

IN THE MATTER OF: Law Enforcement Review Act
Complaint No. 3741

AND IN THE MATTER OF: An Application pursuant to
Section 13(2) of The Law
Enforcement Review Act,
R.S.M. 1987, c L75

BETWEEN:

A G ,

Complainant,

- and -

PATROL/SERGEANT R. K , #

Respondent.

TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Judge Lismer, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 15th day of June, 2000.

APPEARANCES:

MS. A. G. , in person.

MR. P. MCKENNA, for the Respondent.

MR. D. GUENETTE, for the Commissioner, Mr. G. Wright.

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

1 JUNE 15, 2000

2

3 THE COURT: And this is a review on the
4 application of A -- am I pronouncing it correctly,
5 Galarneau?

6 MS. C : Yes.

7 THE COURT: And is that you?

8 MS. G : Yes, it is.

9 THE COURT: From a determination of the
10 Commissioner not to proceed further on the ground that the
11 complaint is frivolous or vexatious, and for appearances I
12 see that Ms. G is here, already identified.

13 Are you here with a lawyer?

14 MS. G : No.

15 THE COURT: And the Commissioner is here.

16 MR. G : That's right, Your Honour, and --

17 THE COURT: And Mr. McKenna is here as his
18 counsel.

19 MR. MCKENNA: Your Honour, for the record, my name
20 is McKenna. I am here for the respondent officer, Sgt.
21 K who is also present. I also have at counsel table
22 with me Mr. Ray, R-A-Y, from our offices who is learning
23 these procedures and would like, with your permission to sit
24 at counsel table.

25 THE COURT: Of course.

26 MR. MCKENNA: Thank you, Your Honour.

27 THE COURT: He is the Sgt. K referred to in the
28 investigation?

29 MR. MCKENNA: That's correct. The respondent
30 officer.

31 THE COURT: Yeah. Yes.

32 MR. GUENETTE: And, and perhaps just to complete
33 the record, Your Honour, the Commissioner is represented
34 today by myself, Guenette, Denis Guenette.

1 THE COURT: Yes.

2 MR. GUENETTE: And as of this morning we are here
3 on a watching brief at the moment, and don't intend to make
4 submissions at this point.

5 THE COURT: You don't seek legal standing?

6 MR. GUENETTE: Not, not at the moment.

7 THE COURT: But at the moment I would think you
8 reserve right to make submissions?

9 MR. GUENETTE: Depending on how things unfold,
10 yes, Your Honour.

11 THE COURT: Yes. The pleasure is yours, Ms.
12 G, to show me, as the provincial court judge,
13 assigned to hear this review, in what way the Commissioner
14 erred in his determination on your complaint.

15 MS. G : Is there a copy available?

16 THE COURT: Of your --

17 MS. : Of that -- the Commissioner's
18 report?

19 THE COURT: Yes, I, I believe that I have
20 everything --

21 MS. : Okay.

22 THE COURT: -- that transpired, and there is the
23 original letter from yourself, and you probably have it in
24 front of you, which starts, In August, '98, I believe it was
25 the 11th...

26 Do you have a copy of that in front of you?

27 MS. : Yes, I do, Your Honour.

28 THE COURT: Yes. And I filed a complaint of rape
29 and sexual assault, and so forth.

30 And then at the bottom, the last paragraph of that
31 letter you say:

32
33 Both sergeants were discourteous in
34 the way they treated me on March

1 17th. The duty sergeant for
2 suggesting to Sgt. K over the
3 phone that I had an affair with the
4 man who assaulted me and Sgt. K
5 for snickering while I was trying
6 to give him more information. They
7 were not taking my complaint
8 seriously enough.

9
10 The file indicates that Sgt. K was interviewed
11 by the Commissioner on May the 7th, and, and I note in the
12 document that on this March 17th meeting you took exception
13 to one of the officers, who it appears was Cst. S ,
14 suggesting that the background to this rape assault was that
15 you were having an affair, and you, it appears, took some
16 exception to the characterization of, of that.

17 MS. Your Honour, may I be permitted to
18 interrupt, please?

19 THE COURT: Yes, I, I just wanted to review what I
20 have, so you'd know what I have, but I have all this
21 information --

22 MS. (Sure.

23 THE COURT: -- and the information including the
24 interview with Sgt. K , and, and all of this essentially
25 is set out in a, in a letter that the Commissioner wrote to
26 you, and you can confirm that you have that letter.

27 MS. Yes, I confirm I have --

28 THE COURT: Yes.

29 MS. : -- the complaint dated January the
30 4th --

31 THE COURT: January the 4th of this year. Yes.

32 MS. : And the, the complaint number, I
33 believe February the 9th of --

34 THE COURT: Yes, all right. And I am all ears to

1 what you have to say.

