

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint #2011/180

AND IN THE MATTER OF:

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

BETWEEN:

P.A.)
Complainant/Applicant)

Self-represented

and)

Constable R.H. and)
Patrol Sergeant K.A.)
Respondents)

Mr. Paul McKenna,
for the Respondents

Mr. Devin Johnston,
for the Commissioner of the
Law Enforcement Review Agency

Hearing: September 4, 2013
Decision: September 25, 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*.

Guy, P.J.

Introduction

[1] This is a decision on an application for review of the Law Enforcement Review Agency Commissioner's decision not to take any further action on a complaint filed by P.A.

[2] On September 1, 2011 P.A. filed a complaint with the Commissioner alleging numerous abuses of authority by members of the Winnipeg Police Service.

[3] By letter dated February 13, 2013, the Commissioner advised P.A. that he was not taking any further action on the complaint as it was his opinion that the evidence supporting the complaint was insufficient. Section 13(1) says:

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.

[4] P.A. has applied to have this decision reviewed by a provincial judge. The hearing took place on September 4, 2013.

[5] After reviewing the evidence before me and considering the submissions of P.A., in the presence of counsel for the Commissioner who had been granted standing to deal with the application, and in the presence of counsel for the Respondents, I am dismissing P.A.'s application for the reasons set out below.

[6] In determining whether or not to grant P.A.'s application, this Court must decide whether the Commissioner's decision not to take any further action was reasonable. Reasonable in the sense that the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law and the decision itself must be transparently, intelligently and rationally articulated.

[7] The onus is on P.A. to show the Commissioner erred in declining to take further action (section 13(4) of the *Act*).

[8] It goes without saying that the Commissioner's decision must be confined to information provided or obtained before his decision of February 13, 2013. Subsequent to this date P.A. has conducted three examinations for discovery involving participants who are involved in the subject matter of his complaint:

K.A. – June 21, 2013

M.M. – June 21, 2013

D.M. – June 21, 2013

[9] Because the transcripts were filed with the counsel, eventually with the Court and were referred to in P.A.'s submission I took the opportunity to peruse them. I have concluded that they do not add any substantive variation to the information already obtained.

[10] For example, Patrol Sergeant K.A., in charge of the search warrant, explained the procedure of seizure, i.e., photos and recording, but he did not search the black safe. Undertakings were made at the examination for discovery with respect to its contents.

[11] Officer M.M. was the affiant of the search warrant and explained the roles of the respective parties, the role of the tactical unit, the items being searched for as a result of the Facebook profile of the son and the need to have a number of officers involved.

[12] Officer D.M. indicated he did not have the search warrant at the scene and therefore could not give it to P.A. but did at the police station.

[13] Suffice it to say that the issues raised at the examinations for discovery do not reveal any disciplinary default by the officers in question.

[14] These issues and many others were raised with the Commissioner and he responded to them with his letter of February 13, 2013.

[15] At the hearing on September 4, 2013 P.A. raised issues such as the legality of the search warrant and his right to counsel. These are legal issues to be dealt with in a legal forum. The Commissioner does not have the mandate or the legal ability to respond appropriately. These issues are raised before a court with the jurisdiction to grant *Charter* relief if appropriate. Since his son pled guilty to the substantive offence and admitted the actions through his guilty plea there is no forum for *Charter* relief even if such *Charter* breaches could be established.

[16] In my view P.A.'s major complaint is the humiliation (his words), negative publicity and the fact this incident took place on his religious holiday. All of this is understandable but P.A. fails to appreciate the serious nature of the actions of his son with respect to firearms that resulted in the response of the Winnipeg Police

Service. It is sad and unfortunate that the son's actions, culminating in his guilty plea to a firearms offence, resulted in such a devastating effect on his entire family.

[17] One should not be surprised that the possession of a sawed-off shotgun would result in such a police response.

[18] Issues such as the possible missing of items from the safe and possible damage are being pursued by him in a different forum where if established it may result in some redress.

[19] However, this does not alter the jurisdiction and mandate of the Commissioner, the extensive investigation he undertook, the results that he shared with P.A. and the conclusion he reached.

[20] The Commissioner's extensive decision to the complaints made was reasonable and, as a result, the application is dismissed.

Original signed by Judge J. P. Guy

J. P. Guy, P.J.