



June 5, 2001

Mr. Paul McKenna
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(sent via registered mail)

M.P.

WINNIPEG MB

Dear Counsel and Mr. M.P.

Re: L.E.R.A. Complaint No. 5333

Please find enclosed herewith the decision re LERA complaint of
Mr. M.P.

Yours truly,

A handwritten signature in black ink, appearing to read "B. Corrin", written over a horizontal line.

Judge B. Corrin
Manitoba Provincial Court

BMC/ik
Enclosure

THE PROVINCIAL COURT OF MANITOBA

In the Matter of: An application pursuant to Section 13(2) of The Law Enforcement Review Act, R.S.M. 1987, c. L75.
(L.E.R.A. Complaint No. 5333)

B E T W E E N:

M.J.P.)	
Complainant)	
)	
- and -)	
)	
CONSTABLE K.T.)	Mr. Paul McKenna
CONSTABLE G.W.)	for the Respondents
Respondents)	
)	Mr. Denis Guenette
)	watching brief for
)	L.E.R.A.

DECISION

CORRIN, P.J.

[1] This is an application under Section 13(2) of the *Law Enforcement Review Act (LERA)* by M.J.P. for a judicial review of the decision of the Commissioner of the Law Enforcement Review Agency (LERA) to take no further action respecting his complaint number 5333. In this regard the Commissioner informed the complainant/applicant by letter dated January 22, 2001 that there was insufficient evidence to justify a public hearing with respect to his complaint of July 7th, 2000.

A review conducted by a Provincial Judge pursuant to Section 13(3) of the LERA is therefore not in the nature of an appeal on the merits of the case. Rather, it is a review for the limited purpose of determining whether, in arriving at his decision, the Commissioner acted within the jurisdiction conferred upon him by the operative legislation. Procedural fairness is a necessary component of the exercise of jurisdiction. Considerable deference must therefore be shown by a Provincial Judge conducting a review pursuant to Section 13(3). A Provincial Judge can only send a complaint to hearing if he or she has determined the Commissioner's decision to be jurisdictionally defective or patently unreasonable. To quote from Madam Justice Beard in *Wagner v. Williams*, (1995), 103 Man. R. (2d) 137 (affirmed Manitoba Court of Appeal 110 Man. R. (2d) 23):

"It is not enough that the decision of the Board is wrong in the eyes of the Court; it must, in order to be patently unreasonable, be found by the Court to be clearly irrational". (para. 56)

[9] A quote from the Supreme Court of Canada in *Re: Maple Lodge Farms Ltd v. Government of Canada et al.*, 47 D.L.R. (3d) 558 is also apropos:

"It is...a clearly established rule that the Court should not interfere with the exercise of a discretion by a statutory authority merely because the Court might have exercised the discretion in a different manner had it been charged with the responsibility..." (p. 562)

[10] The Commissioner concluded that the evidence supporting the various complaints was insufficient to justify a public hearing and therefore declined to take further action on Mr. P's complaint.

[11] I confirm that I have reviewed the material contained in the Commissioner's file, including all of the correspondence and notes prepared by the investigator, and that I have considered the oral submissions made before me on May 24, 2001.

PHYSICAL ASSAULTS AND DISCOURTEOUS REMARKS

[12] The Commissioner retained a professional investigator, Mr. Jim Haslam, who made certain inquiries with respect to these matters. In this regard Mr. Haslam interviewed the two ambulance attendants that dealt with the complainant at the District 6 Station and transported him to hospital. Both attendants recollected the complainant discussing being hit in the chest with a cane by a motorist earlier in the day. Neither recollected any complaint involving an assault at the District 6 Station. One of the attendants advised Mr. Haslam that the alleged assailant was initially described as a 35 year old male. This attendant recollected later hearing the complainant say that the assault had been committed by a 70-year old. Neither attendant reported seeing or hearing either respondent do or say anything that was inappropriate or unprofessional. Both said that the attending police officers were courteous and polite in their presence. Both officers were interviewed by Mr. Haslam and provided a detailed account of their involvement in this matter. Both officers denied all the allegations in this regard. It is clear that the investigation was thorough and failed to confirm any evidence which could support a successful prosecution of these complaints at a public hearing. On the basis of the forgoing, this Court concludes that the Commissioners handling of this aspect of the matter was reasonable within the scope of the discretion which is afforded to the Court.

THEFT OF PROPERTY

[13] The Commissioner reviewed Winnipeg Police Service reports, which disclosed that the complainant only had \$3.38 on his possession when arrested. In this regard the Commissioner examined the prisoner effects log that was completed at the time of the complainant's arrest. The only other items documented were a

wallet and contents, a comb, a pen, a cheque book, and nitroglycerin pills. The Commissioner noted that the complainant acknowledged that this sum, \$3.38, was an accurate account of the properties surrendered to the police. The Commissioner and the Court examined the document and determined that the complainant's signature had been affixed thereto. Mr. Haslam interviewed the officers and reported that they denied removing or keeping any of the complainant's personal property as alleged. It is the Court's view that the Commissioner reasonably declined to take further action with respect to this aspect of the complaint. It is clear that the weight of the evidence could not support a successful prosecution of the complaint in a public hearing.

[14] In summary, this Court concludes that there is nothing on the record indicative of the Commissioner erring when he declined to take further action on the aforementioned complaints.

[15] In compliance with Section 13(14.1) of the *Act*, I order a continuation of the ban on publication of the respondents' names.

Dated this 5th day of June, 2001.

A handwritten signature in black ink, appearing to read "Corrin", written over a horizontal line.

The Honourable Judge Brian M. Corrin