

**IN THE MATTER OF:** *The Law Enforcement Review Act*  
Complaint #2021-1

**AND IN THE MATTER OF:** An Application pursuant to s. 13(2) of *The Law Enforcement Review Act*, C.C.S.M. 1987, c.L75

**THE PROVINCIAL COURT OF MANITOBA**  
**Winnipeg Centre**

<b>A.O</b>	)	Complainant
	)	Self-represented
- and -	)	
	)	
<b>Constable P.M. &amp; Constable A.R.</b>	)	Paul McKenna
	)	for the Respondents
	)	
	)	Devin Johnston
	)	for the Commissioner
	)	
	)	Decision: May 3, 2022
	)	

**Restriction on Publication:**

This Decision is subject to a ban on publication of the Respondent's name pursuant to section 13(4.1)(b) of *The Law Enforcement Review Act*.

**D. MANN, P.J.**

[1] This is an application pursuant to section 13(2) of *The Law Enforcement Review Act* (“Act”). The Complainant A.O. (“Complainant”) submits that the Law Enforcement Review Agency (“LERA”) Commissioner erred in his decision finding that there was insufficient evidence supporting a public hearing.

[2] Specifically the Complainant submits that the police officers committed disciplinary default under sections 29(a)(iii), 29(a)(iv) and 29(e) of the *Act*. Those sections read as follows:

Section 29. Discipline Code

A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

(a) Abuse of authority, including

.....

(iii) Using oppressive or abusive conduct or language,

(iv) Being discourteous or uncivil,

.....

(e) Damaging property or failing to report the damage;

### **Overview of the Incident**

[3] The Complainant’s concerns stem from an incident where the police entered her home in the early morning hours of December 8, 2020, without a warrant, looking for her ex-partner Virgil Meeches.

[4] Earlier in the evening, the Complainant had been drinking in her residence with Mr. Meeches and a friend named Mandy Lord. After Ms. Lord left the residence that evening, she went home and called the police. Ms. Lord reported that she intervened when Mr. Meeches was calling down the Complainant, at which time Mr. Meeches assaulted her and pinned her to the ground. Ms. Lord reported that she ran from the house to get away from Mr. Meeches, who threatened her not to call

the police. Ms. Lord also reported that Mr. Meeches had assaulted the Complainant on the previous day. The Complainant indicates that she had a dispute with Ms. Lord that evening and feels that Ms. Lord called the police to cause problems for her. Although, the Complainant did acknowledge that Mr. Meeches had been at her home that night in violation of a protection order.

[5] As a result of the call by Ms. Lord, the police attended to the residence of the Complainant shortly after midnight to check on her well-being and to look for Mr. Meeches. The police were also aware that Mr. Meeches had three outstanding warrants for his arrest and was on a probation order requiring he not have any contact with, or attend to, the Complainant's residence. The police indicate that they knocked repeatedly on the door and tried calling the two numbers they had for the Complainant and received no answer. The Complainant indicated in her complaint that she had been drinking and was in a deep sleep and did not hear them knocking or trying to call her.

[6] After waiting outside for a period of time, the police made the decision to ram in the Complainant's door for the purpose of checking on her well-being and to search for Mr. Meeches. The Complainant filed a video clip from her home security system that shows a couple of officers outside her door lingering for a period of time. The Complainant suggests that the video shows the officers were not treating the situation with any urgency. She is also concerned that you can hear an officer say something about "not sure if they are calling it in", which she believes is the officers debating whether to even report what they were doing. I will return to this later, as well as the reasons for entry, as they form a large part of the Complainant's complaint; particularly given this entry appears to have caused significant damage.

Once inside the residence, members of Winnipeg Police Service located the Complainant in her bedroom. The officers indicate that the Complainant said she heard the knocking and did not want to answer or let them in. They indicate that the Complainant was belligerent toward them and refused to provide any information about Mr. Meeches whereabouts. They searched the residence and did not locate Mr. Meeches. The Complainant indicates that the police were condescending and unprofessional when speaking with her and caused further damage within her residence, which also forms part of her complaint.

### **The Complainant's Complaints under Section 29 the Act**

[7] The Complainant was very upset by the entire interaction and felt victimized by the police during the entire encounter. She describes a number of concerns in her brief. They can be summarized as follows:

- The manner in which the police milled around her house and treated her suggest they were not genuinely concerned for her safety. She feels the police broke into her residence without proper cause.
- She also submits that the fact that an officer waiting outside can be heard on the video saying “not sure if they’re going to call it in” suggests that the officer knew what he was doing was illegal and they were considering not even reporting what they were doing.
- Once inside the house, the officers acted in a discourteous manner in how they spoke to and treated her.
- Finally, she submits the police caused significant damage to her property. As noted, the police damaged the door and floor upon forcing entry. In addition, she believes the police committed other mischief to

her property, including damaging the TV, shutting off the water and putting debris in her furnace filter.

