

IN THE MATTER OF: Law Enforcement Review Act Complaint #3119  
AND IN THE MATTER OF: An Application pursuant to S. 13 of The Law Enforcement Review Act R.S.M. 1987, c. L75

BETWEEN:

B. P. M.

Complainant/Appellant,

- and -

CONSTABLE K. M,  
CONSTABLE J. Y, } and  
CONSTABLE J. D,

Respondents.

REASONS FOR JUDGMENT

The Complainant has applied under The Law Enforcement Review Act for a review of the Commissioner's decision in declining to take further action on the above noted complaint.

The Complainant wrote letters to the Commissioner dated August 29th, 1996, September 6th, 1996, September 19th, 1996 and November 25th, 1996 from which the Commissioner extracted five areas of complaint. The Commissioner in his letter of June 23rd, 1997 to the Complainant outlined the areas of complaint as follows:

1. The complainant was arrested and charged with a criminal offence without reasonable and probable grounds;

2. The complainant was discriminated against by the police officers involved based on the complainant's race, family status or political beliefs;
3. The police officers involved made false statements;
4. The police officers improperly disclosed information;
5. The complainants privacy was violated.

The Complainant appeared at the hearing without counsel. He agreed that the foregoing five points were the basis of his complaint. The purpose of the hearing was explained at length to the Complainant. He decided early in the hearing to confine his submission to his twelve page written submission which was filed as Exhibit 1 in this proceeding. However at the request and urging of the Court, the Complainant gave a very lengthy submission most of which was irrelevant to the proceedings. The Complainant gave an explanation of his aboriginal beliefs and how they should apply to this proceeding as well as a lengthy and repetitive account of his personal history and background.

The function of a Provincial Judge in reviewing the Commissioners decision has been considered recently in the Manitoba Court of Queen's Bench in the case of Wagner v. Williams 103 M.R. (2 d.) 141, a decision of Madam Justice Beard. This decision was affirmed by

The Manitoba Court of Appeal in 110 M.R. (2 d.) 25. From that decision it is clear that a Provincial Judge must consider the following points in reviewing the decision of the Commissioner:

- a) Did the Commissioner act within the bounds of the jurisdiction conferred upon him by the Act;
- b) Did the Commissioner follow the rules of procedural fairness;
- c) That the decision was not patently unreasonable or irrational;
- d) Did the Commissioner act in bad faith in refusing to take further action.

Section 13 (4) of the Act places the onus on the Complainant to show that the Commissioner erred in declining to take further action. A reading of the Commissioner's file indicates that he acted within the bounds of his jurisdiction, that there was not any procedural unfairness on his part or his staff in arriving at a decision not to take further action. There is nothing to show that the Commissioner's decision was patently unreasonable or irrational. On the contrary, the Commissioner's decision appears to be the only one which the investigation into the complaint allows. Furthermore there is nothing to show bias against the Complainant by the Commissioner or his staff.

While a Provincial Judge can not substitute his decision for that of the Commissioner, the file indicates that the Commissioner's decision was clearly the correct one. The Respondents did nothing more than investigate a complaint made by a female with whom the Complainant had formed a relationship.

The Complainant has failed to satisfy the onus upon him and the Commissioner's decision is upheld and the Complainant's application to compel the Commissioner to take further action is dismissed.

At the outset, I made an Order of non-publication as provided in Section 13 (4.1) of the Act. Pursuant to Subsection (b) of that section, I order that the ban on publication of the Respondents' names be continued.

October 10, 1997

  
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Provincial Judge