

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint #2022/29

AND IN THE MATTER OF:

An application pursuant to section 13 of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75

BETWEEN

R. M.)	Beth Friesen
(Applicant))	Counsel for the Applicant
- and -)	
)	
Constable R. W.)	Paul McKenna
Constable K. M.)	for the Respondents
Constable J. S.)	
Patrol Sergeant P. H.)	
(Respondents))	
)	
)	Decision: November 15, 2023

Restriction on Publication:

Pursuant to section 25 of *The Law Enforcement Review Act*, no person shall cause the Respondents' names to be published in a newspaper or other periodical publication, or broadcast on radio or television.

DEVINE, P.J.

INTRODUCTION

[1] *The Law Enforcement Review Act* (the *Act*) was enacted by our legislature as a check on police powers to ensure that police treat the citizens of Manitoba with respect and professionalism, even when they are arresting known gang members with violent criminal records, perhaps especially so. The Law Enforcement Review

Agency (LERA) exists to take complaints from citizens who complain that the police did not treat them professionally. The Commissioner of LERA is responsible for investigating complaints and has the authority and discretion to refer them to a hearing or not.

[2] In this case, the Applicant alleges that several officers with the Winnipeg Police Service (WPS) assaulted him viciously upon his arrest in the North End of Winnipeg and during his detention at the Hartford Street station in Winnipeg's North End.

[3] The Commissioner investigated the complaint and declined to refer it to a hearing on the basis that there is insufficient evidence supporting the complaint to justify a public hearing.

[4] The matter has come before me to review that decision. The applicant bears the onus of satisfying me that the Commissioner's decision declining to take action on the complaint was not reasonable, that is, his reasons for declining to act on the complaint were not transparent, intelligible and justified. It is not my role to substitute my decision. I may have come to a different conclusion. But if I am satisfied that the Commissioner's decision was a rational one, then that ends the matter. If I am of the view that the Commissioner's decision is based on a reasonable assessment of the evidence and if his conclusion is one of the rational conclusions that could be arrive at, his decision is entitled to deference and ought not be disturbed (see *MS v Cst. PB and Cst. GD*, LERA Complaint #2004-172 (June 21, 2006) at para 21).

THE COMPLAINT

[5] RM's mother made the complaint to LERA on behalf of her son on April 21, 2022. She alleged that just after noon on April 4, 2022, the police saw RM riding

his bicycle at Salter Street and Church Avenue, and attempted to pull him over, but he fled on foot. One of the officers tackled him and placed his knee on RM's throat, cutting off his air supply. Then the second officer came, picked RM up and slammed him against the vehicle to search him. The police found a gun on RM and the officer stated, "Look, he even has a gun." It is alleged the officers threw him into the back of the police vehicle and drove to Hartford Station. Once there, they took him into a room and harassed him, telling him to say, "Cops are the best." He refused, and they banged his head on the table each time he declined to say it. He was thrown onto the floor and officers stomped on his head. The complaint alleges 8 to 10 police officers assaulted him. He lost consciousness at least three or four times. The officers spread his legs apart and kicked him between the legs. And he would lose consciousness again.

[6] At some point he was taken out of the room and pushed to the ground and told to get up and walk again. Another officer, whom RM thought was perhaps higher ranking, asked the officers where they were taking RM. They answered that they were taking him to the Winnipeg Remand Centre. The higher ranking officer told them to take him to the hospital.

[7] They took him to Seven Oaks Hospital. While the examining doctor was out of the examining room, it is alleged the police officers assaulted RM again. Once he was medically cleared, the officers took him to the Winnipeg Remand Centre where he was placed in the medical unit and remained for three days.

[8] The complaint alleges the following injuries:

- Broken tail bone
- Broken ribs
- Black eyes
- Scratches everywhere

- Bruises everywhere
- Could not stand up after the beatings at the Hartford Police Station

[9] Additionally, the complaint alleges that the police officers were taunting and mocking RM and swearing at him throughout. At the hospital, one of the officers was tilting his wheelchair back and forcing him to look forward.

THE INVESTIGATION

[38] In addition to the complaint, the interview that was conducted with RM, and the medical records from Seven Oaks Hospital, the Commissioner also requested from the WPS Chief of Police pursuant to subsection 12(2) of the *Act*, copies of all documents, statements and other materials relevant to RM's complaint. The Commissioner specifically requested as well, all reports, notes, video or audio recordings, prisoner log sheets and paramedic intake reports. As well, each of the involved officers were invited to respond to the complaint.

