

IN THE MATTER OF:

Law Enforcement Review Act

Complaint No. 5039

BETWEEN:

G.T. ,

Complainant,

- and -

SERGEANT M.N.

Respondent.

TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Judge Corrin, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 10th day of October, 2002.

APPEARANCES:

MR. D. GUENETTE, for the Commissioner.

MR. P. MCKENNA, for the Respondent.

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

1 OCTOBER 10, 2002

2

3 MR. MCKENNA: Good afternoon Your Honour.

4 THE CLERK: This hearing is now open.

5 THE COURT: Good afternoon.

6 MR. GUENETTE: Good afternoon Your Honour.

7 MR. MCKENNA: Your Honour my name is McKenna, I'm
8 on for the respondent Sargeant M.N.

9 THE COURT: Yeah.

10 MR. GUENETTE: For the Commissioner Your Honour,
11 Denis Guenette, G-U-E-N-E-T-T-E. Not present.

12 THE COURT: I, I'm obviously not surprised that
13 your appearances for your respective clients.

14 MR. GUENETTE: Yes.

15 THE COURT: What is surprising is we don't have a
16 respondent.

17 MR. GUENETTE: A complainant.

18 THE COURT: Or a complainant, excuse me.

19 MR. GUENETTE: Yes.

20 THE COURT: Anybody seen him, heard from him?

21 MR. MCKENNA: Your Honour I have, I was carbon
22 copied with the letter that was sent to Mr. T. It's a
23 letter dated June 3, 2002 --

24 THE COURT: Right.

25 MR. MCKENNA: -- and it is to the address that, as
26 I understand, LERA has been using --

27 THE COURT: Um-hum.

28 MR. MCKENNA: -- from the beginning of this file.
29 I can tell you that I have not received any correspondence
30 or voice mail messages. I checked --

31 THE COURT: Okay.

32 MR. MCKENNA: -- my voice mail before leaving. I
33 have no word from him one way or the other and I'm, he, of
34 course because he has been to an earlier hearing of this

1 type knows that he has to attend.

2 THE COURT: He knows.

3 MR. MCKENNA: Yes.

4 THE COURT: He knows.

5 MR. GUENETTE: I did send out a copy of our brief
6 to him --

7 THE COURT: Um-hum.

8 MR. GUENETTE: -- but I can't confirm whether or
9 not he would have actually received it. But of course that
10 would be separate and apart from any notice to him about the
11 hearing.

12 THE COURT: Well that's, yeah, that's not material
13 to the question of notice, that's another issue. Have we
14 paged him yet?

15 THE CLERK: Yes I have Your Honour.

16 THE COURT: Tell you what, out of an abundance of
17 caution, since I'm now here and the court is open, page him
18 again.

19 THE CLERK: Mr. G.T. please attend to
20 courtroom 408, Mr. G.T. please attend to courtroom
21 408.

22 THE COURT: Sometimes there's a line-up at the
23 front of the building because of the security arrangement.
24 This does, from time to time, cause difficulties in terms of
25 timely attendances.

26 MR. MCKENNA: Um-hum.

27 THE COURT: Obviously I'm unfamiliar with the
28 situation there today. Can you phone downstairs and ask if
29 there's a line-up? Try to call someone?

30 THE CLERK: Yes.

31 THE COURT: Particularly in the morning that line-
32 up can be extremely long.

33 THE CLERK: There's no one there Your Honour.

34 THE COURT: There's no line-up.

1 THE CLERK: There's no line-up at all.

2 THE COURT: Okay, so that's not our problem.

3 MR. GUENETTE: And I can indicate that coming
4 through from the Woodsworth Building, which would be the
5 other place that he might have come through, there was no
6 line-up when I went through --

7 THE COURT: Yeah.

8 MR. GUENETTE: -- there about --

9 THE COURT: Yeah.

10 MR. GUENETTE: -- five minutes before two.

11 THE COURT: Yeah. Well, normally in court
12 proceedings we give people half an hour grace. That's in
13 situations where they're the accused.

14 MR. GUENETTE: Perhaps I can indicate, Your
15 Honour, that also in attendance in the courtroom are the two
16 LERA investigators.

17 THE COURT: Um-hum.

18 MR. GUENETTE: James Haslam on the left, on your
19 left and Max Churley on your right. Mr. Haslam has just
20 gone out looking for Mr. T. and has, does not see that he
21 was around.

22 THE COURT: Okay. So you patrolled the floor?
23 You, you went --

24 MR. HASLAM: Just, just this floor, Your Honour,
25 yes.

26 THE COURT: -- to the elevator? Yeah. Well, it's
27 unlikely he's in the building then.

28 Well, I guess out of an abundance of caution, just
29 in case he's been held up in traffic or something untimely
30 has happened, we'll give it 'til 2:30 at which time I'll
31 entertain an appropriate motion if he's not here.

32 THE CLERK: Order all rise, court will take a
33 recess.

34

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

(BRIEF RECESS)

THE CLERK: Court is reopened.

THE COURT: Gentlemen who wishes to make the motion?

MR. MCKENNA: Thank you, I will make the motion Your Honour, McKenna for the respondent officers, or respondent officer I should say.

The motion that I make is pursuant to Section 13(4) of the legislation, which provides that the burden of proof in one of these applications is on the complainant, and given that the complainant has not shown and attended then we say that he has not met the burden of proof. I can tell you that we have made this motion on, I would say conservatively, at least ten different occasions where complainants did not show and on each and everyone of those cases your brother and sister judges have granted that motion. I would ask that you grant that motion and as well that you order a ban on publication to continue pursuant to Section 13(4.1).

THE COURT: Thank you, both such orders are made. There's a ban on publication and the matter is at an end.

MR. MCKENNA: Thank you Your Honour.

THE COURT: It's dismissed.

THE CLERK: Order all rise, court stands closed.

(PROCEEDINGS CONCLUDED)

