

I requested that Paul R. McKenna, counsel for Constable R, indicate that the procedure that I adopted would satisfy his concerns.

On the basis of this acceptance I determined that the hearing should proceed as scheduled and that Mr. McKenna would respond orally to the submission. By determining that the complainant should go forward in this manner meant, that the complainant would be unable to rebut the position taken by counsel for Constable R.

FACTS

There appeared to be no dispute as to the facts before the Commissioner. The complaint arose as a result of an incident that occurred on February 13, 1993 in the City of Winnipeg. The complainant was a passenger in a vehicle that was stopped by Constable R. of the City of Winnipeg Police Department. This constable asked the complainant for identification. The complainant declined to provide documentary identification and identified herself only by name. Constable R. insisted that the complainant provide him with documentary identification and when the complainant refused it was alleged that Constable R. threatened to arrest the complainant unless she provided documentary identification. She eventually provided identification by the production of her business card.

L.R.R.C. filed a complaint on the 17th of February, 1993 on behalf of the complainant. This complaint was received by the Commissioner of LERA on February 22, 1993.

An initial response by the Commissioner to the complainant was made to Mr. C. on March 2, 1993 when he requested that Mr. C. obtain a written consent to proceed from the complainant pursuant to section 9(2) of the Act. This consent was received by the Commissioner who on April 5, 1993 ~~was~~ thereupon communicated with Mr. C. informing him that he was proceeding to investigate the complaint.

Following his investigation the Commissioner notified Mr. C. of his decision by letter on May 5, 1993. A copy of the letter of May 5, 1993 is attached to these resource. It was filed as Exhibit 2 to the proceedings.

The Commissioner, in his report to Mr. C, advised him that Section 13(2) provided for the decision of the Commissioner to be reviewed by a provincial judge. On May 28, 1993 by a letter addressed to the LERA the complainant personally notified the agency of her intention to appeal the Commissioner's findings. The complainant was notified on June 8, 1993 of the acceptance of the notice of the appeal and the right to examine all relevant documents in the possession of the Commissioner. On July 6, 1993 the complainant was notified that the date of hearing of submissions was fixed at July 21, 1993.

POSITION OF THE COMPLAINANT

The first position adopted by the complainant was that the Commissioner had the jurisdiction to deal with the complaint. I take no issue with the complainant on the point. The second issue raised by the submissions was that the Commissioner erred and did not exercise his discretion judicially under Section 13(1) of the Act, which reads as follows:

"Commissioner not to act on certain complaints

13(1) Where the Commissioner is satisfied

- (a) that the subject matter of a complaint is frivolous or vexatious or does not fall within the scope of section 29;
- (b) that a complaint has been abandoned; or
- (c) that there is insufficient evidence support the complaint to justify a public hearing;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his or her reasons for declining to take further action.

POSITION OF COUNSEL FOR CONSTABLE ROYER

Mr. McKenna on behalf of the constable submitted that Section 6(3) contained mandatory wording and because the provisions were mandatory they had to be followed explicitly. This Section reads 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) 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 that date of the alleged disciplinary default."

He submitted that the complaint must on form 1 so that the police constable would know what issues he had to face. It was submitted that there has to be certainty in

the complaint and unless it was properly before the Commissioner the police officer would not know how to defend the issues raised in the complaint. It was argued that the letter from Mr. C. did not follow this procedure, and it also lacked specificity. As the letter of February 17, 1993 was accepted by the Commissioner as the complaint, that is what the Commissioner was required to deal with and any other matters raised after the expiry of the thirty (30) day limit ought not to be dealt with by the Commissioner or in the case before me by me sitting as a reviewer of the dismissal of the complaint by the Commissioner.

His second position was that pursuant to Section 13(1)(c) the Commissioner is given the discretion to make the determination that he did. It was submitted that all the Commissioner has to do is be satisfied of the matter set forth in this section. His submission was that the Commissioner exercised his discretion in determining that there was insufficient evidence to support the complaint to justify the public hearing. His submission was that unless it can be shown that the Commissioner acted in an unjudicious fashion there was no jurisdiction to set aside his findings.

Where an application is brought under section 13(2) the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

His submission was that the complainant, in her submission failed to discharge this onus.

THE DECISION

I see my position as a one man appellant tribunal. As I read the Act I must review the evidence and have submissions with respect to the Commissioner's decision to decline to take further action on behalf of the complainant.

It is my finding on the evidence before me and on the submissions that the Commissioner exercised his discretion in a judicial fashion in determining that the evidence before him was insufficient to support a complaint to justify a public hearing. I find nothing in the submissions of the complaint to suggest that he did not proceed in a judicious fashion in making this determination.

There was a suggestion in the submissions that the Commissioner is precluded from seeking advice from the Crown in reaching his decision. Section 12(6) which reads as follows:

"Subject to subsection (7) the Commissioner may utilize any resources and employ any persons the Commissioner deems necessary for the prompt and thorough investigation of the complaint."

It is apparent that in seeking advice from Crown counsel the Commissioner exercised the right to do so pursuant to the terms of the Act.

It seems to me that in reviewing the evidence before the Commissioner that it would have been a simple matter indeed for the complainant to have satisfied the requirement of Police Constable R. for proper identification.

My formal finding is that the Commissioner acted properly in declining the request for a public hearing.

Pursuant to Section 13(4.1)

"Commissioner not to act on certain complaints

13(1) Where the Commissioner is satisfied

- (a) that the subject matter of a complain is frivolous or vexatious or does not fall within the scope of section 29;
- (b) that a complaint has been abandoned; or
- (c) that there is insufficient evidence support the complaint to justify a public hearing;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his or her reasons for declining to take further action."

I am ordering that no publication by any person of the name of the police officer be published.

It is my understanding that pursuant to Section 13(5) my decision in this matter is final.

DATED: August 7th, 1993



PJC