2 MS. Thank you. This needs to be taken
3 apart sentence by sentence. Sorry for the delay, but that's
4 how it will have to be addressed.

5 THE COURT: That's fine. And what are you
6 referring to; your letter?

7 MS. The, the letter that I received
8 from the complaint to my actual complaint --

9 THE COURT: Yes.

10 MS. : -- to cross --

11 THE COURT: From the Commissioner?

12 MS. : Yes.

13 THE COURT: Yes. Fine.

14 MS. : Satisfaction does lie in that the
15 Commissioner, George Wright, did address that I was not
16 pleased with Patrol/Sergeant K , but specifically I was
17 not pleased with the other sergeant, I believe it was S
18 I don't --

19 THE COURT: It appears so, yes.

20 MS. (: It was, it was himself who had
21 contacted Sgt. K at the District 5 office off of Pembina,
22 but prior to that he in fact was commenting on something
23 that was said by Sgt. K , and started to snicker. Sgt.
24 S attempted to say that it was a -- it sounds like an
25 abuse, is she tall, and I had overheard there was 13 cases
26 of the same, of the same or similar happenings of the time
27 that I made the complaint to Sgt. K so I'm quite
28 distraught about that. How you can recognize someone or not
29 recognize somebody and make a comment on -- it sounds like
30 an affair, when this Sgt. S had no idea, except that I
31 told him that I made a complaint to Sgt. K: on a
32 particular date.

33 Do you follow?

34 THE COURT: I do follow, yes. The Commissioner

1 characterized that as an opinion that two officers had
2 internally in discussing the matter. By interpreting it
3 that that may be the background, that was -- do, do you
4 agree that that's a fair description by the Commissioner
5 that they were trying to review your matter and they made
6 this comment in placing this type of characterization,
7 whether correct or incorrect?

8 MS. G : It's not a fair interpretation,
9 no. Whether it's fair -- true or not, true or not true the
10 fact of the matter is it's not of opinions, it's, it's based
11 on this is what actually happened.

12 THE COURT: No, but what I'm saying is it -- well,
13 the officer's acknowledged that it sounds like an affair was
14 said.

15 MS. G : It -- is that what it states here,
16 it sounds --

17 THE COURT: But, but this was a conversation
18 between them in interpreting the background, and ...

19 MS. G : What would make someone make a
20 comment like that, Your Honour?

21 THE COURT: I have no, I have no idea. That's
22 based on experience, to try to understand what was the total
23 picture and, and one of them threw that out to the other.
24 It's probably in exercising their right to free expression.
25 They were talking with each other. They, they were not --

26 MS. In a, in a --

27 THE COURT: -- they were not accusing you publicly
28 or accusing you. You happened to overhear this; isn't that
29 right? I think you acknowledge the officers have the right
30 to express an opinion, too? That they have a Charter right
31 to talk freely between themselves.

32 MS. G : Yes, they may have a Charter
33 right --

34 THE COURT: Yes.

1 MS. G -- to talk freely between
2 themselves, but not of the nature that was of unprofessional
3 manner of not knowing if this person was having an affair,
4 did not have an affair, other than finding out and checking
5 to actual dates in a file, which --

6 THE COURT: That's right. Like the wording was
7 sounds like. That suggests to me that there were the
8 suspicions that that may have been the background, but I
9 can't see how the officers would consider that as
10 determinative. Even if, even if there was an affair this is
11 no license for anyone to be assaulted.

12 MS. G : But by speech I was assaulted.

13 THE COURT: And in, in his report the Commissioner
14 indicates at the bottom of the first page is that the remark
15 was not intended to be offensive, and this he got from an
16 interview with, with Sgt. K . But --

17 MS. G : Well, that's why I'm here today.
18 I've --

19 THE COURT: That's right.

20 MS. G -- had to, to tolerate this
21 freedom of speech in writing.

22 THE COURT: And I don't want to throw you off,
23 and, and continue.

24 MS. G We'll continue, um-hum. I don't
25 believe there was a formal complaint that was -- a statement
26 that was ever written by Sgt. K at the time of my
27 complaint. That I need verification.

28 THE COURT: There's a copy of his interview with
29 the Commissioner on May the 7th of '99.

30 MS. G A review only?

31 THE COURT: Pardon me?

32 MS. G : A review only, Your Honour, or an
33 actual statement?

34 THE COURT: Well, as part of the investigation

1 there was notes as to the interview.

2 MS. G : Are those made available to
3 myself, Your Honour?

4 THE COURT: You, you were referring to an
5 occurrence report of Sgt. K. about the March the 17th
6 meeting you had with him?

7 MS. G : Is it an occurrence report or an
8 actual statement?

9 THE COURT: No, but is that what you're, is that
10 what you're --

11 MS. G Yes.

12 THE COURT: -- referring to?

13 MS. G : Yes.

14 THE COURT: There, there are -- there is an
15 occurrence report, but that appears to be the -- in the
16 handwriting, or the report of the Commissioner.

