

1 IN THE MATTER OF: Law Enforcement Review Act
2 Complaint Numbers 2004/60
3
4

5 BETWEEN:) Mr. S. Boyd,
6) for the LERA Commissioner
7 T.T.,)
8 Complainant,) Mr. J. Weinstein,
9) for the Respondents and
10 - and -) Winnipeg Police
11) Association
12 CONSTABLE J. B., and)
13 CONSTABLE K. G.)
14)
15) Judgment delivered
16 Respondents.) January 8, 2007
17
18

19 ELLIOTT, P.J. (Orally)

20 I can see what counsel is saying about what
21 choices the police had. However, Mr. T. is a citizen and
22 although I don't think it is questioned that he is mentally
23 ill, he has to have certain rights. And for police
24 officers to enter someone's home without their permission
25 and detain them, they have to have a basis in law. My
26 reading of Section 12(1) of The Mental Health Act makes me
27 doubt that they had that basis.

28 There is no contradiction in the facts: that
29 Mr. T. did not want them to come in, that they pepper-
30 sprayed him, that they came in without his permission
31 through a window and they detained him. It does not appear
32 to me, based on the evidence that the commissioner had,
33 that they had grounds to do that. If you read Section

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1 12(1) the way it should be read as requiring that:

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"(a) the peace officer believes on
4 reasonable grounds that the person
5 has threatened or attempted to
6 cause bodily harm to himself or
7 herself or has behaved violently
8 towards another person or caused
9 another person to fear bodily harm
10 from him or her, or has shown a
11 lack of competence to care for
12 himself or herself;

13

(b) the peace officer is of the
14 opinion that the person is
15 apparently suffering from a mental
16 disorder of a nature that will
17 likely result in serious harm to
18 the person or another person, or
19 in the person's substantial mental
20 or physical deterioration; and

21

(c) the urgency of the situation
22 does not allow for an order for an
23 examination under Section 11."

24

25 I think Mr. T. deserves to have the matter heard at a
26 hearing. I believe that the commissioner was wrong in his
27 reasons which refer to some but not all of the grounds
28 required under The Mental Health Act, stating:

29

30

Your calls to the 911 emergency
31 line and your behaviour upon the
32 attendance of the police officers
33 caused them concern that:

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1 1 By tying up the 911 line for
2 extended periods for a non-
3 emergency situation, you could
4 affect the safety of other persons
5 legitimately attempting to get
6 through for emergency reasons; and
7 2 You are apparently suffering
8 from a mental disorder of a nature
9 that would likely result in your
10 substantial mental or physical
11 deterioration.

12
13 I am going to order a hearing on that complaint
14 at number 2004/60.

15 The other matter, I will grant Mr. T.'s request
16 for an adjournment. That should probably go to a 302
17 docket to see if he really presents himself to set that
18 matter down for hearing again.

19 In terms of this one, what is the normal process
20 for setting ...

21 MR. WEINSTEIN: It, it's simply is -- it is
22 referred to a hearing and we will eventually just get
23 correspondence about the scheduling.

24 THE COURT: So, it is just adjourned sine die?

25 MR. WEINSTEIN: It is.

26 THE COURT: Okay. We will adjourn that one sine
27 die, the complaint under 2005/49. Shall we put it on a 302
28 docket a couple of weeks down the road? Is that the
29 appropriate ...

30 MR. WEINSTEIN: That's fine with me. I mean, I
31 guess, in fairness, whatever it is in terms of length of
32 time it needs for correspondence to get out to Mr. T., so
33 ...

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1 THE COURT: Yes. I would say about two weeks,
2 and if he doesn't appear at that time, I think that counsel
3 is justified, more than justified in asking that it be
4 dismissed. So, two weeks from today -- we are at January
5 the 8th. Two weeks from today is the 22nd. Are you
6 available? Do both of you usually appear at that time?

7 MR. BOYD: Not typically, although -- I mean, I
8 don't know that I would necessarily need to be there, but I
9 will attempt to be there or have someone there.

10 THE COURT: Yes. Okay, so January 22nd at ten in
11 302 on 2005/49.

12 MR. WEINSTEIN: Thank you, Your Honour.

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