

# Court of King's Bench of Alberta

**Citation: Behiels v Edmonton (Police Service), 2024 ABKB 471**

**Date:** 20240731  
**Docket:** 2203 09216  
**Registry:** Edmonton

Between:

**Daniel Behiels**

Applicant

- and -

**Dale McPhee, Chief of Police of the Edmonton Police Service and The Edmonton Police Commission**

Respondents

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**Reasons for Decision  
of the  
Honourable Madam Justice D. J. Kiss**

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## **I. Introduction**

[1] The Applicant, Daniel Behiels, is a detective with the Edmonton Police Service (the "EPS"). Det. Behiels was suspended without pay by Dale McPhee, the Chief of Police of the EPS (the "Chief") on November 16, 2021. The Chief's decision to suspend Det. Behiels without pay was confirmed by the Edmonton Police Commission (the "Commission") the following month, with the Commission's written reasons being issued later, on January 24, 2022.

[2] Det. Behiels seeks judicial review of the Commission's decision and requests that the Court either set aside the decision or remit the matter back to the Commission for a new hearing.

## II. Statutory and Legal Framework

[3] The statutory scheme for the discipline of police officers is found in the *Police Act*, RSA 2000, c P-17 and the *Police Service Regulation*, Alta Reg 356/1990 [*PSR*].

[4] Section 5 of the *PSR* sets out a list of prohibited conduct for a police officer. Examples relevant to this application include: breach of confidence (s 5(2)(a)), discreditable conduct (s 5(2)(e)), and insubordination (s 5(2)(g)).

[5] Section 8 of the *PSR* contains the legislative framework for relieving an officer from duty and includes the following provisions:

- a. Section 8(1) permits the Chief to relieve an officer from duty where the Chief has reasonable grounds to suspect the officer has contravened s 5 of the *PSR*;
- b. Section 8(10) allows the Chief to relieve an officer from duty without pay where the Chief is of the opinion that exceptional circumstances exist respecting the alleged contravention of s 5 of the *PSR*; and
- c. Section 8(11) provides that if the Chief does relieve an officer from duty without pay, the Chief must have that direction confirmed by the Commission within 30 days.

[6] The role of the Commission is limited to reviewing the decision of the Chief to determine whether it was reasonable for the Chief to form the opinion that exceptional circumstances existed justifying the officer's relief from duty without pay. To be clear, the Commission's jurisdiction is limited to reviewing the *without pay* aspect of the Chief's decision; the Commission has no authority to review the Chief's reasonable suspicion of misconduct resulting in a decision to relieve an officer from duty *with pay*: *Kube v Edmonton (Police Service)*, 2014 ABQB 126 at paras 50-51 [*Kube*]; *Partington v Edmonton Police Service*, 2021 ABQB 387 at paras 7, 88 [*Partington*].

[7] In assessing whether exceptional circumstances exist, the Commission should consider the following non-exhaustive list of factors set out in *Re Bigelow and Taber Police Service*, LERB 041-98 at 11-12 [*Bigelow*]:

1. An allegation of serious criminal conduct (i.e., culpable homicide; armed robbery; trafficking in narcotics; kidnapping; aggravated assault; etc.); a single allegation of serious criminal conduct may alone constitute "exceptional circumstances";
2. Multiple allegations of criminal conduct;
3. Alleged misconduct of such a nature that the Police Service may reasonably suffer in its reputation or administration were the officer not relieved from duty without pay;
4. Alleged misconduct of such a nature that internal accountability or discipline within the Service may reasonably be undermined, absent relief from duty without pay;
5. Alleged misconduct of such a nature that the public interest may suffer or a loss of public confidence in the Service may reasonably occur, absent relief from duty without pay.

### III. Facts

[8] On January 24, 2021, Det. Behiels authored a memorandum to the Chief advising that he had provided confidential investigative materials gathered by the EPS to the media without proper authorization. The memorandum did not specify which file materials had been disclosed, nor identify which members of the news media or which media outlets had received the materials.

#### (a) Relief from Duty With Pay

[9] On February 4, 2021, a Notice of Relief from Duty With Pay was issued to the Applicant (the “Relief With Pay Notice”), indicating that the Applicant was relieved from duty with pay on the basis that the Chief had reasonable grounds to suspect that the Applicant had contravened several provisions of the *PSR*, including s 5(2)(a) breach of confidence, s 5(2)(e) discreditable conduct, and s 5(2)(g) insubordination.