17 MR. MCKENNA: Your Honour, if I may, just to
18 assist you?

19 THE COURT: Yes.

20 MR. MCKENNA: Section -- according to Section 19
21 of the Act the respondent is, is never bound to make any
22 statement and the practice has been over the years that they
23 are interviewed, but statements are never taken. That's
24 covered off by Section 19, and as well by Section 20, that
25 even if there was a statement it would not be admissible in
26 any proceeding so that's --

27 THE COURT: Well, I don't know if that's what
28 she's referring to. I think, I think you're referring to
29 when there was -- whether there was a report by the officer
30 of your attendance, this is what I understood, on March the
31 17th of your meeting with him to discuss why there hasn't
32 been any action on your rape complaint; isn't that what
33 you're referring to?

34 MS. G : I am referring to that, yes. As

1 -- because that's what we are here to talk about, but if
2 Your Honour permits if there was no statement on March the
3 17th that brings up another issue.

4 THE COURT: That's right. I -- there was none in
5 the document. There is of the interview that I, that I
6 referred you to on April the 7th of '99 by the Commissioner
7 of Sgt. , and the letter that was written to you by the
8 Commissioner on the 4th of January essentially repeats much
9 of the information from that interview. And the additional
10 complaint by you is that the officer snickered, or the
11 officer denied that this occurred.

12 MS. G : Is that professional, Your Honour?

13 THE COURT: Well, what, what do you mean by
14 snicker?

15 MS. G : This is -- snicker?

16 THE COURT: Yes.

17 MS. G Probably a half laugh and a grin
18 in a cunning way.

19 THE COURT: That you took as, as directed towards
20 you in belittlement or --

21 MS. G That's correct, yes.

22 THE COURT: Yes. The, the -- Sgt. K. in his
23 interviews he states, and has stated in a letter to you from
24 the Commissioner, that he did not snicker at you. One has
25 to make allowance for the way people talk. Do you know
26 there's one, one lawyer who constantly appears to have the
27 hyena smile, and if one didn't know that you would think
28 that he would be in court constantly laughing, and, and I
29 know another one who gives the impression that he is
30 arrogant in his manner, but, but that's just his
31 personality, and I know that he is not, and is it possible
32 then reflecting on the matter that the officer was simply
33 communicating in, in his normal manner, and you say it was
34 sort of a half smile, they, they weren't accompanied by any

1 words, like, like --
2 MS. G: : Whatever --
3 THE COURT: -- go to heck, or you're wasting my
4 time, or ...
5 MS. G. I understand what you're saying,
6 Your Honour.
7 THE COURT: Do you understand? Like, like --
8 MS. G J: But this is a very sensitive
9 issue.
10 THE COURT: And, and the Section 29 of The Law
11 Enforcement --
12 MS. G J: Yes.
13 THE COURT: -- Review Agency Act provides as
14 examples of disciplinary default conduct using unnecessary
15 violence or excessive force, using oppressive or abusive
16 conduct or language, or being discourteous or uncivil, and
17 this would be, this would be the basis of your complaint,
18 that he was discourteous or uncivil --
19 MS. G/ Yes.
20 THE COURT: -- and, and again from reading the
21 report on its face there is nothing to suggest that he was,
22 and looking at the matter objectively because two officers
23 in a discussion about your matter one of them thought maybe
24 there was a background of an affair, I, I don't see that
25 that is improper, when you discuss things with other people
26 you discuss everything, and there weren't any conclusions
27 from a suspicion like that that the whole document suggests
28 that that prevented them from taking your complaint more
29 seriously, and --
30 MS. G : I believe it would -- excuse me, I
31 believe it would take the complaint less serious in this
32 matter, given --
33 THE COURT: Well --
34 MS. G/ : -- the free speech movement to

1 voice an opinion. Whether it's a snicker or a facial
2 expression, or whether it's an actual speech I think that's
3 to be accounted for.

4 THE COURT: Well, if, if there was anything like
5 that, and, and that would likely come within this definition
6 of being discourteous or uncivil, and even though often
7 police officers are under considerable provocation in, in
8 the exercise of their duties, and, and there are officers
9 who are more sensitive, and are assigned to domestic
10 violence matters, or youth court, and others who are less
11 sensitive, who are more brusque in manner, and I wouldn't be
12 surprised if the sensitive officers found the other
13 officers, in a normal conversation, to being brusque or
14 discourteous, or not fully considerate of the other person's
15 feeling in the way they express themselves, and I'm -- from
16 -- when you say snicker the officer denies that he did so.
17 Like -- and what you're describing is that there was a half
18 smile --

19 MS. G It wasn't a half smile, it was
20 more -- it's a half smile, a grin, and a -- like I don't
21 care, it's just, it's just another case, k of attitude.

