

***ALBERTA
LAW ENFORCEMENT
REVIEW BOARD***



2018 ANNUAL REPORT



ALBERTA LAW ENFORCEMENT REVIEW BOARD

August 15, 2019

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

Dear Minister:

2018 Annual Report of the Alberta Law Enforcement Review Board

It is my honour to submit the Board's latest annual report to you today.

As required by the *Police Act*, the report covers the calendar year, 2018, and provides an overview of the number and nature of the appeals and inquiries the Board conducted, and the summaries of our decisions.

Yours sincerely,

[Original signed by]

Ellen-Anne O'Donnell
Chair

Enclosure (2018 Annual Report)

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

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TABLE OF CONTENTS**

	<u>Page</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	5
Financial Administration	8
Statistical Analysis	
• Table 1 – Nature of Activities.....	9
• Table 2 – Location of Appeals Filed	9
• Table 3 – Summary of Appeal Matters	10
• Table 4 – Summary of Allegations	11
Case Summaries	
• Glossary of Terms	12
• Standard of Review	12
• Jurisdictional Matters	13
• Section 17 Inquiries.....	14
• Section 19.2(1) Reviews.....	15
• Section 43(12) Reviews.....	16
• Preliminary Applications.....	17
• Appeals Allowed in Full or Allowed in Part.....	18
• Appeals Dismissed	18
Court of Appeal Decisions	25
Judicial Review	26
Supreme Court of Canada.....	27

MESSAGE FROM THE CHAIR

The past year was both a time of change and of challenge for the LERB. We faced an unprecedented workload, as a result of having too few members on the Board to schedule hearings and complete decisions. With the expiry of a number of appointments, the Board was down to only five members for a significant period in 2018. Following the appointment of three new members during the year, we undertook intensive training measures to work towards the necessary level of expertise for the appeal work. This process is ongoing. Historically, there have been twelve (12) or more Board members on the LERB at a time, which allowed us to fulfill our responsibilities in a timely fashion.

Currently with nine (9) members, we continue to face the challenges of a smaller Board than is optimal for scheduling, hearing, and completing appeals. In the table below, you will see the increase in time for processing appeals and releasing decisions, largely due to our low membership.

Year	Days from appeal filing to hearing	Days from appeal hearing to appeal decision	Days from appeal filing to appeal decision
2016	197	89	287
2017	210	104	314
2018	334 ¹	153 ²	487 ³

Notes:

¹ Reflects in part, matters that were remitted back to the Board from the Court of Appeal for rehearing or reconsideration.

² Reflects limited resources in drafting decisions.

³ See Notes 1 and 2 above, limited number of resources available to hear appeals and render decisions.

The number of appeals filed was up slightly in 2018 to 44, from the previous total of 42 in 2017. In addition, we conducted our first ever section 17 Inquiry at the direction of the Minister of Justice and Attorney General, which substantially increased the workload of the Board and staff. The Board also participated in engagement sessions in Edmonton and Calgary with stakeholders and the Ministry's *Police Act* Review Team.

In November 2018, we said goodbye to our excellent Chair of six years, David Loukidelis, Q.C. His knowledge, expertise and high standards raised the quality of the Board's work to a new level, which we will continue to emulate in the future.

I would like to thank our current membership for embarking on this challenging responsibility of police oversight, and for putting their best efforts into Board training, teamwork and excellent outcomes.

Special recognition of our outstanding staff is in order, for their dedication and conscientiousness in the face of change and an ever increasing and complex workload.

August 1, 2019

Edmonton

A handwritten signature in black ink, consisting of several overlapping loops followed by a long, sweeping horizontal stroke that curves downwards at the end.

Ellen-Anne O'Donnell
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 2018 calendar year.

BOARD'S ROLE AND MANDATE

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 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.

The Board was created in 1973. It is an independent, quasi-judicial tribunal established under Part 2 of the *Police Act*. As an appeal body, the Board's primary role is to hear appeals under section 48 of the *Police Act* by individuals who have filed complaints about the actions of a police officer and who are not satisfied with the disposition of their complaint. In addition, the Board hears appeals from police officers who were the subject of a complaint and a penalty issued regarding their conduct. The Board's role is to conduct an independent and impartial review of the decisions made by police services about conduct complaints.

The Board may, on its own motion, conduct inquiries respecting complaints. At the request of the Minister, the Board is required 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 police officers employed with First Nations police services in Alberta.

The Board has jurisdiction over the following police services

Municipal Policing

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

First Nations

Blood Tribe Police Service
Lakeshore Regional Police Service
Tsuu T’ina Nation Police Service

The Board’s jurisdiction also includes peace officers whose appointments have been cancelled under the *Peace Officer Act*.

Who Can Appeal to the Board

Complainant – A person may appeal the decision of the chief of police regarding 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 his or her 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 complaints of 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 officer and/or the complainant may appeal the presiding officer’s decision to the Board.

The chief may decide not to send a complaint to a disciplinary hearing if he or she 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 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 challenged through judicial review proceedings in the Court of Queen's Bench.

Under the *Police Act*, a party to an appeal can seek leave 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 from 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 single judge of that Court concludes that there is a significant question of law to be decided and that the appeal has a reasonable prospect of success.

The Board has jurisdiction over peace officers who have had their peace officer appointment cancelled. Peace officers are subject to a complaint process under the *Peace Officer Act*. A peace officer may, within 30 days of being advised that their appointment has been cancelled, appeal the decision to the Board. The Board does not have jurisdiction to hear appeals arising from complaints made under section 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, or 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* discipline process does not apply to members of the RCMP. Complaints regarding the RCMP are directed to the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police at www.crc-cetp.gc.ca or by calling toll free: 1-800-665-6878.

Board Powers

Police Act Appeals

The Board's powers are set out in section 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 must recommend to the Minister of Justice and Solicitor General whether the decision under appeal should be confirmed, reversed or varied. The Board only makes a recommendation regarding the status of a peace officer's appointment; the final decision is the Minister's.

BOARD MEMBERSHIP

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

Members bring a wealth of professional experience to the Board. A number of the members are lawyers, and others come from varied professional backgrounds. The diversity of their backgrounds helps ensure a measure of community representation, a key consideration given the Board's public interest mandate to provide civilian oversight of police conduct.

In 2018, the Board saw the appointment of five new members and the re-appointment of two existing members. In late 2018, former Chair, David Loukidelis, stepped down and Ellen-Anne O'Donnell was designated Chair for a term expiring November 27, 2020.

