



Association and the Respondent officer have each filed briefs outlining their respective positions. The Complainant in this matter was unrepresented at the hearing and made a very limited submission on the issue before me.

[4] The Respondent officer's motion alleges:

(1) That the Complainant did not comply with the time limitation period set out in s. 6(3) of *The Law Enforcement Review Act* of Manitoba, and;

(2) If so found, that the Commissioner did not properly exercise the discretion to extend the time to file such a complaint and should not have exercised his discretion to do so.

## II. APPLICABLE PROVISIONS OF THE LAW ENFORCEMENT REVIEW ACT

[5] The provisions of the Act relevant to this motion are as follows:

6(1) Every person who feels aggrieved by a disciplinary fault allegedly committed by any member of a police department or by an extra-provincial police officer may file a complaint under this Act.

6(3) Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint, and shall be submitted to

(a) the Commissioner; or

(b) the Chief of Police of the department involved in the complaint; or

(c) any member of the department involved in the complaint;

not later than 30 days after the date of the alleged disciplinary default.

6(4) Every member who receives a verbal complaint concerning conduct which may constitute a disciplinary default shall forthwith inform the person making the verbal complaint that a complaint under this Act must be made in writing and shall forthwith inform the person of the relevant time limits set out in this section.

6(6) Where the complainant has no reasonable opportunity to file a complaint within the time period set out in subsection (3), the Commissioner may extend the time for filing the complaint to a date not later than six months after the date of the alleged disciplinary default.

7(1) Where a complaint is made

(a) to a member of the department involved in the complaint, the member shall forthwith forward a copy of the complaint to the Chief of Police of that department who shall forward a copy to the Commissioner;

together with any other statements or documents submitted by the complainant.

[6] Although the issue was never brought to the forefront, it appears from the actions and comments of counsel that they are in agreement that a Provincial Court Judge has the jurisdiction to hear this preliminary application.

### **III. FACTS**

[7] It is alleged by the Complainant, who was a resident of Thunder Bay, Ontario, that on December 20, 2002 she was involved in a motor vehicle accident here in the City of Winnipeg. A police report was subsequently made and the Complainant was provided with an incident number. The Manitoba Public Insurance Corporation obtained statements from all parties involved and those statements were inconsistent with one another.

[8] On January 28, 2003 the Complainant returned to Winnipeg and contacted the Police Service to inquire as to the status of the investigation. She was placed into contact with the Respondent officer and arrangements were made to meet to discuss the matter. On January 30, 2003 the Complainant met with the Respondent officer during which meeting she alleged the occurrence of inappropriate sexual talk initiated by the Respondent officer. As a result, the Complainant prepared a letter outlining her interaction with the Winnipeg Police Service generally and the Respondent officer specifically. That letter is the subject of this motion.

[9] Pursuant to the Affidavit of Sergeant S.T. (sworn October 19, 2006), Ms. W. attended to the Public Safety Building (“PSB”) located at 155 Princess Street on February 28, 2003 at approximately 1555 hours. At that time she handed a typed letter of complaint (Exhibit “A” of T. affidavit) to an individual described as “one of the traffic accident coordinators”, who is not a “member” as defined in *The Law Enforcement Review Act* (“LERA”) of Manitoba. Upon providing the letter to this civilian, the Complainant immediately left the PSB. The letter was noted to be addressed “To Whom it May Concern” and was unsigned and was provided to Sergeant T. at 1555 hours. Sergeant T. did not see the Complainant nor did she have any direct contact with her. The letter itself contained an Ontario address as the only means of contacting Ms. W. Sergeant T. did make inquiries on the police

computer system in an attempt to locate a telephone number for Ms. W. but was unsuccessful.

[10] Sergeant T. gave the letter to Staff Sergeant P.K. who then passed it onto then Inspector S.T. On March 3, 2003 Inspector T. sent a memorandum (Exhibit “C” of T. Affidavit) to J. T., Deputy Chief of Operations, attaching the letter from Ms. W. for his attention.

[11] On March 4, 2003 Inspector R.H. sent a letter (Exhibit “D” of T. Affidavit) to the address of Ms. W. seeking to confirm that she was the party who submitted the letter in question and secondly to clarify what entity she would like to take conduct of her complaint. A copy of this letter was acknowledged to have been received by Commissioner George Wright in his affidavit of October 10, 2006.