[10] The Relief With Pay Notice outlined that the decision to suspend Det. Behiels with pay was based on the Chief having reasonable grounds to believe that the Applicant:

- a. Had communicated to the news media about matters connected to the police service without proper authorization;
- b. Had refused to cooperate with the initial investigation into the allegations of his alleged misconduct by failing to provide details of his involvement in the release of the confidential information to the media when requested to do so;
- c. Had engaged in the unauthorized dissemination of confidential police information to the media, taking advantage of his position as a peace officer to benefit himself; and
- d. Had disclosed unknown confidential policing information to the media without proper review or authorization, resulting in organizational risk to the EPS and the possible release of police investigative techniques which could compromise ongoing and future investigations, and also matters currently before the Courts.

[11] The Relief With Pay Notice imposed a number of conditions on the Applicant. Compliance with these conditions was noted to be mandatory, and failure to comply would be considered insubordination. The conditions included, but were not limited to, the following:

- To comply with all EPS policies and procedures and any lawful orders issued to the Applicant;
- To attend at the Professional Standards Branch as directed and comply with any directions given with respect to providing statements or interviews; and
- To refrain from discussing the misconducts or circumstances surrounding the misconducts with any other officers, witnesses, or other individuals directly involved in the matters giving rise to the misconduct.

#### (b) Relief from Duty Without Pay

[12] Subsequent to the issuance of the Relief With Pay Notice, a series of further events occurred, and additional information was discovered, which ultimately resulted in the Chief issuing a Notice of Relief from Duty Without Pay (the “Relief Without Pay Notice”) to Det. Behiels on November 10, 2021. The Relief Without Pay Notice indicated that the Chief had reasonable grounds to suspect that the Applicant had continued to engage in conduct that was in

breach of the *PSR* and also in breach of the conditions that had been imposed on the Applicant in the earlier Relief With Pay Notice.

[13] One of the events that occurred was that between October 12 and 16, 2021, the Canadian Broadcasting Company (the “CBC”) released a 5-part series of articles entitled, “Behind the Blue Line: Investigating Abdullah Shah”, which contained numerous references to the records that had been disclosed by the Applicant. As a result of this series, the Chief became aware that the Applicant had:

- Met with the CBC reporter Janice Johnston on three occasions after his initial disclosure of confidential material to her, with at least one of these meetings occurring on or around March, 2021, after the Applicant had received the Relief With Pay Notice;
- Disclosed to the CBC reporter material relating to 4 separate investigations identified by code names, 2 of which used confidential informants, without having the information vetted in accordance with EPS policies;
- Disclosed to the CBC reporter material relating to a joint EPS and Canada Revenue Agency (“CRA”) investigation, with the disclosed material including a confidential CRA analysis that had been provided to EPS;
- Provided to the CBC reporter confidential information from a 75-page summary of the case that the Applicant had prepared on behalf of EPS for the Crown, in which a variety of potential charges against the subject of the investigation were described; and
- Provided the CBC reporter with information from a memorandum prepared by the Applicant for the Chief.

[14] It was also determined by the Chief that between July 29 and October 22, 2021, the Applicant had continued to engage in social media activities by posting information on various social media sites, allegedly in breach of the EPS Social Media Policy and the EPS Disclosure of Information Policy. Examples of just a few of these posts, which the Applicant did not dispute were his, include the following.

- On Twitter, the Applicant’s bio read, “Currently relieved from duty. It is alleged that I, ‘bring discredit on the reputation of the Edmonton Police Service.’”
- On Twitter, the Applicant tweeted, “I’ve been wrestling with a matter of principles since the EJ article last Friday. I know that police officers, politicians, and the public are offended by allegations of corruption in the EPS. The evidence I found needed to be addressed. I still believe that”.
- On Instagram, the Applicant posted a video entitled, “The Aftermath”, in which he expressed disappointment in the limited scope of the CBC reporting, noting that less than 1GB of the 58GB of data presented to the CBC was covered in their story and that he “knows for certain that he handed over evidence of wrongdoing to ASIRT, CPS investigators, and to Janice Johnston”.
- On Facebook, the Applicant launched a new account with a link to the CBC investigative series and stated, “I stand by my allegations of Edmonton Police Corruption. I personally gave Calgary investigators proof of wrongdoing by EPS executive members.”