Member Profiles

Ellen-Anne O'Donnell, who was appointed Chair of the Board in November 2018, is a graduate of McGill University, BA 1984 and Osgoode Hall Law School LLB 1988. She was called to the Alberta Bar in 1989. Ms. O'Donnell had a family law practice in Calgary until 2006. She has appeared in all levels of court in the Province of Alberta, and was a Dispute Resolution Officer at the Court of Queen's Bench of Alberta while in private practice. Ms. O'Donnell has specialized training in arbitration, advanced negotiation, collaborative family law and mediation. She obtained an Advanced Negotiation Certificate from Harvard University's Program on Negotiation in 2016. Ms. O'Donnell earned the Qualified Arbitrator designation from the Canadian Institute of ADR in 2017. She has been a member of the Law Enforcement Review Board since 2011. Ms. O'Donnell was the Vice Chair of the Criminal Injuries Review Board and a past board member of the Child Youth and Family Enhancement Appeal Panel, the Child Care Licensing Appeal Panel, the Elizabeth Fry Society of Calgary and Hospice Calgary.

David Loukidelis QC, (Past Chair) was appointed Chair of the Board in December 2012. 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 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, responsible for enforcement of the public sector *Freedom of Information and Protection of Privacy Act* and for regulation of private sector privacy practices under the *Personal Information Protection Act*. He was in private practice from 1988 to 1999. 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.

Ahmed Ali is a multi-award winning international Somali-born poet and educator. Mr. Ali is extremely passionate about the arts. Prior to his appointment as Edmonton's seventh Poet Laureate, he served on the Edmonton Art Council Board for three years and chaired the Equity Committee. He also served on the Quarterz Arts Board, where he hosted and promoted events at the Boyle Street Community League and surrounding neighborhoods. Mr. Ali is co-founder and current artistic director of Edmonton's only spoken word collective: Breath In Poetry. Mr. Ali is a dedicated youth worker who has taught poetry and the power of perspective in correctional facilities in Canada and Wales. He has contributed to numerous Edmonton Police Service initiatives intended to strengthen community and positive identity within youth. Mr. Ali was hired by the City of Edmonton as the African Youth Outreach Coordinator for the inception of the Rising Youth program. He is a registered vendor with the Edmonton Public School Board and regularly provides lessons to students throughout Edmonton. Mr. Ali is a leader in the Edmonton poetry community and a professional speaker, and regularly shares his expertise on inclusion and the arts through keynotes and panel discussions.

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 from 2011 to 2014. She was a litigation lawyer with Bennett Jones LLP for several years. In 1995, Ms. Bharadia 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 additional advanced education and training in both disciplines, as well as obtaining her training in the interdisciplinary model of collaborative practice and training in mediation-arbitration. She has actively promoted alternate dispute resolution in Alberta and Canada, focusing on issues related to ethics, accreditation, cross-cultural issues, children's interests, complicated financial matters and human rights. Ms. Bharadia was the President of the Alberta Family Mediation Society from 2006 to 2008. She served on the Board for Collaborative Family Lawyers (Calgary) and Collaborative Family Lawyers (Alberta) and was appointed as a Dispute Resolution Officer by the Court of Queen's Bench of Alberta. Ms. Bharadia was also a mediator for Alberta Justice Family Mediation Services, which provides mediation services for lower income families. In 2012, she 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 various types of dispute resolution including 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. She is currently a member of the Appeals Commission for Alberta Workers' Compensation. 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 practices primarily in the area of intellectual property law.

Victoria Foster graduated from the Schulich School of Law at Dalhousie University in 2011, and is currently working towards her Masters of Law from the University of London. Ms. Foster is a sole practitioner in Red Deer and surrounding areas, practicing in the areas of family law and child welfare law. She serves as a member of the Human Services Appeal panel, sitting on appeal hearings for AISH and income support matters. She is also a member on the Legal Aid Alberta Appeals Committee, as well as a member of the board of directors for the Central Alberta Community Legal Clinic. Ms. Foster is a member of the Red Deer Subdivision and Development Appeal Board and the Red Deer Appeal and Review Board, which deal with development and subdivision appeals, and bylaw appeals. She recently joined the board of directors of Vantage Community Services, which is an organization that helps youths, adults, and families with counselling, housing, life skills training, and in-house mental health treatment.

Rosetta Khalideen has been involved in the field of education in various roles for over 40 years and served as Dean of the Faculty of Professional Studies at the University of the Fraser Valley from 2008 to 2014. She retired from her university career at the end of August 2016.

Dr. Khalideen was the first woman appointed to the Guyana Police Force Training Board and served from 1988 to 1991. She has a professional teaching certificate, a certificate in Education, and a Bachelor of Education degree from Guyana. She also has a Masters of Education from the University of Toronto and a PhD from the University of Alberta in Adult Education and International Intercultural Education. In 2006, Dr. Khalideen received the Saskatchewan Centennial Medal for her significant contributions in education to the province.

Judy Kim-Meneen grew up in Treaty 6 territory and went to the University of Alberta for her Bachelor of Education, with a major in Chemistry and a minor in Biology. She has a systemic mind where she likes to explore different systems. Dr. Kim-Meneen left her teaching career to go into public health and managed the Maternal Child Health program out of North Peace Tribal Council. She finished her Masters in Education Administration and evaluated the overall Maternal Child Health program for her capstone. She recently finished her PhD in Community Public Health where her thesis focused on impact of residential schools on second-generation parenting styles. She believes that holistic and wrap-around services are crucial to breaking intergenerational trauma. Dr. Kim-Meneen was a member of the Treaty 8 Commission and was the Board Chair for the Tallcree School Division. She co-led the organization of the historic National Gathering of Elders, calling all Indigenous elders of Canada to celebrate culture, language and have a dialogue on key topics that affect Indigenous people today. She understands that no single approach is the right for every individual, so she is a committed individual who does what it takes to fulfill what is needed. Dr. Kim-Meneen is a consultant on policies, program development and evaluation, staff training, team building, and a proposal writer. She advocates for those who need to be heard, especially the youth, elders, and women.

Damien Lachat is a first generation Canadian of mixed settler and Indigenous heritage. They studied Philosophy and Equity Studies at the University of Toronto from 2011 to 2015, where they acted as VP Internal for the Equity Studies course union: a board that built social justice discourse in the greater university community. From 2009 to 2011, Damien acted as a Materials Technologist, where they worked with various stakeholders in Alberta's industry. Currently, Damien works as an outreach worker at Boyle Street Community Services. Their role includes them working as an advocate for individuals who experience complex barriers to social inclusion, and assisting those individuals out of homelessness. Damien is also a member of the Next Up Youth Leadership Advisory Council, an organization committed to promoting social and environmental justice. Damien Lachat holds a Bachelor of Arts from the University of Toronto.