22 THE COURT: Well, the officer suggests that there
23 was a bit of frustration on his part because he tried to
24 remind you that he already, from an earlier conversation,
25 advised you that, that there would be no charges pressed,
26 unless there was further information, and that he told you
27 that on this March 17th, and that you went over the whole
28 story again, and --

29 MS. G J: No, I didn't, Your Honour.

30 THE COURT: Well, that's what the report says of
31 the interview, and the officer also says that you did not
32 mention anything about threats or knives. I gather that
33 subsequently you may have mentioned that.

34 And -- like I understand that when you, when --

1 you, as a person, who felt that you were grieved by someone
2 you're entitled to have your complaint dealt with
3 professionally by a properly trained officer?

4 MS. G J: That's correct, Your Honour, and
5 may I add. Whatever Sgt. K was doing before, coming into
6 this -- the Tuxedo office, whether he was frustrated from
7 this -- because I had made a complaint and no statement was
8 taken, it lacks profession and professionalism in the police
9 force. If he's frustrated well I'll tell you I could tell.
10 He was frustrated, he didn't care, specifically the other
11 police, Sgt. S , didn't help in the matter, so ...

12 THE COURT: Well, it's, it's not a, a disciplinary
13 default when an officer is frustrated. An officer who has
14 spent -- who's at the end of his shift if -- would likely be
15 more frustrated than others, although at all times like
16 judges, lawyers, or responsible persons are obliged to
17 conduct themselves in such a way so that when they perform
18 their duties they can do so in a partial competent manner,
19 and dispassionately discharge those duties, but frustration
20 in itself is not one of those disciplinary codes. If the
21 officer in frustration exceeds the boundaries and actually
22 engages in that sort of conduct then at the very first one
23 would expect an apology, and then as to what further steps
24 should be taken.

25 Let me have one point clarified in -- is that your
26 original report, complaint about the rape, was in August
27 of ...

28 MS. G J: Ninety-eight.

29 THE COURT: Pardon me?

30 MS. G J: Ninety-eight.

31 THE COURT: That's right. And that report doesn't
32 say when was the allegation of the actual rape.

33 MS. G J: It doesn't?

34 THE COURT: Not that I could see. Was it just

1 shortly before when you first reported it?

2 MS. G : No, it wasn't.

3 THE COURT: How long before that date was it?

4 That is what date were you referring to?

5 Was it something that occurred a few years before
6 August of '98?

7 MS. G : No, it occurred less than a year
8 before --

9 THE COURT: I see.

10 MS. G : -- that date.

11 THE COURT: But it wasn't like the assault took
12 place now and you called the next day?

13 MS. G : No.

14 THE COURT: All right.

15 MS. (: Through the trauma.

16 THE COURT: I'm sorry?

17 MS. (: Through the trauma that I've had
18 to live with, and to deal with I believe any psychologist
19 could tell you, in a court of law, that it would be
20 understandable.

21 THE COURT: And the documents in the files that I
22 perused suggest that you weren't able to accept the decision
23 of the police officer not to press charges, and what he
24 might have done, and he might have done it or not, but that
25 is not in the files, is, is inform you that if you weren't
26 satisfied with that you could probably consider a private
27 prosecution against this person.

28 MS. G : No, I was not aware of that, and
29 if that was the case then I would have -- did it that same
30 day. I would have had the police charge the, the person
31 that had raped me, but if I'm told no charges will be laid
32 it's pretty hard to have a police officer listen to your
33 story and tell you otherwise, because it's too late. It's
34 not an incident that happened 20 years ago, where someone

1 was raped. This is, this is a case of isolation, threats,
2 confinement.

3 THE COURT: The officer presumably asked you why
4 did you wait so long to finally make a complaint in what
5 seemed to be a serious matter?

6 MS. G : That's what I just addressed, Your
7 Honour.

8 THE COURT: Pardon me?

9 MS. G : That's what I have just addressed.

10 THE COURT: No, I know, but he probably did ask
11 you that in that interview in August of --

12 MS. (: That's correct, yes, and I told
13 him.

14 THE COURT: And you probably gave him answers?

15 MS. (: That's correct. I don't know if
16 it's in the report or not.

17 THE COURT: No, it's not in the record, and, and
18 I'm just speculating, but it could be that the answer you
19 gave him to that question probably contributed towards his
20 conclusion that there was no basis to charge anyone with
21 this serious offence?

22 MS. G : No basis? Then someone will have
23 to tell me here a little bit more information on that. What
24 I could have done from the time I made my complaint, and to
25 the actual time that I was told specifically by Sgt. King
26 why I could not, when the situation happened less than a
27 year.

