

The Honourable
Judge John J. Enns

The Provincial Court of Manitoba

5th Floor, 408 York Avenue
Winnipeg, Manitoba, Canada
R3C 0P9
(204) 945-4940
Fax (204) 945-0552

November 16th, 1998

Mr. Paul R. McKenna
Barrister & Attorney-at-Law
Myers Weinberg Kussin
724 – 240 Graham Avenue
Winnipeg, MB R3C 0J7

Dear Mr. McKenna:

Re: L.E.R.A. Complaint No. 3224 – Gordon Gillespie

This letter will confirm that Mr. G [redacted] 's Application for Review, under Section 13(2) of the Law Enforcement Review Act, came on for hearing as scheduled on November 5th, 1998 at 10:00 a.m. in Room 321 of the Law Courts Building, and that at the conclusion of the hearing, the Application was dismissed.

I enclose a copy of my letter to Mr. G [redacted], as well as a copy of the transcript of proceedings.

Yours sincerely,



JOHN J. ENNS
PROVINCIAL JUDGE

JJE/db
Encls.



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Mr. G. G.
X ADDRESS
Winnipeg, MB

Dear Mr. G :

Re: L.E.R.A. Complaint No. 3224

This letter is to confirm that your application, pursuant to Section 13(2) of The Law Enforcement Review Act, to have a decision of the Commissioner of the Law Enforcement Review Agency to take no further action on your complaint, came on for hearing as scheduled on November 5th, 1998 at 10:00 A.M. in Room 321 of the Law Courts Building.

I was informed that you had telephoned Mr. Paul R. McKenna, Counsel for the Respondent Police Officers, and had indicated to him that you would not be in attendance as you were not prepared to submit to the security procedure at the Court House entrance. Mr. McKenna informed me that he would relay this information to me, but that his submission would be that the Review should proceed as scheduled.

I considered this situation and considered, as well, all of the material contained in the Commissioner's Report following his investigation, as well as the submission material filed by Mr. McKenna.

I am of the view that the Commissioner's decision is correct and therefore, dismiss this Application.

Yours sincerely,



JOHN J. ENNS
PROVINCIAL JUDGE

JJE/db

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

LAW ENFORCEMENT REVIEW AGENCY

IN THE MATTER OF: THE LAW ENFORCEMENT REVIEW ACT
Section 13(2)

Re: COMPLAINT NO.3224 -- G G

Transcript of proceedings had and taken before
His Honour Judge Enns, on Thursday, November 5, 1998,
in Room 321, Law Courts Complex,
408 York Avenue, in the City of Winnipeg,
Province of Manitoba

APPEARANCES:

MR. P.R. MCKENNA, for the Police Officers
MR. D.G. GUENETTE, for LERA
MR. G.V. WRIGHT, Commissioner, LERA

1 THURSDAY, NOVEMBER 5, 1998, 10:15 A.M.

2

3 THE COURT: For the record, we are here to deal
4 with a review under Section 13 of a complaint made by a
5 certain G G , and that was dealt with by the
6 Commissioner by way of a refusal to act further following
7 his investigation. My name is Judge John Enns, hearing this
8 review. Present, I believe, is the official court reporter,
9 and Mr. Paul McKenna, acting for the members against whom
10 the complaint was laid. Is that correct, Mr. McKenna?

11 MR. MCKENNA: That's right, Your Honour.

12 THE COURT: Also present -- I see Mr. Wright is
13 present, and also -- I'm sorry, the name, again, was?

14 MR. GUENETTE: Guenette.

15 THE COURT: Guenette, and you are counsel for the
16 Commission?

17 MR. GUENETTE: That's right.

18 THE COURT: I also note from the record of
19 proceedings in this complaint that this matter was set down
20 for this room on this day at 10:00 a.m., and it is now 10:15
21 a.m. Has any information been received by anyone on behalf
22 of Mr. G , as to any request for a postponement of
23 this hearing? Has anyone received such a complaint? Mr.
24 Wright?

25 MR. WRIGHT: No, Your Honour.

1 THE COURT: Mr. McKenna?

2 MR. MCKENNA: Your Honour, I received a phone call
3 for the first time yesterday at approximately four in the
4 afternoon.

5 THE COURT: Yes.

6 MR. MCKENNA: From an individual who identified
7 himself as Mr. G .

8 THE COURT: Yes.

9 MR. MCKENNA: And I have to assume it was him.
10 I've never spoken to him before, and I have never met him.
11 He advised me that he would not be here today. He advised
12 me that he didn't feel that he could submit to the security
13 search to get into the building. He advised me that he had
14 a constitutional challenge pending regarding the search, and
15 that he wasn't prepared to attend to the building as a
16 result of that.

17 I told him that I would relay this to you. And I
18 also told him that I would be taking the position in front
19 of you that the matter ought to proceed, and that he, by not
20 showing up, takes his chances. So he's been made aware of
21 what my position is going to be here, in front of you, this
22 morning.

23 And I contacted Mr. Guenette, and left a message
24 asking whether or not he had received any call from Mr.

25 G and I didn't get to speak to Mr. Guenette until

1 this morning.

