

## LAW ENFORCEMENT REVIEW BOARD

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

**AND IN THE MATTER OF the Appeal of Mr.  
Yun Feng Chu concerning complaints against Cst.  
C. Brown (No. 2022) and Cst. S. Cole (No. 2175) of  
the Edmonton Police Service.**

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### JUDGMENT OF THE BOARD

(Cunningham/Zelmer/Jacques)

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#### THE COMPLAINT

Mr. Chu filed a written complaint dated September 17, 2001, concerning the actions of Constable Brown and two unknown Constables on September 13, 2001, at the residence situated at 12819 – 89<sup>th</sup> St. in the City of Edmonton. Detective R.J. Thiessen of the Internal Affairs Section of the Edmonton Police Service, subsequently investigated the complaint. The Chief of Police responded in writing to the complaint by letter dated February 15, 2002, advising that all four of Mr. Chu’s specific complaints were determined to be “Not Justified”. Mr. Chu filed an appeal to the Board by letter dated March 28, 2002.

The essence of the original complaint was that Mr. Chu was subjected to unjustly being

handcuffed and intimidated, that a proper investigation was not conducted to charge other parties with assault, that his health concerns were ignored by the Police and that he was the subject of racial discrimination due to his Asian decent.

## **THE EVIDENCE**

The appellant, Mr. Chu, did not possess the necessary ability to understand and respond in the English language; therefore, he was afforded the benefit of a Cantonese interpreter, Ms. Judy Sachs. Ms. Sachs was sworn by the Board Secretary and provided continual translation services of all spoken English throughout the hearing.

### **Yun Feng Chu**

Mr. Chu testified that he acts on behalf of his son to maintain the premises and collect the rent from tenants of property owned by the son. His English language skills are not adequate to communicate effectively so he looks after the maintenance and his wife tends to the interpersonal issues as she speaks better English.

Prior to September 12, 2001, the appellant had cause to deliver a letter of eviction to Ms. Mary House, the tenant in the basement suite of 12819 – 89<sup>th</sup> St., Edmonton. The letter gave 14 days notification to vacate the premises. The eviction date was September 12, 2001, and when the appellant arrived at the premises, the tenant advised Mr. Chu that she would require another day to vacate. The tenant requested that Mr. Chu return to the premises at 2:00 p.m. the next day.

Mr. Chu testified that he possesses a Chinese version of the Edmonton Residential Tenancy Act and that he is familiar with its provisions.

Mr. Chu testified that he attended at the residence on September 13<sup>th</sup> at the pre-arranged time. When he arrived the door to the suite was open and he entered the suite. He observed the female

tenant's back as she appeared to be leaving. Mr. Chu was met by a young man who was not the tenant. The young man told the appellant to leave several times. He got impatient with the appellant and after the third request to leave, he touched Mr. Chu's shoulder and escorted him to the door. Mr. Chu testified that he was firm in his insistence to see the tenant and the young man used more force, resulting in Mr. Chu falling to the floor. The appellant testified that he called for help, that someone was beating him.

Mr. Chu testified that shortly after falling, the ambulance and police arrived. He was asked by someone what had happened to which he replied, "Someone hit me". The appellant was helped up and taken into the ambulance. Once in the ambulance, he again said that someone had hit him. He testified that he suffers from diabetes and heart disease, however, his English is not sufficient to adequately express himself and he tried to convey that information to the ambulance personnel by lifting his shirt to expose some old scars on his chest from previous heart surgery.

The appellant testified that the ambulance personnel conducted a number of tests on him, although he did not know for what or why they were testing. At the conclusion of the tests the ambulance personnel requested he sign a paper. He thought the paper was for the charge (fee) for the ambulance. Mr. Chu testified that he signed the paper although he was unable to read it.

Mr. Chu testified that while in the ambulance the police attended. He advised the police that someone had hit him. He handed the police the note on which he relied to be at the residency. He testified that he then said, "Someone hit me". The police responded quickly that no one had hit him and that they had three witnesses that said the appellant was not hit. Mr. Chu testified that at this point he said, "Not fair", exited the ambulance and continued to say, "Not fair".

