

IN THE MATTER OF: The Law Enforcement Review Act
Complaint No. 2010/24

BETWEEN:)	Mr. M. Walker,
)	for the Complainant
G. V. H.)	
Complainant,)	Mr. P. McKenna,
)	for the Respondents
- and -)	
)	Mr. D. Johnston,
CONSTABLE S. D.)	for the Commissioner
CONSTABLE J. S.)	
)	Judgment delivered
Respondents.)	September 21, 2011

1 GARFINKEL, P.J. (Orally)

2 I am in a position this morning to be able to give
3 my decision. I am hesitant in doing so because it may not
4 be as clearly expressed as I would have liked, but I think
5 it is important to answer the issues that have been raised
6 rather than have this hanging over for some time into the
7 future.

8 I want to thank counsel, all three of you, for
9 providing information at the first hearing and at this
10 hearing, which really helped me clarify my thinking. I
11 found the briefs very helpful, and I thank you all for
12 submitting them.

13 I do think that I have the jurisdiction to make
14 the orders. This is shown to me by the purposes of this
15 legislation and by the authorities cited to me by counsel in
16 their briefs. The legislation, in my view, is to be given a
17 broad interpretation to accomplish the purposes of the

Reviewed – Release authorized by Garfinkel, P.J.

1 legislation, and therefore I do feel I have the authority to
2 make an order.

3 As I understand it, the main complaint by the
4 applicant was the conduct of the police officers when she
5 was in the interview room. She complained of the manner in
6 which she was spoken to and the words that were used when
7 talking to her. I do not find that that issue had been
8 addressed by the Commissioner. I do not find that the
9 investigator addressed that issue to the officers.

10 The investigator took the position, as he said at
11 page 24 of the file, that the main complaint was that the
12 officers told her that they could put her in jail, and from
13 her perspective, either lock her up or let her go, but the
14 sitting for over two hours was too much.

15 The Commissioner addressed the time but not the
16 verbal issue of the manner she was spoken to. Did the
17 officer say I can put you in jail, or you will go to jail?
18 Did the officer call her a thief? Did the officer say those
19 things and in the manner that the applicant complained of?
20 That was not addressed, and in my view, in that regard, the
21 Commissioner did not address the complaint.

22 Now, I am not saying how far the Commissioner has
23 to go in addressing the complaint. I do not think he has to
24 investigate the courses at the police academy to see if
25 officers are trained to speak aggressively to suspects. I
26 am not suggesting that at all and I do not want anybody to
27 misunderstand what I am saying.

28 This is, in my view, a very narrow issue. The
29 complainant alleged and complained of certain conduct by one
30 particular officer in an interview room. She requested to
31 look at the video. She was told this is not a situation
32 where a video is made, and I am not saying anything about
33 that. There was no video. Absent a video, how does the
34 Commissioner conduct an investigation about the words spoken

Reviewed – Release authorized by Garfinkel, P.J.

1 and the manner in which they were spoken? Presumably,
2 talking to the people involved, the complainant and the two
3 officers.

4 In my opinion, a proper conclusion could not have
5 been drawn by the Commissioner because the issue was
6 misunderstood by him, and that is understandable. The
7 letter of complaint from the complainant specified a number
8 of issues, and some of them were physical injuries, and it
9 seems to me that concern would have been had with respect to
10 the physical injuries, and it was, because the investigator
11 asked her if she sought medical treatment and an answer was
12 given.

13 It seems to me, also, that once it became known
14 that the applicant had this medical issue and was seeing a
15 psychiatrist, perhaps the applicant should have been spoken
16 to in more detail about what kind of emotional impact the
17 language used and the manner in which the language was
18 spoken to the applicant could have been addressed.

19 So my ruling is, in my opinion, that the
20 Commissioner misunderstood the complaint and did not conduct
21 a proper investigation of that complaint. Therefore, on the
22 basis of correctness, I would say that the conclusion is
23 incorrect because it did not address the issue raised, and I
24 would refer the matter back to the Commissioner for a
25 proper investigation of the complaint.

26 Now, Mr. McKenna, let me ask you, is a formal
27 order taken out in this regard or is my oral order
28 sufficient?

29 MR. MCKENNA: In many cases, it's been sufficient.
30 Most recently, it's been followed up with a letter, and --

31 THE JUDGE: From me?

32 MR. MCKENNA: Yes, from the judge. Most recently,
33 in the last three or four, I would say that -- or two or
34 three, there have been a couple, a letter, and, and it

Reviewed – Release authorized by Garfinkel, P.J.

1 specifically -- also specifically states in the letter that
2 the Commissioner is, is then free to make whatever ruling he
3 sees fit under section 13 after having done that.

4 THE JUDGE: That is right. I have not gone that
5 far.

6 MR. MCKENNA: Right.

7 THE JUDGE: All I -- given the fact that everybody
8 is nodding in the affirmative, I am not going to send that
9 letter requested by Mr. -- do you want the letter?

10 THE COMMISSIONER: No, Your Honour. I --

11 THE JUDGE: Thank you.

12 THE COMMISSIONER: I hear you very clearly. We'll
13 do exactly what you ask.

14 THE JUDGE: Okay. Given the fact that the
15 Commissioner has spoken on his own behalf, I am not sending
16 out a letter.

17 You have my ruling. If you need clarification of
18 the ruling, consult the transcript. Thank you very much.

19

Reviewed – Release authorized by Garfinkel, P.J.

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