

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint #2006/19

AND IN THE MATTER OF:

An Application pursuant to s. 13 of *The Law Enforcement Review Act* R.S.M. 1987, c.175

BETWEEN:

R.C.)	In Person,
Complainant,)	Self-represented
)	
– and –)	
)	
Constable K.P.)	Josh A. Weinstein,
Constable S.M.)	For the Respondents
Constable R.L.)	
Constable K.A.)	
Constable R.M.)	
Respondents.)	Mr. Sean D. Boyd, Counsel for L.E.R.A.
)	
)	July 28, 2010

NOTE: These Reasons are subject to a ban on publication of the Respondents’ names pursuant to s. 25 of *The Law Enforcement Review Act*.

UMPHERVILLE, P.J.

OVERVIEW

[1] The *Law Enforcement Review Act* provides an avenue for any citizen of our Province to complain about the way they have been treated by the police. The legislation is predicated on the principle that the police must deal with members of the public in an even-handed and professional manner. The public has a right to expect nothing less from the police.

[2] As part of the legislative scheme, complaints are investigated by the Law Enforcement Review Agency (LERA). The legislation provides for a screening mechanism which gives the LERA Commissioner the power to dismiss certain complaints. This screening process, which has been upheld by this Court as a valid function, exists to prevent unnecessary public hearings. The screening process is based on the premise that the Commissioner, as an administrative decision maker, has the expertise to assess a complaint made by a citizen.

NATURE OF COMPLAINT AND DETAILS OF DISMISSAL

[3] On January 3, 2006, the respondents were dispatched to the home of the complainant. The respondents had received information that the complainant had made a threat to kill his brother. They also received information that the complainant was schizophrenic and may not be taking his medication. The respondents were aware that the complainant had been violent towards police officers in the past. Upon arrival at the home, the respondents were not allowed entry by the complainant. The respondents forcefully entered the residence of the complainant and he was arrested. The complainant was taken initially to the Health Sciences Centre to be seen by a doctor, after which he was taken to the psychiatric ward (PX3).

[4] On January 16, 2006, Mr. C filed his written complaint with LERA about the conduct of the five Winnipeg Police officers who were involved in his arrest on January 3, 2006. This complaint was investigated by LERA.

[5] In a detailed letter to the Commissioner, Mr. C alleged that the respondents damaged property within his home, injured him by poking him in the eye and hurting his hip and neck, and kept him in handcuffs for eight hours. He also alleged that he was not allowed to call his lawyer and that he should have been immediately taken to PX3 instead of first attending Health Sciences Centre.

[6] Mr. C has alleged that these respondents, contrary to section 29 of *The Law Enforcement Review Act*, abused their authority in the following manner:

- 1) Not allowing him to contact legal counsel;
- 2) Using excessive force or violence by poking a thumb in his eye and hurting his hip and neck;

- 3) Using oppressive or abusive conduct or language by:
 - a. Keeping him handcuffed for eight hours;
 - b. Smashing in his door;
 - c. Coming in through his bedroom window;
 - d. Ripping a cupboard door and closet door off and going through his laundry;
 - e. Refusing to take him directly to PX3 where he would have been medicated and subdued immediately.
- 4) Damaging his property as noted above in 3) (d).

[7] In a detailed letter dated February 19, 2007 to Mr. C, the LERA Commissioner determined that there was no basis for proceeding further with the complaint. In his comprehensive analysis, he decided that there was insufficient evidence to support the complaint and therefore the matter would not proceed to a public hearing.

[8] As was his right under *The Law Enforcement Review Act*, Mr. C asked a Provincial Judge to review the initial dismissal of his complaint. This matter initially appeared before me on October 6, 2008. After hearing submissions from counsel for The Winnipeg Police Association and for the Commissioner, along with Mr. C in person, it became apparent that Mr. C had not received the brief of the LERA Commissioner. The matter was adjourned and a continuation date of December 22, 2009 was scheduled. On December 22, 2009 I heard submissions from Mr. C and counsel for the Police Association.

THE LEGAL FRAMEWORK OF A REVIEW

[9] Section 29 of the *Law Enforcement Review Act* outlines how an officer can commit a “disciplinary default”. The disciplinary defaults as alleged by Mr. C against the officers in question are: abuse of authority by being uncivil or discourteous and by using oppressive or abusive conduct or language.

[10] Section 13 of the *Law Enforcement Review Act* governs this process. The onus is on the complainant to satisfy me that the Commissioner erred in declining to take further action. I have outlined the nature of the complaint and the details of the Commissioner's dismissal.

