

IN THE MATTER OF:

Law Enforcement Review Act
Complaint No. 2013/51.

BETWEEN:

[REDACTED],

Complainant,

-and-

[REDACTED],

Respondent.

TRANSCRIPT OF PROCEEDINGS before The Honourable Judge Combs, held at the Brandon Courthouse, 1104 Princess Avenue, in the City of Brandon, Province of Manitoba, on the 29th day of April, 2015.

BAN ON PUBLICATION

APPEARANCES:

MR. D. JOHNSTON, for the Commissioner.

H. WEINSTEIN, Q.C., for the respondent.

INDEX

	<u>Page</u>
PROCEEDINGS	1
SUBMISSION BY MR. WEINSTEIN	6
SUBMISSION BY MR [REDACTED]	8
REASONS FOR JUDGMENT	9

EXHIBITS

1 LERA file	4
2 document (brief) of [REDACTED]	4

1 APRIL 29, 2015

2

3 THE COURT: Good afternoon.

4 MR. WEINSTEIN: Good afternoon, Your Honour.

5 MR. JOHNSTON: Good afternoon.

6 THE COURT: And sorry, you are?

7 MR. JOHNSTON: Devon Johnston and I'm counsel for
8 the Commission of the Law Enforcement Review Agency.

9 THE COURT: Oh, all right. Thank you.

10 MR. WEINSTEIN: And for the record, Hymie
11 Weinstein appearing on behalf of Constable [REDACTED], Your
12 Honour.

13 THE COURT: All right.

14 And are you Mr. [REDACTED]?

15 MR. [REDACTED]: Yes, Your Honour.

16 THE COURT: Good afternoon.

17 I received just yesterday a further written
18 submission from Mr. [REDACTED]. Did counsel receive a copy
19 of that?

20 MR. WEINSTEIN: No.

21 THE COURT: Okay. Madam clerk, there will have
22 to be a copy of that run off and given to counsel.

23 I apologize for that counsel. I had assumed that
24 you had received a copy.

25 MR. WEINSTEIN: No.

26 THE COURT: Perhaps we'll take just a five or a
27 10 minute break so you can have a look at it and --

28 MR. WEINSTEIN: Well let me just put on the
29 record --

30 THE COURT: Yes?

31 MR. WEINSTEIN: -- Your Honour, Mr. [REDACTED]
32 was told that if he was going to file any material it
33 should be filed by March 20th and I had until April the
34 19th to file.

1 THE COURT: All right.

2 Well what I'll do is, I'll let counsel have a
3 look at what has been given to the Court and you can make
4 whatever submissions you want once you've had a chance to
5 look at it.

6 MR. WEINSTEIN: Thank you, Your Honour.

7 THE COURT: We'll just take a --

8 THE CLERK: Do I make copies?

9 THE COURT: Yes, if you would make copies for
10 both counsel.

11 Just let the clerk know when you're ready.

12 MR. WEINSTEIN: Thank you.

13 THE CLERK: All rise. Court will take a short
14 recess.

15

16 (BRIEF RECESS)

17

18 THE CLERK: Order, please. All rise. Court is
19 now reconvened. You may be seated.

20 THE COURT: Go ahead, Mr. Weinstein.

21 MR. WEINSTEIN: Thank you.

22 I have reviewed this letter. My position - my
23 strong position is that it should not be admitted. This
24 has nothing to do with the onus that is on Mr. [REDACTED]
25 under Section 13(4). Nothing in here deals with the
26 decision that the Commissioner made and that's what we're
27 here for today. He has to demonstrate, as Section 13(4)
28 says:

29

30 "the burden of proof --"

31

32 THE COURT: Can I interrupt you, Mr. Weinstein?

33 MR. WEINSTEIN: Yes.

34 THE COURT: Assuming that I accept what you are

1 saying to me - you are saying that I should not accept it
2 because of relevance?

3 MR. WEINSTEIN: Yes.

4 THE COURT: All right. I guess then Mr.
5 [REDACTED] is obviously not a lawyer - he's unrepresented.
6 My view is that although I may agree with you, I don't see
7 the harm in having the document as part of the proceeding.

