

In The Matter Of: An application pursuant to Section 13(2) of The Law Enforcement Review Act, R.S.M. 1987, c. L75.
(L.E.R.A. Complaint No. 5501)

And In the Matter Of: An application pursuant to Section 13 of The Law Enforcement Review Act, R.S.M. 1987, c. L75.

B E T W E E N:

Mr. S.)	Mr. S. in
)	Person and unrepresented by
)	counsel
- and -)	
)	
Constable C. Respondent)	Mr. Paul R. McKenna
)	Counsel for the Respondent
)	
Constable R.W. Respondent)	Mr. Denis Guénette
)	Counsel for L.E.R.A.
)	
Constable W. Respondent)	
)	
)	
<i>NOTE: These reasons are subject to a</i>)	Judgment Delivered:
<i>ban on publication of the respondents'</i>)	April 16, 2003
<i>names pursuant to s. 13(4.1) (b)</i>)	

DECISION ON REVIEW

I. FACTUAL BACKGROUND

[1] On November 12, 2000, Mr. S. was involved in an altercation to which the respondent police officers responded. However, Mr. S. alleges the officers used oppressive or abusive conduct or language and were discourteous or uncivil towards him during their dealings with him.

[2] In a letter dated December 17, 2001, the Commissioner reported to Mr. S. the results of his investigation into Mr. S.'s complaint of the respondent police officers' conduct.

[3] I have reviewed the Commissioner's file and conclude that his reporting letter of December 17, 2001, fairly sets forth the essence and results of his investigation. This letter is attached to my report as Appendix "A".

II. STANDARD OF REVIEW

[4] At the time of the hearing of this case, a brief was filed by Mr. McKenna, the counsel representing the respondent and Mr. Guénette filed a brief on behalf of the L.E.R.A. Commissioner. The purpose of these briefs was to urge a particular standard of review to be used in such cases.

[5] Judge Swail, who was also conducting such a review, was also presented with the same material. On February 19, 2003, Judge Swail issued his decision on review in the matter of Mr. G. (*complainant*) and Constable B. and Constable S. (*respondents*). In that decision, Judge Swail undertook an extensive review of the material provided by the respective counsel. I have had an opportunity to review that decision and adopt his conclusion with respect to the Standard of Review under L.E.R.A. which had previously been set out L.E.R.A. decisions which he cites. In my view, nothing can be usefully gained by my writing further on the issue.

III. DECISION ON THIS REVIEW

[6] The Commissioner's decision in this instance was to decline to take further action on the complaint.

[7] The complainant at the Review reiterated the issues raised in his letter of complaint dated December 1, 2000. The complainant felt that the police did not treat his complaint of assault with sufficient diligence and attention. He felt their investigation was perfunctory and his complaint was not being investigated with the appropriate care and they were discounting his evidence. The complainant attributed this attitude to the fact that they were discriminating against him due to his having previously made complaints against the Winnipeg Police.

[8] The respondents indicated that they attended the scene of the assault and did conduct an initial investigation. But due to conflicting evidence received at the scene, the conditions at the scene (closing bars and intoxicated people) and the injury received by the complainant they proceeded to Misericordia Hospital. The complainant was advised of the conflicting evidence and told to consider the situation and if he wished he could follow-up on the situation. He did so and further investigation resulted in charges being laid. There is no indication that this matter was dealt with any differently than any other investigation in similar circumstances. There is no indication that the respondents had formed any preconceived opinion with regard to this complainant.

[9] Accordingly it was entirely appropriate for the Commissioner to conclude that there was insufficient evidence in reporting the complaint to justify a public hearing.

[10] The evidence assembled by the Commissioner through his thorough investigation in this instance did not meet the necessary test for “sufficiency of evidence” in clause 13(1)(c) of the *Law Enforcement Review Act*.

[11] I am therefore satisfied the Commissioner did not err in declining to take further action on this complaint.

[12] Pursuant to Section 13(4.1)(b) of the Act, I order a ban on the publication of the respondents’ names.

Dated at Winnipeg, Manitoba, this 16th day of April, 2003.

GUY, P.J..