

## LAW ENFORCEMENT REVIEW BOARD

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

AND IN THE MATTER OF the Appeal of Craig Williamson (the “Appellant”) concerning complaints Cst. Charlene Douglas, Cst. Kevin Douglas, Cst. Regan James, Cst. Scott Innes, Cst. Renee Martynuik, Cst. Darryl Scherr, Cst. Cory Dundas, Cst. James Elliott and Det. Francine McVeigh of the Edmonton Police Service (the “EPS”).

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### JUDGMENT OF THE BOARD

(Callihoo, Goresht, Arcand)

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### MATTERS BEING APPEALED

[1] The Appellant appeals the written decision of the A/Chief of Police, Edmonton Police Service dated September 20, 2005. This decision dismissed all allegations made by the Appellant in his written complaint dated August 19, 2003 where he alleges misconduct by nine EPS officers: Cst. C. Douglas; Cst. K. Douglas; Cst. R. James; Cst. S. Innes; Cst. R. Martynuik; Cst. D. Scherr; Cst. C. Dundas; Cst. J. Elliott and Det. F. McVeigh (the “Respondents”). The allegations included:

- a. Unlawfully evicting the Appellant from his residence.
- b. Taserung a visitor at the residence of the Appellant.
- c. Unlawfully assaulting the Appellant including an assault with a weapon.

- d. Unlawfully detaining, kidnapping and confining the Appellant.
- e. Not providing access to medical services to the Appellant when requested and required.
- f. Unlawfully strip searching the Appellant.

## **BACKGROUND**

[3] The Appellant was 50 years old at the time of the incident and is described as five feet four inches tall and weighing approximately 100 lbs. The Appellant was born with cerebral palsy.

[4] The Board heard testimony from four witnesses, the Appellant and the Respondents.

[5] On April 13, 2002, the EPS received a call from Mr. Ed Kwoon advising of a break and enter was in progress at a rental property he owned. The Appellant was a resident tenant in this building. As a result of the call the Respondents were dispatched to the call.

[6] It became apparent to the Respondents that a break and enter was not in progress, but that Mr. Kwoon wished to have the Appellant removed from his property for not complying with the terms of the lease agreement. The landlord claimed the Appellant, (the tenant), was not to have any visitors at his suite. Mr. Kwoon had in his possession an eviction notice, or Order of Possession, for the Appellant. Mr. Kwoon made this document available to Respondent Douglas.

[7] Based on the authority of an "Order of Possession", the Respondents entered the residence of the Appellant. A physical confrontation took place between some of the Respondents and some of the visitors in the Appellant's suite. There was evidence that liquor had been consumed in the Appellant's suite as empty bottles were observed. All the visitors were escorted out of the suite, leaving the Appellant, Mr. Kwoon and the Respondents at the scene.

[8] When some of the Respondents entered the suite the Appellant was lying in his bed. The Respondents conducted a CPIC (Canadian Police Information Center) check. The results revealed there

were a number of outstanding warrants against the Appellant. Based on this information the Appellant was informed that he was being arrested on outstanding warrants and that he would need to accompany them to the Headquarters for processing.

[9] The Appellant was advised to get out of bed. The Appellant was not wearing any clothes at the time. One of the officers assisted the Appellant in putting on his clothes prior to being transported to Headquarters.

[10] At Headquarters, the Appellant was booked and processed. While in the search area the Appellant was not fully co-operative and physically resisted the officers who wanted to conduct a strip search. During the strip-search one of the Respondents held the Appellant while another Respondent tasered the Appellant. It is alleged that the officers attempted to apply the taser to the Appellant at least three times and made full contact at least once. The Appellant was subsequently strip searched and incarcerated.

