

**IN THE MATTER OF:**

**Law Enforcement Review Act  
Complaint #3238.**

**AND IN THE MATTER OF:**

**An Application pursuant to s. 13  
of The Law Enforcement Review  
Act R.S.M. 1987, c. L75.**

**B E T W E E N:**

**J. N.**  
Complainant/Appellant

- and -

**SGT. J. R. F.**  
**SGT. W. H.**  
**CST. S. B.**  
**CST. G. M.**  
Respondents.

)  
) Mr. Dennis Troniak  
) on behalf of the Complainant  
)  
)  
) Mr. Paul McKenna  
) Mr. Josh Weinstein  
) on behalf of the Respondents  
)  
)  
) Mr. K. Labossiere  
) on behalf of the City of Winnipeg  
) Police Association  
)  
) Mr. Dennis Guenette  
) on behalf of L.E.R.A.

It is significant to note that this particular matter obviously has a history to it respecting the manner in which it has been brought before the court and the background of the various actions taken by the Commissioner from its inception.

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## I. THE ISSUES

A Motion has been placed before hearing by counsel on behalf of the Respondents alleging that there is no jurisdiction for the purposes of a hearing, pursuant to the *Law Enforcement Review Act* as a consequence of non-compliance with the provisions of the Act, particularly appropriate notice within the specified times, as statutorily mandated.

## II. THE FACTS

The facts are taken from the Affidavit of Sgt. J. R. F. with respect to these issues as follows:

2) In mid May, 1998, I received a letter dated May 14, 1998 (*Exhibit 1*) from George Wright (Wright"), the Commissioner of the Law Enforcement Review Agency ("L.E.R.A.") advising me that I had been identified as an Officer involved in a Complaint filed by J. N. ("N. ").

3) Attached to the May 14, 1998 letter were the following:

i) A copy of L.E.R.A. Complaint Form No. 3238 (*Exhibit 2*).

ii) A copy of the handwritten seven page statement, signed by N. setting out the particulars of his Complaint (*Exhibit 3*).

iii) A copy of a hand-drawn map/lay-out of a residence (*Exhibit 4*).

4) This Complaint refers to my involvement, and that of other Winnipeg Police Service Officers, with N. on December 21/22, 1996. My first notice of this Complaint was in mid May,

1998, approximately 17 months after the incident, despite the fact that I could easily have been contacted by L.E.R.A. through the Winnipeg Police Service during that entire time.

5) My legal counsel, Mr. Paul McKenna, sent a letter dated June 23, 1998 (*Exhibit 5*) to Mr. Bob Brakefield-Moore of L.E.R.A. taking issue with the timeliness of the service of the Complaint. At the time, we were under the impression that L.E.R.A. had received the Complaint in a timely fashion, but had chosen not to send it to the Respondent Officers.

6) L.E.R.A. replied one year later by way of a June 14, 1999, letter from Wright (*Exhibit 6*) advising that an extension of time had been granted for the filing of the Complaint pursuant to Section 6(7) of the Act.

7) I am advised by our legal counsel, Paul McKenna, and do verily believe, that he recently reviewed the Commissioner's file on Complaint No. 3238 and that it reveals for the first time the following regarding the timeliness of the filing of this Complaint:

- a) The incident occurred on December 21, 1996, and all that was filed with L.E.R.A. at the time was a December 31, 1996, letter (*Exhibit 7*) from Sheldon Pinx requesting "... *that the time limit for the filing of the formal complaint be extended until the criminal prosecution has been concluded*".
- b) Then Commissioner Norm Ralph ("Ralph") sent a letter dated January 14, 1997, (*Exhibit 8*) to Mr. Pinx advising him that an extension of time had been granted under Section 6(7) of the Act and further advising:

*"An extension granted under Sec. 6(7) of the Act requires that a complaint be filed in my office within one year of the incident being complained about or within 30 days of the final disposition of the related charges, whichever is the sooner.*

*You and your clients should be aware that if a complaint is not filed within the time periods*

*specified by Section 6(7) of the Act my office will lose jurisdiction and will no longer be able to take any action in relation to this incident."*

