

THE PROVINCIAL COURT OF MANITOBA

BRANDON CENTRE

ORIGINAL

In the matter of an application pursuant to
Section 13(3) of The Law Enforcement Review Act,

BETWEEN:

G T F , Complainant,

- and -

CONSTABLE K M , Respondent.

TRANSCRIPT OF REASONS FOR DECISION AT PROCEEDINGS

had and taken before The Honourable Judge Coppleman,
held at the Brandon Court House, 1104 Princess
Avenue, in the City of Brandon, Province of Manitoba,
on the 13th day of August, 1999.

APPEARANCES:

MR. T. F. (Applicant), in Person

MR. J. JANZEN, for the Respondent.

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

1 REASONS FOR DECISION:

2 THE COURT: Well, as I understand the Act, and I
3 could be mistaken -- Mr. Janzen, you've had a little more to
4 do with the Act in preparing for this, but as I understand
5 the Act I am required to make a decision based on the
6 arguments that I've heard today. At one point in the Act it
7 refers to a written decision, but I'm not sure that --

8 MR. JANZEN: No, that -- I believe that section,
9 Your Honour, is a reference to the circumstance in
10 which . . .

11 THE COURT: In which there is a hearing with viva
12 voce evidence.

13 MR. JANZEN: . . . there is an actual hearing, and
14 where there is an actual hearing then the parties may
15 request a written decision. I don't believe that provision
16 applies to this proceeding here today.

17 THE COURT: I think you're correct.

18 Well, just to summarize Mr. F 's argument, then,
19 he says that the Commissioner's decision was not proper
20 because he didn't properly investigate the events and didn't
21 properly represent the statements that were given to him by
22 Mr. F and his girlfriend, Ms. C . He said that
23 he misinterpreted Ms. C 's statement.

24 As I say, I have looked at the statement that Ms.
25 C gave to the Commissioner. It is in the file. It
26 was given to me. It is a rather lengthy statement given by
27 Ms. D C on January the 28th, 1999, in Winnipeg.
28 It is in the handwriting, I gather, of the investigator, Mr.
29 Yeske, and it's signed by K W. C . I'm not going
30 to read the whole statement. I don't think it's necessary.

31 There is also a statement given by Mr. F ,
32 and that is the first, one of the first things on the file,
33 on the Commissioner's file, setting out what he perceived
34 was the series of events that occurred, on which he based

1 his complaint.

2 I have read as well the statement received from Ms.
3 G , the driver of the other car and the other lady
4 that was present, and the statement of the police officer
5 who was interviewed by the same Mr. Yeske, I believe, in
6 Brandon on -- it looks -- I believe it's September. In any
7 event it was shortly after the events occurred.

8 The Commissioner then made a decision and sent a letter
9 addressed to Mr. F at his usual address,
10 X ADDRESS , , dated
11 March 25, 1999. Mr. F said that he did not receive
12 that, but in that letter it sets out the reasons why the
13 Commissioner decided not to take any further action on the
14 matter, and advised Mr. F that he has the right to
15 make an application to have this decision reviewed by a
16 Provincial judge. A second letter was sent to Mr. F .
17 Well, first of all, Mr. F says he didn't receive that
18 letter of March 25th. He did, however, call. According to
19 the occurrence report on the Commissioner's file he did call
20 to the Commissioner's office and there's a note indicating
21 that he would try to retrieve the letter that the
22 Commissioner sent, but he doesn't really live there at that
23 address, and it says if he cannot get the letter he would
24 like to pick up a copy. And the next action is that a
25 letter requesting a review was received by the
26 Commissioner's office. In other words the decision of the
27 Commissioner was communicated somehow to Mr. F , so
28 that he knew enough to make an application to have the
29 decision reviewed.

30 A letter dated April the 15th to Mr. F at the
31 same address, X ADDRESS Brandon,
32 apparently did reach him, and that letter contained
33 information about making an application to review the
34 Commissioner's decision. The matters proceeded from there

1 because Mr. F did apply to have the Commissioner's
2 decision reviewed, and that's where we arrive today.

3 I've reviewed the Commissioner's file. I've read his
4 letters several times, and I've also read the judicial
5 authority provided to me by Mr. Janzen. I haven't read it
6 in full because there is a fair amount of that that doesn't
7 apply to this situation. But what does apply to this
8 situation is a quotation from Mr. Justice Cory, who I
9 believe at the time was on the Supreme Court, but in any
10 event it is the definitive test, in my opinion, on this
11 review. And the standard for review is that there should be
12 an error of law or fact -- pardon me, an error of fact, and
13 Justice Cory said that after considering the dictionary
14 definition of the words "patently unreasonable" -- in other
15 words if Mr. F has to prove to me or has to persuade
16 me, rather -- he doesn't have to prove it but he has to
17 persuade me that Mr. Wright's decision was patently
18 unreasonable, and according to the decision of Mr. Justice
19 Cory,

20

21 This is clearly a very strict test.
22 It is not enough that the decision
23 of the board . . .

24

25 (or in this case the Commissioner)

26

27 . . . is wrong in the eyes of the court.
28 It must, in order to be patently
29 unreasonable, be found by the court to
30 be clearly irrational.

31

32 Mr. Janzen has pointed out that an independent observer
33 has suggested that the actions of the police officer were
34 not such as suggested by Mr. F and his girlfriend,

1 that Mr. F was indeed agitated although he didn't "fly
2 off the handle" at one point as his girlfriend expected that
3 he might, and that the standard, then, has not been met that
4 the decision of the Commissioner is clearly irrational.

5 I don't see that the decision is clearly irrational.
6 He gives reasons for his decision. He has decided that the
7 matter should end here and with his investigation, and that
8 it should not be referred to a full hearing before a
9 Provincial judge. And on reviewing the actions of the
10 Commissioner and the law with respect to the matter I find
11 that his actions were not patently unreasonable and clearly
12 irrational, and that his decision was not patently
13 unreasonable nor clearly irrational, and I deny Mr.
14 F.'s request for a hearing before a Provincial judge.

15 (PROCEEDINGS CONCLUDED)

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

CERTIFICATE OF TRANSCRIPT

I, Diane Fotheringham, 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, Sandra Jones, and has been transcribed by me to the best of my skill and ability.

Diane Fotheringham
COURT TRANSCRIBER