

**IN THE MATTER OF:**

*The Law Enforcement Review Act*  
Complaint #2025/31

**AND IN THE MATTER OF:**

An Application pursuant to Section 13 of  
*The Law Enforcement Review Act*, R.S.M.  
1987, c. L75

**BETWEEN:**

**H.K.**

) H.K. in person,  
Applicant ) unrepresented by counsel

- and -

**Constable J.F. and Constable J.B.**

) Paul McKenna  
Respondents ) for the Respondents

)  
)  
) Hearing: January 6, 2026

) Decision: March 19, 2026

NOTE: These reasons are subject to a ban on publication of the Respondents' names pursuant to s. 13 (4.1)(b) of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75.

**GARRECK PJ.**

[1] This is the complainant's application for judicial review of the decision of the Commissioner of the Law Enforcement Review Agency (LERA), wherein he declined to take further action pursuant to s. 13(1)(c) of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75 (the *Act*), on Complaint #2025/31, received June 15, 2025.

[2] The complaint alleged two officers from the Winnipeg Police Service (WPS) committed disciplinary defaults under s. 29(a)(iv) of the *Act*, abuse of authority by being discourteous or uncivil, during an interaction on April 10, 2025.

[3] The complainant and the respondents acknowledged the applicable legal principles on a judicial review under s. 13(3) of the *Act*. I reviewed the cases provided, along with the oral submissions of the parties, the written brief of the respondent and the LERA file.

[4] The LERA file includes the written complaint, transcripts of the statements from the three civilian witnesses and the two officers, and materials from the WPS. I will provide a brief summary of the complaint, which is found at pages 1 – 3 of the LERA file.

[5] On April 10, 2025, the complainant came into contact with the respondents on Henderson Hwy while they were responding to a call for service regarding a suicidal male laying in the roadway. After a brief interaction, the male was detained by the officers and transported to the Main Street Project, pursuant to *The Intoxicated Persons Detention Act (IPDA)*, R.S.M. 1987, c. I90.

[6] The complainant, her husband and her friend (the civilian witnesses), noticed a male on the ground in the southbound lanes of Henderson Hwy and stopped to assist. The male said he wanted to kill himself, and the complainant helped de-escalate while another bystander was on the phone with 911.

[7] The two officers arrived and approached the male who was intoxicated. The complainant spoke to the officers and provided details about what she learned, including the male was still suicidal. She asked the officers questions, including why the male was handcuffed, if he would receive medical assistance, where they were taking him, and if she could speak to him as he requested.

[8] The complainant alleges Cst. J.B. raised his voice and said he did not know where they were taking the male. She asked for his badge number and alleged the officer moved his hand to cover the badge number on his shoulder, saying he did not need to tell her. She said Cst. J.B. then refused to speak to her, treating her as an annoyance. While she attempted to look at his shoulder, she said he folded the fabric of his sleeve to cover the badge number and ignored her requests to confirm the badge number.

[9] The complainant also said while both officers were seated in the cruiser car, they appeared to say something and laughed while looking directly at her. She said she stepped in front of the cruiser car to take a picture of the license plate and asked where the officers were taking the male. She said the officers ignored her as they drove off with the male.

[10] The written complaint summarized the issues: the attitude demonstrated by the officers towards the male, how the officers treated the complainant, and the deliberate action taken by Cst. J.B. to cover up his badge number.

[11] The Commissioner's 15-page report, dated October 3, 2025, includes a ten-page summary of the evidence. From the report, it is clear the Commissioner reviewed the entire LERA file, including the complaint, the civilian witness statements, the officers' statements and the documents received from WPS.

[12] The Commissioner correctly stated his role, which permits him to make decisions based on a limited assessment of credibility and disputed evidence, but without making any definitive findings of fact or law, he must 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.

[13] On a review under s. 13(3), the complainant has the onus to satisfy the Court the Commissioner made an error in reaching his decision. The standard of review is one of reasonableness and the law explaining the standard of reasonableness is included in the respondent's brief and case book.

[14] The standard of reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process, but also with whether it falls within a range of possible, acceptable outcomes which are defensible on the facts and the law.

[15] The complainant argued the Commissioner erred in preferring evidence of the officers over evidence of the three civilian witnesses, without reason or justification.

She argued the Commissioner mischaracterized certain aspects of her evidence and of the officers' evidence, which led to errors in the conclusion drawn based on those mischaracterizations.

[16] She argued the Commissioner made certain material errors in his summary of the evidence, particularly about how the officer covered his badge and why the officer disengaged with her. She argued the Commissioner placed undue weight on irrelevant and prejudicial information to justify his decision.

[17] She argued the civilian evidence should have been accepted as equally or more reliable than the officers' evidence. She argued the inconsistencies in the evidence should be sufficient justification to have a public hearing.

[18] The complainant noted the civilian witnesses were interviewed separately, whereas the officers were interviewed together, months after the incident. She argued this impacts the credibility and reliability of their evidence, which impacts the assessment of the evidence, and should have resulted in the Commissioner placing less weight on the officers' evidence.

[19] She argued the Commissioner's report does not explain what evidence he actually relied on, it does not say if he preferred the officers' evidence, or if he did, it does not say why he preferred the officers' evidence over the three civilian witnesses. As a result, she argued the Commissioner's decision is not justifiable, is not intelligible, and lacks transparency.