The appellant testified that he felt discomfort because of his heart and continued to shout "Not fair". Mr. Chu testified that he was crouching down when suddenly the police were holding him. One officer was on each side, holding his arms and then handcuffed him. Mr. Chu was unaware exactly when the police arrived at his side but testified that their action was very quick and

forceful.

Mr. Chu testified that he asked five times to have the handcuffs removed, however, the police did not respond. The appellant's wife attended where he was handcuffed and she explained to the police that her husband had heart disease, several illnesses and gets easily excited. She also asked the police on three occasions to remove the handcuffs from her husband.

The handcuffs were eventually removed and the appellant asked the officers for their names. One officer provided his name and the other one did not. The appellant then left the scene, driving his minivan.

During cross-examination, Mr. Chu testified that he did not have a Court Order to evict the tenants from the premises. He was relying on his fourteen (14) day letter of eviction to force the tenants out of the suite. The appellant reiterated that the door to the suite was open on his arrival and he testified that he was of the belief that his appointment with the tenant was sufficient to permit him access into the suite.

Mr. Chu testified that he did not at any time attempt to remove furniture from the suite. He acknowledged that he was lying on the floor of the suite, yelling and screaming when the paramedics arrived. Mr. Chu denied ever asking the paramedics to assist in the eviction of the tenants from the suite.

The appellant testified that at no time did he request further medical examination after he signed the "Form" in the ambulance. He was of the view that the paramedics and/or the police should have initiated a further examination of him after his departure from the ambulance. He further testified that if the police ever asked him to "calm down" he never heard them.

**Ms. Penny Chen**

Ms. Chen (spouse of the appellant Mr. Chu, and referred to by all other witnesses as Mrs. Chu) testified that she is the spouse of Mr. Chu and that on September 13, 2001, she attended a residence with her husband as a result of making an appointment with the tenant.

Ms. Chen testified that she approached the residence with her husband. She stood by the door while Mr. Chu went to the hallway. She saw the female tenant (Ms. Mary House) at the back of the hallway. She also saw a young man that she had never seen before. She testified that she heard the young man tell her husband that they (the tenants) would not leave. Her husband asked to see the female tenant but was told that she was not there.

She further testified that her husband was asked to leave the premises, however, he insisted that he see the female tenant. The young man pushed her husband and he fell to the floor. Ms. Chen was scared because her husband has previous heart surgery and he suffered from diabetes. She left the premises and ran to a neighbor and asked them to call the police.

After a short time the ambulance arrived, then the police came. One of the paramedics asked for Ms. Chen's name, address and who she was. Ms. Chen testified that she observed two people holding her husband, coming up the stairs of the premises and they helped him into the ambulance.

Ms. Chen testified that she heard something and then the police entered the ambulance. The officer asked Mr. Chu why he had to go into the house. Mr. Chu replied that he had an appointment and he handed a note to the officer. The officer looked at the note and returned it to Mr. Chu.

She further testified that she told the police officer that someone had "clouted" her husband. The officer replied that they had three witnesses that said that did not occur. She told her husband what the police had said and he became upset.

Ms. Chen testified that her husband then stepped out of the ambulance and walked across the

road saying, “Unfair”. Ms. Chen followed her husband until she received a telephone call on her cell phone. She had to focus on the telephone call and as a result she walked away from Mr. Chu. When she completed the call, she turned around and observed her husband sitting in a strange position. She went to her husband and noticed that he was handcuffed. She testified that she asked the police to release her husband from the handcuffs. After she requested three times that he be released, the police removed the handcuffs and requested Ms. Chen take her husband home.

During cross-examination, Ms. Chen testified that although she did not enter the suite herself, she could see a man push her husband. He told her husband that they were not prepared to move and he asked her husband to leave. Ms. Chen was unable to see the actual push but did see a short pushing motion by the young man followed by Mr. Chu falling on to the floor.

Ms. Chen testified that her husband did not move any furniture in the suite. She stated that her husband was calm until he found out in the ambulance that no one was being charged with assaulting him. He then left the ambulance very upset.

Ms. Chen further testified that when the police asked for her to take her husband home they were “straight forward” and “not mean”.

### **Kim Gilbert**

Ms. Gilbert testified that she has been a paramedic in the City of Edmonton for approximately two years and was a paramedic in the City of Grand Prairie for two years prior to that. On September 13, 2001, Ms. Gilbert and her partner responded to a “10D1” or “Person with chest pain” call.

