

**IN THE MATTER OF:**                   **Law Enforcement Review Act**  
  **Complaint No. 6358**

**BETWEEN:**

**F.C.,**

**Complainant,**

**- and -**

**CONSTABLE A. L.,**

**Respondent.**

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**EXCERPT FROM PROCEEDINGS, LERA REASONS FOR DECISION,** delivered by The Honourable Associate Chief Judge Miller, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 25th day of May, 2004.

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**APPEARANCES:**

**MR. S. BOYD,** for the Commissioner

**MR. P. McKENNA,** for the Winnipeg Police Association

**MR. F. C.,** in person

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

EXCERPT FROM MAY 25, 2004

THE JUDGE: Mr. C., I, at the outset, want to thank you for your perseverance and your taking this matter forward and availing yourself of your rights and opportunities to have these matters heard at different stages along the way.

And just by way of synopsis, as I understand it it was in August of last year, 2003, that Mr. C. brought his concerns relative to a particular event that he described in his correspondence to the attention of Chief Ewatski, the Chief of the Winnipeg Police Service.

In turn, Chief Ewatski had the matter followed up by a representative of his service, namely Staff Sergeant Poole of the Professional Standards Unit, who communicated with Mr. C. both in writing and in person. And as a result of discussions held between those two individuals, Mr. C. determined that he wished his matter to be referred to the Law Enforcement Review Agency for their consideration.

That was done in September of 2003 and more precisely on the 22nd of September of 2003. Staff Sergeant Poole wrote a letter to Mr. Wright, the Commissioner of the Law Enforcement Review Agency, enclosing Mr. C.'s letter of complaint.

That matter was then considered within the office of the commissioner and subsequently, on the 30th of September of 2003, Mr. Wright, the commissioner, wrote a letter to Mr. C., wherein he acknowledged receipt of the complaint, letter of complaint, that Mr. C. had authored and went on to state to Mr. C. that the Law Enforcement Review Agency is a non-police agency mandated under The Law Enforcement Act to investigate complaints of police misconduct as defined in Section 29 of the Act, namely the

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discipline code.

Upon a review of your complaint,

Commissioner Wright went on to state,

I am satisfied that this matter does not fall within the jurisdiction of the Law Enforcement Review Agency to investigate as no disciplinary defaults under Section 29 have been identified.

Thereafter Mr. Wright, in that same letter, advised Mr. C. of his options and opportunities for additional consideration. And to his credit, Mr. C., upon consideration of those options, determined that he would avail himself of the provisions of The Law Enforcement Review Act and communicated thereafter to the commissioner to the effect that he wished to have the commissioner's decision reviewed by a Provincial Judge. As a result, the matter was referred to the Provincial Court and I was designated and have been designated to conduct that review today.

I have had the opportunity to hear orally from Mr. C. in person. I have heard from counsel for one of the officers identified in respect of the complaint, and I have heard from counsel for the commissioner and the Law Enforcement Review Agency.

I am satisfied in these particular circumstances that the standard and test to be applied is the correctness standard, which, of course, has been referred to in previous decisions of colleagues of mine and have been alluded to by both counsel in the course of their oral representations

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today, and I have considered the provisions of the Act and more particularly have spent some time in reviewing the contents of Section 29 of that Act, particularly the discipline code, and must say that at the end of the day, in the context of the complaint or the concerns that have been raised by Mr. C., that I agree with the conclusion that has been made by the commissioner, that the matter does not fall within the jurisdiction of the Law Enforcement Review Agency to investigate as again within the context of this particular complaint, no disciplinary defaults under Section 29 have been identified. And I say that with the greatest of respect to Mr. C. At the end of the day, that said, I am satisfied that the commissioner's decision was the correct one and, accordingly, this application is dismissed.

Mr. C., as you heard from Mr. McKenna particularly, counsel for the officer identified, there are certain options which you still have at your disposal, namely to renew your concerns directly with the Winnipeg Police Service itself. I am sure you will consider your options at this point in time and determine if, in fact, that is something that you wish to avail yourself of. But, in any event, I am upholding as correct the previous decision of the commissioner, sir, and, accordingly, this matter is thereby concluded.

Thank you for taking the time, sir.

(EXCERPT CONCLUDED)

**CERTIFICATE OF TRANSCRIPT**

I, **JEANNE METCALFE**, 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, A, Koben, and has been transcribed by me to the best of my skill and ability.

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