

IN THE MATTER OF: *The Law Enforcement Review Act* Complaint
#2015-134

AND IN THE MATTER OF: An Application pursuant to s.13(2) of *The Law
Enforcement Review Act* R.S.M. 1987, c.L75

B E T W E E N:

D.R.) Self-represented
Applicant)

- and -)

Cst. B. F. and) Paul McKenna
Cst. J.E.) Counsel for the Respondents and the
Winnipeg Police Association

Respondent

) Devon Johnston, Counsel for the
) Commissioner of the Law
) Enforcement Review Agency

*Note: These reasons are subject to a ban
on publication of the Respondents' names
pursuant to s.13(4.1) of the Law
Enforcement Review Act.*

) Hearing date: September 6, 2016
) Decision delivered:
) September 15, 2016

Guy, A.C.J.

[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 D.R.

[2] On September 2, 2015, D.R. filed a complaint with the Commissioner alleging abuse of authority by members of the Winnipeg Police Service by racial profiling.

[3] By letter dated December 29, 2015, the Commissioner advised D.R. that he was not taking any further action on the complaint as it was his opinion that the evidence supporting the complaint was insufficient.

Section 13(1) says:

Where the Commissioner is satisfied

- (a) that the subject matter of a complaint is frivolous or vexatious or does not fall within the scope of section 29;
- (b) that a complaint has been abandoned; or
- (c) that there is insufficient evidence supporting the complaint to justify a public hearing;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his or her reasons for declining to take further action.

[4] D.R. has applied to have this decision reviewed by a provincial court judge. The hearing took place on September 6, 2016.

[5] The onus is on D.R. to show the Commissioner erred in declining to take further action/section 13(4) of the act.

Section 13(4) says:

Where an application is brought under subsection (2), the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

[6] It is clear from the case law, with which I concur, that I cannot merely replace the Commissioner's decision with my opinion or my view should it differ from the Commissioner. Therefore it is appropriate that the standard of review of the Commissioner's decision be one of reasonableness.

[7] In many of the cases, the interpretation of the facts is going to be made through the respective eyes of those involved. Unfortunately, rarely do the participants step back and see the circumstances from the other's point of view and how there can be another explanation or interpretation.

[8] Often the Commissioner is left with a number of possible outcomes. Was the outcome he came to in these particular circumstances a reasonable one, in the sense of being rationally articulated, transparent and intelligible? Was it reasonable to conclude there was insufficient evidence supporting the complaint to justify a public hearing? The answers to both of these questions must be answered in the affirmative.

[9] D.R., the applicant, was of the view that it was so unreasonable that the police officers gave him a ticket under the HTA for his actions it must have been racial profiling. The officers provided an alternative explanation to the

circumstances and denied the allegation of racial profiling. There is no independent evidence that can be pointed to which would justify a conclusion of racial profiling.

[10] The Commissioner could reasonably conclude that there was insufficient evidence to support the allegation of racial profiling in all the circumstances.

[11] After reviewing the evidence before me and considering the submission of D.R., in the presence of counsel for the Commissioner who has been granted standing to deal with the application, and in the presence of counsel for the respondents, I am dismissing D.R.'s application for the reasons set out above.

“Original Signed By:”
John P. Guy, A.C.J.