8 MR. WEINSTEIN: You have my objection, that's
9 fine.

10 THE COURT: Yes, that's fine.

11 Mr. Johnston, I haven't heard a Review
12 application for a long time. I don't know whether you're
13 here to actively participate in the hearing or - you'll
14 have to help me with what you see the Commissioner's role
15 being in this proceeding.

16 MR. JOHNSTON: Certainly. And I hope, Your
17 Honour, that you will have received a copy of our brief.

18 THE COURT: I have.

19 MR. JOHNSTON: Really I am here as a friend of
20 the Court. We often make submissions just on such issues
21 as the standard of review or any procedural issues that may
22 come up and of course we're happy to answer any questions
23 the Court may have, but we're not taking a position in
24 terms of the substance or the merits of the case.

25 THE COURT: All right.

26 What I would propose to do then, counsel - the
27 Review Agency has filed its file as part of these
28 proceedings which includes the complaint, the response of
29 the Commissioner and the response of the Officer to the
30 complaint. I'm going to suggest that that be filed as an
31 exhibit in this proceeding - that would be Exhibit 1 - and
32 Mr. [REDACTED] - is that how you pronounce your surname?

33 MR. [REDACTED]: Yes, sir.

34 THE COURT: And Mr. [REDACTED] last document of

1 April 27th then would be an exhibit.

2

3 **EXHIBIT 1: LAW ENFORCEMENT**
4 **REVIEW AGENCY FILE**

5

6 **EXHIBIT 2: DOCUMENT (BRIEF)**
7 **OF [REDACTED] DATED**
8 **APRIL 27, 2015**

9

10 I appreciate that the brief filed by the
11 respondent in this case is primarily argument --

12 MR. WEINSTEIN: Yes.

13 THE COURT: -- so it would not typically be filed
14 as an exhibit. So having that having occurred what I would
15 propose we do today is that we hear from Mr. [REDACTED] if
16 he has anything further he wishes to add --

17 MR. [REDACTED]: I just have a question though,
18 Your Honour.

19 THE COURT: Yes?

20 MR. [REDACTED]: Well like in the Commissioner's
21 brief - like I don't understand what he means about the
22 decision - like why he decided against me.

23 THE COURT: Did you not read his letter to you?

24 MR. [REDACTED]: Well it's pretty much jargon
25 though, Your Honour. I don't really understand it.

26 MR. WEINSTEIN: I can't hear. I'm sorry, I can't
27 hear him.

28 THE COURT: He said that he couldn't understand
29 why the Commissioner rejected his complaint.

30 Well the one thing I guess I can't do for you,
31 Mr. [REDACTED], is offer you advice or try and explain to
32 you what the Commissioner has done because I don't want to
33 be put in a position of trying to interpret the words of
34 someone else - they speak for themselves. Obviously you

1 need to read - have you read his letter to you?

2 MR. [REDACTED]: Yes I have, Your Honour.

3 THE COURT: All right. Well the letter obviously
4 sets out his reasons for not --

5 MR. [REDACTED]: But I think, Your Honour, it
6 would probably be best if we maybe stay the proceedings and
7 I go back to the Commissioner because the letter I got was
8 very very brief and not to the point.

9 THE COURT: Well that is certainly a submission
10 you can make to me that you don't think there was
11 sufficient reasons, if that's what you're saying --

12 MR. [REDACTED]: Yes I think so, Your Honour.

13 THE COURT: -- but I guess I need to know whether
14 there's anything else you wish me to consider other than
15 that.

16 MR. [REDACTED]: No. Other than what's in the
17 brief, Your Honour, that's the situation and the occurrence
18 the way it happened.

19 THE COURT: Okay.

20 MR. [REDACTED]: I can't add anything else, Your
21 Honour.

22 THE COURT: Okay.

23 Is there anything you wish to add to your brief,
24 Mr. Weinstein, or you wish to say to me today by way of
25 submission?

26 MR. WEINSTEIN: Well I know Your Honour has read
27 the brief. I don't know if Your Honour wishes me to
28 highlight certain paragraphs of the brief in support of the
29 respondent's position.

