

IN THE MATTER OF:

***The Law Enforcement Review Act*
Complaint No. 2013-174**

AND IN THE MATTER OF:

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

BETWEEN

D.S.,)	In Person (submissions made on
Complainant)	Complainant’s behalf by his father,
)	B.S.)
)	
- and -)	
)	
CONSTABLE K.P. ,)	Paul McKenna,
CONSTABLE K.V.,)	for the Respondents
)	
Respondents)	Mr. Devin Johnston, for the L.E.R.A.
)	Commissioner
)	
)	
)	Hearing date: February 2, 2015
)	Decision delivered: May 22, 2015

<p>Restriction on Publication</p> <p>This Decision is subject to a ban on publication of the Respondents’ names pursuant to s. 13(4.1) (a) of <i>The Law Enforcement Review Act</i>.</p>
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CARLSON, P.J.

Introduction

[1] *The Law Enforcement Review Act* (the “Act”) provides a route for any Manitoba citizen to file a complaint about the way he or she has been dealt with by the police, and a mechanism to have that complaint dealt with and reviewed. This legislation is rooted in the principle that citizens are entitled to be treated fairly, respectfully and professionally by police officers. When a citizen makes a

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

complaint pursuant to the *Act*, and an officer is found to have acted contrary to the legislated standard, that officer will be sanctioned.

[2] The *Act* provides for complaints by citizens about police conduct to be investigated by the Law Enforcement Review Agency (“LERA”). The *Act* requires the LERA Commissioner (the “Commissioner”) to investigate complaints, to refer certain matters for hearings on the merits by a provincial court judge, and to decline to take action on certain other matters. This screening of complaints by the Commissioner effectively prevents unnecessary public hearings. In cases in which the Commissioner declines to take further action, a complainant may have his or her complaint reviewed by a provincial court judge in accordance with the *Act*.

[3] The application is brought by the Complainant, pursuant to s. 13(2) of the *Act*, for a review of the decision of the Commissioner to decline to take further action on his complaint.

[4] The Complainant filed a written Complaint with LERA, dated November 18, 2013 (the “Complaint”), alleging that Winnipeg Police Services officers abused their authority on September 26, 2013 in dealing with him.

[5] On August 22, 2014, the Commissioner wrote to the Complainant advising that there was insufficient evidence supporting the Complaint to justify a public hearing, and that therefore, pursuant to subsection 13(1)(c) of the *Act*, he must decline from taking any further action on the matter.

[6] On September 18, 2014 the Commissioner received a request for a review of his decision pursuant to section 13(2) of the *Act*.

[7] On September 25, 2014, the Commissioner referred the Complaint for a review of his decision, pursuant to section 13(3) of the *Act*, to a judge of the Provincial Court of Manitoba.

[8] The review came on for hearing before this Court on February 2, 2015.

[9] Present at the hearing were Mr. Paul McKenna, counsel for the Respondents, and Mr. Devin Johnston, counsel for the Commissioner. The Complainant was present. The Complainant requested that his father, B.S., be permitted to make submissions on the Complainant's behalf. Neither counsel had any objection to this, and the Court permitted the Complainant's father to make submissions.

[10] The Complainant did not file a brief but the Complainant's father provided the Court with a written copy of his submissions, which he read in court. That written submission was marked as Exhibit 1 at the hearing. D.S. also had provided a letter to the Commissioner dated September 15, 2014, titled "APPEAL", which constituted the request for review of the Commissioner's decision. The Court was provided with a copy of the LERA file pertaining to the Complaint. Mr. McKenna filed a Brief on behalf of the Respondents. Mr. Johnston filed a Brief on behalf of the Commissioner.

[11] Mr. Johnston requested leave to make submissions at the review hearing. The Court granted that leave.

[12] The sole issue to be decided on this review is whether the Commissioner erred in his decision to decline to take further action on the Complaint.

The Commissioner's Jurisdiction

[13] By section 13(1) of the *Act*, the Commissioner must decline to take further action on a Complaint if he is satisfied that any of the following circumstances apply:

- (a) that the subject matter of a complaint is frivolous or vexatious or does not fall within the scope of section 29;
- (b) that a complaint has been abandoned; or,
- (c) that there is insufficient evidence supporting the complaint to justify a public hearing.

[14] The Commissioner declined to take further action on D.S.'s Complaint on the basis of s. 13(1)(c), namely that there was insufficient evidence supporting the Complaint to justify a public hearing.

