

could park, as the event employee told them they could not park on the grounds without a “premium pass”. Therefore, [REDACTED], [REDACTED] and [REDACTED] got out of the truck and [REDACTED] drove away in order to park elsewhere. More event staff – “security” - approached the three as they were standing there and a confrontation took place. The three were being denied entry to the event. Words were exchanged. Voices were raised. [REDACTED] called 911; while on her phone, she was told by one of the staff that the police were close at hand and on their way.

[2] Several police officers and the head of security for the event, [REDACTED] arrived on scene while the confrontation between [REDACTED] and security was still ongoing. Police officers stepped in and soon arrested her for causing a disturbance and assault. She was handcuffed. While one of the officers was speaking with [REDACTED] and obtaining identification, [REDACTED] sat down on the ground and then slipped one of her hands out of the handcuffs. A scuffle ensued and she was pinned to the ground by officers and then handcuffed behind her back. During this time words were exchanged. There was some yelling and swearing. Eventually the officers agreed not to charge her and the handcuffs were removed. She was not allowed into the event, though the others were given their tickets back and told they could go in if they wanted to. [REDACTED] left the grounds in order to go to the Victoria General Hospital to have her injuries attended to.

THE LAW ENFORCEMENT REVIEW AGENCY INVESTIGATION

[3] [REDACTED] attended the LERA office on August 21, 2018 and filed her written complaint. In it she stated that the officers involved in this confrontation abused their authority by using excessive force and unnecessary violence toward her and that one or more of the officers used profanities which were directed at her.

[4] LERA investigated [REDACTED] complaint. They asked her to attend the office a second time in order to sign an authorization for them to obtain the medical records from her visit to the hospital on the night in question. The Investigator

obtained a witness statement from [REDACTED]. The Investigator obtained the Event Chronology file and the Crowd Management Unit Action Report and interviewed the three officers he had identified as being directly involved in the incident with [REDACTED].

[5] [REDACTED], in her complaint, had identified [REDACTED] and [REDACTED] as being present during the time of the confrontation with the police officers when she was handcuffed and taken down to the ground. The Investigator called the number listed for them on [REDACTED] written complaint on three separate days in November. The calls were not answered and the voice mail service did not allow for a message to be left. He was then able to speak with [REDACTED] on November 21, 2018. She gave a similar version of events to what was in her mother's written complaint. She confirmed that both she and [REDACTED] would prepare a written statement and bring it to the Investigator. Nothing was received in the next few weeks and so the Investigator phoned them on December 14 to inquire. Again, the call was not answered and the voice mail did not allow him to leave a message.

THE COMMISSIONER'S DECISION

[6] Nothing further was received by the Investigator and so early in the New Year, he concluded his investigation and made his recommendation to the LERA Commissioner, resulting in the letter of the Commissioner being sent out on January 5, 2018. In it, the Commissioner found that the evidence necessary to justify a referral for a public hearing in this complaint was insufficient and so he declined to take further action.

WHAT HAPPENED IN COURT ON JUNE 4, 2018

[7] On the date set for hearing, June 4, [REDACTED] asked that I allow her boyfriend, [REDACTED] to speak as her representative, which I agreed to. He then asked for an adjournment of the hearing in order to have time to prepare and file materials. This was not consented to, but I agreed to set a new date – August 27,

2018. I set a time line for the filing of those materials and for a response from counsel for the officers. Those timelines were followed. [REDACTED] filed a booklet which included three affidavit/statements, some photographs and a printed page from the LERA website. Counsel for the Respondent police officers filed a Supplementary Brief.

WHAT HAPPENED IN COURT ON AUGUST 27, 2018

[8] Counsel for the police officers asked that the Court not consider the materials filed by [REDACTED] in my judicial review of the Commissioner's decision. He argued that what had been filed was – quite simply – new evidence that had no basis being filed or considered in this judicial review. I gave [REDACTED], speaking as [REDACTED] representative, all the time he needed to convince me otherwise. He was not able to convince me otherwise and I ruled as follows:

(A) Affidavits of [REDACTED] and [REDACTED]

With respect to these two affidavit/statements, I found that the investigating officer had given them ample opportunity to provide their statements to him and did not do so, in a timely fashion. The case law is very clear that this is the kind of circumstance in which new evidence is not to be considered.

