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Blair v. Soltys

Between
Sandra Blair, complainant, and
Lloyd Soltys, respondent, and
The Commissioner of the Law Enforcement Review, third party

[1999] M.J. No. 470
Docket: 98.02.317 CI

Manitoba Court of Queen's Bench
Brandon Centre
Mykle J.

November 4, 1999.
(9 paras.)

Counsel:

No one appeared for the complainant.
J. Janzen, for the defendant.
D. Guenette, for the third party.

¶ 1 **MYKLE J.**— The Respondent appeals under s. 31 of the Law Enforcement Review Act, R.S.M. 1987, c. L75 ('the Act') from a decision of Giesbrecht, A.C.P. J. dated November 19, 1998.

¶ 2 The factual background is not in dispute. On October 27, 1996, the Complainant Sandra Blair was arrested by the Respondent Lloyd Soltys. At the material time, the Complainant was a resident of the City of Brandon and the Respondent was a police officer as a member of the Brandon Police Service.

¶ 3 On October 28, 1996, the Complainant filed a complaint against the conduct of the Respondent under the provisions of the Act. On March 5, 1997, the Complainant entered a plea of guilty to a charge of assaulting a peace officer, in respect of the incident which resulted in the original arrest.

¶ 4 The Commissioner of the Law Enforcement Review Agency conducted an investigation into the complaint, and ultimately referred the complaint to a hearing in the Provincial Court, which was scheduled for July 17, 1998.

¶ 5 On April 27, 1998 the Respondent resigned his position with the Brandon Police Service, effective May 22, 1998.

¶ 6 As a consequence of his resignation and his no longer being a member of the Brandon Police Service, the Respondent took the position that there is no jurisdiction to conduct a hearing under the provisions of the Act, the Act being exclusively disciplinary in nature. This issue was argued before the learned provincial judge, who held that the Provincial Court in fact had jurisdiction to conduct a hearing under the authority of the Act. It is from this decision that the Respondent appeals.

¶ 7 In thoughtful and well-considered reasons, the learned judge saw the scope and purpose of the Act as being much wider than simply being a disciplinary vehicle. As he observes, at p. 4 of his reasons:

The Law Enforcement Review Act is more than a disciplinary statute. Police Officers are different from employees of other industries generally. They have special powers, such as the power of arrest. They are in a unique position. As noted earlier, lawmakers have wrestled for years with the problem of trying to find a balance between an open and fair system for responding to complaints from citizens about possible police abuses on the one hand, while at the same time not hampering the vital work the police do. This probably explains why legislation differs so much from province to province. In Manitoba the L.E.R.A. procedure is a complaint driven process. That is, a citizen who is offended by a police procedure files a complaint that can result in discipline to an individual officer, but it can also result in recommendations for systemic changes. The Judge is to submit a report to the Minister of Justice - not simply to the Chief of Police. The report can include broad recommendations for change. The complainant, the police officer, the police service and the province all have an interest. From the individual police officer's perspective, the Act may appear to be purely disciplinary in nature, but it has a much broader public purpose as well. It is designed to promote both respect for the police and respect for the individual.

¶ 8 I agree with both the conclusions and the reasoning of the learned trial judge, and adopt his reasons as my own.

¶ 9 In the result, the appeal will be dismissed.

MYKLE J.