

In the matter of the *Police Act*, R.S.A. 2000, c. P-17 and
In the matter of the *Police Service Regulation*, Alta. Reg. 356/1990

And in the matter of complaints made by Mr. E.F. and disciplinary
proceedings taken against Constable A.B. and Constable C.D. of the
Edmonton Police Service

DECISION

Superintendent Thomas Grue
Presiding Officer

I. Introduction

A. Disciplinary Charges

Constable A. B. and Constable C.D. were each charged with multiple counts of disciplinary misconduct arising from their interaction with the complainant, Mr. E.F.. The jurisdiction of this tribunal to conduct a hearing with respect to all of the disciplinary charges, save one, was brought into question. It was agreed by all parties that evidence for the prosecution concerning all counts alleged against both officers would be heard with the caveats that:

1. A decision would only be rendered with respect to one count alleged against Constable A.B. (set out below) over which jurisdiction was not contested; and
2. Should it be determined at a later date that this tribunal does in fact have jurisdiction over the remaining charges, the defence would then be permitted to present evidence and argument for the purpose of answering the prosecution's case.

The Count Over Which Jurisdiction was Not Contested

The count over which jurisdiction was not contested was directed against Constable A.B. and reads as follows (count #4 in the Notice and Record of Disciplinary Proceedings):

Breach of Confidence pursuant to section 5(1)(a) of the Police Service Regulation as further defined by Section 5(2)(a)(i), the particulars of which are that on or about February 10, 2004 you spoke with G.H., who was the owner and landlord of an

apartment located at #2, 10711 -- 104 Street in Edmonton, by telephone or in person, or both and you advised Mr. G.H. of one or more of the following:

- (a) E.F. might be a trouble tenant;
- (b) E.F. is or associates with known gang members;
- (c) E.F. may traffic in drugs;
- (d) Mr. G.H. may require assistance from police to deal with E.F.;

Contrary to Edmonton Police Service Policy and Procedure Part 16, Chapter A, Section (B)(2).

B. Jurisdiction

Jurisdiction to hear this matter has been conceded by both the prosecution and defence.

As indicated above, the decision contained herein relates solely to the aforementioned count.

II. Issues for Determination

There are potentially two key issues that must be determined with respect to the aforementioned disciplinary charge:

1. Did Constable A.B. advise Mr. G.H. (Mr. E.F.'s landlord) that Mr. E.F. might be a trouble tenant, was a gang member or associated with known gang members, might be trafficking in drugs, or might require assistance from the police to deal with Mr. E.F.?
2. If Constable A.B. did communicate such information to Mr. G.H., did this communication constitute a Breach of Confidence in violation of the *Police Service Regulation*?

If the first issue is not established on the evidence, then the second issue becomes irrelevant.

III. Facts Not in Dispute

An Agreed Statement of Facts was tendered as an Exhibit (Exhibit #5) in these proceedings. Additionally, the complainant, Mr. E.F., and Mr. G.H. testified as witnesses.

A. Agreed Statement of Facts

The Agreed Statement of Facts tendered as evidence in these proceedings state as follows:

1. In February, 2004, Mr. E.F. was evicted from his apartment. On February 5, 2004, Mr. E.F. contacted Mr. G.H., owner of an apartment building at 10711 -104 Street in Edmonton, Alberta to inquire about renting an apartment in the building.

