In the Court of Appeal of Alberta

Citation: Calgary Police Association v Calgary (City), 2025 ABCA 145

Date: 20250428
Docket: 2301-0240AC
Registry: Calgary

Between:

Calgary Police Association

Appellant

- and -

City of Calgary and Alberta Labour Relations Board

Respondents

The Court:

The Honourable Justice Dawn Pentelechuk
The Honourable Justice Alice Woolley
The Honourable Justice Kevin Feth

Memorandum of Judgment

Appeal from the Decision by
The Honourable Justice J.T. Eamon
Dated and Filed on the 29th day of September, 2023
(2023 ABKB 549, Docket: 2201 04049)

Memorandum of Judgment

The Court:

Overview

[1] The Calgary Police Association (the "Association") appeals a judicial review decision upholding the Alberta Labour Relations Board's finding that the Chief of Police of the Calgary Police Service ("CPS") may use civilians to investigate conduct complaints about police officers: ***Calgary Police Association v Calgary (City)***, 2023 ABKB 549 [the "*Decision*"].

[2] The CPS is a municipal police service operated by the City of Calgary under the *Police Act*, RSA 2000 c P-17. The City decided to employ civilians through the CPS to investigate certain conduct complaints against police officers under the *Police Act*. The Association took issue with the City's decision and applied to the Board to settle a difference under s 40(1) of the *Police Officers Collective Bargaining Act*, RSA 2000, c P-18 (*Bargaining Act*). Before the Board, the Association argued that only police officers can carry out such investigations and that the City's decision offends section 36(3)(a) of the *Bargaining Act.* The City responded that the Chief of Police is authorized to assign investigations to civilians and that the *Police Act* does not limit the Chief's exercise of discretion.

[3] The Board agreed with the City of Calgary that the *Police Act* allows for the appointment of civilian investigators: ***Calgary Police Association v Calgary (City)***, 2022 CanLII 14408 (AB LRB) [the "Board's Decision"]. The Association's application for judicial review in the Court of King's Bench was dismissed.

[4] On appeal, the Association argues that the judicial review judge erred by failing to properly apply the reasonableness standard of review and improperly supplemented the Board's reasoning process and decision. The Association contends that the Board's Decision was unreasonable on multiple grounds, one of which is determinative of this appeal: Was the Board's Decision unreasonable in failing to interpret s 45 of the *Police Act* as a whole, and specifically in failing to consider the interplay between ss 45(1) and 45(5)? We conclude that the answer to this question is "yes".

[5] The appeal is allowed, and the matter is remitted back to the Board.

Background

[6] The history of this matter is set out in detail in the *Decision*. Historically, complaints about members of the CPS were investigated by police officers. In 2020 however, the City of Calgary began to fill vacant investigator positions with civilians for certain types of complaints against police officers. The Association applied to the Board for a decision that only police officers could

investigate such complaints, and that the City's decision violated s 36(3)(a) of the *Bargaining Act* which disallows imposing a condition "in a contract of service that restrains or has the effect of restraining, a police officer from exercising any right conferred on the police officer by this Act". The City responded that the *Police Act* does not limit chiefs of police to assigning only police officers to conduct complaint investigations.

[7] The Board rejected the Association's complaint under s 36(3)(a), finding that the use of civilian investigators does not affect the only "right" conferred on a police officer under s 2 of the *Bargaining Act* - to participate in Association activities. The Association does not appeal this finding.