On arrival Ms. Gilbert observed Ms. Chu with neighbors on the lawn at the residence. She spoke with Ms. Chu and inquired what was happening. Ms. Chu stated that her husband was in the home and refusing to leave. Ms. Gilbert then entered the suite and found Mr. Chu in the foyer, on

his back screaming, "It's not fair". Ms. Gilbert observed three other persons in the suite, a young man in his twenties approx. 10 feet away, a man in his fifties approx. 20 feet away and an older woman at the kitchen table.

Ms. Gilbert testified that she approached Mr. Chu and asked him what was wrong. He pulled up his shirt, showing some old surgical scars, and said, "Not fair". She then asked the young man what had happened and she was told that Mr. Chu had picked up a chair and that the young man had decided to pluck Mr. Chu by the jacket. He took back the chair and Mr. Chu fell to the ground and was screaming "Not fair".

Ms. Gilbert further testified that at that time Cst. Brown arrived in the basement suite. They each took one of Mr. Chu's arms and assisted him to get back up. Ms. Gilbert advised Mr. Chu that the police were present and that they were going to take him to the ambulance. At the top of the stairs, Mr. Chu was yelling in a language unknown to Ms. Gilbert. Mr. Chu fell to the ground and Ms. Gilbert told him to stand up and walk to the ambulance. Mr. Chu stood and was taken to the ambulance for a verbal and physical examination.

During the examination in the ambulance Mr. Chu insisted that Ms. Gilbert go into the residence and evict the tenants. Mr. Chu was able to communicate his health care needs effectively in English while in the ambulance. Mr. Chu subsequently printed and signed his name on a release form, declining transportation to the hospital for any further treatment. Mr. Chu did not complain of any pain and it was determined that he was not in need of further health care treatment from the paramedics.

Ms. Gilbert testified that Cst. Cole attended the rear of the ambulance. She advised Cst. Cole that Mr. Chu was medically cleared, had signed the medical release form and was free to go.

Ms. Gilbert then heard Cst. Cole explain the need for a Court Order to evict tenants to Mr. Chu. Mr. Chu said he was the caretaker of the premises and that the tenants had not left yet. Cst.

Cole spent approximately fifteen (15) minutes explaining the process to obtain and effect a Court Order, however, it did not appear that Mr. Chu believed Cst. Cole.

Ms. Gilbert further testified that at this point the incident escalated and that Mr. Chu became angry. He stopped using English and Ms. Chu now translated that Mr. Chu was angry that no assault charges were being laid. The police officers explained that there was no evidence and, in fact, it appeared that Mr. Chu had been trespassing. Mr. Chu became very angry, pushed by the officer, exited the ambulance and ran down the street screaming, "Not fair".

While Mr. Chu was screaming and yelling, Ms. Gilbert observed children within two blocks as well as people looking out their doors and windows.

Ms. Gilbert testified that she and her partner remained on the scene and that she observed the police officers walking calmly towards Mr. Chu. After about one and a half blocks, Mr. Chu fell on his back, kicking. Ms. Gilbert and her partner followed the police officers down the block with Ms. Chu following them.

Once the officers caught up with Mr. Chu, they discussed again the process of obtaining a Court Order to evict tenants. Throughout their discussions the police were observed to be calm, patient, honest and professional. They did not embellish their remarks in any way.

Ms. Gilbert testified that she observed Mr. Chu fall to the ground, kicking. Cst. Brown then placed handcuffs on Mr. Chu. He then calmed down, insisting on the eviction of the tenants and charging for assault. Ms. Gilbert testified that the police while placing handcuffs on Mr. Chu used very little force. Once cuffed, Mr. Chu continued screaming until the arrival of his wife. Ms. Chu massaged her husband's chest and he calmed down.

The handcuffs were removed from Mr. Chu after five to ten minutes, and both Mr. and Ms. Chu departed in a vehicle.



**David Mytrunec**

Mr. Mytrunec testified that he is employed as an emergency medical technician by the Edmonton Emergency Medical Services. On September 13, 2001, he attended with Ms. Gilbert to a call regarding a man with a chest pain.

