

IN THE MATTER OF:           The Law Enforcement Review Act Hearing  
                                  before Judge M. S. Rusen

BETWEEN:

J.D.

Applicant,

and

J.P.

Respondent Officer.

**DISPOSITION HEARING**

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TRANSCRIPT OF PROCEEDINGS had and taken before  
His Honour, Judge M. S. Rusen, at the hearing held at the  
Victoria Inn, in the City of Brandon, in the Province of  
Manitoba on the 11th day of January, 1995.

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**APPEARANCES:**

M. POLLOCK, for the Applicant.

A. MCGREGOR Q.C. and P. MCKENNA, for the Respondent.

R. SINGLETON Q.C. and B. COOPER, for the City of Brandon,  
City of Brandon Police Department and the Chief of Police.

J. JANZEN, for the Brandon Police Association.

## PROCEEDINGS

1           THE COURT: This morning we are proceeding with  
2 the penalty hearing with respect to the findings against  
3 Constable J.P. I've read the material which has  
4 been filed by Mr. McGregor on behalf of the respondent.  
5 I've read Mr. Pollock's material which was filed on behalf  
6 of his client. Before proceeding with the submissions I  
7 think, according to Section 28.1, the details of the service  
8 record of the respondent should be filed and marked as an  
9 exhibit in the cause, or else read into the record,  
10 whichever counsel chooses to do.

11           MR. COOPER: Your Honour, if it please the court,  
12 in anticipating that the service record as described in the  
13 Law Enforcement Review Act had to be brought forward, I've  
14 had Inspector R.B. attend to reviewing Constable  
15 J.P. personnel records, and I have to say I anticipated  
16 calling him to put in the evidence as to his service record.  
17 It should be very brief.

18           THE COURT: All right. Carrying that further, the  
19 submissions that I would expect to receive this morning are  
20 to be received by the parties to this action, namely Mr.  
21 McGregor, on behalf of his client the constable J.P. Mr.  
22 Pollock on behalf of his client Mr. J.D. And I've  
23 invited -- or not I've invited, but Chief Constable B.S.  
24 the Chief of Police of the City of Brandon, has been  
25 invited to make a submission. So we can proceed with those

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1 submissions at this time, and I believe, Mr. Pollock, it's  
2 incumbent upon you to speak first with respect to this  
3 matter.

4 MR. POLLOCK: Yes, sir.

5 MR. COOPER: Your Honour, did Your Honour wish me  
6 to call Inspector B. now to put in the details of the  
7 service record before --

8 THE COURT: That's fine.

9 MR. COOPER: Yes.

10 THE COURT: Sometimes -- This is an appropriate  
11 time to do that in case Mr. -- any of the parties want to  
12 comment upon it, it would be a good time now, the  
13 appropriate time to do that.

14 MR. COOPER: I'm going to call Inspector R.B.  
15 please. Yes, to the witness stand.

16 THE CLERK: Would you state your full name,  
17 please.

18 THE WITNESS: F.R.B.

19

20 F.R.B. being first duly

21 sworn, testified as follows:

22

23 MR. COOPER: Your Honour, if it please the court  
24 I'm going to lead Inspector B. because I expect most of  
25 his testimony in uncontroversial. My friend Mr. Pollock or

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1 Mr. McGregor will object if they feel I should not be  
2 leading.

3 THE COURT: Excuse me. Before you proceed -- Mr.  
4 McKenna, you've placed before me, I take it, a statement, a  
5 decision, which is in French.

6 MR. MCKENNA: Yes, Your Honour, we -- when we  
7 received Mr. Pollock's material we made inquiries regarding  
8 the case that he had filed, and the conclusion of the case  
9 was that the Quebec Police Ethics Commission had made a  
10 recommendation regarding a police officer. We did some  
11 follow-up and we spoke to the Assistant Commissioner of the  
12 Quebec Police Ethics Committee, and they advised us that  
13 this police officer -- of the police officer's status. We  
14 asked for a copy of the final decision regarding the status  
15 and it was faxed to us on Monday, and obviously with no time  
16 to translate it.