## **BOARD'S AUTHORITY**

[11] When an Appellant appeals the decision of a Chief of Police to the Board and no hearing has been held by the Chief of Police, the Board may:

- a. affirm the decision of the Chief of Police to not hold a hearing;
- b. direct that the Chief of Police hold a hearing;
- c. direct that the Chief of Police lay a charge under the regulations governing the discipline or performance of police officers;
- d. direct the Chief of Police to investigate the matter again;
- e. Take any other action the Board considers proper in the circumstances.<sup>1</sup>

[12] As stated in LERB Board decision 014-2006:

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<sup>1</sup> Police Act, R.S.A. 2000, c. P-17, s. 20(2)(b)

*“the Board must base its decision on the evidence received by the Board in the hearing, the Board’s task in connection with these appeals is to determine the appropriateness of exercising the powers granted to the Board under subsection 20(2)(b) of the Act. Since no hearing has been held at the service level, as the Board pointed out in its judgment 003-2006, at this point in the disciplinary regime established under the Act, the Board must determine whether the Acting Chief’s decision should be affirmed or whether the Appellants’ matters ought to be returned to the Chief of Police for further investigation, the laying of charges or the holding of a disciplinary hearing before a presiding officer. The Board must determine whether the evidence presented to it is such that there is a reasonable prospect that a presiding officer might, upon hearing the evidence and assessing the credibility of the witnesses, conclude that some type of misconduct had occurred.”*

[13] The Board has the responsibility to hear and assess the evidence before it at a de novo hearing and may reach a different conclusion than the Chief of Police in reviewing the complaint.

## **DECISION**

[14] The Board affirms the decision of the Chief of Police to dismiss the allegations brought against: Cst. R. Martyniuk; Cst. C. Dundas; Cst. D. Scherr; Cst. J. Elliott; and Det. F. McVeigh.

[15] The Board returns the following matters to the Chief of Police and directs that a hearing be conducted pursuant to Section 20(2)(b)(ii) of the *Police Act* on the following allegations of misconduct as set out under Section 5 of the *Police Service Regulation* (the “PSR”) against the Respondents as listed below.

- a. Unlawful or Unnecessary Exercise of Authority against Cst. C. Douglas (section 5(2)(i)(i) of the PSR) for entering the Appellant’s suite without proper authority.
- b. Unlawful or Unnecessary Exercise of Authority against Cst. R. James (section 5(2)(i)(i) of the PSR) for entering the Appellant’s suite without proper authority.
- c. Unlawful or Unnecessary Exercise of Authority against Cst. S. Innes (section 5(2)(i)(i) of the PSR) for conducting an unnecessary strip search on the Appellant and (section 5(2)(i)(ii) of the PSR) for participating in the application of the taser to the Appellant.
- d. Neglect of Duty against Cst. S. Innes (section 5(2)(h)(i) of the PSR) for failing to obtain medical

- attention for the Appellant.
- e. Unlawful or Unnecessary Exercise of Authority against Cst. K. Douglas (section 5(2)(i)(i) of the *PSR*) for conducting an unnecessary strip search of the Appellant and (section 5(2)(i)(ii) of the *PSR*) for participating in the unnecessary use of force for participating in the application of the taser to the Appellant.
  - f. Neglect of Duty against Cst. K. Douglas (section 5(2)(h)(i) of the *PSR*) for failing to obtain medical attention for the Appellant.

## REASONS

[16] The Board heard from numerous witnesses who were carefully examined by the Appellant and Respondents' counsel. The Board was presented with numerous exhibits and testimony the preponderance of which led the Board to conclude that the evidence heard does not support the allegation of Discreditable Conduct brought against Cst. R. Martyniuk, Cst. C. Dundas, Cst. D. Scherr, Cst. J. Elliott, and Det. F. McVeigh.

[17] At this stage the Board is not making a determination of misconduct. The Board assessed the evidence presented to it to determine if sufficient evidence exists to return the matter to the Chief of Police to proceed further in the internal disciplinary process as may be directed by the Board pursuant to subsection 20(2)(b) of the *Act*.

[18] The Board finds that evidence was presented that may reasonably support finding of the allegations as described in paragraph [15] alone, against Cst. C. Douglas, Cst. R. James, Cst. S. Innes and Cst. K. Douglas. As the Board has directed a disciplinary hearing be held, it is not considered appropriate for the Board to detail the evidence given by witnesses. For the same reason the Board will provide no specific analysis at this stage, nor any ultimate findings concerning the evidence or credibility of witnesses respecting those matters being returned to the Chief of Police.

Dennis Callihoo  
Acting Chair

DATED at the City of Edmonton,  
in the Province of Alberta, this  
9<sup>th</sup> day of September, 2008

cc: Board Counsel  
E. Norheim, Counsel for the Appellant  
M. Power, Counsel for the Respondents