### **The Decision of the LERA Commissioner**

[8] The LERA Commissioner received and investigated the complaint filed by the Complainant. The investigation included reviewing the reports from the Complainant and police, as well as meeting with the responding officers and reviewing the photographs and video that was submitted.

[9] The Commissioner then reviewed the information and concluded:

Following a close review of all the information available, I am satisfied that the evidence required to justify referral of this complaint to a public hearing is insufficient and, as such, pursuant to Section 13(1)(c) of the Law Enforcement Review Act I must decline to take further action and the file is now closed.

[10] Section 13(1) of the *Act* reads as follows:

13(1) 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.

[11] The complainant filed a review pursuant to section 13(2) of the *Act* alleging the Commissioner erred in his decision. Section 13(2) states as follows:

13(2) Where the Commissioner has declined to take further action on a complaint under subsection (1), the complainant may, within 30 days after the sending of the notice to the complainant under subsection (1.1), apply to the Commissioner to have the decision reviewed by a provincial court Judge.

## **The Standard of Review**

[12] The standard of review has been discussed in a number of decisions by this Court. In *M.S. v. Cst. B. and Cst D.*, LERA Complaint #2004/172 (June 21,2006), Judge Joyal (as he was then) noted that the standard of review was one of reasonableness, which provides considerable deference to the Commissioner's decision, as opposed to the higher standard of correctness. At paragraph 21 he stated:

21. Unlike an identifiable jurisdictional error (to which I've already indicated the standard of correctness does apply), an alleged error in the Commissioner's evaluation of evidence (and his or her resulting conclusion respecting sufficiency), seldom permit of a similarly stark review. In other words, given the limited but still necessary weighing of the evidence that must occur on the part of the Commissioner, the reviewing judge can seldom categorically say the Commissioner was right or wrong. It is for that reason that absent jurisdictional error, if the Commission's conclusion is based on a reasonable assessment of the evidence and if that conclusion is one of the rational conclusions that could be arrived at, the Commissioner's determination is entitled to deference and it ought not to be disturbed.

[13] The Supreme Court of Canada revisited the standard to be applied in administrative reviews in the decision of *Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65. The Supreme Court in *Vavilov*, *supra* reinforced that reasonableness is the presumptive standard to be applied by a Court reviewing the merits of an administrative decision. There is nothing in the LERA legislation that provides a different standard, nor does it fall under any of the exceptions listed in *Vavilov*, *supra*. The standard of review when considering a matter under section 13(2) of the *Act* remains that of reasonableness.

[14] In *P.S. and Cst. S.T.*, LERA Complaint #2020-82, Judge Choy recently considered the issue and found the standard of reasonableness applied. Her decision notes the following principles from *Vavilov* that were summarized in *The Portage la*

*Prairie Teacher's Association v. The Portage la Prairie School Division*, 2020

MBQB 93 at paragraph 5:

- a) A reasonableness review is meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It remains, however, a robust form of review;
- b) The reviewing court must consider an award in light of its underlying rationale. The focus is on the award and the justification for it, not on the conclusion that the court would have reached;
- c) Once the decision maker's reasoning is understood, the court can assess whether the decision as a whole is reasonable and based upon an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker. If it is, the reviewing court must defer to the decision;
- d) To determine whether the decision is reasonable, the reviewing court must ask whether it bears the hallmarks of reasonableness: justification, transparency and intelligibility;
- e) The internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning;
- f) A decision must be justified in relation to the constellation of law and facts that are relevant to the decision, including the common law, evidence, facts, past practices, and potential impact of the decision;
- g) A reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (at para. 125); and
- h) The burden is on the party challenging the Award, in this case the applicant, to show that it is unreasonable.

### **Forced Entry into the Residence**

[15] The Complainant contends the police broke into her residence without proper cause, or at least should have done more investigating first. As noted, this was a warrantless search and Mr. Meeches was not present when the police searched the residence.

[16] When considering the issue of forced entry by the police to check on the well-being of an individual, the leading case is *R. v. Godoy*, [1999] 1 S.C.R. 311. As noted by the Supreme Court, you need to look at the totality of the circumstances

and the information that was available to the officers at the time when assessing the officer's conduct and whether the entry was justified.

[17] In the present case, the officers had been informed that Mr. Meeches had assaulted the Complainant the day before and was at her residence that night about an hour before they attended. They were informed he was present at the residence with the Complainant and had assaulted Ms. Lord. On route the police confirmed that Mr. Meeches had a court ordered no contact condition that was in place for the Complainant's protection. They were also aware he had a history of violence and weapons offences and currently had three outstanding warrants for his arrest. Upon attending the residence, the police indicate they saw a light on upstairs and they knocked on the Complainant's door a number of times and called both phone numbers they had on file without an answer.