2. On February 6, 2004 Mr. G.H. met with Mr. E.F. and Mr. E.F. arranged to rent apartment #2 at 10711 – 104 Street. Mr. G.H. gave Mr. E.F. the keys to apartment #2 on February 6, 2004.
3. On February 7, 2004, Mr. E.F. and a companion Ms. I.J. were using a payphone across the street from 10711 – 104 Street when they were approached by three Edmonton Police Service Constables: Cst. A.B., Cst. C.D. and Cst. K.L..
4. Cst. A.B. has been a member of the Edmonton Police Service since September 29, 1997.
5. Cst. C.D. has been a member of the Edmonton Police Service since May 20, 1997.
6. Cst. K.L. arrested Ms. I.J. on an outstanding warrant while Cst. A.B. and Cst. C.D. spoke with Mr. E.F..
7. Following their discussions with Mr. E.F., Cst. A.B. and Cst. C.D. accompanied Mr. E.F. to his apartment.
8. Attached as Schedule "A" [to this Agreed Statement of Facts] is a copy of the Edmonton Police Service policy 16-A-12 "Other Inquiries" in effect in February, 2004.
9. Attached as Schedule "B" is a copy of the Edmonton Police Service policy 1-D "Authority and Responsibilities" in effect in February, 2004.

B. Summary of Mr. E.F.'s Uncontradicted Evidence

In addition to the aforementioned Statement of Facts, Mr. E.F. provided evidence at the disciplinary hearing. He testified that he responded to an ad in the paper with respect to the aforementioned apartment. He spoke with Mr. G.H. (the landlord), who gave him keys to the apartment.

There appears to be an inconsistency with respect to the dates provided in the Agreed Statement of Facts and Mr. E.F.'s recounting of the incident in question as it relates to the relevant timeline. While this discrepancy is inconsequential to my decision, it is mentioned inasmuch as the dates of certain events cannot be provided with precision.

Mr. E.F. testified that when he had dealings with the police as noted in the Agreed Statement of Facts, one of the Constables told him that they did not want him living at the aforementioned apartment and were going to phone his landlord and tell him so. Mr. E.F. was not certain which Constable told him that they were going to call his landlord, but thought it was Constable C.D..

It would appear that on Monday, February 9, 2004 (three days after renting the aforementioned apartment) Mr. E.F. was advised by Mr. G.H. that the police had contacted him (that is, Mr. G.H.). Mr. G.H. told the complainant that the police told him (Mr. G.H.) that he (Mr. E.F.) might be selling drugs and was possibly a gang member. Accordingly, Mr. E.F. returned the keys to the apartment, thus ending his tenancy.

C. Summary of Mr. G.H.'s Uncontradicted Evidence

Mr. G.H. testified that he was the property manager for the apartment building in question. He stated that Mr. E.F. approached him about renting apartment #2 in this building. According to Mr. G.H., Mr. E.F. advised him that he had recently gotten out of hospital after being diagnosed with a serious cancer and wanted a place to stay while he waited to die. Mr. G.H. agreed to rent the apartment to Mr. E.F. after Mr. E.F. agreed to "all the conditions" that all tenants were to abide by, which included no drugs or drug trafficking. Mr. E.F. assured him he would comply and that he just wanted a quiet place to stay while he waited to die.

After renting the apartment to Mr. E.F., he received a call from Constable A.B. (he could not remember the date). Constable A. B. asked him to confirm if Mr. E.F. was allowed to be living in the above noted suite. He did confirm Mr. E.F. was allowed to live there and asked Constable A.B. why he asked. Constable A.B. would not provide him with any information.

Mr. G.H. then contacted Mr. E.F., asking why the police had contacted him. At this point, he appeared to be already concerned about Mr. E.F. with regard to bringing in traffic that was causing his tenants concern. He then incorrectly advised Mr. E.F. that he would be meeting with the police there in 15 minutes to half an hour. He also told him that he would call the police there every day if he saw Mr. E.F. bringing undesirable traffic to his suite. His purpose in telling Mr. E.F. these things was to scare or pressure him into moving out.

At one point during his testimony, Mr. G.H. was referred to a letter he wrote concerning the matters in question. He repudiated the details contained in the letter that are germane to the disciplinary charge against Constable A.B.. Specifically, he stated that the following points made in the letter were not true:

- That Constable A.B. told him Mr. E.F. might be a trouble tenant.
- That Constable A.B. told him the police suspect Mr. E.F. was a gang member or drug dealer.

