

**IN THE MATTER OF: The Law Enforcement Review Act
LERA Complaint No: 3675**

B E T W E E N:

C. L. (nee S.)	)	Mr. Martin Pollock
	)	for the Complainant,
Complainant,)	
)	
- and -)	
)	
)	
Constable K. H., and	)	Mr. Paul McKenna
Constable D. F.	)	for the Respondent Officers,
)	
Respondent Officers,	)	Mr. Dennis G. Guenette,
	)	for the Commissioner
)	
	)	Ms. Kimberly Carswell
	)	for the Winnipeg Police Service.
)	
	)	DECISION ON A
	)	PRELIMINARY MOTION

HOWELL, P.J.

[1] The respondent Officers, through their counsel, have filed a preliminary motion relating to jurisdictional issues in this matter. Both the Commissioner of the Law Enforcement Review Agency and the Winnipeg Police Service have sought standing before this tribunal regarding only the preliminary issues raised by the Respondents.

[2] There was no opposition raised by the Complainant and the Respondents to the participation of counsel for the Commissioner and counsel for the Winnipeg Police Service. Upon hearing the submissions of counsel, both the Commissioner and the Winnipeg Police Service were added as parties to this hearing for the limited purpose of addressing the issues of jurisdiction raised by the Respondents.

[3] The Respondents are seeking a declaration that the Law Enforcement Review Agency has no jurisdiction to deal with the complaint of C. L. (nee S.) (the complainant). A further declaration is sought that the Law Enforcement Review Agency has no jurisdiction to refer the complaint to a Provincial Judge for a hearing and that a Provincial Judge has no jurisdiction to deal with the complaint.

[4] The background that gave rise to the issues raised by the Respondents is as follows. On April 30th, 1996 T L, (now the husband of the complainant) sent a letter addressed to “City of Winnipeg, Police Department” containing a complaint about the conduct of the two respondent officers. Included in the letter was a request that it be directed to “the appropriate department”. This letter was received by Inspector G.V. W., the Officer in charge of Division #11, where the Respondents were stationed at the time. In a letter of reply dated May 21st, 1996, the Inspector declined to discuss the details of this matter with Mr. L., as he said he was a third party and offered to meet with the Complainant and Mr. L. to discuss the matter or alternatively, the Inspector offered to respond by letter at the request of Ms L. On June 12th, 1996, Ms L. answered that letter indicating she wished the concerns that were raised by Mr. L. in his letter to be addressed.

[5] Inspector W. stated in his affidavit of September 6th, 2002:

That in my view the letter from T. L. dated April 30th, 1996 was a request for information and that I had not seen the letter from C. S. dated June 12th, 1996.

[6] In his reply to Mr. L. on May 21st, 1996, Inspector W. indicated it was his responsibility to deal with the matters raised in Mr. L.’s letter and made no mention of the Law Enforcement Review Agency. Notwithstanding that he had not seen the letter of C. S. and had told Mr. L. that he could not discuss the details of investigation with a third party, proceedings were initiated by way of an internal review that is set out and established under regulations passed pursuant to the City of Winnipeg Act R.S.M. 1989-90, c. C10. The Respondents were dealt with by the Winnipeg Police Service through those internal regulations. Eventually the Complainant contacted a lawyer and the matter was referred directly to the Law Enforcement Review Agency on January 22nd, 1999, by way of a letter dated January 11th, 1999 from the Complainant.

[7] The Commissioner of the Law Enforcement Review Agency opened a file on this matter and reviewed what had transpired. He came to the conclusion that the original letter forwarded to the Winnipeg Police Service by T. L. and responded to by Inspector W., constituted a third party complaint pursuant to the Law Enforcement Review Act R.S.M. 1987, c. L75(the Act). The Respondents,

after having been contacted by the office of the Commissioner, eventually took the position, through counsel, that the Commissioner had no jurisdiction to deal with this matter.

[8] In order to constitute a complaint under the Act; conditions under section 6 must be complied with. The complaint must be made by a person in writing and signed, setting out the particulars of an alleged disciplinary default committed by a member of a police department. This complaint must be made within thirty days of the date of the alleged disciplinary default or can be made with certain extended time frames, in circumstances set out in sections 6(3), (6) and (7). Further, the complaint must be submitted to any one of three categories of persons set out in section 6(3).

Procedure for filing complaint

6(3) Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint, and shall be submitted to

- (a) the commissioner; or
- (b) the Chief of Police of the department involved in the complaint; or
- (c) any member of the department involved in the complaint;

not later than 30 days after the date of the alleged disciplinary default.

[9] I conclude from a review of a letter dated April 30th, 1996, from T. L., that the complaint was made by him against a member of the Police Department and contained particulars of the complaint. This complaint was in writing and signed by Mr. L. and submitted to the Winnipeg Police Service in general and received by Inspector W. in particular.

[10] I am satisfied that Inspector W. is a person as described in section 6(3)(c) of the Act. The complaint was made within thirty days of the date of the alleged disciplinary default.

