

IN THE MATTER OF: Law Enforcement Review Act  
Complaint No.2359

AND IN THE MATTER OF: An Application pursuant to Section 13  
of The Law Enforcement Review Act

BETWEEN:

B B

Complainant/Appellant

- and -

CONSTABLE M. S # and  
CONSTABLE M. L # ,

Respondents.

---

REASONS FOR DECISION delivered by  
His Honour Judge G. Joyal,  
on Tuesday, November 30, 1999,  
in Room 321, Law Courts Building,  
Broadway & Kennedy Street,  
in the City of Winnipeg, Province of Manitoba.

---

PRESENT:

MR. P.R. MCKENNA, counsel for the Respondents  
MR. D.G. GUENETTE, for the Commissioner, LERA  
MR. G. WRIGHT, Commissioner, LERA

Reported by: Rosemary E. Iwasienko, Official Examiner

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

1                   TUESDAY, NOVEMBER 30, 1999, 2:10 P.M.

2

3                   THE JUDGE: All right. Let me just deal with the  
4 issue as I see it, then.

5

6                   Mr. Guenette, on behalf of the Commissioner, Law  
7 Enforcement Review Agency, Province of Manitoba, has  
8 indicated this afternoon that the complainant in this  
9 matter, Mr. B           spoke to him earlier today in a very  
10 informal fashion, suggesting an adjournment might be  
11 required because of his inability to understand the recent  
12 question from both Mr. Guenette for his part, and Mr.  
13 McKenna for his. No specific request was made of Mr.  
14 Guenette, nor would such a request be appropriate. Mr.  
15 Guenette certainly can, as agent for Mr. B           , now make  
16 that request on Mr. B           's behalf.

16

17                   So what I have before me is an empty chair in  
18 which Mr. B           could have been seated, requesting  
19 personally the adjournment which he earlier suggested he  
20 needed. That request has not come, so I'm not going to deal  
21 with the question of an adjournment. I don't think it's  
22 appropriate that I speculate as to why or when that  
23 adjournment might be necessary.

23

24                   Mr. B           is not here, so I think I have to deal  
25 now with Mr. McKenna's request.

25

Mr. McKenna's request is that in the absence of

1 Mr. B , any submissions on his part with respect to an  
2 adjournment or otherwise, the matter should be dismissed, as  
3 the burden which rests on Mr. B , pursuant to section  
4 13(4), has not been discharged.

5 The only hesitation I expressed in that regard was  
6 whether or not I ought to be considering an ex parte  
7 proceeding. But when I look at section 13(4), I think I  
8 have to be mindful of the fact that there will be something  
9 fundamentally incoherent about proceeding with this sort of  
10 hearing, whereas Mr. McKenna quite correctly outlines he, in  
11 an ex parte situation, would have no idea of what he would  
12 be required to assert or submit in respect of his defence of  
13 the initial ruling by the Commissioner. That, obviously, is  
14 unacceptable and not a reason to proceed, and I don't think  
15 that an ex parte hearing, for that reason, is viable.

16 Accordingly, I look at the wording in section  
17 13(4), in the absence of Mr. B this afternoon, and I do  
18 hereby, at this time, dismiss the application, as I find  
19 that Mr. B has not discharged that onus pursuant to  
20 13(4).

21 Just one further order of business. I think I  
22 should specifically indicate, unless counsel feel it is not  
23 required, that there is, and will be, a ban on publication  
24 pursuant to 13(4)(1).

25 MR. MCKENNA: Yes. I would ask that, Your Honour.

1 Thank you.

2 THE JUDGE: Anything else, counsel?

3 MR. MCKENNA: Not from myself.

4 THE JUDGE: Thanks very much.

5

6

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, ROSEMARY E. IWASIENKO, a duly appointed  
Official Examiner in and for the Province of Manitoba, do  
hereby certify that the foregoing pages of typewritten  
matter, numbered 1 to 3, were taken by me by Stenomask at  
the time and place hereinbefore stated.



ROSEMARY E. IWASIENKO, CVR  
OFFICIAL EXAMINER