

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 No. 3994)

B E T W E E N:

Mr. W.	)	Mr. W.,
Complainant/Applicant	)	in person and unrepresented
	)	by counsel
)	
- and -	)	Mr. D. Guenette
	)	for the Commissioner,
	)	George Wright
)	
STAFF SERGEANT V.)	
)	
	)	Mr. S. Mattheos,
	)	for the Winnipeg Police
SERGEANT D.	)	Association
)	
Respondents)	
)	
)	
)	
<i>NOTE: These Reasons are subject to a</i>	)	Judgment Delivered:
<i>ban on publication of the parties'</i>	)	May 26, 2003
<i>names pursuant to s. 13(4.1)(c) of The</i>)	
<i>Law Enforcement Review Act.</i>	)	Written Reasons Delivered:
	)	June 9, 2003

Minuk, P.J.

[1] This is an application by Mr. W. , 66 years of age, brought pursuant to section 13(2) of *The Law Enforcement Review Act* to have a Provincial Judge review a decision of the Commissioner of The Law Enforcement Review Agency

(L.E.R.A.) relating to Commission George V. Wright's decision to take no further action on Mr. W.'s complaint.

THE RELEVANT STATUTORY PROVISIONS

[2] Section 6(1) of *The Law Enforcement Review Act*, R.S.M. 1987, c.L75 (the "Act") allows for complaints to be made by citizens concerning the conduct of police. The section provides as follows:

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) ...

(c) ...

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

Such complaint is made to The Law Enforcement Review Agency (L.E.R.A.).

[3] Section 29 of the Act provides for a discipline code for police officers in the execution of their duties and responsibilities and sets out examples of certain conduct that will be construed as disciplinary conduct. Section 29 provides as follows:

Discipline Code

29. A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

(a) abuse of authority, including...

(iii) using oppressive or abusive conduct or language,

(iv) being discourteous or uncivil;

[4] On November 18, 1999, Mr. W. filed a complaint under *The Law Enforcement Review Act* alleging improper conduct of the two Respondents who are members of the City of Winnipeg Police Service. The alleged misconduct occurred when the officers attended W.'s home on November 5, 1999 to investigate verbal and written complaints made by Mr. D. R., Q.C., a Crown Attorney employed in the Prosecutions Branch of the Attorney-General's Department. Mr. R.'s complaint was that he was being harassed and intimidated by

Mr. W., and was fearful for his safety. Mr. W. complained that when the two police officers interviewed him in his home they abused their authority by using aggressive or abusive language.

[5] Mr. W.'s application came before Commissioner Wright who, after investigating the complaint, concluded that there was insufficient evidence to justify a public hearing. On April 10, 2001, the Commissioner sent a letter by registered mail to Mr. W., part of which read as follows:

On review of this investigation, it is my view that a Provincial Judge would not reasonably be satisfied from the evidence that Staff Sergeant V. and Sergeant D. clearly and convincingly committed the disciplinary defaults you have alleged. As such, the evidence supporting the complaint is insufficient to justify a public hearing, and I am required pursuant to clause 13(1)(c) of *The Law Enforcement Review Act* to decline to take further action on the complaint.

Please be advised that under Section 13(2) of *The Law Enforcement Review Act*, you do have the right to make application to have this decision reviewed by a Provincial Judge. Your application must be received at this office within 30 days from the date of this notice.

[6] Accordingly, on April 26, 2001, Mr. W. applied under section 13(3) of the Act to have the Commissioner's decision reviewed by a Provincial Judge.

[7] The review came on for hearing before me on Monday, September 23, 2002 at 10:00 a.m. in Courtroom 408 of the Law Courts Building, 408 York Street, Winnipeg.

THE BACKGROUND

[8] This matter originated with a dispute between Mr. W. and Mr. R. which began in August or September of 1977 and continued for several years. Each accused the other of harassment, stalking and intimidation. Some of the allegations took place when the two men were at the Sargent Park Recreational Complex ("Sargent Park"). Other complaints originated when Mr. W. and Mr. R. saw each other at the Law Courts Building, 408 York Street, Winnipeg.