On arrival at the scene Mr. Mytrunec followed his partner to the basement suite at the residence. Once in the basement suite he observed Ms. Gilbert in the living room with Mr. Chu who was “yelling for help”. Other parties in the residence were screaming at each other.

Mr. Mytrunec testified that he and Ms. Gilbert assisted Mr. Chu up the stairs and out of the suite and that he escorted Mr. Chu to the ambulance. Enroute to the ambulance, Mr. Chu fell to his knees on two occasions and Mr. Mytrunec helped him to his feet. While going to the ambulance, Mr. Chu was holding his chest and yelling for help. Mr. Mytrunec believed that Ms. Chu was on the front lawn of the residence.

Mr. Chu was placed in a chair in the ambulance and Ms. Gilbert assessed his medical condition. At the conclusion of the medical exam, Mr. Chu refused transportation to the hospital and he signed a form releasing EMS from providing further care. Throughout the assessment Mr. Chu was able to communicate his medical history and symptoms effectively in English. Mr. Mytrunec testified that had Mr. Chu been unable to communicate in English they would have either transported him to a medical facility or obtained a translator.

Mr. Mytrunec further testified that he had a conversation with Ms. Chu, explaining that he husband had refused transportation, that he was believed to be medically fine and that he had signed release documents and could now leave the area.

On completion of the examination, the police arrived. Cst. Cole attended the ambulance and

inquired what had happened. Mr. Mytrunec advised Cst. Cole that they had assessed Mr. Chu for a possible heart attack but that he was fine and that Mr. Chu had signed a form to release himself from EMS care.

Mr. Mytrunec testified that Cst. Brown then attended the area and advised Mr. Chu not to return to the house, as the people in the house were “bad people”. Mr. Chu was very upset while talking to Cst. Brown. He was yelling, “Help, Police”. Mr. Chu then left the ambulance, ran down the street southbound yelling, “Help, Police”. Mr. Chu eventually crossed the avenue, ran two lots and fell to the ground. He was yelling loud enough that residents came out of their houses to see what was going on.

Mr. Mytrunec observed the officers walking slowly towards Mr. Chu. Mr. Chu was on the ground yelling, “Help”. Both Mr. Mytrunec and his partner Ms. Gilbert followed the police on foot towards Mr. Chu. One neighbor was observed raking leaves and a neighbor to the south of Mr. Chu came out of the house and returned. Later a group of 12 to 13-year-old children asked what was going on. Mr. Mytrunec directed the children to keep walking. He observed Ms. Chu walking in the opposite direction of her husband.

Mr. Mytrunec testified that Cst. Brown was repetitive and persistent in his attempts to calm down Mr. Chu. Cst. Brown advised Mr. Chu that he would have to settle down or else go to jail. Cst. Brown asked Mr. Chu to put his hands behind his back. He complied with that request and Cst. Brown placed handcuffs on Mr. Chu. Mr. Chu was still yelling, he was upset and fell on his back to the ground with his hands behind his back. Ms. Chu walked slowly to the location of her husband. She had a discussion with the police then attended to her husband and calmed him down. Mr. Mytrunec testified that he assisted the police lift Mr. Chu to his feet and the handcuffs were removed. Mr. Mytrunec observed a mild indentation on the wrists of Mr. Chu where the handcuffs had been placed.

Ms. Chu was heard to ask Cst. Brown for his badge number and Mr. Mytrunec observed Cst.

Brown provide his name and a card. Mr. and Ms. Chu then walked to their van and departed with Mr. Chu driving.

Mr. Mytrunec described the overall demeanor of the police officers throughout the incident as very patient, very professional and that they repeatedly requested the compliance of Mr. Chu to settle down.

During cross-examination, Mr. Mytrunec testified that Mr. Chu did not ask for medical assistance after signing the release forms. He also testified that he did not observe any resistance from Mr. Chu while being handcuffed. The first he saw the police was approximately two minutes after the arrival of E.M.S. and in the area of the ambulance. He testified that the police were not in the suite at any time.

### **Amy Marie Hawryluk**

Ms. Hawryluk testified that on September 13, 2001, she was a law enforcement student on a “ride-along” with Cst. Brown and Cst. Cole. She attended with the officers at the residence previously referred to, however, she stayed back for her safety and “didn’t see that much”.