[15] The final event that occurred prior to the Chief making the decision to suspend Det. Behiels without pay was an interview of the Applicant that was conducted by the Professional Standards Branch on October 21, 2021. During the interview, the Applicant confirmed much of the information that had already been disclosed in the CBC articles, including that he had provided the CBC reporter with a USB drive containing confidential material; that the confidential material related to 4 EPS investigations, 2 of which involved confidential informants; and that he had met with the CBC reporter several times after making the initial disclosure.

[16] During this interview between the Applicant and the Professional Standards Branch, the Applicant was reminded of his relief with pay conditions and provided with a copy of the EPS Disclosure of Information Policy (IS2PO). Shortly after the interview concluded, the Applicant participated in an “Ask Me Anything” session on Reddit, which lasted for over 5 hours and during which he is alleged to have answered questions and provided information in further contravention of both the EPS Social Media and Disclosure of Information policies.

[17] The Relief Without Pay Notice was issued by the Chief on November 10, 2021 and served on Det. Behiels on November 16, 2021. The Chief’s reasons for his decision are summarized at pages 4-5.

**THE REASON FOR YOUR RELIEF FROM DUTY WITHOUT PAY** is that I am of the opinion that exceptional circumstances exist relative to the aforementioned alleged contraventions of the *Police Service Regulation*, that, individually, and collectively, justify your relief from duty without pay. Specifically, I am of the opinion that:

- (1) I have grounds to believe that you have engaged in Breach of Confidence by:
  - a. Divulging information you were under a duty to keep in confidence, including police investigative matters, records provided to EPS by the Canada Revenue Agency, and information pertaining to Confidential Informants. Information that could identify a Confidential Informant is subject to legal privilege, and disclosure of such information could comprise serious risks to the informant, police investigations, and the community. Information pertaining to Confidential Informants must therefore be handled with the highest degree of security and confidentiality; and
  - b. Communicating with and sharing such information, including information pertaining to Confidential Informants, with news media, or alternatively to a person who is not a member of the EPS, without authorization from a superior officer and contrary to EPS rules.
- (2) I have grounds to believe that you have engaged in Insubordination, or alternatively Discreditable Conduct, by:
  - a. Failing to ensure that the materials containing Confidential Informant information were reviewed or vetted in accordance with EPS policies before providing or showing them to Janice Johnston and/or the CBC;
  - b. Continuing to communicate with Janice Johnston and divulging confidential information to her after being relieved from duty with pay and

without proper authorization from a superior officer, contrary to the policies and procedures of the EPS and/or the Conditions;

- c. Creating or continuing to utilize multiple social media accounts in a manner that disparaged the EPS or its representatives, and harmed or could reasonably be expected to harm the interest of the EPS or its standing with the public that it serves; and
  - d. Refusing to answer questions put to you by EPS PSB investigators respecting your social media activities.
- (3) Your disclosure of confidential information, and in particular your recent statement that you were aware that the files you divulged to the CBC included investigations involving Confidential Informants, is inherently serious. The management and protection of Confidential Informant information requires the highest degree of confidentiality and adherence to internal processes to minimize risks to the informant, to EPS investigations, and to the public.
  - (4) Your disclosure of confidential information to the media without proper review and authorization by your superior officer has resulted in an organizational risk to the EPS, and has resulted in the release of investigative methods and techniques that could compromise ongoing and future investigations.
  - (5) I have reason to believe that you have nonetheless disclosed such information for your own personal reasons, contrary to your duties and obligations as an officer. Your alleged conduct severely undermines and damages the faith and trust placed in you by the EPS and by the public.
  - (6) Your alleged conduct, including your disclosure of confidential information and your repeated, ongoing failure to comply with EPS policies, procedures and directions by engaging in critical and negative social media commentary about the EPS and certain of its members calls your governability into question, and in my opinion damages the morale and maintenance of discipline within the EPS.
  - (7) In light of the alleged misconducts, I am of the opinion that internal accountability or discipline within the EPS may reasonably be undermined, and a loss of public confidence in the EPS may reasonably occur, if you are not relieved from duty without pay.

**(c) Edmonton Police Commission Decision**

[18] Once notified that the Applicant had been relieved from duty without pay, the Commission requested and received written submissions from the Chief and the Applicant. An electronic hearing proceeded on December 15, 2021. The Commission heard oral submissions from the Applicant and from counsel for the Chief.

