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CASE SUMMARY: ALLEGATIONS OF DISGUISED DISCIPLINE CAN BE REVIEWED BY THE LAW ENFORCEMENT REVIEW BOARD

The majority of the Court of Appeal concluded that the Law Enforcement Review Board had jurisdiction to hear appeals from three constables alleging disguised discipline (even though there was no formal complaint made pursuant to the Police Act). The Court of Appeal allowed the appeals of the three constables.

Administrative law – Decisions reviewed – Law Enforcement Review Board – Jurisdiction – Compliance with legislation – Judicial review – Appeals – Standard of review – Correctness – Patent unreasonableness – Professions – Police – Disciplinary proceedings

Deluca v. Alberta (Law Enforcement Review Board), [2018] A.J. No. 1220, 2018 ABCA 340, Alberta Court of Appeal, October 18, 2018, B.K. O’Ferrall, T.W. Wakeling and J. Strefak JJ.A.

The Edmonton Police Service involuntarily transferred Constables Deluca and Paulino from the recruiting training unit and removed Constable Coughlan from a list of eligible candidates for a school resource officer position. Constable Strong claimed that the Calgary Police Service failed to provide full pay and benefits after he was reinstated. These constables all claimed that these actions were disguised discipline. The three constables each asked the Respondent, Law Enforcement Review Board (the “Board”) to hear appeals against those decisions on that basis. The Board refused to do so in two separate decisions. The Board held that its jurisdiction only arises after a complaint has been made and disposed under the *Police Act*.

The constables initiated an appeal to the Court of Appeal. The Court of Appeal panel issued three different sets of reasons.

Reasons were delivered by J. Strefak J.A. allowing all three appeals and directing the Board to hear the appeals. The Court held that the Board was bound by the Court of Appeal’s findings in *Edmonton Police Association v Edmonton (City of)*, 2007 ABCA 147 (“Murdoch”). The Court concluded that, in Murdoch, it was held that the implicit power conferred on the board includes the jurisdiction to hear disciplinary matters even when there has been a failure to conform to the procedural requirements set out in the legislation and the legislation is somewhat narrower. Therefore, the key question for the Board is whether the essential character of a dispute, in its factual context, involves police discipline. Whether or not the Board agrees that Murdoch is a proper interpretation, the Board is bound by the principles of *stare decisis* to apply the law as interpreted by the Court of Appeal. The Board’s failure to do so was incorrect and unreasonable.

Concurring reasons were delivered by B.F. O’Ferrall J.A.

Dissenting reasons were delivered by T.W. Wakeling J.A. concluding that the Board did not have jurisdiction to hear the appeals. The constables could have applied for judicial review.

This case was digested by [Scott J. Marcinkow](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Scott Marcinkow at smarcinkow@harpergrey.com.