

File No. _____
E-File Name: 2019-01-23WOP [REDACTED]
Appeal No. _____

IN THE PROVINCIAL COURT OF MANITOBA
WINNIPEG, MANITOBA

IN THE MATTER OF

THE LAW ENFORCEMENT REVIEW ACT
Complaint # 2018-98

AND IN THE MATTER OF

An Application Pursuant to s.13 of the *Law Enforcement Review Act*
R.S.M. 1987, c. L75

BETWEEN

[REDACTED]

Complainant

and

[REDACTED]

Respondent

PROCEEDINGS
(Pages T1 - T8)

January 23, 2019
Winnipeg, Manitoba

Royal Reporting Services Ltd.
300 - 2010 - 11th Avenue
Regina, Saskatchewan
S4P 0J3
Phone: 306-352-3234
Fax: 306-757-7788

BAN ON PUBLICATION

TABLE OF CONTENTS

Description		Page
January 23, 2019	Afternoon Session	T1
Discussion		T1
Decision		T1
Certificate of Transcript		T2

1 Proceedings taken in the Provincial Court, Winnipeg, Manitoba

2

3

4 January 23, 2019

Afternoon Session

5

6 The Honourable Judge

The Provincial Court of Manitoba

7 B. M. Corrin

8

9 D. Johnston

For the LERA Commissioner

10 P. McKenna

For the Respondent

11 O. Banash

Court Clerk

12

13

14 **Discussion**

15

16 THE JUDGE:

And now we return to Mr. [REDACTED]

17 (phonetic) -- or [REDACTED].

18

19 MR. JOHNSTON:

Yeah, so --

20

21 THE JUDGE:

No person as I said, save for the people

22 who are in the courtroom now are here, it's clear Ms. [REDACTED] has not attended

23 today. We were told earlier because the Court was told by Mr. Johnston that the

24 service was effected on Ms. [REDACTED] by registered mail on December the 11th of last

25 year. So service apparently is in place. Do you have the actual --

26

27 MR. JOHNSTON:

What I --

28

29 THE JUDGE:

-- AR card or something like that?

30 Acknowledgment receipt card?

31

32 MR. JOHNSTON:

Yeah, Your Honour, what I have is a

33 printout of Canada Post that has -- reflects the delivery details and has a --

34

35 THE JUDGE:

Okay.

36

37 MR. JOHNSTON:

-- has an electronic capture of the

38 signature.

39

40 THE JUDGE:

I'll accept it. Just file it.

41

- 1 MR. JOHNSTON: And this was sent to me by my client. I
2 have the email information at the top.
3
- 4 THE JUDGE: Okay, I'll take the -- thanks. I'll just cut
5 to the chase. Where's the part about where they -- where they delivered it?
6
- 7 MR. JOHNSTON: Oh, I -- I don't know if that's noted on
8 there, Your Honour. What --
9
- 10 THE JUDGE: Looks more like an order form than a
11 delivery confirmation form.
12
- 13 MR. JOHNSTON: Yeah. Yeah. What -- what the practice of
14 the agency is is to send these things by registered mail to the same address where
15 they would have sent the commissioner's decision that person has asked to review
16 as that's the last known address --
17
- 18 THE JUDGE: That's a good idea. I think that's great. I
19 have no problem with that part.
20
- 21 MR. JOHNSTON: But it may not be noted there.
- 22
- 23 THE JUDGE: The part I'm contending against is the
24 absence of any proof that they did it. That's all. They clearly were asked to do it.
25 There's no question you did your duty and requested that part, but where's the
26 proof that it happened? That they made an earnest effort and were somewhat
27 successful.
28
- 29 MR. JOHNSTON: Your Honour perhaps if I could have --
30
- 31 THE JUDGE: An AR card is always nice. That's an
32 acknowledgment of receipt card. That's my lingo --
33
- 34 MR. JOHNSTON: If I can just have a moment to confer
35 with my client, Your Honour.
36
- 37 THE JUDGE: -- for acknowledgement of receipt.
38
- 39 MR. JOHNSTON: So, Your Honour, in the document that
40 I've given you, if you'll turn to the second page. Again, this is a print out from
41 Canada Post, you'll see the delivery date is noted as 2018/12/11, I take to mean

1 December the 11th.
2
3 THE JUDGE: Is this what you're referring to?
4
5 MR. JOHNSTON: Signatory name is [REDACTED].
6
7 THE JUDGE: I missed that the first time.
8
9 MR. JOHNSTON: Yeah. And then all the --
10
11 THE JUDGE: So she didn't sign.
12
13 MR. JOHNSTON: Well -- and then on the third page --
14
15 THE JUDGE: Well, she didn't sign the electronic form
16 that -- yeah. There is a place there for signature but --
17
18 MR. JOHNSTON: Yeah, but it -- if -- Your Honour --
19
20 THE JUDGE: There's no indication whether she signed
21 or didn't sign. But -- but --
22
23 MR. JOHNSTON: If you'll turn to the next page --
24
25 THE JUDGE: Oh, okay.
26
27 MR. JOHNSTON: -- then you'll see the
28 (INDISCERNIBLE) image which --
29
30 THE JUDGE: Oh.
31
32 MR. JOHNSTON: -- not the most elegant signature --
33
34 THE JUDGE: Okay, I thought nothing of it when I
35 looked -- okay, is this --
36
37 MR. JOHNSTON: -- but there is something that's been --
38
39 THE JUDGE: Okay.
40
41 MR. JOHNSTON: -- that's been scribbled there.

