IN THE MATTER OF: Law Enforcement Review Act Complaint #3597.

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

BETWEEN:

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

Complainant/Appellant,

- and -

CST. ; and CST.

Respondents.

THE HONOURABLE JUDGE RICHARD CHARTIER
Hearing date November 15, 1999
Reasons and decision given on May 30, 2000

I. THE ISSUES

1) Determining the Applicable Standard of Review
2) Examining the Nature or Scope of Review
3) Reviewing the Commissioner's Decision

II. THE FACTS

III. THE LAW

1) The Standard of Review
 a) Factor #1 Privative Clause/Words of the Constating Statute
 b) Factor #2 Expertise

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c) Factor #3 The Purpose and Intent of the Statute as a Whole and the Provision in Particular
d) Factor #4 Nature of the Problem: A Question of Law or Fact?
e) Appropriate Standard for Issues

2) Nature and Scope of Review

IV. REVIEW OF THE COMMISSIONER'S DECISION

1) Is the Commissioner Independent?
2) Was Abusive or Foul Language a Factor?
3) Was the Complaint Frivolous?

I. THE ISSUES

1) Determining the Applicable Standard of Review.

In the course of argument in respect to this application, I have been asked to consider what would be the appropriate standard of review to be applied by a Provincial Judge conducting a ss. 13(2) review under the L.E.R. Act. On this issue, unlike my Provincial Court colleagues, I have had the benefit of full argument.

2) Examining the Nature or Scope of Review.

The second issue to be considered is what is the nature or scope of the ss. 13(2) review to be conducted by the Provincial Judge. What is the nature

of the evidence that can be considered by the Provincial Judge hearing an application under ss. 13(2). Is the review similar to a hearing "de novo" or does the Judge simply review the evidence considered by the Commissioner and determine whether there was an error.

3) Reviewing the Commissioner's Decision.

The applicant, , (hereinafter called "the Complainant") made a complaint pursuant to The Law Enforcement Review Act, C.C.S.M., c. L-75 (hereinafter called the "L.E.R. Act") against the respondent police officers, (hereinafter called "S ") and (hereinafter called "A "), in relation to S and A 's actions and behaviour while acting in the course of their employment as police officers with Winnipeg Police Services. The complaint was received by a Commissioner appointed under the L.E.R. Act who caused the complaint to be investigated. The Commissioner found that there was "no foundation" to the complaint. Pursuant to clause 13(1)(a) of the L.E.R. Act, he was satisfied that the complaint was frivolous and declined to take further action. The Complainant has now applied to have the Commissioner's decision reviewed by a Provincial Judge pursuant to ss. 13(2) of the L.E.R. Act.

II. THE FACTS

On or about August 27, 1998, the Complainant was in his vehicle travelling eastbound in the City of Winnipeg on Logan Avenue on his way to an 8:00 p.m. meeting when he had stopped for a red light at Main Street. As there was construction at that intersection, temporary signs indicating no turns had been posted.

S and A were also travelling eastbound on Logan Avenue in their cruiser car and were stopped immediately behind the Complainant's vehicle at that intersection. The Complainant had his turning signal to make a left turn on Main Street. A seeing this honked the horn of the cruiser car and made a motion with his left arm to go straight ahead. When the light turned green, The Complainant's vehicle entered the intersection and then waited to turn left once traffic had cleared. Once again the officer honked and gestured to the Complainant not to make the left turn. The Complainant did make the left turn and was stopped a short time after on Main Street between Sutherland and Jarvis Avenues.

A approached the Complainant's vehicle, explained to him the reasons for being stopped, obtained the Complainant's driver's license and registration and returned to the cruiser car. While S was writing up the

ticket, the Complainant left his vehicle and using colourful language told A and S that he had a meeting to go to and that the writing of the ticket was taking too long. An animated discussion occurred between A and the Complainant to the point where A cautioned the Complainant to return to his vehicle or he would be issued with another ticket for disobeying a police officer. The Complainant returned to his vehicle. The traffic ticket was written out and then handed to the Complainant.

In his letter of complaint dated September 2, 1998 to the Law Enforcement Review Agency he indicates in part:

> "When I stopped, I gave them my driver's license and registration and they went back to their car. They sat in there for 20 minutes before they finally got out and presented me with a ticket for allegedly making an illegal turn. My family and I waited and as a result were extremely late for our meeting. It was very obvious to me that the long delay was deliberate and that these policemen were not trying to expedite the process."

