

IN THE MATTER OF: The Law Enforcement Review Act
Complaint #5216

AND IN THE MATTER OF:

BETWEEN:

G.,

Complainant,

- and -

CONSTABLE K.,

Respondent.

THE HONOURABLE JUDGE ROBERT KOPSTEIN

The hearing before a judge

Pursuant to the provisions of the Law Enforcement Review Act, C.C.S.M. c. L 75, the Commissioner appointed thereunder, being unable to resolve the complaint under section 15 or 16 of the Act, referred the complaint to a Provincial Judge as he is empowered to do by virtue of section 17 thereof. The complaint referred relates to an incident alleged to have occurred on May 31, 2000 at the City of Winnipeg.

The matter came on before me for hearing the 26th day of June, 2002 at 10:00 A.M. at Winnipeg.

The Respondent was not in attendance. It appears from the record of correspondence furnished to me that the Respondent had resigned from the Winnipeg Police Service in or about November of 2000 and had moved to the Province of British Columbia at some point following the date of the alleged incident. A review of the correspondence reveals that:

(a) On June 20, 2001, a judicial assistant of the Manitoba Provincial Court, charged with the responsibility of scheduling a hearing date, communicated, inter alia, with the respondent by registered mail advising her that a hearing date must be set, and requesting the Respondent to advise of any dates between October 2001 and January 2002 that would not be suitable.

(b) By August 20, 2001, the said judicial assistant received no response from the Respondent. The assistant, therefore, scheduled the matter for hearing for November 22, 2001 at 10:00 A.M. in Courtroom 408 of the Law Courts Building, 408 York Avenue, in Winnipeg.

(c) By letter dated October 2, 2001, she notified the Complainant, and by registered mail, copied the Respondent, that a hearing date had been set for November 22, 2001.

(d) By October 19, 2001, the Court was notified by counsel in Winnipeg that he had been retained to act on behalf of the Respondent. The letter requested an adjournment of the hearing to a date in the summer of 2002 so as to enable the Respondent to attend Winnipeg for the hearing during her vacation.

(e) It is apparent that the adjournment request was granted, since, by letter dated December 10, 2001, the judicial assistant advised the parties that the matter was scheduled for hearing on June 26, 2002 at 10:00 a.m. and 2:00 p.m. in courtroom 316 at the said Law Courts Building.

(f) On June 25, 2002, late in the afternoon, an e-mail message addressed to the said judicial assistant, and signed "C. K.", advised that the latter would not be attending the hearing because, as she is no longer employed by Winnipeg Police

Service, neither her travel to Winnipeg or her legal representation would be funded.

(g) At the opening of the hearing on June 26, 2002, counsel acting on behalf of The Winnipeg Police Association advised that although he had written “a couple of letters” to the respondent, she had not responded. He advised that the Winnipeg Police Association had taken the position that it would not be providing the respondent with counsel.

The absence of the Respondent

Section 24 (9) of the Act, permits a hearing to proceed in the absence of the respondent where “the respondent absconds, or refuses or neglects without good and sufficient cause to attend the hearing.”

Upon the initial issue arising out of Section 24 (9) of the Act, I ruled, at the outset, that the hearing should proceed in the absence of the respondent. The complainant is entitled to have the matter determined. The hearing date was more than two years after the alleged event. I note from the Commissioner’s correspondence filed with me that the respondent did not admit the disciplinary default. Counsel for the Winnipeg Police Association advised that the respondent was not responsive to his correspondence to her.

While I understand that there is cost involved in traveling to Winnipeg from Victoria, it appears the respondent is employed as a peace officer, and earns a salary. Her own record is at stake. I am not satisfied that her refusal to attend the hearing because of the cost, is good and sufficient cause for refusing to attend. Nor, in my opinion, is the refusal of the Winnipeg Police Association to represent her good and sufficient cause to refuse. Had she attended, she could have stated her side of the story, without the assistance of counsel. Represented by counsel, or not, she has made it impossible for me to consider her version of the incident, if, indeed, it differs from that of the complainant. I can rule only upon the evidence that is before me.

That being said, it is surprising and disappointing to me that the Winnipeg Police Association, at the last moment, apparently, abandoned the respondent, leaving her to fend for herself. She was, surely, a member of that Association at the time of the alleged disciplinary default. Admittedly, I

am not aware of the circumstances surrounding the Association's decision not to assist her at the hearing. The Association's conduct in refusing to assist her is puzzling.

The Evidence

The evidence before me establishes that on apprehending the complainant, a pedestrian, for crossing at an intersection against a Don't Walk sign the Respondent officer was overly officious and caused the complainant uncalled-for and unnecessary public embarrassment. She issued commands and made threats that, if not beyond her authority as a peace officer, were clearly excessive and unwarranted.

The Complainant was crossing the street. Seen to do so by the respondent officer, she ordered him to stop. He obeyed her order. As though he were a child, and she his parent, she ordered him to return to the other side of the street and cross properly, or get a ticket. On his way to a dentist's appointment nearby, in pain with a broken tooth he refused to go back as she commanded.

He provided her with documents of identification, requesting that she give him a ticket and let him go. She threatened to call for a police car and have him arrested. He left and went into his dentist's office. Less than half an hour later she barged into the dentist's office where the Complainant was in the dentist's chair being attended to by his dentist. She lectured him to the effect that if he had gone back, and done as he was told this would not have happened. She spoke about his lack of respect for her uniform. She said "So here is \$37.00 for being a smart ass" and she gave him the ticket.

Ruling upon the evidence

I find that there is clear and convincing evidence that the Respondent K. committed a disciplinary default by being discourteous and uncivil.

Pursuant to Section 28 (1) of the Law Enforcement Review Act:

I give notice hereby that a hearing to determine the penalty to be ordered has been set for the 11th day of February, 2003 at 2:00 p.m. in courtroom 316 or upon such other date as may be arranged by mutual agreement among the parties addressed above, and available to the writer,

through communication with Ms. Marilyn Baron, judicial assistant (Phone 204-945-5693). Failing mutual agreement, the hearing will proceed on the above noted date.

Robert L. Kopstein
Provincial Judge