30 THE COURT: I've read your brief. If there are
31 certain things that you want emphasized then by all means
32 go ahead and do that.

33 MR. WEINSTEIN: Okay. I'll try to be as brief as
34 possible.

1 THE COURT: Sure.

2

3 SUBMISSION BY MR. WEINSTEIN:

4 I might point out, based on what Mr. [REDACTED]
5 has said - and I might add that the letter was sent to him
6 by registered mail over a year ago - March 12th, 2014 - and
7 if you look at page 21 of the brief in the third paragraph,
8 the Commissioner sets out succinctly when he says:

9

10 "Therefore on review of all the
11 information available I am satisfied
12 that the evidence supporting your
13 complaint is insufficient to justify
14 taking this matter to a public
15 hearing."

16

17 It's plain and simple that's what the
18 Commissioner found pursuant to the Act itself.

19 Now let me just highlight certain areas from my
20 brief. If you take a look at page 3 of my brief - the
21 respondent's brief - I just pointed in 1.2 the amendment
22 which:

23

24 "increases the discretionary power of
25 the Commissioner."

26

27 At 13(1):

28

29 "Where the Commissioner is satisfied
30 that the subject matter of a complaint
31 is frivolous or vexatious or does not
32 fall within the scope of Section 29 ..."

33

34 "... the Commissioner shall decline to

1 take further action ..."

2

3 And that's exactly what the Commissioner did
4 under the Act itself.

5 At page 4 I just refer you - and I'm not going to
6 read it out - paragraph 2 at page 4, Your Honour, again
7 basically the brief highlights the broad discretion that
8 the Commissioner has in dealing or deciding a matter by way
9 of a complaint and this is also set out on page 4 in 3.3
10 and the top of page 5 - this is the decision of Judge
11 Chartier, who said:

12

13 "Every administration body to one
14 degree or another must have the power
15 to interpret and apply its own enabling
16 Statute."

17

18 If this were not the case, it would be at the
19 mercy of the parties before it and it would never be the
20 master of its own proceedings.

21 On page 7, 4.7, Your Honour, referring to Judge
22 Preston's decision - and again all these cases indicate the
23 discretion that the Commissioner has in deciding whether or
24 not there should be further proceedings. With all due
25 respect from what we've heard, Mr. [REDACTED] has not even
26 come close to satisfying 13(4) - the burden on him.

27 I finish my brief by again saying - and with all
28 due respect to Mr. [REDACTED] I point out that with 357
29 complaints since 2002, with the greatest respect, I refer
30 to him as a chronic complainer and someone has to say this
31 and I'll say it. Based on this material since 2002 I would
32 categorize him not only as a chronic complainer but an
33 absolute nuisance to the Brandon Police Service.

34 MR. [REDACTED]: I object, Your Honour.

1 MR. WEINSTEIN: Thank you.

2 THE COURT: Well you'll have your chance to
3 speak, Mr. [REDACTED].

4 MR. WEINSTEIN: Thank you.

5 THE COURT: It's not a situation where you have
6 the right to object.

7 MR. WEINSTEIN: Subject to any questions Your
8 Honour has, that is my submission.

9 THE COURT: All right. Thank you.

10 Mr. [REDACTED], do you have any response to the
11 submissions of the respondent? And if you do, I'll ask you
12 to stand up, please.

13 MR. [REDACTED]: Okay.

14 THE COURT: We have to record your voice.

15

16 SUBMISSION BY MR. [REDACTED]:

17 Well in regards to my objection, Your Honour,
18 like they said 357 complaints. I was formerly a taxi
19 driver and in that I would see incidents and these are not
20 all complaints, but reports of incidents. These are not
21 frivolous complaints. If this is the way that the Brandon
22 City Police looks at this then I think that Brandon City
23 Police should review these complaints.

24 I used to be a dispatcher for the Military Police
25 in Shilo and when you take a call it comes lodged in as a
26 complaint.

27 They're not all complaints, they all reports of -
28 all my reports were in the interest of public safety and I
29 think Brandon City Police needs to change their attitude in
30 that respect because they're not complaints, they're
31 reports.

