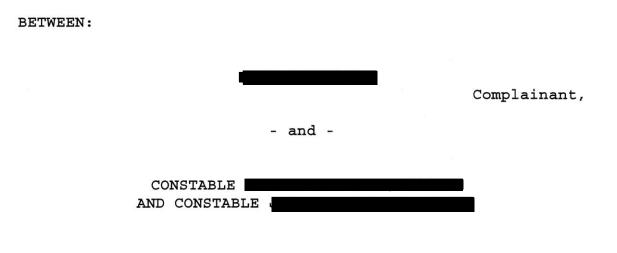
## THE PROVINCIAL COURT OF MANITOBA

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



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 NOVEMBER 8, 2012 PROCEEDINGS

NOVEMBER 8, 2012 1 2 3 THE CLERK: This court is now open, Judge Pullan 4 presiding. You may be seated. 5 THE JUDGE: Good afternoon everyone. MR. MCKENNA: Afternoon, Your Honour. 6 THE JUDGE: I don't see Mr. 7 8 MR. MCKENNA: Sorry? 9 THE JUDGE: I don't see Mr. MR. MCKENNA: No. 10 THE JUDGE: Does anybody else? 11 MR. MCKENNA: No, I --12 13 THE JUDGE: Please page 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 another, by email or otherwise. 16 THE CLERK: (phonetic) , please 17 attend to courtroom 408. to 408. 18 19 THE JUDGE: Okay. Should probably get counsel to identify themselves, although I know who's here. 20 21 MR. JOHNSTON: Your Honour, it's Devin Johnston --22 23 THE JUDGE: For the Commissioner? MR. JOHNSTON: -- counsel for the Commissioner. 24 25 THE JUDGE: Thank you. 26 MR. MCKENNA: It's Paul McKenna, for the 27 respondent officers. So, Counsel, how much time do you 28 THE JUDGE: think we should give Mr. ? Well, I --29 MR. MCKENNA: Well, I can tell you -- no, I'll, 30 31 I'll --32 THE JUDGE: Let me rephrase the question. I'll tell you what the other 33 MR. MCKENNA: 34 judges have done, which is about --

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1 THE JUDGE: What's the usual practice, Mr. 2 McKenna? MR. MCKENNA: Yes, about 20 minutes. 3 THE JUDGE: Okay, let's do that. 4 MR. MCKENNA: Yeah. 5 THE JUDGE: Unless, of course, Mr. 6 7 appears early, in which case, Madam Clerk will come get me. Take a recess. Thank you. 8 9 THE CLERK: All rise. This court is now in 10 recess. 11 12 (BRIEF RECESS) 13 14 THE CLERK: This court is now reopened. You may 15 be seated. seems to have not 16 THE JUDGE: Well, Mr. 17 joined us. Madam Clerk, last call. 18 THE CLERK: , please attend to 19 courtroom 408. THE JUDGE: Counsel, I'd like to thank you both 20 for your very helpful and thorough materials that you 21 clearly invested a lot of time in preparing. But since Mr. 22 isn't here and the onus is on him, it narrows the 23 24 court's options in terms of, it seems to me, of considering a way to go forward this afternoon. What does the court 25 26 normally do, Mr. McKenna, in these circumstances? 27 MR. MCKENNA: Your Honour, about three weeks ago, in front of Judge Chapman, we had an identical situation, 28 and I had advised Judge Chapman of a decision of Judge 29 30 Lerner, from a couple of years ago, where he refused to take it upon himself to see if the Commissioner had erred. 31 32 And we are going to be asking the same thing. Judqe Chapman followed his direction and refused, as well, to 33 take it upon herself. And primarily, in cases like this, 34

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1 we have no idea what it is that Mr. would have 2 claimed to be the, the error, supposed error of the Commissioner, and so we're not able to even speak to it, at 3 this point in time. 4 And so we're doing what we did in the, in the last 5 6 couple of cases, and that is, we're asking you, given that Section 13(4) provides the onus 7 is on the, on the 8 complainant, that we're asking you to dismiss the application for review and to order a continuation of the 9 ban on publication, pursuant to Section 13(4).1 of the Act. 10 THE JUDGE: Mr. Johnston, do you have anything 11 12 more to say than that? No, Your Honour, my client 13 MR. JOHNSTON: wouldn't take any position on that request. 14 Very well. THE JUDGE: 15 The application for 16 review is dismissed. The order of non-publication of the names of the respondent officers shall continue. Is there 17 anything further to this? 18 19 MR. MCKENNA: Nothing further, Your Honour. 20 Thank you. 21 THE JUDGE: All right, very well. Thank you. THE CLERK: (Inaudible) All rise. 22 THE JUDGE: Good afternoon. 23 24 MR. JOHNSTON: Afternoon. 25 26 (PROCEEDINGS CONCLUDED)

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