28 THE COURT: The Commissioner in his letter to you
29 suggested that your underlying complaint was your
30 dissatisfaction in the officer's decision not to press
31 charges; is -- firstly, you --

32 MS. G : That's what it states.

33 THE COURT: Yes, acknowledge that that is in the
34 letter.

1 MS. G : That I acknowledge.

2 THE COURT: What, what do you say to that?

3 MS. G : It's a statement.

4 THE COURT: No, but what do you say -- in your
5 submission are you, are you not saying that that is your
6 main -- that that is one of your complaints about the police
7 department and this particular officer in that he did not
8 lay charges?

9 MS. G : He never took a statement. No, I
10 don't, I don't have a statement, a signed statement. I
11 don't think the police have a signed statement of what I
12 actually told Sgt. K , or if one was made, or if one was
13 recorded, or if one wasn't recorded.

14 THE COURT: Are you referring to the August,
15 '98 --

16 MS. G : Yes. What does a citizen have to
17 do, you know?

18 THE COURT: But -- I, I understand, but as I am
19 trying to understand your position --

20 MS. G : Yes.

21 THE COURT: -- and it seems to be so that your
22 complaint mainly arises out of the inaction of the police,
23 particularly through Sgt. K when you made the complaint
24 to him.

25 MS. G : The inaction, the
26 unprofessionalism and the snicker. It's one thing taking --

27 THE COURT: And when you say unprofessionalism
28 what besides the snicker are you referring to?

29 MS. G : Well, it states in the complaint
30 about the snicker --

31 THE COURT: Yes.

32 MS. G : -- and that's what we're
33 addressing.

34 THE COURT: Right.

1 MS. C : I'm also addressing -- yes, he did
2 carefully listen, yes he may have been frustrated, yes --
3 who knows, his hands may have been tied with other files, so
4 he may not have had extra time, or there may not have been
5 extra money in the budget to take a look, and to allot for
6 more time, in my case. I don't know if I was the last case
7 of that day or not.

8 THE COURT: Well --

9 MS. G : And, yes, somebody would be
10 frustrated, I would be frustrated, too, but to be
11 professional, you know, I think it takes a little bit more
12 effort.

13 THE COURT: How long did the interview with the
14 sergeant take place about that complaint?

15 MS. G : I don't have it documented at all.

16 THE COURT: Do you have any estimate?

17 MS. G : I'm sure it was, I'm sure it was
18 at least an hour.

19 THE COURT: The officer says, says that it was two
20 and a half hours.

21 MS. G : Yeah, I don't know, Your Honour.

22 THE COURT: Pardon me?

23 MS. G : I don't know, Your Honour. I
24 don't know how long.

25 THE COURT: But an hour, which is your best
26 recollection, and two and a half hours which is his
27 doesn't --

28 MS. G : No, I'm not --

29 THE COURT: -- doesn't suggest a hasty disposal of
30 your matter.

31 MS. G : No, no, I'm not, I'm not -- I
32 don't know how long it was, Your Honour. I don't know. All
33 I know that --

34 THE COURT: No, but you're suggesting that maybe

1 it was at the end of the day, and he didn't have time, but
2 it appears that he did take time, and that's a lot of time.

3 MS. G : Yes, I'm not disputing that. Yes,
4 he did take time, but this -- further in the complaint it
5 was the next time I followed up on the matter.

6 THE COURT: Yes, and that was on March the 17th.
7 Yes, and then you followed up -- and, and I
8 believe you're referring to then that March 17th attendance
9 at the Tuxedo Community police office, because you had not
10 heard anything from him, since August of '98?

11 MS. G : Maybe Sgt. K can clarify what
12 is meant by irrational -- of being rationally behind his
13 decision not to investigate.

14 THE COURT: In his interview with the Commissioner
15 he states that after interviewing you with Cst. W , who
16 was present, for two and a half hours, that he told you that
17 there would be no charges, that there was no evidence of
18 sexual assault, and --

19 MS. G : If you don't investigate, Your
20 Honour, how do you know if there's any --

21 THE COURT: And I don't know what that is. That,
22 that wasn't before the Commissioner as to what was in that
23 two and a half hour statement, as that is not the subject of
24 a complaint of any -- as to whether the officer -- how he
25 acted. The fact that he exercised his discretion on not
26 pressing charge does not by any stretch fall within any of
27 the provisions under Section 29 of The Law Enforcement
28 Review Agency Act. And I, I gather that you didn't go to
29 the Women's Advocacy Group or the Crisis Centre, or other
30 agencies?

