

IN THE MATTER OF: *The Law Enforcement Review Act*
Complaint #2017/121

AND IN THE MATTER OF: **An Application pursuant to s. 13(2) of *The Law Enforcement Review Act, C.C.S.M., c.L75.***

BETWEEN:

R.L.)	Self Represented,
)	
<i>Complainant,</i>)	
-and -)	
)	
CST. B., CST. S. and CST. M.)	
)	Mr. P. McKenna
<i>Respondents.</i>)	Counsel for the Respondents.
)	
)	Mr. Devon Johnston
)	Counsel for LERA Commission
)	
)	Hearing date: June 4, 2018
)	Decision date: July 9, 2018

Restriction on Publication
These Reasons are subject to a ban on publication of
the Respondent's names pursuant
to s. 25 of *The Law Enforcement Review Act.*

HEINRICHS, P.J.

INTRODUCTION

[1] On the Sunday morning of the September long weekend last year, 2017, a marked WPS cruiser car and an unmarked police car arrived at R.L.'s home in

Charleswood. It was just after 8:30 a.m., when three uniformed officers - the Respondents in this complaint - exited their vehicles and knocked on R.L.'s door. He let them in. Constable B., who was an Acting Patrol Sergeant at the time, explained that they were there to talk with R.L. about a traffic dispute involving him and another WPS officer. They spoke. After a few minutes, and at R.L.'s request, the officers left the residence, returned to their vehicles and drove away shortly after.

[2] Later that same week, R.L. filed a complaint with the Law Enforcement Review Agency. In his complaint, R.L. alleged that the officers who came inside his residence on Sunday, September 3, 2017 abused their authority and committed disciplinary defaults by using harsh or abusive language and by being discourteous or uncivil.

[3] The LERA Commissioner investigated. R.L.'s complaint was analyzed, police reports were received and reviewed and the three officers in question were interviewed. The Commissioner then provided his report and decision by way of registered letter to R.L. on February 6, 2018. His conclusion was that he was satisfied that the evidence he had was insufficient to justify referring this matter to a public hearing. So he declined to take further action, pursuant to section 13 (1) (c) of *The Law Enforcement Review Act* ("the Act").

[4] R.L. applied to the Provincial Court for a review of that decision. This is my decision on review.

WHAT IS A PROVINCIAL COURT JUDGE REQUIRED TO DO IN A REVIEW?

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

1. 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).
2. 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.
3. 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 APPLICANT'S POSITION

[6] The Applicant chose to represent himself in these proceedings. He filed his complaint with LERA in September, 2017 and received the Commissioner's decision in February, 2018. He immediately requested that this Court review the decision made. On April 25, 2018, he appeared in Provincial Court on his matter. At that time, a hearing date of June 4, 2018 was set. The presiding judge explained to him that he was to file his Brief by May 8, 2018, outlining his position and providing any materials he wished the reviewing judge and other counsel to see. He chose to file nothing. Counsel for the Respondent officers was given until May 29, 2018 to file his brief. He did.

[7] At the hearing on June 4, 2018, I gave the Applicant the opportunity to explain how the Commissioner erred in his decision. What he told me was, in essence, a repeat of what he had written in his original complaint. His argument, quite simply, was that I should substitute my own view of the evidence – that being his view of the evidence – for that of the Commissioner. This is exactly what I am not to do, as I stated earlier.

[8] I also gave the Applicant an opportunity to comment on the Respondent's Brief. He had no comment on it and admitted that he had only glanced at it and not taken the time to read it carefully. To be fair to him, he had only received it a few days earlier and there is a lot of detailed argument and legal cases in it. This, however, leaves me in the position where the Applicant has provided me with nothing specific – no part of the evidence or point in law - in which he can say that the Commissioner erred.

[9] Next, I must comment on two matters that concerned the Applicant enough to emphasize them at the hearing on June 4, even though they do not really have any bearing on whether the officers abused their authority in any way that day. The Applicant pointed out – correctly, I assume - that the bicycle he was driving is an electric powered bicycle, not a gas powered bicycle as had been suggested to him by one or more of the officers. The officer(s) may simply have got it wrong. (I might have got it wrong, unless I was standing by the bike and could hear it running.) It was a bicycle, propelled by more than just manual pedals. The concern the officers were addressing had to do with what had happened when the Applicant was on this bicycle and had, apparently, followed an off duty police officer home.

[10] The second concern the Applicant addressed was his observation that the officers were wrong when they stated in their interview with the Commissioner that

they had left the Applicant's residence immediately when they returned to their police cars. The Applicant's observation was that the officers sat in their cars for quite some time before leaving and he pointed out that the time line in the police reports shows that they were there for a number of minutes before leaving. However, the Commissioner also reviewed the timeline in his decision; his understanding of the police report event chronology was that it looks like it took the police officers approximately two minutes to leave the residence, get in their vehicle and drive away. I see this as no discrepancy at all. It may be semantics or a matter of perception: the evidence is that the officers drove very soon after they came out of his residence.

IS THERE SOMETHING I SEE IN THE COMMISSIONER'S HANDLING OF THIS COMPLAINT, HIS REVIEW OF THE EVIDENCE GATHERED OR IN HIS CONCLUSION DRAWN, WHICH IS CLEARLY IN ERROR?

[11] The first question to be answered in this regard is to ask if the Commissioner committed a jurisdictional error. Did he fail to act as required by his jurisdiction? Did he fail to act within the limits of his jurisdiction? Did he reach his decision by applying the wrong test or by misapplying the right test? From my assessment of the evidence gathered and in his letter of decision, the answer to all three questions is "No". He did exactly what he is required to do under the *Act*.

[12] Next, the Commissioner clearly engaged some weighing of disputed evidence. Was he in error in coming to the conclusions he made in doing this? The Commissioner noted that all three officers disputed the applicant's version of how the conversation progressed inside the door of his home, what was said, the tone of the questions, answers and comments and on how quickly the officers agreed to leave when asked to leave by the Applicant. They stated in their interview with LERA that they did not attempt to harass or intimidate the Applicant and were

courteous and civil. The Applicant disputed this. In weighing this contradictory evidence, the Commissioner correctly observed that the Applicant's wife – who clearly heard and observed some of their interactions – could have spoken to LERA and provided her point of view to all this. She did not, however.

[13] There is also some undisputed evidence that concerned the Applicant. He noted that the police arrived in two police cars – one marked, one not – at 8:30 in the morning on the Sunday of a long weekend and that three uniformed officers came to speak to him inside the door of his home. He commented that he is 65 years old and 5'6" tall. All of this made him feel intimidated. The Commissioner was aware of all of this and did not see this as an abuse of authority, which would come within any of the categories listed as a disciplinary default. I agree.

[14] However, the timing and method of delivering the police concern about another officer to the Applicant, was less than ideal. The evidence was that WPS officers had been to his residence to talk to him two days earlier – on the Friday afternoon – when no one was at home. This did not appear to be an urgent matter that had to be dealt with that early in the morning or on that particular holiday – or with three uniformed officers present. I surmise that this complaint would not have come about if it had been handled more judiciously.

CONCLUSION

[15] I find that the Commissioner assessed the complaint reasonably. He reviewed the evidence and drew a rational conclusion on the merits of the complaint. Because he has done so, I will not interfere with his decision.

Original signed by:
HEINRICHS, P.J.