[18] The attending officers consulted with the Supervisor and a determination was made that exigent circumstances existed and the police went into the residence. It was not actually the decision of Cst. M. or Cst. R. to breach the door, they were directed by the supervisor. However, the Complainant cannot be expected to know who made the decision and the Commissioner appropriately considered the decision itself. I find, based on all of the information in the paragraph above that it is reasonable to conclude that exigent circumstances existed and the police were justified in forcing entry into the Complainant's residence in the manner that they did.

[19] As noted in *Godoy, supra* the police and the courts are mindful of the potential for serious harm in domestic violence situations. Often, victims of domestic violence are in a vulnerable position, included being prevented from answering the



door by the abuser. The police had an obligation to ensure the safety of the complainant when they were called. What if they had simply left and something happened? I recognize, and I do not wish to minimize, the trauma that the police entering her home that night had on the Complainant. However, when considering the decision in totality, the Commissioner was entitled to conclude that the decision did not merit a further hearing.

### **Officer's Conduct in Waiting Outside and Comments about Calling It In**

[20] The Complainant also raised the concern that if the officers were genuinely concerned for her safety, why are two officers (not necessarily Cst. M. or Cst. R) seen standing around outside of her door without any sense of urgency. However, as discussed at the oral hearing and mentioned above, it was not their final decision to enter. They were waiting for approval from the Shift Supervisor, which is actually a protection for the Complainant's benefit.

[21] The Complainant was also concerned that those same officers can be heard on the video saying "not sure if they're going to call it in". She suggested that this implies that they were debating about even reporting what they were doing and they must have known it was wrong. I can understand how she may view the matter like that in isolation and when initially watching the video. However, considering that decision with the benefit of the other reports, it does not support this interpretation.

[22] The officers attending on scene were dispatched to that address as a result of a complaint received by the Winnipeg Police Service. Their presence at the residence was already recorded on the WPS system. In fact, the officers were directed to attend there. It appears they were waiting while another unit called in for

approval from the Shift Supervisor, which did in fact subsequently occur. The whole of the evidence does not support the concern raised by the complainant that the officers were debating whether to report that they were present there or that they were not going to report breaching her door.

### **Officers Conduct Upon Entering the House**

[23] Upon entering the residence, the Complainant alleges that the officers acted in a discourteous and abusive manner and caused significant damage to her property. I note that only one of the officers in this complaint (Cst. M.) was one of the officers who attended inside the residence of the Complainant. However, as stated earlier, the Complainant would not know which officers attended, and the Commissioner appropriately considered the attending officers conduct when considering the entire incident.

[24] The officers report that after they entered her residence, the Complainant indicated that she heard the police knocking, but did not want to answer the door. The police indicate that the Complainant was yelling and swearing at them. In contrast, the Complainant indicated that she had fallen into a deep sleep as she had been drinking and did not hear the knocking and it was the police who were rude and demeaning to her.

[25] The Complainant did acknowledge in the oral hearing that she was upset and yelling as she felt the police just broke into her house. However, there is still clearly some discrepancy in the description of the encounter between the police and the Complainant's perspective. The Commissioner is entitled to conduct a limited weighing of that evidence and consider that even if the officers could have been more courteous that does not necessarily amount to an abuse of trust requiring a

public hearing. (see: *A.C. v. Cst. G.S.*, LERA Complaint #6100 (February 20, 2007) paragraphs 49 – 53)

[26] The Complainant also alleges that a significant amount of her property was damaged by the police. As already noted, the police were justified in forcing entry into the Complainant's home in the manner they did and were not in violation of the *Act* with respect to that damage.

[27] The Complainant also alleges that the police caused further damage that would be unrelated to the forced entry or any other legitimate police conduct. She advises that after they left she noticed there was damage to the side of her TV, her water was shut off and debris was stuffed into her furnace filter.

[28] As noted in the Commissioner's decision indicating there was insufficient evidence, the Complainant did not actually see who caused that damage. In addition to there being no witnesses to the damage, there were two other people and apparently a physical altercation at her residence shortly before the police were called.

### **Conclusion**

[29] In conducting a reasonableness review, my role is not to substitute my decision for that of the Commissioner. I may even have come to a different view. My role is to determine if his reasons are transparent, understandable and justified. I find in this matter that the Commissioner appropriately considered all of the relevant evidence and conducted a limited weighing of the evidence in reaching a conclusion that was reasonable on the evidence before him.

[30] As a result, I am dismissing the Complainant's application. Pursuant to section 13(4.1)(b) of the *Act*, the ban on publication of the Respondent's name shall remain in place.

"Original Signed by"

D. MANN, P.J.