P. Eugene Maeda was a member of the Royal Canadian Mounted Police (RCMP) for 34 years before retiring in September 2014. Mr. Maeda had a varied career that included positions in general policing, diversity awareness, hate and bias crimes, and community policing. In his previous position, he managed, and provided oversight of, the Alberta RCMP Management Review and Unit Level Quality Assurance processes. Mr. Maeda has served in various capacities on committees at all levels of management in the RCMP and in partnership with the provincial government. He is currently a sessional instructor at MacEwan University in the Police and Investigations Program and volunteers his time on the academic advisory committee to that

program. Mr. Maeda has previous administrative tribunal experience as a board member with the Alberta Transportation Safety Board.

Lise Zarb has significant appeal panel experience. She has served on several quasi-judicial administrative tribunals in Alberta, including seven years on the *Child Youth and Family Enhancement Act* appeal panel, and two years on each of the panels created under the *Assured Income for the Severely Handicapped Act*, the *Income and Employment Supports Act* and the *Protection for Persons in Care Act*. In May 2017, Ms. Zarb was appointed to the newly amalgamated Community and Social Services appeal panel, which hears appeals under six different pieces of legislation affecting children and vulnerable adults. After an honors degree from McGill University, Ms. Zarb graduated with an LLB from the University of Western Ontario and was called to the Bar in 1995. She has studied social work at the graduate level at the University of Toronto and later practiced child protection law in London, England for five years. Her community service includes terms as a board member at Discovery House Family Violence Prevention Society in Calgary and as an executive board member at Humewood House, an organization which empowers young pregnant and parenting mothers in Toronto. Ms. Zarb currently performs as a violinist with the Calgary Civic Symphony.

FINANCIAL ADMINISTRATION

Financial management of Board matters is coordinated through the Policy and Planning Services Branch within Alberta Justice and Solicitor General. The Board office is responsible for administering its operating budget and is accountable for Board expenditures through the normal 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. However, the number and nature of matters identified by the Board in this report were undertaken during the 2018 calendar year.

The Board's operating budget for the fiscal year ending March 31, 2019 was \$788,000. Through the prudent fiscal management of expenditures, the Board came in under budget, incurring total expenditures of approximately \$682,420.

STATISTICAL ANALYSIS

Table 1
Nature of Activities

<i>Filed By</i>	2016	2017	2018
Section 17 Inquiry¹	1	1	2
Number of Appeals Filed:	49	42	44
Breakdown:			
Public Complainants	40	35	37
Officer Appeals	9	7	5
Peace Officer Appeals	0	0	2
Self-represented appellant ²	30	25	27
Appellant represented by counsel	19	17	17

Table 2
Location of Appeals Filed

<i>Location</i>	2016	2017	2018
Calgary	14 ³	13 ⁴	7
Edmonton	33	26	31
Lethbridge	2	2	2
Medicine Hat	0	1	0
Camrose	0	0	0
Other	0	0	4 ⁵
Total	49	42	44

¹ Section 17 of the *Police Act* provides the Board with the jurisdiction that it may, on its own motion or at the direction of the Minister, conduct inquiries respecting complaints.

² Appellant is defined as the party (i.e., the public complainant or an aggrieved officer) filing an appeal with the Board.

³ As of December 31, 2016, nine appeals were concluded, of which four were dismissed as lack of jurisdiction. Five appeals remained outstanding.

⁴ Of the 13 appeals filed regarding the Calgary Police Service, seven were without jurisdiction.

⁵ Two appeals were Peace Officer Appeals, one appeal was filed in Taber, and one appeal was filed in Lacombe.

Table 3
Summary of Appeal Matters

<i>Description</i>	2016	2017	2018
Initial Reviews⁶			
Proceed to oral/written hearing	26	26	27
Review of record and dismiss without conducting a hearing	0	0	0
Dismiss - frivolous, vexatious, bad faith	6	3	3
Total	32	29	30
Preliminary Applications			
Allowed	10	6	9
Denied	4	10	6
Total	14	16⁷	15
Appeals held in Abeyance			7⁸
Appeal Dispositions			
Allowed in Full or Allowed in Part:			
Returned for Hearing or Re-investigation	4	1	1
Penalty Varied	0	0	1
Total Allowed	4	1	2
Dismissed:			
Upon Hearing	17	16	20
Lack of Jurisdiction	7	12	14
Section 43(12) Review	1	1	1
Withdrawn/Abandoned	4	8	1
Total - Dismissed/Withdrawn	29	37	36
Total Appeals Concluded	39⁹	41¹⁰	41¹¹
Section 17 Inquiries Concluded	0	0	1
Number of Hearing/Sitting Days	40	44	55

⁶ 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.

⁷ Includes applications made by the respondent during the Board's 19.2 initial review to have an appeal dismissed as frivolous, vexatious or made in bad faith.

⁸ Pending outcome of Court decisions or ongoing police service investigations that have not been concluded.

⁹ Includes six appeals dismissed under section 19.2(1)(a) as frivolous, vexatious or made in bad faith.

¹⁰ Includes three appeals dismissed under section 19.2(1)(a) as frivolous, vexatious or made in bad faith.

¹¹ Includes three appeals dismissed under section 19.2(1)(a) as frivolous, vexatious or made in bad faith.

Table 4
Summary of Allegations

<i>Type of Alleged Misconduct</i>	2016¹²	2017	2018
Unlawful or Unnecessary Exercise of Authority			
Excessive force	12	8	23
Unlawful/unnecessary exercise of authority (e.g., unlawful arrest, detainment or search)	47	11	23
Total	59	19	46
Discreditable Conduct			
Rude or abusive language	7	5	8
Inappropriate conduct	63	17	35
Differential treatment (prejudice or bias)	2	5	1
Total	72	27	44
Neglect of Duty			
Failure to conduct a proper investigation, follow-up	42	20	15
Failure to provide assistance (e.g., medical attention)	1	1	4
Failure to provide <i>Charter</i> rights (e.g., advise of right to contact counsel)	5	3	6
Total	48	24	25
Deceit	23	4	8
Corrupt Practice	2	1	0
Insubordination	6	8	5
Breach of Confidence	2	2	2
Improper Use of a Firearm	0	0	0
Total	212	85	130

¹² Includes 83 allegations identified in one appeal – classified as: 24 alleged misconducts of unnecessary exercise of authority; 44 alleged misconducts of discreditable conduct and 15 alleged misconducts of deceit.

CASE SUMMARIES

Glossary of Terms:

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 Police Service
LRPC	Lethbridge Police Commission
MHPS	Medicine Hat Police Service
RCMP	Royal Canadian Mounted Police
Act	<i>Police Act</i>
PSR	Police Service Regulation
PSB	Professional Standards Branch
PSS	Professional Standards Section

Standard of Review

Before providing the statutorily required summary of decisions, a description of the standard of review the Board applies in conducting an appeal is necessary.

