IN THE MATTER OF:		Law Enforcement Review Act Complaint #6142
AND IN THE MATTER OF:		A Motion seeking various declarations with respect to Law Enforcement Review Act Complaint #6142

BETWEEN:

Y. R.	**)**	**Mr. Odaro Omonuwa**
Complainant	**)**	**For the Complainant**
	)	
- and -	**)**	
	)	
Cst. N.B.	**)**	**Mr. Paul McKenna**
	)	**and Mr. Josh Weinstein**
Cst. B.G.	**)**	**For the Respondents**
Cst. S.H.	**)**	
Cst. B. C.	**)**	**Mr. Sean Boyd**
	)	**For the Commissioner**
	)	
NOTE: These reasons are subject to a ban on publication of the respondents' names pursuant to s. 13(4.1).	**)**	
	)	
	)	January 16th, 2006

SIDNEY LERNER, P.J.

The Background

[1] On January 21, 2003, the complainant in this matter, Y. R., filed a complaint with the Law Enforcement Review Agency with respect to the conduct of various members of the Winnipeg Police Service. The particulars of the complaint are set out in a handwritten statement made to a LERA investigator, signed by the complainant, dated January 22, 2003, and marked as exhibit 'B' to the affidavit of the complainant, which is Exhibit 1 on the Motion.

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

[2] The complaint related to an incident alleged to have occurred on January 18, 2003. In summary, the complainant alleged in his statement that on the noted date he was attending to his friend's apartment following an attack on the friend by an unknown assailant just minutes before. The attack had left his friend cut and bleeding. The complainant stated that he was attending to his friend's apartment in order to attempt to offer assistance. He stated that on his arrival at the apartment he found "lots of police officers" present. He stated that he "wanted to see if there were paramedics there because the cops didn't do anything to stop [his friend's] bleeding", and that "that's when they put me on the floor and they handcuffed me. The complainant goes on to say that "they left me there on the floor while they took my friend out." The complainant goes on to allege that after the paramedics left the apartment, two officers grabbed him above the elbow and took him to a stairwell leading to the main floor of the building. He states that they stopped at the top of the stairs and "were waiting for the other two officers". He alleges that it was at this point that another officer came through the door (presumably the door to the stairwell), called him a "cop hater or hitter", and punched him first in the mouth, and then in the head. The complainant alleges that as he was being assaulted by this officer, the first two officers were holding his arms, with his hands handcuffed behind him. The complainant stated that a fourth officer then attended to where he was being held and punched him as well. He stated that the third officer (the one who had first punched him) and the fourth officer then "hit [him] all over", while the first two officers continued to hold him. He stated that "when they had enough" they took him to the police car and drove him to "Martha St.", which is clarified in the complainant's brief as being the Main St. Project, a location used to house persons under the *Intoxicated Persons Detention Act*.

[3] With one exception, the complainant was not able to identify by name, badge number, or description, any the officers alleged to have been involved in this incident. In the case of the one exception, the officer alleged to have punched him first, the complainant was able to offer a form of description, describing that officer as approximately 6'1", with (he thought) dark hair, a "nice build", no glasses, no beard, and "a little bit of an Asian complexion". He wasn't sure whether this officer had a moustache. The complainant stated that he would know this officer when he saw him.

The Nature of the Motion

[4] The respondents submit that the allegations against them have never been sufficiently particularized. They submit that the complaint initially presented to

them failed to set out the specific nature of the allegations against them, in that it failed to identify which aspect of the incident set out above constituted the complained-of conduct. The respondents further submit that although this initial defect was ultimately belatedly addressed (the extent to which the respondents concede their concern has been addressed is unclear, as discussed below), the complaint continues to fail to specify which of the respondents is alleged to have committed which act in the course of the complained-of conduct.

[5] The respondents submit that the lack of particularization has affected their position in a number of ways.

[6] The respondents submit that it deprived them of the ability to meaningfully exercise their rights under s. 16 (2) of *L.E.R.A.* when that section of the Act was canvassed with them by the Commissioner. The respondents also submit that the ongoing failure to particularize the allegations against them deprives the respondents of reasonable notice of the allegations they must meet, and thereby deprives the respondents of the ability to fully and adequately defend themselves.

[7] The respondents submit that the noted defects deprived the Commissioner of jurisdiction to deal with this complainant, to refer the matter for hearing, and, as a final consequence, deprives a provincial court judge of the jurisdiction to conduct a hearing into the merits of the complaint. The respondents seek declarations to this effect.

