

IN THE MATTER OF: *The Law Enforcement Review Act*
Complaint #2015/72

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

BETWEEN:

C.F.B.)	Ms. Zilla Jones,
)	for the Complainant,
<i>Complainant,</i>)	
-and -)	
)	
SGT. M.G.)	Mr. P. McKenna
<i>Respondent.</i>)	Counsel for the Respondent.
)	
)	Decision date: April 15, 2016

Restriction on Publication
This Decision is subject to a ban on publication of
the Respondent's name pursuant to s. 13(4.1).

HEINRICHS, P.J.

INTRODUCTION

[1] On May 12, 2015, C.F.B. filed a written complaint - dated May 11, 2015 - with the Law Enforcement Review Agency (LERA). C.F.B. alleged that he had been harassed at his workplace by a Winnipeg Police Service officer, with a second - and last - incident occurring on March 26, 2015.

[2] On June 8, 2015, the LERA Commissioner provided his decision in writing to C.F.B. pursuant to section 13(1)(a) of the *Law Enforcement Review Act* (the

Act), the Commissioner declined to take further action on this complaint: the Commissioner was satisfied that this matter was outside the scope of section 29 of the Act, as the officer in question “was not on duty at the time”.

C.F.B.’S COMPLAINT

[3] C.F.B.’s written complaint included the following information and allegations:

- He felt he was being harassed at his work place, Sobeys on 1660 Kenaston Blvd., by Sgt. M.G., a Winnipeg Police Officer.
- The officer was off duty when he came into C.F.B.’s place of work.
- C.F.B. stated that the officer came into his place of employment on two specific dates - although he also alleged that he was being continuously harassed and stalked.
- On March 26, 2015 and one other earlier date, the officer was engaged in trying to communicate with him directly, calling him a “piece of shit”. The officer tried to start conflict with him at his work place.

COUNSEL’S WRITTEN ARGUMENT

[4] Counsel for C.F.B. provided a motion brief for this review which included a written submission. In that submission, a statement of facts was provided. This statement of facts included some further details about C.F.B.’s complaint; it also included a number of allegations that were not mentioned in the written complaint.

[5] Section 6(3) of LERA, however, **requires** that “every complaint shall be in writing signed by the complainant setting out particulars of the complaint. . .” It is the written complaint which forms the basis of the Commissioner’s review and

decision. In this case, the Commissioner's decision was based on what was in that written complaint.

SHOULD THE COMMISSIONER HAVE INVESTIGATED THE COMPLAINT FURTHER?

[6] Section 12(1) requires that the Commissioner "shall cause the complaint to be investigated". Additionally, section 10 of the Act gives the Commissioner the authority to request from the complainant "further particulars of the conduct complained of". However, this is discretionary; it is not something the Commissioner is required to do.

[7] Section 13(1) of the Act mandates the Commissioner to decline to take further action, if he is satisfied he should not take further action, based on any of the criteria set out in that section. Declining to take any further action can include the Commissioner being satisfied that no further investigation is necessary, based on what is contained within the written complaint. In this case, that is what the Commissioner did.

THIS COURT'S REVIEW OF THE COMMISSIONER'S DECISION

[8] The task of this Court, pursuant to section 13 of the Act, is to review the decision of the Commissioner and determine if he erred in declining to take further action in this complaint. Any additional details or allegations contained in counsel's written submission – or oral argument, therefore, can have no bearing on what this Court must determine.

[9] In his decision, the Commissioner explained that the Act mandates him "to investigate conduct complaints made against on duty municipal police officers." This is not to say that conduct by an off duty police officer is not subject to a complaint being made to his or her chief or police board, or subject to any other

action a citizen can take against another person, however, this all of this does not fall under the jurisdiction of the LERA Commissioner.

[10] The Commissioner, in his decision, then explained that the complaint about a police officer “must identify a disciplinary default” – as outlined in section 29 of the Act – “where he (the officer) 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.**”

[11] The complaint by C.F.B. acknowledged that the officer was off duty; there is no suggestion the officer was in uniform or investigating C.F.B. in any way. In fact, C.F.B. suggested that this was a personal matter as he was able to recognize and identify who this person was; that he was a “private detective” with the Winnipeg Police Service; and that this person was following him closely – “stalking” him – and calling him a “piece of shit”. There is no suggestion that the officer was undertaking police duties of any sort.

[12] Counsel for C.F.B. has suggested that it was the Commissioner’s responsibility to investigate and determine what the facts were and what link there might have been between the officer’s actions and the execution of his duty. The difficulty with this is that, in C.F.B.’s written complaint there was no basis upon which such an investigation should be pursued; it would only be speculation. Counsel for C.F.B. also suggested in her written brief that “it is possible that information was improperly disclosed”. Again, this is only speculation.

CONCLUSION

[13] The Commissioner reviewed the written complaint and determined that there was nothing in the complaint which demonstrated – or even suggested – that the officer had committed any act or omission “arising out of or in the execution of his

duties”. Therefore, he declined to take further action and explained why he had made this decision.

[14] As this Court has previously explained, the test to apply in these circumstances is one of reasonableness. See *R.P.M. v. Cst. C. and Cst. W.*, LERA Complaint #5643 (February 12, 2004); *M.S. v. Cst. B and Cst. D.*, LERA complaint #2004-172 (June 21, 2006); and *B.J.P. v. Cst. G.H., Cst. B.Z. and Sgt. G.M.*, LERA Complaint #2005-186 (November 14, 2008).

[15] In *B.J.P.*, Judge Preston, stated the following:

“The question to be answered is this: did the Commissioner assess the evidence reasonably? In other words, have the Commissioner’s reasons been transparently, intelligibly and rationally articulated?”

[16] Judge Preston then answered this question in the context of his case to determine whether the Commissioner had erred in his conclusion:

“I cannot say that he assessed the complaint unreasonably. He drew a rational conclusion on the merits of the complaint. I may not have drawn the same conclusion. That is not the test here. As long as the Commissioner has properly assessed the complaint reasonably and has drawn a rational conclusion, and I have concluded that he has done so, I will not interfere with his decision.”

[17] Similarly, this Court is satisfied that in the case of *C.F.B.*’s complaint, the Commissioner understood his role: he did what he is mandated to do and gave a clear, intelligent and rational decision declining to take further action on this complaint. This Court will not interfere with the LERA Commissioner’s decision.

Original signed by:
HEINRICH, P.J.