Ms. Hawryluk testified that “we” went into the basement suite and that she “didn’t see too much”. She heard yelling upstairs and she went with Cst. Brown and Cole on the front lawn. Her first observation of Mr. Chu was when he was on the front lawn.

Mr. Chu was observed on the ground yelling and screaming, however Ms. Hawryluk was unsure what he was yelling. Mr. Chu got up and went running down the street, still yelling. Ms. Hawryluk then recalled seeing Mr. Chu throw himself to the ground. Ms. Hawryluk walked with the police to the area where Mr. Chu was on the ground. She testified that Cst. Cole had a conversation with Mr. Chu, advising him that if he didn’t settle down he could be arrested for disturbing. Ms. Hawryluk observed other people at the end of the street, coming out of their houses as well as people

watching then walking away.

Ms. Hawryluk testified that she observed Cst. Cole warn Mr. Chu once more to settle down and then apply handcuffs to Mr. Chu, although she did not see much with regard to the use of force in the application of the handcuffs.

Ms. Hawryluk observed the other Constable talking to Ms. Chu. Ms. Chu was talking on her cell phone. The Constable explained to her that if she could get her husband to settle down they could go. Ms. Chu attended to her husband, the police removed the handcuffs, she asked for the police names and badge numbers, and then they left.

During cross-examination, Ms. Hawryluk testified that she didn't remember who helped Mr. Chu upstairs - she was unsure how long it took Mr. Chu to go from the basement to the ambulance, and she didn't see him actually go from the basement to the ambulance.

### **Shane Cole**

Cst. Cole testified that he has been a member of the Edmonton Police Service for approximately four years. On September 13, 2001, he attended with Cst. Brown at a residence, a rental property, managed by Mr. Chu. Also present with the constables was a civilian ride-along. The police were on the scene approximately one hour.

On arrival Cst. Cole observed the EMS already on the scene. Ms. Chu was seen standing on the lawn. Cst. Cole stopped to talk to Ms. Chu and Cst. Brown proceeded to the suite.

Cst. Cole testified that he asked Ms. Chu what was happening, including asking for her name and address. Ms. Chu advised that her husband was having an anxiety attack. Cst. Cole then observed EMS personnel assisting Mr. Chu out of the suite. At the time Mr. Chu was protesting loudly that, "too many people were touching him". At the top of the stairs Mr. Chu sat on the grass,

still complaining. EMS personnel assisted him to his feet and escorted him to the ambulance. Cst. Cole then attended at the ambulance. The EMS personnel advised him what they believed had occurred in the suite.

Cst. Cole testified that he then attended at the suite and found Cst. Brown to be reading an eviction letter to the tenants. A lady present advised that she would not leave without a Court Order. It was obvious to Cst. Cole that Cst. Brown had the situation in the suite under control and he returned to the ambulance.

On arrival at the ambulance Cst. Cole observed Mr. Chu with his shirt off, preparing to sign release documents. EMS personnel advised that Mr. Chu was medically fine and cleared to leave. Cst. Cole then inquired of Mr. Chu what was happening. Mr. Chu responded that two days ago he served an eviction notice on the tenant. The tenant needed a couple more days to pack. Cst. Cole then advised Mr. Chu that he would still need a Court Order, however, Mr. Chu felt the letter gave him authority to evict the tenants. Mr. Chu asked for police assistance in evicting the tenants and Cst. Cole, once again, explained the necessity for a Court Order and Bailiff to properly evict them. At this point Mr. Chu alleged an assault on him by one of the tenants. Mr. Chu continued to request police assistance in evicting the tenants at that time.

Cst. Cole testified that he told Mr. Chu that there were no grounds for his assault allegation and, in fact, there was evidence that he himself could be charged for trespassing. Mr. Chu became very angry, stood up in the ambulance screaming, "Unfair", and pushed by Cst. Cole exiting the ambulance.

Mr. Chu looked up and down the street yelling, "Unfair". He then walked west on the street to the sidewalk and bounced himself off a parked motor vehicle still shouting "help" and "unfair". He continued along the sidewalk and threw himself to the ground, flailing his arms and feet. Cst. Cole and Cst. Brown, followed by EMS personnel, walked towards Mr. Chu. Mr. Chu got up, continued south on the avenue and then returned to the ground, kicking and screaming. A number of

residents noticed these events including one family that crossed the street to get out of Mr. Chu's way.