[12] In a letter dated March 14, 2003 (Exhibit “E” of T. Affidavit) Ms. W. wrote back to Inspector H. and included a copy of her original February 20, 2003 letter that now had her signature above the typed version of her name. With respect to the question as to whom she would like to handle her concerns, Ms. W. provided no clear direction on that issue.

[13] Inspector H., in a letter dated March 19, 2003 (Exhibit “F” to T. Affidavit) forwarded all of the correspondence in his possession to Commissioner George Wright as Ms. W. failed to identify which agency she wished to pursue her complaint. That letter was received by Commissioner George Wright on March 20, 2003 as acknowledged in his affidavit of October 10, 2006.

[14] On March 25, 2003 Commissioner George Wright completed his review of the file and determined that the complaint was not made within the established time frame set out in s. 6(3) of the Act. He then exercised his discretion to extend the time frame to file pursuant to s. 6(6) and made the following note in the comments section (Exhibit 5 of Wright Affidavit) of the Investigation Checklist:

“It is in the public interest to investigate the complaint. The complainant believed that she was dealing with a police officer, thus LERA has jurisdiction.”

#### **IV. RESPONDENT OFFICER’S POSITION**

[15] The Respondent officer takes the position that s. 6(3) of the Act imposes mandatory obligations on an individual who wishes to file a complaint under this legislation. It is his position that the letter delivered on February 28, 2003 did not meet the requirements of s. 6(3) that it shall be in writing and *signed* by the complainant.

[16] However, it is acknowledged that even though the complaint may not have been filed within the time requirements set out in s. 6(3) of the Act, that the Commissioner has a discretion to extend the time to file pursuant to s. 6(6) of the Act. In that regard it is the Respondent officer's position that the Commissioner failed to initially assess and determine whether the Complainant had "no reasonable opportunity" to file a complaint within the time allotted. Secondly, that the Commissioner lacked the jurisdiction to exercise the discretion granted to him under s. 6(6). As a result it is the position of the Respondent officer that the Commissioner suffered a loss of jurisdiction to accept the complaint and/or to forward it for a judicial determination on the merits.

[17] With respect to the initial complaint that was provided to Sergeant T. on February 28, 2003, it is the position of the Respondent officer that it was unsigned and did not contain a signature as is required by s. 6(3) of the Act.

[18] If that position is correct, the Respondent officer asserts that there is nothing before me to support what counsel calls the "condition precedent" to the exercise of the discretion under s. 6(6), that the Complainant did not have a reasonable opportunity to file her complaint within the 30 day time period.

[19] The Respondent officer acknowledges that all of the information available to the Commissioner must be examined in order to determine whether the Complainant had "no reasonable opportunity" to file the complaint within 30 days of the alleged incident occurring. The Complainant attended to the PSB and personally handed a typed letter to a civilian member of the Winnipeg Police Service that in the view of the Respondent contained no signature. The Complainant did not remain to speak to any officers, nor leave any information as to a means in which quick contact could be initiated. All that was left was a Thunder Bay address which would only permit communication to occur by letter.

[20] Counsel also suggests that a review of the complaint filed does not assist to establish that the Complainant did not have a reasonable opportunity to file the complaint within the specified 30 day period.

[21] As for the Commissioner's decision to extend the time period for filing a complaint under s. 6(6), it is the Respondent officer's view that there must be some evidence on the record or uncovered by way of an investigation in order for the discretion to be properly exercised.

[22] It is suggested that the Commissioner did not speak personally to the Complainant at any time to ascertain why the complaint was not filed within the 30 day period. It is further submitted that upon a review of the materials that were available to the Commissioner at the time the discretion was exercised, there exists no basis to conclude the Complainant did not have a reasonable opportunity to file

her complaint within the 30 day time limit. The reasons recorded by the Commissioner are of no assistance in assessing or making the determination that the Complainant did not have a reasonable opportunity to file the complaint.

[23] On this basis it is the Respondent officer's position that a complaint was not filed pursuant to s. 6(3), that there exist no grounds for the Commissioner to conclude that the Complainant did not have a reasonable opportunity to file the complaint and therefore the Commissioner was without jurisdiction to exercise the discretion afforded him under s. 6(6) of the Act.

[24] As a result the Respondent officer argues that the Commissioner did not have the jurisdiction to refer the matter to the Provincial Court of Manitoba for a determination on the merits.