The Complainant is complaining that A and S committed a disciplinary default in the execution of their duties by abusing their authority as police officers. He alleges that by deliberately making the Complainant wait unnecessarily long to receive the traffic ticket, they committed a breach to the discipline code contained in the L.E.R. Act, and in particular clause 29(a).

The Commissioner received and investigated the complaint. All parties involved in this matter were interviewed. The Commissioner's investigator met with the Complainant on November 19, 1998 and subsequently met with S and A on January 25, 1999. The matter was then held in abeyance pending the outcome of the traffic ticket trial which was held on February 10, 1999. On March 18, 1999, the investigator contacted the Complainant to review the matter with him. The Complainant advised the investigator that he did not want to meet further and was not open to an informal resolution of this matter.

The Commissioner, in the course of his investigation, also received the Unit History computer printout for A and S cruiser car. The times indicated on the Unit History are not times that are inputed by the police officers in their cruiser car. Rather, these times are self-recorded by the Central Computer System. The Unit History indicates the following:

2124 OUTSRV EAT D4
2125 CPIC VEH RO MAIN-HIGGINS
2127 CPIC NAM Y DRL
2139 CPIC NAM (NAME OF AN INDIVIDUAL)
2152 PREMPT
2152 TSTOP
MAIN/JARVIS @ , PLYMOUTH VAN 7 0CC…
2152 CPIC LIC,
2156 MISC , ISSUED PON 97- ,

5 … ISSUED

4 HTA SEC 85 OT-NO TURNS
TEMPORARY...COURT 98-09-24298-10-08
2157 CLEAR 2
2158 OUTSRV EAT D4

I was told that the times and notes that are indicated after 2152 and 2156 (or 9:52 p.m. and 9:56 p.m.) refer to a process called "backing the tag". This is when the officers enter all of the information into the system after the ticket has been handed to the complainant. The time of 2139 (9:39 p.m.) refers to another incident involving another person.

After completing his investigation and relying on the Unit History, the Commissioner concluded that the Complainant was detained for a maximum of 12 minutes. The Commissioner then concluded that the complaint was "without foundation", so as to be frivolous pursuant to clause 13(1)(a) of the L.E.R. Act. Thus he declined to take further action. The Complainant has now applied for a review of the Commissioner's decision.

At the review hearing before me, the Complainant indicated that he was going to an 8:00 o'clock meeting and that they were approximately 15 minutes late when they had been stopped by the police officer. As the traffic ticket indicates, the offence occurred at approximately 9:30 p.m., this would mean that he was held by police for approximately an hour and fifteen minutes. At the review hearing before me, Mr. the Complainant argued that:

1. the Commissioner erred in not having the complaint proceed to the next stage;
2. the Commissioner is essentially an arm of the police and is not independent;
3. the alleged use of language by the Complainant was the reason the matter did not proceed to the next stage.

III. THE LAW

1) The Standard of Review.

In order for this matter to be properly considered, I must determine the standard of review to be applied. Unlike some of my colleagues, I have had the benefit of full argument by counsel on this issue.

On application pursuant to ss. 13(2), a review of the Commissioner's decision is to be done by a Provincial Judge. The procedure on review is found in ss. 13(3) and provides that the Provincial Judge must be "satisfied that the Commissioner erred" prior to making an order in accordance with that subsection.

What does "satisfied that the Commissioner erred" mean? What is the applicable standard of review? The Supreme Court of Canada has recently found in two cases, ***Southam Inc. et al v. Director of Investigation and Research*** [1997] 1 S.C.R. 748 and ***Pushpanathan v. Minister of Citizenship and Immigration*** [1998] 1 S.C.R. 982, that the standard of review is a function of four factors and they are follows:

1. Whether there exists a privative clause;

2. The expertise of the person or body hearing the matter;

3. The purpose and intent of the statute as a whole and the provision in particular

4. The nature of the problem: a question of fact or law.

Bastarach J. confirmed in ***Pushpanathan*** that in addition to the standards of "patent unreasonableness" and "correctness", another standard existed. At page 1005, the Supreme Court of Canada stated:

> "Traditionally, the 'correctness' standard and the 'patent unreasonableness' standard were the only two approaches available to a reviewing court. But in ***Southam*** (*supra*) a 'reasonableness *simpliciter*' standard was applied as the most accurate reflection of the competence intended to be conferred on the tribunal by the legislator."

