

IN THE MATTER OF: Law Enforcement Review
Act, Complaint No.3408

AND IN THE MATTER OF: An Application pursuant to
Section 13 of The Law Enforcement
Review Act, RSM 1987, c.L75

BETWEEN:

L. M. K.

Complainant/Appellant

- and -

CST. L. M.
CST. N. B.
CST. J. M.

CST. R. H.
, CST. M. R.
and CST. P. M.

Respondents.

Proceedings had and taken before
His Honour Judge R. Harris, on Friday,
December 4, 1998, 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, counsel for the Commissioner
MR. G. WRIGHT, Commissioner of LERA
MR. R. TRAMLEY, Investigator

Reported by: Rosemary E. Iwasienko, Official Examiner

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

1 FRIDAY, DECEMBER 4, 1998, 10:00 A.M.

2

3 THE JUDGE: It's ten o'clock. Let's find out who
4 is present now. Your name, please?

5 MR. MCKENNA: My name is McKenna, Your Honour. I
6 appear on behalf of the respondent police officers.

7 THE JUDGE: Your name, sir?

8 MR. TRAMLEY: My name is Robert Tramley,
9 T-r-a-m-l-e-y, and I am an investigator with LERA, Your
10 Honour.

11 THE JUDGE: Robert Tramley?

12 MR. TRAMLEY: Yes.

13 THE JUDGE: T-r-a-m --

14 MR. TRAMLEY: L-e-y.

15 THE JUDGE: L-e-y.

16 MR. TRAMLEY: And this was the acting
17 Commissioner, George Wright, who was here.

18 THE JUDGE: Who was with you?

19 MR. TRAMLEY: Yes.

20 THE JUDGE: Who went downstairs?

21 MR. TRAMLEY: Yes.

22 THE JUDGE: Is Mr. K. present?

23 MR. TRAMLEY: He doesn't appear to be, Your
24 Honour.

25 THE JUDGE: Because I don't know the gentleman.

1 Do you know him?

2 MR. MCKENNA: I've never met him before.

3 MR. TRAMLEY: I know what he looks like.

4 THE JUDGE: You know what he looks like?

5 MR. TRAMLEY: Yes.

6 THE JUDGE: All right. We'll wait until Mr. --

7 Mr. Wright, is it?

8 MR. TRAMLEY: Yes.

9 THE JUDGE: The Commissioner?

10 MR. TRAMLEY: Yes.

11 THE JUDGE: We'll wait a few minutes.

12 MR. WRIGHT: There's no line-up at the front door,

13 Your Honour.

14 THE JUDGE: There isn't, eh?

15 MR. WRIGHT: No. And do you want me to call Mr.

16 K 's name?

17 THE JUDGE: Well, let me -- please sit down.

18 You're Commissioner Wright?

19 MR. WRIGHT: Yes.

20 THE JUDGE: Well, I presume you, sir, and Mr.

21 McKenna are the ones who are familiar with these areas?

22 MR. MCKENNA: Yes.

23 THE JUDGE: This is my first hearing. And I

24 gather of late there has been a number of these hearings

25 before Provincial Court Judges?

1 MR. MCKENNA: That's right.

2 THE JUDGE: For whatever reason. Mr. K is not
3 present yet?

4 MR. TRAMLEY: No, Your Honour.

5 THE JUDGE: The question in my mind is how long do
6 we wait for him?

7 MR. MCKENNA: In fairness, Your Honour, I can tell
8 you that the last instances where this has occurred, the
9 Judge has waited approximately fifteen minutes.

10 THE JUDGE: You see, normally, if we were in
11 court, I usually wait a half-hour from the appointed time,
12 to allow people to get here, because if they don't show up,
13 then a warrant is issued. And so -- now, Mr. K is not
14 here. And the question comes to my mind, and maybe you can
15 assist me, Mr. McKenna, what happens if he doesn't show?

16 MR. MCKENNA: This happened yesterday, Your
17 Honour, in front of Judge Enns, and I argued at the time
18 that sections 13(3) and 13(4) of The Law Enforcement Review
19 Act, have to be read together, 13(4) imposing the burden of
20 proof on the complainant, and 13(3) requiring that before
21 you make any decision, and get the jurisdiction for making
22 the decision as a result of the appeal, there must be a
23 hearing, you must hear the complainant. You must hear the
24 complainant, and the complainant must provide you with that
25 burden of proof. This is the same argument that I made

1 yesterday to Judge Enns, and at the end of the day, Judge
2 Enns dismissed.

3 This is Mr. Guenette. He's a Crown attorney in
4 charge of the -- his portfolio is The Law Enforcement Review
5 Act.

6 MR. GUENETTE: Good morning, Your Honour.

7 THE JUDGE: Good morning.

8 MR. MCKENNA: That's what happened yesterday, and
9 after hearing the arguments Judge Enns dismissed.

10 THE JUDGE: Now, who is the gentleman who came in?

11 MR. GUENETTE: Denis Guenette.

12 THE JUDGE: Spell your last name.

13 MR. GUENETTE: G-u-e-n-e-t-t-e.

14 THE JUDGE: You're a Crown attorney?

15 MR. GUENETTE: Yes. Counsel to the Commissioner.

16 THE JUDGE: What's your first name?

17 MR. GUENETTE: Denis, D-e-n-i-s.

18 THE JUDGE: Thank you. Please sit down.

19 MR. MCKENNA: Your Honour, we've had one previous
20 one to this. It was involving Judge Enns as well. The
21 complainant -- I believe it was about two weeks ago, the
22 complainant was G, G, , and he did not attend, and
23 Judge Enns' decision was the same in both cases, to dismiss
24 the application.