## **V. COMMISSIONER'S POSITION**

[25] On behalf of the Commissioner, Mr. Boyd takes the position that the discretion outlined under s. 6(6) of the Act was exercised correctly in this case. However, counsel for the Commissioner also argued that the exercise of discretion by the Commissioner may not have been necessary as the complaint filed on February 28, 2003 may have been in such form to have complied with the requirements set out in s. 6(3) of the Act.

[26] With respect to s. 6(6) it is suggested that the presiding judge ought to give a liberal interpretation to the Commissioner's jurisdiction and discretion to extend time for filing a complaint. Specifically, the lack of a reasonable opportunity to file a complaint is not to be construed as merely a physical impossibility but requires an examination of the entirety of the situation.

[27] At the time of receiving the complaint on March 20, 2003, the Commissioner had a copy of the initial complaint dated February 20, 2003 that was unsigned; the letter dated March 4, 2003 addressed to the Complainant from Inspector H.; the letter from the Complainant dated March 14, 2003 addressed to Inspector H. and finally the letter of March 19, 2003 from Inspector H. to the Complainant which indicates a course of action that will be taken. It was conceded by counsel for the Commissioner that the fact the Complainant had attended to the PSB on February 28, 2003 to file the complaint was unknown to the Commissioner at the time the decision to exercise the discretion under s. 6(6) of the Act was made.

[28] It is the position of the Commissioner that the presiding judge may review the entirety of the record before the Commissioner at the time the decision was made to extend the time for filing. However, it was also suggested that the presiding judge may look to subsequent facts learned or discovered after the

decision of the Commissioner to determine if the decision to extend the time to file was a reasonable one.

[29] Although it was conceded by the Commissioner in their preliminary brief that the complaint was filed outside of the 30 days specified under s. 6(3) of the Act, that position was later reconsidered. It was advanced during oral argument that in retrospect, it may be that the initial complaint had been filed in time. It is now suggested by Mr. Boyd that the initial complaint, that is now known to have been brought to the attention of the Winnipeg Police Service on February 28, 2003 was one therefore brought within the 30 days contemplated by s. 6(3) of the Act. It is acknowledged that although the initial complaint filed by the Complainant lacked a signature, the presiding judge could consider the later signing by the Complainant as a means of “perfecting” this earlier flaw. It is on this basis that the Commissioner suggests that the use of s. 6(6) may not have been necessary.

[30] In addition, the Commissioner has also suggested that when the Complainant hand-delivered the unsigned letter on February 28, 2003, that the Winnipeg Police Service members had an obligation to inform the Complainant forthwith that any complaint under the Act had to be in writing, signed and filed within 30 days of the alleged incident. It is suggested that the failure of the receiving member to inform her of these requirements of the Act prevented the Complainant from having a reasonable opportunity to perfect her complaint.

[31] As a secondary argument, the Commissioner advances that even if it is found that the Complainant failed to comply with the requirements of s. 6(3), that the subsequent use of s. 6(6) to extend the time to file was done so properly. The Commissioner suggests that a Provincial Court Judge ought to give a liberal interpretation to this section and look at all of the circumstances present when assessing whether the discretion accorded under s. 6(6) was properly exercised.

[32] At the time the Commissioner extended the time limit for the Complainant to file her complaint, he had a number of documents in his possession. Based on these materials it was open for the Commissioner to conclude that the Complainant had filed her complaint prior to March 4, 2003. When she did so it was apparent that she did not know of the requirements under s. 6(3) and that there was no way to contact the Complainant to have the complaint perfected within the stated time limit. As a result it is the position of the Commissioner that the Complainant did not have a reasonable opportunity to file the complaint pursuant to s. 6(3) of the Act and it was therefore within the jurisdiction of the Commissioner to extend the time to file under s. 6(6) of the Act.

## **VI. POSITION OF THE WINNIPEG POLICE SERVICE**

[33] It is the position of the Winnipeg Police Service that they had fulfilled their obligations as outlined by s. 7(1)(b) of the Act. When the Complainant attended the PSB on February 28, 2003 she handed the letter in question to a civilian member of the Winnipeg Police Service who then began a process of passing the letter upon the chain of command. A letter was quickly sent to the Complainant seeking clarification as to what her intention was by bringing this letter to the PSB. When a reply was received from Ms. W., a decision was made to forward all of the materials to the Commissioner of the Law Enforcement Review Board.

[34] Based on this, it is the position of the Winnipeg Police Service that they complied fully with their obligations that are imposed by the Act.