Analysis

My Jurisdiction to Decide the Jurisdictional Issue

[8] In their submissions, counsel for the complainant and the Respondents, as well as counsel for the LERA Commissioner, have taken the position that the jurisdictional issues raised on behalf of the Respondents can appropriately be dealt with before the presiding Provincial Court judge. I agree, and find support for this position in the decision of Madam Justice Beard of the Manitoba Court of Queen's Bench in **Kennedy v. Manitoba** (Enforcement Review Act, Commissioner), [1999] M.J. No. 111, the decision of the Manitoba Court of Appeal in **Bennet v. Manitoba (Registered Psychiatric Nurses' Association**), [2002] M.J. No. 367, and the November 4, 2002 L.E.R.A. decision of my brother judge Howell in **Leishman v. Houston and Friesen**, found at Tab 3 of the Respondents' brief.

The Jurisdiction of the Commissioner

[9] As noted, the respondents submit that the Commissioner's inability to specify the nature of the allegations against them, and his inability to specify which of the respondents is alleged to have committed which act, deprives the Commissioner of jurisdiction to deal with the complaint, or to refer it to a provincial court judge for hearing.

[10] Specifically, the respondents submit that the lack of particularization has deprived the respondents of the ability to meaningfully exercise their rights under section 16 of the Act. Section 16(1) of *L.E.R.A.* provides:

> Where the respondent admits having committed a disciplinary default, the Commissioner shall recommend one or more of the penalties set out in section 30.

[11] In his letter to the respondents of May 27, 2004 (one copy of which is Exhibit 4 within the respondent Haddad's October 14 affidavit, Exhibit 2 on the Motion), the LERA Commissioner inquired whether the respondents wished to admit the disciplinary default alleged against them. It is the respondents' position that since at that point they did not know the nature of the allegations against them, and because they therefore did not know what potential admissions they were being asked to consider, they could not properly consider the exercise of their rights under s. 16 of the Act. Specifically, the respondents submit that when the s. 16 issue was raised, it was unclear to them, based on the complainant's statement, whether the complaint included that aspect of the incident in which the complainant was put to the floor and handcuffed (event #1), the point at which the complainant was grabbed by his elbows by police and taken to the stairwell (event #2), or if it was limited to the point at which the complainant was held by two police officers at the top of the stairwell while being punched by the other two (event #3).

[12] Counsel for the respondents initially submitted in oral argument that upon receiving the complainant's brief (complainant's brief, paragraphs 3 and 18) in advance of this motion it became clear that the complaint relates to "event #3". A more complete discussion of the respondents' position on this issue is to be found below, under the heading Lack of Particulars-The Case To Meet.

[13] With respect to the s. 16 issue, I note that in the above-noted letter of May 27, 2004 to the respondents, the following allegation of disciplinary default was identified by the LERA Commissioner:

Abuse of Authority

> By using unnecessary violence or excessive force on the complainant in contravention to section 29 (a) (ii) of *The Law Enforcement Review Act.*

The Commissioner advised the respondents that "[the above-noted] allegation will establish the terms of reference for the hearing…" (emphasis added) , were the matter to be referred to a provincial judge for hearing. The Notice of Alleged Disciplinary Default which referred this matter to a Provincial Court Judge for a hearing (Exhibit 6 within Exhibit 2) does indeed identify abuse of authority by unnecessary violence or excessive force as the allegation of disciplinary default to be considered in the hearing.