[19] On December 16, 2021, the Commission notified the parties of its decision to confirm the Chief's direction that the Applicant be relieved from duty without pay and advised that its written reasons would follow. All of this occurred within the 30 day period prescribed by s 8(11) of the *PSR*.

[20] The written reasons for decision of the Commission were issued on January 24, 2022 (the “Decision”).

#### IV. Issues

[21] The Applicant’s Originating Application, filed June 14, 2022, identified two grounds for seeking judicial review of the Commission’s decision. First, the Applicant submitted that the Chief’s decision to relieve the Applicant from duty without pay was unreasonable as the requirement that there be “exceptional circumstances” was not met. Second, the Applicant claimed that he had been denied procedural fairness at the hearing before the Commission as he had not been appointed counsel to argue the matter.

[22] The Applicant’s position had changed somewhat by the time of this hearing. In the Applicant’s written submissions, the sole argument advanced was in relation to whether exceptional circumstances existed justifying the Chief’s decision. The issue relating to the Applicant’s lack of legal representation before the Commission was not raised by the Applicant, nor was it addressed in the responding materials or submissions of either the Commission or the Chief. Therefore, I conclude that this particular ground of appeal was abandoned by the Applicant, and I will not address it.

[23] The only issue left for determination by this Court is as follows:

1. Was it unreasonable for the Commission to uphold the Chief’s conclusion that there existed “exceptional circumstances” justifying the Chief’s decision to suspend Det. Behiels without pay?

#### V. Analysis

##### (a) Standard of Review

[24] Where a Court reviews the merits of an administrative decision (other than a review related to a breach of the duty of procedural fairness), the presumptive standard of review is now reasonableness: *Canada (Minister of Immigration) v Vavilov*, 2019 SCC 64 at para 16 [*Vavilov*].

[25] The parties all submit that the standard of review applicable to this matter is reasonableness. I agree.

[26] In *Sysco Canada, Inc v Miscellaneous Employees*, 2021 ABQB 459 at para 22, I summarized a number of principles that must be kept in mind when conducting a reasonableness review of the Commission’s decision.

- The party seeking judicial review, in this case Det. Behiels, bears the onus of establishing that the Commission’s decision was unreasonable: *Vavilov* at para 100.
- Any shortcomings or flaws in the Commission’s decision must be sufficiently central or significant to the merits, as opposed to superficial or peripheral, to render the decision unreasonable: *Vavilov* at para 100.
- The starting point for a reasonableness review is judicial restraint and respects the distinct role of administrative decision-makers, their specialized expertise, and the institutional setting in which they operate: *Vavilov* at para 288.

- This Court must focus on the decision the Commission actually made, including the justification offered for it, and not on the conclusion this Court would have reached: *Vavilov* at para 15. The role of this Court is to *review* the Commission’s decision, not to ask what decision it would have made instead, to ascertain the range of possible outcomes open to the decision-maker, to conduct a *de novo* analysis, or to determine the “correct” solution to the problem: *Vavilov* at para 83.
- This Court must begin by examining the Commission’s reasons with “respectful attention” to attempt to understand the reasoning process followed by the Commission: *Vavilov* at para 84. The Commission’s decision must be read “holistically and contextually”, rather than approaching the review process as a “line-by-line treasure hunt for error”: *Vavilov* at paras 102-103.
- This Court must ask whether the Commission’s decision bears the “hallmarks of reasonableness”, namely: justification, transparency, and intelligibility. A reasonable decision is one which is based on an internally coherent and rational chain of analysis. The decision must also be justified in relation to the particular facts and law which constrain the Commission: *Vavilov* at paras 85, 90, 100; *Canada Post Corp v Canadian Union of Postal Workers*, [2019 SCC 67 at para 2.
- The decision will be unreasonable and this Court must intervene if: (1) the decision, read holistically, fails to reveal a rational chain of analysis; (2) the decision was based on an irrational chain of analysis; (3) the conclusion reached by the Commission cannot follow from the analysis undertaken; (4) the decision, read in conjunction with the Record, does not make it possible to understand the Commission’s reasoning on a critical point; or (5) the decision exhibits clear logical fallacies such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise: *Vavilov* at paras 103-104.

#### (b) Position of the Applicant

[27] The main arguments advanced by the Applicant can be summarized as follows.

