

IN THE MATTER OF: The Law Enforcement Review Act
Complaint #5814

AND IN THE MATTER OF: An Application pursuant to s. 17(1) of
The Law Enforcement Review Act
R.S.M. 1987, c.L75

BETWEEN:

X)	P. Cramer
Complainant)	
)	
- and -)	
)	
Y)	R. Wolson, Q.C.
Respondent)	
)	Decision date: August 10, 2004

Pursuant to s. 25 of the Law Enforcement Review Act there shall be a ban on publication of the Respondent's name.

REASONS FOR DECISION ON REFERRAL

SANDHU, P.J.

I. FACTUAL BACKGROUND

[1] The Complainant alleges that on October 11, 2001 during the day he was with an elderly lady friend (now deceased) on the corner of Smith and Portage in the City of Winnipeg. As he waited with her for a taxi an unmarked police car went by. It slowed down. The occupants took an “extra special” look at the Complainant. The Complainant lifted both his arms towards the sky with his palms open and mouthed the words “take a fucking picture”.

[2] A taxi pulled up and the two went in. They drove down Smith towards Ellice, almost to Portage. The taxi pulled over. The unmarked police car was behind. The Respondent got out of the police car and

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

knocked on the window of the taxi beside the Complainant. The Respondent identified himself to the Complainant. The Complainant complains that the Respondent forcefully removed him from the taxi, grabbing him by the arm and saying “you are coming with me”. He was taken to the police car by the arm in a “crushing grip”.

[3] In the police car the Complainant alleges he was verbally abused, the details of which are unimportant. They do not form part of the formal disciplinary default alleged. The Complainant was allowed to leave the police car shortly thereafter. He attended almost immediately to a hospital and told the doctor there what happened. As a result of this incident the Complainant stated that he suffered from the following physical symptoms:

- i) Sore and throbbing arm, including swelling as he noted in his initial complaint.
- ii) Arm was painful, red, turning black and bluish and bruised.
- iii) Arm pain continued for 2 to 3 weeks.
- iv) X-ray of his arm was taken at the Misericordia Hospital.

[4] By agreement, a notebook statement made by and recorded by LERA investigation staff during a telephone interview with the taxi driver was tendered in evidence. The statement is brief. It is not in question and answer form. The taxi driver essentially noticed nothing untoward. The statement neither assists nor impedes the Complainant’s position. The taxi driver’s current whereabouts are unknown.

[5] In addition, Dr. Z. from the Misericordia Hospital testified and the medical records of the Complainant pertaining to the matter at hand were filed. The medical records and testimonial evidence indicate that the Complainant presented with several red marks on his arm. There was minimal tenderness, described as “very slight tenderness”. The arm had full range of motion. There was no noted redness, swelling or bruising. There was no bony tenderness. There was some complaint of numbness and tingling in the right hand. There was no X-ray.

II. NATURE OF THESE PROCEEDINGS

[6] This matter comes before me pursuant to a referral from the Commissioner of the Law Enforcement Review Agency pursuant to s 17(1) of the *Law Enforcement Review Act*. The specific charge against the Respondent is pursuant to s 29(a)(ii) in that he did commit a disciplinary default whereby he affected the Complainant by means of “using unnecessary violence or excessive force”, arising out of or in the execution of his duties.

[7] The Court is to consider the standard of proof in s. 27(2) whereby the Court is directed to dismiss the complaint unless satisfied on clear and convincing evidence that the Respondent has committed the disciplinary default.

III. CREDIBILITY OF THE COMPLAINANT

[8] I have not had a difficult time reaching a decision in this matter. The only evidence possibly supporting the complaint is the sworn testimony of the Complainant. I do not believe the Complainant. I find little of what he says to be truthful or candid. He was evasive during cross-examination. His demeanor was one of someone who is quite capable of and in fact did answer questions that he thought most helpful to him, rather than answer as to the truth. Of his testimony that can be compared to independent testimony, in particular that of Dr. Z. and the submitted medical report, it is in stark contradiction to this testimony. For example, his complaint of a black and blue arm with great pain can most charitably be described as a gross exaggeration, when compared to the unchallenged medical facts. The entirety of his testimonial evidence was an exaggeration, if perhaps somewhat short of deceit.

[9] It is unfortunate that this matter has even come this far, that is for disposition by a Court in a full blown hearing. I appreciate that Mr. X, like all citizens, has a right to complain about police conduct. It is important, indeed vital, that there be any independent agency capable of reviewing and empowered to act upon these complaints. It is equally important that these complaints be thoroughly and impartially

investigated before a default charge is laid and then referred to a Court. The investigation of this matter by the LERA staff was inadequate. Perhaps this is merely a function of the lack of resources available to the agency. I do not know. If so, then either more resources should be made available or more caution needs to be exercised before police conduct is deemed to be so serious as to require judicial review or adjudication.

[10] That this complaint comes to this Court more than two years after the complaint is made is another concern best left to consider in a different case.

IV. DISPOSITION

[11] The complaint is dismissed.

[12] Pursuant to s. 25 of the *Law Enforcement Review Act* there shall be a ban on publication of the Respondent's name.

"Original signed by Fred H. Sandhu, P.J."
Fred H. Sandhu, P.J.