

**IN THE MATTER OF:**                    **Law Enforcement Review Act**  
   **Complaint No. 6136**

**BETWEEN:**

**T.R.,**

**Complainant,**

**- and -**

**THE COMMISSIONER OF THE**  
**LAW ENFORCEMENT REVIEW AGENCY,**

**Respondent.**

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**EXCERPT FROM PROCEEDINGS, REASONS FOR DECISION**  
delivered by The Honourable Judge Everett, held at the Law  
Courts Complex, 408 York Avenue, in the City of Winnipeg,  
Province of Manitoba, on the 29th day of January, 2004.

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**APPEARANCES:**

**MR. S. BOYD,** for the Commissioner.

**MR. P. MCKENNA,** for the Winnipeg Police Association.

**MS. T. R.,** in person.

EXCERPT FROM JANUARY 29, 2004

THE COURT: Okay. Anything further from anyone?

All right, without intending this in any kind of precedential way on the argument you've made Mr. McKenna, and I want to make that very clear because I don't think I have to go to that argument in this particular case. I understand the argument that Mr. Boyd and Mr. McKenna have made on that point, but I am, on these facts alone and every one of these cases is extremely unique, and I, I do not intend this to be a ruling on the argument made on behalf of the Winnipeg Police Association. I am going to find that I have the jurisdiction to conduct this review and I'm going to rule on Ms. R.'s argument and submission. And I've heard everything you've said Ms. R. and I've, I've considered it very carefully. And I do want to rule on the merits of, of your submission in this particular case.

I've heard what Mr. Boyd has said and Mr. Boyd has asked me to consider it from a reasonableness point of view rather than a correctness point of view. Do I, do I have you correctly on that point? But in this case I'm going to apply the correctness standard, again without intending any precedential commitment here but I, I want to give Ms. R. the widest possible scope and I've considered all of, all of your arguments and I understand that you feel very frustrated and I understand you feel very hurt by, by the actions of everyone involved, Mr. F. and the police, both in Winnipeg and in Toronto, and I want to let you know that I, I think I've heard you say that and I feel that you feel that you've been let down, not just by the police, not just by Mr. F. but even by some of the agencies you've dealt with like the Osborne shelter --

MS. R.: Yes, correct, yes.

THE COURT: -- and the Women's Advocacy program.

MS. R.: Yeah, yeah.

THE COURT: And no one's hearing your side --

MS. R.: Right, yeah.

THE COURT: -- of the story. And I think it's important for me to let you know that I'm hearing your side of story and that you feel that they're listening to Mr. F. and not to you --

MS. R.: Right.

THE COURT: -- and that he was drinking just as much as you were drinking, or that he was, he was drinking and that somehow they're holding it against you that you were drinking but not holding it against him.

MS. R.: Right, correct, yeah.

THE COURT: Okay, good, so I, I do understand your argument and I understand that you're feeling frustrated.

With respect to the actions of the commissioner and the investigation that's been conducted I feel that the commissioner did conduct a sufficient investigation that applying the most generous standard here and see what I look at here to day is whether the, there -- I review the commissioner's investigation. I'm going to apply the standard of correctness because that's the most generous, that's the best standard for me to apply from your point of view. It allows me to overturn his decision or order remedies for you under the legislation. It gives me the most scope.

But I don't feel here that there's been any error. I don't feel here that, you know, the commissioner did look into it and as frustrated as you felt, you know, that's kind of not the test as to whether or not --

MS. R.: The police made me feel this way though.

THE COURT: Yes, I, I understand that that's what your saying --

MS. R.: And enjoyed it.

THE COURT: I'm sorry?

MS. R.: And -- the police made me feel this way -

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THE COURT: Um-hum.

MS. R.: -- and enjoyed watching me crumble. Like when I made that example of the tomato, squashing the tomato, when I was making an example and the police were sitting there, standing there watching that tomato being squashed --

THE COURT: Um-hum.