[11] Here is where the position of the Commissioner differs with that of the Respondents and the Winnipeg Police Service. The position of the Commissioner is that this complaint should have been forwarded to the Law Enforcement Review Agency so they could deal with it in the manner set out by Statute. The position of the Respondents and the Winnipeg Police Service is that the complaint was not a specific request for the matter to be referred to the Law Enforcement Review Agency, and in fact made no reference to that entity, it was merely a request that

the issue be referred to the appropriate department and Mr. L. be contacted with a response. It is the position of the Respondents and the Winnipeg Police Service that all matters need not be referred to the Law Enforcement Review Agency, and that this was one of them. They further take the position that this matter was dealt with in a manner approved by statute and in accordance with disciplinary proceedings of the Winnipeg Police Service described in detail in the regulations passed pursuant to the City of Winnipeg Act.

[12] The position of the Commissioner is that Inspector W. failed to forward the complaint to the Law Enforcement Review Agency as required by statute. He had a fiduciary responsibility to submit the complaint to the Commissioner. The position of the Commissioner is that the complaint complied with all of the conditions set out in section 6 of the Act and once such a complaint is received, there is an obligation on the member of the Police Service receiving such a complaint to forward it to the Law Enforcement Review Agency.

[13] The question to consider is when a complaint that meets all of the criteria identified in section 6 of the Act is received by a member of a police department but no specific reference is made to the Law Enforcement Review Agency, is it then the option of the member to forward the complaint to an internal discipline procedure set out under Provincial regulations? There is no suggestion, Inspector W. made any reference to the Law Enforcement Review Agency when dealing with Mr. L., or the complainant and gave no information whatsoever to the Law Enforcement Review Agency about the issues raised by Mr. L.

[14] The Law Enforcement Review Act is legislation that deals specifically with complaints made by members of the public in respect of disciplinary default allegations committed by a member of a Police Department. This legislation would be ineffective to a significant degree if members of a Police Department who receive such complaints have the option of not referring the matters to the Law Enforcement Review Agency. The complaint procedure is specific and what constitutes a complaint is specific. These complaints are time sensitive and therefore rely on a duty of those receiving them to submit them to the Law Enforcement Review Agency in a timely manner.

[15] It was suggested the discipline procedure set out in the City of Winnipeg Act is some sort of parallel procedure that may be utilized if a police officer receiving the complaint, deems it appropriate to do so. This cannot be. Section 37(1) of the Act indicates with clarity that the Act takes precedence over any internal disciplinary proceedings. Section 37(2) states:

Where internal police disciplinary proceedings have been commenced against a member in respect of conduct, which constitutes the subject matter of a complaint under this Act, the internal disciplinary proceedings shall terminate upon the filing of the complaint and the matter shall be resolved solely in accordance with this Act.

Further, in section 37(3):

No resolution or termination of internal police disciplinary proceedings against a member precludes the subsequent filing of a complaint under this Act in respect of the conduct which constitutes the subject matter of the internal disciplinary proceedings.

I am satisfied the legislature intended the Law Enforcement Review Act to have priority in reviewing complaints regarding police conduct rather than simply jurisdiction concurrent to internal disciplinary procedures. The fact the internal disciplinary procedures of the Winnipeg Police Service are established under regulations of another provincial statute does not affect this priority.

[16] This matter has been delayed for a significant period of time. The alleged disciplinary default was in April of 1996 and it will likely be 2003 before the matter can be heard. Does this constitute an unreasonable delay? The issue of delay in an administrative law context is set out in *Blencoe vs British Columbia (Human Rights Commission)* 2000 [2 R.C.S. p. 307 (S.C.C.)], the Supreme Court states there must be proof of significant prejudice which results from unacceptable delay. The court further states that they must be satisfied continued proceedings are contrary to the interests of justice and further that a Respondent asking for a stay bears a heavy burden. (page 312) It is clear that delay in itself is unlikely to result in the proceedings being discontinued. In applying the test for unreasonable delay, set out by the Supreme Court of Canada, to the facts here, no unreasonable delay has been established.

[17] The Respondents argue that the time guidelines have not been complied with. They argue that the Complainant filed her complaint on January 22nd, 1999, two years and three and a half months outside of the jurisdictional limit set out in the Act, however, I do not find that is the complaint. I am satisfied that the letter dated April 30th, 1996 alleging a disciplinary default on April 5th, of 1996 is the complaint. It is a third party complaint. It meets all of the requirements set out in the Act and it was submitted in time to a proper person to constitute such a complaint. I am not prepared to allow the failure of the member to whom the complaint was submitted to deny the Complainant's and Mr. L.'s rights under the

Act. They did all that was required of them and the conduct of the party who received the complaint should not be a determining factor in whether it can proceed.

[18] The application by the Respondents for declarations is dismissed.

SIGNED at the City of Winnipeg, in the Province of Manitoba, this 4th day of November, 2002.

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Judge Murray Howell

MH/ems