[11] There is now recent and binding authority from the Supreme Court of Canada in *Dunsmuir v. New Brunswick* [2008] S.C.J. 9, which governs how review processes such as this are to proceed. The *Dunsmuir* decision clarifies the test to be applied in these types of reviews. The Supreme Court of Canada has streamlined the implementation of a judicial review process, opting for a contextual approach. Two standards of review may apply. The first is the principle of "correctness" and the second is "reasonableness".

[12] This type of analysis was performed by Joyal P.J. (Manitoba), as he then was, when he examined the role of the Provincial Judge in a LERA review in an earlier decision, *Law Enforcement Review Act* Complaint No. 2004/172. He outlined that the most demanding standard of review to be imposed upon a Commissioner in a s.13 *Law Enforcement Review Act* Review is the standard of "correctness". That standard is to be imposed only in cases where the Commissioner has committed an identifiable jurisdictional error.

[13] A jurisdictional error can be committed if the Commissioner failed to act as required by his jurisdiction or failed to act within the limits of his jurisdiction by applying a wrong test or by misapplying the right test in reaching his decision. I am of the view that none of the above jurisdictional errors has occurred in this case.

[14] Therefore, I must apply the standard of "reasonableness", as understood by the *Dunsmuir* decision. Reasonableness is a standard that recognizes that certain questions that come before an administrative tribunal such as LERA do not lend themselves to one specific or particular conclusion. Instead, the analysis of a complaint such as Mr. C's complaint can, and often does, give rise to more than one, possible, reasonable conclusion.

[15] The Supreme Court of Canada in *Dunsmuir* succinctly defines reasonableness in the context of a judicial review:

In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

The standard of reasonableness is not as exacting a standard as correctness. Joyal P.J., stated the following regarding the role of the reviewing judge when examining a decision of the LERA Commissioner:

... given the limited but still necessary weighing of the evidence that must occur on the part of the Commissioner, the reviewing judge can seldom categorically say the Commissioner was right or wrong. It is for that reason that absent jurisdictional error, if the Commissioner's conclusion is based on a reasonable assessment of the evidence and if that conclusion is one of the rational conclusions that could be arrived at, the Commissioner's determination is entitled to deference and it ought not to be disturbed.

DECISION ON REVIEW

[16] After reviewing all filed materials and hearing oral argument, I must now determine whether I am satisfied that the Commissioner did, in fact, err in his decision to decline in taking further action on the complaint. I am also mindful that it is upon the complainant to prove that the Commissioner erred in this matter. With the information at hand, am I satisfied the Commissioner assessed the evidence reasonably?

[17] It is important for Mr. C as the complainant to understand that he and possibly other individuals may have drawn an equally supportable but different conclusion on the facts in question. I may have reached a different conclusion as well but such a conclusion would not mean success for Mr. C on review given the standard I must apply. I must determine if the Commissioner made a reasonable

assessment of the evidence, one that could reasonably be drawn upon the facts of this case. I am satisfied that he did.

[18] The Commissioner determined there was insufficient evidence to support a public hearing in this matter per Section 13(1)(c) of the *Law Enforcement Review Act*. In coming to this decision, the Commissioner is allowed broad access to relevant information in support of his ultimate decision. Here, the Commissioner did pursue the information he deemed necessary to assist him in his decision including obtaining a clarifying statement from the complainant himself.

[19] The information received by the respondents regarding the complainant coupled with the situation they encountered upon arriving at the complainant's residence can explain their reaction and actions. It is possible that the respondent's manner of entry into the complainant's residence may have been excessive. Different police officers may have assessed the situation differently and may have responded accordingly. But I do not find that an abuse of authority occurred given my parameter of legal review.

[20] It was not unreasonable for the Commissioner to determine that the actions of the respondents, given the tenor of the atmosphere they encountered, did not constitute an abuse of authority. This conclusion can certainly be seen as rational, flowing from a reasonable assessment of all of the evidence.

[21] I find the Commissioner's assessment was one within the reasonable range of possible assessments. Given the information available, it was a rational conclusion. I am not, in my capacity, able to pass judgment on the actions of the respondents. Instead, I am to review the reasonableness of the finding of the Commissioner. Although I may or may not have drawn the same conclusion, I do not find that the Commissioner acted outside of the legislated standard. On that basis, I dismiss the application for review.

Original signed by Judge Patti Umpherville

P. Umpherville, P.J.