

In the matter of: *The Law Enforcement Review Act*

B E T W E E N:

C. W. W.)	In Person.
)	
Complainant/Applicant)	
)	
- and -)	
)	
Inspector R. S.)	Paul R. McKenna
, and)	
P/Sgt. P. M.)	for the Respondents
)	
Respondents)	
)	
)	
Denis Guénette)	For The Law Enforcement Review Agency
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)	
)	

CONNER, P.J.

[1] Pursuant to subsection 13(2) of the *Law Enforcement Review Act* (L.E.R.A.), the complainant has applied for a review of the Commissioner's decision that there is insufficient evidence supporting the complaint to justify a public hearing with respect to the complaint filed by the complainant on January 28th, 1999.

[2] The complainant alleged that on December 29th, 1998, he was the victim of a "hit and run" accident when a City of Winnipeg transit bus ran over the rear tire of his bicycle. The complainant alleged that the bus driver did not stop pursuant to sec. 155 of the *Highway Traffic Act*.

[3] On the same date, around noon, the complainant attended the Public Safety Building to report the accident. The complainant alleged that the intake person (a

female) refused to take an accident report from him because he could not estimate the damage to his bicycle. The intake person called a uniformed officer (a male) who, according to the complainant: “attempted to harass and intimidate me telling me to get out of the building”.

[4] The complainant then telephoned the Chief Administrator’s office and complained of the incident.

[5] On December 30th, 1998, the complainant received a telephone call from a peace officer (a male), who the complainant identified as Sgt. M. The complainant alleged that Sgt. M. “made an attempt to dissuade (sic) me from making a complaint.”

[6] On January 5th, 1999, after complaining to the Chief of Police office, the complainant received a telephone call from “Officer S. ” (a male) who, according to the complainant: “was rude and obnoxious, made attempts to negate the complainant harassed me to dissuade (sic) the complaint.” The complainant further alleged that the peace officer was “sarcastic”.

[7] The Commissioner investigated the complaint filed by the complainant and identified the respondent S. as the peace officer who spoke to the complainant on January 5th, 1999.

[8] On January 29, 1999, the Commissioner advised the Chief of Police of the complaint. The Commissioner characterized the complaint as alleging disciplinary defaults under section 29 of L.E.R.A., namely, “using oppressive or abusive conduct or language” and “being discourteous or uncivil.”

[9] On April 15th, 1999, the Commissioner advised the respondent S. that the complaint had been made against him.

[10] The Commissioner interviewed the respondent S. who admitted speaking to the complainant on January 5th, 1999, concerning an unrelated matter. The respondent S. admitted to being “blunt” but denied the alleged disciplinary defaults.

[11] The Commissioner scheduled a meeting for June 16th, 1999, between the complainant and the respondent S. in an attempt to resolve the complaint informally. The complainant refused to take part in the meeting because “the other

officer”, who he claimed was rude to him initially at the Public Safety Building, had not been identified.

[12] The Commissioner continued his investigation and determined that a Sgt. M. had been employed by the Winnipeg Police Service but that he had retired from the service on June 30, 1998.

[13] The Commissioner interviewed Ms C.C. , who was identified as the female intake person the complainant initially spoke to on December 29, 1999. Ms C. advised the Commissioner that she vaguely recalled the incident but was not sure if her recollection was as a result of her dealing with the complainant or because she heard about the incident. When advised that the complainant had been referred to a male police officer, Ms C. was unable to recall who that might be because the station duty officer was a female, Cst. C.S. When Ms C. was advised by the Commissioner that the respondent, M. spoke to the complainant by telephone on December 30th, 1998, Ms C. said the respondent M. may have dealt with the complainant at the counter as he had assisted in that way before.

[14] The Commissioner ascertained that the respondent M. was on duty in the traffic office on December 29th, 1998.

[15] The Commissioner also recognized the similarity of the names M. and M. and on July 13th, 1999, advised the respondent M. that the complaint had been made against him.

[16] The Commissioner interviewed the respondent M. M. advised the Commissioner that he was positive it was not him who had attended to the complainant on December 29th, 1998, because he (M.) would have been at lunch when the complainant attended the Public Safety Building to report the accident. With respect to the telephone conversation of December 30th, 1998, the respondent M. was on duty that day and because of that fact and because he speaks to numerous complainants daily when they are referred to him by the front counter staff or by telephone, he acknowledged the possibility that he could have spoken to the complainant on the telephone on December 30th, 1998. The respondent M. further advised the Commissioner that he had no recollection of any conversation with the complainant and did not recall attempting to dissuade anyone from making a complaint.

[17] At no time subsequent to his complaint did the complainant have the opportunity to come face to face with the respondent M. in an attempt to identify him as the individual he encountered on December 29th, 1998.

[18] On September 16th, 1999, the Commissioner advised the complainant: "In my view, the evidence supporting the complaint is insufficient to justify a public hearing, and I --- decline to take further action on the complaint."

[19] A review under subsection 13(2) is a review of the record in that the parties are limited to making submissions in support of or in opposition to the application for review. The record consists of the Commissioner's file in this matter which contains various correspondence and notes of the interviews conducted. I have reviewed the contents of the Commissioner's file.

[20] L.E.R.A. also provides that the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

[21] The complainant, who was unrepresented by counsel, spent the majority of his submissions making general allegations of conflict of interest and bias by the Minister of Justice, the Commissioner, counsel, the courts and me. After hearing lengthy submissions from the complainant on this issue, I dismissed the complainant's allegations of conflict of interest and bias.

[22] During the balance of the complainant's submission, the complainant did not allege any mistake of fact, law or mixed fact and law on the part of the Commissioner. Rather, the complainant submitted that the Commissioner failed to conduct a complete investigation of his complaint.

[23] Subsection 13(3) of L.E.R.A. provides that if the Provincial Judge is satisfied that the Commissioner erred in declining to take further action on the complaint, the Provincial Judge shall order the Commissioner to refer the complaint for hearing or take such other action under L.E.R.A. respecting the complaint as the Provincial Judge directs.

[24] In **Caldwell vs Kublik**, a decision delivered on November 18th, 1999, on a sub section 13(2) L.E.R.A. review, Garfinkel, P.J., after finding that the Commissioner's investigation was not complete, ordered the Commissioner, pursuant to subsection 13(3)(b), to complete the investigation and thereafter, to reconsider his decision under subsection 13(1).

[25] After reviewing the Commissioner's file and considering the complainant's and counsel's submissions, I conclude that while the Commissioner's investigation may be subject to some criticism for not being as thorough as I believe it might have been, the complainant has not discharged the burden of proof, pursuant to subsection 13(4) of L.E.R.A., and I am not satisfied that the Commissioner erred in concluding that his investigation was complete and that there was insufficient evidence supporting the complaint to justify a public hearing. I therefore dismiss the complainant's application

[26] Pursuant to subsection 13(4.1), I order that no person shall cause the respondents' names to be published in a newspaper or other periodical publication, or broadcast on radio or television.



Judge Arnold J. Conner