[14] Against the backdrop of the complainant's description of the events of in his LERA statement (summarized above), coupled with the identification (in the Commissioner's May 27th letter) of unnecessary violence or excessive force as the basis for the alleged disciplinary default, it would seem clear that the s. 16 inquiry identified the incident on the stairwell (event #3) as the basis of the allegation of disciplinary default to which the Commissioner was referring, and with respect to which a possible admission of disciplinary default was being canvassed with the respondents. With the greatest of deference to the submission to the contrary on behalf of the respondents, I find that one would have to parse the complaint's statement in microscopic, and distortive, detail to identify anything other than the "struck-while- being-held" aspect of the incident (event #3) as being the pith and substance of the complaint in this case. As counsel for the respondents conceded in oral argument, neither event #1 or #2 were, on their face, particularly serious. As counsel also conceded, event #1 "may not even be excessive force" but "it's there and it's in the allegation". With respect, the recitation of various aspects of the chronology of an incident does not render each aspect so recited a part of the complaint. Similarly, counsel conceded with respect to event #2 that if an individual is handcuffed and on the floor one has to pick that person up somehow, the implication being that on its face, the recitation of event #2 was not obviously a complaint. In fairness, counsel went on to note that dealing with an individual in this fashion might be excessive force if the person was grabbed too hard. In that regard, counsel points to one of the injuries the complainant alleges he sustained in the course of incident, that being a bruise covering the inside of his left arm, both above and below the elbow, suggesting that event #2 may also have been part of the complaint in this case. But there is no suggestion in the complainant's statement that he was grabbed too hard by the officers when they lifted him off the ground. Rather, the complainant describes being held by his arms in the course of being struck, and notes the injury as being to his arm, not his elbow. I agree with the submission of counsel for the Commissioner (in oral argument) that the incident forming the basis of the complaint (i.e. event #3) fairly "leaps off the

page" as being the subject matter of the complaint, with or without the subsequent clarification in the complainant's brief to that effect.

[15] But even if a perceived lack of clarity as to the nature of the complaint was indeed an obstacle to the exercise by the respondents of their rights under s. 16, there is no evidence in the material before me, in the correspondence between the Commissioner and counsel, in the written briefs or oral submissions, that this issue was raised with the Commissioner at the time the s. 16 issue was being canvassed. No such reference is to be found within the chronology of events set out in the respondents' brief. To the contrary, the submission in oral argument was that the manner in which the respondents chose to address their concern with respect to the alleged lack of particularization was to raise it in the pre-hearing conference in this matter, and then in this motion. While the respondents maintain that what they submit is the additional lack of specificity in the complaint- i.e. who is alleged to have done what on the stairwell- continues to undermine their ability to fully and adequately defend themselves (to be discussed below), it would appear that at least the first aspect of the complaint that they perceived as unclear (i.e. which aspects of the incident formed the basis for the complaint) could well have been clarified, had the question been posed, at the time the s. 16 issue was raised with them. To the extent that the officers chose not to raise this issue with the Commissioner either calls into question the extent to which it was an issue for the respondents, or at the very least causes the officers to have to accept the consequences of their decision in that regard.

Lack of Particulars-The Case To Meet

[16] The initial position of respondents' counsel in oral argument was that the complainant's brief had clarified which aspect of the complainant's statement set out the basis of the complaint and alleged disciplinary default herein. It was counsel's initial position in this regard that upon receiving the complainant's brief it became clear that the complainant related "not at all" to events 1 and 2, but was restricted to the third aspect, that is the incident in the stairwell.

[17] However, in the course of questions from the Bench seeking confirmation that this aspect of the purported lack of clarity of the complaint had been resolved, counsel for the respondent took the position that this aspect of the issue had not in fact been resolved. It was counsel's submission that it continued to remain unclear as to whether the complaint herein related to event #2 (the grabbing of the complainant by the arms once handcuffed), or event #3. Notwithstanding the latter submission, for the reasons set out above I find that to the extent that there was initially any question as to the nature of the alleged default, that question has now

been resolved by the material filed on behalf of the complainant prior to the commencement of the hearing.

[18] The respondents also submit that the description of the alleged disciplinary default (Exhibit 6 within Exhibit 2 on the Motion) is defective, in that it purports to advance a joint allegation of disciplinary default against the respondents, rather than setting out individual allegations against each officer. In that regard, the respondents point, inter alia, to ss. 29 and 17(2) of the Act, as well as the prescribed form contained within Schedule 2 to the Act, all of which make reference to 'member', in the singular. The respondents also submit that the wording of the noted sections confirms their position that the allegation of disciplinary default is insufficiently particularized, in that it does not set out an individual allegation for each of the respondents as mandated by the Act.

[19] With respect to this aspect of the respondents' submission, I would begin by noting that s. 27 of *The Interpretation Act* C.C.S.M. c. 180 provides that "words in the singular include the plural, and words in the plural include the singular". As a result, I find that the references to 'member' within the Act and Regulations contemplate the form of notice provided in the instant case.