- c) Enclosed with the January 14, 1997, letter were copies of L.E.R.A.'s public information brochure (*Exhibit 9*).
- d) The next correspondence that L.E.R.A. received was from Mr Chris Wullum ("Wullum") who was also with the law firm Wolch, Pinx, Tapper, Scurfield by way of a December 17, 1997 letter (*Exhibit 10*) advising that N. charges were disposed of on December 18, 1997, and that N. wished to proceed with his Complaint. L.E.R.A. still had not received a Complaint from N. at that point.
- e) Ralph then sent a letter dated January 13, 1998 (*Exhibit 11*) to Wullum enclosing Complaint Form 3238, asking that it be completed and signed by N. and returned to Ralph along with a signed statement of complaint in N. own words.
- f) In early February, 1998, L.E.R.A. received the signed L.E.R.A. Complaint Form No. 3238 (*Exhibit 2*) for the first time from N. The Complaint Form came in an envelope from N. which is postmarked February 4, 1998, (*Exhibit 12*).
- g) The particulars (*Exhibits 3 and 4*) of N. Complaint were not included in the February 4, 1998 envelope.
- h) Ralph sent a letter dated February 18, 1998 (*Exhibit 13*) to Wullum asking for N. statement, photographs and other information.
- i) Wullum sent a letter dated February 26, 1998 (*Exhibit 14*) to Ralph enclosing the photographs but not the particulars, which they could not locate at the time.

- j) A May 11, 1998, L.E.R.A. Note to File (*Exhibit 15*) indicates that N.            did not bring his statement setting out the particulars of his Complaint and the diagram of the residence (*Exhibits 3 and 4*) to L.E.R.A. until May 11, 1998.

### III. THE LAW

The *Law Enforcement Review Act*, Section 6(7) states:

Where an alleged disciplinary default occurs in the course of an investigation, arrest or other action by a member which results in a criminal charge against the complainant, the Commissioner may extend the time for filing the complaint to a date not later than one year after the date of the alleged disciplinary default or 30 days after the final disposition of the criminal charge, *whichever is the sooner*.

*Exhibit #1* filed on behalf of the Respondents indicates that no notice of the existence of the complaint was received by the Respondents until over seventeen months had elapsed from the date of the alleged incident.

The event alleged occurred on December 21/22, of 1996. As a consequence, December 22<sup>nd</sup>, 1997 would have been the ultimate date upon which a formal complaint in the appropriate manner, pursuant to the Act, could have been filed.

As indicated previously, it is my view that none of the statutory requirements of the Act were complied with by the complainant until the complaint of February 1998, postmarked February 4<sup>th</sup>, 1998, and even at that juncture the complaint was incomplete and numerous letters were required to go back and forth to obtain the balance of the particulars.

Counsel for the complainant argued that pursuant to the Act, minimum requirements for a complaint had been made. He suggests that the letter from counsel satisfied the complaint with respect to the allegations, and that counsel's letter would suffice for a letter in writing with particulars as set out in a further letter of counsel submitted to the Commissioner. He indicates that all of these actions by counsel took place within the time period set out in the Act itself.

It is obvious, by virtue of the specific provision of the Act, that the Act does not contain the provision which allows counsel or an agent to file the complaint and provide the particulars without the signature of the complainant, and satisfaction of the time constraints.

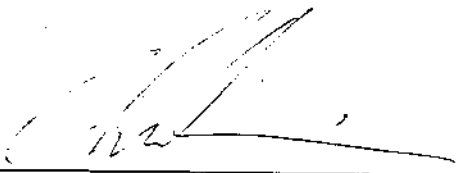
Counsel for the respondents cited a number of cases; and in particular **Re Vialoux and Registered Psychiatric Nurses Association of Manitoba,**

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decision of the Manitoba Court of Appeal delivered October 7<sup>th</sup>, 1983. The conclusion of the Court of Appeal was that the directions contained in the Act at issue was mandatory time requirement which ought to be strictly observed as the provision involves the private rights of an individual, and failing to commence an inquiry no later than the Act directed. As a consequence, the committee acted without jurisdiction and any order made in such an inquiry is a nullity.

Counsel also referred to the decision in the case of Stefani v. College of Dental Surgeons of British Columbia (Exhibit #4)

Having satisfied myself that the law is such that compliance with the statutory requirements is an absolute. The respondents motion for dismissal for lack of jurisdiction is granted, and the matter is dismissed.



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Judge Charles N. Rubin