

**IN THE MATTER OF:**            *The Law Enforcement Review Act*  
**Complaint # 2007/26**

**AND IN THE MATTER OF:** **An Application pursuant to section 13 of *The Law Enforcement Review Act, R.S.M. 1987, c.375***

<b>BETWEEN:</b>	)	
	)	
<b>E. E.,</b>	)	<b>Complainant/Applicant,</b>
	)	<b>in person</b>
	)	
<b>Complainant/Applicant,</b>	)	<b>Mr. M. Stonyk,</b>
	)	<b>for the Commissioner</b>
<b>-and-</b>	)	
	)	
<b>CONSTABLE T. W.</b>	)	
<b>CONSTABLE T. T.</b>	)	
<b>and</b>	)	
<b>SERGEANT M. P.</b>	)	<b>Mr. P. McKenna,</b>
	)	<b>for the Respondents</b>
<b>Respondents.</b>	)	
	)	<b>Decision delivered: July 16, 2009</b>

Note: These reasons are subject to a ban on publication of the Respondents’ names, pursuant to section 25 of *The Law Enforcement Review Act*.

**REASONS FOR DECISION**

**MEYERS, P.J.**

**INTRODUCTION**

[1] On February 12, 2008, the Commissioner of the Law Enforcement Review Agency (hereinafter referred to as “LERA”) found there to be insufficient evidence to support a complaint of the Complainant E.E. that City of Winnipeg police officers Constables T.W. and T.T., along with Sergeant M.P., committed disciplinary defaults by abusing their authority in that they:

NOTE: For the purposes of distribution, personal information has been removed by the Commissioner.

- (a) Used unnecessary violence or excessive force contrary to Section 29(a)(ii) of the Law Enforcement Review Act;
- (b) Used oppressive or abusive conduct or language, contrary to Section 29(a)(iii) of the Law Enforcement Review Act.

[2] As required by the Act, the Commissioner on receiving an application from the Complainant dated March 7, 2008, requesting that his decision be reviewed by a Provincial Judge pursuant to Section 13 of the Act, did on March 13, 2008 forward to the Chief Judge of the Provincial Court all applicable documentation for said review.

[3] The review of the Commissioner's decision was conducted at the Provincial Court of Manitoba on June 23, 2009. It is for me to determine whether or not the Commissioner was in error in declining to take further action on the complaint, and if in reaching the conclusion that he was in error make an order under Section 13(3) that the Commissioner:

- (a) refer the complaint for a hearing; or,
- (b) take such further action under the Act respecting the complaint as I might direct.

[4] Submissions were made before me by the Complainant Mr. E.E. who was self represented and by Mr. Mark Stonyk for the Commissioner and Mr. Paul McKenna for the Respondents, it being recognized by all that pursuant to Section 13(4) that the burden of proof in showing that the Commissioner erred in declining to take further action on the complaint remained with the Complainant E.

[5] Has Mr. E. discharged that onus?

[6] Was the Commissioner in error when after satisfying himself that under Section 13(1)(c) there was insufficient evidence supporting the complaint to justify a public hearing that he declined to take further action?

## **THE COMPLAINT**

[7] Mr. E. alleged that in the early morning hours on July 21, 2007, Constable W. and Constable T. banged loudly on the door of his condo residence and enquired of him whether or not he was leaving obnoxious messages in front of the

doors of certain neighbors. He stated that after questioning the officers as to whether or not they had a signed complaint and after taking down their badge numbers that officer T. moved behind him, grabbed and twisted his arms in attempt to break them. He further stated that after being handcuffed the officer pulled the cuffs down his wrists causing severe pain, after which he was thrown to the floor. According to the Complainant, he was told that he was being arrested because he was not cooperating and not answering questions put to him. He further alleged that despite his asking the officers not to go into his apartment that in fact they did so by taking him into his bedroom where his driver's license was removed from his wallet and his keys taken from him.

[8] After being transported to the District 6 police station he was again assaulted by Sergeant P., who threw him to the floor. This reopened a cut on his face earlier sustained by him. While detained he asked for an aspirin and water but was not given the aspirin. The complaint further alleges that he after having had his identification process he was released and in fact was kidnapped by being taken to Victoria General Hospital, where he was held against his will.

[9] He claimed that the officers entered his condo without a warrant and took pills from his bathroom. It was his claim that these actions put his life in danger.

[10] The complaint triggered an extensive investigation by the office of the Commissioner pursuant to Section 12(1) of the Act. It is to be noted that the Commissioner and those retained to investigate side with no party.

## **THE ANALYSIS AND CONCLUSION AFTER INVESTIGATION**

[11] In reaching the conclusion he did, the Commissioner addressed each of Mr. E.'s complaints with an extensive analysis of same.

