

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:) Mr. D. Johnston
) for the Complainant
D.B.,)
) Mr. P. McKenna
Complainant,) for the Respondents
))
- and -)
))
S.K.,)
C.K.,)
and P.S.,)
) Judgment delivered
Respondents.) April 29, 2011

1 HEINRICHS, P.J. (Orally)
2 Under Section 13 there is not a requirement for
3 me to provide a written decision, and in this particular
4 case I am not going to be giving a written decision. In
5 other words, I am not going to be typing and preparing a
6 report that I will be giving subsequently. I am going to
7 tell you what my decision is today. And because I am doing
8 that, some parts of it may be wandering a bit because I
9 have not had enough time to sit and write and organize it
10 and all the rest.

11 And, Mr. B., the first thing I want to tell you
12 is that I have been a lawyer or a judge for about 25 years.
13 And most of my life, I was a defence lawyer, so far, and I
14 have represented many, many people who have had complaints
15 about the police. It was not in Winnipeg. I was not
16 practicing in Winnipeg so it has nothing to do with the

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1 Winnipeg Police Service at all, in fact. It has been the
2 RCMP and the Brandon Police Service and aboriginal police
3 forces and the Rivers town police and the Morden town
4 police and others that I have dealt with.

5 And what I have to tell you is that most police
6 officers most of the time are good and try to do the right
7 things. There are some that are not good. It is because
8 power gets to their head and they exert excessive force,
9 whether it is when they are handcuffing somebody or they
10 are upset because a person is drunk and too much in their
11 face and they lose it and they hit the person, or sometimes
12 they say things that are out of control or they say things
13 that might even have racist or other tones to them. It
14 happens.

15 And so you do not have to convince me that the
16 police are always right and "I am just the poor innocent
17 victim that nobody is going to believe", okay, because I
18 have seen officers that are bad. And I have been involved
19 in Law Enforcement Review Agency complaints over the years
20 where there have been findings of that sort, where the
21 officers have done something that was not appropriate and
22 had been wrong and they had been dealt with accordingly.
23 So this is not just me listening to all of this going,
24 "yeah, well, the officers are always right and there is no
25 question about that, okay?" I have seen the other things
26 that happen.

27 What I have also learned over the years is that
28 the officers, when they are dealing with high pressure
29 situations and emergencies, are human beings. They have to
30 act based on what is happening moment by moment but based
31 on what they see. And what I hear happening in this
32 particular case is that from the call history that they had
33 and from coming to the scene, they were looking for a
34 possible prowler that had been a nuisance and perhaps

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1 potentially violent to you. And their initial reaction,
2 more than one of them, was that they found the person, and
3 it was you, out in the back lane. And the responses they
4 got seemed to confirm that about sort of lurking and they
5 say not being forthcoming at first. I do not have the
6 exact time frames on this but I am guessing that from the
7 time that they actually got there and spotted you until the
8 time that you were with your hands up against the police
9 car, it all happened pretty quick. There was not a lot of
10 time in there.

11 And I do not know exactly what happened or how,
12 in the process of all of that, or even if during that time
13 frame, that something happened that your thumb got hurt.
14 It may have been one of the officers doing too much in the
15 spur of the moment. I do not know. But I am not here to
16 decide that. I have to look at the whole picture in what
17 happened.

18 And I have read the different police officers'
19 statements and your different statements over and thought
20 about them and heard arguments. And from what I can see is
21 that overall the police, in that one minute, when they were
22 dealing with everything and assessing the situation,
23 probably did a good job. I do not believe that they all
24 conspired and put together statements and met with the
25 commissioner later on and said that, no, there was no
26 scuffle and we did not deliberately beat him up and all
27 that. They did not get together and try and say that and
28 do that.

29 In fact, if you read through them carefully you
30 will discover that they do not all say the same thing. And
31 that is not necessarily a bad thing because they are saying
32 that, from what I remember, this was the way it went down
33 and the other one has a bit of a different picture about
34 how it went down. I think the end result is that at some

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1 point in time there was some physical force. You were
2 definitely grabbed by the right arm and the left arm. More
3 than one of them says that. Something may have happened in
4 that process but they seem pretty clear on the fact that
5 you had not yet identified yourself. They are still
6 thinking this is the person that may be the trespasser.
7 And it all happened pretty quickly.

8 Could it have been handled different? Possibly.
9 Should it have been? I do not know. But, again, I go back
10 to what I have to do today and that is to decide, has the
11 commissioner gathered all of the information, put it all
12 together, summarized everything and made it clear what the
13 information is that he has? Is what he has written
14 transparent? Is it intelligible? Is it rationally
15 articulated? And from what I can see in this particular
16 case the conclusions that he made is supported based on
17 everything that they gathered at that point in time.

18 I am not saying that I would necessarily have
19 agreed with them or not wanted to ask some further
20 questions or something. If I had been the commissioner
21 doing it, there might have been some other angles and I
22 might have seen it differently because I might have been
23 inquiring more or doing something different, perhaps. But
24 based on the amount of work that they did, the information
25 that they got and everything that they put together, I
26 cannot see that the decision they made was not a reasonable
27 one in all of the circumstances.

28 I do not know what happened with respect to the
29 follow-up and the Henderson Highway address. I do know
30 that outside of the Perimeter the addresses are sometimes a
31 bit on the goofy side and they probably do not show up on
32 police computers. Something obviously happened there that
33 did not match up. I do not know what it is because
34 sometimes there are lot numbers and other things and that

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1 does not show up.

2 But it sounds like the matter had been referred
3 to somebody else to follow-up further and definitely we
4 know they asked you to come in, whether it was because you
5 phoned or not, but they did. And why, during that process,
6 or up until that point in time, they did not give you the
7 incident report number I do not know. I also do not see
8 anywhere that you asked them for it and they said, "we are
9 not giving it to you." I did not see that anywhere. So
10 what exactly happened there or they were waiting for you to
11 come in to give you more information and you just never
12 went in, I do not know. But I do not see that that alone
13 is sufficient at this point in time to determine that the
14 commissioner did not handle the whole thing thoroughly
15 enough, transparently enough, and clearly enough.

16 So in this particular case I find that you have
17 not satisfied the onus that you have, which is to show me
18 that the decision is not a reasonable one in all of the
19 circumstances that the commissioner has laid out in the
20 lengthy report and letter of January 31st, 2001. So in
21 this particular case that means that it has not been
22 satisfied and so the matter will not proceed further under
23 Section 13. I do not know the correct wording for it but I
24 find that the commissioner did not err in declining to take
25 further action, I believe is the correct wording for it.
26 And as I understand it, the ban on publication can remain
27 in effect under Section 13(4.1).

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