

IN THE MATTER OF: Law Enforcement Review Act

BETWEEN:

A.A.

Complainant,

- and -

D/SERGEANT G.M. B.
and CST. R.R.

Respondents.

REASONS FOR DECISION given by The Honourable Judge Conner, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 20th day of September, 2002.

APPEARANCES:

MR. D. GUENETTE, for the Commissioner

MR. P. MCKENNA, for the Respondents

NOTE: For the purposes of distribution, personal information has been removed by the Commissioner.

1 SEPTEMBER 20, 2002

2

3 THE JUDGE: This review is brought pursuant to
4 Subsection (13)(2) of The Law Enforcement Review Act. On
5 March the 9th of 2001, Mr. A filed a complaint with the
6 Commissioner.

7 In this complaint Mr. A alleges that the
8 respondents attended to his residence at approximately 5:45
9 am on March the 8th, 2001, and asked him to accompany them
10 to the Public Safety Building so that they could interview
11 him about a crime they were investigating. Mr. A agreed
12 to accompany the respondents to the Public Safety Building
13 and the applicant did not leave the Public Safety Building
14 until approximately 9:30 pm the same day.

15 During the period of time he was at the Public
16 Safety Building, approximately fifteen and a half hours, Mr.
17 A alleges that he asked for a lawyer and, and his
18 request for one was denied. He further alleges that after
19 being at the Public Safety Building for approximately six or
20 seven hours the respondents became very angry and aggressive
21 with him. Mr. A complained that one of the respondents
22 pointed a finger at him, yelled at him, calling him a
23 criminal, telling him he was hiding things, and accusing him
24 of lying. Finally, Mr. A alleges that Cst. R slapped
25 him when he asked for a lawyer. These are very serious
26 allegations of improper conduct and he emphasized the
27 seriousness of that conduct in his submission before me.

28 On March the 9th of the same year the Commissioner
29 wrote to the Chief of Police advising that the respondents
30 had been accused of disciplinary faults under Section 29 of
31 The Law Enforcement Review Act; namely, abuse of authority,
32 Charter rights, using unnecessary violence or excessive
33 force, using oppressive or abusive conduct or language.

34 The Commissioner investigated the complaint, part

1 of the investigation including interviewing the respondents.
2 The respondents categorically denied the allegations and
3 stated that Mr. A was at all times treated
4 appropriately. After completing his investigation the
5 Commissioner concluded that there was insufficient evidence
6 supporting the complainant -- or supporting the complaint to
7 justify a public hearing, and pursuant to Subsection (13)(1)
8 of The Law Enforcement Review Act the Commissioner declined
9 to take further action.

10 On October 10, 2001 the Commissioner advised Mr.
11 A of his decision. In the penultimate paragraph of his
12 letter the Commissioner states, I quote:

13

14 "On review of this investigation,
15 it is my view that a Provincial
16 Judge would not reasonably be
17 satisfied from the evidence that
18 Sgt. B. and Cst. R
19 clearly and convincingly committed
20 the disciplinary faults you have
21 alleged. As such, the evidence
22 supporting your complaint is
23 insufficient to justify a public
24 hearing, and I am required pursuant
25 to clause 13(1)(c) of The Law
26 Enforcement Review Act to decline
27 to take further action on the
28 matter."

29

30 Thus, this review. I have read and reviewed the
31 Commissioner's file which contains written material
32 concerning his investigation of the complaints. This review
33 is limited to -- this review of the review before me is
34 limited to submissions by the parties to the proceeding.

1 Subsection (13)(3) of The Law Enforcement Review Act
2 provides that if I am satisfied that the Commissioner erred
3 in declining to take further action on the complaint, I
4 shall either:

5

6 (a) order the Commissioner to
7 refer the complaint for a
8 hearing; or

9 (b) order the Commissioner to take
10 such other action under The
11 Law Enforcement Review Act
12 respecting the complaint as
13 (I) direct.

14

15 On this review, the burden of proof is on the
16 complainant to show that the Commissioner erred in declining
17 to take further action on the complaint. On this review I
18 am not entitled to substitute my own view of the matter, but
19 I am required to determine whether the Commissioner erred.
20 In this regard, amongst other inquiries, I must determine
21 whether the Commissioner acted within the bounds of the
22 jurisdiction conferred on him by The Law Enforcement Review
23 Act, whether the Commissioner acted within his jurisdiction
24 by following the rules of procedural fairness, and whether
25 the Commissioner reached a decision that is patently
26 unreasonable. As well, because the Commissioner declined to
27 take further action on the complaint, I must consider the
28 provisions of Subsection (27)(2) which states that:

29

30 A judge presiding on a hearing
31 involving the merits of the
32 complaint must be satisfied on
33 clear and convincing evidence that
34 the police officers committed

1 disciplinary defaults alleged.

2

3 Simply put, what is contained in the
4 Commissioner's file is the complaints, the complainant's
5 allegations, and statements of improper conduct directed
6 towards him by the two police officers, and the respondents'
7 notes and statements denying the improper conduct, and
8 their, their assertion that they treated Mr. A
9 appropriately. The Commissioner decided that this was --
10 that this evidence was insufficient to clearly and
11 convincingly satisfy a Provincial judge that the police
12 officers committed the disciplinary faults alleged.

13 After reviewing the Commissioner's file, and after
14 hearing the submission of Mr. A , I am not satisfied that
15 the Commissioner erred in declining to take further action
16 on Mr. A's complaint. This does not mean, however, that
17 I believe the police officers and that I disbelieve Mr.
18 A . It merely means that on the review of the file and
19 of the Commissioner's reasons, and on hearing the
20 submissions made, that I have concluded that the decision
21 that the Commissioner made was within his jurisdiction, and
22 I cannot conclude that he was wrong in making that decision.

23 Accordingly, I order the continuation of the ban
24 on publication of the respondents' names.

25 Anything further on the matter?

26 MR. MCKENNA: Nothing from me, Your Honour.

27 MR. GUENETTE: No, Your Honour.

28 THE COURT: Mr. A ?

29 MR. A : Thanks, Your Honour, no.

30 (PROCEEDINGS CONCLUDED)

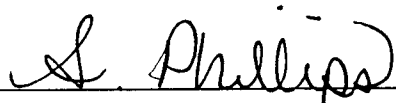
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SEPTEMBER 20, 2002
REASONS FOR DECISION


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CERTIFICATE OF TRANSCRIPT

I, SHARON PHILLIPS, hereby certify that the foregoing pages of printed matter, numbered 1 to 4, 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, Darcy Blackburn, and has been transcribed by me to the best of my skill and ability.



COURT TRANSCRIBER

CERTIFIED COURT TRANSCRIPT
FROM THE OFFICE OF
TRANSCRIPTION SERVICES UNIT


TRANSCRIPTION SERVICES UNIT

MEMORANDUM

October 1st, 2002

TO: L.E.R.A. File #5637
FROM: Judge Arnold Conner
Re: **Review - Sept. 20th, 2002 at 2:00 p.m.**

This is to advise that I upheld the Commissioner's decision not to take any further action relative to this complaint.

for M. Baron
Judge Arnold J. Conner

/mrb

c. George Wright
Commissioner, L.E.R.A.