17 THE COURT: So you've got no translation of this.

18 MR. MCKENNA: We have no translation, Your Honour.  
19 That's the -- It exists in French only.

20 THE COURT: What am I expected to do with it?

21 MR. MCKENNA: Well, Your Honour, you could -- I  
22 would say get the Province to translate that decision for  
23 you. The recommendation that was filed by Mr. Pollock was a  
24 1987 recommendation. The decision, the final decision  
25 re-instating the officer was 1989. So that was, you know,

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1 six years ago, and I just received it two days ago. I  
2 intend -- At some point during the submissions and Mr.  
3 McGregor's discussion of the case law, it would be my  
4 intention to discuss some of the important points of that  
5 case, and from there of course you can have it translated.

6 THE COURT: Very well. Mr. Cooper, proceed.

7

8 DIRECT EXAMINATION OF INSPECTOR B. BY MR. COOPER:

9 Q Inspector B. I understand that your position  
10 with the Brandon Police Services is that of Executive-  
11 Assistant. Is that correct?

12 A Yes, it is.

13 Q And how long has that been your position?

14 A Since June 1st, 1991.

15 Q Right. And I understand that you have served with  
16 the Brandon Police Service for some 24 years. Is that true?

17 A That's correct.

18 Q I understand that historically your  
19 responsibilities with the Brandon Police Service have  
20 included training, and as well have included the management  
21 of the Brandon Police Service's drive towards accreditation  
22 since 1989. Is that right?

23 A That's correct.

24 Q Now, I understand that your responsibilities as  
25 Executive Assistant include ensuring that policy is

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1 meaningful and current. Am I right about that?

2 A That's correct.

3 Q And that your responsibilities include managing  
4 internal audit systems to ensure compliance with policy. Am  
5 I right about that?

6 A That's correct.

7 Q And finally, you deal with complaints, including  
8 internal disciplinary matters and liaising with LERA, and  
9 you also have involvement in any official commendations. Is  
10 that true?

11 A That's correct.

12 Q Now, I have asked you to do a search of Constable  
13 P's personnel records at the Brandon Police Service.  
14 Have you done that, Inspector?

15 A Yes, I have.

16 Q All right. What year did Constable P. start  
17 with the Brandon Police Service?

18 A In 1979, January 7th.

19 Q In what divisions has Constable P. served  
20 with the Brandon Police Service?

21 A All his time has been in Patrol Division, which is  
22 uniform, and either assigned to Platoon or Canine.

23 Q Okay.

24 A If you'd like the dates, I'd have to refer to  
25 this sheet.

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1 Q Yes, I think that would be acceptable.

2 A From 1979 to July of 1988 he was Platoon. July,  
3 '88 to May of '89 he was in Canine, in 1989 he was  
4 transferred back to Platoon, and he went to — was then  
5 transferred to Canine in July of '89 and back to Platoon in  
6 January of '92.

7 Q All right. Now, after your search of Constable  
8 P.'s personnel records, has Constable P. been  
9 convicted of any disciplinary defaults under the Law  
10 Enforcement Review Act?

11 A No, he has not.

12 Q Has Constable P. been convicted of any  
13 charges under Brandon Police Service's disciplinary policy  
14 or regulations?

15 A No, he has not.

16 Q Has Constable P. received any official  
17 commendations?

18 A No, he has not.

19 MR. COOPER: Now, Your Honour, the final element  
20 to the service record is, as I understand it under the Law  
21 Enforcement Review Act, is the computer printout of the  
22 training record, and I intend to call Sergeant D.T.  
23 to put in the computer printout of the training record, if  
24 it please the court.

25 THE COURT: Do you have any objections, Mr.

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1 Pollock, to having that filed as an exhibit without calling  
2 a witness?

3 MR. POLLOCK: No, sir. I've never seen it, but no  
4 objection.

5 THE COURT: Why don't we just file it as an  
6 exhibit, or would you like to read it into the record?

7 MR. COOPER: Well, I think there may be some  
8 elements of it that need some explanation. I don't  
9 anticipate taking very long with Sergeant T.