[9] On September 10, 1999, Mr. W. wrote a letter to The Law Society of Manitoba accusing Mr. R. of harassment and stalking. In his complaint Mr. W. claimed that about five years earlier, when he was at Sargent Park, he overheard Mr. R. tell another person (a bus driver) not to divulge what his (Mr. R.'s) occupation was. After Mr. R. left, Mr. W. told the bus driver that Mr. R. was a Crown Attorney. Up to this point, neither Mr. R. nor Mr. W. ever spoke to each

other. Mr. W. knew that Mr. R. was a Crown Attorney but didn't have any dealings with him.

[10] Mr. W. claimed that often when he was at the Law Courts Building on legitimate business Mr. R. followed him about and "made faces".

[11] Mr. W. asked the Law Society to investigate the matter.

[12] Following their investigation, Ms. D. Senft, Director of Discipline of the Law Society, on October 14, 1999, wrote to Mr. W. Part of her letter was as follows:

Your allegations appear to be based on the fact that Mr. R. has been at the Sargent Park Recreational Complex on more than one occasion when you were there, along with persons you believe are associated with Mr. R.the fact that you and Mr. R. had occasion to attend the same recreational complex on more than one occasion does not support your allegations of stalking and harassing behaviour. Accordingly, based upon the information you have presented, including your acknowledgement that you have had no dealings with Mr. R., I have concluded that this is a complaint that does not warrant investigation by the Law Society.

[13] It should be pointed out once more that Mr. R. did not know who Mr. W. was, nor did he ever have occasion to prosecute him regarding a criminal charge.

[14] On October 22, 1999, Mr. W. brought an application to a magistrate for a protection order against Mr. R. under the domestic violence and stalking legislation, claiming he was being harassed, stalked and discriminated against by Mr. R.. The application was heard by Judge R. Cummings on October 22, 1999 and was dismissed the same day.

[15] By this time Mr. R. was beginning to be quite concerned with Mr. W.'s conduct and became fearful for his safety. He claimed that Mr. W. was harassing and stalking him when Mr. R. was out at Sargent Park swimming and jogging and also in the hallways of the Law Courts Building where Mr. R. worked. Mr. R. also complained that Mr. W. harassed him at times when Mr. R. was motoring or cycling to work through the Legislative Building grounds. Because of Mr. W.'s conduct, Mr. R. became very concerned and sought help and advice from his colleagues. He reported the matter to Mr. Rob Finlayson, the Assistant Deputy Attorney-General of Manitoba. As a result of Mr. R.'s concerns, Mr. Finlayson wrote to the Winnipeg Police Service requesting that they investigate Mr. R.'s complaints.

[16] On November 5, 1999, Staff Sergeant V. and Sergeant D. went to Mr. W.'s home to speak to him about the matter. Mr. W. told the officers he did not know Mr. R. personally but knew that he was a Crown Attorney. He denied stalking or harassing him and told the police it was the other way around, namely, that Mr. R. was stalking and harassing him. He told the police he was 63 years old, unemployed and had a disability due to a car accident in September of 1993 in which he claimed to have been in collision with a stolen car that the police were pursuing. He told the police officers that both at Sargent Park and at the Law Courts, Mr. R., when he sees Mr. W., stares at him, follows him about and intimidates him. When asked by the police what Mr. R. did to intimidate him, he replied that Mr. R. knew that Mr. W. had other complaints about lawyers and Crowns and refused to take any action. The police reminded Mr. W. that Mr. R. was a Crown Attorney who he worked at the Law Courts Building almost every day and had a legal right to be there.

[17] The police suggested to Mr. W. that in order to diffuse the situation he should stay away from the Law Courts for a month or so. According to the police report, Mr. W. became angry and belligerent and in a loud voice told the police that he had every right to be in the Law Courts because he was involved in several civil matters and the police could not stop him from attending the Law Courts whereupon Staff Sergeant V., according to Mr. W., said "You just try me." The police warned him to stay away from Mr. R. or else he would be barred from attending the Law Courts Building.

[18] In their written report to the Commissioner, the officers wrote "Mr. W. was paranoid... and ...viewed all authority with disdain". The police added that Mr. W. had no known prior criminal record and it was difficult to determine if he was, in fact, a danger to anyone.