In 2010, the Court of Appeal 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, meaning that decision-makers such as a chief or presiding officer are given a margin of appreciation within the range of acceptable and reasonable outcomes. 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.

The following is a summary of the Board decisions issued in 2018. Summaries are not included for appeals that were abandoned or withdrawn. There are some Board decisions that have been depersonalized where minor children were involved, disclosure of sensitive information that could invade someone's personal privacy, or to protect recognized privilege.

Board decisions are posted on the Canadian Legal Information Institute:

<http://www.canlii.org> (click on Law Enforcement Review Board, under the Alberta tab)

JURISDICTIONAL MATTERS

Addai-Nyamekye v Calgary (Police Service), 2018 ABLERB 013

The appellant, through an agent, made a formal written complaint to the CPS about the manner in which the respondents, one other CPS officer and two Alberta peace officers treated him in the course of one night and early morning. In March 2014, the agent allegedly told PSS that the appellant was abandoning the complaint against the respondents. In April 2014, CPS decided that the respondents' conduct, as described in the appellant's initial letter of complaint, needed to be explored with the appellant by the PSS. On August 2015, the PSS interview of the appellant did not delve into the appellant's allegations against these respondents. PSS obtained written confirmation that the appellant's complaint encompassed the appellant's four allegations against the one other CPS officer, but there was no written withdrawal of the appellant's allegations against the respondents. The Chief's disposition letter dated July 3, 2017 addressed only the allegations against the one other CPS officer. The appellant, through his present legal counsel, appealed the Chief's decision not to pursue an investigation against the respondent officers as being time-barred pursuant to section 43(11) of the Act. The Board finds that there is no proper appeal here, but will conduct an inquiry under section 17(1)(a) of the Act, into the CPS's processing, investigation and disposition of the appellant's concerns about the conduct of the respondents.

Jones v Calgary (Police Service), 2018 ABLERB 021

The appellant's complaints against CPS members were dismissed by the Chief under section 45(4.1) as not serious in nature. The appellant complained to the CPC that the Chief's decision was an abuse of process, that the Chief had erred in law, and that he was guilty of discreditable conduct and neglect of duty. The CPC concluded the complaint did not meet the threshold under section 46(2) of the Act and dismissed the complaint. The Board found that it had jurisdiction to accept the appeal.

SECTION 17 INQUIRIES

Under section 17(1) of the *Police Act*, the Board :

- (a) may, on its own motion, conduct inquiries respecting complaints,
- (b) shall conduct appeals referred to the Board under section 48 in accordance with section 19.2,
- (c) shall at the request of the Minister conduct inquiries in respect of any matter respecting policing or police services, and
- (d) shall conduct appeals under section 21 of the *Peace Officer Act*.

Section 17 inquiries were conducted in the following matters:

Arkininstall Inquiry (Calgary Police Service)

In July 2017, the Minister directed the Board to conduct a public inquiry to examine whether there was any omission or interference of disciplinary action under the *Police Act*, or public oversight of CPS officers involved in the arrest of Jason Arkininstall during a traffic stop in August 2008. The terms of reference allowed the Board to make findings and recommendations to specific or general matters arising from the inquiry, including legislative, policy and practice recommendations relating to police discipline and recommendations for improvement of civilian oversight of policing in Alberta. The Board conducted the inquiry in April 2018, hearing evidence from a number of witnesses, including current and former members of the CPS, the CPC and Alberta Serious Incident Response Team (ASIRT). One theme underlying the Board's inquiry report was that it is time for an in-depth expert review of Alberta's police discipline framework. The Board made recommendations for reform and there was a broad consensus among the participants in the inquiry that Alberta's oversight system is in need of a thorough review and overhaul. The Arkininstall matter illustrated this in many ways in that the internal review and handling of the matter by CPS highlighted the problems that can occur when "the police investigate their own", both in the public's perception and in practice. A copy of the Arkininstall inquiry report can be found on the Board's website under "Publications".

Addai-Nyamekye (Calgary Police Service)

This inquiry arose from the Board's decision in *Addai-Nyamekye*, 2018 ABLERB 013, where the appellant appealed the Chief's decision not to pursue an investigation against the respondent officers as being time-barred pursuant to section 43(11) of the Act. The Board found that there was no proper appeal, but determined that it would conduct an inquiry under section 17(1)(a) of the Act into the CPS's processing, investigation and disposition of the appellant's concerns about the respondents' conduct. The Board sought submissions from the parties and from the lawyers for the potential named officers. On June 25, 2018, CPS advised the Board of ongoing investigations arising from complaints filed by the appellant. Three of the investigations related to alleged failure by named, and yet to be named, CPS officers to properly investigate matters

connected to the appellant's interactions with CPS officers. The Board suspended its inquiry into this matter until the investigations are concluded and CPS disposes of the complaints.

SECTION 19.2(1) REVIEWS

Upon receipt of an appeal, the Board is required to conduct an initial review of the notice of appeal and the record that was before the chief or the presiding officer, and make a determination how the appeal will be conducted. Three options are available for the Board on how to stream an appeal:

- i. Dismiss the matter, if in the opinion of the Board, the appeal is frivolous, vexatious or made in bad faith; or
- ii. Make a decision based on the review of the record and consideration of the factors set out in the regulations respecting appeals, without conducting a hearing.
- iii. If the Board is unable to dismiss or conclude in accordance with the above, schedule a hearing of the appeal.

The Board considered whether the following appeals were frivolous, vexatious or made in bad faith, and dismissed three of the four appeals.

Blanchard v Edmonton (Police Service), 2018 ABLERB 019

The appellant stated, during his court attendance where the Judge was handing down his verdict on a number of indictable offences, that the respondents behaved in a disgraceful manner. The appellant alleged the respondents were smirking and smiling, and making gestures towards him. The Chief dismissed the complaint and the appellant appealed the Chief's decision claiming a flawed investigation. Counsel for the respondents applied to have the appeal dismissed under section 19.2(1)(a) of the Act on the basis that multiple proceedings are an abuse of process and that the appeal was frivolous, vexatious and made in bad faith. Having reviewed the submissions and the record, the Board found that it was plain and obvious that the appeal had no chance of success. The Board allowed the respondent's application and the appeal was dismissed.

