

ORIGINAL

IN THE MATTER OF: Law Enforcement Review Act
Complaint No. 3599

AND IN THE MATTER OF: An Application pursuant to
Section 13(2) of the Law
Enforcement Review Act,
R.S.M. 987, c L75

W. B.

Complainant,

- and -

CONSTABLE J. A # , CONSTABLE K. L # ,
CONSTABLE S. I # , CONSTABLE R. M #

Respondents.

TRANSCRIPT OF PROCEEDINGS had and taken before The
Honourable Judge Meyers, held at the Law Courts Complex, 408
York Avenue, in the City of Winnipeg, Province of Manitoba,
on the 18th day of April, 2000.

APPEARANCES:

MR. D. GUENETTE, for the Commissioner, George Wright.

MR. P. MCKENNA, for the Winnipeg Police Association.

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

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1 APRIL 18, 2000

2

3 THE JUDGE: It seems we have a bit of a problem.
4 We don't have a complainant.

5 MR. MCKENNA: That's correct, Your Honour. My
6 name is McKenna for the respondent officers and I can
7 indicate to you that I have no indication whatsoever as to
8 Mr. B 's non-attendance. We have no letters or
9 correspondence or messages advising us he won't be here or
10 that the date is a problem. The only thing that I have on
11 my record is a carbon copy of Carol Abbott's letter to him
12 dated January 11, 2000, advising of the date, time and
13 location of the hearing and I have no way of telling you
14 whether or not this reached him. It is addressed to his
15 home on X ADDRESS which is the address that the
16 officers attended to on the original call. We have no
17 indication that he has moved from that address, so I'm at a
18 loss to be able to explain anything more than that to you.
19 And I can add that I don't know that it's a registered
20 letter. It certainly doesn't have in here that it's
21 registered above the body of the letter, it certainly
22 doesn't indicate that.

23 THE JUDGE: Any views from you, Mr. Guenette?

24 MR. GUENETTE: Nothing to add, Your Honour. Mr.
25 Guenette for the --

26 THE JUDGE: Yes.

27 MR. GUENETTE: -- Commissioner, of course.

28 THE JUDGE: Has counsel run into a situation like
29 this before where the complainant does not show at the
30 hearing? Both of you gentlemen would appear, as I've read
31 the decisions of brother judges, you seem to be two of the
32 main players and I was just wondering have you run into a
33 situation like this before?

34 MR. MCKENNA: I have, Your Honour. I've been

1 doing this for 12 years now and so we have from time to time
2 run into situations of no-shows in various scenarios. I'm
3 at a loss to give the exact name of the complainant. I know
4 that it has happened at least once and it caused me to
5 change my style of cause in my material because the judge at
6 the time was asking is there any way that you can explain to
7 us whether or not this person knew the date, time and
8 location. And as a result of that hearing, and I really
9 can't remember the complainant's name, I changed in my style
10 of cause so that I put respondent's brief, hearing before a
11 provincial judge and then I put the date, time and location.
12 I can advise you that Mr. B has attended every other
13 type of proceedings so far. He has another one of these
14 that he has attended, they didn't seem to have a problem
15 getting a hold of him in that one. He attended before you
16 on the first appearance and he attended at the informal
17 resolution that was set.

18 THE JUDGE: That's the Section 15 hearing?

19 MR. MCKENNA: The Section 15, yes, he was there
20 for that as well. He gave no indication at the time that he
21 was not going to proceed any further. It is our position,
22 Your Honour, that because the onus under the Act is on the
23 complainant, and specifically under Section 13(4) of the
24 legislation, that this complaint or this application for
25 review ought to be dismissed at this point in time.

26 THE JUDGE: The -- certainly if we were certain
27 that Mr. B received notice of this particular hearing,
28 the Court could accept your request. The thing is we don't
29 know if Mr. B received Ms. Abbott's letter. The -- I
30 wonder if the safest thing to do would be for us to have Ms.
31 Abbott attend to advise whether or not the letter was
32 registered. If it wasn't, then how are we certain that he
33 received notice of this hearing --

34 MR. MCKENNA: The other -- yes.

1 THE JUDGE: You know, when one looks at the fact
2 that he did appear the last time before me and attended,
3 Section 15, a formal hearing, if he didn't get it and this
4 Court -- or not the Court, sorry, because I agree with Mr.
5 Guenette, it's not a judicial review, it's a review, and if
6 I were to accede to your request, then Mr. B could, as
7 is his want, move to, you know, I guess to a higher
8 authority and say he never received notice and how dare we.
9 That's the problem I have.