In the ***Southam*** case at page 765, the Supreme Court of Canada held that:

> ". . . Depending on how the factors play out in a particular instance, the standard may fall somewhere between correctness, at the more exacting end of the spectrum, and patently unreasonable, at the more deferential end."

Suffice it to say, that where more deference is to be shown, the more applicable the test of patent unreasonableness becomes. Where there is

comparatively less deference required, the test of correctness is more probable.

The decision from our Court of Queen's Bench in ***Wagner v. Williams*** (1995), 103 Man. R. (2d) 137 (affd. by Manitoba Court of Appeal 110 Man. R. (2d) 23) is certainly a leading decision on the interpretation of the L.E.R. Act. In that decision, Beard J. was called upon to review the decision of Cohan P.J. who had found that the Commissioner had not erred in declining to take further action in the Applicant's complaint. Unfortunately she was not called upon to review the issue of the applicable standard of review by a Provincial Judge dealing with a ss. 13(2) review.

Can I simply apply the standard of review set out in the ***Wagner*** case? Unfortunately I cannot as two of the four factors that the Supreme Court of Canada said must be considered in determining the appropriate standard, are different. They are as follows:

i) The privative clause:

The judicial review conducted by the Court of Queen's Bench had to contend with the privative clause found in ss. 13(5) of the L.E.R. Act, whereas between the Commissioner's ss. 13(1)

decision and a Provincial Judge's review of that decision, there is no such privative clause.

ii) **The expertise**:

The assessment of the sufficiency of the evidence in ss. 13(1) has been likened to the test at a preliminary inquiry. With all due respect to the Commissioner, the level of the Provincial Judge's expertise on that point alone makes it such that more deference is required on the review of the Provincial Judge's decision than on the Commissioner's decision.

As there are no superior court or appellate court decisions dealing with the standard of review to be applied by a Provincial Judge conducting a ss. 13(2) review under the Act and as I have, contrary to my Provincial Court colleagues, had the benefit of full argument on this issue, I will, in order to determine the appropriate standard, review each of the four factors listed by the Supreme Court of Canada.

a) **Factor #1 - Privative Clause/Words of the Constating Statute**

Contrary to a judicial review conducted by the Court of Queen's Bench, which has to contend with the privative clause found in ss. 13(5), there is no true privative clause in existence for the review by the Provincial

Judge. Subsection 13(3) confers on the Provincial Judge the jurisdiction to review a decision of the Commissioner. There is no limitation on the exercise of that jurisdiction other than the Provincial Judge must be "satisfied that the Commissioner erred".

The Supreme Court of Canada in ***Pushpanathan*** stated at page 1006 that:

> ". . . the presence of a 'full' privative clause is compelling evidence that the court ought to show deference to the tribunal's decision, unless other factors strongly indicate the contrary as regards the particular determination in question."

With respect to a ss. 13(2) review, I find that the absence of a privative clause would, with respect to this factor, point towards a standard of correctness.

b) <u>Factor #2 - Expertise</u>

On this factor, the Supreme Court of Canada in ***Pushpanathan*** stated at 1007:

> "If a tribunal has been constituted with a particular expertise with respect to achieving the aims of an Act, whether because of the specialized knowledge of its decision-makers, special procedure, or non-judicial means of implementing the Act, then a greater degree of deference will be accorded."

It also stated further at 1008:

> "In short, a decision which involves in some degree the application of a highly specialized expertise will militate in favour of a high degree of deference, and towards a standard of review at the patent unreasonableness end of the spectrum."

Under ss. 13(1) of the Act where any one of the conditions stipulated therein is met, the Commissioner is required to take no further action. The L.E.R. Act does not allow for much discretion. The Commissioner must first of all determine whether the complaint falls under one of the categories of disciplinary defaults stipulated at s. 29 of the L.E.R. Act. Secondly, if it does, the matter will proceed to the next stage unless:

(1) it is a frivolous or vexatious complaints (ss.13(1)(a));

(2) it is abandoned (ss.13(1)(b)); or

(3) there is insufficient evidence (ss.13(1)(c)).

Other than interpreting what is meant by "frivolous and vexatious" or "insufficient evidence", no specialized knowledge or expertise is required to make a decision pursuant to ss. 13(1). I also not that there is no requirement under the L.E.R. Act that the Commissioner have some legal background.