Elm v Edmonton (Police Service), 2018 ABLERB 020

The respondent investigated a collision between the appellant, who was cycling in a group, and a motorcyclist, who was passing this group of cyclists. The appellant complained to EPS about the respondent's actions, words and attitude. He claimed the respondent displayed bias and showed a lack of empathy towards the injured appellant when investigating the collision. The Chief dismissed the complaint on the basis that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing. The appellant appealed the Chief's decision on the ground that the Chief made errors in his investigation. After reviewing the record, the Board sought submissions from parties on whether the appeal was considered frivolous,

vexatious or made in bad faith. The appellant's appeal lacked any threshold basis and the appeal had no chance of success. The Board dismissed the appeal.

Sussman v Edmonton (Police Service), 2018 ABLERB 024

Shopping mall security guards asked one of the appellants, Mr. Sussman senior, to remove a t-shirt indicating gang support. When he refused, mall security asked him to leave and he refused to do so. Mall security arrested Mr. Sussman senior and called the EPS. Two of the respondents attended and escorted both the appellants to their car. Mr. Sussman senior alleged that the respondents failed to provide him with a complaint form when requested and failed to investigate his complaint that mall security personnel had assaulted him. The respondents directed him to EPS's West Division station to complain. The appellant alleged that at West Division, another respondent refused to give him a complaint form or take his complaint about mall security, instead directing him to EPS's complaint line. Mr. Sussman senior called but was referred back to one of the respondents he had initial contact with. The Chief counselled one of the respondents about professionalism in the front desk role. The Chief dismissed the complaint against the other respondents. The respondents applied to strike the appeal under section 19.2(1)(a) of the Act. The Board dismissed the application, concluding that the appeal was not frivolous, vexatious or made in bad faith. In view of the dismissal of the application, the Board awarded the total sum of \$750.00 in costs to the appellants.

Howe v Edmonton (Police Service), 2018 ABLERB 025

The appellant alleged that the respondents failed to properly investigate a motor vehicle collision she was involved in. The appellant claimed the respondents behaved unprofessionally in their dealings with her. The Chief dismissed the appellant's complaint on the basis that there was no evidence to substantiate the allegations. The appellant appealed the Chief's decision. The Board concluded that the appeal plainly and obviously could not succeed. The appeal was dismissed as frivolous, vexatious and made in bad faith.

SECTION 43(12) REVIEWS

If, at any time during an investigation into a complaint, it appears to the chief that the complaint is frivolous, vexatious or made in bad faith, or that the complainant fails to participate in an investigation, the chief can recommend to the police commission that the complaint be dismissed. The commission may, on consideration of the chief's recommendation, dismiss the complaint. The complainant can file a request for review to the Board to conduct a review into the police commission's decision to dismiss their complaint.

The Board issued the following decision arising from a request for review.

Howe v Edmonton (Police Service), 2018 ABLERB 018

The complainant alleged that officers misconducted themselves by failing to thoroughly investigate an incident where she alleged her neighbour put dog feces on her property. In addition, the complainant alleged the officers displayed bias towards her and stereotyped her regarding her mental health. The Chief recommended to the EPC that the complaint be dismissed as frivolous and vexatious, and the EPC did so. The Board affirmed the EPC's determination that the complaint was frivolous.

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 may include, but are not limited to: seeking to admit additional evidence beyond what is found in the record; seeking disclosure of information that has been redacted from the record; seeking to have the record, or portions thereof, sealed from public access; or holding the appeal hearing in private.

The Board generally does not issue public decisions arising from preliminary applications, but may do so where the decision will have some value as guidance for future cases. In 2018, the following application decisions were published.

Conlin and Barton v Edmonton (Police Service), 2018 ABLERB 012

One of the respondents in the appeal did not waive privilege over his compelled statement that was prepared under section 10 of the PSR. The Board determined it could not compel production of the involuntary statement under the current legislation. Accordingly, the statement was not produced in the appeal. The Board had to decide if there was enough information on the record without the respondent's statement to make a determination of the reasonableness of the Chief's decision on the appeal, or whether *viva voce* evidence or a new sworn statement should be admitted. Mindful of the *Palmer* criteria, the Board declined to admit new evidence as the respondent did not advise of the substance of the new evidence, and the Board could not determine if the new evidence would be credible, relevant or persuasive, such that it would affect the outcome in the proceeding.

APPEALS ALLOWED IN FULL OR IN PART

A v Edmonton (Police Service), 2018 ABLERB 003

**Allegations: Deceit
Discreditable Conduct
Insubordination**

The Presiding Officer convicted the appellant of five charges of misconduct, including three counts of deceit, one count of discreditable conduct and one count of insubordination, and imposed the penalty of dismissal from the EPS. The Board upheld the appellant's dismissal as reasonable. The decision was appealed to the Alberta Court of Appeal. The Court quashed the Board's decision and remitted the matter to the Board for reconsideration, on the basis that it correctly enunciated but failed to properly apply the reasonableness standard of review to the Presiding Officer's decision. In light of the Court of Appeal's decision and on reconsideration of the appeal, the Board considered the opportunity for rehabilitation as a significant factor mitigating against dismissal and reduced the appellant's rank.

GH v Edmonton (Police Service), 2018 ABLERB 029

Allegations: Breach of Confidence

The respondent had disclosed historical criminal allegations against the appellant to the appellant's employer. In doing so, the respondent said that the appellant had a "history of assaults". The appellant had been given a conditional discharge as a youth and over the years, four other allegations had been made against him, but he was never charged in any of those cases. The respondent prompted the employer to obtain a new criminal record check and vulnerable sector check so the employer could obtain the information officially. The respondent did this after being told not to do so by her superiors. The appellant's new records check contained the historical information and his employment was terminated. The Chief dismissed the allegation of breach of confidence and concluded that the respondent's disclosure of the appellant's personal information was authorized by section 40(1) of the *Freedom of Information and Protection of Privacy Act*. The Board determined the EPS's investigation of the appellant's complaint was grossly inadequate and that the Chief's decision was unreasonable. The Board returned the matter to the Chief for reinvestigation and a new decision.

APPEALS DISMISSED

AB v Edmonton (Police Service), 2018 ABLERB 001

**Allegations: Neglect of Duty
Discreditable Conduct**

On three separate occasions the appellant made reports to the EPS about her landlord making forced entries into her rental suite as a result of his intention to put the suite up for sale. She wanted the landlord to be criminally charged. The respondents found that the landlord's actions

were a civil matter rather than criminal, and the appellant was advised to contact the Residential Tenancy Dispute Resolution Service to find a resolution. The appellant alleged that during their investigation of her reports, the respondents failed to do their duty, did not treat her fairly and that their conduct was unprofessional. The appellant filed formal complaints against the respondents. The Chief dismissed the allegations based on a lack of supporting evidence. The Board concluded the Chief's disposition was within the range of reasonableness and dismissed the appeal.

