

ORIGINAL

IN THE MATTER OF: Law Enforcement Review Act
Complaint No. 3445

AND IN THE MATTER OF: An Application pursuant to
Section 13(2) of the Law
Enforcement Review Act,
R.S.M. 987, c L75

B P

Complainant,

- and -

CONSTABLE J. S # ,

Respondent.

TRANSCRIPT OF PROCEEDINGS had and taken before The
Honourable Judge Joyal, held at the Law Courts Complex, 408
York Avenue, in the City of Winnipeg, Province of Manitoba,
on the 17th day of January, 2000.

APPEARANCES:

R. WOLSON, Q.C., for Constable S

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

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1 JANUARY 17, 2000

2

3 THE JUDGE: I guess we're having difficulty
4 reaching, Ms. P ?

5 MR. WOLSON: Well, we're not having difficulty,
6 the number is no longer in service. I might indicate for
7 the record, Richard Wolson. I act for Mr. S . Mr.
8 McKenna is with me on this matter.

9 This matter, as you know, has been pending for a
10 long, long, long time. The Clerk tried twice to reach Ms.
11 P with the number that she gave and the line is no
12 longer in service. # is a -- I think that's Montreal.
13 I'm looking for a dismissal of these charges, of this
14 review, I should say.

15 THE JUDGE: You're acting for Mr. S , Mr.
16 Wolson?

17 MR. WOLSON: I am, yes.

18 THE JUDGE: And you're acting for the Association,
19 Mr. McKenna?

20 MR. MCKENNA: Yes, Your Honour, and the interests
21 of any other officer that would be negatively affected and
22 that may include the other officers that were sent
23 correspondence on this matter.

24 MR. WOLSON: And I can say that this matter
25 dragged on before LERA and it's just enough.

26 THE JUDGE: Okay. I'm very mindful of the
27 oppressiveness of these types of allegations when they
28 remain over the heads of officers who are trying as best
29 they can to address the complaints in an orderly and
30 procedurally clear way. That's what's happened here. We
31 have a decision from the Commissioner about which Ms. P
32 is presumably wanting to make submissions.

33 My intention today, and I'll hear counsel's
34 submissions on this point, was to do this. Keeping in mind

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1 that the onus is on Ms. P at this point to make her
2 submissions and to convince this Court that there is a
3 matter which is reviewable in terms of the Commissioner's
4 decision, my intention initially was to adjourn this matter
5 for a very brief period of time which was to say one week to
6 give her an opportunity to give us the information we needed
7 to put together a hearing, however brief it was going to be,
8 at which time she could make her submissions. The reason I
9 was prepared to give her that leeway was this, and my
10 decision is not made so I'll hear your submissions on this
11 point. There's apparently been some difficulty reaching
12 her. She was in custody, although she's now, technically
13 speaking, on parole. She was staying at a halfway house, as
14 I understood it, and she had made tentative arrangements
15 with one of the secretaries in the judges' chambers to be
16 present by way of a telephone conversation today. She
17 obviously hasn't, and I'll be clear about this, kept her end
18 of the bargain in terms of providing the information as
19 quickly as she should have. What concerns me as well is
20 that her parole officer was not forthcoming with the
21 information that we needed to arrange the teleconference or
22 in her instance, her presence on the other end of the
23 telephone for the purpose of today's matter.

24 As I understood it, today was not at any point
25 going to be the actual formal hearing. It was simply to be
26 a day on which the practicalities of the hearing would be
27 arranged which is to say when it would be taking place. So
28 that's why, when I came down here today, I was less inclined
29 to simply deal with it by way of a straightforward
30 dismissal, but my intention was, and I repeat, to impose a
31 very, very tight timeline on this which is to say about a
32 week. If counsel is able to attend at some point, nine
33 o'clock, 1:30, I'm prepared to be here and to hear whatever
34 submissions are necessary. And between now and then, if we

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1 can reach Ms. P , fine, if we can't you'll be making
2 your motions again.

3 Now, Mr. Wolson --

4 MR. WOLSON: I'd say that's putting Officer
5 S in a very difficult position. He has a right to
6 have the matter resolved and to have it resolved in an
7 expeditious way. Your Honour is right, this woman has not
8 kept her end of the bargain, so as to speak, because today
9 she was supposed to be present by way of a conference call.
10 We're given a number that's no longer in service. That
11 number obviously was not a halfway house because I think you
12 would agree that halfway houses don't disconnect their
13 numbers without having a forwarding number. So she's at a
14 certain phone which is no longer in service. It's not fair
15 to my client to have him come back through counsel a week
16 from now, two days from now. This woman, if she wanted to
17 be present at this hearing today, at this court process
18 today, had every opportunity to do so. And --

19 THE JUDGE: Mr. Wolson, just on that point, what
20 about the question of expectation today. Everything you've
21 said is right, I'm not taking issue with the equities of
22 your submission with respect to her non-attendance, but what
23 about the fact that the expectation today was simply because
24 of her peculiar status as a, as a paroled inmate to arrange,
25 as I say, the practicalities of the day.