Cst. Cole further testified that both he and Cst. Brown began asking then telling Mr. Chu to settle down or face arrest. Eventually they had to arrest Mr. Chu. Each officer took one arm, sat up Mr. Chu, and Cst. Brown applied the handcuffs with very little resistance.

Cst. Cole testified that he then left Cst. Brown and Mr. Chu to attend where Ms. Chu was talking on her cell phone. She had been seen by Cst. Cole to be walking away from her husband, northbound on the street. Cst. Cole spoke to Ms. Chu, advising her that if her husband did not settle down, he would be taken to the hospital. Cst. Cole testified that at the time he was considering a Form 10, *Mental Health Act* admission to protect Mr. Chu from himself or others.

Ms. Chu brought up the "letter of eviction" and Cst. Cole explained the need for a Court Order and Bailiff to evict a tenant. Cst. Cole and Ms. Chu returned to the area where Mr. Chu was in custody. She spoke to Mr. Chu in Chinese, placed her hand on Mr. Chu's chest and he calmed down. Cst. Brown removed the handcuffs, Mr. Chu complained about his wrists where the handcuffs had been placed and then both Mr. and Ms. Chu departed the scene.

Cst. Cole testified that just prior to the departure of the Chus, Ms. Chu requested the business cards of the police officers. Cst. Brown provided a card and Cst. Cole provided his name. He further testified that at no time did the fact that Mr. Chu was of Asian decent have any bearing on his investigation. Cst. Cole described the demeanor of Mr. Chu as very erratic and not what he would expect from an adult. He described his own demeanor and that of Cst. Brown as very patient and professional.

During cross-examination Cst. Cole re-iterated that the police attended a "Trouble with Man" complaint in the first instance. The issue of an assault only arose after Mr. Chu was unable to get the assistance of the police in evicting the tenants. By then the police had determined through interviews

of the tenants that Mr. Chu had no lawful authority to enter the suite or evict the tenants. The police had also determined that force, if applied to remove Mr. Chu from the suite, was not sufficient to constitute an assault.

### **Christopher Brown**

Cst. Brown testified that he has been a member of the Edmonton Police Service for approximately six years and that on September 13, 2001, he was on duty and responded to a residence where the appellant was a landlord. Cst. Brown was accompanied by his partner, Cst. Cole, and a civilian ride-along.

Cst. Brown attended to the basement suite where EMS personnel were having difficulty with Mr. Chu. EMS personnel assisted Mr. Chu upstairs and out of the suite, and Cst. Brown remained in the suite to speak to the residents. Mr. Chu appeared agitated, emotional and worked up at the time.

Cst. Brown spoke to Ms. Mary House, the tenant at the suite. She advised Cst. Brown that Mr. Chu had attended at the suite, uninvited, to evict them. Mr. Chu had picked up a chair and one of the male tenants prevented Mr. Chu from moving more furniture. Mr. Chu fell down. Cst. Brown then explained the eviction process to Ms. House and once satisfied that she understood he departed the suite and went upstairs to the ambulance.

Once upstairs Cst. Brown observed several people around the ambulance including his partner Cst. Cole, and he therefore determined that he was not required at that location. Cst. Brown observed Mr. Chu exit the ambulance and begin a “public tirade”. He walked south on the street, then west on a sidewalk with his hands above his head and screaming, “Not fair, not fair, not fair”. On the west side of the street he threw himself down and began to roll around on the ground. Cst. Brown testified that he then inquired of the EMS personnel if Mr. Chu suffered from any medical condition and he was advised, “absolutely not, that he had signed a medical release form”.

Cst. Brown testified that he and Cst. Cole then began to walk towards Mr. Chu. Cst. Brown observed three groups of people stopped to see what was causing the commotion. The first group came from a front door to their front porch, the second was a young woman with two or three pre-schoolers who crossed the street to avoid a problem, and the third group was a couple doing yard work.

Cst. Brown observed Mr. Chu cross to the south side of 128<sup>th</sup> Avenue, fall down and roll around screaming and yelling. Some of what Mr. Chu said was unintelligible to Cst. Brown but he did hear Mr. Chu yell, in English, “not fair, not fair, not fair”.