Mr. G.H. did confirm that he met with Constable A.B. at police headquarters, which I understood was after Mr. E.F. had moved out. At this time, Constable A.B. told him that if he needed any help he could either call the officer or the police dispatch line.

In summary, I understood Mr. G.H.'s evidence was that he no longer wanted Mr. E.F. as a tenant given the undesirable traffic Mr. E.F. was bringing to the apartment and after receiving a call from Constable A.B. wherein he was asked to confirm whether Mr. E.F. was allowed to be living in the suite in question (even though he did not receive any information from the officer). Accordingly, he tried to pressure Mr. E.F. into leaving by making up a story concerning an imminent meeting with the police. I also understood that Mr. G.H. thought he

would be helping the police by making up some of the information in the letter he provided for the investigation. However, it appears he did not understand the nature of the Professional Standards investigation until after he provided the above noted letter.

Mr. G.H. testified that Mr. E.F. called him after moving out of the apartment and complained of harassment by Mr. G.H.. Mr. G.H. tried to resolve the matter by agreeing to rent back the apartment to Mr. E.F. upon receipt of rent and damage money within three days. Mr. G.H. indicated that Mr. E.F. never showed up.

IV. Disputed Facts

While there were some factual contradictions or inconsistencies *vis-à-vis* the evidence provided by Mr. E.F. and that provided by Mr. G.H, I find that they related to peripheral details that did not have a bearing on either the disciplinary charge in question or factors relating to credibility or reliability concerning this particular charge.

V. Witness Credibility and Reliability

Mr. E.F.'s credibility and reliability as a witness has little to do with the disciplinary charge under consideration. This is because the accusation made against Constable A.B. is based upon information he allegedly provided to Mr. G.H.. If it cannot be established that the cited officer provided to Mr. G.H. the information upon which the disciplinary charge is based, then it does not matter that Mr. E.F. correctly recounted his conversation with Mr. G.H..

The credibility and reliability of Mr. G.H. is, therefore, of critical importance. In this regard, and as indicated *supra*, Mr. G.H. forthrightly admitted that he did not want Mr. E.F. to remain as a tenant and tried to pressure him into leaving by making up a story concerning an imminent meeting with the police. Mr. G.H. also frankly admitted that he thought he would be helping the police by making up some of the information in the letter he provided for the investigation. Mr. G.H. effectively repudiated the written statement he provided concerning the incident. I have no reason to disbelieve Mr. G.H.'s testimony.

VI. Argument and Analysis

In closing argument, the Presenting Officer fairly conceded that there was insufficient evidence to sustain a conviction with respect to the charge in question. Naturally, defence counsel concurred with this assessment.

The case for the prosecution depended on the evidence provided by Mr. G.H.. In this regard, Mr. G.H.'s testimony contradicted and otherwise did not support the allegations set out in the disciplinary charge against Constable A.B..

VII. Decision

The charge against Constable A.B. is dismissed as it has not been proven.

Superintendent Thomas Grue
Presiding Officer

Mr. G.D. Sim

Presenting Officer:

Counsel for Constable A.B.:

Mr. M. R. Danyluik

Issued in the City of Edmonton, Province of Alberta, the 11th day of July, 2011.

Attachment

EXHIBITS

- Exhibit 1 - Memorandum dated 2010 October 13 appointing Superintendent Grue as the Presiding Officer.
- Exhibit 2. - Memorandum dated 2010 October 13 appointing Mr. Gregory Sim as the Presenting Officer.
- Exhibit 3. Notice and Record of Disciplinary Proceedings with respect to disciplinary charges filed against Constable C.D..
- Exhibit 4 Notice and Record of Disciplinary Proceedings with respect to disciplinary charges filed against Constable A.B..
- Exhibit 5. Agreed Statement of Facts and excerpt from EPS Policy and Procedure.
- Exhibit 6. Letter from Mr. E.F. dated February 12, 2004.
- Exhibit 7. Statement from Mr. E.F. dated June, 2004.
- Exhibit A For Ident. Statement from Mr. G.H..