26 MR. WOLSON: Well, she's provided a phone number
27 and in effect, she's failed to appear. She's failed to
28 appear at this hearing. And it's, in my view, a very simple
29 matter, having been given the opportunity to appear for the
30 purposes of arranging a date, she's failed to do so. Why
31 hold the officer hostage? And that's what happening with
32 this whole process. And the same thing happened, I might
33 add, I've been advised, before LERA. And there comes a time
34 when either she's accountable or she's not. She's present

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1 or she's not. And she's chosen not to be available. It's a
2 simple matter in my view that the Court needn't go further
3 to accommodate Ms. P . She hasn't made herself
4 available for this Court.

5 THE JUDGE: Mr. McKenna, do you have any further
6 submissions?

7 MR. MCKENNA: The only -- I agree with my learned
8 friend on that. The only thing that I could add, if I
9 would, is that we have seen this happen once before in a
10 slightly different fashion and that was when a complainant,
11 his last name was M , M , was supposed to attend Mr.
12 Wright's office, that's the Commissioner's office, for an
13 informal resolution hearing -- or meeting rather, with
14 officers and didn't attend and didn't phone. The
15 commissioner declared it to be abandoned, given that it,
16 like this one, is a procedure where the complainant has the
17 onus when they set up a date to be there, to go forward with
18 it. Now, that was challenged in front of a provincial
19 judge, the decision to declare it abandoned and the
20 provincial judge agreed entirely with the commissioner and
21 said when the complainant has these dates and is supposed to
22 be there to do something and doesn't show up, that
23 rightfully this complaint can be declared abandoned and the
24 provincial judge in that case agreed with the commissioner's
25 decision. I just give you that by way of analogy and
26 otherwise I agree with my learned friend's comments.

27 MR. WOLSON: This entire matter has gone on for
28 too long. It went on for too long before LERA and it's just
29 not right. It's not right to the police officer involved.

30 THE JUDGE: Okay, mindful of the fact that this is
31 a review and the review is a review by its very definition
32 and nature of an earlier order of a commissioner, the onus
33 clearly is on the applicant in this matter and the applicant
34 is Ms. P Just to be clear about the context, the

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1 matter was adjourned to today's date so that Ms. P
2 could be accommodated with respect to that application. The
3 application was going to be for the review of the earlier
4 mentioned commissioner's order. The peculiarity of this
5 case rests in the fact that Ms. P was in custody and it
6 came to the Court's attention more recently when this matter
7 was being set up, she was paroled and living in a halfway
8 house. Arrangements were made with a great deal of
9 difficulty and complication to make contact with Ms. P
10 which occurred, as I say, with, in the end, great
11 difficulty. But even after that conversation took place
12 with Ms. P, and today's date was confirmed by her at
13 which time she would participate in the arranging of the
14 date for the desired review, she did not provide accurate
15 information so that this session today could ultimately
16 produce the date for review.

17 I should point out as well that the efforts that
18 were made with Ms. P included continuing efforts up
19 until this morning so that she would be reminded of today's
20 date, this, as a result of her failing to have called back
21 last week as she apparently was supposed to do with one of
22 the judge's secretary's. All of this is background for what
23 is admittedly a more informal administrative procedure but
24 it's important background when it comes to listening to Mr.
25 Wolson's submissions on prejudice to Officer S.

26 When I review this file, as I have reviewed it, in
27 preparation for the fixing of the date, because it was my
28 intention in any event to fix an early date, I am mindful of
29 the delay that has gone on. Mr. Wolson also makes
30 submission with respect to one earlier delay which
31 apparently has been attributed to Ms. P. That may or
32 may not be the case but what is undeniable is the fact that
33 this has gone on a very long time. And Court always has to
34 be mindful of the peculiarly powerful position that someone

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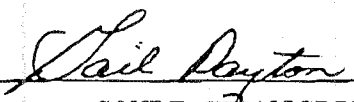
1 like Ms. P has over an officer in a review like this
2 because if they are not proceeding with some dispatch, the
3 matter, if it's not dealt with in a fairly determined way by
4 the presiding judge, could simply go on ad infinitum in a
5 pending and painful way for the officer.

6 So given all of that, given the non-attendance of
7 Ms. P this afternoon to set the date which ultimately
8 was to provide her an opportunity for review, and as
9 importantly given her unwillingness last week to do the
10 minimal and necessary things to confirm the fact that she
11 would be available in the next couple of weeks for a
12 hearing, my view is that her non-attendance today can be in
13 fact interpreted as abandonment. I'm choosing my words
14 carefully now because I'm not specifically dismissing the
15 review, but I am certainly considering it abandoned because
16 of her lack of participation and I don't think Officer
17 S should have to twist in the wind in the face of
18 that uncertainty. So the application by Ms. P is, by
19 my lights, abandoned and that should end the matter.

20 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, GAIL DAYTON, hereby certify that the foregoing
pages of printed matter, numbered 1 to 6, 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, Alicia
McKinnon, and has been transcribed by me to the best of my
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