

COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER: 2603-0065AC

TRIAL COURT FILE NUMBER: 2503 15758

REGISTRY OFFICE: Edmonton

PLAINTIFF/APPLICANT: CHASITY PHILLIPS and RHONDA SPENCE

STATUS ON APPEAL: APPELLANTS

DEFENDANT/RESPONDENT: EDMONTON POLICE SERVICE, ALBERTA CROWN PROSECUTION SERVICES, ALBERTA ATTORNEY GENERAL and MINISTER OF JUSTICE

STATUS ON APPEAL: RESPONDENTS

DOCUMENT: **CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:

SHARON ROBERTS LAW GROUP



WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: February 25, 2026

Date entered: Not yet entered

Date served: Not yet served

Official neutral citation of reasons for decision, if any:
(do not attach copy) 2026 ABKB 140

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Court of King's Bench

Judicial Centre: Edmonton

Justice: The Honourable Justice W.N. Renke

On appeal from a King's Bench Applications Judge or a Justice of the Court of Justice?:

Yes No

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

Permission not required

4. Portion being appealed (Rule 14.12(2)(c)):

Whole, or

Only specific parts (if specific part, indicate which part):

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.)

5. Provide a brief description of the issues:

The Appellants appeal the dismissal of their Application for Judicial Review at a threshold hearing to assess whether evidence then before the Court satisfied the established legal test for judicial review of the Respondents' decision not to lay any charges against Michael Lucier, also known as Michael Polacsek ("**Lucier**"), whom the Respondents, Edmonton Police Service ("**EPS**"), and Alberta Crown Prosecution Service ("**ACPS**") confirmed to have been responsible for the homicide of a 13-year old child, Eric Omeasoo, on February 5, 2025 ("**Threshold Hearing**").

The question before the Court below was whether there was some evidence on which, if believed, a court ultimately hearing the judicial review, acting judicially, could conclude that the decision of Alberta Crown Prosecution Service ("**the Crown**") and Edmonton Police

Service (“**EPS**”) not to lay charges against the person undeniably responsible for the homicide of Eric Omeasoo involved an abuse of process (“**Threshold Test**”).

The Threshold Test:

- a. Did not require any assessment of the credibility or reliability of the evidence;
- b. Permitted only a limited weighing of the evidence;
- c. Could be met by the Appellants (Applicants) providing either:
 - a. direct evidence which could support an allegation of abuse of process;
 - b. circumstantial evidence which is reasonably capable of supporting inferences which would support an allegation of abuse of process; or
 - c. both of the above.
- d. Involves a weighing of evidence on a balance of probabilities, not the criminal “beyond a reasonable doubt” standard.

In applying the Threshold Test to the conduct of the Crown, the Court below found that the Respondent, Edmonton Police Service (“**EPS**”), had presented “all of its evidence” to the Crown. In evidence admitted by the Court below, EPS Detective Jared Buhler informed the Appellants that the Crown had provided an opinion to EPS that there was no reasonable likelihood of conviction in Eric Omeasoo’s homicide (“**Crown Opinion**”).

By February 11, 2025, EPS had made a determination that Eric Omeasoo’s homicide was non-culpable “after consultation with the Crown” and EPS’ investigation was concluded. In doing so, EPS and, presumably, the Crown, relied on a falsehood that Eric Omeasoo received only a single stab wound from Lucier.

The Court below acknowledged that there is authority to find that EPS waived privilege over the Crown Opinion, but declined to make any finding on waiver.

The Court below held that judicial review is not available to quash an opinion and, as such, the proceeding as against the Crown was premature. Further, the decision appealed from found that the Appellants had no information about the Crown Opinion except as mentioned in EPS press releases and EPS officers’ comment, and that the decision not to charge was that of EPS. The Court dismissed the Judicial Review as against the Crown.

The Court below established a novel standard of review for the exercise of police discretion, preserving the “abuse of process” standard relied upon in the Threshold Test only for Crown decisions. Prior to the decision appealed from, judicial review of police decision-making has not required a preliminary hearing and application of the Threshold Test before the judicial review hearing proper.

The decision appealed from dismissed the Appellants’ judicial review of the EPS decision not to lay charges in the homicide of Eric Omeasoo by introducing a novel “reasonableness” standard to be applied using the criminal burden of proof, i.e., beyond a reasonable doubt, and exclusion of all evidence deemed not to have been before the decision maker, EPS, when it chose not to lay charges. In effect, the Court below, purported to decide the judicial review

proper on a final basis at the preliminary “threshold hearing” stage applicable to cases involving exercise of prosecutorial discretion. In so doing, the Court below erred in law.

6. Provide a brief description of the relief claimed:

An Order pursuant to Rule 14.75(1):

1. Admitting, on application to this Court, new evidence not available to the Appellants at the time of the hearing below, including, without limitation, evidence that the EPS itself had reported “multiple stab wounds” to Eric Omeasoo when contacting Emergency Medical Services after locating his body hidden underneath the Light Rail Transit station platform where he had first been stabbed.
2. Setting aside the decision below and substituting a decision of this Honourable Court finding that the Appellants meet the threshold necessary or are otherwise entitled to have their Judicial Review proceeding continue in the ordinary course, including with an application to admit evidence and a direction compelling production of the Certified Record of Proceedings by each of EPS and the Crown.
3. In the alternative, sending this matter down for a new threshold hearing on such terms as this Honourable Court deems just.
4. Such further and other relief as shall be sought by the Appellants and granted by this Honourable Court.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

Yes No

8. Does this appeal involve the custody, access, guardianship, parenting time, decision-making responsibility, contact or support of a child? (Rule 14.14(2)(b))

Yes No

9. Will an application be made to expedite this appeal?

Yes No

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

Yes No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

Yes No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)

Yes No

13. List respondent(s) or counsel for the respondent(s), with contact information:

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If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

Order under appeal not yet entered, and as such not yet available.

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.