

COMPLAINT FILE REVIEW

BY THE PUBLIC COMPLAINT DIRECTOR

ISC: Unclassified



FILE:	FORMER CONSTABLE SEAN CHU – AUGUST 1997 TO JANUARY 2003
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BACKGROUND

In late 2021, there were several media reports regarding a sexual assault complaint that was made against former constable Sean Chu while he was a member of the Calgary Police Service. The Calgary Police Commission committed to a review how this complaint was handled to determine whether it was handled properly and to assess if any process or policy changes are needed.

Under Section 28.1(3)(d) of Alberta's *Police Act*, the Public Complaint Director has the authority to review any investigation into police conduct. More information is being provided to the public about this review than is typical because the high-profile nature of this case could significantly impact the public's trust in policing.

The review examined the following questions:

- Did the Calgary Police Service properly follow the procedures and policies in place at the time for investigating police misconduct complaints?
- Were there any gaps in the procedures at the time that still exist today?
- Would a similar incident be handled differently under current procedures?
- Are any additional changes to police misconduct investigation procedures needed?

To stay within the commission's legal authorities, the review was not able to:

- Evaluate whether the criminal investigation and decision not to lay criminal charges were correct. The Commission does not have the legal authority to review criminal investigations.
- Lay new charges. The Commission does not have the legal power to criminally charge people and only has the power to bring police misconduct charges against the current police chief following a complaint.



- Re-investigate and publicly report on the actions of former Constable Sean Chu. Police files are private information unless charges are laid or releasing the information is necessary to forward a criminal investigation.
- Determine former Constable Sean Chu's fitness for public office.

The Public Complaint Director reviewed all documents provided by the Calgary Police Service and relevant appeal records as part of this review, which included:

- Internal file records of the Service including legal memoranda, letters, and opinions.
- Trial binder contents for the police chief in the Court of Queen's Bench lawsuit in which the person that made the complaint sued Sean Chu, alleging sexual assault, and former Chief Christine Silverberg, alleging, among other things, failure to discipline Sean Chu.
- All relevant court filings, orders and decisions from the Calgary Police Service Professional Standards Unit, Alberta Court of Queen's Bench and Alberta Court of Appeal.
- Transcript of the Appeal Hearing of the Law Enforcement Review Board decision on March 5, 1999.
- Transcript of Sean Chu's closed disciplinary hearing on January 31, 2002.
- Relevant policies of the Service, both current and historic.

A full report on the timeline and details of the case was presented to the Calgary Police Commission, however, many of the details cannot be released publicly under the *Freedom of Information and Protection of Privacy Act* because they are personal information of both Sean Chu and the person that made the complaint.

This public report is a summary of the findings with all private information removed.

COMPLAINT TIMELINE

The complaint against former Constable Sean Chu was regarding an incident on August 12, 1997, where Chu met with two youths at a restaurant. One youth reported that, after giving the other youth a ride home, Chu sexually assaulted her. The youth reported the incident to a School Resource Officer on August 19, 1997.

The Calgary Police Service Sex Crimes Unit began an investigation into the incident and by the end of August advised the youth that the file was being reviewed by the Crown Prosecution Service, which is the usual procedure when criminal charges are being



considered. In January of 1998, the Sex Crimes Unit received a letter from the Calgary Crown Prosecution Service stating that criminal charges were not supported. The Service told the youth that they would initiate an internal disciplinary investigation, but that did not occur.

In February 1998, the youth was advised that her complaint had only been investigated as a criminal matter and she was provided with details on how to make a police conduct complaint about Chu. She decided to file complaints against the officers who investigated her criminal case.

The complaints against the investigating officers were dismissed in July 1998 and the youth appealed that decision to the Law Enforcement Review Board in August of that same year. The appeal found that the Service was correct to dismiss the complaints against the investigating officers, but the board also directed in their decision that the Service needs to investigate whether Chu should face internal discipline for the original incident.

In October 1999, Chu appealed the decision of the Law Enforcement Review Board to the Court of Appeal on the grounds that the board did not have the legal authority to direct that an internal disciplinary investigation be done into him. The appeal was successful in March 2002 and the board's direction that an internal investigation be conducted was set aside, without overturning the board's ruling on the complaints against the investigating officers.