31 MS. G : Yes, as a matter of fact I did,
32 and they told me, through their mandate, I had to be in a
33 relationship.

34 THE COURT: Yes.

1 MS. G : And they ended the conversation by
2 saying, well I hope you have somewhere to stay.

3 THE COURT: And, and was this conversation shortly
4 after this rape, or was it after this August, '98 interview?

5 MS. G : No, it was after the rape.

6 THE COURT: One is curious to know why you didn't
7 report it immediately to the police, but that is not before
8 me, and I professionally am not interested in the reasons,
9 and you indicate that you discussed that with Sgt. K in
10 August of '98, and so that he in his discretion that's the
11 conclusion he arrived at, and it's a conclusion that you
12 weren't prepared to accept, and as I see it why you attended
13 again on March the 17th, and then in the course of this
14 conversation you heard the officers exchange the words,
15 sounds like an affair, and then you observe what you thought
16 was a snicker, that you took to be demeaning.

17 MS. G : It was. Anyone would have taken
18 it as demeaning. My father did not come in when I talked to
19 two officers, so I don't have a witness until after I was
20 done with the quote, unquote, meeting with the two officers.
21 I don't think that's fair, if that's to be used against me
22 in a court of law.

23 THE COURT: Apparently your mother saw the
24 rationale of, of the police officer, but your father had no
25 sympathy with the system; is that correct?

26 MS. G : No, there was no comment made from
27 my dad, other than to listen, and with my mother she wanted
28 to find out how long I would be with Sgt. K , period.

29 THE COURT: Well, Sgt. K says, mother, mother
30 came in, was a legal secretary, and, and okay with her
31 decision -- with the officer's decision.

32 MS. G : Is there a written statement?

33 THE COURT: No, this is part of the interview.

34 MS. G : Oh.

1 THE COURT: In any, in any event that's the
2 history, that is why you were not satisfied, and Sgt. K
3 in his interview states that he wanted to go over everything
4 that you wanted to go -- everything over again. He offered
5 to meet with your lawyer, he called your father -- is it
6 father or father-in-law to explain, and he's the one who
7 said he doesn't agree with the system?

8 MS. G : I was right there. I did not hear
9 my dad say that.

10 THE COURT: Anything else that you want to say?
11 We're probably reaching the stage where anything else would
12 be repetition, but I -- and we have repeated some of the
13 matters of your concern, to make sure that I didn't miss
14 anything --

15 MS. G : The --

16 THE COURT: -- and had the full impact of your
17 complaint.

18 MS. G : -- the information that Sgt. K
19 -- it states that wanted to talk to my lawyer about that
20 alone. If he wanted to talk to me more about what happened
21 then he would -- I would have thought he would have come to
22 me, and ask about more details, so he could further his
23 report, so I could have a filed statement, but as of the
24 case there is no statement given, that I'm aware, unless --
25 correct me if I'm wrong, Sgt. K .

26 THE COURT: When you're talking about a statement
27 what, what are you referring to?

28 MS. G : The actual statement that I made
29 to Sgt. K that day in August.

30 THE COURT: No, I don't have that. That is not
31 part of the -- and I don't believe the Commissioner had it,
32 or I would have had it, because as I pointed out to you his,
33 his discretion in deciding not to press does not fall within
34 one of the disciplinary codes. That was, that was a

1 discretion the officer, based on his experience, was
2 entitled to make, and it would be surprising that he would
3 not press charges, in view of the zero tolerance policy in
4 this province that I believe extended to then, so that one
5 can only infer is that he felt that your case had no merit,
6 as far as he was concerned.

7 MS. G : Can you explain zero tolerance?

8 THE COURT: Pardon me?

9 MS. G J: Can you explain zero tolerance to
10 me?

11 THE COURT: Is that every complaint would be acted
12 upon?

13 MS. G : Yes, that -- it was acted upon
14 through that small time frame.

15 THE COURT: He had a two and a half -- yes, he had
16 a two and a half hour interview, but -- you see a police
17 officer has to have information on which he could form
18 reasonable and probable grounds that someone committed an
19 offence --

20 MS. G : Well --

21 THE COURT: -- and as you were the complainant he
22 would have to be satisfied from you, or if he then proceeded
23 to arrest someone, without being so satisfied, he is
24 violating that person's constitutional rights, on, on being
25 arrested without sufficient grounds. Do you understand?

26 MS. G : I hear what you're saying. I may
27 not understand all of what -- the legalities of the, the
28 legal system, but --

29 THE COURT: But you understand when the officer
30 spent two --

31 MS. G : I --

32 THE COURT: -- and a half hours it didn't show
33 that he was dismissing you out of hand, and he --

34 MS. G : No, but I'm talking --

1 THE COURT: -- says he offered to meet with your
2 lawyer further, and I gather you didn't come -- you didn't
3 pursue that.

4 MS. G : I -- next time the situation would
5 happen I guess I will have to take the two weapons out and
6 prove it; myself and act as someone in need. I was in time
7 of need and ...