[20] The role of the Court on a judicial review, as stated in many previous LERA cases, is to determine if the Commissioner assessed the evidence reasonably. In other words, did the Commissioner draw a reasonable conclusion, that is one that could have been drawn on the facts of this case. It is not the Court's role to decide if I or others, including the complainant, might have drawn a different or equally supportable conclusion.

[21] The screening power of the Commissioner recognizes not all complaints justify a public hearing. If the Commissioner did not have the limited, but significant, power to weigh all the evidence, then each and every time any controversial issue or any credibility issue arose, the Commissioner would be obliged to refer the matter to a Provincial Court Judge.

[22] After the Commissioner's review, he decided there was insufficient evidence of abuse of authority to justify a public hearing.

[23] Judge G. Joyal, (as he then was), considered the significance of the words "abuse of authority" as used in s. 29(a), and noted:

[51] ... 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 behaviour set out in section 29(a)(i)-(vii). Each case will depend upon its own facts.

[52] On a contextual reading of the Act and the consideration of its purposes, one can conclude that an "abuse of authority" connotes conduct of an exploitative character. The exploitative potential flows from an officer's position of authority which permits the impugned conduct to have an inappropriately and unjustifiably controlling, intimidating or inhibiting effect on a given complainant in the context of a particular fact situation. 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. ...

(LERA Complaint #6100, February 20, 2007  
Tab 16 respondent’s case brief)

[24] Turning to the Commissioner’s report at page 70. After review of the written complaint and the evidence, the Commissioner addressed the complaint of discourteous and uncivil conduct toward the complainant during the officers’ interaction with the male.

[25] The Commissioner reviewed the conflicting evidence in the file, then addressed and responded to the specific complaints about handcuffing, searching and not removing the handcuffs. His report and decision make it clear he accepted the officers’ actions were appropriate under the *IPDA*. (Agency file, bottom of p. 70 to 71)

[26] The Commissioner referred to evidence specific to the complaint about the officers’ conduct when dealing with the male. He noted the complainant said the male had calmed down before police officers arrived. He pointed to evidence of the male’s actions a few minutes before police arrival, that showed the male was a danger to himself or other people who were preventing him from jumping into traffic. He referred to the officers’ authority and the procedure under the *IPDA*, to explain why he accepted the officers’ actions were in accordance with the *IPDA*.

[27] At page 71, the Commissioner considered the complaint that Cst. J.B. covered his badge with his hand, his shirt sleeve and refused to provide his badge number. The Commissioner summarized the discrepancies between the officer's denial that he covered the badge and the civilians' assertion he did cover the badge.

[28] The Commissioner noted the two civilian witnesses supported the complainant's position the badge was covered up. He noted the officer said he pointed to the badge when asked for the number. The Commissioner noted the officer demonstrated his inability to cover the badge using the sleeve of his short sleeve shirt worn during the interview.

[29] The Commissioner referred to the complaint that the officers refused to answer questions and ignored the complainant. He reviewed the officers' explanations about why they ignored the complainant in order to deal with the male, and why they would not engage with the complainant any further based on her repeated questions, and because she was no longer relevant to, or involved in, the detention. He noted both officers denied laughing at the complainant. (Agency file, p.71-72)

[30] The Commissioner identified the areas of dispute in the evidence being - whether Cst. J.B. covered his badge and refused to answer the complainant's questions. Having referred to the officer's explanations, he took note of the complainant's statement to LERA, that said she had obtained the officer's badge

number while the male was being handcuffed and had addressed the officer by his badge number, confirming she had already identified the officer.

[31] After reviewing the evidence, and identifying the areas in dispute, the Commissioner set out his conclusion at p. 72 para. 6. It is clear, the Commissioner was satisfied the detention, handcuffing, and search of the male appeared consistent in the officers' version of events and did not coincide with the complainant's allegations.

[32] He went on to say, the officers contend the badge was not covered up, and this is consistent in their statements and with their actions in the detention of the male.

[33] The Commissioner went on to say, based on the information reviewed, which included his limited weighing of the evidence, there was insufficient evidence of abuse of authority to justify a public hearing, which is why he declined to take further action.

[34] After careful review of the evidence and the Commissioner's report, I am satisfied he considered all the evidence, he identified the issues, he recognized the discrepancies between the evidence of the witnesses, and he engaged in a limited assessment of the credibility and disputed evidence, without drawing any final conclusions. His review and reasons make it clear he was not satisfied there was sufficient evidence of abuse of authority to justify referral to a public hearing, therefore he declined to take any further action.

[35] I am satisfied the Commissioner carefully assessed the evidence. I am not satisfied he mischaracterized or misapprehended the evidence. I am not satisfied his characterization of the evidence led to an unreasonable or unjustified decision.

[36] I am satisfied the decision is justifiable, and in the context of all the evidence, the reasons are intelligible and transparent. I find the decision falls within the range of possible, acceptable outcomes which are defensible on the facts in this case and the law.

[37] As a result, I am not persuaded the Commissioner erred, and the complaint will not be referred back to the Commissioner for any further action.

“Original Signed By”

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Judge W. Garreck