

IN THE MATTER OF:

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

BETWEEN:

G.T.

Complainant,

- and -

PATROL SERGEANT M.N.

Respondent.

REASONS FOR DECISION, delivered by The Honourable
Judge Smith, held at the Law Courts Complex, 408 York
Avenue, in the City of Winnipeg, Province of Manitoba, on
the 19th day of November, 2001.

APPEARANCES:

MR. G.T. in person

MR. D. GUENETTE, for the Commissioner

MR. P. MCKENNA, for the Respondent

1 EXCERPT FROM NOVEMBER 19, 2001

2

3 THE COURT:. The applicant, Mr. G.T.
4 applies under Section 13(2) of the Law Enforcement Review
5 Act for a review of the Commissioner's decision in relation
6 to L.E.R.A. complaint number 5039. The Commissioner decided
7 to dismiss Mr. T's complaint pursuant to Section 13(1)(c)
8 of that Act on the basis of insufficient evidence.

9 The burden of proof in this matter lies upon Mr.
10 Toth on a balance of probabilities. Under the section, the
11 hearing is on the record. I should note that the
12 Commissioner's file will be Exhibit 1 in these proceedings.

13

14 **EXHIBIT 1: COMMISSIONER'S FILE**

15

16 THE COURT:. I've reviewed Exhibit 1 and heard
17 submissions from the parties related to the application.
18 I've heard submissions from Mr. T, who appears in person,
19 and from Mr. McKenna on behalf of the named respondent Sgt.
20 N, and from Mr. Guenette only in respect of
21 jurisdiction on behalf of the Commissioner.

22 Commissioner Wright has also been present at these
23 proceedings and gave some helpful guidance to the court in
24 relation to the file in a certain matter.

25 The complaint concerns an incident that Mr. T,
26 a taxi driver, said occurred when he was stopped by the
27 police in relation to his manner of driving.

28 In his original complaint letter and in his
29 submissions today, Mr. T, complains of the actions of two
30 officers; one whose identity is known to be Sergeant N,
31 and a second whose identity is apparently ascertainable but
32 not disclosed anywhere on the file. The file appears to
33 substantiate that no steps were taken by L.E.R.A.
34 investigators to ascertain who he is or what relevant

1 information he might have concerning this matter.

2 In his written documentation and in his oral
3 submissions, much of Mr. T. complaints centres on the
4 process of the investigation in relation to the lack of
5 steps taken concerning this second officer.

6 I note that the formal complaint document, or at
7 least the cover page of it, appears to only identify
8 Sergeant N. as the respondent, but it is not clear when
9 that complaint document was filled out and whether Sergeant
10 N. name was on it when Mr. T. signed that document.
11 Moreover, the complaint letter itself is an integral part of
12 the complaint document and set out the fact that two
13 officers, in different vehicles, were on the scene.
14 Moreover, both of these officers had dealings with Mr. T.
15 or his passenger. The complaint letter, an integral part
16 of the complaint document, seems to me to be making
17 complaints about both officers.

18 In my opinion, the investigation by L.E.R.A. was
19 flawed in this case. The Commissioner ought to have
20 recognized either that T. was complaining about both
21 officers and conducted the investigation appropriately.
22 Even if that were not the case, and the complaint was solely
23 concerning Sergeant N.'s conduct, the Commissioner, in
24 my view, or the investigators of L.E.R.A. ought to have made
25 efforts to investigate the matter further by contacting the
26 second officer.

27 I recognize that much trust is to be placed in the
28 experienced L.E.R.A. investigators and in the special
29 expertise of the Commissioner and it is not appropriate for
30 the court to be second-guessing every investigative
31 determination. Nevertheless, in the circumstances of this
32 case, I find the apparent conclusion that nothing useful
33 could be gained from learning the identify of this officer
34 and taking appropriate steps to interview him was clearly


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, Stephanie Schnell, and has been transcribed by me to the best of my skill and ability.



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