THE JUDICIAL REVIEW HEARING OF THE COMMISSIONER'S DECISION

Burden and Standard of Proof on Review

[15] Section 13(4) of the *Act* places the burden of proof on the Complainant to show that the Commissioner erred in declining to take further action on the Complaint.

[16] The standard of proof is a civil standard, that is, on a balance of probabilities.

Scope of Review

[17] A review by a Provincial Court Judge under s. 13(3) of the *Act* is limited in its scope. It is not an appeal on the merits of a Complaint. It is only to decide whether the Commissioner, in deciding to decline to take further action on the Complaint, acted within the jurisdiction given to him by the *Act*.

[18] The document provided by D.S. to the Commissioner titled "APPEAL", requesting the review of the Commissioner's decision, and the document marked as Exhibit 1, both contain arguments, positional statements and questions, and some allegations that were not contained in the evidence that was before the

Commissioner when he made his decision. This Court, in conducting a s. 13 review, is only able to consider the evidence that was before the Commissioner when he made his decision.

Standard of Review

[19] The nature of the alleged error is important because it determines what standard of review will be applied to the Commissioner's decision.

[20] The Supreme Court of Canada determined in the *R. v. Dunsmuir* case, [2008] S.C.J. No. 9, that there are two standards of review to be applied in judicial reviews. When it is an error of jurisdiction that is alleged, the standard of review is one of "correctness". In the case of an alleged error that is not jurisdictional in nature, the standard of review is one of "reasonableness".

[21] A jurisdictional error is made if the Commissioner failed to act within the limits of his jurisdiction or as required by his jurisdiction, by using an incorrect test to reach his decision. The Complainant has not made any allegation of a jurisdictional error in this case.

[22] Accordingly, it is the standard of "reasonableness" that must be applied to the Commissioner's decision declining to take further action on D.S.'s Complaint.

[23] The Supreme Court in *Dunsmuir*, defined the standard of reasonableness within the context of judicial review, at paragraph 24, as follows:

"In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law."

[24] Indeed, the test of reasonableness has been applied by provincial court judges of this Court on reviews of decisions of the Commissioner declining to take

further action on complaints on the basis of insufficient evidence, even prior to the *Dunsmuir* decision (including Judge R. Chartier, as he then was, in *R.P.M. v. Cst. C. and Cst. W.*, LERA Complaint #564 (February 12, 2004); and Judge Joyal, as he then was, in *M.S. v. Sgt. B and Sgt. D.*, LERA Complaint #2004-172 (June 21, 2006). After the *Dunsmuir* decision, the reasonableness test has been consistently applied to reviews addressing sufficiency of the evidence. Such cases in this Court include Judge Preston's decision in *B.J.P. v. Sgt. G.H., Cst. B.Z., and Sgt. G.M.*, LERA Complaint #2005-186 (November 14, 2008)); Judge Preston's decision in *A.M. v. Cst. D.R., Cst. G.P., Cst. J.M. and D/Sgt. R.L.*, LERA Complaint #2005-307 (July 17, 2009); Judge M. Chartier's decision in *K.A. and S.J. v. Cst. C.P. and Cst. P.B.*, LERA Complaint #2006-233 (March 8, 2010) ; Judge Chapman's decision in *B.L. v. P/Sgt. E.R., Cst. W.C. and Cst. J.B.*, LERA Complaint #2011-26 (October 11, 2011), and A.C.J. Guy's decision in *O.O. v. Cst. R.M. and Cst. R.C.*).

[25] Judge Preston, in the *B.J.P.* case, succinctly described the judge's role in a s. 13 review case, as follows, at paragraph 39:

“Be that as it may, my function is not to pass judgment on the quality of the initial police investigation, but to decide whether the Commissioner erred in his conclusion. I cannot say that he assessed the complaint unreasonably. He drew a rational conclusion on the merits of the complaint. I may not have drawn the same conclusion. That is not the test here. As long as the Commissioner has properly assessed the complaint reasonably and has drawn a rational conclusion, and I have concluded that he has done so, I will not interfere with his decision.”

[26] Judge Preston said further in the *A.M.* decision, at paragraph 35, as to the power of the Commissioner to weigh evidence in reaching his decision:

“*The Law Enforcement Review Act* mandates the Commissioner to weigh all the evidence and to draw a conclusion on its sufficiency. This includes the weighing of disputed evidence in order to determine its sufficiency. If that were not the case, each time there was a contradiction on any fact in issue, the matter would have to proceed to hearing before a provincial judge.”