Meanwhile, the youth had formally filed a police misconduct complaint in February 2002 against Chu for what occurred in the original 1997 incident. The Service investigated and in April 2002 ordered a disciplinary hearing. The police chief determined the hearing should be closed to the public but open to the youth. The Service did not need the Law Enforcement Review Board's direction to stand in order to continue with the hearing as the authority to order hearings rests with the police chief.

The disciplinary hearing resulted in January 2003 in one finding of discreditable conduct against Chu. The presiding officer (a retired senior officer) issued a five-year reprimand and ordered Chu to work with the internal Ethics Council to help develop the integrity and compromise portion of a course on ethical decision making.

The youth, now a young woman, appealed the decision to the Law Enforcement Review Board but the appeal was dismissed after she did not attend several scheduled hearings.



As required by Alberta's Police Service Regulation, the record of the discipline issued was removed from former Constable Chu's record after five years.

FINDINGS

1. *Were the relevant policies in place at the time of the complaint followed?*

A public complaint vs. an internal investigation

Part 5 of the *Police Act* contemplates two types of complaints – a public complaint, which in this context is a complaint made by a member of the public, and an "internal complaint," which would include any complaint which is generated from within the police service, the Director of Law Enforcement, or the Minister of Justice.

When the youth reported the alleged sexual assault in August 1997, it was not managed as a public complaint but as an internal investigation. While the *Police Act* does not differentiate between an external (or public) complaint and an internal (initiated by the police chief) complaint, the reporting requirements are different.

All complaints trigger a requirement under Section 45(7) of the *Police Act* to provide the complainant with a report every 45 days as to the progress of the complaint. This serves several purposes, not the least of which is to reassure the complainant that progress is being made.

While it was never expressed in these terms, it appears the youth was of the view that she was the complainant. In 1997, she reported the incident, she met with officers, she received verbal updates and she complained to the Commission. Legally, however, she was not the complainant and therefore was not entitled to a written update every 45 days.

Subsequently, the youth was advised that the matter was not going to be prosecuted criminally but was reassured that the matter would be investigated internally, though that investigation does not appear to have been completed.

The materials reviewed do not indicate that any explanation was given to her as to the difference between an internal investigation and a public complaint. Although she was clear that she wanted the matter to proceed, the process of making a complaint - a public complaint - was never explained to her. It is believed that this lack of communication at certain key points were the cause of future issues.



Had this distinction been clarified and she been offered a chance to become the complainant earlier, it is likely that her subsequent complaints against the investigating officers may have been avoided.

In the appeal of the dismissal of the complaints against the investigating officers, the Law Enforcement Review Board raised the issue of why the matter was handled as a criminal investigation only and not a public or internal complaint. The Service later wrote to the board to explain that the officer responsible for initiating a complaint investigation was waiting for evidence to be transferred from the Sex Crimes Unit, but that did not occur before the youth filed her complaint about him. The complaint resulted in a stoppage of work and that officer removing himself from the file without anyone else taking it over.

The youth also complained that she had been wrongly advised that the matter was being reviewed by the Edmonton Crown Prosecution Service, when it was in fact being reviewed by the Calgary Crown Prosecution Service. It appears she is correct that there was a miscommunication on who was reviewing the file. Had the matter been treated as a public complaint, she would have been entitled to (and presumably received) regular updates that would have reduced the likelihood of this error.

Police Officer Public Complaints Discipline Policy

The Police Officer Public Complaints Discipline Policy is the same now as it was in August 1997. It reads at 2-21:

- c. A complaint against a police officer will be recorded on a Public Complaint Form.
- d. Upon receipt of a complaint, the police officer accepting the complaint will determine that it is a complaint and not a request for information or service. If the citizen is not satisfied with the explanation, the complaint will be recorded.
- e. Letters of complaint will be directed to the Professional Standards Section.
[...]
- g. The complaint will be assigned to the appropriate Section, District or Internal Affairs Unit for investigation.



Both the current and former policy require that a complaint against an officer be recorded on a Public Complaint Form. At the time the youth reported the alleged sexual assault, she did not complete a Public Complaint Form. Nowhere is it suggested that this was requested of her or that she was made aware this was an option. The lack of a completed Public Complaint Form was the basis for the Court of Appeal's decision (not the form specifically, but this went to a lack of jurisdiction as no complaint had been formally filed).

