

**IN THE MATTER OF:**            *The Law Enforcement Review Act*, Complaint  
#2007-270

**AND IN THE MATTER OF:** A review pursuant to s.13 of *The Law Enforcement  
Review Act* R.S.M. 1987, c.L75

**BETWEEN**

<b>D. D. ,</b>	)	<b>Self-represented</b>
<b>Complainant</b>	)	
	)	
<b>and</b>	)	
	)	
<b>Sergeant S. M.,</b>	)	<b>Mr. Paul R. McKenna,</b>
<b>Respondent</b>	)	<b>for the Respondent</b>
	)	
	)	
	)	<b>Mr. Sean Boyd,</b>
	)	<b>for the Commissioner</b>
	)	
	)	
	)	<b>Hearing Date: June 4, 2008</b>
	)	<b>Decision Delivered: June 13, 2008</b>
	)	

**NOTE: These Reasons are subject to a ban on publication of the  
Respondent’s name pursuant to s. 13(4.1) of *The Law Enforcement Review Act*.**

**Stewart, P.J.**

[1] The complainant/applicant brings an application under section 13(2) of *The Law Enforcement Review Act* to review the decision of Commissioner Wright in his declining to hold a public hearing into the complaint advanced by the applicant as against Sergeant S.M. Upon the application for review being heard on June 4, 2008, whereby submissions were made by the applicant herself and counsel for Sergeant S.M. and for the Commissioner, I had reserved the decision to allow it to be put into writing for complete clarity.

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

[2] Upon such a hearing, the Act makes it clear that the onus is upon the applicant to establish that the Commissioner erred in not taking further action on the complaint. This is a review of that decision and not a separate hearing.

[3] Upon such a review I find that the appropriate standard of review is one of correctness and reasonableness as established by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9. As such, my role is to conduct a judicial review of the decision made not to take further action on the complaint. Unfortunately, the applicant's submission was more fact-driven as to the complaint as opposed to underlying any errors which were committed by the Commissioner in arriving at decision which he made.

[4] When making his determination the Commissioner must consider all of the evidence gathered by his investigator and not just the *prima facie* elements of the complaint. The Commissioner should not determine credibility, draw inferences or make definitive findings of fact. The Commissioner can, in a limited way, weigh all of the evidence to determine whether it registers on the scale as sufficient evidence so as to constitute a reasonable basis to proceed further.

[5] From a review of the Commissioner's file it appears that all aspects of the case were reviewed and thereafter the Commissioner was satisfied that there was insufficient information supporting the complaint. As a reviewing judge I must allow the Commissioner to determine if there is a reasonable basis to proceed to a hearing or not and whether such a determination is based on a reasonable assessment of the evidence.

[6] I find, in this case, that the Commissioner has met his responsibilities and the Commissioner's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. I therefore dismiss this appeal.

[7] It is further ordered that the ban on publication of the respondent's name shall continue.

*Original signed by Judge B. Stewart*

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Brent D. Stewart, P.J.