As a result, with respect to a ss. 13(2) review, for Factor #2 (expertise), it is my view that we fall within the more exacting end of the spectrum or the test of correctness as the Commissioner, who does not necessarily have any legal education, is essentially carrying out a mandatory requirement with little discretionary powers.

c) **Factor #3 - The purpose and intent of the statute as a whole and the provision in particular.**

The purpose and intent of ss. 13(2) review is essentially to determine whether a complaint should proceed to the next step. The Supreme Court of Canada in considering the federal Human Rights Act noted in ***Cooper v. Canada*** [1996] 3 S.C.R. 854 at 891:

> "When deciding whether a complaint should proceed to be inquired into by a tribunal, the Commission fulfills a screening analysis somewhat analogous to that of a judge at a preliminary inquiry. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the Act, an inquiry is warranted having regard to all the facts. The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it."

With the amendment in 1992 to the Act introducing the element of the "sufficiency of the evidence" at clause c of ss. 13(1), the ***Cook*** decision certainly rings louder. In addition, from the standpoint of fairness as between the complainant and the respondent, the consequences of an adverse ss. 13(2) decision is much more significant to the complainant than they are for a respondent police officer. For the complainant, an adverse decision will bar him or her from the process before a hearing ever takes place on the merits of the complaint. By comparison, a decision that is adverse to the respondent police officer means that there is the prospect of a hearing on the

merits of the complaint, and the usual safeguards attendant to a hearing remain in place.

As was noted in the ***Pushpanathan*** case at 1008, the test of correctness would apply "where the purpose of the statute and the decision-maker are concerned primarily in terms of establishing rights between parties . . .". Clearly, under ss. 13(1), as the Commissioner is deciding whether the complaint will proceed to the next step, rights between parties are being affected.

With respect to a ss. 13(2) review, for Factor #3 (purpose and intent), I find that the appropriate test would lean towards the standard of correctness.

d) Factor #4 - Nature of the problem: a question of law or fact?

As indicated previously the Commissioner fulfills a role somewhat analogous to that of a judge at a preliminary hearing, essentially assessing the sufficiency of the evidence before it. As was stated by Justice Sopinka in ***Syndicat des employés de production du Québec et de l'Acadie v. Canadian Human Rights Commission*** [1989] 2 S.C.R. 879 at 899 in reference to the Canadian Human Rights Commission:

> "It is not intended that this be a determination where the evidence is weighed as a judicial proceeding but rather the Commission must determine whether there is a reasonable basis in the evidence for proceeding to the next stage."

The factor to be examined here is what determinations are being made by the Commissioner. Is the nature of the problem a question of law or fact? Iacobucci in the ***Southam*** case states at p. 766-767:

> "Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests."

The nature of the problem in most cases will be a question of mixed law and fact as the nature of the problem will often be whether the Commissioner applied the appropriate "sufficiency of evidence" test. ("a legal test") with the evidence before it ("the facts"). Did the facts satisfy the legal tests?

If the issue to be reviewed is solely a question of fact or solely a question of law, I follow the Supreme Court of Canada decision of ***Attorney General of Canada v. Mossop*** [1993] 1 S.C.R. 554 at 599-600 where L'Heureux-Dubé J. stated:

> "In general, deference is given on questions of fact because of the 'signal advantage' enjoyed by the primary finder of fact. Less deference is warranted on questions of law, in part because

the finder of fact may not have developed any particular familiarity with issues of law."

When the Commissioner conducts a ss. 13(1) investigation, there is no hearing. Neither the complainant nor the police officer is subject to cross-examination. As a result, when the Provincial Judge is reviewing the Commissioner's decision on a question of fact, the standard of review would be closer to "reasonableness *simpliciter*" rather than "patent unreasonableness".

With respect to a ss. 13(2) review, for Factor #4 (nature of the problem), I find that:

(1) the appropriate test for reviewing a question of law will tend to be correctness;

(2) the appropriate test for reviewing a question of mixed law and fact will tend to be correctness;

(3) the appropriate test for reviewing a question of fact will tend to be reasonableness *simpliciter*.

e) Appropriate Standard For Issues.

Having now carefully considered each of the four factors identified by the Supreme Court of Canada, I must now relate them to the review to be conducted by the Provincial Judge. I have tried to categorize the issues facing the Commissioner when conducting his investigation of a complaint

pursuant to ss. 13(1). I have found three. With respect to those issues, I find that the appropriate standard of review will be as follows:

1. Where the review is one which relates to the jurisdiction of the Commissioner and more specifically, does the complaint "fall within the scope of section 29" of L.E.R. Act as same is found in clause 13(1)(a) of the L.E.R. Act, the standard of review will tend to be "the correctness" of the decision made by the Commissioner.