[27] So, to be clear, this Court's role is not to review the evidence and decide what conclusion this Court would come to on the merits of the Complaint. Rather, in reviewing the Commissioner's decision not to refer D.S.'s Complaint to a hearing on the merits due to insufficiency of evidence, this Court's role is limited to deciding whether that conclusion of the Commissioner is one of the rational conclusions that could be arrived at, based on a reasonable assessment of the evidence, and falls within a range of possible legally defensible outcomes, taking into account the Commissioner's entitlement to weigh all the evidence.

REVIEWING THE COMMISSIONER'S DECISION

[28] By letter dated August 22, 2014, the Commissioner informed D.S. that there was insufficient evidence supporting the Complaint to justify a public hearing. Pursuant to s. 13(1)(c) of the *Act*, the Commissioner declined to take any further action on the matter.

[29] The Commissioner's decision set out in his letter of August 22, 2014 is divided into three parts, as follows:

Part 1: Complainant's Allegations and Statement

[30] D.S. made a written Complaint alleging that police officers abused their authority on September 26, 2013 in dealing with him. D.S. filed a written Complaint on November 18, 2013. Prior to the written Complaint being filed, D.S. made a phone call to LERA on November 5, 2013 to provide basic information. Subsequent to the written Complaint being filed, a LERA investigator interviewed D.S. in person twice, first on March 18, 2014, and again on August 14, 2014. The Commissioner set out the details provided by D.S. in each of these four forums, in his written decision to D.S. dated August 22, 2014.

[31] In his Complaint, the Complainant refers to “HCC”, meaning Headingly Correctional Centre, and the “PSB”, meaning the Public Safety Building.

[32] During his phone call to LERA on November 5, 2013 to LERA, D.S. reported that:

- On September 16, 2013, two officers came to HCC to get him and took him to the PSB saying they had a warrant.
- They took him to another location.
- He was in the back of the vehicle.
- One officer was driving, and the officer in the passenger seat was beating him up.
- The officers were asking him about an incident in 2007 and wanting him to admit something.
- The officers returned him to HCC.
- He sustained injuries, being a fractured nose and swollen head.
- He did not see the doctor.
- He was originally charged with grand theft.

[33] The written Complaint alleges that:

- On September 16, 2013, at 9:30 a.m. , he was taken from HCC.
- He was in the back of an unmarked Winnipeg Police SUV when he asked why he was under arrest.
- The officers told him to admit to the charges.
- When he asked for a lawyer, the officers continuously beat him, until they arrived at 55 Princess.

- While travelling to the PSB, the officers said they had to make a quick stop, and put him inside a room with no camera and the officers beat him again.
- He called his lawyer who said he was waiting for him at the PSB.
- He told his lawyer he had not left the building yet.
- The lawyer waited for two hours and then said he had to leave.
- Later, he was threatened by officers that they were going to pull their guns out and shoot him while his hands were handcuffed behind his back.
- At 11 a.m., they arrived at 55 Princess, and left for the PSB at 4 p.m.
- When he was returned to HCC they took photographs of him and asked what happened.
- He told them he was assaulted by Winnipeg Police.
- He listed his injuries on the Complaint form as “Bruises and chipped tooth. Bruises to the head, skull, forehead. Big busted lip”.

[34] As to the date of the incident, police records and records of Headingly Correctional Centre indicated that D.S. was actually escorted by police on September 26, 2013, rather than September 16, 2013 as alleged by D.S.

[35] D.S. provided further information relative to the Complaint to the LERA investigator at a meeting on March 18, 2014. Specifically, D.S. stated the following:

- The incident took place on September 26, 2013.
- He identified two of the four officers as Cst. K.P. and Cst. K.V. and gave physical descriptions of them.

- The vehicle he was transported in was a Chevrolet Avalanche, and he was beaten by officers in the back of that vehicle.
- While being driven to 55 Princess he was hit constantly in the face by the Detective that was the passenger, with fists.
- During this time, he was under arrest with his hands cuffed at his back.
- When he asked for his lawyer, the officers punched him in the groin and face.
- The assault continued when they arrived at 55 Princess.
- The officers lied to him about his detention location.
- One of the officers came into the room, pointed his gun at D.S.'s head and threatened to shoot him if he refused to talk to them.
- D.S. says he asked that officer for his name and badge number, but the officer told him it was none of his business and continued to beat him.

