

Date: 2004/10/20

**IN THE MATTER OF:** Law Enforcement Review Act Complaint #6138

**AND IN THE MATTER OF:** An Application pursuant to s. 13 of The Law Enforcement Review Act R.S.M. 1987, C. L75

**BETWEEN:**

**T.R. Complainant** ) **T. R., in person**  
 ) **Unrepresented by counsel**

**- and -**

**Cst. D. M.** ) **Mr. Josh Weinstein**  
**Cst. S. D.** ) **For the Respondents**

**Cst. S. P.** )  
**Cst. W. M.** )  
**Respondents** ) **Mr. Sean Boyd**  
 ) **For the Commissioner**

*NOTE: These reasons are subject to a ban on publication of the respondents' names pursuant to s. 13(4.1).* ) **Hearing Date: June 30<sup>th</sup>, 2004**  
 ) **Decision Date: October 20<sup>th</sup>, 2004**

**SAM MINUK, P.J.**

**DECISION ON REVIEW**

**THE BACKGROUND**

[1] On January 24<sup>th</sup>, 2003, Ms R. filed a complaint under the provisions of **The Law Enforcement Review Act** hereinafter referred to as the “Act”, alleging that the Respondent police officers used offensive and inappropriate language when

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

they were investigating her claim that her friend at the time, Mr. G. F. with whom she was living in his apartment, abused her emotionally and sexually.

[2] The police attended the apartment to speak to Ms R., however, they were unable to do so due to her high intoxication. Police officer #\_\_ took her from the apartment at the request of Mr. F. and delivered her to the Martha Street shelter for women where she was detained under the provisions of **The Intoxicated Persons Detention Act**. Ms R. claims that officer #\_\_ as well as the other Respondent officers treated her unfairly in that they would not listen to her complaints of being abused by Mr. F.

[3] She was subsequently transferred to the Osborne Street shelter. At the shelter she tried talking to the officers once more but she claims that they were rude to her and refused to discuss her case. She told the police that she wanted Mr. F. to be kept away from her and the police promised her that they would do so.

[4] On May 7<sup>th</sup>, 2003, the police called the Osborne Street shelter and spoke to one of the counselors Ms R. and asked her whether, in her opinion, the officers were abusive to Ms R. and did not treat her fairly.

[5] Ms R., who was present when the police spoke to Ms R., told the police that as far as she was concerned the police treated Ms R. fairly and were not abusive towards her; that their conduct was appropriate at all times as far as Ms R. was concerned.

[6] Ms R.'s complaint against the Respondents was reviewed by the Commissioner under L.E.R.A., Mr. George V. Wright. The Commissioner received the police reports, spoke to witnesses and the police officers involved. All of the officers denied they were rude to Ms R. and also denied that they used offensive language.

[7] After a careful review of Ms R.'s complaint the Commissioner sent a letter to the complainant by registered mail dated September 22, 2003. In part the letter reads as follows:

...in view of this investigation it is my view that there is insufficient evidence supporting the complaint to justify a public hearing. Accordingly I am required pursuant to s. 13(1)(c) of the *Law Enforcement Review Act* to decline from taking any further action in the matter.

[8] The Commissioner also informed Ms R. that pursuant to s. 13(2)(c) of the Act she had the right to have the Commissioner's decision reviewed by a Provincial Court Judge.

[9] The aforementioned letter also informed the Complainant that under s. 13(4) of the Act, the burden was on her to show that the Commissioner had erred in declining to take further action on her complaint.

[10] On September 29<sup>th</sup>, 2003, Ms R. wrote to Commissioner Wright informing him that she wished to make an application before a Provincial Court Judge for a review of his decision.

[11] Mr. Wright acknowledge receipt of Ms R.'s letter and by letter to her dated October 10<sup>th</sup>, 2003, quoted sections of the Act relevant to her application setting forth the procedure on the application. As well he brought to her attention s. 13(4) of the Act which reads as follows:

Where an application is brought under subsection (2) the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

[12] Mr. Wright also stated the following in his letter:

Accordingly in order to prepare for this review you may want to examine our file #6138. In order to do so please call in advance to make an appointment and I will ensure the file is made available to you. You may also wish to engage the services of legal counsel as the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on your complaint.

[13] Prior to the hearing before me, Mr. Wright made his entire file available to me, which I have examined and reviewed. Attached hereto and marked as Addendum "A" to this decision is a letter from the Commissioner to Ms R. dated September 22<sup>nd</sup>, 2003 setting out Ms R.'s complaints in detail.

[14] The matter came before me on June 30<sup>th</sup>, 2004. Mr. Josh Weinstein appeared for the Respondent police officers as well as for the Winnipeg Police Association; Mr. Sean Boyd appeared for the Commissioner. The complainant, Ms T. R., appeared in person without counsel. Ms R. testified on her own behalf. The bulk of her evidence and her chief concern was her desire to have the police keep Mr. F. away from her. She did not raise any issues in her testimony that she did not present to the Commissioner, despite being given ample opportunity to do so.

[15] After reviewing and considering the details outlined in Addendum “A”, and taking into account Ms R.’s viva voce evidence, I have concluded that the Commissioner did not err in declining to take further action. Ms R. has failed to discharge the burden of proof under s. 13(4) of the Act.

[16] Accordingly, Ms R.’s application is dismissed.

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Sam Minuk, P.J.