

APPEARANCES:

MR. S. BOYD, for the Commissioner.

MR. P. MCKENNA, for the Winnipeg Police Association.

MS. C. R., in person.

JANUARY 28, 2004

THE JUDGE: All right. I should say to start off, I'm going to give my decision on this application now, Ma'am, that I would agree with Ms. R.'s contention that if matters proceeded as she's referred to, police officers behaving in the manner that she's described, that that would constitute a disciplinary default on the basis of discourtesy -- I'm sorry, which section sets out the disciplinary default?

MR. MCKENNA: Section 29, Your Honour.

THE JUDGE: Section 29? Or actions or behaviour on behalf to the officers involved, which could be termed as being discourteous or uncivil.

The indication from the case law under LERA is that the level of evidence required to establish a disciplinary default against an officer at a hearing and I'm not referring to this hearing now, but to a hearing on the question of a disciplinary default, has to be in the area of proof beyond a reasonable doubt, perhaps not quite to that level, but bearing close upon it.

In this instance, the commissioner has determined that there is insufficient evidence to justify a public hearing. I accept the contention on behalf of the commissioner in his brief, and I would presume that Mr. McKenna has accepted it also, that the standard on this hearing is a standard of correctness.

MR. MCKENNA: Your Honour, if I may, just for the record, I take the position that it is reasonableness.

THE JUDGE: All right, I'm -- reasonableness simplicitor presumably.

MR. MCKENNA: That's correct.

THE JUDGE: Well, it seems that the case law as referred to in the commissioner's brief is to the contrary,

a question of whether there is insufficient evidence that the standard of review is correctness, and I accept that, and that's the standard that I'm going to deal with here.

There is also the case law and in particular the decision of Provincial Judge Smith in LERA complaint 3771, where it was held that it should be a standard -- that the commissioner should make his decision in a fashion akin to that of a judge at a preliminary inquiry and considering whether there is sufficient evidence to commit an accused for trial.

That would bring into play the standard from the U.S.A. and Sheppard case which says that there has to be some evidence upon which a reasonable jury properly charged could convict the accused.

In this situation, what we have here is the commissioner's conclusion that there was insufficient evidence and I should say that I accept that the commissioner's letter of, I guess it's March 27th, 2003, giving his decision that he has fairly and accurately dealt with the evidence before him. The, I shouldn't say the evidence before him, the investigation before him.

In his letter, he says this about the incident and the response by the police officers, particularly Constable C., and L. The second paragraph on the second page, he says,

At the court house, the two officers advised that they may have been talking about you or they may have been talking about someone else all together. They recalled that they had dealt with another woman one week prior to your arrest who was also quite intoxicated and

that any laughing done was not about you. They were aware of your son being present outside the courtroom. The officer's lawyer, who was present during the officer's interviews also indicated that any comments made about you being drunk would simply be a statement of fact.

That last comment attributed to counsel for the officers in my view, would be effectively irrelevant. However, it seems to me in these circumstances, a reasonable jury properly charged, could not convict.

On that basis, I'm in agreement with the conclusion of the commissioner that there is insufficient evidence to justify a public hearing. Accordingly, the application -- I'm sorry, under the section, I'm to dismiss or --

MR. MCKENNA: Section 13(2), I believe.

THE JUDGE: I'm sorry?

MR. BOYD: Isn't it 13(3) or?

THE JUDGE: Section 13(3) deals with the --

MR. MCKENNA: It's 13(3)(b), a combination of 13(3)(b) and 13(4), under which you dismiss, Your Honour, unless I'm missing something.

THE JUDGE: All right, the application is dismissed. That's my conclusion.

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **SUE MYMKO**, hereby certify that the foregoing pages of printed matter, numbered 1 to 3, are a true and accurate transcript of the proceedings recorded by a sound recording device that has been approved by the Attorney-General and operated by court clerk/monitor, Monique Navitka, and has been transcribed by me to the best of my skill and ability.

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