[36] During that March 18, 2014 meeting, the LERA investigator asked the Complainant if he saw medical staff when he was returned to HCC by the officers. He did not respond. He did say that Correctional Officer, K [REDACTED] B [REDACTED] took a photograph of him at HCC, and that HCC and his lawyer have pictures of him in their records. D.S. also added that the officers that assaulted him were not the same ones that returned him to HCC.

[37] The LERA investigator interviewed D.S. again on August 14, 2014. At that time, D.S. provided the following information about the alleged incident:

- That he was picked up at HCC by two officers who were not in uniform, and taken in an Avalanche.
- That he asked to call a lawyer before he was put in the truck at HCC by the officers.

- The officers told him he did not need to call a lawyer.
- He was sitting behind the officer who was a passenger.
- He had his hands cuffed at the back.
- The officers were asking him about an incident of “September 2000 something”.
- He told them he needed to talk to his lawyer, while they were driving on the highway from HCC into Winnipeg.
- An officer started punching him in the groin, face and ribs.
- He tried to defend himself by moving back and forth and sideways on the seat.
- This all occurred on the way to Princess Street.
- When they arrived at Princess Street, the officers took him upstairs and put him, handcuffed, in a room that had no camera.
- The officer who had been the passenger in the vehicle elbowed him.
- The same officer pushed his head into the wall and elbowed him in the side of the face. This happened in the presence of the other officer.
- The officers left and he remained in the room for two hours.
- Two new officers came into the room and said “Do you want to talk now?”
- He told them he needed a lawyer and wanted to speak to a lawyer.
- The officers left him alone in the room again for approximately half an hour to an hour.
- Those two officers came back with gloves on and punched him in the face while he was standing in a corner.
- One officer smashed his head on the table while the other watched.

- One officer smashed his face four or five times on the table.
- The same officer pulled his gun out and said “I can shoot you right now, you know that?”
- He said “Don’t do this. Why can’t I get a lawyer?”
- The officers left with the phone number of his lawyer.
- They called his lawyer and brought him a phone.
- He talked to this lawyer .
- The officers told him he would be taken to the PSB.
- His lawyer said he would wait for him at the PSB.
- He hung up the phone and waited to be taken to the PSB.
- At 2:30 he called his lawyer again and his lawyer said he had been waiting at the PSB for some time and would be leaving soon.
- By 4:10 his lawyer had left.
- He was taken to the PSB where he was fingerprinted and had photographs done.
- The two officers that picked him up from HCC were hitting him inside the room at Princess.
- One of those same officers returned him to HCC.
- He suffered swelling to the left side of his forehead and to his lip.
- He said he felt like his ribs were bruised, although they didn’t look like they were bruised.

[38] During that interview the LERA investigator asked him about his initial phone call to LERA when he stated he had suffered a “fractured nose”. His response was “yeah, there was pain in my nose. I now remember my nose was sore at the time”. He also said “By the time I seen the Doctor, he said “there’s no bruises. We can’t take you for an x-ray. It’s too late”. The LERA Investigator

noted that D.S. still had a puffed lower left lip (one year after the alleged incident) and asked D.S. about it. D.S. said it was from a cut, caused by the officers punching him. The LERA investigator also asked about any injuries to his teeth and D.S. said “When they punched me they cracked my tooth a little bit”, pointing to his upper front teeth.

Part 11: The Investigation

[39] The Agency reviewed records at HCC and police reports. A LERA Investigator also interviewed the officers involved.

Medical Reports at Headingly Correctional Centre:

- D.S. completed an “Offender Request Form” on September 28, 2013 stating “I would like to see the Doctor because I am concerned about my injuries after I came back from Winnipeg Police Services custody”.
- On October 1, 2013, he completed another “Offender Request Form” stating “I have been feeling really sick and I have injuries to my nose and would like to see the Doctor immediately please”.
- An Emergency Treatment Record shows that on October 2, 2013 he was treated for facial swelling due to an allergic reaction, and if he exhibited an increase in swelling and a shortness of breath, an Epi-pen should be prescribed.
- HCC records show he asked photos to be taken upon his return on September 26, 2013.
- Records show one of the HCC guards indicated on his return to HCC on September 26, 2013 he was visibly upset over new charges laid against him.

- Records show he had a bump on his head and swelling of the lip and the photos were taken as requested.

