

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint # 2020/15

AND IN THE MATTER OF:

A Hearing pursuant to section 13(2) of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

B.M.,

) Ryan McElhoes
) for the Complainant
)

- and -

)

**Cst. T.,
Cst. M.,**

)
) Paul McKenna
) for the Respondents.
)
)
)

) Hearing date: April 5, 2022
) Decision date: April 28, 2022

Note: These reasons are subject to a ban on publication of the Respondents' names pursuant to section 13(4.1) of The Law Enforcement Review Act

ROLSTON P.J.

[1] The Respondents, who are Winnipeg Police Service were assigned to investigate a “stalking event” that had been reported to their dispatch. The complainant (C.P.) for that call was spoken to and identified that B.M. (the

complainant in this matter) had waited outside her place of work and attempted to follow her home. The Officers attended to B.M.'s home to investigate and spoke with him but did not charge him with an offence. B.M. levelled a complaint against the officers due to the manner in which this investigation was conducted. B.M.'s complaint was dismissed by the Commissioner of the Law Enforcement Review Agency (LERA), and he applied to this Court for a review of LERA's decision.

Background

[2] Counsel on behalf of B.M. did not file materials in this application and was retained after B.M. filed his application. On B.M.'s behalf, counsel abandoned all grounds for review, except the complaint that the Officers abused their position of authority by disclosing B.M.'s personal information without authority to do so.

[3] There is no dispute that an officer commits a disciplinary default when he affects the complainant by improperly disclosing any information acquired as a member of the police service (*Law Enforcement Review Act R.S.M. 1987, c. L75, section 29(c)*). B.M. asserts that the Officers disclosed information to C.P., to B.M.'s landlady and to a potential employer for B.M. and that these disclosures were unnecessary and impacted B.M. negatively. During the investigation, the Commissioner determined that the Officers denied improperly disclosing information to outside parties. The Commissioner accepted the Officers' statements and dismissed the claim. Counsel argues that this decision is unreasonable because the Commissioner failed to properly investigate leads that corroborate B.M.'s position, and because certain information was not considered at all by the investigator.

[4] Counsel for the Officers maintains that the investigation was conducted in a thorough manner and that the decision was reasonable.

[5] Both counsel agree that the appropriate standard of review is reasonableness. The Commissioner investigated B.M.'s claim and made findings based upon his investigation. My role is not to reinvestigate or make my own findings. My role is to simply consider whether the Commissioner's action were reasonably possible in the circumstances, even if they were not necessarily the same actions as I would have taken. Since B.M. has filed this review, onus is on him to establish the decision was unreasonable. In the end, I cannot interfere with the Commissioner's conclusion unless I can conclude that the decision was not justified, transparent and intelligible (*B.J.P. v. Cst. G.H., Cst. B.Z., and Sgt G.M.*, LERA Complaint #2005-186).

[6] In order to determine the merits of this review, I need to answer the two questions raised by counsel for B.M.:

- Did the Commissioner fail to properly investigate leads that corroborate that information was improperly shared by the Officers?
- Did the Commissioner fail to consider all of the information gathered in the investigation?

The answer to these questions will allow for clarity in examining the decision of the Commissioner as a whole in determining whether the decision was reasonable.

Did the Commissioner fail to properly investigate leads that corroborate that information was improperly shared by the Officers?

[7] It is not contested that my role in this review is not to determine the complaint of B.M. afresh. Rather, I am to examine the Commissioner's decision to determine whether the decision making process overall led to a rational outcome. The Commissioner is entitled to base his decision on a limited assessment of credibility. The Commissioner noted, "There are some discrepancies between your account and

the ones the officers provide.” In my view, these discrepancies explain why the Commissioner took the steps in the investigation that he did.

[8] B.M. says that the Commissioner’s ruling is unreasonable because the Commissioner did not investigate two obvious corroborating witnesses that suggested information was disclosed by the Officers. Both of these will be considered now.

Information released to C.P.

[9] B.M. provided the Commissioner a transcript of a hearing where C.P. sought a protection order against B.M. The following exchange took place between C.P. and the hearing officer:

Q: And then you indicate he has a history. So—

A: Yeah. I don’t know the specifics of his history so just to clarify but I do know—like, I was generally informed by police that he had six, like, separate instances I think in Ontario with—and they did say with women and I –I don’t—I—I don’t want to quote and say they said girls but I—I believe it was they were saying, like, with women.

Q: So the police tried to, without breaching confidentiality –

A: Yes. Just let me know—

Q:--let you know—

A: --I did the right thing.

Q: --that you did the right thing coming forward?

A: yes. Yes. And they explained that his—I don’t know if you’d say status or whatever, but they’d be watching more closely because of this and perhaps maybe that’s why they were informed of him applying at my work and all that stuff.