[39] The following documents constitute the LERA file, a copy of which was filed in this review:

- The complaint
- The LERA investigator interview with RM
- Health care assessment and notes, Manitoba Corrections
- Summary of Seven Oaks Hospital triage records and Diagnostic Imaging report of Dr. S. Ying
- Arrest report
- Police officer notes
- Dispatch/unit/radio running notes
- Use of Force Summary Report
- Certificate of Analysis of the firearm and ammunition

- Forensic report of the firearm and ammunition
- Health Canada Seizure and Disposition report of drugs seized from RM's person
- Media release with respect to the arrest and seizure of firearm, ammunition and drugs
- Police Narratives including photos of items seized
- The 10-year Weapons Prohibition of RM
- WPS Prisoner Injury Report
- Prisoner Log Sheet
- Release Order of RM
- Report to a Justice / Statement Supporting Detention / Order
- Prisoner time checks and activity log
- Commissioner's decision

RM's Interview

[10] LERA investigated the complaint. An investigator interviewed RM eight days after the complaint was made, on April 29, 2022, at the Winnipeg Remand Centre. A copy of the transcript of the interview was filed in this review.

[11] RM told the investigator that a brown SUV pulled up beside him while he was riding his bicycle on the sidewalk at Salter and Church and were calling, "Jessie, Jessie." He said he wasn't Jessie and then the guy pulled up over the curb in front of him. He did not know they were police. He was afraid and turned around and pedalled in the opposite direction, then jumped off his bike and ran, and then realized that the man chasing him was a police officer. He was afraid because he was on judicial interim release and the "guy who bailed me out" got shot in the face.

[12] He stated the officer who tackled him choked him with one hand and punched him in the head with the other hand.

[13] The second officer jumped on him and kned him on the side of the leg.

[14] On the way into the Hartford Station, one of the arresting officers punched him in the stomach and told him to quit resisting. He could not breathe as a result of the punch, and stumbled.

[15] Then both arresting officers rammed his head into the police station door.

[16] He lost consciousness.

[17] He told the investigator that when he regained consciousness, he was sliding/being dragged on the floor. The officers would pick him up and kick and punch him and “whatever”. He regained consciousness on the floor.

[18] They put him on the interview room table while he was handcuffed and laid him chest down on the table, “and that’s when they proceeded to beat me”. Then they removed one handcuff to get his clothing off. He alleged the following specific forms of assaults:

- Punching him in the back of the head
- Causing him to lose consciousness
- Trying to rip his ears off
- Stomping him on his tail bone
- Kicking him in the groin
- The young officer “proceeded to beat the shit out of me”
- Ripped his clothes off
- Pulling his arm (“yanking the shit out of my arm”)

- When he fell to the floor, the big officer (the one driving the SUV), stepped on his leg, between his ankle and his knee, stomping it and twisting with his boot
- He was in and out of consciousness
- An officer stepped on his head and twisted his boot on RM's head, as if putting out a cigarette
- Then he kicked him in the face
- Kicked the bottom of his shoe while he was trying to get his shoes on

[31] RM told the interviewer he had the following injuries:

- Broken ribs
- Broken tail bone
- Skin missing from his forehead
- Not able to go to the bathroom for a week
- Swollen face, so swollen he could not chew food
- Swollen side of his head
- Cannot hear properly
- Bleeding (a lot) from his nose when he was at police headquarters (HQ)
- Rupture of what sounds like a sebaceous cyst on his head

[32] During the interview, the investigator noted a mark above RM's right eye. RM showed him injuries on his right shin.

[33] He alleged the officers did not give him his notice of arrest, right to counsel or police caution. He says that once they discovered the firearm, which he thought was a sawed-off shotgun, their attitude changed.

[34] He told the investigator that he had a CT scan and x-ray at the hospital, and despite police asking frequently if they could take him, the doctor kept him in the hospital to rest and to make sure he was okay.

[35] When he was taken to police HQ downtown, his nose was bleeding and an officer gave him two wet gauze pads to wipe his face. He said that one of the officers transferring him to the Remand Centre must have been part of the Hartford Station, because he said, “Oh, I thought he’d be in worse shape than this.”

