



THE CLERK: Court is now open. Judge Lerner presiding.

THE COURT: Good morning.

MR. GUENETTE: Good morning, Your Honour.

THE COURT: So, my apologies to all concerned. I understand there was a bit of a mix-up in terms of the availability of a clerk so that accounts for the late start.

I'll just get the appearances on the record before we proceed any further and I'll begin with you, sir.

MR. GUENETTE: On behalf of the commissioner, I'm Denis Guenette, Your Honour.

THE COURT: Okay, thank you.

MR. GUENETTE: The commissioner is here, present in the courtroom.

THE COURT: Yes, thank you.

And I take it you, sir, are Mr. F.?

MR. F.: Yes.

THE COURT: Okay. I'll just get you to stand up so we can get you closer to the microphone and better record --

THE CLERK: Actually, (inaudible).

THE COURT: And better record your, your comments, sir.

Mr. F., I'll begin by noting that you're obviously here on your own without counsel and I want to confirm that that's a, a decision that you have reached after some thought and deliberation, that is, you have considered the matter and determined, I take it, that you want to represent yourself on this application; is that correct?

MR. F.: That's right.

THE COURT: Okay. And that's certainly your right in this case.

Before we go any further -- and I'll just invite you to have a seat again, Mr. F. -- I'll address my comments to you, Mr. Guenette, on behalf of the commissioner.

I note that the officers who were the subject matter of the complaint are not here, nor are counsel here or his counsel here on their behalf, and I'm wondering if you can address that issue, that is, whether or not those officers were notified of the decision to, to appeal the commissioner's rejection of the application and that this hearing would take place today.

MR. GUENETTE: Sure. If I'm speaking and I say something wrong, I'll have the commissioner correct me but I believe this is one of those complaints that gets to a point where the officers are not notified because of the complaint itself, because the matter has ended even before there's any need to get the officers involved, and then they would not have been notified that this hearing was taking place.

THE COURT: Um-hum, okay.

MR. GUENETTE: Because the complaint wasn't accepted. It was out of scope.

THE COURT: Right, I understand. That's the -- certainly the position taken by the commissioner, of course. That's the --

MR. GUENETTE: That's what's happened.

THE COURT: That's the issue here, that is, whether or not indeed the complaint was, in fact, out of scope, whether or not that was a, a correct decision and that's a matter that ultimately we'll, we'll discuss at some future point.

My concern, though, is with respect to the issue of notification. Can you tell me if there's some provision of the legislation that deals with the issue of notification in this circumstance, that is, who is to be notified? Or is it a decision of the commissioner without reference to the legislation?

MR. GUENETTE: The, the legislation doesn't specifically address how precisely this is supposed to take place. It -- the complaints come in and are processed under Section 7, a raw complaint that hasn't been -- had anything

dealt with it. There are some provisions in there about notification, Subsection 2 in Section 7, and then the Act basically skips over to Section 13. And it doesn't say -- well, there's, there's investigation provisions but it, it doesn't specifically say, "This step must take place after that step."

Section 13(1) says where the commissioner is satisfied that the subject matter of the complaint is out of scope, essentially Section -- beyond Section 29, and then the commissioner has to decline to take further action.

So, these concepts are all floating about and there's no clear and direct statement about whether one step has to take place before another step takes place. And there's no clear timing provisions.

THE COURT: All right. What I'm going to do is this: I'm going to allow the application to proceed this morning. I, I may, depending upon what my interim inclination is in terms of the application, decide that the matter has to be adjourned for notification to the officers and counsel to see if they wish to make submissions on the matter, but I think that it would be -- may potentially be unnecessary to do that and I don't want to unnecessarily protract or prolong this matter.

So, what I'm going to do first is I'm going to invite you, Mr. F., to address the Court. And I'll say to you that in this particular case, the onus or obligation is on you to persuade me that the decision of the commissioner in this case, that is his decision that your complaints were out of scope or out of the scope of Section 29 of The Law Enforcement Review Act, was wrong, that he was in error and that his decision not to proceed was in error as a result. So, that onus is on you by virtue of the Act and I'm going to invite you to address me on that point and to tell me why, in your view, the, the commissioner erred in reaching

the decision that he did. And I'll just invite you again to stand and speak closer to the microphone, please.

