

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint #2012/238

AND IN THE MATTER OF:

An Application pursuant to s. 13 of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75

BETWEEN:

M.N.)
Complainant/Applicant)

Self-represented

and)

UNNAMED)
Respondents)

Mr. Devin Johnston,
for the Commissioner of the
Law Enforcement Review Agency

Hearing: September 4, 2013
Decision: September 25, 2013

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

Guy, P.J.

Introduction

[1] This is a decision on an application for review of the Law Enforcement Review Agency Commissioner's decision not to take any further action on a complaint filed by Ms M.N.

[2] On December 13, 2012 and January 2, 2013, Ms M.N. filed complaints with the Commissioner alleging a number of instances including racism, abuse, slander

and harassment, among others. No specific presently-serving police officers were named.

[3] By letter dated January 11, 2013, the Commissioner advised Ms M.N. that he was not taking any further action on her complaint as it was his opinion that she was out of time (her complaints being more than 30 days after the alleged incidents) and more particularly her complaints did not fall within the scope of s. 29 of *The Law Enforcement Review Act*, R.S.M. 1987 c.L75; in other words, the allegations did not constitute a disciplinary default of a member of the Winnipeg Police Service as defined in the *Act*.

[4] Ms M.N. applied to have this decision reviewed by a provincial judge. The hearing took place on September 4, 2013.

[5] After reviewing the evidence before me and considering the submission of Ms M.N. in the presence of counsel for the Commissioner, who had been granted standing to deal with the application, I am dismissing Ms M.N.'s application for the reasons set out below.

[6] In determining whether or not to grant Ms M.N.'s application, this Court must decide whether the Commissioner's decision not to take any further action was reasonable. Reasonably, in the sense that the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law, and the decision itself is transparently, intelligently and rationally articulated.

[7] The onus is on Ms M.N. to show the Commissioner erred in declining to take further action (s. 13(4) of the *Act*).

[8] Ms M.N.'s complaints involved allegations which were criminal in nature and thus the responsibility of the Winnipeg Police Service to investigate (not L.E.R.A.) or were complaints which allegedly took place well before the legislative time frame under the *Act*. (Extremely difficult to investigate and unfair to everyone in light of the passage of time.)

[9] The *Act* deals with disciplinary defaults of individual police officers. Section 29 of the *Act* sets out examples of acts or omissions of a police officer in the execution of his duties that could constitute a disciplinary default:

29 A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

(a) abuse of authority, including

(i) making an arrest without reasonable or probable grounds,

- (ii) using unnecessary violence or excessive force,
 - (iii) using oppressive or abusive conduct or language,
 - (iv) being discourteous or uncivil,
 - (v) seeking improper pecuniary or personal advantage,
 - (vi) without authorization, serving or executing documents in a civil process, and
 - (vii) differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*;
- (b) making a false statement, or destroying, concealing, or altering any official document or record;
 - (c) improperly disclosing any information acquired as a member of the police service;
 - (d) failing to exercise discretion or restraint in the use and care of firearms;
 - (e) damaging property or failing to report the damage;
 - (f) being present and failing to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property;
 - (g) violating the privacy of any person within the meaning of *The Privacy Act*;
 - (h) contravening this Act or any regulation under this Act, except where the Act or regulation provides a separate penalty for the contravention;
 - (i) assisting any person in committing a disciplinary default, or counselling or procuring another person to commit a disciplinary default.

[10] In light of the provisions of s. 29 and the nature of Ms M.N.'s complaints, the Commissioner did not have the legislative mandate to deal with the complaints.

[11] The Court therefore finds that the Commissioner's decision was reasonable. As a result, the application is dismissed.

Original signed by Judge J. P. Guy

J. P. Guy, P.J.