[36] He told the interviewer that a woman in the admitting area of the Remand Centre asked another person there, “don’t we take pictures of him?” and then a guard took a photograph of his face; not photographs of his injuries. His mother later asked his lawyer to take pictures of his injuries.

[37] He told a nurse at the Remand Centre that a cop jumped him, beat him and broke his ribs.

[38] When asked if he thought he had done anything to provoke the police, he stated that he did not, he just slept. He had used methamphetamine earlier that night and it stays in your system for eight hours, but he was not high at all.

[39] He was asked if he was aware of any video surveillance that might have captured his interaction with the officers. RM told the interviewer to get all the video surveillance from Hartford Station from the outside entrance side, the hallway going into the station, the outside of the room where he was interrogated. He opined that every area of a police station should be recorded and videotaped, “right?”

[40] The first person he told was his lawyer. He was not permitted to call his lawyer at the Hartford Station – he did not get a call to his lawyer until he was at police headquarters.

[41] When asked to describe the police officers whom he dealt with, he said they were all in uniform. There was a young one. They were all Caucasian, but one of them was darker than the interviewer. The driver of the police vehicle was bigger and huskier. He was the officer who did most of the beating on his right side at the police station.

[42] He described the mental trauma being worse than the physical trauma. When he was asked by the interviewer what he would like to see happen as a result of his complaint:

I just like to see the guys held accountable. You know what I mean, they beat me, like I'm, not just physically, but mental trauma; fucked up. If I'm ever in that situation again, the worse feeling as I was losing consciousness, that I had no one to scream to for help. Who do I ask for help? You guys are supposed to be law. That is the last resort.

I thought I was going to die. I thought they were going to kill me. I was skeptical even to go with them, freaked out, couldn't walk, had no choice. That feeling of like nobody [to] ask for help. Nothing after the police. That['s] the law. You know what I mean. Take the law into their own hands. Don't know if I will be able to trust the police again.

Medical Records

[43] Medical information provided by the Seven Oaks Health Information Services included information from triage. It was difficult to communicate with RM due to "incoherent mumbling". He was asked why he seemed so sleepy and indicated he had not slept in four days. His abdomen seemed to be tender. There was no bruising on his trunk/lower back. He had scratches, abrasions and bruising on his lower legs, including his knees. His CT scan from Doctor Ying showed no acute intracranial abnormality, no aggressive osseous lesion. He did not have broken ribs, a broken tail bone or any significant injuries.

[44] Handwritten notes in a document titled Health Care Assessment from Corrections indicate on April 5, 2022, that RM had headaches secondary to an

altercation with WPS officers, and facial injuries, cuts and bruises. There was no note of officers jumping him and breaking his ribs. Unfortunately, a note on the second page of the records is unreadable. A note dated April 6, 2022 on the Health Service Progress Notes is similarly unreadable, expect for the words “Injuries” and “assault” and something that appears to read “RI Chest”.

Police Reports, Notes and Records

[45] Narratives, notes and the arrest reports from involved officers indicate that RM is a member of the Indian Posse street gang and was bound by a 10-year weapons prohibition (included in the package) and a release order containing a condition he not possess any weapons or illegal drugs (also included). As a result of alleged violations of his release order, there was a warrant issued for his arrest. Police saw RM that day riding a bike (later learning it was stolen three months earlier, December 28 or 29, 2021). Police who observed him riding the bike were familiar with him and stopped to arrest him on the warrant. He threw down the bike and fled, then slipped and fell. As police officers approached him, he turned on his back and kicked Cst. JS three times in his legs, while reaching for the inside of his jacket. “Cst. JS moved past RM’s legs and engaged him, at which point a combative struggle ensued.” Cst. RW went to assist and was kicked by RM twice in the torso, all the while continuing to fight, attempting to reach into his pocket and rolling. Police overcame him and handcuffed him. A search of his person revealed a loaded, sawed-off rifle, 11 more rounds of .22-calibre ammunition, two pocket knives, 30.1 grams of fentanyl and 8.03 grams of methamphetamine. In addition to charges involving the firearm, ammunition, knives and drugs, he was also charged with two counts of assault police officer.

[46] I also read narratives by Cst. JS and Cst. RW, which are consistent.