1. The Applicant has not been charged or convicted of any offences under the *PSR* or the *Criminal Code*, RSC 1985, c C-46 since his initial suspension with pay in February, 2021.
2. Most of the cases involving a relief of duty without pay involve criminality, violence against members of the public or deception on the part of the officer. The Applicant here was simply “too honest” with the public at large, in breach of his obligation to maintain confidentiality; however, there was no evidence before the Commission that the Applicant’s actions were of such a nature as to erode internal accountability and discipline within the EPS or that the EPS would reasonably suffer in its reputation or administration if the Applicant was not relieved from duty without pay.
3. With respect to the confidential file materials the Applicant disclosed to the media, the Applicant maintained throughout that he had vetted the files and removed any confidential informant information. The Chief did not put forward any evidence before the Commission to suggest that any of the informants had been compromised as a result of the Applicant’s actions and this diminishes the “extraordinary” nature of the Applicant’s initial disclosure to the media.



4. One of the new allegations against the Applicant after his initial suspension with pay was his continued social media use. The Applicant submits that he was exceptionally restrained in his comments and that many of his posts were value-neutral and not contrary to the EPS Social Media Policy. Further, all of the Applicant's social media accounts were closed and unpublished on October 23, 2021, prior to the Chief's decision to suspend the Applicant without pay.
5. The second new allegation against the Applicant after his initial suspension with pay was the Applicant's decision to meet with the CBC reporter 3 additional times after the initial disclosure of confidential material. However, the Applicant submits that no further confidential information was provided to the media during these meetings, and there was no evidence before the Chief or the Commission to the contrary.
6. The third new allegation against the Applicant was that he had refused to provide information requesting a number of social media accounts that he had linked or posted to. The Applicant argues this conclusion is contradicted by portions of his interview that were before the Commission. The Applicant notes that when he advised the interviewer he was concerned for the safety of the individuals involved and asked if he had to provide their names, the interviewer indicated he did not because of these safety concerns.

[28] During oral submissions, counsel for the Applicant raised one further argument. The Applicant noted that while a copy of the EPS Social Media Policy had been included as part of the Certified Record of Proceedings which was before the Commission, the EPS policy with respect to disclosure of files containing confidential source information was not included as part of the Certified Record of Proceedings. However, the Applicant noted that the Commission found as a fact that the Applicant had not followed the appropriate procedures. The Applicant submits that the Commission's conclusion that the Applicant had not complied with the internal controls and procedures was unreasonable, as there was no evidence before the Commission as to what the policy actually was.

### (c) Discussion

[29] I will address the first two arguments raised by the Applicant as they can be dealt with summarily.

[30] The first argument raised by the Applicant is that the fact that he has not been charged with either a criminal offence or an offence under the *PSR* since his initial suspension without pay supports his position that there were no exceptional circumstances that justified his later suspension without pay. However, in my view, that information is irrelevant to this judicial review application. The decision made by the Chief to suspend the Applicant was an interim decision. Information concerning any further internal disciplinary or criminal proceedings that may, or may not, have been taken against the Applicant since then have no bearing on my assessment of whether the Commission's decision to uphold the Chief's decision to suspend the Applicant without pay was reasonable.

[31] Further, I agree with the position advanced by the Chief that criminal conduct is not required for a finding of exceptional circumstances. I find support for this position in the following comments made by the Law Enforcement Review Board (the "LERB") in *Bigelow*, at pages 11-12:

Notwithstanding the bare subjective words of Section 8 of the Regulation the Board is persuaded that a Chief of Police must be able to articulate the reasonable basis on which a relief without pay is directed. The “exceptional circumstances” should be capable of identification and subject to disclosure before the Police Commission. A fundamental construct of administrative law requires a decision maker to base decision making on a fair and reasonable basis and not on one incapable of identification or contexted within an arbitrary framework (see, *Nicholson v. Haldimand Norfolk Police Commr. Bd.*, [1997] 1 SCR 311).

With respect to decision criteria (as noted) none are provided in the Regulation concerning relief without pay. This is not considered by the Board to be particularly unsuitable as a limited or narrow list of factors would be unproductive - sufficient room must be left for the unexpected or extraordinary. However, as the Board may be obliged (on an appeal) to consider the circumstance of relief without pay in the context of an overall misconduct penalty, the following would be considered by the Board to be factors of significance in this connection (although what follows is not intended to be exhaustive):

[32] The LERB proceeds to list the five factors that this Court has accepted as factors that should be considered when a decision to relieve an officer without pay is made. However, nowhere in its decision does the LERB indicate that all of these factors must be present or that any one factor is more important than another. I note that only 2 of the factors listed in *Bigelow* relate to criminal activity. Neither the Chief, nor the Commission, relied on either of those factors and instead focussed on the 3 remaining factors.