10 MR. MCKENNA: If I may, Your Honour, and I
11 understand your concern in that regard, if I may there is
12 perhaps one other solution as well or one other method that
13 we can use and we can phone him right now and he can tell us
14 if he's received it and has chosen not to come in. That may
15 short circuit matters.

16 THE JUDGE: Well, let us -- well, certainly it
17 shouldn't be you, it shouldn't be Mr. Guenette and it
18 shouldn't be me that phones him. I think Ms. Abbott should
19 be the one to call him, to see -- if he says that he did
20 receive it, then -- and he's not prepared to attend, then we
21 can dispose of the matter. If he says he didn't know of the
22 hearing, then of course we can adjourn for a new date. I
23 think that is the proper way to go. I wonder if we took a
24 short recess, if the Clerk could get Ms. Abbott to attend in
25 court and we could see where we go from there, unless you
26 have other suggestions, Mr. Guenette.

27 MR. GUENETTE: No, that's fine.

28 MR. MCKENNA: Are you instructing that Ms. Abbott
29 try to contact him before attending into court?

30 THE JUDGE: No, I'm going to first of all, I'm
31 going to tell you, if Ms. Abbott comes to court and says she
32 sent a registered letter, I will deal with the matter. If
33 she says she didn't send a registered letter, at that point
34 I will request that she phone him, ask him if he got the

1 letter, if he is attending. If he says yes, okay, if he
2 says yes, I think she doesn't have to go any further --

3 MR. MCKENNA: All right.

4 THE COURT: -- if he acknowledges that he received
5 it. If he says he didn't receive it, at that point I'm
6 going to grant him an adjournment --

7 MR. MCKENNA: All right..

8 THE JUDGE: -- and we'll send a registered letter.
9 But I don't think that it's for her to ask him if he has an
10 intention of attending. He either received it or didn't
11 receive it. So, I think -- I don't want to put her in a
12 spot where she enters into a dialogue with him.

13 MR. MCKENNA: I understand.

14 THE COURT: So could you get Ms. Abbott to attend
15 in court and then come and get me?

16 THE CLERK: Certainly, Your Honour.

17 THE JUDGE: Okay. And I have her, I have her
18 communications as does counsel. So she, you know, she
19 doesn't have to bring anything here because we've got the
20 file, okay?

21 THE CLERK: All right.

22 THE JUDGE: So if you would do that. Thank you.

23

24 (BRIEF RECESS)

25

26 THE JUDGE: Ms. Abbott, we've run into a problem
27 and perhaps you could help us with it. As you can see, we
28 don't have Mr. B , the complainant in this matter. The
29 notice that you sent him, and I have a copy of the letter,
30 was that send by registered mail?

31 MS. ABBOTT: No.

32 THE JUDGE: What's your procedure?

33 MS. ABBOTT: The only matters we send by
34 registered mail, Your Honour, in the courts that I am aware

1 of are estreatals.

2 THE JUDGE: Okay.

3 MS. ABBOTT: They go out by regular mail. My
4 usual course of action in LERA hearings or reviews when I'm
5 scheduling is to contact first Mr. McKenna to find out his
6 availability and then the other party to make sure that
7 they're available and --

8 THE JUDGE: And you advise them?

9 MS. ABBOTT: And then I -- I find out if they're
10 available a certain date, advise them and follow up with a
11 letter and say I will send you a letter telling you the time
12 starting, the courtroom, et cetera. I don't specifically
13 remember Mr. B because I've been setting an awful lot
14 of these lately, but that is my usual steps that I take in
15 these matters. It doesn't make sense to me to set a matter
16 without contacting someone because you don't know they're if
17 available.

18 THE JUDGE: And he said he would be available on
19 this date?

20 MS. ABBOTT: I don't remember specifically, but I
21 wouldn't have set it unless he had said he was.

22 THE JUDGE: The problem I have, and of course is
23 that Mr. B did appear at the last hearing, at the
24 adjourned hearing and then he appeared at the informal
25 hearing, so he has showed an inclination to attend. I
26 wonder if it would be possible for you -- and I don't want
27 you to get into a dialogue with him, is to phone his
28 residence, find out whether or not he received your letter.
29 I think -- I don't think you should ask him are you coming,
30 I don't think you should ask him what his intentions are. I
31 don't want you to become involved in his dispute with the
32 commissioner and with the four officers. If he says he
33 received it, I think a simple thank you. If he said he
34 didn't receive it, I think a simple thank you and then for

1 you to come back to tell the Court, because at that point if
2 he said he didn't receive it, then the Court will ask that
3 you send it out by registered mail with the new date. If he
4 said he received it, I will be hearing from Mr. McKenna, I'm
5 sure.