[8] The Board also found that the primary issue before it was "whether the *Police Act* restricts the Chief of Police by obligating the Chief of Police to assign only police officers to carry out section 45(1) investigations": Board's Decision at para 47. The relevant provisions of s 45 provide as follows:

> **Complaints re police officers**
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> **45(1)** Where a complaint is a complaint as to the actions of a police officer other than the chief of the police service, subject to sections 43 and 43.1, the chief of the police service shall cause the complaint to be investigated.
> . . .
>
> **(5)** If a police officer is the subject of an investigation or hearing, the chief of the police service, the commission or the Oversight Board, as the case may be, may request the chair of the commission or chair of the Oversight Board, as the case may be, to make arrangements for another police service to provide the necessary police officers to conduct the investigation, present the case or preside at the hearing, or perform any combination of those functions, as the case may be, if in the opinion of the chief of the police service, the commission or the Oversight Board, as the case may be,
>
> a) there is not a police officer in the chief's police service who has sufficient rank and experience to carry out the functions, or
>
> b) it would be in the public interest to have one or more police officers of another police service carry out the functions.

[9] The Association argued that s 45(1) must be read harmoniously with sections of the *Police Act* requiring the Chief of Police to use police officers for other duties concerning the complaint process (i.e. ss 45(5), 45(6), 46(2)(a), 46.2(3)). The City countered that the Association's position

would require the Board to add words to s 45(1) (" ... to be investigated by a police officer") which are simply not present in the legislation.

[10] The Board ultimately concluded that the Chief of Police is not restricted to appointing police officers to conduct s 45(1) investigations. Paragraph 49 of the Board's Decision explains the Board's interpretation of s 45:

> ... The Board's reasoning is based upon the following statutory analysis:
>
> 1. The context of complaints is such that the subject matter of complaints does not necessarily mandate the utilization of police officers to carry out the investigations.
>
> 2. The scheme of the *Police Act* provides the Chief of Police with the authority to exercise his discretion in issuing directives and orders as the Chief of Police considers necessary.
>
> 3. The object and the intention of section 42.1(1) complaints and the investigations in response thereto, is to create a process of accountability for police officers.
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> 4. In response to the CPA's argument regarding harmonious interpretation of the *Police Act* in terms of other provisions that reference investigations, the Board notes that the wording contained in section 45(1) does not expressly refer to the use of police officers, and in the Boards view, this in turn means that the Chief of Police must exercise his discretion pursuant to section 41(2) as he considers necessary in carrying out his responsibilities.
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> 5. The Chief of Police in conducting an investigation pursuant to section 45(1) of the *Police Act* is in essence carrying out a right/duty, which right/duty duty [sic] can be exercised by the Chief of Police in his discretion subject to any restrictions imposed pursuant to the *Police Act* or the collective agreement. There are no explicit restrictions. In addition, section 41(2) authorizes the Chief of Police to issue orders and directions as he considers necessary. A harmonious reading of section 45(1) with the authority designated to the Chief of Police pursuant to section 41(1)(2) and (3) is that the Chief of Police has the right to determine if he wishes to use civilian investigators unless the *Police Act* otherwise restricts him from doing so.
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> 6. Section 60 of the *Police Act* prohibits matters referenced in section 45(1) of the *Police Act* from being the subject of a collective agreement. It is difficult to reconcile the *Police Act*'s prohibition against there being collective agreement terms addressing section 45(1) matters with an interpretation of section 45(1) that mandates the investigations are to be carried out by CPA members.

[11] On judicial review, the Association argued, *inter alia*, that the Board's Decision was unreasonable because it narrowly interpreted s 45(1) in a manner that was not supported by a broader reading of ss 45 and 46, and the *Police Act* generally. The Association asserted that only one possible interpretation of s 45 is available: police officers must be appointed to investigate conduct complaints under s 45(1). The Association submitted that if a chief of police can engage civilian investigators to investigate s 45(1) complaints, there would be no need for s 45(5) which allows a chief of police to request another police service to "provide the necessary police officers to conduct the investigation", particularly if "there is not a police officer in the chief's police service who has sufficient rank and experience to carry out the functions". It maintained that the Board's failure to reconcile s 45(5) with s 45(1) was sufficient to find the decision unreasonable. In the alternative, the Association contended that if more than one interpretation of s 45 is available, the Board's interpretation is outside the range of acceptable outcomes.

