

IN THE MATTER OF: *The Law Enforcement Review Act* Complaint #2021/66

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

BETWEEN:

I.R.Z.Z.)	Self Represented,
)	In Person.
<i>Complainant,</i>)	
-and -)	
)	
Constable J.Z. and Constable S.C.,)	
)	
<i>Respondents.</i>)	Mr. P. McKenna
)	Counsel for the Respondents.
)	
)	Hearing date: October 26, 2022
)	Decision date: November 4, 2022

Ban on Publication

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

CARLSON, P.J.

INTRODUCTION

[1] *The Law Enforcement Review Act* (the “*Act*”) provides a mechanism for any person in Manitoba to file a complaint about the way that person was dealt with by the police, and a mechanism to have that complaint dealt with and reviewed. The *Act* is rooted in the principle that citizens are entitled to be treated fairly, respectfully, and professionally by police officers. When a citizen makes a complaint under the

Act, and an officer is found to have acted contrary to the standards set out therein, that officer will be sanctioned.

[2] The *Act* provides that complaints filed by citizens about police conduct will be investigated by the Law Enforcement Review Agency (“LERA”). The *Act* requires the LERA Commissioner (“the Commissioner”) to investigate complaints, to refer certain matters for hearings on the merits, and to decline to take action on certain matters. This screening of complaints by the Commissioner, which process has been upheld as a valid function, ensures that there are not unnecessary public hearings. In cases in which the Commissioner declines to take further action, a complainant may have that complaint reviewed by a provincial judge pursuant to the *Act*.

[3] This is an application brought by the Complainant, pursuant to subsection 13(2) of *Act*, for a review of the decision of the Commissioner to decline to take further action on his complaint.

[4] On October 29, 2021, the Complainant filed LERA Complaint No. 2021/66 (the “Complaint”) alleging that Winnipeg Police Services officers (later identified as the Respondents) abused their authority by using oppressive conduct or language on October 18, 2021 in dealing with him.

[5] After receiving the Complaint, an investigation was conducted by LERA.

[6] The investigation included an investigator reviewing the Complaint, interviewing the Complainant to obtain further particulars, and conducting interviews with the Respondent officers.

[7] Based on that investigation, the Commissioner decided that the evidence required to justify referral of the Complaint to a public hearing was insufficient, and that therefore pursuant to s. 13(1)(c) of the *Act*, he must decline to take further action on the Complaint.

[8] The Complainant was advised of the Commissioner's decision to take no further action by letter dated April 5, 2022.

[9] On April 14, 2022, the Complainant applied for review of the Commissioner's decision not to take further action on the Complaint, pursuant to s. 13(2) of the *Act*.

[10] On May 19, 2022, the Commissioner referred the Complaint for a review of his decision, pursuant to s. 13(3) of the *Act*, to a provincial judge.

[11] The review came on for hearing before me on October 26, 2022.

ISSUE ON THIS REVIEW

[12] The sole issue to be decided on this review is whether the Commissioner erred in his decision to decline to take further action on the Complaint.

[13] In order to reach a conclusion on that issue, I must consider the following:

- (i) The burden and standard of proof on a review;

- (ii) The scope of authority a provincial judge has in reviewing a decision of the Commissioner;
- (iii) The standard of review to be applied;
- (iv) How the standard of review applies to factual findings made by the Commissioner; and
- (v) Ultimately, whether the decision of the Commissioner in declining to take further action on the Complaint was reasonable.

The burden and standard of proof on review

[14] Section 13(4) of the *Act* places the burden of proof on the Complainant to show that the Commissioner erred in declining to take further action on the Complaint.

[15] The standard of proof is a civil standard, that is, on a balance of probabilities.

Scope of authority of a provincial court judge reviewing a decision of the Commissioner

[16] A review by a provincial judge under s. 13(3) of the *Act* is limited in scope. It is not a hearing on the merits of the complaint. Nor is the hearing an appeal of the Commissioner's decision. It is a review of the Commissioner's decision. I am limited to deciding whether the Commissioner erred in deciding to decline to take further action on the Complaint.