Cst. Brown then approached Mr. Chu. He testified that he was convinced at this time that the actions of Mr. Chu constituted causing a disturbance. Cst Brown then asked, instructed and warned Mr. Chu to calm down and lower his voice. Mr. Chu did not calm down and Cst. Brown then decided to arrest Mr. Chu for causing a disturbance. He and Cst. Cole each took one of Mr. Chu’s arms and Cst. Brown applied handcuffs to Mr. Chu. Mr. Chu did not struggle and no heightened degree of force was required to apply the handcuffs.

Cst. Brown testified that he and Cst. Cole, once again, attempted to explain the proper procedure for evicting a tenant including the necessity for a Court Order and Bailiff. Cst. Brown then observed Ms. Chu walking away from the area where her husband was located, apparently disinterested. Cst. Cole left to talk to her and Cst. Brown remained with Mr. Chu.

Cst. Brown then stood up Mr. Chu and began walking towards Ms. Chu. They crossed to the north side of 128<sup>th</sup> Avenue when Mr. Chu, once again, fell to the ground on his back without regard for his discomfort. Ms. Chu then attended and asked for the removal of the handcuffs from her husband. Cst. Brown advised her that Mr. Chu was still not calm and there was no reason yet to remove the handcuffs. Ms. Chu stated that her husband had heart trouble. She then rubbed his chest and he calmed down. The handcuffs were removed and Mr. Chu was released. They both left in a minivan.



Cst. Brown testified that they were at the scene approximately 33 minutes, according to his notes. Mr. Chu was able to ask for the names and cards of the police in English.

Cst. Brown described the demeanor of Mr. Chu throughout the incident as “out of control and at the very least so agitated that he was making no sense. He was unable to communicate effectively.

During cross-examination Cst. Brown testified that he did not see Mr. Chu move a chair in the suite but that he did observe a chair in the hallway. He further testified that advised Mr. Chu the reason for the arrest but that he did not provide Mr. Chu with his Charter Rights. He testified that Mr. Chu was placed in handcuffs for five to seven minutes and that no inculpatory evidence was obtained during that time.

## **ANALYSIS**

The Appellant’s original complaint, the investigation of that complaint, and the evidence provided to the Board revealed four distinct and identifiable concerns.

- 1. Cst. Brown and Cst. Cole – Conducted a negligent investigation thereby failing to charge the tenant with assault when sufficient evidence existed to support such a charge.**

The appellant acknowledged he attended the residence of Ms. Mary House for the purpose of evicting her. He relied on his understanding of the Chinese version of the Edmonton Residential Tenancy Act to provide fourteen (14) days notice and then evict her. He served notice and by agreement extended by two days the time to vacate the premises. He then returned to the premises and believed that by making an appointment to return, he had the lawful authority to return, enter the premises, and evict the tenants.

Cst. Brown and Cst. Cole attended a complaint of a “Man with a Problem” at the residence in question. Cst. Brown conducted inquiries of the occupants of the suite and determined that Mr. Chu lacked the lawful authority to enter the premises and evict the tenants. His entry into the suite, uninvited, constituted a trespass and provided the occupants with the lawful authority to use as much force as necessary to evict Mr. Chu. The police determined, and Mr. Chu acknowledged, that only sufficient force was used to effectively remove Mr. Chu.

The Board accepts that Cst. Brown and Cst. Cole conducted an investigation sufficient to determine the sequence of events that occurred, evaluate the evidence available, and draw the appropriate conclusions from their inquiries.

**2. Cst. Brown and Cst. Cole – Disregarded the poor health of Mr. Chu and displayed no regard for his well being when placing him in handcuffs.**

Mr. Chu acknowledged that the Edmonton Emergency Medical Services (EMS) conducted a variety of medical tests on him to determine his medical well-being. He also made several attempts, by lifting his shirt, to draw his previous heart surgery to the attention of the members of the Edmonton Police Service.

Both Cst. Brown and Cst. Cole indicated that they made several inquiries of the EMS personnel to determine the medical well-being of Mr. Chu, including a time just prior to handcuffing him. The EMS personnel assured them that Mr. Chu was “medically cleared” and their concern then turned towards his mental well-being. Had Mr. Chu not eventually calmed down, they indicated that they would have continued the arrest process and escorted him to the hospital under the authority of the *Mental Health Act* in order to secure proper professional medical assistance.