(B) Affidavit of [REDACTED]

The Investigator had reviewed [REDACTED] complaint and sought out all of the witnesses and police officers he knew of and believed were present when the incident occurred. This did not include [REDACTED], as he was apparently away from the scene parking the truck at this time. [REDACTED], as [REDACTED] boyfriend - if he believed he had relevant information to provide - could have provided his statement to his girlfriend to hand in at the

LERA office at any time or sent or delivered the information himself at any time, if he had wanted to.

(C) The photographs of [REDACTED] injuries

These photographs were not shown, offered to be given, or provided to the Investigator at any time prior to the Commissioner's decision being sent out. It was evidence that the Complainant had access to and could have provided with her written complaint or any at time before the Commissioner made his decision. I do note, though, that [REDACTED] did state in her complaint that photographs of her wrists, pants, face and back were taken that evening. The Investigator could have asked to see them or to obtain a copy of them, but apparently did not. I agree with the Complainant's concern about the photographs not being seen by the Investigator. After reading that there were photographs taken, he should have asked for them if they were not offered to him.

However, I ruled that the photographs would not be allowed in as new evidence in the review for two reasons. Firstly, they could have been provided to the Investigator in the beginning and secondly, I have carefully looked at the photographs and compared them to the statements the officers gave to the Investigator. What I saw were photographs of injuries that could have been sustained from the kind of confrontation and contact the police officers described having with [REDACTED] in the handcuff struggle and in taking her down to the ground. In other words, the photographs support [REDACTED] version of events as outlined in her complaint, but as well, they do not contradict what the officers said in their explanations of what happened.

[9] The materials filed by [REDACTED] were therefore not included in the judicial review. I then gave [REDACTED] an opportunity to convince me that the Commissioner had made an error in his decision in declining to take further action in this complaint, and for counsel for the officers to reply.

WHAT AM I REQUIRED TO DO IN A REVIEW?

[10] *The Act* sets out what my role is in a review of a decision made by the Commissioner. It includes – or doesn't include - the following:

It is not up to me to substitute or replace the Commissioner's findings and decision with my own, just because I take a different view of things. My task is to determine "whether the Commissioner drew a rational conclusion, one that could reasonably be drawn on the facts of this case." (To use the phrasing of Judge Preston in *B. J.P. v. Cst. G.H., Cst. B.Z. and Sgt. G.M.*, LERA Complaint #2005-186 (November 14, 2008).

[11] The Commissioner is to investigate the complaint, weigh all of the evidence gathered and make a rational conclusion with respect to it. This does include, to some extent, the weighing of disputed evidence. I must be satisfied that his decision does not fall within a range of possible outcomes which are defensible in respect of the facts and law.

[12] The burden of proof – or onus - is on the Applicant to satisfy me that the Commissioner was wrong in his decision – that he erred - in declining to take further action in this particular complaint.

THE COMMISSIONER'S FINDINGS AND DECISION

[13] The LERA investigation included reviewing [REDACTED] complaint, the hospital reports, some reports made about the incident, [REDACTED] statement and interviewing the three officers involved in the incident. The three officers and [REDACTED]

██████████ were in substantial agreement about what happened and what was said during the confrontation. There are some minor differences – which are understandable when a fast-paced heated confrontation takes place.

[14] There was, though, one significant difference on what was said by Constable ██████████ at one point in time. The Commissioner agreed that ██████████ recollection is to be accepted, that is, that the officer did say “shut the fuck up” at one point in time. The Commissioner stated that this was unprofessional, even if it was “in the heat of the moment” when he was sworn at by ██████████. He then noted that this does not qualify as a default under the Act. He was correct in his assessment of the evidence and law on this.

CONCLUSION

[15] In my review of all of the evidence the Commissioner had available to him, I am satisfied that it reveals a seriously upset and angry ██████████ who was escalating out of control when the police officers and ██████████ arrived on scene. Their descriptions of the encounter with her at this point in time are similar enough that the Commissioner, as he is entitled to do, was able to make a limited assessment on credibility when weighing the disputed evidence. I do not have to agree with his assessment or the conclusions he came to in making that assessment. The Commissioner assessed the evidence reasonably, he came to a rational conclusion, and his reasons for coming to the conclusion that he did are clear: there was insufficient evidence to justify referring this particular complaint to a public hearing. I agree. Therefore, I will not be interfering with the Commissioner’s decision.

Original signed by:

Judge R. Heinrichs