32 There's things like signs being left by drunks in
33 the middle of the road and I'm a taxi driver so I don't
34 always have time to move them so I just report it to

1 Brandon City Police and they can take it - so in the
2 interest of public safety.

3 Fights, drunk drivers - you guys don't want me to
4 report drunk drivers? I think you people need to --

5 THE COURT: Mr. [REDACTED], I'll ask that you
6 direct your comments to me.

7 MR. [REDACTED]: Yeah. Yeah.

8 THE COURT: Anything else?

9 MR. [REDACTED]: No, Your Honour.

10 THE COURT: All right.

11 MR. [REDACTED]: And in this incident I think
12 that Constable Potter refused to do his job and that's all
13 it was.

14 THE COURT: All right. Thank you.

15 I'm prepared to give my decision.

16

17 REASONS FOR JUDGMENT

18 This is an application under Section 13 of the
19 Law Enforcement Review Act.

20 Basically I have to determine whether there is
21 any basis for me to conclude that the Commissioner's
22 decision in this case to reject this complaint was in error
23 and the case law sets out - and I accept - that it is
24 appropriate that I consider whether or not his actions were
25 reasonable, in other words did he reasonably assess the
26 information he had before him and come to a conclusion that
27 is basically defensible. I do not have to come to the
28 conclusion that I would not have done something different
29 or that I may not necessarily even agree with his response,
30 I just have to conclude that what he did was reasonable in
31 view of the information he had before him.

32 The complaint consisted of an allegation that
33 some children - aged five to eight years old - were
34 throwing snowballs at a surveillance camera. I am told in

1 the complaint that the Officer advised you, Mr. [REDACTED],
2 that children under the age of 12 cannot be the subject of
3 criminal prosecutions and obviously that being the case he
4 advised you that there was nothing he could do to help you.
5 He came to that conclusion and the Commissioner in his
6 decision accepted that the Officer inferred that this was
7 not a circumstance where a serious injury or death might
8 occur or a chance of any substantial property damage that
9 was imminent. That is a conclusion that he came to, so I
10 have to ask myself: Were his findings reasonable? I have
11 no reason, based on the evidence I have before me, but to
12 accept his findings.

13 I do find that his conclusion was reasonable in
14 the circumstances.

15 I do find that the Officer, in not taking any
16 action in those circumstances, was reasonable. Whether or
17 not it was what he should have done is not what I am here
18 to conclude. I am here to conclude whether or not what he
19 did was reasonable and the conclusions of the Commissioner
20 in finding so were reasonable and in the circumstances I
21 find that they were.

22 There will not be a hearing of the matter. The
23 complaint will not go further and that will be the end of
24 the matter.

25 Is there anything further I need to do, Mr.
26 Johnston?

27 MR. JOHNSTON: There will have been a ban on
28 publication issued earlier in the proceeding and generally
29 the continuation of that ban - and it's with respect to the
30 respondent's name - generally that's automatic under the
31 Act.

32 THE COURT: Yes, there will be a ban on
33 publication.

34 Mr. [REDACTED], do you understand what I've done

1 today?

2 MR. [REDACTED]: Yes I understand, Your Honour.

3 THE COURT: All right. Do you have any
4 questions?

5 MR. [REDACTED]: It's just that --

6 THE COURT: I don't want to rehash my decision,
7 I'm just asking you if you have any questions.

8 MR. [REDACTED]: No, it's quite clear, Your
9 Honour.

10 THE COURT: All right.

11 Anything from you, Mr. Weinstein?

12 MR. WEINSTEIN: No. Thank you, Your Honour.

13 THE COURT: All right. Thank you.

14 THE CLERK: All rise. Court stands adjourned.

15

16 (PROCEEDINGS CONCLUDED)

17

18

19

20

21

22

23

24

25

26

27

CERTIFICATE

28 I hereby certify the foregoing pages of printed
29 matter, numbered 1 to 11, are a true and accurate
30 transcript of the proceedings, transcribed by me to the
31 best of my skill, ability and understanding.

32

33

34

[REDACTED]
COURT TRANSCRIBER