[19] On November 8, 1999, at the request of the police, Mr. R. wrote out an eight-page report detailing times and places when he was confronted, harassed and intimidated by Mr. W. For example, he wrote:

Whenever I encountered Mr. W. - he would stare at me, grimace or make actions that made me feel uncomfortable and threatened. As he began to frequent my workplace and be in my area on a more regular basis, I recognized him as a person whom I have occasionally seen at Sargeant Park.

He wrote further:

...On mornings, on my way to work walking from the car park to the Woodsworth Building - he would be cycling near me - looking and staring. At

times when I was walking across Kennedy Street to the Law Courts Building at 408 York, he would be around. I can specifically remember one morning on Kennedy Street – he rode his bicycle near me – staring directly at me and making “tweeting” sounds.

Mr. R. complained further that on one day on his way to work Mr. W., when on his bicycle, stopped and threw his bike against Mr. R.’s car.

[20] As stated earlier, the review came before me on September 23, 2002.

[21] Prior to the hearing, the Commissioner, by virtue of section 13(3) of the Act, made available to the Court his entire file, with copies to Mr. W. and to the Respondent police officers. Earlier, the Commissioner had written to the police officers inviting them to reply to Mr. W.’s complaints against them, but they declined to do so, relying instead on their written report to the Commissioner which, under the Act, they have a right to do.

MR. W.’S EVIDENCE

[22] Mr. W. was the only witness to testify. At times it was difficult to keep him from straying on to old, irrelevant matters. For example, he spoke of an accident he had in 1993 when his car was struck by a stolen car being pursued by police. He claimed the police (not the present officers) had prevented him from obtaining relevant medical documents and x-rays concerning his injuries. During the course of Mr. W.’s evidence, Mr. Mattheos often stood up to complain that Mr. W. was giving irrelevant evidence. I informed Mr. Mattheos that because he had no counsel I was prepared to allow him reasonable leeway.

[23] The gist of Mr. W.’s complaint against the two police officers is that when questioning him they attempted to harass and intimidate him. His testimony is as follows (pp. 27-28-29):

THE JUDGE: Oh, Finlayson, the Crown attorney?

MR. W.: Evidently, R. went to Finlayson.

THE JUDGE: Yeah.

MR. W.: What originally happened is I filed a civil complaint against him and it was dismissed in, in the – by a judge, and what I had done is I had lapsed the time to file an appeal for it, and what I had done was go back to the court and ask one of the magistrates if I could file a criminal complaint.

THE JUDGE: Um-hum.

MR. W.: Now, what transpired was, there, was that magistrate phoned R. and told him that I was contemplating filing a criminal complaint against him, and that's when the police came to my house.

THE JUDGE: Um-hum.

MR. W.: I didn't know why they came. I thought they came in regards to my complaint, but they were not, they were acting for Fin – R.

THE JUDGE: You're saying that Mr. R., the Crown attorney –

MR. W.: Yeah.

THE JUDGE: -- sent the two police officers –

MR. W.: No, he went to Finlayson.

THE JUDGE: He went to Finlayson, spoke –

MR. W.: And Finlayson referred it to the police.

THE JUDGE: All right. So as a result of Mr. Finlayson referring it to the police, two officers came to speak to you –

MR. W.: Correct.

THE JUDGE: -- about your complaint?

MR. W.: Correct.

THE JUDGE: All right. And you had a, you had a talk with the officers, right –

MR. W.: That's right, and in –

THE JUDGE: -- in your home?

MR. W.: In the process that they were – they told me to stop and desist or they would have me barred, I guess prosecuted, from coming into the courthouse.

THE JUDGE: To desist from harassing or bothering whom?

MR. W.: R.

THE JUDGE: R. Okay.

MR. W.: They said I was harassing him.

THE JUDGE: Okay.

MR. W.: It was the other way around.

THE JUDGE: I see. Now I'm getting the picture. So the police officers came to see you and they wanted to know why you're harassing Mr. R.

MR. W.: That's right. Or so he claims.

THE JUDGE: Or so he claimed. So what happened? You were talking to the police officers and what happened?

