

THE LAW ENFORCEMENT REVIEW ACT - R.S.M. 1987, c.L.75

BETWEEN:

S. P.

Applicant

- and -

N. B.


Respondent

REASONS FOR JUDGMENT

The respondent is alleged to have committed disciplinary faults by using unnecessary or excessive force contrary to Section 29(a)(ii) of the Act and by using oppressive or abusive conduct or language contrary to Section 29(a)(iii) of the Act. After hearing the evidence on May 13th, 1997 and argument by counsel for the applicant and counsel for the respondent, I have concluded that the respondent has not committed such breaches. Accordingly I dismiss the applicant's complaints.

Neither of the parties requested written reasons.

May 14, 1997

  
Provincial Judge

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LAW ENFORCEMENT REVIEW AGENCY

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Hearing held in the Place Louis Riel Hotel,  
23rd Floor, 190 Smith Street, State Room,  
Winnipeg, Manitoba on Tuesday, May 13, 1997

\* \* \* \* \*

BEFORE: His Honour Judge S. Cohan

Appearances:

B. Hwozdulych, Esq.	- For the Complainant
Mr. S. P.	- Complainant
P. McKenna, Esq.	- For the Respondent
Constable N. B.	- Respondent

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EXCERPT OF PROCEEDINGS

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Reported By:

Marilyn Pankratz,  
Special Examiner, Q.B.

1 not effective. In terms of the statute law that my  
2 learned friend has brought to your attention, I  
3 would ask Your Honour to bear in mind the provisions  
4 of the Charter of Rights, that every person has the  
5 right to be free from unreasonable search and  
6 seizure.

7 I think the main point is that when  
8 we're talking about the powers of search incidental  
9 to a lawful arrest, that has nothing to do with the  
10 case at bar. The issue of credibility, I think, in  
11 terms of whether there was reasonable and probable  
12 grounds, whether there was a broadcast call of a man  
13 with a gun, is still a live issue that I think Your  
14 Honour should give careful consideration to. Thank  
15 you. That's all.

16 THE COURT: I think I would like to  
17 adjourn for a few moments. I think I would be  
18 prepared to make a decision or give my decision this  
19 afternoon. It's just after 3:00. About a quarter  
20 after 3:00, if we could reconvene.

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22 (HEARING RECESSED AT 3:00 P.M. AND  
23 RECONVENED AT 3:20 P.M.)

24 *Judge COHAN*

25 THE COURT: Constable B. is alleged

1 to have committed two disciplinary defaults. The  
2 first, that he abused his authority by using  
3 unnecessary or excessive force contrary to Section  
4 29(a)(2) of the Law Enforcement Review Act; and  
5 secondly, abused his authority by using oppressive  
6 or abusive conduct or language contrary to Section  
7 29(a)(3) of the Law Enforcement Review Act.

8 As I stated at the outset of this  
9 hearing, the standard of proof is found at Section  
10 27, Subsection 2 of the Law Enforcement Review Act  
11 which requires a Provincial Judge hearing the matter  
12 to dismiss the complaint in respect to an alleged  
13 disciplinary default unless he or she is satisfied  
14 on clear and convincing evidence that the respondent  
15 has committed the disciplinary default.

16 The facts giving rise to what happened  
17 occurred on March the 15th, 1996 at somewhere  
18 between 9 and 10 o'clock. The exact time is not  
19 definite and I don't think it's important. The  
20 police officers who were on general patrol in a  
21 marked police vehicle received a message or  
22 information either by radio or on their computer  
23 that a male youth with a gun wearing track clothes  
24 and a cap was seen in the vicinity of X Address  
25 . The police officers were in

1 that vicinity and they made a U-turn, and at the  
2 time when they were in that vicinity, they saw a  
3 youth who, in fact, was the complainant, jogging,  
4 wearing a track type top, as I understood it, and  
5 holding his hands in front of his -- holding  
6 something in front of his jacket. This aroused the  
7 suspicion of the police officers and Constable  
8 P. said that maybe that could be the guy. The  
9 police stopped their vehicle in front of the  
10 complainant and, at that point, there are two  
11 different versions as to what happened.

12 I'll just backtrack for a moment to say  
13 that I believe, having regard to all of the  
14 circumstances, "Maybe that could be the guy" was a  
15 reasonable assumption because it was right in the  
16 vicinity, within several blocks of X Address  
17 ; the complainant in a general way fit the  
18 description; he seemed to be concealing something in  
19 his jacket, and he was jogging away from that area.

20 As I say now, there are two versions as  
21 to what happened. According to the complainant, the  
22 police officer in the passenger side, who was  
23 Constable R, rolled down the window and called  
24 the complainant to come over to him. According to  
25 Constable P. and to Constable B. they both

1 got out of the vehicle virtually at the same time,  
2 P. being the first to come in contact with the  
3 complainant, and P. , as he stated in his  
4 evidence, held the complainant's arm.