MS. R.: And they were laughing about it and, and -- and they, they enjoyed doing that to me.

THE COURT: You feel that ...

MS. R.: Yes they did, the way they conducted themselves towards me.

THE COURT: Um-hum. I'm just looking up for the section number that deals with dismissal or the --

MR. MCKENNA: It's a combination, Your Honour, it's, it's never been all that clear. It's a combination of s. 13(3)(b) and 13(4), which basically, when you combine the two the --

THE COURT: Right.

MR. MCKENNA: -- the, the -- the -- if, if the burden is not met then the --

THE COURT: Yeah.

MR. MCKENNA: -- the ruling that comes is that the application is dismissed.

THE COURT: Yes, and I am finding that the burden of proof is not met and I am dismissing it, but I want to see something to you MS. R.. That doesn't mean that I don't understand what you're saying about how you felt in dealing with all these agencies. But you know sometimes we, sometimes we deal with various people be it the police, be it the Women's Advocacy program, be it Mr. F. and you don't

come away feeling like something fair has happened or feeling like what you wanted to have happen has happened.

MS. R.: But the --

THE COURT: I understand that you haven't come away feeling good at the end of all of this but I'm also dismissing the complaint because I don't feel that the commissioner's --

MS. R.: The policemen --

THE COURT: -- made any error and I don't, in declining to take the further action, I don't find that you've met the burden of proof necessary that the police conducted themselves in any kind of way that would fall with, with-in --

MS. R.: Are you --

THE COURT: -- with, under this Act.

MS. R.: Okay, so what, what you're saying to me is that I'm lying about this?

THE COURT: No, I've been very careful to not say that.

MS. R.: Because I'm not. The police did manipulate these organizations not to support me. They did.

THE COURT: I understand that that's your position and I'm, I'm certainly not using the words that you're suggesting I'm using but I am finding no basis for the complaint and certainly no, no -- no error on the part of the commissioner, and I want to make that very clear. There's no ambiguity here in my mind. The commissioner conducted a completely appropriate investigation and there's no evidence to support the allegations.

MR. MCKENNA: I wonder, Your Honour, if I might have an order of ban on publication pursuant to s. 13(4.1) of the Act?

THE COURT: I think that's appropriate.

MS. R.: What does that mean?

THE COURT: The -- do you have a copy of, of the -  
- do you want to just hand her --

MR. MCKENNA: It should be at tab 1 of the brief  
you have there.

THE COURT: Okay. Have a read of it and if, if  
you want me to -- I think it's pretty clear, but basically  
I'm saying that no person shall cause the respondent's name  
to be published.

MS. R.: I'm sorry?

THE COURT: The, the names in newspaper can't  
publish --

MS. R.: Um-hum.

THE COURT: -- cannot publish --

MS. R.: Um-hum.

THE COURT: -- the names of --

MS. R.: Um-hum.

THE COURT: -- the police officers who were named  
in this complaint, and, and who were investigated. I'm  
banning an order; I'm banning the publication of their  
names. I'm not allowing the newspaper to publish those  
police officers' names because I didn't fine them, I didn't  
find -- I don't want to use the term guilty, but just to  
help you understand that I, I didn't find that they'd done  
anything wrong, I guess would be one --

MS. R.: I find that they did do something wrong.

THE COURT: Um-hum, I understand that.

MS. R.: Okay.

THE COURT: But today I'm, I'm the judge that.  
Okay?

THE CLERK: All rise, court is adjourned 'til two  
o'clock.

(EXCERPT CONCLUDED)

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I, **ALAIN ROCH**, hereby certify that the foregoing pages of printed matter, numbered 1 to 5, are a true and accurate transcript of the proceedings recorded by a sound recording device that has been approved by the Attorney-General and operated by court clerk/monitor, Candace Ransome, and has been transcribed by me to the best of my skill and ability.

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