[17] The rationale for this limited scope of judicial review in LERA matters was fully explained by Chartier, PCJ as he then was, in *Rev. R.P.M., v. Cst. S.C., Cst. D.W.* LERA Complaint #5643 (February 12, 2004), and was more recently

summarized by Judge Rolston in *C.B. v. Cst. D.D. and P/Sgt. C.W.*, LERA Complaint #2020-47, as follows, at paragraph 9:

“In summary, LERA has a role that affords wide latitude to investigate and determine matters of police discipline. LERA has specialized knowledge in that regard, given that *The Act* specifically mandates police disciplinary matters as their one and only function. That being the case, the court’s role in reviewing the decisions of LERA should be limited to ensuring the principles of justice have been followed, as opposed to inserting its own views in the place of the Commissioner’s.”

Standard of Review to be applied to the Commissioner’s Decision

[18] The law as to the standard of review to be applied in review of administrative decisions has evolved.

[19] The standard of review used for review of LERA Commissioner decisions pursuant to s. 13(2) of the *Act* has long been the standard of reasonableness, rather than correctness (*Rev. R.P.M. v. Cst. S. C. and Cst. D.W.*, LERA Complaint #5643 (February 12, 2004) (Judge R. Chartier, as he then was) and *M.S. v. Cst. B. and Cst. D.* LERA Complaint #2004-172 (June 21, 2006) (Judge G. Joyal, as the then was).

[20] The Supreme Court of Canada determined in *R. v. Dunsmuir*, [2008] S.C.J. No. 9, that when it is an error of jurisdiction alleged, the standard of review is one of correctness, and when an alleged error is non-jurisdictional, the standard of review is one of reasonableness.

[21] The Supreme Court of Canada has recently spoken again on the standard of review, in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC

65. The principles in *Vavilov* have been recently applied to s. 13(2) review hearings under the *Act*, in *P.S. v. Constable S.T.*, LERA Complaint #2020-82 (Choy, J. January 28, 2022) and in *C.B. v. Cst. D.D. and P/Sgt. C.W.*, LERA Complaint 2020-47 (Rolston, J. February 28, 2022). Judges Choy and Rolston in those cases, concluded that the standard of reasonableness applies to reviews of decisions made by the Commissioner under s. 13(2) of the *Act*. I agree with their reasoning and conclusions.

What is the Standard of Reasonableness?

[22] A reasonableness review means that a reviewing judge has to consider the Commissioner's decision in light of its underlying rationale to ensure the decision was transparent, intelligible and justified (*Vavilov* at paragraph 15).

[23] The Supreme Court of Canada described the standard of reasonableness within the context of judicial review, in *Dunsmuir*, at paragraph 24, as follows:

“In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision - making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.”

How does the standard of review apply to factual findings made by the Commissioner?

[24] Judge Preston, in *B.J.P. v. Sgt. G.H., Cst. B.Z., and Sgt. G.M.*, LERA Complaint #2005-186 (November 14, 2008) succinctly described the judge's role in a s.13 review case as follows, at paragraph 39:

“Be that as it may, my function is not to pass judgment on the quality of the initial police investigation, but to decide whether the Commissioner erred in his conclusion. I cannot say that he assessed the complaint unreasonably. He drew a rational conclusion on the merits of the complaint. I may not have drawn the same conclusion. That is not the test here. As long as the Commissioner has properly assessed the complaint reasonably and has drawn a rational conclusion, and I have concluded that he has done so, I will not interfere with his decision.

[25] It is important to note that the Commissioner has the power in making his decision, to weigh evidence. Judge Preston commented on this in the *A.M.* decision at para 35, as follows:

“The Law Enforcement Review Act mandates the Commissioner to weigh all the evidence and to draw a conclusion on its sufficiency. This includes the weighing of disputed evidence in order to determine its sufficiency. If that were not the case, each time there was a contradiction on any fact in issue, the matter would have to proceed to hearing before a provincial judge.”

[26] So to be clear, my role is not to review the evidence and decide what conclusion I would have come to on the merits of the Complaint. Instead, in reviewing the Commissioner’s decision not to refer the Complaint to a hearing on the merits due to insufficiency of evidence, my role is limited to deciding whether that conclusion of the Commissioner is one of the rational conclusions that could be arrived at, based on a reasonable assessment of the evidence, and falls within a range of possible legally defensible outcomes, taking into account the Commissioner’s entitlement to weigh all the evidence.

Was the Commissioner's Decision Reasonable?