The Board accepts that the members of the Edmonton Police Service gave proper and appropriate attention to the medical needs of Mr. Chu.

**3. Cst. Brown and Cst. Cole – Illegally handcuffed Mr. Chu, thereby intimidating him.**

Mr. Chu acknowledged he was angry and upset with the police members in attendance, the reason for which was their apparent lack of concern with his medical condition.

Both Cst. Brown and Cst. Cole, as well as EMS personnel indicated the reason for Mr. Chu's behavior appeared to be his frustration with the lack of assistance being afforded by both EMS and EPS personnel in the eviction of the tenants.

All witnesses for the respondent officers, including themselves, indicated that Mr. Chu's behavior was erratic and uncontrolled. They indicated that on several occasions he fell to the ground, screaming and yelling. They also indicated that a number of residents and passers by were distracted by the behavior of Mr. Chu, some to the extent that they crossed the street to avoid contact with Mr. Chu.

The Board accepts that, although Mr. Chu may have felt intimidated or even humiliated by being placed in handcuffs in view of several people, there were sufficient grounds for the police to take such action. Sufficient grounds existed in response to two statutes, the Criminal Code of Canada (Sec. 175(1)(a)(i) which states, "Every one who not being in a dwelling house, causes a disturbance in or near a public place by fighting, screaming, shouting, swearing, singing or using insulting or obscene language is guilty of an offence punishable on summary conviction."), and the *Alberta Mental Health Act* (Sec. 10).

The Board also notes the appellant's objection to the absence of evidence from any passers by to his behavior and would draw the appellant's attention to the Criminal Code of Canada, Sec. 175(2) which states, "In the absence of other evidence, or by

way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a) or (d) or an obstruction described in (1)(c) was caused or occurred.” The Board is satisfied that there was sufficient corroborating evidence from both the EMS personnel and the civilian ride-along to satisfy the elements of this section.

**4. Cst. Brown and Cst. Cole – Displayed a bias or prejudice towards Mr. Chu because of his Asian ethnic decent.**

The appellant alleged in his original complaint that the actions of the police were racially discriminatory towards him. He reiterated that view in his opening remarks, however, offered no further evidence in support of this allegation.

The evidence offered by the EMS personnel as well as the civilian ride-along person supported the evidence of both Cst. Brown and Cst. Cole in their demonstration of extreme patience and professionalism throughout. There was evidence to indicate the officers engaged the appellant’s wife both to interpret and assist their efforts to calm him down. The officers eventually released the appellant, believing that no public good would be served by charging him with the trespass.

The Board is satisfied that Cst. Brown and Cst. Cole did not conduct themselves in a biased or prejudicial manner that could be interpreted as racially motivated.

## **JURISDICTION OF THE BOARD**

During closing summation, the appellant requested the Board award compensation for damages caused him by the Edmonton Police Service during the incident under review. The Board feels it is appropriate to advise the appellant that this Board does not have the statutory authority to

determine “Civil Liability”, and therefore does not address any issues of compensation.

## **LEGAL BURDEN**

The burden on the appellant is to establish the allegations of complaint by a preponderance of evidence, or by a fair and reasonable preponderance of credible testimony (see *re Gamoz et al.* (1989), 74 Sask. R. 73 (Sask. C.A.); *Sheenan v. Edmonton* (1990) 103 A.R. 78 (Alta. A.C.)). In considering all of the evidence given at the appeal, including that which has been previously outlined, the Board is not satisfied that Mr. Chu has met the burden of proof which falls to the appellant.

## **CONCLUSION**

After consideration of all the evidence, including that mentioned in this judgment, the Board is satisfied that the disposition of the Chief of Police must be affirmed.

## **THE APPEAL IS ACCORDINGLY DISMISSED**

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C. R. Cunningham  
Acting Chairman

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H. A. Zelmer  
Board Member

DATED at the City of Edmonton,  
in the Province of Alberta, this  
26<sup>th</sup> day of March, 2003.

cc: C. Smart, Board Counsel

D. Savoie, Counsel for the Police Service/Respondent Officers