

IN THE MATTER OF: Law Enforcement Review Act
 Complaint No. 6024

AND IN THE MATTER OF: An Application pursuant to
 Section 13(2) of The Law
 Enforcement Review Act,
 R.S.M. 1987, c L75

BETWEEN:

C.W.,

Complainant,

- and -

CONSTABLE N. A., #2070
 and
CONSTABLE S. S., #2121

Respondents.

REASONS FOR DECISION had and taken before The Honourable Judge Curtis, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 18th day of February, 2004.

APPEARANCES:

MR. C. W., in person.

MR. J. WEINSTEIN, for the Respondents.

MR. S. BOYD, for the Commissioner, George Wright.

FEBRUARY 18, 2004

THE JUDGE (Orally): Mr. Weinstein is representing the Winnipeg Police Association officers --

MR. WEINSTEIN: The respondent officers.

THE JUDGE: The respondent officers. Mr. Boyd is present on behalf of the Commissioner, but his only function in being present was to address the standard of a review, as far as I understand it from the information contained in his brief, so other than that there is no active part that he is taking with respect to the matter.

So with respect to the conflict of interest argument that's raised it has no merit, and it is dismissed in this case with what I've heard, sir.

Going -- moving on to the issue before the Court, which is given the complaint whether or not the Commissioner erred in declining to send it further, I'm going to go to Section 29 which sets out the disciplinary faults for which the Commissioner may make a referral for a public hearing, where it's found officers -- where the information that he receives substantiates that the officers failed or were derelict in these areas.

There's an abuse of authority, arrest without reasonable or probable grounds, using unnecessary violence or excessive force, using oppressive or abusive conduct, or language, being discourteous or uncivil, seeking improper pecuniary or personal advantages, without authorization seeking or executing documents in a civil process, discrimination, making a false statement, improperly disclosing information acquired as a police member, failing to use restraint in the use and care of firearms, damaging property or failing to report damage, failing to provide assistance, violating the privacy of any person within the

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meaning of the privacy act, contravening LERA or any Regulation under this Act.

It is also the job of the Commissioner, going back to Section 13(1):

A Commissioner is not to act on certain complaints where the Commissioner is satisfied

(a) that the subject matter of a complaint is frivolous or vexatious, or does not fall within the scope of Section 29;

(b) that a complaint has been abandoned, or;

(c) that there is insufficient evidence supporting the complaint to justify a public hearing,

The Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's chief of police of his or her reasons for declining to take further action.

From having read through Section 29 it is clear that from the nature of the complaint the letter that was written, which was the basis for the Commissioner taking any action, the complaint does not fall under Section 29.

The complaint, obviously, wasn't abandoned under (b).

Under (c) it indicates that there is insufficient evidence supporting the complaint to justify a public hearing.

Having the letter before me, which I read into the record, for the purpose of completeness, in view of what the letter contains, and in viewing the response given by the Commissioner, with respect to the fact that given his investigation -- and I do note that the investigation -- the results of the investigation are not on file, and I make that with respect to an entry that says, 6/11/2002, I assume this is the Commissioner, in light of comments by Mr. -- and I can't read the names, do you wish this to be investigated?

I don't know what the comments were, they're not contained on the file, so I don't know what basis those comments might have had, in terms of influencing whether or not there was a further investigation, but I, I can say that I'm satisfied that based on the letter itself, and the information contained therein, it doesn't disclose a valid complaint under Section 29, and it does not provide enough evidence for a public hearing.

There's no suggestion in the letter that the officers were rude or discivil (sic), or anything of that nature, when they escorted him from the Public Safety Building. There is simply not enough information to go ahead with an investigation and/or have a public hearing on it, and as such I dismiss the application for a review.

The ban on publication under 13(4.1)(b) will continue.

(DECISION CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **MARLEEN BELL**, hereby certify that the foregoing pages of printed matter, numbered 1 to 3 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 Alicia Schnell, and has been transcribed by me to the best of my skill and ability.

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