MEMORANDUM

November 22nd, 2001

TO: L.E.R.A. File 5435
Complainant – C.J.

FROM: Judge Wesley H. Swail

Re: Review date – November 21, 2001

The complainant did not appear in court on this date. I dismissed her application for a review as a result. I made an order for a publication ban pursuant to s. 13(4.1).

for M. Baron
Judge Wesley H. Swail

/mrb

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

IN THE MATTER OF: Law Enforcement Review Act
Complaint No. 5435

AND IN THE MATTER OF: An Application pursuant to Section 13(2) of The Law Enforcement Review Act, R.S.M. 1987, c L75

BETWEEN:

C.J.

Complainant,

- and -

CONSTABLE P.
and CONSTABLE O.

Respondent.

TRANSCRIPT OF PROCEEDINGS, had and taken before The Honourable Judge Swail, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 21st day of November, 2001.

APPEARANCES:

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

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

NOVEMBER 21, 2001

MR. MCKENNA: Good morning, Your Honour.
THE JUDGE: Yes, good morning.
MR. GUENETTE: Good morning, Your Honour.
THE JUDGE: Do we have Ms. J. here?
MR. MCKENNA: We don't, we don't know where she is, Your Honour. She's obviously not here and -- my name is McKenna for the record. I'm on for the respondent officers and I have received no telephone calls or mail from her advising that she is not going to be here. So I have nothing to -- I have no way to advise you where she is.
MR. GUENETTE: For the record, Your Honour, Denis Guenette. I'm here on behalf of the commissioner. We traditionally appear at these hearings to address issues of jurisdiction only, ordinarily, but we can indicate that we have no indication one what or another as to Ms. J.'s whereabouts or whether she was intending on appearing this morning.
THE JUDGE: All right. It's about 12 minutes after 10:00 according to the courtroom clock. I take it the two other individuals here, who are they, Mr. McKenna?
MR. MCKENNA: The commissioner is also in the courtroom, Your Honour.
THE JUDGE: All right.
MR. WRIGHT: And my investigator, Ms. Poitras.
THE JUDGE: All right, thank you.
MR. MCKENNA: Your Honour, the only thing that I have is the July 20, 2001 letter which I imagine you would have from the file which is addressed to Ms. J. and we are copied with that letter advising her of the date, time and location of the hearing.
THE JUDGE: And are Officers P. and O. here?

MR. MCKENNA: They are not, Your Honour, no.

THE JUDGE: All right. What I would propose is to recess till just after 10:30 to see if Ms. J. does appear and then we'll deal with the matter appropriately at that time. We'll have a recess then.

(BRIEF RECESS)

THE JUDGE: Good morning again. I understand that Ms. J. has been paged a couple of times and she still is not present, is that the case?

MR. MCKENNA: That's what I understand, yes, Your Honour.

THE JUDGE: All right. Have you got a position on this, Mr. McKenna?

MR. MCKENNA: Yes. We have taken this position in the past, Your Honour, that given that the burden of proof is on the complainant, if the complainant does not show up for one of these applications, it has been our position in the past that they have not satisfied the burden and that the complaint ought to be dismissed. And I can't cite the cases, Your Honour, there are at least two or three where that has occurred and in each case the judge has dismissed for want of fulfilling the onus, the burden of proof, that is, and furthermore that we would also ask that a ban on publication be imposed pursuant to Section 13(4.1). The burden of proof section that I refer to is 13(4).

THE JUDGE: Yes. Yes, obviously for me to take any action pursuant to Section 13(3), I have to be satisfied that the commissioner erred in declining to take further action and in this instance I have gone over the file and it seems to me that the investigation was done thoroughly and the conclusion that the commissioner came to is well justified in the circumstances.

I agree that with the onus being on the applicant pursuant to Section 13(4), that that onus has not been discharged and, accordingly, I am directing that the application is dismissed.

With regard to the issue of the ban on publication, I'm of course not satisfied that such an order would be ineffectual and I'm making an order for banning publication pursuant to the terms of 13(4.1) of the Act.

Unless there's anything further then, that's the disposition of the matter.

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **GAIL DAYTON**, hereby certify that the foregoing pages of printed matter, numbered 1 to 3 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, Michelle Marcoux, and has been transcribed by me to the best of my skill and ability.

Gail Dayton
COURT TRANSCRIBER

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