

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint No. 2007/191.

AND IN THE MATTER OF:

An Application pursuant to s. 17 of *The Law Enforcement Review Act*, C.C.S.M., c.L75.

BETWEEN:

S.L.

Complainant

- and -

CST. J.M.

CST. S.M.

CST. P.N.

CST. J.P.M.

CST. D.R.

CST. A.A.

Respondents

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Ms. K. Burwash

for the Complainant

Mr. P. McKenna

for the Respondents

Decision delivered:

April 19, 2012

Restriction on Publication
This Decision is subject to a ban on publication of the Respondent's names pursuant to s. 13(4.1).

HEINRICHS, ROBERT, P.J.

[1] This is the court's decision in *The Law Enforcement Review Act* matter number 2007/191 which is how it is defined as the complaint number. The complainant is S.L. and there are six respondent officers named.

[2] Mr. McKenna, on behalf of the officers, is asking the court to dismiss the complaint against the six named police officers, being .Cst. J.M., Cst. S.M., Cst. P.N., Cst. J.P.M., Cst. D.N. and Cst. A.A., on the basis that there is no evidence that any one of them, or all of them or some of them abused their authority by

using unnecessary violence or excessive force contrary to Subsection 29(a)(ii) of *The Law Enforcement Review Act*, or, and/or abused their authority by using oppressive or abusive conduct or language contrary to Subsection 29(a)(iii) of *The Law Enforcement Review Act* on or about July 2nd, 2007.

[3] I will give my decision orally at this point in time and will, as soon as possible, deliver my decision in writing to the parties as required pursuant to Section 27(1) of *The Law Enforcement Review Act*. My notes are barely legible and so it is not going to be in this form but it will be typed and sent properly.

[4] The six named officers have been present in court yesterday and today for this hearing. The complainant, S.L., had the opportunity to identify them in person through her testimony but has been unable to do so. She thinks that one of the officers matches the description of one of the officers involved, based on what she wrote in her complaint back in September of 2007, but that is the best she can offer as far as identification of any of the officers. This is perhaps not surprising given what she complained of. After a night of a fair amount of alcohol and passing out in the back of her van, she testified that she was suddenly forcibly removed from that van, thrown to the ground, cuffed, assaulted, abused, thrown in and out of the police car, and then taken to the Remand Centre where she was pulled out or forced out and then booked and held.

[5] It was a very traumatic event, according to her evidence, and she recalls at one point in time there were at least nine officers within a distance of her, based on the legs she was counting. She also admitted in evidence that there could have been up to 14 officers present at some point in time during the time at Ellice and Colony, or Osborne, or whatever the street is called at that point in time.

[6] So remembering faces, individual officers or even trying to get badge numbers from the officers at that point in time would simply not be possible. The court understands this. However, *The Law Enforcement Review Act* requires that the complainant provide clear and convincing evidence that this officer, each of these six officers, committed one or both of these disciplinary defaults. At this point in time the court has no evidence that these six officers were working that night or that they were even employed with the Winnipeg Police Service at that time or that they were even at the scene at Ellice and Colony, or more than that,

were in any direct contact with S.L. that night at any point in time during her being taken from the van to the police car and to the Remand Centre.

[7] It may not seem fair that the act places the onus on the complainant in such a fashion, but once some evidence, any evidence had been testified to or had been filed as an exhibit, that any one of these officers had contact with her that night, it would have been enough to move past the hurdle of this being “no evidence” and would likely have forced the officers to testify. But as I have indicated, there is no evidence of that sort at this point in time.

[8] What evidence could have been some evidence? We could have heard from J.S., C.P. or R.L. They were in the van when it was pulled over. Could not any of them identified some of the officers or commented on who else was at the scene at the time?

[9] What about the dispatch notes or the call sheets, or whatever they happen to be, from the Winnipeg Police Service which could have been obtained and filed, showing which officers were called to the scene?

[10] Did the prosecution not provide the prosecutor's information sheet, officer's notes, and so forth for the criminal proceedings and would that not have disclosed some more details about the officers involved?

[11] Certainly, their supervisor could have been subpoenaed to be called as a witness to confirm exactly who the officers were that were involved, and that was not done.

[12] What about the records of the remand centre that could have been obtained and filed? This would definitely show which officers brought S.L. into the Remand Centre, and this is keeping in mind that this is exactly the officers that dealt with her in the elevator and brought her into the Remand Centre and booked her in. Certainly they would have been named at some point in time in the Remand Centre documents as relinquishing control of her to the Remand Centre.

[13] Why did the complainant S.L. not take note of who the officers were that testified at the two trials on her criminal charges and identify them from what she

recalls seeing, as the evidence that was being called to satisfy those charges against her? That would have shown to her at least who they were. She could have through that somehow identified who the officers were that had contact with her that night.

[14] These are only a few examples of some evidence that could have been called that would satisfy the court on the issue of identification or at least put the officers in a position where they would have had to testify beyond the no evidence motion.

[15] In summary, there simply is no evidence that any of these six officers committed either of the disciplinary defaults that the complaint alleges, and so the complaint against all six with respect to both charges, or the defaults is dismissed.

[16] That having been said, the court would like to comment on some of the evidence that was given with respect to the officers' conduct, or the evidence in general.

[17] The standard of proof that the complainant has to meet in one of these hearings is found in Section 27(2) of *The Law Enforcement Review Act*. This test was quoted and explained by Judge Richard Chartier, as he then was, in this court, in *The Law Enforcement Review Act* complaint 3181 on October 26, 2000. He said:

“The standard of proof in such matters is found in Subsection 27(2) which states that:

‘The provincial judge ... shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default.’

This is a high standard of proof because the consequences to the careers of police officers resulting from an adverse decision are very serious. The evidence must be clear, it must be free from confusion, it must also be convincing which, when combined with the word clear, in my view, means that it must be compelling.”

[18] S.L. has testified and has admitted that the complaint she filed with the Law

Enforcement Review Agency in September 2007, the evidence she gave before Judge Moar and the evidence that she gave before Judge Lismer, and the evidence she gave yesterday and today, that with respect to all of that evidence there are parts of it that are clearly different. It is not the same story or the same version of events that happened, and, in addition, that there are places where the chronology of the events are not the same. It is clear from this that there are some issues with respect to her evidence, and this court must take note of the fact that at the end of the day her evidence would have been such that it would not have been free from confusion, it would not have been evidence sufficient to meet that standard of proof that would be clear, convincing, compelling evidence in this particular case.

[19] Unless there are reasons otherwise, under Section 25(b) there will be an order for a ban on publication of the officers' names, that ban will continue pursuant to that section.

Original signed by:
HEINRICHS, ROBERT, P.J.