup>

[27] The appellant's allegation that the Chief mischaracterized her complaint is not supported by the record. The appellant submitted that the Chief should have investigated the respondent for failing to contact her before contacting the CBSA, should not have led CBSA to believe that PB was abducted, should have known that SN's allegations were false, and should have charged SN with breach of the peace.

[28] The respondent disagreed, stating:

It is submitted on behalf of Det. Going that when one reviews the entirety of the Record it is clear that the substance of the Appellant's complaints was in fact addressed and that the investigation was responsive to those complaints. It is submitted that the Chief did not mischaracterize or truncate the Appellant's complaints. Further, appropriate potential misconduct charges were considered and a reasonable investigation was completed in the circumstances.<sup>14</sup>

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<sup>13</sup> Respondent's written submission, p 13, para 43.

<sup>14</sup> Respondent's written submission, pp 5-6, para 20.

[29] In his disposition letter, the Chief stated after reviewing the record that:

- The respondent did not contact the appellant regarding the CBSA’s involvement because she had done nothing wrong;
- It was appropriate for the respondent to return the call to CBSA concerning the appellant and she did not inform them that PB was abducted or missing, but provided information about the relationship between the appellant and SN; and
- The respondent investigated the actions of SN and reached a reasonable conclusion when satisfied that SN had a genuine concern that PB may not return to Canada and that SN was not being malicious or mischievous and did not breach the peace bond.

[30] The Board notes that, even if the actions of SN had been improperly motivated, the respondent would have had the discretion to determine whether or not to lay a charge in all the circumstances.<sup>15</sup>

[31] The Chief submitted that Board should not interfere, stating:

*...“unless the Board decides that the process before the Chief was compromised in a way that calls into play the Board’s mandate to provide civilian oversight”.*<sup>16</sup>

The Board can only intervene when the investigation was conducted in a manner that “*tainted*” the Chief’s decision. The Court of Appeal delineates the circumstances when the Board’s civilian oversight will be engaged by explaining;  
*“If it concludes that the investigation that created the record before the chief of police was **tainted, flawed or grossly inadequate**, that would engage its role of civilian oversight”*<sup>17</sup> [Chief’s emphasis]

[32] The Chief referenced *Pelech*, which further gives the direction that the Chief has the discretion to determine how a complaint is investigated:

A complaint such as the Criminal Trial Lawyers’ Association does not have a right to have every complaint investigated and processed to the fullest extent...

...

Not every complaint justifies an investigation that exhausts every possible lead, and the Chief is entitled to allocate his limited resources in a reasonable way. Simply because the investigation failed to turn over every stone does not make it unreasonable. Neither

<sup>15</sup> *Hill v Hamilton-Wentworth Regional Police Services Board*, [2007] 3 SCR 129 2007 SCC, para 55.

<sup>16</sup> Chief’s written submission, p 3, para 8.

<sup>17</sup> Chief’s written submission, p 3 para 9.

the complainant nor the Board are entitled to take over every investigation; the Chief is the one granted jurisdiction to investigate complaints.<sup>18</sup>

[33] In reviewing the record, the Chief noted that the review of the appellant's concerns by Detective Pennie, the PSB investigator was "thorough". In considering each of the alleged misconducts, the Chief discussed all the relevant evidence and, in the Board's view, he was alive to:

- The conduct of the respondent in her interaction with CBSA;
- The information provided by the respondent to CBSA; and
- The role and conduct of SN concerning whether he breached the peace bond and whether the exercise of discretion not to charge him was reasonable.

[34] On all fronts, the Chief concluded that there was insufficient evidence to justify charges under the PSR, as there was no reasonable likelihood of obtaining a conviction at a disciplinary hearing. In his view there was no evidence in support of any of the allegations of wrongdoing.

[35] After reviewing the record and the written submissions, and upon hearing oral submissions, the Board affirms that the decision reached by the Chief was reasonable.

[36] First, there was little evidence to support the allegation that the respondent had advised the CBSA that the child had been abducted. It is clear however, that SN made the allegation to CBSA. The explanation of the respondent's return phone call to the CBSA as a professional courtesy, and the information provided regarding the acrimony between the parties, were within the Chief's purview to accept and his doing so was reasonable. The "look out" sheet had mistakenly referred to the respondent as being from the Royal Canadian Mounted Police when that was not the case. It could not be relied upon to confirm the respondent as the source of the abduction allegation, especially in light of the fact that SN had initiated that claim.

[37] The advice to the CBSA to check the travel documents of either parent was insufficient to warrant a disciplinary charge; indeed, the policies for the CBSA mandated that this be done in any event, where one parent is travelling with a minor. It is difficult to see how the respondent contacting the appellant regarding CBSA would have affected the events at the border, given the policies that govern CBSA. There was no obvious need or reason why the respondent should have contacted the appellant. The Board finds that it was reasonable for the

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<sup>18</sup> Chief's written submission, p 4, para 11.

Chief to determine there was no reasonable likelihood of a conviction at a disciplinary hearing for the phone interactions the respondent had with the CBSA.

[38] As to the failure to investigate and charge SN with breach of the peace bond or mischief for making a false allegation of abduction, the Board finds that the Chief's disposition was reasonable. The wording of the peace bond clearly required contact with the appellant, which did not occur here. There was, furthermore, little evidence to justify pursuing the charge, including because there was a suggestion that SN apparently believed that the appellant might not return the child. The respondent exercised her discretion not to charge SN for making the allegation, and there was no evidence before the Chief of any impropriety in that exercise of discretion.

[39] The Chief was tasked with performing a screening function to determine if there was sufficient evidence to justify sending the complaint to a hearing. He concluded there was not. The Board, in reviewing the decision, has determined that there was a clear line of analysis delineated in the disposition leading to the Chief's conclusions on each of the allegations, wherein he found insufficient evidence on each one. In the Board's view, the disposition adequately captured the essence of the appellant's complaint and the findings on each count were reasonable, based on the record. As the conclusions of the Chief were tenable and reasonable on the evidence, the Board will not intervene.

[40] In reviewing whether the investigation was adequate, the Board takes its direction from *Pelech*, which clearly states that the responsibility to investigate and how to investigate a complaint is the responsibility of the Chief. The Board is not to interfere unless the investigation and the process were "tainted, flawed and grossly inadequate".<sup>19</sup>

[41] The Board finds that the PSB obtained sufficient information from the parties involved and provided the Chief with the information he needed to reach a reasonable decision. The Chief is not required to pursue every possibly avenue or line of inquiry in an investigation; he has the discretion to determine how the investigation will be conducted. The Board does not find the process was tainted, flawed or grossly inadequate, but that it was transparent and reasonably complete.

[42] In reviewing the complaints the appellant identified as those that should have been investigated by the Chief, the Board concludes that the Chief was alert to those issues and reasonably addressed them in his disposition letter.<sup>20</sup>

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<sup>19</sup> *Pelech*, para 36.

<sup>20</sup> Record, pp 26-31.

**CONCLUSION**

[43] The Board affirms the Chief’s decision and dismisses the appeal.

Edmonton, Alberta

November 17, 2014

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Ellen-Anne O’Donnell  
Presiding Member

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Archie Arcand  
Member

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Patricia Mackenzie  
Member

For the appellant: K. Engel  
For the respondents: S. Weber  
For the Chief of Police: T. Magee