

ORIGINAL

IN THE MATTER OF: Law Enforcement Review Act  
Complaint No.3198

AND IN THE MATTER OF: An application pursuant to  
Section 13(2) of The Law  
Enforcement Review Act

BETWEEN:

J P

Complainant,

- and -

NO IDENTIFIABLE RESPONDENT,

Respondent.

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TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Judge Pullan, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 4th day of August, 1999.

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APPEARANCES:

MS. J. MANN, for the Commissioner's Office.

MR. P. MCKENNA, for the Respondent.

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

1 AUGUST 4, 1999

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3 THE JUDGE: Good morning.

4 MR. MCKENNA: Good morning Your Honour.

5 THE JUDGE: Please be seated.

6 MS. MANN: Good morning Your Honour.

7 THE JUDGE: Thank you.

8 Yes, we are here on the J P L.E.R.A.  
9 complaint, I guess to put it in that way. Has anyone heard  
10 from R W , whom you all may know is the person  
11 appointed to represent the administratrix, I guess, of the  
12 estate of Mr. P ?

13 MS. MANN: There's -- it's Jennifer Mann, here,  
14 for the Commissioner's Office.

15 THE JUDGE: Yes.

16 MS. MANN: No, we -- Ms. W hasn't -- isn't  
17 here and we haven't seen anyone appearing on her behalf, as  
18 of yet.

19 THE JUDGE: Mr. McKenna, you wouldn't necessarily  
20 have heard anything?

21 MR. MCKENNA: Nothing at all throughout these  
22 entire proceedings, Your Honour.

23 THE JUDGE: All right. Would you page R  
24 W please, out of an abundance of caution?

25 THE CLERK: R W , please attend to  
26 Courtroom 409. R W , please attend to Courtroom  
27 409.

28 THE JUDGE: All right. Well, there's no response  
29 to the page. We are, as you may be aware, in a bit of  
30 uncharted waters here because at least my reading of the  
31 act is that it's not at all clear how matters ought to  
32 proceed when there is an unfortunate demise of the original  
33 complainant in this matter. There have been, as you may be  
34 aware, a number of attempts to contact Ms. W and bring

1 her to court to advance the complaint, if she wished. I  
2 shouldn't say the complaint, actually the application  
3 pursuant to s.13(2), if she wished to do so. They're all  
4 detailed on the file. I am confident that she was aware of  
5 today's hearing, the last hearing being adjourned from June  
6 to accommodate her convenience. So, do counsel wish to make  
7 any submission in connection with the next step here? Ms.  
8 Mann? Mr. McKenna?

9 MR. MCKENNA: Your Honour, we believe that s.13(4)  
10 of the act places the burden of proof on the complainant in  
11 a situation like this. Given the non-attendance of Ms.  
12 W we believe that the burden of proof has not been  
13 met, obviously, and that this matter, this application ought  
14 to be dismissed by yourself, along with a ban on publication  
15 pursuant to s.13(4.1).

16 THE JUDGE: Seems to me that order was made  
17 earlier, was it not?

18 MR. MCKENNA: There may have been an order such as  
19 that. I don't know that it would run the entire time, it  
20 may have been that it was meant to run until the matter  
21 would reconvene.

22 THE JUDGE: All right. Ms. Mann, do you have any  
23 submission?

24 MS. MANN: The Commissioner takes the position  
25 that the Court should find that the complainant has  
26 withdrawn the complaint in this matter. We have taken the  
27 position that the complaint continues after the death of the  
28 complainant but as the executor or executrix hasn't appeared  
29 the -- we, we would take the position that the matter should  
30 be withdrawn.

31 THE JUDGE: Section 13(3) says:

32

33 "That upon --"

34

1 (OTHER MATTERS SPOKEN TO)

2

3 THE JUDGE: Sorry for that. I thought that might  
4 be Ms. W

5

6 "(Upon) receiving an application  
7 under subsection (2), the  
8 Commissioner shall refer the  
9 complaint to provincial judge who,  
10 after hearing ... submissions from  
11 the parties ... and is satisfied  
12 that the Commissioner erred shall  
13 take further action ..."

14

15 So it seems to me in these circumstances there are  
16 two options. One is to deem the complaint withdrawn and the  
17 alternative is to take the position, pursuant to s.13(3),  
18 that the Court is satisfied that the -- is not satisfied  
19 that the Commissioner erred. I must say I've reviewed the  
20 file material and there is nothing in the file material that  
21 would persuade me, considering especially that the burden is  
22 on the complainant to take the matter further. I just don't  
23 know whether it's appropriate in these circumstances, based  
24 on that finding, to find that the complaint has been  
25 withdrawn or to take the position that I am not satisfied on  
26 the materials before me that the Commissioner erred. Is  
27 there any material difference in the end result to either  
28 course of conduct, to either action?

29 MR. MCKENNA: Yeah. I, I don't know, we're in  
30 unchartered waters. You know, I suppose, if either one is  
31 considered to be a decision --

32 THE JUDGE: Yes.

33 MR. MCKENNA: -- of yours, then s.13(5) applies  
34 and then it's final. We believe the one that's the most



## CERTIFICATE OF TRANSCRIPT

I, JACQUELYN DYSON, hereby certify that the foregoing pages of printed matter, numbered 1 to 4 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, Alicia McKinnon, and has been transcribed by me to the best of my skill and ability.

  
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