MR. F.: Yeah. So, I just went to the police station, right, made a complaint. My father was murdered, brutally murdered, and he was murdered the same way I was tortured. I was tortured as -- this is a, a very, very brutal case, sir. You know, and I went to the, the -- seen -- I forget his name already but -- and I went -- when, when I went to the police, they just -- you know, the -- you know, you know, I'm lost for words right now.

THE COURT: They didn't act on your complaint, is that --

MR. F.: No, they -- not only that they didn't act, this, this -- they, they started to -- well, I, I told them I -- that -- years ago that my family tortured me. You know, my doctor says I was sexually molested but I, I prefer to say it was tortured. And I told -- you know, like, it was a group thing, all my family against me, you know. And I told the police. And then the way they, they tortured me, that that's how they murdered my father in '99.

In 1999, March 10th, my father was murdered. I was in the hospital, the, the Grace Hospital. My father looked like he was murdered. He had a pair of pliers put to his member 'til he had a heart attack and stroke. I was there. He looked like he was murdered like that, you know. I was tortured like that, you know. And, so, I tell that to the police. The police -- the, the police, they, they -- twice I was phoned. They started to harass me. I was phoned twice. Once is -- like, this is a hard case to solve, you know.

Another time he said -- this is -- another -- different policeman phoned me and, you know, he said, "We're not going to investigate." You know, just, just harassing me more.

And, and then I went down there and I phoned and they, they took me to the Vulnerable Persons coordinator and I had to tell my story again and, and he was instructed -- she just further abused me.

And then I phoned -- what's his name again? Mr. T. or -- and he threatened me not to phone any more.

That's basically it, sir.

THE COURT: All right. Thank you, Mr. F..

Does the commissioner or the commission wish to make any submission with respect to this application, Mr. Guenette?

MR. GUENETTE: We've made a written submission, Your Honour. I trust you've read it. I'm sure that you -- if you have any questions, you'll ask me but I -- other than what we've submitted in writing, I don't think there's any need for me to comment.

THE COURT: All right. And I have read the material provided by counsel for the commissioner.

THE CLERK: Your Honour, can I just clarify something? When Mr. F. was referring to -- is it Mr. T.? Is it Constable T. or --

THE COURT: I'm wondering if perhaps what we can do is just deal with that issue in due course.

THE CLERK: Okay.

THE COURT: I'll be making reference to the officers --

THE CLERK: Okay.

THE COURT: -- in the course of my comments.

The history to this matter is as follows: And I'll begin by noting that given the nature of this application, I have been previously provided with a copy of the LERA commissioner's file. And I note that by correspondence directed to Mr. F., that offer was provided to him as well, that is to review the file.

In reviewing the file I have noted that by virtue of a statement dated June the 12th of 2003, apparently dictated by Mr. F. to a member of the commissioner's office, Mr. F. made a complaint with respect to two City of Winnipeg police officers, a Sergeant Jim T., \*-\*-\* double \*-\*-\*; and a Sargent S. I believe elsewhere in the file it's referred to Sergeant A. S., \*-\*-\* double \*. And the complaint itself is relatively brief and I think it's instructive to read it into the record. Mr. F. says:

I went to see Sergeant Jim T. about my father being murdered in 1999 in the same way I was sexually molested 39 years ago. He has been lying to me. He got Sergeant S. to call me and harass me on the telephone. Just a couple of days ago I got another phone call from a detective. He wouldn't identify himself. It was just more harassment. Plus Sergeant T. threatened me not to phone the police station. That's it.

Now, there is some further elaboration on the second page of the statement. I'll talk about that more in a moment.