8 THE COURT: But it was the time in need that
9 apparently extended for over a year from the time --

10 MS. G : Under a year.

11 THE COURT: -- of the complaint, you know --

12 MS. G : Under a year, Your Honour.

13 THE COURT: Or under a year, or some months.

14 MS. G : This is not a case of -- the cases
15 you hear out in the media, Your Honour, and I don't want to
16 get into that, but it was under a year, it's not a situation
17 where -- I like to talk about.

18 THE COURT: Yeah. But I'm interested that you
19 feel that you, that you -- that your coming here has
20 satisfied you, and I, I feel that probably you didn't
21 understand how our basic system works. In this case the
22 officer spent two and a half hours, according to his
23 estimate, and you said an hour, maybe more, and that's a
24 considerable time --

25 MS. G : Yes, I believe that.

26 THE COURT: -- but that an officer has -- does,
27 does not -- he did not feel -- I gather that he had a basis
28 even for forming a suspicion to investigate by, by
29 approaching this person. You see every citizen, every
30 person has certain rights and the officer, it would seem,
31 did not have those grounds to approach that other person,
32 and he so told you. I would, I would feel that you might
33 have some cause that if the officer lead you to believe that
34 you had a good case, and then he did nothing about it, and

1 that would be, that would be being two-faced with you. That
2 would be a discourtesy, even if it wasn't in so many words.

3 MS. : But what officer would tell a
4 citizen that they are raped, that you had a good case?

5 THE COURT: That you had which?

6 MS. G : That you had a good case, when all
7 you're doing is making a statement.

8 THE COURT: Oh, he would -- well, that's true, and
9 then, and then --

10 MS. G : They --

11 THE COURT: -- the officer would keep you
12 informed. Generally the police keep complainants informed,
13 and we have a system so you know how matters are
14 progressing, or you would hear about it in the paper, the
15 person's been arrested, you'd know he's jailed, but here he
16 told you that he wasn't going any further because he didn't
17 think there was a sexual assault, and you may disagree with
18 his opinion, but he was very frank with you after that two
19 and a half hour discussion; wouldn't you say?

20 MS. G : Oh, he didn't tell me what time
21 was, was allotted for, for me, but I would say that he ...

22 He listened, that's all I'm saying.

23 THE COURT: Thank you.

24 MS. G : But it's the behaviour after, Your
25 Honour.

26 THE COURT: Well, or mainly his non-behaviour, his
27 non-action that gave rise to your concern on attending on
28 March 7th, and then when you did you observed what you
29 thought was a snicker.

30 MS. G : It was a snicker.

31 THE COURT: Is that the extent of your remarks?

32 MS. G : The comment here, On the
33 possibility of meeting with him informally you said that you
34 would only meet to tell him face to face that he lied.

1 If we had a polygraph test would he say he was
2 telling the truth or he'd, or he'd lied?

3 THE COURT: About --

4 MS. G J: Can a police officer say to the
5 public, yes, I'm sorry, I did make a mistake; yes, I did
6 snicker; yes, I didn't take this very seriously, the second
7 time that I met with you at the Tuxedo branch; is it so
8 demeaning for a public -- or a police officer to say, yes, I
9 did make a mistake? How, how professional would it be, in
10 the public's eye?

11 I'm not, I'm not here to put it in the newspaper.
12 I'm not the person that runs around -- I'm not the person
13 that's going to tell every police officer that, yeah, Sgt.
14 was the one that said, yes, I do apologize for
15 something I should not have done and taken it a little more
16 seriously because this woman was raped, and I can't prove
17 it, or she didn't, or she didn't phone right away.

18 THE COURT: Yes. And it, it may be that there may
19 have been some contortions on the officer's face that you
20 interpreted as a snicker. The officer specifically denies
21 that he intended to be offensive, or that he snickered.

22 MS. G J: The two of them snickered, Your
23 Honour.

24 THE COURT: You sat down and I take it you're
25 concluded, and even though -- you are concluded?

26 And I must commend you for being --

27 MS. G J: Yes, Your Honour.

28 THE COURT: -- very thorough, complete and very
29 competent on your feet.

30 MS. G J: I try, one day at a time.

31 THE COURT: Yes. And even though the two counsel
32 express only a watching brief, but is there anything that
33 counsel wanted to say, which would be at least that you
34 don't have any submission, if that is so?