MR. W.: Well, they told me that I shouldn't go on with the complaint and without warning them that they were interfering in the court proceeding and they shouldn't be doing that, they insisted I stop and desist and very – were very vociferous about it. I said you don't have the right to stop me from doing anything.

THE JUDGE: Um-hum. Okay.

MR. W.: I know what they're doing is a criminal offence. They cannot interfere with any court proceeding, as far as I am concerned.

THE JUDGE: Um-hum.

MR. W.: But if the commissioner had done an investigation into this matter, he could very easily have referred it for criminal prosecution, which he didn't do. This is one, two, three – this is the fourth complaint now, where he doesn't do anything with any complaint, and there's more to come, because the same thing is happening. I am no longer getting police service.

I was just excluded from my house for nine months on the false charge of assault, when, in fact, my brother assaulted me, and they threw me out of the house so that I could not get use of all these files, and my clothing and, and everything else.

[24] The difficulty the Court had in attempting to have Mr. W. testify as to his specific complaints against the officers is again illustrated by the following exchange at pp. 32-33 where Mr. W. testified as follows:

THE JUDGE: Yeah. I, I'm trying to find out, Mr. W., what the police officers did or didn't do that causes you to complain – complain about their conduct. That's what this is all about, sir, right? You, you're claiming that the police did something to you or – that is your complaint. I am anxious to find out, what is your specific complaint against these two officers, numbers 523 and 527?

MR. W.: It's not only these two; it's a whole bunch of them. I mean if somebody leaves you injured, and they won't identify me, and a lawyer I have won't sue anybody, what it tells me, sir, that this is all corruption. I'm left – I

have three kids. I can't work, I can't do anything because I'm too sick to work and I've never been told of my injuries.

THE JUDGE: Who hasn't told you of your injuries?

MR. W.: The medical profession. I've been to the hospital –

THE JUDGE: Well, what's that got to do with –

MR. W.: -- they wouldn't do nothing.

THE JUDGE: What's that got to do with the police officers? If the doctors wouldn't tell you, that's –

MR. W.: Well –

THE JUDGE: -- your complaint is against them, isn't it?

MR. W.: Well, I went to the hospital like everybody else goes. The police got there a lot.

THE JUDGE: Right.

MR. W.: Very obviously, they never took x-rays or anything of me so that I wouldn't know.

THE JUDGE: Well, the doctors didn't take x-rays. It's got nothing to do with the police, sir. They don't take the x-rays.

MR. W.: Well, I, I presumed they got a favour from the police.

and also at pp. 42-45:

MR. W.: Well, R. went to Finlayson and complained.

THE JUDGE: Yeah.

MR. W.: Filed a false complaint against me.

THE JUDGE: Yeah. Okay.

MR. W.: That's why they sent the police to my house.

THE JUDGE: Yeah.

MR. W.: Now, the police have no right to enter onto my property at any time if they are not there for a legal reason.

THE JUDGE: Well –

MR. W.: They could have come and told me, I guess, to – whatever it be about R., that R. was complaining, but they had no right to tell me that I couldn't prosecute him or attempt to prosecute him.

THE JUDGE: No, they told you that, that you should desist from molesting him. They didn't say anything about you not suing him.

MR. W.: When did I molest him?

THE JUDGE: Well, according to – that this is an attempt to harass and intimidate. Well, you were harassing Mr. R. –

MR. W.: No, that's –

THE JUDGE: -- allegedly.

MR. W.: It's the other way around. So why didn't he file the complaint first? I filed the first complaint.

THE JUDGE: Um-hum.

MR. W.: His is a counter-complaint, which is, is fraudulent, as far as I'm concerned. He's filed false documents with the tribunal.

THE JUDGE: Okay. Mr. W., who is, in your view, your complaint against? Is it Mr. R.? Is it Mr. Finlayson? Is it the two police officers? Who are you complaining against?

MR. W.: Well, this complaint, specifically, is against the police officers –

THE JUDGE: Yes.

MR. W.: -- that came to the house –

THE JUDGE: Yes.