25 THE JUDGE: Well, it makes sense to me, doesn't

1 it? The Act is very explicit, in my opinion. People have
2 the right to come forth and put forth their complaint,
3 whatever it may be, and the Commissioner, in his wisdom, or
4 her wisdom, will make a decision. And if persons wish to
5 have that decision reviewed by a Provincial Court Judge,
6 there is provision for it in the Act. But then if people
7 don't show, the applicants, there's nothing before the Court
8 to adjudicate on, which is very simple, quite frankly.

9 All right. Let's take a recess till 10:15. That
10 will be about another seven minutes. Okay? And then we'll
11 come back.

12 Thank you, gentleman.

13 MR. MCKENNA: Very well, Your Honour.

14

15 (BRIEF RECESS)

16

17 THE JUDGE: All right. This hearing will now come
18 to order. Mr. McKenna, I'll hear from you first.

19 MR. MCKENNA: Thank you, Your Honour. I will,
20 just for the record, repeat my position, that pursuant to
21 sections 13(3) and 13(4) it is virtually impossible for an
22 individual to satisfy the burden of proof and the
23 requirement that they provide their submissions to you
24 without attending at the hearing, and that your jurisdiction
25 and authority to impose any of the remedies that are set out

1 in section 13(3) does not come to you until the complainant
2 has come forward on an appeal, presented their submissions,
3 and satisfied the burden of proof upon them to show that the
4 Commissioner has erred. In the circumstances that person
5 has not done so, Mr. K. has not done so, and may want to
6 dismiss this appeal, and I would ask as well that you impose
7 a ban on publication pursuant to section 13.4(1) of The Law
8 Enforcement Review Act. Those are my comments, sir. Thank
9 you.

10 THE JUDGE: Thank you, Mr. McKenna. Mr. Guenette,
11 is there anything you want to say?

12 MR. GUENETTE: The Commissioner likes to appear at
13 these hearings just on a watching brief, so we're not taking
14 any position on any of these issues today.

15 THE JUDGE: Now, you're representing the
16 Commissioner?

17 MR. GUENETTE: The Commissioner of Law Enforcement
18 Review, yes.

19 THE JUDGE: Well, let me put it this way. I'm
20 going to ask Mr. Wright if there's anything he'd like to
21 say, because I think he's quite capable of speaking for
22 himself. Mr. Wright?

23 MR. WRIGHT: Thank you, Your Honour. I would
24 point out, to assist the Court, that the applicant did come
25 to see me several weeks ago. I gave him the file. He

1 reviewed the file completely. We wrote him a letter. We
2 explained the whole procedure to him. I am absolutely more
3 than satisfied that he was aware of today's date, and also
4 C. A. had notified him as well, to assist you. And I
5 concur with Mr. McKenna's position completely.

6 THE JUDGE: Thank you, Commissioner. Now, I don't
7 suppose, Mr. Tramley, the investigator, has anything to say?

8 MR. TRAMLEY: No, Your Honour.

9 THE JUDGE: Fine. Thank you.

10 Well, I take the same view that Mr. McKenna takes.
11 Section 13(4) is very clear. It states:

12

13 Where an application is brought under
14 subsection (2), the burden of proof is on the
15 complainant to show that the Commissioner
16 erred in declining to take further action on
17 the complaint.

18

19 Now, my jurisdiction comes into play, in my humble
20 opinion, where there's proof before me of the complaint.
21 Mr. L. M. K. , for whatever reason, has declined to
22 appear. And consequently, there is no complaint before me.
23 And as a result, I would dismiss this application. Mr.
24 McKenna has asked me to exercise my jurisdiction under
25 section 13.4.1 relating to the ban on publication. And

1 accordingly, I will order that no person shall cause the
2 respondents' names to be published in any newspaper or any
3 other periodical, publication, or broadcast on radio or
4 television until a Judge has determined the merits of this
5 application.

6 MR. MCKENNA: Actually, Your Honour, we would like
7 you to go further, to -- if you are now determining the
8 merits of the application, that you are rejecting the
9 application, we would like you to go further to subsection
10 (b), in order that the ban continue if, indeed, you are, at
11 this moment, dismissing the application.

12 THE JUDGE: Yeah. I'm dismissing it.

13 MR. MCKENNA: Fine.

14 THE JUDGE: Because there's no application before
15 me. And there will be a ban on publication of any of the
16 respondents' names. And I understand there were six of
17 them. Is that right?

18 MR. MCKENNA: Yes, Your Honour.

19 THE JUDGE: The application is dismissed.

20 MR. MCKENNA: Thank you, Your Honour.

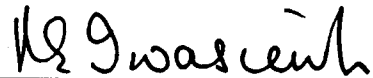
21 THE JUDGE: Thank you, gentlemen.

22

23 (PROCEEDINGS CONCLUDED AT 10:30 A.M.)

OFFICIAL EXAMINER'S CERTIFICATE

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 8, were taken by me by Stenomask at the time and place hereinbefore stated.



ROSEMARY E. IWASIENKO
OFFICIAL EXAMINER, Q.B.