The policy also requires that the "police officer accepting the complaint will determine that it is a complaint and not a request for information or service." Again, in this case, the policy required that the matter be assessed. The policy goes on to state that a public complaint will "be in writing and signed by the complainant where practicable" and that "[t]his form will be directed to [the Professional Standards Section] and assigned to the appropriate Section, District or Investigative Unit for investigation."

It could be argued that this matter was a public complaint, and that a Public Complaint Form should have been completed.

2. Are there any unaddressed gaps in policy or procedure?

The issues in this matter arose because policies were not followed, not because of gaps in the process. However, better communication could have prevented issues from being exacerbated. Had the matter been treated as a public complaint, the complainant would have been entitled to regular updates as noted above.

The Service also did start an internal investigation initially, but it appears that investigation was stopped when the criminal charges did not go forward and complaints were filed about the investigating officers. The officer who told the youth that there would be an internal disciplinary investigation into her file did not proceed due to the youth's complaint about him putting him in a conflict of interest.

Today, the Service automatically opens an internal investigation when criminal allegations are made against an officer. That investigation proceeds even if the criminal charges do not and there are systems in place to manage files so that investigations do not depend on one person moving them forward.

One possible gap is the lack of communication to the complainant regarding the difference between a public complaint and an internal complaint. There is no policy



to address this, however, the Service's website now provides detailed information on how to file a complaint, the difference between formal and informal resolution, and options for whether the complainant desires to be contacted by the Service to discuss the matter further.

3. *Would a similar incident be handled differently today?*

The biggest difference between 1997 and 2022 is the existence of the Alberta Serious Incident Response Team (ASIRT). ASIRT was founded in 2008 with a mandate to investigate serious or sensitive allegations of police misconduct.

While there are learnings from the incident involving former Constable Sean Chu, it is very unlikely that the matter would be handled the same in 2022. At a minimum, as soon as the allegation was made, the Director of Law Enforcement would have been notified as required by Section 46.1 (1) of the *Police Act*. Once the Director of Law Enforcement has been advised, a gateway decision is made as to whether the matter is within ASIRT's mandate (commonly referred to as "in scope"). Assuming the matter would have been determined to be in scope, ASIRT would then assume the investigation or become involved as an overseer or review body.

The Service now has the advantage of an excellent website which can be easily navigated by potential complainants. The Professional Standards Section also provides follow up with complainants and expectations of complainants are actively discussed.

This communication process and the progress being made on files are now checked through regular File Administration Committee meetings and ultimately, regular meetings between the Professional Standards Section leadership and the police chief. If nothing had changed since 1997, the development of a clear file management process with appropriate checks would have been a recommendation of this review.

As noted above, the Service's approach to criminal allegations against officers has also changed so that, regardless of whether a public complaint is filed, a Service investigation automatically proceeds to see if the officer's conduct violated the Police Service Regulation.

One of the directives in former Constable Chu's disciplinary hearing was to assist the Ethics Council in developing materials for the Ethical Decision Making component of



training. It was confirmed in later records that Chu completed his assistance to the Ethics Council and also took several courses that would assist him with appropriate decision making.

As to how this might look different today, officers needing remedial training are no longer tasked with helping to train other officers on the subject over which they were disciplined. The Service has also advised that the Ethics Council is no longer in existence. It eventually evolved into the Ethics and Accountability Division, which is now the Legal and Regulatory Division.

The Chief Crowfoot Learning Centre now teaches ethics through recruit classes, and ethics training is embedded within all components of the course, rather than as a separate class.

RECOMMENDATIONS

The following recommendations would have arisen from this review if it occurred directly after the Chu case. However, these have all been implemented since the case and therefore are already in place:

- Develop a clear file management process with appropriate checks to ensure files follow the right process and communication occurs with the complainant.
- Automatically initiate and complete Service investigations when criminal allegations are made against an officer.
- Create a process for serious or sensitive criminal allegations to be overseen or investigated by an independent body.
- Improve the information available to complainants and make the Public Complaint Form more accessible.