[33] The second argument raised by the Applicant is that there was no evidence before the Commission that the Applicant’s actions were of such a nature as to erode internal accountability and discipline within the EPS or that the EPS would reasonably suffer in its reputation or administration if the Applicant was not relieved from duty without pay. These, of course, are references to the 3<sup>rd</sup> and 4<sup>th</sup> factors in *Bigelow* that are to be considered when determining whether exceptional circumstances exist.

[34] This issue was specifically addressed by Justice Yungwirth in the *Partington* decision. In that case, Cst. Partington argued that exceptional circumstances had not been proven as the Chief of Police had failed to introduce evidence before the Commission to demonstrate the damage to the reputation of the EPS that would result if Cst. Partington was not relieved of duty without pay. However, Justice Yungwirth agreed with the position advanced by the Chief that actual evidence is not required of the possible consequences of a failure to relieve from duty without pay under the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> elements of the *Bigelow* test (*Partington* at para 50). Instead, a “reasonable person test” will suffice.

[35] I agree with the reasoning of Yungwirth J, and I am satisfied that the Chief was not obligated to present actual evidence to the Commission on these issues. Rather, these *Bigelow* factors only require a reasonable belief that the actions taken by the Applicant could cause such a result. The Chief believed this to be the case, and the Commission confirmed such a belief was reasonable.

[36] The thrust of the Applicant’s 3<sup>rd</sup> to 6<sup>th</sup> arguments appears to be that the Applicant’s conduct was not serious enough to give rise to “exceptional circumstances”. However, that is not the issue this Court must decide. This Court does not engage in a reweighing of evidence or

conduct a *de novo* analysis. The question this Court must answer is whether it was reasonable for the Commission to conclude that the Chief was reasonable in determining that exceptional circumstances existed.

[37] In its Decision, the Commission begins by providing a summary of the facts it relies on. It then goes on to reference its authority under s 8(11) of the *PSR* and the procedure that was followed at the hearing before it. The Commission then sets out the standard of review, relying on the case of *Kube* to find that the standard of review is reasonableness and noting that *Vavilov* did not change that. The Decision clearly articulates that the role of the Commission was to assess whether the Chief's decision that exceptional circumstances exist, and the reasoning process that led to that decision, were reasonable.

[38] The Commission, at paras 13 – 25 of its Decision, then proceeds to outline its analysis and conclusions. Before specifically addressing the reasonableness of the Chief's finding of exceptional circumstances, the Commission makes several other findings of note.

- The Chief's decision to relieve Det. Behiels from duty without pay and the Commission's confirmation of that decision, was not punitive. The Commission recognized that all of the misconduct allegations remained unproven at that point (at para 13).
- Relief from duty without pay is an administrative tool designed, among other things, to minimize risk to the service and the public, and public safety was a very real concern in this case (at para 14).
- Det. Behiels initially followed appropriate procedures to address his concerns, but when he did not agree with the outcome of those investigations, he was not free to take whatever action he deemed necessary without consequence (at para 15).

[39] The Decision then goes on to identify and apply the relevant factors from *Bigelow* in its consideration of whether it was reasonable for the Chief to form the opinion that exceptional circumstances existed to justify a relief from duty without pay. The Decision makes it clear the Applicant's alleged misconduct in this case was (1) the unauthorized disclosure of confidential EPS investigative files to the media; (2) the potential disclosure of highly sensitive confidential informant information; and (3) the ongoing breaches of EPS policy (at para 16). The Decision notes that only the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> factors in *Bigelow* are relevant, as the Chief did not rely on either of the first 2 factors, both of which involve allegations of criminal misconduct, in reaching his decision.

[40] In addressing the unauthorized disclosure of confidential police files, the Commission commented on how essential it is to maintain the confidentiality of police records for many reasons, including preserving investigative integrity and protecting personal and sensitive information. The Commission noted that this breach of an officer's duty to safeguard these materials is aggravated by the sharing of that material with members of the media, which the Applicant admitted doing. The Commission concluded that it was "indisputable" that the public interest and reputation of EPS may reasonably suffer, and a loss of confidence in the EPS may reasonably occur, if the Applicant was not relieved from duty without pay in relation to this alleged misconduct.