[12] In contrast, the City submitted that chiefs of police have wide discretion in the manner of investigating complaints, and s 45(5) was merely an additional investigative tool. The Board's Decision properly grappled with the statutory provisions and the arguments, which resulted in an intelligible and reasonable conclusion.

[13] The judicial review judge, after setting out the principles of the test for reasonableness, concluded that the Association had not demonstrated that the Board's Decision was unreasonable. He found that the "Board identified the correct approach to statutory interpretation, followed a rational chain of analysis, and came to an interpretation that is reasonable": *Decision* at para 69. In so finding, the reviewing judge noted that he "would have preferred to see a more explicit discussion of the Applicant's submissions concerning the impact of section 45(5) and similar provisions in sections 46 through 46.2". However, he concluded:

> … I am satisfied that the Board did not fail or refuse to consider or overlook CPA's submissions about the impact of section 45(5) or similar provisions of the *Police Act* or unreasonably construe them. To the contrary, the only possible conclusion is that the Board accepted the City's submission that section 45(5) "simply provides the Chief of Police with the option of having another police service conduct an investigation rather than prescribing it …". Some of the other things said to be errors are a misreading of the Board's reasons, or minor missteps that are not sufficiently central or significant to render the decision unreasonable.

[14] The reviewing judge then offered his own analysis of 45(5), with the aim of demonstrating that the Board's "chain of reasoning" was reasonable: *Decision* at paras 72-77. He found that s 45(1) did not expressly require police officers to investigate conduct complaints, and "the language of section 45(5) does not explicitly require a chief of police to arrange for police officers ... to investigate if a police officer of the chief's police service is not assigned or assignable as investigator. Rather, the language of section 45(5) is in the form of a discretionary power." He also concluded that the Association's interpretation of s 45(5) is "not the only plausible interpretation"

and a further interpretation is that a chief of police is authorized to arrange for another service to investigate if they decide that a police officer is required but no suitable officer is in the chief's service. Various other findings were made about the overall statutory scheme being supportive of the Board's Decision.

[15] The *Decision* added that courts and administrative decision makers must be "cautious in constraining the general powers of the chief of police and commission to operate the police service in an appropriate fashion, sensitive to public concerns, budgetary constraints, and resource allocation issues." The reviewing judge held at paragraphs 91-92 of the *Decision*, that in assessing the "language, object and scheme of the *Police Act*" he disagreed with the Association's contention that the only reasonable interpretation of section 45(5) imposes "a mandatory duty on the chief of police to seek the assistance of police officers of other services in certain situations or that such a duty implies that only police officers may investigate complaints". He then concluded: "I do not see a good reason to interpret section 45 so as to deprive a chief of police from having discretion under section 45(1) to appoint investigators other than police officers to meet operational needs of their police service"; rather, the "most plausible interpretation" is the opposite.

[16] After reviewing other alleged errors and acknowledging minor "missteps" by the Board, the reviewing judge ultimately concluded that the "force" of the Board's Decision was properly on "the plain language of section 45; the context of complaints, particularly that they do not necessarily mandate the utilization of police officers to carry out investigations; and the chief's need for discretion in assigning resources": *Decision* at para 106. The Association's application for judicial review was dismissed.

Standard of review

[17] An appeal from a judicial review decision requires this Court to consider whether the reviewing judge correctly identified the standard of review and whether that standard was applied correctly. No deference is owed to the lower court's decision, and this Court "steps into the shoes" of the reviewing judge to conduct a *de novo* review of the administrative decision: ***Agraira v Canada (Public Safety and Emergency Preparedness)***, 2013 SCC 36 at paras 45–47, [2013] 2 SCR 559; ***Northern Regional Health Authority v Horrocks***, 2021 SCC 42 at para 10, [2021] 3 SCR 107; ***Lausen v Alberta (Director of SafeRoads)***, 2023 ABCA 176 at para 27.

