

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint #2008/119

AND IN THE MATTER OF:

An Application pursuant to s. 13 of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75

BETWEEN:

A.R.,
Applicant

) In Person,
) Self-represented

- and -

)

)

)

Constable A.P.
Constable W.J.
Constable N.L.
Respondents

) Mr. Paul McKenna,
) for the Respondents

)

)

)

Mr. Sean D. Boyd, Counsel for L.E.R.A.

)

)

June 3, 2010

NOTE: These Reasons are subject to a ban on publication of the Respondents' names pursuant to s. 25 of *The Law Enforcement Review Act*.

FINLAYSON, P.J.

Overview of Complaint

[1] *The Law Enforcement Review Act* (the “Act”) provides an avenue for any citizen of our province to file a complaint about the conduct of any police officer. The Legislation is predicated on the principle that the police should deal with all citizens in a professional manner.

[2] As part of the legislative scheme complaints are investigated by the Law Enforcement Review Agency (LERA). The Legislation provides for a screening mechanism which provides to the Commissioner the power to dismiss certain complaints. The screening process exists to prevent unnecessary public hearings. The screening process is predicated on the premise that the Commissioner, as an administrative decision-maker, has the expertise to assess a complaint made by a citizen.

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

[3] The complainant, Ms R filed a written complaint with LERA with respect to the conduct of three police officers who dealt with her on June 17, 2008.

[4] In a very detailed letter dated September 21, 2009, the LERA Commissioner determined that the evidence supporting the complaint was not sufficient. The Commissioner's decision meant that the matter would not proceed to a public hearing.

[5] Under the provisions of the Act, the complainant, Ms R asked a Provincial Court Judge to review the decision made by the Commissioner. Accordingly, the matter appeared before me for review on May 12, 2010.

Factual Background

[6] The complaint concerns the allegations of Ms R on the late evening of June 4, 2008. Ms R called the police concerning the fact that her boyfriend was not letting her out of the house. Ms R alleges that shortly after attending to her house, one police officer grabbed her by the neck and said: "*You fucking shut up or I'll break your neck.*" She also alleges that one officer was very rude to her when placing her in the drunk tank and told her to shut up.

[7] The officers denied Ms R's allegations. There was no independent evidence to corroborate Ms R's allegations nor was any medical evidence placed before the Commissioner.

Legal Framework of a Review

[8] Section 29 of the Act outlines how an officer can commit a "disciplinary default". The disciplinary default as alleged by Ms R against the officers in question are: an abuse of authority by using unnecessary violence or excessive force.

[9] Section 13 of the Act governs this process and the onus is on the complainant to satisfy me that the Commissioner erred in declining to take further action.

[10] There is recent binding authority from the Supreme Court of Canada in *Dunsmuir v. New Brunswick* [2008] S.C.J. 9, which governs how review processes such as this are to proceed. The *Dunsmuir* decision clarifies the test to be applied in these types of reviews. The Supreme Court of Canada has streamlined the implementation of a judicial review process such as this, opting for a contextual approach. Two standards of review apply. The first principle is "correctness" and the second is "reasonableness."

[11] A jurisdictional error can be committed if the Commissioner failed to act within the limits of his jurisdiction by applying a wrong test or misapplying the

right test in reaching his decision. I am of the view that none of the above jurisdictional errors has occurred in this case.

[12] I must apply the standard of reasonableness as understood by the *Dunsmuir* decision. Reasonableness is a standard that recognizes that certain questions that come before an administrative tribunal such as LERA do not lend themselves to only one specific or particular conclusion. Instead, the analysis of a complaint such as the one made by Ms R can, and often does, give rise to more than one possible, reasonable conclusion.

[13] In *Dunsmuir*, the Supreme Court defines reasonableness in the context of a judicial review:

Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

Decision on Review

[14] The question to be answered is the following: Did the Commissioner assess the evidence reasonably? In other words, have the Commissioner's reasons been transparently, intelligibly and rationally articulated?

[15] It is important for Ms R to know that other persons, herself included, may have drawn an equally supportable conclusion from the facts presented in this case. However, that is not the test that I am required to apply. I must examine whether the Commissioner drew a rational conclusion, one that could reasonably be drawn from the facts of this case.

Conclusion

[16] I have reviewed the Commissioner's reasons for not proceeding to a hearing before a judge. I have concluded that the Commissioner assessed the evidence reasonably and drew a rational conclusion on the merits of Ms R's complaint. The Commissioner's reasons were transparent, intelligent and rationally articulated. I am not prepared to interfere with the decision of the LERA Commissioner.

Original signed by Judge R. Finlayson

R. Finlayson, P.J.