

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:	)	Mr. D. Johnston
	)	for the Commissioner
B.L.,	)	
	)	Mr. P. McKenna
Complainant,	)	for the Winnipeg Police
	)	Association
- and -	)	
	)	Mr. B. L.
PATROL SERGEANT E. R.,	)	in person
CONSTABLE W. C., and	)	
CONSTABLE J. B.,	)	
	)	Judgment delivered
Respondents.	)	October 11, 2011

1 CHAPMAN, P.J. (Orally)

2 B.L. has applied, pursuant to Section 13(2) of  
 3 the Law Enforcement Review Act, for an application to have  
 4 the commissioner's decision declining to take any further  
 5 action on his complaint reviewed by this court.

6 Mr. L.'s initial complaint dealt with events that  
 7 occurred on January the 30th, 2011 where he alleges that  
 8 the Winnipeg Police committed disciplinary default by  
 9 abusing their authority under the Act, and, in particular,  
 10 by making an arrest without reasonable or probable grounds,  
 11 arbitrarily detaining him, and refusing to allow him to  
 12 contact counsel.

13 The facts underlying his complaint and the  
 14 response by the police officers has been laid out in an  
 15 occurrence report, the first report, his complaint, being  
 16 February the 3rd, 2011.

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1           I will not repeat the facts here. I will only  
2 note that I have reviewed the entirety of the file and all  
3 the material filed before me. This includes the Law  
4 Enforcement Review Agency file itself as well as a brief  
5 filed on behalf of the respondents and the brief filed on  
6 behalf of the commissioner.

7           It is clear in the written correspondence to Mr.  
8 L. from commissioner George Wright that he has reviewed the  
9 complaint taken from Mr. L., the statements provided by the  
10 police officers, and the information provided by Mr. L.  
11 from the Canad Inns, and the report filed by the Main  
12 Street Project.

13           It is further apparent on the face of the  
14 document that Mr. Wright has, after considering all the  
15 evidence, determined, as he is entitled to do, that the  
16 evidence does not warrant the matter going any further.

17           On a review to a provincial court judge it is  
18 important to specify the alleged error made by the  
19 commissioner in order for the court to determine the  
20 appropriate standard of review to be applied. If the error  
21 alleges one of jurisdictional error, for example, an  
22 allegation that the commissioner had failed to act as  
23 required by his jurisdiction, the commissioner had failed  
24 to act within his limits of his jurisdiction, or the  
25 commissioner has reached a decision by applying the wrong  
26 test or misapplying the right test then a standard of  
27 review is one of correctness.

28           If the reviewing court determines that none of  
29 the above jurisdictional errors has been committed then the  
30 court must move to the next step of review analysis where  
31 the determination will involve the standard of review of  
32 reasonableness. And here I have found no jurisdictional  
33 error.

34           In this case, Mr. L., the complainant, alleges

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1 that the commissioner erred and that he made the wrong  
2 decision in not sending the matter to a provincial court  
3 judge for a hearing and contests some of the allegations in  
4 the file regarding materials noted by the investigators.

5 He also argues that the court should order that  
6 the record of this incident be expunged. And on that  
7 latter issue I have already said in the course of my  
8 dealings with Mr. L. and counsel this morning, in my view,  
9 there is no jurisdiction for the commissioner to do this,  
10 nor is there jurisdiction for me to do this as a provincial  
11 court judge sitting on review of the commissioner's  
12 decision.

13 When dealing with the issue before me, there are  
14 two questions that I have to deal with initially. One is  
15 who has the onus. And the legislation makes it clear that  
16 the onus is on the complainant to satisfy the court that  
17 the commissioner has erred in determining to take no  
18 further action. And the second question is what is the  
19 reasonableness. I must ask myself, did the commissioner  
20 assess the evidence reasonably? Has the commissioner's  
21 reasons been transparently, intelligibly and rationally  
22 articulated?

23 It is important to understand that other people  
24 may draw an equally supportable conclusion. I may have  
25 determined a different conclusion. But my function is not  
26 to do that. My function is to see if the commissioner drew  
27 a rational conclusion, one that could reasonably be drawn  
28 from the facts. My job is not to pass judgment on the  
29 quality of the initial investigation or the workings of the  
30 police but to decide only if the commissioner erred.

31 The reason for this limited role of a provincial  
32 court judge on review makes some sense if we would look  
33 back at the purpose and function of administrative  
34 tribunals and why they exist in the first place.

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1 Legislation develops setting up administrative tribunals  
2 historically because it was a way to delegate power to  
3 boards or individuals who have expertise in certain areas.  
4 So whether it is a disciplinary professional board entity  
5 like the Law Society of Manitoba, for example, or a  
6 commissioner like here under the Law Enforcement Review  
7 Act, the government felt that certain matters are more  
8 properly dealt with by individuals with some expertise in  
9 the profession.

10           That is why, in this case, the commissioner has  
11 discretion to screen complaints and investigate them to  
12 determine if they warrant a public hearing. Not all  
13 complaints justify a public hearing so the government  
14 enacted the screening provision to allow the commissioner  
15 to do just that. Because of that, the law has developed  
16 this deferential role courts must pay to the tribunals when  
17 matters appear before them on reviews. As a reviewing  
18 court, we are concerned first with jurisdiction, i.e.  
19 whether the commissioner has done his job. And then,  
20 secondly, as in this case, if he has what he is required to  
21 do as he has done it reasonably and is why he made certain  
22 decisions transparent and rationally connected to the  
23 process. That is what the review court must adhere to.

24           In this case, based on his investigation, which  
25 he has articulated, and based on his reasons given, I  
26 cannot say that he did not draw a rational conclusion on  
27 the merits of the complaint. He has explained in clear  
28 language that based on the evidence before him, he felt  
29 that no public hearing was warranted. He pointed out,  
30 without weighing the evidence where your evidence and the  
31 police officers' evidence conflicts and where some external  
32 factors support, the position taken by the police,  
33 including the information from the Canad Inns, again, Mr.  
34 L., and from the Main Street Project on Martha Street. He

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1 determined that there was no reasonable basis to proceed  
2 any further with these complaints.

3 I am also mindful of a number of points that you  
4 have raised with respect to the evidence, per se. Firstly,  
5 I agree with the respondent that it is apparent that the  
6 error noted on page 30 is a typographical error and, in my  
7 view, would not have made a difference in the  
8 commissioner's ultimate decision. I can certainly  
9 sympathize with your frustration in this regard, but at the  
10 end of the day, in my view, does not warrant further  
11 investigation.

12 I am also mindful of the contrasting positions  
13 you put forward with respect to the police officers cuffing  
14 you, with the requests made for counsel, and the lack of  
15 suggestion by the police as to the alternative location to  
16 take you to. Even if the commissioner took that evidence  
17 into account and accepted that evidence, in my view, it  
18 would not change the ultimate decision of the commissioner.

19 As a result, I am not persuaded, with the onus  
20 being on you, that the matter should go back to the  
21 commissioner for further investigation. As a result, after  
22 reviewing the decision of the commissioner and the file in  
23 its totality under Section 13(3) of the Law Enforcement  
24 Review Act, I decline to take any further action with  
25 respect to this matter or refer the matter back for a  
26 hearing.

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