1
2 THE JUDGE: I see what you're saying. So you're
3 saying that this --
4
5 MR. JOHNSTON: So I -- I think that that's the electronic
6 capture of the signature, such as it is.
7
8 THE JUDGE: Okay. I -- this scribble -- scribble or
9 swibble (phonetic) I don't know what it is. It was done electronically, so I assume
10 it was not easy to get a faithful signature on this.
11
12 MR. JOHNSTON: Yeah, my -- my experience is they
13 present you with that little --
14
15 THE JUDGE: But I see what you're saying. So you're
16 saying --
17
18 MR. JOHNSTON: -- electronic pad.
19
20 THE JUDGE: -- that Ms. -- this is Ms. [REDACTED]
21 signature.
22
23 MR. JOHNSTON: As far as we're aware.
24
25 THE JUDGE: No, no, I understand --
26
27 MR. JOHNSTON: It's --
28
29 THE JUDGE: -- that as far as you know that that would
30 be her signature.
31
32 MR. JOHNSTON: Yeah.
33
34 THE JUDGE: Okay.
35
36 MR. JOHNSTON: So -- so Your Honour --
37
38 THE JUDGE: I think you're -- I reckon you're right. I
39 think that it was probably in this age, done electronically and it's illegible because
40 it was done electronically, employing high-tech (INDISCERNIBLE)
41

1 MR. MCKENNA: Your Honour, I -- I have her --
2
3 THE JUDGE: Probably works for -- works for me. I
4 understand. I think I've signed a few of these types of documents and it's come out
5 the same way.
6
7 MR. MCKENNA: Yeah. I have her signature on the file and
8 it's -- it looks a lot like --
9
10 THE JUDGE: Little bit like this. Okay.
11
12 MR. MCKENNA: -- what you're looking at there.
13
14 THE JUDGE: Okay. A lot like this.
15
16 MR. MCKENNA: Yeah.
17
18 THE JUDGE: Okay. Well, I'm willing to accept it as
19 such as being her signature, now that I've seen everything, so to speak and looked
20 at it and understood it. Okay. So it appears that she was therefore aware -- made
21 aware.
22
23 MR. JOHNSTON: Yeah
24
25 THE JUDGE: -- of her need to attend today, this time
26 date and place.
27
28 MR. JOHNSTON: Yes, and I will note again though Your
29 Honour, it is a first appearance and so of course it's within your discretion to
30 decide whether or not the complainant ought to be given a second opportunity to
31 attend having failed the first time but -- and of course my friend may have a
32 position on that.
33
34 THE JUDGE: M-hm.
35
36 MR. MCKENNA: Your Honour, I moved to dismiss -- I
37 mean, they -- there's some work that goes into registered mail to make sure that
38 this sort of communication gets sent to the person and she did sign for it. I can tell
39 you that I have no received any communication whether voicemail, email, or
40 phone call otherwise from her one way or another. And certainly, when she got a
41 copy of the file, she would have known that I was counsel of record. And in the

1 circumstances then, I move to dismiss, Your Honour.

2

3 THE JUDGE: This is a section 13 application.

4

5 MR. JOHNSTON: Yes.

6

7 THE JUDGE: That's important because it's context. Do
8 you want to -- because you have -- your client has an interest, so to speak.

9

10 MR. JOHNSTON: Well, my client would take no position
11 on the request. We're --

12

13 THE JUDGE: Do you want to take -- that's what I was
14 going to ask -- do you want to take a position on this?

15

16 MR. JOHNSTON: We typically don't take a position in
17 these matters.

18

19 THE JUDGE: He has an interest but --

20

21 MR. JOHNSTON: Yeah. We're -- we're here essentially as
22 a friend of the court to try to assist these matters to move along in an orderly way,
23 so we -- we have no position one way or another.

24

25 THE JUDGE: Okay.

26

27 MR. JOHNSTON: -- but I provide the information for what
28 it's worth.

29

30 **Decision**

31

32 THE JUDGE: Okay. Having heard, as it were, the
33 evidence of service, and received the Canada Post confirmation of same, and
34 received now an application to dismiss from the, I guess we'll call it the -- what the
35 peace officer, I suppose is the way to put it, the Court will dismiss the application.

36

37 MR. MCKENNA: And if I could ask for a Section 13(4.1)
38 continuation on the ban?

39

40 THE JUDGE: That's fine.

41

1 MR. MCKENNA:

Thank you, Your Honour.

2

3

4

5 PROCEEDINGS CONCLUDED

IN THE MATTER OF *THE LAW ENFORCEMENT REVIEW ACT*

AND IN THE MATTER OF [REDACTED] V. [REDACTED]
[REDACTED]

I, KARI SHORT, Court Transcriber, HEREBY MAKE OATH AND SAY that the foregoing typewritten pages being numbered T One (T1) to T Seven (T7), inclusive, contain a true and correct transcription of the recorded proceedings taken herein to the best of my knowledge, skill and ability.

COURT TRANSCRIBER