

In the matter of: The Law Enforcement Review Act

B E T W E E N:)
)
 M.U.) Ms. Frances Telford,
) for the Complainant,
 Complainant,)
)
 - and -)
)
 Constable P.O. and) Mr. Paul McKenna, and
 Constable G.V.) Mr. Josh Weinstein,
) for the Respondents,
 Respondents.)
)
)
) Mr. Denis Guenette
) for the Commissioner.

HOWELL, P.J.

[1] Counsel, on behalf of the respondent officers has raised two preliminary issues that where requested be dealt with prior to the hearing set for October 25th and 26th. Argument on these issues was heard on May 15th, 2001. The respondent officers, the complainant and the Commissioner of the Law Enforcement Review Agency all were represented by counsel who made oral submissions to the Court. The respondent officers and the Commissioner filed written briefs on the preliminary issues raised by the respondent.

[2] Counsel for the Commissioner requested to be added as a party for the limited purposes of addressing the jurisdictional issues raised by the respondents. In the past, the Commissioner has been granted standing at hearings to address

issues similar in nature to those, which are raised here. The complainant and the respondents were not opposed. I am satisfied that it is in the best interests of justice to allow the Commissioner be added as a party for the limited purpose requested and I make that Order.

[3] Both counsel for the respondents and counsel for the Commissioner, in their briefs, raised the issue of whether there should be a ruling on the preliminary issues raised by the respondents at the outset of the hearing or whether the ruling should be made after all of the evidence has been heard.

[4] Whether a ruling is made at the outset of the proceedings is largely dependent on the issue raised. If it is a matter in which evidence would likely assist in determining facts and background on which a decision is to be made, then it is best that all of the evidence be heard. If it is an issue relating to whether some essential element has been complied with and all of the circumstances are available without the calling of evidence, then a ruling can be made prior to the hearing of evidence.

[5] Of the two issues raised by the respondents, one of them can be dealt with prior to the hearing. This is the issue of whether the matter set out in number 1 of the "Notice of Alleged Disciplinary Default and Referral to a Provincial Court Judge" (Notice) (Exhibit 5 of the Agreed Statement of Facts) constitutes a new complaint that was made outside the time periods prescribed by the *Law Enforcement Review Act* R.S.M. 1987 c. L75 (the *Act*). The allegations contained in number 1. of the Notice are not specifically raised in the complaint received by the Law Enforcement Review Agency (LERA) from M. U. It was argued by counsel for the respondents that this constituted a new complaint which would be required to comply with the time and notice requirements set out in the *Act*. It was argued on behalf of the Commissioner that there is a requirement for the Commissioner to "forthwith cause the complaint to be investigated" (section 12(1) of the *Act*) and that investigation may uncover new matters of concern. These new matters would, if the respondents' position were accepted, require a new complaint to be made, which could possibly be out of time. There is no provision in the *Act* for amending or deleting matters from a complaint at a later date. The argument is that the legislature would not have included this process because it was unnecessary.

[6] The allegations about the police report do relate to the respondents attendance at the U. home on September 4th, 1999, so, upon receipt of that complaint duly forwarded within the proper time period, they were aware that their conduct regarding this matter was being investigated by the Commissioner.

[7] At a later stage of the proceedings, the respondents received notice of the case to be met when they received the notice dated July 7th, 2000 and were officially aware at that time of all of the specific allegations against them.

[8] To determine whether notice is sufficient, reference must be made to the enabling statute. Reference to other discipline or complaint procedures in other statutes with differing methods of bringing matters before tribunals are not of great assistance. Here, in this *Act*, there is a provision that "every complaint shall be in writing signed by the Complainant setting out the particulars of the complaint" (section 6(3)) and a further provision that, "upon receiving a complaint, the Commissioner shall, as soon as it is practicable, provide the respondent with a copy of the complaint" (section 7(2)). These provisions indicate that respondents are to be notified at an early stage of the proceedings of the complaint against them. There is no provision in the *Act* for the Commissioner to forward to the respondents the results of the investigation conducted pursuant to the *Act*. There is a requirement that when the Commissioner refers a complaint to a Provincial Judge; the respondent is required to be served with notice of each alleged disciplinary fault at issue at this stage. There is no requirement for additional notification to be made to the respondents of matters arising during the investigation by the Commissioner. The respondents are protected by section 17 of the *Act* in that, before the matter can proceed before a Provincial Judge, each alleged disciplinary default is required to be set out by the Commissioner. In this case, that has been done.

[9] I am satisfied the *Act* has been complied with and that notice has been given of the original complaint, as required, and that notice has been given of each alleged disciplinary default now that the matter has been referred to a Provincial Judge.

[10] It would seem reasonable, looking at the legislation as drafted, that after receiving a complaint about police conduct an investigation by the Commissioner could result in other alleged defaults arising out of that same situation that were not included in the original complaint. I am satisfied that disciplinary default number 1, as alleged in the Notice is properly before this tribunal.

[11] On the issue of whether the complaints listed at 1, 2, and 4, are third party complaints, I have reviewed the material contained in the agreed Statement of Facts and listened to the tapes (exhibit 6) and reviewed the transcript (exhibit 7a) of the 911 calls along with the other exhibits filed in this matter. To more fully understand the nature of the complainant's involvement with the police officers on

the date in question, I will have to hear from the witnesses. On this matter, I therefore will reserve my decision until after the hearing.

SIGNED at the City of Winnipeg, in the Province of Manitoba.


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Judge Murray Howell