[20] Further, as conceded by counsel for the respondents, there would have been no material difference were each member to have received an individual notice of the alleged disciplinary default in the instant case, listing only that member as respondent. It is clear from the Notice of Alleged Disciplinary Default that was provided in this case, as well as from the complaint on which it is based, that the allegation in the instant case is that each officer has committed the disciplinary default of abuse of authority by the use of unnecessary force or violence on the complainant. It would have served little purpose were each officer to have been provided with an individual notice setting out that allegation, nor do the respondents suggest that this was necessary.

[21] Rather, and as noted elsewhere in this decision, the essence of the respondents' objection to the form of the instant complaint is that it fails to adequately identify the manner in which the default was committed by each officer, and suggests a notion of "joint and several liability". I find, however, for reasons noted below, that the allegation is sufficiently identified with respect to each officer, in that its parameters are narrow, and it alleges involvement in one of two very limited, and interconnected, ways.

[22] The respondents also submit that the decision of the Commissioner to decline to show a photopac lineup to the complaint amounts to a failure to exercise

his investigative role pursuant to s. 12 of the Act. It is effectively their submission that the existing uncertainty as to the roles of the alleged participants is created, in part, by this omission, and also perpetuated by it. While a photopac lineup might well prove to be of some assistance with respect to the issue of identification, given my findings with respect to the sufficiency of the complaint I find that I am without jurisdiction to address the Commissioner's decision in this regard.

[23] As noted, the respondents have also submitted that the complaint against them continues to be defective in that it does not specify how each of the respondents is alleged to have committed the alleged disciplinary default.

[24] The respondents submit that the inadequacy of the complaint in this respect was essentially acknowledged by the LERA Commissioner, who stated (in a May 26, 2005 letter from counsel for the Commissioner to counsel for the complainant, Exhibit 7 within the respondent Haddad's October 14th affidavit, Exhibit 2 on the Motion) "… it was not possible to determine which officers involved in the alleged incident carried out which alleged conduct".

[25] Section 6(3) of *LERA* provides:

> Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint, and shall be submitted to …any member of the department involved in the complaint (emphasis added).

[26] On the issue of the sufficiency of the complaint, counsel for the respondents cited the decision of the Manitoba Court of Queen's Bench in **Re Bateman and Association of Professional Engineers of Manitoba** [1984], M.J. No. 391, a decision of Wright J. In the respondents' brief, the following excerpt from paragraph 19 of that decision is provided:

> "Complaint" is not defined in the Act, but in the context of s. 26(1) I am satisfied the complaint referred to should state with reasonable precision the nature of the unprofessional conduct alleged. It is not sufficient to say only that the accused member is guilty of unprofessional conduct or misconduct…it is necessary to allege something more…the offence must be identified.

a) I note, however, that the balance of paragraph 19 contains the following observation:

> Similarly, an allegation of unprofessional conduct should indicate in what way the conduct is in breach of professional standards as they may exist - perhaps by following the wording of one or more of the many rules of conduct listed in the

> professional engineers' code of ethics (authorized by bylaw passed pursuant to the Act).

[27] In **Bateman**, the complaint in question alleged unprofessional conduct or misconduct in that on four occasions the applicant had said or written something that later, when he appeared before a commission of inquiry, he acknowledged had been inaccurate. In characterizing the complaint in that case, Justice Wright went on to observe, at para. 20 of that decision:

> The additional words then must go beyond a bland statement of fact that identifies no offence. The complaint here does not meet that standard. Neither unprofessional conduct or misconduct is revealed in the statement the applicant on a few occasions has been inaccurate. That in itself is not an allegation of breach of ethics or of anything giving rise to a complaint under the Act.

[28] In the instant case, however, the complaint and the allegation of disciplinary default taken together do specify misconduct which gives rise to a complaint under the Act: that in the course of the incident at the top of the stairwell, event #3, the respondents participated in an attack on the complainant, in the course of which the complainant was restrained by two of the officers while being punched by the remaining two, amounting to an abuse of authority by using unnecessary violence or excessive force in contravention of section 29 (a) (ii) of *The Law Enforcement Review Act.*

[29] The specific nature of the allegation is also instructive in this regard. As noted, the respondents are charged with committing a disciplinary default contrary to s. 29 (a) (ii) of the Act: abuse of authority by using unnecessary violence or excessive force. The only conclusion to be drawn from the particular disciplinary default alleged is that all of the respondents are alleged to have been active participants, in one of two ways, in the above-noted attack. Had it been otherwise, the notice would have also included allegations pursuant to s. 29 (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, or s. 29 (i) - assisting any person in committing a disciplinary default, or counseling or procuring another person to commit a disciplinary default.

