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

BETWEEN:

G T

Complainant,

- and -

PATROL SERGEANT M N , #

Respondent.

REASONS FOR DECISION, delivered by The Honourable Judge Smith, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 19th day of November, 2001.

APPEARANCES:

MR. G. T , in person

MR. D. GUENETTE, for the Commissioner

MR. P. MCKENNA, for the Respondent

EXCERPT FROM NOVEMBER 19, 2001

THE COURT:. The applicant, Mr. G T applies under Section 13(2) of the Law Enforcement Review Act for a review of the Commissioner's decision in relation to L.E.R.A. complaint number 5039. The Commissioner decided to dismiss Mr. T complaint pursuant to Section 13(1)(c) of that Act on the basis of insufficient evidence.

The burden of proof in this matter lies upon Mr. T on a balance of probabilities. Under the section, the hearing is on the record. I should note that the Commissioner's file will be Exhibit 1 in these proceedings.

EXHIBIT 1: COMMISSIONER'S FILE

THE COURT:. I've reviewed Exhibit 1 and heard submissions from the parties related to the application. I've heard submissions from Mr. T who appears in person, and from Mr. McKenna on behalf of the named respondent Sgt. N and from Mr. Guenette only in respect of jurisdiction on behalf of the Commissioner.

Commissioner Wright has also been present at these proceedings and gave some helpful guidance to the court in relation to the file in a certain matter.

The complaint concerns an incident that Mr. T a taxi driver, said occurred when he was stopped by the police in relation to his manner of driving.

In his original complaint letter and in his submissions today, Mr. T complains of the actions of two officers; one whose identity is known to be Sergeant N and a second whose identity is apparently ascertainable but not disclosed anywhere on the file. The file appears to substantiate that no steps were taken by L.E.R.A. investigators to ascertain who he is or what relevant

information he might have concerning this matter.

In his written documentation and in his oral submissions, much of Mr. T complaints centres on the process of the investigation in relation to the lack of steps taken concerning this second officer.

I note that the formal complaint document, or at least the cover page of it, appears to only identify Sergeant N as the respondent, but it is not clear when that complaint document was filled out and whether Sergeant N name was on it when Mr. T signed that document. Moreover, the complaint letter itself is an integral part of the complaint document and set out the fact that two officers, in different vehicles, were on the scene. Moreover, both of these officers had dealings with Mr. T or his passenger. The complaint letter, an integral part of the complaint document, seems to me to be making complaints about both officers.

In my opinion, the investigation by L.E.R.A. was flawed in this case. The Commissioner ought to have recognized either that T was complaining about both officers and conducted the investigation appropriately. Even if that were not the case, and the complaint was solely concerning Sergeant N conduct, the Commissioner, in my view, or the investigators of L.E.R.A. ought to have made efforts to investigate the matter further by contacting the second officer.

I recognize that much trust is to be placed in the experienced L.E.R.A. investigators and in the special expertise of the Commissioner and it is not appropriate for the court to be second-guessing every investigative determination. Nevertheless, in the circumstances of this case, I find the apparent conclusion that nothing useful could be gained from learning the identify of this officer and taking appropriate steps to interview him was clearly

unreasonable.

This is a case where credibility is important. The officer in question may have very useful and relevant information or evidence concerning the complaint about Sergeant N . Further, it appears there was a complaint made about this unknown officer's conduct in relation to advising the passenger to leave without paying his fare.

The failure to take steps in relation to the second officer has left the applicant, Mr. T , with an apprehension or feeling that something is being hidden deliberately.

While I do not find any basis for that allegation, I find the error made by the Commissioner in not requiring his staff to pursue this avenue before making this decision was significant and inappropriate.

I'm going to direct that the matter be referred back to the Law Enforcement Review Agency for a further determination and investigation. Firstly to determine if the complaint was made or can now be entertained against the second officer, and to proceed lawfully in relation to such a complaint. I suppose having regard to the information that Mr. T has referred us to today as well concerning the Taxi Cab Act. And secondly in relation to the complaint against Sergeant N , to take steps to interview the -- to ascertain the identity of and interview the second officer.

I hope it should be clear that I'm not expressing any opinion on the ultimate determination that may be made in the case, but I'm simply asking that further investigation be made.

That's the decision of the court in this case or in the review.

(EXCERPT CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **KIMBERLEY M. POHORILY**, hereby certify that the foregoing pages of printed matter, numbered 1 to 3, are a true and accurate transcript of the proceedings recorded by a sound recording device that has been approved by the Attorney-General and operated by court clerk/monitor, Stephanie Schnell, and has been transcribed by me to the best of my skill and ability.

Kim Pohorily
COURT TRANSCRIBER

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