

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: Law Enforcement Review Act
Complaint Number 2011/31

BETWEEN:

[REDACTED]

Complainant,

- and -

CONSTABLE [REDACTED]
AND CONSTABLE [REDACTED]

Respondents.

TRANSCRIPT OF PROCEEDINGS, before The Honourable
Judge Pullan, held at the Law Courts Complex, 408 York
Avenue, in the City of Winnipeg, Province of Manitoba, on
the 8th day of November, 2012.

APPEARANCES:

MR. D. JOHNSTON, for Law Enforcement Review Agency

MR. P. MCKENNA, for the Respondents

1 NOVEMBER 8, 2012

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3 THE CLERK: This court is now open, Judge Pullan
4 presiding. You may be seated.

5 THE JUDGE: Good afternoon everyone.

6 MR. MCKENNA: Afternoon, Your Honour.

7 THE JUDGE: I don't see Mr. [REDACTED]

8 MR. MCKENNA: Sorry?

9 THE JUDGE: I don't see Mr. [REDACTED]

10 MR. MCKENNA: No.

11 THE JUDGE: Does anybody else?

12 MR. MCKENNA: No, I --

13 THE JUDGE: Please page [REDACTED]

14 MR. MCKENNA: While she's paging her (sic), I can
15 tell you that I have not been contacted by him one way or
16 another, by email or otherwise.

17 THE CLERK: [REDACTED] (phonetic) [REDACTED], please
18 attend to courtroom 408. [REDACTED] to 408.

19 THE JUDGE: Okay. Should probably get counsel to
20 identify themselves, although I know who's here.

21 MR. JOHNSTON: Your Honour, it's Devin
22 Johnston --

23 THE JUDGE: For the Commissioner?

24 MR. JOHNSTON: -- counsel for the Commissioner.

25 THE JUDGE: Thank you.

26 MR. MCKENNA: It's Paul McKenna, for the
27 respondent officers.

28 THE JUDGE: So, Counsel, how much time do you
29 think we should give Mr. [REDACTED]? Well, I --

30 MR. MCKENNA: Well, I can tell you -- no, I'll,
31 I'll --

32 THE JUDGE: Let me rephrase the question.

33 MR. MCKENNA: I'll tell you what the other
34 judges have done, which is about --

1 THE JUDGE: What's the usual practice, Mr.
2 McKenna?

3 MR. MCKENNA: Yes, about 20 minutes.

4 THE JUDGE: Okay, let's do that.

5 MR. MCKENNA: Yeah.

6 THE JUDGE: Unless, of course, Mr. [REDACTED]
7 appears early, in which case, Madam Clerk will come get me.
8 Take a recess. Thank you.

9 THE CLERK: All rise. This court is now in
10 recess.

11

12 (BRIEF RECESS)

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14 THE CLERK: This court is now reopened. You may
15 be seated.

16 THE JUDGE: Well, Mr. [REDACTED] seems to have not
17 joined us. Madam Clerk, last call.

18 THE CLERK: [REDACTED], please attend to
19 courtroom 408.

20 THE JUDGE: Counsel, I'd like to thank you both
21 for your very helpful and thorough materials that you
22 clearly invested a lot of time in preparing. But since Mr.
23 [REDACTED] isn't here and the onus is on him, it narrows the
24 court's options in terms of, it seems to me, of considering
25 a way to go forward this afternoon. What does the court
26 normally do, Mr. McKenna, in these circumstances?

27 MR. MCKENNA: Your Honour, about three weeks ago,
28 in front of Judge Chapman, we had an identical situation,
29 and I had advised Judge Chapman of a decision of Judge
30 Lerner, from a couple of years ago, where he refused to
31 take it upon himself to see if the Commissioner had erred.
32 And we are going to be asking the same thing. Judge
33 Chapman followed his direction and refused, as well, to
34 take it upon herself. And primarily, in cases like this,

1 we have no idea what it is that Mr. [REDACTED] would have
2 claimed to be the, the error, supposed error of the
3 Commissioner, and so we're not able to even speak to it, at
4 this point in time.

5 And so we're doing what we did in the, in the last
6 couple of cases, and that is, we're asking you, given that
7 Section 13(4) provides the onus is on the, on the
8 complainant, that we're asking you to dismiss the
9 application for review and to order a continuation of the
10 ban on publication, pursuant to Section 13(4).1 of the Act.

11 THE JUDGE: Mr. Johnston, do you have anything
12 more to say than that?

13 MR. JOHNSTON: No, Your Honour, my client
14 wouldn't take any position on that request.

15 THE JUDGE: Very well. The application for
16 review is dismissed. The order of non-publication of the
17 names of the respondent officers shall continue. Is there
18 anything further to this?

19 MR. MCKENNA: Nothing further, Your Honour.
20 Thank you.

21 THE JUDGE: All right, very well. Thank you.

22 THE CLERK: (Inaudible) All rise.

23 THE JUDGE: Good afternoon.

24 MR. JOHNSTON: Afternoon.
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(PROCEEDINGS CONCLUDED)