Kozina v Edmonton (Police Service), 2018 ABLERB 002

Allegations: Unlawful or Unnecessary Exercise of Authority

The appellant alleged excessive force by the respondents during his arrest, resulting in injuries to the appellant. The Chief charged the respondents with excessive use of force and a disciplinary hearing was held. The Presiding Officer acquitted both respondents. On appeal, the appellant argued that the presenting officer who prosecuted the charges was biased, tainting the prosecution. He further argued that the acquittal was unreasonable and that the matter should be returned for another hearing. The Board determined the prosecution was not tainted and the acquittal was within the range of reasonable outcomes. The appeal was dismissed.

Mutch v Edmonton (Police Service), 2018 ABLERB 004

Allegations: Unlawful or Unnecessary Exercise of Authority

Discreditable Conduct

Neglect of Duty

Insubordination

Deceit

The appellant attended an Edmonton Oilers hockey game where he became intoxicated which led to his arrest and detention by the EPS. During this time, the appellant struggled and was uncooperative. He filed a complaint alleging that EPS breached a number of policies when he was arrested and detained. The appellant argued his *Charter* rights were violated as he was not cautioned or provided with the opportunity to speak to a lawyer. The Chief dismissed all 24 of the allegations and the appellant filed an appeal to the Board. The appellant claimed that the Board's civilian oversight mandate should be engaged as the PSB investigation was tainted, flawed and grossly inadequate. The Board dismissed the appeal, finding that the PSB investigation was not compromised so as to engage the Board's civilian oversight mandate. The Chief's disposition was within the range of reasonable outcomes on all allegations.

Korniyenko v Edmonton (Police Service), 2018 ABLERB 005

Allegations: Unlawful or Unnecessary Exercise of Authority

Neglect of Duty

The appellant was arrested and detained by the respondents after searching the appellant's property. The appellant complained about the search warrant, the search and seizure of his property including the involvement of an animal protection agency, and his arrest and detention.

As the appellant was facing criminal jeopardy, his participation in the investigation was self-limited. The appellant appealed portions of the Chief's disposition on the basis that the investigation was tainted, flawed or grossly inadequate, and that the Chief's disposition was unreasonable. The Board determined that the appellant was represented by experienced counsel and had sufficient opportunity to participate in the investigation. On this basis, the investigation was adequate and the Chief's decision was not unreasonable.

Wood v Edmonton (Police Service), 2018 ABLERB 006

**Allegations: Insubordination
Discreditable Conduct**

The appellant alleged the respondent had improperly used police databases to obtain his personal information and provided this to a third party. The appellant alleged his ex-girlfriend told him that the respondent initiated a relationship with her and that she would do "favours" for the respondent in exchange for information about her ex-husband for her custody case in her divorce proceedings. The ex-girlfriend allegedly threatened the appellant that the respondent was also going to assist her in getting information about the appellant, which she would use to make criminal allegations against him. The appellant claimed that the respondent was using his position as a police officer to view the appellant's personal records, as well as the records of his ex-girlfriend's ex-husband, with the intent of allowing the ex-girlfriend to use this information against them. The appellant provided no evidence to substantiate his claims. The Chief's decision to dismiss the appellant's complaint without a disciplinary hearing was reasonable.

Saunders v Edmonton (Police Service), 2018 ABLERB 007

Allegations: Discreditable Conduct

The appellant and the respondent were involved in divorce proceedings. The appellant alleged that the respondent ignored or breached two court orders granted by the Court of Queen's Bench. One of the orders was for legal costs owed by the respondent to the appellant. The second was a parenting order regarding their child. The appellant stated that there is a code of ethics and guidelines of appropriate behaviour expected of an EPS officer, including following court orders, which the respondent breached. The Chief's decision to dismiss the appellant's complaint without a disciplinary hearing was upheld as reasonable as the subject matter of the appeal was outside the scope of the Act and the PSR.

Lucyshyn v Edmonton (Police Service), 2018 ABLERB 008

Allegations: Neglect of Duty

The appellant's wife complained to EPS about a telephone call she received threatening to shoot her son. The respondent contacted the son at a telephone number provided by the appellant's wife and concluded from that telephone call that he was safe and in no imminent danger. The respondent then told the appellant that the complaint was downgraded for response, as it was not time-sensitive. The appellant was dissatisfied with the downgrading of the level of seriousness and the eventual call response time. The Chief dismissed the allegation of neglect of

duty against the respondent. The Board concluded the Chief's dismissal of the complaint fell within the range of reasonable outcomes.

Szybunka v Edmonton (Police Service), 2018 ABLERB 009

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

The appellants' intoxicated son was picked up by the respondent and transported to the vicinity of a social service agency. Tragically, later that afternoon the appellants' son was found deceased near the agency. The appellants complained to the Chief regarding the respondent's conduct. The Chief disposed of two allegations pursuant to section 45 of the Act. The remaining three allegations were appealed to the Board. The Board found no basis to exercise its civilian oversight mandate regarding the adequacy of the Chief's investigation. Further, the Board found the Chief's disposition of the allegations to be reasonable.

NO v Edmonton (Police Service), 2018 ABLERB 010

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

The respondents attended the appellant's residence and interviewed her regarding her complaint of receiving harassing phone calls. The appellant's complaint was investigated and the file was closed without charges being pursued. One of the respondents contacted the mental health crisis response team about the appellant. The appellant claimed that the respondents did not properly investigate her complaint and failed to do so in a professional manner, and provided false information to the mental health crisis response team about her. The Board concluded the Chief's decision to dismiss the appellant's allegations without a disciplinary hearing was reasonable. The investigation was adequate and the reasons were justifiable, transparent and intelligible.

CD v Edmonton (Police Service), 2018 ABLERB 011

Allegations: Neglect of Duty

The appellant alleged that the respondent failed to adequately investigate his complaint of "parental abduction" by his daughter's mother, failed to enforce a court order for access and failed to charge the mother with a crime. The complaint was dismissed as having no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing. The appellant appealed the Chief's decision, citing a number of concerns about the investigation. These concerns were addressed at the appeal hearing. The Board dismissed the appeal, finding no basis to conclude that the Chief's disposition of the appellant's complaint was tainted, flawed or grossly inadequate. The Chief's decision that there was insufficient evidence of misconduct to warrant a hearing was within the range of reasonable outcomes. The appeal was dismissed.