2 I contacted Mr. Wright of the Law Enforcement
3 Review Agency, and asked him if he had heard from Mr.
4 G. and he advised me at the time that he hadn't,
5 although he had not, at that time, checked his voice
6 messages.

7 So this correspondence I get by phone at four,
8 four o'clock yesterday afternoon.

9 THE COURT: Mr. Guenette, have you any comments to
10 make, as counsel for the Commission?

11 MR. GUENETTE: The Commission doesn't take any
12 objection with the position Mr. McKenna has put forward.

13 THE COURT: I reviewed -- in fact, we had a very
14 helpful noon lunch, as we call it, a session with Judges
15 yesterday at noon, dealing with a whole series of matters
16 pertaining to the Law Enforcement Review Agency, and the
17 procedures that Judges might adopt in what we understand to
18 be more frequent such hearings coming up. And there is
19 nothing in the Act I see that specifically deals with the
20 issue of an absent complainant.

21 There are sections, of course, dealing with
22 absconding respondents, and the authority to issue warrants
23 for an absconding respondent, but nothing -- the procedures
24 normally that apply nevertheless are The Summary Conviction
25 Act procedures, and in Summary Conviction Act trials, as in

1 indictable trials, if there is no evidence, or no appearance
2 by the complainant, there is the authority, of course, to
3 dismiss a charge, or an Information, for want of evidence,
4 or in the absence of evidence from the complainant and so
5 on.

6 And so I have taken the view, and take the view
7 now that that is the authority that this court or this
8 hearing, this review, can consider, is that in reviewing the
9 matter, much as in some other kinds of proceedings where a
10 complainant, in his or her complaint, the matter can then be
11 dismissed.

12 However, before dismissing this, I might say on
13 the record I have reviewed the report of the Commissioner.
14 I have reviewed the material that led to that report, and it
15 does seem to me that this particular case has a very clear
16 issue where the Commissioner acted appropriately in not
17 calling for a hearing, as Mr. G. seems to suggest
18 that because some what might almost be called obiter
19 comments by Mr. Justice Scollin in his judgment, questions
20 the wisdom or appropriateness of the wide conditions
21 initially imposed in the recognizance, as Ms. Stannard says
22 in her opinion for the Department, and I concur as well that
23 is something that the trial Court, in due course, might have
24 considered.

25 But he, that is Mr. Justice Scollin, in no way

1 purported to have quashed in that mandamus application the
2 actual probation order, and any condition under it.

3 Therefore, it is my view that Mr. Wright was
4 correct in saying the probation order was a valid order.
5 The warrant that the police were acting under, then stemming
6 from that, issued by Judge Aquila, as I understand it, was
7 also a valid warrant, and it is not for police officers,
8 surely, to say, "Well, is this a good warrant, or is that
9 not a bad warrant?"

10 They have enough problems simply to attempt to
11 enforce whatever enforcement orders they are required to act
12 upon. In my opinion, they had the authority and a duty to
13 act on such a warrant. There is nothing in this execution
14 of the warrant that in my opinion gives rise to any wrongful
15 complaint.

16 And so both on the consideration of the
17 information contained in it, and of course, Mr. G ,
18 as did Mr. McKenna, had the right to file in advance any
19 submission that he wished, I, of course, also reviewed the
20 material that you, Mr. McKenna, have filed in this matter,
21 and I am not calling upon you to comment further on it. But
22 in the same way, Mr. G had the opportunity to file
23 in advance, and he did file some rather, in my opinion, not
24 very relevant papers, but in any case, even on all of that,
25 I am completely satisfied that on review, under Section

1 13(2), should result in a dismissal of that application.
2 And I so order today.

3 MR. MCKENNA: Your Honour, I would ask that you
4 further order a ban on publication pursuant to Section
5 13(4.1) of the Act.

6 THE COURT: Yes. Yes. There is that -- that is
7 correct, and I will so order a continuing ban on
8 publication, as required under Section 13(7), is it?

9 MR. MCKENNA: 13(4.1).

10 THE COURT: (4.1), yes. I'm not sure if that
11 requires a written order on my part or not. There should be
12 something in writing. I will, in due course, prepare -- I
13 will prepare a simple decision, so to speak, with these
14 concluding comments, and that will be done in the next few
15 days. I will circulate it both to the Commissioner's
16 office, and to your office, and to Mr. G , if it can
17 reach him. All right. That concludes the hearing.

18 MR. MCKENNA: Thank you, Your Honour.

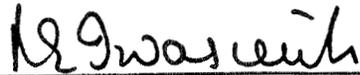
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(PROCEEDINGS CONCLUDED AT 10:20 A.M.)

REPORTER'S CERTIFICATE

I, ROSEMARY E. IWASIENKO, Certified Verbatim Reporter, do hereby certify that the foregoing pages of typewritten matter, numbered 1 to 7, were taken by me by Stenomask at the time and place hereinbefore stated.



Rosemary E. Iwasienko
Court Reporter