## **VII. ANALYSIS**

- **Was s. 6(3) complied with?**

[35] No issue was taken with the typed form of the complaint filed by the Complainant as being a complaint “in writing”.

[36] In its original brief, the Commissioner conceded that the complaint was not filed within the 30 day period as outlined under s. 6(3) of the Act. However, in its supplemental brief and in oral argument, the Commissioner advanced that the Complainant may have complied with the time requirements set out in the applicable section.

[37] On February 28, 2003 the Complainant attended to the PSB and handed her typed complaint to a civilian clerk of the Winnipeg Police Service. That complaint was then forwarded to Sergeant T. who noted that it was not signed by the Complainant. She inquired and was advised that the Complainant had left the building immediately after providing the letter and could therefore not be spoken to personally. The letter contained an Ontario address for the Complainant but did not contain a phone number that she could be reached at immediately. A subsequent computer check did not reveal any further contact information for the Complainant.

[38] During oral argument it was suggested by the Commissioner that it is open for me to conclude that although the original letter was not signed by the Complainant, that it could be considered perfected when a signed copy of the exact same letter that was left on February 28, 2003 was received on March 19, 2003. On that basis the Commissioner suggests that the letter left on February 28, 2003 was now perfected and that it was filed within the 30 days specified in s. 6(3) of the Act.

[39] *The Law Enforcement Review Act* fulfills a broad public interest that is designed to promote respect for the police and respect for the individual. As is



stated in s. 6(1) of the Act, an individual who feels aggrieved by a disciplinary fault allegedly committed by any member of a police department may file a complaint under this Act.

[40] Section 6(3) sets out the parameters that must be followed by a party who wishes to make a complaint and states, “every complaint shall be in writing signed by the complainant...”

[41] Counsel for the Respondent officer has submitted that s. 6(3) of the Act contains mandatory language which must be complied with in order to fall within the jurisdiction of the Act.

[42] The term “shall” in its normal grammatical sense is presumptively imperative and when used should be construed as making something mandatory (see *Manitoba Language Rights Reference* (1985) 25 Man. R. (2d) 83 (S.C.C.) at para. 27).

[43] Mr. Justice MacInnes considered s. 6(3) of the Act in the case of *Apostle v. Robson et al* (1996), 114 Man. R. (2d) 240 and stated at paragraph 8:

“In my opinion, the law is clear that limitation or time provisions of the kind set forth in s. 6(3) of the Act are mandatory and that particularly where, as here, the private rights of the applicant are involved, compliance is a necessary statutory prerequisite to jurisdiction.”

[44] It is clear from the case law that given the potential interference with ones private rights, there must be absolute compliance with what might be termed the prerequisites to invoke jurisdiction over the matter. The requirement of the complaint being filed within 30 days of the alleged incident is a provision that incorporates within it that the complaint be in writing and signed.

[45] By the very nature of those requirements being termed mandatory, it would preclude any type of perfecting of a complaint at a later date so as conclude that it did fall within s. 6(3) even though not all of the requirements were complied with during the 30 day time limit.

[46] As a result, in order for there to be jurisdiction over the matter, the complaint must be in writing and it must be signed by the Complainant. The failure to comply with the mandatory requirements as set out in s. 6(3) of the Act will result in a lack of jurisdiction to permit the matter to proceed to a hearing under this section. (*Nicholas v. Freeman et al*, LERA Complaint No. 3238 of Judge Rubin dated January 24, 2002).

[47] Therefore it is my view that the complaint that was submitted on February 28, 2003 was not one that met the requirements stated in s. 6(3) of the Act as it was unsigned. According to the evidence submitted, the Winnipeg Police Service did not receive a signed copy until March 19, 2003 which was some 48 days after the date of the alleged incident. It is only then that the Winnipeg Police are finally in receipt of a signed written complaint, however, it is outside of the 30 day period specified and therefore does not permit the Commissioner to have jurisdiction over the matter pursuant to s. 6(3) of the Act.

### **VIII. APPLICABILITY OF S. 6(6) OF THE ACT**

[48] Notwithstanding that a complaint was not filed in writing, signed and within 30 days, the Commissioner can still attain jurisdiction over a matter pursuant to s. 6(6) of the Act. That section permits the Commissioner to extend the time to file a complaint to a date not later than 6 months from the date of the alleged incident. The Commissioner may do so “where the complainant has no reasonable opportunity to file a complaint within the time period set out in subsection (3)...”