2. Where the review is related to an error of law or an error of mixed facts and law within the jurisdiction of the Commissioner and more specifically, when the Commissioner has to decide whether or not "there is insufficient evidence supporting the complaint to justify a public hearing" as same is found in clause 13(1)(c) of the L.E.R. Act, the standard of review will tend to be "the correctness" of the decision made by the Commissioner.

3. Where the review is related to a finding of fact within the jurisdiction of the Commissioner, the standard of review to be

applied to the decision of the Commissioner will be closer to "reasonableness *simpliciter*".

2) **<u>Nature or Scope of Review.</u>**

Ss. 13(3) of the L.E.R. Act states that the Provincial Judge in reviewing the decision of the Commissioner shall hear "any submissions from the parties in support of or in opposition to the application". Is the review similar to a hearing "de novo" or does the Judge simply review the evidence considered by the Commissioner and determine whether or not there was an error committed? Can the Provincial Judge consider new evidence at this stage?

A ss. 13(2) review, in my view, is not a hearing "de novo" in which either side has the right to submit additional material. However, with leave from the Judge, in special circumstances where the complainant can first pass a *prima facie* threshold test establishing

(1) that certain evidence was unavailable to him/her at the time of the Commissioner's investigation; or

(2) that the Commissioner was in some way biased, not independent or not in a position to impartially consider a position before him,

a party may be granted the right to produce new evidence. This, however, is obviously a discretionary determination to be made by the Provincial Judge. In addition, if new evidence is called, it would be limited to matters which pertain to the unavailable evidence mentioned or, which would have a bearing on the Commissioner's alleged bias or lack of impartiality.

I am of the view that, pursuant to ss. 13(3), the nature and scope of the review is, subject to being granted leave to produce new evidence, limited to determining whether or not the Commissioner erred in law or in principle in making his/her finding. It must also be borne in mind that, pursuant to a ss. 13(2) review, the complainant has the onus to show that the Commissioner erred.

IV. REVIEW OF THE COMMISSIONER'S DECISION

Bearing in mind the applicable standards of review, the scope and nature of a ss. 13(2) review and that the burden of proof is on the Complainant to show the Commissioner erred in declining to take further action on the complaint, I shall now review the decision of the Commissioner.

At the review hearing before me, the Complainant indicated that he was going to an 8:00 o'clock meeting and that they were approximately 15 minutes late when they were stopped by the police officer. As the traffic

ticket indicates the offence occurred at approximately 9:30 p.m., this would mean, according to the Complainant, that he was held by police for approximately one hour and fifteen minutes. At the review hearing before me, the Complainant argued that:

1. the Commissioner is essentially an arm of the police and is not independent;
2. his alleged use of foul language was the reason the matter did not proceed to the next stage.
3. the Commissioner erred in not having the complaint proceed to the next stage;

1) <u>Commissioner not independent</u>

The Complainant claims that the Commissioner is not independent, that he is simply an arm of the police and that "it was patently obvious that what he was engineering was a cover-up". As Beard J. stated in the ***Wagner*** case,

> "A finding that an administrative tribunal has acted in bad faith is an example of an abuse of discretion or an irregularity in the exercise of discretion which goes to the very jurisdiction of the tribunal. Such an allegation, if proven, renders the decision of that tribunal a nullity."

As that matter relates to a jurisdictional issue, the standard of review is that of correctness.

In considering this matter, I have reviewed all the documents provided to me and the transcript of the arguments before me. Other than an indication by the Complainant that the Commissioner's investigator who interviewed him was an ex-RCMP officer, there is nothing to substantiate that the Commissioner was not independent or impartial. In addition, on reviewing the Commissioner's written reasons for his decision, I can find no evidence that he acted in bad faith.

Keeping in mind that pursuant to ss. 13(4) the burden of proof is on the complainant with respect to a ss. 13(2) review, I cannot find anything to support an allegation that the Commissioner was acting in bad faith other than one of his investigators is an ex-RCMP officer and that the Commissioner declined to take further action. The fact that the Commissioner categorizes the complaint as frivolous does not necessarily indicate that he is not independent. The L.E.R. Act requires that written reasons be provided to the complainant. His decision not to proceed was motivated by written reasons and I do not see anything in those reasons to indicate any evidence of lack of impartiality or bias. That the Commissioner declined to take action or that one of the investigators is an ex-police officer is in itself not enough. I therefore find, by applying the standard of review of "correctness", that the Commissioner was acting independently.