5 Now, if the police were investigating  
6 or if they had a reasonable suspicion, which I found  
7 that they had, that the person that they were  
8 stopping may be the person that was reported having  
9 a gun, I think the last thing they would do is  
10 confront him from the inside of the vehicle where  
11 both police officers are sitting inside where  
12 they're in a subservient position to a complainant  
13 who's outside in a dominant position because he's  
14 free to move as he would want to and the police  
15 officers are definitely constricted inside the  
16 police vehicle. I'm satisfied that both police  
17 officers got out of the vehicle, as described by  
18 both Constable B. and Constable P. , virtually  
19 at the same time and one was on each side of the  
20 complainant. P. had first contact and they held  
21 his arm. When the complainant pulled away,  
22 Constable B. restrained him with a form of  
23 restraint by holding his wrist down and putting his  
24 hand behind his back.

25 The complainant was searched and when

1 it was found that what he had on him was, in fact, a  
2 video, the matter ended. I'm satisfied it took  
3 several minutes at the most. It was over very  
4 quickly. There was a minimal amount of force to  
5 conduct the search and there was an explanation  
6 given to the complainant after the matter happened.

7 The Supreme Court decision in Storrey  
8 sets forth I think what is the law that has to be  
9 applied in this matter, that the officers must have  
10 reasonable and probable grounds, which I find they  
11 had. They received information; the complainant was  
12 seen in the area very, very shortly thereafter,  
13 generally fitting the description. He was running,  
14 concealing, appeared to be concealing something  
15 under his jacket, and I think the police had every  
16 right to stop him under those circumstances.

17 Looking at it from an objective point  
18 of view, I come to the same conclusion. Constable  
19 B. said he would be negligent if they hadn't, and  
20 I'm not sure if that would be the term I would use,  
21 but certainly under these circumstances they had  
22 reasonable and probable grounds to stop and  
23 investigate what the complainant was doing.

24 There was conflicting evidence as to  
25 what was said and by whom at the scene. The

1 officers deny using any profanity or abusive  
2 language. The first count deals with using  
3 oppressive or abusive conduct or language.  
4 Oppressive equates to bad faith and there certainly  
5 wasn't any bad faith on the part of the officers  
6 based on the evidence that I've heard.

7 So in the result, I find that the  
8 complainant has not made out the first count in the  
9 indictment and that count is dismissed. I also find  
10 that the use of oppressive or abusive conduct has  
11 not been proven by clear and convincing evidence and  
12 I'm dismissing that charge as well.

13 I can understand the complainant's  
14 point of view. He was stopped; he hadn't done  
15 anything wrong in his mind. In his mind, he was  
16 being hassled by the police; but at the same time,  
17 because of the circumstances that I've described,  
18 the complainant was in the wrong place at the wrong  
19 time.

20 There was information that there was  
21 somebody that generally fit his description in that  
22 area with a gun, and the police I think were  
23 justified in taking the action that they did. When  
24 the complainant resisted, although it may not have  
25 been a very significant resistance, he did jerk away



1 from Constable P. when P. held his arm, then  
2 he was restrained, searched very quickly, and that  
3 was the end of it. I can understand his feelings,  
4 but at the same time, that isn't the issue before  
5 this hearing today. The issue is whether or not the  
6 two charges in the complaint have been made out. In  
7 my opinion, they have not. So they're both  
8 dismissed.

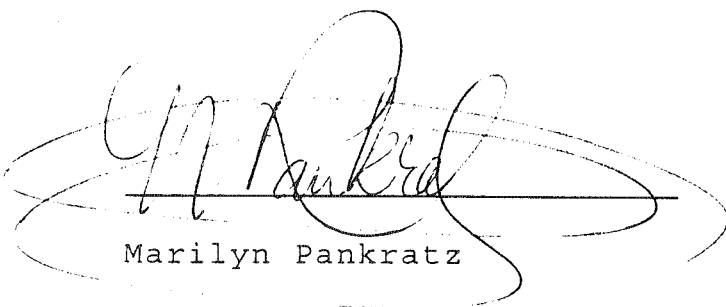
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10 (HEARING CONCLUDED)

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12 TIME: 3:10 p.m.  
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SPECIAL EXAMINER'S CERTIFICATE

I, Marilyn Pankratz, a duly appointed  
Special Examiner in and for the Province  
of Manitoba, do hereby certify the  
foregoing 47 pages are a true and  
correct transcript of my stenotype  
notes as taken by me at the time and  
place hereinbefore stated.



Marilyn Pankratz  
Special Examiner Q.B.