

IN THE MATTER OF:           The Law Enforcement Review Act  
Complaint #2007-283

AND IN THE MATTER OF:   An Application pursuant to s. 17(1) of *The Law  
Enforcement Review Act* R.S.M. 1987, c. L90

IN THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

J. S.	)	In Person
	)	Self-Represented
	)	
and	)	
	)	
Constable D. S.	)	Saul Simmonds
	)	for the Accused Constable D. S.
	)	
Constable K. O.	)	Paul McKenna
	)	for the Accused Constable K. O.
	)	
	)	
	)	Reasons for Decision delivered:
	)	April 2, 2013

**NOTE: These Reasons are subject to a ban on publication of the Respondents' names pursuant to s. 25 of *The Law Enforcement Review Act*.**

STEWART P.J.

[1] This hearing was heard in Winnipeg on February 15, 2013. Referral of this matter was made by the LAW ENFORCEMENT REVIEW COMMISSION to a Provincial Court Judge to determine the merits of the complaint made against Constable D. S. And Constable K. O. alleging a disciplinary default, namely; that on October 25, 2007 the respondents improperly disclosed information relating to

the background of the complainant which information was acquired by the respondents as members of the Winnipeg Police Service.

[2] The complainant, who is self represented, called two witnesses plus himself at this hearing. Evidence was heard over the course of a one-half day and the matter was adjourned to give written reasons.

### The Testimony

[3] The complainant who owns and operates a boxing gym alleges that on October 25, 2007 one of his boxing students was assaulted by a group of girls on the street outside of his gymnasium. As a result of this, the young student attended Winnipeg Police Service to give a statement as it relates to the assault. She attended with her cousin who was present during the giving of the statement and interview. From the information received by the complainant, the interviewing officer asked for her coach's name and on identifying the complainant and his gymnasium, was told that the complainant was involved in an investigation surrounding a shooting incident. The complainant was also alleged to have been lying to the police during this investigation and the student was discouraged from associating with the complainant.

[4] The complainant then called the student and her cousin who each testified as to their recollection of the events of October 25, 2007. Both these witnesses substantiated the complaint as to the information that was given to them in the interview of that day. In their testimony, however, it became clear that both of the named respondents were present for this interview, as determined through their badge numbers, but it was also clear that one of the two officers was the individual making these detrimental comments while the other remained silent. The testimony of each of these girls was contradictory to each other in describing which officer

was the one making the comments. This may have been as a result of the significant time delay in the ultimate hearing of this matter thus dampening the memory of each witness. Alternatively, a comment of the cousin who was the second witness is concerning as she indicated a hesitancy to testify and name the responsible officer as a result of fear from retaliation from the Winnipeg Police Service and the respondents. I certainly hope that this is not the reason for the divergent testimony.

[5] I have no doubt that in fact these inappropriate comments were made and that the information disclosed was done so improperly as it had been acquired by a member of the Winnipeg Police Service relating to a prior incident in which the complainant was involved on the periphery.

[6] The standard of proof in such matters is found in subsection 27(2) of *The Law Enforcement Review Act* which states that the provincial judge shall dismiss the 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. In this case, as a result of the witnesses being unable to agree as to which of the two respondents was the one who was making these detrimental comments, I must dismiss this claim.

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STEWART P.J.