

IN THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF:) Mr. [REDACTED]
 Law Enforcement Review Act) in Person
 Complaint No. 2010/51)
)
 BETWEEN:) Mr. P. McKenna,
) for the Respondents
)
 [REDACTED]) Mr. D. Johnston,
 Complainant,) for the Commissioner
 - and -)
)
 CONSTABLE [REDACTED])
 [REDACTED])
 CONSTABLE [REDACTED])
 [REDACTED]) Judgment delivered
 Respondents.) October 24, 2012

RESTRICTION ON PUBLICATION
 Pursuant to the Criminal Code of Canada and/or
 the Youth Criminal Justice Act, there is a
 restriction on publication regarding this matter.

1 WYANT, P.J. (Orally)
 2 Let me say this, first of all, that Section 13 of
 3 The Law Enforcement Review Act clearly outlines what the
 4 purpose of this hearing is, and Mr. McKenna said essentially
 5 what I said earlier, and that is that it is not for me here
 6 today to have a hearing on what did or did not occur. That
 7 is not the purpose. That is not the jurisdiction I have. I
 8 have to be very careful to exercise the jurisdiction that is
 9 given to me by virtue of The Law Enforcement Review Act. A
 10 judge cannot go outside the jurisdiction that they have that

1 is given by statute.

2 It may be that people disagree with the Act or
3 disagree with the process and wish that somehow there were a
4 different process, perhaps say an automatic hearing into
5 every case before a judge. I am not going to put words in
6 your mouth, but I suspect that is the kind of thing you
7 would like to see, that you would like to see someone who
8 has an allegation of being beaten up, to have a hearing in
9 front of a judge... to have evidence called. "We want to have
10 a judge determine, did this happen or did this not happen."
11 I think that is fair. That is what you are saying to me.
12 And I think that, there would be many people who might say,
13 "I agree with that."

14 But here is the difficulty, so you know. As a
15 judge, I cannot give my opinion as to whether or not the
16 legislation works well, does not work well, protects the
17 rights of individuals or does not protect the rights of
18 individuals, or I would like to see it some other way.

19 It is not my function to do that and it is
20 improper for me to do that. My job is to look at the
21 legislation, look at the jurisdiction that I am given, and I
22 can only exercise the jurisdiction that I am given. I do
23 not have the jurisdiction to say, "well, I don't like the
24 act, I'm going to ignore it." I do not have the
25 jurisdiction to have a hearing on this complaint and say,
26 "let's call evidence." I do not have that.

27 What I have is the limited jurisdiction in this
28 case to look at what occurred, to look at all of the files,
29 as I have, and determine, based on what I have read, did the
30 commissioner make a reasonable assessment of the evidence
31 and was the decision that he made one of the rational
32 conclusions, and I think that is what Mr. McKenna said when
33 he said one of the rational conclusions. In other words,
34 the fact that I might have reached another rational

1 conclusion is not for me to say. I cannot put my own
2 opinion in.

3 I have to look at what the Commissioner reviewed
4 and determine, did they make a reasonable assessment of the
5 evidence and was the conclusion that they reached a rational
6 conclusion? Was it justified or justifiable? Was it
7 transparent? Was it intelligible? And I think in the
8 circumstances when I look at that, I am satisfied that it
9 was a rational conclusion, that there was a reasonable
10 assessment of the evidence, that it was justified,
11 justifiable, transparent and intelligible. And I am not
12 satisfied that there was any error, either error in
13 jurisdiction or error in the method by which the
14 Commissioner came to the conclusion that he did.

15 And I am not going to go through the evidence bit
16 by bit, because obviously there are positions on either side
17 with respect to the evidence and it is not for me to weigh
18 the evidence. But when I look at the totality of the
19 investigation that occurred and all of the evidence before
20 me, including the extensive efforts of the Commissioner to
21 verify or not certain claims that were made, and then to
22 write a very extensive report to the complainant with
23 respect to this matter, in my opinion this file was
24 reasonable. There was a reasonable assessment. There was
25 an extensive assessment, I might say, and the Commissioner's
26 decision was a rational decision in this particular case.

27 And that is the test that I have to come to, not
28 whether I would have come to a different decision and not to
29 assess the evidence, but was the Commissioner's review, did
30 it meet the test. And I am satisfied that it did. And the
31 onus is on you of course to satisfy that it did not and that
32 in some fashion the Commissioner's ruling on Section 13(1)
33 was not correct and I cannot find that.

34 So in the circumstances, pursuant to Section

1 13(4), I am not satisfied that the complainant has shown me
2 that the Commissioner erred in declining to take further
3 action on this complaint, for all of the reasons that I have
4 said, and therefore, I am dismissing the application. The
5 ban on publication, therefore, with respect to the
6 respondents' names will continue. And I believe subject to
7 any comment, I believe that that is then the resolution of
8 the matter. Pursuant to Section 13(5), the decision of
9 course of this court is a final decision and not subject to
10 review or appeal. So that is my decision, Mr. [REDACTED]

11

GENERATED COURT TRANSCRIPT
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Reviewed – Release authorized by Wyant, P.J.

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