[12] As to the complaint that the attending officers did not have in their possession a warrant for his arrest and in fact was being arrested because the Complainant was not cooperating and not answering questions put to him, the Commissioner cited Section 29(1) and (2) of the Criminal Code of Canada on the duty of a person arresting, and stated:

“Constable T., in his narrative report stated that it was after police attended to your building and spoke with the complainant; he queried your name on the police computer and learned of the outstanding warrant for your arrest. Under the

circumstances, it wasn't feasible to produce a copy of the warrant immediately. During the interview Mr. Churley (the investigator for the Commissioner) Constable T. advised that you were told that you were being arrested on an outstanding warrant. You were not told that you were under arrest because you were not co-operating or answering their questions."

[13] In addressing the complaint that Constable T. assaulted Mr. E. without reason while he was handcuffed, and that Sergeant P. assaulted him while his hands were cuffed behind his back, the Commissioner's in his analysis stated:

"The officers deny that you were assaulted at any time. They explained that immediately upon entering the hallway of your condo you began to "rant." You were told that there was an outstanding warrant for you and that was the reason for your arrest. At no time were you grabbed from behind and thrown to the floor. The handcuffs were not applied in a manner that the officers would consider too tight. The officers said that when they applied the handcuffs you were being aggressive and pulling your hands away. They had to pull your arms from the front of your body to the back and the handcuffs were placed on quickly in order to gain control. The officers didn't consider them too tight and you didn't complain of such or that your arms were injured. Once the handcuffs were successfully applied there was no need to drag you as you walked along with them."

[14] As to the complaint that after identification was complete that Mr. E. was not released from custody, and that he was kidnapped and transported to the Victoria General Hospital and that the police had no legal authority to hold him against his will, the Commissioner's analysis was that:

"The officers involved, based on your behaviour, believed that you may be suffering from a mental disorder and as such had a duty to ensure that you were well prior to being released from custody."

[15] The complainant's charge that Constable T. needlessly put his life in danger by illegally entering the condo and not returning pills taken until some 11 hours later drew the following assessment from the Commissioner:

"While still at your residence, you advised the officers that you had medication for a heart condition and told them where it could be located. You told them not

to retrieve it at this time. However, once in their custody when the decision was made to take you to the hospital for assessment they knew the medical staff would require the name of any medication you were taking.”

[16] In his report the Commissioner cites Section 12(1) of the Manitoba Mental Health Act and offers that the entry into the condo without warrant to retrieve the medication was done in the best interests of the complainant.

[17] Did the Commissioner err in declining to find that the officers in question committed those disciplinary defaults as provided in Section 29 of The Law Enforcement Review Act?

[18] No argument was raised both in the complainant’s application for review and in submissions made by him that the Commissioner exceeded his jurisdiction(a)by failing to act as required by his jurisdiction; (b) by failing to act within the limits of his jurisdiction or (c) reaching his decision by applying the wrong test or by misapplying the right test. This then addresses the first of two standards required on review, namely that of “correctness,” as described in both decisions of Joyal P.J. (as he then was) in *Law Enforcement Review Act Complaint #2004/172* and *David Dunsmuir v Her Majesty the Queen in Right of the Province of New Brunswick* 2008 SCC 9.

[19] Rather, when one cuts through the filthy language and diatribe as evidenced in the complainant’s application and in his submissions at the review hearing, the issue simply put is whether or not the Commissioner made a reasonable assessment of the evidence and rationally concluded that no further action was to be taken.

[20] The second standard enunciated in both of the above noted decisions is the principle of “reasonableness.” As described *Dunsmuir* (paragraph 47):

“Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. 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 respects of the facts and law.”

[21] Again at paragraph 48, Bastarache and LeBel J.J. writing for the Court state:

“Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that the courts are subservient to the determinations of decision makers, or that the court must show blind reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view. Rather, deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law.”

[22] In order for Mr. E. to be successful in his application for review, it is for him to show that the Commissioner’s reasoning in dismissing his complaint was unreasonable and that the conclusions drawn by him were not rational. I am cognizant that his being self-represented posed difficulties in advancing his argument. However, a review of the Law Enforcement Review Agency File satisfies me that the conclusions reached by the Commissioner were both rational and reasonable.

[23] While it is true that officers T. and W. attended at *[address removed]* on the night of January 21, 2007 in answer to complaints from neighbors on Mr. E.’s conduct, his arrest was precipitated by a computer check of an outstanding warrant for his failing to comply with conditions of a promise to appear. The complainant’s belligerent and combative actions left the officers with no other alternative but to apply handcuffs.

[24] While I may have concluded otherwise as to the possible mental state of the complainant, choosing instead to accept that his conduct was that of a person who was just a difficult human being who refused to accept responsibility for his earlier actions, which brought the attending officers to *[address removed]*, I recognize that the conclusions reached by the Commissioner after investigation were reasonable.

[25] My function is to decide whether or not the Commissioner erred in conclusions reached by him after the investigation. His analysis satisfies me that he properly carried out the duties assigned to him under the Act and that the reasons provided in dismissing the complaint were rationally articulated.

[26] There shall be no referral of this complaint for further hearing as the Complainant has failed to show that the Commissioner erred in declining to take further action on his complaint.

“ORIGINAL SIGNED BY:”  
RONALD J. MEYERS, P.J.