EF v Edmonton (Police Service), 2018 ABLERB 014**Allegations: Unlawful or Unnecessary Exercise of Authority**

The appellant alleged the respondent used unlawful and unnecessary authority when attending her home with a member of the Child at Risk Response Team in response to a “check on welfare” request issued by Children’s Services. The appellant claimed that when she told the respondent that he could not enter her residence, he forced his way in, grabbed her hands, threw her against the wall and put his elbow on her neck, resulting in injuries to her neck and arm. In his investigation, the Chief could not find any evidence to substantiate the claims made by the appellant. The Chief dismissed the complaint as having no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing. As the independent civilian evidence and medical evidence did not support the allegations, the Board found the Chief’s decision to dismiss the appellant’s complaint to be reasonable.

Siebert v Lethbridge (Police Service), 2018 ABLERB 015**Allegations: Discreditable Conduct
Unlawful or Unnecessary Exercise of Authority
Insubordination
Neglect of Duty
Deceit**

The LPS was investigating an alleged assault by the appellant against his girlfriend. The appellant was allegedly intoxicated, refused to identify himself, and became uncooperative and belligerent towards the officers. The appellant allegedly resisted arrest, was taken to the ground and handcuffed. The appellant lost a tooth and had some other injuries in the takedown. Upon arrival at the holding cells, the appellant was removed from the vehicle by one respondent, who he claimed had assaulted him. The appellant complained that he was wrongfully arrested and detained, not read his *Charter* rights, assaulted and denied medical treatment, among other things. The Chief dismissed all but one of the allegations. He found a count of insubordination to have been established but disposed of this allegation as ‘not serious’ under section 45(4) of the Act. On appeal, the appellant submitted that there was an inadequate investigation and unreasonable outcome. The Board dismissed all grounds of appeal on the basis that there was no support for the argument of an inadequate investigation. The Chief properly performed his screening role and the conclusions he reached were reasonable.

Andrews v Edmonton (Police Service), 2018 ABLERB 016**Allegations: Unlawful or Unnecessary Exercise of Authority**

The respondents attended the appellant’s home to retrieve CCTV video footage in connection with an EPS investigation of mischief by a group of juveniles who had damaged vehicles in the area where the appellant lives. Due to a prior incident with the appellant and the EPS, the respondents were joined by another respondent and her civilian partner from the Police and Crisis Team (“PACT”). The appellant claimed that the respondents allowed the PACT members to enter his home without his permission and while there, they conducted an unlawful search of his

residence. The Chief dismissed the allegations as having no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing for unlawful or unnecessary exercise of authority. The Board dismissed the appeal, finding that the Chief's disposition was within the range of reasonable outcomes, and that the PSB investigation was not compromised so as to engage the Board's civilian oversight mandate.

Barriffe v Edmonton (Police Service), 2018 ABLERB 017

Allegations: Unlawful or Unnecessary Exercise of Authority

The respondents attended the appellant's residence in response to two complaints about a female screaming and appearing that she was being forcibly taken into the appellant's residence. The respondents claimed that the appellant refused their entry into the residence, that they saw the appellant assault his wife, and then used force to arrest him. The appellant complained that he was arrested without just cause and that excessive force was used to arrest him. The Chief determined that the respondents' actions did not meet the required threshold for a criminal investigation and dismissed the complaint without a hearing. The Chief's decision was reasonable.

Carriere v Edmonton (Police Service), 2018 ABLERB 022

Allegations: Discreditable Conduct

The respondent and his partner attended the appellant's residence to speak with him regarding a complaint against him. The appellant alleged in his complaint that the respondent was aggressive and threatening towards him. The PSB investigation and the fresh evidence that was allowed as a result of a preliminary application, did not conclusively support the appellant's complaint. The Chief's decision to dismiss the appellant's complaint without a disciplinary hearing was reasonable.

Pescar v Edmonton (Police Service), 2018 ABLERB 023

**Allegations: Discreditable Conduct
Deceit**

The respondents attended the home of the appellant late at night to investigate a harassment complaint. The appellant alleged the respondents were abusive and intimidating, and could have met with him at a more reasonable hour. He also claimed that one of the respondents falsified his police report and disclosed his health information without his permission. The appellant's complaint was investigated and dismissed by the Chief. The appellant appealed the Chief's decision on the grounds of a biased investigation and unreasonable outcome. The appeal was dismissed.

OP v Edmonton (Police Service), 2018 ABLERB 026

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

The appellant complained that he was assaulted by EPS officers responding to his request for assistance to get medical help for his mentally-ill son. An altercation ensued between the appellant and the respondents at the apartment building where the son resides. The respondents were trying to get the appellant to move away from his son's apartment door. The appellant alleged that the respondents used excessive force to arrest him and their actions constituted unlawful or unnecessary exercise of authority, discreditable conduct, deceit and neglect of duty. The respondents claimed the appellant was uncooperative, he failed to listen to and follow their instructions. The respondents had to take down the appellant with the help of a conducted energy weapon ("CEW") device to get him under control and to remove him to safety. 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 of the respondents at a disciplinary hearing. The Board dismissed the appeal, finding that the Chief's disposition was within the range of reasonable outcomes on all allegations.

Engel v Calgary (Police Service), 2018 ABLERB 027

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

Following an access to information request to CPS, the appellant sent a follow-up question to the Service's freedom of information coordinator, a civilian employee. She forwarded the request by email to the Chief, the respondent and senior members. The respondent forwarded the request to legal counsel for the CPS. The appellant complained to CPS that the dissemination of the access request to CPS members and civilian employees, and to outside counsel, was in breach of the *Freedom of Information and Protection of Privacy Act*. The Office of the Information and Privacy Commissioner determined that it was not. The Chief dismissed the appellant's *Police Act* complaint without a hearing. The appellant alleged on appeal that in dismissing the complaint, the Chief erred in not investigating and addressing all aspects of his complaint, and not investigating all of the members who had involvement in the matter. Most of the individuals identified in the complaint were either civilian employees or members who have since retired, therefore, leaving the Board with no jurisdiction over these individuals. The respondent's role was limited as he followed the direction of the Chief. The appeal was dismissed.

Cantwell v Edmonton (Police Service), 2018 ABLERB 028

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

The appellant had a contract with a property management company to deal with vehicles that were parked in contravention of signage posted on the property. The appellant used a “Denver Boot” device as a means to immobilize these parked vehicles and subsequently collected money to have the devices removed. The respondents arrested and charged the appellant and his employee with fraud, mischief and extortion. The appellant laid a complaint against the respondents for false arrest, public humiliation and conduct unbecoming of an officer. The complaint was investigated and the Chief dismissed the complaint. The appellant appealed the Chief’s decision on the grounds of an inadequate investigation and an unreasonable outcome. The Board concluded that the Chief reasonably concluded that there was no reasonable prospect of establishing the facts necessary to obtain a conviction at a disciplinary hearing for discreditable conduct against an EPS member. The Board affirmed the Chief’s decision and dismissed the appeal.