2) Abusive or foul language

The Complainant claims the reason the matter did not proceed to a public hearing is that he may have used abusive or foul language towards the police officers. This second issue is a jurisdictional matter as clearly, ss. 13(1) does not allow the Commissioner to decline to take further action if a complainant uses abusive or foul language towards the police officers. The standard of review in such a case would be that of correctness.

In his letter to the Complainant, the Commissioner declines to take further action and finds the complaint to be "without foundation". He then indicates at the second page of his letter

> "On the other hand the comments attributed to you by the officers if they did occur were, in my estimation, not only uncalled for but also reprehensible under the circumstances."

I would categorize those comments as being a personal interpretation or opinion rendered after his finding under ss. 13(1). (The underlining is mine) The issue facing the Commissioner was and always was whether the Complainant was held for an inordinately lengthy period of time as a result of receiving a traffic ticket. I therefore find, by applying that standard of review of "correctness", that the alleged use of foul or abusive language was not the reason the matter did not proceed to the next stage.

3. **<u>Whether or not the Commissioner erred in finding that the complaint was frivolous.</u>**

As I indicated before, the issue is and always was whether the Complainant had to wait for an inordinately lengthy period of time to receive his highway traffic ticket. The issue is clear. The issue is how much time did the Complainant wait before receiving his ticket?

The Commissioner, relying on the computer printout of the Unit History, finds that the Complainant was detained for a maximum of 12 minutes. The Commissioner made a finding of fact. As indicated previously, when reviewing a finding of fact, unless the error raises a question of jurisdiction or makes it tantamount to an error of law on the face of the record, the standard of review is one of whether the Commissioner's decision is reasonable *simpliciter* .

As a result of the existence of the Unit History, the Commissioner was provided with an objective instrument to measure the time involved in this matter. He finds that the Complainant was detained for approximately 12 minutes. That time is not that far off the 20 minutes mentioned in the Complainant's letter of complaint dated September 2, 1998.

At the hearing before me on November 15, 1999, the Complainant in trying to explain what he meant with respect to the 20 minutes referred to in his complaint, stated the following at pp. 50-51 of the transcript:

> "The 20 minutes that I refer to simply was this; the 20 minutes was -- you see, initially, I didn't think of looking at my watch when these guys started honking the horn and when they pulled me over. I didn't look at my watch until I called the inspector. So the 20 minutes, when I started calling the inspector until we got our ticket, that was the 20 minutes."

That, with all due respect to the Complainant, is not what his September 2, 1998 complaint states:

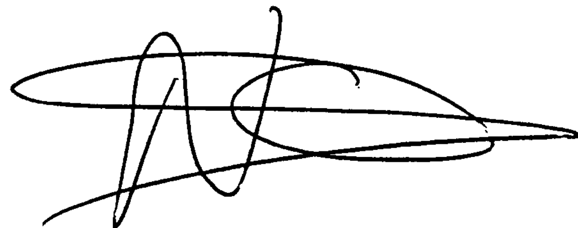
> "When I stopped, I gave them my driver's license and registration and they went back to their car. They sat in there for 20 minutes before they finally got out and presented me with a ticket for allegedly making an illegal turn. My family and I waited and as a result were extremely late for our meeting."

The Complainant also indicated in his submission that he was 15 minutes late for an 8:00 o'clock meeting when he was stopped. When you look at the Unit History it is very clear that A and S were patrolling on Lagimodiere Boulevard at 8:15 p.m. The officers were nowhere near downtown Winnipeg at that time. As a result of all of the above, I find the Commissioner's finding of fact that the Complainant was stopped for approximately 12 minutes, to be reasonable.

That then raises the question whether having someone held for 12 minutes to give a highway traffic ticket is an abuse of process and an abuse of authority. Is being held for a 12 minute period an unreasonable period of time? When dealing with questions of reasonableness, I am of the view that this is a question of mixed fact and law as the question is about whether the facts (12 minutes) satisfy the legal test (reasonableness) and as such the standard of review would be correctness.

Taking into account all of the uncontradicted facts before the Commissioner, being the record of the Unit History and the fact that there was an animated discussion between A and the Complainant with respect to being late for a meeting, the 12 minute wait for the ticket is not unreasonable.

I therefore am satisfied that by applying the standard of correctness, the Commissioner did not err in declining to take further action on Complaint #3597.



Judge Richard Chartier