The response to that complaint was made to Mr. F. by a letter dated June 13th, 2003 -- that is the following day -- from the commissioner of the Law Enforcement Review Agency, advising Mr. F. that in the view of the commissioner, a discipline or a default had not been identified in the complaint made by Mr. F. and therefore, pursuant to the relevant provision of the Act, the commissioner was declining to take any further action on the matter.

The further background to Mr. F.'s complaint is set out in notes to the LERA commissioner's file based on, as I read it from the file, comments made by Mr. F. to the LERA investigator. And I think it's also instructive to read a portion of those comments into the record. This is from June the 12th of 2003.

Mr. F. attends office. Said he could not write out his complaint. I obtained a written statement from him. He feels his father, 91 years old, was murdered, died in the hospital of a heart attack. Mr. F. says he was tortured before and this is what caused the heart attack. Said his father's penis was pinched (pulled with pliers)...

I'm sorry.

...pinched/pulled with pliers. Mr. F. said he was similarly tortured 39 years ago as...  
years ago, rather,



...(by his family). I asked Mr. F.  
if the hospital or ME...

I assume that's medical examiner's office.

...officer recorded his father's  
death as suspicious or suspected  
foul play. He said, "No. Nobody  
suspects anything." Mr. F. and  
some others are convinced his  
father was killed.

And that's paragraph 1 of the LERA investigator's notes of  
his meeting with Mr. F., which, as I say, ultimately gave  
rise to the complaint to the commissioner.

As noted, the commissioner found that the  
complaints did not fall within the jurisdiction of the Law  
Enforcement Review Agency to investigate as no discipline or  
defaults were identified in the letter of complaint.

As I told Mr. F., per Section 13(4) of The Law  
Enforcement Review Act, as the applicant or appellant in  
this case Mr. F. bears the burden of persuading me and  
showing me that the commissioner erred or made a mistake in  
concluding that the complaint was outside the scope of  
Section 29 of the Act and declining to take further action.

There is also case law on point which talks about  
what standard of review is to apply in a case such as this  
and I'm referring specifically to the decision of Chartier,  
my brother Judge Chartier, PCJ, in LERA complaint number  
3597, in which Judge Chartier states that:

Where the decision of the  
commissioner is one which relates  
to the jurisdiction of the  
commissioner, the standard on

review is that of the correctness of the decision made by the commissioner.

And that's the standard that I'm applying in this case, that is, to determine whether or not the decision reached by the commissioner was correct.

In that regard it is necessary to examine Mr. F.'s complaints somewhat more closely. And in that regard I note that, as I read into the record a moment ago, he says a number of things about the officers who were spoken to by him and who spoke to him in return.

He says that Sergeant T. had been lying to him and he goes on -- that is Mr. F. does in his statement to the LERA investigator -- to say that by this he means that Sergeant T. or T. said that "everything had been investigated" when, in fact, nothing had been investigated. He says that Sergeant S. called and harassed him as well. And, unfortunately, there is no elaboration as to what form that harassment took. There is no elaboration on that either in the complaint nor in the submission today other than to say that Sergeant S. had told him on the telephone that "the case was a tough one to crack" and that he heard laughter in the background when this was being said, which Mr. F. interpreted as relating to his conversation with the officer. I will talk more about that in a moment.

He also says that -- by virtue of his complaint that Sergeant T. threatened him not to call the police station. When asked by the LERA investigator to elaborate as to the nature of the threat, Mr. F. explained that the officer had told him not to call. That was what he interpreted as the threat not to call the police station.

Section 29 of The Law Enforcement Review Act sets out the disciplinary defaults that may be investigated by the commissioner and in my view the potential category under which the complaint of Mr. F. falls would be Section 29(a),

that is, abuse of authority, including being discourteous or uncivil in the course of execution of duty.

I should say in that regard as well, however, that there is a decision by my brother Judge Wyant between G. and G. -- these are -- and B., constables, in which Wyant, PJ, found that an abuse of authority under Section 29(a) is not limited to only those types of conduct that specifically fall within the subclass as set out in Section 29(a). That is not only limited to the types of abuse of authority referred to in the Act but it can include anything that falls within the general meaning of abuse of authority.

