

IN THE MATTER OF: Law Enforcement Review Act  
Complaint No. 5753

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:

J.G.

Complainant,

- and -

CONSTABLE D.K.

Respondent.

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TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Acting Chief Judge Miller, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 21st day of January, 2002.

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**APPEARANCES:**

MR. G. HANNON, for the Commissioner.

MR. J.G. In Person.

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SUBMISSION BY MR. HANNON

1 seriously in respect of the matter and I think -- I hope  
2 I've outlined at least a couple of those for you, one being  
3 the time frame of, of the complaint and the basis for the  
4 complaint. And secondly, just exactly what it is that you  
5 are alleging in the way of a disciplinary default against  
6 Constable K. It lacks that clarity and, and precise  
7 articulation or precise outline of what it is that you are  
8 complaining about. Do you understand?

9 MR. G : Yes.

10 THE JUDGE: Okay.

11 Mr. Hannon, did you have anything further, sir?

12 MR. HANNON: No, Your Honour. That's -- those are  
13 my comments.

14 THE JUDGE: All right. Mr. G, with your  
15 indulgence I'll just take a couple of minutes and I'll be  
16 back within 10 minutes, if that's all right with you.

17 MR. G : Yes.

18 THE JUDGE: I don't know if you've got a meter to  
19 plug or something but I'll be very brief in terms of a short  
20 recess and I'll come back and deal with the matter at that  
21 time. Okay?

22 MR. G : Okay. Thank you.

23

24 (BRIEF RECESS)

25

26 THE JUDGE: My apologies for being a little bit  
27 longer than what I had hoped, Mr. G and Mr. Hannon.  
28 I got sidetracked by something else and had to deal with  
29 that briefly. So I took a little bit of extra time to  
30 consider this matter.

31 Mr. Hannon, would it be your position that given  
32 the nature of this proceeding that I am in a position to  
33 deliver my decision orally from the bench without the  
34 requirement of providing it in writing?

1 MR. HANNON: I believe that would be fine, Your  
2 Honour.

3 THE JUDGE: Yes. This of course is not a hearing  
4 on the merits of the matter which of course would compel, or  
5 does oblige the court, to provide its reasons in writing.  
6 And by my reading of the applicable legislation I'm  
7 certainly of the view that it is not necessary to provide  
8 reasons in writing and that I can indeed render a decision  
9 orally in respect of this matter, and that is my intention.

10 Mr. G. brought -- oh, you can be seated,  
11 sir. You can remain seated.

12 Mr. G. brought a complaint against  
13 Constable K. of the Winnipeg Police Service on -- by  
14 letter dated July 13 of 2001. That letter was considered by  
15 Commissioner Wright who, on the 27th of July of 2001,  
16 responded to Mr. G. informing him that he was  
17 declining to take further action in respect of that  
18 complaint and outlining the reasons for his decision to that  
19 effect.

20 Mr. G., in accordance with the legislation  
21 and as is his right, sought a review by a provincial judge  
22 of the decision of the commissioner. And that is the  
23 process that has unfolded here today.

24 I've had an opportunity to review the materials on  
25 the file. I have, of course, today had an opportunity to  
26 hear the submissions of the parties and particularly the  
27 submission of Mr. G. in support of his position that  
28 the Commissioner erred in taking the decision declining to  
29 take further action on the complaint.

30 And as Mr. G. has acknowledged today and as  
31 was pointed out to him in earlier correspondence from Mr.  
32 Wright, it is understood that the burden of proof rests with  
33 Mr. G. in these proceedings to show that the  
34 Commissioner erred in declining to take further action on

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1 the complaint.

2 I have in the course of my review during the  
3 recess had an opportunity to consider the reasons of my  
4 brother Judge Chartier which were delivered on May 30th of  
5 the year 2000 in respect of the matter of B. (phonetic)  
6 and Constables S and A. And I have found that  
7 decision to be helpful in terms of determining in my mind  
8 the standard of review that is to be applied in  
9 circumstances such as those that I'm dealing with today.

10 Effectively Commissioner Wright declined to take  
11 further action in respect of Mr. G. 's complaint on  
12 the basis that pursuant to Section 13(1) paragraph (a) he,  
13 Commissioner Wright, determined the complaint to be  
14 vexatious. I'm satisfied that in the course of the review  
15 which I am conducting of that decision the standard to be  
16 applied is that of correctness.

17 In all of the circumstances, having heard from Mr.  
18 G. in person today, and I thank him for his time and  
19 efforts in respect of the matter, having reviewed the file  
20 and its contents, I am satisfied that with all of that the  
21 decision of the Commissioner was, indeed, correct. And  
22 accordingly I uphold the decision of Commissioner Wright in  
23 respect of that particular, that specific complaint, that  
24 was brought by Mr. G. I am not satisfied that the  
25 burden that applies to Mr. G. in these proceedings  
26 has, has been satisfied.

27 That is my determination in respect of this  
28 matter.

29 Mr. G. for your benefit, sir, I have  
30 determined that the decision of Commissioner Wright in  
31 respect of that particular complaint of July 13 of last year  
32 was a correct decision. And I support the decision that  
33 Commissioner Wright took.

34 In the course of our discussions earlier this

1 morning you understand that, hopefully now, a little bit  
2 more clearly, what your responsibilities are in terms of  
3 time lines and actually outlining in more specific terms  
4 complaints or what have you that, that you might have about  
5 the conduct of members of the Winnipeg Police Service or, or  
6 members of other municipal police forces in this province.  
7 Okay?

8 Thank you, sir.

9 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, Jody Brown, hereby certify that the foregoing pages of printed matter, numbered 1 to 23, 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, Monique Navitka, and has been transcribed by me to the best of my skill and ability.

Jody Brown.  
COURT TRANSCRIBER

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