[27] This requires consideration of the Commissioner's decision reached after investigation of the Complaint, so I must consider:

- i) The Complainant's allegations;
- ii) The information obtained as a result of the investigation;
- iii) The Commissioner's decision; and
- iv) An analysis of the Commissioner's decision.

The Complainant's Allegations

[28] The Complainant, in his written Complaint alleges that:

- On October 18, 2021, at about 11:29 p.m., he was driving north bound on Main Street, near the entrance of the Disraeli Freeway.
- He had to stop his vehicle because he observed people fighting on the street.
- At first he thought the people were drunk and may be trying to help each other to walk.
- But then he noticed that one female was assaulting another female, by punching and kicking her.
- Traffic in the area was stopped at that point.
- He was going to get out and try to help, but he saw two young people get out of their vehicle, separate the people fighting and hold the aggressor.
- He called 911 and was waiting on the phone line.

- While he was on the phone line, he saw a police vehicle arrive, and says that is when “the problem started”.
- He said there was a record of his 911 call.
- He thought the officers in the police vehicle that had just arrived would jump out of their vehicle and intervene because the aggressor was being held on the ground by “other good Samaritans” and they needed help.
- The officer did not get out of his vehicle.
- So he (the Complainant) exited his truck and called to get that officer’s attention.
- He asked the officer if he was going to do anything, and he pointed to where the problem was.
- The officer was very calm, and was eating peanuts or sunflower seeds very casually.
- The windows of that police car were still closed.
- Then the officer lowered the window of the cruiser car and said to the Complainant “shut up and go back to your fucking car”.
- He said the officer’s comment shocked him, and in his experience with the police, he has never heard that kind of language used.
- At the same time, three additional police units arrived, and about 6 officers went straight to where the problem was.
- The subject officer was still in his vehicle and he drove from the north to the south bound lanes.
- He got close to another young officer and pointed at the first officer who was now out of his vehicle as the one who just verbally assaulted him.

- For the second time, the first officer said again, “I told you already, go back to your fucking car”. He said something else that the Complainant cannot recall.
- At that point he was afraid of being arrested and losing his job.
- That officer kept walking towards him but continued past him.
- He was afraid for his freedom and integrity because the other officer did not say anything.
- When that same officer casually walked by his truck the Complainant asked him for his badge number.
- The officer mumbled a response, but did not stop to speak with the Complainant.
- He did get the officer’s car number as 3062 and took a photo of the vehicle.
- He wants to know what he did wrong and if it is safe for him to contact the police in the future.
- He also said it is his belief that the officer responded as he did because of his strong Spanish accent.
- He also commented about past military experience of himself and his family members and says he recognized “aggressive, intimidated language by people with authority when they feel or want to be in control”.

The information obtained during the investigation

[29] On November 4, 2021, the LERA investigator contacted the Complainant to request some follow up information.

[30] The Complainant advised the investigator as follows:

- There were possibly two officers in the police cruiser that the subject officer was in.
- He was approximately 12 to 15 metres in distance from those officers.
- He described the subject officer as white, approximately 5'10" in height, with a thin build, in full police uniform, clean shaven and in his mid 30s.
- He told the 911 operator that the unit had arrived.
- He said he got out of his vehicle at the location because there were two people holding the aggressor in the incident and he saw a lady being kicked in the head.
- He was not successful in getting the badge number of the subject officer because the officer mumbled a response. The Complainant did not persist as he feared being arrested.
- He says he was "verbally assaulted" by the officer.
- He wants the officer to accept that he verbally assaulted him and did wrong by making the comment.
- He also wants to know what he did wrong on this occasion.
- He said he feels "betrayed and horrible as he has been abused in his country and it brought back very bad memories".
- He wants an apology.

[31] LERA requested reports that may identify the subject officer and received notification form WPS identifying the involved officers as Constable J.Z. and Constable S.C.

[32] The officers were interviewed on March 28, 2022 with their legal counsel present. It appears they were interviewed together and it is not delineated in the investigation as to which officer is giving the responses to questions, or if the responses are a combination of responses of both officers. It does appear that the subject officer that the Complainant is attributing the words and actions complained of is Cst. J.Z., and that Cst. S.C. was present and being trained by Cst. J.Z. at the time.