Counsel points to this excerpt to illustrate that C.P. clearly knew details about B.M.’s past that could only have been furnished by the police.

[10] Counsel also referenced reports and notes generated by Constable K., who followed up with C.P. after the initial contact with police. It is in this interaction that B.M. theorizes that information was disclosed by the Winnipeg Police Service to C.P. Specifically, counsel points to certain details which are blacked out on the reports and notes that he suggests are likely to contain details about B.M. that were provided to C.P. These details are what counsel says are referenced by C.P. in the protection order application as outlined above.

[11] B.M. points out that the Commissioner did not speak to Constable K. to determine what information was provided to C.P. B.M. says that investigation was warranted in light of the evidence set out in the protection order transcript. The lack of investigation contributes to the unreasonable finding made by the Commissioner.

[12] The protection order application was not referenced in the Commissioner's decision, except in reference to the Officers' position:

Officers provided details that they appraised the complainant on the procedure on how to obtain a Protection Order as she appeared shaken and distraught enough to contact the police as a result of her interactions with M.

I agree with B.M.'s counsel that there is no reference that the Commissioner necessarily considered the excerpt from the protection order hearing referenced above in furtherance of B.M.'s claim under section 29(c) of *The Law Enforcement Review Act*. However, there is also no evidence that there was any concrete information provided to C.P. by the police.

[13] Given the lack of detail from Constable K.'s notes and reports, the only real information as to what C.P. knew of B.M. is contained in the transcript of the protection order hearing. It is not surprising that some vague indication of B.M.'s background would be shared with a complainant in the context the Officers were in.

The Act only prohibits *improper* disclosure. It is hardly improper for limited disclosure in order to protect the complainant and give context to C.P. so she can make a responsible decision on whether to act or not. Based upon the excerpt of the protection order hearing, it appears that the officers did just that. I am therefore not satisfied that it was unreasonable for the Commissioner to consider the issue further or initiate any further investigation by speaking with Constable K.

Failure to speak to landlady

[14] When the Officers initially investigated the call by C.P., they attended to B.M.'s home, a basement suite which was rented from the landlady who lived upstairs. The vehicle associated to the incident involving C.P. and B.M. actually belonged to the landlady. B.M. asserts that the Officers stayed for two hours. When the Officers attended to B.M.'s home, there is no contest that an officer attended upstairs and spoke to the landlady away from B.M.'s presence. B.M. asserts that this conversation was lengthy and that the Officers disclosed his entire "Manitoba Justice history" to the landlady resulting in B.M. being evicted. The Officers denied disclosing this information to the landlady.

[15] The Commissioner attempted to speak with the landlady on two occasions to confirm what, if any, information was provided to her. A message was left on at least one of those occasions, but no contact with the landlady was ever achieved. B.M. argues that this futile attempt to corroborate B.M.'s assertion was really no investigation at all and is therefore unreasonable given that she was a crucial witness to his claim.

[16] The Commissioner outlined his investigation at length in his decision. As to the allegations regarding evidence given to the landlady, it is clear that the Commissioner considered both the version given by the Officers and the version

given by B.M. He noted that there was compelling independent evidence as to the amount of time the Officers were at the home and determined that B.M.'s version was not credible. He was entitled to do that.

[17] B.M. strongly argued that the only reason he would have been evicted was because the police disclosed unfavourable information about him to the landlady. While it would have been preferable to speak to the landlady to cover off this possibility, there are other potential reasons why B.M. was evicted. For example, shortly after the investigation, the authorities began doing regular curfew checks at all hours of the day and night. In any event, it is also clear that B.M. had used the landlady's vehicle during the incident that led to their attendance to B.M.'s home. The police were entitled to investigate to determine whether the vehicle was taken with consent and whether the owner knew of the use being made of the vehicle. Based upon the timing uncovered in the investigation, it is not unreasonable to conclude that there may have been many reasons why B.M. was evicted, and that some conversation with the landlady was warranted. The Commissioner did try to speak with the landlady, but was unable to do so. Based upon the overall evidence and her limited importance in the context of that evidence, I am not convinced that the Commissioner's limited attempts at a statement from her was unreasonable.

[18] B.M. raises issues with the failure of the Commissioner to investigate by not speaking with witnesses who had information that would confirm B.M.'s assertion that the police disclosed information improperly pursuant to section 29(c) of *The Act*. The Commissioner tried to contact the landlady for a statement, but was unsuccessful. I agree that a mere two attempts may not generally be considered a thorough investigation. However, I cannot conclude that the landlady's statement was as crucial to the investigation as suggested by B.M. in light of the overall evidence of this case.