[49] On March 25, 2003 the Commissioner extended the time to file and stated “It is in the public interest to investigate this complaint. The complainant believed that she was dealing with a police officer, thus LERA has jurisdiction.”

[50] When it is alleged that the Commissioner lacked the jurisdiction to extend the time to file a complaint under s. 6(6), the onus falls upon the Respondent officer to show that no grounds existed to permit the exercise of the discretion. I agree with the Commissioner, that it would be unreasonable for the Commissioner to appear before a Provincial Court Judge each time the discretion under s. 6(6) is exercised.

[51] The lack of a sufficient record to conclude that “no reasonable opportunity” to file the complaint existed would result in the Commissioner lacking the jurisdiction over the matter and the subsequent referral of a complaint for a hearing on the merits.

### **IX. NO REASONABLE OPPORTUNITY**

[52] Judge L. Giesbrecht had an opportunity to examine the concept of “no reasonable opportunity” in the case of R.J.M. v. Constable P. and Constable T., Decision on the Preliminary Application by the Respondents, February 10, 2004.

[53] After a careful and thorough analysis, Judge Giesbrecht concluded that the term “no reasonable opportunity” ought to be given a fairly broad and liberal interpretation. It should not be construed to require a physical impossibility to file but rather a Provincial Court Judge ought to look at all of the circumstances that

existed at the time the discretion was exercised. In addition it ought to be on a case-by-case analysis to determine the issue of what is reasonable for those facts.

[54] As there was no direct communication between the Commissioner and the Complainant, it then becomes incumbent to look to the materials (as attached to the Affidavit of Commissioner George Wright sworn October 10, 2006) that were in the possession of the Commissioner at the time the discretion was exercised:

- (1) Letter of Ms. W. dated February 20, 2003

This letter contains significant details of Ms. W.'s initial accident claim and also speaks of the alleged inappropriate actions of the Respondent officer. The alleged conduct exhibited by the officer is serious and is something that should cause members of the public concern. However, the focus of the letter is not that of filing a complaint against the officer but rather to have the accident investigated. The last line of the letter states "Let's get my accident properly investigated or do I have to do your job also?"

- (2) Letter of Inspector H. to Ms. W. dated March 4, 2003

The letter to Ms. W. is sent concerning a number of issues. Initially it is sent to confirm that it was she who in fact filed the complaint as it was unsigned. The Inspector also details the means of investigation available to her with respect to the alleged misconduct exhibited by the Respondent officer. The letter is concluded by asking that she specify whether she wishes LERA or the Professional Standards Unit to investigate her complaint.

- (3) Letter of Ms. W. to Inspector H. dated March 14, 2003

In this letter Ms. W. confirms that it was she who hand delivered the letter dated February 20, 2003. It is clear that she is seeking to have the conduct of the officer investigated along with her initial *Highway Traffic Act* matter. What is of significance is the fact she does not indicate who she would like to investigate the Respondent officer's behavior. The last line of the letter states, "If you so strongly feel I have a predisposed opinion of the WPS, please show me otherwise, then let's get

this complaint properly dealt with in a professional and timely manner.”

(4) Letter of Ms. W. to LERA dated March 14, 2003

Ms. W. sends in a copy of all the correspondence to LERA and in essence is now filing her complaint.

[55] The alleged conduct of the Respondent officer is definitely concerning. As is stated at paragraph 39 of Judge Giesbrecht’s decision, the broad public interest of the Act requires the public to have confidence in the police. Furthermore, the public must have confidence in the process established to deal with complaints such as the one alleged here. The public must feel that there is a ‘real’ avenue available to them should they wish to complain of police misconduct, as is alleged by Ms. W..

[56] The public interest is one factor that the Commissioner can take into account when assessing whether it is appropriate to exercise the discretion to extend the time to file. However, it cannot be the sole factor in determining whether the Complainant had “no reasonable opportunity” to file the complaint within 30 days of the alleged incident.

[57] Judge Giesbrecht commented on other factors that the Commissioner could consider when determining whether to extend the time to file. One of those factors is whether the applicant was physically unable to file the complaint. Although it appears that Ms. W. was a resident of Ontario at the time of the initial incident, there is nothing to indicate that inquiries were made to ascertain if that was a factor that may have resulted in her having “no reasonable opportunity” to file her complaint. There is no evidence to indicate that she could not have accessed “modern communication devices” as a means to assist her to file her complaint within the proscribed time limits. There is no information to say that she was physically prevented from filing her complaint nor was there anything psychologically or emotionally preventing her from filing.