[47] Cst. RW was the driver.

[48] In his use of force report, Cst. JS wrote that he and Cst. RW received information from a confidential informant that RM was in possession of several firearms. He had previously arrested RM three times. RM had never been combative previously, nor had he ever run away before, even when carrying significant quantities of drugs. Thus, the officer thought there was an escalated danger involved this time. He chased RM and was alone with him. His report offers clarification about what was meant in the arrest report by “engaging” RM – he dropped his knee, pinning RL’s right side ribs, pulled his arm away from trying to reach inside his jacket, and punched him three times in the face with his fist. When RM continued to try to reach inside his jacket and rolled out from the knee pin, Constable JS pinned his head onto the ground with his knee. He delivered approximately five hammer fist strikes to RM’s face. He gave him a knee strike to the ribs, and then changed his knee pin from RM’s head to his ribs. RM kept trying to reach inside his jacket – Cst. JS suspected a gun. He just wanted to keep RM pinned to the ground until Cst. RW arrived.

[49] Cst. RW arrived and shin-pinned RM’s back. Cst. JS pivoted his knee again onto RM’s head, to allow Cst. RW to control the lower part of his body. Cst. RW observed a knife clipped to RM’s front jeans pocket and yelled, “Knife”, and at the same time RM came free from Cst. JS’s grasp and tried to grab the knife. Cst. RW delivered a knee strike to RM’s rib/back area and punched him approximately three times in the stomach/ribs. RM rolled out of their grasp and kicked Cst. RW twice in the chest, still trying to reach inside his jacket. They flipped him over, with Cst. JS’s knee on his head. Cst. RW handcuffed him.

[50] RM continued to squirm and kick on the way to the police vehicle.

[51] Officers located the loaded sawed-off firearm in his left inside jacket pocket, where RM had been reaching when Constable JS first tackled him and throughout the encounter. They also located two knives in his right pants pocket.

[52] Upon arrival at the police station, RM dropped to his knees while they were walking in and Cst. RW in response dragged him into the holding room and told him to stand up.

[53] In the holding room, RM continued to squirm and try to break free of the officers. They held him onto the table by his shoulders, and Cst. KM and P/Sgt. PH came to assist by removing his clothing down to one layer. Cst. KM pinned his squirming leg with her knee. He was then left in the room.

[54] He complained of soreness to his back and ribs, so officers took him to Seven Oaks Hospital. He was found to be high on methamphetamine, and cleared with no medical issues. He was detained at the Central Processing Unit (CPU) downtown. The narrative of Cst. JS notes that at the hospital RM said that he had used methamphetamine prior to the police interaction and thought he was overdosing.

[55] The narrative by Cst. VV, who with his partner had been tasked with taking over custody of RM at the hospital, states that they arrived at approximately 17:11 hours. They were told by Dr. Mendis that the CT scan and x-ray were “good” but RM’s pupils were not normal, so he had to be monitored for a few more hours. RM was medically cleared at 23:01 hours and a different unit transported him to CPU.

[56] He was viewed in by a Desk Sergeant and cleared by CPU paramedics.

[57] RM had a swollen face, nose and ears. He was also complaining of soreness to his spine and ribs.

[58] The WPS Prisoner Injury Report indicates the following injuries: scrape to top of head, scrape/swelling to the forehead, swollen cheeks and bloody nose, that

he was taken to Seven Oaks Hospital, had a CT scan and x-ray and was medically cleared.

[59] The Prisoner Log Sheet from Hartford Station notes a swollen, scraped forehead, bloody nose and sore ribs. It noted that he was violent, a risk of escape and was a medium risk. It noted that he had consumed alcohol or drugs with no ill effects and an additional note that he had taken methamphetamine earlier. The CPU supervisor noted the same injuries: sore ribs and back, bloody nose and scrapes.

[60] The officer interviews with Csts. JS, RW and KM and P/Sgt. PH are consistent.

STANDARD OF REVIEW

[61] Several decisions from this court were filed in this matter. The standard of review for this administrative body and all administrative tribunals is one of reasonableness, following the Supreme Court of Canada decision in *Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65.

