

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:) Mr. [REDACTED]
) in person
 [REDACTED])
) Mr. P. McKenna
 Informant,) for the respondents
 - and -) police officers [REDACTED],
) [REDACTED] and [REDACTED],
 P/SGT. [REDACTED] # [REDACTED],)
 CST. [REDACTED] # [REDACTED],) Mr. D. Johnston
 CST. [REDACTED]) for Commissioner for LERA
 # [REDACTED],)
) Judgment delivered
 Respondents.) October 17, 2012

RESTRICTION ON PUBLICATION
 Pursuant to the Criminal Code of Canada and/or
 the Youth Criminal Justice Act, there is a
 restriction on publication regarding this matter.

1 CHAPMAN, P.J. (Orally)
 2 Well, then first dealing with that issue, the
 3 appointment of counsel issue, which would appear was
 4 canvassed quite a bit by Judge Moar back in October of
 5 2011, it would appear that Mr. [REDACTED] was told, not only is
 6 he supposed to know based on the law but, in fact, was told
 7 in court in October 2011 what the process was with respect
 8 to his ability to retain counsel with respect to this
 9 matter. It would appear that no steps that we're aware of
 10 or that ever had been put before the court have been made
 11 in that regard, and so as a result I don't think it's fair
 12 at this stage to consider an adjournment, if that's one of

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1 the reasons he's asked for an adjournment, on the basis
2 that he be able to obtain counsel at this late date. I
3 think it's pretty clear on the record, from what Mr.
4 McKenna has said on the record, that he's had ample
5 opportunity to do that and hasn't taken advantage of that.

6 I note, of course, there's a comment in his fax
7 of today's date marked as Exhibit 1 before the court with
8 respect to whether or not that process is fair or not and
9 whether or not, in fact, that's a conflict of interest.
10 And of course, that is not before me and it's not for this
11 court to make any determination with respect to that
12 particular comment made by Mr. [REDACTED], and so I am not going
13 to say anything further with respect to that, but I
14 certainly would not grant him an adjournment at this stage
15 with respect to retention of counsel.

16 Second issue then before the court is whether or
17 not, in fact, based on his application to the court as a
18 result of not being well enough to attend to today, whether
19 or not the court should adjourn these proceedings. And in
20 my view, again, I think Mr. [REDACTED] has been given ample
21 opportunity to appear in this court to deal with this
22 matter. He himself, in the facsimile to the court today,
23 indicated that on a previous occasion, and I'm not sure
24 whether it was correct or not, but he did say that on a
25 previous occasion before Judge Elliott, he was unable to
26 appear as a result of being ill and filed written materials
27 setting out his position with respect to the matter.
28 Certain he was aware, then, of the fact that the materials
29 needed to be provided, and an alternative to appearing in
30 court with his apparent illnesses would have been, at the
31 very least, to file a written submission, provide it to
32 counsel for the respondents in advance and give the
33 respondents an opportunity to respond to it, so I don't
34 think it's fair, based on now this being the second time

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1 this matter's been adjourned. It goes back some years with
2 respect to the initial complaint. I think the officers
3 have a right to have some finality with respect to this
4 matter and I don't think, based on the information that
5 I've been provided, that it's sufficient to grant a further
6 adjournment of the Section 13 review, and as a result I'm
7 not going to grant Mr. [REDACTED] application for an
8 adjournment with respect to this matter.

9 Finally, with respect to whether or not the
10 Section 13 review should take place in his absence, I can
11 deal with that, I guess, in this way: Based on the
12 information that I have received to date, taking into
13 account the briefs that have been filed by the respondent,
14 the full Law Enforcement Review Agency materials and the
15 previous facsimiles that I've received from Mr. [REDACTED] and,
16 of course, the letter I read today, in my view, even if, in
17 fact, the Section 13 review did take place, if I apply the
18 law as I am to do as a judge sitting on a Section 13
19 review, the test, in my view, with respect to what he is
20 alleging here would be one of reasonableness. I would not
21 have found that the Commissioner acted unreasonably, in any
22 event, with respect to his decision. And I am aware, of
23 course, of the fact that I'm not to second guess him, I'm
24 just to look at his decision to see if it's reasonably
25 made, if it's articulate and rational and it's a decision
26 that could have been made on, on the circumstances. Based
27 on everything I've seen, I would have found that to be the
28 case, in any event, based on material I have to date. But
29 Mr. McKenna is not asking me not to make the Section 13
30 finding, he is asking me to dismiss the application on the
31 basis of the applicant not being present and so I will
32 grant that motion, that the application by Mr. [REDACTED] is
33 dismissed. But just for the record, the comment is made
34 that I did read the full file. I did review what I believe

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1 to be his complaints with respect to the Commissioner's
2 review of the matter. I certainly didn't find a
3 jurisdictional error and if the issue was one of
4 reasonableness, I found that Commissioner Wright's decision
5 was one that could rationally have been made and, as a
6 result, I wouldn't have interfered in any event.

7 All right. I think that completes matters. What
8 about the ban on publication, is there something that I
9 have to do at this stage?

10 MR. MCKENNA: Yes, just an order that it
11 continue, Your Honour.

12 THE COURT: Ban on publication, then, continues
13 with respect --

14 MR. MCKENNA: That's pursuant to Section 13(4.1).

15 THE COURT: 13(4.1), Madam Clerk, with respect to
16 ban on publication. And I think that completes all
17 matters.

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