MR. W.: -- that (sic) told me that I had no right to sue him, that I had no right to complain to the Law Society, I had no rights, period, and if I did, they, they would arrest me and have me barred from the Law Courts. Now, tell me where, in the Criminal Code, can they do such a thing without proven facts. (underlining is mine)

THE JUDGE: Now, you're saying that either or both of these police officers told you that –

MR. W.: That's right.

THE JUDGE: -- in your home?

MR. W.: That's right.

THE JUDGE: Are there any witnesses to that?

MR. W.: I didn't phone them. They, they came to my house. They were sent by Finlayson.

THE JUDGE: All right. They came to your house.

MR. W.: Correct.

THE JUDGE: All right. Could you give me, just briefly, what the conversation was? They sat down in your living room?

MR. W.: That's right.

THE JUDGE: Your – was your wife there?

MR. W.: No.

THE JUDGE: All right. So you and two police officers are having a talk?

MR. W.: That's right.

THE JUDGE: Now, tell me, according to what you are alleging, the police officers told you.

MR. W.: I had explained what was transpiring, that I, I go to the Sargent Park Recreational Complex to work out, and jog and that, and Mr. R. was there, and on a certain day a party that was – had been sitting with him started harassing me.

THE JUDGE: A person sitting with Mr. R.—

MR. W.: Right.

THE JUDGE: --at the Sargent Park –

MR. W.: Started harassing me while we were sitting in the sauna.

THE JUDGE: Okay.

MR. W.: Started waving his finger in my face. And he sat there and never said a word. He's a law enforcement officer. So I took it to mean that this same party was being encouraged by him because there were other people throwing stuff at me too, knowing that, that I have a severe neck injury and a skull fracture. And I had complained to the police about what was going on over there and nothing was being done. And in this one occasion he was sitting there, watching, but on numerous occasions – he would come at ten o'clock, for instance. I says,

well, if he comes at ten, I'll come later, so he's not there. I would come at eleven, he would be there. I'd come there at twelve, he would be there. I'd come at one, he would be there. I'd come at two, he would happen to be there. So obviously he was following me and harassing me.

THE JUDGE: Oh, I – okay. So you're, you're saying –

MR. W.: So I made a complaint that he was harassing me.

THE JUDGE: So your complaint, from what you're saying, is against Mr. R., the Crown attorney?

MR. W.: That's right. And I filed a protection order with the court. I mean I like to go to the recreation complex and relax and have fun. Here's a guy bothering me, trying to pick fights with me. I have no record of fighting anybody, even though I played ice hockey for a living and everything else. I want no part of violence. And yet these people were attacking me and throwing stuff at me. Of course, at that point in time, there were many police officers who were also using the complex, so I guess they overheard my conversation too, and all this was going on--

[25] The above underlined portion of Mr. W.'s evidence could, if accepted, be construed as a disciplinary default, however the police never told him he could not commence court proceedings against Mr. R. or anyone else and there is no corroboration that the police indeed told him so. What the police did tell him, according to their report, was that he should desist from harassing Mr. R. or else he would be barred from the Law Courts.

[26] I do not accept Mr. W.'s claim that the police told him he had no right to sue Mr. R. or to complain to the Law Society. That this was not so is illustrated by the fact that less than two weeks after the police spoke to him (on November 5, 1999), on November 18, 1999, despite what Mr. W. claimed were threats by the police, he did, in fact, file an application to review the Commissioner's decision without interference from the police or anyone else.

CONCLUSION

[27] The evidence presented satisfies me that the police officers were sent to Mr. W.'s home to investigate Mr. R.'s complaint of harassment and intimidation, which are serious criminal offences under the *Criminal Code*. The police have the right, indeed the duty, to look into such complaints whenever and wherever they occur. In my view, the officers were performing their duties and acted properly.

Burden of Proof on Complainant

[28] Section 13(4) of the Act reads as follows:

13(4) 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.

[29] In my view, Mr. W. has failed to discharge the above burden of proof. It is my respectful conclusion that Commissioner Wright's decision to decline to take further action on his complaint was the correct one. Based on all the evidence presented, I am of the view that Mr. W.'s application must be dismissed.

[30] Pursuant to section 13(4.1) of the Act, I order that the ban on the publication of the Respondents' names continue.

Sam Minuk, P.J.