1 MR. MCKENNA: I just, just wanted to refer to the
2 Bartel (phonetic) decision, Your Honour --

3 THE COURT: Yes.

4 MR. MCKENNA: -- and, and I believe -- do you have
5 a copy of that?

6 THE COURT: I, I do. I have the one -- the
7 original when it came out with the name, and then the one
8 from, from you on two occasions with the names --

9 MR. MCKENNA: Fine.

10 THE COURT: -- deleted --

11 MR. MCKENNA: Okay. All right. Is there a --

12 THE COURT: -- the amplified --

13 MR. MCKENNA: -- need to file it in this hearing,
14 Your Honour?

15 THE COURT: Pardon me?

16 MR. MCKENNA: Is there a need for me to file it in
17 this hearing with you? I've made copies if you --

18 THE COURT: Yes, that might be helpful.

19 MR. MCKENNA: Fine.

20 THE COURT: That is you want to leave it with the
21 Clerk?

22 MR. MCKENNA: Yes.

23 THE COURT: Right. Or that'll be with the file,
24 yes.

25 MR. MCKENNA: Your Honour, just based on, on this
26 -- the decision of Judge Chartier, and, and referring more
27 particularly to page 16 of the decision it deals with
28 findings of fact, and as I listened to Ms. G put in
29 her presentation, and she was objecting to findings of fact
30 that the Commissioner had made, if you look at the bottom of
31 page 16, and the top of page 17 it talks about how whenever
32 it comes to challenging the Commissioner's findings of fact
33 that it is a reasonableness simplicitor test in this
34 particular case, and I think that unless you are able to

1 find the findings of fact unreasonable that you ought not to
2 overturn them simply because you may find a different set of
3 facts. That is I'm, I'm referring Your Honour to the bottom
4 of page 16 and the top of page 17.

5 THE COURT: Yes.

6 MR. MCKENNA: So whenever Ms. G is raising
7 findings of fact that the Commissioner made I think the test
8 is reasonableness and according to Judge Chartier when it
9 comes to the ultimate question of whether or not this falls
10 under Section 29 of the Act I think the test is set out at
11 page 18 of the decision that -- page 18 there's numbers 1,
12 2, and 3. It's, it's really number 1 that governs this
13 particular case because the Commissioner's decision was that
14 the complaint did not fall within the scope of Section 29 of
15 the Act. Then it's a correctness test. I think on either
16 test, whether it be the reasonableness test, when it comes
17 to the findings of facts, or whether it is the, the decision
18 that it doesn't fall within Section 29, and therefore a
19 correctness test, I think under either of those two tests,
20 Your Honour, that the, the onus is on the complainant and I
21 don't think that the complainant has made out a, a case for
22 overturning the decision of the Commissioner.

23 I, I don't have much more to say to that, except
24 to say that if you thought it would be helpful, Your Honour,
25 I would ask Sgt. King to review with you the notes of his
26 August, 1998 interview.

27 THE COURT: I, I am able to read his writing.

28 MR. MCKENNA: Fine.

29 THE COURT: I had no difficulty. Did I suggest --

30 MR. MCKENNA: No, that --

31 THE COURT: -- that I had some difficulty?

32 MR. MCKENNA: -- that was the only reason I was
33 offering that is that in, in the event that, that it
34 wouldn't be easy to read his writing. I didn't find it all

1 that easy to read, and I was --

2 THE COURT: It is 10 times better than my writing.

3 MR. MCKENNA: That is the test, Your Honour, and
4 that's the only thing that I wanted to speak to. I don't
5 think that the onus has been met, and I would ask that you
6 uphold the decision of the Commissioner, and --

7 THE COURT: Yes.

8 MR. MCKENNA: -- and as well if you are going to
9 do so then I'm asking for a publication ban under article --
10 or Section 13(4.1) of the Act.

11 THE COURT: Yes, and any other submissions or
12 positions?

13 I looked at all the documents that are contained
14 in the two files, including the one that the commissioner
15 had and prepared, and received what I felt was a, a full and
16 good submission by Ms. (, and in the submission
17 there's no suggestion that there was any further evidence or
18 information that the Commissioner might have had that would
19 have moved him to make a different determination than he
20 did, or that would move me to order that there'd be a
21 hearing with additional witnesses before a provincial court
22 judge, as this matter is limited it was pointed out to you
23 and the documentation was forwarded to you, to review of the
24 determination that the Commissioner did make.

25 But I, I am satisfied from the submission made and
26 the documents filed that the Commissioner made a correct
27 determination and that he assessed this complaint as
28 frivolous or vexatious, and furthermore there would be --
29 there's insufficient evidence that your version of the
30 snicker is an intended meaning, conduct on the part of the
31 officer, which would be a disciplinary defect -- default
32 matter, and, and I'm therefore confirming then on the
33 grounds of reasonableness and correctness the Commissioner's
34 determination is confirmed, and in addition there'd be a ban

1 under Section 13(4.1), and that's banning the publication of
2 names, just so you would know, Ms. G .

3 Then that, therefore, concludes this review this
4 afternoon. Thank you again for your submission, Ms.
5 G .

6 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, MARLEEN BELL, hereby certify that the foregoing pages of printed matter, numbered 1 to 26, 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, Judy Cohn, and has been transcribed by me to the best of my skill and ability.

Marleen Bell
COURT TRANSCRIBER