10 THE COURT: All right.

11 MR. COOPER: So on that basis, those are my  
12 questions of yourself, Inspector B. Please wait.

13 THE COURT: Thank you, Inspector.

14 MR. MCKENNA: Your Honour, I take it we'll be  
15 allowed to question Inspector B.

16 THE COURT: You want to -- Yes, sure.

17 MR. MCKENNA: Thank you.

18

19 EXAMINATION BY MR. MCKENNA:

20 Q Now, Inspector B. during your years with the  
21 Brandon Police Service, have you ever had an opportunity to  
22 work with Constable P.?

23 A I was the supervisor of Constable P. in the  
24 '80's.

25 Q In the 1980's you were supervisor of Constable



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1 P ?

2 A Yes, I was.

3 Q And approximately how many years did you supervise  
4 Constable P. ?

5 A I believe it was three.

6 Q Three years in the 1980's. Can you give us an  
7 assessment for His Honour of Constable P. during that  
8 period of time as a police officer with the Brandon Police  
9 Service?

10 A I found P. to be liked by most of his co-  
11 workers -- all of the co-workers. People in the public  
12 would write letters or speak to me and say that he was a  
13 likable person, he was diligent in his work, he was honest,  
14 forthright, he was a stalwart. He wasn't a complainer. He  
15 was one of the people that go out and do what was necessary  
16 to get it done. He would involve his colleagues if he was  
17 having trouble in a particular file. He didn't care whether  
18 you were a very senior person or a very junior person. If  
19 he had exhausted what he thought were reasonable solutions  
20 he would ask for others. If they had something then he  
21 would follow it up. I would say that he was diligent and  
22 tenacious in the files that he had, to try and bring them to  
23 a successful conclusion.

24 Q All right. That was an assessment of him in the  
25 1980's. Do you feel that same way about him now?

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1 A On the (inaudible) I would say that's still held  
2 by his supervisors that are in the Police Service now, and  
3 his colleagues, and I still hold to that.

4 Q All right. Now, I understand that when you say  
5 that there are no convictions -- or commendations, I should  
6 say, that the Brandon Police Service did not have a  
7 definition of commendations until 1992. Is that right?

8 A Yes, that's correct.

9 Q I understand that there are a number of letters  
10 that Constable P. has received over the years that --  
11 if anything else would commend him for a job well done in  
12 particular instances. Is that not right?

13 A Yes. That's correct.

14 Q Do you have those letters here with you?

15 A I don't have them here with me, but I can get  
16 them.

17 Q All right.

18 MR. MCKENNA: Your Honour, I would ask that those  
19 also be entered. The Law Enforcement Review Act mentions  
20 commendations, and it doesn't really give a definition. And  
21 I would suggest that any of these types of letters that  
22 commend an officer for a job well done ought to fall into  
23 the Law Enforcement Review Act under the portion that  
24 permits you to review commendations, and I would ask that  
25 the Brandon Police Service obtain those letters and file

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1 them with you.

2 THE COURT: Okay. Approximately how many letters  
3 are there? Have you checked?

4 THE WITNESS: There's a dozen or so.

5 THE COURT: I'll agree to that.

6 MR. MCKENNA: Thank you.

7 MR. COOPER: I have one set of copies of those  
8 letters. I brought the one set. Perhaps we'll have to have  
9 a quick recess to --

10 THE COURT: Well --

11 MR. MCKENNA: Well, maybe somebody can photocopy  
12 it.

13 THE COURT: Mr. Cooper, before we proceed further,  
14 the Brandon Police Service has been referred to in the  
15 correspondence which you sent, or a copy which I received,  
16 and it's been mentioned here again -- I note that in my --  
17 in the appearances that yourself and Mr. Singleton. Q.C.,  
18 were representing the City of Brandon, the City of Brandon  
19 Police Department, and the Chief of Police, B.S.

20 Would you please clarify for me where the Brandon Police  
21 Service fits in with respect to those three situations.

22 MR. COOPER: Well, the Brandon Police Service,  
23 Your Honour, is an agency of the City of Brandon, and of  
24 course the Chief of Police is the Chief Executive Officer of  
25 that agency, so --

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

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R.B. - EX. BY MR. MCKENNA

1 MR. MCKENNA: If I can help -- I think I  
2 anticipate where that's coming from, is that most police  
3 forces are now changing from departments to service.  
4 Brandon Police Department and Brandon Police Service are one  
5 and the same now.