Police Report

[40] The police report includes details relative to the charges that D.S. was arrested on at Headingly Correctional Centre on September 26, 2013. The report indicates that:

- On September 26, 2013 D.S. was arrested at HCC by Winnipeg Police on the strength of a warrant issued on August 6, 2013.
- D.S. was given his charge and caution which he indicated he understood.
- He asked to speak to legal counsel.
- He was taken to 55 Princess St. , where he was processed and spoke to legal counsel. He was then turned over to the arrest processing unit.
- He was taken back to HCC.

Identification Records

[41] These indicate a coloured photograph was taken of D.S. at 3:32 pm on September 26, 2013. The photograph depicts that D.S. had a slightly puffed, split left lower lip and minute swelling to the right front forehead. Since D.S. appeared to have the same facial swellings when the LERA investigator met with D.S. on August 14, 2014, a year after the alleged incident, as a part of the investigation, efforts were made to find photographs of D.S. obtained prior to the September 26, 2013 incident. A photograph of D.S. taken on June 11, 2013 (so, more than a year prior to the incident alleged) was provided by WPS on August 19, 2014. That photograph shows the same swelling to D.S.'s right forehead and left, lower lip area.

Interviews with the Officers

[42] Constable K.V. and Constable K.P., the two officers who transported D.S. from HCC to 55 Princess Street, were interviewed. They agreed that they did transport D.S., but denied the allegations of D.S. contained in the Complaint. They both said:

- The transport of D.S. for processing was routine.
- D.S. was given full access to counsel and D.S. spoke to his lawyer twice.
- There was a delay in transporting D.S. to the Arrest Processing Unit due to lack of room. This delayed D.S.'s meeting with counsel
- The officers tried to contact D.S.'s lawyer to update him but he had already left.
- Neither officer saw any injuries on D.S. Nor did D.S. raise any concerns about injuries.
- Cst. K.V. was one of the officers that took him back to HCC.
- Cst. K.V. has no knowledge of D.S. making complaints or having photos taken at HCC.
- Both officers say D.S.'s allegation of being beaten and threatened with a gun is a fabrication.

[43] Another officer, Cst. S.M., was interviewed. He and Cst. R.S. transported D.S. from 55 Princess to the PSB. He denied knowledge of the allegations, and said it was a quiet, routine transport. Cst. S. M. and Cst. K.V. later took him from the PSB to HCC. He did not note any injuries on D.S. and says D.S. did not raise any concerns about this treatment by any of the officers.

PART III: Commissioner's Reasons for Decision

[44] As indicated previously, the Commissioner must, after the investigation is finished, consider all of the information and decide whether he is satisfied that there is sufficient evidence supporting the Complaint to justify a public hearing. If he is not so satisfied, then s. 13(1) (c) of the *Act* requires him to decline to take further action on the Complaint and to inform the Complainant, the Respondents and the Respondents' Chief of Police of his reasons for declining to take further action. In his letter of August 22, 2014 the Commissioner so informed D.S. By letter of that same date, he provided a copy to the Chief of Police of the Winnipeg Police Service and copied the Respondents, Constable K. P. and Constable K. V.

[45] The Commissioner was satisfied, based on all the evidence before him, that the evidence supporting the Complaint was insufficient to justify referring the matter to a public hearing. The reasons he set out in his August 22, 2014 letter for this finding are:

1. While D.S. alleges he was assaulted and threatened by the officers, both officers were interviewed and denied assaulting or threatening D.S. There were no independent witnesses to verify either D.S.'s version or the officers' version of the events.
2. D.S. did not ask to see a doctor at Headingly Correctional Centre until two days after the alleged beating and threatening by officers.
3. When D.S. did see the doctor at Headingly Correctional Center seven days later, on October 2, 2013, D.S.'s visit was for treatment of facial swelling due to an allergic reaction.
4. The medical records of Headingly Correctional Centre from October 2, 2013 make no mention of D.S. being assaulted or injuries to his groin, nose or ribs. Those records only mention the allergic reaction which caused facial swelling. The Commissioner was of the view that

if D.S. had reported an assault by police, and injuries incurred from that assault, to the doctor, the doctor would have documented that information in the medical records.

5. Photographs taken of D.S. upon his return to HCC after dealing with the officers do show swelling to D.S.'s lip and forehead. But those same swellings were still present a year later, when the LERA investigator interviewed D.S. on August 14, 2014. Further, a photograph taken of D.S. by WPS three months before his September 26, 2013 dealings with police, on June 11, 2013, depict the same swellings. The identification photograph taken on September 26, 2013, just shortly after the alleged misconduct, shows the same swellings, and no other injuries.

