

**MEMORANDUM**

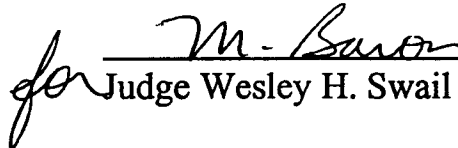
November 22<sup>nd</sup>, 2001

TO: L.E.R.A. File 5435  
Complainant – G.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 \_\_\_\_\_  
Judge Wesley H. Swail

/mrb

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.

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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.

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**APPEARANCES:**

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

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

1 NOVEMBER 21, 2001

2

3 MR. MCKENNA: Good morning, Your Honour.

4 THE JUDGE: Yes, good morning.

5 MR. GUENETTE: Good morning, Your Honour.

6 THE JUDGE: Do we have Ms. J. here?

7 MR. MCKENNA: We don't, we don't know where she  
8 is, Your Honour. She's obviously not here and -- my name is  
9 McKenna for the record. I'm on for the respondent officers  
10 and I have received no telephone calls or mail from her  
11 advising that she is not going to be here. So I have  
12 nothing to -- I have no way to advise you where she is.

13 MR. GUENETTE: For the record, Your Honour, Denis  
14 Guenette. I'm here on behalf of the commissioner. We  
15 traditionally appear at these hearings to address issues of  
16 jurisdiction only, ordinarily, but we can indicate that we  
17 have no indication one way or another as to Ms. J's  
18 whereabouts or whether she was intending on appearing this  
19 morning.

20 THE JUDGE: All right. It's about 12 minutes  
21 after 10:00 according to the courtroom clock. I take it the  
22 two other individuals here, who are they, Mr. McKenna?

23 MR. MCKENNA: The commissioner is also in the  
24 courtroom, Your Honour.

25 THE JUDGE: All right.

26 MR. WRIGHT: And my investigator, Ms. Poitras.

27 THE JUDGE: All right, thank you.

28 MR. MCKENNA: Your Honour, the only thing that I  
29 have is the July 20, 2001 letter which I imagine you would  
30 have from the file which is addressed to Ms. J. and we  
31 are copied with that letter advising her of the date, time  
32 and location of the hearing.

33 THE JUDGE: And are Officers P. and O.  
34 here?

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

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

6

7 (BRIEF RECESS)

8

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

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

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

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

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

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

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

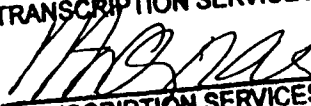
9 Unless there's anything further then, that's the  
10 disposition of the matter.

11 (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.

  
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