[30] As a result, the content of the complaint in the instant case is markedly different from that in **Bateman**, where the complaint identified no professional misconduct. For similar reasons, I find that the form and content of the complaint in the instant case satisfy the criteria set out by Wright J. in **Bateman**.

[31] The respondents also cite the decision of the Manitoba Court of Appeal in **Mondesir v. Manitoba Association of Optometrists**, [2001] M.J. No. 497. In **Mondesir**, the Manitoba Court of Appeal found that the disciplinary body in that case had failed to give the respondent reasonable notice of the conduct that was ultimately found to amount to professional misconduct, and thereby lost jurisdiction. In the respondents' brief, the following excerpt from paragraph 27 of that decision is reproduced:

> The act or conduct must be described "in such a way as to lift it from the general to the particular." That was not done in this case. The citation did lift the charge above the generic charge of "professional misconduct," but it remained a general complaint. The citation and the particulars that were provided do not say what particular clinical records Dr. Mondesir had altered, in what manner he had altered the records, or for what purpose they were altered.

a) I note, however, that the balance of paragraph 27 contains the following observation:

> Specifically, the notes of the May 5th appointment in the records were never identified as the clinical record that Dr. Mondesir was alleged to have altered.

And further, at paragraph 28:

> Counsel for Dr. Mondesir argues:
>
> > …Dr. Mondesir was left to guess at what he is alleged to have done.

When the Committee denied the preliminary objection to the charges, counsel for Dr. Mondesir did in fact guess, and guess wrongly, that what was objected to was a change in a pressure reading from 25 to 20.

And further, at paragraph 29:

> …His "guess" at the hearing was a reasonable and logical one. Indeed, in all of the circumstances, it would have been unlikely in the extreme for him to have "guessed," even as the evidence was unfolding at the hearing, that the disputed May 5th appointment was the subject-matter of the hearing and the conduct that would lead to a finding of professional misconduct. In my view, the notice that was given to Dr. Mondesir was totally inadequate in identifying the particular conduct that was the subject of the complaint or matter being investigated by the discipline committee, and the particulars that were given failed to cure that defect.

[32] It's clear that in *Mondesir* the specific incident giving rise to the complaint could not be identified at all from the complaint or the accompanying particulars.

In contrast, in the instant case the subject matter of the complaint is clear, as is the allegation of the roles of the alleged participants: that on January 18, 2003 the respondents jointly participated in an attack on the complainant in the stairwell of his apartment building, in the course of which the complainant was restrained by two of the officers while being punched by the remaining two. While the allegation does not specify which of the two are alleged to have done the holding, and which of the two the punching, the nature of the alleged misconduct is specified within parameters sufficiently limited as to lift the act or conduct complained of "from the general to the particular", and to provide reasonable and adequate notice of the alleged misconduct. I find, therefore, that the complaint here meets the test set out by the Court of Appeal in **Mondesir**.

[33] In Administrative Law (2001), by David J. Mullan, Chapter 13, "Notice", the author states:

> It is one of the fundamentals of procedural fairness that those affected by decisions coming within its ambit should in general receive notice of the process about to be undertaken in a sufficient degree of detail and in a timely enough fashion to enable the effectuation of their participatory entitlements. However, what this involves is a very context- sensitive inquiry.
>
> As in many other situations involving the content of procedural entitlements, the requirements of notice will be more rigorous the nearer the nature of the decision-making process in question comes to approximating the paradigmatic kind of case arising in ordinary criminal or civil litigation. Thus, to take the example of professional discipline with career threatening ramifications, it will often be the case (whether by way of statute, subordinate legislation, informal procedural rules or policies, or, failing all those, the common law) that the kind of process engaged in will be very similar in many aspects, including notice and other pre-hearing processes, to the model of a criminal prosecution. Disciplinary charges will be laid in the form of a document that specifies the nature of the professional misconduct alleged with reference to the particular provisions of the professional conduct regime that are being relied upon as well as setting out the potential consequences of any adverse finding.

[34] To a similar effect, the respondents cite (inter alia) the decisions of the Supreme Court of Canada in **Knight v. Indian Head School Division** No. 19, [1990] 1 S.C.R. 653, and **Baker v. Canada (Minister of Citizenship and Immigration)**, [1999] 2 S.C.R. 1105.

