

IN THE MATTER OF: Law Enforcement Review Act
Complaint No. 5704

AND IN THE MATTER OF: An application pursuant to s.13(2)
of the Law Enforcement Review Act
R.S.M. 1987, c L75

BETWEEN:

M.P.

Complainant,

- and -

CONSTABLE T.

Respondent.

EXCERPT FROM PROCEEDINGS, REASONS FOR DECISION,
delivered by The Honourable Judge Everett, held at the Law
Courts Complex, 408 York Avenue, in the City of Winnipeg,
Province of Manitoba, on the 3rd day of September, 2002.

APPEARANCES:

MR. D. GUENETTE, for the Commissioner.

MR. P. MCKENNA, for the Winnipeg Police Association.

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

1 EXCERPT FROM SEPTEMBER 3, 2002

2

3 THE COURT (Orally): Mr. P. do you
4 understand that this is a review of the Commissioner's
5 decision, that's what's in front of me. I'm sorry, Mr.
6 Guenette, did you -- I didn't give you a chance to speak,
7 did you want to?

8 MR. GUENETTE: No, we won't have anything to say,
9 Your Honour.

10 THE COURT: Okay. You understand that this is a
11 review of the Commissioner's decision? You understand that?

12 MR. P. A review of what the Commission
13 done.

14 THE COURT: Right. I'm sort of sitting in appeal
15 of what the Commissioner done -- did. You're not happy with
16 what the Commissioner did and I'm -- and you're coming to me
17 and asking me to review what he did and change --

18 MR. P. Well, it's my mistake, Your Honour.

19 THE COURT: Pardon?

20 MR. P. My mistake. I didn't realize
21 that's what it was really for.

22 THE COURT: Well, I'm just reiterating what's
23 going on here today. I think you understood that you could
24 bring this to court, you weren't happy with what happened at
25 LERA --

26 MR. P. : That's correct.

27 THE COURT: -- and you came before me because you
28 weren't happy with what happened at LERA and you told me the
29 story and you told me and I have the whole file from the
30 Commissioner of what he did, and now I'm going to decide and
31 I'm going to give you my decision now as to whether or not I
32 am -- my decision with respect to my review of what he did.

33 The legislation lays out the grounds for the
34 review, for my review of what the Commissioner did and I

1 have reviewed all of the materials in the Commissioner's
2 file and I am satisfied, firstly, that he acted within his
3 jurisdiction, that he didn't exceed his jurisdiction, he
4 acted within, you know, the proper power, if you will, that
5 he has been given.

6 I am satisfied from the extensive work and
7 investigation that went into this file by his investigators
8 and by the way you were treated by them that they've dealt
9 with the matter with what's called procedural fairness, they
10 thoroughly looked into the matter.

11 And lastly, I am satisfied that the decision he
12 made was not an unreasonable decision, and in fact, it was a
13 reasonable conclusion. He -- the grounds that he denied
14 your application on was -- or took no further action on was
15 -- the evidence wasn't there to support your claim and
16 frankly, from what I've heard today and from my review of
17 the file -- and I'm not hearing the case all over again but
18 it's clear that there were -- there was simply not the
19 evidence on which to proceed and you should not take from
20 that the meaning that you described in your argument that --
21 earlier on that I feel that there is something there but
22 that there is not any -- not enough evidence. I am not
23 saying that at all. I'm saying that there is no evidence --
24 I agree with the Commissioner's decision that there was no
25 evidence to go any further with.

26 So I am denying your application for a view, I'm
27 dismissing it, rejecting it and I am -- given that decision,
28 it is only fair and appropriate to continue the ban on
29 publication.

30 MR. P. Well, if I take legal action
31 against this constable for injuries surely I should have the
32 right to bring this hearing out.

33 THE COURT: Well, you have come to court.

34 MR. P. : Yes.

1 THE COURT: And you have told me everything, I
2 gave you a chance to speak for as long as you want to.

3 MR. P. That's correct.

4 THE COURT: And I sit in review of what the
5 Commissioner of the LERA Commission did and I am upholding
6 his decision, I am upholding it, I am agreeing with it.

7 MR. P. : Yes, I realize this, Your Honour.

8 THE COURT: Okay. So that's what's happened here,
9 today.

10 MR. P. Yes. The next one won't get away
11 quite Scott-free, Your Honour, because he has got a witness
12 that someone attacked me.

13 THE COURT: Thank you, is that all, counsel?

14 MR. GUENETTE: Okay, thank you.

15 MR. MCKENNA: Yes.

16 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, PAMELA PESCIPELLI, 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, Donna Jorgerson, and has been transcribed by me to the best of my skill and ability.

COURT TRANSCRIBER

MEMORANDUM

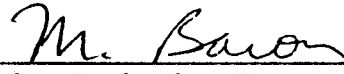
October 1st, 2002

TO: George Wright
Commissioner, L.E.R.A.

FROM: Judge Catherine Everett

Re: **Review – Sept. 3rd, 2002 at 2:00 p.m.**
M.P. #5704

Attached is a transcript articulating my reasons for dismissing this application for review


for Judge Catherine Everett

/mrb