Analysis

[18] The reviewing judge properly undertook a review of the Board's Decision for reasonableness, notwithstanding his *obiter* comments suggesting that the standard of review might be correctness. As a result, we need not further discuss his comments about concurrent first instance jurisdiction between administrative bodies and the courts under the *Police Act*.

[19] On judicial review, the reasonableness standard is concerned with the presence of justification, transparency and intelligibility within the decision-making process, and whether the administrative decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Importantly, where "a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility." Further, the reviewing court may not "disregard the flawed basis for a decision and substitute its own justification for the outcome": ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 at paras 86-87, 96, 98, [2019] 4 SCR 653.

[20] We agree with the Association that the reasonableness standard was not applied correctly in this case. Stepping into the shoes of the reviewing judge and conducting a *de novo* review, the Board's Decision does not meet the test for reasonableness. In our view, the Board's Decision failed to consider s 45 of the *Police Act* as a whole, and particularly the interplay between s 45(1) and 45(5), resulting in a reasoning pathway that lacked intelligibility and an outcome that lacked transparency. To the extent that the reviewing judge's reasons for upholding the Board's Decision appear to fill in these missing considerations, this approach cannot serve to render the Board's Decision reasonable, and it must be overturned.

[21] The Board properly found that the crux of its decision was the interpretation of s 45 of the *Police Act*. Section 45 was predominantly assessed and interpreted at paragraph 49 of the Board's decision, reproduced at paragraph 10 above. Nothing in that paragraph or the Board's Decision generally addresses the interplay between ss 45(1) and (5). Indeed, s 45(5) is not even mentioned except in passing reference at paragraph 48. The only statement that might otherwise allude to 45(5) is found in paragraph 49.5: "There are no explicit restrictions." The Association argued however, that s 45(5) explicitly restricted who could be appointed as an investigator of a s 45(1) conduct complaint (i.e. a police officer). As the reviewing judge acknowledged, the Board's Decision did not address this argument. The judge's finding that he was nevertheless satisfied that the argument was considered and the *Police Act* was not misconstrued by the Board is untenable, as is his reasoning that the "only possible conclusion is that the Board accepted the City's submission that section 45(5) 'simply provides the Chief of Police with the option of having another police service conduct an investigation rather than prescribing it'": *Decision* at para 69. Given the lack of reasons provided by the Board on this issue, we are not satisfied this was the case.

[22] Section 45(5) allows a chief of police to request that the "necessary police officers" from another police service be assigned to conduct a s 45(1) conduct investigation, particularly where "there is not a police officer in the chief's police service who has sufficient rank and experience to carry out the functions". There is simply no assessment of this section in the Board's Decision and the impact, if any, on how section 45(1) conduct complaints must be investigated. Section 45(5) provides some support for the Association's argument that s 45(1) investigations must be conducted by police officers generally, and even more specifically by those with "sufficient rank

and experience". Further, just as the Board (and the judicial review judge) found that nothing in ss 45(1) and 45(5) states that conduct investigations must be carried out by a police officer, neither do those sections provide that a civilian can carry out such a task.

[23] While the judicial review judge provided his own analysis of the interplay between ss 45(1) and 45(5), none of that analysis or reasoning is set out in the Board's Decision. The additional analysis offered by the judge (because of the absence of any transparent explanation provided by the Board) illustrates that the Board's Decision was unreasonable. More specifically, the Board failed to provide an intelligible answer to the issue it identified: "whether the *Police Act* restricts the Chief of Police by obligating the Chief of Police to assign only police officers to carry out section 45(1) investigations". This question could not be answered without assessing s 45 as a whole, including by analyzing the meaning and interplay of s 45(5).

[24] The appeal is allowed. The matter is remitted back to the Board to conduct a proper review of s 45, including 45(5), contextualized by the balance of the statute.

Appeal heard on November 7, 2024

Memorandum filed at Calgary, Alberta
this 28th day of April, 2025

Authorized to sign for: Pentelechuk J.A.

Authorized to sign for: Woolley J.A.

Feth J.A.

Appearances:

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