

The Honourable Brian M. Corrin

**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 Nos. 5066 and 5111)

B E T W E E N:

<b>MR. G</b>	)	Mr. G in person
	)	and unrepresented by counsel
<b>- and -</b>	)	
	)	
<b>CONSTABLE S.</b>	)	Mr. Josh Weinstein
<b>Respondent</b>	)	For the Respondents
	)	
<b>SERGEANT C.</b>	)	Mr. Denis Guénette
<b>Respondent</b>	)	Counsel for L.E.R.A.
	)	
	)	
	)	
	)	
<i>NOTE: These reasons are subject to a</i>	)	Judgment Delivered:
<i>ban on publication of the respondents'</i>	)	March 7, 2003
<i>names pursuant to s. 13(4.1) (c)</i>	)	

[1] This is an application under Section 13(2) of *The Law Enforcement Review Act* by Mr. G for a judicial review of the decision of the Commissioner of the Law Enforcement Review Agency (LERA) to take no further action respecting his complaints numbered 5066 and 5111. In this regard the Commissioner informed the complainant/applicant by letters dated May 8, 2002 that there was insufficient evidence to justify a public hearing with respect to these complaints of February 10<sup>th</sup> and February 11, 2000.

[2] The process used by the Commissioner in the exercise of his discretion was described by his counsel to be essentially investigative and as such is conceded to be ill suited to determining credibility or making findings on contested facts. Court was told that the Commissioner considers himself to be an investigator and not a

quasi-judicial official. Counsel for the Commissioner declined to make a submission in support of his client's decision when invited to do so by the Court.

[3] This Court is of the opinion that the standard of review to be applied by a Provincial Court Judge under Section 13(2) of *The Law Enforcement Review Act* is properly indicated in the following decisions:

LERA Complaint No. 3208 – Associate Chief Judge Bruce Miller

LERA Complaint No. 3771 – Judge Marva J. Smith

LERA Complaint No. 3597 – Judge Richard Chartier

LERA Complaint No. 5792 – Judge Wesley Swail

Counsel for the Commissioner stated that he concurs with this approach.

### **DECISION ON THIS REVIEW**

[4] The Commissioner's decision in these matters was to decline to take further action on either complaint. I am satisfied that the Commissioner did not err in declining to take further action on the first complaint. The complainant alleged that the Respondents misconducted themselves by abusing their authority in the issuance of a traffic ticket.

[5] Suffice it to say that the Commissioner rejected the "traffic ticket" complaint after receiving confirmation that the complainant plead guilty to this charge and received a fine for his involvement in the offence. The Court agrees that an abuse of authority could not properly be construed from the circumstances surrounding this incident. There is simply no evidence upon which a Judge hearing the matter under the Act could reasonably conclude that a disciplinary default has occurred in the circumstances of this incident. Indeed, having reviewed the Commissioner's file, this Court is of the view that the complaint appears to be totally frivolous and vexatious.

[6] The complainant made serious allegations of physical abuse and excessive force against the Respondent S. in his complaint filed February 11, 2000. He alleged that Constable S. shook him in the hallway of the Hartford Station after arrest, then proceeded to push him against an interview room wall so hard that he hit his head thereupon and then pushed him down causing him to strike his head on a table. He also accused Constable S. of calling him "a piece of shit". He told the Commissioner's investigator that Sergeant C. was not in the room when the latter

events took place. The officers informed the investigator that such was not the case, that Mr. G. had never been left alone in Constable S's sole care and control.

[7] It should be noted that these allegations resulted from a separate incident at Mr. G.'s residence, the day following the traffic incident. The investigator's report indicates that this incident arose as a consequence of the officers attending the complainant's apartment to serve a summons for the traffic incident. They hadn't been able to locate a common offence notice the previous evening. The officers told the investigator that the complainant came to the door in an obviously irate state and then punched Sergeant C. in the face. A struggle ensued. Ultimately Mr. G. was arrested for assaulting a peace officer and taken to the Hartford Avenue police station. The complainant alleged that Constable S. shook him in the hallway of the station, then while alone with him in an interview room, pushed him against the wall so hard that he hit his head, then pushed him again causing him to strike his head on a table. The officers, when interviewed, related a very different sequence of events. They stated that the complainant was still in a belligerent state at the police station and threatened to "beat the shit" out of both officers if his handcuffs were removed. The investigator was told that the officers left Mr. G. alone while they went to fill out various reports. Upon returning some time later, the complainant agreed to settle down and the handcuffs were removed. Constable S. denied being alone with the complainant in the interview room and denied referring to him in any derogatory manner. During the course of the investigation Commissioner Wright received a medical report from Dr. Roman Koczanski dated January 31, 2002. This report confirmed that the complainant had presented to the physician's office on February 11, 2000 and complained of physical abuse by the police. Dr. Koczanski related that Mr. G. complained about being thrown against the wall and having struck his head against same as a consequence of physical abuse by the police. Examination revealed slight swelling on the complainant's left temple and over the left TM joint. He was diagnosed with a head contusion as well as contusions to both wrists.

[8] Court was told that the complainant plead guilty to assaulting the Respondents before Provincial Judge John Guy and received a conditional discharge. The Commissioner concluded that the injuries related in the medical report were consistent with the complainant "having struggled with police". Assumably he was of the opinion, although he didn't directly state it, that he disbelieved the complainant's version of events at the police station, preferring without explanation to accept the version offered by the officers. With respect, the Court does not agree with Commissioner Wright in this regard. While it is quite possible that his conclusion about the origin of the complainant's injuries is

correct, it is equally possible that he is wrong. The injuries are equally consistent with the complainant having been physically abused in the manner he described in his complaint. I am satisfied that a judge, upon receiving this evidence at a preliminary inquiry, would decide to commit this matter for a trial. There is after all direct and corroborative evidence implicating the Respondent S. upon which a properly instructed jury could reasonably convict.

[9] This Court being of the opinion that the medical evidence presented to Commissioner Wright is corroborative of the second complaint and as such is capable of supporting an inference that the complainant was subjected to physical abuse by Constable S., hereby rules that the Commissioner erred in declining to take further action on this aspect of the complaint. I therefore order that the Commissioner refer Complaint No. 5066 to a Provincial Judge for a hearing.

[10] In accordance with Section 13(4.1) I further order:

- (a) that no person shall cause the Respondents' name to be published in a newspaper or other periodical publication, or broadcast on regional or television until the Judge has determined the merits of the application;
- (b) that if the application is dismissed by the Judge hearing the complaint on its merits, the ban on publication of the Respondents' name shall continue;
- (c) that if the application before the Judge hearing the complaint on its merits is successful, the ban on publication of the Respondents' name shall continue until the complaint is disposed in accordance with *The Law Enforcement Review Act*.

Dated at Winnipeg, March 7, 2003.

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Brian M. Corrin, P.C.J.