In that decision Judge Wyant, as he then was, went on to find, quote, at paragraph 5:

I find that the context in The Law Enforcement Review Act in which the word "including" was used was not meant to be restrictive in any fashion. What may be deemed to be an abuse of authority could be determined on a case-by-case basis, the particulars of which can be itemized and therefore answerable by a respondent.

I should say that in my view, even on an expanded view of what constitutes abuse of authority, it is difficult to see how the complained of conduct satisfies any definition of that term.

The officers in this case apparently determined that no further investigation was warranted and conveyed that conclusion to the applicant appellant. The fact that Mr. F. may have been told not to call police any further with respect to this matter does not, in my view, fall within the definition of abuse of authority and in that

regard I concur with the view taken by the commissioner, that is, I find that that decision was correct.

As to the issue of the officers potentially being discourteous or uncivil, I have mentioned the fact that there is really no elaboration on the allegation of harassment by Mr. F..

And with respect to the issue of hearing laughter when he was told that the case was a difficult one for the police, there is really no way, of course, to link that laughter to the call, nor, more particularly, would there be or is there any evidence to permit a trier of fact to draw that inference, which is a matter that I must consider in determining whether or not this matter --

MR. F.: Your Honour --

THE COURT: -- was correctly decided.

Mr. F., it is actually rude and inappropriate --

MR. F.: Oh, I'm sorry.

THE COURT: -- to interrupt --

MR. F.: Oh.

THE COURT: -- when a decision is being made. Having said that, I appreciate you are unrepresented. If you want to say something, I am going to give you that opportunity now notwithstanding where we are at in the proceedings. So, I will get you to stand up again --

MR. F.: Your Honour, like, I went, I went to the police station to tell them I was group-tortured. I was group-tortured. My family group-tortured me and the police group-tortured me. I was group-tortured. They're marching around. That's -- they're going back and forth, marching around.

They take me to the Vulnerable Persons. I have to tell my story about being abused over and over again and nothing's being done. They're -- you know, they're laughing at me, you know. I, I confine them to, to -- that I was group-tortured and, and they group-torture me back. A whole

bunch -- they were, they were having fun at -- you know, you know. They -- you know, like, that's ridiculous, you know.

THE COURT: Okay, thank you, Mr. F..

Just as to that issue, I'll say a couple of things. Firstly, this isn't what is called a hearing de novo. This isn't a hearing in which evidence can be given or additional information supplied to the Court. In my view this is a review of a decision reached by the commissioner based upon the information provided to the commissioner.

But having said that, even with respect to this additional information that Mr. F. has provided, while I profoundly regret the, the sense that Mr. F. has as to the way in which he was treated by the police, I regret that he feels that he was treated badly. In my view given the limits of The Law Enforcement Review Act, the complained of conduct, that is both in the complaint and what I have heard here, does not fall within the type of disciplinary default described in Section 29 of the Act.

If there are other concerns that Mr. F. has with respect to criminal offences committed against him, this decision here today is not meant in any way to prevent you, Mr. F., from exploring those concerns and pursuing those concerns. My job here today is to decide whether or not there was a correct decision by the commissioner that the complaint made to him back in June of this year falls outside the four corners of The Law Enforcement Review Act and in my view, for the reasons that I have expressed, I find that the decision was correctly arrived at, that the complaints made do not fall within the scope of the Act, and accordingly I must and do dismiss the application.

I appreciate that the officers who were the subject of the complaint are not named in this application or this review but out of an abundance of caution I will indicate, as well, that I am making a -- an order banning publication of the names of those officers in any publication.

Unless there is any further submission from counsel or from Mr. F., in my view that resolves this matter today. I will, however, conclude by adding that for reasons that ought to be apparent from my decision, I have concluded that it would be unnecessary to notify the officers of this hearing. They may be notified of the result but in my view their further submission on the hearing is not required.

THE CLERK: Order. All rise. This court is closed.

(PROCEEDINGS CONCLUDED)