[19] As noted at the outset, I must make an assessment as to whether the reasons given by the Commissioner were justified, transparent and intelligible when read together and in light of the conclusion. It is on this basis that I must decide whether the outcome was one of a range of possible outcomes. The Commissioner made it clear that he found the Officers to be credible and B.M. to not be credible. There was a solid factual foundation for this. In the end, I do not find the steps taken to investigate the Officers was unreasonable. I am not satisfied that the Commissioner failing to speak to the landlady or Constable K. amounts to an unreasonable lack of investigation.

Did the Commissioner fail to consider all of the information gathered in the investigation?

[20] The last ground on which B.M. asserts that the Commissioner conducted an unreasonable investigation is that there was no consideration given to the fact that the Officers spoke to B.M.'s prospective employer about whether the Officers disclosed B.M.'s personal information.

[21] It is clear that the Commissioner did not investigate whether information was given to the employer. However, it is not clear that a complaint was levelled by B.M. that the Officers spoke to the employer. In his written complaint of March 26, 2020, B.M. wrote (at page 5),

...then they told her [C.P.] I got a job at the same company (different location) and in return they broke my privacy on so many levels. They cost me my job, gave power to an unstable person and mettled [sic] in my privacy, where I live.

This is the only reference by B.M. to the prospective employer in his complaint.

[22] On a plain reading of the complaint, it seems that B.M.'s complaint is focused on the impression that C.P., not the Officers, shared information with her employer.

The Commissioner did not mention an allegation that the Officers spoke to the employer in his decision, despite a very thorough account of the complaint and subsequent investigation.

[23] The Commissioner does reference the employer in his decision when he was detailing the Officers' interviews (see page 7). He stated,

Officers responded to the allegation that B.M.'s employer had been contacted. Officers deny this occurred at anytime and recall that M. was not employed during their interaction with him.

The interview between LERA and the Officers is transcribed. The comment referenced above was part of a response to an open ended question, "Do you have anything to add?" Based upon the response, it is clear that the responding officer had read the complaint and was responding to the part of B.M.'s complaint referenced above. Based upon the response, it seems that the officer interpreted B.M.'s complaint to be that the Officers spoke to the employer. The officer clearly stated that he did not.

[24] It is rational to conclude that the Commissioner interpreted B.M.'s complaint to suggest that information was given to C.P. and C.P. used that information in the protection order application (which was dealt with above) and to the employer. Again, this is the plain meaning of the sentence transcribed from B.M.'s complaint. That being the case, there would be no reason for the Commissioner to speak to the employer as to whether they received information about B.M. from the Officers. I do not find that the Officer's comment, given to an open ended question would reasonably lead the Commissioner to conclude that he had missed an aspect of the complaint or that he should speak to the employer.

Conclusion

[25] B.M. complained to LERA that the Officers disclosed his personal information unnecessarily to persons in the public, thereby breaching section 29(c) of *The Law Enforcement Review Act*. The Commissioner conducted an investigation and determined that there was insufficient information to substantiate B.M.'s allegation. B.M. applied for a review of that decision to this Court.

[26] The basis of B.M.'s application is that the Commissioner did not interview witnesses that apparently corroborated B.M.'s version of events and that there was simply no investigation on one aspect of his claim. B.M. urges me to conclude that the failure to do these things leads to an unreasonable decision.

[27] It is clear that the Commissioner did not speak to B.M.'s landlady. She clearly had relevant information to provide. While I find the Commissioner's efforts to contact the landlady to be very minimal and less than desirable, I cannot conclude that the resulting decision was unreasonable. The Commissioner had independent information that corroborated the Officers and he made a rational decision based upon the entirety of the information he had.

[28] It is clear that the Commissioner did not speak to Constable K. Based upon the information that the Commissioner had, such an interview was not necessary. I find that the conclusions reached by the Commissioner were reasonable in that regard.

[29] Lastly, on a reasonable reading of the complaint, it is not clear that B.M. made a complaint to LERA about the Officers providing information to the prospective employer. While one officer did interpret that to be part of the complaint, it is clear from the overall investigation that the Officer denied giving information to an

employer and that there were other avenues by which an employer may have learned information about B.M. The Commissioner accepted the evidence of the Officers to the extent that he made findings. His findings were reasonably available to him upon review of the evidence.

[30] While I do not find the Commissioner's decision unreasonable, I understand why B.M. may have had some difficulty in understanding why the Commissioner decided what he did. The Commissioner outlined his extensive investigation, and then made conclusive statements of his findings. It would have been helpful if he had detailed his analysis as to his reasoning in a more comprehensive way. However, on overall reading of the decision, I am satisfied that the decision is not completely devoid of justification, transparency, and intelligibility for the reasons set out above.

[31] Based upon the reasons stated, pursuant to section 13(2) of *The Law Enforcement Review Act*, the application is dismissed.

"Original signed by:"
ROLSTON, P.J.