

**ORIGINAL**

IN THE MATTER OF:

An application pursuant to s.13(2)  
of the Law Enforcement Review Act  
R.S.M. 1987, c L75

3666

BETWEEN:

F P ,

Complainant,

- and -

PATROL SERGEANT G. C , #  
CONSTABLE W. B , # ,  
CONSTABLE S. C # ,  
CONSTABLE D. S # ,  
CONSTABLE B. C , # ,  
CONSTABLE V. S # ,  
CONSTABLE B. M # , and  
COMMISSIONER GEORGE WRIGHT

Respondents.

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REASONS FOR DECISION delivered by The Honourable  
Judge C. Everett, held at the Law Courts Complex, 408 York  
Avenue, in the City of Winnipeg, Province of Manitoba, on  
the 17th day of April, 2000.

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**APPEARANCES:**

MR. F. P , in person

MR. P. MCKENNA, for the Respondents

MR. D. GUENETTE, for the Respondent Commissioner

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

1 EXCERPT FROM APRIL 17, 2000

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3 THE COURT (Orally): For the purpose of this  
4 decision only, and without meaning this to be in any way a  
5 precedent or a decision between the two analysis's that I  
6 have before me on which is the correct test, I am going to  
7 apply the more advantageous test for you, the correctness  
8 test. And I am scrutinizing and reviewing the  
9 Commissioner's decision using the more advantageous test for  
10 you.

11 And I want to thank both counsel for your very  
12 helpful case books, I found them very helpful, and I find  
13 your arguments here today of great assistance to me because  
14 this is not something that I've ever sat on before. So  
15 thank you, thank you both. And thank you, Mr. P , for  
16 your very thorough submission. I believe that I've heard in  
17 your submission both the merits of your case. And even  
18 though, strictly speaking, this was a simply review of the  
19 Commissioner's decision -- or I shouldn't say simple -- but  
20 you have been allowed by both counsel to go into actually  
21 the merits of the investigation. And I thank counsel for  
22 their patience on that, because I know it's hard when you're

23 MR. P : One -- excuse me.

24 THE COURT: -- representing yourself, Mr. P .  
25 You're wanting to interrupt me, Mr. P . I'll allow you  
26 to but please be aware I am now in the middle of delivering  
27 my decision. Is there something that you want to say?

28 MR. P : I'm sorry, I shouldn't -- I'm not  
29 used to this.

30 THE COURT: Yeah, I know. If there's something  
31 that needs to be said, go ahead, but it's quite unusual to  
32 interrupt a judge delivering their decision.

33 MR. P : It was some information that Mr.  
34 McKenna had, Your Honour. Mr. McKenna said that I had said

1 that T. M. (phonetic) hadn't made a statement. I  
2 referred to a statement that he made but I said that this  
3 was not taken under caution. You know, I was completely  
4 aware of that statement he had made, but it was not done  
5 under caution, and I thought --

6 THE COURT: Thank you for clarifying that point.

7 All right. So by either of the tests, by the  
8 stricter test or the more advantageous test, my role is to  
9 review the Commissioner's decision.

10 The Commissioner found insufficient evidence in  
11 this particular case pursuant to Section 13. I have noted  
12 the disagreement between counsel as to the proper test for  
13 this review, but I'm indicating that I think in this  
14 particular set of facts it's moot.

15 I have reviewed all of the documentary evidence  
16 that's been provided, which includes the Commissioner's  
17 complete file, which included the police report. I've  
18 reviewed the very helpful case books and the arguments by  
19 both counsel, both in writing and in court today. Again, I  
20 want to formally thank counsel for their assistance because  
21 it has been very helpful. And I have heard a very lengthy  
22 submission from Mr. P., which has gone, once again, into  
23 the merits of the actual review and provided me with, again,  
24 some of the facts of the actual complaint.

25 I am satisfied by either standard, and in  
26 particular by the more advantageous standard to Mr. P.  
27 that the Commissioner's decision that there was insufficient  
28 evidence should be upheld, that the Commissioner made no  
29 error.

30 I have considered, in arriving at this decision,  
31 the aforementioned evidence and submissions. And I note  
32 that interviewed was T. M.; I note H.  
33 M.'s position; I note that Mr. P.' son was not  
34 present at the incident. And I've reviewed all of the

1 evidence and documentation in its entirety, Mr. P , I've  
2 listened very carefully to what you've said this morning,  
3 and I had read the materials before I came into the  
4 courtroom. I've listened carefully to what you've said,  
5 I've considered it, and I can't and do not find that the  
6 Commissioner made any error, having regard to what everyone  
7 has said and the totality of the evidence.

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(EXCERPT CONCLUDED)

**CERTIFICATE OF TRANSCRIPT**

I, KIMBERLEY M. POHORILY, 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, Melody Fleury, and has been transcribed by me to the best of my skill and ability.



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