CONCLUSION

[46] As indicated earlier, this Court's role is limited to deciding whether the Commissioner's decision not to take further action on the Complaint was a reasonable decision. That is, did the Commissioner make a reasonable assessment of the evidence and draw a rational conclusion, one that could reasonably be drawn on the facts of the case?

[47] D.S. did not specify any errors that the Commissioner made in reaching his decision. D.S.'s position is that the Commissioner came to the wrong decision, but did not identify any basis on which the Commissioner's decision was not a rational one, based on the evidence he had before him.

[48] The Court has reviewed the LERA Investigation File and the Commissioner's reasons for not proceeding to a hearing before a judge. The Commissioner had before him a version of events provided by the Complainant that was not only uncorroborated, but was specifically denied by the officers

involved. There were no independent witnesses. Further, there were some differences in certain respects, contained in the Complainant's accounts of what happened. Some of these differences may be summarized as follows:

- At the August 14, 2014 meeting with the LERA Investigator, the Complainant said two new officers came into the room he was in at the PSB and said "Do you want to talk now?" In the earlier meeting with the LERA Investigator on March 18, 2014, the Complainant did not mention this to the Investigator. Nor was this mentioned in his written Complaint.
- In the original written Complaint, the Complainant said that he was threatened by officers that they were going to pull their guns out and shoot him. In the first interview with the LERA Investigator in March, 2014, the Complainant says an officer actually pointed his gun at his head and threatened to shoot him if he refused to talk to them. In the August, 2014 interview with the LERA Investigator, the Complainant says an officer pulled his gun out and said "I can shoot you right now, you know that?"
- In the original written Complaint, the Complainant says he was assaulted by officers. No details were provided. In the interview with the LERA Investigator in March, 2014, the Complainant says he was beaten while in the police vehicle and that he was assaulted by officers when he arrived at the PSB. During the August, 2014 interview with the LERA Investigator, the Complainant provided significant detail, saying while he was in the back of the police vehicle en route to the PSB, an officer was punching him in the groin, face and ribs, and elbowed him. Then he says, once he was in a room

at the PSB, the same officer pushed his head into a wall and elbowed him on the side of his face. He says then two new officers came into the room with gloves on and punched him in the face and smashed his head on the table 4 to 5 times. None of that information was provided in the original call, written Complaint or first interview with the LERA Investigator.

[49] The Commissioner was entitled to engage in weighing the evidence in order to determine its sufficiency. The Commissioner found the evidence of the Complainant was uncorroborated and specifically refuted by the officers. The Complainant provided some different details in his various versions of events. The Commissioner found the injuries alleged by the Complainant to have been sustained during his interactions with the respondents to be unsubstantiated. The Commissioner relied on the fact that when the Complainant saw the doctor at Headingly Correctional Centre seven days after the alleged incident, he did not, according to medical records, make any complaint about injuries to his groin, nose or ribs, which the Complainant says he suffered at the hands of the officers. The medical records do not reflect the Complainant telling the doctor he had been assaulted by officers. The records indicate the reason for the medical visit was facial swelling due to an allergic reaction. The Commissioner concluded that if the Complainant had told the doctor he had been assaulted, and/or did exhibit injuries to his groin, nose and/or ribs, the doctor would have noted it, and the fact that he did not do so means the Complainant likely did not tell him that, nor exhibit those injuries. The Commissioner also concluded that since the swelling to the Complainant's lip and forehead exhibited in the photograph taken at Headingly Correctional Centre on his return there by officers, that he says is evidence of the officers beating him, appeared to be present in photos taken both several months

before the alleged incident, and also a year after the alleged incident, when seen by the LERA Investigator, such physical evidence does not support the Complainant's evidence in a manner to make it sufficient to support the Complaint being referred to a hearing on its merits.

[50] Whether or not this Court would have come to the same conclusion as the Commissioner on a fresh look at the evidence is not the issue. If the conclusion the Commissioner came to was a reasonable one, and one of the rational determinations based on the facts and evidence before him, then this Court must not interfere with that decision.

[51] This Court concludes that the Commissioner assessed the evidence reasonably and drew a rational conclusion on the merits of D.S.'s Complaint. The Commissioner's reasons were set out transparently, intelligently and rationally in his letter to the Complainant advising of his decision. This Court is not prepared to interfere with the decision of the LERA Commissioner.

Original signed by:
Carlson, P.J.