[33] The officers advised as follows:

- They do not know the Complainant but do recall an interaction with a male on October 18, 2021 at the location of Main Street near the Disraeli Bridge.
- The officers were assigned to District 3.
- At the time, Cst. J.Z. was training Cst. S.C.
- They were travelling northbound on Main Street, near James Avenue and observed two vehicles that were parked, one behind the other, in the number three lane near the curb.
- The doors of one of those two vehicles were all open and there was a lone female seated in the driver's seat of one of the vehicles.
- The officers parked their cruiser car behind a black or dark coloured vehicle and activated the amber directional lights.
- The officer spoke with the lone female in one of the vehicles.
- That female was on her cell phone.

- The officers asked her if she was on the phone to 911 and she said she was.
- The female told the officers that someone had jumped on top of her vehicle. Cst. J.Z. was trying to get further information from the female and determined that other police units from Division 11 had been dispatched to the location.
- The officers said they were not aware of any occurrences in the immediate area because they were on the District 3 radio channel and not on the District 11 radio channel where the incident was happening.
- There were two vehicles stopped in the median lane on Main Street near the subject location, and the officers had no clear view of the west side of Main Street.
- A male that had been operating a larger “utility truck” had stopped and the male was yelling at them, during the time they were trying to get further information from the female.
- The officers could not discern what the male was yelling and Cst. J.Z. motioned for the male to “hang on” until they had a chance to identify what was happening in the area.
- The male continued to yell at them. They could still not hear what he was saying. The male appeared as though he was angry and was standing in traffic.
- At the time, there was traffic and radio noise, which hindered the officers from getting further information from the subject female and from determining what was actually happening in the immediate area.
- Cst. J.Z. motioned to the subject male to stay back, but that male continued walking toward the officers.

- The subject male entered his vehicle and left the scene for a short time. The officers were then able to observe what was going on the west side of Main St and to intervene accordingly.
- That is when the officers saw four males holding down another person and that is when the female in the vehicle they had been talking to identified the individuals from the car in front of her that had jumped on her car.
- After they saw what was going on, they attended to where the males were holding down another person. As they approached, 3 or 4 Division 11 cars attended at the same time. Those Division 11 units stopped and were able to intervene before Csts. J.Z. and S.C. could because they were in closer proximity.
- Division 11 was looking after the call for service.
- The male that had been yelling at them returned in his truck driving south bound on Main St, stopped his truck, got out of his truck and was walking toward the two officers and yelling. They could not hear what he was saying. Cst. J.Z. told him to get lost and that was the end of it.
- The officers said they were not able to observe the disturbance until the male had moved his vehicle.
- Cst. J.Z. said he addressed the male in a loud voice. He does not recall verbatim what he said but suggested he conveyed to the male that he did not want him to intervene and to stay away.
- Cst. J.Z. does not recall his exact word usage. If he used "forceful language", he did so to gain the subject male's immediate attention and he was not certain of the male's objective.

- Cst. J.Z. said he did not recall being in the cruiser car when the male approached, or using profanity to address him. If he did so it was to request him to stay back and not obstruct or interfere in an ongoing police matter. He said the male appeared angry and was yelling, and parked his vehicle in traffic and approached a second time.
- Cst. J.Z. said he was unaware of the male's intention and the general scene presented some mayhem. The male's angry demeanour did not suggest he wanted to provide assistance.

[34] The officers were specifically asked about the Complainant's allegation that Cst J.Z. told him to "shut up and go back to your fucking car". Cst J.Z. said if he used forceful language it was to request the male to stay back and not involve himself in what was going on and to get his immediate attention as the male was yelling at them and appeared angry.

[35] When asked if he again said "I told you already, go back to your fucking car" as the male approached the officer a second time, the officer says again he may have used forceful language. The male returned again after being told to leave and parked his vehicle in traffic and got out of his vehicle again in traffic. He appeared angry. The officer wanted to get the male's immediate attention as there was a lot going on at the time and he did not know what the male's intentions were.

[36] The officers said if they knew the male was trying to assist by pointing out what was happening it might have been different. But they did not know what was going on and the male's demeanor did not suggest he wanted to help them

[37] The officers provided a diagram of the positions of the parties concerned.