[62] A number of guiding principles emerge from *Vavilov* and its application in the case law:

- The decision of the tribunal must be considered in light of its underlying rationale. Another way of stating that, is that the entirety of the decision must be considered, not only the sentence or two where the “decision” is stated;
- Is the decision as a whole reasonable;
- The hallmarks of reasonableness are: justification, transparency and intelligibility;
- Is the decision based on an internally coherent and rational chain of analysis, that is justified in relation to the facts;
- The reviewing judge does not substitute their decision for that of the Commissioner, even if they may have come to a different conclusion.

[63] The Commissioner's decision is 19 pages in length. It details the complaint and RM's interview. It reviews medical information from Seven Oaks Hospital and from the Winnipeg Remand Centre, the Prisoner Log Sheet and Prisoner Injury Report. It reviews the police officers' arrest reports, narratives, use of force reports and interviews. It is lengthy, detailed and comprehensive.

[64] After a consideration of all this information, the decision goes on to state the role of the Commissioner to determine whether to act on the complaint pursuant to section 13(1) of the *Act*:

Commissioner not to act on certain complaints

Where the Commissioner is satisfied

- 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;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his or her reasons for declining to take further action.

[65] The decision states that the Commissioner conducted their assessment of the information provided to them on a limited assessment of the credibility and disputed evidence without making any definitive finding of fact or law. They considered, in a limited way, whether there was any evidence of abuse of authority, and if that evidence is sufficient to justify taking further action.

[66] The Commissioner determined there was not, because:

- 1) The complaint differs in great detail to the version of events provided by the officers, which is supported by detailed notes and reports;
- 2) By his own admission, RM was under the influence of illicit drugs at the time;

3) Police officers who knew him stated that his behaviour was a marked departure from his usual behaviour with police;

4) Police provided a detailed account of their deliberate use of force in response to RM's failure to comply with their direction and his response to the police.

[67] I adopt the words of Judge Preston from a previous LERA review decision about the approach of the reviewing judge:

My function is to see if the Commissioner has made a reasonable assessment of the evidence. In other words, I must examine whether the Commissioner drew a rational conclusion, one that could reasonably be drawn on the facts of this case. I have concluded that he did.

(BJP v Cst GH, Cst BZ and Sgt GM, LERA Complaint #2005-186 (Preston, PJ – November 14, 2009, at para 26)

[68] The police officers who saw and arrested RM knew him. There was a warrant out for his arrest for violating conditions of his release order relating to possessing drugs and weapons. When they saw him, they attempted to pull him over and advised him of his arrest. He ran. One officer caught up to him after the accused slipped and fell. The accounts diverge greatly at that point, with RM stating police stepped on his neck so that he could not breathe, then threw him against the police vehicle, found the gun and drove him to Hartford. The information he told the LERA investigator was that the first officer choked him with one hand and punched him in the head with the other hand. That is one of several inconsistencies in RM's own allegations. The police information of the arrest is far more detailed, and comprehensively outlines non-compliance with police commands, assaults on the police attempting to arrest him and aggressive, combative behaviour, which continued throughout the entire interaction with the police until shortly before the officer in charge directed he be taken to the hospital because he was acting cognitively strange. The police information all details a combative accused and justified use of force designed to meet the threat before them.

[69] When police finally got him handcuffed, they searched him and seized a loaded, sawed-off shot gun from the pocket, 11 additional rounds of ammunition, two knives from his pants pocket and a significant quantity of fentanyl and methamphetamine.

[70] RM's allegations from the police brutality and taunts from the Hartford Station are inconsistent and uncorroborated. He alleged severe assaults and beatings that rendered him unconscious and with broken ribs and a broken tailbone. The medical records from Seven Oaks Hospital report no loss of consciousness, concussion or broken bones, notwithstanding x-rays and CT scans being taken. Other than scrapes and bruising, which would be consistent with the use of force by the police, the injuries claimed by RM were not supported by the medical reports.

[71] RM was admittedly consuming methamphetamine and possibly also cocaine that day. His behaviour appears to be consistent with someone extremely intoxicated by methamphetamine and is not consistent with his usual, cooperative demeanor when dealing with these officers.

CONCLUSION

[72] I am satisfied that the Commissioner's decision was reasonable and supported by the evidence reviewed. It was communicated in a straightforward and clear manner. I will not disturb the decision made by the Commissioner. Based on the reasons I have outlined above, the application for review is dismissed.

Original signed by Judge Devine
DEVINE, P.J.