[58] Other factors suggested as being appropriate considerations for the Commissioner include whether the Complainant was under the misapprehension that the conduct complained of was expected, that the conduct alleged could not be addressed, or that the Complainant did not know of the time requirements set out in the Act. An additional consideration identified was whether the Winnipeg Police Service members did something to prevent the filing of a complaint on time or failed to do something that would have permitted the filing of a complaint on time.

[59] A review of the letters submitted do not support the conclusion that Ms. W. was talked out of filing a complaint, asked to wait before filing or in any way felt that her complaint would not be considered seriously.

[60] Counsel for the Commissioner suggests that when the Complainant attended to the Public Safety Building on February 28, 2003, the Winnipeg Police Service member had an obligation to inform her of the requirements of the Act.

[61] Section 6(4) deals with situations where a *member* receives a *verbal* complaint and imposes an obligation that they shall inform the person of the requirements of the Act, which would include that the complaint must be in writing, it must be signed and it must be filed within 30 days. Who is a member is defined in the Act as:

“Means any person employed in a municipal police department having the powers of a peace officer or employed as a peace officer in any municipality in the Province of Manitoba, and includes any person employed as a peace officer by a law enforcement body that is designated by regulation; . . .”

[62] Pursuant to the Affidavit of Sergeant T., the initial complaint was provided to a civilian clerk of the Winnipeg Police Service and was in writing. The record of the Commissioner does not contain any further information to suggest that in addition to that complaint that a verbal complaint was also made.

[63] Verbal is to be considered in its generic form of involving oral or spoken words as contrasted with written words. Based on the record available, there is no evidence that a verbal complaint was ever made by Ms. W.. Had one been made to the civilian clerk, the issue of the legal obligation imposed upon a non-member would have had to have been examined.

[64] That being said, I am in agreement that the Winnipeg Police Service members involved did all they could once in possession of the complaint. Sergeant T. made efforts to try to speak personally to the Complainant, including checking to see if the Complainant was still at the Public Safety Building. In addition Sergeant T. conducted various computer checks to see if a phone number could be located to contact the Complainant. When those means were found to be unavailable, the letter was quickly passed up the chain of command and within a few days a clarification and informational letter was sent to Ms. W. by Inspector H. Upon receipt of the reply letter from Ms. W., Inspector H. acted prudently when he forwarded all of the materials to the attention of the Commissioner for LERA. In my view, the Winnipeg Police Service acted in a forthwith manner once they came into possession of the letter from Ms. W.

[65] Given the purpose the Act seeks to serve, there must be a liberal interpretation given to the Act. The Commissioner ought to be given a broad latitude when determining whether the Complainant had “no reasonable opportunity” to file a complaint within the proscribed time limits. The test is not whether I would have extended the time to file but rather whether there existed circumstances that are sufficient in their totality to conclude that there existed no reasonable opportunity to file.

[66] There is no obligation imposed on the Commissioner to investigate each matter before exercising the discretion accorded by s. 6(6) of the Act. The Commissioner may simply rely on the letter(s) that are submitted by the complainant.

[67] The misconduct alleged by Ms. W. is serious and raises a significant public interest issue that needs to be considered. However, in my view, that factor alone would not be sufficient to permit the Commissioner to conclude that the complainant had “no reasonable opportunity” to comply with the time limits based solely on the public interest factor. The Commissioner would need the presence of other factors in order to arrive at that conclusion.

[68] Having assessed the entirety of the record, I am of the view that the Complainant did not file her complaint in the form described nor within the time limit stipulated in s. 6(3). I am also of the view that there are no additional factors present that would support a conclusion that the Complainant had ‘no reasonable opportunity to file her complaint within the 30 day limit.

[69] Therefore I am satisfied that the Respondent officer has shown that the Commissioner lacked the jurisdiction to refer this complaint for a hearing before a Provincial Court Judge.

[70] The Respondent officer’s application is therefore granted and I declare that LERA has no jurisdiction to deal with LERA Complaint No. 6176, that LERA has no jurisdiction to refer the complaint pursuant to s. 17 of the Act and that a Provincial Court Judge is therefore without the jurisdiction to deal with the complaint on the merits.

Dated at Winnipeg, Manitoba, this 26<sup>th</sup> day of October, 2007.

“Original Signed By”

---

K. MOAR, P.J.