

IN THE MATTER OF:

**Law Enforcement Review
Complaint No. 5927**

BETWEEN:

K.C.,

Complainant,

- and -

CONSTABLE J.L.

CONSTABLE C.M.

DETECTIVE SERGEANT P.S.

SERGEANT L.M.

Respondent.

TRANSCRIPT OF PROCEEDINGS had and taken before
The Honourable Judge Curtis, held at the Law Courts
Building, 408 York Avenue, in the City of Winnipeg,
Province of Manitoba, on the 5th day of October, 2004.

APPEARANCES:

MR. S. BOYD, for the Commissioner

MR. P. MCKENNA, for the RESPONDENTS

OCTOBER 5, 2004

THE CLERK: Court is open. Judge Curtis presiding.

MR. BOYD: Good afternoon, Your Honour.

MR. MCKENNA: Good afternoon.

THE JUDGE: Good afternoon. For the record, who's here?

MR. BOYD: Boyd, initial "S" appearing for the LERA Commissioner, and M.C. and Mr. Wright, the Commissioner are here, as well.

THE JUDGE: And Mr. McKenna...

MR. MCKENNA: Paul McKenna for the respondent officers.

THE JUDGE: And has anybody seen Mr. C.?

MR. MCKENNA: I haven't heard anything from him that he would or would not attend and I can tell you what we typically do in a case like this, if it helps you --

THE JUDGE: It would.

MR. MCKENNA: -- is -- yes -- they -- we typically adjourn for about ten minutes, usually. I, I would say about 15 minutes would be about the average for what your colleagues are doing in this regard, and then reconvene to deal with the issue of the non-attendance.

THE JUDGE: Well, in any event, that's normal practice for most courts. Sometimes there's a line-up trying to get into the building and it's now about seven minutes after two. We'll reconvene approximately twenty after two and see if Mr. C. has arrived.

THE CLERK: Order. All rise. Court will take a recess.

(BRIEF RECESS)

THE CLERK: This court is reopened.

THE JUDGE: What we're doing at this point, I appreciate that it is two-thirty, but it occurred to Madam Clerk that perhaps we should check to see if he was in custody somewhere, so we're waiting for a phone call back. Somebody is running a check to see if he -- that might be a reason for him not being here. So I think what I'm going to do is I'm simply going to leave the courtroom for the two or three minutes that it will take for him to get back to us and once Madam Clerk has the information, then we'll deal with what we have.

MR. BOYD: Okay. Your Honour, if I might add, I did speak with Mr. C. yesterday and he had indicated that he wanted an adjournment because the material that we had given him was -- arrived on last Thursday, which he felt was late, and admittedly it is later than it is my practice to serve that material. But for what it's worth, he certainly was in a position to make a phone call last night anyway. So ...

THE JUDGE: You don't know where he was phoning from?

MR. BOYD: No.

THE JUDGE: Okay. Well, since we've instituted this check, I think we can wait a minute or two and see what the result is. I'll come back in when the clerk gets the message.

THE CLERK: Court will take a recess.

(BRIEF RECESS)

THE CLERK: This hearing is reopened.

THE JUDGE: Thank you. Madam Clerk informs me that Mr. C. is not in custody anywhere and it is now 25 minutes to three. This hearing was set for two o'clock.

You've indicated, Mr. Boyd, that you provided Mr. C. with the materials. From your conversation you had with him, he obviously received them and from what you said, he wanted an adjournment of the matter. I would expect that if he wanted an adjournment, he would have shown up to ask for one, but he hasn't appeared and I'm going to presume -- or I should ask you if you told him that he would have to make that application in court.

MR. BOYD: Yes. I did tell him that and I told him what time the hearing was again, although it was also indicated on the brief that he received.

THE JUDGE: Okay.

Given that we have waited perhaps a bit longer and made more checks than one would ordinarily do, at this point, I am simply prepared to dismiss the application since Mr. C. has not appeared to make submissions. The onus is on him, pursuant to the act, to persuade the court that there is reason to determine that the commissioner erred in making the decision to decline to send the matter on and certainly, with his absence, he hasn't persuaded this court.

I am going to ask one thing, because I do want to make sure that this is done appropriately because we're now in a courtroom and this courtroom is open to the public, I am going to ask you, Mr. McKenna, if you want me to make a ban on publication in any event --

MR. MCKENNA: Yes, Your Honour, that --

THE JUDGE: -- even though there have not been all submissions.

MR. MCKENNA: Yes. Thank you, Your Honour. I was just rising to ask you for that, a ban on publication,

pursuant to s.13(4.1) of the Act.

THE JUDGE: Yes. And certainly I'm prepared to do that. As I say, this is a public courtroom and anybody could walk in. So there will be the usual ban on publication. No person shall cause the respondent's name to be published in a newspaper or other periodical, publication, or broadcast on radio or television. Since the application has been dismissed, that ban is imposed and will continue.

MR. MCKENNA: Thank you. Your Honour, I wonder if we might -- and this has -- I can tell you that this has happened at least twice that I can remember in the last 10 or so years, where the judge has actually written a, a brief letter stating that the onus is on the applicant. The applicant did not attend and therefore the application is dismissed. We keep those because we like to have them as precedents in the event that someone doesn't attend and then the judge is saying, "Well, what do we do now?" We have had some judges say, "What do we do now," and we have always taken that position and we have from time to time filed letters from previous judges to indicate what they have done in the past.

THE JUDGE: I have no difficulty -- well, actually, I suppose the best thing would be to do, it would be very short, is to get a transcript.

MR. MCKENNA: Perhaps. All right. That's fine.

THE JUDGE: That, I think, would be more appropriate because that's what's been done in open court.

MR. MCKENNA: All right. Fine.

THE CLERK: Order. All rise. This hearing is closed.

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 1 to 5, are a true and accurate transcript of the proceedings recorded by an approved sound recording device, transcribed by me to the best of my skill and ability.

JACQUELYN DYSON
COURT TRANSCRIBER