[35] I accept that this is a case of professional discipline with career threatening ramifications in which the decision-making process comes to approximating the paradigmatic kind of case arising in ordinary criminal or civil litigation. As a result, in assessing the adequacy of notice in the instant case I have also considered the general principles with respect to particulars within criminal procedure.

[36] In a criminal complaint, it can be the case that where there are multiple accused alleged to have been involved in a common enterprise, for example a beating, the Crown cannot establish with precision, either when charges are laid or at the conclusion of the evidence, precisely who did what. But if it is alleged that the persons charged were involved in a joint or common enterprise-with, for example, some of the accused having punched, some having kicked, some having held the victim-the Crown is not obliged to establish which accused performed which act in order to bring a charge, only that the accused were part of that common or joint enterprise. If this level of specificity is sufficient in a criminal prosecution, a fortiori it is adequate in an administrative proceeding.

[37] Therefore, I do not accept that the inability of the Commissioner to specify which officer is alleged to have committed which act on the stairwell constitutes an absence of reasonable notice as to the nature of the allegations against the officers. The gravamen of the complaint is that these four officers were involved together in an assault on the complainant, and that that this assault was committed in one of two limited and interconnected ways. As a result, I do not accept the submission advanced on behalf of the respondents throughout oral argument that the respondents "have not been told what it is that they are said to have done". While it is fair to say that the complaint does not specify which of the four officers performed which of the two acts within the activity alleged to have taken place in the stairwell, the nature of the complained-of activity is both limited and clear: two of the four respondents allegedly held the complainant while the remaining two allegedly struck him repeatedly.

[38] For the reasons set out above, it is my view that the lack of precision with respect to the alleged role of each officer in the incident on the stairwell does not impact the jurisdiction of the Commissioner to deal with the complaint or to refer it to a provincial judge for hearing, nor does it impact the jurisdiction of a provincial judge to hear the matter. As a result, I dismiss the respondents' application herein.

Recusal

[39] Counsel for the respondents also raised concerns with respect to material filed in the motion on behalf of the complainant, and asked me to consider whether the viewing of those materials should cause me to conclude that I am now unable to preside at the hearing of this matter.

[40] Specifically, respondents' counsel referred me in this regard to paragraphs 2, 3, 4, 5, and 6 of the complainant's affidavit, Exhibit 1 on the Motion. Counsel submits that facts dealing with the merits of the case, as contained within the noted

paragraphs, should not be allowed on a motion dealing with sufficiency of particulars. I agree in part. It is my view that other than the provision of information designed either to demonstrate the manner in which the complaint has been particularized, or designed to further particularize the allegation against the respondents, any factual assertions relating to the merits of the complaint are to be disregarded, and will form no part of the consideration of the case on its merits.

[41] In the instant case, the only relevance of the above-noted paragraphs is the extent to which they address the issue of sufficiency of particulars, and confirm that it is the incident on the stairwell (event #3) that constitutes the basis of the complaint against the respondents. To the extent to which the paragraphs in question purport to allege facts with respect to the merits of the case, they are disregarded in their entirety and will form no part of the case on its merits, and no part of the consideration of the case on its merits.

[42] Similarly, other than for the limited purpose of addressing the issue of sufficiency of particulars and clarification of the basis of the complaint against the respondents-the subject matter of this motion- references in the affidavit to the injuries and medical treatment of the complainant are disregarded in their entirety, and will form no part of the case on its merits, and no part of the consideration of the case on its merits.

[43] Pursuant to s. 20 of the Act, statements made by the respondent officers to an investigator employed by the Commissioner are inadmissible at the hearing under this Act. Appendix ‘D’ to the complainant’s affidavit contains certain statements of the respondents made to an investigator employed by the Commissioner. This material has been filed as part of what is a pre-hearing motion to address the adequacy of the particulars/complaint in this case. Statements of the respondents are inadmissible at the hearing of this matter, and will form no part of the case on its merits, and no part of the consideration of the case on its merits.

[44] With respect to the matters that have been put before me on the motion in the above-noted manner, the circumstances here are similar to those of a trier of fact on a voir dire hearing facts that are subsequently ruled to be inadmissible in the case proper: in the instant case, I find that I am similarly able to instruct myself as to the limited uses of the noted material for the purposes of the motion alone, to disregard those matters that are not properly before me, and to fairly hear the case on its merits , based only on admissible evidence. As a result, I find that I am able to preside at the hearing of this matter.

Sidney Lerner, P.J.

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