The Commissioner's Decision and Reasons for Decision

[38] In the decision letter addressed to the Complainant, dated April 5, 2022, the Commissioner stated that it is not his role to make any final and binding decisions as to what events did or did not occur. If those kind of decisions needed to be made, that would be done by a provincial judge. The Commissioner stated that his role is to determine whether section 13(1) of the *Act* applies to the Complaint and the information uncovered as a result of the investigation.

[39] The Commissioner set out s. 13(1) in his decision which says:

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.

[40] The Commissioner in the decision letter also advised that on a review of matters, he is permitted to make his decision based on a limited assessment of credibility and disputed evidence, but without making any definitive findings of law or fact. He is to consider the information available to him and he is permitted, in a

limited way, to determine if there is evidence of an abuse of authority, and if that evidence is sufficient to justify taking further action.

[41] The Commissioner noted that the Complaint alleged a disciplinary default within the scope of the *Act*, being a violation of section 29(a)(iii), namely using oppressive conduct or language.

[42] After a review of the investigation, the Commissioner wrote:

“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 taking further action and the file is closed”.

Analysis of the Commissioner’s Decision

[43] When the Commissioner exercises his jurisdiction pursuant to, s. 13(1)(c) of the *Act* and finds there was “insufficient evidence supporting the complaint to justify a public hearing, he has reference to the wording of the *Act*, in particular s. 29(a) which references “abuse of authority”. By coming to the decision he did, he has necessarily assessed there is insufficient evidence of “abuse of authority” to refer the matter to a further hearing.

[44] Even though an officer may use oppressive conduct or language as referenced in s. 29(a)(iii) of the *Act*, it will only be a disciplinary default if such conduct or language is an “abuse of authority”. Judge Joyal (as he then was) explained what is

necessary to make oppressive conduct or language an “abuse of authority” in *A.C.*

v. Cst. G.S. LERA Complaint #6100 (February 20, 2007):

“Read contextually in the entirety of the Act, it would seem that the legislators have, with section 29(a), recognized a police officer’s “abuse of authority” as one category of behaviour which, along with the other sorts of behaviour and conduct set out in section 29(b)-(i), is deserving of a disciplinary default. It is only the cases where a police officer’s behaviour or conduct can be concluded to be abusive of his authority that are sanctionable pursuant to section 29(a). Default is not to be found for absolutely any and all manifestations of the impunable behavior set out in section 29(a)(i) – (vii). Each case will depend upon its own facts.” (paragraph. 51.)

And, at para. 52:

“...Police conduct which can be properly found as an “abuse of authority” is that exploitative conduct which, even after an examination of the factual context of a given case, cannot be viewed as consistent with a reasonable police officer’s good faith intention to lawfully perform his duties and uphold the public trust...”

And, at para. 53

“...in giving more clear meaning to the idea of police “abuse of authority”, this Court’s future decisions...must take care to not encourage hearings pursuant to section 29(a) for every example of sub-par police behaviour...”

[45] All of this means in plain language that even if an officer may have, or did, use oppressive or abusive conduct or language, such action is not necessarily a disciplinary default. It will only be a disciplinary default if it rose to the level of being an abuse of authority. The evidence about the totality of the circumstances in which the conduct and/or language would be considered in an assessment as to whether the use of such conduct and/or language was an abuse of authority.

[46] So when the Commissioner made his decision under subsection 13(1)(c) to decline to take further action, he had to take the following approach (set out by Judge Choy in *P.S. and Cst. S.T.*, LERA Complaint #2020-82, at para.32):

1. Decide if there was evidence of the types of behavior set out in s. 29(a)(i)-(vii) – one of which is using oppressive or abusive conduct or language;
2. If so, consider whether there was evidence that such behaviour was exploitative, lacked good faith, or otherwise could rise to the level of abuse of authority, and then
3. Decide if that evidence may be sufficient to justify a public hearing.