6 So could we do that? Take a few minutes recess
7 and if you could attend to that.

8 MS. ABBOTT: Could I have the file, Your Honour,
9 so that I can --

10 THE JUDGE: Yes, certainly. I'll give you
11 everything that I have except the submissions of counsel.

12 Mr. Guenette, did you want to add anything?

13 MR. GUENETTE: No, I'm just standing for the...

14 THE JUDGE: Okay. You can take the files, okay.
15 And we'll take a short recess and if you could advise the
16 Clerk when you're ready to proceed and then we'll go ahead.
17 Thank you.

18

19 (BRIEF RECESS)

20

21 MS. ABBOTT: Your Honour, I called Mr. B 's
22 home phone number. His son answered, he wasn't at home.
23 The son didn't know when he would be home, he said later in
24 the day. His son wasn't aware whether he had received the
25 letter or not. We also attempted to phone him on his cell
26 phone and there was no answer.

27 THE JUDGE: Thank you. Counsel -- thank you so
28 much, Ms. Abbott. Counsel, I have taken more than a moment
29 to reflect on the matter. It's not only Mr. B , there
30 are four officers, to have this hanging over their head. I
31 think that Ms. Abbott's procedure is the right procedure,
32 that is to call to see the availability of not only the
33 complainant, but of counsel and then to do a follow up
34 letter. Whether or not it was registered mail, I think was

1 sufficient notice to tell Mr. B that there was a
2 hearing today. Had there not been a phone call, Mr. McKenna
3 and Mr. Guenette, had there not been an initial phone call,
4 I would have asked Ms. Abbott as a result of her telephone
5 conversation and the information she received, to send a
6 follow up letter by way of registered mail with AR card
7 returned. I don't think it's necessary, I think that the
8 procedure that you utilized is a good procedure. There is
9 nothing to indicate that when Mr. B first spoke to Ms.
10 Abbott, that he wasn't available and he isn't the only party
11 affected by this proceeding. There are four officers and
12 even if it was only one officer, they can't continually have
13 this hanging over their head. Mr. McKenna, I'm prepared to
14 hear any motion you wish to make, sir.

15 MR. MCKENNA: Thank you, Your Honour. My motion
16 is that you rule that pursuant to Section 13(4) of the Law
17 Enforcement Review Act, that given that the onus is on Mr.
18 B and that he has not satisfied the onus, that you
19 dismiss the application and --

20 THE JUDGE: That's the abandonment?

21 MR. MCKENNA: No, it's not abandonment, no.

22 THE JUDGE: Perhaps you could just give me 13(4)
23 again.

24 MR. MCKENNA: Yes. That would be found at Tab 4
25 of -- or I'm sorry, Tab 7 of my brief, Your Honour. I have
26 a copy of the legislation.

27 THE JUDGE: I have it, thank you.

28 MR. MCKENNA: My motion, Your Honour, is pursuant
29 to Section 13(4), that -- actually it's a combination of
30 13(4) and 13(3) and that on the basis of the fact that the
31 onus is on the complainant and that he has not discharged
32 that onus, that you dismiss the application and leave intact
33 the commissioner's decision under Section 13(1) to not
34 proceed any further with this complaint and I also ask that

1 there continue to be a ban on publication pursuant to
2 Section 13(4.1) of the Act.

3 THE JUDGE: Mr. Guenette, do you wish to make any
4 representations?

5 MR. GUENETTE: We don't have anything to add, Your
6 Honour.

7 THE JUDGE: Fine. I'm satisfied that the onus is
8 on Mr. B . He has not proceeded with the hearing, for
9 reasons that I guess only he can explain. I am prepared to
10 accept counsel's application that the application be
11 dismissed and it is so dismissed. There will be a ban on
12 publication pursuant to Section 13(4.1) of the Law
13 Enforcement Review Act, that no person shall cause the
14 respondent's name to be published in a newspaper or other
15 periodical publication or broadcast on radio or television.

16 Secondly, that the ban on publication of the
17 respondents' names continue and that would be it, just (a)
18 and (b). Thank you. This matter is completed.

19 (PROCEEDINGS CONCLUDED)

20

CERTIFICATE OF TRANSCRIPT

I, GAIL DAYTON, hereby certify that the foregoing pages of printed matter, numbered 1 to 8, are a true and accurate transcript of the proceedings recorded by a sound recording device that has been approved by the Attorney-General and operated by court clerk/monitor, Isabel Morgado, and has been transcribed by me to the best of my skill and ability.


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