

ORIGINAL

IN THE MATTER OF:

An application pursuant to s.13(2)
of the Law Enforcement Review Act
R.S.M. 1987, c L75

3709

BETWEEN:

J. P. ,

Complainant,

- and -

CONSTABLE R. L. , #

Respondent.

EXCERPT FROM PROCEEDINGS, RULING OF THE COURT ON
MOTION FOR ADJOURNMENT delivered by The Honourable Judge
Collerman, held at the Law Courts Complex, 408 York Avenue,
in the City of Winnipeg, Province of Manitoba, on the 20th
day of March, 2001.

APPEARANCES:

MR. J. P. , in person

MR. D. GUENETTE, for the Commissioner

MR. P. MCKENNA, for the Respondent

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

1 EXCERPT FROM MARCH 20, 2001

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3 THE COURT: I've had an opportunity to review all
4 the points that have been raised and review the Criminal
5 Code charges that are presently in existence, and, of
6 course, to review the decision of P and the Personal
7 Insurance Company of Canada, Mr. Justice Hanssen's decision,
8 wherein the insurance company applied for and was granted a
9 stay of the civil proceedings pending the outcome of the
10 criminal matters.

11 This is a somewhat unique situation because of the
12 fact that there are parallel criminal proceedings to the
13 L.E.R.A. hearings. And I have considered the fact that they
14 are parallel proceedings, and I've also considered as well
15 the nature of the allegations which Mr. P has made as
16 against the officer, L, some of which relate
17 specifically to Charter issues. And I raised that earlier
18 when counsel were speaking on the matter, when Mr. McKenna
19 spoke on behalf of Constable L's position, and I
20 indicated that, of course, with these Charter issues in the
21 criminal proceeding, depending on the outcome of any Charter
22 issues that may be raised, there can be decisions made under
23 Section 24 of the Charter, and these decisions, of course,
24 would be pivotal to the outcome of the criminal proceeding.

25 I also take note of the fact that in the criminal
26 proceeding, you're dealing with a standard of proof which is
27 different and, in fact, more onerous than is the standard of
28 proof at the L.E.R.A. hearings. It is my view that were the
29 L.E.R.A. hearings to proceed in advance of the criminal
30 matter, and were findings made relative to credibility --
31 if, for example, there was a negative finding made relative
32 to Mr. P's credibility, that that would impact upon his
33 ability to defend himself at the criminal hearing, that that
34 might very well interfere with his ability to place a full

1 answer and defence before the court.

2 I realize that Officer L -- it's L , is
3 it, L ?

4 MR. GUENETTE: That's right, Your Honour.

5 THE COURT: Yes. That Officer L 's interests
6 are relevant interests. They're interests that I certainly
7 do not ignore; I take them into account fully. His concern
8 about his career, possibility of promotion, possibility of
9 long-service medals or any of the other issues that would
10 attend a delay of this matter are all relevant. The court
11 takes that into account and weighs that as against the
12 interests of the accused in the criminal proceedings. And
13 as counsel knows, very often the court is faced with trying
14 to resolve what is a balancing act.

15 In this particular situation, it is my view that
16 the interests of the accused in the criminal proceedings
17 must take precedence over the possibility of a negative
18 impact on Officer L were the matter to be delayed. And
19 the fact of the matter is that whereas Officer L 's
20 interests are career related and very valid -- and please do
21 not interpret what I say as detracting from that in any way,
22 shape or form -- the interests of the accused in the
23 criminal proceedings are issues that could interfere with
24 his liberty. The liberty of a subject is an issue, of
25 course, which the court has to place prime consideration
26 upon.

27 The matter, if it were adjourned to a point in
28 time after the completion of the criminal trial, could still
29 proceed. It is not a case of such a nature -- I'm talking
30 about the L.E.R.A. proceeding -- whereby the passage of time
31 would result in the loss of exhibits or interfere with the
32 abilities of the witnesses to testify at the appropriate
33 point in time when the L.E.R.A. matter would proceed.

34 The reverse of that, of course, is that if the

1 L.E.R.A. proceeding went first, again, depending upon
2 credibility findings made at that point in time, it could
3 impact upon the ability of the accused to properly place his
4 defence before a criminal court; it would lead to dealing
5 with issues, primarily Charter issues, which would be
6 particularly relevant to and could be pivotal to the outcome
7 of the trial.

8 So that in all the circumstances, it is my view
9 that the L.E.R.A. proceeding ought to be adjourned until a
10 point in time following upon the completion of the criminal
11 hearings. I think that that is in the best interests of
12 justice; it takes into account all the interests of all the
13 parties, keeping in mind at all times the interests of the
14 accused, and any assurance of a fair trial must be of prime
15 consideration in the court's decision.

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(EXCERPT CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, KIMBERLEY M. POHORILY, 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, Alice Koben, and has been transcribed by me to the best of my skill and ability.



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