

- [3] On April 30, 1996, the Commissioner of L.E.R.A. spoke with Ms. C. and confirmed she wanted to proceed with the complaint against the officer. By letter dated May 24, 1996, the Commissioner confirmed the Law Enforcement Review Agency will be conducting an investigation into her complaint. She was also advised that L.E.R.A. matters often take some time to be resolved.
- [4] By letter of the same date (May 24, 1996) the Commissioner wrote to the Chief of Police, Winnipeg Police Service, advising of the complaint and requesting a copy of any reports or information relating to the incident.
- [5] By letter dated June 4, 1996, the Winnipeg Police Service provided to the Commissioner of L.E.R.A. a copy of the PON; the unit history for E701, a copy of the officer's notes, a copy of the supplementary reports.
- [6] By letter dated June 20, 1996, the Commissioner wrote to Constable K. advising him of the complaint and requesting him to contact the Commissioner's office to arrange to meet to discuss the matter.
- [7] There is a note dated August 27, 1996 in the L.E.R.A. file setting out the results of the Commissioner's interview with Constable K.
- [8] On September 16, 1996, Ms. C. attended the Commissioner's office. The notes indicate that the process was explained to her and that she was very upset.
- [9] Presumably, the L.E.R.A. Commissioner changed. By letter dated May 7, 1998, the Acting Commissioner advised Ms. C. that, in his opinion, the officer did not accurately record his opinion, but there was no malicious intent to mislead. The Acting Commissioner concluded there was insufficient evidence to justify a public hearing.
- [10] By letter dated June 5, 1998, Ms. C. applied for this review.
- [11] On August 13, 1998, Ms. C. attended the Commissioner's office to discuss the file. She was given a copy of the L.E.R.A. and the section pertaining to legal aid.

[12] On September 4, 1998, Ms. C. advised the Commissioner that she was denied legal aid. By letter dated September 28, 1998, Ms. C. requested that counsel be appointed for her pursuant to section 24(8).

[13] By letter dated October 6, 1998, the Commissioner declined to appoint counsel for Ms. C. because section 24(8) is for a "hearing" before a Provincial Judge, whereas, Ms. C. is applying for a "review" under section 13(2).

[14] The review application came on for hearing before me on October 13, 1998. I urged Ms. C. to obtain counsel. There were issues where counsel could be of assistance. For example, could the word "hearing" be given a broad interpretation to encompass a review?; Could counsel assist in having Legal Aid reconsider its refusal to provide counsel to Ms. C. ?; Is this a situation where Rowbotham applies given the important social objectives of L.E.R.A.? I would not presume to answer these questions without having heard submissions. It is unfortunate Ms. C. did not have counsel to assist her in attempting to answer these questions. The answers to these questions would be helpful guidelines for L.E.R.A. when considering future applications. The hearing of October 13, 1998 was adjourned sine die.

[15] On April 13, 1999, Ms. C. A. , Director of Judicial Support, wrote to Ms. C. - not on my instructions, and presumably on her own initiative - requesting that Ms. C. contact Ms. A.

[16] On May 14, 1999, Ms. A. requested from me instructions as to how to proceed. I directed that a letter be sent to Mr. McKenna and Mr. Guenette asking for a brief outlining what options, under the legislation, are available to me. This was done on May 17, 1999.

[17] On May 26, 1999, the review hearing was scheduled for October 7, 1999. No response to the request for a brief was received.

[18] On October 7, 1999, Ms. C. appeared for herself, unrepresented by counsel. Ms. C. acknowledged the onus was on her to show that the Commissioner erred in declining to take further action. She argued that the error was in failing to investigate properly her complaint, because she was never interviewed with respect to the substance of her complaint. She argued that the Commissioner failed to share with her the relevant information received from the Police Service, and to obtain her response to that information. Moreover, she

argued, the Commissioner did not discuss with her any findings prior to the making of a final determination.

[19] Mr. McKenna submitted that Ms. C. knew, or ought to have known, because in the material sent by the Police Service to the Commissioner were the officer's notes. In the officer's notebook there is a statement taken of the applicant by the constable. That statement is signed by Ms. C.

[20] Mr. McKenna further submitted that for the Commissioner to find that there has been a disciplinary default under section 29(b) L.E.R.A, there must be malicious intent; a mere error is not sufficient. This submission was accepted by the Commissioner.

[21] Mr. McKenna submitted that the Commissioner accepted the submission that the disciplinary default of making a false statement requires a malicious intent, and that there was information in the file to enable the Commissioner to assess that requirement. First, the Commissioner interviewed the officer and gauged the officer from that interview. Second, Ms. C. had opportunity to assert maliciousness, but she did not make such assertion.

[22] Mr. McKenna concluded his submission by saying that I must find that the Commissioner's decision was patently unreasonable on the basis of the investigation that was done in order to make a ruling.

[23] Mr. Guenette made a brief submission, not so much with respect to the substance of Ms. C. 's application for review, but generally with respect to process. He submitted the file speaks for itself, and the Commissioner's decision must be assessed in light of the legislation, not with regard to a pamphlet. I agree the legislation governs, not a pamphlet prepared to advise and assist the public.

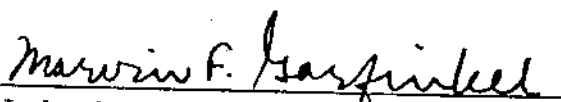
[24] Mr. Guenette also pointed out that the authority under section 13 of L.E.R.A. is with respect to the particular complaint, and not to make rulings generally on how L.E.R.A. operates as a whole.

[25] The Act requires a complaint to be made in writing. Notice is required to be given to the Respondent. This was done and the then Commissioner interviewed the officer. The then Commissioner did not advise the complainant of the results of his interview, nor of his assessment that a malicious intent had to be shown. The complainant should know what standard has to be met, and she should have been given an opportunity to meet that standard. Mr. McKenna's argument

assumes that the complainant knew the standard is malicious intent. There is nothing in the L.E.R.A. file to indicate Ms. C knew that was the standard.

[26] My ruling is that the Commissioner was in error, because Ms. C. was not advised that the standard for establishing the making of a false statement is malicious intent; nor was she given the opportunity to show malicious intent.

[27] Pursuant to section 13(3), I now have to decide what should happen. It is not evident to me, on the basis of the L.E.R.A. file that a hearing must be held. The investigation is not complete. Ms. C. now knows what the test is. The Commissioner should complete the investigation. Then he should make a decision under section 13(1). Also, after the investigation is complete, the Commissioner may, if appropriate, apply section 15, which did appear to have been considered; probably because the Commissioner concluded there was insufficient evidence.


Judge Marvin F. Garfinkel