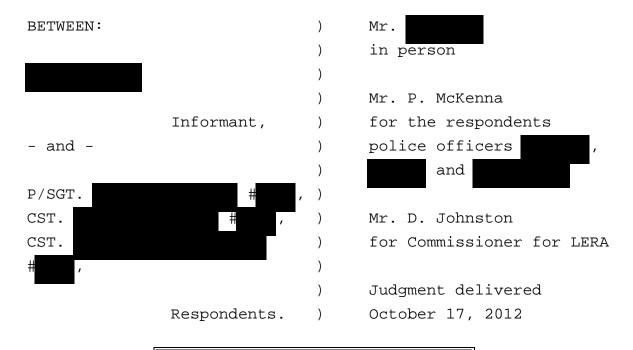
THE PROVINCIAL COURT OF MANITOBA



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.

CHAPMAN, P.J. (Orally)

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

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

the reasons he's asked for an adjournment, on the basis 1 2 that he be able to obtain counsel at this late date. 3 think it's pretty clear on the record, from what Mr. 4 that McKenna has said on the record, he's had 5 opportunity to do that and hasn't taken advantage of that. I note, of course, there's a comment in his fax 6 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 make any determination with respect court to 12 particular comment made by Mr. , and so I am not going 13 to say anything further with respect to that, but 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. 20 my view, again, I think Mr. has been given ample 21 opportunity to appear in this court to deal with this 22 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 Certain he was aware, then, of the fact that the materials 28 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 32 counsel for the respondents in advance and give 33 respondents an opportunity to respond to it, so I don't

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think it's fair, based on now this being the second time

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

9 Finally, with respect to whether or not Section 13 review should take place in his absence, I can 10 11 deal with that, I guess, in this way: Based on 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. 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 review, the test, in my view, with respect to what he is 19 alleging here would be one of reasonableness. 20 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. 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. 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. 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. Ι certainly didn't find jurisdictional if 3 error and the issue was one 4 reasonableness, I found that Commissioner Wright's decision was one that could rationally have been made and, as a 5 6 result, I wouldn't have interfered in any event. 7 All right. I think that completes matters. about the ban on publication, is there something that I 8 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 That's pursuant to Section 13(4.1). MR. MCKENNA: 13(4.1), Madam Clerk, with respect to 15 THE COURT: 16 ban on publication. And I think that completes all 17 matters. 18 19