[41] With respect to the Applicant's admission that at least 2 of the files he disclosed to the media involved confidential informants, the Commission noted that this is one of the most significant breaches of confidentiality that a police officer can commit, as the identity of

confidential informants is subject to informer privilege, which is fundamentally important to the criminal justice system as a whole. While acknowledging that the Applicant claimed to have vetted the files to remove any confidential informant information prior to release, the Commission found that there was strong evidence that files “potentially” containing confidential source information had been released externally without following any EPS policies regarding the handling of this information, without any consultation with the Crown, or any judicial authorization. The Commission found that this further exacerbated the concerns regarding the public interest and loss of public confidence in the EPS.

[42] Finally, with respect to the Applicant’s alleged ongoing breaches of EPS policies, the Commission noted that there was strong evidence of ongoing and persistent contraventions by the Applicant of the EPS Social Media Policy. These allegations of ongoing breaches arose after the Applicant had been relieved from duty with pay and been cautioned that he was required to comply with all EPS policies henceforth. The Commission accepted that the allegations of continuing engagement on social media, in contravention of the conditions imposed upon him, demonstrated that being relieved from duty was not a sufficient deterrent to the Applicant to prevent this misconduct from recurring. The Commission agreed that it was reasonable for the Chief to conclude that internal accountability or discipline within the EPS might be undermined if Det. Behiels was not relieved from duty without pay in these circumstances.

[43] I find that the reasons of the Commission are internally consistent and demonstrate a clear, rational chain of analysis. I also find that the Commission’s reasons are justified, transparent and intelligible. The Commission, in making its decision, applied the appropriate standard of review and the well-established legal test prescribed by *Bigelow*.

[44] The final argument raised by the Applicant in oral submissions is that the Commission’s decision was unreasonable, because the Commission found as a fact that Det. Behiels did not follow the EPS policy with respect to disclosure of files containing confidential source information even though the policy was never put into evidence.

[45] The Chief argued that it would not be necessary to include the policies and procedures at this stage of the proceedings, which deals primarily with the allegations against a police officer rather than the ultimate findings with respect to those allegations. Further, the members of EPS would be required to know these policies and procedures in any event.

[46] As I have already outlined, under the *PSR*, the role of the Commission is restricted to reviewing the Chief’s decision to relieve a police officer from duty without pay. This means determining whether it was reasonable for the Chief to be of the opinion that exceptional circumstances exist with respect to the alleged contravention of s 5 of the *PSR*. I agree with the Chief that, at this stage, the focus is on the allegations of misconduct rather than the ultimate finding of whether misconduct has occurred. In other words, there is no obligation on the Chief to actually prove the alleged contraventions in order to form the opinion that there are exceptional circumstances.

[47] Additionally, in this particular case, the parties did not raise the issue of the EPS policy with respect to disclosure of files containing confidential source information before the Commission. Instead, the Chief relied on evidence that showed Det. Behiels was aware he was in violation of the EPS policy, and Det. Behiels did not contest this position. In *Vavilov*, the Supreme Court explained that a reviewing Court must read the decision maker’s reasons in light of the history and context of the proceeding in which they were rendered: at para 94. In the

context of the parties' submissions, it was reasonable for the Commission to accept the allegation that that Det. Behiels violated EPS policy when determining if it was reasonable for the Chief to form the opinion that there were exceptional circumstances respecting his alleged misconduct.

[48] The Applicant has not demonstrated any significant shortcomings or flaws in the Decision and has therefore not met his burden of establishing that the Commission's Decision was unreasonable.

## **VI. Conclusion**

[49] Det. Behiels has failed to meet his burden of establishing that the Commission's Decision was unreasonable. His application is therefore dismissed.

[50] If the parties are unable to agree upon costs, they may each provide me with brief written submissions, limited to a maximum of five (5) pages, within thirty (30) days.

Heard on the 15<sup>th</sup> day of May, 2024

**Dated** at the City of Edmonton, Alberta this 31<sup>st</sup> day of July, 2024.

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**D. J. Kiss**  
**J.C.K.B.A.**

### **Appearances:**

David Wolsey  
PBM Law  
for the Applicant

Derek Cranna and Alisha Hurley  
Field LLP  
for the Chief of Police of the Edmonton Police Service

Deanna Matchett  
for the Edmonton Police Commission