

June 7, 2006

Mr. G. H.

Winnipeg (MB)

DELIVERED

Mr. Sean Boyd

Civil Legal Services

730 - 405 Broadway

Winnipeg, (MB) R3C 3L6

Dear Messrs. H. and Boyd:

Re: LERA COMPLAINT NO. 2005/102
REVIEW HEARD: April 19, 2006

You will find enclosed my decision dated June 7, 2006 respecting the Review of LERA Complaint No. 2005/102 heard on April 19, 2006. You will see that I upheld the Commissioner's decision not to take any further action relative to this complaint as it did not fall within the scope of any one of the disciplinary defaults in section 29 of the Law Enforcement Review Act.

Accordingly, this matter is dismissed and the court file is now closed.

Yours truly,

Richard Chartier
Provincial Judge

/mb

Encl. 1

cc: Mr. George Wright

cc: Chief of Police Ewatski

IN THE MATTER OF: *The Law Enforcement Review Act* Complaint #2005/102

AND IN THE MATTER OF: An Application pursuant to s.13(2) of *The Law Enforcement Review Act* R.S.M. 1987, c.L75

B E T W E E N:

G.L. H.)	In Person, Unrepresented by Counsel
Applicant)	
)	
- and -)	
)	
Commissioner of)	S. Boyd
The Law Enforcement Agency)	Counsel for L.E.R.A.
Respondent)	
)	Hearing date April 19, 2006
)	Decision delivered June 7, 2006

Chartier, P.J.

DECISION ON REVIEW

I. FACTUAL BACKGROUND

[1] On April 11, 2005, the Applicant filed a complaint against three officers of the Winnipeg Police Service. The complaint was received by the Law Enforcement Review Agency on April 26, 2005. In his complaint, the Applicant relates that he attended the Public Safety Building on March 21, 2005 wanting criminal charges be laid against the Province of Manitoba, Concordia Hospital and “assorted Dr’s & Nurses etc” with respect to allegations of torture, criminal conspiracy as well as a number of other criminal code offences.

[2] The Applicant indicates in the complaint that other than meeting with three detectives who made “an initial review of (his) case” at the time of his attendance and subsequently receiving a call from an officer, no further response has been forthcoming.

[3] In a letter dated July 25, 2005, the Commissioner reported to the Applicant that because the complaint did not fall within the scope of any one of the disciplinary defaults in section 29 of **The Law Enforcement Review Act** (hereinafter called the “Act”) that he declined to take further action on the complaint. The Commissioner further states that the Agency does not investigate criminal and service issues stating:

“Service issues include investigations and the quality of the investigation is ultimately the responsibility of the Chief of Police. The decision to proceed with a prosecution in a criminal case is, in the end, the responsibility of the Director of Prosecutions, Manitoba Department of Justice.”

II. STANDARD OF REVIEW

[4] As this review relates to the jurisdiction of the Commissioner and more specifically, whether or not the complaint falls within the scope of section 29 of the Act, I find that the appropriate standard of review will be the standard of correctness. The standard of correctness is the most exacting of review standards. It results in the Provincial Judge affording the least amount of deference to the Commissioner’s decision. When the standard is applied, the Commissioner’s decision can be overturned on the basis of a simple error.

III. BURDEN OF PROOF

[5] Pursuant to section 13(4) of the Act, the burden of proof is on the Applicant to show that the Commissioner erred in declining to take further action on the complaint.

IV. SUBMISSIONS OF THE PARTIES

[6] At the Review Hearing, the Applicant reiterated that essentially his complaint with the police officers is that they “*didn’t come out to investigate*” (p.4, line 6 of the transcript). This is however not borne out in the April 11th, 2005 letter of complaint filed

by the Applicant himself. In that letter it states that he met with three detectives who made “*an initial review of (his) case*” and that after he returned home “*a female inspector called*” to tell him that the police would see him the next day. He was not subsequently contacted by police.

[7] Though the scope and outcome of the police investigation may not be to the Applicant’s satisfaction, it is clear that there was some form of investigation by the police officers.

[8] What the Applicant’s complaint really comes down to is that he is not satisfied with the results of the police investigation and that criminal charges were not laid. His complaint therefore raises either an issue of the extent or nature of the police investigation itself or of whether criminal charges should have been laid.

[9] Counsel for the Commissioner states that the quality of police investigations ultimately is the responsibility of the Chief of Police and that the decision to proceed with any criminal prosecution is that of the Director of Prosecutions. As a result, it is submitted by the Respondent that the complaint doesn’t fall within the scope of any disciplinary default under the Act.

V. SCOPE AND PURPOSE OF ACT

[10] As was stated in **Blair v. Soltys** (1999) M.J. No. 470 (Man. Q.B.), who adopted the reasons of the hearing judge, Giesbrecht A.C.J. (as he then was), the “L.E.R.A. procedure is a complaint driven process.” This complaint process, which is found in section 6 of the Act, is however limited to a “disciplinary default allegedly committed by any member of a police department...” The complaint must concern the individual action or inaction of a specific police officer or officers.

[11] Though the outcome of a s.6 complaint may lead to recommendations for procedural or systemic changes to a law enforcement body, it is not the scope and purpose of this legislation to deal with complaints that relate to dissatisfaction with respect to institutional discretionary decisions such as to the extent or nature of a police investigation or whether a criminal charge is to be laid in a matter.

VI. DECISION ON THIS REVIEW

[12] In reviewing the Act, I cannot find how there has been the commission by anyone of a disciplinary default by means of any one of the acts or admissions listed in section 29. This is not a case where a police officer refuses to investigate a complaint filed by a member of the public. Had the police officers refused to conduct any investigation whatsoever, my decision may well have been different.

[13] I am therefore satisfied that the Commissioner was correct in concluding that the subject matter of the complaint did not fall within the scope of section 29 of the Act and that he did not err in declining to take further action on this complaint.

DATED at Winnipeg, this 7th day of June 2006.

Judge Richard Chartier