[47] The reasons the Commissioner set out in the decision letter for his finding that the evidence supporting the Complaint was insufficient to justify referring the matter to a public hearing are:

- At the time of the incident, the officers were surrounded by busy traffic and radio noise, which was hindering them from gathering further information from the female in the driver's seat of the vehicle, and what was going on in the immediate area. The officers were trying to deal with a female who was on the phone with 911 who had been involved in an incident in which an unknown person jumped on top of her vehicle while she was driving.
- Although Cst. J.Z. motioned to the Complainant to stay back and stay away, the Complainant continued walking toward the officer.
- Cst. J.Z. does not recall what words he used but if he did use "forceful language", it was in order to gain the Complainant's immediate attention, as Cst. J.Z. was not certain of the Complainant's intentions or objectives.
- When he spoke to the Complainant, Cst. J.Z. said he requested the Complainant stay back and not obstruct or interfere in an ongoing police matter. The officer said the Complainant appeared angry, was

yelling and had parked his vehicle initially in a position where it obstructed their view of the incident that was going on.

- The Commissioner commented that the Complainant agreed he had in fact parked his vehicle in a position consistent with what the officers said, and the position of where his vehicle was initially parked may have obstructed the officers' view of the disturbance. Once the Complainant moved his vehicle, they could see the disturbance that was going on across the street.
- The Commissioner noted that Cst. J.Z. indicated he was unaware of the intentions of the Complainant and the general scene of occurrence presented a degree of mayhem, and that the Complainant's angry demeanor did not suggest he wanted to provide assistance.

[48] The Commissioner exercised his jurisdiction to find that there was not sufficient evidence to substantiate an "abuse of authority" in this case, so as to justify referring the Complaint to a public hearing, and to close the file pursuant to s. 13(1)(c) of the *Act*.

[49] It is well recognized that the LERA Commissioner has the expertise to assess the merit of a complaint made by a citizen against the police (*A.M. and Constable D.R., Constable G.P., Constable J.M. and Det. /Sgt. R.L.* LERA Complaint #2005/30 at para. 16), and the *Vavilov* decision has confirmed that a reviewing court is to owe deference to the administrative decision makers (*Vavilov*, para. 13).

[50] The Complainant asks me to come to a different conclusion than the Commissioner did. That is not my function on a LERA review. My function on

review is to decide if the Commissioner came to one of the reasonable or rational conclusions that could reasonably be drawn on the evidence.

[51] The Complainant did not provide any basis upon which I could conclude that the decision reached by the Commissioner was one that could not reasonably be drawn on the facts of this case. The Complainant argued for a different decision. At the review hearing, the Complainant asserted his version of the facts was accurate where there were differences in the evidence between his and the officers; he stressed his good intentions and civic responsibility to stop and to be helpful to the police; and he expressed his shock and upset at being spoken to by police in the manner he complained he was. He did not put forward any arguments as to why the alleged actions of the officers necessarily rose to the level of an abuse of authority.

[52] The Commissioner's reasons set out all of the evidence in the Complaint and the information drawn from the investigation. It is clear from the way the Commissioner set out his analysis and conclusion in the decision letter that since there was mayhem going on, and noise from traffic and the police radio, while the officers were trying to get information from the female in the car, and the officers were focused on that task, they were trying to prevent the Complainant, who seemed angry and advancing toward them and whose intentions they did not know, from interfering. In those circumstances, it seems clear that the Commissioner without having to find what words were or were not used, concluded that whatever was said

and the way in which the officers dealt with the Complainant did not rise to the level of an abuse of process.

[53] I am satisfied that the reasons of the Commissioner permit me, as the reviewing judge, to understand why he made the decision he did and permit me to determine if the decision is within the range of acceptable outcomes.

[54] I am satisfied in this case that the Commissioner's reasons show that he reviewed all of the evidence of the investigation, conducted a limited weighing of the evidence and determined the evidence was insufficient to justify a public hearing. It was available to the Commissioner to decide on the information he had that the evidence was insufficient to amount to an abuse of authority and to decline to take further action on the Complaint. The decision falls within a range of possible outcomes that could reasonably be drawn on the facts of the case. Despite the conclusion I may have reached, the issue on review is whether the Commissioner's decision meets the reasonableness standard. I find that it does.

[55] The Commissioner complied with the requirement of acting with justification, transparency and intelligibility by setting out his reasons in the decision letter of April 5, 2022 to the Complainant. I will not interfere with the Commissioner's decision.

CONCLUSION

[56] For the reasons stated above, the Complainant's application is dismissed.

[57] Pursuant to s.13 (4.1)(b) of the *Act*, the ban on publication of the Respondents' names shall remain in place.



Judge Carlson