6 MR. COOPER: Yes. I'm sorry, Your Honour. Yes,  
7 I didn't understand that was the nature of your question.

8 THE COURT: That's fine. Okay. I just wanted  
9 that clarified. Fine, thank you.

10 MR. COOPER: I don't know what Your Honour wishes  
11 me to do about getting these --

12 THE COURT: Well, I just -- I'm sure you have  
13 somebody that can --

14 MR. COOPER: Take some quick copies.

15 THE COURT: I take it these letters are available  
16 and they're in one place.

17 THE WITNESS: Yes.

18 THE COURT: And they're easily found, are they?

19 THE WITNESS: Yes, they are, Your Honour.

20 THE COURT: So why don't you -- May I suggest  
21 respectfully that you send somebody and pick up the letters  
22 and have them filed.

23 MR. COOPER: Sure. I'll get them copied  
24 immediately, Your Honour.

25 THE COURT: All right. So those are your

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1 questions, Mr. McKenna?

2 MR. MCKENNA: Those are my questions, Your Honour.

3 THE COURT: All right. Mr. Pollock.

4

5 CROSS-EXAMINATION BY MR. POLLOCK:

6 Q I just have a few questions, sir, to ask you.

7 I'm sorry. I missed something. What is an official  
8 commendation? What does that mean, "official"?

9 A According to our policy now, it's an exemplary  
10 act.

11 Q So there are no examples of any exemplary act by  
12 Constable P. which is on his record.

13 A Under that policy, that's correct.

14 Q And for example, what is an exemplary act?

15 A If you do something that's above and beyond what  
16 we consider normal course of events in investigating  
17 something. It may be something that's done off duty, or  
18 doing something where you may save or render assistance to  
19 somebody that's in distress, that saves their life.

20 Q Have there been officers of the Brandon City  
21 Police who have received official commendations?

22 A Three.

23 Q And are there any negative letters that have been  
24 written or received about Constable P. to your  
25 knowledge?

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1 A Two that I'm aware of.

2 Q Okay. And what were those letters relating to,  
3 sir?

4 A One was dealing with an incident with a media  
5 person over how close they were to an incident. Constable

6 P. felt that they were too close and the media person  
7 wasn't -- didn't like Constable P. telling him to get  
8 back. And the other one that I'm aware of is over an  
9 arrest.

10 Q Over an arrest.

11 A That's correct.

12 Q When was that, sir?

13 A These were in 1989 and 1990, I believe.

14 Q To your knowledge, are there any outstanding LERA  
15 complaints?

16 MR. MCKENNA: Your Honour, I object --

17 MR. POLLOCK: Made against Constable P. ?

18 MR. MCKENNA: Your Honour, I object to that. That  
19 is not a permissible question under these circumstances.

20 THE COURT: It's like asking somebody whether he's  
21 charged with an offence.

22 MR. POLLOCK: Okay. That's fine.

23

24 BY MR. POLLOCK:

25 Q And I understand that in 1986 Constable P.

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1 was involved while he was on duty, in the death of a  
2 particular individual in Brandon.

3 MR. MCKENNA: Your Honour, we have been through  
4 this before, and it was ruled as irrelevant then. I see no  
5 reason to have it relevant at this point in time.

6 MR. POLLOCK: I haven't asked the question yet,  
7 Your Honour. Perhaps you can hear the question?

8 THE COURT: Well, but I recall the incident...

9 MR. POLLOCK: I have -- I have a question.

10 THE COURT: ..close to a year ago, and --

11

12 BY MR. POLLOCK:

13 Q I have one question, and my question is: is there  
14 no letter of complaint regarding that particular incident,  
15 on Constable P.'s record?

16 A No.

17 Q None whatsoever.

18 A No.

19 MR. POLLOCK: Thank you.

20 THE COURT: Thank you. All right?

21

22 (WITNESS EXCUSED)

23

24 MR. COOPER: I'll attend to getting those letters  
25 photocopied and filed forthwith, Your Honour.