Conlin and Barton v Edmonton (Police Service), 2018 ABLERB 030

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

Numerous allegations were brought against seven officers as a result of obtaining and executing a search warrant at the appellants’ home, including the arrest and detention of appellant Conlin and the interactions between the appellants and the respondents on the night in question. In his disposition, the Chief sent four allegations to a hearing and dismissed the rest of the complaints. On appeal, the appellants argued an inadequate investigation, an inadequate application of the charging threshold and the disposition of the Chief was unreasonable. The Board concluded that the application of the charging threshold was reasonable, the investigation was adequate, and that the Chief’s disposition was reasonable.

COURT OF APPEAL DECISIONS

Section 18 of the *Police Act* provides the right for a party to apply for leave with the Court of Appeal to appeal a Board’s decision on a question of law. In 2018, the following matters, arising from the Board’s decision, were dealt with by the Court of Appeal. Full citations of the Court of Appeal decisions are provided on matters that have been concluded.

Patel v Law Enforcement Review Board, 2018 ABCA 52

The applicant appealed the Board’s decision (*PQ v Edmonton (Police Service), 2017 ABLERB 030*) to the Alberta Court of Appeal on whether the findings of fact by the Board on various issues that were raised before them, were reasonable findings of fact. On the application for leave, the Court found there was no suggestion of a misapprehension of the evidence, nor did they see any

significant question of law that would qualify under the guidelines of reasonable prospect of success were leave to be granted. The application for leave was dismissed.

Toy v Edmonton (Police Service), 2018 ABCA 37

Cst. Toy appealed the Board's decision (*Toy v Edmonton (Police Service), 2016 ABLERB 021*) where it upheld the Presiding Officer's decision on the findings of deceit and that he be dismissed from the EPS. The primary issues before the Court were the admissibility of Cst. Toy's involuntary statement and testimony from the first and the second disciplinary hearings, the findings of deceit and the penalty. The Court found it was not unreasonable for the Board to conclude that the Presiding Officer reasonably found that Cst. Toy's deceit was sufficiently egregious that he was no longer fit to serve in the privileged position of a police officer. The Court upheld the Board's decision and the appeal was dismissed.

Braile v Calgary (Police Service), 2018 ABCA 109

Sgt. Braile filed an application for leave arising from the Board's decision in his appeal (*Braile v Calgary (Police Service), 2017 ABLERB 001*). The Board upheld the Presiding Officer's decision that he be dismissed from the CPS. Leave was granted on the articulation and application of the burden of proof, and whether the Presiding Officer applied the correct standard of proof in the penalty assessment decision. The Court determined that the Presiding Officer was correct on placing the legal burden on Sgt. Braile to establish mitigation and that it was clear from a review of the decision that the Presiding Officer understood and applied the correct standard. The appeal was dismissed.

Deluca v Alberta (Law Enforcement Review Board), 2018 ABCA 340

This decision relates to the following four appeals that the Board dismissed for lack of jurisdiction: Csts. T. Deluca and T. Paulino; Cst. J. Coughlan; and Cst. M. Strong. In each of the appeals the officers alleged 'disguised discipline' where action was taken against them, but not under Part 5 of the *Police Act*. In a split decision, the Court allowed the appeals and directed the Board to hear the four appeals, assuming that the challenged actions were disciplinary in nature. The Court also advised that the deficiencies in the records, because sections 47(4) and (5) of the Act were not complied with, are matters the Board will need to deal with. The appeal was allowed.

The Board was advised in late 2018 that the affected police services would be filing applications for leave to appeal to the Supreme Court of Canada.

JUDICIAL REVIEW

I. Gonzalez (Edmonton Police Service)

Mr. Gonzalez sought judicial review of the Board's decision (*Gonzalez v Edmonton (Police Service), 2017 ABLERB 011*), arguing that the Board did not address or consider all his arguments

during his hearing, and that the Board's decision failed to provide convincing reasons why it preferred the officers' version to that of the content in a video he produced. Judicial review of this matter is scheduled to be heard in 2019.

K. Kozina (Edmonton Police Service)

Mr. Kozina sought judicial review arising from the Board's decision (*Kozina v Edmonton (Police Service)*, 2018 ABLERB 002) where the Board found the Presiding Officer's decision from the disciplinary hearing was not tainted and within the range of reasonable outcomes. Mr. Kozina cited the Board's decision contained errors of law and was unreasonable, particularly with the respect to the disciplinary hearing conducted by the EPS. The judicial review is scheduled to be for the Spring 2019.

P. Korniyenko (Edmonton Police Service)

Mr. Korniyenko sought judicial review arising from the Board decision (*Korniyenko v Edmonton (Police Service)*, 2018 ABLERB 005), where it found that the investigation into his complaints was adequate and that the Chief's decision was within the range of reasonable outcomes. Mr. Korniyenko's grounds for seeking judicial review are that the Board did not address or consider all of his arguments, it failed to provide cogent reasons why it preferred the respondents' version over his, and that the Board's decision was unreasonable. The judicial review is scheduled for May 2019.

J. Mutch (Edmonton Police Service)

Mr. Mutch sought judicial review of the Board's decision (*Mutch v Edmonton (Police Service)*, 2018 ABLERB 004), where he cites the Board did not address or consider all of the arguments, the Board's decision failed to provide cogent reasons why it preferred the respondents' version to that of Mr. Mutch and that the Board's decision was unreasonable. The judicial review is scheduled for September 2019.

SUPREME COURT OF CANADA

Hu v Alberta (Law Enforcement Review Board), et al., 2018 CanLII 1149 (SCC)

Mr. Hu sought permission to appeal the Board's decision (*Hu v Edmonton (Police Service)*, 2016 ABLERB 015), where his complaint was dismissed as frivolous, vexatious or made in bad faith under section 19.2(1) of the Act. The application for permission to appeal to the Court of Appeal did not raise a significant question of law that would have a reasonable prospect of success and the application for leave was denied. Mr. Hu sought leave to appeal with the Supreme Court of Canada ("SCC"). Leave was denied in January 2018, with costs against the applicant.

**Chief of the Edmonton Police Service and Csts. Paulino and Deluca and Cst. Coughlan
Chief of the Calgary Police Service and Cst. M. Strong**

An application for leave was filed with the SCC on the Alberta Court of Appeal’s decision in *Deluca v Alberta (Law Enforcement Review Board)*, 2018 ABCA 340, raising the following issues: what is the proper test to find that a power exists by “necessary implication”?; how does the doctrine of jurisdiction by “necessary implication” relate to the doctrine of “implied exclusion”?; and what is the scope of powers that can be created by “necessary implication”. The SCC’s decision on leave was outstanding as of December 31, 2018.