

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint No. 2006/275

AND IN THE MATTER OF:

An Application pursuant to s. 13(2) of
The Law Enforcement Review Act
R.S.M. 1987, c.L75

BETWEEN

M. P.
Complainant

) Self-represented

)

)

)

- and -

)

)

)

Cst. R.H.

) Paul McKenna

Cst. D.A.

) Counsel for the Respondents and

Cst. R.B.

) The Winnipeg Police Association

Cst. J.C.

) Sean Boyd

Cst. M.M.

) Counsel for L.E.R.A.

Respondents

)

*Note: These reasons are subject to a ban on
Publication of the Respondents' names
Pursuant to s. 13(4.1).*

T.J. LISMER, P.J.

DECISION ON REVIEW

[1] The complainant applied pursuant to s.13(2) of *The Law Enforcement Review Act*, C.C.S.M. c.L75 to have a Provincial Judge review the Commissioner's decision to decline from taking further action on a complaint, in accordance with s. 13(1).

[2] The Commissioner has declined to take further action on the complaint on the ground under s. 13(1)(c), that there is insufficient evidence supporting the complaint to justify a public hearing. The Review came up for hearing on

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

Thursday, the 12th day of November, 2009 at 2:00 p.m. in Courtroom 408 at 408 York Avenue, Winnipeg, after due notice to the complainant.

[3] Greg Bartel, articling student attended on behalf of Paul McKenna, counsel for the respondents and Sean D. Boyd, counsel for LERA Commissioner attended but the complainant nor anyone on his behalf did not attend.

[4] Direction to the Stony Mountain Institution directing that M.P. be transported to court for the Review, was filed as Exhibit 1.

[5] Prior to the scheduled hearing at 2:00 p.m. M.P. phoned Marilyn Baron, Judicial Assistant to the Provincial Court, and informed her that he was abandoning his Application for Review and declined to be transported from the Stony Mountain Institution to courtroom 408 at 408 York Avenue, Winnipeg, Manitoba on the Review proceeding and stated that his voluntary non attendance will confirm his decision to abandon this Review.

[6] At 2:36 p.m. on the same date Greg Bartel on behalf of Paul McKenna moved to a dismissal of the Application on the ground that whereas under s. 13(4) of the *Act* the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action or complaint, the complainant chose not to attend and did not otherwise satisfy this burden of proof.

[7] Accordingly the Application for Review is dismissed.

[8] The ban on publication of the respondents' names continues under s. 13(4) of the *Act*.

SIGNED at Winnipeg, Manitoba, this 16th day of December, 2009.

original signed by

Lismer, P.J.